



Regulatory Enforcement and Sanctions Act 2008

2008 CHAPTER 13

PART 1

THE LOCAL BETTER REGULATION OFFICE

Modifications etc. (not altering text)

- C1** Pt. 1: transfer of functions (1.4.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 2, 4(1)(a), **Sch. 1** (with Sch. 2)

Establishment of LBRO

1 LBRO

^{F1}(1)

^{F1}(2)

(3) Schedule 1 (which makes further provision about LBRO) has effect.

Textual Amendments

- F1** S. 1(1)(2) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(a)** (with Sch. 2)

^{F2} 2 Dissolution of the LBRO company

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Textual Amendments

- F2** S. 2 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(b)** (with Sch. 2)

Definitions

3 “Local authority”

- (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”

- (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—
- (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—

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- (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 [^{F3}devolved Welsh] 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 [^{F4}devolved Welsh] 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.

Textual Amendments

F3 Words in s. 4(6) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\), ss. 21\(2\)\(a\), 44\(5\)](#); S.I. 2016/695, art. 3(c)

F4 Words in s. 4(8)(b) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\), ss. 21\(2\)\(a\), 44\(5\)](#); S.I. 2016/695, art. 3(c)

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General functions of LBRO

5 Objective relating to general functions

- (1) [^{F5}In exercising their functions under sections 6 to 10 the Secretary of State and the Welsh Ministers have] the objective of securing that local authorities in England and Wales exercise their relevant functions—
- (a) effectively,
 - (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.

Textual Amendments

- F5** Words in s. 5(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 3** (with Sch. 2)

6 Guidance to local authorities

- [^{F6}(1) It is a function of the Secretary of State to give guidance to—
- (a) one or more local authorities in England,
 - (b) one or more local authorities in Wales, or
 - (c) local authorities in England and Wales
- as to how to exercise their relevant functions (other than functions relating to [^{F7}devolved Welsh] matters).
- (1A) It is a function of the Welsh Ministers to give guidance to one or more local authorities in Wales as to how to exercise their relevant functions which relate to [^{F7}devolved Welsh] matters.]
- (2) Guidance under subsection (1) [^{F8}or (1A)] —
- ^{F9}(a)
 - (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 [^{F10}the person giving the guidance] 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 [^{F10}the person giving the guidance] considers appropriate, and

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(c) such other persons as [^{F10}the person giving the guidance] considers appropriate.

[^{F11}(5) The person giving guidance under this section must publish it in such manner as that person considers appropriate.]

(6) [^{F12}The person giving the guidance] may vary or revoke any guidance given ^{F13}... under this section by further guidance under this section.

Textual Amendments

- F6** S. 6(1)(1A) substituted for s. 6(1) (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 4(a)** (with Sch. 2)
- F7** Words in s. 6(1)(1A) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), **ss. 21(2)(b)**, 44(5); S.I. 2016/695, art. 3(c)
- F8** Words in s. 6(2) inserted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 4(b)** (with Sch. 2)
- F9** S. 6(2)(a) repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(c)** (with Sch. 2)
- F10** Words in s. 6(4) substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 4(c)** (with Sch. 2)
- F11** S. 6(5) substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 4(d)** (with Sch. 2)
- F12** Words in s. 6(6) substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 4(e)** (with Sch. 2)
- F13** Words in s. 6(6) repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(d)** (with Sch. 2)

^{F147} **Guidance to local authorities: enforcement**

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Textual Amendments

- F14** S. 7 repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(e)** (with Sch. 2)

^{F158} **Financial support and assistance to local authorities**

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Textual Amendments

- F15** S. 8 repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(f)** (with Sch. 2)

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F169 Advice to Ministers of the Crown

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Textual Amendments

F16 S. 9 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(g)** (with Sch. 2)

10 Advice to Welsh Ministers

- (1) [F17The Secretary of State] 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 [F18devolved Welsh] 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;
 - (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.

F19(2)

Textual Amendments

F17 Words in s. 10(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 5** (with Sch. 2)

F18 Words in s. 10(1)(a) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(2)(c)**, 44(5); S.I. 2016/695, art. 3(c)

F19 S. 10(2) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(h)** (with Sch. 2)

Function relating to enforcement priorities

11 Enforcement priorities

- [F20(1) The Secretary of State must prepare and publish a list specifying those matters to which a local authority in England should give priority when allocating resources to its relevant functions.
- (1A) The Welsh Ministers must prepare and publish 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) [F21or (1A)] when allocating resources to its relevant functions.
- (3) Before publishing a list under subsection (1) [F22the person preparing the list] must consult such persons as [F23that person] considers appropriate.

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- (4) ^{F24}The person preparing the list] must publish details of any representations made _{F25} ... pursuant to subsection (3).
- ^{F26}(5) Before publishing a list under subsection (1A), the Welsh Ministers must consult the Secretary of State.]
- ^{F27}(6)
- ^{F28}(7) A list published under this section must be reviewed from time to time by the person who published it.]
- ^{F28}(8) A list revised as a result of a review under subsection (7) must be published (and subsections (2) to (7) have effect in relation to it).]

Textual Amendments

- F20** S. 11(1)(1A) substituted for s. 11(1) (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(a)** (with Sch. 2)
- F21** Words in s. 11(2) inserted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(b)** (with Sch. 2)
- F22** Words in s. 11(3) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(c)(i)** (with Sch. 2)
- F23** Words in s. 11(3) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(c)(ii)** (with Sch. 2)
- F24** Words in s. 11(4) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(d)** (with Sch. 2)
- F25** Words in s. 11(4) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(i)** (with Sch. 2)
- F26** S. 11(5) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(e)** (with Sch. 2)
- F27** S. 11(6) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(j)** (with Sch. 2)
- F28** S. 11(7)(8) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 6(f)** (with Sch. 2)

Matters relating to exercise of LBRO's functions

12 Relationship with other regulators

- (1) ^{F29}The Secretary of State] 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—
- the Environment Agency;
 - the Food Standards Agency;
 - the Gambling Commission;
 - the Health and Safety Executive;

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(e) the [^{F30}Competition and Markets Authority] .

[^{F31}(3) The Secretary of State must consult the Welsh Ministers about—

- (a) revising an existing memorandum of understanding, or
- (b) entering into a new one,

which relates to a [^{F32}devolved Welsh] matter.]

Textual Amendments

- F29** Words in s. 12(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 7(a)** (with Sch. 2)
- F30** Words in s. 12(2)(e) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 179** (with art. 3)
- F31** S. 12(3) inserted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 7(b)** (with Sch. 2)
- F32** Words in s. 12(3) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(2)(d)**, 44(5); S.I. 2016/695, art. 3(c)

^{F33}13 Duty not to impose burdens etc

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Textual Amendments

- F33** S. 13 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(k)** (with Sch. 2)

^{F34}14 Ancillary powers

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Textual Amendments

- F34** S. 14 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(l)** (with Sch. 2)

Ministerial powers in relation to LBRO

^{F35}15 Guidance or directions by the Secretary of State

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Textual Amendments

- F35** S. 15 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(m)** (with Sch. 2)

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16 Guidance or directions by Welsh Ministers

- (1) The Welsh Ministers may give [^{F36}the Secretary of State] —
 - (a) guidance, ^{F37} ...
 - ^{F37}(b)as to the exercise in relation to Wales of any of [^{F38}the Secretary of State’s functions under this Act so far as they relate] to a [^{F39}devolved Welsh] matter.
- (2) Before giving any guidance ^{F40} ... under this section the Welsh Ministers must consult—
 - (a) [^{F41}the Secretary of State] , and
 - (b) such other persons as the Welsh Ministers consider likely to be affected by the guidance ^{F40} ..., or persons representative of such persons.
- (3) The Welsh Ministers must—
 - (a) publish (in such manner as they consider appropriate) any guidance ^{F42} ... given under this section, and
 - (b) lay a copy of any such guidance ^{F42} ... before the National Assembly for Wales.
- (4) [^{F43}The Secretary of State] must have regard to any guidance ^{F44} ... given under this section.
- (5) The Welsh Ministers may vary or revoke any guidance ^{F45} ... given under this section by further guidance ^{F45} ... under this section.
- ^{F46}(6)
- ^{F46}(7)

