

**Response to  
Consultation  
on the Draft  
Primary  
Authority  
Guidance**

**LBRO**  
Local Better Regulation Office

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## PROCESS AND RESPONDENTS

On 5 December 2008, we published our 'Consultation on the Primary Authority Guidance', giving our intended approach to the administration of the scheme, with the aim of maximizing its advantages to all participants.

Our consultation was emailed to a wide range of stakeholders, including:

- all the local authorities in the UK;
- all the fire and rescue authorities in England;
- government departments;
- national regulators;
- professional bodies; and
- business and consumer organizations.

It was also uploaded to our web site and publicized via the media. A workshop held in London in January gave the opportunity for attendees to discuss its contents in detail.

Our consultation closed on 28 February 2009. We thank everyone who took the time and trouble to comment. The 63 written responses break down as follows:

Local authorities	26
Fire and rescue authorities	4
Government departments	3
National regulators	3
Professional bodies	20
Business and consumer organizations	4
Company	1
Regulatory services officers	2

## KEY FINDINGS AND CONSEQUENT ACTIONS

Our consultation was specifically concerned with our draft statutory guidance on the operation of Primary Authority.

Some responses requested further clarity and detail in certain areas of our draft guidance and we have addressed this as follows:

- We have reviewed the categorization of relevant functions and made some changes.
- We are reviewing the template Primary Authority Agreement, particularly in relation to comments made about liability and application in Scotland, and we will publish it on our website.
- The status of Primary Authority Advice to a business and the recording of that advice for future reference have been explained in greater detail.
- Practical examples of areas where an inspection plan might be appropriate have been added and the purpose of inspection plans has been explained more clearly.
- The benefits of early discussions with the primary authority were highlighted by several respondents. We have made clear in the guidance that we are encouraging all enforcing authorities to discuss compliance issues at an early stage with the primary authority.
- We have been able to strengthen our guidance on the notification of proposed enforcement action, and the timescales that will apply, now that the secondary legislation is in place.
- We have added further practical examples to illustrate the applicability of the scheme.

## QUESTIONS AND ANSWERS

Each question posed in our consultation is given below, together with our comment on the issues raised by the written responses received.

### General Question 1

The guidance is set out in five sections. For each, please comment on whether you believe the information is:

- Sufficiently clear about what the requirements of the scheme are; and
- Sufficiently detailed to enable the scheme to be successfully implemented.

### Section 1 Characteristics of a partnership

*Can LBRO provide a formula for charging?*

Under the Regulatory Enforcement and Sanctions Act 2008, a primary authority is entitled to recover its costs when resourcing a partnership. Relevant guidance has already been issued by HM Treasury on how these charges should be calculated. In addition, our guidance sets out an assessment process that the primary authority and business should consider when deciding how their partnership will be resourced. Sufficient capacity is needed to provide advice to the business and other local authorities as required, and to process enforcement notifications. These arrangements will be different for each partnership. The decision as to whether to charge, and at what level, is rightfully a matter for local determination by local government.

### Section 2 Establishing a partnership

*Why is nothing said concerning the assessment of businesses?*

The legislation requires LBRO to assess the suitability of the local authority to undertake the role of primary authority. The assessment will be carried out by examination of the Primary Authority Agreement that sets out how the local authority and the business will operate the partnership. One of the clauses in the agreement sets out the obligations on the business to cooperate with the primary authority. The willingness of both parties to work together is a key factor in determining the suitability of the arrangements put forward in the agreement by the local authority.

*Only once a Primary Authority Agreement is signed by the relevant business and local authority will its suitability be assessed by LBRO. Shouldn't it be involved earlier in the process, to prevent the potential waste of resources?*

We know support is needed at the outset. During the pilot, the test partnerships were guided by dedicated account managers, who answered questions and facilitated meetings. We will continue to make this assistance available to support the local authority and the business.

### Section 3 Providing effective advice

*Since a primary authority and a partner business must agree the circumstances for recording advice issued, this implies it will not always be available for reference by all the other local authorities. How can this be compatible with their need to find out if a proposed enforcement action is inconsistent with advice previously given?*

Requiring a primary authority to publish all the advice it gave to a business would create an unnecessary burden. The resulting volume of information would be time-consuming and arduous to consult. It would also be largely irrelevant to the overall aim of guiding local authorities in relation to their work. Where a primary authority is approached about an issue involving a business, it must provide any related advice previously given. This will certainly be the case if a local authority proposes enforcement action, but we anticipate that this situation will normally be addressed, through contact with the primary authority at an earlier stage. It is worth adding that in the event that a particular issue is repeatedly drawn to the attention of a primary authority, it may be addressed either in specific advice given to local authorities, or by means of a national inspection plan.

*For each relevant function, how will LBRO ensure that consistent advice is offered by all the primary authorities involved?*

We recognize the importance of promoting consistency in the advice given by primary authorities to businesses, particularly those that operate in the same market sector. We will work closely with the national regulators, the Local Authority Coordinators of Regulatory Services (LACoRS) and the professional bodies to ensure local authorities have access to consistent guidance on legislative requirements and have the opportunity to discuss and agree consistent approaches.

#### Section 4      Inspection plans

*Doesn't setting out when a local authority can deviate from an inspection plan exceed the provisions of the Act?*

Under the Act, enforcing authorities intending to deviate from an inspection plan must notify the primary authority and give their reasons. Our guidance is intended to help them identify reasons for this course of action.

