
Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

4th December 2008

Report of the Director of Neighbourhood Services

Regulatory Enforcement and Sanctions Act

Summary

1. To advise Members of the implications of the Regulatory Enforcement and Sanctions Act.

Background

2. The Regulatory Enforcement and Sanctions Act 2008 (RESA) received Royal Assent on 21 July 2008.
3. The following sections of RESA came into force on 1st October 2008:
 - Part 1, which establishes the Local Better Regulation Office (LBRO) as a statutory body
 - Part 3, which makes provision for regulators to adopt a variety of civil sanctions as an alternative to criminal prosecution and
 - Part 4, which allows the Secretary of State to place a duty on regulators not to impose unnecessary burdens.
4. Part 2 will come into force on 6 April 2009. Part 2 of RESA establishes the Primary Authority scheme (see later for definition). The effective operation of this scheme requires a statutory instrument (secondary legislation) which will address issues such as the definition of enforcement action and exclusions from the requirement to notify the Primary Authority before any enforcement action can take place. The Department for Enterprise and Regulatory Reform (BERR) published a consultation document of the proposed scope of this secondary legislation in September 2008.

Local Better Regulation Office

5. LBRO is a non-departmental public body, accountable to the Department of Business, Enterprise and Regulatory Reform through the Better Regulation Executive. LBRO's role is to improve local authority enforcement of environmental health, trading standards and licensing. Its purpose is to reduce burdens on businesses that comply with the law while targeting those who flout it.

6. LBRO's overall aim is to secure the effective performance of local authority regulatory services in accordance with the principles of better regulation. Its focus is to ensure that inspection and enforcement are based on an assessment of risk, so that businesses are supported and regulatory resources are focused on those areas that most deserve tougher scrutiny.
7. RESA has imposed certain legal responsibilities on LBRO:
 - Providing guidance to local authorities on regulatory services
 - Advising ministers about local regulatory reform
 - Investing in projects to improve local regulation
 - Updating the list of national enforcement priorities for English authorities
 - Setting up and running the Primary Authority scheme
 - Signing Memoranda of Understanding with five national regulators - Food Standards Agency, Office of Fair Trading, Health and Safety Executive, Environmental Agency and the Gambling Commission.

Civil Sanctions

8. RESA gives regulators, including local authorities, access to new powers to impose administrative sanctions against businesses. However, these powers are not available until a minister has granted them through secondary legislation.
9. BERR have stated that the new administrative sanctions are being introduced in order to provide regulators with a more consistent, flexible and proportionate set of sanctions to use when dealing with regulatory non-compliance. The penalties are civil and are designed to give regulators an option that is not as time-consuming or risky as taking criminal prosecutions.
10. Regulators who are given the power will be able to impose fixed or variable penalties on organisations which they believe are behaving unacceptably. RESA also potentially gives regulators the power to order organisations to stop certain behaviour or even take steps to restore a situation to how it was before the organisation broke any regulations.

Primary Authority Scheme

11. The stated aim of the Primary Authority scheme is to deliver consistency in local regulation. To achieve this any company trading across council boundaries in the scheme is guaranteed access to advice, through the creation of legal partnerships with local regulators.

12. These partnerships can cover the full range of regulatory services or specific functions, such as health and safety, food safety or product labelling.
13. A primary authority will be responsible for liaising with other councils to ensure that inspection and enforcement action reflects the advice given. It can work with its business to produce a national inspection plan, giving guidelines to other councils to avoid unnecessary checks and tests.
14. The scheme also intends to provide a safety net to ensure that local authorities are consistent in the way they regulate. Before a local authority starts imposing sanctions it must check to see whether a company has acted in accordance with the advice given, reducing unwarranted legal action.
15. The question of resourcing the partnership is up to the businesses and councils concerned. It is proposed that a primary authority will be able to recover the costs of providing this service from the business. LBRO will register partnerships, provide guidance and have indicated they will help resolve any disputes.
16. As of 1 November 2008 no York based businesses have indicated they wish to enter into a formal Primary Authority partnership arrangement with City of York Council.

Consultation

17. Not applicable.

Options

18. Not applicable as members are being asked to note the content of the report.

Analysis

19. Not applicable.

Corporate Priorities

20. RESA has the potential to impact on all areas of council activity.

Implications

21. **Financial:** There are no financial implications associated with this report.
22. **Human Resources:** There are no Human Resources implications associated with this report.
23. **Equalities:** There are no equalities implications associated with this report.
24. **Legal:** There are no legal implications associated with this report

- 25. **Crime and Disorder:** There are no crime and disorder implications associated with this report
- 26. **Information Technology (IT):** There are no IT implications associated with this report.
- 27. **Other:** There are no other implications associated with this report.

Risk Management

- 28. There are no known risks associated with this report.

Recommendations

- 29. That the Advisory Panel advise the Executive Member to notes the contents of this report.
- 30. Reason: so that the Executive Member is advised of the potential changes to the delivery of local authority regulatory services thought the introduction of the Regulatory Enforcement and Sanctions Act 2008.

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Report Approved

Date 06/11/08

Specialist Officer Implications: None

Wards Affected:

All

Background Papers:

Regulatory Enforcement and Sanctions Act 2008