

PRIMARY
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Primary Authority Inspection Plans:

A Tool For Change



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This guide aims to help officers operating primary authority partnerships to understand how an inspection plan can be used by a primary authority as a tool to work with its partner business.

The guide also provides a brief outline of the steps to developing and using an effective inspection plan. 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.

What is an inspection plan?

The legislation² provides for you, as a primary authority, to prepare an inspection plan, in consultation with your partner business, making recommendations to other local authorities about the frequency, nature and circumstances of proactive checks on the partner business, and requiring feedback on those checks.

Where LBRO gives consent to an inspection plan it is made available to all local authorities on LBRO's secure Primary Authority IT system and they must have regard to it.

Inspection plans assist enforcing authorities by providing them with the information and tools that they need to better regulate the business locally. If a local authority has reasons not to follow an inspection plan then it must explain these reasons to the primary authority.

Inspection plans are for the use of regulators only and should not be shared more widely.

What are the benefits of an inspection plan?

Significant aspects of local authority regulation are premises-based, with checks on business compliance by inspection of individual premises. Businesses of all sizes, where they trade across local authority boundaries, experience frustration at having their premises viewed in isolation by local authority regulators. These frustrations encompass a variety of issues and their impact can be much more significant for small businesses than for larger businesses.

As a primary authority, your local authority has taken on the role of working in partnership with a business to improve and maintain its compliance. A key part of this role is ensuring that the business is relieved of some of the burdens that can be associated with regulation by multiple local authorities – the much talked-about issues of 'inconsistency' and 'duplication of effort'.

An equally important part of your primary authority role is ensuring that your partner business derives the greatest possible benefit from the strengths of local regulation.

Advice is often seen as the main tool of Primary Authority, delivering obvious benefits in terms of providing your partner business with assurance. Inspection plans are an equally valuable tool, with the potential to deliver benefits to you, to your partner business, and to your colleagues in other local authorities.

¹ Primary Authority Guidance, available on LBRO's website at <http://www.lbpro.org.uk/docs/pa-guidance.pdf>

² **Regulatory Enforcement and Sanctions Act 2008**, section 30

As a primary authority, you are best able to support compliance in your partner business when you are well informed about how the business is working. While your contact within the business is able to tell you how things work, and may be able to share with you the results of internal checks, your colleagues in other local authorities will be able to help you to build up a clearer picture of how things are actually working 'on the ground'.

An inspection plan allows you to provide your colleagues with key information about the business, its procedures, and where the problems are most likely to arise, and enables you to get feedback on what they find when carrying out checks on the business.

You can use this data in two ways:

1. to help the business to address any failings and to improve its performance; and
2. to help enforcing authorities to see any issues that they identify locally in the wider context, allowing them to make an informed decision on a proportionate response to those issues.

How does your business benefit?

Inspection plans enable businesses to reduce the costs associated with being regulated by multiple local authorities, and to maximise the benefits associated with local regulation.

Businesses of all sizes can benefit, where they are inspected by more than one local authority, from national retailers with outlets in many different local authority areas, to mobile premises that visit different local authority areas. The following examples highlight the issues that can be addressed by inspection plans for two quite different business models:

The national retailer

- Operates retail outlets across the UK, all using centrally agreed systems and procedures that it has reviewed with its primary authority
- Commits significant resources to compliance activities, including, for example, a national programme of auditing compliance in its stores
- Experiences hundreds of local authority inspections each year, many of which include a significant element of checking the centrally agreed systems
- Is frustrated that local authority risk assessments often fail to take into account its systems, internal checks and compliance history, instead treating each of its premises in isolation
- Would welcome robust checks on local implementation of its systems in areas that it has identified as high risk
- Would welcome feedback from local authority inspectors on local implementation of its systems, to supplement the intelligence that it receives from its own checks

An inspection plan could:

- ❖ Reduce the number of inspections that are carried out at the business by ensuring that all local authorities have the information they need to accurately risk assess the business, and to determine whether, and how often interventions are appropriate in their area.
- ❖ Improve the focus of inspections that do take place by ensuring that enforcing authorities understand the business's procedures and compliance activities. This is likely to reduce the length of each inspection.
- ❖ Raise the value of local inspections by ensuring that useful feedback is made available to the business, through the primary authority.

