

Mapping the  
Local Authority  
Regulatory Services  
Landscape:  
November 2009

**LBRO**  
Better Local Regulation

**Legislative  
Landscape**

**Part One of Six**

**Themes:**

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| <b>1 Legislation</b>   | <b>4 Resources</b>     |
| <b>2 Policy</b>        | <b>5 Performance</b>   |
| <b>3 Organisations</b> | <b>6 Relationships</b> |

## Part 1: Legislative Landscape

- 1.1 This section provides an overview of the key aspects of the legislative framework which underpin or inform the enforcement activities of local authority regulatory services (LARS). Further details can be found in the *Legislative Mapping Report*, which is available from the Local Better Regulation Office (LBRO) website: [www.lbro.org.uk](http://www.lbro.org.uk)

### The Regulatory Enforcement and Sanctions Act 2008

- 1.2 The regulatory bodies that enforce the legislation in Parts 1 and 2 of the Regulatory Enforcement and Sanctions (RES) Act 2008 are the environmental health and trading standards services provided by local authorities, fire and rescue authorities (FRAs) in their role as enforcers of fire safety legislation, and port health authorities (PHAs). Unless explicitly stated, the term local authority regulatory services (LARS) refers to them all in this report. Licensing functions provided by LARS are also covered by the Act.
- 1.3 The legislation listed in Parts 1 and 2 of the RES Act and enforced by LARS is extensive and has built up over time. It stems from the original role and function of local government as sanitary authorities,<sup>1</sup> from reactions to unforeseen events, such as the BSE crisis or fire disasters, and from proactive policy development by the Government and the European Union. The duties that are imposed, the powers that can be exercised and the measures that are available to LARS generally stem directly from the legislation.
- 1.4 The legislation covers a number of broad topics, which are drawn from separate work to map the legislative landscape for LBRO as follows:
- Agriculture: fertilizers and feeding stuffs
  - Animal Health and Welfare: companion animals, farmed animals, animal trade/movement, dangerous animals, diseases and by-products
  - Consumer Protection: regulation of businesses, protection of consumers, consumer credit, fair trading, product safety, scams, rogue traders, weights and measures
  - Environmental Protection: air, land, water, local environment and pollution
  - Fire Safety: audit of fire risk assessment in commercial premises
  - Food Safety and Food Standards: marketing, labelling, manufacturing, preparation, importing, storage and sale
  - Health and Safety: occupational health and safety measures in shops, offices or commercial/service businesses (excluding inspections of industrial premises undertaken by the Health and Safety Executive)
  - Housing: landlords, tenants, safety and hygiene standards, overcrowding and multiple occupation, health and safety of occupants
  - Licensing: regulation of people, places, vehicle, alcohol, public entertainment, door supervisors, gambling, animals, and sales of prohibited goods to minors.

## Local Better Regulation Office statutory functions

1.5 The RES Act sets out six statutory functions for LBRO, as follows:

- Operate the Primary Authority scheme
- Advise the government on local regulation
- Issue guidance to local authorities
- Manage the list of national enforcement priorities
- Encourage innovation and good practice
- Develop formal partnerships with national regulators

LBRO therefore has a mandate that reflects its position at the heart of the relationship between central and local government.

## European Union

1.6 The European Union (EU) is a major source of new legislation in the areas enforced by LARS.<sup>2</sup> It makes Directives and Regulations specifying aims that Member States are free to implement in the manner most appropriate to them.

1.7 Most EU negotiations are conducted between the EU Council of Ministers and the European Parliament, with the European Commission proposing the original text and being closely involved in the negotiating process. Increasingly, the rules developed are intended to apply protections, standards and enforcement across all 27 EU Member States. It is possible that this will make it more difficult to achieve common ground.

1.8 The failure of bodies responsible for the implementation of EU Directives can lead to infraction proceedings. This is the legal process by which the European Commission takes a Member State to the European Court of Justice. The role of LARS in enforcing legislation originating from the EU is important in ensuring the UK implements and complies with EU Directives.

## Reducing the burden of legislation

1.9 Since the early 1990s, there has been an impetus within Whitehall to review the existing stock, and flow of new legislation with a view to reducing the regulatory burden faced by businesses. In 1994 for example, the Deregulation and Contracting Out Act 1994 was used 48 times to remove burdens from businesses and individuals.<sup>3</sup> This Act was superseded by the Regulatory Reform Act 2001 which itself was superseded by the Legislative and Regulatory Reform Act 2006.

