

EXPLANATORY MEMORANDUM TO
THE CO-ORDINATION OF REGULATORY ENFORCEMENT REGULATIONS
2017

2017 No. 835

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Primary Authority is a statutory scheme in which a local authority ('a primary authority') can partner with a business, or with a group of businesses, in order to take on responsibility for providing regulatory advice and guidance to it. This advice and guidance then guides the way in which that business is regulated by all other local authorities ('enforcing authorities').
- 2.2 This instrument sets out which national regulators can support primary authorities when they are developing advice or guidance or inspection plans for businesses. It also defines the scope of Primary Authority in Scotland and Northern Ireland, sets out which types of enforcement action falls within the scope of the scheme, and sets out the process for dealing with disputes relating to proposed enforcement action by enforcing authorities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Primary Authority was established under Part 2 of the Regulatory Enforcement and Sanctions Act 2008. The scheme is designed to provide more co-ordinated, consistent and proportionate regulatory enforcement.
- 4.2 The Enterprise Act 2016 revised Primary Authority to extend and simplify it so that more businesses, including pre-start up enterprises and those not trading across local authority borders, could benefit from the scheme. These changes will come into force on 1 October 2017. The provisions in the Enterprise Act mean that new secondary legislation must be produced; that sets out the detail that enables Primary Authority to work in practice and these are included in this instrument. This will replace secondary legislation made under the old provisions of Part 2 of the Regulatory Enforcement and Sanctions Act 2008.

- 4.3 One of the changes in the Enterprise Act is to give specified national regulators a statutory role in Primary Authority. This instrument specifies the Competition and Markets Authority, the Food Standards Agency, the Gambling Commission, the Health and Safety Executive and the Secretary of State as ‘supporting regulators’ under the Act, enabling them to provide support to primary authorities in developing advice or guidance or inspection plans for their partners.
- 4.4 The instrument sets out the scope of Primary Authority in Scotland and in Northern Ireland.
- 4.5 It sets out what should and should not be considered as ‘enforcement action’ for the purposes of Primary Authority, and specifies the conditions when ‘enforcement action’ can be notified retrospectively.
- 4.6 It sets out the process that will be followed where there are disputes about proposed ‘enforcement action’.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales, Scotland and Northern Ireland,
- 5.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.
- 5.3 Primary Authority applies, across England and Wales, to both reserved and devolved matters; with the consent of the Welsh Government.
- 5.4 Primary Authority has limited application in Scotland and Northern Ireland. In Scotland it applies to reserved matters only; where local authorities are responsible for enforcing those matters. In Northern Ireland it applies to reserved matters only; where the district councils are the regulatory bodies for those matters.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 Part 2 of the Regulatory Enforcement and Sanctions Act 2008 provides the statutory basis for Primary Authority. The scheme was introduced to make it easier and simpler for businesses to understand and follow regulation; giving them confidence to invest and grow. It offers businesses the opportunity to form a legally recognised partnership with a local authority; which then provides robust and reliable advice to the business on matters of regulatory compliance. Currently Primary Authority is open only to businesses regulated by more than one local authority and to businesses in a group that share an approach to compliance.
- 7.2 The Enterprise Act 2016 included measures to amend the statutory basis of the scheme. These measures aim to unlock the potential of Primary Authority by extending and simplifying its operation. From 1 October 2017 many more small businesses, including those located in a single local authority area and pre-start up enterprises will be able to participate. The number of businesses in Primary Authority is expected to increase from 17,000 to 250,000 by 2020.