Textual Amendments

- F36** Words in s. 16(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 8(a)(i)** (with Sch. 2)
- F37** S. 16(1)(b) and preceding word repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(n)** (with Sch. 2)
- F38** Words in s. 16(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 8(a)(ii)** (with Sch. 2)
- F39** Words in s. 16(1) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(2)(e)**, 44(5); S.I. 2016/695, art. 3(c)
- F40** Words in s. 16(2) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(o)** (with Sch. 2)
- F41** Words in s. 16(2)(a) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 8(b)** (with Sch. 2)
- F42** Words in s. 16(3)(a)(b) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(o)** (with Sch. 2)
- F43** Words in s. 16(4) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 8(c)** (with Sch. 2)
- F44** Words in s. 16(4) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(p)** (with Sch. 2)

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- F45** Words in s. 16(5) repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(q)** (with Sch. 2)
- F46** S. 16(6)(7) repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(r)** (with Sch. 2)

Supplementary and general

^{F47} 17 Review of LBRO

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Textual Amendments

- F47** S. 17 repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(s)** (with Sch. 2)

18 Power to dissolve LBRO

- (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 (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.

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- (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

- (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

- (1) An order or regulations under this Part must be made by statutory instrument.
- (2) A statutory instrument containing an order made by the Secretary of State under section 4(7)^{F48}... is subject to annulment in pursuance of a resolution of either House of Parliament.

Status: Point in time view as at 26/11/2018.

Changes to legislation: Regulatory Enforcement and Sanctions Act 2008 is up to date with all changes known to be in force on or before 03 September 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)

(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.

^{F49}(4)

(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.

Textual Amendments

F48 Words in s. 20(2) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(f)** (with Sch. 2)

F49 S. 20(4) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(u)** (with Sch. 2)

21 Interpretation of Part 1

In this Part—

^{F50} ...

^{F50} ...

“local authority” has the meaning given in section 3;

“relevant function” has the meaning given in section 4.

Textual Amendments

F50 Words in s. 21 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(v)** (with Sch. 2)

^{F51}[PART 2

CO-ORDINATION OF REGULATORY ENFORCEMENT

Textual Amendments

F51 Pt. 2 substituted (4.5.2016 for specified purposes, 1.10.2017 in so far as not already in force) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 20(1), 44(1)(c)**; S.I. 2017/473, reg. 3(b)

Modifications etc. (not altering text)

C2 Pt. 2: transfer of functions (1.4.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 2, 4(1)(b), **Sch. 1** (with Sch. 2)

Introductory

22 Scope of Part 2

[This Part applies in relation to a person if the Secretary of State is satisfied that the ^{F52}(A1) person is within subsection (1) or (1A).]

Status: Point in time view as at 26/11/2018.

Changes to legislation: Regulatory Enforcement and Sanctions Act 2008 is up to date with all changes known to be in force on or before 03 September 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)

- (1) ^{F53}A person is within this subsection if—
- (a) the 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.

^{F54}[A person (P) is within this subsection if each of the conditions in subsection (1B) is met.]

- (1B) The conditions are—
- (a) that P carries on an activity in relation to which a local authority exercises a relevant function;
 - (b) that the effect of arrangements made by P with any organisation or other person is that P's approach to compliance, in respect of the relevant function, is one that is shared with another person (Q) who carries on the activity;
 - (c) that—
 - (i) at least one of P and Q carries on the activity in the area of two or more local authorities, or
 - (ii) Q carries on the activity in the area of a local authority in which P does not carry on the activity.]

^{F55}(2) In this Part, references to “the regulated person” are to a person to whom this Part applies.]

^{F55}[The Secretary of State may from time to time publish guidance about matters likely (3) to be taken into account for the purposes of subsection (1B)(b).]

^{F55}[The guidance may be published in such manner as the Secretary of State considers (4) appropriate.]

Textual Amendments

- F52** S. 22(A1) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 67(2)**, 103(3); S.I. 2013/2227, art. 2(d)
- F53** Words in s. 22(1) substituted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 67(3)**, 103(3); S.I. 2013/2227, art. 2(d)
- F54** S. 22(1A)(1B) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 67(4)**, 103(3); S.I. 2013/2227, art. 2(d)
- F55** S. 22(2)-(4) substituted for s. 22(2) (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 67(5)**, 103(3); S.I. 2013/2227, art. 2(d)

23 “Local authority”

- (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).

Status: Point in time view as at 26/11/2018.

Changes to legislation: Regulatory Enforcement and Sanctions Act 2008 is up to date with all changes known to be in force on or before 03 September 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)

- (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”

- (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).

[References in this Part to “the relevant function”, in relation to the regulated person,^{F56}(7) are to the relevant function by reference to which the Secretary of State is satisfied that the person is within section 22(1) or (1A).]

Textual Amendments

F56 S. 24(7) inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 67\(6\), 103\(3\); S.I. 2013/2227, art. 2\(d\)](#)

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](#)

Status: Point in time view as at 26/11/2018.

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Primary authorities

25 Primary authorities

- (1) For the purposes of this Part [^{F57}the Secretary of State] 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.

Textual Amendments

F57 Words in s. 25(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 10** (with Sch. 2)

26 Nomination of primary authorities

- (1) [^{F58}The Secretary of State] 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 [^{F59}the Secretary of State] to make a nomination under section 25(1) for the exercise of the relevant function in relation to the regulated person,and [^{F59}the Secretary of State] considers the authority suitable for nomination.
- (2) [^{F60}Where the Secretary of State has been satisfied that the regulated person is within section 22(1), the Secretary of State] 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) [^{F61}the Secretary of State] must consult—
 - (a) that authority, and
 - (b) the regulated person.
- (4) [^{F62}The Secretary of State] must have particular regard to any representations made by a local authority pursuant to subsection (3) as to the resources available to it.
- (5) [^{F63}The Secretary of State] may at any time revoke a nomination under section 25(1) if—
 - (a) [^{F64}the Secretary of State] considers that the authority is no longer suitable for nomination, or
 - (b) [^{F64}the Secretary of State] considers it appropriate to do so for any other reason,

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and subsections (2) to (4) apply in relation to a revocation of a nomination as in relation to a nomination.

- (6) [^{F65}The Secretary of State] must maintain, or cause to be maintained, a register of nominations under section 25(1).

Textual Amendments

- F58** Words in s. 26(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(a)(i)** (with Sch. 2)
- F59** Words in s. 26(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(a)(ii)** (with Sch. 2)
- F60** Words in s. 26(2) substituted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 67(7), 103(3)**; [S.I. 2013/2227](#), art. 2(d)
- F61** Words in s. 26(3) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(c)** (with Sch. 2)
- F62** Words in s. 26(4) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(b)** (with Sch. 2)
- F63** Words in s. 26(5) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(b)** (with Sch. 2)
- F64** Words in s. 26(5)(a)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(d)** (with Sch. 2)
- F65** Words in s. 26(6) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 11(b)** (with Sch. 2)

Functions of primary authorities

27 Advice and guidance

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

28 Enforcement action

- (1) Subject as follows, a local authority other than the primary authority (“the enforcing authority”) must notify the primary authority before taking any enforcement action against the regulated person pursuant to the relevant function.

Status: Point in time view as at 26/11/2018.

Changes to legislation: Regulatory Enforcement and Sanctions Act 2008 is up to date with all changes known to be in force on or before 03 September 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)

- (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.
- (7) Schedule 4 (which makes provision for questions arising under this section to be referred to [^{F66}the Secretary of State]) has effect.
- (8) Where an enactment limits the period within which the enforcing authority may take the proposed enforcement action, any time during which the authority is prohibited under this section or Schedule 4 from taking the action is to be disregarded in calculating that period.
- (9) For the purposes of this section “relevant period” means—
 - (a) the period of five working days beginning with the day after that on which the primary authority is notified under subsection (1), or
 - (b) such longer period beginning with that day as [^{F66}the Secretary of State] may direct.
- (10) In subsection (9)(b) “working day” means a day other than—
 - (a) a Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in—
 - (i) the part of the United Kingdom where the primary authority is, or
 - (ii) (if different) the part of the United Kingdom where the enforcing authority is.

