



Department for  
Business, Energy  
& Industrial Strategy

Regulatory Delivery

# Primary Authority Statutory Guidance

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## PART A: General Guidance

### 1. Introduction

#### **The Regulatory Enforcement and Sanctions Act 2008**

- 1.1 The Regulatory Enforcement and Sanctions Act 2008, as amended by the Enterprise Act 2016 (referred to in this guidance as 'the RES Act'), and secondary legislation made under the RES Act, establish Primary Authority as a statutory scheme in which a local authority can partner with a business, or with a group of businesses, taking on responsibility for providing regulatory advice and guidance to them and for guiding the way in which they are regulated by all local authorities.
- 1.2 The Secretary of State for the Department for Business, Energy and Industrial Strategy is responsible for Primary Authority, and provides the web-based Primary Authority Register that supports the scheme.

#### **About this guidance**

- 1.3 This guidance will be issued by the Secretary of State under section 30A of the RES Act and should be read in conjunction with the Act and the Co-ordination of Regulatory Enforcement Regulations 2017<sup>1</sup> made under it ('the CORE Regulations').
- 1.4 It is relevant to local authorities, supporting regulators and co-ordinators, all of whom have statutory obligations in Primary Authority. However it will also be useful for businesses participating in the scheme and national regulators which are not specified as supporting regulators. The guidance is structured as follows:
  - Part A provides general explanation of Primary Authority and of the different tools available to primary authorities and is relevant to all those with an interest in the scheme.
  - Parts B and C provide guidance on the formation and termination of direct and co-ordinated partnerships respectively and are particularly relevant to those forming and operating partnerships.
  - Part D provides guidance to primary authorities and prospective primary authorities.
  - Part E provides guidance to enforcing authorities.
  - Part F provides guidance to co-ordinators and prospective co-ordinators.
  - Part G provides guidance to those national regulators specified as supporting regulators.

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<sup>1</sup> The Co-ordination of Regulatory Enforcement Regulations 2017 are made under the RES Act, sections 22C(1)(b), (1)(c), (2), (4) and (5); 25A(2); 25D(1) and (2); 28A(1), (9), (10) and (11) and paragraph 9 of Schedule 4A.

- 1.5 Section 30A(4) of the RES Act requires local authorities<sup>2</sup>, supporting regulators<sup>3</sup>, and co-ordinators<sup>4</sup> to have regard to any guidance given to them under section 30A. The requirement on these bodies to have regard to this guidance means that they must consider the provisions of the guidance and give them due weight in determining how they will exercise their functions within Primary Authority.
- 1.6 The Secretary of State will take account of whether local authorities, supporting regulators and co-ordinators have had regard to this guidance when making decisions under Primary Authority, including in respect of:
- nomination of primary authorities;
  - nomination of co-ordinators;
  - revocation of partnerships;
  - consent to inspection plans and Primary Authority Advice to Local Authorities; and
  - the determination process.
- 1.7 This guidance has been written to provide the framework for the operation of Primary Authority. Explanatory materials on the practical operation of the scheme will be made available and should be read in conjunction with this statutory guidance.

### Key elements of Primary Authority

- 1.8 A business that receives advice from its primary authority, known as 'Primary Authority Advice', is able to rely on that advice in its dealings with all local authorities, by virtue of the fact that a local authority that proposes enforcement action against the business is required to first notify the primary authority. The primary authority is then able to direct that local authority not to take the proposed action if the primary authority decides that this would be inconsistent with any Primary Authority Advice it has given. This provides certainty for a business that chooses to receive and follow advice from a primary authority, giving it confidence in its approach to compliance. The Secretary of State is empowered to make a determination in the case of any subsequent disagreement as to whether proposed enforcement action is inconsistent with the advice, and whether that advice was correct and was properly given by the primary authority (see section 9).
- 1.9 Primary Authority applies to specified regulatory functions carried out by local authorities (see [sections 3.13 to 3.19](#)). In the main, Primary Authority covers matters that are commonly referred to as the 'environmental health', 'licensing', 'trading standards' and 'fire safety' functions of local authorities.
- 1.10 Primary Authority applies differently in each nation of the United Kingdom (see [section 2](#)) and the activities of a primary authority, whether in issuing Primary Authority Advice or an inspection plan, may therefore have statutory effect across one or more nations, depending on the particular regulatory function under which they are acting.

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<sup>2</sup> Qualifying regulators, as defined in section 22B of the RES Act, are referred to in this guidance as 'local authorities' and include local authorities, fire and rescue authorities and port health authorities.

<sup>3</sup> As defined in section 28A of the RES Act

<sup>4</sup> As defined in section 23C of the RES Act

- 1.11 A primary authority partnership is a partnership with a single local authority that has been nominated by the Secretary of State as the 'primary authority' in relation to specified regulatory functions:
- A local authority may partner with an individual business, in which case the partnership is referred to as a 'direct partnership' and the local authority is known as the 'direct primary authority'.
  - Alternatively, Primary Authority establishes an effective mechanism for a local authority to support a group of businesses by partnering with an organisation or individual that represents the group of businesses, known as the 'co-ordinator' (see [Part F. Guidance to Co-ordinators](#)). In this case, the partnership between the local authority and the co-ordinator is referred to as a 'co-ordinated partnership' and the local authority is known as the 'co-ordinated primary authority'. This provision allows local authorities to work with existing business networks and relationships, such as those, for example, between a trade association and its members, or between a franchisor and its franchisees.
- 1.12 A business or co-ordinator may, subject to certain conditions, choose to partner with more than one primary authority in order to be able to access the benefits of Primary Authority across the range of legislation that the scheme covers (see [section 2](#)). Where this is the case, the primary authorities may agree arrangements with the business or co-ordinator to work together to provide a coherent service to the business or co-ordinator and to enforcing authorities (see [sections 18.12 to 18.15](#)).

### The role of a primary authority

- 1.13 By working in partnership with a business, or with a co-ordinator supporting a group of businesses, a primary authority is able to deliver benefits for businesses, for the local authorities that regulate them ('enforcing authorities'), and for those that the regulation protects. It does this by leading and co-ordinating regulation of businesses that is both efficient and effective, with a view to improving and maintaining compliance.
- 1.14 The scheme provides primary authorities with three statutory tools that they may use:
- Primary Authority Advice is used to support regulatory compliance (see section 6).
  - Primary Authority Advice to Local Authorities may, with the consent of the Secretary of State, be used to guide enforcing authorities in exercising their regulatory functions in relation to a business (see section 7).
  - An inspection plan may, with the consent of the Secretary of State, be used to guide enforcing authority checks on business compliance, where the primary authority sees that an inspection plan would be beneficial in improving the co-ordination and efficiency of such checks (see section 8).
- 1.15 In addition to its use of these tools, a primary authority provides a valuable resource for businesses, co-ordinators and enforcing authorities by acting as a key point of contact and source of information. This allows the primary authority to improve communication, deliver efficiencies and facilitate better relationships.

- 1.16 A direct primary authority partnered with a single business is able to build a detailed understanding of that business and its approach to compliance. This allows the primary authority to provide Primary Authority Advice that is specific and tailored to the particular needs and circumstances of the business. At the same time, this detailed understanding enables the primary authority to lead effective regulation of the business on behalf of local authority regulators including: through guiding proactive checks on the business; supporting consistent interpretation and informed and proportionate responses to non-compliance; and through the co-ordination of information and intelligence that allows the primary authority to identify any compliance issues that need to be addressed.
- 1.17 A co-ordinated primary authority is able, through its partnership with a co-ordinator, to provide effective support to a group of businesses that face similar issues in relation to regulatory compliance, whether, for example, because they all operate in the same sector, or because they are all franchisees of the same franchisor. The primary authority is able to develop expertise in relation to these regulatory compliance issues that is of value to both the businesses and to enforcing authorities. This expertise enables the primary authority to provide Primary Authority Advice, through the co-ordinator, that is tailored to the needs and circumstances of the businesses in the group and to guide enforcing authorities in relation to the particular compliance issues.
- 1.18 A primary authority working with an individual business or a group of businesses is well placed to liaise effectively with any national regulator or government department that has a lead role in relation to the legislation with which the business(es) must comply (known as a 'relevant national regulator'). This includes working with any relevant national regulator that is specified as a supporting regulator in Primary Authority (see [Part G. Supporting Regulators](#)).
- 1.19 A local authority is entitled to charge<sup>5</sup> a business or a co-ordinator on a cost recovery basis for services that it provides in exercising its functions as a primary authority (see [sections 18.7 to 18.11](#)).

### The role of an enforcing authority

- 1.20 The RES Act establishes statutory duties for all local authorities in relation to their regulation of any business that has a primary authority. These duties relate primarily to:
- following an inspection plan for the business, where one has been issued by the primary authority, and providing any feedback required (see section 23); and
  - notifying the primary authority of enforcement action in relation to the business (see section 24). In most circumstances this notification is required before the action can be taken. However, exemptions allow certain enforcement action to proceed immediately, for example, where action is needed urgently to prevent harm. In this circumstance the notification to the primary authority is made retrospectively.

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<sup>5</sup> Section 27A of the RES Act

## The role of national regulators

- 1.21 Primary Authority covers a diverse range of locally delivered regulations. In relation to some of these regulations, there is a relevant national regulator (see section 1.18) that also regulates businesses that participate in the scheme, sometimes in relation to the same functions as those delivered by local authorities. More commonly there is a relevant national regulator that has an interest in supporting effective implementation of the regulations.
- 1.22 Relevant national regulators play an important role in Primary Authority, through the support that they provide on occasion to primary authorities and through the views that they share with the Secretary of State when consulted on key decisions in the scheme, including in relation to consent to inspection plans (see section 8.24) and determinations (see section 9).
- 1.23 Certain relevant national regulators are specified as ‘supporting regulators’ in Primary Authority. A supporting regulator is able to make arrangements to provide support to a primary authority in its provision of Primary Authority Advice or Primary Authority Advice to Local Authorities, or its development and management of an inspection plan (see [Part G. Supporting Regulators](#)). The national regulators specified as supporting regulators by the CORE Regulations are:
- the Health and Safety Executive;
  - the Food Standards Agency;
  - the Gambling Commission;
  - the Competition and Markets Authority; and
  - the Secretary of State (in relation to his regulatory functions concerning weights and measures and product safety regulation).
- 1.24 The RES Act makes provision for regulatory bodies, including national regulators, to be specified as ‘complementary regulators’ within Primary Authority. No complementary regulators are currently specified and this guidance therefore makes no further reference to complementary regulators or their duties.

## The role of the Secretary of State in administering Primary Authority

- 1.25 The Secretary of State fulfils the statutory functions of Primary Authority in relation to:
- a) nominations and revocations (see section 5);
  - b) maintenance of a public register of nominated partnerships (the ‘Public Register’ - see section 5.2);
  - c) consenting to Primary Authority Advice to Local Authorities (see section 7);
  - d) consenting to inspection plans (see section 8);
  - e) the determination process (see section 9); and
  - f) issuing statutory guidance on the scheme.
- 1.26 The Secretary of State administers Primary Authority and facilitates its effective operation by making available the web-based Primary Authority Register that supports the scheme, enabling users to fulfil certain statutory obligations in relation to publication and communication, and to share information securely.

- 1.27 The Secretary of State supports the effective delivery of Primary Authority by making available practical explanatory materials and competency products, by facilitating dialogue between parties, and by working to develop the scheme to deliver good regulatory outcomes.
- 1.28 The Secretary of State engages with relevant national regulators in relation to the support that they provide in Primary Authority and works with them to improve the delivery of regulation in line with their policy objectives.
- 1.29 The Secretary of State, in addition to his role in administering Primary Authority, has a role to play in the scheme as a relevant national regulator and supporting regulator (see section 1.23). The Secretary of State will ensure that robust governance arrangements are in place to secure separation between these roles.

## Terminology

- 1.30 All terms used in this guidance that refer to regulators – including supporting regulator, primary authority and enforcing authority – are to be taken to cover any person exercising a regulatory function, meaning both the regulatory organisation and an officer or officers acting on behalf of that organisation.
- 1.31 In line with the terminology used in the practical operation of Primary Authority, the term ‘business’ is used in this guidance to refer to any legal entity that carries out, or is planning to carry out, a regulated activity including providing goods and services or employing or offering employment to any person<sup>6</sup>, for example:
- a sole trader or other individual;
  - a limited company;
  - a partnership;
  - a pre-start-up enterprise;
  - a charity;
  - a public sector body; or
  - any other form of organisation.
- 1.32 A glossary of terms used within Primary Authority is included at the end of this guidance.

## 2. Scope

- 2.1 The regulatory scope of Primary Authority is defined, in the RES Act<sup>7</sup> and the CORE Regulations, in terms of:
- a) specified ‘relevant functions’; and
  - b) activities defined as ‘enforcement action’ (see [sections 24.19 to 24.21](#)).

As regulatory matters are subject to differing degrees of devolution across the nations of the United Kingdom (‘UK’), the scope of Primary Authority within each of these nations differs in accordance with the devolution settlements (see sections 2.9 to 2.12).

<sup>6</sup> Section 4(9)(b) of the RES Act

<sup>7</sup> Sections 4 and 22C of the RES Act



- 2.2 Local authorities should ensure, when checking whether legislation that they are dealing with is in scope of Primary Authority, that they refer to the current versions of:
- a) the RES Act;
  - b) the CORE Regulations, taking account of any amendments to the definition of enforcement action; and
  - c) the CORE Regulations, taking account of any amendments to legislation that is specified as in scope of Primary Authority in Scotland and Northern Ireland.
- 2.3 Where primary legislation is in scope of Primary Authority (see sections 2.8 to 2.12), secondary legislation made under powers within that primary legislation is also in scope of Primary Authority. Where new secondary legislation is made under these powers, it will be in scope of Primary Authority from the day on which it takes effect<sup>8</sup>.
- 2.4 All regulations enacted under section 2(2) of the European Communities Act 1972 that fall within the areas specified in relation to each nation (see sections 2.8 to 2.12) are within scope of Primary Authority, regardless of the date on which they came into effect.
- 2.5 Primary legislation introduced since the RES Act came into effect in 2009 is within scope of Primary Authority where it has been brought within scope by amendment of the RES Act. Similarly, secondary legislation enacted under powers within primary legislation which is not within scope of Primary Authority is not within scope of Primary Authority unless it has been brought within scope by such an amendment.
- 2.6 Primary Authority applies differently in each nation of the UK. The scope of Primary Authority and its practical operation differs for matters that are reserved to the UK Government and matters that are not reserved. The activities of a primary authority that is nominated in respect of a particular relevant function will have effect in each nation of the UK in which that relevant function is in scope of Primary Authority (see Figure 1).
- 2.7 There is an expectation that a primary authority will provide relevant information and support, on request, to a local authority in another nation that is exercising a regulatory function that is not a relevant function of the primary authority in respect of that nation.

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<sup>8</sup> On occasion, regulations made under the RES Act which define 'enforcement action' for the purposes of Primary Authority may require amendment in order to require notification of specific enforcement actions set out in new secondary legislation.

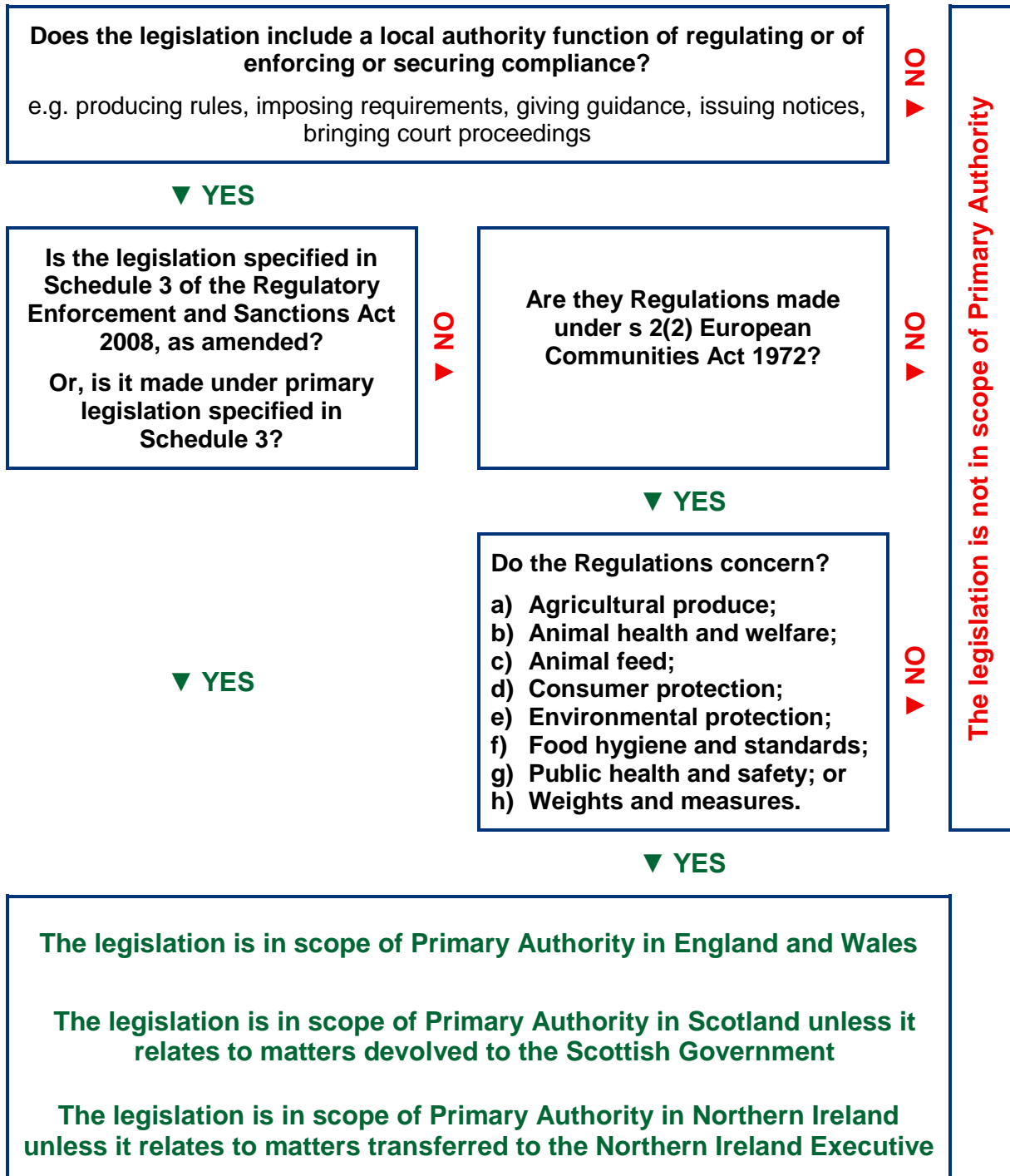


Figure 1. Scope of Primary Authority

- 2.8 The relevant functions in scope of Primary Authority are regulatory functions of a local authority under or by virtue of:
- a) the legislation listed in Schedule 3 of the RES Act;
- and
- b) regulations enacted under section 2(2) of the European Communities Act 1972, that fall within the following specified areas:
    - agricultural produce (quality standards and labelling);
    - animal health and welfare;
    - animal feed;
    - consumer protection;
    - environmental protection;
    - food hygiene and standards;
    - public health and safety; and
    - weights and measures (including measuring instruments).
- 2.9 In England, all relevant functions that are exercised by local authorities are in scope of Primary Authority. This includes relevant functions relating to reserved matters and relevant functions relating to 'England only' matters. 'England only' matters include, for example, matters in relation to agriculture, food, environmental protection and pollution control, housing and public health.
- 2.10 In Wales, all relevant functions that are exercised by local authorities are in scope of Primary Authority. This includes relevant functions relating to reserved matters and relevant functions relating to devolved Welsh matters. 'Devolved Welsh matters' are matters:
- within the legislative competence of the National Assembly for Wales as defined in the Government of Wales Act 2006; or
  - in relation to Wales in respect of which functions are exercisable by the Welsh Ministers.
- Devolved Welsh matters include, for example, matters in relation to agriculture, food, environmental protection and pollution control, housing and public health.
- 2.11 In Scotland, all relevant functions that relate to reserved matters and are exercised by local authorities are in scope of Primary Authority<sup>9</sup>. Relevant functions relating to matters that have been devolved to the Scottish Government<sup>10</sup> are outside the scope of Primary Authority<sup>11</sup>. These include, for example, matters in relation to food, fire safety, environmental protection and public health.

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<sup>9</sup> Regulation 3, CORE Regulations 2017

<sup>10</sup> Scotland Act 1998, Schedule 5

<sup>11</sup> The Regulatory Reform (Scotland) Act 2014 creates a legal framework for the future implementation of a Scottish Primary Authority scheme relating to the devolved regulatory responsibilities of local authorities in Scotland.

