



Department for  
Business, Energy  
& Industrial Strategy

Regulatory Delivery

## References for Determination: Policy and Procedure

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## 1. Executive summary

- 1.1 The Regulatory Enforcement and Sanctions Act 2008<sup>1</sup> (**the Act**) enables questions that arise in respect of proposed enforcement action against businesses that have a nominated primary authority to be referred to the Secretary of State for determination. The powers of the Secretary of State to make a determination are exercised on his behalf by the Director of Regulatory Delivery (RD). All references to RD and its Director in this document should be taken in this context.
- 1.2 RD may in particular consider questions that arise where a local authority (the **enforcing authority**) proposes to take enforcement action against a business (the **regulated person or a member of the regulated group**) in circumstances where that business is claiming to have followed Primary Authority Advice provided to it by its primary authority.
- 1.3 RD manages the determination process in accordance with the provisions in the Act<sup>2</sup>; the Co-ordination of Regulatory Enforcement Regulations 2017 ('CORE Regulations') and statutory guidance issued under the Act.
- 1.4 A party that wishes to refer proposed enforcement action to RD must first apply for consent to make a reference to RD. If consent is granted, RD will determine the reference within 28 calendar days of the referral to RD (see the flowchart at paragraph 2.1).
- 1.5 The actions by enforcing authorities that constitute 'enforcement action' are set out in the CORE Regulations.
- 1.6 RD will determine references by considering:
  - a) whether the proposed enforcement action is inconsistent with Primary Authority Advice<sup>3</sup> given by the primary authority;
  - b) whether the Primary Authority Advice given was correct; and
  - c) whether the Primary Authority Advice was properly given by the primary authority.
- 1.7 Following consideration of these issues, RD will determine whether the enforcing authority may proceed with the proposed enforcement action.
- 1.8 If the Primary Authority Advice was properly given by the primary authority, was correct, and the proposed enforcement action is inconsistent with it, RD will determine that the enforcement action may not proceed. In all other cases it will determine that the enforcing authority may take the action proposed. This document provides details of the circumstances in which questions may be referred to RD and how RD will deal with such references. It provides guidance as to the procedure and practice that RD intends to adopt in making determinations and it indicates the conduct that RD will expect of parties to the determination process.

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<sup>1</sup> As amended by the Enterprise Act 2016

<sup>2</sup> As amended. See footnote 1

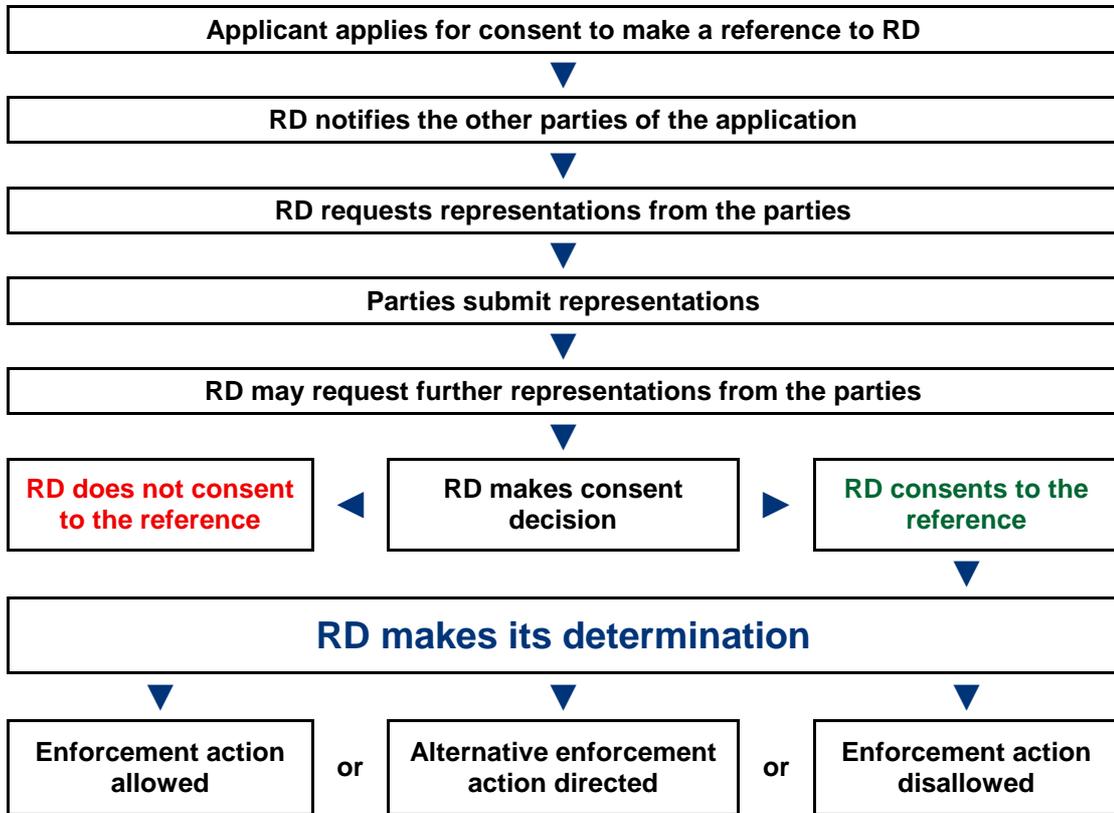
<sup>3</sup> Primary Authority Advice is advice or guidance issued by the primary authority under section 24A of the Act.

