

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

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

Monday 29 November 2021

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Friday 3 December 2021

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The Committee consisted of the following Members:

Chair: DAME ANGELA EAGLE

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| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Scully, Paul (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| Ali, Rushanara (<i>Bethnal Green and Bow</i>) (Lab) | Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | Stafford, Alexander (<i>Rother Valley</i>) (Con) |
| † Bowie, Andrew (<i>West Aberdeenshire and Kincardine</i>) (Con) | † Vaz, Valerie (<i>Walsall South</i>) (Lab) |
| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Costa, Alberto (<i>South Leicestershire</i>) (Con) | Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | |
| † Fletcher, Mark (<i>Bolsover</i>) (Con) | Jonathan Finlay, <i>Committee Clerk</i> |
| † Kearns, Alicia (<i>Rutland and Melton</i>) (Con) | |
| † Onwurah, Chi (<i>Newcastle upon Tyne Central</i>) (Lab) | |
| † Rees, Christina (<i>Neath</i>) (Lab/Co-op) | † attended the Committee |

First Delegated Legislation Committee

Monday 29 November 2021

[DAME ANGELA EAGLE *in the Chair*]

Draft Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021

4.30 pm

The Chair: Before we begin, I remind Members that they are expected to wear face coverings and to maintain distancing as far as possible. That is in line with current Government guidance and that of the House of Commons Commission. Please give each other and members of staff space when seated, and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week if coming on to the parliamentary estate. That can be done either at the testing centre in Parliament or at home. Ministers and Members should send their speaking notes by email to hansardnotes@parliament.uk. Similarly, officials in the Gallery should communicate electronically with Ministers.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I beg to move,

That the Committee has considered the draft Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021.

It is a pleasure to serve under your chairmanship, Dame Angela. We know the importance of helping businesses to prepare for and efficiently respond to a public health emergency, and the point of the order is to help businesses in that way in the event of a future public health emergency. Key to that will be reducing regulatory burdens imposed on businesses due to regulations introduced to control the public health emergency. The order adds

“Public Health (Control of Disease) Act 1984 (c.22), Part 2A as it applies in England”

to schedule 3 to the Regulatory Enforcement and Sanctions Act 2008. It brings part 2A, and regulations made under part 2A as they apply in England, within the scope of the primary authority scheme. As a result, businesses in England that participate in the primary authority scheme will now be able to receive consistent advice on meeting the regulatory requirements imposed by regulations made under part 2A through a single point of contact.

Part 2A provides, among other things, that regulations can be made to prevent, protect against, control or respond to the spread of infection or contamination, including radiation, which presents or could present significant harm to human health, including by conferring functions on local authorities. It provides for a local authority to apply to a justice of the peace for the making of a time-limited order to reduce or remove the risk that a contaminated or infected person, thing or premises who or that poses, or could pose, significant

harm to human health infects or contaminates others. It also provides for regulations to be introduced promptly under an emergency procedure.

To be within the scope of the primary authority scheme, legislation has to be in an enactment specified in schedule 3 or be made under an enactment specified in schedule 3, or be made under section 2(2) of the European Communities Act 1972 and related to a particular specified matter. Accordingly, to bring part 2A, and any enactments made under part 2A as they apply in England, within the scope of the scheme, it has to be added to the list of enactments in schedule 3. Under section 4(4) of RESA, that needs to be done by an order of the Secretary of State.

RESA establishes a statutory framework for a business to form a partnership with a local authority—I will call it a primary authority from now on—to receive support and tailored advice from that primary authority in respect of complying with legislation that comes within the scope of the scheme. A business is entitled to rely on primary authority advice received in its dealings with other local authorities, so the business avoids the cost and regulatory burdens associated with the inconsistent interpretation and application of the law by different local authorities. That gives businesses confidence in the regulations being applied consistently, allowing and encouraging them to invest resources in complying with them, such as through staff training and putting policies in place.

