



Regulatory Enforcement and Sanctions Act 2008

2008 CHAPTER 13

PART 2

CO-ORDINATION OF REGULATORY ENFORCEMENT

Introductory

22 **Scope of Part 2**

- (1) This Part applies where—
 - (a) a 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.
- (2) In this Part “the regulated person” means the person referred to in subsection (1)(a).

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).
- (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).

*Primary authorities***25 Primary authorities**

- (1) For the purposes of this Part LBRO 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.

26 Nomination of primary authorities

- (1) LBRO 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 LBRO to make a nomination under section 25(1) for the exercise of the relevant function in relation to the regulated person,
- and LBRO considers the authority suitable for nomination.

- (2) LBRO 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) LBRO must consult—
 - (a) that authority, and
 - (b) the regulated person.
- (4) LBRO must have particular regard to any representations made by a local authority pursuant to subsection (3) as to the resources available to it.
- (5) LBRO may at any time revoke a nomination under section 25(1) if—
 - (a) it considers that the authority is no longer suitable for nomination, or
 - (b) it considers it appropriate to do so for any other reason,and subsections (2) to (4) apply in relation to a revocation of a nomination as in relation to a nomination.
- (6) LBRO must maintain, or cause to be maintained, a register of nominations under section 25(1).

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.
- (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 LBRO) 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 LBRO 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.

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.
- (4) Before making an inspection plan the primary authority must consult the regulated person.
- (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 LBRO consents to the plan, bring the plan to the notice of the other local authorities with the function of inspection.
- (7) A local authority (including the primary authority) exercising the function of inspection in relation to the regulated person must have regard to a plan to which consent has been given under subsection (6).
- (8) Before a local authority other than the primary authority exercises the function of inspection in relation to the regulated person otherwise than in accordance with a plan to which consent has been given under subsection (6), it must notify the primary authority.
- (9) A notification under subsection (8) must include reasons for exercising the function otherwise than in accordance with the plan.
- (10) A primary authority may from time to time revise a plan made by it under this section (and subsections (3) to (9) apply in relation to any revision of the plan).

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.

32 LBRO support

- (1) LBRO may do anything it considers appropriate for the purpose of supporting the primary authority in the exercise of the authority’s functions under this Part.

- (2) That includes making grants to the authority.

General

33 LBRO guidance

- (1) LBRO 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 LBRO must consult such persons as it considers appropriate.
- (5) LBRO may not give guidance under subsection (2)(c)—
- (a) without the consent of the Secretary of State;
 - (b) without having consulted the Welsh Ministers.
- (6) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.
- (7) LBRO may at any time vary or revoke any guidance given under this section by further guidance under this section.

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);
- “LBRO” has the meaning given in section 1;
- “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.