



Department for Business Innovation & Skills

Better
Regulation
Delivery Office

Extending and Simplifying Primary Authority: Keeping the UK Competitive



September 2015

Executive summary

- 1.1 Primary Authority provides businesses with consistent, tailored, assured advice they can rely on and provides regulators with flexible ways of working. This gives businesses greater confidence to invest and grow and increases regulator efficiency. The principles of Primary Authority are set out in the Regulatory Enforcement and Sanctions Act (RESA) 2008¹, as amended. Operational since 2009, the scheme makes it easier to comply with regulation and run a business in the UK.
- 1.2 The scheme is very successful. Since its introduction, it has been extended, having proved very popular with business, and has grown strongly, providing assurance to 7695 businesses as of 3 September, doubling membership every year of the last Parliament. It now covers over ¼ million premises across the UK.

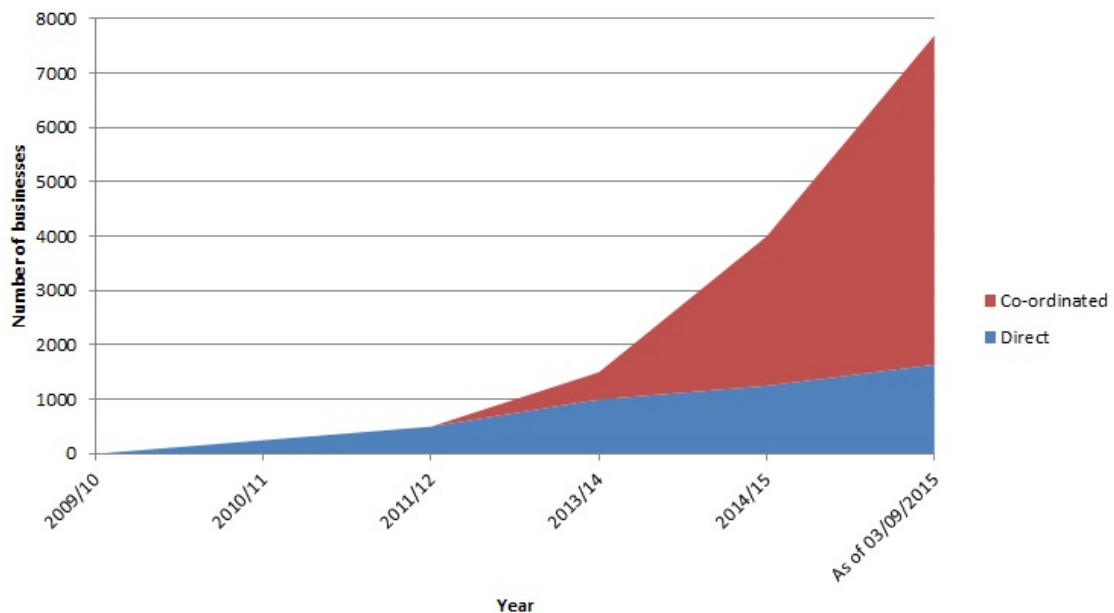


Figure 1: Primary Authority success

- 1.3 Throughout 2014-15, we spent six months reviewing the implementation of the scheme, extensively engaging with stakeholders to find out how Primary Authority is operating. We surveyed 350 businesses and 100 local authority officers to find out how the scheme is working for them and this has given us an evidence base from which we have identified improvements that would make the system work more effectively and deliver benefits to businesses and regulators.
- 1.4 In a speech he gave on 19 May 2015², the Business Secretary made a commitment to extend and simplify Primary Authority “to make it far easier for small businesses to access the scheme.”

¹ <http://www.legislation.gov.uk/ukpga/2008/13/contents>

² <http://bit.ly/1JWEeCN>

- 1.5 This Government wants to ensure that as many businesses as possible can access the benefits of Primary Authority as simply as possible. That means taking a whole new look at the scheme, removing blockages to improve the business experience of regulation.
- 1.6 To achieve this objective we are proposing a number of changes to the existing scheme, some of which will be taken forward in a new Enterprise Bill. This was announced in the Queen's Speech 2015 and is being introduced in order to cement the UK's position as the best place in Europe to start and grow a business. It includes a number of deregulatory measures to help business, including extending the Government's target for cutting red tape, requiring regulators to be more transparent in reporting their compliance with existing statutory better regulation measures, and extending Primary Authority to streamline regulation around the country.
- 1.7 In summary, we are proposing to:**
- i. Simplify the scheme to allow more small businesses to join Primary Authority and access assured advice;**
 - ii. Extend Primary Authority to additional areas of legislation, enabling other regulatory bodies to participate in Primary Authority, ensuring regulators recognise advice issued in other nations; and**
 - iii. Streamline the administrative processes for all involved.**
- 1.8 **We need your feedback to inform our proposals. This will help us develop a strong evidence base to support the simplification and extension of Primary Authority and inform the administration of the scheme. Specific questions on which we are looking for response are on [Citizen Space](#).**
- 1.9 **This document is being published alongside the introduction of the Enterprise Bill and should be read in conjunction with the relevant clause of the bill.**
- 1.10 **This discussion paper will be of interest to anyone affected by regulation. It will be of particular relevance to those with an existing Primary Authority relationship or who may wish to have one in future. We are keen to gather your views and evidence relating to the simplification and extension of Primary Authority. Your feedback is requested by 22 October 2015 in the first instance; then there will be ongoing evidence gathering.**

Simplify the scheme to allow more small businesses to join Primary Authority and access assured advice

