

2009 No. 670

REGULATORY REFORM

**The Co-ordination of Regulatory Enforcement (Procedure for
References to LBRO) Order 2009**

<i>Made</i>	- - - -	<i>5th 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 makes the following Order in exercise of the power conferred by paragraph 6(2) of Schedule 4 to the Regulatory Enforcement and Sanctions Act 2008(a):

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 and will come into force on 6th April 2009.

(2) In this Order—

“the Act” means the Regulatory Enforcement and Sanctions Act 2008;

“applicant” means the person applying or who has applied for consent to a reference;

“other parties” means, in relation to an application for consent to a reference or in relation to a reference, whichever of the enforcing authority, regulated person and primary authority is not the applicant in respect of that reference;

“reference” means reference of a proposed enforcement action to LBRO under Schedule 4 to the Act;

“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(b) 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.

Address for LBRO

2. Applications for consent to a reference and any representations made to LBRO in relation to a reference must be made in writing to the following electronic address: www.lbro.org.uk, or such other address (whether electronic or otherwise) as may from time to time be published by LBRO on its website.

Information to be included with an application to LBRO for consent to a reference

3.—(1) All applications to LBRO for consent to a reference must contain the following information—

- (a) the applicant's name;
- (b) the applicant's business address and the name and contact details of an individual within the applicant's organisation who has responsibility for the application and reference;
- (c) the names and business addresses of the other parties; and
- (d) a description of the proposed enforcement action.

(2) In addition, in each case, the following information must also be provided—

- (a) where the enforcing authority is the applicant—
 - (i) a copy of any written notification sent to the primary authority under section 28(1) of the Act regarding the proposed enforcement action;
 - (ii) a copy of any written direction by the primary authority under section 28(2) of the Act that the enforcing authority must not take the enforcement action;
 - (iii) a copy of the advice and guidance given by the primary authority to the enforcing authority under section 27(1) of the Act which is relevant to the proposed enforcement action; and
 - (iv) a statement as to why the enforcing authority considers that—
 - (aa) the proposed enforcement action is consistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act,
 - (bb) the advice or guidance given was not correct, or
 - (cc) the advice or guidance was not properly given;
- (b) where the regulated person is the applicant—
 - (i) a copy of the advice and guidance received from the primary authority under section 27(1) of the Act which is relevant to the proposed enforcement action;
 - (ii) a copy of any document informing the regulated person, in accordance with section 28(3) of the Act, of the proposed enforcement action; and
 - (iii) a statement as to why the regulated person considers that—
 - (aa) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act,
 - (bb) the advice or guidance given was correct, and
 - (cc) the advice or guidance was properly given;
- (c) where the primary authority is the applicant—
 - (i) a copy of advice and guidance it has previously given under section 27(1) of the Act which is relevant to the proposed enforcement action;
 - (ii) a copy of any written notification received by it under section 28(1) of the Act regarding the proposed enforcement action; and
 - (iii) a statement as to why the primary authority considers that
 - (aa) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act,
 - (bb) the advice or guidance given was correct, and
 - (cc) the advice or guidance was properly given.

Time limits for making an application for consent to a reference

4. The enforcing authority must make an application for consent to a reference as soon as reasonably practicable, and in any event within the period of 10 working days beginning with the day after that on which the enforcing authority receives a direction from the primary authority under section 28(2) of the Act that the proposed enforcement action must not be taken.

5. The regulated person must make an application for consent to a reference as soon as reasonably practicable, and in any event within the period of 10 working days beginning with the day after that on which the regulated person is informed by the enforcing authority under section 28(3) of the Act of the enforcement action proposed to be taken.

6. The primary authority must make an application for consent to a reference as soon as reasonably practicable, and in any event within the period of 5 working days beginning with the day after that on which the primary authority is notified under section 28(1) of the Act that the enforcing authority proposes to take enforcement action against a regulated person.

7. LBRO may, in exceptional circumstances, allow an application for consent to a reference to be made after the time limits set out in Articles 4, 5 and 6.

8. On receipt of an application for consent to a reference, LBRO must give notice of it to the other parties.

Representations

9.—(1) LBRO may request, before or after giving consent to a reference, that the other parties submit any written representations which they wish to make to LBRO in relation to that reference.

(2) Representations must be made within the time which LBRO shall specify in a request for representations.

(3) Representations from either of the other parties must include the information which that other party would have had to give under Article 3(2) if it had been the applicant.

Decision on application for consent to a reference

10.—(1) LBRO must decide whether to consent to a reference as soon as reasonably practicable after receiving an application for consent to that reference.

(2) LBRO must, as soon as reasonably practicable, inform the applicant and other parties in writing of its decision.

(3) If LBRO refuses consent to a reference, it must give a written statement of reasons for that decision at the same time as it informs the applicant and the other parties of the decision.

Withdrawal of application for consent or of reference

11.—(1) The applicant may apply to LBRO for consent to withdraw its application for consent to a reference by giving notice in writing to LBRO.

(2) LBRO shall not consent to the withdrawal of an application for consent to a reference without consulting the other parties.

(3) After LBRO has given consent to a reference, the applicant may apply to LBRO for consent to withdraw that reference by giving notice in writing to LBRO.

(4) LBRO shall not consent to the withdrawal of a reference after giving consent to it without consulting the other parties.

Confidentiality

12.—(1) LBRO shall not be required to treat information disclosed in connection with an application for consent to a reference or a reference as confidential.

(2) No person shall, without the consent of LBRO, the applicant and the other parties, use any information disclosed to it in connection with an application for consent to a reference or in connection with a reference for any purpose not directly connected to that application or reference.

Determination of a reference

13. As soon as reasonably practicable after determining a reference under paragraph 1, 2, or 3 of Schedule 4 to the Act, LBRO must notify the applicant and the other parties in writing of its determination.

14. LBRO must provide to the applicant and the other parties a written statement of reasons as soon as reasonably practicable after the determination has been made and in any event within 28 days of the determination being made.

5th 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 makes provision for the procedure that will govern the reference of matters for determination by the LBRO in accordance with Schedule 4 to the Regulatory Enforcement and Sanctions Act 2008.

Part 2 of that Act establishes a scheme for co-ordination of regulatory enforcement against a person (a “regulated person”) where that person carries on an activity in the area 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, the taking of enforcement action against the regulated person by any other local authority (an “enforcing authority”) has to be notified to the primary authority, who may direct the enforcing authority not to take the action.

LBRO may determine a reference of a matter where there is dispute between the parties in relation to whether or not an enforcement action should or should not go ahead.

Article 2 of the Order gives the website address for LBRO and provides that applications for consent to a reference must be made in writing through that website. Article 3 sets out the information to be provided to LBRO by an applicant. Articles 4 to 7 set out time limits for making an application. Article 8 provides for notice of an application to be given to the other parties, i.e. whichever of the enforcing authority, regulated person and primary authority is not the applicant. Article 9 provides for the making of representations by the other parties to a reference. Article 10 provides for LBRO to take a decision as to whether to consent to a reference as soon as reasonably practicable, and also makes provision for LBRO to inform the parties of that decision.

Article 11 makes provision for the withdrawal of an application for consent to a reference or withdrawal of a reference once consent has been given by LBRO.

Article 12 makes provision in relation to confidentiality and use of information.

Articles 13 and 14 provide that LBRO must inform the parties of its determination in writing as soon as reasonably practicable, and provide written reasons for its determination.

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, Bay 3134, 1 Victoria Street, London, SW1H 0ET, 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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