The market trader

- Retail farm produce at several farmers markets across its region
- Has followed advice from his primary authority in relation to the products and his market stall
- Experiences inspections of his stall and products in each local authority area that he visits
- Receives pre-event communications from local authorities each time that he takes his stall to an event such as a show, often with a checklist to complete
- Is frustrated by the frequency of inspections of his stall, sometimes several inspections each year, which he sees as a waste of his time and of local authority resources
- Is frustrated that he is repeatedly asked to complete event checklists which cover areas where he already follows advice from his primary authority

An inspection plan could:

- ❖ Reduce the number of inspections of the market stall that are carried out by ensuring that all local authorities have the information they need to accurately risk assess the business, and to determine whether interventions are appropriate when the business visits their area.
- ❖ Remove the need for the business to repeatedly complete pre-event checklists by making the required information available to all local authorities.

What can an inspection plan cover?

A large part of the value of inspection plans is that the legislation does not prescribe too narrowly how they can be used. They are a flexible tool, capable of serving a number of different purposes. The statutory Primary Authority Guidance provides examples of how a plan may be used and sets out requirements for the information that should be contained in the plan³, as well as explaining limitations on the use of a plan. In particular, it is important to understand that inspection plans should relate to proactive activities and should not make recommendations in respect of reactive interventions in response to specific complaints or intelligence about the business, or in response to a specific local issue.

You should work with your partner business to understand its needs in relation to local regulation of its premises, and to agree what you seek to achieve by producing an inspection plan. Having agreed your objectives, you will need to design an inspection plan that is capable of meeting them, and carry out the necessary preparatory work.

Areas to consider include:

- ❖ **Informing risk assessment**
- ❖ **Improving targeting and reducing duplication of effort**
- ❖ **Improving focus and effectiveness**
- ❖ **Ensuring effective communications**

1) Informing risk assessment

- Making specific recommendations on risk assessment of the business's premises
- Making recommendations on the use of alternative enforcement strategies
- Making available information that will help local authorities to properly risk assess premises of the business in their area

Examples:

- ❖ *A plan makes recommendations on the score that should be allocated to specific elements under a national risk framework.*
- ❖ *A plan recommends that self assessment questionnaires are not sent to the business but refers enforcing authorities to the Additional Information area of the Primary Authority IT system where the primary authority makes available all of the information that is normally requested of the business by such questionnaires.*
- ❖ *A plan refers to further information on the business's procedures and practices that it has made available on the Primary Authority IT system in order to help local authorities to properly risk assess premises of the partner business in their area.*

³ Primary Authority Guidance, sections 33-37

2) Improving targeting and reducing duplication of effort

- Making recommendations on areas that do not require local inspection or interpretation
- Inviting participation in a risk-based inspection programme designed and managed by the primary authority
- Inviting participation in a risk-based sampling or test purchasing programme designed and managed by the primary authority

Examples:

- ❖ *The business has received Primary Authority Advice that its HACCP⁴ plan is satisfactory, and the primary authority produces an inspection plan recommending that local authorities should not assess whether the HACCP plan is suitable or adequate but may assess local compliance with the plan.*
- ❖ *The business has 800 premises nationally, all of which have been inspected annually by local regulators. The primary authority, having good knowledge of the business's internal compliance systems, undertakes to coordinate a risk-based national inspection strategy. It produces an inspection plan seeking participation in this programme.*
- ❖ *A bottled drink manufacturer has its drinks sampled occasionally across the country, with little or no joined-up planning of which products to sample. The primary authority produces an inspection plan with a coordinated sampling programme, recommending that only local authorities participating in this risk-based approach should take routine product samples.*

3) Improving focus and effectiveness

- Recommending areas where local checks should be carried out
- Requesting feedback on inspection findings and sampling results

Examples:

- ❖ *The primary authority and partner business have identified a particular area as presenting higher risks of non-compliance. The primary authority produces an inspection plan which asks local authorities to focus their efforts on this area and to feedback to the primary authority on specific issues, via the Primary Authority IT system.*

4) Ensuring effective communication

- Making recommendations about the manner in which the enforcing authority communicates with the business and with the primary authority

Examples:

- ❖ *An inspection plan sets out how inspection findings should be reported to the business.*
- ❖ *An inspection plan provides information on who should be contacted by the enforcing authority if it has queries in relation to the inspection.*
- ❖ *The primary authority requests feedback on compliance in specific areas, for example, to inform its management of a national inspection strategy.*

What is the process for developing an inspection plan?