- 2.1 Post implementation evaluation of Primary Authority has highlighted a number of benefits for business, varying between different business types and sizes. The benefits of Primary Authority as experienced by large, complex businesses often focus on the business having a single point of contact, which reduces the time, risk, burden and complexity of dealing with numerous local regulators. Primary Authority also provides such businesses with the ability to receive assured advice and form a more constructive relationship with a single local authority to support their approach to managing compliance.
- 2.2 Smaller businesses focus their attention on receiving robust, good quality, relevant assured advice that they can rely on. Small businesses often do not have in-house expertise on regulatory issues, and look to external sources for advice³. This may include business representative groups, trade associations or paid consultants and many small businesses value the ability of local regulators to provide advice to assist them to meet their obligations⁴. Businesses, especially small businesses, are more likely to grow when they have increased confidence⁵. Primary Authority can deliver that confidence through a more engaged relationship with a single local authority regulator leading to assured advice.
- 2.3 In 2013, Government extended Primary Authority through the Enterprise and Regulatory Reform Act to enable businesses that share an approach to regulatory compliance, such as members of a trade association or businesses within a company group, to enter Primary Authority co-ordinated partnerships. There are currently 6057 businesses in co-ordinated partnerships⁶, demonstrating the importance for businesses of tailored sectoral advice and the confidence they place in their relationships with their trade associations.
- 2.4 Despite these changes, only a small proportion of the 5 million small businesses⁷ in the UK are currently in a primary authority partnership. Co-ordinators tell us that the current application process for co-ordinated partnerships can be complex and bureaucratic, putting off their members. Entrepreneurs tell us they cannot access assured advice at the crucial stage of set up. Creative and new technology businesses tell us they want to access specialist advice for their sector from regulatory experts which encourages innovation and challenges current practice. The proposals below set out how we will address these challenges and ensure that as many businesses as possible can access the benefits of Primary Authority as simply as possible.

³ Business Perceptions Survey 2014 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314378/14-p145-business-survey-2014.pdf 91 per cent of businesses surveyed used at least one external source for advice.

⁴ Business Perceptions Survey 2014. 38% of businesses surveyed use inspectors from the local council or regulatory bodies to help their businesses in complying.

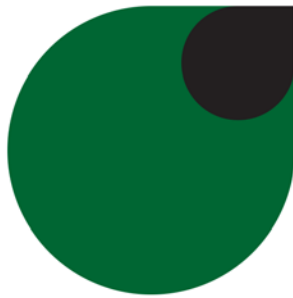
⁵ <http://www.goldmansachs.com/citizenship/10000-small-businesses/UK/news-and-events/10ksb-uk-progress-report-PDF.pdf>

⁶ As of 3 September 2015

⁷ Figures from <http://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>

8 out of 10

businesses in Primary Authority Partnerships
are co-ordinated



85%

of businesses within
Primary Authority are SMEs

Co-ordinated partnership for the construction products sector

New rules on CE marking of construction products were introduced in the EU in advance of guidance on how they should be implemented. Businesses felt that in the absence of specific advice they were in no position to make the investment decisions required. The **Construction Products Association** used its co-ordinated Primary Authority Partnership with **Cambridgeshire County Council** to provide its members with a consistent interpretation of the key issues. This has since been used at European level, saving the sector hundreds of millions of pounds.

Extend access to Primary Authority to any business that wishes to form a partnership, enabling more small businesses to benefit

- 2.5 We are bringing forward legislation in the Enterprise Bill which will change the eligibility criteria for businesses wishing to join Primary Authority. In summary we propose to remove the requirement that businesses must be carrying out a regulated activity and must carry out an activity in more than one local authority area or share an approach to compliance with a business in another area. This will make it clear that Primary Authority is available to all businesses that want it, widening access to the scheme, especially for businesses that are regulated by a single local authority⁸ or pre-start-up businesses that are not yet regulated in respect of a particular function.
- 2.6 Entrepreneurs and pre-start-up businesses often have a high demand for timely, good regulatory advice, wanting to 'get it right first time'. The availability of this service can be dependent on local authority resourcing. While there are some local authorities that offer a 'pay as you go' cost-recovered service to provide advice to pre-start-up businesses, this is not widespread or necessarily sustainable.
- 2.7 Receiving advice at this pre-start-up phase boosts confidence but is also an efficient approach for businesses and regulators. This time in the business lifecycle can often be high-risk in terms of regulatory compliance, as good practice is not yet established in the business' activity and management resources spread thinly. Effort by regulators at this time has maximum impact through greater compliance by the business when they start trading and in the future.
- 2.8 Some businesses need to access specialist expertise about their sector. These businesses may be operating new or disruptive business models and can struggle to source the right advice. Innovative local authorities are using Primary Authority to respond to this need and building specialist expertise to provide detailed advice. These include Cheshire East Council in relation to outdoor adventure companies, Cornwall Council for cheese making and Warwickshire County Council for the estate agency sector, in association with the National Federation of Property Professionals and the Property Ombudsman Limited.
- 2.9 For other small businesses trading in a single area, Primary Authority could offer the opportunity to form a new relationship with their local authority, based on assured advice. The business would gain greater confidence and the local authority would be enabled to provide tailored advice on a cost recovery basis, as per current arrangements for cost recovery for Primary Authority.
- 2.10 We anticipate that in the majority of circumstances a business would wish to partner with the local authority where it is based, unless it was seeking specialist expertise. This may result in a local authority having the role of both primary authority and enforcing authority in the case of non-compliance by the business. To address this, we propose to provide the business with the opportunity to seek determination from the Secretary of State if it considers that the primary authority is not respecting its own advice.

⁸ In respect of a particular function.