Consequently, the public are better protected, as businesses find it easier to comply with regulations. In addition, local authorities can access, through a central primary authority register, primary authority advice that is given to a business in respect of a regulation. That enables the local authorities to avoid duplication of enforcement and to target high-risk areas. Where a local authority proposes to take enforcement action against a business that participates in the scheme, the primary authority will review the proposed enforcement action and consider whether it is consistent with the primary authority advice that it has previously given to the business.

Adam Afriyie (Windsor) (Con): I thank the Minister for giving way. I have been here a long time—16 years—and I do not think I have ever seen a regulation that is so impenetrable in its actual actions. I want to give the Minister a bit of time to inject some inspiration. I wonder if he can give an example of how the regulation might work for a real business in a real scenario so that we can get to grips with what is actually being laid out. It feels a bit like something from Sir Humphrey—it is utterly obscure and impenetrable at the moment.

Paul Scully: It is indeed a technical scheme. On primary authorities, instead of having businesses go to the local authority for any area it might operate in, the regulation allows businesses to go to one local authority that has been appointed to tackle such a scheme. It already happens in various areas, such as trading standards. The regulation brings the particular public health order within the scope of the overarching scheme of primary authority. One local authority can effectively take the lead in interpreting and setting out the enforcement approach for public health emergencies. Unfortunately, the complexities of the technicalities that underlie the scheme mean that it gets technical very quickly.

Valerie Vaz (Walsall South) (Lab): Who designates a primary authority?

Paul Scully: That is a good question, and I will come back to it in a second. We have worked together to come to this point, and businesses support what we are doing here. The regulation has been a long time in the making. Local authorities face a lot of challenges in interpreting at pace the regulations made under part 2A to reduce the impact of the covid-19 pandemic, as well as the associated burdens experienced by businesses in trying to comply with all of that. Business stakeholders, local authorities and trade associations have offered strong support for bringing part 2A within the scope of the scheme. In November 2020, the British Retail Consortium, which represents more than 170 major retailers, wrote to the then Business Secretary—now the COP26 President—to request that part 2A be brought within scope. The context for that request was that, in 2020, around 46,000 businesses with an existing primary authority partnership received informal advice on coronavirus regulations made under part 2A.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I thank the Minister for giving way and for making excellent progress in explaining the legislation. First, can he clarify that the regulation is about businesses that have locations or sites in multiple primary authorities, and would therefore be subject to competing advice? Secondly, does the regulation allow the businesses to choose the primary authority they receive advice from, or is that designation—on the point made by my right hon. Friend the Member for Walsall South—made by somebody else?

Paul Scully: It is exactly as the hon. Lady describes: the regulation concerns businesses that operate in different areas. The Secretary of State will designate the primary authority.

I can give one example of where the provisions have previously helped simplify the enforcement and interpretation of regulations, which concerns the primary authority for supermarket health and safety—the covid expert panel—which is made up of several primary authority officers and their business partners. The panel promoted active engagement with local authority enforcement teams and external bodies under health and safety legislation, which is in scope of the primary authority scheme, and remained at the forefront of their commitment to compliance in order to ensure that consistency.

Yes, the Secretary of State will designate the primary authority, but it gives businesses that are operating in multiple areas the confidence to know they will have a single set of rules to follow that are consistent, and enforcement will be consistent as well. That is what I mean about the fact that 46,000 businesses with an existing primary authority partnership are getting informal advice—that is about as consistent as it gets. That is why the British Retail Consortium and other business stakeholders are keen to ensure in any future public health emergency that businesses can get that primary advice, rather than having to rely on different interpretations across the board. We know the current pandemic is unlikely to be the last public health emergency that the country will face. It is therefore important that the

order ensures primary authority advice can be given in respect of legislation made under part 2A in the event of future public health emergencies.