## References for Determination: Policy and Procedure

- 1.9 This document is intended for all persons who may be parties to or have an interest in the determination process – especially for regulated persons or a member of the regulated group, primary authorities and enforcing authorities. It is not a legally binding document, but is intended to be a source of information and assistance to those persons and their advisers. It is not a substitute for the statutory framework, but aims to summarise the effect of that framework as far as possible.

## 2. Overview of the reference process

2.1 The flowchart below shows the process for referring a question to RD:



**Table 1: Referring a question to RD**

2.2 Referring a question to RD is a two stage process:

- a) Applicants must first apply for consent to make a reference;<sup>4</sup> and
- b) If consent is granted, the question raised will be automatically treated as a referral to RD, and RD will determine the reference within 28 days of such referral<sup>5</sup>.

2.3 There will be three parties to each question referred to RD:

- a) the enforcing authority;
- b) the regulated person or member of the regulated group against which the enforcing authority proposes enforcement action; and
- c) the primary authority.

2.4 RD will communicate with and invite representations from all parties during the reference process. RD may also seek the views and representations of other regulators and of persons who are not parties but who may have an interest in the case or useful information to contribute.

2.5 The powers of the Secretary of State to make a determination are exercised on his behalf by the Director of RD.

<sup>4</sup> Paragraphs 1(1), 2(1) and 3(1) of Schedule 4A to the Act

<sup>5</sup> Paragraph 5(6) of Schedule 4A to the Act

### 3. Resolution of questions outside of the formal determinations process

- 3.1 RD encourages the parties to make efforts to resolve questions before considering a referral to the determinations process, which should be seen as a last resort.
- 3.2 RD encourages the parties to maintain contact with each other throughout the reference process, with a view to resolving questions at the earliest opportunity.
- 3.3 Where the parties do reach agreement before RD determines a reference, they should notify RD as soon as practicable that such agreement has been reached, and the applicant should request the withdrawal of the application.

## 4 Applications for consent to a reference

- 4.1 Applications for consent may only be made:
- a) by an enforcing authority which has been directed by a primary authority not to take enforcement action<sup>6</sup>;
  - b) by a regulated person or member of a regulated group that has been informed by an enforcing authority that it proposes to take enforcement action, in circumstances where the primary authority has not directed that the enforcement action should not be taken<sup>7</sup>;
  - c) by a primary authority which has been notified of proposed enforcement action by an enforcing authority, but has not directed the enforcing authority not to take the proposed action<sup>8</sup>.
- 4.2 Where an application for consent to a reference is made by a regulated person or a member of the regulated group, RD may require that the regulated person or member of the regulated group pay reasonable costs incurred by RD in determining the reference (see paragraph 13).
- 4.3 The outline of the notification process below shows the points in any proposed enforcement process at which the various parties may refer a question to RD.
- 4.4 Where RD receives an application from a primary authority it will be because that authority has declined to make a definitive decision whether it should or should not direct that the proposed enforcement action is not to take place. RD expects that a primary authority would only make a reference in default of this decision in exceptional circumstances, and that it would be able to provide good reasons why it was not appropriate for it to make the decision. These reasons will be relevant to whether or not RD grants consent to the application from a primary authority.
- 4.5 The application must be made on the appropriate application form, which is available from RD by emailing [pa@beis.gov.uk](mailto:pa@beis.gov.uk). Applications should be submitted to RD by email to [pa@beis.gov.uk](mailto:pa@beis.gov.uk).

