

**2013 No. 2286**

**REGULATORY REFORM**

**The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2013**

<i>Made</i>	- - - -	<i>8th September 2013</i>
<i>Laid before Parliament</i>		<i>10th September 2013</i>
<i>Coming into force</i>	- -	<i>1st October 2013</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 and commencement**

1. This Order may be cited as the Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2013 and comes into force on 1st October 2013.

**Amendments to the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009**

2.—(1) The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009(b) is amended as follows.

(2) In paragraph (1) of article 2, after sub-paragraph (c) insert—

“(ca) the making of a prohibition order under section 20 or 21 of the Housing Act 2004(c);”.

(3) In that paragraph, after sub-paragraph (d) insert—

“(da) the making of a demolition order under section 265 of the Housing Act 1985(d);”.

(4) In that paragraph, after sub-paragraph (e) insert—

“(ea) the making of an emergency prohibition order under section 43 of the Housing Act 2004;”.

(5) In that paragraph, after sub-paragraph (f) insert—

“(fa) the service of an improvement notice under any of the following enactments—  
(i) section 11 or 12 of the Housing Act 2004,

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(a) 2008 c.13.  
(b) S.I. 2009/665.  
(c) 2004 c.34.  
(d) 1985 c. 68.

- (ii) regulation 7 of the Fish Labelling Regulations 2013<sup>(a)</sup>;
- (6) In that paragraph, after sub-paragraph (g) insert—  
“(ga) the service of a notice of emergency remedial action under section 40(7) of the Housing Act 2004;”.
- (7) In that paragraph, after sub-paragraph (j) insert—  
“(ja) the service of a hazard awareness notice under section 28 or 29 of the Housing Act 2004;”.
- (8) In that paragraph, after sub-paragraph (l) insert—  
“(la) the imposition of a fixed monetary penalty under Schedule 2 to the Single Use Carrier Bags Charge (Wales) Regulations 2010<sup>(b)</sup> or the imposition of one or more discretionary requirements under Schedule 3 to those Regulations;”.
- (9) In that paragraph, after sub-paragraph (o) insert—  
“(oa) the taking of emergency remedial action under section 40 of the Housing Act 2004;”.
- (10) In article 2(2)(b)(iii) after “the Gambling Act 2005”<sup>(c)</sup> insert “(except in relation to Part 4 of that Act)”.
- (11) For article 3(b), substitute—  
“(b) where the enforcement action is—  
(i) the service of a notice referred to in article 2(1)(d), (e) or (ga), or  
(ii) the making of an order referred to in article 2(1)(ea).”.

8th September 2013

*Michael Fallon*  
Minister for Business and Enterprise  
Department for business, Innovation and Skills

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<sup>(a)</sup> S.I. 2013/1768.  
<sup>(b)</sup> S.I. 2010/2880, amended by S.I. 2011/2184.  
<sup>(c)</sup> 2005 c.19.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (S.I. 2009/665) (“the 2009 Order”), which was made under Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) (“the Act”).

Part 2 of the Act applies where a person (“the regulated 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. Part 2 enables a local authority to be nominated by the Secretary of State as the “primary authority” for the exercise of that “relevant function” in relation to the regulated person. “Relevant function” is defined in section 24. It covers particular regulatory functions of local authorities, including statutory functions of giving guidance and functions relating to the enforcement of statutory restrictions or requirements affecting activities such as the provision of goods and services. Where a primary authority has been nominated, section 28 of the Act provides for other local authorities to notify the primary authority when they propose to take “enforcement action” against the regulated person pursuant to the “relevant function”. Where the proposed action is inconsistent with advice or guidance previously given by the primary authority, the primary authority may direct the other local authorities not to take that action.

The 2009 Order, made under sections 28(6) and 29(1) of the Act, specifies action which is and is not to be regarded as “enforcement action” for the purposes of Part 2 of the Act. It also prescribes circumstances in which the notification procedure under section 28 does not apply. Article 2(1) to (9) of the present Order amends the 2009 Order by adding a number of statutory enforcement actions under the Housing Act 1985 (c.68), the Housing Act 2004 (c.34), the Single Use Carrier Bags Charge (Wales) Regulations 2010 (S.I. 2010/2880), and the Fish Labelling Regulations 2013 (S.I. 2013/1768) to the list of actions which are to be regarded as “enforcement actions” for the purposes of Part 2 of the Act. This is connected to amendments made to Schedule 3 to the Act by the Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) Order 2013 (S.I. 2013/2215), which extend the coverage of Part 2 of the Act so that a primary authority may be nominated in relation to (for example) the enforcement of the requirements of this legislation as it affects businesses operating in the areas of more than one local authority.

Paragraph 10 of Article 2 of this Order amends article 2(2)(b)(iii) of the 2009 Order. That provision currently prevents any action listed in article 2(1) of the 2009 Order from being regarded as “enforcement action” for the purposes of Part 2 of the Act where it is taken by a local authority pursuant to or in connection with the exercise of any function under the Gambling Act 2005. The amendment to article 2(2)(b)(iii) has the effect that action taken by a local authority pursuant to or in connection with the exercise of functions under the Gambling Act 2005 in relation to Part 4 of that Act will also constitute “enforcement action”. Part 4 of the Gambling Act 2005 contains offences for the protection of children and young persons.

Article 2(11) of this Order amends article 3 of the 2009 Order so that the requirements of section 28(1) to (4) of the Act for a local authority to (among other things) notify the primary authority before taking enforcement action and not to take the proposed action if so directed by the primary authority do not apply to the making of emergency prohibition orders or the service of notices of emergency remedial action under Part 1 of the Housing Act 2004. The taking of emergency remedial action under section 40 of the Housing Act 2004 is already exempted from the requirement to notify by virtue of paragraph (a) to article 3 of the 2009 Order.

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