



# Regulatory Enforcement and Sanctions Act 2008

## 2008 CHAPTER 13

**U.K.**

An Act to make provision for the establishment of the Local Better Regulation Office; for the co-ordination of regulatory enforcement by local authorities; for the creation of civil sanctions in relation to regulatory offences; for the reduction and removal of regulatory burdens; and for connected purposes. 9 [21st July 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 01/10/2008

### PART 1 **U.K.**

#### THE LOCAL BETTER REGULATION OFFICE

##### *Establishment of LBRO*

#### 1 **LBRO** **U.K.**

- (1) The Local Better Regulation Office is established as a body corporate.
- (2) In Parts 1 and 2 it is referred to as “LBRO”.
- (3) Schedule 1 (which makes further provision about LBRO) has effect.

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## 2 Dissolution of the LBRO company **U.K.**

- (1) The company limited by guarantee with registered number 6237580 and the company name Local Better Regulation Office (in this Part called “the LBRO company”) is dissolved.
- (2) The registrar of companies for England and Wales must strike the name of the LBRO company off the register of companies before the end of the period of seven days beginning with the day on which this section comes into force.
- (3) Schedule 2 (which makes provision relating to the replacement of the LBRO company by LBRO) has effect.

### Definitions

## 3 “Local authority” **U.K.**

- (1) In this Part references to a local authority in England are to any of the following—
  - (a) a county or district council in England;
  - (b) a London borough council;
  - (c) the Common Council of the City of London;
  - (d) the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple;
  - (e) the Council of the Isles of Scilly;
  - (f) a fire and rescue authority in England (not being an authority referred to in paragraphs (a) to (e));
  - (g) a port health authority in England (not being an authority referred to in paragraphs (a) to (e));
  - (h) an authority established under section 10 of the Local Government Act 1985 (c. 51) (waste disposal authorities for Greater London and metropolitan counties).
- (2) In this Part references to a local authority in Wales are to any of the following—
  - (a) a county or county borough council in Wales;
  - (b) a fire and rescue authority in Wales (not being a county or county borough council);
  - (c) a port health authority in Wales (not being a county or county borough council).

## 4 “Relevant function” **U.K.**

- (1) In this Part “relevant function”, in relation to a local authority in England or Wales, means—
  - (a) a function under a relevant 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 a relevant enactment relate to any activity.
- (2) In subsection (1) “relevant enactment” means—

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- (a) an enactment specified in Schedule 3 or an enactment made under such an enactment;
  - (b) an enactment to which subsection (3) applies.
- (3) This subsection applies to any enactment made under section 2(2) of the European Communities Act 1972 (c. 68) with respect to any of the following matters—
- (a) agricultural produce (quality standards and labelling);
  - (b) animal health and welfare;
  - (c) animal feed;
  - (d) consumer protection;
  - (e) environmental protection;
  - (f) food hygiene and standards;
  - (g) public health and safety;
  - (h) weights and measures (including measuring instruments).
- (4) The Secretary of State may by order—
- (a) amend Schedule 3 so as to add any enactment to it or to remove any enactment from it;
  - (b) amend subsection (3) so as to add any matter to it or remove any matter from it.
- (5) An order under subsection (4) may make different provision for different purposes (including different provision in relation to local authorities in England and Wales respectively).
- (6) An order under subsection (4) requires the consent of the Welsh Ministers to make provision, in relation to local authorities in Wales, in respect of a Welsh ministerial matter.
- (7) The Secretary of State may by order determine whether, for the purposes of subsection (3), an enactment made under section 2(2) of the European Communities Act 1972 is made with respect to any of the matters specified in that subsection.
- (8) An order under subsection (7) requires the consent of the Welsh Ministers where—
- (a) the determination affects the application of this Part in relation to local authorities in Wales, and
  - (b) the enactment made under section 2(2) of the European Communities Act 1972 relates to a Welsh ministerial matter.
- (9) In subsection (1)—
- (a) references to a function do not include a function of conducting criminal or civil proceedings;
  - (b) references to an activity include providing goods and services and employing or offering employment to any person.

#### *General functions of LBRO*

### **5 Objective relating to general functions U.K.**

- (1) In exercising its functions under sections 6 to 10 LBRO has the objective of securing that local authorities in England and Wales exercise their relevant functions—
- (a) effectively,

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- (b) in a way which does not give rise to unnecessary burdens, and
- (c) in a way which conforms with the principles in subsection (2).

(2) Those principles are that—

- (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- (b) regulatory activities should be targeted only at cases in which action is needed.

## 6 Guidance to local authorities **U.K.**

(1) LBRO has the function of giving guidance to local authorities in England and Wales as to how to exercise their relevant functions.

(2) Guidance under subsection (1)—

- (a) may be given to any one or more local authorities in England or Wales;
- (b) may relate to any one or more relevant functions;
- (c) may relate to the exercise of one or more relevant functions in a particular case.

(3) A local authority in England or Wales must have regard to any guidance given to it under this section.

(4) Before giving guidance under this section in relation to any relevant function LBRO must consult—

- (a) the persons whose activities are regulated by the exercise of the function, or persons representative of such persons,
- (b) such local authorities in England and Wales, or such persons representative of local authorities in England and Wales, as LBRO considers appropriate, and
- (c) such other persons as LBRO considers appropriate.

(5) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.

(6) LBRO may vary or revoke any guidance given by it under this section by further guidance under this section.

## 7 Guidance to local authorities: enforcement **U.K.**

(1) LBRO may at any time, if it thinks it appropriate to do so, direct one or more local authorities in England or Wales to comply with—

- (a) any guidance given under section 6 which relates to the exercise of a relevant function, or
- (b) any guidance given under an enactment by another person which relates to the exercise of a relevant function.

(2) LBRO may not give a direction under this section without the consent of the Secretary of State, except in a case to which subsection (3) applies.

(3) LBRO may not give a direction under this section to one or more local authorities in Wales in relation to a Welsh ministerial matter without the consent of the Welsh Ministers.

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- (4) Where a direction under this section relates to two or more local authorities in England and Wales, consent under subsection (2) or (3) must be given by order.
- (5) Before giving a direction under this section LBRO must consult—
  - (a) the local authorities in England or Wales to whom the direction is to be given,
  - (b) any relevant regulator, and
  - (c) such other persons as LBRO considers appropriate.
- (6) In subsection (5)(b) “relevant regulator” means a person (other than a local authority in England or Wales) with regulatory functions which relate to the matter to which the direction relates.
- (7) LBRO must publish (in such manner as it considers appropriate) any direction given by it under this section.
- (8) A direction under this section may be revoked or varied by a further direction under this section.

## **8 Financial support and assistance to local authorities** **U.K.**

LBRO may provide financial support and assistance—

- (a) to a local authority in England or Wales in relation to its exercise of its relevant functions;
- (b) to any other person for the purpose of assisting local authorities in England or Wales in the exercise of their relevant functions.

## **9 Advice to Ministers of the Crown** **U.K.**

- (1) LBRO may at any time give advice or make proposals to a Minister of the Crown on—
  - (a) the way in which any one or more local authorities in England or Wales exercise any of their relevant functions;
  - (b) the effectiveness of legislation (or proposed legislation) relating to the exercise by local authorities in England or Wales of their relevant functions;
  - (c) whether any other regulatory functions could appropriately be exercised by local authorities in England or Wales;
  - (d) any other matter relating to the exercise by local authorities in England or Wales of their relevant functions.
- (2) LBRO must give advice or make proposals to a Minister of the Crown on the matters referred to in subsection (1) if requested to do so by that Minister.