Status: Point in time view as at 26/11/2018.

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Textual Amendments

F66 Words in s. 28(7)(9)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 12** (with **Sch. 2**)

Modifications etc. (not altering text)

C3 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**

29 Enforcement action: exclusions

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

30 Inspection plans

- (1) Where a relevant function consists of or includes a function of inspection, the primary authority may in accordance with this section make an inspection plan.
 - (2) An “inspection plan” is a plan containing recommendations as to how a local authority with the function of inspection should exercise it in relation to the regulated person.
 - (3) An inspection plan may in particular set out—
 - (a) the frequency at which, or circumstances in which, inspections should be carried out;
 - (b) what an inspection should consist of.
- [An inspection plan may require a local authority other than the primary authority, on ^{F67}(3A) exercising the function of inspection in relation to the regulated person, to provide the primary authority with a report on its exercise of the function.]
- (4) Before making an inspection plan the primary authority must consult the regulated person.

Status: Point in time view as at 26/11/2018.

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- (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 ^{F68}the Secretary of State] consents to the plan, bring the plan to the notice of the other local authorities with the function of inspection.
- (7) ^{F69}Where the primary authority exercises] the function of inspection in relation to the regulated person ^{F70}, it] must have regard to a plan to which consent has been given under subsection (6).

[A local authority other than the primary authority may not exercise the function of ^{F71}(7A) inspection in relation to the regulated person otherwise than in accordance with a plan that has been brought to its notice under subsection (6), unless—

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

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

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

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

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

^{F72}(8)

(9) A notification under subsection ^{F73}(7A)(a)] must include reasons for exercising the function otherwise than in accordance with the plan.

[A primary authority may, with the consent of the Secretary of State, revoke a plan ^{F74}(9A) made by it under this section.

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

(10) A primary authority may from time to time revise a plan made by it under this section (and subsections (3) to ^{F75}(9B)] apply in relation to any revision of the plan).

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

- ^{F76}(11) (a) a Saturday or Sunday,
- (b) Christmas Day or Good Friday, or

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- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in—
- (i) the part of the United Kingdom where the primary authority is, or
 - (ii) (if different) the part of the United Kingdom where the authority is that has given the notification referred to in subsection (7A)(a).]

Textual Amendments

- F67** S. 30(3A) inserted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(2)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F68** Words in s. 30(6) substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 13** (with Sch. 2)
- F69** Words in s. 30(7) substituted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(3)(a)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F70** Word in s. 30(7) inserted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(3)(b)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F71** S. 30(7A)-(7E) inserted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(4)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F72** S. 30(8) omitted (1.10.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(5)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F73** Word in s. 30(9) substituted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(6)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))
- F74** S. 30(9A)(9B) inserted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(7)**, 103(3); S.I. 2013/2227, art. 2(e)
- F75** Word in s. 30(10) substituted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(8)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(2))
- F76** S. 30(11) inserted (1.10.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 68(9)**, 103(3); S.I. 2013/2227, art. 2(e) (with art. 5(1))

Primary authorities: supplementary

31 Power to charge

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.

^{F77}32 LBRO support

Textual Amendments

- F77** S. 32 repealed (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(w)** (with Sch. 2)

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General

33 [F78] Guidance from the Secretary of State

- (1) [F79]The Secretary of State] 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 [F80]the Secretary of State] must consult such persons as [F80]the Secretary of State] considers appropriate.
- (5) [F81]The Secretary of State] may not give guidance under subsection (2)(c)—
 - ^{F82}(a)
 - (b) without having consulted the Welsh Ministers.
- (6) [F83]The Secretary of State] must publish (in such manner [F84]as the Secretary of State] considers appropriate) any guidance given ^{F85}... under this section.
- (7) [F86]The Secretary of State] may at any time vary or revoke any guidance given under this section by further guidance under this section.

Textual Amendments

- F78** S. 33 heading substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), art. 4(2), **Sch. 1 para. 14(d) (with Sch. 2)**
- F79** Words in s. 33(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 14(a)** (with Sch. 2)
- F80** Words in s. 33(4) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 14(b)** (with Sch. 2)
- F81** Words in s. 33(5) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 14(a)** (with Sch. 2)
- F82** S. 33(5)(a) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(x)** (with Sch. 2)
- F83** Words in s. 33(6) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 14(a)** (with Sch. 2)
- F84** Words in s. 33(6) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 14(c)** (with Sch. 2)
- F85** Words in s. 33(6) repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(y)** (with Sch. 2)
- F86** Words in s. 33(7) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 14(a)** (with Sch. 2)

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34 Orders under Part 2

- (1) An order under this Part is to be made by statutory instrument.
- (2) An order under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

35 Interpretation of Part 2

In this Part—

“enforcement action” has the meaning given in section 28(5);

^{F87}
...

“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.]

Textual Amendments

F87 Words in s. 35 repealed (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 1(z)** (with Sch. 2)

[^{F51}PART 2

REGULATORY ENFORCEMENT

Introductory

22A “Regulated person” and “regulated group”

- (1) A person is a “regulated person” for the purposes of this Part if the Secretary of State is satisfied that—
 - (a) the person carries on, or proposes to carry on, an activity, and
 - (b) a qualifying regulator has a relevant function which is, or would be, exercisable in relation to the person in respect of the activity.
- (2) A group of persons is a “regulated group” for the purposes of this Part if the Secretary of State is satisfied that—
 - (a) a member of the group carries on, or proposes to carry on, an activity, and
 - (b) a qualifying regulator has a relevant function which is, or would be, exercisable in relation to the member in respect of the activity.

22B “Qualifying regulator”

- (1) In this Part, “qualifying regulator” means—
 - (a) a local authority, or
 - (b) a specified regulator.
- (2) In this Part, “local authority” means a local authority in England, Wales, Scotland or Northern Ireland.

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- (3) In this Part—
- (a) references to a local authority in England or Wales have the same meaning as in Part 1;
 - (b) references to a local authority in Scotland are to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
 - (c) 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.
- (4) In this Part, “specified regulator” means a person (other than a local authority) who—
- (a) has regulatory functions, and
 - (b) is specified for the purposes of this Part by regulations made by the Secretary of State.
- (5) Regulations under subsection (4)(b) require the consent of the Welsh Ministers to specify a regulator whose functions relate only to devolved Welsh matters.

22C “Relevant function”

- (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 regulations 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 regulations made by the Secretary of State;
 - (d) in relation to a specified regulator, means a regulatory function exercised by that regulator and specified for the purposes of this Part by regulations made by the Secretary of State.
- (2) Regulations 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) Regulations under subsection (1)(d) 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 the specified regulator, is equivalent to such a function.
- (4) Regulations under subsection (1)(b) or (d) 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.
- (5) Regulations under subsection (1)(c) or (d) 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.

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- (6) Regulations under subsection (1)(d) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (7) Regulations under subsection (1)(d) may make different provision for—
 - (a) different purposes;
 - (b) different areas.

