



Department
for Business
Innovation & Skills

Better
Regulation
Delivery Office

Government Response
Primary Authority Statutory Guidance

September 2013

Executive summary

Primary Authority is established under the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). The scheme allows businesses to form statutory partnerships with local authorities, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of proactive inspection and enforcement activity. The Better Regulation Delivery Office (BRDO) is responsible for administering the scheme.

The Secretary of State issues guidance to assist local authorities and others using Primary Authority and sets out detail beyond the provisions of the RES Act. Since the guidance was issued when Primary Authority began in 2009, the scheme continues to develop with extensions to scope and eligibility to commence in October 2013.

The guidance has been revised to reflect these changes as well as the evolution of Primary Authority to date. The consultation *Primary Authority Statutory Guidance*, published in June 2013, sought views on proposed changes to the guidance, specifically:

- whether the revised guidance is sufficiently clear on issues surrounding eligibility, including shared approach to compliance;
- whether the revised guidance is sufficiently clear on inspection plans, including the types of interventions to which inspection plans are applicable and the duties of primary authorities and enforcing authorities in relation to inspection plans; and
- how best to address certain anomalies which have become apparent in relation to categories.

Fifty-five responses to the consultation were received from a variety of organisations, including local and national regulators, businesses, trade associations and professional bodies. Sixteen responses were from fire and rescue authorities, reflecting their interest following the pilot of Primary Authority for fire safety, the results of which will be published in due course. A list of respondents is included at Annex A.

The Government is keen to ensure that the guidance is effective and beneficial for all those using Primary Authority. The responses received have been carefully considered and this is reflected in the final version of the guidance which will come into effect from 1 October 2013.

Shared approach to compliance

The guidance has been revised to take account of consultation responses seeking further clarification about the eligibility requirements for Primary Authority.

Inspection plans

Consultation responses indicated that greater clarity was required on several aspects of inspection plans. To this end the guidance has been revised to include more relevant detail.

Scope of the scheme

Consultation responses provided useful input as to how best to address certain anomalies which have become apparent in relation to categories. The Government's response details how categories will be amended as a result.

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1. Introduction

- 1.1 Primary Authority improves consistency in the delivery of regulation by providing a statutory framework for a business to form a partnership with a local authority in order to receive robust advice on compliance in relation to a range of regulations. Primary Authority is established under the RES Act and has been in operation since 2009.
- 1.2 A primary authority can support its partner business to comply with regulations in several ways, such as issuing Primary Authority Advice, coordinating enforcement action, and developing an inspection plan.
- 1.3 The RES Act makes the scheme available to businesses which are regulated by more than one local authority. Under changes effected by the Enterprise and Regulatory Reform Act 2013 (the ERR Act), Primary Authority will be extended to include many more businesses, particularly small businesses operating from a single site. Simultaneously, the scope of the scheme will expand to include regulations on the age restricted sale of gambling, sunbed tanning, the Housing Health and Safety Rating System and Welsh regulations on single use carrier bag charging. Inspection plans will also be strengthened to help deliver earned recognition for compliant businesses and to assist local regulators to target their resources effectively.
- 1.4 The Secretary of State issues guidance to assist those using the scheme. Guidance was issued in 2009, when Primary Authority began. Since then, the scheme has grown significantly with 855 businesses and 109 local authorities participating in Primary Authority partnerships, covering in excess of 68,000 premises.
- 1.5 The guidance has been updated to reflect the development and maturation of Primary Authority. Whilst guidance was initially issued to assist local authorities, the revised version is also relevant to a wider audience – national regulators, businesses and others. This is reflective of the growing impact of the scheme and also of lessons learned during the first four years of its operation.
- 1.6 The revised guidance has a new layout to assist users to locate information relevant to their circumstances. It goes into greater detail about the operation of Primary Authority and BRDO's expectations of those using it. It also clarifies the role of national regulators in the scheme in terms of providing input where useful, thereby reflecting their increasing level of engagement.
- 1.7 The revised guidance contains information on the extension of eligibility effected by the ERR Act, including detail on the matters to be considered when the Secretary of State assesses applications for nomination. It also provides enhanced detail on inspection plans, reflecting the ERR Act changes and the responsibilities of enforcing and primary authorities. The guidance reflects the introduction of the new web-based Primary Authority Register which will replace the current IT system and is scheduled for a phased introduction from the Autumn.
- 1.8 Primary Authority applies in its entirety across England and Wales. In Scotland and Northern Ireland, Primary Authority applies only in relation to reserved and non-transferred matters and the scope of the scheme is established slightly differently. The list of categories published by BRDO shows the geographic application of Primary Authority.

