



# Enterprise Act 2016

## 2016 CHAPTER 12

### PART 3

#### REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

#### 20 Extending the primary authority scheme

- (1) For Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (co-ordination of regulatory enforcement) substitute—

#### “PART 2

#### REGULATORY ENFORCEMENT

#### *Introductory*

#### 22A “Regulated person” and “regulated group”

- (1) A person is a “regulated person” for the purposes of this Part if the Secretary of State is satisfied that—
- (a) the person carries on, or proposes to carry on, an activity, and
  - (b) a qualifying regulator has a relevant function which is, or would be, exercisable in relation to the person in respect of the activity.
- (2) A group of persons is a “regulated group” for the purposes of this Part if the Secretary of State is satisfied that—
- (a) a member of the group carries on, or proposes to carry on, an activity, and
  - (b) a qualifying regulator has a relevant function which is, or would be, exercisable in relation to the member in respect of the activity.

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## 22B “Qualifying regulator”

- (1) In this Part, “qualifying regulator” means—
  - (a) a local authority, or
  - (b) a specified regulator.
- (2) In this Part, “local authority” means a local authority in England, Wales, Scotland or Northern Ireland.
- (3) In this Part—
  - (a) references to a local authority in England or Wales have the same meaning as in Part 1;
  - (b) references to a local authority in Scotland are to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
  - (c) 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.
- (4) In this Part, “specified regulator” means a person (other than a local authority) who—
  - (a) has regulatory functions, and
  - (b) is specified for the purposes of this Part by regulations made by the Secretary of State.
- (5) Regulations under subsection (4)(b) require the consent of the Welsh Ministers to specify a regulator whose functions relate only to devolved Welsh matters.

## 22C “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 regulations 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 regulations made by the Secretary of State;
  - (d) in relation to a specified regulator, means a regulatory function exercised by that regulator and specified for the purposes of this Part by regulations made by the Secretary of State.
- (2) Regulations 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) Regulations under subsection (1)(d) may only specify a regulatory function—

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- (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 the specified regulator, is equivalent to such a function.
- (4) Regulations under subsection (1)(b) or (d) 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.
- (5) Regulations under subsection (1)(c) or (d) 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.
- (6) Regulations under subsection (1)(d) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (7) Regulations under subsection (1)(d) may make different provision for—
  - (a) different purposes;
  - (b) different areas.

### *Primary authorities*

#### **23A Primary authorities for regulated persons and regulated groups**

- (1) For the purposes of this Part, the Secretary of State—
  - (a) may nominate, in relation to a regulated person, a qualifying regulator to be the “primary authority” for the exercise of the partnership functions in relation to that person (a “direct primary authority”);
  - (b) may nominate, in relation to a regulated group, a qualifying regulator to be the “primary authority” for the exercise of the partnership functions in relation to the members of the group (a “co-ordinated primary authority”).
- (2) The “partnership functions” are the functions specified by the nomination under subsection (1) as covered by it.
- (3) A function may be so specified only if condition A or B is met.
- (4) Condition A is that the function—
  - (a) is a relevant function of the primary authority, and
  - (b) is, or (in the case of an activity proposed to be carried on) would be, exercisable by the primary authority in relation to the regulated person or a member of the regulated group.
- (5) Condition B is that the function—
  - (a) is a relevant function of a qualifying regulator other than the primary authority,
  - (b) is, or (in the case of an activity proposed to be carried on) would be, exercisable by that other regulator in relation to the regulated person or a member of the regulated group, and
  - (c) is equivalent to a relevant function of the primary authority.

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- (6) The Secretary of State may from time to time revise the specification of partnership functions included in a nomination under subsection (1) if—
  - (a) the requirements of subsections (3) to (5) are met in relation to the revised specification,
  - (b) in the case of a nomination under subsection (1)(a), the primary authority and the regulated person have agreed in writing to the revision, and
  - (c) in the case of a nomination under subsection (1)(b), the primary authority and the co-ordinator of the regulated group have agreed in writing to the revision.
- (7) This Part applies to a revised specification of partnership functions as it applies to a specification of partnership functions under subsection (1); and references in this Part to the partnership functions include partnership functions in the revised specification.

### **23B Nomination of primary authorities**

- (1) The Secretary of State may only nominate a qualifying regulator as a direct primary authority if the regulator and the regulated person have agreed in writing to the nomination.
- (2) The Secretary of State may only nominate a qualifying regulator as a co-ordinated primary authority if—
  - (a) there is a co-ordinator of the regulated group, and
  - (b) the regulator and the co-ordinator have agreed in writing to the nomination.
- (3) The Secretary of State may at any time revoke a nomination under section 23A(1).
- (4) The Secretary of State must—
  - (a) maintain, or cause to be maintained, a register of nominations under section 23A(1), and
  - (b) make the register available for inspection free of charge.