Simplify co-ordinated partnerships to make it as easy as possible for businesses to register partnerships through trade associations, franchisors and company groups

- 2.12 Through the Enterprise Bill we are proposing simplifying arrangements for co-ordinated partnerships, enabling co-ordinators, such as a franchisor or trade association, to enter a partnership with a primary authority without requiring each member business to submit an individual application.
- 2.13 Currently, there is a two-stage application process for co-ordinated partnerships. Stage 1 is for the local authority and the co-ordinator to make a joint application. Stage 2 is for each individual business to make its own application to join. This two-stage process is burdensome, time-consuming and resource-intensive and can deter small businesses from joining Primary Authority and accessing the benefits of assured advice. The National Federation of Meat and Food Traders, for example, has struggled to sign up all of its member businesses due to the complexity of the application process, despite offering support to its businesses. Support included operating a dedicated phone line for Primary Authority applicants, publishing newsletters and calling each individual business to guide them through the application process. This demonstrates the challenge for trade sectors made up of small, disparate businesses and the level of additional resource and commitment needed to support the current application process.
- 2.14 We want to place trade associations and franchisors at the centre of Primary Authority, harnessing their relationships with their members and making it quicker and simpler for small businesses to access the assurance provided by Primary Authority Advice. We propose to remove the need for each business to go through the application process, with the co-ordinator entering and maintaining a partnership with a primary authority on behalf of its members.
- 2.15 Co-ordinators are in the best position to identify which businesses should be able to rely on the assured advice they receive from their primary authority, and we propose to remove the need for each business to demonstrate that they share an approach to compliance. Instead, we propose that the co-ordinator should define its group of businesses. By simplifying the application processes and not requiring each individual business to hold a separate partnership, the onus would be on the co-ordinator to maintain accurate details of who is entitled to rely on any assured advice issued by its primary authority and to respond in a timely manner to requests from enforcing authorities about members of the co-ordinated partnership.
- 2.16 Experience of operating co-ordinated partnerships has demonstrated that some trade associations, such as the National Federation of Retail Newsagents, have engaged with the need to improve the data they hold about their members and that this has had benefit beyond their primary authority partnership. We welcome feedback from trade associations and co-ordinating bodies on this approach.
- 2.17 We propose to use statutory guidance to outline any requirements for co-ordinators to demonstrate their suitability to fulfil the role of co-ordinator of a partnership.

- 2.18 Advice issued by the primary authority to businesses in co-ordinated partnerships would be required to be available to enforcing authorities through the secure Primary Authority Register. All such Primary Authority Advice should be published and it will be good practice for a business to signal its participation in Primary Authority to any enforcing authority that it has interactions with.
- 2.19 In this approach to simplifying co-ordinated partnerships, we propose that a business is entitled to rely on advice from the primary authority⁹ where the business has a formal relationship with the co-ordinator at the time at which enforcement action is proposed. This is the same as current requirements. A business could prove a relationship with the co-ordinator, through for example, current membership or a current franchise agreement. Figure 2 sets out our proposed simplification.

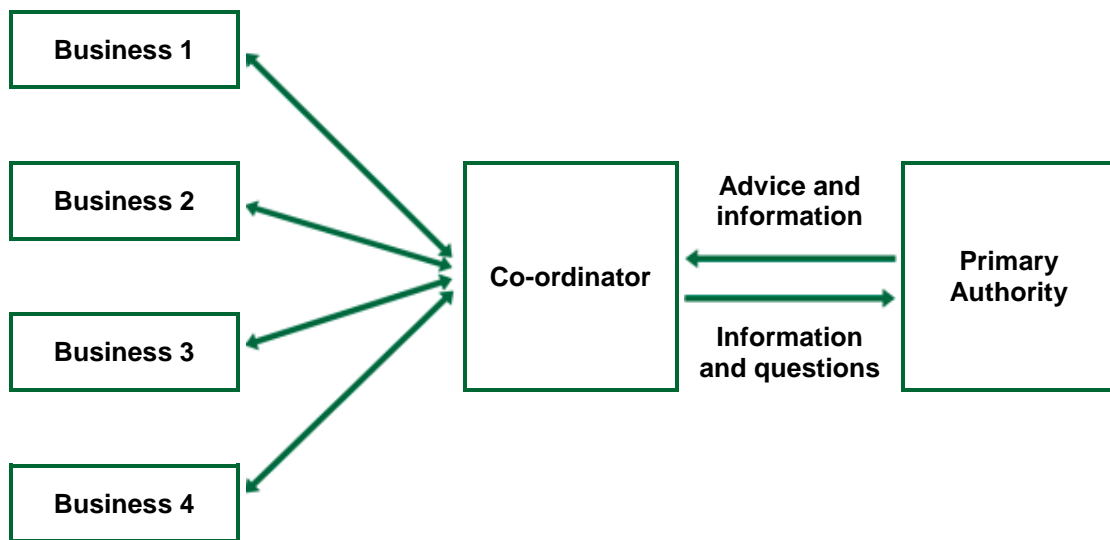


Figure 2: Simplified co-ordinated partnership: relationship between the parties

- 2.20 We propose that inspection plans will be available to simplified co-ordinated partnerships only where a partnership can demonstrate it meets the criteria for inspection plans. Criteria for co-ordinated partnerships are currently included in the Primary Authority Statutory Guidance and we propose to update this to ensure criteria are rigorous and fit for purpose. This will include a criterion for transparency of membership where a partnership wishes to form an inspection plan.

⁹ The advice would be disseminated to businesses by the co-ordinator but the advice is issued by the primary authority.