- 2.12 In Northern Ireland, relevant functions that relate to reserved matters and are exercised by local authorities<sup>12</sup> are in scope of Primary Authority where they relate to:
- a) legislation listed in Schedule 3 of the RES Act;
- and
- b) regulations enacted under section 2(2) of the European Communities Act 1972, that relate to:
    - the safety of consumer products; or
    - technical standards derived from European Community law, other than in relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides.

Regulatory functions that have been transferred in Northern Ireland are outside the scope of Primary Authority.

- 2.13 Regulators in Northern Ireland have committed to giving effect to the general principles of Primary Authority in relation to regulatory functions that are not within scope of the scheme in Northern Ireland.

### 3. Participation

- 3.1 Businesses (see section 1.31) are able to access the benefits of Primary Authority through two distinct routes:
- a) A single business (see [sections 3.4 to 3.8](#)) may choose to have a partnership with a direct primary authority.
  - b) A business that is a member of a 'regulated group' of businesses (see [sections 3.9 to 3.12](#)) may have a co-ordinated primary authority.
- 3.2 A business that has a direct primary authority in relation to a relevant function may also, by virtue of being a member of one or more 'regulated groups', have one or more co-ordinated primary authorities in relation to the same relevant function.
- 3.3 Primary Authority is available to a business or co-ordinator that has its base outside of the UK, provided that it satisfies the criteria explained in this guidance. However, such a business or co-ordinator should be aware that the calculation of any periods of time for the purposes of notifications and other communications required in the Primary Authority will not take account of different time zones or public holidays in countries other than in the UK. This includes, for example:
- the relevant period in respect of a notification of proposed enforcement action (see sections 21.9 to 21.10 and 21.24);
  - the referral period in respect of a notification of proposed enforcement action (see section 24.43); and
  - the period within which a co-ordinator must provide a copy of its Primary Authority Membership List (see section 26.13).

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<sup>12</sup> Regulation 4, CORE Regulations 2017. Reserved matters specified in relation to Northern Ireland are more limited than in the other nations. This is due the division of responsibilities in Northern Ireland between local authorities and the Department for the Economy.

### **'Regulated person'**

- 3.4 A legal entity that is eligible for a partnership with a direct primary authority is referred to in the RES Act as a 'regulated person'. This guidance uses the term regulated person only where it is necessary to be specific about the legal entity. Elsewhere, the term 'business' is used and should be taken to mean both a single legal entity, and a collection of related legal entities. For example, a business might comprise several limited companies operating from the same head office or under the same brand name.
- 3.5 A partnership with a direct primary authority is available to any business that is regulated, or expects to be regulated, by one or more local authorities in respect of a relevant function (see [section 2](#)).
- 3.6 A business that is proposing to carry out an activity that is regulated by local authorities in respect of a relevant function is eligible. This could be the case in a range of circumstances, which might include, for example:
- a) where a business idea or concept is being explored but the business is not yet established;
  - b) where the business is in the start-up phase and may not yet be trading; or
  - c) where the business is considering expansion into new markets.
- 3.7 An eligible business that is regulated, or expects to be regulated, by a single local authority is referred to in this guidance as a 'singly regulated business'. It is anticipated that a singly regulated business that wishes to enter a direct partnership would usually partner with the local authority that regulates it. However, it is recognised that a singly regulated business may have good reasons to wish to partner with another local authority including, for example:
- a) where the business is proposing to relocate or to expand its activities such that it would be regulated by more than one local authority;
  - b) where the local authority that regulates the business is unable or unwilling to enter into a partnership; or
  - c) where the chosen local authority has particular expertise or resources that the business wishes to access.
- 3.8 A business that has a direct primary authority in respect of particular relevant functions is not eligible to form a partnership with another direct primary authority in respect of the same relevant functions but remains eligible to form a direct partnership with another direct primary authority in respect of other relevant functions (see [sections 4.9 to 4.14](#)).

### **'Regulated group'**

- 3.9 Primary Authority allows for the nomination of a local authority as the primary authority for a group of businesses that includes businesses which are, or expect to be, regulated by one or more local authorities in respect of a relevant function. Such a group of businesses is known as a 'regulated group'. The regulated group accesses Primary Authority by virtue of a partnership between a legal entity that takes on the role of co-ordinator of the group and the co-ordinated primary authority.
- 3.10 An individual business that is a member of such a group of businesses has a co-ordinated primary authority where the following conditions are met:

- a) the Secretary of State has nominated the co-ordinator of the regulated group<sup>13</sup>;
  - b) the Secretary of State has nominated the local authority as the primary authority for the regulated group; and
  - c) the business is included in the list of members of the regulated group maintained by the co-ordinator – the ‘Primary Authority Membership List’ (see [Part F. Guidance to Co-ordinators](#)).
- 3.11 Where an individual business is a member of more than one regulated group, that business may have more than one co-ordinated primary authority in respect of the same relevant function. A business that has more than one co-ordinated primary authority in respect of the same relevant function may receive Primary Authority Advice that relates to the same topic from more than one of the primary authorities. In this situation, it is for the business to decide which Primary Authority Advice is most appropriate to its circumstances and it can then choose to follow that advice.
- 3.12 A legal entity that seeks nomination as the co-ordinator of a regulated group will first need to satisfy its prospective primary authority of its suitability to fulfil the role of a co-ordinator in Primary Authority for the group of businesses. On application for nomination, the suitability of the prospective co-ordinator may be assessed by the Secretary of State (see [Part C. Guidance for Co-ordinated Partnerships](#)).

### Local authorities

- 3.13 Qualifying regulators are defined in the RES Act<sup>14</sup> as local authorities and any other regulators specified by regulations. No other regulators are currently specified as qualifying regulators and this guidance refers, therefore, to qualifying regulators as ‘local authorities’.
- 3.14 A local authority, as defined in the RES Act<sup>15</sup>, includes:
- county, district and unitary councils in England<sup>16</sup> (including London boroughs and metropolitan boroughs);
  - county and county borough councils in Wales;
  - fire and rescue authorities in England and Wales<sup>17</sup>;
  - port health authorities in England and Wales;
  - councils<sup>18</sup> in Scotland; and,
  - district councils in Northern Ireland<sup>19</sup>.
- 3.15 A local authority may be nominated as a primary authority in respect of those relevant functions for which that local authority has regulatory responsibility<sup>20</sup>. For example:

<sup>13</sup> Section 23C(1) of the RES Act

<sup>14</sup> Section 22B of the RES Act

<sup>15</sup> Section 3 of the RES Act

<sup>16</sup> Including the Common Council of the City of London; the Council of the Isles of Scilly; the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities for Greater London and metropolitan counties).

<sup>17</sup> Including fire and rescue authorities that are non-metropolitan county council or district councils in England; the London Fire and Emergency Planning Authority; metropolitan county fire and civil defence authorities in England; the Council of the Isles of Scilly; county and county borough councils in Wales; or, combined fire and rescue authorities established by Order.

<sup>18</sup> Councils constituted under section 2 of the Local Government etc (Scotland) Act 1994

<sup>19</sup> District councils constituted under section 1 of the Local Government Act (Northern Ireland) 1972

<sup>20</sup> Sections 23A(1) - (5) of the RES Act

- an English county council may be nominated as primary authority for Trading Standards matters but not Environmental Health matters;
  - a local authority in any nation of the UK may be nominated in relation to relevant functions relating to reserved matters, where these relevant functions are in scope of Primary Authority in that nation (see [section 2](#));
  - only a local authority in England should be nominated in respect relevant functions that relate to 'England only' matters (see section 2.9);
  - only a local authority in Wales should be nominated in respect of relevant functions that relate to devolved Welsh matters (see section 2.10).
- 3.16 A local authority that seeks nomination by the Secretary of State as primary authority for a business or group of businesses should first ensure that it is suitable to undertake the primary authority role (see [Part D. Guidance to Primary Authorities](#)).
- 3.17 A local authority that partners with a business or co-ordinator may provide Primary Authority services through arrangements with another local authority or third party, where this is agreed with the business. In this situation, the local authority nominated as primary authority remains accountable and will retain responsibility for issuing and managing advice and for responding to enquiries or notifications from enforcing authorities. For example, the primary authority may make arrangements with another local authority to develop Primary Authority Advice on its behalf in respect of one of the partnership functions in which that local authority has particular expertise.
- 3.18 Where two or more local authorities have arrangements in place to work together, for example through a shared service, they may deliver primary authority services through these arrangements. However, only a single local authority can be nominated as a primary authority by the Secretary of State. Therefore, in this circumstance the local authorities must agree which of the local authorities will act as the primary authority.
- 3.19 A local authority may, itself, undertake regulated activities that are within scope of Primary Authority. It may do so either acting as itself or as part of a joint committee or through an incorporated or unincorporated body. Where this is the case and the local authority is nominated as the primary authority it should ensure that it has robust governance arrangements in place to secure separation between those responsible for delivering its primary authority role and those responsible for delivering the regulated activity (see section 18.6).

## 4. Partnership arrangements

- 4.1 A partnership under Primary Authority is a recognised agreement between a local authority, that is nominated by the Secretary of State as a primary authority, and either:
- a) the individual business in respect of which the nomination is made<sup>21</sup>, in which case the partnership is referred to as a 'direct partnership'; or
  - b) the nominated co-ordinator that is acting on behalf of the group of businesses in respect of which the nomination is made<sup>22</sup>, in which case the partnership is referred to as a 'co-ordinated partnership'.
- 4.2 A partnership has effect under Primary Authority where the nomination by the Secretary of State took place on or after 1<sup>st</sup> October 2017. Any nomination under the RES Act prior to that date no longer has effect.
- 4.3 Prospective partners should agree the arrangements for their partnership prior to making an application for nomination. The requirements in relation to these arrangements differ for direct and co-ordinated partnerships and are explained in detail in Part B of this guidance for direct partnerships (see [section 10](#)) and in Part C of this guidance for co-ordinated partnerships (see [section 14](#)).
- 4.4 The essential elements of Primary Authority are available for both direct partnerships and co-ordinated partnerships. However, there are practical differences in the application and operation of the scheme. A quick guide to the key differences is presented in the table at Figure 2.
- 4.5 Where a business or a co-ordinator wishes to enter into a partnership with a local authority but has not found a willing and suitable local authority, it can seek assistance from the Secretary of State.

### Primary Authority terms and conditions

- 4.6 Primary authorities and their partners are required to accept standard terms and conditions (the 'Primary Authority Terms and Conditions'), which address the following matters:
- a) the specification of partnership functions;
  - b) confidentiality;
  - c) freedom of information;
  - d) sharing information, including personal data and notifications of proposed enforcement action;
  - e) maintaining up-to-date details on the Primary Authority Register; and
  - f) consent to receiving information from the Secretary of State.

<sup>21</sup> Section 23A(1)(a) and 23B(1) of the RES Act

<sup>22</sup> Section 23A(1)(b) and 23B(2) of the RES Act



	<b>‘Direct Partnership’</b>	<b>‘Co-ordinated Partnership’</b>
The partnership	This is between the business and the primary authority and is underpinned by: <ul style="list-style-type: none"> <li>• partnership arrangements agreed between the two parties;</li> <li>• the Primary Authority Terms and Conditions.</li> </ul> (see section 10)	This is between the co-ordinator and the primary authority and is underpinned by: <ul style="list-style-type: none"> <li>• partnership arrangements agreed between the two parties;</li> <li>• suitable arrangements between the co-ordinator and the businesses in the regulated group; and</li> <li>• the Primary Authority Terms and Conditions.</li> </ul> (see section 14)
The application for nomination process	The application is initiated by the prospective primary authority and completed or confirmed by the business. It is then submitted to the Secretary of State. (see section 11)	The application for nomination is initiated by the prospective primary authority and completed or confirmed by the co-ordinator. It is then submitted to the Secretary of State. (see section 15)
Primary Authority Advice	Issued directly to the business. Tailored to the individual business’ needs and circumstances, based on the primary authority’s detailed knowledge of the business. (see section 6)	Issued via the co-ordinator to those members of the group of businesses to whom the co-ordinator considers it may be relevant. This may be all members of the group or members with defined characteristics. Tailored to the collective needs and circumstances of the businesses that will receive it. (see section 6)
Inspection plans	Tailored to the individual business’ operations, based on the primary authority’s detailed knowledge of the business. (see section 8)	Tailored to specified members of the group of businesses. (see section 8)
Public Register	The business is listed, with its primary authority, on nomination by the Secretary of State.	The co-ordinator is listed, with its primary authority, on nomination by the Secretary of State. The listing also includes the name of any person nominated to act on behalf of the co-ordinator. (see section 30)

**Figure 2. Key differences between a direct and co-ordinated partnership**

- 4.7 The Secretary of State may vary the Primary Authority Terms and Conditions and, should he do so, will notify partners of any variation prior to it coming into effect.
- 4.8 Partnerships will be expected to agree their own arrangements in relation to matters that are not covered by the Primary Authority Terms and Conditions (see sections 10.8 and 14.10). Their agreement cannot be used to alter the Primary Authority Terms and Conditions.

### Scope of partnerships under Primary Authority

- 4.9 The scope of a partnership is determined at the point of its nomination by the Secretary of State<sup>23</sup>, whose nomination specifies the relevant functions in scope as ‘partnership functions’. The Secretary of State will, in specifying partnership functions, have regard to the following principles:
- A business may not have more than one direct primary authority in respect of the same relevant function;
  - A co-ordinator may not have more than one co-ordinated primary authority in respect of the same relevant function; and
  - A local authority that enters into a partnership with a business or a co-ordinator will be its primary authority in respect of **all** relevant functions of the local authority (see [Local Authorities](#)), other than any that are partnership functions of another partnership.
- 4.10 Where an application for nomination relates to a business or co-ordinator that has no existing primary authority the Secretary of State will treat this as an application to nominate the local authority as primary authority in respect of all of its relevant functions<sup>24 25</sup>. This approach to defining the scope of a partnership allows the primary authority the opportunity to provide a comprehensive service to the business or co-ordinator, and to enforcing authorities.
- 4.11 Where an application for nomination relates to a business or co-ordinator that has one or more existing primary authorities the Secretary of State will, by default, treat this as an application to nominate the local authority as primary authority in respect of all of its relevant functions that are not listed as partnership functions of existing primary authorities (see Figure 3).

<sup>23</sup> Section 23A of the RES Act.

<sup>24</sup> Once nominated, the primary authority is able to agree with the business or co-ordinator the areas in which Primary Authority Advice will be given.

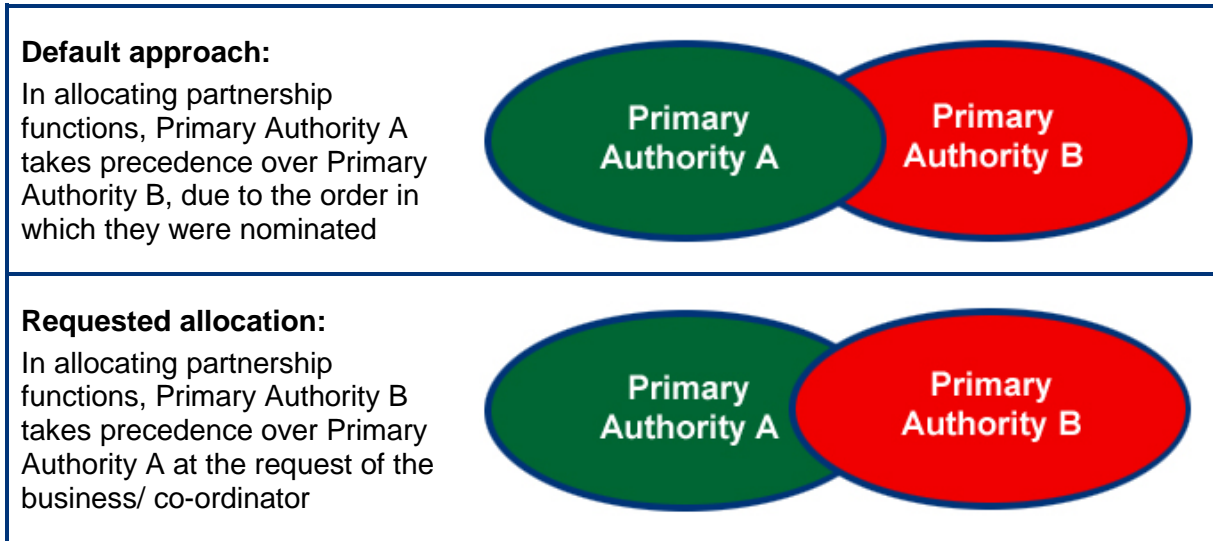
<sup>25</sup> The structure of local government varies across England – in some areas responsibilities are divided between a county council (primarily those relevant functions referred to as ‘Trading Standards’, some licensing functions and in some cases fire safety) and a district council (primarily those relevant functions referred to as ‘Environmental Health’ and ‘Licensing’). In other areas, there is a single unitary authority which is responsible for most relevant functions. In Wales, Scotland and Northern Ireland all local authorities are unitary.

	First partnership	Application for new partnership
Example 1	<p>Primary Authority A is an English County Council</p> <ul style="list-style-type: none"> <li>➤ The partnership functions encompass all of the relevant functions of Primary Authority A</li> </ul>	<p>Local Authority B is an English Unitary Authority</p> <ul style="list-style-type: none"> <li>➤ The Secretary of State will, by default, specify the partnership functions as all of the relevant functions of Local Authority B other than those that are also relevant functions of Primary Authority A</li> </ul> <p><i>In practice this means that the partnership with Primary Authority B will cover 'district level' functions</i></p>
Example 2	<p>Primary Authority A is a Welsh County Borough Council</p> <ul style="list-style-type: none"> <li>➤ The partnership functions encompass all of the relevant functions of Primary Authority A</li> </ul>	<p>Local Authority B is an English District Council</p> <ul style="list-style-type: none"> <li>➤ The Secretary of State will, by default, specify the partnership functions as all of the relevant functions of Local Authority B other than those that are also relevant functions of Primary Authority A</li> </ul> <p><i>In practice this means that the partnership with Primary Authority B will cover only 'district level' functions that are 'England only' (see sections 2.9 to 2.10)</i></p>
Example 3	<p>Primary Authority A is a Combined Fire and Rescue Authority in England</p> <ul style="list-style-type: none"> <li>➤ The partnership functions encompass all of the relevant functions of Primary Authority A</li> </ul>	<p>Local Authority B is an English County Council that is a Fire and Rescue Authority</p> <ul style="list-style-type: none"> <li>➤ The Secretary of State will, by default, specify the partnership functions as all of the relevant functions of Local Authority B other than those that are also relevant functions of Primary Authority A</li> </ul> <p><i>In practice this means that the partnership with Primary Authority B will cover most 'county' functions (such as those referred to as 'Trading Standards') but will not cover the fire safety functions covered by Primary Authority A or any other functions covered by Primary Authority A, for example in relation to explosives or petroleum</i></p>

**Figure 3. Allocation of partnership functions on the basis of order of nomination**

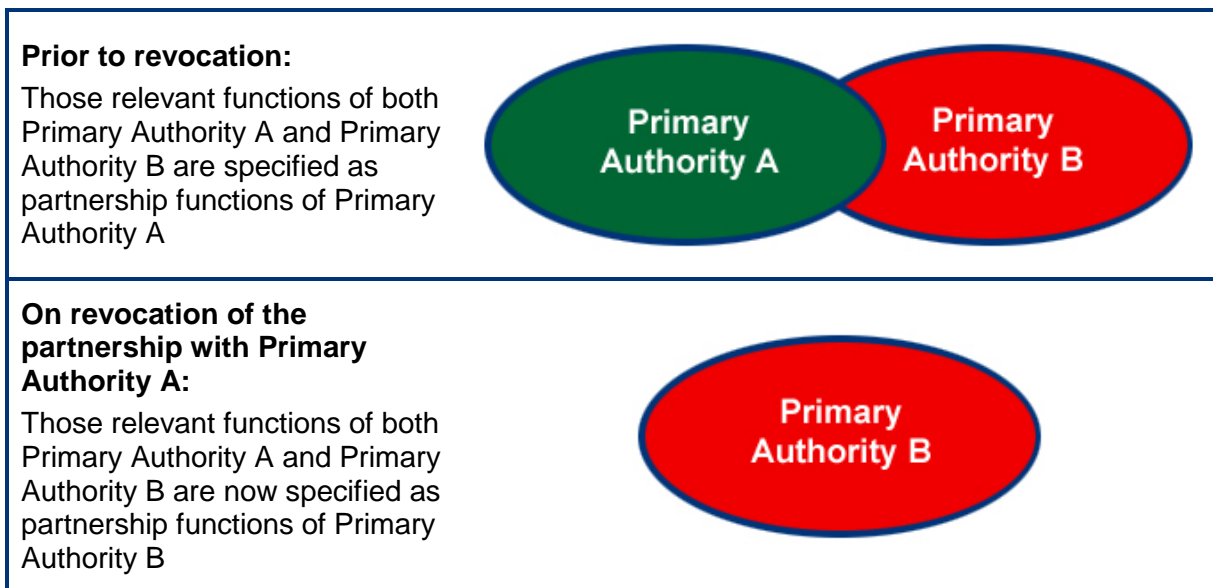
4.12 Where an application for nomination requests a variation to the default approach to allocation of partnership functions set out at section 4.11, the Secretary of State will consider the request and will consult with any primary authority whose partnership will be affected before varying the partnership functions of that primary authority's partnership<sup>26</sup> (see Figure 4).

