



# Regulatory Enforcement and Sanctions Act 2008

## 2008 CHAPTER 13

### <sup>F1</sup>[PART 2

#### CO-ORDINATION OF REGULATORY ENFORCEMENT

##### *[Functions of primary authorities*

#### **27 Advice and guidance**

- (1) The primary authority has the function of—
  - (a) giving advice and guidance to the regulated person in relation to the relevant function;
  - (b) giving advice and guidance to other local authorities with the relevant function as to how they should exercise it in relation to the regulated person.
- (2) The primary authority may make arrangements with the regulated person as to how it will discharge its function under subsection (1).

#### **28 Enforcement action**

- (1) Subject as follows, a local authority other than the primary authority (“the enforcing authority”) must notify the primary authority before taking any enforcement action against the regulated person pursuant to the relevant function.
- (2) If the primary authority determines within the relevant period that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), it may within that period direct the enforcing authority not to take the enforcement action.
- (3) If the enforcing authority is not directed as specified in subsection (2) and continues to propose to take the enforcement action, it must inform the regulated person.

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- (4) The enforcing authority may not take the proposed enforcement action—
- (a) at any time during the relevant period;
  - (b) at any time after the end of that period, if it is directed as specified in subsection (2).
- (5) In this Part “enforcement action” means, subject to subsection (6)—
- (a) any action which relates to securing compliance with any restriction, requirement or condition in the event of breach (or putative breach) of a restriction, requirement or condition;
  - (b) any action taken with a view to or in connection with the imposition of any sanction (criminal or otherwise) in respect of an act or omission;
  - (c) any action taken with a view to or in connection with the pursuit of any remedy conferred by an enactment in respect of an act or omission.
- (6) The Secretary of State may by order with the consent of the Welsh Ministers specify action which is or is not to be regarded as enforcement action for the purposes of this Part.
- (7) Schedule 4 (which makes provision for questions arising under this section to be referred to <sup>F1</sup>the Secretary of State] has effect.
- (8) Where an enactment limits the period within which the enforcing authority may take the proposed enforcement action, any time during which the authority is prohibited under this section or Schedule 4 from taking the action is to be disregarded in calculating that period.
- (9) For the purposes of this section “relevant period” means—
- (a) the period of five working days beginning with the day after that on which the primary authority is notified under subsection (1), or
  - (b) such longer period beginning with that day as <sup>F1</sup>the Secretary of State] may direct.
- (10) In subsection (9)(b) “working day” means a day other than—
- (a) a Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in—
    - (i) the part of the United Kingdom where the primary authority is, or
    - (ii) (if different) the part of the United Kingdom where the enforcing authority is.

#### Textual Amendments

- F1** Words in s. 28(7)(9)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 12** (with Sch. 2)

#### Modifications etc. (not altering text)

- C1** S. 28(1)-(4) excluded (6.4.2009) by [The Co-ordination of Regulatory Enforcement \(Enforcement Action\) Order 2009 \(S.I. 2009/665\)](#), **arts. 1(1), 3** (as amended (6.4.2014) by [S.I. 2014/573](#), arts. 1, **2(9)**)

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#### Commencement Information

- II** S. 28 wholly in force at 6.4.2009; s. 28 not in force at Royal Assent see s. 76(1); s. 28(6)(7) in force at 1.10.2008 by [S.I. 2008/2371](#), [art. 2\(b\)](#); s. 28 in force for all remaining purposes at 6.4.2009 by [S.I. 2009/550](#), [art. 2](#)

### 29 Enforcement action: exclusions

- (1) The Secretary of State shall by order with the consent of the Welsh Ministers prescribe circumstances in which section 28(1) to (4) shall not apply.
- (2) Where a local authority other than the primary authority takes enforcement action against the regulated person in circumstances prescribed under subsection (1), the authority must inform the primary authority of the enforcement action it has taken as soon as it reasonably can.
- (3) The Secretary of State shall in particular under subsection (1) prescribe circumstances for the purpose of securing that section 28(1) to (4) shall not apply—
  - (a) where the enforcement action is required urgently to avoid a significant risk of serious harm to human health or the environment (including the health of animals or plants) or the financial interests of consumers;
  - (b) where the application of section 28(1) to (4) would be wholly disproportionate.