Extend Primary Authority to additional areas of legislation, enabling other regulatory bodies to participate in Primary Authority, ensuring regulators recognise advice issued in other nations

- 3.1 Since Primary Authority was established in 2009, it has been extended a number of times to meet the needs of business. In April 2013, it was extended to fire safety regulation, underage sales of alcohol, carrier bags charging and sun beds. Figure 3 summarises the main changes to the scheme since its inception.
- 3.2 We are now seeking feedback on proposals to extend Primary Authority to a number of areas of legislation that are currently not part of the scheme, and to create a stronger role for other regulatory bodies in Primary Authority. Changes to the scope of the scheme will not be made through the Enterprise Bill.

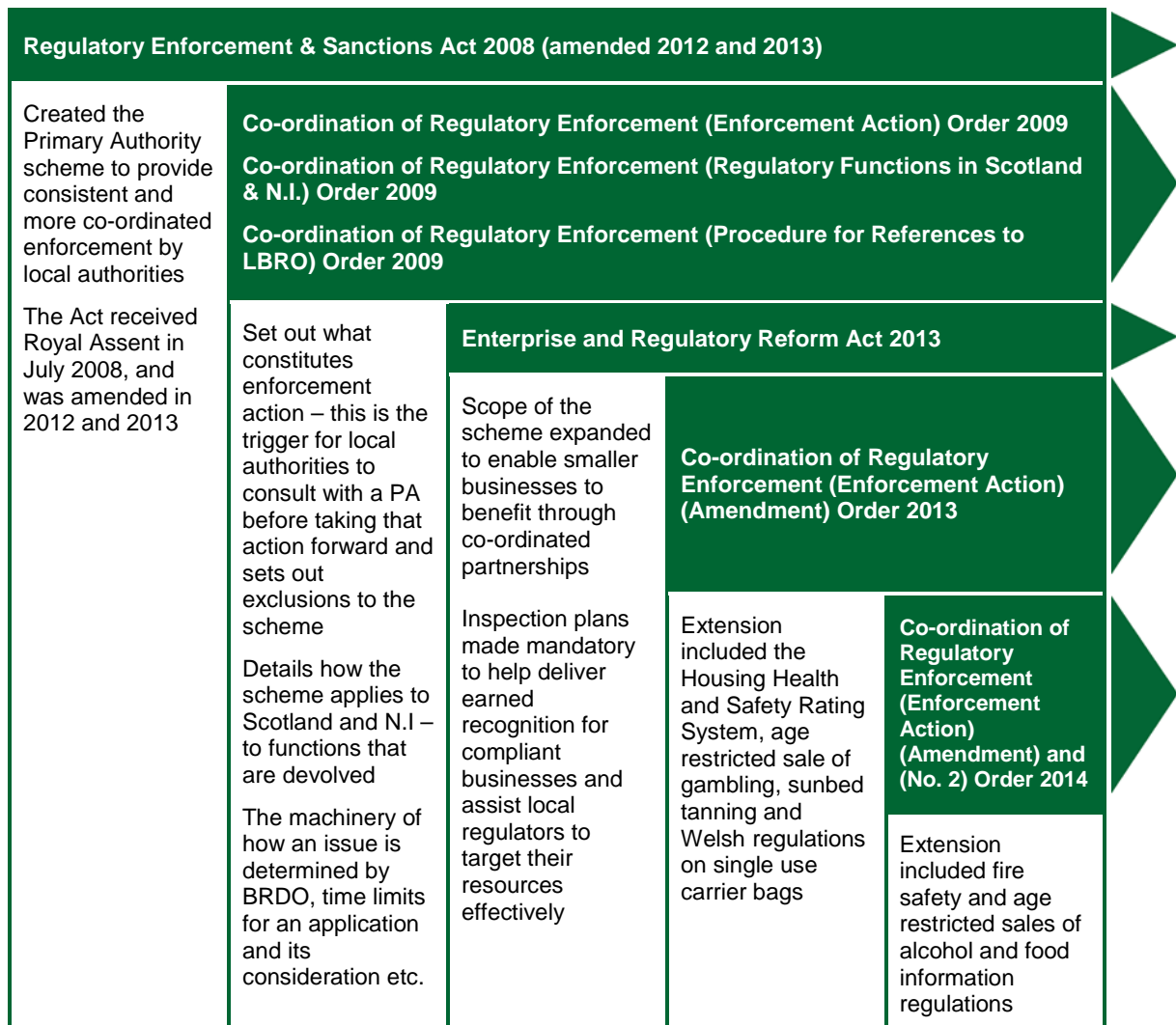


Figure 3: Summary of main legislative changes to Primary Authority

Other regulators

Enable national regulators to be formally recognised as playing a role to support primary authorities in the development of Primary Authority Advice, guidance and inspection plans

- 3.3 Businesses that are regulated by both national bodies and local authorities face potential duplication and inconsistency of advice. Primary Authority provides a mechanism to offer co-ordinated advice between different regulatory bodies to a business.
- 3.4 Through the Enterprise Bill we propose to create a new power in RESA to enable the Secretary of State to specify those regulatory bodies that would be able to play a statutory role in Primary Authority, supporting the development of Primary Authority Advice, guidance and inspection plans in conjunction with a primary authority. A national regulator would be able to undertake such a role supporting a local authority where they exercise the same or similar relevant function which is in scope of Primary Authority, or where they oversee (but do not necessarily exercise) a function which is exercised by a local authority and that function is in scope of the scheme.
- 3.5 The regulatory landscape is complex, and the boundary between what is regulated by national regulators and what is regulated by local authorities is not always clear to businesses. The roles and boundaries are even less clear to business when the national regulator enforces the same law as the local authority.
- 3.6 Despite existing mechanisms such as Memoranda of Understanding¹⁰, businesses have not always experienced a joined up approach to advice and guidance, and have cited difficulties in obtaining a single assured approach.
- 3.7 This is exacerbated for businesses in primary authority partnerships where assured advice from their primary authority is not being taken into account by a national regulatory body. Under the current framework, there is no obligation for national regulatory bodies to provide any input to primary authorities in the development of Primary Authority Advice.
- 3.8 At the same time, national regulators have recognised that having a role within Primary Authority would enable them to deliver their sector strategies, but at present they lack any formal recognition in delivery of partnerships or any ability to recover their costs when they contribute to the production of advice.
- 3.9 In the event of any such power to specify in secondary legislation (paragraph 3.12 above), we are considering whether regulatory bodies such as the Health and Safety Executive, the Food Standards Agency and the Gambling Commission, might be specified and so provided with the ability to play a statutory role in primary authority partnerships, alongside a local authority, where a business or sector is regulated by both a local authority and that national regulator.