- 7.3 One of the changes being made to the scheme enables specified national regulators to take a more structured role in Primary Authority. They will be able to assist primary authorities in developing advice and guidance and developing and managing inspection plans for the businesses they work with. The aim is to further increase consistency and certainty for businesses investing in compliance. The Regulators specified in the SI are responsible for the regulatory areas in which Primary Authority is most active. These are the Health and Safety Executive, the Food Standards Agency, the Gambling Commission the Competition and Markets Authority and the Secretary of State in relation to weights and measures regulation and product safety regulation.
- 7.4 The scope of Primary Authority in England and Wales applies across a range of regulatory functions set out in the Regulatory Enforcement and Sanctions Act 2008. In Wales the scheme applies to devolved Welsh legislation, within the range set out in the legislation, with the consent of the Welsh Government. In Scotland the scope of Primary Authority is limited to those regulatory functions, set out in the legislation, which are reserved matters for which local authorities are the regulatory body. In Northern Ireland the extent is further limited in that it extends only to reserved regulatory functions, where the district councils are the regulating bodies, included in Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008 and certain matters under European legislation. Regulatory functions, pertinent to Scotland and Northern Ireland, are currently defined in the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009. The amendment of the Regulatory Enforcement and Sanctions Act 2008 by the Enterprise Act 2016 means the 2009 order must be replaced for the scheme to continue to operate as it does now in these nations.
- 7.5 As part of Primary Authority enforcing authorities proposing to take action against a business with a primary authority must notify that authority. The definition of ‘enforcement action’ establishes which actions must be notified under the scheme. This is currently set out in the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (as amended) by listing individual notices under specified legislation and by some general provisions. This approach necessitates frequent amendment and has resulted in the definition becoming increasingly complex. A more general definition of ‘enforcement action’ means improved administrative efficiency and increased clarity for local authorities and businesses.
- 7.6 Disagreements arising in relation to proposed enforcement action against a business with a primary authority may be referred to the Secretary of State for determination. This process is key to providing confidence to the parties involved in Primary Authority. The process is currently set out in the Regulatory Enforcement and Sanctions Act 2008 (as amended) and the Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009. Again, the amendment of the Regulatory Enforcement and Sanctions Act 2008 by the Enterprise Act 2016 means the 2009 order must be replaced and updated.

8. Consultation outcome

- 8.1 The draft SI was issued for an eight week consultation ending on 7 April 2017. The consultation was published on GOV.UK and the Department’s Citizen Space consultation hub. It was also signposted on the Primary Authority Register (the IT system that supports operation of Primary Authority) and directly to a wide range of

businesses and local authority stakeholders. The Department also organised a number of stakeholder engagement events during the consultation at which the proposals were presented and discussed.

- 8.2 Sixty-four formal responses to the consultation were received. A summary of these and the feedback from the engagement events, together with the Government's response is published at <https://www.gov.uk/government/consultations/unlocking-the-potential-of-primary-authority>.
- 8.3 Stakeholders were broadly supportive of the measures in the draft SI. They envisaged that there will be benefits from the more structured involvement of national regulators in Primary Authority. They considered the ongoing operation of the scheme in Scotland and Northern Ireland to be important. They welcomed the more general definition of 'enforcement action' and considered the process for dealing with disputes to be an important safeguard.

9. Guidance

- 9.1 The framework for operation of Primary Authority is set out in Statutory Guidance issued by the Secretary of State under section 30A of the Regulatory Enforcement and Sanctions Act 2008. The Statutory Guidance is being revised to reflect the provisions of the SI and administrative changes being made. A draft of the revised Guidance is appended to the Government response to the consultation on the SI. The draft will be finalised and the revised Statutory Guidance will be issued formally in time for 1 October 2017.

10. Impact

- 10.1 The measures in this instrument are administrative in nature and have minimal impact on businesses, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has been submitted to the Regulatory Policy Committee for validation and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. There are potentially one off costs for businesses, charities or voluntary bodies associated with familiarising themselves with the new option to involve a supporting regulator. It is, however, expected that the benefits of doing so will at least be as high as the costs so this measure is scored as a zero cost to business.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. It only applies, however, where they have opted to participate in Primary Authority and are benefiting from receiving regulatory advice and guidance and a more consistent approach to enforcement.
- 11.2 To minimise the impact of the requirements on small businesses the approach taken is to ensure that the scheme is open to all small businesses, so that they have the opportunity to benefit, but that participation remains a voluntary choice for the business.

12. Monitoring & review

- 12.1 There are a number of forums already in place to monitor the effectiveness of the scheme in practice including Primary Authority User Groups in England and Wales, a Primary Authority Supermarkets Group and a Business Reference Panel. The effectiveness of the instrument will be monitored via feedback from these forums and also directly from business, primary authorities, enforcing authorities and supporting regulators. The Department will work with stakeholders to resolve any issues that arise.
- 12.2 A review of this instrument will be undertaken every five years. The review period begins when this instrument comes into force.

13. Contact

- 13.1 Catriona Stewart at the Department of Business, Energy and Industrial Strategy, Telephone: 020 7215 8816 or email: catriona.stewart@beis.gov.uk can answer any queries regarding the instrument.