2. Shared approach to compliance

- 2.1 The ERR Act contains provisions which will extend eligibility for Primary Authority so that a business may form a partnership where it has arrangements in place to share an approach to compliance with at least one other business, and collectively those businesses are regulated by more than one local authority. This extension has been designed to benefit small businesses in particular, which are less likely to have resources at their disposal to manage compliance matters. The extension means that there will effectively be two routes by which a business may be eligible to form a Primary Authority partnership, as the existing eligibility criteria (where a business is regulated by more than one local authority) will remain unchanged.
- 2.2 The revised guidance introduces new language to distinguish each means of eligibility, where such distinction is necessary. It refers to partnerships accessing the scheme via the original criteria as 'direct partnerships' and those accessing the scheme via the new criteria as 'co-ordinated partnerships'. The revised guidance has been split into three sections: one containing information for all partnerships, one for direct partnerships and one for co-ordinated partnerships. These sections are marked for ease of reference and are designed to assist with navigation through the guidance, as well as to mark the key differences between direct and co-ordinated partnerships. The guidance explains the arrangements partnerships need to have in place and BRDO's expectations as to how partnerships will operate.

Consultation responses

- 2.3 Respondents were asked whether the revised guidance clearly explains the differences between direct and co-ordinated partnerships. Forty-four respondents commented on this question. Of these, 42 indicated that the revised guidance draws a sufficiently clear distinction between direct and co-ordinated partnerships. Many respondents indicated that they found the flow chart useful. Some respondents indicated that they would like worked examples to be provided to aid their understanding.
- 2.4 Thirty-nine respondents welcomed the new structure. Respondents commented that the new structure was easy to navigate and that sections were appropriately signposted. The majority of respondents were supportive of splitting the guidance into sections relating to direct and co-ordinated partnerships.
- 2.5 The consultation sought confirmation as to whether the section relating to shared approach to compliance was sufficiently detailed. Thirty respondents indicated that the section was sufficiently detailed whereas 13 suggested that the section could be more detailed. These responses focused on the need for worked examples and practical explanations. One respondent sought clarification on the requirement for businesses to provide premises details to BRDO.

Government response

- 2.6 Whilst it is envisaged that trade association members and franchise groups are most likely to benefit from the extension of eligibility, Government is keen to ensure that these are not the only groups to benefit. Accordingly, the guidance has been drafted fairly widely on the issue of the matters likely to be taken into account in assessing whether arrangements constitute a shared approach to compliance. The guidance has been clarified as a result of the consultation, however it needs to retain sufficient flexibility to cover other situations where businesses may demonstrate their shared approach to compliance.
- 2.7 Government is aware of the importance of adequate information and guidance in making the extension of eligibility successful for regulators and businesses alike. It is recognised that further practical explanation, including examples, will be necessary to fully realise the benefits of the extension. To this end, further tools will be made available with greater emphasis on the practical aspects. These will include updated modules of the Primary Authority Handbook, additional training courses and online material. BRDO also offers the RDNA Common Approach to Professional Competency for Regulators.
- 2.8 In response to respondents' queries in relation to Primary Authority Advice to Local Authorities, the guidance has been amended to indicate BRDO's expectation that primary authorities carefully consider the need to issue such advice, and will take account of the views of local authorities who may be affected by the advice before doing so.
- 2.9 Further detail has been included on the issue of cost recovery, including an indication as to the types of services provided by the primary authority under its partnership for which costs may be recovered. This follows several responses seeking clarification in this regard.
- 2.10 The revised guidance sets out further detail on the arrangements on which partnerships should agree prior to making an application for nomination. Government is aware that partnerships are increasingly seeking to make their own arrangements in relation to the terms and conditions on which partnerships operate. To this end, the guidance explains that from 1 October, all partnerships will be required to adopt a set of core terms and conditions and will be free to agree other arrangements as they wish.
- 2.11 The guidance details obligation for businesses and primary authorities to maintain up to date details on the Primary Authority Register. The effective operation of Primary Authority is reliant on enforcing authorities being able to access accurate and up to date information on the Primary Authority Register and the guidance explains the information which should be provided.
- 2.12 In light of the positive feedback, the new structure of the guidance has been retained.

