

Bradford Chamber Networking – Environmental Talk

The Regulatory Enforcement and Sanctions Act 2008

Introduction:

The Act is primarily aimed at local authorities, national regulators businesses and consumer groups. It is intended to provide assistance in understanding the provisions within the Act.

1. Why is it Needed

Regulation provides essential protection to society and brings invaluable benefits. Regulation ensures that our areas are clean, our medicines are safe and that the rights of citizens and workers are protected. It helps ensure that businesses treat customers fairly while not standing in the way of effective competition which provides greater choice of value for money for consumers.

However businesses and frontline public workers and third sector workers complain about the time they spend on Regulation and the many ways in which they find the rules frustrating.

Better regulation promotes efficiency, productivity and value for money. Proportionate regulation and inspections can help drive up standards and deliver outcomes whether in the form of public services, better environment for business or driving forward economic reform.

2. The Hampton Review – Reducing Administrative Burdens: Effective Inspection and Enforcement

This concluded while there were many positive aspects to the work of local authority trading standards and environmental health services, there remained wide variations and inconsistencies in the application of national standard set in legislation. It was found

that regulators penalty regimes were cumbersome and ineffective and recommended that comprehensive review of these regimes should take place. The review found that many regulators sanctioning regimes were over reliant on criminal prosecution and lacking flexibility. Recommendations were made to ensure that regulators have access to a flexible set of sanctioning tools.

3. How Does the Act Help?

The government committed themselves to implement the Hampton Agenda. The Act delivers three distinct policy areas in four parts.

Part 1 has established the Local Better Regulation Office ("LBRO") to promote adherence to the principles of better regulation amongst local authorities and co-ordination between them and central government. It brings financial benefits to businesses through increased clarity and guidance to local authorities helping them work together to keep the burdens of regulation on compliant business to a minimum.

Part 2 seeks to secure co-ordination and consistency of regulatory enforcement by local authorities by establishing a primary authority scheme. Businesses will operate in more than one local authority area that choose to have a primary authority partnership will benefit from improved consistency of advice and enforcement across local authority trading standards environmental health licensing and fire rescue services.

Part 3 gives regulators an extended alternative of civil sanctions as more proportionate and flexible response to cases of regulatory non-compliance, normally dealt with in the criminal courts. This will allow regulators to remove the financial benefit gained by businesses that deliberately seek an advantage through non-compliance with their regulatory obligations whilst helping to secure increased compliance.

Part 4 quotes a duty that requires regulators to review their functions, not to impose burdens and unless this proportionate or impracticable, to remove burdens that are found to be unnecessary. Regulators that are subject to the duty must report on progress annually. The duty applies to the following:-

- Gas and electricity market authority (OFGEM)
- Office of Fair Trading (OFT)
- Office of Rail Regulation (ORR)
- The Postal Services Commission (Postcom)
- Water Services Regulation Authority (OFWAT)

4. How does the Act Apply across the UK?

The Local Better Regulation Office applies only to England and Wales. The Act came into course on 01 October 2008 however part 2 latest primary authority scheme was to follow on 06 April 2009.

5. LBRO

LBRO was incorporated as a government owned limited company in May 2007. This was following the commencement of the Regulatory Enforcement and Sanctions Act on 01 October 2008, which now operates as an executive non-departmental public body, accountable to the department for business, innovation and skills (BIS) through the Better Regulation Executive.

The idea is to enhance the support and effective performance in environmental health, fire safety, licensing and trading standards. The aim is to reduce the regulatory burdens on businesses while maintaining or increasing the current levels and environmental protection.

6. Background

Protection:

The question we ask is who checks that the air is clean, the food is fit to eat, workplaces are safe and companies trade fairly?

Answer:

Council authorities, they do this through their regulatory services. The LBRO works with Councils to advise on and apply the rules. The mission is to ensure the public services are:-

- Accountable – activities should be open to public scrutiny, with clear and accessible policies and fair and efficient complaints procedures
- Targeted – resources should be focused on managing high risk enterprises, reflecting local need and national priorities.
- Proportionate – enforcement action should reflect the level of risk to the public and the penalty should relate to the seriousness of the offence.
- Consistent – advice to businesses should be reliable and robust and application in different parts of the country. Services should operate in similar ways in similar circumstances, there needs to be a level of a uniformed approach.
- Transparent – businesses should be able to understand what is expected from them by local regulators and what they can anticipate in return.
- Primary authority – from April 2009 the LBRO was responsible for this new scheme, which ensures that businesses trading across Council boundaries are regulated in a consistent way. It comprises the legal right for the first time to form a partnership with a primary authority, providing robust and reliable advice on compliance that other Councils must take into account and inspection plans to guide and co-ordinate.

REGULATORY ENFORCEMENT AND SANCTIONS ACT

Introduction

Background

The Regulatory Enforcement and Sanctions Act was introduced in July 2008 and legislates to ensure the effective performance of local authority regulatory services. The Act also creates civil sanctions in relation to regulatory offences which can be imposed by the Regulator, without spending time and resources associated with bringing criminal proceedings. The Act provides for new types of civil financial penalty which imposes a fixed fee for a breach. There was also a discretionary penalty which can be:-

- Variable monetary penalty which is designed to remove any financial gain from committing the offence; or
- A compliance notice which requires that steps are taken to ensure the offence does not happen again; or
- A restoration notice which requires the business to take specified steps to remedy the damage caused by the offence

A stop notice can also be issued, which prevents the business carrying on until steps have been taken to comply. In addition an enforcement undertaking enables a business to give an undertaking to take one or more corrective actions. These penalties come direct from the Regulator and are the product of complex provisions.

The impact of these Regulatory Penalties can be significant for business and can involve significant clean-up costs or the cost of increased safety measures.

The above civil sanctions have significant advantages for a business faced with regulatory action:-

- There is now a serious alternative to criminal penalties avoiding the cost and stigma of being convicted

- The new scheme offers more transparency for those working in regulated areas
- The regulators must publish guidance and report annually on their activities
- There is also the advantage of an emphasis on restorative rather than punitive procedure, allowing the authorities to ensure that businesses act within the Regulations.

This new framework means that there are now more options available to the regulators and correspondingly there are more opportunities to avoid prosecution for a breach of regulations. However, in order to take advantage of these new opportunities, it is necessary to instruct a firm of solicitors who have experience in negotiating with regulators in order to achieve the best results.