### 30 Inspection plans

- (1) Where a relevant function consists of or includes a function of inspection, the primary authority may in accordance with this section make an inspection plan.
- (2) An “inspection plan” is a plan containing recommendations as to how a local authority with the function of inspection should exercise it in relation to the regulated person.
- (3) An inspection plan may in particular set out—
  - (a) the frequency at which, or circumstances in which, inspections should be carried out;
  - (b) what an inspection should consist of.
- <sup>F2</sup>(3A) [ An inspection plan may require a local authority other than the primary authority, on exercising the function of inspection in relation to the regulated person, to provide the primary authority with a report on its exercise of the function.]
- (4) Before making an inspection plan the primary authority must consult the regulated person.
- (5) When making an inspection plan the primary authority must take into account any relevant recommendations relating to inspections which are published by any person (other than a local authority) pursuant to a regulatory function.
- (6) Where a primary authority has made an inspection plan, it must, if [<sup>F3</sup>the Secretary of State] consents to the plan, bring the plan to the notice of the other local authorities with the function of inspection.
- (7) [<sup>F4</sup>Where the primary authority exercises ] the function of inspection in relation to the regulated person [<sup>F5</sup>, it] must have regard to a plan to which consent has been given under subsection (6).

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[ A local authority other than the primary authority may not exercise the function of <sup>F6</sup>(7A) inspection in relation to the regulated person otherwise than in accordance with a plan that has been brought to its notice under subsection (6), unless—

- (a) it has notified the primary authority in writing of the way in which it proposes to exercise the function in relation to the regulated person, and
- (b) the primary authority has notified the local authority in writing that it consents to the authority's exercising the function in that way.

(7B) Subsection (7C) applies if a primary authority that has been notified by a local authority as described in subsection (7A)(a) fails to notify that authority in writing, within the notification period, whether it consents to the authority's exercising the function of inspection as described in the notification.

(7C) The primary authority is to be treated for the purposes of this section, following the expiry of the notification period, as having given the notification of consent described in subsection (7A)(b).

(7D) The “notification period”, in subsections (7B) and (7C), is the period of five working days beginning with the first working day after the day on which the notification referred to in subsection (7A)(a) is received by the primary authority.

(7E) Where an inspection plan includes a requirement of the type described in subsection (3A), a local authority exercising the function of inspection in relation to the regulated person must provide a report to the primary authority in accordance with the requirement.]

<sup>F7</sup>(8) .....

- (9) A notification under subsection [<sup>F8</sup>(7A)(a)] must include reasons for exercising the function otherwise than in accordance with the plan.

[ A primary authority may, with the consent of the Secretary of State, revoke a plan <sup>F9</sup>(9A) made by it under this section.

(9B) If a primary authority revokes a plan under subsection (9A), it must notify the other local authorities with the function of inspection that the plan is no longer in effect.]

(10) A primary authority may from time to time revise a plan made by it under this section (and subsections (3) to [<sup>F10</sup>(9B)] apply in relation to any revision of the plan).

[ In subsection (7D), “working day” means a day other than—

- <sup>F11</sup>(11) (a) a Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in—
  - (i) the part of the United Kingdom where the primary authority is, or
  - (ii) (if different) the part of the United Kingdom where the authority is that has given the notification referred to in subsection (7A)(a).]]

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#### Textual Amendments

**F2** S. 30(3A) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 68\(2\), 103\(3\); S.I. 2013/2227, art. 2\(e\)](#) (with art. 5(1))

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- F3** Words in s. 30(6) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 13** (with Sch. 2)
- F4** Words in s. 30(7) substituted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(3)(a)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F5** Word in s. 30(7) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(3)(b)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F6** S. 30(7A)-(7E) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(4)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F7** S. 30(8) omitted (1.10.2013) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(5)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F8** Word in s. 30(9) substituted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(6)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F9** S. 30(9A)(9B) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(7)**, 103(3); S.I. 2013/2227, art. 2(e)
- F10** Word in s. 30(10) substituted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(8)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(2))
- F11** S. 30(11) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 68(9)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 70(6) inserted by [2018 c. 12 Sch. 19 para. 152\(3\)](#)