### **23C “Co-ordinator” of a regulated group**

- (1) For the purposes of this Part, there is a “co-ordinator” of a regulated group if there is a person nominated by the Secretary of State to be the co-ordinator of the group.
- (2) The Secretary of State may only nominate a person under subsection (1) if the person has agreed in writing to the nomination.
- (3) The Secretary of State may at any time revoke a nomination under subsection (1).
- (4) If at any time the co-ordinator of a regulated group is unable to act, the Secretary of State may nominate another person to exercise the functions of the co-ordinator of the group under this Part.

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- (5) Subsections (2) and (3) apply to a nomination under subsection (4) as they apply to a nomination under subsection (1).
- (6) The Secretary of State must secure that the register of nominations maintained and made available under section 23B(4) includes, in relation to each co-ordinated primary authority, the name of—
  - (a) the co-ordinator of the regulated group concerned, and
  - (b) any person nominated under subsection (4) to exercise the co-ordinator's functions.

### **23D Membership of a regulated group**

- (1) This section applies where a qualifying regulator is nominated as a co-ordinated primary authority.
- (2) The co-ordinator of the regulated group concerned must—
  - (a) maintain, or cause to be maintained, a list of members of the group, and
  - (b) secure, as far as is reasonably practicable, that the list is accurate and kept up-to-date.
- (3) The list must include in relation to each member—
  - (a) the member's name and address,
  - (b) when the person became a member, and
  - (c) if applicable, when the person ceased to be a member.
- (4) The co-ordinator of the regulated group must make a copy of the list available free of charge, on request, to—
  - (a) the Secretary of State,
  - (b) the primary authority, and
  - (c) a qualifying regulator who has a function which is both a relevant function of the regulator and a partnership function.
- (5) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (6) For the purposes of this Part, the list is conclusive as to whether a person is a member of the group at a particular time.

### **23E Application of sections 24A to 28B**

- (1) The following provisions apply in each case where a qualifying regulator has been nominated under section 23A(1) as a primary authority—
  - (a) section 24A (primary authority advice and guidance);
  - (b) sections 25A to 25D and Schedule 4A (enforcement action);
  - (c) sections 26A to 26C (inspection plans);
  - (d) section 27A (power for primary authority to recover costs);
  - (e) section 28A (support of primary authority by other regulators);
  - (f) section 28B (other regulators to act consistently with primary authority advice etc).

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- (2) References in those provisions to “the primary authority”, “a partnership function” and other terms defined in or for the purposes of this Part are to be read accordingly.
- (3) But see sections 29A to 29D in relation to cases where more than one qualifying regulator has been nominated as the primary authority for the exercise of the same function in relation to the same person.

### *Advice and guidance*

#### **24A Primary authority advice and guidance**

- (1) The primary authority, if it is a direct primary authority, has the function of—
  - (a) giving advice and guidance to the regulated person in relation to each partnership function;
  - (b) giving advice and guidance, in relation to each partnership function, to other qualifying regulators as to how they should exercise it in relation to the regulated person.
- (2) The primary authority, if it is a co-ordinated primary authority, has the function of—
  - (a) giving advice and guidance to the co-ordinator of the regulated group in relation to each partnership function;
  - (b) giving advice and guidance, in relation to each partnership function, to other qualifying regulators as to how they should exercise it in relation to a member of the group.
- (3) The primary authority may make arrangements with the regulated person or the co-ordinator of the regulated group as to how the authority will discharge its functions under subsection (1) or (2).
- (4) In the case of a co-ordinated primary authority, the co-ordinator of the regulated group must notify any advice or guidance given to the co-ordinator under subsection (2)(a) to those members of the group to whom the co-ordinator considers it may be relevant.
- (5) Advice or guidance may be given under subsection (1)(b) or (2)(b) only with the consent of the Secretary of State.
- (6) Subsections (1)(b) and (2)(b) do not require advice and guidance to be given to a qualifying regulator in relation to a partnership function if it is not a relevant function of that regulator.