## **10 Advice to Welsh Ministers** **U.K.**

- (1) LBRO may at any time give advice or make proposals to the Welsh Ministers on—
  - (a) the way in which any one or more local authorities in Wales exercise any of their relevant functions in relation to any Welsh ministerial matter;
  - (b) the effectiveness of legislation (or proposed legislation) relating to the exercise by local authorities in Wales of their relevant functions in relation to any such matter;

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- (c) whether any other regulatory functions could appropriately be exercised by local authorities in Wales in relation to any such matter;
  - (d) anything else relating to the exercise by local authorities in Wales of their relevant functions in relation to any such matter.
- (2) LBRO must give advice or make proposals to the Welsh Ministers on the matters referred to in subsection (1) if requested to do so by the Welsh Ministers.

*Function relating to enforcement priorities*

**11 Enforcement priorities U.K.**

- (1) LBRO must prepare and publish—
- (a) a list specifying those matters to which a local authority in England should give priority when allocating resources to its relevant functions, and
  - (b) a list specifying those matters to which a local authority in Wales should give priority when allocating resources to its relevant functions.
- (2) A local authority in England or Wales must have regard to the appropriate list under subsection (1) when allocating resources to its relevant functions.
- (3) Before publishing a list under subsection (1) LBRO must consult such persons as it considers appropriate.
- (4) LBRO must publish details of any representations made to it pursuant to subsection (3).
- (5) LBRO may not publish a list under subsection (1)(a) without the consent of the Secretary of State.
- (6) LBRO may not publish a list under subsection (1)(b)—
- (a) without consulting the Secretary of State;
  - (b) without the consent of the Welsh Ministers.
- (7) LBRO must review a list under this section—
- (a) from time to time on its own initiative;
  - (b) if requested to do so by the Secretary of State;
  - (c) in the case of a list under subsection (1)(b), if requested to do so by the Welsh Ministers.
- (8) If following a review LBRO decides to revise a list under this section it must publish the revised list (and subsections (2) to (7) have effect in relation to any revised list).

*Matters relating to exercise of LBRO's functions*

**12 Relationship with other regulators U.K.**

- (1) LBRO and a regulator to which this section applies must enter into a memorandum of understanding with each other as to how they will work together in the exercise of their respective functions.
- (2) This section applies to the following regulators—
- (a) the Environment Agency;

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- (b) the Food Standards Agency;
- (c) the Gambling Commission;
- (d) the Health and Safety Executive;
- (e) the Office of Fair Trading.

### **13 Duty not to impose burdens etc** **U.K.**

- (1) LBRO must secure that in exercising any of its functions it does not—
  - (a) impose burdens which are unnecessary, or
  - (b) maintain burdens which have become unnecessary.
- (2) Subsection (1) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impracticable or disproportionate.
- (3) LBRO must secure that—
  - (a) it exercises its functions in a way which is transparent, accountable, proportionate and consistent;
  - (b) it targets its activities only at cases in which action is needed.

### **14 Ancillary powers** **U.K.**

- (1) LBRO may do anything which it thinks necessary or expedient for the purpose of, or in connection with, the exercise of any of its functions.
- (2) In particular, LBRO may—
  - (a) enter into agreements;
  - (b) acquire or dispose of property;
  - (c) borrow money;
  - (d) invest money.

*Ministerial powers in relation to LBRO*

### **15 Guidance or directions by the Secretary of State** **U.K.**

- (1) The Secretary of State may give LBRO—
  - (a) guidance, or
  - (b) directions,as to the exercise of any of its functions.
- (2) Before giving any guidance or directions under this section the Secretary of State must consult—
  - (a) LBRO, and
  - (b) such other persons as the Secretary of State considers likely to be affected by the guidance or directions, or persons representative of such persons.
- (3) The Secretary of State must—
  - (a) publish (in such manner as the Secretary of State considers appropriate) any guidance or directions given under this section, and
  - (b) lay a copy of any such guidance or directions before Parliament.

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- (4) LBRO must have regard to any guidance, and comply with any directions, given under this section.
- (5) The Secretary of State may vary or revoke any guidance or directions given under this section by further guidance or directions under this section.
- (6) The Secretary of State may not under subsection (1)(b) give LBRO directions relating to the exercise of its functions under section 7 in relation to two or more local authorities in England and Wales.
- (7) The Secretary of State may by order require LBRO to exercise its functions under section 7 in relation to two or more local authorities in England and Wales in such manner as may be specified in the order.

## 16 Guidance or directions by Welsh Ministers **U.K.**

- (1) The Welsh Ministers may give LBRO—
  - (a) guidance, or
  - (b) directions,as to the exercise in relation to Wales of any of its functions relating to a Welsh ministerial matter.
- (2) Before giving any guidance or directions under this section the Welsh Ministers must consult—
  - (a) LBRO, and
  - (b) such other persons as the Welsh Ministers consider likely to be affected by the guidance or directions, or persons representative of such persons.
- (3) The Welsh Ministers must—
  - (a) publish (in such manner as they consider appropriate) any guidance or directions given under this section, and
  - (b) lay a copy of any such guidance or directions before the National Assembly for Wales.
- (4) LBRO must have regard to any guidance, and comply with any directions, given under this section.
- (5) The Welsh Ministers may vary or revoke any guidance or directions given under this section by further guidance or directions under this section.
- (6) The Welsh Ministers may not under subsection (1)(b) give LBRO directions relating to the exercise of its functions under section 7 in relation to two or more local authorities in Wales.
- (7) The Welsh Ministers may by order require LBRO to exercise its functions under section 7 in relation to two or more local authorities in Wales, so far as relating to a Welsh ministerial matter, in such manner as may be specified in the order.



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### *Supplementary and general*

#### **17 Review of LBRO U.K.**

- (1) The Secretary of State must in accordance with this section review LBRO's discharge of its functions.
- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which this section comes into force.
- (3) The review must in particular consider—
  - (a) whether LBRO is discharging its functions effectively and efficiently, and
  - (b) the extent to which LBRO, in discharging its functions under sections 6 to 10, has attained the objective in section 5.
- (4) In conducting a review under this section the Secretary of State must consult—
  - (a) the Welsh Ministers, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (5) The Secretary of State must publish the results of a review under this section.
- (6) The Secretary of State must lay a copy of a review under this section before Parliament and the National Assembly for Wales.

#### **18 Power to dissolve LBRO U.K.**

- (1) The Secretary of State may by order—
  - (a) provide for LBRO to be dissolved, and
  - (b) make consequential, supplementary, incidental and transitional provision in relation to its dissolution.
- (2) An order under subsection (1) may in particular—
  - (a) provide for the transfer of the property, rights and liabilities of LBRO to another person;
  - (b) provide for the transfer of the functions of LBRO to another person;
  - (c) provide that anything done by or in relation to LBRO is, so far as is necessary for continuing its effect, to have effect as if done by or in relation to another person;
  - (d) provide for anything (which may include legal proceedings) which is in the process of being done by or in relation to LBRO when a transfer under the order takes effect to be continued by or in relation to another person;
  - (e) provide for a reference to LBRO in an enactment, instrument or other document to be treated as a reference to another person.
- (3) Provision under subsection (2)(a) may include provision for property, rights or liabilities to be transferred—
  - (a) whether or not they would otherwise be capable of being transferred,
  - (b) without any instrument or other formality being required, and
  - (c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.
- (4) Provision under subsection (2)(a) for the transfer of rights and liabilities relating to employees of LBRO must include provision for the Transfer of Undertakings

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(Protection of Employment) Regulations 2006 (SI 2006/246) to apply in relation to the transfer.

