STATUTORY INSTRUMENTS

2017 No. 835

REGULATORY REFORM

The Co-ordination of Regulatory Enforcement Regulations 2017

Made - - - -	*11th August 2017*
Laid before Parliament	*15th August 2017*
Coming into force - -	*1st October 2017*

The Secretary of State, in exercise of the powers conferred by sections 22C(1)(b), (1)(c), (2), (4), and (5); 25A(2); 25D(1) and (2); 28A(1), (9), (10) and (11); and paragraph 9 of Schedule 4A of the Regulatory Enforcement and Sanctions Act 2008(**1**), and with the consent of the Welsh Ministers makes the following Regulations.

Citation, commencement and Interpretation

1.—(1) These Regulations may be cited as the Co-ordination of Regulatory Enforcement Regulations 2017 and come into force on 1st October 2017.

(2) In these Regulations—

"the Act" means the Regulatory Enforcement and Sanctions Act 2008;

"relevant enactment" has the same meaning as in section 4(2) of the Act (except in regulation 4, where it has a different meaning).

Supporting Regulators

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

(2) A regulatory function(**2**) is a designated function for the purposes of section 28A(10) of the Act if it is a regulatory function that the supporting regulator is entitled to exercise under a relevant enactment.

(**1**) 2008 c.13; Part 2 was substituted by section 20(1) of the Enterprise Act 2016 (c.12); Schedule 4A was substituted for Schedule 4 by section 20(2) of, and Schedule 3 to, the Enterprise Act 2016.

(**2**) 'Regulatory function' for these purposes is defined in section 74 of the Act, by reference to the definition in section 32 of the Legislative and Regulatory Reform Act 2006 (c.51) as "(2)(a) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity. (3) In subsection (2)(a) and (b) the references to a function (a) include a function exercisable by or on behalf of the Crown; (b) do not include (i) any function exercisable by any body of, or any person holding office in, the Church of England; or (ii) any function of conducting criminal or civil proceedings. (4) In

Relevant functions in Scotland

3.—(1) A regulatory function is specified for the purposes of section 22C(1)(b) of the Act if it is a regulatory function that a local authority in Scotland is entitled to exercise under a relevant enactment.

(2) Paragraph (1) does not apply to a regulatory function if, or to the extent that, the function relates to a matter which is not a reserved matter.

Relevant functions in Northern Ireland

4.—(1) A regulatory function is specified for the purposes of section 22C(1)(c) of the Act if it is a regulatory function that a local authority in Northern Ireland is entitled to exercise under a relevant enactment.

(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) made under section 2(2) of the European Communities Act 1972(**3**) 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) Paragraph (1) does not apply to a regulatory function if, or to the extent that, the function relates to a matter which is a transferred matter.

Enforcement action

5.—(1) In accordance with 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 under a relevant enactment—

(i) an abatement notice,

(ii) an alterations notice,

(iii) a compliance notice,

(iv) a demolition order,

(v) a detention notice,

(vi) an enforcement notice,

(vii) a fixed monetary penalty,

(viii) a hazard awareness notice,

(ix) an improvement notice,

(x) a premises order,

(xi) a prohibition notice (including an emergency prohibition notice),

(xii) a prohibition order,

(xiii) a remedial action notice (including an emergency remedial action notice),

(xiv) a request to fulfil a discretionary requirement,

subsection (2)(a) and (b) the references to an activity include (a) providing goods and services; and (b) employing or offering employment to any person."

(**3**) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and by section 3 and Part 1 of the Schedule to the European Union (Amendment) Act 2007 (c.7).

(xv) a stop notice,

(xvi) a suspension notice, or

(xvii) any other notice or order;

(b) the determination of an application under section 61 of the Control of Pollution Act 1974(**4**);

(c) certificates issued under regulation 29 of the Food Safety and Hygiene (England) Regulations 2013(**5**);

(d) certificates issued under regulation 27 of the Food Hygiene (Wales) Regulations 2006(**6**);

(e) 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;

(f) the commencement of proceedings in a court of law, or a tribunal created under an enactment;

(g) the imposition of any sanction (whether civil or criminal) in respect of any act or omission;

(h) the administering of a simple caution;

(i) 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 within the scope of 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(**7**) (except action taken under sections 146, 147, 147A and 151 of that Act), or

(ii) the Gambling Act 2005(**8**) (except action taken under Part 4 of that Act).

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) the application of sections 25B or 25C of the Act would be wholly disproportionate.

(**4**) 1974 c.40; section 61 was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c.55), section 120 of, and Schedule 24 to, the Environment Act 1995 (c.25); and as regards Scotland it was amended by section 58 of, and Schedule 6 to, the Building (Scotland) Act 2003 (asp 8), and section 162(1) of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c.43).

(**5**) S.I. 2013/2996.

(**6**) S.I. 2006/31 (W.5).

(**7**) 2003 c.17; section 147A was inserted by section 23(1) and section 23(4) of the Violent Crime Reduction Act 2006 (c.38) and amended by section 28 of the Policing and Crime Act 2006 (c. 26), by section 67(8)(a) of the Deregulation Act 2015 (c.20), and by sections 218(1), (2) and (4) of the Police Reform and Social Responsibility Act 2011 (c.13). Section 147A(4)(c) was inserted by section 67(8)(b) of the Deregulation Act 2015 (c.20).

(**8**) 2005 c.19.

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,

(b) the applicant's business address,

(c) the name and contact details of an individual within the applicant's organisation who has responsibility for the application and reference,

(d) the name and business address of any other party, and

(e) a description of the proposed enforcement action.

(2) In addition the following information must also be provided—

(a) where the enforcing authority is the applicant—

(i) a copy of any written notification sent to the primary authority regarding the proposed enforcement action,

(ii) a copy of any written direction from the primary authority under section 25C(4) of the Act stating that the enforcing authority must not take enforcement action,

(iii) a copy of any advice and guidance given by the primary authority or the co-ordinator to the regulated person under section 24A(1)(a) or section 24A(4) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority,

(iv) a copy of any advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) or 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 not inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person under section 24A(1)(a) or section 24A(4) of the Act, or to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act,

(bb) the advice or guidance was not correct, or

(cc) the advice or guidance was not properly given;

(b) where the regulated person is the applicant—

(i) a copy of any advice and guidance given by the primary authority or the co-ordinator to the regulated person under section 24A(1)(a) or section 24A(4) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority,

(ii) a copy of any advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) or section 24A(2)(b) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority,

(iii) a copy of any document informing the regulated person of the proposed enforcement action; and

(iv) a statement as to why the regulated person considers that—

(aa) the proposed enforcement action is not inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person under section 24A(1)(a) or section 24A(4) of the Act, or