### *Enforcement action*

#### **25A “Enforcement action”**

- (1) In this Part, “enforcement action” means—
  - (a) action which relates to securing compliance with a restriction, requirement or condition in the event of breach (or putative breach) of a restriction, requirement or condition;

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- (b) action taken with a view to, or in connection with, the imposition of a sanction (criminal or otherwise) in respect of an act or omission;
  - (c) action taken in connection with the pursuit of a remedy conferred by an enactment in respect of an act or omission.
- (2) But the Secretary of State may by regulations, with the consent of the Welsh Ministers, specify—
  - (a) action which is to be regarded as enforcement action for the purposes of this Part or any provision of this Part specified in the regulations;
  - (b) action which is not to be regarded as enforcement action for the purposes of this Part or any provision of this Part specified in the regulations.
- (3) Regulations under subsection (2) may make different provision for different purposes.

#### **25B Enforcement action by primary authority**

- (1) This section applies if—
  - (a) the primary authority proposes to take enforcement action against the regulated person or a member of the regulated group pursuant to a relevant function of the primary authority which is a partnership function, and
  - (b) in the case of proposed enforcement action against a member of the regulated group, the primary authority is aware that the member belongs to the group.

But see section 25D (which imposes a duty to prescribe circumstances in which this section does not apply).

- (2) The primary authority—
  - (a) must notify the regulated person or the member in writing before taking the proposed enforcement action, and
  - (b) may not take the action during the referral period mentioned in paragraph 5(2) of Schedule 4A (period in which the regulated person or the member may refer the action to the Secretary of State) unless notified in writing by the regulated person or the member that no such reference is to be made.
- (3) Parts 1 and 3 of Schedule 4A contain provision for questions arising under this section to be referred to the Secretary of State.
- (4) Where another enactment limits the period within which the primary authority may take the proposed enforcement action, any time during which it is prohibited under this section or paragraph 5(7) of Schedule 4A from taking the action is to be disregarded in calculating that period.

#### **25C Enforcement action other than by primary authority**

- (1) This section applies if—
  - (a) a qualifying regulator other than the primary authority proposes to take enforcement action against the regulated person or a member of

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the regulated group pursuant to a relevant function of the regulator which is a partnership function, and

- (b) in the case of proposed enforcement action against a member of the regulated group, the regulator is aware that the member belongs to the group.

But see section 25D (which imposes a duty to prescribe circumstances in which this section does not apply).

- (2) The qualifying regulator (the “enforcing authority”)—
  - (a) must notify the primary authority in writing before taking the proposed enforcement action, and
  - (b) may not take the action during the relevant period.
- (3) If—
  - (a) the enforcing authority fails to notify the primary authority under subsection (2)(a) of the proposed enforcement action, but
  - (b) the primary authority is notified of it by the regulated person or the member or the co-ordinator of the regulated group,

the primary authority must notify the enforcing authority in writing that the enforcing authority is prohibited by subsection (2)(b) from taking the action during the relevant period.
- (4) If the primary authority determines, within the relevant period, that the proposed enforcement action is inconsistent with advice or guidance previously given by it (generally or specifically), it may direct the enforcing authority in writing not to take the action.
- (5) Any such direction must be given as soon as is reasonably practicable, and in any event within the relevant period.
- (6) If the enforcing authority is not directed under subsection (4) not to take the proposed enforcement action, and continues to propose to take the action—
  - (a) it must inform the regulated person or the member, and
  - (b) it may not take the action during the referral period mentioned in paragraph 5(4) of Schedule 4A (period in which the regulated person or the member may refer the action to the Secretary of State) unless notified in writing by the regulated person or the member that no such reference is to be made.
- (7) Parts 2 and 3 of Schedule 4A contain provision for questions arising under this section to be referred to the Secretary of State.
- (8) Where another enactment limits the period within which the enforcing authority may take the proposed enforcement action, any time during which it is prohibited under this section or paragraph 5(7) of Schedule 4A from taking the action is to be disregarded in calculating the period.
- (9) For the purposes of this section, the “relevant period” means the period which—
  - (a) begins when the primary authority is notified under subsection (2) (a) of the proposed enforcement action or the enforcing authority is notified under subsection (3) that it is prohibited from taking the action during the relevant period, and



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- (b) ends—
  - (i) at the end of the fifth working day after the day on which the period begins, or at such later time as the Secretary of State may direct, or
  - (ii) if earlier, when the enforcing authority is notified in writing by the primary authority that no direction is to be given under subsection (4) (unless the notification states that the primary authority has referred the action to the Secretary of State under paragraph 4(1) of Schedule 4A or that it intends to do so).