¹⁰ As required under the Regulatory Enforcement and Sanctions Act 2008.

- 3.10 We propose that participation by national regulators would not be mandatory. However, we anticipate that many national regulators would wish to support such partnerships and we propose there would be a provision for the national regulator to recover its costs for doing so, as local authorities are currently enabled to do.
- 3.11 Should a national regulator then decide to participate, we propose that they would be under a commitment to play a role to support primary authorities in the production of Primary Authority Advice, guidance and inspection plans. We intend there to be a commitment for national regulators to act consistently with the advice they have supported a primary authority to create. If a national regulator decides not to offer support to a primary authority it is anticipated that BRDO would play an administrative role in mediating between the primary authority, business and a national regulator.

Specify regulators other than local authorities who could be required to act consistently with Primary Authority Advice

- 3.12 We are proposing to use the new Enterprise Bill to create a power to enable the Secretary of State in secondary legislation to specify regulators who would be required to act consistently with Primary Authority Advice. The regulators would be required to exercise the same functions as the primary authority and in circumstances where the businesses are regulated by both a local authority and the regulator in respect of that function. It has strong support from stakeholders such as the British Retail Consortium, ASDA, Home Retail Group and the British Hospitality Association¹¹.
- 3.13 There are currently some enforcement agencies that enforce the same legislation (under Schedule 3) as local authorities. There is potential for greater involvement of a wide range of organisations, including private enforcers such as the consumer rights group Which? and industry bodies acting in a regulatory role alongside local authorities.
- 3.14 There is currently no mechanism within Primary Authority to enable recognition of the role of other enforcement bodies and businesses have reported examples of other enforcement bodies not having appropriate regard to a primary authority partnership and the advice issued.

Specify regulators other than local authorities who can become primary authorities

- 3.15 We propose to extend the existing scheme through the Enterprise Bill by creating a new power in RESA for the Secretary of State, exercisable by secondary legislation, to specify regulators other than local authorities who can be a primary authority – and where they are not the primary authority they will be subject to the same requirements under the scheme as a local authority that is not designated as a primary authority.
- 3.16 Businesses have told us that they want Primary Authority to operate as consistently as possible across England, Scotland and Wales and there is widespread business support for this proposal.

¹¹ This has precedent from Schedule 7 of the Consumer Rights Act 2015, where there is a power for the Secretary of State to specify private enforcers who are required to act consistently with Primary Authority Advice when using new enhanced consumer measures.

- 3.17 We propose to specify in secondary legislation, regulators other than local authorities who could become primary authorities so far as they exercise relevant functions which are in scope of Primary Authority. For example, Licensing Boards in Scotland may fit into the primary authority framework of Section 22 in RESA.
- 3.18 This proposal is also needed to reflect the current and possible future changes in local government and ensure that bodies who are not a local authority who carry out functions of a local authority, can be specified in secondary legislation and would be eligible to act as primary authorities, as well as carry out the responsibilities of enforcing authorities.
- 3.19 This is partly in recognition of the proposed changes in the Cities and Local Government Devolution Bill, currently making its passage through Parliament. These include the implementation of devolution agreements with combined authority areas and the creation of a new Mayor who would have a range of powers for Greater Manchester's combined authority area.
- 3.20 Licensing boards which operate in Scotland are another example of a body which might be specified in such secondary legislation. The Gambling Act 2005 transferred responsibility for enforcement of gambling regulations from Magistrate Courts to local authorities in England and Wales and to licensing boards in Scotland. It also established the national regulator for the sector, the Gambling Commission. When the changes to Primary Authority came into effect in 2013, this enabled businesses to enter into primary authority partnerships in respect of gambling regulations. However, RESA does not recognise licensing boards, as they are not a 'local authority' and this has prevented Scottish licensing boards from being able to offer primary authority partnerships for gambling in respect of reserved functions.

Reduce the detrimental impact of divergent regulatory regimes on business by enabling mutual recognition of Primary Authority
Advice

- 3.21 Primary Authority applies to regulatory functions in Scotland that apply across Great Britain and to regulatory functions in Northern Ireland that apply across the UK ("reserved matters")¹². In relation to Wales, Primary Authority applies to the same regulatory functions as in England, even though some of those functions are devolved to Wales. This means that the application of the scheme in Scotland and Northern Ireland differs to that in England and Wales. Devolution enables tailored responses to local conditions, but it can create different regulatory regimes, which can have a cost for businesses operating across the UK.
- 3.22 Businesses that operate across the UK have to comply with divergent legislation for devolved areas of law, increasing the barriers to trade and the cost of compliance for firms who have to comply with different systems¹³.

