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DRAFT STATUTORY INSTRUMENTS

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**2011 No. 0000**

**REGULATORY REFORM**

**The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2011**

*Made* - - - -

*2012*

*Coming into force* - -

*1st February 2012*

The Secretary of State makes the following Order in exercise of the powers conferred by section 18 of the Regulatory Enforcement and Sanctions Act 2008(a).

In accordance with section 20(3) of that Act a draft of this Order was laid before and approved by a resolution of each House of Parliament.

The Secretary of State has, in accordance with section 18(6) of that Act, consulted the Welsh Ministers and such persons as appear to the Secretary of State to be substantially affected by the dissolution of the Local Better Regulation Office.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2011.

(2) This Order comes into force on 1st February 2012.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

**Dissolution of the Local Better Regulation Office**

**2.**—(1) The Local Better Regulation Office (“LBRO”) is dissolved.

(2) Paragraph (1) is subject to Article 9.

**Transfer of functions**

**3.** The functions of the LBRO under Part 1 of the Regulatory Enforcement and Sanctions Act 2008 are transferred, in accordance with Schedule 1, to the Secretary of State and the Welsh Ministers.

**4.** The functions of the LBRO under Part 2 of that Act are transferred, in accordance with Schedule 1, to the Secretary of State.

5. Schedule 1 (which gives effect to the transfers made by Articles 3 and 4 and makes consequential, supplemental and incidental provision in relation to those transfers) has effect.

6. The Secretary of State and the Welsh Ministers must enter into a memorandum of understanding with each other as to how they will work together in the exercise of their respective functions as a result of this Order.

### **Transfer of employees**

7.—(1) The employees of the LBRO shall, from the date on which this Order comes into force, be employed in the civil service of the State.

(2) The Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(a)</sup> have effect as if the transfer under paragraph (1) is a relevant transfer for the purposes of those regulations.

### **Transfer of property**

8.—(1) All the property, rights and liabilities (other than rights and liabilities arising from any contract of employment) to which the LBRO is entitled or subject immediately before the coming into force of this Order become on the coming into force of this Order property, rights and liabilities of the Secretary of State.

(2) Paragraph (1) operates in relation to property, rights and liabilities—

- (a) whether or not they would otherwise be capable of being transferred;
- (b) without any instrument or other formality being required; and
- (c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.

(3) This Article is subject to Article 9.

### **Final Accounts of the Local Better Regulation Office**

9.—(1) A statement of the final accounts of the LBRO is to be prepared by a committee (“the Committee”) established by the LBRO for the purpose of preparing and submitting a statement of its accounts to the Secretary of State.

(2) The Committee must send a copy of the statement to the Secretary of State and to the Comptroller and Auditor General within such period as the Secretary of State directs.

(3) A direction given by the Secretary of State under paragraph 13(3) of Schedule 1 to the Regulatory Enforcement and Sanctions Act 2008 has effect in relation to a statement of accounts prepared under this Article as it had effect in relation to a statement of accounts prepared under that paragraph.

(4) The Comptroller and Auditor General must—

- (a) examine, certify and report on the statement of accounts received under paragraph (2), and
- (b) send a copy of the certified statement and report to the Secretary of State.

(5) The Secretary of State must lay before Parliament a copy of the certified statement and the report received under paragraph (4)(b).

(6) Notwithstanding Articles 2 and 8—

- (a) the Committee is to continue in existence until the certified statement of the final accounts and the report on them by the Comptroller and Auditor General are laid before Parliament by the Secretary of State, and
- (b) any property, rights and liabilities retained by the Committee for the purpose of preparing the statement of the final accounts and winding-up its affairs are not transferred by Article 8.

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(a) S.I. 2006/246.

(7) If at any time the Secretary of State decides that insufficient progress has been made on the completion of the final accounts by the Committee continued in existence by paragraph (6)(a), the Secretary of State may complete the final accounts and paragraphs (3) and (4) apply to any statement of accounts completed by the Secretary of State.

(8) Property, rights and liabilities retained under paragraph (6)(b) are transferred, so far as still subsisting, to the Secretary of State when the Committee ceases to exist (and Article 8(2) applies to such a transfer as it applies to a transfer under that Article).