## 25D Enforcement action: exceptions

- (1) The Secretary of State must by regulations, with the consent of the Welsh Ministers, prescribe—
  - (a) circumstances in which section 25B, and Schedule 4A so far as relating to cases within section 25B, do not apply, and
  - (b) circumstances in which section 25C, and Schedule 4A so far as relating to cases within section 25C, do not apply.
- (2) In particular, the Secretary of State must exercise the power under subsection (1) to secure that those provisions do not apply—
  - (a) where the enforcement action is required urgently to avoid a significant risk of serious harm to—
    - (i) human health,
    - (ii) the environment (including the health of animals or plants), or
    - (iii) the financial interests of consumers;
  - (b) where the application of those provisions would be wholly disproportionate.
- (3) Where a qualifying regulator other than the primary authority takes enforcement action against the regulated person or a member of the regulated group in circumstances prescribed under subsection (1)(b), the qualifying regulator must inform the primary authority of the action as soon as it reasonably can.

### *Inspection plans*

## 26A Inspection plans

- (1) Where a partnership function consists of or includes a function of inspection (an “inspection function”), the primary authority may make an inspection plan in accordance with this section.
- (2) An “inspection plan” is a plan containing recommendations as to how the inspection function should be exercised by an inspecting regulator in relation to the regulated person or a member of the regulated group.
- (3) A person is an “inspecting regulator” if—
  - (a) the person is a qualifying regulator, and

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- (b) the inspection function is a relevant function of the person.
- (4) An inspection plan may, in particular—
  - (a) set out what an inspection should consist of;
  - (b) set out the frequency with which inspections should be carried out;
  - (c) set out the circumstances in which they should be carried out;
  - (d) require the inspecting regulator to provide the primary authority with a report on the inspecting regulator's exercise of the inspection function.
- (5) Before making an inspection plan the primary authority must consult the regulated person or the co-ordinator of the regulated group.
- (6) When making an inspection plan the primary authority must take into account any relevant recommendations relating to inspections which are published pursuant to a regulatory function by a person other than an inspecting regulator.
- (7) When it has made an inspection plan, the primary authority may apply to the Secretary of State for consent to the plan.
- (8) If the Secretary of State consents to a plan under subsection (7), the primary authority must notify the plan to—
  - (a) the regulated person or the co-ordinator of the regulated group, and
  - (b) inspecting regulators.
- (9) If, in the case of a regulated group, an inspection plan is notified to the co-ordinator under subsection (8)(a), the co-ordinator must—
  - (a) notify the plan to those members of the group to whom the co-ordinator considers it may be relevant,
  - (b) prepare a list of the names and addresses of those members,
  - (c) secure, as far as is reasonably practicable, that the list is accurate and kept up-to-date,
  - (d) provide the primary authority with the list, including any updates to it, and
  - (e) notify any member whose name is included in the list or removed from it of the inclusion or removal.
- (10) If a list or update is provided to the primary authority under subsection (9)(d), the primary authority must notify the list or update to inspecting regulators.

## **26B Effect of inspection plans**

- (1) If the Secretary of State consents under section 26A(7) to an inspection plan in respect of an inspection function, the primary authority must have regard to the plan when it exercises the inspection function in relation to—
  - (a) the regulated person, or
  - (b) a member of the regulated group whose name is included in the list provided to the primary authority (and, where applicable, updated) under section 26A(9)(d).
- (2) If an inspection plan of the primary authority is notified to an inspecting regulator under section 26A(8)(b), the inspecting regulator may not exercise

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the inspection function in relation to the regulated person or a member of the regulated group otherwise than in accordance with the plan, unless—

- (a) the inspecting regulator has notified the primary authority in writing of the way in which it proposes to exercise the function, and the primary authority has notified the regulator in writing that the primary authority consents to that proposed exercise, or
  - (b) in the case of a regulated group, the member's name is not included in the list notified to the inspecting regulator (and, where applicable, updated) under section 26A(10).
- (3) A notification by an inspecting regulator under subsection (2)(a) must include reasons for exercising the function otherwise than in accordance with the plan.
- (4) A primary authority is to be treated as having given the notification of consent described in subsection (2)(a) if—
- (a) it is notified by the inspecting regulator as described in that subsection, and
  - (b) it fails to notify the inspecting regulator in writing, before the end of the fifth working day after the day on which it received the notification, whether it consents as described in that subsection.