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<sup>6</sup> Paragraph 2 of Schedule 4A to the Act

<sup>7</sup> Paragraph 3 of Schedule 4A to the Act

<sup>8</sup> Paragraph 4 of Schedule 4A to the Act

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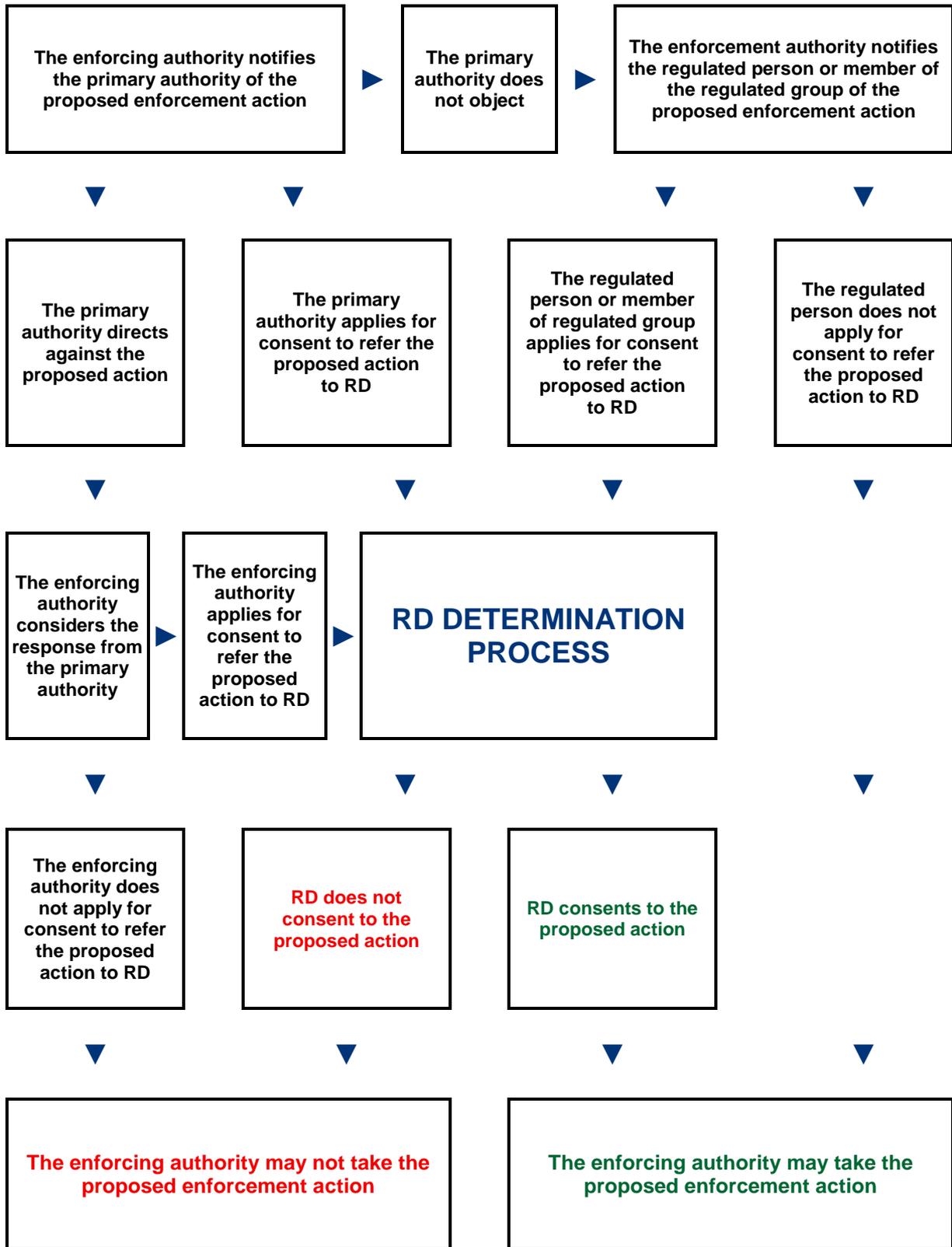