<sup>26</sup> Section 23A(6) of the RES Act



**Figure 4. Requested variation to allocation of partnership functions**

4.13 Where a business or a co-ordinator has more than one primary authority, the Secretary of State will, on revocation of its partnership with one primary authority, consider whether the partnership functions of that partnership could be specified in relation to its partnership with another primary authority. Where the Secretary of State considers it appropriate to vary the specified partnership functions he will consult with the parties that would be affected by such a variation (see Figure 5).



**Figure 5. Impact of revocation on partnership scope**

4.14 There is an expectation that where a business or a co-ordinator is in partnership with more than one primary authority, these primary authorities will agree arrangements to work together where appropriate to ensure that the business or group of businesses experiences a consistent approach and that the work of enforcing authorities is streamlined (see [sections 18.12 to 18.15](#)).

## 5. Nomination, revocation and changes to nomination

- 5.1 The Secretary of State manages nominations, changes to nominations and revocations under Primary Authority and maintains the Public Register of nominations.
- 5.2 The Public Register is an electronic list of all nominations and includes the following details in respect of each nomination<sup>27</sup>:
- a) In the case of a direct partnership, the name of the local authority nominated as the primary authority and the name of the regulated person(s).
  - b) In the case of a co-ordinated partnership, the name of the local authority nominated as the primary authority, the name of the co-ordinator, and where applicable the name of any person nominated to exercise the functions of the co-ordinator (see [section 30](#)). It may also include the names of the businesses in the co-ordinator's regulated group, where the co-ordinator has chosen to maintain its Primary Authority Membership List in the Primary Authority Register (see section 26.13).

### Nomination

- 5.3 A local authority may only be nominated by the Secretary of State as a primary authority where the local authority and its prospective partner have agreed in writing to the nomination<sup>28</sup>.
- 5.4 In order to have a partnership nominated by the Secretary of State, the prospective partners must submit an application for nomination via the Primary Authority Register. The requirements in relation to applications and nomination are explained in full in Part B of this guidance for direct partnerships (see section 11) and in Part C of this guidance for co-ordinated partnerships (see section 15).
- 5.5 On nomination by the Secretary of State, a partnership is listed on the Public Register. The partnership remains on this register until it is revoked by the Secretary of State.

### Revocation of nomination

- 5.6 A partnership will continue until it is ended by a revocation of the nomination by the Secretary of State. A partnership may be revoked:
- a) at the request of one or both partners;
  - b) where the Secretary of State determines that the local authority is no longer suitable to act as primary authority (see [Part D. Guidance to Primary Authorities](#));
  - c) in the case of a direct partnership, where the business is no longer eligible (see [section 3](#));
  - d) in the case of a co-ordinated partnership, where the Secretary of State determines that the co-ordinator is no longer suitable for nomination; or
  - e) where the Secretary of State considers it appropriate to do so for any other reason.

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<sup>27</sup> Section 23B(4) & 23C(6)

<sup>28</sup> Section 23B(1) & (2) of the RES Act

- 5.7 Further details on revocation are provided in Part B of this guidance for direct partnerships (see [section 12](#)) and in Part C of this guidance for co-ordinated partnerships (see [section 16](#)).

### Changes to nominations and partnership details

- 5.8 Certain changes to partners will impact on the validity of the Secretary of State's nomination. Such changes, as set out in this section, require notification to the Secretary of State in order to initiate the appropriate nomination and/ or revocation processes<sup>29</sup>. Notification to the Secretary of State should be made in accordance with [section 13](#) (for direct partnerships) or [section 17](#) (for co-ordinated partnerships). A failure to make a timely notification may result in a business being exposed to enforcement action that is not notified. The following changes require notification to the Secretary of State:
- a) Any change to the legal status of a local authority that is nominated as a primary authority.
  - b) In the case of a business that has a direct partnership, any change to the business with regards to its name, its company number (where applicable), or the nature of the legal entity (sole trader/ partnership/ limited company etc).
  - c) In the case of a business that has a direct partnership, the addition or removal of a regulated person or persons.
  - d) In the case of a nominated co-ordinator, any change to the co-ordinator with regards to its name, its company number (where applicable), or the nature of the legal entity (sole trader/ partnership/ limited company etc).
- 5.9 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. During the lifetime of a partnership certain details which were disclosed during the application for nomination process may change. Any changes to these details should be updated by the relevant party on the Primary Authority Register as soon as reasonably practicable. Such details might include:
- a) contact details for the primary authority;
  - b) contact details for the business or co-ordinator;
  - c) trading names of the business, in the case of a business that has a direct partnership; or
  - d) explanatory information about the partnership, the business or the group of businesses.
- 5.10 Where a business or a co-ordinator has more than one primary authority, and these primary authorities have overlapping regulatory functions, it is possible that the business or the co-ordinator and the primary authorities may agree that a re-allocation of partnership functions between the partnerships is desirable. In this circumstance they are able to make a request to the Secretary of State to vary the allocation of partnership functions (see section 4.12). The Secretary of State will consider the request and, where he considers it appropriate to vary the specified partnership functions, will consult with the parties that would be affected by such a variation.

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<sup>29</sup> Section 23A(6) of the RES Act

## 6. Primary Authority Advice

- 6.1 'Primary Authority Advice' is any advice and guidance from the primary authority to a business or to a co-ordinator (for communication to its businesses). This is distinct from Primary Authority Advice to Local Authorities, which a primary authority may use to guide other local authorities when they interact with a business for which it is the primary authority (see [section 7](#)).
- 6.2 Primary Authority Advice may be used as a basis for directing against proposed enforcement action, of which the primary authority subsequently receives notification, and which it judges to be inconsistent with the Primary Authority Advice (see section 21).
- 6.3 Primary Authority Advice does not affect the responsibility that a business has to comply with legal requirements. It supports a business in meeting its obligations by:
- helping it to understand what needs to be done to achieve and maintain compliance;
  - setting out a way of achieving and maintaining compliance; or
  - providing confirmation that the method of compliance chosen by the business is acceptable.
- 6.4 Primary Authority Advice is provided by both direct and co-ordinated primary authorities and the requirements for such advice are largely the same. However, there is a key difference in that Primary Authority Advice provided by a direct primary authority is tailored to the particular needs and circumstances of the individual business whereas Primary Authority Advice provided by a co-ordinated primary authority is tailored to the circumstances of a group of businesses. It is reasonable to expect that there may be matters in relation to which the Primary Authority Advice provided by a co-ordinated primary authority will meet the needs of a business but there may be other matters in relation to which the business would prefer to receive advice that is bespoke to its own circumstances from a direct primary authority.
- 6.5 A business will have only one direct primary authority in relation to a particular relevant function but might, in relation to the same relevant function, have one or more co-ordinated primary authorities (see [Participation](#)). Such a business may therefore receive Primary Authority Advice from more than one primary authority in relation to the same relevant function. Whilst Primary Authority Advice from a direct primary authority will always be relevant and applicable to the business, this will not always be the case for Primary Authority Advice from a co-ordinated primary authority. It is for the business to determine whether Primary Authority Advice from a co-ordinated primary authority is relevant and applicable to its circumstances and to choose to follow the advice. Co-ordinators will encourage businesses in their regulated group to make these choices clear to any enforcing authority with which they have interactions (see section 27.7).
- 6.6 Where a business has both a direct primary authority and one or more co-ordinated primary authorities in relation to the same partnership function, an enforcing authority that is proposing enforcement action against the business is required to make its notification to the direct primary authority in the first instance (see [Part E. Guidance to Enforcing Authorities](#)). However the notification may, in certain circumstances, be passed by the primary authority to a co-ordinated primary authority (see section 21.8b).

## Arrangements for the provision of Primary Authority Advice

- 6.7 The primary authority should have in place suitable arrangements for its provision of Primary Authority Advice (see section 19).
- 6.8 The primary authority will need to consider, and agree with the partner business or co-ordinator:
- a) who will provide Primary Authority Advice on behalf of the primary authority;
  - b) who can request and receive Primary Authority Advice on behalf of the business or co-ordinator;
  - c) how both partners will be clear when Primary Authority Advice is being provided. For example, the primary authority may have discussions with the business or co-ordinator or offer early views on a matter that do not constitute Primary Authority Advice, and both partners will need to be clear that these discussions cannot later be relied on as Primary Authority Advice;
  - d) by what means Primary Authority Advice will be provided. This will usually be in writing but may be in other formats that are capable of being recorded (see section 19.8);
  - e) how the primary authority will satisfy the requirement set out at section 6.22 of this guidance, such that an enforcing authority will be able to identify the specific regulatory requirements in relation to which Primary Authority Advice has been issued;
  - f) how Primary Authority Advice will be reviewed to ensure it remains current, relevant and applicable (see section 19.7); and
  - g) how the partners will be clear as to the ownership of any documents or materials to which the Primary Authority Advice refers.
- 6.9 In addition, a co-ordinated primary authority and co-ordinator will need to consider and agree:
- a) how the co-ordinator will identify and gain sufficient understanding of the collective advice needs of the businesses in the group (see section 27.1);
  - b) how the co-ordinator and the primary authority will work together to ensure that the primary authority has sufficient understanding of the businesses in the group in order to provide Primary Authority Advice that is relevant and applicable to their circumstances;
  - c) how the co-ordinator will determine, in respect of any Primary Authority Advice, to which businesses in the group that advice may be relevant;
  - d) how the co-ordinator will disseminate Primary Authority Advice to the businesses to whom the co-ordinator considers it may be relevant (see section 27.4); and
  - e) how the co-ordinator will ensure that the businesses to which it has sent Primary Authority Advice are aware of changes to that advice (see section 27.4).

[Part F. Guidance to Co-ordinators](#) sets out the responsibilities of the co-ordinator in respect of these matters.



- 6.10 A direct primary authority should ensure that it is aware of whether the business has, or proposes to have, more than one direct primary authority. In this circumstance, the direct primary authority should agree with the business, and with the other primary authorities where appropriate, arrangements to ensure that the business receives advice and guidance that is consistent and appropriate (see [sections 18.12 to 18.15](#)). The direct primary authority should also ensure that it is aware of whether the business is, or proposes to be, a member of a regulated group that has a co-ordinated primary authority. Arrangements between the direct primary authority and a co-ordinated primary authority may be beneficial where the relationship between the business and the co-ordinator is particularly close; for example, where the business is a franchisee and the co-ordinator is its franchisor and requires it to implement particular compliance arrangements.
- 6.11 A co-ordinated primary authority should ensure that it is aware of whether the co-ordinator is working with, or proposes to work with, more than one co-ordinated primary authority in respect of the group of businesses. In this circumstance, the co-ordinated primary authority should agree with the co-ordinator, and with the other primary authorities where appropriate, arrangements to ensure that the group of businesses receives advice and guidance that is consistent and appropriate (see [sections 18.12 to 18.15](#)).
- 6.12 A primary authority, working with a business or a co-ordinator, may request support from a supporting regulator in the development of Primary Authority Advice, for example in relation to meeting the requirements at section 6.17(a) to 6.17(d). (See sections 18.18 to 18.19 and [Part G. Supporting Regulators](#)).

### Requirements for Primary Authority Advice

- 6.13 In order for a business to rely on Primary Authority Advice that it follows, the advice must be correct and must be properly given by the primary authority. In addition, in the case of a co-ordinated partnership, the enforcing authority needs to be aware that the business is a member of a regulated group and has a primary authority<sup>30</sup> (see section 6.21 below and [Part F. Guidance to Co-ordinators](#)).
- 6.14 Primary Authority Advice is considered to be ‘correct’ where:
- a) it is consistent with the law;
  - b) the law has been applied to the particular circumstances of the regulated person or members of the regulated group for whom it may be relevant.
- 6.15 Primary Authority Advice is ‘properly given’ where it has been issued to the business or co-ordinator by the primary authority with due regard to relevant requirements of this guidance.
- 6.16 Where a local authority has provided advice and guidance to a business prior to being nominated as its primary authority, this advice will not constitute Primary Authority Advice, unless it is issued as such once the primary authority has been nominated on or after the 1<sup>st</sup> October 2017.

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<sup>30</sup> Section 25C(1)(b) of the RES Act

- 6.17 The primary authority should ensure that Primary Authority Advice that it issues to a business, or to a co-ordinator:
- a) takes into account published guidance or codes of practice from the Government, national regulators and others, including, for example, professional bodies;
  - b) takes into account relevant case law;
  - c) takes into account obligations imposed on the business or group of businesses by any relevant national regulator;
  - d) takes into account industry practices and relevant and available advice being given to other businesses within the sector;
  - e) takes into account, wherever possible, relevant Primary Authority Advice given to the business or group of businesses by other primary authorities with responsibility for different relevant functions;
  - f) takes into account any relevant and applicable Primary Authority Advice given to any related business, for example a franchisor, which provides the compliance approach used by the business or group of businesses; and,
  - g) supports the regulation of the business or group of businesses in accordance with the statutory principles of good regulation<sup>31</sup>.
- 6.18 A direct primary authority should ensure that its Primary Authority Advice to a business is specific and tailored to the particular needs and circumstances of the business.
- 6.19 A co-ordinated primary authority should not generally provide, through the co-ordinator, Primary Authority Advice that is addressed to a single business and is specific and tailored to the particular needs and circumstances of that business. A business that wishes to receive such advice is able to enter a direct partnership.
- 6.20 A co-ordinated primary authority should, in developing its Primary Authority Advice, be clear as to which businesses it is likely to be relevant to. This might, for example, be all members of the regulated group or it might be members of the group with defined characteristics, such as all businesses undertaking a specified activity.
- 6.21 A co-ordinated primary authority should ensure that its Primary Authority Advice to a group of businesses, or to a subset of the group of businesses, includes:
- a) a clear indication as to which businesses the advice is addressed to (see section 6.20);
  - b) any information that the primary authority considers will assist a business that receives the advice in determining whether the advice is relevant and applicable to its circumstances;
  - c) the name of the primary authority and its contact details;
  - d) the name of the co-ordinator and its contact details;
  - e) an indication, where applicable, of a supporting regulator's involvement in developing the advice;

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<sup>31</sup> Legislative and Regulatory Reform Act 2006, section 21

- f) an indication of the nation(s) of the UK in which the advice is applicable (see [section 2](#));
  - g) the date of issue of the advice;
  - h) a clear explanation to businesses receiving the advice that it is 'Primary Authority Advice' and, as such, provides assurance where they choose to follow it; and
  - i) a clear explanation to businesses that choose to follow the Primary Authority Advice as to what steps they should take in relation to their dealings with enforcing authorities. This explanation should include an indication of the time limits that apply where the business is challenged by an enforcing authority, in relation to its compliance, and wishes to rely on the Primary Authority Advice.
- 6.22 A primary authority, whether direct or co-ordinated, should publish, in the secure area of the Primary Authority Register, the regulatory questions, topics or issues in relation to which it has issued Primary Authority Advice. The published information should be sufficient to enable an enforcing authority to identify that advice has been issued in relation to specific regulatory requirements.
- 6.23 Where a supporting regulator has provided support to the primary authority in developing its Primary Authority Advice, the primary authority should ensure that it is clear whether the supporting regulator has given its agreement to the Primary Authority Advice (see sections 34.3 to 34.5).

## 7. Primary Authority Advice to Local Authorities

- 7.1 A primary authority is able to guide the way in which enforcing authorities interact with its partner business in a number of ways. Where the primary authority wishes to guide regulation of a business or group of businesses by providing helpful information it is able to share this information via the Primary Authority Register, and this does not constitute Primary Authority Advice to Local Authorities.
- 7.2 Primary Authority Advice to Local Authorities is advice and guidance that a primary authority gives to other local authorities that have responsibility for the partnership functions, regarding the exercise of those functions in relation to the business<sup>32</sup> or group of businesses<sup>33</sup>. Primary Authority Advice to Local Authorities has the same status as Primary Authority Advice that is given to a business or group of businesses (see section 6). This means that where a primary authority receives a notification of proposed enforcement action from an enforcing authority it will review the proposed action against any relevant Primary Authority Advice to Local Authorities that it has issued, alongside any Primary Authority Advice to the business or to a regulated group of which the business is a member.
- 7.3 Primary Authority Advice to Local Authorities takes effect after:
- a) the Secretary of State has given consent<sup>34</sup>; and
  - b) the advice is published in full on the Primary Authority Register.

It remains in effect until it is withdrawn by the primary authority.

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<sup>32</sup> Section 24A(1)(b) of the RES Act

<sup>33</sup> Section 24A(2)(b) of the RES Act

<sup>34</sup> Section 24A(5) of the RES Act

- 7.4 Advice or guidance that was given to local authorities prior to 1st October 2017 does not constitute Primary Authority Advice to Local Authorities, unless it is given consent by the Secretary of State on or after that date.

### **Arrangements for the provision of Primary Authority Advice to Local Authorities**

- 7.5 The primary authority should have in place suitable arrangements for its provision of Primary Authority Advice to Local Authorities (see section 19).
- 7.6 Primary Authority Advice to Local Authorities is capable of impacting significantly on the interactions between enforcing authorities and businesses covered by the advice. A primary authority that is considering issuing Primary Authority Advice to Local Authorities should first consider whether it is appropriate to do so and, in considering whether it is appropriate, should take account of the views of local authorities that will be affected by the advice. The primary authority will need to consider what mechanisms are appropriate to gather relevant views.
- 7.7 A primary authority, working with a business or a co-ordinator, may choose to request support from a supporting regulator in the development of Primary Authority Advice to Local Authorities, for example in relation to meeting the requirements at section 7.12(a) and 7.13(a). (See sections 18.18 to 18.19 and [Part G. Supporting Regulators](#)).

### **Requirements for Primary Authority Advice to Local Authorities**

- 7.8 Where the primary authority considers it appropriate to issue Primary Authority Advice to Local Authorities it must ensure that its advice is correct and properly given.
- 7.9 Primary Authority Advice to Local Authorities is considered to be 'correct' where:
- a) it is consistent with the law;
  - b) the law has been applied to the particular circumstances of the regulated person or members of the regulated group for whom it may be relevant.
- 7.10 Primary Authority Advice to Local Authorities is 'properly given' where it has been issued by the primary authority with due regard to relevant requirements of this guidance.
- 7.11 Primary Authority Advice to Local Authorities may be used to guide how enforcing authorities exercise their regulatory functions, other than their inspection function<sup>35</sup>, in relation to the business or group of businesses. It should support regulation of the business or group of businesses in accordance with the statutory principles of good regulation and may, for example, set out factors that an enforcing authority should have regard to in making proportionate enforcement decisions.

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<sup>35</sup> Guidance in relation to these matters may be provided through an inspection plan.

- 7.12 Primary Authority Advice to Local Authorities should not seek to prevent enforcing authorities from:
- a) taking any course of action that they are under a statutory duty to take, or that is required of them by relevant national regulators, including through statutory guidance or a code of practice;
  - b) following a legally defined route or means of communication; or
  - c) requesting specified information or documents from a business, unless the primary authority or business is making the specified information or documents readily available to enforcing authorities.
- 7.13 Primary Authority Advice to Local Authorities should:
- a) take into account published guidance or codes or practice from the Government, national regulators and others including, for example, professional bodies;
  - b) take into account relevant case law;
  - c) be consistent with any relevant Primary Authority Advice issued to the business or group of businesses by the primary authority that issues the Primary Authority Advice to Local Authorities; and
  - d) be clear as to the partnership functions to which it relates and the nations of the UK in which these are in scope of Primary Authority (see [section 2](#)).
- 7.14 The primary authority should ensure that its Primary Authority Advice to Local Authorities is reviewed at appropriate intervals and when circumstances change, to ensure that it remains current (see [section 19](#)). Where the advice is no longer current or relevant it should be withdrawn and, where appropriate, the primary authority may submit revised advice to the Secretary of State for consent.

