

Primary Authority Advice:

Providing Assurance



This guide aims to help officers operating primary authority partnerships to understand how Primary Authority Advice can best be used to support compliance in a partner business. It is one of a series of guides that supplement the requirements of LBRO's statutory Primary Authority Guidance¹ by providing advice based on practical experiences of the scheme to date, and by addressing questions that are commonly asked by primary authority officers.

The guide covers advice that is provided under the scheme by a primary authority to a partner business. It does not cover Primary Authority Advice to local authorities, which is addressed separately by LBRO.

What is Primary Authority Advice?

Primary Authority Advice is regulatory advice provided by a local authority to a business in the context of a partnership under the statutory Primary Authority scheme.

Businesses have very different needs in relation to regulatory advice. While some businesses may be looking for help in identifying or interpreting legal requirements, others may be looking for assurance that their interpretation is correct or that the compliance systems that they have in place are accepted. Primary Authority Advice meets these different needs and the business is able to rely on the advice if its compliance is challenged by another local authority.

To offer protection to the business, the advice must be properly given and it must also be correct. This does not mean that the primary authority is giving a definitive interpretation of the law, or that it is 'usurping the role of the courts' – it is providing the business with an informed and considered professional view of the law. It is quite possible that there will be compliance solutions that differ from those agreed by the primary authority and that are equally valid, but this does not, of itself, make the Primary Authority Advice incorrect.

The provision of Primary Authority Advice should meet the requirements of LBRO's statutory Primary Authority Guidance.

¹ Available on LBRO's website at www.lbro.org.uk/docs/pa-guidance.pdf

What is the value of Primary Authority Advice?

Compliance with legislation can be delivered in a variety of ways, particularly where legislation is based on principles rather than detailed rules. This means that businesses can experience difficulties in choosing a route to compliance that will be acceptable to all local regulators.

Prior to April 2009, businesses that sought and acted on advice provided in good faith by one local authority received no legal protection from the consequences of challenge to their approach or interpretation by another local authority. The introduction of Primary Authority has fundamentally changed this situation. Businesses that value having a single source of regulatory advice are now able to opt for a new relationship with local regulators.

As a primary authority, your local authority has taken on a role of working in partnership with a business to improve and maintain its compliance. With a good knowledge and understanding of the legislation and of the partner business, you are in the unique position of being able to provide robust, bespoke advice to a partner business on which it can rely. This enables the business to invest, with confidence, in products, practices and procedures, safe in the knowledge that it will no longer have to deal with the consequences of different interpretations of the law or different approaches to enforcing it.

The statutory basis of Primary Authority Advice provides the mechanism to deal with inconsistent enforcement action against the business but it also provides a way of streamlining the way that the business is regulated at a local level.

What can Primary Authority Advice cover?

Businesses can have very different approaches to compliance, particularly in relation to legislation that is based on principles rather than statutory rules, and this means that their advice requirements may be very different.

Your Primary Authority Advice to a partner business can cover any matters relating to compliance in legislative areas covered by the partnership.

This could range from advising that a new product developed by the business should be labelled in a particular way in order to meet legal requirements, to reviewing a procedure and then advising that it outlines a satisfactory system for delivering compliance in a particular area.

Practical Examples

- A business wishes to describe a food product as 'home-made'. The primary authority considers the legal requirements and reviews the product's formulation and production and is satisfied that the description can be used. It issues advice as follows: Primary Authority Advice is given to the business that the description of Product X as 'home-made' is in accordance with current legal requirements, where it is produced in accordance with the recipe and processes outlined in the attached schedule.
- A business has produced a central procedure which outlines how each of its premises should manage the health and safety risks associated with working at height. It asks its primary authority to assess this procedure for compliance. The primary authority reviews the legal requirements and the procedure and issues advice as follows: Primary Authority Advice is given to the business that the attached 'Working at Height Plan' outlines a system that, where it is properly implemented, would demonstrate suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.
- A business has a procedure for managing stock control and ensuring that it does not supply food that is past its 'Use By' date. It asks the primary authority to review this procedure and the associated internal compliance activities. The primary authority reviews the procedure and data presented by the business demonstrating the effectiveness of the procedure in managing stock control. It forms the view that the procedure and associated compliance activities represent a satisfactory system and issues advice as follows: Primary Authority Advice is given to the business that the attached procedure demonstrates that the business is taking reasonable precautions in relation to its legal obligations under the Food Labelling Regulations in relation to selling food after its 'Use By' date. Primary Authority Advice is also given that the internal compliance system operated by the business would demonstrate a satisfactory approach to due diligence, where it is properly implemented.