Table 2: Outline of the notification process

## Timescales for applying for consent to a reference

4.6 Applications must be made within the time periods set out below:

<b>Applicant</b>	<b>Time period</b>
<b>Enforcing authority</b>	10 working days beginning with the day after receipt of a direction from the primary authority (under section 25C(4) of the Act) that the enforcement action must not be taken. <sup>9</sup>
<b>Regulated person or member of the regulated group</b>	10 working days beginning with the day after receipt of notification from the enforcing authority (under section 25B(2)(a) or section 25C(6)(a) of the Act) of the enforcement action proposed to be taken. <sup>10</sup>
<b>Primary authority</b>	5 working days beginning with the day after receipt of notification from the enforcing authority (under section 25C(2)(a) of the Act) of the proposed enforcement action. <sup>11</sup>

4.7 Applications received by RD after 5pm will be deemed to be received on the following working day.

4.8 RD may only extend the time period within which it will accept an application in exceptional circumstances.<sup>12</sup>

4.9 In exercising discretion to extend the time period for applications, consideration will be given as to whether an effective process was in place for dealing promptly with statutory notifications under the scheme when they are received.

4.10 The time period where enforcement action must be stopped is automatically extended to cover the period where RD is considering whether to consent to an application.

## Information to be provided in the application for consent to a reference

4.11 Applications must contain the following information:

<sup>9</sup> Regulation 8(1) CORE Regulations

<sup>10</sup> Regulation 8(2) CORE Regulations

<sup>11</sup> Regulation 8(3) CORE Regulations

<sup>12</sup> Regulation 8(4) CORE Regulations

<p><b>Information to be included in all applications<sup>13</sup></b></p>	<p>The applicant's name;</p> <p>The applicant's business address;</p> <p>The name and contact details of an individual within the applicant's organisation who has responsibility for the application and reference;</p> <p>The names and business addresses and email addresses of the other parties;</p> <p>A description of the proposed enforcement action.</p>
<p><b>Additional information to be included in applications from enforcing authorities<sup>14</sup></b></p>	<p>A copy of any written notification sent to the primary authority regarding the proposed enforcement action;</p> <p>A copy of any written direction by the primary authority under section 25C(4) of the Act stating that the enforcing authority must not take the proposed enforcement action;</p> <p>A copy of any advice given and guidance given by the primary authority to the regulated person or to the coordinator of the regulated group under section 24A(1)(a), 24A(2)(a), or section 24A(4) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority;</p> <p>A copy of any advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) or section 24A(2)(b) of the Act which is relevant to the proposed enforcement action; and a statement as to why the enforcing authority considers that:</p> <ul style="list-style-type: none"> <li>• the proposed enforcement action is not inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person or the coordinator under section 24A(1)(a), 24(A)(2)(a) or section 24A(4) of the Act, or to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act</li> <li>• the advice or guidance was not correct, or</li> <li>• the advice or guidance was not properly given.</li> </ul>

<sup>13</sup> Regulation 7(1) CORE Regulations

<sup>14</sup> Regulation 7(2)(a) CORE Regulations

<p><b>Additional information to be included in applications from regulated person or member of a regulated group<sup>15</sup></b></p>	<p>A copy of any advice and guidance given by the primary authority to the regulated person or to the co-ordinator of the regulated group under section 24A(1)(a), 24A(2)(a) or section 24A(4) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority</p> <p>A copy of any advice and guidance given by the primary authority to the enforcing authority under section 24A(1)(b) or section 24A(2)(b) of the Act which is relevant to the proposed enforcement action and which has been provided to the enforcing authority</p> <p>A copy of any document informing the regulated person of the proposed enforcement action; and a statement as to why the regulated person considers that:</p> <ul style="list-style-type: none"> <li>• the proposed enforcement action is not inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person or the co-ordinator under section 24A(1)(a), 24A(2)(a) or section 24A(4) of the Act, or to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act,</li> <li>• the advice or guidance was correct, and</li> <li>• the advice or guidance was properly given.</li> </ul>
<p><b>Additional information to be included in applications from primary authorities<sup>16</sup></b></p>	<p>A copy of any advice or guidance given:</p> <ul style="list-style-type: none"> <li>• to the regulated person or to the co-ordinator of the regulated group under section 24A(1)(a) or section 24A(2)(a) of the Act,</li> <li>• to other qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act, and</li> <li>• which is relevant to the proposed enforcement action.</li> </ul> <p>A copy of any written notification of enforcement action from an enforcing authority received by it, under section 25C(2) of the Act, regarding the proposed enforcement action; and a statement as to why the primary authority considers that:</p> <ul style="list-style-type: none"> <li>• the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically) to the regulated person or co-ordinator of the regulated group under section 24A(1)(a) or section 24A(2)(a) of the Act, or to qualifying regulators under section 24A(1)(b) or section 24A(2)(b) of the Act,</li> <li>• the advice or guidance given was correct, and</li> <li>• the advice or guidance was properly given.</li> </ul>