### **The Secretary of State's role in relation to Primary Authority Advice to Local Authorities**

- 7.15 The Secretary of State will consider Primary Authority Advice to Local Authorities submitted via the Primary Authority Register (see [section 19](#)). In considering such advice, the Secretary of State will not be forming a view as to whether the advice is correct and was properly given by the primary authority. The Secretary of State:
- a) will give consideration to the clarity of the advice, with a view to whether it will be easily understood by enforcing authorities;
  - b) will give consideration to the technical accuracy of any references in the advice to the provisions of the RES Act or of this guidance;
  - c) will give consideration to evidence of the primary authority's regard for the requirements of this guidance set out in sections 7.6, 7.11, 7.12 and 7.13(d); and
  - d) may request further information or clarification from the primary authority.
- 7.16 Where the Secretary of State is not satisfied in respect of the matters set out in section 7.13(d), 7.15(a) and 7.15(b) he may request that the primary authority amends the advice.

- 7.17 In making his assessment, The Secretary of State may consult with any relevant national regulator to seek a view on whether the primary authority has had regard to the requirement at section 7.12(a). However, where a relevant national regulator has acted as a supporting regulator in the development of the advice and has indicated agreement with the advice as submitted, the Secretary of State will not usually consider consultation with that regulator to be necessary.
- 7.18 Where the Secretary of State is satisfied that it is appropriate to give consent to the proposed Primary Authority Advice to Local Authorities, the advice will be published in full on behalf of the primary authority via the Primary Authority Register, where it will be available to all local authorities and relevant national regulators, including supporting regulators. The primary authority's rationale for the advice will not be published (see section 19).
- 7.19 Where the Secretary of State is not satisfied that it would be appropriate to give consent the primary authority will be notified and given reasons and an explanation as to how the decision may be challenged.
- 7.20 The Secretary of State may, where this is considered to be appropriate, consent to Primary Authority Advice to Local Authorities that is jointly submitted by:
- more than one direct primary authority that is partnered with the same business; or
  - more than one co-ordinated primary authority that is partnered with the same co-ordinator.

In this case, the Primary Authority Advice to Local Authorities should include a clear indication to enforcing authorities as to which primary authority they should address any queries or notifications of proposed enforcement action to.

## 8. Inspection Plans

- 8.1 An inspection plan is a document that a primary authority may prepare in order to guide local authorities in risk-based planning and conduct of their inspection functions, including in relation to other checks, such as sampling visits and test purchases. An inspection plan can help to deliver regulated self-assurance<sup>36</sup> or 'earned recognition' for businesses that have in place robust compliance arrangements. The responsibilities of a primary authority in relation to an inspection plan are set out in this part and in [Part D. Guidance to Primary Authorities](#).
- 8.2 An inspection plan may provide helpful information on a business, or a group of businesses, and the approach being used to manage compliance (see section 8.11). An inspection plan may also set out specific requirements that enforcing authorities must follow (see section 8.12). The duties of enforcing authorities in relation to inspection plans are set out in [Part E. Guidance to Enforcing Authorities](#).
- 8.3 Inspection plans can deliver the following benefits:
- a) promoting more informed risk assessment of a business or a group of businesses;
  - b) co-ordinating risk-based regulation of a business or group of businesses and improving the targeting of premises or activities at a local level;

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<sup>36</sup> More information on regulated self-assurance can be found in the Regulatory Futures Review here: <https://www.gov.uk/government/publications/regulatory-futures-review>.

- c) improving the allocation of local resources by focusing local checks on priority issues; reducing or eliminating local checks in clearly defined areas; addressing inefficiencies and duplication of effort and enhancing the effectiveness of the enforcing authority's checks;
  - d) collating an improved national picture in key areas of compliance through better feedback on local interventions; and
  - e) promoting an effective, consistent, communication process for businesses and enforcing authorities.
- 8.4 A primary authority's inspection plan takes effect when the Secretary of State gives consent to the plan (see sections 8.23 to 8.29) and it is published on the Primary Authority Register.
- 8.5 An inspection plan remains in effect until its expiry date or until it is revoked by the primary authority with the consent of the Secretary of State (see sections 8.30 to 8.33).
- 8.6 A primary authority that develops an inspection plan accepts responsibility for meeting the criteria set out in sections 8.8 to 8.17 of this guidance and, where the inspection plan includes specific requirements that enforcing authorities must follow<sup>37</sup>, must meet the additional criteria set out for such requirements in sections 8.19 to 8.22. The requirements will be examined by the Secretary of State through the consent process, and by any relevant national regulators that the Secretary of State consults with prior to giving consent.
- 8.7 The primary authority also accepts responsibility for managing the inspection plan on an ongoing basis. Guidance to primary authorities in relation to the development and management of inspection plans is set out in [section 20](#).

### Criteria for inspection plans

- 8.8 An inspection plan covers any proactive, planned or programmed regulatory interventions in relation to partnership functions, such as:
- inspections;
  - test purchases;
  - sampling visits;
  - other checks on compliance; or
  - advisory visits.
- 8.9 An inspection plan may cover interventions that are planned in response to information or intelligence about non-compliance in a sector but should not set out requirements that limit the ability of an enforcing authority to respond to matters of specific concern in relation to an individual business.
- 8.10 An inspection plan should not:
- a) seek to prevent enforcing authorities from taking any course of action that they are statutorily required to take; or
  - b) require a local authority to undertake a proactive inspection or other check on compliance of the business when it would not otherwise have undertaken a proactive inspection or other check on compliance at that time.

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<sup>37</sup> Unless the primary authority has been notified and given consent pursuant to section 26B(2) of the RES Act.

- 8.11 An inspection plan may assist enforcing authorities by:
- a) providing information to guide local checks;
  - b) providing guidance on risk assessment of the business' premises and / or activities for the purposes of programming interventions, but should not seek to restrict a local authority's ability to make its own assessment of any elements of the risk score that relate to local implementation;
  - c) providing guidance on the most effective means of communicating with the business and the primary authority but should not seek to alter means or routes of communication with the business that are required by law; and
  - d) may draw attention to information that the primary authority has made available on the Primary Authority Register, which an enforcing authority might otherwise have requested from the business.
- 8.12 Subject to the criteria set out in this guidance, an inspection plan may require:
- a) that local checks are only carried out in line with a 'national inspection strategy' co-ordinated by the primary authority;
  - b) that certain checks are not carried out locally;
  - c) that specified procedures or systems are not reviewed locally to determine their suitability or adequacy;
  - d) that local checks are focused on specified areas; and
  - e) that specified feedback is provided to the primary authority about the inspection.
- 8.13 An inspection plan:
- a) must take account of any relevant national regulators' published strategies, guidance, priority topics or risk assessment methodologies, and obligations set by relevant national regulators;
  - b) should be informed by available information and intelligence;
  - c) should be clear as to the partnership functions to which it relates and the nations of the UK in which these are in scope of Primary Authority (see [section 2](#));
  - d) should be reviewed by the primary authority at appropriate intervals or in response to information received from enforcing authorities or other changes in circumstance; and
  - e) should include an expiry date of no more than 24 months from the date of publication.
- 8.14 An inspection plan developed by a direct primary authority will be tailored to the particular needs and circumstances of the individual business, which may comprise more than one related regulated person (see section 3.4).
- 8.15 An inspection plan developed by a co-ordinated primary authority should be tailored to the circumstances of those businesses in the relevant group for whom the co-ordinator considers it may be relevant. The co-ordinators Inspection Plan Coverage List (see section 29) provides a list of these businesses.



- 8.16 A co-ordinated primary authority should not develop an inspection plan that covers only one business in the regulated group and is specific and tailored to the particular needs and circumstances of that business. Where there is a perceived need to develop such an inspection plan the business is able to enter a direct partnership.
- 8.17 Where a primary authority is developing an inspection plan in relation to an area of regulation for which there is a supporting regulator, the primary authority should consider whether it would be beneficial to invite support from the national regulator (see sections 18.18 to 18.19). There may be particular benefits where the primary authority is proposing a national inspection strategy.
- 8.18 Some businesses are regulated, in respect of certain relevant functions, by both local authorities and by a national regulator. In this circumstance an inspection plan for such a business, or group of businesses, will be binding only in respect of inspection activities undertaken by local authorities. However, where a supporting regulator has supported the development of the inspection plan and has given its agreement to the plan, then it is required to act consistently with the plan (see sections 34.3 to 34.5).

### **Additional criteria for inspection plans that place requirements on enforcing authorities**

- 8.19 An inspection plan that sets out a national inspection strategy should include a requirement for any feedback that the primary authority considers will be relevant and useful.
- 8.20 Where a primary authority has reviewed specific procedures or systems and has confirmed that they are acceptable by issuing Primary Authority Advice then the primary authority may, in its inspection plan, require that those procedures or systems are not reviewed by an enforcing authority to determine their suitability or adequacy. In the case of an inspection plan developed by a co-ordinated primary authority, the primary authority should ensure, before including such a requirement, that the relevant Primary Authority Advice has been provided by the co-ordinator to all businesses on the co-ordinator's Inspection Plan Coverage List (see section 29).
- 8.21 An inspection plan that requires that local checks are focused on specified areas:
- a) should make it clear whether the area identified is to be focused on 'in addition' or 'in place of' areas that the enforcing authority would otherwise have checked;
  - b) should include a basic explanation of the reasons for focussing on the areas, for the enforcing authority to use during inspection, if these reasons are not evident; and
  - c) should include a requirement for any feedback that the primary authority considers will be relevant and useful.
- 8.22 Where a primary authority requires, in an inspection plan, that enforcing authorities provide specified feedback, it should:
- a) require only feedback that it believes will be relevant and useful;
  - b) be mindful of the need to avoid creating overly burdensome requirements on enforcing authorities;
  - c) ensure that the feedback relates to requirements set out in the inspection plan; and
  - d) be clear about how the feedback should be provided.

## The Secretary of State's role in consenting to an inspection plan

- 8.23 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 an inspection plan submitted to him by reference to the following:
- a) the clarity of the inspection plan, with a view to whether it will be easily understood by enforcing authorities;
  - b) the technical accuracy of any references to the provisions of the RES Act or of this guidance;
  - c) the primary authority's regard for the requirements of this guidance; and
  - d) the benefits that the plan is anticipated to deliver, as expressed in the primary authority's rationale for the inspection plan (see section 20).
- 8.24 In making his assessment, the Secretary of State will usually consult with any relevant national regulator to seek a view on whether the primary authority has acted in compliance with the requirement at section 8.13a. However, where a relevant national regulator has acted as a supporting regulator in the development of the inspection plan and has indicated agreement with the plan as submitted, the Secretary of State will not usually consider consultation with that regulator to be necessary.
- 8.25 The Secretary of State may request further information or clarification from the primary authority, prior to making a decision on whether to consent to the proposed inspection plan, and may request that the primary authority amends the content of the plan where he considers that the plan does not meet the requirements of this guidance.
- 8.26 Where the Secretary of State is satisfied that it would be appropriate to give consent to the proposed inspection plan it will be published on behalf of the primary authority, via the Primary Authority Register, where it will be available to all local authorities and relevant national regulators, including supporting regulators. The primary authority's rationale for the inspection plan will not be published. The inspection plan remains on the Primary Authority Register until it expires or is revoked by the primary authority with consent from the Secretary of State.
- 8.27 Where the Secretary of State is not satisfied that it would be appropriate to give consent the primary authority will be notified and given reasons and an explanation as to how the decision may be challenged.
- 8.28 The Secretary of State may consent to more than one inspection plan submitted by a primary authority in respect of the same business or group of businesses, where this is considered to be appropriate, and where the inspection plans relate to different partnership functions.
- 8.29 The Secretary of State may consent to an inspection plan in which requirements are made by more than one primary authority, where this is considered to be appropriate, and where the primary authorities ensure that there is clarity as to which requirements are being made by each of them.

## Revocation of an inspection plan

- 8.30 The Secretary of State will consider any request from a primary authority to revoke an inspection plan. In doing so, the Secretary of State may seek further information or clarification from the primary authority and other parties prior to making a decision on whether to consent to the request.
- 8.31 Where the Secretary of State gives consent the inspection plan will be revoked and the revocation will be confirmed to the primary authority. Notification of the revocation will also be sent to any supporting regulator involved in the development of the inspection plan and, where appropriate, to any relevant national regulator.
- 8.32 On receipt of confirmation of the revocation of an inspection plan, the primary authority is required to notify the revocation to enforcing authorities and to the business, in the case of a direct partnership, or the co-ordinator, in the case of a co-ordinated partnership<sup>38</sup>. On receipt of this confirmation, a co-ordinator is required to notify the businesses on its Inspection Plan Coverage List (see section 29).
- 8.33 A primary authority that submits an inspection plan to the Secretary of State for consent may already have an inspection plan in place relating to the same business. In this circumstance, publication of the new inspection plan, on consent by the Secretary of State, will automatically bring to an end any previous inspection plan that relates to the same partnership function(s). The primary authority does not therefore need to request consent to the revocation of the existing inspection plan.

## 9. Dealing with compliance issues

- 9.1 A primary authority has an important role in leading regulation of a business, or of a group of businesses, and it is able, through this role, to deliver value to both the business(es) and to enforcing authorities. A primary authority is best able to deliver value where it is well informed about compliance issues and it is in the interests of primary authorities, enforcing authorities, businesses and co-ordinators for information about non-compliance to be shared with a primary authority.
- 9.2 In the case of a direct partnership, early dialogue between the enforcing authority and the primary authority about possible compliance issues can:
- a) enable the primary authority to assist enforcing authorities in:
    - understanding the business' approach to managing compliance;
    - identifying whether the business is following Primary Authority Advice;
    - identifying whether an issue is confined to a particular premises or area or whether it is symptomatic of a wider issue;
  - b) assist enforcing authorities in determining a proportionate response to non-compliance;
  - c) enable the primary authority to identify issues where it may be appropriate for the primary authority to consider enforcement action; and
  - d) help the partnership to identify compliance issues that need to be addressed, for example, through the provision or revision of Primary Authority Advice or through training.

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<sup>38</sup> Section 26C of the RES Act

- 9.3 In the case of a co-ordinated primary authority, the primary authority is likely to have less direct knowledge of the individual business that an enforcing authority has dealings with. However, early dialogue between an enforcing authority and the primary authority about possible compliance issues can still be of value in:
- a) enabling the primary authority to assist the enforcing authority in identifying whether an individual business is following Primary Authority Advice that has been issued to the co-ordinator for communication to the group of businesses; and
  - b) helping the primary authority and co-ordinator to identify compliance issues that need to be addressed, for example, through the provision or revision of Primary Authority Advice.
- 9.4 Where there is non-compliance and an enforcing authority determines that enforcement action is an appropriate response, it must comply with the requirements of the RES Act in relation to notification of the primary authority. The duties of enforcing authorities in relation to non-compliance by a business that has a primary authority are set out in [Part E. Guidance to Enforcing Authorities](#) (see section 24).
- 9.5 The responsibilities of a primary authority in relation to non-compliance by a partner business, both in responding to notifications from enforcing authorities and in acting itself in the role of enforcing authority, are set out in [Part D. Guidance to Primary Authorities](#) (see section 21).

### The determination process

- 9.6 The RES Act allows for questions that arise in respect of proposed enforcement action to be referred to the Secretary of State with his consent. This provision allows for determination, by the Secretary of State, where there is disagreement between any of the three parties – the primary authority, the enforcing authority, and the business – as to whether the proposed enforcement action is inconsistent with Primary Authority Advice given to the business or Primary Authority Advice to Local Authorities and whether that advice was correct (see sections 6.14 and 7.9) and was properly given by the primary authority (see sections 6.15 and 7.10).
- 9.7 The Secretary of State administers the determination process in accordance with the provisions in the RES Act, the CORE Regulations and the published determinations procedure<sup>39</sup>.

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<sup>39</sup> References for Determination: Policy and Procedure, see: <https://www.gov.uk/government/collections/primary-authority-documents>

## PART B: Guidance for Direct Partnerships

This Part provides guidance to local authorities and businesses on the arrangements for direct partnerships. It should be read alongside other parts of the guidance, in particular Part A (General guidance) and Part D ([Guidance to Primary Authorities](#)) and cross referencing is provided.

### 10. Partnership arrangements

10.1 Prospective partners will wish to be clear, prior to making an application for nomination, as to:

- a) each party's expectations of how the partnership will work;
- b) what the partnership functions will be (see section 4);
- c) what the objectives of the partnership will be and how they propose to achieve them through using the statutory tools;
- d) how the partners will communicate with each other and with enforcing authorities;
- e) the arrangements for requesting, issuing and managing Primary Authority Advice (see section 6);
- f) the arrangements for developing and managing an inspection plan (see section 8) or Primary Authority Advice to Local Authorities (see section 7); and
- g) the arrangements for resourcing the work of the partnership (see sections 10.5 to 10.7).

10.2 The prospective partners should ensure that they are clear as to:

- a) whether the business has existing direct primary authorities and, if so
  - how this will affect the Secretary of State's allocation of partnership functions to the new partnership (see [sections 4.9 to 4.14](#)); and
  - how the direct primary authorities will work together (see [sections 18.12 to 18.15](#)).
- b) whether the business is developing partnerships with other direct primary authorities and, if so
  - how the prospective primary authorities will co-ordinate their submission of applications for nomination (see section 11.2) to ensure that the allocation of partnership functions to each partnership is in line with the preferences expressed by the business (see [sections 4.9 to 4.14](#))
- c) whether the partnership proposes to invite support from any supporting regulator(s).

10.3 Where a business that is regulated in both England and Wales in relation to 'England only' and devolved Welsh matters chooses to partner with just one local authority, whether in England or Wales, that local authority should make the business aware that any Primary Authority Advice or inspection plan that it issues in relation to 'England only' or devolved Welsh matters will not have statutory effect in the other nation.

10.4 In the case of a singly regulated business that it does not itself regulate (see section 3.7), the prospective primary authority will want to consider why the business is not forming a partnership with the local authority by which it is regulated and may choose to contact that local authority to inform it of the proposed partnership. The prospective primary authority should ensure that the business is clear that the local authority in whose area it is located will continue to regulate it.

### Resourcing the partnership

10.5 In order to make an informed assessment of the resources that are likely to be required to operate an effective partnership, prospective partners should have a clear understanding of:

- a) the scale and scope of the proposed partnership;
- b) the needs of the business for regulatory advice;
- c) the expectations of both partners;
- d) the scope of the service being provided by the local authority to the business;
- e) the likely level of enquiries and notifications of proposed enforcement action from enforcing authorities; and
- f) the role that the local authority will play in leading regulation of the business on behalf of local authorities.

10.6 In assessing the resources required, consideration should be given to the amount of staff resource and the level of expertise needed, both in terms of knowledge of the partnership functions and understanding of the business and its practices. Consideration should also be given to whether the primary authority will need to source resources externally.

10.7 Having made an assessment of the resource requirements of the partnership, the business and the local authority should agree how costs will be met. Examples of primary authority services for which the partners may agree that costs will be recovered include:

- a) establishing partnership arrangements;
- b) familiarising primary authority staff with the business;
- c) raising awareness and understanding of the partnership amongst enforcing authorities;
- d) developing, providing and reviewing Primary Authority Advice;
- e) developing, managing and evaluating an inspection plan;
- f) liaising with supporting regulators and other regulators;
- g) responding to queries and notifications from enforcing authorities;
- h) collating and analysing data and other information;
- i) training staff of the business; and
- j) conducting audits or other checks on compliance at the request of the business.

## Summary of partnership arrangements

- 10.8 The local authority and the business should agree a written summary of their partnership arrangements, the 'Summary of Direct Partnership Arrangements', setting out:
- a) the scope of the partnership, including any agreement on the partnership functions on which the primary authority will provide advice;
  - b) the objectives of the partnership;
  - c) arrangements for the primary authority to work with other primary authorities with which the business has or proposes to have partnerships;
  - d) any arrangements for the primary authority to invite the support of a supporting regulator;
  - e) arrangements for the business to request Primary Authority Advice;
  - f) arrangements relating to the issue and review of Primary Authority Advice (see section 6.8) by the primary authority;
  - g) any arrangements for the primary authority to develop, manage and review an inspection plan;
  - h) any arrangements for cost recovery by the primary authority in respect of the primary authority services that it provides to the business; and
  - i) any agreement as to limitation of the liability<sup>40</sup> of the primary authority.
- 10.9 The agreed summary of partnership arrangements will be supplementary to the Primary Authority Terms and Conditions (see sections 4.6 to 4.8) and cannot be used to alter them.

## 11. Nomination

- 11.1 Before submitting an application to the Secretary of State, for nomination as primary authority for a business, the local authority should satisfy itself:
- that it is suitable for nomination, by reference to the requirements set out in the RES Act and this guidance; and
  - that the regulated person(s) are eligible (see sections 3.4 to 3.8).

## Applications for nomination

- 11.2 Where a business and a local authority agree that they wish to establish a partnership, and have agreed arrangements for the partnership, they should make an application to the Secretary of State to nominate the local authority as primary authority (see sections 5.3 to 5.5).