## **26C Revocation and revision of inspection plans**

- (1) A primary authority may, with the consent of the Secretary of State, revoke an inspection plan made by it under section 26A.
- (2) If a primary authority revokes an inspection plan, it must notify the following that the plan is no longer in effect—
  - (a) the regulated person or the co-ordinator of the regulated group;
  - (b) inspecting regulators.
- (3) Where the revocation of an inspection plan is notified to the co-ordinator of a regulated group under subsection (2)(a), the co-ordinator must notify the revocation to those members of the group to whom the co-ordinator considers it may be relevant.
- (4) A primary authority may from time to time revise an inspection plan made by it under section 26A.
- (5) Sections 26A and 26B and this section apply to a revised plan as they apply to a plan made under section 26A; and references in this Part to an inspection plan include the revised plan.

### *Primary authority's costs*

## **27A Power to charge**

- (1) The primary authority—
  - (a) may, in the case of a regulated person, charge the person such fees as the authority considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the person;
  - (b) may, in the case of a regulated group, charge the co-ordinator such fees as the authority considers to represent the costs reasonably

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incurred by it in the exercise of its functions under this Part in relation to the regulated group.

- (2) The reference in subsection (1)(b) to functions in relation to the regulated group includes functions in relation to the co-ordinator or a member of the group.

### *Other regulators*

#### **28A Support of primary authority by other regulators**

- (1) This section applies to a person who has regulatory functions and who—
  - (a) is specified as a “supporting regulator” by the Secretary of State by regulations, and
  - (b) has a function which is not a relevant function of the person but which—
    - (i) is a designated function of the person, and
    - (ii) is, or is relevant to the exercise of, a partnership function.
- (2) The supporting regulator may do anything which it considers appropriate for the purpose of supporting the primary authority in the preparation of—
  - (a) advice or guidance under section 24A in relation to the partnership function, or
  - (b) an inspection plan in relation to the partnership function.
- (3) If the supporting regulator provides support under subsection (2), it must, in the exercise of the designated function in relation to the regulated person or a member of the regulated group, act consistently with any advice or guidance under section 24A, or any inspection plan—
  - (a) which is subsequently given or made in relation to the partnership function, and
  - (b) to which the supporting regulator has consented.
- (4) But, in the case of a regulated group, the duty under subsection (3) applies to the exercise of the designated function in relation to a member of the group only if the supporting regulator is aware that the member belongs to the group.
- (5) The duty under subsection (3) is a duty to act consistently so far as it is possible for the supporting regulator to do so in accordance with its other functions.
- (6) If—
  - (a) the supporting regulator provides support under subsection (2), and
  - (b) the regulated person or the co-ordinator of the regulated group has agreed in writing to the provision of that support,
 the supporting regulator may charge the regulated person or the co-ordinator such fees as it considers to represent the costs reasonably incurred by it in providing that support.
- (7) In the case of a regulated group, the co-ordinator of the group must make the following available free of charge, on request, to the supporting regulator—
  - (a) a copy of the group membership list maintained under section 23D(2);

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- (b) a copy of a list under section 26A(9) of group members to whom an inspection plan may be relevant.
- (8) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (9) Regulations under subsection (1)(a) require the consent of the Welsh Ministers to specify a person whose functions relate only to devolved Welsh matters.
- (10) In this section, “designated function”, in relation to a supporting regulator, means a regulatory function exercised by that regulator and specified by the Secretary of State by regulations.
- (11) Regulations under subsection (10)—
  - (a) 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;
  - (b) 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;
  - (c) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (12) Regulations under subsection (10) may make different provision for—
  - (a) different purposes;
  - (b) different areas.
- (13) A supporting regulator who, apart from subsection (2), has power to provide the support described in that subsection, is not prevented by that power from exercising the power conferred by subsection (2).

## **28B Other regulators to act consistently with primary authority advice etc**

- (1) This section applies to a person who has regulatory functions and who—
  - (a) is specified as a “complementary regulator” by the Secretary of State by regulations, and
  - (b) has a function which is not a relevant function of the person, but which—
    - (i) is a designated function of the person,
    - (ii) is, or is equivalent to, a partnership function, and
    - (iii) is exercisable by the person in relation to the regulated person or a member of the regulated group.
- (2) The complementary regulator must act consistently with primary authority advice and guidance in the exercise of the designated function in relation to the regulated person or a member of the regulated group.
- (3) But, in the case of a regulated group, the duty under subsection (2) applies to the exercise of the designated function in relation to a member of the group only if the complementary regulator is aware that the member belongs to the group.