¹² The details of the scope of Primary Authority in relation to Scotland and Northern Ireland are set out in the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009 and subsequently amended once in 2013 and twice in 2014. The geographical applicability of each of the categories that can be covered by a partnership is summarised in the List of Primary Authority Categories published by BRDO:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421844/list-of-pa-categories.pdf

¹³ Scotland analysis: Business and microeconomic framework:

- 3.23 Primary Authority can help a business obtain advice to enable them to comply, however where the advice covers nation-specific legislation, this may involve having more than one primary authority for a single area of regulation.
- 3.24 In Scotland, Primary Authority applies to reserved matters such as Health and Safety and Fair Trading and is operating well, and covers over 2,300 premises in Scotland. The Scottish Government has recently consulted on the scope of a Scottish Primary Authority scheme and how it would operate in practice in relation to devolved matters¹⁴. We continue to work closely with officials on the workings of Primary Authority with their proposed scheme.
- 3.25 We are also working with the Welsh Government to ensure that Primary Authority can continue to operate effectively in relation to Wales. Across the UK, smooth operation of Primary Authority is crucial for business certainty and confidence, and it is a concern they raise with us with increasingly frequency as more devolved regulations emerge. Some businesses want to apply a single standard or procedure across the UK, and want a simple way to obtain advice rather than having to co-ordinate advice from different local authorities across borders on a single regulatory issue.
- 3.26 We are considering formalising the relationship between the devolved nations and the UK Government, to encourage local authorities throughout the UK when giving Primary Authority Advice to work closely together to ensure that the business receives a consistent approach. We are discussing how best to achieve this and one option might be the inclusion of an annex to the Memorandum of Understanding between the UK and devolved governments¹⁵.
- 3.27 This would build upon the existing approach that we have with certain of the devolved nations such as statements of intent between BIS and the Department of Enterprise, Trade and Investment in Northern Ireland and with Wales¹⁶.
- 3.28 Primary authorities would be expected to provide information and support, on request, to enforcing authorities in Wales, Scotland and Northern Ireland where they are voluntarily operating in line with Primary Authority despite being outside its geographical scope for particular relevant functions. This will help to ensure that business experiences consistent enforcement across the United Kingdom.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209891/13-635-scotland-analysis-business-and-microeconomic-framework.pdf July 2013, page 7

¹⁴ The Regulatory Reform (Scotland) Act 2014 includes provisions for Primary Authority partnerships for devolved matters in Scotland <http://www.gov.scot/Publications/2015/04/1951>

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

¹⁶ http://www.detini.gov.uk/statement_of_intent.pdf?rev=0 Wales

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263905/brdo-mou.pdf in Welsh https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263906/brdo-mou-welsh.pdf

Streamline the administrative processes for all involved

- 4.1 We want to make sure that Primary Authority is as simple as possible. We wish to remove any unnecessary administrative burdens placed on businesses, primary authorities and local authorities, as well as introduce a number of technical changes to improve and enhance the scheme. This includes proposals relating to definitions of enforcement actions, changes to requirements regarding notifications and clarification of provisions relating to cost recovery by local authorities.

Simplify the secondary legislation that defines what constitutes an 'enforcement action' for Primary Authority

- 4.2 We aim to simplify and systematise the secondary legislation which defines what constitutes an enforcement action for the purposes of Primary Authority. The definition of enforcement action is important because it makes clear which actions enforcing authorities are required to notify to the primary authority before taking the enforcement action. This is crucial to the successful operation of Primary Authority and is the mechanism that delivers assurance from the advice received. One option would be to create a generic definition of a notice to make it clearer what constitutes an enforcement action for the purpose of Primary Authority; however we need to consider how best to define enforcement action in light of the other amendments that we intend to make to the scheme.
- 4.3 Where a business has a primary authority partnership, a local authority that wishes to take enforcement action (the enforcing authority) against that business must first notify the primary authority about the action it proposes to take. This is a key benefit of the scheme, improving the consistency and co-ordination of enforcement for those businesses that choose to form a primary authority partnership.
- 4.4 Notification of proposed enforcement action to the primary authority allows it to consider whether the proposed action is consistent with advice that it has given to the business. The primary authority is entitled, where it identifies such an inconsistency, to direct the enforcing authority not to take the proposed action¹⁷.
- 4.5 The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (CORE) sets out what is regarded as 'enforcement action' for the purpose of Primary Authority and lists all notices and orders individually. This list requires updating every time a new notice or order is brought into legislation and this creates a time lag between new legislative requirements and them being included with Primary Authority. The list is also confusing for local authorities and businesses and leads to uncertainty as to whether an enforcement action is included or not.

¹⁷ The requirement to notify proposed enforcement action is waived in certain circumstances such as where the enforcement action must be taken urgently. In those circumstances, the enforcing authority must notify the primary authority that it has taken the enforcement action after that action has been taken.

- 4.6 We are considering whether to have a generic definition of this type of action in CORE, rather have a list of notices and orders that are considered to be enforcement action, as is done now under article 2()(1)(b) to (oa) of CORE. This would provide clarity for those who participate in Primary Authority and reduce administrative burden. We would widen the general definition of an enforcement notice to capture appropriate future statutory notices as well as current ones. This change would make it easier for enforcing authorities to understand and interpret and should ensure that the benefits of Primary Authority cover all statutory notices.
- 4.7 We are not proposing to make any changes to the definition of what constitutes an 'enforcement action' for Primary Authority as part of our legislative measures in the Enterprise Bill.