Primary authorities

23A Primary authorities for regulated persons and regulated groups

- (1) For the purposes of this Part, the Secretary of State—
 - (a) may nominate, in relation to a regulated person, a qualifying regulator to be the “primary authority” for the exercise of the partnership functions in relation to that person (a “direct primary authority”);
 - (b) may nominate, in relation to a regulated group, a qualifying regulator to be the “primary authority” for the exercise of the partnership functions in relation to the members of the group (a “co-ordinated primary authority”).
- (2) The “partnership functions” are the functions specified by the nomination under subsection (1) as covered by it.
- (3) A function may be so specified only if condition A or B is met.
- (4) Condition A is that the function—
 - (a) is a relevant function of the primary authority, and
 - (b) is, or (in the case of an activity proposed to be carried on) would be, exercisable by the primary authority in relation to the regulated person or a member of the regulated group.
- (5) Condition B is that the function—
 - (a) is a relevant function of a qualifying regulator other than the primary authority,
 - (b) is, or (in the case of an activity proposed to be carried on) would be, exercisable by that other regulator in relation to the regulated person or a member of the regulated group, and
 - (c) is equivalent to a relevant function of the primary authority.
- (6) The Secretary of State may from time to time revise the specification of partnership functions included in a nomination under subsection (1) if—
 - (a) the requirements of subsections (3) to (5) are met in relation to the revised specification,
 - (b) in the case of a nomination under subsection (1)(a), the primary authority and the regulated person have agreed in writing to the revision, and
 - (c) in the case of a nomination under subsection (1)(b), the primary authority and the co-ordinator of the regulated group have agreed in writing to the revision.
- (7) This Part applies to a revised specification of partnership functions as it applies to a specification of partnership functions under subsection (1); and references in this Part to the partnership functions include partnership functions in the revised specification.

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23B Nomination of primary authorities

- (1) The Secretary of State may only nominate a qualifying regulator as a direct primary authority if the regulator and the regulated person have agreed in writing to the nomination.
- (2) The Secretary of State may only nominate a qualifying regulator as a co-ordinated primary authority if—
 - (a) there is a co-ordinator of the regulated group, and
 - (b) the regulator and the co-ordinator have agreed in writing to the nomination.
- (3) The Secretary of State may at any time revoke a nomination under section 23A(1).
- (4) The Secretary of State must—
 - (a) maintain, or cause to be maintained, a register of nominations under section 23A(1), and
 - (b) make the register available for inspection free of charge.

23C “Co-ordinator” of a regulated group

- (1) For the purposes of this Part, there is a “co-ordinator” of a regulated group if there is a person nominated by the Secretary of State to be the co-ordinator of the group.
- (2) The Secretary of State may only nominate a person under subsection (1) if the person has agreed in writing to the nomination.
- (3) The Secretary of State may at any time revoke a nomination under subsection (1).
- (4) If at any time the co-ordinator of a regulated group is unable to act, the Secretary of State may nominate another person to exercise the functions of the co-ordinator of the group under this Part.
- (5) Subsections (2) and (3) apply to a nomination under subsection (4) as they apply to a nomination under subsection (1).
- (6) The Secretary of State must secure that the register of nominations maintained and made available under section 23B(4) includes, in relation to each co-ordinated primary authority, the name of—
 - (a) the co-ordinator of the regulated group concerned, and
 - (b) any person nominated under subsection (4) to exercise the co-ordinator's functions.

23D Membership of a regulated group

- (1) This section applies where a qualifying regulator is nominated as a co-ordinated primary authority.
- (2) The co-ordinator of the regulated group concerned must—
 - (a) maintain, or cause to be maintained, a list of members of the group, and
 - (b) secure, as far as is reasonably practicable, that the list is accurate and kept up-to-date.
- (3) The list must include in relation to each member—
 - (a) the member's name and address,

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- (b) when the person became a member, and
 - (c) if applicable, when the person ceased to be a member.
- (4) The co-ordinator of the regulated group must make a copy of the list available free of charge, on request, to—
- (a) the Secretary of State,
 - (b) the primary authority, and
 - (c) a qualifying regulator who has a function which is both a relevant function of the regulator and a partnership function.
- (5) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (6) For the purposes of this Part, the list is conclusive as to whether a person is a member of the group at a particular time.

23E Application of sections 24A to 28B

- (1) The following provisions apply in each case where a qualifying regulator has been nominated under section 23A(1) as a primary authority—
- (a) section 24A (primary authority advice and guidance);
 - (b) sections 25A to 25D and Schedule 4A (enforcement action);
 - (c) sections 26A to 26C (inspection plans);
 - (d) section 27A (power for primary authority to recover costs);
 - (e) section 28A (support of primary authority by other regulators);
 - (f) section 28B (other regulators to act consistently with primary authority advice etc).
- (2) References in those provisions to “the primary authority”, “a partnership function” and other terms defined in or for the purposes of this Part are to be read accordingly.
- (3) But see sections 29A to 29D in relation to cases where more than one qualifying regulator has been nominated as the primary authority for the exercise of the same function in relation to the same person.

Advice and guidance

24A Primary authority advice and guidance

- (1) The primary authority, if it is a direct primary authority, has the function of—
- (a) giving advice and guidance to the regulated person in relation to each partnership function;
 - (b) giving advice and guidance, in relation to each partnership function, to other qualifying regulators as to how they should exercise it in relation to the regulated person.
- (2) The primary authority, if it is a co-ordinated primary authority, has the function of—
- (a) giving advice and guidance to the co-ordinator of the regulated group in relation to each partnership function;

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- (b) giving advice and guidance, in relation to each partnership function, to other qualifying regulators as to how they should exercise it in relation to a member of the group.
- (3) The primary authority may make arrangements with the regulated person or the co-ordinator of the regulated group as to how the authority will discharge its functions under subsection (1) or (2).
- (4) In the case of a co-ordinated primary authority, the co-ordinator of the regulated group must notify any advice or guidance given to the co-ordinator under subsection (2)(a) to those members of the group to whom the co-ordinator considers it may be relevant.
- (5) Advice or guidance may be given under subsection (1)(b) or (2)(b) only with the consent of the Secretary of State.
- (6) Subsections (1)(b) and (2)(b) do not require advice and guidance to be given to a qualifying regulator in relation to a partnership function if it is not a relevant function of that regulator.

Enforcement action

25A “Enforcement action”

- (1) In this Part, “enforcement action” means—
 - (a) action which relates to securing compliance with a restriction, requirement or condition in the event of breach (or putative breach) of a restriction, requirement or condition;
 - (b) action taken with a view to, or in connection with, the imposition of a sanction (criminal or otherwise) in respect of an act or omission;
 - (c) action taken in connection with the pursuit of a remedy conferred by an enactment in respect of an act or omission.
- (2) But the Secretary of State may by regulations, with the consent of the Welsh Ministers, specify—
 - (a) action which is to be regarded as enforcement action for the purposes of this Part or any provision of this Part specified in the regulations;
 - (b) action which is not to be regarded as enforcement action for the purposes of this Part or any provision of this Part specified in the regulations.
- (3) Regulations under subsection (2) may make different provision for different purposes.

25B Enforcement action by primary authority

- (1) This section applies if—
 - (a) the primary authority proposes to take enforcement action against the regulated person or a member of the regulated group pursuant to a relevant function of the primary authority which is a partnership function, and
 - (b) in the case of proposed enforcement action against a member of the regulated group, the primary authority is aware that the member belongs to the group.

But see section 25D (which imposes a duty to prescribe circumstances in which this section does not apply).

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- (2) The primary authority—
 - (a) must notify the regulated person or the member in writing before taking the proposed enforcement action, and
 - (b) may not take the action during the referral period mentioned in paragraph 5(2) of Schedule 4A (period in which the regulated person or the member may refer the action to the Secretary of State) unless notified in writing by the regulated person or the member that no such reference is to be made.
- (3) Parts 1 and 3 of Schedule 4A contain provision for questions arising under this section to be referred to the Secretary of State.
- (4) Where another enactment limits the period within which the primary authority may take the proposed enforcement action, any time during which it is prohibited under this section or paragraph 5(7) of Schedule 4A from taking the action is to be disregarded in calculating that period.

25C Enforcement action other than by primary authority

- (1) This section applies if—
 - (a) a qualifying regulator other than the primary authority proposes to take enforcement action against the regulated person or a member of the regulated group pursuant to a relevant function of the regulator which is a partnership function, and
 - (b) in the case of proposed enforcement action against a member of the regulated group, the regulator is aware that the member belongs to the group.

But see section 25D (which imposes a duty to prescribe circumstances in which this section does not apply).