Does Primary Authority Advice have to be delivered in a particular format?

Primary Authority Advice needs to be provided in accordance with your local authority's agreement with the partner business, which should cover the areas outlined in section 34 of LBRO's statutory Primary Authority Guidance. The statutory guidance recognises that there will be situations in which you will have discussions with the business that do not involve giving Primary Authority Advice and provides some practical examples.

It needs to be clear to both parties when Primary Authority Advice is being given and when it is not and it is important that all Primary Authority Advice is recorded in a manner that facilitates its future retrieval and review by the officers responsible for the business, and by colleagues in their absence.

Practical Examples

- A local authority has included in its policy on Primary Authority provisions for giving and recording Primary Authority Advice. It allows officers to give Primary Authority Advice in writing or verbally but specifies that advice given verbally (in meetings or over the telephone) must be logged in a particular format. All Primary Authority Advice issued to a particular business is required to be stored in chronological order in a file associated with the business which is kept in a specified locked cabinet.
- This same local authority agrees arrangements with businesses that are within its policy but are tailored to the requirements of the business. For example, one business might specify that it only wants to receive Primary Authority Advice by letter. Another business might specify that it wishes to receive Primary Authority Advice during face to face meetings but only where these are with specified staff of the business, such as the Compliance Manager. They also require the advice to be noted in a record of the meeting which is then agreed by both parties.

In what circumstances should Primary Authority Advice be available to enforcing authorities?

Primary Authority Advice to a business will not normally need to be shared with all enforcing authorities particularly as it may include commercially sensitive information.

Where an enforcing authority is seeking assistance in respect of a particular issue, for example where it has identified non-compliance and is considering its response, you will need to review relevant Primary Authority Advice that has been given to the business and consider sharing it where this will be helpful.

LBRO's secure Primary Authority IT system provides a facility for partnerships to share information such as business documents and agreed procedures with local authorities, where the business has explicitly agreed to this. This facility is particularly valuable where an inspection plan has been produced for the business which makes reference to particular documents.

For example, where a primary authority issues Primary Authority Advice that a procedure outlines a satisfactory system for delivering compliance in a particular area, an inspection plan could then draw attention to this procedure and recommend that enforcing authorities focus their inspection resources on local implementation of the procedure but do not review the procedure. The procedure should then be made available in support of the inspection plan.

How often should Primary Authority Advice be updated?

You should agree with your partner business a maximum interval at which Primary Authority Advice will be reviewed and updated.

In the meantime, the advice may need to be amended in the light of changes to legislation, guidance, codes of practice, industry practices or other circumstances.

A review of the advice should take into account any feedback received from enforcing authorities and should be seen as an opportunity to improve systems and procedures, driving continuous improvement in the business's compliance activities.

Background

Effective local regulation requires confidence and mutual trust. Businesses should be able to rely on the environmental health, licensing and trading standards advice received from local authorities, in the knowledge that it is expert opinion, applicable across the UK, and a secure basis for investment and operational decisions. This forms the basis for Primary Authority, which was launched on 6 April 2009. Its operation is a statutory responsibility of LBRO. Our role is to register partnerships, issue guidance and resolve disputes.

As the public body for better local regulation, LBRO reduces unnecessary red tape for law-abiding businesses, to allow greater focus on targeting the rogue traders and persistent offenders who harm vulnerable people and damage our communities. By making it easier for councils to advise on and apply the rules, and simpler for businesses to understand them, we help to ensure that local regulation delivers both prosperity and protection.

LBRO was established under the Regulatory Enforcement and Sanctions Act 2008 as a non-departmental public body, accountable to the Department for Business, Innovation and Skills (BIS) through the Better Regulation Executive. We are governed by an independent Board and operate across the United Kingdom from our base in central Birmingham.

For further information about Primary Authority and LBRO, please visit www.lbpro.org.uk. Alternatively, contact Duncan Johnson at duncan.johnson@lbpro.org.uk or on 0121 226 4000.

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