

2014 No. 3070

REGULATORY REFORM

The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) (No. 2) Order 2014

<i>Made</i>	- - - -	<i>18th November 2014</i>
<i>Laid before Parliament</i>		<i>20th November 2014</i>
<i>Coming into force</i>	- -	<i>13th December 2014</i>

The Secretary of State makes the following Order, with the consent of the Welsh Ministers, in exercise of the powers conferred by section 28(6) of the Regulatory Enforcement and Sanctions Act 2008(a).

Citation and commencement

1. This Order may be cited as the Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) (No. 2) Order 2014 and comes into force on 13th December 2014.

Amendments to the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009

2.—(1) Article 2(1) of the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009(b) is amended as follows.

(2) In sub-paragraph (c)—

- (a) omit paragraphs (iii) and (iv); and
- (b) after paragraph (v) insert—

“(vi) regulation 48(3) of the Fluorinated Greenhouse Gases Regulations 2009(c);”.

(3) In sub-paragraph (e)—

- (a) omit paragraph (iv); and
- (b) after paragraph (v) insert—

“(vi) regulation 8 of the Food Safety and Hygiene (England) Regulations 2013(d);”.

(4) In sub-paragraph (f)—

- (a) omit paragraph (vi); and
- (b) after paragraph (vii) insert—

“(viii) regulation 6 of the Food Safety and Hygiene (England) Regulations 2013;”.

(a) 2008 c.13.
(b) S.I. 2009/665, amended by S.I. 2013/2286, S.I. 2014/573.
(c) S.I. 2009/261.
(d) S.I. 2013/2996.

- (5) In sub-paragraph (fb), after paragraph (iv) insert—
- “(v) regulation 12(1) of, and Part 1 of Schedule 4 to, the Food Information Regulations 2014(a),
 - (vi) regulation 12(1) of, and Part 1 of Schedule 4 to, the Food Information (Wales) Regulations 2014(b);”.
- (6) In sub-paragraph (g)—
- (a) in the opening words, omit “or a detention notice”;
 - (b) omit paragraph (i); and
 - (c) after paragraph (ii) insert—
 - “(iii) regulation 9 of the Food Safety and Hygiene (England) Regulations 2013;”.
- (7) After sub-paragraph (g) insert—
- “(gza)the service of a detention notice under either of the following enactments—
 - (i) regulation 9 of the Food Hygiene (Wales) Regulations 2006(c),
 - (ii) regulation 10 of the Food Safety and Hygiene (England) Regulations 2013;”.
- (8) In sub-paragraph (h)—
- (a) omit paragraph (i); and
 - (b) after paragraph (ii) insert—
 - “(iii) regulation 29 of the Food Safety and Hygiene (England) Regulations 2013;”.
- (9) In sub-paragraph (m)—
- (a) omit paragraphs (i) to (iii); and
 - (b) after paragraph (iv) insert—
 - “(v) regulation 48(1) of the Fluorinated Greenhouse Gases Regulations 2009,
 - (vi) regulation 36 of the Environmental Permitting (England and Wales) Regulations 2010(d),
 - (vii) regulation 9 of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011(e);”.
- (10) In sub-paragraph (n), for “regulation 37 of the Environmental Permitting (England and Wales) Regulations 2007” substitute “regulation 37 of the Environmental Permitting (England and Wales) Regulations 2010”.

Matthew Hancock

Minister of State for Business and Enterprise and Energy
Department for Business, Innovation and Skills

18th November 2014

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (S.I. 2009/665) (“the 2009 Order”), which was made under Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (“the Act”).

(a) S.I. 2014/1855.
(b) S.I. 2014/2303 (W.227).
(c) S.I. 2006/31 (W.5), amended by S.I. 2012/975 (W.129).
(d) S.I. 2010/675, amended by S.I. 2013/390.
(e) S.I. 2011/1543.

Part 2 of the Act applies where a person (“the regulated person”) carries on an activity in the areas of more than one local authority with the same regulatory function in relation to that activity, or shares an approach to regulatory compliance in relation to an activity with at least one other person and between them those persons are regulated, as regards the activity, by more than one local authority. In those circumstances, the Secretary of State may nominate a local authority to be the “primary authority”. Where a primary authority has been nominated and another local authority (“the enforcing authority”) proposes to take “enforcement action” against the regulated person, section 28(1) provides that the enforcing authority must notify the primary authority that it proposes to take that action. Section 28(2) enables the primary authority to direct the enforcing authority not to take that action, if it is inconsistent with advice or guidance previously given by the primary authority.

The 2009 Order, which was made under sections 28(6) and 29(1) of the Act, prescribes those actions that are, and in some cases are not, to be regarded as enforcement action for the purposes of Part 2 of the Act. It also prescribes the circumstances in which the notification procedure under section 28 does not apply.

Article 2 of this Order amends article 2(1) of the 2009 Order. It removes references to enforcement action under a number of statutory instruments that have been revoked. It amends the 2009 Order so that specified kinds of enforcement action under the statutory instruments that have replaced the revoked instruments are to be regarded as enforcement action for the purposes of Part 2 of the Act. It also amends article 2(1)(fb) of the 2009 Order to take account of the fact that section 10 (improvement notices) of the Food Safety Act 1990 (c.16) has been applied by the Food Information Regulations 2014 (S.I.2014/1855) and the Food Information (Wales) Regulations 2014 (S.I. 2014/2303 (W.227)). This means that the following actions are to be regarded as enforcement action for the purposes of Part 2 of the Act, in addition to those already specified as such in the 2009 Order—

- (a) serving a prohibition notice or an enforcement notice under the Fluorinated Greenhouse Gases Regulations 2009 (S.I. 2009/261);
- (b) serving an enforcement notice or a suspension notice under the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675);
- (c) serving an enforcement notice under the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 (S.I. 2011/1543);
- (d) serving a hygiene emergency prohibition notice, a hygiene improvement notice, a remedial action notice, a detention notice, or a certificate under the Food Safety and Hygiene (England) Regulations 2013 (S.I. 2013/2996);
- (e) serving an improvement notice under section 10 of the Food Safety Act 1990 as applied and modified by the Food Information Regulations 2014 or the Food Information (Wales) Regulations 2014.

However, by virtue of article 3 of the 2009 Order, the notification procedure under section 28 of the Act will not apply to the service of a hygiene emergency prohibition notice under the Food Safety and Hygiene (England) Regulations 2013.

A full impact assessment has not been produced for this Order as no significant impact on the private or voluntary sector is foreseen.

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