

2014 No. 573

REGULATORY REFORM

The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2014

<i>Made</i>	- - - -	<i>7th March 2014</i>
<i>Laid before Parliament</i>		<i>11th March 2014</i>
<i>Coming into force</i>	- -	<i>6th April 2014</i>

The Secretary of State, in exercise of the powers conferred by sections 28(6) and 29(1) of the Regulatory Enforcement and Sanctions Act 2008(a) and with the consent of the Welsh Ministers, makes the following Order.

Citation and commencement

1. This Order may be cited as the Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2014 and comes into force on 6th April 2014.

Amendments to the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009

2.—(1) The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009(b) is amended as follows.

(2) In paragraph (1) of article 2, after sub-paragraph (c)(iv) insert—

“(v) article 31 of the Regulatory Reform (Fire Safety) Order 2005(c);”.

(3) In that paragraph, after sub-paragraph (ea) insert—

“(eb) the service of an alterations notice under article 29 of the Regulatory Reform (Fire Safety) Order 2005;”.

(4) In that paragraph, after sub-paragraph (fa)(i) omit—

“(ii) regulation 7 of the Fish Labelling Regulations 2013(d);”.

(5) In that paragraph, after sub-paragraph (fa) insert—

“(fb) the service of an improvement notice under section 10 of the Food Safety Act 1990(e), as applied and modified by—

(i) regulation 7 of the Fish Labelling Regulations 2013(f),

(a) 2008 c.13.
(b) S.I. 2009/665, amended by S.I. 2013/2286.
(c) S.I. 2005/1541.
(d) S.I. 2013/1768.
(e) 1990 c.16.
(f) S.I. 2013/1768.

- (ii) regulation 5 of the Fish Labelling (Wales) Regulations 2013**(a)**,
- (iii) regulation 17 of the Fruit Juices and Fruit Nectars (England) Regulations 2013**(b)**,
- (iv) regulation 17 of the Fruit Juices and Fruit Nectars (Wales) Regulations 2013**(c)**;

(6) In that paragraph, after sub-paragraph (m)(iii) insert—

“(iv) article 30 of the Regulatory Reform (Fire Safety) Order 2005;”.

(7) In article 2(2)(b), omit “the Regulatory Reform (Fire Safety) Order 2005;”.

(8) In article 2(2)(b)(ii) after “the Licensing Act 2003”**(d)** insert “(except in relation to sections 146, 147, 147A, 148 and 151 of that Act)”.

(9) In article 3(b)(i) before “2(1)(d)” insert “2(1)(c)(v);”.

7th March 2014

Michael Fallon
Minister of State for Business and Energy
Department for Business, Innovation and Skills

(a) S.I.2013/2139.
(b) S.I. 2013/2775.
(c) S.I.2013/2750.
(d) 2003 c.17.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (S.I. 2009/665) (“the 2009 Order”), which was made under Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) (“the Act”).

Part 2 of the Act applies where a person (“the regulated person”) carries on an activity in the areas of two or more local authorities and each of those authorities has the same “relevant function” in relation to that activity. Part 2 enables a local authority to be nominated by the Secretary of State as the “primary authority” for the exercise of that “relevant function” in relation to the regulated person. “Relevant function” is defined in section 24. It covers particular regulatory functions of local authorities, including statutory functions of giving guidance and functions relating to the enforcement of statutory restrictions or requirements affecting activities such as the provision of goods and services. Where a primary authority has been nominated, section 28(1)-(4) of the Act requires other local authorities to notify the primary authority when they propose to take “enforcement action” against the regulated person pursuant to the “relevant function”. Where the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority, the primary authority may direct the other local authorities not to take that action.

The 2009 Order, made under sections 28(6) and 29(1) of the Act, specifies action which is and is not to be regarded as “enforcement action” for the purposes of Part 2 of the Act. Article 3 of the 2009 Order also prescribes circumstances in which the notification procedure under section 28 does not apply. Articles 2(1), (2), (3) and (6) of the present Order amend the 2009 Order by adding the following statutory enforcement actions under the Regulatory Reform (Fire Safety) Order 2005:

- an alteration notice
- an enforcement notice
- a prohibition notice

Therefore these notices are to be regarded as “enforcement actions” for the purposes of Part 2 of the Act.

Article 2(5) of the present Order adds a new category of improvement notice which are those served under section 10 of the Food Safety Act 1990 as applied and modified by other legislation. The new category contains improvement notices served under section 10 as applied and modified by regulation 7 of the Fish Labelling Regulations 2013 and regulation 5 of the Fish Labelling (Wales) Regulations 2013. The category also contains improvement notices served under section 10 as applied and modified by regulation 17 of the Fruit Juices and Fruit Nectars (England) Regulations 2013 and regulation 17 of the Fruit Juices and Fruit Nectars (Wales) Regulations 2013. This means that these improvement notices are now ‘enforcement action’ for the purposes of Part 2 of the Act.

Article 2(4) of this Order has omitted the existing listing of regulation 7 of the Fish Labelling Regulations 2013 in order to list it consistently and in the same category as the Fruit Juices and Fruit Nectars (England) Regulations 2013.

It should be noted that improvement notices served under section 10 of the Food Safety Act where they have not been modified by other legislation are still regarded as ‘enforcement action’ for the purposes of Part 2 of the Act. This is provided for in the existing stand alone reference to section 10 of the Food Safety Act 1990 in article 2(1)(f)(i) of the 2009 Order.

Articles 2(7) and (8) amend article 2(2)(b) of the 2009 Order. That provision specifies action which is not to be regarded as enforcement action for the purposes of Part 2 of the Act. Article 2(7) of this Order now amends article 2(2)(b)(i) of the 2009 Order by removing the specific exclusion of the Regulatory Reform (Fire Safety) Order 2005. Moreover Article 2(8) of this Order amends article 2(2)(b)(ii) of the 2009 Order in relation to the Licensing Act 2003. This amendment has the effect that any action taken by a local authority to enforce the listed criminal

offences in the Licensing Act 2003 connected with the under-age sale of alcohol will now constitute “enforcement action” for these purposes.

Article 2(9) of this Order amends Article 3 of the 2009 Order by including a notice made under section 31 of the Regulatory Reform (Fire Safety) Order 2005 (“a prohibition notice”). This means that although the section 31 prohibition notice is an enforcement action for the purposes of the Act, it is not subject to the pre-notification requirements under section 28(1) to (4) of the Act.

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