*Should inspection plans be mandatory?*

Under the Act, primary authorities are not required to produce a plan. Some businesses will not need one, especially where they have only one site. Inspection plans are also less likely to have applicability in some regulatory areas than in others.

*Can a partner business insist on an inspection plan?*

There is no entitlement for a business to insist on the primary authority producing a plan.

#### Section 5      Supporting consistent enforcement

*A proposed enforcement action must always be drawn to the attention of a primary authority, even in the case of a local infringement that by its very nature is obviously inconsistent with advice previously given. Why is this necessary?*

Notifications are needed in order for a primary authority to build a full picture of how the business is complying with the law. This intelligence is likely to inform the issuing of advice to the business or the amendment of inspection plans. It should also be noted that there will be circumstances under which the requirement to notify applies only retrospectively. These include situations in which any delay would cause significant risk of serious harm to human health or the environment.

*Will LBRO provide a template letter for local authorities to use in notifying a business of proposed enforcement action?*

A template letter will be available on our website. The guidance has also been amended to clarify the requirements for this notification.

### **General Question 2**

Are there any other aspects of the scheme that you would like to see further guidance on?

*Will LBRO guidance on the secondary legislation be forthcoming?*

Now that the secondary legislation has been finalized, we have reflected its requirements in our guidance.

### **Specific Question 1**

To enable the partnerships to be implemented in a consistent way, the relevant functions have been organized in 15 categories. Do you believe that the proposed categories provide the basis of workable partnerships?

*Can't this list be simplified?*

All the relevant functions listed in the Act need to be allocated to a category. We recognize that the scope for primary authorities to provide advice and guidance to partner businesses applying in all localities and circumstances will vary.

The categories stem from consultation work with businesses and local authority regulators from different fields. They are the minimum needed to deal with local authority structural issues and business preferences.

Through the consultation process, one category in particular was identified as causing problems. As a result, we have split the environmental protection category, creating a separate category for pollution control and environmental permitting, and removing pest control, which is now included in the food hygiene category.

*Why is 'general licensing' a category, even though alcohol licensing is not proposed for inclusion in the scheme?*

This category includes hackney carriage and private hire licensing, house-to-house collections, sex establishments, Sunday trading, charity collections, scrap metal dealers and pavement cafes. All are within the scope of the scheme. However, we recognize that in some of these regimes, a primary authority may be unable to provide advice that will have applicability across multiple local authorities because of different local conditions.

### **Specific Question 4**

Is the proposed process for resolving disputes appropriate? How might it be improved?

*Given that determination will inevitably require expert opinion to be sought, are the various deadlines realistic?*

The timescales for our determination process are set out in the Act and its associated secondary legislation. It is our intention to actively work with parties to seek the effective resolution of any disputes.

**Miscellaneous Questions**

*What will happen to home and lead authority partnerships?*

These may continue if the participants wish, but there will be a persuasive case for transferring these initiatives into the scheme, due to its firm legal basis.

*What are the cost benefits of the scheme?*

The anticipated costs and benefits of the scheme for local authorities and businesses are outlined in the Government's Impact Assessment that accompanied the Act and the secondary legislation.

## ANNEX 1: LIST OF WRITTEN RESPONSES RECEIVED

- Aberdeen City Council
- Aberdeenshire Council
- Asda
- Bolsover District Council
- Borough of Pendle
- Brighton and Hove City Council
- Chartered Institute of Environmental Health
- Chief Environmental Health Officers' Group
- Chief Fire Officers' Association
- Chiltern District Council
- City of York
- Cleveland Fire Authority
- Communities and Local Government
- David Poole-Gotto
- Department for Environment, Food and Rural Affairs
- Department for Regional Development in Northern Ireland
- Directors of Public Protection in Wales
- Dundee City Council
- East Ayrshire Council
- East of England Trading Standards Association
- Environmental Health Managers in Cheshire
- Flintshire County Council
- Food Standards Agency
- Glasgow City Council
- Greater Manchester Fire and Rescue Service
- Hambleton District Council
- Hampshire and Isle of Wight Environmental Health Managers' Group
- Haringey Council
- Harrogate Borough Council
- Hertfordshire and Bedfordshire Environmental Health Group
- Hertfordshire Trading Standards
- James Windsor
- Kent Food Group
- Leeds City Council
- Leicester, Leicestershire and Rutland Environmental Health Managers' Group
- Local Authority Coordinators of Regulatory Services
- London Borough of Brent
- London Borough of Wandsworth
- London Fire Brigade
- Mid Devon District Council
- National Farmers' Union
- Northern Ireland Tourist Board
- Royal Environmental Health Institute of Scotland
- Scottish Environmental Protection Agency
- Society of Chief Officers of Trading Standards in Scotland
- Society of Chief Trading Standards Officers
- South West England Regional Coordinators of Trading Standards
- South West London Food Group
- Southampton City Council

- Suffolk Environmental Health
- Suffolk Trading Standards
- Sunderland City Council
- Sussex Food Liaison Group
- Sussex Health and Safety Liaison Group
- Trading Standards Institute
- Trading Standards North West
- United Kingdom Accreditation Service
- Welwyn Hatfield Borough Council
- West Sussex County Council
- West Yorkshire Fire and Rescue Service
- West Yorkshire Joint Services
- Worcestershire County Council
- Wolverhampton City Council

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