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- (4) The duty under subsection (2) is a duty to act consistently so far as it is possible for the complementary regulator to do so in accordance with its other functions.
- (5) In subsection (2), “primary authority advice and guidance” means—
  - (a) advice and guidance given by the primary authority under section 24A to the regulated person or the co-ordinator of the regulated group in relation to the partnership function,
  - (b) advice and guidance given by the primary authority under that section to qualifying regulators as to how they should exercise the partnership function in relation to the regulated person or a member of the regulated group, and
  - (c) an inspection plan made by the primary authority in respect of the exercise of the partnership function in relation to the regulated person or a member of the regulated group.
- (6) In the case of a regulated group, the co-ordinator of the group must make the following available free of charge, on request, to the complementary regulator—
  - (a) a copy of the group membership list maintained under section 23D(2);
  - (b) a copy of a list under section 26A(9) of group members to whom an inspection plan may be relevant.
- (7) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (8) Regulations under subsection (1)(a) require the consent of the Welsh Ministers to specify a person whose functions relate only to devolved Welsh matters.
- (9) In this section, “designated function”, in relation to a complementary regulator, means a regulatory function exercised by that regulator and specified for the purposes of this section by the Secretary of State by regulations.
- (10) Regulations under subsection (9) specifying a function other than a partnership function must identify the partnership function to which the designated function is equivalent.
- (11) Regulations under subsection (9)—
  - (a) 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;
  - (b) 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;
  - (c) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (12) Regulations under subsection (9) may make different provision for—
  - (a) different purposes;
  - (b) different areas.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016, PART 3. (See end of Document for details)*

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*Cases with more than one primary authority*

**29A Primary authority enforcement action inconsistent with another authority's advice etc**

- (1) This section applies if—
  - (a) a qualifying regulator nominated as a direct primary authority or a co-ordinated primary authority for the exercise of a function in relation to a person notifies the person, under section 25B(2)(a), of enforcement action that it proposes to take against the person pursuant to the function, and
  - (b) within the referral period, the person notifies the primary authority that the person considers the action to be inconsistent with advice or guidance previously given (generally or specifically) by another qualifying regulator nominated as the primary authority for the exercise of the function in relation to the person.
- (2) Section 25C (but not section 29C) applies in relation to the proposed enforcement action as if the primary authority which gave the notification under section 25B(2)(a) were an enforcing authority under section 25C; and section 25B no longer applies in relation to the action.
- (3) “Referral period” in this section means the referral period mentioned in paragraph 5(2) of Schedule 4A (period in which the regulated person or the member may refer the proposed enforcement action to the Secretary of State).

**29B Concurrent duties to notify primary authorities of enforcement action**

- (1) This section applies if—
  - (a) a qualifying regulator is nominated as a co-ordinated primary authority for the exercise of a function in relation to a person,
  - (b) an enforcing authority proposes to take enforcement action against the person pursuant to the function, and
  - (c) because of the nomination mentioned in paragraph (a), the enforcing authority is (ignoring this section) required under section 25C(2) (a) to notify the co-ordinated primary authority of the proposed enforcement action.
- (2) That requirement to notify the co-ordinated primary authority does not apply if condition A or B is met.
- (3) Condition A is that under section 25C(2)(a) the enforcing authority is required to notify another qualifying regulator of the proposed enforcement action because of that other qualifying regulator's nomination as a direct primary authority for the exercise of the function in relation to the person.
- (4) Condition B is that—
  - (a) condition A is not met,
  - (b) the enforcing authority is (ignoring this section) required under section 25C(2)(a) to notify at least one other qualifying regulator of the proposed enforcement action because of that other regulator's

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nomination as a co-ordinated primary authority for the exercise of the function in relation to the person, and

- (c) the enforcing authority has so notified that other regulator or (if there is more than one) it has so notified at least one of them.

#### **29C Enforcement action notified to a primary authority inconsistent with another authority's advice etc**

- (1) This section applies if—
  - (a) a qualifying regulator is nominated as a direct primary authority or a co-ordinated primary authority for the exercise of a function in relation to a person,
  - (b) that primary authority (“PA1”) is notified under section 25C(2)(a) of enforcement action that an enforcing authority proposes to take against the person pursuant to the function, and
  - (c) PA1 decides not to give a direction under section 25C(4) directing the enforcing authority not to take the enforcement action, and does not refer the action to the Secretary of State under paragraph 4(1) of Schedule 4A.
- (2) PA1 must, within the relevant period, take reasonable steps to find out if—
  - (a) another qualifying regulator nominated as the primary authority (“PA2”) for the exercise of the function in relation to the person has previously given advice or guidance (generally or specifically), and
  - (b) the person considers the proposed enforcement action to be inconsistent with that advice or guidance.
- (3) If PA1 is of the view that such advice or guidance has previously been given and that the person considers the proposed enforcement action to be inconsistent with it, PA1 must—
  - (a) refer the action to PA2, and
  - (b) notify the enforcing authority and the person that it has done so.
- (4) If subsection (3) applies—
  - (a) the reference of the proposed enforcement action by PA1 to PA2 under subsection (3)(a) is to be treated as a notification given by the enforcing authority to PA2 under section 25C(2)(a), and
  - (b) accordingly, section 25C (but not this section) applies in relation to PA2 as the primary authority and ceases to apply in relation to PA1 as the primary authority.
- (5) “Relevant period” in this section has the same meaning as in section 25C (see subsection (9) of that section).