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<sup>40</sup> Example clauses for this purpose are included in the template documents available from Regulatory Delivery for recording a summary of partnership arrangements, see: <https://www.gov.uk/government/collections/primary-authority-documents>

- 11.3 An application for nomination is initiated by the local authority, via the Primary Authority Register, and completed by the local authority and the business, providing the information required by the online form.
- 11.4 Where a business comprises multiple related regulated persons, these may all be included in a single application for nomination (see section 3.4).
- 11.5 The local authority is required to confirm:
- a) that it has satisfied itself that it is suitable for nomination as the primary authority for the business;
  - b) that it has satisfied itself that each regulated person named in the application is eligible (see sections 3.4 to 3.8);
  - c) whether the business is a singly regulated business (see section 3.7); and
  - d) that the local authority and the business have agreed in writing suitable arrangements for the operation of their partnership (see [section 10.8](#)).
- 11.6 The local authority and the business are required to confirm that they accept the Primary Authority Terms and Conditions (see sections 4.6 to 4.8).

### **Nomination by the Secretary of State**

- 11.7 On receipt of an application for nomination, the Secretary of State will consider the application and may request further information or clarification from the primary authority prior to making a decision. The Secretary of State may, for example, request sight of the written summary of partnership arrangements agreed by the applicants.
- 11.8 Where the Secretary of State is satisfied, the partnership will be added to the Public Register and the business and the primary authority will be notified of the nomination. The partnership remains on this register until it is revoked by the Secretary of State.
- 11.9 Where the Secretary of State is not satisfied, the business and the local authority will be notified that the local authority will not be nominated and given reasons and an explanation as to how the decision may be challenged.
- 11.10 The Secretary of State will share details of all nominations with any relevant national regulator.

## **12. Revocation**

(See section 5.6)

### **Revocation on request**

- 12.1 Where one or both partners wishes to end the partnership, either partner may request the Secretary of State to issue a revocation notice in relation to the partnership, by notifying the Secretary of State and the other partner in writing.
- 12.2 When a notification is received from one partner, the Secretary of State will consider whether it is appropriate to consult with the other partner and with any other parties, before revoking the nomination of the partnership.
- 12.3 When the Secretary of State is satisfied that it is appropriate to revoke the nomination he will notify both partners of the decision and will amend the Public Register accordingly.



## Revocation where the local authority is no longer suitable

- 12.4 The Secretary of State may conduct periodic reviews of the suitability of a local authority to continue to act as primary authority for a business, or may decide to conduct such a review if certain information is drawn to his attention including:
- a) information indicating that the local authority is failing to operate in accordance with guidance on Primary Authority;
  - b) information about the adequacy of arrangements for supporting local authority staff in the primary authority role, including issues such as developing and maintaining skills, knowledge and expertise in relation to the partnership functions and competency in the delivery of primary authority services;
  - c) information about the adequacy of the working arrangements between the primary authority and the business and their commitment to maintaining an effective partnership, including the arrangements for resourcing the partnership and the arrangements for reviewing the impact of their activities;
  - d) information about the adequacy of standards of service to enforcing authorities;
  - e) information that raises concerns about the integrity and objectivity of the local authority, or any of its staff that are involved in supporting the partnership;
  - f) information that raises concerns, in the case of a local authority that is both primary authority and regulated person, that governance arrangements designed to secure separation between those responsible for delivering the primary authority role and those responsible for delivering the regulated activities are not effective in securing the appropriate degree of independence and impartiality (see section 3.19); or
  - g) information that raises concerns that the local authority is failing to meet its responsibility to act in a transparent and accountable manner.
- 12.5 In order to inform such a review, the Secretary of State may request relevant information from the primary authority, the business or other parties, as he considers appropriate.
- 12.6 Where the Secretary of State considers that a local authority may no longer be suitable to continue as primary authority for a business, he may consult with the partners before revoking the nomination of the partnership. The Secretary of State may also consult with others, including relevant national regulators, as he considers appropriate.
- 12.7 When the Secretary of State is satisfied that it is appropriate to revoke the nomination, both partners will be notified of the decision and given reasons and an explanation as to how the decision may be challenged. The Secretary of State, will amend the Public Register and may also, as considered appropriate, notify others of the revocation.

## Revocation where the business is no longer eligible

- 12.8 The Secretary of State will not review the eligibility of a regulated person to participate in Primary Authority on a routine basis but will consider a review if certain information is drawn to his attention including:
- a) information indicating that the regulated person may no longer be trading; or
  - b) information indicating that the regulated person is no longer regulated, or no longer expects to be regulated, by one or more local authorities in respect of the partnership function(s).
- 12.9 The Secretary of State may consult with the business, the primary authority, or other parties in order to determine the question of eligibility.
- 12.10 Where the Secretary of State considers that the regulated person no longer satisfies the eligibility criteria, he will revoke the nomination, amend the Public Register accordingly and notify both partners of the decision.

## 13. Notifiable changes to partnerships

(See sections 5.8 to 5.10)

- 13.1 Changes to the business in respect of the matters listed below will impact on the validity of the Secretary of State's nomination and the primary authority should notify such changes via the Primary Authority Register:
- name;
  - company number (where applicable); or
  - the nature of the legal entity (sole trader/ partnership/ limited company etc).
- 13.2 Where possible, this notification should be made in advance of the change(s) taking effect, otherwise, the notification should be made as soon as reasonably practicable after the change(s) take effect. The Secretary of State will, where appropriate, treat this notification as a request for revocation of the existing partnership and an application for nomination of a new partnership.
- 13.3 Where the business comprises multiple regulated persons, the addition of a regulated person to the partnership, or the removal of a regulated person from the partnership, will need to be recognised by the Secretary of State in order to be effective under Primary Authority. The primary authority should therefore notify any such a change via the Primary Authority Register. The Secretary of State will, as appropriate, treat this notification as either:
- a) a request for revocation of the named regulated person(s) (see section 12); or
  - b) an application for nomination of the new regulated person(s) (see section 11).

## PART C: Guidance for Co-ordinated Partnerships

This Part provides guidance to local authorities, co-ordinators and businesses on the arrangements for co-ordinated partnerships. It should be read alongside other parts of the guidance, in particular Part A (General guidance), Part D ([Guidance to Primary Authorities](#)) and Part F ([Guidance to Co-ordinators](#)) and cross referencing is provided.

### 14. Partnership arrangements

14.1 The nature of the arrangements for a co-ordinated partnership is likely to vary significantly depending on the relationship between the prospective co-ordinator and the regulated group of businesses to which it provides support. Examples of this relationship include:

- a franchisor and its franchisees;
- a sectoral trade association and its members; or
- a single company and other companies that are in the same company group.

14.2 A local authority and a prospective co-ordinator will need to be clear, prior to initiating an application for nomination, as to:

- a) whether the businesses to which they propose to offer primary authority services constitute a regulated group (see [sections 3.9 to 3.12](#));
- b) whether the prospective co-ordinator is suitable to take on the role of a co-ordinator in respect of the group of businesses;
- c) their expectations of how their relationship will work;
- d) what the partnership functions will be (see section 4);
- e) what they will seek to deliver for the group of businesses and how they propose to do this using the statutory tools;
- f) how they will communicate with each other, with the businesses, and with enforcing authorities;
- g) the arrangements for requesting, issuing and managing Primary Authority Advice (see section 6) to the group of businesses;
- h) the arrangements for developing and managing an inspection plan (see section 8) or Primary Authority Advice to Local Authorities (see section 7); and
- i) the arrangements for resourcing the work of the partnership (see sections 14.5 to 14.9).

14.3 The prospective partners should ensure that they are clear as to:

- a) whether the co-ordinator has existing co-ordinated primary authorities and, if so
  - how this will affect the Secretary of State's allocation of partnership functions to the new partnership (see [sections 4.9 to 4.14](#)); and
  - how the co-ordinated primary authorities will work together (see [sections 18.12 to 18.15](#)).

- b) whether the co-ordinator is developing partnerships with other co-ordinated primary authorities and, if so
- how the prospective primary authorities will co-ordinate their submission of applications for nomination (see section 15.3) to ensure that the allocation of partnership functions to each partnership is in line with the preferences expressed by the co-ordinator (see [sections 4.9 to 4.14](#)).

14.4 Where a co-ordinator has businesses in its regulated group that are regulated in both England and Wales in relation to 'England only' and devolved Welsh matters and that co-ordinator chooses to partner with just one local authority, whether in England or Wales, that local authority should make the co-ordinator aware that any Primary Authority Advice or inspection plan that it issues in relation to 'England only' and devolved Welsh matters will not have statutory effect in the other nation.

### Resourcing the partnership

- 14.5 The prospective co-ordinator and the local authority will need to have a clear understanding of:
- a) the scale and scope of the proposed arrangements;
  - b) the needs of the businesses for regulatory advice and how this will be developed;
  - c) the expectations of the businesses and the co-ordinator; and
  - d) the scope of the service being provided by the local authority to the businesses and the co-ordinator.
- 14.6 In assessing the resources required, consideration should be given to the amount of staff resource and the level of expertise needed, both of the local authority and the co-ordinator, and to the amount of resource required of the co-ordinator in terms of acting effectively as a single point of contact for the primary authority and enforcing authorities.
- 14.7 The prospective co-ordinator and the local authority will need to have a clear understanding of how any cost recovery, in respect of primary authority services provided to the group of businesses, will be managed in practice between them.
- 14.8 It is for a co-ordinator to determine its own policy in respect of recovering some or all of the costs of Primary Authority from businesses in the regulated group (see section 25.10).
- 14.9 Primary authority services for which the local authority and prospective co-ordinator may agree that costs will be recovered could include:
- a) establishing working arrangements between the primary authority, the co-ordinator and the group of businesses;
  - b) familiarising primary authority staff with the nature and practices of the group of businesses;
  - c) raising awareness and understanding amongst enforcing authorities of the partnership and of Primary Authority Advice or of an inspection plan;
  - d) developing, providing and reviewing Primary Authority Advice or Primary Authority Advice to Local Authorities;

- e) developing, managing and evaluating an inspection plan;
- f) liaising with supporting regulators or other regulators;
- g) responding to queries and notifications from enforcing authorities;
- h) collating and analysing data and other information;
- i) providing compliance tools and training services to the businesses in the group;  
and
- j) providing a service of checking compliance to the businesses in the group.

### Summary of partnership arrangements

14.10 The local authority and the prospective co-ordinator should agree a written summary of their partnership arrangements, the 'Summary of Co-ordinated Partnership Arrangements', setting out:

- a) the scope of the partnership, including any agreement on any partnership functions on which the primary authority will provide advice;
- b) the objectives of the partnership;
- c) arrangements for the co-ordinator to provide the primary authority with its Primary Authority Membership List (see [section 26](#));
- d) arrangements for the primary authority to work with other primary authorities with which the co-ordinator has or proposes to have partnerships;
- e) any arrangements for the primary authority to invite the support of a supporting regulator;
- f) arrangements for the co-ordinator to request Primary Authority Advice on behalf of the businesses in co-ordinated partnerships, and to disseminate it to them;
- g) arrangements relating to the issue and review of Primary Authority Advice (see sections 6.8 and 6.9) by the primary authority;
- h) any arrangements for the primary authority to develop, manage and review an inspection plan;
- i) any arrangements for cost recovery by the primary authority in respect of the primary authority services that it provides to the businesses; and
- j) any agreement as to limitation of the liability of the primary authority.

14.11 The agreed summary of partnership arrangements will be supplementary to the Primary Authority Terms and Conditions (see sections 4.6 to 4.8) and cannot be used to alter them.

## 15. Nomination

- 15.1 Before submitting an application to the Secretary of State, for nomination as primary authority for a group of businesses, the local authority should satisfy itself:
- that it is suitable for nomination, by reference to the requirements set out in the RES Act and this guidance; and
  - that the prospective co-ordinator is suitable to take on the role of a co-ordinator in Primary Authority and is committed to doing so effectively.
- 15.2 In order to satisfy itself that a prospective co-ordinator is suitable to take on the co-ordinator role, the local authority should consider:
- a) the nature of the relationship between the prospective co-ordinator and the businesses in the regulated group (see section 25.2); and
  - b) the capacity and capability of the prospective co-ordinator to fulfil the statutory duties of a co-ordinator in Primary Authority (see section 25).

### Applications for nomination

- 15.3 Where a local authority and a prospective co-ordinator have agreed arrangements for working together in Primary Authority in respect of a regulated group of businesses, they should make an application to the Secretary of State for nomination of the co-ordinator and of the local authority as the co-ordinated primary authority. These nominations establish a co-ordinated partnership between the two parties (see sections 5.3 to 5.5).
- 15.4 An application for nomination is initiated by the local authority via the Primary Authority Register and completed by the local authority and the prospective co-ordinator, providing the information required by the online form.
- 15.5 The local authority is required to confirm:
- a) that it has satisfied itself that it is suitable for nomination as the primary authority for the regulated group;
  - b) that it has satisfied itself that the prospective co-ordinator is suitable to fulfil the duties of a co-ordinator in respect of the regulated group; and
  - c) that the local authority and the co-ordinator have agreed in writing suitable arrangements for the operation of their partnership (see [section 14.10](#)).
- 15.6 The prospective co-ordinator is required to confirm that it is satisfied that it is suitable for nomination as the co-ordinator for the regulated group (see [Part F. Guidance to Co-ordinators](#)).
- 15.7 The local authority and the prospective co-ordinator are required to confirm that they accept the Primary Authority Terms and Conditions (see sections 4.6 to 4.8).

## Nomination by the Secretary of State

- 15.8 On receipt of an application for nomination, the Secretary of State will consider the application and may request further information or clarification from the primary authority and/ or the co-ordinator prior to making a decision. The Secretary of State may, for example:
- a) request sight of the written summary of partnership arrangements agreed by the applicants;
  - b) request evidence of the local authority's assessment of the suitability of the prospective co-ordinator.
- 15.9 Where the Secretary of State is satisfied he will add the partnership to the Public Register and will notify the co-ordinator and the primary authority of the nominations. The partnership remains on this register until it is revoked by the Secretary of State.
- 15.10 Where the Secretary of State is not satisfied he will notify the co-ordinator and the local authority that a nomination will not be made, give reasons and explain how the decision may be challenged.
- 15.11 The Secretary of State will share details of all nominations with any relevant national regulator.

## 16. Revocation

(See section 5.6)

### Revocation on request

- 16.1 Where one or both partners wishes to end the partnership, either partner may request the Secretary of State to issue a revocation notice, in relation to the partnership, by notifying the Secretary of State and the other party in writing.
- 16.2 When a notification is received from one partner, the Secretary of State will consider whether it is appropriate to consult with the other partner, and with any other parties, before revoking the nomination.
- 16.3 When the Secretary of State is satisfied that it is appropriate to revoke the nomination, he will notify the primary authority and the co-ordinator of the decision and will amend the Public Register accordingly. The co-ordinator will be expected to notify the businesses on its Primary Authority Membership List of the revocation (see section 25.6).

### Revocation where the local authority is no longer suitable

- 16.4 The Secretary of State may conduct periodic reviews of the suitability of a local authority to continue to act as primary authority for a regulated group, or may decide to conduct such a review if certain information is drawn to his attention including:
- a) information indicating that the primary authority is failing to operate in accordance with guidance on Primary Authority;

- b) information about the adequacy of arrangements for supporting local authority staff in the primary authority role, including issues such as developing and maintaining skills, knowledge and expertise in relation to the partnership functions, and competency in the delivery of primary authority services;
  - c) information about the adequacy of the working arrangements between the primary authority and the co-ordinator and their commitment to maintaining an effective partnership, including the arrangements for resourcing the partnership and the arrangements for reviewing the impact of their activities;
  - d) information about the adequacy of standards of service to enforcing authorities;
  - e) information that raises concerns about the integrity and objectivity of the local authority or any of its staff that are involved in supporting the partnership (see sections 18.1 to 18.4);
  - f) information that raises concerns, in the case of a local authority that is both primary authority and a member of the regulated group, that governance arrangements designed to secure separation between those responsible for delivering the primary authority role and those responsible for delivering the regulated activity are not effective in securing the appropriate degree of independence and impartiality (see section 3.19); and
  - g) information that raises concerns that the local authority is failing to meet its responsibility to act in a transparent and accountable manner.
- 16.5 Where the Secretary of State considers that a local authority may no longer be suitable to continue as primary authority for a group of businesses, he may consult with the primary authority and the co-ordinator before revoking the nomination of the partnership. The Secretary of State may also consult with others as he considers appropriate.
- 16.6 When the Secretary of State is satisfied that it is appropriate to revoke the nomination, both partners will be notified of the decision and given reasons and an explanation as to how the decision may be challenged. The Secretary of State, will amend the Public Register and may also, as considered appropriate, notify others of the revocation.

### **Revocation where the co-ordinator is no longer suitable**

- 16.7 The Secretary of State will review the suitability of a nominated co-ordinator where information is available:
- a) that raises concerns about the adequacy of the co-ordinator's arrangements to meet its obligations<sup>41</sup> in respect of the list of members of the regulated group (see section 26);
  - b) indicating that communication channels in place between the co-ordinator and the businesses in the regulated group are not operating effectively to communicate, in a timely manner:
    - the existence and implications of the primary authority arrangements;
    - Primary Authority Advice;
    - an inspection plan that is developed by the primary authority; or
    - any changes to Primary Authority Advice or an inspection plan.

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<sup>41</sup> Section 23D of the RES Act



- c) indicating that communication channels in place between the co-ordinator and the businesses in the regulated group are not operating effectively to keep the co-ordinator informed about:
- regulatory compliance issues faced by the businesses;
  - understanding of Primary Authority Advice that it has disseminated to the businesses; and
  - questions about Primary Authority Advice that it has disseminated to the businesses.

- 16.8 Where the Secretary of State considers that a co-ordinator may no longer be suitable for nomination, he may consult with the primary authority and the co-ordinator before revoking the nomination of the partnership. The Secretary of State may also consult with others as he considers appropriate.
- 16.9 When the Secretary of State is satisfied that it is appropriate to revoke the nomination, both partners will be notified of the decision and given reasons and an explanation as to how the decision may be challenged. The Secretary of State, will amend the Public Register and may also, as considered appropriate, notify others of the revocation.

## 17. Notifiable changes to partnerships

(See sections 5.8 to 5.10)

- 17.1 Changes to the co-ordinator, in respect of the matters listed below, will impact on the validity of the Secretary of State's nomination of the co-ordinator and the primary authority or the co-ordinator should notify such changes via the Primary Authority Register:
- name;
  - company number (where applicable); or
  - the nature of the legal entity (sole trader/ partnership/ limited company etc).
- 17.2 Where possible, this notification should be made in advance of the change(s) taking effect, otherwise the notification should be made as soon as reasonably practicable after the change(s) take effect. The Secretary of State will, where appropriate, treat this notification as a request to nominate another person to exercise the functions of the co-ordinator. This allows for continuity in the provision of primary authority services to the regulated group of businesses.
- 17.3 Where the co-ordinator is unwilling or unable to continue in the co-ordinator role, the co-ordinator or the primary authority may propose that this role is taken on by another organisation or individual that is willing and able to do so (see section 30). A change to the co-ordinator should be notified to the Secretary of State via the Primary Authority Register. The Secretary of State will treat this notification as a request to nominate another person to exercise the functions of the co-ordinator<sup>42</sup>.

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<sup>42</sup> Section 23C(4) of the RES Act

## PART D: Guidance to Primary Authorities

This Part provides guidance to primary authorities and prospective primary authorities on their role and responsibilities within Primary Authority. It should be read alongside other parts of the guidance and cross referencing is provided.

### 18. Managing Primary Authority

- 18.1 A local authority that provides primary authority services has an ongoing responsibility to ensure that it has effective arrangements in place to resource, manage and deliver partnerships, including suitable oversight and contingency arrangements.
- 18.2 A primary authority has an ongoing responsibility to ensure that it has effective arrangements in place to ensure that staff that it engages to support partnerships:
- have the skills, knowledge and expertise needed to lead regulation of the business in relation to partnership functions in which it has agreed that it will provide advice;
  - have appropriate access to mechanisms that promote consistency including, for example, through Expert Panels<sup>43</sup>, networks and liaison groups;
  - are competent in the delivery of primary authority services<sup>44</sup> and are operating in accordance with guidance on Primary Authority and the principles of good regulation<sup>45</sup>; and
  - are able to undertake their role with integrity and objectivity, acting at all times in the public interest<sup>46</sup>.
- 18.3 A primary authority should have regard to the requirements for transparency and accountability<sup>47</sup>, both in terms of the service that it provides to businesses and co-ordinators and the service that it provides to enforcing authorities.
- 18.4 A primary authority should recognise that the benefits that can be realised by working closely in partnership with businesses can be accompanied by an increased risk of bias and perceptions of regulatory capture. Primary authorities should be mindful of this risk and should take appropriate steps to maintain their independence and objectivity and that of staff assigned to support partnerships.
- 18.5 In any review of a local authority's suitability to continue in the role of primary authority, whether in relation to one or more partnerships, the Secretary of State will take account of the factors set out at sections 18.1 to 18.4 above. Where the Secretary of State is not satisfied as to the ongoing suitability of the local authority as the primary authority for a business or a group of businesses the Secretary of State's nomination of that local authority may be revoked (see sections 12 and 16).

