

**2017 No. XXXX**

**REGULATORY REFORM**

**The Co-ordination of Regulatory Enforcement Regulations 2017**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - - - - *1st October 2017*

The Secretary of State, in exercise of the powers conferred by sections 22C(1)(b), (1)(c), (2), (4), and (5); 25A(2); 25D(1) and (2); 28A(1), (9), (10) and (11); and paragraph 9 of Schedule 4A of the Regulatory Enforcement and Sanctions Act 2008(a), and with the consent of the Welsh Ministers makes the following Regulations.

**Citation, commencement and Interpretation**

1.—(1) These Regulations may be cited as the Co-ordination of Regulatory Enforcement Regulations 2017 and come into force on 1st October 2017.

(2) In these Regulations—

“the Act” means the Regulatory Enforcement and Sanctions Act 2008;

“relevant enactment” has the same meaning as in section 4(2) of the Act (except in regulation 4, where it has a different meaning).

**Supporting Regulators**

2.—(1) The regulators listed in the Schedule to these Regulations are specified as supporting regulators for the purpose of section 28A(1)(a) of the Act.

(2) A regulatory function(b) is a designated function for the purposes of section 28A(10) of the Act if it is a regulatory function that the supporting regulator is entitled to exercise under a relevant enactment.

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(a) 2008 c.13; Part 2 was substituted by section 20(1) of the Enterprise Act 2016 (c.12); Schedule 4A was substituted for Schedule 4 by section 20(2) of, and Schedule 3 to, the Enterprise Act 2016.

(b) ‘Regulatory function’ for these purposes is defined in section 74 of the Act, by reference to the definition in section 32 of the Legislative and Regulatory Reform Act 2006 (c.51) as “(2)(a) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity. (3) In subsection (2)(a) and (b) the references to a function (a) include a function exercisable by or on behalf of the Crown; (b) do not include (i) any function exercisable by any body of, or any person holding office in, the Church of England; or (ii) any function of conducting criminal or civil proceedings. (4) In subsection (2)(a) and (b) the references to an activity include (a) providing goods and services; and (b) employing or offering employment to any person.”

### **Relevant functions in Scotland**

3.—(1) A regulatory function is specified for the purposes of section 22C(1)(b) of the Act if it is a regulatory function that a local authority in Scotland is entitled to exercise under a relevant enactment.

(2) Paragraph (1) does not apply to a regulatory function if, or to the extent that, the function relates to a matter which is not a reserved matter.

### **Relevant functions in Northern Ireland**

4.—(1) A regulatory function is specified for the purposes of section 22C(1)(c) of the Act if it is a regulatory function that a local authority in Northern Ireland is entitled to exercise under a relevant enactment.

(2) In paragraph (1) “relevant enactment” means an enactment—

- (a) specified in Schedule 3 to the Act or an enactment made under such an enactment, or
- (b) made under section 2(2) of the European Communities Act 1972<sup>(a)</sup> with respect to—
  - (i) the safety of consumers in relation to goods, or
  - (ii) technical standards derived from European Union law, other than standards and requirements in relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides.

(3) Paragraph (1) does not apply to a regulatory function if, or to the extent that, the function relates to a matter which is a transferred matter.

### **Enforcement action**

5.—(1) In accordance with section 25A(2)(a) of the Act, and subject to paragraph (2), each of the following actions is to be regarded as enforcement action for the purposes of Part 2 of the Act—

- (a) the service of any of the following by an enforcing authority under a relevant enactment—
  - (i) an abatement notice,
  - (ii) an alterations notice,
  - (iii) a compliance notice,
  - (iv) a demolition order,
  - (v) a detention notice,
  - (vi) an enforcement notice,
  - (vii) a fixed monetary penalty,
  - (viii) a hazard awareness notice,
  - (ix) an improvement notice,
  - (x) a premises order,
  - (xi) a prohibition notice (including an emergency prohibition notice),
  - (xii) a prohibition order,
  - (xiii) a remedial action notice (including an emergency remedial action notice),
  - (xiv) a request to fulfil a discretionary requirement,
  - (xv) a stop notice,
  - (xvi) a suspension notice, or

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(a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and by section 3 and Part 1 of the Schedule to the European Union (Amendment) Act 2007 (c.7).

- (xvii) any other notice or order;
- (b) the determination of an application under section 61 of the Control of Pollution Act 1974(a);
- (c) certificates issued under regulation 29 of the Food Safety and Hygiene (England) Regulations 2013(b);
- (d) certificates issued under regulation 27 of the Food Hygiene (Wales) Regulations 2006(c);
- (e) the reference of any matter to a prosecuting authority other than a local authority with a view to the prosecuting authority considering the commencement of proceedings in relation to the matter;
- (f) the commencement of proceedings in a court of law, or a tribunal created under an enactment;
- (g) the imposition of any sanction (whether civil or criminal) in respect of any act or omission;
- (h) the administering of a simple caution;
- (i) the acceptance by the enforcing authority of any undertaking (under an enactment or otherwise) in respect of an act or omission.