<sup>15</sup> Regulation 7(2)(b) CORE Regulations

<sup>16</sup> Regulation 7(2)(c) CORE Regulations

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- 4.12 RD expects applicants to provide all relevant information in as clear and succinct a form as possible using the appropriate application form, available from RD by emailing [pa@beis.gov.uk](mailto:pa@beis.gov.uk).
- 4.13 All applications should include a list of contents and pages and should be numbered sequentially.
- 4.14 Failure to provide relevant information succinctly and to follow relevant guidance about the form and presentation of applications may delay the making of a consent decision by RD. Failure to provide information that is clear, complete and readily comprehensible may prejudice the case of the party providing it.
- 4.15 RD will check that all necessary information has been included in applications and will endeavour to alert applicants to any omissions as soon as reasonably practicable. Applicants should, however, note that it is their sole responsibility to make sure that applications are complete before the time period for making the application has expired, and that it may not be possible for RD to check applications within that time period. Consent may be refused for incomplete applications.

## 5 Multiple and related applications

- 5.1 The making of an application by one party does not preclude another party from making an application in respect of the same question.
- 5.2 Regulated persons or members of a regulated group should note that an application by a primary authority does not automatically constrain enforcing authorities from proceeding to take the relevant enforcement action. If, following an application for consent being made by a primary authority, a regulated person or member of a regulated group receives notice from the enforcing authority in accordance with section 25B(2)(a) or section 25C(6)(a) of the Act that it continues to propose to take the relevant enforcement action, the regulated person may wish to consider making its own application for consent. Such an application will prevent the enforcing authority from progressing the proposed enforcement action until consent is declined or any resulting reference is determined. In this situation, RD would not seek to recover its costs from the regulated person / member of the regulated group (see 13).
- 5.3 If more than one application is received, RD will consider all applications but will not usually grant consent to more than one. The question referred will be considered in the light of information provided by all of the parties, and RD will take into account the fact that more than one application was received if at any stage during the process it is asked to consent to the application or reference being withdrawn.
- 5.4 RD may receive related applications. For example, related applications may arise from proposals for similar enforcement action by different enforcing authorities against the same regulated person with the same designated primary authority. Typically, for instance, this might occur if the same product has been supplied by a manufacturer within the areas of a number of enforcing authorities, and more than one of those authorities considers the product to breach a relevant regulation and therefore proposes to take action in relation to it.
- 5.5 Where related applications are received, RD will generally progress the first such application received and may delay making a consent decision in respect of related applications until after the first application has been determined. RD will inform the parties to any related applications as to why a consent decision is being delayed, and may consider representations and other information provided in respect of related applications when determining the outcome of the first application.

## 6 Representations from other parties

- 6.1 On receipt of an application for consent, RD will notify the other parties to the proposed enforcement action.<sup>17</sup>
- 6.2 RD may, at the same time as notifying the other parties of receipt of an application, or at a later time if it deems it appropriate, request representations from the other parties<sup>18</sup>. RD expects that in most cases it will request representations before a consent decision is made.
- 6.3 Representations should be submitted in writing (electronically) to RD within the time period specified by RD in the request.<sup>19</sup>
- 6.4 RD expects that parties should be able to prepare representations without third party assistance. RD will not make technical experts available to the parties to assist with the preparation of representations.
- 6.5 Representations should include the following information<sup>20</sup>

<p><b>Information to be included in representations from enforcing authorities</b></p>	<p><b>The enforcing authority’s business address</b></p> <p>The name and contact details of an individual within the representations from the enforcing authority who has responsibility for responding to the application and reference;</p> <p>The information referred to at 4.11 in relation to applications by enforcing authorities</p> <p>Such further information as RD specifies</p>
<p><b>Information to be included in representations from regulated persons or members of a regulated group</b></p>	<p><b>The regulated person or member of regulated group’s business address</b></p> <p>The name and contact details of an individual within the regulated person or member of regulated group’s organisation who has responsibility for responding to the application and reference;</p> <p>The information referred to at 4.11 in relation to applications by regulated persons</p> <p>Such further information as RD specifies</p>
<p><b>Information to be included in representations from primary authorities</b></p>	<p><b>The primary authority’s business address</b></p> <p>The name and contact details of an individual within the primary authority who has responsibility for responding to the application and reference;</p> <p>The information referred to at 4.11 in relation to applications by primary authorities</p> <p>Such further information as RD specifies</p>

