

**EXPLANATORY MEMORANDUM TO  
THE CO-ORDINATION OF REGULATORY ENFORCEMENT (ENFORCEMENT  
ACTION) (AMENDMENT) ORDER 2014**

**2014 No. 573**

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 multiple 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 coordinating '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. The Order extends the Primary Authority scheme by enabling it to operate with respect to additional statutory enforcement actions. By including these additional enforcement actions within CORE, businesses will be able to benefit from Primary Authority in respect of these enforcement actions.
- 4.2 This Order amends CORE by removing the exclusion of certain enforcement actions from the Primary Authority scheme. Firstly, it removes the exclusion of enforcement action taken under the Regulatory Reform (Fire Safety) Order 2005. Secondly, it removes the exclusion of specific actions taken pursuant to the Licensing Act 2003 which relate to the

age-restricted sale of alcohol. These actions relate to administering cautions or commencing proceedings against a business.

4.3 This Order further amends CORE by specifying additional statutory actions which are to be regarded as enforcement action. These actions are contained in legislation which is already within scope of the Primary Authority scheme due to their inclusion in Schedule 3 of the Act. The actions which this Order will add are:

- i. The service of an alteration notice, enforcement notice and a prohibition notice under the Regulatory Reform (Fire Safety) Order 2005; and
- ii. The service of an improvement notice under the Fruit Juices and Fruit Nectars (England) Regulations 2013.
- iii. The service of an improvement notice under the Fruit Juices and Fruit Nectars (Wales) Regulations 2013.
- iv. The service of an improvement notice under the Fish Labelling (Wales) Regulations 2013

The order also removes the current reference to the Fish Labelling Regulations (England) 2013 from CORE so that the entry may be reformulated and drafted in a manner which is consistent with the amendments listed in (ii)-(iv).

4.4 This Order also provides that while the service of a prohibition notice under the Regulatory Reform (Fire Safety) Order 2005 is ‘enforcement action’, it will not be subject to the section 28(1)-(4) pre-notification requirements of the Act.

4.5 It is intended that this Order will come into force on the next Common Commencement Date.

## **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 the 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 where the business operates ('enforcing authorities'). It also coordinates enforcement action proposed against a business and assesses whether that action is consistent with previous advice issued to the 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.

- 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 Government is committed to ending the culture of tick box regulation. 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 responses to the June 2011-September 2011 *Transforming Regulatory Enforcement: Freeing Up Business Growth* consultation indicated that businesses felt that extending the scheme to fire safety and age restricted sale of products would benefit them by reducing inconsistency in enforcement. Following on from this consultation the Government set up pilots to establish whether and how Primary Authority could fit alongside current legislation and enforcement mechanisms in relation to fire safety and age-restricted sale of alcohol.
- 7.4 The inclusion of enforcement actions contained in the Fruit Juices and Fruit Nectars (England) Regulations 2013, the Fruit Juices and Fruit Nectars (Wales) Regulations 2013 and the Fish Labelling (Wales) Regulations 2013 were not consulted on, as these regulations are already included within the scope of Primary Authority. In order to ensure that the full range of enforcement action available under this updated legislation is covered by the scheme, it is necessary to update CORE to include the service of an improvement notice under regulation 17 of The Fruit Juices and Fruit Nectars (England) Regulations 2013, regulation 17 of The Fruit Juices and Fruit Nectars (Wales) Regulations 2013 and regulation 5 of the Fish Labelling (Wales) Regulations 2013. The changes effected by this Order are simply an administrative update rather than a change in policy.
- 7.5 As the scheme is statutory, legislation is required to effect these extensions. Including these enforcement actions within Primary Authority will ensure that the scheme delivers its potential benefits more widely, enabling businesses, local authorities and

consumers to benefit from increased consistency in the delivery of these regulations and further reducing the burdens on businesses.

## **8. Consultation outcome**

- 8.1 The June-September 2011 consultation on *Transforming Regulatory Enforcement* provided the government with input from businesses, local authorities and other stakeholders on the issue of extending the Primary Authority scheme. Following business support for extension during the consultation, one of the commitments in the Government response, published in December 2011<sup>1</sup>, was to include specific policy areas within the scheme which were outside of its scope. Following on from the consultation, pilots were set up in regard to two regulatory areas: fire safety and the age-restricted sale of alcohol.
- 8.2 The pilot looking into Primary Authority for fire safety began in autumn 2012. Two concurrent pilots (one voluntary, one backed by statute) were set up to examine how partnership working could help improve the delivery of fire safety regulation. The pilots involved Fire and Rescue Authorities and businesses. An independent evaluation concluded that partnership working reduced inconsistencies and over-regulation, and improved transparency. According to the evaluation, the statutory scheme represented 'the most sensible way forward'.
- 8.3 The pilot on Primary Authority for the age-restricted sale of alcohol ran between September 2012 and March 2013. It included a small number of local authorities, police forces and businesses with existing Primary Authority partnerships involving other categories of regulation. The agreed purpose of the piloting activity was to test for negative impacts associated with any extension of Primary Authority to age-restricted sale of alcohol. Ministers supported the conclusions of the pilot advisory group and of Association of Chief Police Officers (ACPO) that there was no evidence that Primary Authority would have negative impacts on the activities of enforcing authorities or of their local police forces.
- 8.4 Based on the information from the pilots on fire safety and age-restricted sale of alcohol, the relevant Ministers agreed to proceed with extending the Primary Authority scheme to both regulatory areas.

## **9. Guidance**

- 9.1 The Government provides statutory guidance under section 33 RESA and informal advice on the Primary Authority scheme. These can be found on the gov.uk website. The extension of the scope of Primary Authority to include additional legislation will be publicised to local authorities and businesses.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31428/11-1408-transforming-regulatory-enforcement-government-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31428/11-1408-transforming-regulatory-enforcement-government-response.pdf)

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is positive. The extensions to the Primary Authority scheme are permissive in nature in that they allow but do not force businesses to participate in a primary authority partnership, or to incur costs. Therefore business only engages where it is of benefit to them to do so. Business savings come from improved consistency of advice, coordination of enforcement action and the development of inspection plans, all of which reduce the burden of regulatory enforcement on them.
- 10.2 The impact on the public sector is positive as the annual net impact on local authorities is positive. By reducing duplication for enforcing authorities, and because the legislative framework allows primary authorities to recover the costs of partnership from the business. The scheme enables local authorities to target their resources more effectively. Local authorities can choose whether to become primary authorities and the annual net impact on primary authorities would be zero if they fully cost recovered, which the legislative framework allows them to do.
- 10.3 An Impact Assessment is attached as an Annex to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

## **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 will be undertaken in 2014/15 and a further post-implementation review for the extension associated with this Instrument will be undertaken in April 2017.

### **13. Contact**

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