3. Inspection plans

- 3.1 Section 30 of the RES Act allows a primary authority to prepare an inspection plan, in consultation with the business, which makes recommendations as to how inspections should be carried out in relation to that business. The Secretary of State must consent to an inspection plan before it comes into effect. BRDO consults with national regulators (where applicable) as part of the consent process, and expects primary authorities to engage with national regulators during development of inspection plans to take account of national regulator requirements.
- 3.2 Under the changes effected by the ERR Act, where an inspection plan is in place, it must be followed by local regulators unless the primary authority has given prior permission for an alternative method of inspection¹. Where an inspection plan requires feedback following an inspection, such feedback must be provided. The ERR Act also introduces a new power for the Secretary of State to revoke inspection plans. The guidance has been updated to reflect these changes and the development of inspection plans as the scheme matures.

Consultation responses

- 3.3 Respondents were asked to comment on whether the revised guidance is sufficiently clear on the types of interventions to which inspection plans apply. Thirty respondents indicated satisfaction with the clarity of the guidance whilst 13 respondents remained unclear about the types of interventions to which inspection plans apply. Some of the respondents were confused by the distinction between proactive and reactive interventions and indicated that practical examples would be useful. Some respondents raised concerns about how inspection plans will work for coordinated partnerships.
- 3.4 The consultation asked for views on whether the revised guidance contains sufficient information for enforcing authorities and primary authorities on their respective responsibilities in relation to inspection plans. Thirty-eight respondents gave positive indications in relation to enforcing authorities whereas four respondents indicated that more guidance was required. Some respondents were concerned that providing feedback requested by inspection plans would constitute an additional burden on enforcing authorities.
- 3.5 Thirty-seven respondents indicated that the guidance gave sufficient detail on the responsibilities of primary authorities in developing and maintaining inspection plans. Five respondents indicated that further clarification was required and some indicated that the requirement for primary authorities to complete inspection plan rationales was too burdensome.
- 3.6 Some respondents raised concerns that overly prescriptive inspection plans could restrict the ability to undertake investigative action in response to intelligence and queried the period of five working days for the primary authority to respond to requests from enforcing authorities for consent to follow an alternative approach.
- 3.7 Several responses queried the need for the Secretary of State to consent to the revocation of inspection plans.

¹ A primary authority will be deemed to have given consent if it fails to respond within the notification period of five working days: section 30(7C).