- (2) The qualifying regulator (the “enforcing authority”)—
 - (a) must notify the primary authority in writing before taking the proposed enforcement action, and
 - (b) may not take the action during the relevant period.
- (3) If—
 - (a) the enforcing authority fails to notify the primary authority under subsection (2)(a) of the proposed enforcement action, but
 - (b) the primary authority is notified of it by the regulated person or the member or the co-ordinator of the regulated group,the primary authority must notify the enforcing authority in writing that the enforcing authority is prohibited by subsection (2)(b) from taking the action during the relevant period.
- (4) If the primary authority determines, within the relevant period, that the proposed enforcement action is inconsistent with advice or guidance previously given by it (generally or specifically), it may direct the enforcing authority in writing not to take the action.
- (5) Any such direction must be given as soon as is reasonably practicable, and in any event within the relevant period.
- (6) If the enforcing authority is not directed under subsection (4) not to take the proposed enforcement action, and continues to propose to take the action—

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- (a) it must inform the regulated person or the member, and
 - (b) it may not take the action during the referral period mentioned in paragraph 5(4) of Schedule 4A (period in which the regulated person or the member may refer the action to the Secretary of State) unless notified in writing by the regulated person or the member that no such reference is to be made.
- (7) Parts 2 and 3 of Schedule 4A contain provision for questions arising under this section to be referred to the Secretary of State.
- (8) Where another enactment limits the period within which the enforcing authority may take the proposed enforcement action, any time during which it is prohibited under this section or paragraph 5(7) of Schedule 4A from taking the action is to be disregarded in calculating the period.
- (9) For the purposes of this section, the “relevant period” means the period which—
- (a) begins when the primary authority is notified under subsection (2)(a) of the proposed enforcement action or the enforcing authority is notified under subsection (3) that it is prohibited from taking the action during the relevant period, and
 - (b) ends—
 - (i) at the end of the fifth working day after the day on which the period begins, or at such later time as the Secretary of State may direct, or
 - (ii) if earlier, when the enforcing authority is notified in writing by the primary authority that no direction is to be given under subsection (4) (unless the notification states that the primary authority has referred the action to the Secretary of State under paragraph 4(1) of Schedule 4A or that it intends to do so).

25D Enforcement action: exceptions

- (1) The Secretary of State must by regulations, with the consent of the Welsh Ministers, prescribe—
- (a) circumstances in which section 25B, and Schedule 4A so far as relating to cases within section 25B, do not apply, and
 - (b) circumstances in which section 25C, and Schedule 4A so far as relating to cases within section 25C, do not apply.
- (2) In particular, the Secretary of State must exercise the power under subsection (1) to secure that those provisions do not apply—
- (a) where the enforcement action is required urgently to avoid a significant risk of serious harm to—
 - (i) human health,
 - (ii) the environment (including the health of animals or plants), or
 - (iii) the financial interests of consumers;
 - (b) where the application of those provisions would be wholly disproportionate.
- (3) Where a qualifying regulator other than the primary authority takes enforcement action against the regulated person or a member of the regulated group in circumstances prescribed under subsection (1)(b), the qualifying regulator must inform the primary authority of the action as soon as it reasonably can.

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Inspection plans

26A Inspection plans

- (1) Where a partnership function consists of or includes a function of inspection (an “inspection function”), the primary authority may make an inspection plan in accordance with this section.
- (2) An “inspection plan” is a plan containing recommendations as to how the inspection function should be exercised by an inspecting regulator in relation to the regulated person or a member of the regulated group.
- (3) A person is an “inspecting regulator” if—
 - (a) the person is a qualifying regulator, and
 - (b) the inspection function is a relevant function of the person.
- (4) An inspection plan may, in particular—
 - (a) set out what an inspection should consist of;
 - (b) set out the frequency with which inspections should be carried out;
 - (c) set out the circumstances in which they should be carried out;
 - (d) require the inspecting regulator to provide the primary authority with a report on the inspecting regulator's exercise of the inspection function.
- (5) Before making an inspection plan the primary authority must consult the regulated person or the co-ordinator of the regulated group.
- (6) When making an inspection plan the primary authority must take into account any relevant recommendations relating to inspections which are published pursuant to a regulatory function by a person other than an inspecting regulator.
- (7) When it has made an inspection plan, the primary authority may apply to the Secretary of State for consent to the plan.
- (8) If the Secretary of State consents to a plan under subsection (7), the primary authority must notify the plan to—
 - (a) the regulated person or the co-ordinator of the regulated group, and
 - (b) inspecting regulators.
- (9) If, in the case of a regulated group, an inspection plan is notified to the co-ordinator under subsection (8)(a), the co-ordinator must—
 - (a) notify the plan to those members of the group to whom the co-ordinator considers it may be relevant,
 - (b) prepare a list of the names and addresses of those members,
 - (c) secure, as far as is reasonably practicable, that the list is accurate and kept up-to-date,
 - (d) provide the primary authority with the list, including any updates to it, and
 - (e) notify any member whose name is included in the list or removed from it of the inclusion or removal.
- (10) If a list or update is provided to the primary authority under subsection (9)(d), the primary authority must notify the list or update to inspecting regulators.

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26B Effect of inspection plans

- (1) If the Secretary of State consents under section 26A(7) to an inspection plan in respect of an inspection function, the primary authority must have regard to the plan when it exercises the inspection function in relation to—
 - (a) the regulated person, or
 - (b) a member of the regulated group whose name is included in the list provided to the primary authority (and, where applicable, updated) under section 26A(9)(d).
- (2) If an inspection plan of the primary authority is notified to an inspecting regulator under section 26A(8)(b), the inspecting regulator may not exercise the inspection function in relation to the regulated person or a member of the regulated group otherwise than in accordance with the plan, unless—
 - (a) the inspecting regulator has notified the primary authority in writing of the way in which it proposes to exercise the function, and the primary authority has notified the regulator in writing that the primary authority consents to that proposed exercise, or
 - (b) in the case of a regulated group, the member's name is not included in the list notified to the inspecting regulator (and, where applicable, updated) under section 26A(10).
- (3) A notification by an inspecting regulator under subsection (2)(a) must include reasons for exercising the function otherwise than in accordance with the plan.
- (4) A primary authority is to be treated as having given the notification of consent described in subsection (2)(a) if—
 - (a) it is notified by the inspecting regulator as described in that subsection, and
 - (b) it fails to notify the inspecting regulator in writing, before the end of the fifth working day after the day on which it received the notification, whether it consents as described in that subsection.

26C Revocation and revision of inspection plans

- (1) A primary authority may, with the consent of the Secretary of State, revoke an inspection plan made by it under section 26A.
- (2) If a primary authority revokes an inspection plan, it must notify the following that the plan is no longer in effect—
 - (a) the regulated person or the co-ordinator of the regulated group;
 - (b) inspecting regulators.
- (3) Where the revocation of an inspection plan is notified to the co-ordinator of a regulated group under subsection (2)(a), the co-ordinator must notify the revocation to those members of the group to whom the co-ordinator considers it may be relevant.
- (4) A primary authority may from time to time revise an inspection plan made by it under section 26A.
- (5) Sections 26A and 26B and this section apply to a revised plan as they apply to a plan made under section 26A; and references in this Part to an inspection plan include the revised plan.

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Primary authority's costs

27A Power to charge

- (1) The primary authority—
 - (a) may, in the case of a regulated person, charge the person such fees as the authority considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the person;
 - (b) may, in the case of a regulated group, charge the co-ordinator such fees as the authority considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated group.
- (2) The reference in subsection (1)(b) to functions in relation to the regulated group includes functions in relation to the co-ordinator or a member of the group.