In conclusion, as I have said, the order widens the scope of the existing scheme, enabling businesses to receive primary authority advice on meeting regulatory requirements introduced by regulations made under part 2A through a single local authority. It reduces the regulatory burden on businesses in England when complying with regulations brought in to control and contain a public health emergency, with the result that the public are better protected and local authorities can regulate more efficiently and effectively. I urge the Committee to approve the order.

4.41 pm

Chi Onwurah: It is a great pleasure to serve under your chairship on this important piece of legislation, Dame Angela. As the Minister has set out, the legislation is being considered with a future pandemic in mind. It seeks to amend schedule 3 of the Regulatory Enforcement and Sanctions Act 2008, or RESA, to bring part 2A of Public Health (Control of Disease) Act 1984 within the scope of the primary authority scheme. As the Minister set out, the scheme is a framework for a business, particularly one with multiple locations, to form a partnership with a specific local authority, which is therefore the primary authority, to receive support on particular pieces of legislation.

A primary authority can support a business in many ways, such as by issuing primary authority advice that must be followed by other local authorities where the business operates, which are therefore deemed the enforcing authorities; by co-ordinating enforcement action proposed against the business and assessing whether it is consistent with a previous primary authority advice issue to the business; or by developing an inspection plan, which sets out national priorities for routine inspection of a business and provides information about compliance policies that are in place. In other words, it provides a formal way for a business to receive local advice on particular areas.

The legislation extends the advice that can be provided to include health protection regulations of the type brought in during the covid lockdown. In the event of a future pandemic, that would allow businesses to receive consistent and reliable advice on complying with the regulations from their local authorities. The Regulatory Enforcement and Sanctions Act was introduced in 2008 under Labour. It established the primary authority scheme, which allowed local authorities and fire and rescue authorities to become primary authorities.

Through the schemes, businesses could partner with primary authorities and receive advice on meeting environmental, health, trading standards or fire safety regulations through a single point of contact, rather than having to deal with different points of contact in different local authorities and each of the local authorities in which they might operate. The partnerships are available to any type of business, regardless of size or experience. Businesses can join the partnership directly, or they can belong to a trade association and benefit from a co-ordinated partnership. They are also able to engage in multiple partnerships, receiving advice on different regulatory areas.

[Chi Onwurah]

The 2008 Act allows businesses access to authoritative advice on areas of regulation, while allowing regulators to support local economic growth through stronger business relationships and more effective regulatory compliance. Businesses are only asked to cover the recovery costs of any advice they receive from a primary authority, allowing the Act in normal times to provide a cost-effective way of encouraging regulatory compliance. The amendment to schedule 3 seeks to add part 2A of the Public Health (Control of Disease) Act 1984 to the Regulatory Enforcement and Sanctions Act 2008. Basically, by doing so, it would allow primary authorities to advise businesses on public health measures.

Any measures that we can take to support businesses to keep their employees and customers safe, and to recover and continue through the pandemic, are important measures to take. Labour recognises that we need to do all we can to make life easier, not harder, for businesses, and to make sure that advice can be clear and consistent. Providing clarity and consistency is the job of Government.

Unfortunately, throughout the pandemic we saw businesses struggling with covid measures, particularly given the often confusing and chaotic advice handed to them by the Government. In July, the Government washed their hands of responsibility and passed the responsibility regarding face covering and NHS covid passes to businesses, with no consultation with either businesses or unions.

As I am sure all Members of this House have done, I have met and spoken with businesses and representatives of businesses during the pandemic who felt incredibly let down, as the Government seemed to pass the buck when it came to the responsibility for taking action. Those businesses felt that they were not equipped to make public health decisions. They needed clarity and consistency in order to be able to plan ahead. There were also concerns about the lack of economic support for businesses and about the miscommunication in that regard. However, we cannot expect this piece of delegated legislation to do everything.

Our economic recovery has undoubtedly been weakened by the Government's mishandling of public health and economic measures, a situation that is compounded now by the lack of any clear long-term growth plan. Such a plan is urgently needed.