1.10 A significant proportion of the legislation that LARS enforces is derived from the implementation of EU directives. In 2005 the Commission launched a rolling programme to simplify existing EU law which focused on codifying and consolidating legal acts. The benefits to UK stakeholders so far have been modest. More promising was the decision made by the EU Heads of State and Government in March 2007 to set a target to reduce administrative burdens stemming from EU law by 25 per cent by 2012. On 22 October 2009, the European Commission published a Communication setting out progress made so far to achieve this target and outlining new areas for the next Commission to consider taking forward. In addition, it reported that all 27 Member States have now set national targets to reduce administrative burdens since the European Council invited them to do so in March 2007. The

Commission has made good progress on this agenda so far, but much more work needs to be done before businesses feel significant effects as a result of the EU administrative burden reduction programme. The UK Government will continue to work with the Commission, Council and Parliament to secure significant simplification measures in the coming months and years.

- 1.11 The OECD firmly believes that efforts should be stepped up to encourage the stronger control of new EU regulations to avoid new burdens from this level. In its recent review of regulatory capacity, it argues for local government having a stronger voice at EU level on regulations that require local enforcement.<sup>4</sup>
- 1.12 In addition, the House of Commons has the Regulatory Reform Select Committee, which is required to examine and report on all draft legislative reform orders proposed by the Government. The Committee published a report on *Themes and Trends in Regulatory Reform* in July 2009<sup>5</sup>, examining amongst others the lessons learned from the financial crisis.
- 1.13 The better regulation agenda aims to simplify existing legislation and to avoid unnecessary regulation. All government Whitehall departments are required to carry out regulatory impact assessments and ensure they are published 13 weeks prior to legislation. Further details about the better regulation agenda can be found in Part 2.
- 1.14 The Government has recently published its Forward Regulatory Programme.<sup>6</sup> This sets out the planned changes to regulations which will impact on business and that are due to come into force between now and the end of April 2011. It should allow businesses and those affected by regulation to plan more effectively. The Government also published *The Total Benefit/Cost Ratio of New Regulations 2008-09* making public for the first time the total annual benefits and costs of regulation resulting from legislation enacted in the last financial year. The total ratio of quantified benefits to costs is 1.85.<sup>7</sup>

## Statutory and voluntary codes of practice

- 1.15 In 1998, the Cabinet Office published the Enforcement Concordat. This is a voluntary non-statutory code of practice to which all local authorities in the UK can sign up. In April 2008, the Regulators Compliance Code came into force as a statutory requirement for all English local authorities under the Legislation and Regulatory Reform 2006 Act.<sup>8</sup> It encompasses the Hampton principles for improved inspection, enforcement and outcomes. The Code now also applies in the devolved administrations.
- 1.16 The five principles of good regulation, which form the basis for improved enforcement, were articulated by the Better Regulation Task Force in 2000.<sup>9</sup> They are as follows:
  - Proportionality – regulators should only intervene when necessary; remedies should be appropriate to the risk posed and costs identified and minimised.
  - Accountability – regulators must be able to justify decisions and be subject to public scrutiny.
  - Consistency – Government rules and standards must be joined up and implemented fairly.
  - Transparency – regulators should be open and keep regulations simple and user-friendly.
  - Targeting – regulation should be focused on the problem and minimise side effects.

## Impact of devolution

- 1.17 The 1998 Government of Wales, Scotland and Northern Ireland Acts devolved or transferred legislative powers to the newly created National Assembly for Wales, Scottish Parliament and Northern Ireland Assembly. This process created the devolved administrations. The remit of LBRO extends to LARS in Wales and LBRO has a duty to provide guidance to Welsh Ministers in a similar manner to Ministers at Westminster.<sup>10</sup>
- 1.18 LBRO has a limited remit in Scotland insofar as certain measures are reserved matters, meaning that Whitehall has the legislative jurisdiction in these areas.<sup>11</sup> LBRO has a limited remit in Northern Ireland as the majority of legislation in the RES Act was devolved in the Northern Ireland Act 1998.<sup>12</sup>
- 1.19 Devolution has not resulted in new law making institutions nor regional assemblies in England apart from the Greater London Authority. The Regional Development Agencies Act 1998 led to the creation of eight regional development agencies (RDAs) across England. RDAs drive economic prosperity in each region<sup>13</sup> and, insofar as one of the Hampton principles is to promote prosperity, there is a link between their remit and LBRO.