- (5) Provision under subsection (2)(a) or (b) may include provision establishing a body corporate to which property, rights and liabilities, or functions, are transferred.
- (6) Before making an order under this section the Secretary of State must consult—
  - (a) the Welsh Ministers, and
  - (b) such persons (or persons representative of such persons) as appear to the Secretary of State to be substantially affected by the dissolution of LBRO.
- (7) The provision which may be made by an order under this section may be made by repealing, revoking or amending an enactment (whenever passed or made).

## 19 Dissolution of LBRO: tax **U.K.**

- (1) Where an order under section 18 makes provision under subsection (2)(a) of that section, the Treasury may by regulations make provision for varying the way in which a relevant tax has effect in relation to—
  - (a) the property, rights or liabilities transferred, or
  - (b) anything done for the purposes of, or in relation to, the transfer.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to the property, rights or liabilities transferred;
  - (b) the property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to the property, rights or liabilities transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) In this section—
 

“relevant tax” means income tax, corporation tax, capital gains tax, stamp duty or stamp duty reserve tax;

“tax provision” means a provision of an enactment about a relevant tax.

## 20 Orders under Part 1 **U.K.**

- (1) An order or regulations under this Part must be made by statutory instrument.

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- (2) A statutory instrument containing an order made by the Secretary of State under section 4(7), 7(4) or 15(7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing an order made by the Secretary of State under section 4(4) or 18 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) A statutory instrument containing an order made by the Welsh Ministers under section 7(4) or 16(7) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) A statutory instrument containing regulations made by the Treasury under section 19 is subject to annulment in pursuance of a resolution of the House of Commons.

## 21 Interpretation of Part 1 **U.K.**

In this Part—

- “LBRO” has the meaning given in section 1;
- “the LBRO company” has the meaning given in section 2;
- “local authority” has the meaning given in section 3;
- “relevant function” has the meaning given in section 4.

VALID FROM 01/10/2008

## PART 2 **U.K.**

### CO-ORDINATION OF REGULATORY ENFORCEMENT

#### *Introductory*

VALID FROM 06/04/2009

## 22 Scope of Part 2 **U.K.**

- (1) This Part applies where—
  - (a) a person carries on an activity in the area of two or more local authorities, and
  - (b) each of those authorities has the same relevant function in relation to that activity.
- (2) In this Part “the regulated person” means the person referred to in subsection (1)(a).

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**23 “Local authority” U.K.**

- (1) In this Part “local authority” means a local authority in England, Wales, Scotland or Northern Ireland.
- (2) In this Part references to a local authority in England or Wales have the same meaning as in Part 1.
- (3) In this Part references to a local authority in Scotland are to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (4) In this Part references to a local authority in Northern Ireland are to a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972 (c. 9).

**24 “Relevant function” U.K.**

- (1) In this Part “relevant function”—
  - (a) in relation to a local authority in England or Wales, has the same meaning as in Part 1;
  - (b) in relation to a local authority in Scotland, means a regulatory function exercised by that authority and specified for the purposes of this Part by order made by the Secretary of State;
  - (c) in relation to a local authority in Northern Ireland, means a regulatory function exercised by that authority and specified for the purposes of this Part by order made by the Secretary of State.
- (2) An order under subsection (1)(b) or (c) may only specify a regulatory function—
  - (a) which is a relevant function for the purposes of Part 1 in relation to local authorities in England or Wales or both, or
  - (b) which for the purposes of local authorities in Scotland or Northern Ireland is equivalent to such a function.
- (3) An order under subsection (1)(b) may not specify a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters.
- (4) An order under subsection (1)(c) may not specify a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters.
- (5) In subsection (3) “reserved matter” and “Scotland” have the same meanings as in the Scotland Act 1998 (c. 46).
- (6) In subsection (4) “transferred matter” and “Northern Ireland” have the same meanings as in the Northern Ireland Act 1998 (c. 47).

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### Commencement Information

- II** S. 24 wholly in force at 6.4.2009; s. 24 not in force at Royal Assent see s. 76(1); s. 24(1)(b)(c) in force at 1.10.2008 by S.I. 2008/2371, **art. 2(b)**; s. 24 in force for all remaining purposes at 6.4.2009 by S.I. 2009/550, **art. 2**

VALID FROM 06/04/2009

### *Primary authorities*

#### **25 Primary authorities** **U.K.**

- (1) For the purposes of this Part LBRO may nominate a local authority to be the “primary authority” for the exercise of the relevant function in relation to the regulated person.
- (2) Sections 27 to 32 apply in any case where a primary authority is nominated under this section in relation to the regulated person.

#### **26 Nomination of primary authorities** **U.K.**

- (1) LBRO may only nominate a local authority under section 25(1) in relation to the regulated person if—
  - (a) the authority and the regulated person have agreed in writing to the nomination, or
  - (b) the regulated person has requested LBRO to make a nomination under section 25(1) for the exercise of the relevant function in relation to the regulated person,and LBRO considers the authority suitable for nomination.
- (2) LBRO may in particular consider as suitable for nomination under subsection (1)—
  - (a) the local authority in whose area the regulated person principally carries out the activity in relation to which the relevant function is exercised;
  - (b) the local authority in whose area the regulated person administers the carrying out of that activity.
- (3) Before nominating a local authority under section 25(1) in the case referred to in subsection (1)(b) LBRO must consult—
  - (a) that authority, and
  - (b) the regulated person.
- (4) LBRO must have particular regard to any representations made by a local authority pursuant to subsection (3) as to the resources available to it.
- (5) LBRO may at any time revoke a nomination under section 25(1) if—
  - (a) it considers that the authority is no longer suitable for nomination, or
  - (b) it considers it appropriate to do so for any other reason,and subsections (2) to (4) apply in relation to a revocation of a nomination as in relation to a nomination.

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- (6) LBRO must maintain, or cause to be maintained, a register of nominations under section 25(1).

*Functions of primary authorities*

VALID FROM 06/04/2009

**27 Advice and guidance** **U.K.**

- (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** **U.K.**

- (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.
- (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.

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- (7) Schedule 4 (which makes provision for questions arising under this section to be referred to LBRO) 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—
- the period of five working days beginning with the day after that on which the primary authority is notified under subsection (1), or
  - such longer period beginning with that day as LBRO may direct.
- (10) In subsection (9)(b) “working day” means a day other than—
- a Saturday or Sunday,
  - Christmas Day or Good Friday, or
  - a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in—
    - the part of the United Kingdom where the primary authority is, or
    - (if different) the part of the United Kingdom where the enforcing authority is.

#### 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\(9\)](#))

#### Commencement Information

- I2** 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](#)

VALID FROM 06/04/2009

## 29 Enforcement action: exclusions **U.K.**

- 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.
- 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.
- 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—
  - 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;

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- (b) where the application of section 28(1) to (4) would be wholly disproportionate.

