

**Better Regulation Regime – Review of Primary Authority regulation****Report by Director, Resources****1 Purpose of Report**

To make Members aware of the public consultation on the introduction of Primary Authorities in relation to the Better Regulation campaign and to invite comments from Members for inclusion in the Council's submission.

**2 Background**

The Committee submitted comments to a previous consultation relating to the Better Regulation Campaign and the relative Regulatory Reform (Scotland) Bill was introduced to the Parliament in March 2013. However the Bill does not feature a specific and additional proposal which emerged from a number of business responses to the consultation, namely that some equivalent of UK Primary Authority partnerships should be adopted in Scotland.

The UK Government's established Primary Authority initiative allows a business which has branches in a number of local authority areas to form a partnership with one local authority in order to receive tailored support in relation to a specified range of regulation. That "primary" authority is resourced by the business to assist in three ways: by issuing assured advice, co-ordinating enforcement action across all locations used by the business and developing an inspection plan for the business as a whole.

The Scottish Government is holding a consultation which seeks views on whether some equivalent of the UK Primary Authority initiative should be adopted in Scotland, in the context of devolved Scottish regulation. The Consultation document is attached hereto as **Appendix 1**. A set of deliberately open questions provide a framework for establishing whether there is broad support for a Scottish equivalent – and what that would involve.

The Key elements /

The Key elements /of Primary Authority operate as follows:-

- Primary Authority covers environmental health, licensing and trading standards legislation and applies to all local authorities that have responsibility for these functions. Due to the nature of reserved legislative authority in the devolved administrations, the application of the scheme in Scotland and in Northern Ireland is different from its application in England and Wales.
- A Primary Authority partnership with a particular business may originate in an approach from the business, or it may be proposed by a local authority and a business jointly, for example as a natural progression from an existing home or lead authority relationship.
- A written Primary Authority Agreement will be prepared by the local authority and the business and forms the basis for a request to LBRO to formally nominate and register the partnership.
- A primary authority has responsibility for providing the regulatory advice that the business requires in relation to specified areas of regulation, and the business will be able to rely on this advice.
- A primary authority may issue statutory advice to other local authorities and produce an inspection plan to which enforcing authorities must have regard.
- Where an enforcing authority has concerns about the compliance of a business that has a primary authority, it should discuss the issue with the primary authority at an early stage.
- If enforcement is envisaged there is a statutory requirement for enforcing authorities to notify the primary authority of the proposed enforcement action. However, exemptions allow certain enforcement action to proceed immediately, for example where action is needed urgently to prevent harm.
- Where actions of the business are potentially subject to enforcement action by an authority, the primary authority will advise on whether relevant advice has been given to the business and whether the proposed action is consistent with that advice.
- LBRO is empowered to make determinations in cases of disagreement as to whether proposed enforcement action is inconsistent with the advice given by the primary authority.

### **Who can have a partnership?**

The Primary Authority scheme is open to any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function. Relevant functions are defined in the Regulatory Enforcement and Sanctions Act 2008 ('the Act') and Orders made under it. Relevant functions cover matters that are commonly referred to as 'trading standards', 'environmental health' and 'licensing' legislation.

The following are examples of businesses that might want to have a partnership:

- a multi-site retailer with branches in a number of local authority areas;
- a food manufacturer whose goods are distributed for sale across a number of local authority areas;
- an internet retailer who sells goods or services over a wide area;
- a tour operator whose customers may be located in any area;
- an importer whose products are distributed nationally;
- a chain of gyms with outlets in a number of local authority areas;
- a charitable care home provider with premises in several local authority areas;
- a national chain of petrol filling stations; or
- a restaurant company that offers franchises across several local authority areas but retains central control of particular relevant functions.

### **What scope can a partnership have?**

There are various elements to the scope of a partnership, as outlined in the following sections.

#### ***Regulatory scope***

A local authority can form a partnership only in respect of those relevant functions for which it has regulatory responsibility. For example, a county council could become a primary authority for food standards matters but not food safety and hygiene matters.

BRDO has defined a number of categories which include all of the relevant functions within the scope of Primary Authority; and recommends that, wherever possible, partnerships should cover one or more of the following complete categories of relevant function ('categories'):

- age-restricted sales
- agriculture
- animal establishments and companion animal welfare
- consumer credit
- environmental protection
- explosives licensing
- fair trading
- farm animal health
- food safety and hygiene
- food standards
- general licensing
- health and safety
- housing
- metrology
- petroleum licensing
- pollution control
- product safety
- road traffic.

These categories are listed in full in Annex 1 of the Consultation document, where further information is provided on the scope of each category.

A business can have a partnership for a single category or for multiple categories. This means that a business could have partnerships with different local authorities for different categories. For example, retailer 'A' may enter into a partnership with district council 'B' for health and safety, with county council 'C' for product safety and food standards, and with fire authority 'D' for petroleum and explosives licensing.

## **Geographical scope**

The Primary Authority scheme applies differently in the different parts of the United Kingdom, as set out in the Act. The details of the scope of Primary Authority in relation to Scotland and Northern Ireland are defined in The Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009 and the geographical scope of each of the categories that can be covered by a partnership is detailed at Annex 1.

In England and Wales, Primary Authority is available for all the relevant functions exercised by local authorities.

In Scotland, a local authority can offer a partnership only for the relevant functions that remain the responsibility of the UK Government. In summary, these are principally included in the following categories:

- age-restricted sales (limited applicability)
- consumer credit
- explosives licensing
- fair trading
- health and safety (limited applicability)
- metrology
- product safety
- road traffic (limited applicability).

Relevant functions that have been devolved to the Scottish Government – for example, food standards and food hygiene – are outside the scope of Primary Authority.

In Northern Ireland, a local authority can offer a partnership only for the relevant functions that remain the responsibility of the UK Government where these are delivered by local authorities. These are principally included in the product safety category.

In establishing a partnership, the partners will need to assess the likely resources necessary to deliver the advice and guidance requirements of the business. These will vary between partnerships. From the outset, both parties will need to have a clear understanding of the needs of the business for regulatory advice, the expectations of the business and the scope of the service being provided by the local authority.

In establishing a partnership, the partners will also need to assess the likely resources necessary to deliver the requirements of other local authorities, in respect of:

- providing advice and guidance about how they should exercise their relevant functions in relation to the business;

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- setting inspection plans, where appropriate; and
- advising on and responding to proposed enforcement actions.

### **3      Commentary**

There is an obvious divergence of view as regards the enforcement of licensing legislation from the perspective of the commercial sector. The views of Officers have been requested .

### **4      Resource Implications**

There are no resource implications at this stage.

### **5      Conclusions**

Views on the consultation are requested.

### **6      Recommendations**

It is recommended that the Committee remit to the Director in consultation with the Chair to submit a response to the questionnaire based on feedback from Officers and Members.

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Background Papers : Consultation document