#### **29D Overlapping inspection plans**

- (1) This section applies if, in relation to an inspecting regulator, there is more than one relevant inspection plan in respect of the exercise of the same inspection function in relation to the same person.
- (2) An inspection plan is “relevant” in relation to an inspecting regulator if—



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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016, PART 3. (See end of Document for details)*

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- (a) it is a plan made by it (as a primary authority) to which the Secretary of State has consented under section 26A(7), or
- (b) it is a plan notified to it (as an inspecting regulator) under section 26A(8)(b).

(3) If—

- (a) the inspecting regulator is a direct primary authority for the exercise of the inspection function in relation to the person, and
- (b) there is a relevant inspection plan made by the regulator in relation to the exercise of the function in relation to the person,

section 26B(2) (duty of inspecting regulator to act in accordance with plans notified by the primary authority) does not apply in relation to the inspecting regulator by reason of it being notified of any other relevant inspection plan under section 26A(8)(b) in relation to the exercise of the function in relation to the person.

(4) Subsection (5) applies if—

- (a) the inspecting regulator is a co-ordinated primary authority for the exercise of the inspection function in relation to the person, and
- (b) there is a relevant inspection plan which is made by a direct primary authority for the exercise of the function in relation to the person and notified to the inspecting regulator under section 26A(8)(b).

(5) Where this subsection applies—

- (a) section 26B(1) (duty of primary authority to have regard to its own inspection plan) does not apply to the inspecting regulator (as primary authority) in relation to any relevant inspection plan made by it in respect of the exercise of the function in relation to the person;
- (b) in the application of section 26B(2) to the exercise of the function in relation to the person by the inspecting regulator, the reference to the inspection plan in that provision is to the plan mentioned in subsection (4)(b) only.

(6) If—

- (a) the inspecting regulator is a co-ordinated primary authority for the exercise of the inspection function in relation to the person,
- (b) there is a relevant inspection plan made by the regulator in respect of the exercise of the function in relation to the person, and
- (c) subsection (5) does not apply,

section 26B(2) does not apply in relation to the exercise of the function by the inspecting regulator in relation to the person.

(7) If none of subsections (3) to (6) apply, but more than one relevant inspection plan is notified to the inspecting regulator under section 26A(8)(b) in relation to the exercise of the inspection function in relation to the person, in section 26B(2) the reference to the plan is to be read—

- (a) if one of those plans is made by a direct primary authority for the exercise of the function in relation to the person, as a reference to that plan, and
- (b) otherwise, as a reference to any one of the plans notified to the regulator.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016, PART 3. (See end of Document for details)*

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### *General*

#### **30A Guidance and directions**

- (1) The Secretary of State may give guidance to any one or more qualifying regulators, supporting regulators, complementary regulators or co-ordinators about the operation of this Part.
- (2) The guidance may include, in particular, guidance to qualifying regulators about—
  - (a) arrangements under section 24A(3) for the giving of advice or guidance by primary authorities;
  - (b) enforcement action referred to the Secretary of State under paragraph 1(1), 2(1), 3(1) or 4(1) of Schedule 4A;
  - (c) the notification of inspection plans under section 26A(8);
  - (d) the charging of fees under section 27A.
- (3) The guidance may include, in particular, guidance to supporting regulators about—
  - (a) the circumstances in which a function is relevant to the exercise of a partnership function for the purposes of section 28A;
  - (b) the charging of fees under section 28A(6).
- (4) A qualifying regulator, supporting regulator, complementary regulator or co-ordinator must have regard to any guidance given to it under this section.
- (5) Before giving guidance under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) The Secretary of State may not give guidance under subsection (2)(d) or (3) without consulting the Welsh Ministers.
- (7) The Secretary of State may at any time vary or revoke guidance given under this section.
- (8) The Secretary of State must publish guidance given under this section and any variation or revocation of the guidance.
- (9) A qualifying regulator must comply with a direction given to it under this Part.