Other regulators

28A Support of primary authority by other regulators

- (1) This section applies to a person who has regulatory functions and who—
 - (a) is specified as a “supporting regulator” by the Secretary of State by regulations, and
 - (b) has a function which is not a relevant function of the person but which—
 - (i) is a designated function of the person, and
 - (ii) is, or is relevant to the exercise of, a partnership function.
- (2) The supporting regulator may do anything which it considers appropriate for the purpose of supporting the primary authority in the preparation of—
 - (a) advice or guidance under section 24A in relation to the partnership function, or
 - (b) an inspection plan in relation to the partnership function.
- (3) If the supporting regulator provides support under subsection (2), it must, in the exercise of the designated function in relation to the regulated person or a member of the regulated group, act consistently with any advice or guidance under section 24A, or any inspection plan—
 - (a) which is subsequently given or made in relation to the partnership function, and
 - (b) to which the supporting regulator has consented.
- (4) But, in the case of a regulated group, the duty under subsection (3) applies to the exercise of the designated function in relation to a member of the group only if the supporting regulator is aware that the member belongs to the group.
- (5) The duty under subsection (3) is a duty to act consistently so far as it is possible for the supporting regulator to do so in accordance with its other functions.
- (6) If—
 - (a) the supporting regulator provides support under subsection (2), and
 - (b) the regulated person or the co-ordinator of the regulated group has agreed in writing to the provision of that support,
 the supporting regulator may charge the regulated person or the co-ordinator such fees as it considers to represent the costs reasonably incurred by it in providing that support.

Status: Point in time view as at 26/11/2018.

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- (7) In the case of a regulated group, the co-ordinator of the group must make the following available free of charge, on request, to the supporting regulator—
 - (a) a copy of the group membership list maintained under section 23D(2);
 - (b) a copy of a list under section 26A(9) of group members to whom an inspection plan may be relevant.
- (8) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (9) Regulations under subsection (1)(a) require the consent of the Welsh Ministers to specify a person whose functions relate only to devolved Welsh matters.
- (10) In this section, “designated function”, in relation to a supporting regulator, means a regulatory function exercised by that regulator and specified by the Secretary of State by regulations.
- (11) Regulations under subsection (10)—
 - (a) 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;
 - (b) 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;
 - (c) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (12) Regulations under subsection (10) may make different provision for—
 - (a) different purposes;
 - (b) different areas.
- (13) A supporting regulator who, apart from subsection (2), has power to provide the support described in that subsection, is not prevented by that power from exercising the power conferred by subsection (2).

28B Other regulators to act consistently with primary authority advice etc

- (1) This section applies to a person who has regulatory functions and who—
 - (a) is specified as a “complementary regulator” by the Secretary of State by regulations, and
 - (b) has a function which is not a relevant function of the person, but which—
 - (i) is a designated function of the person,
 - (ii) is, or is equivalent to, a partnership function, and
 - (iii) is exercisable by the person in relation to the regulated person or a member of the regulated group.
- (2) The complementary regulator must act consistently with primary authority advice and guidance in the exercise of the designated function in relation to the regulated person or a member of the regulated group.
- (3) But, in the case of a regulated group, the duty under subsection (2) applies to the exercise of the designated function in relation to a member of the group only if the complementary regulator is aware that the member belongs to the group.

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- (4) The duty under subsection (2) is a duty to act consistently so far as it is possible for the complementary regulator to do so in accordance with its other functions.
- (5) In subsection (2), “primary authority advice and guidance” means—
 - (a) advice and guidance given by the primary authority under section 24A to the regulated person or the co-ordinator of the regulated group in relation to the partnership function,
 - (b) advice and guidance given by the primary authority under that section to qualifying regulators as to how they should exercise the partnership function in relation to the regulated person or a member of the regulated group, and
 - (c) an inspection plan made by the primary authority in respect of the exercise of the partnership function in relation to the regulated person or a member of the regulated group.
- (6) In the case of a regulated group, the co-ordinator of the group must make the following available free of charge, on request, to the complementary regulator—
 - (a) a copy of the group membership list maintained under section 23D(2);
 - (b) a copy of a list under section 26A(9) of group members to whom an inspection plan may be relevant.
- (7) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (8) Regulations under subsection (1)(a) require the consent of the Welsh Ministers to specify a person whose functions relate only to devolved Welsh matters.
- (9) In this section, “designated function”, in relation to a complementary regulator, means a regulatory function exercised by that regulator and specified for the purposes of this section by the Secretary of State by regulations.
- (10) Regulations under subsection (9) specifying a function other than a partnership function must identify the partnership function to which the designated function is equivalent.
- (11) Regulations under subsection (9)—
 - (a) 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;
 - (b) 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;
 - (c) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (12) Regulations under subsection (9) may make different provision for—
 - (a) different purposes;
 - (b) different areas.

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Cases with more than one primary authority

29A Primary authority enforcement action inconsistent with another authority's advice etc

- (1) This section applies if—
 - (a) a qualifying regulator nominated as a direct primary authority or a co-ordinated primary authority for the exercise of a function in relation to a person notifies the person, under section 25B(2)(a), of enforcement action that it proposes to take against the person pursuant to the function, and
 - (b) within the referral period, the person notifies the primary authority that the person considers the action to be inconsistent with advice or guidance previously given (generally or specifically) by another qualifying regulator nominated as the primary authority for the exercise of the function in relation to the person.
- (2) Section 25C (but not section 29C) applies in relation to the proposed enforcement action as if the primary authority which gave the notification under section 25B(2)(a) were an enforcing authority under section 25C; and section 25B no longer applies in relation to the action.
- (3) “Referral period” in this section means the referral period mentioned in paragraph 5(2) of Schedule 4A (period in which the regulated person or the member may refer the proposed enforcement action to the Secretary of State).

29B Concurrent duties to notify primary authorities of enforcement action

- (1) This section applies if—
 - (a) a qualifying regulator is nominated as a co-ordinated primary authority for the exercise of a function in relation to a person,
 - (b) an enforcing authority proposes to take enforcement action against the person pursuant to the function, and
 - (c) because of the nomination mentioned in paragraph (a), the enforcing authority is (ignoring this section) required under section 25C(2)(a) to notify the co-ordinated primary authority of the proposed enforcement action.
- (2) That requirement to notify the co-ordinated primary authority does not apply if condition A or B is met.
- (3) Condition A is that under section 25C(2)(a) the enforcing authority is required to notify another qualifying regulator of the proposed enforcement action because of that other qualifying regulator's nomination as a direct primary authority for the exercise of the function in relation to the person.
- (4) Condition B is that—
 - (a) condition A is not met,
 - (b) the enforcing authority is (ignoring this section) required under section 25C(2)(a) to notify at least one other qualifying regulator of the proposed enforcement action because of that other regulator's nomination as a co-ordinated primary authority for the exercise of the function in relation to the person, and
 - (c) the enforcing authority has so notified that other regulator or (if there is more than one) it has so notified at least one of them.

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29C Enforcement action notified to a primary authority inconsistent with another authority's advice etc

- (1) This section applies if—
 - (a) a qualifying regulator is nominated as a direct primary authority or a co-ordinated primary authority for the exercise of a function in relation to a person,
 - (b) that primary authority (“PA1”) is notified under section 25C(2)(a) of enforcement action that an enforcing authority proposes to take against the person pursuant to the function, and
 - (c) PA1 decides not to give a direction under section 25C(4) directing the enforcing authority not to take the enforcement action, and does not refer the action to the Secretary of State under paragraph 4(1) of Schedule 4A.
- (2) PA1 must, within the relevant period, take reasonable steps to find out if—
 - (a) another qualifying regulator nominated as the primary authority (“PA2”) for the exercise of the function in relation to the person has previously given advice or guidance (generally or specifically), and
 - (b) the person considers the proposed enforcement action to be inconsistent with that advice or guidance.
- (3) If PA1 is of the view that such advice or guidance has previously been given and that the person considers the proposed enforcement action to be inconsistent with it, PA1 must—
 - (a) refer the action to PA2, and
 - (b) notify the enforcing authority and the person that it has done so.
- (4) If subsection (3) applies—
 - (a) the reference of the proposed enforcement action by PA1 to PA2 under subsection (3)(a) is to be treated as a notification given by the enforcing authority to PA2 under section 25C(2)(a), and
 - (b) accordingly, section 25C (but not this section) applies in relation to PA2 as the primary authority and ceases to apply in relation to PA1 as the primary authority.
- (5) “Relevant period” in this section has the same meaning as in section 25C (see subsection (9) of that section).