Government response

- 3.8 Inspection plans assist regulators to direct their resources where they are needed most, thereby saving time and effort for both regulators and business. Experience of Primary Authority to date is that inspection plans improve consistency of risk assessment. As part of the legislative process for the ERR Act, Government considered the potential implications for enforcing authorities, including any burden which could result from the requirement to provide feedback, where applicable. The ERR Act formalises best practice in requiring that feedback be provided following an inspection, where this is requested by the primary authority.
- 3.9 The revised guidance details the criteria which inspection plans should satisfy in order to be given consent by the Secretary of State. These criteria are intended to ensure that inspection plans are not prescriptive and do not place excessive burden upon enforcing authorities. Enforcing authorities play a vital role in assisting primary authorities to assess compliance at local level by providing feedback following inspections. The guidance requires primary authorities to consider the impact of inspection plans, including any request for feedback, upon enforcing authorities.
- 3.10 Inspection plans are capable of impacting significantly on the way that enforcing authorities plan and conduct their regulatory interventions. The Secretary of State will assess the suitability of inspection plans by reference to a primary authority's compliance with the guidance and the benefits the plan is expected to deliver. The submission of a rationale assists the Secretary of State in this regard and the guidance contains additional detail on the requirements for rationales and ongoing evaluation of inspection plans.
- 3.11 Whilst some respondents requested that a standard format be used for feedback purposes, Government recognises that primary authorities' need for feedback will differ according to circumstance. Therefore there will be no standard format for feedback purposes and primary and enforcing authorities will be able work together to determine how feedback should best be provided.
- 3.12 Inspection plans do not require enforcing authorities to conduct activities that they would not otherwise conduct, and do not prevent them from taking action in accordance with statutory duties. The guidance has been revised to add further clarity in this regard and now contains further detail on the types of intervention to which inspection plans apply.
- 3.13 The period of five working days within which the primary authority may consider requests by enforcing authorities to follow an alternative approach to that set out in the inspection plan is a statutory requirement.² The guidance has been revised to note this.
- 3.14 In light of respondents' views on revocation, the guidance has been amended to clarify the situation regarding the necessity for the Secretary of State to consent before an inspection plan may be revoked. This is a legislative requirement³ and the guidance indicates that consent will be given in all but exceptional circumstances.

² RES Act 2008 section 30(7B) – (7D)

³ RES Act 2008 section 30(9A)

- 3.15 Government is committed to realising the full benefits of inspection plans to regulators and businesses. The need for practical material, including examples, is recognised and to this end, further tools will be made available with emphasis on the practical aspects. These include updated modules of the Primary Authority Handbook and training provision developed specifically in relation to inspection plans.
- 3.16 Government is confident that the revised guidance will provide a useful framework in relation to developing and managing inspection plans.

4. Scope of the scheme

- 4.1 Schedule 3 of the RES Act lists the regulations which are within scope of Primary Authority. Section 4(3) also specifies the matters to which enactments made under the European Communities Act 1972 are within scope of the scheme. In the interests of simplicity, the functions under these regulations are divided into categories for the purposes of administering Primary Authority. Partnerships are therefore nominated on the basis of categories rather than individual regulations.
- 4.2 As Primary Authority has developed, some anomalies have become apparent in relation to categories and the revised guidance seeks to address these. In addition, the extension of scope to include the age restricted sale of gambling, sunbed tanning, the Housing Health and Safety Rating System and Welsh regulations on carrier bag charging necessitates some amendments to categories.

Consultation responses

- 4.3 Forty-six respondents commented on the proposed changes to categories. There was broad support for the re-named Age Restricted Products category and the new Age Restricted Services category. Clarification of the Fair Trading, Petroleum Licensing and Health and Safety categories was also welcomed.
- 4.4 Stakeholders in Wales were opposed to the proposed single category for Welsh regulations and suggested that categories for Welsh regulations should be introduced in parallel to the existing categories.
- 4.5 The consultation sought views on whether categories should be amended to better cater for regulations enforced only at the border (for example, by port health authorities only). Twenty responses were received, of which five respondents were in favour of a new category for such regulations to be available to port health authorities. The remainder of respondents gave mixed views as to whether amendment was needed, with some respondents indicating that further consultation is necessary.
- 4.6 Feedback was received which indicated that changes were needed to the Farm Animal Health and Animal Establishments and Companion Animal Welfare categories to improve effectiveness and better reflect the nature of the regulations in these categories.

Government response

- 4.7 In light of respondents' views, Government will amend categories to:
- 4.8 Re-name the Age Restricted Sales category Age Restricted Products. This category will cover the sale and supply of goods which have an age restriction associated with them which are within the scope of the scheme.
- 4.9 Create a new category titled Age Restricted Services. This category will cover the supply of services which have an age restriction associated with them, including gambling and sunbed tanning.
- 4.10 Change the name of the Health and Safety category to Health, Safety and Welfare and amend the description to incorporate public health issues and indicate more clearly the regulations covered by the category.