Remove barriers to business assurance where enforcing authorities fail to notify the primary authority of intended enforcement action

- 4.8 Currently, if an enforcing authority fails to notify the primary authority that it intends to take enforcement action against a business with a primary authority partnership, the business cannot challenge the enforcing authority's action through Primary Authority. Instead, the only action available is to seek a judicial review of the actions of the enforcing authority. The business or primary authority can ask the court to issue an injunction to stop the enforcement action from taking place.
- 4.9 We want to address this issue as it undermines the effectiveness of the scheme and propose to do so through the Enterprise Bill. We would like to ensure that businesses have the protection of Primary Authority even when the primary authority has not been notified. We propose that primary authorities are given the power to direct against an enforcement action, where the enforcing authority has not notified the primary authority of that action.
- 4.10 This would require the business to signal the proposed enforcement action to the primary authority. We propose that the business would have a time-limited opportunity of 5 working days from the date of notification of the enforcement action to do this. Should the business signal to the primary authority in this way, we propose that the primary authority can suspend, for 5 working days, the enforcement action to consider whether the action is consistent with advice. If the primary authority considers the enforcement action inconsistent, it would direct the enforcing authority not to take the action.

Remove unnecessary time limits relating to the notification of enforcing action

- 4.11 When an enforcing authority notifies the primary authority that it intends to take enforcement action, it must wait 5 days before it can take that action, even if the primary authority agrees to the action being taken. We propose to simplify this and enable action to be taken as soon as the primary authority informs the enforcing authority of its decision.

- 4.12 Currently, if the primary authority does not stop the enforcement action, the business has 10 days to decide whether to refer the matter to the Secretary of State to seek a determination. The enforcing authority cannot take action during this time. We propose to use the Enterprise Bill to amend RESA to enable the enforcing authority to act as soon as the business informs the authority that it will not refer the matter to the Secretary of State.
- 4.13 Ending the 5 day period on response by the primary authority and ending the 10 day period on response by the business would create greater flexibility for all concerned.

Clarify which guidance local authorities should use in their cost recovery policies

- 4.14 Primary authorities have the ability to charge for the service they provide¹⁸. We have learnt that primary authorities have varied approaches to cost recovery and use different sets of guidance to inform the delivery of their service. Approaches range from charging an hourly rate to charging a fixed annual fee. The majority of fees are retained by the teams and a minority return them to central funds¹⁹.
- 4.15 Businesses greatly value the benefits that Primary Authority gives them. As figure 4 demonstrates, 76 per cent commented that the level of service they received was worth more than or equal to what they paid.

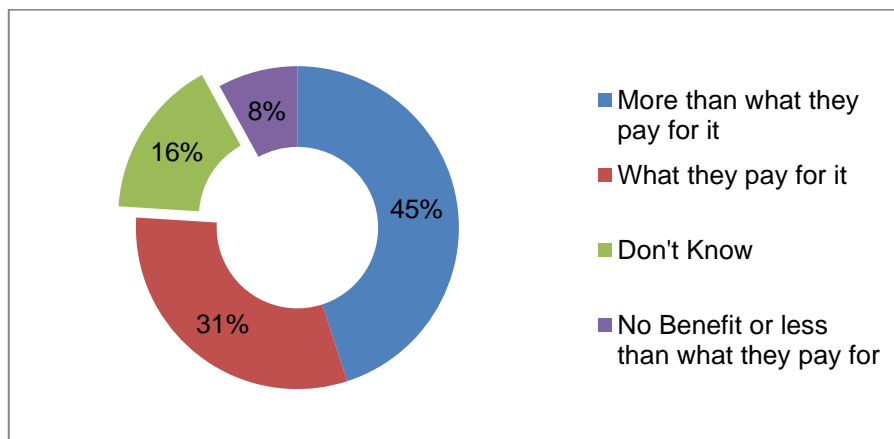


Figure 4: Businesses valuation of the benefits of Primary Authority²⁰

¹⁸ Section 31 of RESA 2008 'The primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated person'. Section 33(3) requires a local authority to have regard to any guidance given to it.

¹⁹ Taken from research conducted by ACL Consulting in 2015, commissioned by the Better Regulation Delivery Office about the impact of Primary Authority. The full research report will be published shortly, following peer review. Out of 98 primary authority partnerships questioned: 11 do not charge a fee; 40 charge an hourly rate with or without free hours; 17 charge an annual fee for set/min no. of hours; 12 charge a fixed annual fee; 10 charge an hourly rate for set/minimum no. of hours; 6 charge an annual fee for set hours, with additional hours charged; 1 charges an hourly rate with an annual maximum; 1 charges an hourly rate (first hour charged higher). 82 out of 93 primary authority teams retained fees earned; 7 surrendered them to central funds.

²⁰ Ibid.

- 4.16 Our Statutory Guidance refers to HMT's Managing Public Money as the guidance that primary authorities should use when cost recovering for Primary Authority. However, our research indicates that local authorities find the Managing Public Money guidance too generic and it does not enable them to accurately recover the costs for the services that they provide²¹.
- 4.17 The Department for Communities and Local Government indicates that the most often used guidance is the Service Reporting Code of Practice, owned by the Chartered Institute of Finance and Accountancy (CIPFA)²².
- 4.18 We propose to update the guidance governing cost recovery by local authorities to refer to CIPFA's Service Reporting Code of Practice and provide additional guidance on cost recovery.

Simplify the regulatory categories in respect of which a business can have a partnership

- 4.19 The number of Primary Authority categories has grown over the life of the scheme and an increase in devolution means that the current structure is no longer fit for purpose, and it is not always clear to those entering a partnership which category they should form a partnership under. We propose to reduce the number of categories from 22.

Make inspection plans more effective

- 4.20 Inspection plans are documents that are used to assist and guide local authorities in planning and conducting their inspection activities. The Enterprise and Regulatory Reform Act 2013 made it a legal requirement for local authorities to act in accordance with them. In addition to bringing greater certainty for businesses as to the way their compliance will be measured, benefits to regulators from having inspection plans include promoting more informed risk assessment of the business, collating an improved national picture in key areas of compliance through better feedback on local interventions, improving targeting of premises and activities, and more efficient use of resources at the local level.
- 4.21 Many plans include a request that enforcing authorities provide feedback on what they have found (and in some cases provide a format for them to do this). Business perceptions of inspection plans are detailed at figure 5.
- 4.22 However, concerns have also been expressed by some businesses and primary authorities that the requirements of inspection plans are not always being followed, both in relation to how the inspections are conducted and in provision of feedback to the primary authority, thereby limiting their benefits. Some primary authorities and their partner businesses have decided not to develop inspection plans because of this.