(2) In accordance with section 25A(2)(b) of the Act, the following action is not to be regarded as enforcement action for the purposes of Part 2 of the Act—

- (a) action within the scope of section 25A(1) of the Act not specified in paragraph (1);
- (b) action taken by an enforcing authority pursuant to or in connection with the exercise of functions under—
  - (i) the Licensing Act 2003(d) (except action taken under sections 146, 147, 147A and 151 of that Act), or
  - (ii) the Gambling Act 2005(e) (except action taken under Part 4 of that Act).

6. In accordance with section 25D of the Act, sections 25B and 25C of the Act do not apply where—

- (a) the enforcement action is required urgently to avoid a significant risk of serious harm to—
  - (i) human health,
  - (ii) the environment (including the health of animals or plants), or
  - (iii) the financial interests of consumers; or
- (b) the application of sections 25B or 25C of the Act would be wholly disproportionate.

### **Procedure for references to the Secretary of State - Applications for consent**

7.—(1) All applications to the Secretary of State for consent to a reference must contain the following information—

- (a) the applicant's name,
- (b) the applicant's business address,

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(a) 1974 c.40; section 61 was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c.55), section 120 of, and Schedule 24 to, the Environment Act 1995 (c.25); and as regards Scotland it was amended by section 58 of, and Schedule 6 to, the Building (Scotland) Act 2003 (asp 8), and section 162(1) of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c.43).

(b) S.I. 2013/2996.

(c) S.I. 2006/31 (W.5).

(d) 2003 c.17; section 147A was inserted by section 23(1) and section 23(4) of the Violent Crime Reduction Act 2006 (c.38) and amended by section 28 of the Policing and Crime Act 2006 (c. 26), by section 67(8)(a) of the Deregulation Act 2015 (c.20), and by sections 218(1), (2) and (4) of the Police Reform and Social Responsibility Act 2011 (c.13). Section 147A(4)(c) was inserted by section 67(8)(b) of the Deregulation Act 2015 (c.20).

(e) 2005 c.19.

- (c) the name and contact details of an individual within the applicant’s organisation who has responsibility for the application and reference,
  - (d) the name and business address of any other party, and
  - (e) a description of the proposed enforcement action.
- (2) In addition the following information must also be provided—
- (a) where the enforcing authority is the applicant—
    - (i) a copy of any written notification sent to the primary authority regarding the proposed enforcement action,
    - (ii) a copy of any written direction from the primary authority under section 25C(4) of the Act stating that the enforcing authority must not take enforcement action,
    - (iii) a copy of any advice and guidance given by the primary authority or the co-ordinator to the regulated person under section 24A(1)(a) or section 24A(4) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority,
    - (iv) a copy of any advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) or section 24A(2)(b) of the Act which is relevant to the proposed enforcement action, and
    - (v) a statement as to why the enforcing authority considers that—
      - (aa) the proposed enforcement action is not inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person under section 24A(1)(a) or section 24A(4) of the Act, or to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act,
      - (bb) the advice or guidance was not correct, or
      - (cc) the advice or guidance was not properly given;
  - (b) where the regulated person is the applicant—
    - (i) a copy of any advice and guidance given by the primary authority or the co-ordinator to the regulated person under section 24A(1)(a) or section 24A(4) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority,
    - (ii) a copy of any advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) or section 24A(2)(b) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority,
    - (iii) a copy of any document informing the regulated person of the proposed enforcement action; and
    - (iv) a statement as to why the regulated person considers that—
      - (aa) the proposed enforcement action is not inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person under section 24A(1)(a) or section 24A(4) of the Act, or to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act,
      - (bb) the advice or guidance was correct, and
      - (cc) the advice or guidance was properly given;
  - (c) where the primary authority is the applicant—
    - (i) a copy of any advice or guidance given—
      - (aa) to the regulated person or to the co-ordinator of the regulated group under section 24A(1)(a) or section 24A(2)(a) of the Act,

- (bb) to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act, and
- (cc) which is relevant to the proposed enforcement action;
- (ii) a copy of any written notification of enforcement action from an enforcing authority received by it, under section 25C(2) of the Act, regarding the proposed enforcement action; and
- (iii) a statement as to why the primary authority considers that—
  - (aa) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person or co-ordinator of the regulated group under section 24A(1)(a) or section 24A(2)(a) of the Act, or to qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act,
  - (bb) the advice or guidance given was correct, and
  - (cc) the advice or guidance was properly given.

**Procedure for references to the Secretary of State - Time limits for making an application for consent to a reference**

8.—(1) The enforcing authority must make an application for consent to a reference as soon as reasonably practicable, and in any event within the period of 10 working days beginning with the day after that on which the enforcing authority receives a direction from the primary authority under section 25C(4) of the Act that the proposed enforcement action must not be taken.

(2) The regulated person must make an application for consent to a reference as soon as reasonably practicable, and in any event within the period of 10 working days beginning with the day after that on which the regulated person is informed by the enforcing authority under section 25B(2)(a) or section 25C(6)(a) of the Act of the enforcement action proposed to be taken.

