

2017 No.

REGULATORY ENFORCEMENT

The Co-ordination of Regulatory Enforcement Regulations 2017

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st October 2017</i>

The Secretary of State, in exercise of the powers conferred by sections 22C(1), 25A(2), 25D(1), 28A(1), 28A(10) and Schedule 4A paragraph 9 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) These Regulations shall be known as the Co-ordination of Regulatory Enforcement Regulations 2017 and shall come into force on 1 October 2017.

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

REGULATORS

Support of primary authority by other regulators

2.—(1) The regulators listed in Schedule 1 to these Regulations are specified as supporting regulators for the purposes of section 28A(1)(a) of the Act.

(2) A regulatory function is specified for the purpose of the definition of “designated function” in section 28A(10) of the Act if it is a function—

(a) 2008 c. 13; Part 2 was amended by The Enterprise Act 2014 (c. 12) Part 3; Schedule 4 was amended by The Enterprise Act 2014 (c. 12) Schedule 3.

- (a) exercised under a relevant enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity, or
 - (b) which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions or standards or guidance which under or by virtue of a relevant enactment relate to any activity.
- (3) In subsection (2) “relevant enactment” means—
- (a) in relation to England and Wales—
 - (i) an enactment specified in Schedule 3 to the Act or an enactment made under such an enactment;
 - (ii) an enactment to which section 4(3) of the Act applies;
 - (b) in relation to Scotland, where the supporting regulators powers extend to Scotland, an enactment set out in Schedule 2 to these Regulations;
 - (c) in relation to Northern Ireland, where the supporting regulators powers extend to Northern Ireland, an enactment set out in Schedule 3 to these Regulations.

RELEVANT FUNCTIONS IN SCOTLAND AND NORTHERN IRELAND

Relevant functions in Scotland

3.—(1) For the purposes of section 22C(1)(b) of the Act the following are specified as relevant functions in relation to a local authority in Scotland—

- (a) any specified regulatory function exercised by that authority under a relevant enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; and
- (b) any specified regulatory function exercised by that authority which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of a relevant enactment relate to any activity.

(2) In paragraph (1) “relevant enactment” means an enactment—

- (a) specified in Schedule 3 to the Act or an enactment made under such an enactment; or
- (b) to which subsection 4(3) of the Act applies.

(3) In paragraph (1) “specified regulatory function” means, in relation to a relevant enactment specified in—

- (a) Part 1 of Schedule 2, any regulatory function;
- (b) Part 2 of Schedule 2, any regulatory function which relates to the protection of consumers;
- (c) Part 3 of Schedule 2, any regulatory function which relates to the granting of licences or permits under those enactments;
- (d) Part 4 of Schedule 2, any regulatory function which relates to product safety, compliance with standards, product labelling or weights and measures;
- (e) Part 5 of Schedule 2, any regulatory function which relates to price indications;
- (f) Part 6 of Schedule 2, any regulatory function which does not relate to the encouragement of and observance of equal opportunities requirements.

(4) Paragraph (1) will not apply if, or to the extent that, a regulatory function relates to matters which are not reserved matters.

Relevant functions in Northern Ireland

4.—(1) For the purposes of section 22C(1)(c) the following are specified as relevant functions in relation to a local authority in Northern Ireland—

- (a) any regulatory function exercised by that authority under a relevant enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; and
 - (b) any regulatory function exercised by that authority which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under, or by virtue of, a relevant enactment relate to any activity.
- (2) In paragraph (1) “relevant enactment” means—
- (a) an enactment specified in Schedule 3 to the Act or an enactment made under such an enactment; and
 - (b) an enactment made under section 2(2) of the European Communities Act 1972^(a) with respect to
 - (i) the safety of consumers in relation to goods, or
 - (ii) technical standards derived from European Union law, other than standards and requirements in relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides.
- (3) In paragraph (1) “regulatory function” means any function in relation to a relevant enactment set out in Schedule 3.

ENFORCEMENT ACTION

Enforcement action

5.—(1) In accordance to section 25A(2)(a) of the Act and 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 service of any of the following by an enforcing authority in accordance with legislation specified in Schedule 3 to the Act—
 - (i) stop notice,
 - (ii) prohibition notice (including emergency prohibition notice),
 - (iii) prohibition order,
 - (iv) abatement notice,
 - (v) alterations notice,
 - (vi) improvement notice,
 - (vii) remedial action notice (including emergency remedial action notice),
 - (viii) detention notice,
 - (ix) enforcement notice,
 - (x) suspension notice,
 - (xi) compliance notice,
 - (xii) hazard awareness notice,
 - (xiii) demolition order,
 - (xiv) a certificate under the Food Hygiene Regulations,
 - (xv) a fixed monetary penalty,
 - (xvi) a discretionary requirement, or
 - (xvii) any other notice issued by a local authority, or regulator, within their vires;

(a) 1972 c. 68.; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by section 3(3) and Schedule, Part 1 to the European Union (Amendment) Act 2008 (c. 7).

