EXPLANATORY MEMORANDUM TO

THE REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008 (AMENDMENT OF SCHEDULE 3) ORDER 2013

2013 No. 2215

1. This explanatory memorandum has been prepared by The Department of Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument extends the scope of the Primary Authority scheme by adding the following regulatory areas to Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008: Welsh Regulations on single use carrier bag charging; regulations concerning sunbed tanning; and the Housing Health and Safety Rating System. 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 Primary Authority to these regulatory areas will enable businesses to form primary authority partnerships with local authorities which cover these regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The instrument is being made in order to widen the scope of the existing Primary Authority scheme to allow it to operate with respect to additional regulatory areas by adding legislation to Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008. The legislation to be added to the coverage of the scheme was either created since the Act was passed, or was an area where further policy work was required.

4.2 It is the first time the affirmative power within the Regulatory Enforcement and Sanctions Act 2008 has been used to amend Schedule 3.

4.3 In order to extend the Primary Authority scheme to these new regulatory areas, it is necessary to amend both Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 ("RESA") by way of an affirmative instrument under section 4(4)(a) RESA and the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 ("CORE") by way of a negative instrument under section 28(6) RESA. There will therefore be a later negative instrument which amends the definition of "enforcement action" to include some actions which may be taken in relation to the Housing Health and Safety Rating System and Welsh regulations

on single use carrier bags. Under section 28 of RESA, any proposed "enforcement action" must be notified to the Primary Authority. The two instruments taken together effect the extension to the Primary Authority Scheme. It is planned that the negative instrument will be laid later in the year but it is intended that it will come into force on the same date as this instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales

6. European Convention on Human Rights

The Rt Hon. Michael Fallon MP has made the following statement regarding Human Rights:

In my view the provisions of the Regulatory Enforcement and Sanctions Act 2008 (Amendment of Schedule 3) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy objectives of the Regulatory Enforcement and Sanctions Act 2008 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 relation to a range of regulations. A Primary Authority can support a business in several ways: by issuing advice that must be followed by other local authorities where the business operates ('enforcing authorities'); by coordinating enforcement action proposed against a business and assessing whether it is consistent with previous 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 the compliance policies which are in place. Lastly, 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.

7.2 The Primary Authority scheme has provided a successful way for businesses to reduce the burden of complying with regulation. Businesses report reductions in staff time and costs associated with regulatory compliance. They have confidence and certainty as a result of primary authority advice, allowing them to plan their investment while managing their regulatory risk. The scheme saves time for enforcing authorities by removing duplication, while primary authorities can recover the cost of providing enhanced support from business. The Government is committed to ending the culture of tick box regulation. The Primary Authority scheme helps achieve this by promoting a collaborative approach where regulators work with businesses to deliver improved protection while minimising duplication and burdens. The Government consulted on including these additional areas of regulation within the Primary Authority scheme in the consultation *Extending the Range of Regulations Covered by Primary Authority*, December 2012-January 2013. Following consultation, the Government Response, April 2013, committed to this extension. As the Primary Authority scheme is statutory, legislation is required to effect this.

7.3 This statutory instrument fulfils the policy intention of the Regulatory Enforcement and Sanctions Act 2008 by increasing the areas of regulation which Primary Authority partnerships can cover. It does so by amending Schedule 3 of RESA to add the following legislation: Part 1 of the Housing Act 2004, the Single Use Carrier Bags Charge (Wales) Regulations 2010 and the Sunbeds (Regulation) Act 2010. These pieces of legislation cover the Housing Health and Safety Rating System (which concerns health and safety in privately let properties), Welsh Regulations on single use carrier bag charging, and regulations for businesses relating to sunbed tanning. As previously noted, the extension relates to legislation enacted since the original act, or where further policy work was required to ensure the practical operation of the scheme. Including these regulations within Primary Authority will ensure that the scheme delivers its potential benefits more widely, enabling businesses, local authorities and consumers to benefit from increased consistency in the delivery of these regulations and further reducing the burdens for businesses.

8. Consultation outcome

8.1 The *Government Response to the Consultation on Transforming Regulatory Enforcement*, published in December 2011[1], committed to extending Primary Authority in three ways:

- strengthening inspection plans to deliver earned recognition for business;
- allowing more organisations to participate in order to enable small businesses to benefit from it; and
- including specific policy areas within the scheme, which are currently outside of its scope.

8.2 The consultation, *Extending the Range of Regulations Covered by Primary Authority*, concerned the third of these commitments. The consultation took place between the 13th December 2012 and 24th January 2013. It sought views on implementing the extension of Primary Authority to include the age-restricted sale of gambling. Additionally, Government consulted on whether to include the following within Primary Authority:

- the Housing Health and Safety Rating System;
- sunbed tanning; and
- Welsh regulations on carrier bag charging.

8.3 There were 62 responses to the consultation from a variety of organisations. Response rates differed for the areas of extension considered.

8.4 The full Government response to the consultation can be found at: http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-777-pa-consultation-response.pdf

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31428/11-1408-transforming-regulatory-enforcement-government-response.pdf

9. Guidance

9.1 The Government provides statutory guidance under section 33 RESA and informal advice on the Primary Authority scheme. Updated statutory guidance will shortly be consulted upon, and contains advice on forming partnerships for Welsh specific regulation, such as the Single Use Carrier Bags Charge (Wales) Regulations 2010. The extension of the scope of Primary Authority to include additional legislation will be publicised to local authorities and businesses.

10. Impact

10.1 The impact on business, charities or voluntary bodies is positive. The extensions to the Primary Authority scheme are permissive in nature in that they allow but do not force businesses to participate in a Primary Authority partnership, or to incur costs. Therefore business only engages where it is of benefit to them. Business savings come from improved consistency of advice, coordination of enforcement action and the development of inspection plans, all of which reduce the burden of regulatory enforcement on them.

10.2 The impact on the public sector is positive as the annual net impact on local authorities is positive. By reducing duplication for enforcing authorities, and because the legislative framework allows primary authorities to recover the costs of partnership from the business, the scheme enables local authorities to target their resources more effectively. Local authorities can choose whether to become primary authorities and the annual net impact on primary authorities would be zero if they fully cost recovered, which the legislative framework allows them to do.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Businesses are free to engage in partnerships where it is of benefit to them to do so. Extending the scope of Primary Authority to this legislation will allow small businesses which assess it is of benefit to them a further tool to reduce the burden of complying with this legislation. As the scheme is voluntary, any impact felt by small business would be as a result of a decision by them to enter into a partnership to realise the benefits of the Primary Authority scheme.

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

12. Monitoring & review

12.1 Primary Authority as a whole is evaluated and monitored on a regular basis. It is currently being externally evaluated and a report will be published in 2013. A post-implementation review

for Primary Authority as a whole will be undertaken in 2014/15 and a further post-implementation review for the extension associated with this Instrument will be undertaken in October 2016.

13. Contact

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