<sup>43</sup> A list of expert panels is available from Regulatory Delivery.

<sup>44</sup> Regulatory Delivery makes available training for primary authority officers.

<sup>45</sup> Legislative and Regulatory Reform Act 2006, section 21

<sup>46</sup> The seven principles of public life (Committee on Standards in Public Life, 1995) apply to all local authority officers. The principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

<sup>47</sup> As required by the Legislative and Regulatory Reform Act 2006, section 21 and the Regulators' Code (Department for Business, Innovation and Skills, 2014).

18.6 The Secretary of State may nominate a local authority as primary authority where that same local authority, either acting as itself or as part of a joint committee or through an incorporated or unincorporated body, is the regulated person or a member of the regulated group (see section 3.19). In this circumstance, the primary authority should establish robust governance arrangements and should ensure that these are maintained on an ongoing basis. These arrangements should secure separation between those responsible for delivering its primary authority role and those responsible for the regulated activity, such that the former can act with the appropriate degree of independence and impartiality.

### Resourcing primary authority services

18.7 The resources required to operate effectively as a primary authority will vary depending on the number and nature of the partnerships that a local authority enters into. In making its assessment of the resources required to operate partnerships, a local authority should give due consideration to its responsibilities as set out in the RES Act and this guidance.

18.8 A local authority is entitled to charge, on a cost recovery basis, for primary authority services supplied through a partnership. It can recover the costs reasonably incurred in providing primary authority services:

- a) from a business, in the case of a direct partnership; or
- b) from a co-ordinator, in the case of a co-ordinated partnership.

18.9 In deciding whether, and to what extent, to charge for primary authority services the local authority should consider all relevant matters, including the local authority's policy in respect of supporting local economic prosperity.

18.10 Where a local authority decides to charge for some or all of the services that it provides as a primary authority, it should ensure that:

- a) it uses a robust methodology to calculate its cost recovery rate(s);
- b) it publishes clear and transparent information explaining its cost recovery policy, in line with the requirement of the Regulators' Code. This information should be easily accessible to businesses, including on the local authority's website<sup>48</sup>; and
- c) it provides each of its partners with clear and transparent information on charging.

18.11 An assessment should be made, prior to making an application for nomination of a new partnership, or when reviewing an existing partnership, of the resources that are likely to be required to operate an effective partnership that is capable of meeting the needs and expectations of the business or businesses and of enforcing authorities. Guidance on resourcing of partnerships is given in Part B of this guidance for direct partnerships (see sections 10.5 to 10.7) and in Part C of this guidance for co-ordinated partnerships (see sections 14.5 to 14.9).

### Working in a network of primary authorities

18.12 The regulatory functions in scope of Primary Authority are the responsibility of different types of local authority and a business or a co-ordinator that wishes to benefit from Primary Authority across all relevant areas of regulation is likely to wish to partner with more than one primary authority.

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<sup>48</sup> Section 6, Regulators' Code (Department for Business, Innovation and Skills, 2014)

- 18.13 Where a business or a co-ordinator has multiple partnerships with primary authorities, the business or co-ordinator and the primary authorities are likely to derive benefits from co-operation and collaboration, including a reduction in duplication of effort and a more coherent and consistent approach. The extent of these benefits may vary according to the particular partnership functions of each primary authority.
- 18.14 In this situation, the primary authorities should work together, with the business or co-ordinator, to agree arrangements that will work best for them, known as 'network arrangements'. Network arrangements might, for example, include:
- agreement that one of the primary authorities will act as a single point of contact for the business and enforcing authorities;
  - agreement as to how the primary authorities will share data and other information;
  - arrangements to discuss Primary Authority Advice or Primary Authority Advice to Local Authorities that they are developing to ensure a consistent approach;
  - arrangements to collaborate on the development and provision of Primary Authority Advice or Primary Authority Advice to Local Authorities;
  - arrangements to collaborate on the development and management of an inspection plan;
  - arrangements to ensure that notifications of enforcement action proposed by an enforcing authority are handled appropriately.
- 18.15 Where a business or a co-ordinator has a primary authority in England, advising on 'England only' matters, and a primary authority in Wales, advising on devolved Welsh matters, network arrangements might, for example, include agreement that where regulations in both nations place similar or identical requirements on businesses, one primary authority will take a lead in developing the Primary Authority Advice needed by the business, or group of businesses, and the other primary authority will then review that advice with a view to ensuring that it is correct in its own national context. Each of the primary authorities is then able to issue the advice.

### **Maintaining up-to-date details on the Primary Authority Register**

- 18.16 The primary authority should ensure that any changes to its contact details are updated on the Primary Authority Register as soon as reasonably practicable.
- 18.17 The primary authority has an ongoing responsibility to ensure that the information that it publishes via the Primary Authority Register is kept up-to-date.

### **Working with supporting regulators**

- 18.18 A primary authority working with a business or a co-ordinator may choose to request support from a supporting regulator in the development of Primary Authority Advice, Primary Authority Advice to Local Authorities, or an inspection plan. Before requesting such support, the primary authority should discuss with the business or co-ordinator:
- a) the reasons for requesting the support and the nature and extent of the desired support; and
  - b) the costs that might be incurred.

18.19 A primary authority that requests support from a supporting regulator:

- a) should agree with the business or co-ordinator and the supporting regulator the nature and extent of the desired support;
- b) should agree with the business or co-ordinator and the supporting regulator whether and how information that the business or co-ordinator has shared with the primary authority will be shared with the supporting regulator; and
- c) should ensure that there is a common understanding between itself, the business or co-ordinator and the supporting regulator that Primary Authority Advice is 'owned' by the primary authority. The parties will wish to be clear as to the ownership of any documents or materials to which the Primary Authority Advice refers and how such documents or materials might be shared beyond the partnership.

## 19. Primary Authority Advice and Primary Authority Advice to Local Authorities

- 19.1 In acting as direct primary authority for a business, a local authority accepts responsibility, in relation to the partnership functions, for being the principal source of local authority regulatory advice and guidance to the business. It is up to the business and local authority to agree the partnership functions in relation to which the primary authority will provide advice. The Primary Authority Advice provided to the partner business is a fundamental element of an effective partnership.
- 19.2 In acting as primary authority for a regulated group of businesses, a local authority accepts responsibility, in relation to the partnership functions, for being the principal source of local authority regulatory advice and guidance to the co-ordinator in support of its role in promoting and supporting regulatory compliance amongst the businesses in the regulated group (see section 25.2).
- 19.3 In conjunction with its role in providing regulatory advice to a business, or group of businesses, a primary authority accepts responsibility for guiding other local authorities that regulate the business or businesses for which it is the primary authority and for taking a lead in responding to non-compliance where appropriate.
- 19.4 In order to provide businesses with assurance, the primary authority's advice needs to be correct and properly given with regard to the guidance in:
- section 6 in respect of Primary Authority Advice
  - section 7 in respect of Primary Authority Advice to Local Authorities
- 19.5 The primary authority has an ongoing responsibility to ensure that it has robust arrangements in place to develop and issue its advice. In developing these arrangements, consideration should be given to:
- a) the appropriate person(s) to develop Primary Authority Advice or Primary Authority Advice to Local Authorities; and
  - b) appropriate oversight arrangements.
- 19.6 A primary authority should publish information about its Primary Authority Advice in the secure area of the Primary Authority Register, in line with the requirement under section 6.22, and should keep this information up-to-date. This provides transparency and enables enforcing authorities to identify whether advice has been given in relation to specific regulatory requirements.

- 19.7 The primary authority's advice should be reviewed at appropriate intervals, and when circumstances change, to ensure that it remains current, relevant and applicable. The primary authority has an ongoing responsibility to ensure that it has robust arrangements in place for the review of its advice.
- 19.8 Primary Authority Advice and Primary Authority Advice to Local Authorities may be subject to future scrutiny where the business is faced with proposed enforcement action to which the advice is relevant. The primary authority should maintain an accurate and up-to-date record of all advice that it has issued. The primary authority should consider maintaining, as part of its record of its advice, relevant background information, for example, in relation to how a particular interpretation was reached and the role of any supporting regulator.

### **The rationale for Primary Authority Advice to Local Authorities**

- 19.9 A primary authority that develops Primary Authority Advice to Local Authorities should set out its rationale for the advice and this should include:
- a) an explanation of the basis on which the primary authority is seeking to guide enforcing authorities in exercising their regulatory functions;
  - b) confirmation that the primary authority has taken account of the views of enforcing authorities that may be affected by the advice (see section 7.6); and
  - c) confirmation that the primary authority has taken account of relevant codes of practice and guidance from the Government, national regulators and others (see section 7.13(a)).
- 19.10 Where a supporting regulator supported the primary authority in developing the advice, the rationale should identify the supporting regulator. The rationale should also indicate clearly whether the supporting regulator has given its agreement to the advice as submitted to the Secretary of State for consent (see sections 34.3 to 34.5).

### **Seeking consent to provide Primary Authority Advice to Local Authorities**

- 19.11 A local authority that has prepared Primary Authority Advice to Local Authorities, in accordance with this guidance, should submit the advice to the Secretary of State for consent (see sections 7.15 to 7.20). The submitted advice should include the primary authority's rationale, setting out the information that will be assessed in determining whether it is appropriate for the Secretary of State to consent to the advice. The rationale does not form part of the Primary Authority Advice to Local Authorities and will not be published with it.

## **20. Inspection Plans**

- 20.1 A primary authority has a role to play in leading local regulation of a business, or group of businesses, for which it is primary authority and an inspection plan can be a valuable tool in delivering this role. A primary authority is able to develop an inspection plan in order to guide enforcing authorities in exercising their function of planning and conducting inspections and other checks, such as sampling visits and test purchases.

20.2 A primary authority that is considering developing an inspection plan should ensure that it has a good understanding of the current level and nature of enforcing authority checks on the business or group of businesses, and of any issues that might be addressed through an inspection plan. An inspection plan is most likely to deliver benefits where there is a significant level of checks, particularly where there are issues in relation to duplication of effort, ineffective or inefficient targeting or prioritisation. An inspection plan can help to deliver regulated self-assurance<sup>49</sup> or 'earned recognition' for a business that has in place robust compliance arrangements, for example, where the business has a regular programme of third party audits of its compliance arrangements.

### Development of an inspection plan

20.3 A primary authority will usually work closely with its partner in developing an inspection plan and must, before submitting a plan for the consent of the Secretary of State:

- in the case of a direct partnership, consult the business on the proposed inspection plan; or
- in the case of a co-ordinated partnership, consult the co-ordinator on the proposed inspection plan. The co-ordinator should take reasonable steps to ensure that it provides adequate information to inform the primary authority in its development of the inspection plan (see sections 29.1 to 29.2).

20.4 Where a business has more than one direct primary authority, the direct primary authority that is considering making an inspection plan should discuss this with the other direct primary authorities for the business to ensure a consistent and compatible approach.

20.5 Where a co-ordinator is working with more than one primary authority in respect of the same group of businesses, the primary authority that is considering making an inspection plan should discuss this with those other primary authorities to ensure a consistent and compatible approach.

20.6 An inspection plan should be prepared using the relevant template made available on the Primary Authority Register.

### The Inspection Plan rationale

20.7 The primary authority should set out its rationale for the inspection plan and this should include:

- a) an explanation of any issues that the partnership has with current enforcement activity at a local level, where the plan includes requirements that seek to address these issues;
- b) where a plan includes requirements against reviewing specified procedures or systems of the business locally to determine their suitability or adequacy, confirmation that the relevant procedures and/or systems are controlled centrally by the business and an outline of what this control consists of;

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<sup>49</sup> More information on regulated self-assurance can be found in the Regulatory Futures Review here: <https://www.gov.uk/government/publications/regulatory-futures-review>.

- c) where consideration of particular procedures has been critical to the primary authority's development of the plan, a list of these procedures including identifying features such as dates and version numbers;
  - d) where a plan includes requirements against carrying out specified checks locally, an explanation of the arrangements for local checks that are in place, for example through checks by the primary authority or a suitable third party;
  - e) where a plan includes requirements in respect of the focus of checks at a local level, an explanation for the checks that are required, unless this is included in the plan;
  - f) where a plan includes a requirement to provide specified inspection feedback, an explanation as to why the primary authority believes that the specified feedback will be relevant and useful;
  - g) an explanation of the basis on which the primary authority has made any requirements in respect of risk assessment of the business;
  - h) an explanation of how the primary authority will evaluate the effectiveness of a plan that places requirements on enforcing authorities; and
  - i) details of the primary authority's evaluation of the effectiveness of any previous plan for the partnership to which the Secretary of State has consented and which placed requirements on enforcing authorities.
- 20.8 Where the primary authority is proposing a national inspection strategy, its rationale should, in addition to the requirements of the preceding paragraph:
- a) identify whether it seeks to control the level of local inspection activity and, if so, provide its explanation of the proposed controls;
  - b) explain how it will manage the national inspection strategy, including ensuring that it is responsive to changing circumstances; and
  - c) set out its method for securing specified activity by particular local authorities, where the national inspection strategy is reliant on this activity taking place.
- 20.9 Where a national regulator supported the primary authority in developing the plan, the primary authority's rationale should identify the national regulator and, where the national regulator is a supporting regulator, should indicate clearly whether that supporting regulator has given its agreement to the inspection plan as submitted to the Secretary of State for consent (see sections 34.3 to 34.5). The rationale should also confirm whether the primary authority has consulted with any other relevant national regulator, during the development of the plan, and provide a summary of any issues that were raised.

### Seeking consent to an Inspection Plan

- 20.10 A local authority that has prepared an inspection plan, in accordance with this guidance, should submit the inspection plan to the Secretary of State for consent (see sections 8.23 to 8.29). The submitted inspection plan should include the primary authority's rationale for the requirements included in the plan, setting out the evidence that will be assessed in determining whether it is appropriate for the Secretary of State to consent to the plan. The rationale does not form part of the inspection plan and will not be published with the inspection plan.



## Responsibilities of a primary authority that has a published Inspection Plan

- 20.11 A primary authority that has a published inspection plan will need to have arrangements in place to manage and review the plan. In particular, it should have robust internal arrangements for handling any request from an enforcing authority to follow an alternative approach within the statutory timescale of five working days (see sections 23.8 to 23.10). In developing these arrangements, consideration should be given to:
- a) the appropriate person(s) to receive and respond to such requests;
  - b) the internal process for making a decision on such requests and recording the reasons for the decision; and
  - c) ensuring that such requests are reviewed with a view to considering whether they may reveal any inadequacy of the published inspection plan.
- 20.12 Where a primary authority has a published inspection plan that requires an enforcing authority to provide a report of its activity under the plan, it should:
- a) have arrangements in place to review and analyse the reports that it receives;
  - b) consider the way in which it will share intelligence from feedback on inspections with the business concerned; and
  - c) consider how it will share, with the co-ordinator, intelligence on compliance issues in the sector that may be revealed by feedback on inspections (see section 23.4).
- 20.13 Where a primary authority has a published inspection plan that sets out specific requirements that enforcing authorities must follow, it should have arrangements in place to gather evidence to evaluate the success of the plan. It should give consideration to whether it is appropriate for it to share this evaluation with certain enforcing authorities and, if so, how it will do this.
- 20.14 Where a primary authority wishes to withdraw an existing inspection plan it should submit a request to the Secretary of State, via the Primary Authority Register, for consent to revocation (see sections 8.30 to 8.33). The request should give the primary authority's reasons for wishing to withdraw the inspection plan and confirmation that the primary authority has consulted with the business or co-ordinator.

## 21. Dealing with compliance issues

- 21.1 In order to fulfil its role in leading regulation of a business, or of a group of businesses, a primary authority needs to ensure that it:
- a) takes appropriate steps to ensure that it is well informed in relation to relevant compliance issues (see sections 21.2 to 21.3);
  - b) manages appropriately any notifications of proposed enforcement action that it receives from enforcing authorities (see sections 21.4 to 21.14);
  - c) manages appropriately any referred notifications of proposed enforcement action that it receives from another primary authority (see sections 21.15 to 21.18);
  - d) manages appropriately any notification that it receives from a business or co-ordinator in relation to a failure to notify proposed enforcement action (see sections 21.19 to 21.25);

- e) takes appropriate action in response to any retrospective notifications of enforcement action that it receives from enforcing authorities (see section 21.26);
  - f) responds appropriately to non-compliance that it identifies, whether through its own activities; through information that is shared with it by the business or co-ordinator; or, through information that it receives from enforcing authorities (see sections 21.27 to 21.31); and
  - g) liaises effectively with other regulators, including relevant national regulators or supporting regulators as appropriate.
- 21.2 In order to ensure that it is well informed about relevant compliance issues in a business or group of businesses, the primary authority should take steps to encourage both enforcing authorities and any partner business or co-ordinator to provide it with information on:
- a) identified non-compliance;
  - b) possible non-compliance, including allegations and complaints that may reveal potentially significant compliance issues; and
  - c) issues that represent a challenge to compliance, including difficulties around interpretation of legal requirements or where there are underlying risks that may present a challenge for future compliance.
- 21.3 The primary authority should manage the data that it collates in a manner that enables it to identify compliance issues that may need to be addressed.
- 21.4 Responding to notifications about proposed enforcement action is a key factor in achieving effective partnerships and in meeting the needs of enforcing authorities. The primary authority will need to have robust internal arrangements in place for handling notifications of proposed enforcement action within the statutory timescale (see sections 21.9 to 21.12). In developing these arrangements, consideration should be given to:
- a) the appropriate person(s) to receive notifications;
  - b) the appropriate person(s) to respond to notifications;
  - c) the process for discussing notifications with the business; and
  - d) the availability and form of information that will be needed to support the primary authority's decision.

### **Managing an enforcing authority's notifications of proposed enforcement action**

- 21.5 Where an enforcing authority proposes to take enforcement action against a business that has a primary authority, it is required to make a notification of the proposed enforcement action to the primary authority<sup>50</sup>. In the case of a business that has a direct primary authority this requirement is unqualified. However, in the case of a business that is a member of a regulated group, and has a co-ordinated primary authority, the requirement applies where the enforcing authority is 'aware' that the business is a member of the group<sup>51</sup> (see section 24.1). Businesses in co-ordinated partnerships will not all be listed on the Primary Authority Register and so the enforcing authority should ask the business whether they are relying on Primary Authority Advice.

<sup>50</sup> Section 25C(2) of the RES Act. This requirement applies to any local authority other than the local authority that is nominated as primary authority in respect of the business (see sections 21.27 to 21.31).