29D Overlapping inspection plans

- (1) This section applies if, in relation to an inspecting regulator, there is more than one relevant inspection plan in respect of the exercise of the same inspection function in relation to the same person.
- (2) An inspection plan is “relevant” in relation to an inspecting regulator if—
 - (a) it is a plan made by it (as a primary authority) to which the Secretary of State has consented under section 26A(7), or
 - (b) it is a plan notified to it (as an inspecting regulator) under section 26A(8)(b).
- (3) If—
 - (a) the inspecting regulator is a direct primary authority for the exercise of the inspection function in relation to the person, and

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- (b) there is a relevant inspection plan made by the regulator in relation to the exercise of the function in relation to the person,
- section 26B(2) (duty of inspecting regulator to act in accordance with plans notified by the primary authority) does not apply in relation to the inspecting regulator by reason of it being notified of any other relevant inspection plan under section 26A(8)(b) in relation to the exercise of the function in relation to the person.
- (4) Subsection (5) applies if—
- (a) the inspecting regulator is a co-ordinated primary authority for the exercise of the inspection function in relation to the person, and
 - (b) there is a relevant inspection plan which is made by a direct primary authority for the exercise of the function in relation to the person and notified to the inspecting regulator under section 26A(8)(b).
- (5) Where this subsection applies—
- (a) section 26B(1) (duty of primary authority to have regard to its own inspection plan) does not apply to the inspecting regulator (as primary authority) in relation to any relevant inspection plan made by it in respect of the exercise of the function in relation to the person;
 - (b) in the application of section 26B(2) to the exercise of the function in relation to the person by the inspecting regulator, the reference to the inspection plan in that provision is to the plan mentioned in subsection (4)(b) only.
- (6) If—
- (a) the inspecting regulator is a co-ordinated primary authority for the exercise of the inspection function in relation to the person,
 - (b) there is a relevant inspection plan made by the regulator in respect of the exercise of the function in relation to the person, and
 - (c) subsection (5) does not apply,
- section 26B(2) does not apply in relation to the exercise of the function by the inspecting regulator in relation to the person.
- (7) If none of subsections (3) to (6) apply, but more than one relevant inspection plan is notified to the inspecting regulator under section 26A(8)(b) in relation to the exercise of the inspection function in relation to the person, in section 26B(2) the reference to the plan is to be read—
- (a) if one of those plans is made by a direct primary authority for the exercise of the function in relation to the person, as a reference to that plan, and
 - (b) otherwise, as a reference to any one of the plans notified to the regulator.

General

30A Guidance and directions

- (1) The Secretary of State may give guidance to any one or more qualifying regulators, supporting regulators, complementary regulators or co-ordinators about the operation of this Part.
- (2) The guidance may include, in particular, guidance to qualifying regulators about—
 - (a) arrangements under section 24A(3) for the giving of advice or guidance by primary authorities;

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- (b) enforcement action referred to the Secretary of State under paragraph 1(1), 2(1), 3(1) or 4(1) of Schedule 4A;
 - (c) the notification of inspection plans under section 26A(8);
 - (d) the charging of fees under section 27A.
- (3) The guidance may include, in particular, guidance to supporting regulators about—
- (a) the circumstances in which a function is relevant to the exercise of a partnership function for the purposes of section 28A;
 - (b) the charging of fees under section 28A(6).
- (4) A qualifying regulator, supporting regulator, complementary regulator or co-ordinator must have regard to any guidance given to it under this section.
- (5) Before giving guidance under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) The Secretary of State may not give guidance under subsection (2)(d) or (3) without consulting the Welsh Ministers.
- (7) The Secretary of State may at any time vary or revoke guidance given under this section.
- (8) The Secretary of State must publish guidance given under this section and any variation or revocation of the guidance.
- (9) A qualifying regulator must comply with a direction given to it under this Part.

30B Periods of time under Part 2

The Secretary of State may by regulations amend any provision of this Part which specifies a period within which, or a time before which, anything must, must not or may be done.

30C Regulations under Part 2

- (1) Regulations under this Part must be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 22B, 28B(1)(a) or 30B (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

30D Interpretation of Part 2

- (1) In this Part—
 - “complementary regulator” means a complementary regulator under section 28B;
 - “co-ordinated primary authority” has the meaning given in section 23A(1)(b);
 - “co-ordinator” has the meaning given in section 23C(1);
 - “direct primary authority” has the meaning given in section 23A(1)(a);

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- “enforcement action” has the meaning given in section 25A;
- “enforcing authority” has the meaning given in section 25C(2);
- “inspecting regulator” has the meaning given in section 26A(3);
- “inspection function” has the meaning given in section 26A(1);
- “inspection plan” has the meaning given in sections 26A(2) and 26C(5);
- “local authority” has the meaning given in section 22B(2) and (3);
- “Northern Ireland” has the same meaning as in the Northern Ireland Act 1998;
- “partnership function” has the meaning given in section 23A(2) and (7);
- “primary authority” means a qualifying regulator nominated as a primary authority under section 23A(1);
- “qualifying regulator” has the meaning given in section 22B(1);
- “regulated group” has the meaning given in section 22A(2);
- “regulated person” has the meaning given in section 22A(1);
- “relevant function” has the meaning given in section 22C(1);
- “reserved matter” has the same meaning as in the Scotland Act 1998;
- “Scotland” has the same meaning as in the Scotland Act 1998;
- “specified regulator” has the meaning given in section 22B(4);
- “supporting regulator” means a supporting regulator under section 28A;
- “transferred matter” has the same meaning as in the Northern Ireland Act 1998;
- “Wales” has the same meaning as in the Government of Wales Act 2006;
- “working day” has the meaning given in subsection (2).

- (2) In this Part, “working day” means a day other than—
- (a) a Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the relevant part of the United Kingdom.
- (3) For the purposes of subsection (2)(c), the “relevant part” of the United Kingdom is—
- (a) in relation to section 23D(5), 28A(8) or 28B(7) (period in which co-ordinator must make available a list of group members or of group members to whom an inspection plan may be relevant), the part where the co-ordinator of the group is;
 - (b) in any other case, the part where the primary authority is.]

PART 3

CIVIL SANCTIONS

Modifications etc. (not altering text)

- C4 Pt. 3 modified (21.1.2010) by [Video Recordings Act 2010 \(c. 1\)](#), s. 2(2), [Sch. para. 5](#) (with [Sch. para. 2\(2\)6](#))

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Orders under Part 3: introductory

36 Power to make orders providing for civil sanctions

- (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 [^{F88}devolved Welsh] matter.
- (3) An order under this Part is to be made by statutory instrument.

Textual Amendments

F88 Words in s. 36(2) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), ss. 21(2)(f), 44(5); S.I. 2016/695, art. 3(c)

37 “Regulator”

- (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.
- (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 [^{F89}the Police Service of Scotland] ,
 - (e) the Public Prosecution Service for Northern Ireland, or
 - (f) a member of the Police Service of Northern Ireland.

Textual Amendments

F89 Words in s. 37(3)(d) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), Sch. 2 para. 59

38 “Relevant offence”

- (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

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- (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.
- (3) [^{F90}The entry in Schedule 6 for Part 5 of the Disability Discrimination Act 1995 is, in relation to England and Wales and Scotland, to be read as a reference to Part 12 of the Equality Act 2010.]

Textual Amendments

F90 S. 38(3) inserted by 2010 c. 15 Sch. 26 Pt. 1 para. 98 (as inserted) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 6](#) (see S.I. 2010/2317, art. 2)

Fixed monetary penalties

39 Fixed monetary penalties

- (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 [^{F91}(if any)] of that fine.

Textual Amendments

F91 Words in s. 39(4) inserted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 5 para. 12\(2\)](#) (with reg. 5(1))

Modifications etc. (not altering text)

C5 S. 39(4) excluded (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), [ss. 10\(3\)\(a\)](#), 21(2)

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40 Fixed monetary penalties: procedure

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

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

41 Fixed monetary penalties: criminal proceedings and conviction

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

- (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 [^{F92}(if any)] of that fine.