VALID FROM 06/04/2009

### 30 Inspection plans **U.K.**

- (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.
- (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 LBRO consents to the plan, bring the plan to the notice of the other local authorities with the function of inspection.
- (7) A local authority (including the primary authority) exercising the function of inspection in relation to the regulated person must have regard to a plan to which consent has been given under subsection (6).
- (8) Before a local authority other than the primary authority exercises the function of inspection in relation to the regulated person otherwise than in accordance with a plan to which consent has been given under subsection (6), it must notify the primary authority.
- (9) A notification under subsection (8) must include reasons for exercising the function otherwise than in accordance with the plan.
- (10) A primary authority may from time to time revise a plan made by it under this section (and subsections (3) to (9) apply in relation to any revision of the plan).



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VALID FROM 06/04/2009

*Primary authorities: supplementary*

**31 Power to charge U.K.**

The primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated person.

**32 LBRO support U.K.**

- (1) LBRO may do anything it considers appropriate for the purpose of supporting the primary authority in the exercise of the authority's functions under this Part.
- (2) That includes making grants to the authority.

*General*

VALID FROM 06/04/2009

**33 LBRO guidance U.K.**

- (1) LBRO may give guidance to any one or more local authorities about the operation of this Part.
- (2) The guidance may include, in particular, guidance to local authorities about—
  - (a) arrangements under section 27(2);
  - (b) notification of inspection plans under section 30(6);
  - (c) the charging of fees under section 31.
- (3) A local authority must have regard to any guidance given to it under this section.
- (4) Before giving guidance under this section LBRO must consult such persons as it considers appropriate.
- (5) LBRO may not give guidance under subsection (2)(c)—
  - (a) without the consent of the Secretary of State;
  - (b) without having consulted the Welsh Ministers.
- (6) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.
- (7) LBRO may at any time vary or revoke any guidance given under this section by further guidance under this section.

**34 Orders under Part 2 U.K.**

- (1) An order under this Part is to be made by statutory instrument.

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- (2) An order under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

VALID FROM 06/04/2009

### 35 Interpretation of Part 2 **U.K.**

In this Part—

- “enforcement action” has the meaning given in section 28(5);
- “LBRO” has the meaning given in section 1;
- “local authority” has the meaning given in section 23;
- “the regulated person” has the meaning given in section 22(2);
- “relevant function” has the meaning given in section 24.

VALID FROM 01/10/2008

## PART 3 **U.K.**

### CIVIL SANCTIONS

#### *Orders under Part 3: introductory*

### 36 Power to make orders providing for civil sanctions **U.K.**

- (1) A Minister of the Crown may by order in accordance with this Part make—
- (a) the provision specified in section 39 (fixed monetary penalties);
  - (b) the provision specified in section 42 (discretionary requirements);
  - (c) the provision specified in section 46 (stop notices);
  - (d) the provision specified in section 50 (enforcement undertakings).
- (2) The Welsh Ministers may by order in accordance with this Part make any such provision, where the provision relates to a Welsh ministerial matter.
- (3) An order under this Part is to be made by statutory instrument.

### 37 “Regulator” **U.K.**

- (1) In this Part, “regulator” means—
- (a) a person specified in Schedule 5 (in this Part called a “designated regulator”),  
or
  - (b) a person, other than a designated regulator, who has an enforcement function in relation to an offence to which subsection (2) applies.
- (2) This subsection applies to an offence contained, immediately before the day on which this Act is passed, in an enactment specified in Schedule 6.

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- (3) Subsection (1)(b) does not include—
- (a) the Crown Prosecution Service,
  - (b) a member of a police force in England or Wales,
  - (c) a Procurator Fiscal,
  - (d) a constable of a police force in Scotland,
  - (e) the Public Prosecution Service for Northern Ireland, or
  - (f) a member of the Police Service of Northern Ireland.

### 38 “Relevant offence” **U.K.**

- (1) In this Part, “relevant offence”, in relation to a designated regulator, means an offence—
- (a) in relation to which the designated regulator has an enforcement function, and
  - (b) which is contained in an Act immediately before the day on which this Act is passed.
- (2) In this Part “relevant offence”, in relation to a regulator other than a designated regulator, means an offence—
- (a) which is contained, immediately before the day on which this Act is passed, in an enactment specified in Schedule 6, and
  - (b) in relation to which that regulator has an enforcement function.

#### *Fixed monetary penalties*

### 39 Fixed monetary penalties **U.K.**

- (1) The provision which may be made under this section is provision to confer on a regulator the power by notice to impose a fixed monetary penalty on a person in relation to a relevant offence.
- (2) Provision under this section may only confer such a power in relation to a case where the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence.
- (3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to a regulator a penalty of a prescribed amount.
- (4) Where the relevant offence is—
- (a) triable summarily (whether or not it is also triable on indictment), and
  - (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
- the amount of the fixed monetary penalty may not exceed the maximum amount of that fine.

### 40 Fixed monetary penalties: procedure **U.K.**

- (1) Provision under section 39 must secure the results in subsection (2).
- (2) Those results are that—

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- (a) where a regulator proposes to impose a fixed monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
  - (b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty),
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the regulator must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the regulator decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (3) To comply with this subsection the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the effect of payment of the sum referred to in subsection (2)(b),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the regulator may not impose the fixed monetary penalty,
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
  - (f) the period within which representations and objections may be made, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (4) Provision pursuant to subsection (2)(c)(ii)—
- (a) must secure that the regulator may not decide to impose a fixed monetary penalty on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the relevant offence, and
  - (b) may include provision for other circumstances in which the regulator may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (6) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the regulator include the following—
- (a) that the decision was based on an error of fact;

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- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable.

#### **41 Fixed monetary penalties: criminal proceedings and conviction** **U.K.**

Provision under section 39 must secure that—

- (a) in a case where a notice of intent referred to in section 40(2)(a) is served on a person—
  - (i) no criminal proceedings for the relevant offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period in which the person may discharge liability to the fixed monetary penalty pursuant to section 40(2)(b), and
  - (ii) if the person so discharges liability, the person may not at any time be convicted of the relevant offence in relation to that act or omission;
- (b) in a case where a fixed monetary penalty is imposed on a person, that person may not at any time be convicted of the relevant offence in respect of the act or omission giving rise to the penalty.

#### *Discretionary requirements*

#### **42 Discretionary requirements** **U.K.**

- (1) The provision which may be made under this section is provision to confer on a regulator the power by notice to impose one or more discretionary requirements on a person in relation to a relevant offence.
- (2) Provision under this section may only confer such a power in relation to a case where the regulator is satisfied beyond reasonable doubt that the person has committed a relevant offence.
- (3) For the purposes of this Part a “discretionary requirement” means—
  - (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine,
  - (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur, or
  - (c) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed.
- (4) Provision under this section may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.
- (5) In this Part—
  - “variable monetary penalty” means a requirement referred to in subsection (3)(a);
  - “non-monetary discretionary requirement” means a requirement referred to in subsection (3)(b) or (c).

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(6) Where a variable monetary penalty is imposed in relation to a relevant offence which is—

- (a) triable summarily only, and
- (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the variable monetary penalty may not exceed the maximum amount of that fine.

#### 43 Discretionary requirements: procedure **U.K.**

(1) Provision under section 42 must secure the results in subsection (2).