<sup>51</sup> Sections 25C(1)(b) and 25C(2) of the RES Act

- 21.6 A primary authority that receives a statutory notification of proposed enforcement action is required to determine whether the proposed action is inconsistent with any Primary Authority Advice that it has given, whether to the business or to local authorities.
- 21.7 Where a primary authority receives a notification that has been wrongly directed to it, in that the notification relates to proposed enforcement action in connection with a relevant function that is not a partnership function of that primary authority, the primary authority should contact the enforcing authority as soon as possible to advise it of this.
- 21.8 A notification of proposed enforcement action will lead to the primary authority taking one of four courses of action (see [Figure 8](#) in section 24):
- a) Where the primary authority has issued relevant Primary Authority Advice, or Primary Authority Advice to Local Authorities, and is satisfied that the proposed action is inconsistent with that advice, it is able to direct the enforcing authority not to take the proposed action (see section 21.13 and sections 24.32 to 24.36).
  - b) Where the primary authority has given no relevant Primary Authority Advice or Primary Authority Advice to Local Authorities, or where it determines that there is no inconsistency between the proposed enforcement action and its advice, the primary authority is required to take reasonable steps to establish whether a second primary authority, acting as a co-ordinated primary authority, has given Primary Authority Advice or Primary Authority Advice to Local Authorities, with which the business considers the proposed enforcement action to be inconsistent<sup>52</sup> (see [Figure 9](#) in section 24):
    - i. where the primary authority is satisfied that the business considers the proposed enforcement action to be inconsistent with the advice of a second primary authority it must refer the notification to that primary authority via the Primary Authority Register (see section 21.12); or
    - ii. where the primary authority is not satisfied that the business considers the proposed enforcement action to be inconsistent with the advice of a second primary authority it should respond to the enforcing authority to confirm that it will not direct against the proposed enforcement action (see section 24.39).
  - c) Where the primary authority is unable to reach its own decision on whether or not the action is inconsistent with its advice, it may choose to apply to the Secretary of State for consent to refer the matter for determination (see section 21.14).
- 21.9 The primary authority must make its response to a notification of proposed enforcement action as soon as is reasonably practicable and, in any event within a period known as the ‘relevant period’ (see section 21.10). The primary authority’s response should be made, via the Primary Authority Register, to the person making the original notification. The RES Act does not allow a primary authority to revoke or revise its response to a notification once the relevant period has elapsed.
- 21.10 The relevant period is usually five working days<sup>53</sup> beginning on, and including, the day following that on which notification to the primary authority is made. However, the relevant period:

<sup>52</sup> Section 29C(2) of the RES Act

<sup>53</sup> See Glossary for definition of ‘working days’

- a) may be shorter, where the primary authority notifies the enforcing authority, within the five working days, that it is not directing the enforcing authority not to take the action; or
  - b) may be extended at the discretion of the Secretary of State.
- 21.11 A primary authority that considers that an extension of the relevant period is justified should send a request to the Secretary of State, giving its reasons. In considering the request, the Secretary of State will take account of any relevant evidence, including for example, evidence that the enforcing authority has failed to provide adequate information to enable the primary authority to make an informed decision.
- 21.12 It is essential that the primary authority identifies at the earliest possible time if proposed enforcement action relates to a matter in respect of which it has not given any Primary Authority Advice or Primary Authority Advice to Local Authorities; or decides that there is no inconsistency between the proposed enforcement action and its advice. This will ensure that it is able, within the relevant period, to establish whether a second primary authority has given Primary Authority Advice or Primary Authority Advice to Local Authorities with which the business considers the proposed enforcement action to be inconsistent, and to refer the notification to that primary authority. Where the primary authority refers the notification to a second primary authority it must notify the enforcing authority and the business that it has done so<sup>54</sup>.
- 21.13 Where the primary authority directs the enforcing authority not to take the proposed action, its response to the enforcing authority should include:
- a) details of the advice with which the proposed enforcement action would be inconsistent;
  - b) details of how and when the advice was issued; and
  - c) an explanation of the primary authority's reasons for believing that the proposed enforcement action would be inconsistent with its advice. This explanation should include sufficient detail to enable the enforcing authority to make an informed judgment as to whether it accepts the decision.
- 21.14 Where a primary authority chooses to apply to the Secretary of State for consent to refer the matter for determination it must do so within five working days of receiving the notification of proposed enforcement action from the enforcing authority. In this circumstance, the primary authority should be able to provide good reasons why it was not appropriate for it to make the decision. These reasons will be relevant to whether or not the Secretary of State grants consent to the application.

### **Managing referred notifications of proposed enforcement action**

- 21.15 A primary authority that has received a notification of proposed enforcement action (referred to here as the 'receiving primary authority') may, in the circumstances identified at section 21.8(b)(i), refer that notification to a second primary authority (referred to here as the 'referral primary authority'). This will only occur where the business has more than one primary authority in relation to the same partnership function and the referral primary authority will always be a co-ordinated primary authority.

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<sup>54</sup> Section 29C(3) of the RES Act

- 21.16 The referral primary authority is required to determine whether the proposed action is inconsistent with any Primary Authority Advice or Primary Authority Advice to Local Authorities that it has issued.
- 21.17 The referral primary authority should take one of three courses of action:
- a) Where the referral primary authority has issued relevant Primary Authority Advice and is satisfied that the proposed action is inconsistent with that advice, it is able to direct the enforcing authority not to take the proposed action (see section 21.13 and sections 24.32 to 24.36).
  - b) Where the primary authority has given no relevant Primary Authority Advice, or where it has determined that there is no inconsistency between the proposed enforcement action and its advice, the primary authority should respond to the enforcing authority to confirm that it will not direct against the proposed enforcement action.
  - c) The primary authority may decline to make its own decision and may apply to the Secretary of State for consent to refer the matter for determination (see section 21.14).
- 21.18 The referral primary authority must make its response as soon as is reasonably practicable and, in any event, within the relevant period. The relevant period<sup>55</sup> begins when it receives the referral from the receiving primary authority and will usually end after five working days. However, the relevant period may end sooner or may be extended (see section 21.10).

### **Managing a business notification of proposed enforcement action**

- 21.19 The RES Act makes provision<sup>56</sup> for a business that has a primary authority, whether direct or co-ordinated, to make a notification of proposed enforcement action to the primary authority. In the case of a business that has a co-ordinated primary authority, it is also possible for the co-ordinator to make a notification to the primary authority of enforcement action that is proposed against the business.
- 21.20 Notification by a business or co-ordinator will happen only where the business or co-ordinator has reason to believe: that the enforcing authority proposes to take enforcement action; and, that it has failed to make the required notification to the primary authority. There is no provision for a business to make a notification to its primary authority where an enforcing authority has already taken enforcement action in respect of which it failed to make the required notification to the primary authority.
- 21.21 Where a primary authority receives such a notification from a business, or a co-ordinator, it will need to satisfy itself:
- a) that the enforcing authority proposes to take enforcement action that requires notification; and
  - b) that the enforcing authority has failed to notify the proposed enforcement action to the primary authority.

<sup>55</sup> Section 29C(5) of the RES Act

<sup>56</sup> Section 25C(3) of the RES Act

- 21.22 The primary authority will usually find it necessary to discuss the business' notification with the enforcing authority in order to satisfy itself that the conditions set out in section 21.21 are met. It is unlikely that the primary authority would decide that these conditions had been met where, for example:
- the enforcing authority indicated that it was considering enforcement action but had not yet reached a decision as to whether to take enforcement action or what action to take; or
  - the enforcing authority indicated that it was proposing to take enforcement action and intended to make the required notification to the primary authority once it was ready to do so.
- 21.23 Where it is not satisfied that the conditions are met, the primary authority should confirm in writing, to the business or co-ordinator that made the notification, that it will not be notifying the enforcing authority and should give an indication of its reasons for reaching its decision. The primary authority may also choose to confirm its decision to the enforcing authority and may, where it considers it appropriate, remind the enforcing authority of its duty to make a notification of proposed enforcement action at the appropriate time.
- 21.24 Where it is satisfied that the conditions are met, the primary authority must notify the enforcing authority not to take the proposed action whilst the primary authority reviews it. This notification, which should be made via the Primary Authority Register, commences the relevant period (see section 21.10).
- 21.25 Having notified the enforcing authority not to take the proposed enforcement action, the primary authority will then need to review the proposed action to determine whether it is inconsistent with Primary Authority Advice that it has issued. In order to carry out this review the primary authority may request, from the enforcing authority, the information that the enforcing authority would have been required to provide as part of its enforcement notification (see [sections 24.22 to 24.31](#)). In the event that the primary authority feels unable to make an informed decision, because of a failure on the part of the enforcing authority to provide the required information in a timely manner, the primary authority may choose to make an application to the Secretary of State to extend the relevant period (see section 21.11).

### **Managing retrospective notifications of enforcement action**

- 21.26 A primary authority that receives a statutory notification of enforcement action that has already taken place, under one of the exclusions set out at sections 24.15 to 24.16, is not required to respond to the enforcing authority but should consider whether the non-compliance identified by the enforcing authority indicates a need to review Primary Authority Advice that has been provided.

### **The Primary Authority's enforcement responsibilities**

- 21.27 The primary authority may also be the enforcing authority that is proposing enforcement action and in this case the requirement to notify the primary authority of the proposed action is replaced by a requirement<sup>57</sup> to notify the business.

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<sup>57</sup> Section 25B of the RES Act

- 21.28 In the case of a business that is a member of a regulated group, the requirement to notify the business applies only where the authority is aware that the business belongs to the regulated group. It is to be expected that an enforcing authority that is a primary authority, in taking reasonable steps to establish whether a business has a primary authority (see section 24.1), would pay particular attention to the membership of regulated groups for which it is the primary authority.
- 21.29 The notification to the business should include the following details:
- a) full details of the contravention including, where appropriate, the address of the relevant premises;
  - b) full details of any affected products or services; and
  - c) details of the proposed enforcement action.
- 21.30 Having made its notification to the business, the authority may not take the proposed enforcement action within a period known as the 'referral period' (see section 24.43).
- 21.31 The requirement to notify the business of the proposed action provides an opportunity for the business to:
- a) apply to the Secretary of State within 10 working days starting on and including the day following that on which it receives the notification, for consent to refer the matter for determination (see sections 24.42 to 24.44); or
  - b) notify the authority that it considers the proposed enforcement action to be inconsistent with Primary Authority Advice that it has received from a second primary authority. In this circumstance the authority must notify its proposed enforcement action to the second primary authority<sup>58</sup>.

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<sup>58</sup> Section 29A(1) of the RES Act

## PART E: Guidance to Enforcing Authorities

This Part provides guidance to all local authorities on their responsibilities as 'enforcing authorities' within Primary Authority. It should be read alongside other parts of the guidance, in particular Part A (General guidance) and cross referencing is provided.

### 22. The role of enforcing authorities

- 22.1 Primary Authority has established a new way of regulating businesses that is based on ensuring that businesses that seek to comply with the law can access robust, reliable advice that enables them to comply more easily. This approach is working for businesses of all sizes, across the country, meaning that all enforcing authorities will regularly encounter businesses that have a primary authority and are relying on its advice – from large national or multinational companies to single site businesses, mobile traders or pre-start-ups.
- 22.2 A primary authority, in its capacity as the lead regulator for a business or group of businesses, can also play a role in providing information to enforcing authorities or directing their efforts so as to ensure that scarce regulatory resources are used in the most efficient and effective manner.
- 22.3 Primary Authority works well for businesses, enforcing authorities and primary authorities where there is good communication between all three parties, and a shared understanding of the responsibilities of each party.
- 22.4 All local authorities should ensure that their officers have sufficient understanding of the responsibilities of an enforcing authority within Primary Authority.
- 22.5 Primary Authority establishes statutory duties for all local authorities when they exercise regulatory functions that are within scope of the scheme in respect of any business that has a primary authority. These duties relate primarily to:
- following an inspection plan for the business, where one has been developed by the primary authority and has received consent from the Secretary of State (see [section 23](#)); and
  - notifying the primary authority of enforcement action in relation to the business (see [section 24](#)). In most circumstances this notification is required before the action can be taken. However, exemptions allow certain enforcement action to proceed immediately, for example where action is needed urgently to prevent harm, and in this circumstance the notification to the primary authority may be made retrospectively.
- 22.6 A local authority that is the primary authority for a business will also have responsibilities as an enforcing authority in relation to that business (see [sections 21.27 to 21.31](#)).



- 22.8 Enforcing authorities will need to be aware, in relation to considering Primary Authority Advice, following inspection plans and notifying enforcement action, that a business may have more than one primary authority in respect of the same partnership function (see section 3.2). For example, this occurs where a business has a partnership with a direct primary authority and is also a member of one or more trade associations that are acting as co-ordinators, partnered with co-ordinated primary authorities. This guidance sets out what enforcing authorities are required to do:
- when notifying proposed enforcement action in relation to a business that has more than one primary authority (see sections 24.7 to 24.10 and [Figure 8](#) in section 24); or
  - where a business is covered by more than one inspection plan (see sections 23.6 to 23.7 and [Figure 6](#)).

### Identifying businesses in Primary Authority

- 22.9 Whilst the Public Register that lists all direct and co-ordinated partnerships (see section 5.2) is a helpful reference point, the secure Primary Authority Register is an essential resource for enforcing authorities. It enables enforcing authorities to find key information and to perform various tasks including:
- a) identifying all businesses that have a direct partnership and viewing information about the partnership;
  - b) identifying all co-ordinators that have a co-ordinated partnership and viewing information about the partnership;
  - c) identifying all businesses that are covered by inspection plans to which the Secretary of State has consented and viewing the inspection plans (see sections 8 and 23);
  - d) identifying that Primary Authority Advice has been given by a primary authority in relation to specific regulatory requirements (see section 6.22);
  - e) viewing all Primary Authority Advice to Local Authorities (see section 7) to which the Secretary of State has consented;
  - f) contacting primary authorities and co-ordinators; and
  - g) submitting the required notifications in relation to enforcement action (see section 24).
- 22.10 Primary authorities and co-ordinators are expected to keep the information held on the Primary Authority Register, such as contact details, updated.
- 22.11 Whilst the Primary Authority Register includes details of all businesses that have a direct primary authority, it does not include details of all businesses that have a co-ordinated primary authority. For businesses that have a co-ordinated primary authority the decision as to whether or not they are included in the Primary Authority Register rests with the co-ordinator. However, any business that is covered by an inspection plan, whether issued by a direct or co-ordinated primary authority, will always be listed on the Primary Authority Register.

22.12 Some co-ordinators will choose to share their Primary Authority Membership List by maintaining it in the Primary Authority Register or by sharing a link to an external website where the list is available (see [sections 26.13 to 26.14](#)). Where a co-ordinator chooses to do this it enables enforcing authorities to verify whether a particular business is a member of that co-ordinator's regulated group. However, in order to properly establish whether a business has one or more co-ordinated primary authorities, enforcing authorities will need to ask the business. If there is any doubt then verification can then be sought by requesting a copy of the list from the co-ordinator.

## 23. Inspection Plans

### An enforcing authority's duty to follow an Inspection Plan

- 23.1 An enforcing authority that is carrying out its function of planning and conducting inspections and other checks (such as sampling visits and test purchases) in relation to a business that has a primary authority must, subject to certain provisions (see 23.8 to 23.10), follow an inspection plan that the primary authority has published, via the Primary Authority Register, relating to the business. In order to comply with this duty, enforcing authorities, and their officers, must first establish whether there is one or more inspection plan in place, by checking the Primary Authority Register.
- 23.2 Inspection plans must be followed:
- a) when planning and programming regulatory interventions at the business, or businesses, to which the inspection plan applies; and
  - b) when conducting proactive, planned or programmed regulatory interventions at the business, or businesses, to which the inspection plan applies.
- 23.3 Where an inspection plan includes a requirement for the enforcing authority to provide a report of its activity under the plan, to the primary authority, then the enforcing authority must provide such a report. The report should be produced, as soon as reasonably practicable following the activity, and should be sent to the primary authority via the Primary Authority Register or by any other means specified in the inspection plan.
- 23.4 An enforcing authority's report to a primary authority of its inspection may be shared with the business where the primary authority considers this appropriate. In the case of a business that has a co-ordinated primary authority, the primary authority may share general compliance issues that are highlighted by such reports with the co-ordinator on an anonymised basis.
- 23.5 An inspection plan is published for the use of officers acting within the scope of Primary Authority only and may contain information that is confidential and commercially sensitive. It should not be shared more widely unless permission has been given by the primary authority that prepared the plan.

### Multiple Inspection Plans

- 23.6 It is possible for a business to be covered by more than one inspection plan relating to the same partnership function, where the business has more than one primary authority (see section 22.7). Where this is the case, the enforcing authority must follow one of these plans and, in respect of which inspection plan takes precedence, the following provisions apply (see Figure 6 below):

- a) Where one of the inspection plans has been published by a direct primary authority this plan must be followed, regardless of whether there is also an inspection plan published by a co-ordinated primary authority<sup>59</sup>. This is also the case where the enforcing authority is, itself, a co-ordinated primary authority for the business.
- b) Where more than one co-ordinated primary authority has published an inspection plan that covers the business, and there is no inspection plan published by a direct primary authority, the enforcing authority must follow one of the plans but is able to choose which one it will follow<sup>60</sup>. This choice should be made by considering which plan is most relevant and helpful in respect of the inspection activity that the enforcing authority intends to undertake.

23.7 Whilst an enforcing authority that encounters a business covered by multiple inspection plans will satisfy its statutory duty by following one of these plans, it may be helpful to refer to more than one of the plans as they may relate to different aspects of the business' operations and each plan may include content that will be helpful to the enforcing authority.

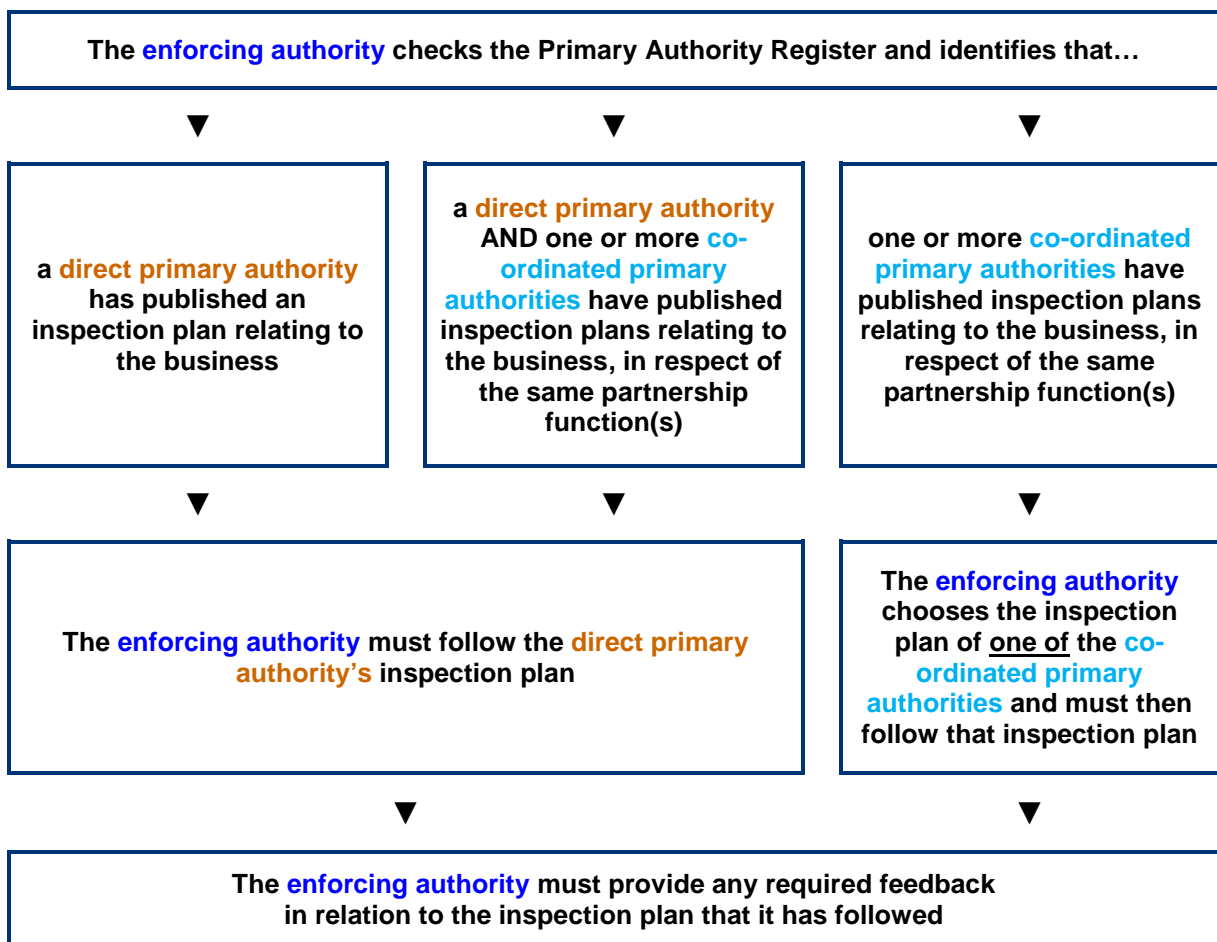


Figure 6. Requirements in relation to multiple inspection plans

<sup>59</sup> Section 29D(7)(a) of the RES Act

<sup>60</sup> Section 29D(7)(b) of the RES Act

## Proposing an alternative approach to inspection of the business

- 23.8 Where an enforcing authority, having considered the inspection plan that it is required to follow, considers it appropriate to follow an alternative approach to that set out, it should submit a request to the primary authority, via the Primary Authority Register, setting out its alternative approach and its reasons for considering this appropriate.
- 23.9 On receipt of such a request, a primary authority should provide its response to the enforcing authority within five working days (see section 20.12).
- 23.10 An enforcing authority is entitled to follow an alternative approach to that set out in the inspection plan only where:
- a) it has made a request to the primary authority and either it has received the agreement of the primary authority, via the Primary Authority Register, or the primary authority has failed to provide a response to its request within the period of five working days beginning on, and including, the day after the request to the primary authority is made<sup>61</sup>; or
  - b) in the course of conducting a proactive check on compliance at the business, a possible non-compliance is identified, in which case that issue may be addressed.

## 24. Dealing with compliance issues

### Early communication with a primary authority

- 24.1 An enforcing authority that encounters possible non-compliance by a business should take reasonable steps to establish whether that business has a primary authority (if it has not done so already) for the relevant function in relation to which the enforcing authority is acting. Reasonable steps would usually include:
- a) checking the Primary Authority Register; and
  - b) asking an appropriate representative of the business whether the business has a primary authority or is relying on Primary Authority Advice.