- (b) the determination of an application under section 61 of the Control of Pollution Act 1974(a);
- (c) 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;
- (d) the commencement of proceedings in a court of law or tribunal created under an enactment;
- (e) the imposition of any sanction (whether civil or criminal) in respect of any act or omission;
- (f) the administering of a simple caution;
- (g) the acceptance by the enforcing authority of any undertaking (under an enactment or otherwise) in respect of an act or omission.

(2) In accordance with section 25A(2)(b) of the Act, 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 25A(1) 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 Licensing Act 2003(b) (except in relation to sections 146, 147, 147A, 148 and 151 of that Act), or
 - (ii) the Gambling Act 2005 (except in relation to Part 4 of that Act)(c).

Enforcement action: Exclusions

6. In accordance with section 25D, of the Act, sections 25B and 25C of the Act do not apply where:

- (a) 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, or
- (b) where the application of sections 25B and 25C of the Act would be, or in the opinion of the enforcing authority would be, wholly disproportionate.

PROCEDURE FOR REFERENCES TO THE SECRETARY OF STATE

Applications for consent

7.—(1) All applications to the Secretary of State for consent to a reference must contain the following information—

- (a) the applicant's name;

(a) 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 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.

(b) 2003 c. 17; section 147A was inserted by section 23(1) to the Violent Crime Reduction Act 2006 (c. 38) and amended by section 28 to the Policing and Crime Act 2006 (c. 26) and by SI 2015/664, regulation 1(1). Section 148 was repealed by section 70 to the Deregulation Act 2015 (c. 20).

(c) 2005 c. 19.

- (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 regulated person under section 25B(2) or section 25C(2) of the Act regarding the proposed enforcement action;
 - (ii) a copy of any written direction by the primary authority under section 25C(4) of the Act that the enforcing authority must not take enforcement action;
 - (iii) a copy of the advice and guidance given by the primary authority to the regulated person or to the co-ordinator of a regulated group under section 24A(1)(a) and section 24A(2)(a) of the Act which is relevant to the proposed enforcement action;
 - (iv) a copy of the advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) and section 24A(2)(b) of the Act which is relevant to the proposed enforcement action; and
 - (v) 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 24A(1)(b) or section 24A(2)(b) of the Act;
 - (bb) the advice or guidance given was not correct in that it was not consistent with the underlying enactments; 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 24A(1)(a) or section 24A(2)(a) 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 25B(2) or section 25C(6)(a) 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 24A(1)(b) or section 24A(2)(b) of the Act;
 - (bb) the advice or guidance was correct in that it was not inconsistent with the underlying regulations; and
 - (cc) the advice or guidance was properly given;
 - (c) where the primary authority is the applicant—
 - (i) a copy of the advice or guidance it has previously given under section 24A(1)(a), section 24A(1)(b), section 24A(2)(a) or section 24A(2)(b) of the Act which is relevant to the proposed enforcement action;
 - (ii) a copy of any written notification received by it under section 25B(2) or section 25C(2) 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 24A(1)(b) or section 24A(2)(b) of the Act,
 - (bb) the advice given was correct in that it was not inconsistent with the underlying regulations; and
 - (cc) the advice or guidance was properly given.

Time limits for making an application for consent to a reference

8.—(1) 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 25C(4) of the Act that the proposed enforcement action must not be taken.

(2) 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 25B(2)(a) or section 25C(6)(a) of the Act of the enforcement action proposed to be taken.

(3) 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 25C(2)(a) of the Act that the enforcing authority proposes to take action against a regulated person.

(4) The Secretary of State may, in exceptional circumstances, allow an application for consent to a reference to be made after the time limits set out in this Regulation.

(5) On receipt of an application for consent to a reference the Secretary of State must give notice of it to the other parties.

Representations

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

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

(3) Representations from any of the other parties must include the information that other party would have to give under regulation 7(2) if it had been the applicant.

Decision on application for consent to a reference

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

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

(3) If the Secretary of State refuses consent to a reference, the Secretary of State 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 the Secretary of State for consent to withdraw its application for consent to a reference by giving written notice to the Secretary of State.

(2) The Secretary of State must not consent to the withdrawal of an application for consent to a reference without consulting with the other parties.

(3) After the Secretary of State has given consent to a reference, the applicant may apply to the Secretary of State for consent to withdraw that reference by giving written notice to the Secretary of State.

(4) The Secretary of State must not consent to the withdrawal of a reference after giving consent to it without consulting the other parties.