(2) Those results are that—

- (a) where a regulator proposes to impose a discretionary requirement on a person, the regulator must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
- (b) that person may make written representations and objections to the regulator in relation to the proposed imposition of the discretionary requirement,
- (c) after the end of the period for making such representations and objections, the regulator must decide whether to—
  - (i) impose the discretionary requirement, with or without modifications, or
  - (ii) impose any other discretionary requirement which the regulator has power to impose under section 42,
- (d) where the regulator decides to impose a discretionary requirement, the notice imposing it (the “final notice”) complies with subsection (6), and
- (e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.

(3) To comply with this subsection the notice of intent must include information as to—

- (a) the grounds for the proposal to impose the discretionary requirement,
- (b) the right to make representations and objections,
- (c) the circumstances in which the regulator may not impose the discretionary requirement, and
- (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.

(4) Provision pursuant to subsection (2)(c)—

- (a) must secure that the regulator may not decide to impose a discretionary requirement on a person where the regulator is satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the relevant offence, and
- (b) may include provision for other circumstances in which the regulator may not decide to impose a discretionary requirement.

(5) Provision pursuant to subsection (2)(c) must also include provision for—

- (a) the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence,

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- (b) the regulator to be able to accept or reject such an undertaking, and
  - (c) the regulator to take any undertaking so accepted into account in its decision.
- (6) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the discretionary requirement,
  - (b) where the discretionary requirement is a variable monetary penalty—
    - (i) how payment may be made,
    - (ii) the period within which payment must be made, and
    - (iii) any early payment discounts or late payment penalties,
  - (c) rights of appeal, and
  - (d) the consequences of non-compliance.
- (7) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the regulator include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
  - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason.

#### 44 Discretionary requirements: criminal proceedings and conviction **U.K.**

- (1) Provision under section 42 must secure the result in subsection (2) in a case where—
- (a) a discretionary requirement is imposed on a person, or
  - (b) an undertaking referred to in section 43(5) is accepted from a person.
- (2) The result in this subsection is that the person may not at any time be convicted of the relevant offence in respect of the act or omission giving rise to the discretionary requirement or undertaking except in a case referred to in subsection (3).
- (3) The case referred to in subsection (2) is a case where—
- (a) a non-monetary discretionary requirement is imposed on the person or an undertaking referred to in section 43(5) is accepted from a person,
  - (b) no variable monetary penalty is imposed on the person, and
  - (c) the person fails to comply with the non-monetary discretionary requirement or undertaking.
- (4) Provision under section 42 may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the person.

#### 45 Discretionary requirements: enforcement **U.K.**

- (1) Provision under section 42 may include provision for a person to pay a monetary penalty (a “non-compliance penalty”) to a regulator if the person fails to comply with—
- (a) a non-monetary discretionary requirement imposed on the person, or
  - (b) an undertaking referred to in section 43(5) which is accepted from the person.

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- (2) Provision under subsection (1) may—
  - (a) specify the amount of the non-compliance penalty,
  - (b) provide for the amount to be calculated by reference to prescribed criteria,
  - (c) provide for the amount to be determined by the regulator, or
  - (d) provide for the amount to be determined in any other way.
- (3) Provision under subsection (1) must secure that—
  - (a) the non-compliance penalty is imposed by notice served by the regulator, and
  - (b) the person on whom it is imposed may appeal against that notice.
- (4) Provision pursuant to paragraph (b) of subsection (3) must secure that the grounds on which a person may appeal against a notice referred to in that subsection include the following—
  - (a) that the decision to serve the notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by the regulator, that the amount is unreasonable).

#### *Stop notices*

#### 46 **Stop notices** **U.K.**

- (1) The provision which may be made under this section is provision conferring on a regulator the power to serve a stop notice on a person.
- (2) For the purposes of this Part a “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (3) Provision under this section may only confer such a power in relation to a case falling within subsection (4) or (5).
- (4) A case falling within this subsection is a case where—
  - (a) the person is carrying on the activity,
  - (b) the regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to any of the matters referred to in subsection (6), and
  - (c) the regulator reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of a relevant offence by that person.
- (5) A case falling within this subsection is a case where the regulator reasonably believes that—
  - (a) the person is likely to carry on the activity,
  - (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to any of the matters referred to in subsection (6), and
  - (c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of a relevant offence by that person.



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- (6) The matters referred to in subsections (4)(b) and (5)(b) are—
  - (a) human health,
  - (b) the environment (including the health of animals and plants), and
  - (c) the financial interests of consumers.
- (7) The steps referred to in subsection (2) must be steps to remove or reduce the harm or risk of harm referred to in subsection (4)(b) or (5)(b).

#### 47 Stop notices: procedure **U.K.**

- (1) Provision under section 46 must secure the results in subsection (2) in a case where a stop notice is served.
- (2) Those results are that—
  - (a) the stop notice must comply with subsection (3),
  - (b) the person on whom it is served may appeal against the decision to serve it,
  - (c) where, after service of the notice, the regulator is satisfied that the person has taken the steps specified in the notice, the regulator must issue a certificate to that effect (a “completion certificate”),
  - (d) the notice ceases to have effect on the issue of a completion certificate,
  - (e) the person on whom the notice is served may at any time apply for a completion certificate,
  - (f) the regulator must make a decision as to whether to issue a completion certificate within 14 days of such an application, and
  - (g) the person on whom the notice is served may appeal against a decision not to issue a completion certificate.
- (3) To comply with this subsection a stop notice must include information as to—
  - (a) the grounds for serving the notice,
  - (b) rights of appeal, and
  - (c) the consequences of non-compliance.
- (4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a person may appeal against a decision of the regulator to serve a stop notice include the following—
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) that any step specified in the notice is unreasonable;
  - (e) that the person has not committed the relevant offence and would not have committed it had the stop notice not been served;
  - (f) that the person would not, by reason of any defence, have been liable to be convicted of the relevant offence had the stop notice not been served.
- (5) Provision pursuant to subsection (2)(g) must secure that the grounds on which a person may appeal against a decision of the regulator not to issue a completion certificate include the following—
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable.

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#### 48 Stop notices: compensation **U.K.**

- (1) Provision under section 46 conferring power on a regulator to serve a stop notice on a person must include provision for the regulator to compensate the person for loss suffered as the result of the service of the notice.
- (2) Provision under subsection (1) may provide for compensation—
  - (a) only in prescribed cases;
  - (b) only in relation to prescribed descriptions of loss.
- (3) Provision under subsection (1) must secure that the person on whom the stop notice is served is able to appeal against—
  - (a) a decision by the regulator not to award compensation, or
  - (b) a decision of the regulator as to the amount of the compensation.

#### 49 Stop notices: enforcement **U.K.**

- (1) Provision under section 46 conferring power on a regulator to serve a stop notice must provide that, where a person on whom a notice is served does not comply with it, the person is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, or imprisonment for term not exceeding twelve months, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (2) In the application of this section—
  - (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,
 the reference in subsection (1)(a) to twelve months is to be read as a reference to six months.

