EXPLANATORY MEMORANDUM TO

THE REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008 (AMENDMENT TO SCHEDULE 3) (ENGLAND) ORDER 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument extends the scope of the Primary Authority scheme by adding Part 2A of the Public Health (Control of Disease) Act 1984 as it applies in relation to England to Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008. The Primary Authority scheme provides a statutory framework for a business to form a partnership with a local authority in order to receive support in relation to specific areas of regulation. Extending the scope of the Primary Authority scheme to include this regulatory area as it applies in relation to England will enable businesses to form Primary Authority partnerships with local authorities in respect of this regulatory area, including in the context of a future pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 The Minister for London and Parliamentary Under Secretary of State in the Department for Business, Energy and Industrial Strategy, Paul Scully, has made the following statement regarding Human Rights:

"In my view the provisions of the Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This statutory instrument is being made in order to widen the scope of the existing Primary Authority scheme to allow it to operate in respect of an additional regulatory area by adding Part 2A of the Public Health (Control of Disease) Act 1984 as it applies in relation to England to Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008 (RESA).

6.2 In order to extend the Primary Authority scheme to this new regulatory area, it is necessary to amend Schedule 3 of the RESA by way of an affirmative instrument under section 4(4)(a) of RESA. This statutory instrument effects the extension to the Primary Authority regime. This statutory instrument as a result will bring Part 2A of the Public Health (Control of Disease) Act 1984 as it applies in England within scope of RESA allowing Primary Authorities to issue advice on Part 2A of the Public Health (Control of Disease) Act 1984 and regulations made under it as they apply in England.

7. Policy background

What is being done and why?

7.1 This statutory instrument fulfils the policy intention of RESA by increasing the areas of regulation which Primary Authority partnerships can cover. It does this by amending Schedule 3 of RESA to bring within scope of the Primary Authority scheme Part 2A of the Public Health (Control of Disease) Act 1984, and regulations made under that Part, as they apply in England. Including this legislation within the Primary Authority scheme will ensure that the Primary Authority scheme delivers its potential benefits more widely, enabling business, local authorities and consumers to benefit from increased consistency in the delivery of regulations made under this legislation and further reducing the burdens for businesses.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The policy objectives of RESA include improving the local regulatory system by increasing consistency in the enforcement of regulation across two or more local authorities so as to reduce the burdens on business. It provides a statutory framework for a business to form a partnership with a local authority (a 'Primary Authority') in order to receive support in respect of a range of legislation. A Primary Authority can support a business in several ways: by issuing advice ('Primary Authority advice') that must be followed by other local authorities where the business operates ('enforcing authorities'); by co-ordinating enforcement action proposed against a business and assessing whether it is consistent with previous Primary Authority advice issued to the business; by developing an inspection plan, which sets out national priorities for routine inspection of the business and provides information about compliance policies which are in place. In addition, partnership working provides the basis for a more productive and proactive regulatory relationship, where the regulator knows and understands the business, and the business has confidence in the advice and guidance given.

Why is it being changed?

7.3 The importance of adding Part 2A of the Public Health (Control of Disease) Act 1984 as it applies in relation to England to Schedule 3 of RESA and hence to its inclusion under the Primary Authority scheme is evident from the fact that in 2020 approximately 46,000 businesses with an existing partnership under the Primary Authority scheme were receiving informal advice on regulations made under Part 2A of the Public Health (Control of Disease) Act 1984. The amendment to Schedule 3 will enable these businesses to access consistent and reliable advice on compliance in respect of regulations made under Part 2A of the Public Health (Control of Disease) Act 1984.

7.4 In addition, business stakeholders, local authorities and trade associations in England have requested that this change be made, to enable a more uniform approach to the interpretation and application of regulations made under Part 2A of the Public Health (Control of Disease) Act 1984. For example, in November 2020 the British Retail Consortium representing over 170 major retailers wrote to the then Business Secretary, Alok Sharma, requesting that Part 2A of the Public Health (Control of Disease) Act 1984 be brought within the Primary Authority scheme.

What will it do now?

7.4 In the event of a future public health emergency, businesses in England which enter into Primary Authority partnerships will be able to obtain assured advice from local authorities on compliance with relevant regulations made under Part 2A of the Public Health (Control of Disease) Act 1984. This will enable these businesses to access consistent and reliable advice on compliance in respect of regulations made under Part 2A of the Public Health (Control of Disease) Act 1984, thereby helping preparations in respect of any future public health emergency, including in the context of a future pandemic.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 The Government did not undertake a public consultation as there is no statutory or common law duty to consult on the amendment, nor was it considered necessary to consult voluntarily.