<sup>17</sup> Regulation 13 CORE Regulations

<sup>18</sup> Regulation 9(1) CORE Regulations

<sup>19</sup> Regulation 9(2) CORE Regulations

<sup>20</sup> Regulation 9(3) CORE Regulations

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- 6.6 Parties are expected to present relevant information clearly and succinctly in their representations. All representations should include a list of contents and pages should be numbered.
- 6.7 RD may request further information from the parties after representations have been submitted. All such information should be submitted in writing, electronically if so directed by RD, promptly and within the time period set out in RD's request for the information.
- 6.8 Parties should be aware that RD can only make consent decisions and determinations on the basis of information presented to it. Failure to make timely, full, clear or adequate representations, or to provide information requested by RD within relevant time periods, may prejudice the determination process to the detriment of the party in default.

## 7 Consent decisions

- 7.1 A report will be prepared on each application for the Director of RD. The report will consider the following and may include a recommendation as to whether consent should be granted:
- a) whether the application is complete and properly made;
  - b) whether the subject of the application is an appropriate question for RD to determine;
  - c) whether multiple applications have been received in respect of the same question;
  - d) whether related applications have been received;
  - e) where the primary authority is the applicant, whether RD is satisfied that the primary authority has provided sufficient and appropriate reasons for making the application; and,
  - f) whether all of the information required for the determination process has been made available to RD.
- 7.2 Prior to preparing the report, RD may consult with relevant regulators and other third parties, take legal or other specialist advice, and request such further information as it thinks fit from the parties.
- 7.3 The report or any part of it may be shared, including the recommendation as to whether consent should be granted, with any or all of the parties, or the third parties mentioned in paragraph 7.2 above, prior to it being submitted to the Director.
- 7.4 The Director will typically refuse consent if:
- a) an application is incomplete or has otherwise been improperly made;
  - b) the subject of an application is not an appropriate question for RD to determine;
  - c) consent has already been given to another party relating to the same question;
  - d) consent has already been given to another applicant making a related application;
  - e) RD is not satisfied that the applicant has provided sufficient and appropriate reasons for making the application; or
  - f) the application is frivolous or vexatious.
- 7.5 Where consent has already been granted to a related application, the Director will usually defer making a consent decision until the reference resulting from the related application has been determined.
- 7.6 RD will inform the applicant and the other parties in writing (electronically) of a consent decision as soon as reasonably practicable following the making of the decision<sup>21</sup>. If consent is refused, RD will provide all parties with a written statement of reasons for its decision.<sup>22</sup>
- 7.7 If RD consents to a reference, the reference is automatically deemed to be made on the day after the date on which the notice of consent is given to the parties.
- 7.8 Once made and communicated to the parties a consent decision is final and will not be reconsidered by RD.

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<sup>21</sup> Regulation 10(2) CORE Regulations

<sup>22</sup> Regulation 10(3) CORE Regulations

## 8 References

- 8.1 RD expects applicants to submit all information relevant to any reference with the application for consent to that reference. RD does not expect applicants to submit further information following the making of a reference (although RD may at any stage during the reference process request further information from any of the parties.<sup>23</sup>)
- 8.2 References will be determined by RD within 28 calendar days of the reference being made<sup>24</sup>.
- 8.3 A report will be prepared on each reference for the Director of RD. The report will be prepared following a consideration of the relevant information available and may include a recommendation as to how the reference should be determined. Relevant information will include:
- a) the application;
  - b) representations from the parties;
  - c) any other information received from the parties;
  - d) any information received as a result of consultation with relevant regulators or other persons;
  - e) any previous determinations by RD in respect of similar references.
- 8.4 References will be determined by the Director as follows:

<b>References by enforcing authorities</b>	<p><b>If RD is satisfied that:</b></p> <ul style="list-style-type: none"> <li>• <b>the proposed enforcement action is inconsistent with Primary Authority Advice or guidance previously given by the primary authority (generally or specifically);</b></li> <li>• <b>the primary authority’s advice or guidance was correct; and</b></li> <li>• <b>the Primary Authority Advice was properly given by the primary authority.</b></li> </ul>	<p><b>RD will confirm the direction of the primary authority preventing the enforcing authority from taking enforcement action.<sup>25</sup></b></p>
	<p><b>If RD is not satisfied that:</b></p> <ul style="list-style-type: none"> <li>• <b>the proposed enforcement action is inconsistent with Primary Authority Advice or guidance previously given by the primary authority (generally or specifically);</b></li> <li>• <b>the primary authority’s advice or guidance was correct; and</b></li> <li>• <b>the Primary Authority Advice was properly given by the primary authority.</b></li> </ul>	<p><b>RD will revoke the primary authority’s direction preventing the enforcing authority from taking enforcement action<sup>26</sup></b></p>