### **Transitional provisions**

10. Schedule 2 (which makes transitional provisions) has effect.

Date

*Name*  
Parliamentary Under Secretary of State  
Department

## SCHEDULE 1 Transfer of Functions

Article 5

### PART 1 Regulatory Enforcement and Sanctions Act 2008

#### **Repeals**

1. The following provisions of the Regulatory Enforcement and Sanctions Act 2008 are repealed—

- (a) section 1(1) and (2);
- (b) section 2;
- (c) section 6(2)(a);
- (d) in section 6(6), the words “by it”;
- (e) section 7;
- (f) section 8;
- (g) section 9;
- (h) section 10(2);
- (i) in section 11(4), the words “to it”;
- (j) section 11(6);
- (k) section 13;
- (l) section 14;
- (m) section 15;
- (n) in section 16(1), paragraph (b) and the word “, or” preceding it;
- (o) in section 16(2), in both places, and in subsection (3)(a) and (b), the words “or directions”;
- (p) in section 16(4), the words “, and comply with any directions,”;

- (q) in section 16(5), in both places, the words “or directions”;
- (r) section 16(6) and (7);
- (s) section 17;
- (t) in section 20(2), the words “, 7(4) or 15(7)”;
- (u) section 20(4);
- (v) in section 21, the definition of “LBRO” and that of “the LBRO company”;
- (w) section 32;
- (x) section 33(5)(a);
- (y) in section 33(6), the words “by it”;
- (z) in section 35, the definition of “LBRO”;
- (aa) Schedule 1, except paragraphs 11(3) and (4) and 16; and
- (bb) Schedule 2.

## **Part 1 of the Act**

2. Part 1 of the Regulatory Enforcement and Sanctions Act 2008 is amended as follows.

3. In section 5(1), for the words from the beginning to “has” substitute “In exercising their functions under sections 6 to 10 the Secretary of State and the Welsh Ministers have”.

4. In section 6—

(a) for subsection (1), substitute—

“(1) It is a function of the Secretary of State to give guidance to—

- (a) one or more local authorities in England,
- (b) one or more local authorities in Wales, or
- (c) local authorities in England and Wales

as to how to exercise their relevant functions (other than functions relating to Welsh ministerial matters).

(1A) It is a function of the Welsh Ministers to give guidance to one or more local authorities in Wales as to how to exercise their relevant functions which relate to Welsh ministerial matters.”;

(b) in subsection (2), after “(1)” insert “or (1A)”;

(c) in subsection (4), for “LBRO”, in each place, substitute “the person giving the guidance”;

(d) for subsection (5), substitute—

“(5) The person giving guidance under this section must publish it in such manner as that person considers appropriate.”;

(e) in subsection (6), for “LBRO” substitute “The person giving the guidance”.

5. In section 10(1), for “LBRO” substitute “The Secretary of State”.

6. In section 11—

(a) for subsection (1) substitute—

“(1) The Secretary of State must prepare and publish a list specifying those matters to which a local authority in England should give priority when allocating resources to its relevant functions.

(1A) The Welsh Ministers must prepare and publish a list specifying those matters to which a local authority in Wales should give priority when allocating resources to its relevant functions.”

(b) in subsection (2), after “(1)” insert “or (1A)”;

- (c) in subsection (3)—
  - (i) for “LBRO” substitute “the person preparing the list”; and
  - (ii) for “it” substitute “that person”;
- (d) in subsection (4), for “LBRO” substitute “The person preparing the list”;
- (e) for subsection (5), substitute—
 

“(5) Before publishing a list under subsection (1A), the Welsh Ministers must consult the Secretary of State.”; and
- (f) for subsections (7) and (8), substitute—
 

“(7) A list published under this section must be reviewed from time to time by the person who published it.

(8) A list revised as a result of a review under subsection (7) must be published (and subsections (2) to (7) have effect in relation to it).”

**7. In section 12—**

- (a) In subsection (1), for “LBRO” substitute “The Secretary of State”; and
- (b) after subsection (2), insert—
 

“(3) The Secretary of State must consult the Welsh Ministers about—

  - (a) revising an existing memorandum of understanding, or
  - (b) entering into a new one,

which relates to a Welsh ministerial matter.”.

**8. In section 16—**

- (a) in subsection (1)—
  - (i) for “LBRO” substitute “the Secretary of State”; and
  - (ii) for “its functions relating” substitute “the Secretary of State’s functions under this Act so far as they relate”;
- (b) in subsection (2)(a), for “LBRO” substitute “the Secretary of State”; and
- (c) in subsection (4), for “LBRO” substitute “The Secretary of State”.