²¹ The guidance on cost recovery available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf

²² The guidance applies to all local authority services throughout the United Kingdom from 1 April 2015 for the preparation of 2015/16 Budgets, Performance Indicators and Statements of Accounts. Available from <http://www.cipfastats.net/sercop/>

- 4.23 It is important that the full benefits of inspection plans are realised for primary authorities, enforcing authorities, and for businesses. We are firstly keen to understand why enforcing authorities might not be acting in accordance with them. Is it, for example, because enforcing authority officers are unaware that relevant inspection plans exist? Are some officers unaware of the legal obligation to follow inspection plans? Is there some issue or problem that makes it difficult for officers to follow an inspection plan? Inspection plans apply to all proactive, planned or programmed regulatory interventions, but not to reactive interventions in relation to matters of specific concern about a business; are the circumstances in which inspection plans apply sufficiently clear to both businesses and local authorities?
- 4.24 Secondly, we are keen to understand what might need to be done to address the issue. For example, do inspection plans need to be made more visible? Do the structure or content of inspection plans need to be changed? Is some form of sanction required in circumstances where local authorities fail to act in accordance with an inspection plan?

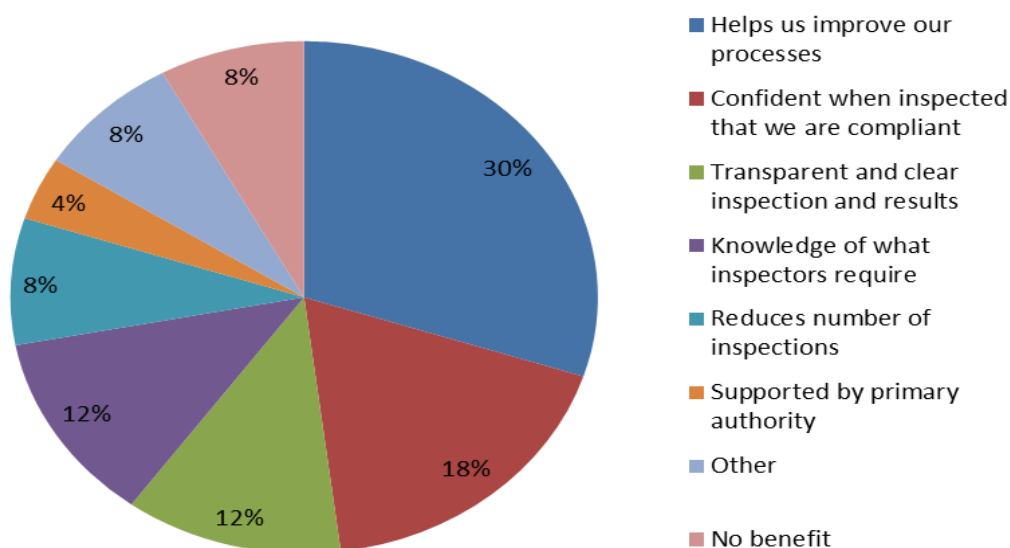


Figure 5: Business perceptions about the benefits from inspection plans²³

²³ Taken from research conducted by ACL Consulting in 2015, commissioned by the Better Regulation Delivery Office about the impact of Primary Authority. The full research report will be published shortly, following peer review.

Annex A: List of acts partially covered by RESA

Agriculture (Miscellaneous Provisions) Act 1954 (c. 39), section 9
Agriculture and Horticulture Act 1964 (c. 28), Part 3
Cancer Act 1939 (c. 13), section 4
Charities Act 2006 (c. 50), section 50
Children and Young Persons Act 1933 (c. 12), Part 1
Children and Young Persons Act 1963 (c. 37), Part 2
Clean Neighbourhoods and Environment Act 2005 (c. 16), Parts 2, 6 and 7
Companies Act 1985 (c. 6), Chapter 1 of Part 11 and section 693
Copyright, Designs and Patents Act 1988 (c. 48), sections 107A and 198A
Courts and Legal Services Act 1990 (c. 41), Parts 4 and 6
Criminal Justice and Police Act 2001 (c. 16), Part 1
Criminal Justice and Public Order Act 1994 (c. 33), Parts 5, 7 and 12
Education Reform Act 1988 (c. 40), section 215
Enterprise Act 2002 (c. 40), Part 8
Food and Environment Protection Act 1985 (c. 48), Parts 1 and 2
Food Safety Act 1990 (c. 16), Parts 2 and 3
Health Act 2006 (c. 28), Part 1
Housing Act 1985 (c. 68), Parts 8, 9 and 10
Housing Act 1996 (c. 52), Part 8
Legal Services Act 2007 (c. 29), section 198
Local Government Act 1972 (c. 70), Parts 9 and 11
Local Government Act 1985 (c. 51), Part 2
Local Government Act 1988 (c. 9), Part 4
Local Government Act 2000 (c. 22), Part 1
National Lottery etc. Act 1993 (c. 39), sections 12 and 13
Road Traffic Act 1988 (c. 52), sections 15A, 17, 18, 41, 71, 81, 82 and 196
Serious Organised Crime and Police Act 2005 (c. 15), Part 4
Trade Marks Act 1994 (c. 26), section 93
Water Industry Act 1991 (c. 56), sections 77 to 85

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