(3) The primary authority must make an application for consent to a reference as soon as reasonably practicable, and in any event within the period of 5 working days beginning with the day after that on which the primary authority is notified under section 25C(2)(a) of the Act that the enforcing authority proposes to take action against a regulated person.

(4) The Secretary of State may, in exceptional circumstances, allow an application for consent to a reference to be made after the time limits set out in this Regulation.

(5) On receipt of an application for consent to a reference the Secretary of State must give notice of it to the other parties.

**Procedure for references to the Secretary of State - Representations**

9.—(1) Before or after giving consent to a reference the Secretary of State may request written representations from the parties.

(2) Representations must be made within the time period which the Secretary of State specifies in the request.

(3) Representations from any of the other parties must include the information that the other party would have to have given under regulation 7(2) if it had been the applicant.

**Procedure for references to the Secretary of State - Decision on application for consent to a reference**

10.—(1) The Secretary of State must decide whether to consent to a reference as soon as reasonably practicable after receiving an application.

(2) The Secretary of State must inform the applicant and other parties in writing of the decision as soon as reasonably practicable.

(3) If the Secretary of State refuses consent to a reference, the Secretary of State must give a written statement of reasons for that decision at the same time as it informs the applicant and the other parties of the decision.

#### **Procedure for references to the Secretary of State - Withdrawal**

**11.**—(1) The applicant may apply in writing to the Secretary of State for consent to withdraw an application for consent to a reference.

(2) The Secretary of State must not consent to the withdrawal of an application for consent to a reference without consulting with the other parties.

(3) After the Secretary of State has given consent to a reference, the applicant may apply in writing to the Secretary of State for consent to withdraw that reference.

(4) The Secretary of State must not consent to the withdrawal of a reference after giving consent to it without consulting the other parties.

#### **Procedure for references to the Secretary of State - Confidentiality and disclosure**

**12.**—(1) The Secretary of State cannot be required to treat information disclosed in connection with an application for consent to a reference or in connection with a reference as confidential.

(2) No person may use any information received in connection with a reference or an application for consent to a reference for any other purpose without the consent of the Secretary of State and all other parties.

#### **Procedure for references to the Secretary of State - Determination of a reference**

**13.**—(1) The Secretary of State must notify the parties in writing of a determination as soon as reasonably practicable.

(2) The Secretary of State must provide the applicant and the other parties with a written statement of reasons as soon as reasonably practicable after the determination has been made and in any event within 28 days of the determination being made.

#### **Review**

**14.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st October 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015.

Date

*Name*  
Parliamentary Under Secretary of State  
Department

## SCHEDULE

Regulation 2(1)

### Supporting Regulators

The Competition and Markets Authority

The Food Standards Agency

The Gambling Commission

The Health and Safety Executive

The Secretary of State

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under powers in Part 2 and Schedule 4A of the Regulatory Enforcement and Sanctions Act 2008 ('the Act'). These provisions create the framework under which Primary Authority operates. Primary Authority is a scheme that allows businesses to form partnerships with local authorities in order to receive advice and guidance on regulatory matters.

Regulation 2 and Schedule 1 of these Regulations specify the regulators that may provide support to primary authorities and specify the functions in relation to which that support may be provided.

Regulations 3 and 4 of these Regulations specify the regulatory functions exercisable by local authorities in Scotland and Northern Ireland to which Primary Authority applies.

Regulation 5 of these Regulations describes what is, and what is not, to be regarded as enforcement action for the purposes of Primary Authority and Regulation 6 prescribes the circumstances in which the enforcing authority does not have to notify the primary authority before it takes enforcement action. In such circumstances the enforcing authority must notify the primary authority as soon as it reasonably can after taking the enforcement action.

Schedule 4A of the Act sets out the procedure for references to the Secretary of State where there is dispute between the parties in relation to whether or not an enforcement action should go ahead.

Regulation 7 sets out the information to be provided by an applicant.

Regulation 8 provides for notice of an application to be given to the other parties, i.e. whichever of the enforcing authority, regulated person or primary authority is not the applicant.

Regulation 9 provides for the making of representations by the other parties to a reference.

Regulation 10 sets out time limits for making an application. It also provides for the Secretary of State to take a decision as to whether to consent to a reference as soon as reasonably practicable, and also makes provision for the Secretary of State to inform the parties of that decision.

Regulation 11 makes provision for the withdrawal of an application for consent to a reference or withdrawal of a reference once consent has been given by the Secretary of State.

Regulation 12 makes provision in relation to confidentiality and use of information.

Regulation 13 provides that the Secretary of State must inform the parties of the determination in writing as soon as reasonably practicable, and provide written reasons for the determination.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and

Industrial Strategy, Regulatory Delivery, 1 Victoria Street, London, SW1H 0ET and is annexed to the Explanatory Memorandum, which is available alongside the instrument on the OPSI website.