We note that the explanatory notes state that "business stakeholders, local authorities and trade associations in England have requested that this change be made"—as the Minister has said—

"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."

Giving businesses the opportunity to receive consistent and straightforward advice on public health issues will not only help to protect the public but will aid businesses in coping with any health-related regulatory changes.

I have just a couple of questions for the Minister. First, in relation to public health advice, is there expected to be any cost recovery from businesses for the cost of any advice they receive from a primary authority, and what discussions has he had with business organisations about this matter? I ask this question because the impact assessment outlines a potential net benefit to businesses of approximately £20 million over the next decade.

Secondly, as we have discussed, the Minister said that the Business Secretary will designate a primary authority. Could he set out that process in a little more detail? Will the Business Secretary designate a primary authority for each business that might benefit from a primary authority? In the past, concerns have been raised that businesses could shop around between local authorities to choose a primary authority whose advice and interpretation they felt they would most benefit from. I assume that that will not be the case, because the primary authority will be designated by the Business Secretary, as the Minister set out.

Finally, we note that the Welsh Government have chosen not to pass consent on this amendment, following a move earlier this year by the Welsh Government whereby they wrote to all local authorities to achieve a similar outcome through voluntary recognition of the primary authority scheme in relation to covid regulations. I am sure that the Government will continue to work alongside the Welsh Government and share experience about what is working well and what should be shared as good practice across our nations, and for consistency in planning where businesses may work across our four nations. Labour recognises the importance of the amendment in the draft regulations, and its potential to offer effective advice to business in any future health crisis. We therefore support this amendment being made to the Regulatory Enforcement and Sanctions Act.

4.50 pm

Paul Scully: Wales has public health delegated to it, and it has decided to go a different way. We will indeed work with the Welsh Senedd in ensuring that, even if we have a slightly different approach, we show a consistent face to business, because it is really important that businesses operating across Wales, Scotland, Northern Ireland and England have as much consistency as possible. As I said, the Secretary of State is indeed responsible for primary authorities, and provides the web-based primary authority register that supports the scheme. A business that receives advice from its primary authority, known as primary authority advice, is able to rely on that advice in its dealings with all local authorities by virtue of the fact that a local authority that proposes enforcement action against the business is required first to notify the primary authority.

That authority is then able to direct the local authority not to take a proposed action if the primary authority decides that it would be inconsistent with the original primary authority advice that it gave. That is what provides the certainty for businesses, but businesses can approach a local authority that has been working with the original primary authority that it may have sought enforcement action from or dealt with at an early stage. Ultimately, it will be the Secretary of State who is the arbiter to ensure that it is not just about shopping around for businesses, and that there is a level of control within this.

In terms of the business impact, over the period 2021-30 the expected one-off set-up costs for additional businesses to join primary authority schemes amounted to approximately £75,000 to £378,000. That is based on the likelihood of a public health emergency of 1% to 5% a year. That is 2,500-odd additional businesses a year that will be encouraged to form partnerships with a

primary authority on account of being able to receive primary authority advice in the event of a public health emergency.

In a typical business year, the median annual cost to businesses of receiving primary authority advice is approximately £2,105. That is weighted by the estimated use of primary authority advice on part 2A regulations at 25%, reflecting the fact that 75% of primary authority advice would not involve advising on them. In terms of what the monetary or other benefits to businesses would be, businesses would wish to join the primary authority scheme only if they expected it to deliver a net benefit to them in the first place. No business will be compelled to join any primary authority scheme. That is why, as

the hon. Member for Newcastle upon Tyne Central said, we expect including part 2A within the primary authority scheme to be a net benefit to business.

I have talked about the fact that the order brings within the scope of the primary authority scheme part 2A as it applies in England, as well as any enactment made under part 2A as it applies in England, which is really important for the reasons that I have outlined. I commend the order to the Committee.

Question put and agreed to.

4.54 pm

Committee rose.

