



Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 2

PRIMARY AUTHORITIES

8 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 (other than section 12), “the regulated person” means the person referred to in subsection (1)(a).

9 Meaning of “relevant function”

- (1) In this Part, “relevant function”, in relation to a local authority, means a regulatory function—
 - (a) exercised by that authority, and
 - (b) specified for the purposes of this Part by order made by the Scottish Ministers.
- (2) In subsection (1), “regulatory function” has the same meaning as in section 1(5).

10 Nomination of primary authorities

- (1) For the purposes of this Part, the Scottish Ministers may nominate a local authority to be the “primary authority” for the exercise of the relevant function in relation to the regulated person.
- (2) The Scottish Ministers may delegate their function under subsection (1) to another person.
- (3) Sections 13 and 14 apply in any case where a primary authority is nominated under this section in relation to the regulated person.

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11 Nomination of primary authorities: conditions and registers

- (1) The Scottish Ministers may nominate a local authority under section 10(1) in relation to the regulated person only if—
 - (a) the Scottish Ministers consider the authority suitable for nomination, and
 - (b) the authority and the regulated person have agreed in writing to the nomination.
- (2) The Scottish Ministers 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, or
 - (b) the local authority in whose area the regulated person administers the carrying out of that activity.
- (3) The Scottish Ministers may at any time revoke a nomination under section 10(1) if they consider that—
 - (a) the authority is no longer suitable for nomination, or
 - (b) it is appropriate to do so for any other reason.
- (4) Subsection (2) applies in relation to a revocation of a nomination as it applies in relation to a nomination.
- (5) The Scottish Ministers must maintain or cause to be maintained a register of nominations.
- (6) Subsections (1) to (5) apply in relation to a person to whom the function under section 10(1) is delegated as they apply in relation to the Scottish Ministers.

12 Primary authorities: power to make further provision

- (1) The Scottish Ministers may by order make further provision about the exercise of relevant functions by primary authorities in relation to persons (in this section, “regulated persons”).
- (2) The provision that may be made under subsection (1) includes provision—
 - (a) requiring a local authority other than the primary authority (an “enforcing authority”) to notify the primary authority before taking any enforcement action against a regulated person pursuant to the relevant function,
 - (b) prescribing the circumstances in which—
 - (i) the enforcing authority may not take any enforcement action against a regulated person,
 - (ii) the primary authority may direct the enforcing authority not to take any enforcement action against a regulated person,
 - (iii) the enforcing authority must notify the primary authority that it has taken enforcement action against a regulated person,
 - (c) specifying time periods for the purposes of paragraph (b),
 - (d) prescribing the circumstances in which provision made by virtue of paragraphs (a) to (c) does not apply including, in particular, circumstances—
 - (i) where the enforcement action is required urgently to avoid a significant risk of serious harm to human health, the environment (including the health of animals or plants) or the financial interests of consumers,

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- (ii) where the application of provision made by virtue of those paragraphs would be wholly disproportionate,
 - (e) requiring an enforcing authority to notify the primary authority, as soon as reasonably practicable, of any enforcement action it takes against a regulated person in circumstances prescribed under paragraph (d).
- (3) In subsection (2), “enforcement action” means any action—
 - (a) which relates to securing compliance with or enforcement of any requirement, restriction, condition, standard, outcome or guidance in the event of breach (or putative breach) of the requirement, restriction, condition, standard, outcome or (as the case may be) guidance,
 - (b) taken with a view to or in connection with—
 - (i) the imposition of any sanction (criminal or otherwise) in respect of an act or omission, or
 - (ii) the pursuit of any remedy conferred by an enactment in respect of an act or omission.
- (4) Where a relevant function consists of or includes a function of inspection, an order under subsection (1) may make provision for or about an inspection plan including, in particular, provision for or in connection with—
 - (a) prescribing the circumstances in which a primary authority may make, revise or withdraw an inspection plan,
 - (b) specifying the matters that a primary authority must take into account in preparing an inspection plan,
 - (c) specifying the matters that must be included in an inspection plan,
 - (d) prescribing the circumstances in which a primary authority must consult a regulated person in relation to the carrying out of the function of inspection,
 - (e) prescribing the arrangements for notifying a local authority about the making, revising or withdrawal of an inspection plan,
 - (f) specifying the duties of a local authority in relation to an inspection plan,
 - (g) prescribing the circumstances in which a local authority must notify a primary authority before carrying out the function of inspection.
- (5) An “inspection plan” is a plan made by a primary authority containing recommendations as to how a local authority with the function of inspection should exercise that function in relation to a regulated person.
- (6) Before making an order under subsection (1), the Scottish Ministers must consult—
 - (a) any primary authority to which the order would apply,
 - (b) such persons or bodies as appear to the Scottish Ministers to represent the interests of persons substantially affected by the proposed order, and
 - (c) such other persons or bodies as the Scottish Ministers consider appropriate.

13 Advice and guidance

- (1) The primary authority has the function of giving advice and guidance to—
 - (a) the regulated person in relation to the relevant function,
 - (b) other local authorities having the relevant function as to how they should exercise that function in relation to the regulated person.

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- (2) The primary authority may make arrangements with the regulated person as to how the authority will exercise its function under subsection (1).

14 Power to charge

The primary authority may charge the regulated person such fees as it considers represent the costs reasonably incurred by it in exercising functions as the primary authority under or by virtue of this Part in relation to the regulated person.

15 Guidance

- (1) The Scottish Ministers may issue guidance to local authorities about the operation of this Part including, in particular, guidance about—
- (a) inspection plans for or about which provision is made under an order under section 12(1),
 - (b) arrangements under section 13(2),
 - (c) the charging of fees under section 14.
- (2) A local authority must have regard to any guidance issued to it under this section.
- (3) Before issuing guidance under this section, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance issued under this section.
- (5) The Scottish Ministers may at any time vary or revoke any guidance issued under this section.