

**EXPLANATORY MEMORANDUM TO
THE CO-ORDINATION OF REGULATORY ENFORCEMENT (ENFORCEMENT
ACTION) (AMENDMENT) (NO.2) ORDER 2014**

2014 No. 3070

1. This explanatory memorandum has been prepared by the Department of Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Primary Authority scheme, created in Part 2 of the Regulatory Enforcement and Sanctions Act 2008 ('the Act') enables either a single business or businesses that share an approach to compliance and are regulated by two or more local authorities to form a partnership with a local authority ('the primary authority') in relation to regulatory compliance. The primary authority supports the business, for example by issuing advice which other local authorities regulating the business must follow and by co-ordinating 'enforcement action'.
- 2.2 The instrument amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 ('CORE') which specifies what is and is not 'enforcement action' for the purposes of Part 2 of the Act.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 The scope of the Primary Authority scheme is established, in terms of the enactments which are included, by Schedule 3 of the Act; and in terms of the enforcement actions which are to be covered, by CORE. This Order updates the list of enforcement actions in CORE by removing reference to enactments which have been revoked and substitutes those enactments for the enactments which have replaced them. This Order also makes provision for improvement notices applied and modified under the Food Information Regulations 2014 and the Food Information (Wales) Regulations 2014. Updating CORE in this way will enable businesses to benefit from Primary Authority in respect of the enforcement actions described in these enactments made under legislation already in scope of the scheme.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective of Part 2 of the Act is to improve the regulation of business by achieving consistency in advice and enforcement across two or more local authorities so as to reduce burdens on business. It provides a statutory framework for a business to form a partnership with a local authority (a ‘primary authority’) which provides support in relation to regulatory compliance. Primary Authority is available to a single business that is regulated by multiple local authorities (known as a direct partnership), or to a business that is part of a group of businesses that are collectively regulated by multiple local authorities, where these businesses share an approach to compliance (known as co-ordinated partnerships). A primary authority supports a business by issuing advice that must be followed by other local authorities who regulate that business (‘enforcing authorities’). It also co-ordinates enforcement action proposed against a business and assesses whether that action is consistent with previous advice issued to that business. Partnership working provides the basis for a more productive and proactive regulatory relationship, where the regulator knows and understands the business, and the business has confidence in the advice and guidance given to it by the regulator.

7.2 Primary Authority has proved successful in reducing the burden of regulatory compliance on business. Businesses report reductions in staff time and costs associated with regulatory compliance. They have confidence and certainty as a result of Primary Authority Advice, allowing them to plan their investment while managing their regulatory risk. The scheme saves time for enforcing authorities by removing duplication, while primary authorities can recover the cost of providing enhanced support from business. The Primary Authority scheme helps achieve this by promoting a collaborative approach where regulators work with businesses to deliver improved protection while minimising duplication and burdens.

7.3 The amendments in this instrument which remove revoked enactments and substitute these with the enactments that have replaced them constitute an update to the legislation rather than a change in policy.

7.4 The inclusion of improvement notices under section 10 of the Food Safety Act 1990 as applied and modified by the Food Information Regulations 2014 and the

Food Information (Wales) Regulations 2014 was not consulted on, as improvement notices under section 10 of the Food Safety Act 1990 are already included in the scope of Primary Authority.

8. Consultation outcome

8.1 The changes in this instrument are simply an update rather than a change in policy and were not publicly consulted upon.

9. Guidance

9.1 The Government provides statutory guidance under section 33 RESA and informal advice on the Primary Authority scheme. Information on the regulations within scope of the Primary Authority scheme can be found on the gov.uk website.

10. Impact

10.3 An Impact Assessment has not been prepared for this instrument as the changes made are trivial and mechanical and do not impose a cost on business or civil society.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Businesses are free to engage in partnerships where it is of benefit to them to do so. As the scheme is voluntary, any impact felt by small business would be as a result of a decision by them to enter into a partnership to realise the benefits of the scheme in reducing the burden of regulatory compliance.

11.3 The basis for the final decision on what action to take to assist small business was that the legislation is permissive, and participation by businesses in Primary Authority is voluntary.

12. Monitoring & review

12.1 Primary Authority as a whole is evaluated and monitored on a regular basis. The 2013 interim evaluation concluded that more than three-quarters (77%) of businesses interviewed were satisfied with their participation in the scheme. The evaluation identified that both businesses and enforcing authorities benefit from access to specialist advice. Businesses also mentioned aspects such as:

- A reduction in the amount of time businesses spend on regulatory activities
- Improvements in relationships with regulators
- Improved intelligence about regulatory matters
- Improvements in the consistency of regulatory advice and guidance

12.2 A post-implementation review of Primary Authority as a whole is in progress.

13. Contact

13.1 Fiona Couper at the Department for Business, Innovation and Skills Tel: 0114 207 5229 or email: fiona.couper@brdo.bis.gsi.gov.uk can answer any queries regarding the instrument.