

2009 No. 665

REGULATORY REFORM

**The Co-ordination of Regulatory Enforcement (Enforcement
Action) Order 2009**

<i>Made</i>	- - - -	<i>13th March 2009</i>
<i>Laid before Parliament</i>		<i>16th March 2009</i>
<i>Coming into force</i>	- -	<i>6th April 2009</i>

The Secretary of State, in exercise of the powers conferred by sections 28(6) and 29(1) of the Regulatory Enforcement and Sanctions Act 2008(a), and with the consent of the Welsh Ministers makes the following Order:

Citation, Commencement and interpretation

1.—(1) This Order shall be known as the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 and shall come into force on 6th April 2009.

(2) In this Order “the Act” means the Regulatory Enforcement and Sanctions Act 2008.

Enforcement action

2.—(1) Subject to paragraph (2), each of the following actions is to be regarded as enforcement action for the purposes of Part 2 of the Act—

- (a) the giving of any communication in writing which indicates that one or more of the actions referred to in subparagraphs (b) to (t) will be taken within, or at the end of, a period of time specified in the communication unless the regulated person acts (or ceases to act) in the manner specified in the communication;
- (b) the service of a stop notice within the meaning of section 46(2) of the Act;
- (c) the service of a prohibition notice under any of the following enactments—
 - (i) section 22 of the Health and Safety at Work etc Act 1974(b),
 - (ii) section 10 of the Safety of Sports Grounds Act 1975(c),
 - (iii) regulation 15(3) of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002(d),
 - (iv) regulation 24(3) of the Fluorinated Greenhouse Gases Regulations 2008(e);

(a) 2008 c.13.
(b) 1974 c.37.
(c) 1975 c.52.
(d) S.I. 2002/528; regulation 15 was inserted by paragraph 5(1) of the Schedule to S.I. 2008/91.
(e) S.I. 2008/41.

- (d) the service of an abatement notice under section 80 of the Environmental Protection Act 1990(a);
- (e) the service of an emergency prohibition notice under any of the following enactments—
 - (i) section 12(1) of the Food Safety Act 1990(b),
 - (ii) regulation 22 of the Feed (Hygiene and Enforcement) (England) Regulations 2005(c),
 - (iii) regulation 22 of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005(d),
 - (iv) regulation 8 of the Food Hygiene (England) Regulations 2006(e),
 - (v) regulation 8 of the Food Hygiene (Wales) Regulations 2006(f);
- (f) the imposition of an improvement notice under any of the following enactments—
 - (i) section 10 of the Animal Welfare Act 2006 (g),
 - (ii) section 10 of the Food Safety Act 1990,
 - (iii) section 21 of the Health and Safety at Work etc Act 1974,
 - (iv) regulation 17 of the Feed (Hygiene and Enforcement) (England) Regulations 2005,
 - (v) regulation 17 of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005,
 - (vi) regulation 6 of the Food Hygiene (England) Regulations 2006,
 - (vii) regulation 6 of the Food Hygiene (Wales) Regulations 2006;
- (g) the service of a remedial action notice or a detention notice under either of the following enactments—
 - (i) regulation 9 of the Food Hygiene (England) Regulations 2006,
 - (ii) regulation 9 of the Food Hygiene (Wales) Regulations 2006;
- (h) the service of a certificate under either of the following enactments—
 - (i) regulation 27 of the Food Hygiene (England) Regulations 2006,
 - (ii) regulation 27 of the Food Hygiene (Wales) Regulations 2006;
- (i) the service of a notice under section 4 of the Prevention of Damage by Pests Act 1949(h);
- (j) the service of a notice under section 60 of the Control of Pollution Act 1974(i);
- (k) the determination of an application under section 61 of the Control of Pollution Act 1974(j)
- (l) the imposition of a fixed monetary penalty or discretionary requirement within the meaning of section 39(3) or section 42(3) of the Act respectively;
- (m) the service of an enforcement notice under—
 - (i) regulation 15(1) of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002,
 - (ii) regulation 36 of the Environmental Permitting (England and Wales) Regulations 2007(k),