<sup>23</sup> Paragraph 7 Schedule 4A to the Act

<sup>24</sup> Paragraph 5(6) Schedule 4A to the Act

<sup>25</sup> Paragraph 1(2)(a) Schedule 4A to the Act. In this situation, Paragraph 1(4) allows RD to direct the enforcing authority to take some other enforcement action.

<sup>26</sup> Paragraph 1(2)(b) Schedule 4A to the Act

References by regulated persons or member of a regulated group	<p>If RD is satisfied that:</p> <ul style="list-style-type: none"> <li>the proposed enforcement action is inconsistent with Primary Authority Advice or guidance previously given by the primary authority (generally or specifically);</li> <li>the primary authority’s advice or guidance was correct; and</li> <li>the Primary Authority Advice was properly given by the primary authority.</li> </ul>	RD will direct the enforcing authority not to take the proposed enforcement action <sup>27</sup> .
	<p>If RD is not satisfied that:</p> <ul style="list-style-type: none"> <li>the proposed enforcement action is inconsistent with Primary Authority Advice or guidance previously given by the primary authority (generally or specifically);</li> <li>the primary authority’s advice or guidance was correct; and</li> <li>the Primary Authority Advice was properly given by the primary authority.</li> </ul>	RD will consent to the proposed enforcement action <sup>28</sup> .
References by primary authorities	<p>If RD is satisfied that</p> <ul style="list-style-type: none"> <li>the proposed enforcement action is inconsistent with Primary Authority Advice or guidance previously given by the primary authority (generally or specifically);</li> <li>the primary authority’s advice or guidance was correct; and</li> <li>the Primary Authority Advice was properly given by the primary authority.</li> </ul>	RD will direct the enforcing authority not to take the proposed enforcement action <sup>29</sup> .
	<p>If RD is not satisfied that</p> <ul style="list-style-type: none"> <li>the proposed enforcement action is inconsistent with Primary Authority Advice or guidance previously given by the primary authority (generally or specifically);</li> <li>the primary authority’s advice or guidance was correct; and</li> <li>the Primary Authority Advice was properly given by the primary authority.</li> </ul>	RD will consent to the proposed enforcement action <sup>30</sup> .

<sup>27</sup> Paragraph 3(2)(a) Schedule 4A to the Act. In this situation, Paragraph 3(4) allows RD to direct the enforcing authority to take some other enforcement action.

<sup>28</sup> Paragraph 3(2)(b) Schedule 4A to the Act

<sup>29</sup> Paragraph 4(3)(a) Schedule 4A of the Act. In this situation, Paragraph 4(4) allows RD to direct the enforcing authority to take some other enforcement action.

<sup>30</sup> Paragraph 4(3)(b) Schedule 4A of the Act

- 8.5 In considering whether proposed enforcement action is inconsistent with Primary Authority Advice given by the primary authority, the Director will in particular consider:
- a) whether the regulated person or member of a regulated group has complied with the Primary Authority Advice; and
  - b) the application of the Primary Authority Advice to the enforcement activity.
- 8.6 In considering whether the Primary Authority Advice given by the primary authority was correct, the Director will in particular consider:
- a) whether the Primary Authority Advice was legally correct, in that the Primary Authority Advice was in accordance with any relevant legislative provisions;
  - b) whether, with regard to other matters, the Primary Authority Advice was within the range of Primary Authority Advice that could reasonably have been given by the primary authority.
- 8.7 In considering whether the Primary Authority Advice was properly given by the primary authority, the Director will in particular consider:
- a) the primary authority's status as primary authority for the regulated person;
  - b) the application of the Act to the enforcement activity;
  - c) whether the Primary Authority Advice was effectively communicated to the regulated person or member of the regulated group; and
  - d) whether the Primary Authority Advice was provided in accordance with the requirements of statutory guidance on the scheme.
- 8.8 Damages are not available through the RD determination process and RD determinations will not make provision for the payment of damages by or to any party.
- 8.9 As soon as reasonably practicable after determining a reference, RD will notify the parties in writing of its determination and make any relevant directions<sup>31</sup>. RD will provide the parties with a statement of its reasons for the determination as soon as reasonably practicable and in any event within 28 days of the determination being made<sup>32</sup>.