#### *Enforcement undertakings*

#### 50 Enforcement undertakings **U.K.**

- (1) The provision which may be made under this section is provision—
  - (a) to enable a regulator to accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed a relevant offence, and
  - (b) for the acceptance of the undertaking to have the consequences in subsection (4).
- (2) For the purposes of this Part, an “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be—
  - (a) action to secure that the offence does not continue or recur,
  - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,

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- (c) action (including the payment of a sum of money) to benefit any person affected by the offence, or
  - (d) action of a prescribed description.
- (4) The consequences in this subsection are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of the relevant offence in respect of the act or omission to which the undertaking relates,
  - (b) the regulator may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of section 39 in respect of that act or omission, and
  - (c) the regulator may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of section 42 in respect of that act or omission.
- (5) Provision under this section may in particular include provision—
- (a) as to the procedure for entering into an undertaking;
  - (b) as to the terms of an undertaking;
  - (c) as to publication of an undertaking by a regulator;
  - (d) as to variation of an undertaking;
  - (e) as to circumstances in which a person may be regarded as having complied with an undertaking;
  - (f) as to monitoring by a regulator of compliance with an undertaking;
  - (g) as to certification by a regulator that an undertaking has been complied with;
  - (h) for appeals against refusal to give such certification;
  - (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
  - (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person;
  - (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the relevant offence in the event of breach of an undertaking or any part of it, to extend any period within which those proceedings may be instituted.

*Orders under Part 3: supplementary provision*

**51      Combination of sanctions** **U.K.**

- (1) Provision may not be made under section 39 and section 42 conferring powers on a regulator in relation to the same offence unless it secures that—
- (a) the regulator may not serve a notice of intent referred to in section 40(2)(a) on a person in relation to any act or omission where a discretionary requirement has been imposed on that person in relation to that act or omission, and
  - (b) the regulator may not serve a notice of intent referred to in section 43(2)(a) on a person in relation to any act or omission where—
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or

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(ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 40(2)(b).

(2) Provision may not be made under section 39 and section 46 conferring powers on a regulator in relation to the same offence unless it secures that—

(a) the regulator may not serve a notice of intent referred to in section 40(2)(a) on a person in relation to any act or omission where a stop notice has been served on that person in relation to that act or omission, and

(b) the regulator may not serve a stop notice on a person in relation to any act or omission where—

(i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or

(ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 40(2)(b).

## 52 Monetary penalties **U.K.**

(1) An order under this Part which confers power on a regulator to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under section 45(1) may include provision—

(a) for early payment discounts;

(b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;

(c) for enforcement of the penalty.

(2) Provision under subsection (1)(c) may include—

(a) provision for the regulator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;

(b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

## 53 Costs recovery **U.K.**

(1) Provision under section 42 may include provision for a regulator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the regulator in relation to the imposition of the discretionary requirement up to the time of its imposition.

(2) Provision under section 46 may include provision for a regulator, by notice, to require a person on whom a stop notice is served to pay the costs incurred by the regulator in relation to the service of the notice up to the time of service.

(3) In subsections (1) and (2), the references to costs include in particular—

(a) investigation costs;

(b) administration costs;

(c) costs of obtaining expert advice (including legal advice).

(4) Provision under this section must secure that, in any case where a notice requiring payment of costs is served—

(a) the notice specifies the amount required to be paid;

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- (b) the regulator may be required to provide a detailed breakdown of that amount;
  - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
  - (d) the person required to pay costs may appeal against—
    - (i) the decision of the regulator to impose the requirement to pay costs;
    - (ii) the decision of the regulator as to the amount of those costs.
- (5) Provision under this section may include the provision referred to in section 52(1)(b) and (c) and (2).
- (6) Provision under this section must secure that regulator is required to publish guidance about how it will exercise the power conferred by the provision.

#### 54 Appeals **U.K.**

- (1) An order under this Part may not provide for the making of an appeal other than to—
- (a) the First-tier Tribunal, or
  - (b) another tribunal created under an enactment.
- (2) In subsection (1)(b) “tribunal” does not include an ordinary court of law.
- (3) An order under this Part which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include—
- (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in subsection (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
- (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the regulator could take in relation to the act or omission giving rise to the requirement or notice;
  - (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator;
  - (e) to award costs.

#### 55 Other provision **U.K.**

- (1) An order under this Part may include consequential, supplementary, incidental or transitional provision.
- (2) The consequential provision referred to in subsection (1) includes—
- (a) provision as to how any enactment passed or made before the day on which this Act is passed applies or operates in relation to the imposition of a fixed monetary penalty or discretionary requirement or service of a stop notice, and
  - (b) in particular, where such an enactment applies in relation to a person convicted of a criminal offence, provision to make the enactment apply in

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relation to a person on whom a fixed monetary penalty or discretionary requirement is imposed or a stop notice is served in relation to that offence.

- (3) The supplementary provision referred to in subsection (1) includes provision for the purpose of facilitating the use of powers conferred by an order under this Part, and in particular provision which for that purpose—
- (a) confers or extends powers to require information;
  - (b) confers or extends powers of entry, search or seizure;
  - (c) where information is authorised to be used in evidence in criminal proceedings, authorises its use in relation to the use of any power to impose a civil sanction conferred under or by virtue of this Part.
- (4) The provision which may be made by an order under this Part may be made by repealing, revoking or amending an enactment (whenever passed or made).

#### *Orders under Part 3: exclusions*

#### **56 Excluded provision: Scotland U.K.**

An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

#### **57 Excluded provision: Northern Ireland U.K.**

An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly.

#### *Orders under Part 3: procedure*

#### **58 Consultation and consent: Scotland U.K.**

- (1) A Minister of the Crown must obtain the consent of the Lord Advocate before making an order under this Part in relation to an offence in Scotland.
- (2) A Minister of the Crown must consult the Scottish Ministers before making an order under this Part in relation to a regulator which is a local authority in Scotland.
- (3) In subsection (2), “local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

#### **59 Consultation and consent: Wales U.K.**

- (1) A Minister of the Crown must consult the Welsh Ministers before making an order under this Part in relation to an offence which applies in or in relation to Wales.
- (2) A Minister of the Crown must obtain the consent of the Welsh Ministers before making an order under this Part containing provision which relates to a Welsh ministerial matter.
- (3) The Welsh Ministers must consult the Secretary of State before making an order under this Part.

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## **60 Consultation: general** U.K.

- (1) Before making an order under this Part the relevant authority must consult the following (in addition to any persons who must be consulted under sections 58 and 59)—
  - (a) the regulator to which the order relates,
  - (b) such organisations as appear to the relevant authority to be representative of persons substantially affected by the proposals, and
  - (c) such other persons as the relevant authority considers appropriate.
- (2) If, as a result of any consultation required by subsection (1), it appears to the relevant authority that it is appropriate substantially to change the whole or any part of the proposals, the relevant authority must undertake such further consultation with respect to the changes as it considers appropriate.
- (3) If, before the day on which this Part comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this section, those requirements may to that extent be taken to have been satisfied.

## **61 Parliamentary and Assembly procedure** U.K.

- (1) A statutory instrument containing an order under this Part made by a Minister of the Crown may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (2) A statutory instrument containing an order under this Part made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

### *Extension of powers to make subordinate legislation*

## **62 Offences under subordinate legislation** U.K.

- (1) This section applies where, by virtue of a specified enactment—
  - (a) a Minister of the Crown has, or the Welsh Ministers have, power by statutory instrument to make provision creating a criminal offence, and
  - (b) the power has been or is being exercised so as to create the offence.
- (2) The power includes power to make, in relation to a relevant enforcement authority, any provision which could be made by an order under this Part if, for the purposes of this Part—
  - (a) the relevant enforcement authority were a regulator, and
  - (b) the offence were a relevant offence in relation to that regulator.
- (3) Where a statutory instrument containing provision made under the power referred to in subsection (1) pursuant to subsection (2) would, apart from this subsection, be subject to annulment in pursuance of a resolution of either House of Parliament or of the National Assembly for Wales—
  - (a) the instrument is not subject to such annulment; but

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(b) the instrument may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament or (as the case may be) the National Assembly for Wales.