Confidentiality

12.—(1) The Secretary of State is not be required to treat information disclosed in connection with an application for consent to a reference or in connection with a reference as confidential.

(2) No person may, without the consent of the Secretary of State, the applicant or 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.—(1) As soon as reasonably practicable after determining a reference under paragraph 1,2, 3 or 4 of Schedule 4A to the Act, the Secretary of State must notify the applicant and the other parties in writing of its determination.

(2) The Secretary of State 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.

SCHEDULE 1

Regulation 2(1)

Supporting Regulators

Health and Safety Executive

Food Standards Agency

Gambling Commission

Competition and Markets Authority

A person appointed (or, a body designated) by the Secretary of State under section of the Weights and Measurements Act 1985(a)

SCHEDULE 2

Regulation 3(3)

Regulatory functions: Scotland

PART 1

Offices, Shops and Railway Premises Act 1963(b)

Firearms Act 1968(c)

Medicines Act 1968 (section 109)(d)[or Human Medicines Regulations 2012 (regulation 323)]

Unsolicited Goods and Services Act 1971(e)

-
- (a) 1985 c. 72.
 - (b) 1963 c. 41.
 - (c) 1968 c. 67
 - (d) 1968 c. 67.
 - (e) 1971 c. 30.

Health and Safety at Work, etc Act 1974**(a)**
Consumer Credit Act 1974**(b)**
Firearms Act 1982**(c)**
Video Recordings Act 1984**(d)**
Copyright, Designs and Patents Act 1988(sections 107A and 198A)**(e)**
Trade Marks Act 1994**(f)**
Olympic Symbol etc (Protection) Act 1995**(g)**

PART 2

Explosives Act 1875**(h)**
Trade Descriptions Act 1968**(i)**
Development of Tourism Act 1969**(j)**
Supply of Goods (Implied Terms) Act 1973**(k)**
Fair Trading Act 1973**(l)**
Hallmarking Act 1973**(m)**
Prices Act 1974**(n)**
Energy Act 1976**(o)**
Weights and Measures etc Act 1976**(p)**
Unfair Contract Terms Act 1977**(q)**
Estate Agents Act 1979**(r)**
Sale of Goods Act 1979**(s)**
Public Passenger Vehicles Act 1981**(t)**
Supply of Goods and Services Act 1982**(u)**
Motor Cycle Noise Act 1987**(v)**

-
- (a) 1974 c. 37.
(b) 1974 c. 39.
(c) 1982 c. 31.
(d) 1984 c. 39.
(e) 1988 c. 48; sections 107A and 198A were inserted by section 165(2) of the Criminal Justice and Public Order Act 1994.
(f) 1994 c. 26.
(g) 1995 c. 32.
(h) 1875 c. 17.
(i) 1968 c. 29.
(j) 1969 c. 51.
(k) 1973 c. 13.
(l) 1973 c. 41.
(m) 1973 c. 43.
(n) 1974 c. 24.
(o) 1976 c. 76.
(p) 1976 c. 77.
(q) 1977 c. 50.
(r) 1979 c. 38.
(s) 1979 c. 54.
(t) 1981 c. 14.
(u) 1982 c. 29.
(v) 1987 c. 34.

Consumer Protection Act 1987**(a)**

Education Reform Act 1988**(b)**

Enterprise Act 2002, Part 8**(c)**

Fireworks Act 2003**(d)**

Crystal Glass (Descriptions) Regulations 1973**(e)**

Alcohol Tables Regulations 1979**(f)**

Package Travel, Package Holidays and Package Tours Regulations 1992**(g)**

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**(h)**

Consumer Protection from Unfair Trading Regulations 2008**(i)**

any enactment to which section 4(3) of the Act applies

PART 3

Cinemas Act 1985 (sections 1 to 3 and 5 to 16) **(j)**

Road Traffic Act 1988 (the whole Act except sections 39 to 40 and 157 to 159)**(k)**

Gambling Act 2005**(l)**

PART 4

Energy Act 1976**(m)**

PART 5

Disability Discrimination Act 1995**(n)**

SCHEDULE 3

Regulation 4(3)

Regulatory functions: Northern Ireland

-
- (a)** 1987 c. 43: Part 4 which relates to enforcement of Parts 2 and 3 was amended by S.I. 2008/1277.
(b) 1988 c. 40.
(c) 2002 c. 40.
(d) 2003 c. 22.
(e) S.I. 1972/1952.
(f) S.I. 1979/132.
(g) S.I. 1992/3288: Schedule 3 sets out enforcement provisions; paragraph 2 revoked by Article 3 of S.I. 2003/1376, and paragraphs 7 were revoked by Article 7 of, and Schedule 5 to, S.I. 2003/1400.
(h) S.I. 2013/3134.
(i) S.I. 2008/1277.
(j) 1985 c. 13; whole Act ceased to have effect in respect of England and Wales by Licensing Act 2003, Schedule 6 paragraph 95.
(k) 1988 c. 52.
(l) 2005 c. 19.
(m) 1976 c. 76.
(n) 1995 c. 50.