#### **30B Periods of time under Part 2**

The Secretary of State may by regulations amend any provision of this Part which specifies a period within which, or a time before which, anything must, must not or may be done.

#### **30C Regulations under Part 2**

- (1) Regulations under this Part must be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 22B, 28B(1)(a) or 30B (whether alone or with other provision) may not be made unless a draft

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of the instrument has been laid before, and approved by resolution of, each House of Parliament.

- (3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

### 30D Interpretation of Part 2

- (1) In this Part—

“complementary regulator” means a complementary regulator under section 28B;

“co-ordinated primary authority” has the meaning given in section 23A(1)(b);

“co-ordinator” has the meaning given in section 23C(1);

“direct primary authority” has the meaning given in section 23A(1)(a);

“enforcement action” has the meaning given in section 25A;

“enforcing authority” has the meaning given in section 25C(2);

“inspecting regulator” has the meaning given in section 26A(3);

“inspection function” has the meaning given in section 26A(1);

“inspection plan” has the meaning given in sections 26A(2) and 26C(5);

“local authority” has the meaning given in section 22B(2) and (3);

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998;

“partnership function” has the meaning given in section 23A(2) and (7);

“primary authority” means a qualifying regulator nominated as a primary authority under section 23A(1);

“qualifying regulator” has the meaning given in section 22B(1);

“regulated group” has the meaning given in section 22A(2);

“regulated person” has the meaning given in section 22A(1);

“relevant function” has the meaning given in section 22C(1);

“reserved matter” has the same meaning as in the Scotland Act 1998;

“Scotland” has the same meaning as in the Scotland Act 1998;

“specified regulator” has the meaning given in section 22B(4);

“supporting regulator” means a supporting regulator under section 28A;

“transferred matter” has the same meaning as in the Northern Ireland Act 1998;

“Wales” has the same meaning as in the Government of Wales Act 2006;

“working day” has the meaning given in subsection (2).

- (2) In this Part, “working day” means a day other than—

- (a) a Saturday or Sunday,
- (b) Christmas Day or Good Friday, or

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- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the relevant part of the United Kingdom.
- (3) For the purposes of subsection (2)(c), the “relevant part” of the United Kingdom is—
  - (a) in relation to section 23D(5), 28A(8) or 28B(7) (period in which co-ordinator must make available a list of group members or of group members to whom an inspection plan may be relevant), the part where the co-ordinator of the group is;
  - (b) in any other case, the part where the primary authority is.”
- (2) For Schedule 4 to the Regulatory Enforcement and Sanctions Act 2008 (enforcement action: references to the Secretary of State) substitute Schedule 4A set out in Schedule 3 to this Act.

#### Commencement Information

- I1** [S. 20](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(c\)](#)
- I2** [S. 20](#) in force at 1.10.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 3\(b\)](#)

## 21 Devolved Welsh matters

- (1) The Regulatory Enforcement and Sanctions Act 2008 is amended as follows.
- (2) In each of the following provisions, for “Welsh ministerial” substitute “ devolved Welsh ”
  - (a) in section 4 (meaning of “relevant function”), subsections (6) and (8)(b);
  - (b) in section 6 (guidance to local authorities), subsections (1) and (1A);
  - (c) in section 10 (advice to Welsh Ministers), subsection (1)(a);
  - (d) in section 12 (relationship between Secretary of State and other regulators), subsection (3);
  - (e) in section 16 (guidance or directions by Welsh Ministers), subsection (1);
  - (f) in section 36 (power to make orders providing for civil sanctions), subsection (2);
  - (g) in section 59 (consultation and consent for civil sanctions orders: Wales), subsection (2);
  - (h) in section 73 (functions to which duty not to impose or maintain unnecessary regulatory burdens applies), subsections (3)(c), (4)(c) and (5).
- (3) In section 73 (functions to which section 72 applies), in subsections (3)(c) and (4)(c), for “in Wales” substitute “ in relation to Wales ”.
- (4) In section 74 (general interpretation)—
  - (a) omit the definition of “Welsh ministerial matter”;
  - (b) before the definition of “Minister of the Crown” insert—
    - ““devolved Welsh matter” means —
    - (a) a matter within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006), or

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**Changes to legislation:** There are currently no known outstanding effects  
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(b) a matter in relation to Wales in respect of which functions are  
exercisable by the Welsh Ministers,  
and in this definition “Wales” has the same meaning as in the  
Government of Wales Act 2006;”.

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**Commencement Information**

**I3** [S. 21](#) in force at 1.10.2016 by [S.I. 2016/695](#), **art. 3(c)**

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2016, PART 3.