10.2 The Department has undertaken engagement with a cross representation of stakeholders, including local authorities and other government departments, namely DHSC and MHCLG. The engagement with DHSC in January and February 2021 concerned whether BEIS would take the lead in respect of this instrument and whether the extension to Primary Authority would be narrow and refer only to regulations in respect of Covid-19 made under Part 2A of the Public Health (Control of Disease) Act 1984, or whether the extension would not be so restricted.

10.3 There has also been engagement with the Welsh Government on this statutory instrument, to explore whether the Welsh Government would wish for this statutory instrument to apply in Wales. In a letter dated 19 February 2021, the Welsh Minister for Environment, Energy and Rural Affairs, wrote to all local authorities in Wales encouraging them to 'voluntarily recognise' the Primary Authority scheme in relation to Covid regulations made under the Public Health (Control of Disease) Act 1984. The Welsh Government decided not to apply this statutory instrument to Wales; the Welsh First Minister subsequently declined to consent to the amendment on 2 July 2021.

11. Guidance

11.1 Specific guidance is not required in respect of this statutory instrument.

11.2 Under section 30A of RESA, the Government has published statutory guidance in respect of the Primary Authority scheme.

11.3 The extension of the scope of the Primary Authority scheme to include Part 2A of the Public Health (Control of Disease) Act 1984 as it applies in relation to England will be published to local authorities in England.

12. Impact

12.1 The impact on business, charities or voluntary bodies is an expected net benefit to business in England of approximately £20.9 m over 2021 to 2030.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the impact of this instrument on business in England is an expected net benefit of approximately £20.9 m over 2021 to 2030. It does not impose any significant cost on the public sector.

12.4 Basing the likelihood of a pandemic and its severity on influenza pandemics experienced in the last 100 years, it is estimated that a severe pandemic of high mortality will occur at a 2% rate per year, and a less-severe pandemic of low mortality will occur at a 3% rate per year, in total, a 5% likelihood of a pandemic in a given year.

12.5 Based on the above likelihoods, over 2021 to 2030, it is expected that approximately £6.7m in costs will be spent in the event of severe pandemics and £8.3m in costs will be spent in the event of less-severe pandemics. In total, and including £0.6m in setup costs, the expected cost is approximately £15.7m over 2021 to 2030.

12.6 Over the same period, it is expected that approximately £16.4m in benefits will be received in the event of severe pandemics and £20.2m in benefits will be received in the event of less-severe pandemics. The total expected benefits are therefore around £36.6m over 2021 to 2030.

12.7 Overall, the proposals will provide an expected net benefit for businesses in England at approximately £20.9m over 2021 to 2030.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. As the Primary Authority scheme is voluntary, and businesses will only join the scheme if they expect it to deliver a net benefit for them, any impact felt by small business would be as a result of a decision by them to enter into a Primary Authority partnership to realise the benefits of the Primary Authority scheme.

13.3 The basis for the final decision on what action to take to assist small businesses was that the legislation is permissive, and participation by businesses in Primary Authority partnerships is voluntary.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that a review would not be proportionate because the instrument introduces a net benefit for businesses, who will

only be involved in the Primary Authority scheme on a voluntary basis and the instrument does not involve any change in policy.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for London and Parliamentary Under Secretary of State in the Department for Business, Energy and Industrial Strategy, Paul Scully, has made the following statement, "The Department has not included a statutory review clause. This is because a statutory review would be disproportionate when taking into account that the statutory instrument introduces a net benefit for business who will only be involved in the Primary Authority scheme on a voluntary basis. Furthermore, the statutory instrument does not involve any change in policy. A statutory review would also potentially undermine the desired intent that businesses have available to them consistent advice in the event of a future pandemic or other public health emergency."

15. Contact

15.1 Jas Dhillon at the Department of Business, Energy and Industrial Strategy, telephone: 0121 221 2474 or email: Jas.Dhillon@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Elizabeth Thornhill, Deputy Director for OPSS Regulation and Legal, at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully, the Minister for London and Parliamentary Under Secretary of State in the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.