(4) In subsection (1) “specified enactment” means any enactment specified in Schedule 7.

(5) In subsection (2) “relevant enforcement authority” means a person, other than a person referred to in section 37(3), who has an enforcement function in relation to the offence.

### Guidance

#### 63 Guidance as to use of civil sanctions **U.K.**

(1) Where power is conferred on a regulator under or by virtue of this Part to impose a civil sanction in relation to an offence, the provision conferring the power must secure the results in subsection (2).

(2) Those results are that—

- (a) the regulator must publish guidance about its use of the sanction,
- (b) in the case of guidance relating to a fixed monetary penalty, discretionary requirement or stop notice, the guidance must contain the relevant information,
- (c) the regulator must revise the guidance where appropriate,
- (d) the regulator must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
- (e) the regulator must have regard to the guidance or revised guidance in exercising its functions.

(3) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in subsection (2)(b) is information as to—

- (a) the circumstances in which the penalty is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- (c) the amount of the penalty,
- (d) how liability for the penalty may be discharged and the effect of discharge, and
- (e) rights to make representations and objections and rights of appeal.

(4) In the case of guidance relating to a discretionary requirement, the relevant information referred to in subsection (2)(b) is information as to—

- (a) the circumstances in which the requirement is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the regulator in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
- (d) rights to make representations and objections and rights of appeal.

(5) In the case of guidance relating to a stop notice, the relevant information referred to in subsection (2)(b) is information as to—



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- (a) the circumstances in which the regulator is likely to serve the notice,
- (b) the circumstances in which it may not be imposed, and
- (c) rights of appeal.

#### **64 Guidance as to enforcement of relevant offences** **U.K.**

- (1) Where power is conferred on a regulator under or by virtue of this Part to impose a civil sanction in relation to an offence, the regulator must prepare and publish guidance about how the offence is enforced.
- (2) The guidance must include guidance as to—
  - (a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
  - (b) the action which the regulator may take to enforce the offence, whether by virtue of this Part or otherwise, and
  - (c) the circumstances in which the regulator is likely to take any such action.
- (3) A regulator may from time to time revise guidance published by it under this section and publish the revised guidance.
- (4) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this section.

#### **65 Publication of enforcement action** **U.K.**

- (1) Where power is conferred on a regulator under or by virtue of this Part to impose a civil sanction in relation to an offence, the provision conferring the power must, subject to this section, secure the result in subsection (2).
- (2) That result is that the regulator must from time to time publish reports specifying—
  - (a) the cases in which the civil sanction has been imposed,
  - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to section 40(2)(b), and
  - (c) where the civil sanction is a discretionary requirement, the cases in which an undertaking referred to in section 43(5) is accepted from a person.
- (3) In subsection (2)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.
- (4) The provision conferring the power need not secure the result in subsection (2) in cases where the relevant authority considers that it would be inappropriate to do so.

*Exercise of powers: general*

#### **66 Compliance with regulatory principles** **U.K.**

The relevant authority may not make any provision under or by virtue of this Part conferring power on a regulator to impose a civil sanction in relation to an offence unless the authority is satisfied that the regulator will act in accordance with the principles referred to in section 5(2) in exercising that power.

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## 67 **Review** **U.K.**

- (1) The relevant authority must in accordance with this section review the operation of any provision made under or by virtue of this Part conferring power on a regulator to impose a civil sanction in relation to an offence.
- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.
- (3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.
- (4) In conducting a review under this section the relevant authority must consult such persons as the authority considers appropriate.
- (5) The relevant authority must publish the results of a review under this section.
- (6) The relevant authority must lay a copy of a review under this section—
  - (a) before Parliament (where the relevant authority is a Minister of the Crown), or
  - (b) before the National Assembly for Wales (where the relevant authority is the Welsh Ministers).

## 68 **Suspension** **U.K.**

- (1) Where provision has been made under or by virtue of this Part conferring power on a regulator to impose a civil sanction in relation to an offence, the relevant authority may direct the regulator—
  - (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in section 40(2)(a) in relation to that offence,
  - (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in section 43(2)(a) in relation to that offence,
  - (c) where the power is power to serve a stop notice, not to serve any further stop notice in relation to that offence, and
  - (d) where the power is power to accept an enforcement undertaking, not to accept any further enforcement undertaking in relation to that offence.
- (2) The relevant authority may only give a direction under subsection (1) in relation to an offence if it is satisfied that the regulator has failed on more than one occasion—
  - (a) to comply with any duty imposed on it under or by virtue of this Part in relation to that offence,
  - (b) to act in accordance with the guidance it has published in relation to that offence (in particular, the guidance published under sections 63 and 64), or
  - (c) to act in accordance with the principles referred to in section 5(2) or with other principles of best practice in relation to the enforcement of that offence.
- (3) The relevant authority may by direction revoke a direction given by it under subsection (1) if satisfied that the regulator has taken the appropriate steps to remedy the failure to which that direction related.
- (4) Before giving a direction under subsection (1) or (3) the relevant authority must consult—

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- (a) the regulator, and
  - (b) such other persons as the authority considers appropriate.
- (5) Where the relevant authority gives a direction under this section, the authority must lay a copy before Parliament (where the relevant authority is a Minister of the Crown) or the National Assembly for Wales (where the relevant authority is the Welsh Ministers).
- (6) Where the relevant authority gives a direction under this section, the regulator must—
- (a) publish the direction in such manner as the relevant authority thinks fit, and
  - (b) take such other steps as the regulator thinks fit or the relevant authority may require to bring the direction to the attention of other persons likely to be affected by it.

### *Supplementary and general*

#### **69 Payment of penalties into Consolidated Fund etc** **U.K.**

- (1) Where pursuant to any provision made under or by virtue of this Part a regulator receives—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under section 45(1),
  - (b) any interest or other financial penalty for late payment of such a penalty, or
  - (c) a sum paid in discharge of liability to a fixed monetary penalty pursuant to section 40(2)(b),
- the regulator must pay it into the relevant Fund.
- (2) In subsection (1) “relevant Fund” means—
- (a) in a case where the regulator has functions only in relation to Wales, the Welsh Consolidated Fund,
  - (b) in a case where the regulator has functions only in relation to Scotland, the Scottish Consolidated Fund,
  - (c) in a case where the regulator has functions only in relation to Northern Ireland, the Consolidated Fund of Northern Ireland, and
  - (d) in any other case, the Consolidated Fund.

#### **70 Disclosure of information** **U.K.**

- (1) Information held by or on behalf of a person referred to in section 37(3) may be disclosed to a regulator on whom powers are conferred under or by virtue of this Part where—
- (a) the person has an enforcement function in relation to an offence, and
  - (b) the information is disclosed for the purpose of the exercise by the regulator of any powers conferred on it under or by virtue of this Part in relation to that offence.
- (2) It is immaterial for the purposes of subsection (1) whether the information was obtained before or after the coming into force of this section.
- (3) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

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- (4) Nothing in this section authorises the making of a disclosure in contravention of—
- (a) the Data Protection Act 1998 (c. 29), or
  - (b) Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (5) This section does not affect a power to disclose which exists apart from this section.