## The duties of local government

- 1.20 The duties of local government have evolved since the initial legislation of the Poor Law Act 1601 establishing delivery of the welfare state. The functions of trading standards developed from weights and measures legislation dating from the middle-ages.<sup>14</sup> Local authorities have enforced standardised weights and measures since 1824. They have also been empowered with the mandate to protect public health – with responsibilities, for example, in relation to the Public Health (Control of Disease) Act 1984 – and can have duties as PHAs.<sup>15</sup> In addition, local authorities have regulatory responsibilities in terms of planning and building control, such as enforcement of building regulations, which are outside the scope of the RES Act.
- 1.21 The Local Government Act 1972 reorganised the structure and functions of local authorities evolving into the two-tier structure in parts of England. Similarly, the Local Government (Wales) Act 1994 established a system of unitary local government in Wales. The existing organisational structure of FRAs is based upon the recommendations of the Independent Review of the Fire Service that were enacted in the Fire and Rescue Services Act 2004.
- 1.22 Legislation often imposes a duty upon local councils to draw up or review their existing policies which broaden the impact that LARS have on their communities. For example, Section 17 of the Crime and Disorder Act 1998 gives local councils a remit with respect to reducing crime and disorder. Similarly Crime Reduction and Disorder Partnerships have a mandatory duty to put a local alcohol strategy in place.
- 1.23 Recent legislation has given local government in England more responsibility to develop local priorities. The Local Government Act 2000 tasked local authorities to promote the economic, social and environmental well-being of their local area. It imposed a statutory duty upon every local authority to produce a Community Strategy to establish local priorities and pursue them in partnership with other public bodies. The Local Government Act 2003 encouraged local authorities to act in partnership with businesses in the area to address local priorities through Business Improvement Districts. The Local Government and Public Involvement in Health Act 2007 also

gave upper tier local authorities responsibility for developing local area agreements with their partners in a local strategic partnership. The proposed Local Democracy, Economic Development and Construction Bill would require local communities to address local priorities and will seek to take forward reforms at a regional level. The Department for Communities and Local Government (CLG) recently published a consultation paper *Strengthening Local Democracy*.<sup>16</sup> The paper set out a range of proposals to promote democratic renewal and strengthen the power and responsibility of local government.

## Bye-laws

- 1.24 Local authorities are also empowered by statute to make bye-laws to address local priorities where general legislation has not addressed the issue of concern. Bye-laws allow local authorities to criminalise activity undesirable to the local community through the Magistrates Court. The legislation<sup>17</sup> which empowers local authorities has evolved with the duties of local government. Government departments approve the formulation of bye-laws and ensure there is no conflict with existing government policy. Proposed reforms<sup>18</sup> by CLG suggest the Government may intend to reform enforcement of bye-laws towards a fixed penalty regime.

## Part 1: End Notes

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- 1 The Public Health Act dates from 1848
- 2 Further details about the European Union can be found via the English-language web pages  
[www.europa.eu/index\\_en.htm](http://www.europa.eu/index_en.htm)
- 3 All Acts of Parliament can be found via the Office of Public Sector Information web pages  
[www.opsi.gov.uk](http://www.opsi.gov.uk)
- 4 *Better Regulation in Europe: An Assessment of Regulatory Capacity in 15 member states of the European Union. Better Regulation in the United Kingdom*, OECD, 2009. Available via  
[www.oecd.org](http://www.oecd.org)
- 5 The Regulatory Reform Committee's report can be viewed via the UK Parliament web pages  
[www.parliament.uk](http://www.parliament.uk)
- 6 The October 2009 Regulatory Forward Programme is available via the BIS web pages  
[www.berr.gov.uk](http://www.berr.gov.uk) or via [www.bis.gov.uk](http://www.bis.gov.uk)
- 7 Available from the BIS website, published 21 October 2009.
- 8 Briefings on these are available on the LBRO website [www.lbro.org.uk](http://www.lbro.org.uk) and from the LACORS  
website [www.lacors.gov.uk](http://www.lacors.gov.uk). The Compliance Code itself is available from the BIS website  
[www.bis.gov.uk](http://www.bis.gov.uk)
- 9 <http://archive.cabinetoffice.gov.uk/brc/publications/principlesentry.html>
- 10 Advice to Government is a statutory function of LBRO.
- 11 See Schedule 5 of the Scotland Act 1998 for details of reserved powers via the Office of  
Public Sector Information web pages
- 12 Northern Ireland Act 1998 see Office of Public Sector Information web pages.
- 13 See [www.englandsrdas.com](http://www.englandsrdas.com)
- 14 There is a useful short history of trading standards on the Hampshire County Council website  
[www.hants.gov.uk/regulatory/tradingstandards/tshistory.html](http://www.hants.gov.uk/regulatory/tradingstandards/tshistory.html)
- 15 Cited as indicative legislation in the 2007 Rogers Review
- 16 The *Strengthening Local Democracy* consultation document is available via the CLG web  
pages [www.communities.gov.uk](http://www.communities.gov.uk)
- 17 For example in England, Public Health Act 1875, Open Spaces Act 1905, Open Spaces Act  
1906, Public Health Act 1961, Public Health Amendments Act 1907, Local Government Act  
1972, Food Act 1984, Public Health Act 1936, Countryside Act 1968, Local Government  
(Scotland) Act 1973
- 18 *The Communities in Control: Real people, real power: The making and enforcement of  
byelaws* consultation document was published in August 2008 and can be found via the CLG  
web pages