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<sup>31</sup> Regulation 13(1) CORE Regulations

<sup>32</sup> Regulation 13(2) CORE Regulations

## 9 Consultation with third parties

- 9.1 Before determining a reference, RD may consult with any relevant regulator. Such consultation may take place before or after a consent decision is made and may involve the disclosure to the relevant regulator of any or all of the information provided to RD by the parties<sup>33</sup>.
- 9.2 Before determining a reference, RD may consult such other persons as it thinks fit<sup>34</sup>. Such consultation may take place before or after the consent decision is made and may involve the disclosure to the other persons of any or all of the information provided to RD by the parties. Other persons with whom RD may consult include:
- a) legal advisors;
  - b) technical experts; and
  - c) parties to related applications.
- 9.3 RD may but is not obliged to notify the parties before consulting with third parties.

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<sup>33</sup> Paragraph 6(1)(a) Schedule 4A of the Act

<sup>34</sup> Paragraph 6(1)(b) Schedule 4A of the Act

## 10 Withdrawal of applications and references

- 10.1 Applicants may apply to RD in writing for the withdrawal of their application at any time before RD determines a reference<sup>35</sup>. Applications may only be withdrawn by the applicant and may not be withdrawn without RD's consent.
- 10.2 RD will consult with all parties before deciding whether to consent to the withdrawal of an application<sup>36</sup>. RD encourages resolution of questions by the parties outside of the formal reference process and is mindful that applications should not proceed in circumstances where none of the parties wishes them to do so. If no party expresses any objections, RD will generally consent to the withdrawal of an application or reference.
- 10.3 RD will normally only refuse consent for the withdrawal of a reference in the following circumstances:
- a) where multiple applications were received and the withdrawal of the reference may prejudice other applicants;
  - b) where the time period for another party to make an application has expired and withdrawal of the current application or reference may prejudice the interests of that other party; and
  - c) where determination of the reference would be in the public interest.

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<sup>35</sup> Regulation 11(1) CORE Regulations

<sup>36</sup> Regulation 11(2) CORE Regulations

## 11 Sharing of information

- 11.1 RD is not required to treat any information disclosed to it by any of the parties as confidential<sup>37</sup>. RD would generally expect to disclose the full content of an application and any representations and other information received from the parties to all parties.
- 11.2 RD may also disclose the full content of an application and any representations and other information received from the parties to any relevant regulator or such other persons that it consults during its consideration of the application.
- 11.3 No person may, without the consent of RD and the other parties, use any information disclosed to it in connection with an application for any purpose not directly connected to the application<sup>38</sup>.

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<sup>37</sup> Regulation 12(1) CORE Regulations

<sup>38</sup> Regulation 12(2) CORE Regulations

## 12 Publication of information

12.1 RD may, where it considers it appropriate, publish:

- a) details of applications received, and relevant supporting information;
- b) the outcome of consent decisions; and
- c) the outcome of reference determinations.

12.2 RD will respect the commercial sensitivity of information provided to it, where this has been highlighted by the party providing the information.

## 13 Costs

- 13.1 The primary authority, enforcing authority and regulated person must bear their own costs in respect of any application (regardless of which party makes the application) or reference to RD.
- 13.2 RD will bear its own costs if an application is made by a primary authority or an enforcing authority.
- 13.3 If a regulated person or member of a regulated group makes an application, RD may require the regulated person or regulated group member to pay such reasonable costs incurred by RD as a result of the reference as RD may specify<sup>39</sup>. RD will discuss the issue of costs with the regulated person / regulated group member on receipt of their application.
- 13.4 Whether the regulated person or member of a regulated group will be required to pay costs and the level of those costs may depend on factors including:
- a) the outcome of the reference;
  - b) the conduct of all parties during the reference process;
  - c) the complexity of the reference;
  - d) any public interest implications of the reference;
  - e) any application made by the regulated person to withdraw the reference;
  - f) the circumstances of the regulated person; and
  - g) whether multiple or related applications have been considered by RD.
- 13.5 RD's costs will usually include its out-of-pocket expenses, such as the cost of external legal or technical advisers required for the purposes of assisting it, as well as an element of its own cost.

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### **Regulatory Delivery**

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<sup>39</sup> Paragraph 8 Schedule 4A of the Act