(a) 1990 c. 43.
 (b) 1990 c.16.
 (c) S.I. 2005/3280.
 (d) S.I.2005/3368.
 (e) S.I. 2006/14.
 (f) S.I. 2006/31.
 (g) 2006 c.45.
 (h) 1949 c.55; section 4 was amended by the Agriculture (Miscellaneous Provisions) Act 1972, section 26(3) and Schedule 6, and by section 17(2)(a) of the Interpretation Act 1978.
 (i) 1974 c.40.
 (j) 1974 c.40; section 61 was amended by section 133(2) of, and Schedule 7 to the Building Act 1984, section 120 of, and Schedule 24 to the Environment Act 1995, and by section 162 of and Schedule 15 paragraphs 15(1) and (3) to, the Environmental Protection Act 1990; and as regards Scotland it was amended by section 58 of, and Schedule 6 to, the Building (Scotland) Act 2003.
 (k) S.I. 2007/3538.

- (iii) regulation 24(1) of the Fluorinated Greenhouse Gases Regulations 2008;
 - (n) the service of a suspension notice under regulation 37 of the Environmental Permitting (England and Wales) Regulations 2007;
 - (o) the service of any of the following notices under the General Product Safety Regulations 2005^(a)—
 - (i) a suspension notice under regulation 11,
 - (ii) a requirement to mark products under regulation 12,
 - (iii) a requirement to warn consumers under regulation 13,
 - (iv) a withdrawal notice under regulation 14,
 - (v) a recall notice under regulation 15;
 - (p) the reference of any matter to a prosecuting authority other than a local authority with a view to the prosecuting authority considering the commencement of proceedings in relation to the matter;
 - (q) the commencement of proceedings in a court of law or tribunal created under an enactment;
 - (r) the imposition of any sanction (whether criminal or otherwise) in respect of any act or omission;
 - (s) the administering of a simple caution;
 - (t) the acceptance by the enforcing authority of any undertaking (under an enactment or otherwise) in respect of any act or omission.
- (2) The following action is not to be regarded as enforcement action for the purposes of Part 2 of the Act:—
- (a) action referred to in section 28(5) of the Act not specified in paragraph (1);
 - (b) action taken by an enforcing authority pursuant to or in connection with the exercise of functions under—
 - (i) the Regulatory Reform (Fire Safety) Order 2005^(b),
 - (ii) the Licensing Act 2003^(c), or
 - (iii) the Gambling Act 2005^(d).

Enforcement Action: Exclusions

3. Section 28(1) to (4) of the Act shall not apply in the following circumstances:

- (a) where the enforcement action is required urgently, or in the opinion of the enforcing authority is required urgently, to avoid a significant risk of harm to human health or the environment (including the health of animals or plants) or the financial interests of consumers;
- (b) where the enforcement action is the service of a notice referred to in Article 2(1)(d) or (e);
- (c) where the application of section 28(1) to (4) of the Act would be, or in the opinion of the enforcing authority would be, wholly disproportionate.

(a) S.I. 2005/1803.
 (b) S.I.2005/1541.
 (c) 2003 c.17.
 (d) 2005 c.19.

13th March 2009

Stephen Carter
Minister for Communications, Technology and Broadcasting
Department for Business, Enterprise and Regulatory Reform

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies action which is and is not to be regarded as enforcement action for the purposes of Part 2 of the Regulatory Enforcement and Sanctions Act 2008. It also prescribes circumstances in which the enforcing authority does not have to notify the primary authority before it takes enforcement action, and cannot be directed not to take that action. In such circumstances, the enforcing authority must notify the primary authority of the enforcement action as soon as it reasonably can after taking the enforcement action.

Part 2 of the Regulatory Enforcement and Sanctions Act 2008 establishes a scheme for co-ordination of regulatory enforcement against a person (a “regulated person”) where that person carries on an activity in the areas of two or more local authorities and each of those authorities has the same relevant function in relation to that activity. Under the scheme one authority can be appointed as “the primary authority” in relation to the regulated person. In such cases, other than in circumstances prescribed by Article 3 of this Order, the taking of enforcement action against the regulated person by any local authority other than the primary authority (an “enforcing authority”) has to be notified to the primary authority, who may direct the enforcing authority not to take the action.

Article 2 describes what is, and what is not, to be regarded as enforcement action for the purposes of the primary authority scheme. Article 3 prescribes the circumstances in which the enforcing authority does not have to notify the primary authority before it takes enforcement action.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Enterprise and Regulatory Reform and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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STATUTORY INSTRUMENTS

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