PART 1

Consumer Protection Act 1987 (Parts II and III)(a)

PART 2

Construction Products Regulations 1991(b)

Simple Pressure Vessels (Safety) Regulations 1991(c)

Simple Pressure Vessels (Safety) Regulations 2016(d)

Supply of Machinery (Safety) Regulations 1992(e)

Electrical Equipment (Safety) Regulations 1994(f)

Toys (Safety) Regulations 1995(g)

Gas Appliances (Safety) Regulations 1995(h)

Pressure Equipment Regulations 1999(i)

Medical Devices Regulations 2002(j)

Personal Protective Equipment Regulations 2002(k)

Recreational Craft Regulations 2004(l)

General Product Safety Regulations 2005(m)

Cosmetic Products Enforcement Regulations 2012(n)

Human Medicines Regulations 2012, in relation to Part 7 (traditional herbal registrations) of those Regulations(o)

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of the Act enables persons that carry on a regulated activity to have a single local authority nominated as the “primary authority”. The primary authority has the function of giving advice and guidance to the regulated person in relation to the regulated function and to other local authorities as to how they should exercise the regulatory function in relation to that person. In certain circumstances, the primary authority can prevent enforcement action by other local authorities in respect of the regulated person.

Sections 22C, 28A and 28B of the Act enable the Secretary of State to make an order specifying the roles that national regulatory bodies can take within primary authority. Sections 22B and 22C

(a) 1987 c. 43.

(b) S.I. 1991/1630, amended by S.I. 1994/3051.

(c) S.I. 1991/2749, amended by S.I. 2003/1400.

(d) S.I. 2016/1092.

(e) S.I. 1992/3073, amended by S.I. 1994/2063, S.I. 2005/831.

(f) S.I. 1994/3260.

(g) S.I. 1995/204, amended by S.I. 2004/1769, S.I. 2005/1082.

(h) S.I. 1995/1629.

(i) S.I. 1995/1629, S.I. 1999/2001, amended by S.I. 2002/1267, S.I. 2008/1597.

(j) S.I. 2002/618, relevant amending instruments are S.I. 2003/1697, S.I.2005/2759, S.I. 2005/2909, S.I. 2007/400, S.I. 2008/2936.

(k) S.I. 2002/1144, amended by S.I. 2004/693.

(l) S.I. 2004/1464, to which there are amendments which are not relevant for this Order.

(m) S.I. 2005/1803, to which there are amendments which are not relevant for this Order.

(n) S.I. 2013/1478.

(o) S.I. 2012/1916.

sets out the role and functions of specified regulators; section 28A sets out the role and functions of supporting regulators and section 28B sets out the role and functions of complementary regulators. Section 1 and Schedule 1 of the Regulations sets out both the names of the regulators, and their functions, specific to each category.

Part 2 of the Regulations specifies regulatory functions exercisable by local authorities in Scotland and Northern Ireland to which Part 2 of the Act applies.

Section 22C of the Act enables the Secretary of State to make an order specifying the regulatory functions exercisable by local authorities in Scotland and Northern Ireland to which Part 2 of the Act will apply. Such an order may not specify a regulatory function, so far as exercisable in Scotland, if or to the extent that the function relates to matters that are not reserved matters, and so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters that are transferred matters.

Part 3 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 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.

Regulation 5 describes what is, and what is not, to be regarded as enforcement action for the purposes of primary authority. Regulation 6 prescribes the circumstances in which the enforcing authority does not have to notify the primary authority before it takes enforcement action.

Regulation 7 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Part 4 makes provision for the procedure that will govern the reference of matters for determination by RD in accordance with Schedule 4A of the Act.

Part 2 of the Act establishes a scheme for co-ordination of regulatory enforcement against a regulated person. An enforcing authority taking enforcement action against the regulated person must notify the primary authority, of the proposed action. The primary authority may direct the enforcing authority not to take the action.

RD 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.

Regulation 7 sets out the information to be provided, to RD, by an applicant. Regulation 10 sets out time limits for making an application. Regulation 8(5) 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. Regulation 9 provides for the making of representations by the other parties to a reference. Regulation 10 provides for RD to take a decision as to whether to consent to a reference as soon as reasonably practicable, and also makes provision for RD to inform the parties of that decision.

Regulation 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 RD.

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

Regulation 13 provides that RD must inform the parties of its determination in writing as soon as reasonably practicable, and provide written reasons for its determination.

A full regulatory 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, Energy and

Industrial Strategy, Regulatory Delivery, 1 Victoria Street, London, SW1H 0ET and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.