Textual Amendments

F92 Words in s. 42(6) inserted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 5 para. 12\(3\)](#) (with [reg. 5\(1\)](#))

Modifications etc. (not altering text)

C6 S. 42(6) excluded (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), [ss. 10\(3\)\(a\)](#), 21(2)

43 Discretionary requirements: procedure

- (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)—

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- (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,
 - (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

- (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.

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- (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

- (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.
- (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

- (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

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- (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.
- (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

- (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;

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- (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.

48 Stop notices: compensation

- (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

- (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 [^{F93}a fine not exceeding £20,000][^{F93}a fine] , 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.

Textual Amendments

F93 Words in s. 49(1)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 39](#) (with reg. 5(1))

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Modifications etc. (not altering text)

- C7 S. 49(1) modified (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), **ss. 10(3)(b)**, 21(2)
C8 S. 49(1) modified (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), **ss. 14(3)**, 21(2)

Enforcement undertakings

50 Enforcement undertakings

- (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,
 - (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;

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- (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

- (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
 - (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

- (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.

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- (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

- (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;
 - (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

- (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;

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- (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

- (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 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

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.

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57 Excluded provision: Northern Ireland

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

- (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

- (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 ^{F94}devolved Welsh matter.
- (3) The Welsh Ministers must consult the Secretary of State before making an order under this Part.

Textual Amendments

F94 Words in s. 59(2) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), ss. 21(2)(g), 44(5); S.I. 2016/695, art. 3(c)

60 Consultation: general

- (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

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requirements of this section, those requirements may to that extent be taken to have been satisfied.

61 Parliamentary and Assembly procedure

- (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

- (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
 - (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

- (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,

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- (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—
- (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.

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\)](#), ss. [59\(4\)](#), 70(1); S.I. 2018/1224, reg. 2(vv)

64 Guidance as to enforcement of relevant offences

- (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,

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- (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.

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), s. 14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), s. 10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\), ss. 59\(4\), 70\(1\); S.I. 2018/1224, reg. 2\(vv\)](#)

65 Publication of enforcement action

- (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.

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), s. 14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), s. 10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\), ss. 59\(4\), 70\(1\); S.I. 2018/1224, reg. 2\(vv\)](#)

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Exercise of powers: general

66 Compliance with regulatory principles

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.

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\)](#), **ss. 59(4)**, 70(1); S.I. 2018/1224, reg. 2(vv)

67 Review

- (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).

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\)](#), **ss. 59(4)**, 70(1); S.I. 2018/1224, reg. 2(vv)
- C12** S. 67 applied (with modifications) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 7 para. 12** (with Sch. 7)

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68 Suspension

- (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—
 - (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.

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\)](#), ss. [59\(4\)](#), [70\(1\)](#); S.I. 2018/1224, reg. [2\(vv\)](#)

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Supplementary and general

69 Payment of penalties into Consolidated Fund etc

- (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.

Modifications etc. (not altering text)

- C9** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [14\(4\)\(5\)21\(2\)](#)
- C10** Ss. 63-69 applied (with modifications) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), s. [10\(4\)\(5\)21\(2\)](#)
- C11** Ss. 63-69 modified (26.11.2018) by [Space Industry Act 2018 \(c. 5\)](#), ss. [59\(4\)](#), [70\(1\)](#); S.I. 2018/1224, reg. 2(vv)

70 Disclosure of information

- (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).
- (4) Nothing in this section authorises the making of a disclosure in contravention of—
- (a) the Data Protection Act 1998 (c. 29), or
 - ^{F95}(b) any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.]

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(5) This section does not affect a power to disclose which exists apart from this section.

Textual Amendments

F95 S. 70(4)(b) substituted (27.6.2018) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 para. 21** (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2018/652](#), reg. 12(g)(iii)

71 Interpretation of Part 3

(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.

PART 4

REGULATORY BURDENS

72 Duty not to impose or maintain unnecessary burdens

(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.

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- (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.

73 Functions to which section 72 applies

- (1) Section 72 applies to the following regulatory functions—
 - (a) the regulatory functions specified in subsection (2),
 - ^{F96}(aa) the regulatory functions specified in subsection (2A),]
 - (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 ^{F97}Competition and Markets Authority] ,
 - (c) ^{F98}the Office of Rail and Road]

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- [^{F99}(d) the Office of Communications in relation to postal services, and]
 (e) the Water Services Regulation Authority,
 other than any function exercised under competition law [^{F100}or any function exercisable by a CMA group (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013) or a member of the CMA panel (within the meaning of that Schedule)] .
- [^{F101}(2A) The regulatory functions referred to in subsection (1)(aa) are the regulatory functions exercised by the Civil Aviation Authority under—
- (a) Chapter 1 of Part 1 of the Transport Act 2000 (air traffic services);
 - (b) Chapter 1 of Part 1 of the Civil Aviation Act 2012 (regulation of operators of dominant airports).]
- (3) Any reference in [^{F102}subsection (2) or (2A)] 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 [^{F103}in relation to Wales] , does not include the function if or to the extent that it relates to a [^{F104}devolved Welsh] 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 [^{F105}in relation to Wales] , if or to the extent that the function relates to a [^{F106}devolved Welsh] matter.
- (5) The Welsh Ministers may only specify under this section a regulatory function if or to the extent that it relates to a [^{F107}devolved Welsh] 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.
- (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.
- [^{F108}(10A) In subsection (2)(d) “postal services” has the same meaning as in Part 3 of the Postal Services Act 2011.]

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(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).

Textual Amendments

- F96** S. 73(1)(aa) inserted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), **ss. 104(2)**, 110(1) (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(4)(c)
- F97** Words in s. 73(2)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 180(a)** (with art. 3)
- F98** Words in s. 73(2)(c) substituted (E.W.S.) (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 4(s)(i)**
- F99** S. 73(2)(d) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), **Sch. 12 para. 191(2)**; S.I. 2011/2329, art. 3
- F100** Words in s. 73(2) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 180(b)** (with art. 3)
- F101** S. 73(2A) inserted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), **ss. 104(3)**, 110(1) (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(4)(c)
- F102** Words in s. 73(3) substituted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), **ss. 104(4)**, 110(1) (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(4)(c)
- F103** Words in s. 73(3)(c) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(3)**, 44(5); S.I. 2016/695, art. 3(c)
- F104** Words in s. 73(3)(c) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(2)(h)**, 44(5); S.I. 2016/695, art. 3(c)
- F105** Words in s. 73(4)(c) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(3)**, 44(5); S.I. 2016/695, art. 3(c)
- F106** Words in s. 73(4)(c) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(2)(h)**, 44(5); S.I. 2016/695, art. 3(c)
- F107** Words in s. 73(5) substituted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(2)(h)**, 44(5); S.I. 2016/695, art. 3(c)
- F108** S. 73(10A) inserted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), **Sch. 12 para. 191(3)**; S.I. 2011/2329, art. 3

PART 5

GENERAL

74 General interpretation

In this Act—

[^{F109}“devolved Welsh matter” means —

- (a) a matter within the legislative competence of the National Assembly for Wales (see [^{F110}section 108A] of the Government of Wales Act 2006), or

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(b) a matter in relation to Wales in respect of which functions are exercisable by the Welsh Ministers,

and in this definition “Wales” has the same meaning as in the Government of Wales Act 2006;]

“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);

F111
...

Textual Amendments

F109 Words in s. 74 inserted (1.10.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(4)(b)**, 44(5); S.I. 2016/695, art. 3(c)

F110 Words in s. 74(a) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 71** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(r)

F111 Words in s. 74 omitted (1.10.2016) by virtue of [Enterprise Act 2016 \(c. 12\)](#), **ss. 21(4)(a)**, 44(5); S.I. 2016/695, art. 3(c)

75 Extent

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

76 Commencement

(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

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

Status:

Point in time view as at 26/11/2018.

Changes to legislation:

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