- ❖ Work with your partners business to agree the aims of the proposed inspection plan and to gather the evidence that supports the recommendations that you intend to make to enforcing authorities
- ❖ Where you intend to coordinate a national inspection strategy, develop a proposal for managing this strategy and for reviewing its impact
- ❖ Prepare an 'Inspection Plan Rationale'

The rationale documents the reasons for putting in place the recommendations, and the evidence that supports the plan, for the benefit of the primary authority, LBRO, and any national regulators that will have an interest in the plan, It also sets out the primary authority's proposals in respect of review and evaluation of inspection plans that include elements of 'earned recognition'.

A template 'Inspection Plan Rationale' document is available on the LBRO website.

- ❖ Draft the inspection plan

LBRO, working with a number of partnerships, has developed a template format for use by primary authorities preparing inspection plans, in order to promote a consistent approach which makes it easier for enforcing authorities to assimilate the information contained in inspection plans. The template format is available on the LBRO website in two documents, one for plans which cover a single legislative category, and one for plans which address multiple categories.

- ❖ Provide supporting information to enforcing authorities

Where the inspection plan draws attention to particular procedures then the primary authority will normally want to make these procedures available to other local authorities through the Primary Authority IT system, by uploading them to the 'Additional Information' area.

It may be helpful to provide further background information on the Primary Authority IT system, to support the effectiveness of the plan. For example, by addressing any visibility issues around the premises that are operated by the business.

- ❖ Submit the inspection plan to LBRO via the Primary Authority IT System.

What happens once the inspection plan has been submitted to LBRO?

- ❖ LBRO will consider the inspection plan and accompanying inspection plan rationale and may contact you if there are any queries at this stage.
- ❖ LBRO will send the inspection plan to any national regulators who might have an interest in the plan, including, for example, the Food Standards Agency, the Health and Safety Executive, the Office of Fair Trading, the National Measurement Office, the Environment Agency, and the Gambling Commission. These organisations will provide any comments to LBRO.
- ❖ Once LBRO consents to the inspection plan it will be published on the Primary Authority IT system, where it can be easily accessed by all local authorities.

Is the inspection plan delivering?

You will need to agree with your partner business at an early stage how both parties will monitor the impact of the plan. For example, you may wish to monitor:

- ❖ whether hoped-for feedback is being received from enforcing authorities;
- ❖ whether the feedback received is proving helpful in driving improvements; and
- ❖ changes in the level of local inspections of the business's premises.

The information gathered will inform your review of the effectiveness of the inspection plan in delivering your agreed objectives.

An inspection plan can only deliver its objectives effectively if enforcing authorities follow it. You should therefore agree with your partner business at how you will work together to monitor adherence to the inspection plan.

Should you experience issues with enforcing authorities failing to follow the plan, or notifying deviations which you do not feel to be justified, you should seek to understand and resolve these issues with individual enforcing authorities wherever possible. Where this is not possible, LBRO will seek to provide assistance.

How often should an inspection plan be reviewed?

The inspection plan will need to be reviewed in the light of changes to the business's procedures or information received from enforcing authorities, to ensure that it remains current.

In addition, the plan should be reviewed at regular intervals and an appropriate interval for this review should be agreed with your partner business at the outset. An appropriate interval is likely to depend upon the nature of the plan and what it is seeking to achieve.

Where the inspection plan sets out a national inspection strategy that aims to reduce local checks on the business, the management of this strategy would need to be responsive to all incoming intelligence.

All inspection plans will need to have an expiry date and LBRO considers that a duration of up to 12 months would be appropriate in most circumstances.

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.

Following the government review of public bodies initiated in 2010, it was announced in February 2011 that our work to administer Primary Authority and simplify the regulatory system will be taken forward by a streamlined body within BIS. The new organisation will continue to provide technical expertise and will retain our reputation for independence and challenge.

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