

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Reduction of Legislative Burdens

Regulatory Enforcement and Sanctions Act 2008

Section 67: Primary authorities

446. Sections 67 and 68 make amendments to provisions contained in Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (“RESA 2008”). Those provisions, introduced as a response to the Hampton Review, Reducing Administrative Burdens: Effective Inspection and Enforcement published in March 2005¹, sought to promote co-ordination of regulatory enforcement amongst local authorities by establishing the Primary Authority Scheme (“PAS”).
447. Until 1 April 2012 the PAS was administered by the Local Better Regulation Office (“LBRO”), a statutory corporation created by the RESA 2008. On that date the [Local Better Regulation Office \(Dissolution and Transfer of Functions, Etc.\) Order 2012 \(SI No. 246 of 2012\)](#) dissolved LBRO and its functions in relation to the PAS were transferred to the Secretary of State.
448. The PAS enables a business trading across local authority areas to form a primary authority partnership with a single local authority in relation to regulatory compliance across all the local authority areas in which it operates. Through the partnership the business receives advice on compliance from the primary authority which other local authorities who regulate it must follow. This provides the business with certainty and consistency.
449. Section 67 amends section 22 of the RESA 2008 to broaden the eligibility requirements for the PAS.
450. Under the existing PAS a person is eligible only if they carry out an activity in the area of 2 or more local authorities, and each of those authorities has the same relevant function in relation to that activity. For example a business would be eligible where it sells a product in two different local authorities’ areas and is subject to regulatory enforcement by trading standards in both those authorities’ areas. The intention behind the amendments is to extend the PAS to businesses who share an approach to regulatory compliance, such as the members of a trade association, even if not all of them operate in the area of more than one local authority.
451. Subsection (4) inserts new subsections (1A) and (1B) into section 22 of the RESA 2008. These mean that a person is also eligible for the PAS if the Secretary of State is satisfied that they share an approach to regulatory compliance in relation to an activity with at

¹ <http://www.berr.gov.uk/files/file22988.pdf>

least one other person and between them those persons are regulated, as regards the activity, by more than one local authority.

452. This means, for example, that where a number of members of a trade association are small businesses operating from single stores they could all be eligible for the PAS if the effect of their arrangements with their trade association meant that they shared an approach to compliance in relation to the same activity with other members operating in different local authority areas. Those arrangements might be, for example, that the trade association provides its members with regulatory guidance.
453. Those members of the trade association who had multiple sites across different local authority areas would be eligible for the PAS without needing to satisfy the conditions in new subsection (1B) because they would already come within the test in section 22(1) of the RESA 2008. However, the conditions in new subsection (1B) have deliberately been made fairly wide in order that, continuing with the above example, members of the trade association may apply to join the PAS on the basis of guidance from their association that is applicable to all of its members, without having to distinguish between members who do and do not happen to satisfy the existing eligibility test in section 22(1) of the RESA 2008.
454. *Subsection (5)* amends section 22(2) of the RESA 2008 to include a provision that the Secretary of State may publish guidance about the matters likely to be taken into account when deciding whether two or more persons share an approach to compliance for the purposes of new subsection (1B)(b) .
455. *Subsections (6) and (7)* make necessary consequential amendments.

Section 68: Inspection plans

456. **Section 68** makes amendments to section 30 of the RESA 2008. That section makes provision for primary authorities that exercise the function of inspection to draw up inspection plans in respect of the regulated person with whom they have a relationship. These inspection plans are intended to act as a guide for other local authorities who also carry out inspections in relation to that person. For example, an inspection plan may set out details of compliance procedures established by a business on a national basis and may indicate areas which do not require inspection, or areas which should be focused upon for inspection purposes. Local authorities, including the primary authority, must have regard to these plans. The intention behind the amendments is to strengthen inspection plans and increase their use.
457. *Subsection (2)* inserts new subsection (3A) into section 30 of the RESA 2008 so that an inspection plan may require a local authority to provide the primary authority with a report on its inspection activities in respect of the regulated person. *Subsection (4)* inserts new subsection (7E) into section 30 of the RESA 2008 so that where an inspection plan includes such a requirement the local authority must provide this report.
458. *Subsection (4)* also inserts new subsections (7A), (7B), (7C) and (7D) into section 30 of the RESA 2008.
459. New subsection (7A) means that local authorities may not deviate from an inspection plan unless the primary authority has been given written notification of the deviation and given its consent (new subsections (7A)(a) and (b)). These provisions do not apply to inspections carried out by the primary authority but the amendments made by *subsection (3)* mean that primary authorities remain under their existing obligation to have regard to inspection plans.
460. Where a local authority has notified the primary authority of its intention to deviate from an inspection plan when carrying out an inspection and the primary authority has failed to respond within 5 working days, the primary authority will be treated as having given consent to the deviation (new subsections (7B), (7C) and (7D)).

*These notes refer to the Enterprise and Regulatory Reform Act
2013 (c.24) which received Royal Assent on 25 April 2013*

461. Subsection (7) inserts new subsections (9A) and (9B) into section 30 of the RESA 2008 which allow a primary authority to revoke an inspection plan and require that such revocation be brought to the attention of local authorities who may wish to carry out inspections.
462. Subsections (5), (6) and (8) make necessary consequential amendments.
463. Subsection (9) inserts a definition of “working day”.