- 4.11 The Fair Trading category will be clarified to indicate that it is not applicable in Northern Ireland and further detail added to the description to ensure that regulations relating to misleading and excess packaging, and environmental standards (for example, energy labelling) are included.
- 4.12 Clarification will be added to the Health, Safety and Welfare category and the Petroleum Licensing category to ensure that health and safety requirements in relation to petroleum are included only in the latter category.
- 4.13 The description for the Housing category will now reflect the inclusion of the Housing Health and Safety Rating System.
- 4.14 In response to feedback on the Farm Animal Health and Animal Establishments and Companion Animal Welfare categories, Government has consulted with affected partnerships. As a result, these categories will be re-named Animal Health and Welfare and Animal Establishments and their descriptions amended to better reflect the nature of the regulations concerned, and the enforcement of these.
- 4.15 As a result of responses from stakeholders in Wales, new categories for Welsh regulations will be added in parallel to existing categories. The first of these parallel categories will be Health, Safety and Welfare (Welsh regulations) and Environmental Protection (Welsh regulations). These will include regulations on sunbed tanning and charging for single use carrier bags, respectively. Further parallel categories will be introduced in future as necessary. Only local authorities in Wales will be capable of nomination for these categories.
- 4.16 Respondents' views were mixed on the issue of how best to cater for regulations enforced only at the border. Some respondents indicated that further consultation on this issue is warranted. Government will therefore engage further with stakeholders before making any amendments to categories in this regard.
- 4.17 In addition to the changes detailed above, the list of categories will be removed from the statutory guidance and published as a separate document by BRDO. This will enable categories and their descriptions to be updated more easily in response to the needs of those using Primary Authority. In order to assist partnerships to identify relevant national regulators, the categories list will also identify the categories to which national regulators are applicable.
- 4.18 The Government is content that the changes made to categories will assist those using Primary Authority to maximise its benefits.

5. Next steps

- 5.1 Having considered the responses to this consultation, Government will proceed to publishing the revised Primary Authority guidance.

Annex A: Respondents

Respondents were received from the following individuals and organisations:

Bedfordshire Fire and Rescue Service
British Association of Removers
British Hospitality Association
British Retail Consortium
British Soft Drinks Association (BSDA)
British Toy and Hobby Association
Caravan Club
Chartered Institute of Environmental Health
Chief Fire Officers Association
Colchester Borough Council
County Durham and Darlington Fire and Rescue Service
Cumbria Fire & Rescue
Devon & Somerset Trading Standards Service
Dorset Fire and Rescue Service
East of England Trading Standards Association (EETSA)
Eastern Ports Liaison Network (EPLaN)
Essex Fire & Rescue Service
Food and Drink Federation
FSA
Gambling Commission
Greater Manchester Fire and Rescue Authority
Haringey Council Regulatory Services
Hereford & Worcester Fire and Rescue Authority
Hertfordshire County Council
Home Retail Group
Kent Fire & Rescue Service
Kirklees Council
Leicestershire Fire & Rescue Service
LGA
London Fire and Emergency Planning Authority
London Port Health Authority/City of London Corporation
Moto Hospitality
National Association of Licensing and Enforcement Officers (NALEO)
Northumberland Fire and Rescue Service
Oxfordshire County Council Fire and Rescue Service
Oxfordshire County Council Trading Standards Service
Primary Authority Supermarkets Group
Reading Borough Council
Regulatory Services and Frontline Services Welsh Local Government Association
Royal Borough of Kensington and Chelsea and the London Borough of Hammersmith and Fulham
Seafish
Suffolk Coastal Port Health Authority
Surrey Fire & Rescue Service
The Association of Chief Trading Standards Officers (ACTSO)
The Co-operative Group
Tyne and Wear Fire and Rescue Service
Wakefield Council
Wales Heads of Environmental Health
Wales Heads of Trading Standards (WHoTS)

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Welsh Local Government Association
West Midlands Fire Service
West of England local authorities: Bath and Northeast Somerset Council, Bristol City Council,
North Somerset Council and South Gloucestershire Council.
West Sussex Fire and Rescue Service
Westminster City Council
Worcestershire Regulatory Services

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