**Part 2 of the Act**

**9.** Part 2 of the Regulatory Enforcement and Sanctions Act 2008 is amended as follows.

**10.** In section 25(1), for “LBRO” substitute “the Secretary of State”.

**11.** In section 26—

- (a) in subsection (1)—
  - (i) for “LBRO”, where it first appears, substitute “The Secretary of State”; and
  - (ii) for “LBRO”, where it appears elsewhere, substitute “the Secretary of State”;
- (b) in subsections (2), (4), (5) and (6), for “LBRO” substitute “The Secretary of State”;
- (c) in subsection (3), for “LBRO” substitute “the Secretary of State”; and
- (d) in subsection (5)(a) and (b), for “it” substitute “the Secretary of State”.

**12.** In section 28(7) and (9)(b), for “LBRO” substitute “the Secretary of State”.

**13.** In section 30(6), for “LBRO” substitute “the Secretary of State”.

**14.** In section 33—

- (a) in subsections (1), (5), (6) and (7), for “LBRO” substitute “The Secretary of State”;
- (b) in subsection (4), for “LBRO” and for “it” substitute “the Secretary of State”;

- (c) in subsection (6) for “as it” substitute “as the Secretary of State”; and
- (d) for the section heading, substitute “**Guidance from the Secretary of State**”.

15. In paragraph 11(3) of Schedule 1, for “LBRO” substitute “the Secretary of State in respect of the Secretary of State’s functions under Parts 1 and 2”.

16. In Schedule 4—

- (a) in paragraph 1(1), for “LBRO”, in both places, substitute “the Secretary of State”;
- (b) in paragraph 1(2)—
  - (i) in sub-paragraph (a), for “LBRO” and for “it” substitute “the Secretary of State”; and
  - (ii) in sub-paragraph (b), for “it” substitute “the Secretary of State”;
- (c) in paragraph 1(4), for “LBRO” and for “it” substitute “the Secretary of State”;
- (d) in paragraph 2(1), for “LBRO”, in both places, substitute “the Secretary of State”;
- (e) in paragraph 2(2)—
  - (i) in paragraph (a), for “LBRO” and for “it” substitute “the Secretary of State”; and
  - (ii) in paragraph (b), for “it” substitute “the Secretary of State”;
- (f) in paragraph 2(5), for “LBRO” and for “it” substitute “the Secretary of State”;
- (g) in paragraph 2(7)—
  - (i) for “LBRO”, where it first appears, substitute “The Secretary of State”; and
  - (ii) for “LBRO”, where it appears elsewhere, substitute “the Secretary of State”;
- (h) in paragraph 3(1), for “LBRO”, in both places, substitute “the Secretary of State”;
- (i) in paragraph 3(2)—
  - (i) in paragraph (a), for “LBRO” and “it” substitute “the Secretary of State”; and
  - (ii) in paragraph (b), for “it” substitute “the Secretary of State”;
- (j) in paragraph 3(5), for “LBRO” and for “it” substitute “the Secretary of State”;
- (k) in paragraph 5(1)—
  - (i) for “LBRO” substitute “the Secretary of State”; and
  - (ii) in paragraph (b), for “it” substitute “Secretary of State”;
- (l) in paragraph 6(1), for “LBRO” substitute “The Secretary of State”;
- (m) in paragraph 6(2), for “LBRO” substitute “the Secretary of State”;
- (n) in paragraph 7(1)—
  - (i) for “LBRO” substitute “The Secretary of State”; and
  - (ii) for “it” substitute “the Secretary of State”;
- (o) in paragraph 7(3)—
  - (i) for “LBRO” substitute “The Secretary of State”; and
  - (ii) for “it” substitute “the Secretary of State”;
- (p) in paragraph 8, for “LBRO”, in both places, and for “it”, in both places, substitute “the Secretary of State”; and
- (q) in the Schedule heading, for “LBRO” substitute “the Secretary of State”.

## PART 2

### Other Enactments

**17.** In the Parliamentary Commissioner Act 1967(a), in Schedule 2 (departments etc. subject to investigation) the entry relating to the Local Better Regulation Office is repealed.

