

Changes to legislation: Regulatory Enforcement and Sanctions Act 2008, SCHEDULE 4 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

[^{F1}SCHEDULE 4

Section 28(7)

ENFORCEMENT ACTION: REFERENCES TO [^{F2}THE SECRETARY OF STATE]

Textual Amendments

- F1** Sch. 4A substituted for Sch. 4 (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1) (c), Sch. 3
- F2** Words in Sch. 4 heading substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), art. 4(2), Sch. 1 para. 16(q) (with Sch. 2)

Reference by enforcing authority

- 1 (1) If the primary authority directs the enforcing authority as specified in section 28(2), the enforcing authority may with the consent of [^{F3}the Secretary of State] refer the proposed enforcement action to [^{F3}the Secretary of State] .
- (2) On a reference under this paragraph—
- (a) if [^{F4}the Secretary of State] is satisfied as to the matters in sub-paragraph (3), [^{F4}the Secretary of State] must confirm the direction;
- (b) in any other case, [^{F5}the Secretary of State] must revoke the direction (and section 28(4)(b) shall accordingly cease to apply in relation to the direction).
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically),
- (b) the advice or guidance was correct, and
- (c) the advice or guidance was properly given by the primary authority.
- (4) Where under sub-paragraph (2) [^{F6}the Secretary of State] confirms a direction of the primary authority, [^{F6}the Secretary of State] may direct the enforcing authority to take some other enforcement action (and section 28(1) to (4) does not apply in relation to that action).
- (5) The enforcing authority must comply with any direction under sub-paragraph (4).

Textual Amendments

- F3** Words in Sch. 4 para. 1(1) substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), Sch. 1 para. 16(a) (with Sch. 2)
- F4** Words in Sch. 4 para. 1(2)(a) substituted (2.2.2012) by The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (S.I. 2012/246), arts. 1(2), 2, 4(2), Sch. 1 para. 16(b)(i) (with Sch. 2)

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- F5** Words in Sch. 4 para. 1(2)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(b)(ii)** (with Sch. 2)
- F6** Words in Sch. 4 para. 1(4) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(c)** (with Sch. 2)

Reference by regulated person

- 2 (1) If the primary authority does not direct the enforcing authority as specified in section 28(2), the regulated person may with the consent of [^{F7}the Secretary of State] refer the action to [^{F7}the Secretary of State] .
- (2) On a reference under this paragraph—
- (a) if [^{F8}the Secretary of State] is satisfied as to the matters in sub-paragraph (3), [^{F8}the Secretary of State] must direct the enforcing authority not to take the proposed enforcement action;
 - (b) in any other case, [^{F9}the Secretary of State] must consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically),
 - (b) the advice or guidance was correct, and
 - (c) the advice or guidance was properly given by the primary authority.
- (4) The enforcing authority may not take the proposed enforcement action if it is directed as specified in sub-paragraph (2)(a).
- (5) Where [^{F10}the Secretary of State] gives a direction under sub-paragraph (2)(a), [^{F10}the Secretary of State] may direct the enforcing authority to take some other enforcement action (and section 28(1) to (4) does not apply in relation to that action).
- (6) The enforcing authority must comply with any direction under sub-paragraph (5).
- (7) [^{F11}The Secretary of State] may require a regulated person who makes a reference under this paragraph to pay such reasonable costs incurred by [^{F12}the Secretary of State] as a result of the reference as [^{F12}the Secretary of State] may specify.

Textual Amendments

- F7** Words in Sch. 4 para. 2(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(d)** (with Sch. 2)
- F8** Words in Sch. 4 para. 2(2)(a) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(e)(i)** (with Sch. 2)
- F9** Words in Sch. 4 para. 2(2)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(e)(ii)** (with Sch. 2)
- F10** Words in Sch. 4 para. 2(5) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(f)** (with Sch. 2)

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- F11** Words in Sch. 4 para. 2(7) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(g)(i)** (with Sch. 2)
- F12** Words in Sch. 4 para. 2(7) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(g)(ii)** (with Sch. 2)

