

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 20

PRIMARY AUTHORITY SCHEME: NEW SCHEDULE 4A TO RESA 2008

Commencement Information

- I1** [Sch. 3](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(c\)](#)
- I2** [Sch. 3](#) in force at 1.10.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 3\(b\)](#)

This is the Schedule 4A to be substituted for Schedule 4 to the Regulatory Enforcement and Sanctions Act 2008—

“SCHEDULE 4A

Sections 25B and 25C

REFERENCES TO THE SECRETARY OF STATE

PART 1

ENFORCEMENT ACTION BY PRIMARY AUTHORITY

- 1 (1) If the primary authority notifies the regulated person, or a member of the regulated group, under section 25B(2)(a) that it proposes to take enforcement action against the regulated person or the member, the regulated person or the member may, with the consent of the Secretary of State, refer the proposed enforcement action to the Secretary of State.
- (2) On a reference under sub-paragraph (1) the Secretary of State must—
 - (a) if satisfied as to the matters in sub-paragraph (3), direct the primary authority not to take the proposed enforcement action;
 - (b) otherwise, consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
 - (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
 - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State directs the primary authority not to take the proposed enforcement action, the Secretary of State may direct the primary authority to take some other enforcement action (and section 25B does not apply in relation to that other action).

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PART 2

ENFORCEMENT ACTION OTHER THAN BY PRIMARY AUTHORITY

Reference by an enforcing authority

- 2 (1) If the primary authority directs an enforcing authority under section 25C(4) not to take the proposed enforcement action, the enforcing authority may, with the consent of the Secretary of State, refer the proposed action to the Secretary of State.
- (2) On a reference under sub-paragraph (1) the Secretary of State must—
- (a) if satisfied as to the matters in sub-paragraph (3), confirm the direction;
 - (b) otherwise, revoke the direction.
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
 - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State confirms the direction, the Secretary of State may direct the enforcing authority to take some other enforcement action (and section 25C does not apply in relation to that other action).

Reference by regulated person or member of the regulated group

- 3 (1) If section 25C applies and the primary authority does not direct the enforcing authority (under subsection (4) of that section) not to take the proposed enforcement action, the regulated person or the member of the regulated group may, with the consent of the Secretary of State, refer the action to the Secretary of State.
- (2) On a reference under sub-paragraph (1) the Secretary of State must—
- (a) if satisfied as to the matters in sub-paragraph (3), direct the enforcing authority not to take the proposed enforcement action;
 - (b) otherwise, consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
 - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State directs the enforcing authority not to take the proposed enforcement action, the Secretary of State may direct the enforcing authority to take some other enforcement action (and section 25C does not apply in relation to that other action).

Reference by primary authority

- 4 (1) The primary authority may, with the consent of the Secretary of State, instead of making a determination under section 25C(4) as to whether to direct an enforcing authority not to take proposed enforcement action, refer the action to the Secretary of State.
- (2) On a reference under this paragraph the Secretary of State must—
- (a) if satisfied as to the matters in sub-paragraph (3), direct the enforcing authority not to take the proposed enforcement action;

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- (b) otherwise, consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
 - (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
 - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State directs the enforcing authority not to take the proposed enforcement action, the Secretary of State may direct the enforcing authority to take some other enforcement action (and section 25C does not apply in relation to that other action).

PART 3

GENERAL

Timing

- 5 (1) Any reference under this Schedule must be made as soon as is reasonably practicable, and in any event within the referral period.
- (2) The “referral period” for the purposes of a reference under paragraph 1(1) is the period which—
 - (a) begins when the regulated person or the member is notified under section 25B(2)(a) of the proposed enforcement action, and
 - (b) ends at the end of the tenth working day after the day on which the period begins, or at such later time as the Secretary of State may direct.
- (3) The “referral period” for the purposes of a reference under paragraph 2(1) is the period which—
 - (a) begins when the enforcing authority is directed under section 25C(4) not to take the proposed enforcement action, and
 - (b) ends at the end of the tenth working day after the day on which the period begins, or at such later time as the Secretary of State may direct.
- (4) The “referral period” for the purposes of a reference under paragraph 3(1) is the period which—
 - (a) begins when the regulated person or the member is informed under section 25C(6)(a) that the enforcing authority continues to propose to take the enforcement action, and
 - (b) ends at the end of the tenth working day after the day on which the period begins, or at such later time as the Secretary of State may direct.
- (5) The “referral period” for the purposes of a reference under paragraph 4(1) is the relevant period under section 25C(9).
- (6) The Secretary of State must determine a reference under this Schedule within the period of 28 days beginning with the day on which the reference is made.
- (7) The primary authority (in the case of a reference under paragraph 1(1)) or the enforcing authority (in the case of a reference under paragraph 2(1), 3(1) or 4(1)) may not take the proposed enforcement action at any time after the making of the reference and before its determination.

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Consultation

- 6 (1) Before determining a reference under this Schedule, the Secretary of State—
- (a) must consult any relevant regulator, where appropriate, and
 - (b) may consult other persons.
- (2) In sub-paragraph (1)(a), “relevant regulator” means a person who has regulatory functions which relate to the matter to which the determination relates.
- (3) But a person is not a “relevant regulator” within the meaning of sub-paragraph (1)(a) if—
- (a) the person is a qualifying regulator, and
 - (b) the partnership function pursuant to which the proposed enforcement action would be taken is a relevant function of the person.

Information

- 7 (1) For the purposes of determining whether to consent to a reference under this Schedule, or of determining such a reference, the Secretary of State may require any of the following to provide the Secretary of State with information—
- (a) the primary authority;
 - (b) in the case of a reference under paragraph 2(1), 3(1) or 4(1), the enforcing authority;
 - (c) the regulated person concerned or the member of the regulated group concerned.
- (2) The information must be information which the authority, person or member may lawfully provide to the Secretary of State.

Secretary of State's costs

- 8 The Secretary of State may require the regulated person or a member of the regulated group to pay reasonable costs incurred by the Secretary of State as a result of—
- (a) a reference by the regulated person or the member under paragraph 1(1) or 3(1),
or
 - (b) an application by the regulated person or the member for consent to make such a reference.

Procedure

- 9 The Secretary of State may by regulations make further provision as to the procedure to be followed for the purposes of this Schedule.”

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