**18.** In the Superannuation Act 1972(b), in Schedule 1 (kinds of employment, etc., referred to in section 1 of that Act), the entry relating to the Local Better Regulation Office is repealed.

**19.** In the House of Commons Disqualification Act 1975(c), in Schedule 1, Part 2 (bodies of which all members are disqualified), the entry relating the Local Better Regulation Office is repealed.

**20.** In the Freedom of Information Act 2000(d), Schedule 1, in Part 6 (other public bodies and offices: general) the entry relating to the Local Better Regulation Office is repealed.

## SCHEDULE 2

Article 10

### Transitional Provisions

**1.** A list published by the LBRO under section 11(1)(a) or (b) of the Regulatory Enforcement and Sanctions Act 2008 before the coming into force of this Order has effect as if prepared and published by the Secretary of State or, as the case may be, by the Welsh Ministers under section 11 of the Regulatory Enforcement and Sanctions Act 2008 on the coming into force of this Order.

**2.** Anything done by or in relation to the LBRO which has effect immediately before the coming into force of this Order is, so far as necessary for continuing its effect on or after that day, to have effect, as appropriate, as if done by or in relation to—

- (a) the Secretary of State; or
- (b) the Welsh Ministers.

**3.** If before the day on which this Order comes into force any consultation was undertaken by the LBRO which, had it been undertaken by the Secretary of State or the Welsh Ministers on or after that day, would to any extent have satisfied any consultation requirement to which the Secretary of State is or the Welsh Ministers are subject, the requirement may to that extent be taken to have been satisfied.

**4.** Anything (including legal proceedings) which, immediately before the day on which this Order comes into force, is in the process of being done by or in relation to the LBRO may be continued by or in relation to the Secretary of State.

**5.** So far as is necessary or appropriate in consequence of Article 7 and 8, on and after the day on which this Order comes into force, a reference to the LBRO in an enactment, instrument or other document is to be treated as a reference to the Secretary of State.

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- (a) 1967 c. 13. The relevant entry was inserted by paragraph 18 of Schedule 1 to the Regulatory Enforcement and Sanctions Act 2008.
  - (b) 1972 c. 11. The relevant entry was inserted by Article 2(2)(b) of the Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2008, S.I. 2008/1891.
  - (c) 1975 c. 24. The relevant entry was inserted by paragraph 17 of Schedule 1 to the Regulatory Enforcement and Sanctions Act 2008.
  - (d) 2000 c. 36. The relevant entry was inserted by paragraph 19 of Schedule 1 to the Regulatory Enforcement and Sanctions Act 2008.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, made under section 18 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) (“RESA”), provides for the dissolution of the Local Better Regulation Office (“LBRO”) and the transfer of its functions to the Secretary of State and the Welsh Ministers.

The LBRO was established under Part 1 of RESA, and came into being on 1st October 2008. Section 18 of RESA empowers the Secretary of State to dissolve the LBRO and transfer its functions etc. by Order, subject to consultation and to approval in each House of Parliament.

Article 2 dissolves the LBRO, subject to provisions in Article 9 relating to its final accounts.

Articles 3 and 4 transfer the LBRO’s functions to the Secretary of State and the Welsh Ministers, as provided for by Schedule 1.

Article 5 brings Schedule 1 (Transfer of Functions) into effect.

Article 6 provides that the Secretary of State and the Welsh Ministers shall enter into a memorandum of understanding, which will set out in more detail how the two administrations will operate the transferred functions.

Article 7 provides, in accordance with the requirement of RESA section 18(4), for the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I.2006/246) to the transfer of the LBRO’s rights and liabilities relating to employees.

Article 8 provides for the transfer of all LBRO’s property, rights and liabilities to the Secretary of State.

Article 9 provides that LBRO’s audit committee remains in existence beyond the dissolution of the LBRO for the purpose of preparing LBRO’s final accounts, and also provides the procedure for the completion of the final accounts.

Article 10 brings Schedule 2 (Transitional Provisions) into effect.

Schedule 1 Part 1 provides the repeals and amendments to RESA which are consequent upon the LBRO’s dissolution and transfer of its functions, property, rights and liabilities to the Secretary of State or to the Welsh Ministers.

Schedule 1 Part 2 provides the repeals to other legislation consequent upon the dissolution of the LBRO.

Schedule 2 provides transitional provisions.