## 71 Interpretation of Part 3 **U.K.**

- (1) In this Part—

“civil sanction” means a fixed monetary penalty, discretionary requirement, stop notice or enforcement undertaking (and references to imposition of a civil sanction include acceptance of an enforcement undertaking);

“discretionary requirement” has the meaning given in section 42(3);

“enforcement function”, in relation to an offence, means a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where the offence is committed;

“enforcement undertaking” has the meaning given in section 50(2);

“fixed monetary penalty” has the meaning given in section 39(3);

“non-monetary discretionary requirement” has the meaning given in section 42(5);

“prescribed” means prescribed in an order under this Part;

“regulator” has the meaning given in section 37;

“relevant authority” means—

- (a) in relation to provision made under or by virtue of this Part by a Minister of the Crown, that Minister, and
- (b) in relation to provision made under or by virtue of this Part by the Welsh Ministers, the Welsh Ministers;

“relevant offence” has the meaning given in section 38;

“stop notice” has the meaning given in section 46(2);

“variable monetary penalty” has the meaning given in section 42(5).

- (2) For the purposes of this Part, any reference to a person who has an enforcement function in relation to an offence includes a reference to a person who is in any circumstances capable of exercising an enforcement function in relation to the offence.

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VALID FROM 01/10/2008

**PART 4 U.K.**

## REGULATORY BURDENS

**72 Duty not to impose or maintain unnecessary burdens U.K.**

- (1) Any person exercising a regulatory function to which this section applies must keep that function under review and secure that in exercising the function the person does not—
  - (a) impose burdens which that person considers to be unnecessary, or
  - (b) maintain burdens which that person considers to have become unnecessary.
- (2) Subsection (1) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impracticable or disproportionate.
- (3) Where this section applies to a regulatory function, the person exercising the function must from time to time publish a statement setting out—
  - (a) what the person proposes to do pursuant to subsection (1) in relation to the function in the period to which the statement relates,
  - (b) (except in the case of the first statement published by the person under this section) what the person has done pursuant to subsection (1) in relation to the function since the previous statement published by that person under this section, and
  - (c) where a burden relating to the exercise of the function which has become unnecessary is maintained pursuant to subsection (2), the reasons why removal of the burden would, having regard to all the circumstances, be impracticable or disproportionate.
- (4) The first statement published under this section by a person—
  - (a) must be published as soon as reasonably practicable after the commencement of the duty in subsection (1) in relation to the function, and
  - (b) is to be a statement for the period of twelve months beginning with the day of its publication.
- (5) A subsequent statement published by a person under this section—
  - (a) must be published during the period to which the previous statement related or as soon as reasonably practicable thereafter, and
  - (b) must be a statement for the period of twelve months beginning with the end of the period to which the previous statement related.
- (6) The publication of a statement under this section must be in such manner as the person publishing it considers appropriate for bringing it to the attention of the persons likely to be affected by it.
- (7) A person exercising a function to which subsection (1) applies must, in exercising the function during a period for which a statement is in force under this section, have regard to that statement.

*Status: Point in time view as at 21/07/2008. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Regulatory Enforcement and Sanctions Act 2008 is up to date with all changes known to be in force on or before 24 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 73 Functions to which section 72 applies **U.K.**

- (1) Section 72 applies to the following regulatory functions—
  - (a) the regulatory functions specified in subsection (2),
  - (b) any regulatory function specified by a Minister of the Crown by order in accordance with this section, and
  - (c) any regulatory function specified by the Welsh Ministers by order in accordance with this section.
- (2) The regulatory functions referred to in subsection (1)(a) are the regulatory functions exercised by—
  - (a) the Gas and Electricity Markets Authority,
  - (b) the Office of Fair Trading,
  - (c) the Office of Rail Regulation,
  - (d) the Postal Services Commission, and
  - (e) the Water Services Regulation Authority,other than any function exercised under competition law.
- (3) Any reference in subsection (2) to a regulatory function—
  - (a) where the function is exercisable in Scotland, does not include the function if or to the extent that it relates to matters which are not reserved matters,
  - (b) where the function is exercisable in Northern Ireland, does not include the function if or to the extent that it relates to matters which are transferred matters, and
  - (c) where the function is exercisable in Wales, does not include the function if or to the extent that it relates to a Welsh ministerial matter.
- (4) A Minister of the Crown may not under this section specify—
  - (a) a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters,
  - (b) a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters, or
  - (c) a regulatory function so far as exercisable in Wales, if or to the extent that the function relates to a Welsh ministerial matter.
- (5) The Welsh Ministers may only specify under this section a regulatory function if or to the extent that it relates to a Welsh ministerial matter.
- (6) Before making an order under this section the authority making the order must consult—
  - (a) any person whose regulatory functions are to be specified in the order, and
  - (b) such other persons as the authority considers appropriate.
- (7) An order under this section may make such consequential, supplementary, incidental or transitional provision (including provision amending any enactment) as the authority making it considers appropriate.
- (8) An order under this section is to be made by statutory instrument.
- (9) A statutory instrument containing an order under this section made by a Minister of the Crown may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

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(10) A statutory instrument containing an order under this section made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

(11) In subsections (3) and (4)—

“reserved matter” and “Scotland” have the same meanings as in the Scotland Act 1998 (c. 46);

“transferred matter” and “Northern Ireland” have the same meanings as in the Northern Ireland Act 1998 (c. 47);

“Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32).

## PART 5 U.K.

### GENERAL

#### 74 General interpretation U.K.

In this Act—

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

“regulatory function” has the same meaning as in the Legislative and Regulatory Reform Act 2006 (c. 51);

“Welsh ministerial matter” means a matter in Wales (within the meaning of the Government of Wales Act 2006) in respect of which the Welsh Ministers exercise functions.

#### 75 Extent U.K.

This Act extends to England and Wales, Scotland and Northern Ireland.

#### 76 Commencement U.K.

(1) Parts 1 to 4 come into force in accordance with provision made by order made by statutory instrument by the Secretary of State.

(2) This Part comes into force on the day on which this Act is passed.

#### Subordinate Legislation Made

P1 S. 76(1) power partly exercised: 1.10.2008 appointed for specified provisions by {S.I. 2008/2371}, art. 2

P2 S. 76(1) power partly exercised: 6.4.2009 appointed for specified provisions by {S.I. 2009/550}, art. 2

#### 77 Short title U.K.

This Act may be cited as the Regulatory Enforcement and Sanctions Act 2008.

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VALID FROM 01/10/2008

## SCHEDULES

SCHEDULE 1 **U.K.** Section 1

LBRO: SUPPLEMENTARY

.....

SCHEDULE 2 **U.K.** Section 2

REPLACEMENT OF THE LBRO COMPANY BY LBRO

.....

SCHEDULE 3 **U.K.** Section 4(2)

ENACTMENTS SPECIFIED FOR THE PURPOSES OF PART 1

.....

SCHEDULE 4 **U.K.** Section 28(7)

ENFORCEMENT ACTION: REFERENCES TO LBRO

.....

SCHEDULE 5 **U.K.** Section 37(1)

DESIGNATED REGULATORS

.....

SCHEDULE 6 **U.K.** Section 37(2)

ENACTMENTS SPECIFIED FOR THE PURPOSES OF ORDERS UNDER PART 3

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SCHEDULE 7 **U.K.**

Section 62

ENACTMENTS SPECIFIED FOR THE PURPOSES OF SECTION 62

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**Status:**

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**Changes to legislation:**

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