

## REGULATOR'S COMPLIANCE CODE

### Purpose of the Code

Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

The Code stresses the need for the Licensing Service to adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, voluntary and community organisations, charities, social enterprises and cooperatives; and other regulated entities, such as businesses, public sector bodies, charities and voluntary sector organisations that are subject to regulation.

The Code does not relieve the Licensing Service of its responsibility to comply with its obligations under the law.

### Background and scope

The Code was laid before Parliament by the Minister for the Cabinet Office and has been approved by both Houses of Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), after having consulted persons appearing to him to be representative of persons exercising regulatory functions and such other persons as he considered appropriate. In preparing the draft, the Minister has sought to secure that the Code is consistent with the Principles of Good Regulation specified in section 21(2) of the Act.

These principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.

The Minister issued the Code under section 22(1) of the Act on 17 December 2007.

The Code only applies to those regulatory functions specified by order made under section 24(2) of the Act. Any regulator (including the Licensing Service) whose functions are so specified **must have regard to** this Code:

- (a) when determining any general policy or principles about the exercise of those specified functions (section 22(2)); or
- (b) when exercising a specified regulatory function which is itself a function of setting

standards or giving general guidance about other regulatory functions (whether their own functions or someone else's functions)(section 22(3)).

The duties to have regard to the Code under section 22(2) and (3) of the Act **do not** apply to the exercise by a regulator or its staff of any specified regulatory function in individual cases. This means, for example, that while an inspector or investigator should operate in accordance with a regulator's general policy or guidance on inspections, investigations and enforcement activities, the Code does not apply directly to the work of that inspector or investigator in carrying out any of these activities in individual cases.

The duty on the Licensing Service to "have regard to" the Code means that the regulator **must** take into account the Code's provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance.

The Licensing Service is not bound to follow a provision of the Code if they *properly* conclude that the provision is either not relevant or is outweighed by another relevant consideration. It should ensure that any decision to depart from any provision of the Code is properly reasoned and based on material evidence. Where there are no such relevant considerations, the Licensing Service should follow the Code.

Section 22(4) of the Act provides that the duty to have regard to the Code is subject to any other legal requirement affecting the exercise of the regulatory function, including EC law obligations.

### **Specific obligations of the Code**

#### **Economic progress**

The Licensing Service will endeavour to consider the impact that their regulatory interventions may have on economic progress, including thorough consideration of the costs, effectiveness and perceptions of fairness of regulation. It will only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving their objectives.

The Licensing Service will keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

The Licensing Service will endeavour to consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.

When the Licensing Service sets standards or gives guidance in relation to the exercise of its own or other regulatory functions, they will endeavour to allow for reasonable variations to meet local government priorities, as well as those of the devolved administrations.

## **Risk Assessment**

The Licensing Service will endeavour to ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes. They will also endeavour to ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:

- data collection and other information requirements;
- inspection programmes;
- advice and support programmes; and
- enforcement and sanctions.

Risk assessment will be based on all available relevant and good-quality data. It will include explicit consideration of the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance.

In evaluating the likelihood of non-compliance, the Licensing Service will endeavour to give consideration to all relevant factors, including:

- past compliance records and potential future risks;
- the existence of good systems for managing risks, in particular within regulated entities or sites
- evidence of recognised external accreditation; and
- management competence and willingness to comply.

The Licensing Service will regularly review and, where appropriate, improve their risk methodologies. In doing so, they may take into account feedback and other information from regulated entities and other interested parties.

## **Advice and Guidance**

The Licensing Service will endeavour to ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements, are promptly communicated or otherwise made available to relevant regulated entities.

The Licensing Service will try to provide targeted and practical advice that meets the needs of regulated entities. Such advice may be provided in a range of formats, such as through face-to-face interactions, telephone helpline and online guidance. In determining the appropriate formats, the Licensing Service may seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources.

The Licensing Service will endeavour to provide appropriate means to ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the Licensing Service may seek primarily to provide the advice and guidance necessary to help ensure compliance.

## **Inspections and other visits**

The Licensing Service will ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology, except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.

The Licensing Service will focus their **greatest** inspection effort on regulated assessment which shows that both:

- a compliance breach or breaches would pose a serious risk to a regulatory; and
- there is high likelihood of non-compliance by regulated entities.

Where the Licensing Service visits or carry out inspections of regulated entities, it will try to give positive feedback to the regulated entities to encourage and reinforce good practices.

The Licensing Service will also share amongst regulated entities, and with other regulators, information about good practice.

Where two or more inspectors, whether from the same or different sectors within the Licensing Service or outside body, undertake planned inspections of the same regulated entity, it will try to make arrangements for collaboration to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

## **Information requirements**

When determining which data it may require, the Licensing Service may undertake an analysis of the costs and benefits of data requests to regulated entities. It will give explicit consideration to reducing costs to regulated entities through:

- limiting data requests according to risk;
- limiting collection to specific regulated entities sectors/sub-sectors;
- reducing the frequency of data collection;
- obtaining data from other sources;
- allowing electronic submission; and
- requesting only data which is justified by risk assessment.

## **Compliance and enforcement actions**

The Licensing Service may seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. It may also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.

When considering formal enforcement action, the Licensing Service will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This does not apply where immediate action is required

to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

The Licensing Service will endeavour to ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review. This means that their sanctions and penalties policies will:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

In accordance with the Macrory characteristics, the Licensing Service will also endeavour to:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- follow-up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

The Licensing Service will try to ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should also be explained at the same time.

The Licensing Service will enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. It will also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

## **Accountability**

The Licensing Service will, where possible, create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

The Licensing Service will provide effective and timely complaints procedures (including for matters in this Code) that are easily accessible to regulated entities and other interested parties.