Reference by primary authority

- 3 (1) The primary authority may with the consent of [^{F13}the Secretary of State], instead of making a determination under section 28(2) in relation to a proposed enforcement action, refer the action to [^{F13}the Secretary of State].
- (2) On a reference under this paragraph—
- (a) if [^{F14}the Secretary of State] is satisfied as to the matters in sub-paragraph (3), [^{F14}the Secretary of State] must direct the enforcing authority not to take the proposed enforcement action;
- (b) in any other case, [^{F15}the Secretary of State] must consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically),
- (b) the advice or guidance was correct, and
- (c) the advice or guidance was properly given by the primary authority.
- (4) The enforcing authority may not take the proposed enforcement action if it is directed as specified in sub-paragraph (2)(a).
- (5) Where [^{F16}the Secretary of State] gives a direction under sub-paragraph (2)(a), [^{F16}the Secretary of State] may direct the enforcing authority to take some other enforcement action (and section 28(1) to (4) does not apply in relation to that action).
- (6) The enforcing authority must comply with any direction under sub-paragraph (5).

Textual Amendments

- F13** Words in Sch. 4 para. 3(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(h)** (with Sch. 2)
- F14** Words in Sch. 4 para. 3(2)(a) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(i)(i)** (with Sch. 2)
- F15** Words in Sch. 4 para. 3(2)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(i)(ii)** (with Sch. 2)
- F16** Words in Sch. 4 para. 3(5) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(j)** (with Sch. 2)

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Effect of reference

- 4 The enforcing authority may not take the proposed enforcement action—
- (a) in any period during which the regulated person may make a reference under paragraph 2;
 - (b) at any time after the making of a reference under this Schedule and before its determination.

Consultation

- 5 (1) Before making a determination for the purposes of this Schedule [^{F17}the Secretary of State] —
- (a) must consult any relevant regulator, where appropriate, and
 - (b) may consult such other persons as [^{F18}Secretary of State] thinks fit.
- (2) In sub-paragraph (1)(a) “relevant regulator” means a person (other than a local authority) with regulatory functions which relate to the matter to which the determination relates.

Textual Amendments

- F17** Words in Sch. 4 para. 5(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(k)(i)** (with Sch. 2)
- F18** Words in Sch. 4 para. 5(1)(b) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(k)(ii)** (with Sch. 2)

Procedure: general

- 6 (1) [^{F19}The Secretary of State] must determine any reference under this Schedule within the period of 28 days beginning with the day on which the reference is made.
- (2) The Secretary of State may by order make further provision as to the procedure to be followed, for the purposes of this Schedule, by the primary authority, the enforcing authority, the regulated person and [^{F20}the Secretary of State] .

Textual Amendments

- F19** Words in Sch. 4 para. 6(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(l)** (with Sch. 2)
- F20** Words in Sch. 4 para. 6(2) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(m)** (with Sch. 2)

Commencement Information

- II** Sch. 4 para. 6 wholly in force at 6.4.2009; Sch. 4 para. 6(2) in force at 1.10.2008 by [S.I. 2008/2371](#), **art. 2(b)**; Sch. 4 para. 6(1) in force for all remaining purposes at 6.4.2009 by [S.I. 2009/550](#), **art. 2**

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Guidance and directions

- 7 (1) [^{F21}The Secretary of State] may give guidance or directions to any one or more local authorities about any enforcement action referred to [^{F22}the Secretary of State] .
- (2) A local authority must have regard to any guidance, and comply with any direction, given to it under sub-paragraph (1).
- (3) [^{F23}The Secretary of State] must publish any guidance or directions given under this paragraph in such manner as [^{F24}the Secretary of State] considers appropriate.

Textual Amendments

- F21** Words in Sch. 4 para. 7(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(n)(i)** (with Sch. 2)
- F22** Words in Sch. 4 para. 7(1) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(n)(ii)** (with Sch. 2)
- F23** Words in Sch. 4 para. 7(3) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(o)(i)** (with Sch. 2)
- F24** Words in Sch. 4 para. 7(3) substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(o)(ii)** (with Sch. 2)

Information

- 8 For the purposes of this Schedule [^{F25}the Secretary of State] may require the primary authority, the enforcing authority or the regulated person to provide [^{F25}the Secretary of State] with such information as [^{F25}the Secretary of State] may specify, being information which the authority may lawfully provide to [^{F25}the Secretary of State] .]

Textual Amendments

- F25** Words in Sch. 4 para. 8 substituted (2.2.2012) by [The Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(S.I. 2012/246\)](#), arts. 1(2), 2, 4(2), **Sch. 1 para. 16(p)** (with Sch. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 70(6) inserted by [2018 c. 12 Sch. 19 para. 152\(3\)](#)