In the case of a direct primary authority the Primary Authority Register includes the name of the primary authority and that of the business. In the case of a co-ordinated primary authority the Primary Authority Register includes the name of the primary authority and that of the co-ordinator. It may also, at the discretion of the co-ordinator, include the co-ordinator's Primary Authority Membership List (see sections 26.13 to 26.14), or a link to that list.

- 24.2 In addition to identifying partnerships, the secure Primary Authority Register includes information about those partnerships that enforcing authorities will find helpful (see section 22.8). The primary authority may have shared information that is of particular relevance to the possible non-compliance that the enforcing authority is addressing. The primary authority should also have given an indication of any communication preferences that will assist the enforcing authority in communicating effectively with relevant primary authority contacts.

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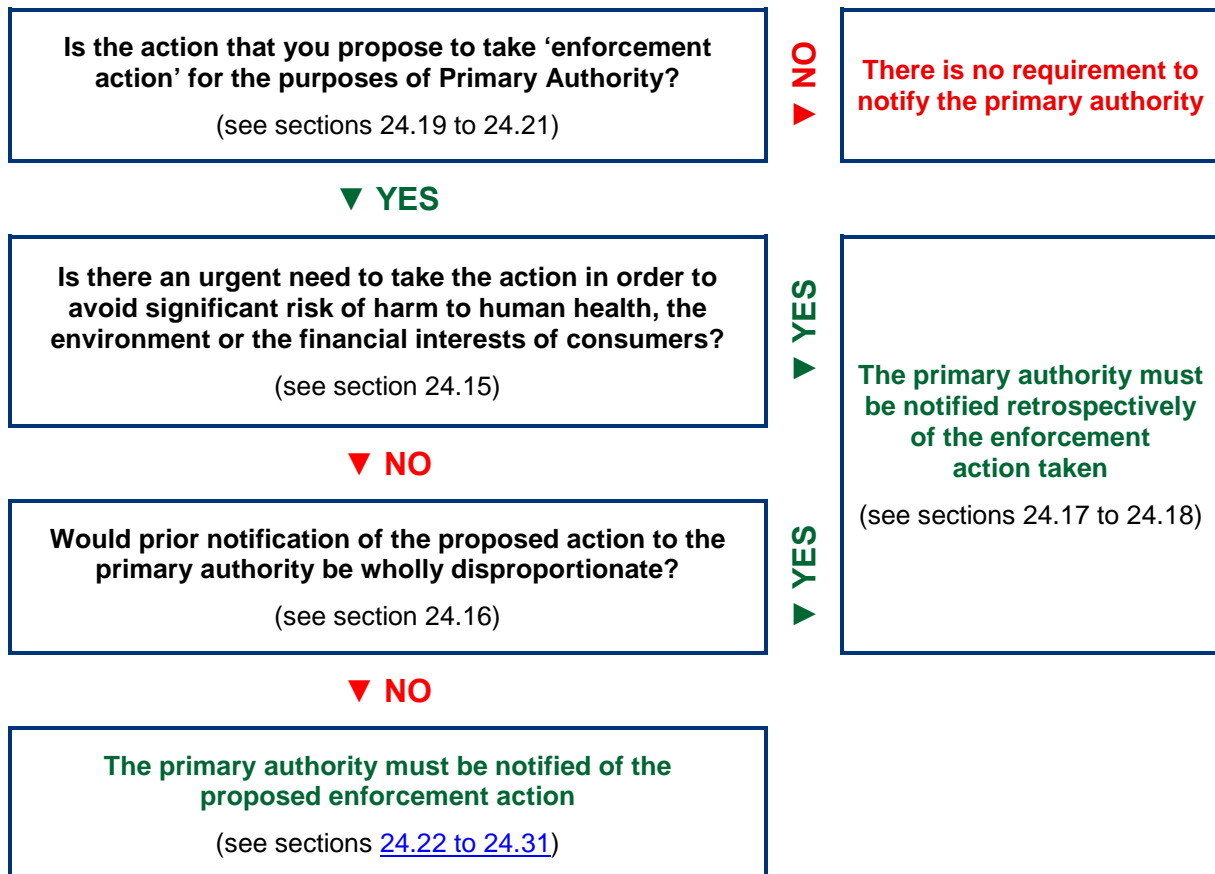
<sup>61</sup> Section 26B(4) of the RES Act

- 24.3 An enforcing authority that is considering its response to possible non-compliance by a business that has a primary authority, should consider appropriate communication with the primary authority at an early stage. The nature of this communication is likely to differ for direct partnerships and co-ordinated partnerships as the level of knowledge and understanding that the primary authority has in relation to the business will usually be very different.
- 24.4 Where the business in question has a direct primary authority, there is particular value in engaging with the primary authority at an early stage where:
- a) the matter is likely to be a local example of wider non-compliance by the business;
  - b) the enforcing authority has identified a contravention that requires or may require an amendment to a system or process used by the business across its operations;  
or
  - c) the problem cannot be addressed purely through local action, for example where the local premises requires input from the head office of the business.
- 24.5 Where the business in question has a co-ordinated primary authority, and an enforcing authority has questions about Primary Authority Advice that has been issued to the group of businesses, then it is appropriate for it to raise these questions with the primary authority. However, where the enforcing authority is concerned with the failure of the particular business to implement the Primary Authority Advice then it will need to recognise that the primary authority's knowledge and understanding of the individual business and its operations will depend upon the nature of the co-ordinated partnership. For example, the primary authority may be able to provide the enforcing authority with valuable insight into implementation issues in a business that is a franchisee, with tight controls on compliance being exercised by the franchisor. However, the primary authority may be less able to provide such insight where the business is a member of a trade association with a large and diverse membership.

### **Requirement to notify a primary authority of proposed enforcement action**

- 24.6 Primary Authority provides consistency and assurance to businesses by enabling primary authorities to ensure that enforcement action is not taken which would be inconsistent with Primary Authority Advice or Primary Authority Advice to Local Authorities. The notification requirements are summarised for enforcing authorities in Figure 7 below and explained in detail in the following sections of this guidance.
- 24.7 Where an enforcing authority proposes to take enforcement action (see [sections 24.19 to 24.21](#)) against a business that has a direct primary authority for the relevant function in relation to which the enforcing authority is proposing action, it is required to make a notification of the proposed enforcement action to the direct primary authority<sup>62</sup>. This requirement to notify the direct primary authority applies whether or not the business also has a co-ordinated primary authority (see stage 1 of Figure 8 below) but does not apply:
- a) in circumstances where retrospective notification is required (see sections 24.15 to 24.18); or
  - b) where the enforcing authority is the primary authority for the business in relation to the relevant function (see the [sections 21.27 to 21.31](#)).

<sup>62</sup> Section 25C(2) of the RES Act, and, in the case of a business that has more than one primary authority for the same partnership function, section 29B(3)



**Figure 7. Requirements in respect of ‘enforcement action’**

- 24.8 Where an enforcing authority proposes to take enforcement action against a business and it is aware that the business has a co-ordinated primary authority for the relevant function in relation to which the enforcing authority is proposing action, it is required to make a statutory notification of the proposed enforcement action to the co-ordinated primary authority<sup>63</sup>. The enforcing authority should take reasonable steps to establish whether the business has a co-ordinated primary authority (see section 24.1).
- 24.9 The requirement to notify the co-ordinated primary authority of proposed action does not apply:
- In circumstances where retrospective notification is required (see sections 24.15 to 24.18);
  - Where the enforcing authority is a primary authority for the business in relation to the relevant function (see the [sections 21.27 to 21.31](#)); or
  - Where the business has a direct primary authority (see section 24.7) with the same partnership function.

<sup>63</sup> Section 25C(2) of the RES Act, and, in the case of a business that has more than one primary authority for the same partnership function, section 29B(4).

- 24.10 Where a business is a member of more than one regulated group, and has more than one co-ordinated primary authority with the same partnership function (in relation to which the enforcing authority is proposing action), the enforcing authority is required to make its notification to **one** of these co-ordinated primary authorities<sup>64</sup>. In choosing which of the co-ordinated primary authorities to notify, the enforcing authority should take account of any information that it is aware of that indicates that the business is following advice or guidance from one of the primary authorities in particular in relation to the compliance issue in question, for example where it has been advised of this by the business.
- 24.11 The notification process arises only where enforcement action is proposed against the business that has a primary authority and is not required where action is proposed against an individual employee of that business. However, contact with the primary authority may be helpful in this situation, as the primary authority may have information that is of relevance in determining a proportionate response.
- 24.12 Enforcing authorities will need to be aware that in certain circumstances a business is entitled to make a notification of proposed enforcement action to its primary authority<sup>65</sup>, or a co-ordinator may do so on behalf of a business that is a member of its regulated group<sup>66</sup>. This is the case only where the business or co-ordinator has reason to believe that:
- the enforcing authority proposes to take enforcement action; and
  - the enforcing authority has failed to notify the proposed enforcement action to the primary authority.
- 24.13 Where a primary authority receives such a notification it will need to satisfy itself that the enforcing authority has failed to notify enforcement action that it proposes to take. Once satisfied, the primary authority is required to notify the enforcing authority not to take the proposed action whilst it is reviewed (see section 21.24).
- 24.14 In this circumstance, the primary authority may request, from the enforcing authority, the information that the enforcing authority would have been required to provide as part of its enforcement notification (see sections 24.25 to 24.27). This information allows the primary authority to make a properly informed decision as to whether the proposed action is inconsistent with Primary Authority Advice that it has issued. The enforcing authority should provide such information in a timely manner. Any failure to provide such information will be taken into account by the Secretary of State in the event that the primary authority requests an extension to the period of five working days during which it must usually make its decision (see section 21.10).

### Requirement to give retrospective notification of enforcement action

- 24.15 The requirement to notify **proposed** enforcement action does not apply where a compliance issue is identified that requires urgent action in order to avoid a significant risk of harm to human health, the environment, or the financial interests of consumers<sup>67</sup>. This might be the case, for example, where the enforcing authority considers it appropriate to act urgently by issuing an emergency prohibition notice; an emergency remedial action notice; or, an emergency prohibition order.

<sup>64</sup> Section 29B(4) of the RES Act

<sup>65</sup> This includes direct primary authorities and co-ordinated primary authorities.

<sup>66</sup> Section 25C(3) of the RES Act

<sup>67</sup> Regulation 6(a), CORE Regulations 2017

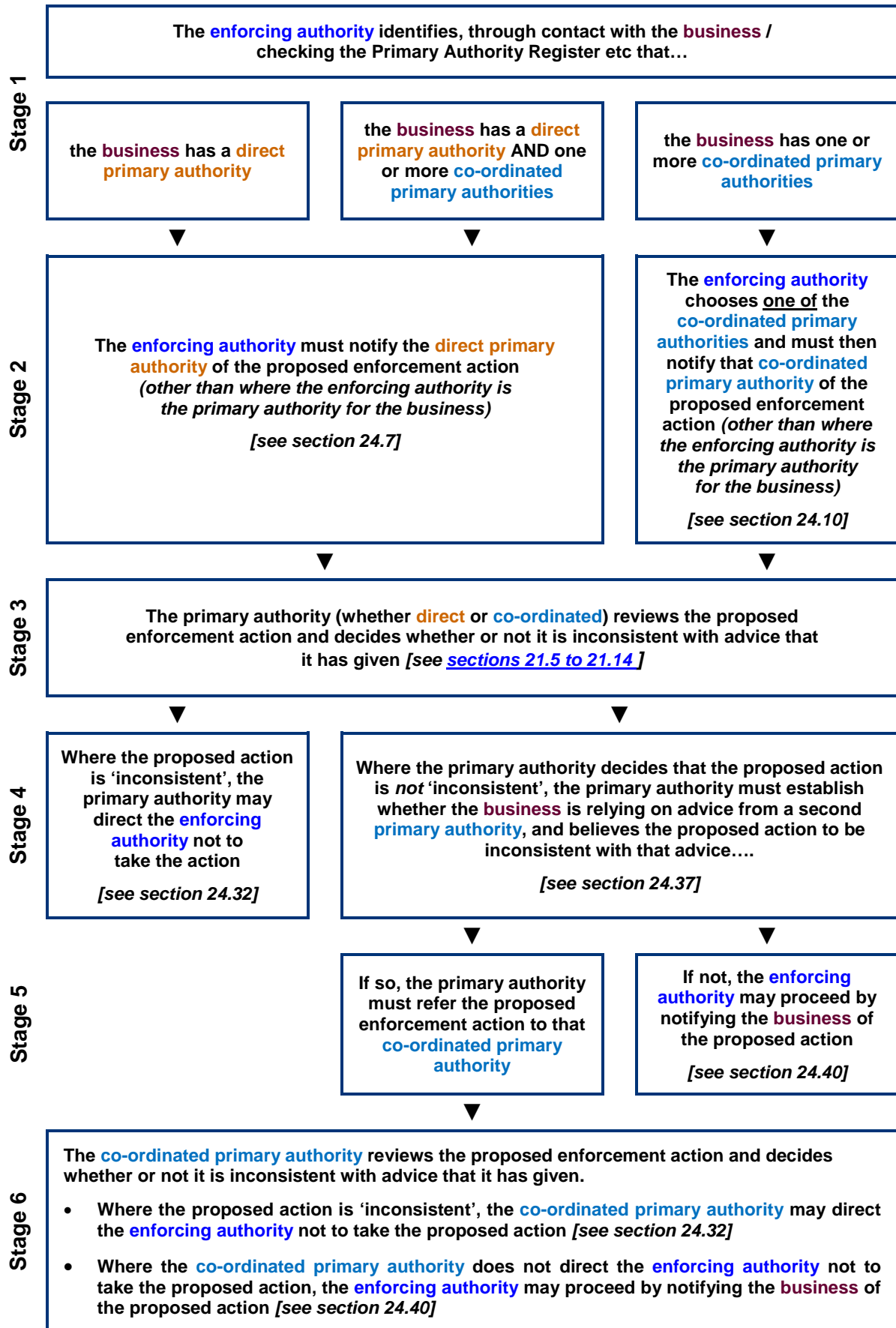


Figure 8. Requirements for notification of proposed enforcement action



- 24.16 The requirement to notify **proposed** enforcement action also does not apply where notification would be wholly disproportionate<sup>68</sup>. This might be the case, for example, where the enforcing authority proposes to issue a notice under weights and measures legislation, of the type typically referred to as a '28 day notice'; to apply a disqualification sticker under weights and measures legislation; or, to issue a notice under section 60 of the Control of Pollution Act 1974.
- 24.17 These exclusions enable the enforcing authority to take enforcement action without prior notification to the primary authority. The enforcing authority remains under a duty to make a retrospective notification to the primary authority<sup>69</sup>.
- 24.18 The retrospective notification of enforcement action should be made, via the Primary Authority Register, as soon as it reasonably can be made after the action is taken and should provide the primary authority with sufficient information about the enforcement action and the circumstances in which it was taken. This enables the primary authority to address any wider compliance issues with the business where appropriate.

### Defining 'enforcement action'

- 24.19 Enforcement action is defined by the CORE Regulations<sup>70</sup> and includes a wide range of actions that enforcing authorities may use to remedy or address non-compliance. Examples of enforcement actions specified by the Regulations include:
- a) statutory notices or orders;
  - b) fixed or variable monetary penalties;
  - c) the imposition of a civil or criminal sanction (see section 24.20);
  - d) the administering of a simple caution;
  - e) the reference of any matter to a prosecuting authority; or
  - f) the commencement of proceedings in a court of law or tribunal
- 24.20 Any action taken by an enforcing authority in relation to an authorisation regime (such as a licensing, permitting, registration, approval or certification regime) will be enforcement action where the action constitutes the imposition of a sanction. For example, the revocation of an authorisation would usually constitute enforcement action. Equally, the imposition of non-standard conditions or the refusal of an authorisation on the grounds of a failure to comply could, depending on the circumstances, constitute enforcement action. However, the CORE Regulations specify that certain actions in relation to the licensing provisions of the Licensing Act 2003 and the Gambling Act 2005 are not defined as enforcement action<sup>71</sup>.
- 24.21 Investigative activities are not defined as enforcement actions and do not require notification to the primary authority. However, enforcing authorities will clearly benefit from a dialogue with the primary authority in relation to certain investigative activities and should always consider whether there may be an inspection plan or Primary Authority Advice to Local Authorities that is of relevance. Investigative activities may include, for example, inspection of goods, records and documents, the exercise of powers of entry, or interviewing a suspect under caution.

<sup>68</sup> Regulation 6(b), CORE Regulations 2017

<sup>69</sup> The requirement to make a retrospective notification does not apply where the primary authority is also the enforcing authority that is proposing enforcement action

<sup>70</sup> Regulation 5, CORE Regulations 2017

<sup>71</sup> Regulation 5(2)(b), CORE Regulations 2017

## Notifying a primary authority of proposed enforcement action

- 24.22 In order for Primary Authority to operate effectively it is essential that enforcing authorities provide primary authorities with sufficient information about proposed enforcement action, as set out in this guidance, so that a view can be taken as to whether it is inconsistent with a primary authority's advice (see sections 24.25 to 24.27).
- 24.23 When making a notification of proposed enforcement action an enforcing authority should be aware that the primary authority will usually have up to five working days to consider its response (see section 21.10). During this period the primary authority may need to contact the enforcing authority to request further information or clarification. The enforcing authority should therefore ensure that it is able to respond to such requests during this period, in a timely manner.
- 24.24 Notification by the enforcing authority of proposed enforcement action should be made via the Primary Authority Register.
- 24.25 The notification should include the following details, which are provided for in the online form on the Primary Authority Register:
- a) full details of the contravention including sufficient information about the nature of the failings that, in the view of the enforcing authority, contributed to the contravention;
  - b) where appropriate, the address of the relevant premises;
  - c) full details of any affected products or services;
  - d) details of the proposed enforcement action, including, where appropriate, the proposed text for any statutory notice, draft charges etc; and
  - e) the reasons for proposing the enforcement action.
- 24.26 Where the enforcing authority is proposing multiple enforcement actions, these should be itemised in the notification to allow the primary authority to consider and respond to each one separately.
- 24.27 Where the proposed enforcement action is in relation to a local failure to implement controls that the business has established, the enforcing authority should provide sufficient information about the circumstances of the non-compliance to enable the primary authority to make an informed judgment as to whether relevant Primary Authority Advice has been provided and whether the proposed enforcement action is inconsistent with that advice.
- 24.28 The enforcing authority cannot proceed with the proposed action within a period known as the 'relevant period'. This period is usually five working days beginning on, and including, the day after the day on which notification to the primary authority is made but may end sooner or be extended as set out in section 21.10.
- 24.29 The enforcing authority should be aware that, where the primary authority to which it makes its notification of proposed enforcement action refers that notification to a second primary authority, the relevant period for the second primary authority commences when it receives the referred notification.

- 24.30 Where an enactment limits the period within which an enforcing authority may take enforcement action, the calculation of this time limit should not include<sup>72</sup>:
- a) the period during which a primary authority considers its response to the notification – the relevant period or relevant periods (see sections 21.9 to 21.11 and section 21.24);
  - b) the referral period (see section 24.43); or
  - c) the period following a reference to the Secretary of State for determination until that reference is determined.
- 24.31 The notification of proposed enforcement action to the primary authority may result in one of three outcomes:
- a) the primary authority directs against the proposed enforcement action (see sections 24.32 to 24.36);
  - b) the primary authority does not direct against the proposed enforcement action (see sections 24.37 to 24.44); or
  - c) where the primary authority is unable to reach a decision, it may choose to seek consent to refer the notification to the Secretary of State for determination (see section 21.14).

### **The primary authority directs against proposed enforcement action**

- 24.32 The notification requirement allows the primary authority to review the proposed enforcement action and decide whether or not it is inconsistent with Primary Authority Advice, or Primary Authority Advice to Local Authorities, that it has issued. Where the primary authority decides that the proposed action is inconsistent with its advice, it may direct the enforcing authority not to take the action<sup>73</sup>.
- 24.33 Where the primary authority directs the enforcing authority not to take the proposed action, the primary authority's response will include:
- a) details of the advice with which the proposed enforcement action would be inconsistent;
  - b) details of how and when the advice was issued; and
  - c) an explanation of the primary authority's reasons for believing that the proposed enforcement action would be inconsistent with its Primary Authority Advice or Primary Authority Advice to Local Authorities. This explanation should include sufficient detail to enable the enforcing authority to make an informed judgment as to whether it accepts the decision.

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<sup>72</sup> Section 25C(8) of the RES Act

<sup>73</sup> Section 25C(4) of the RES Act

- 24.34 Where the primary authority directs against proposed enforcement action the enforcing authority cannot proceed with the proposed action. If, having considered the primary authority's reasons for its direction, the enforcing authority considers that the proposed action should be allowed to proceed then it may apply to the Secretary of State for consent to refer the matter for determination on the basis that:
- a) the Primary Authority Advice was not correct (see sections 6.14 and 7.9); or
  - b) the Primary Authority Advice was not properly given by the primary authority (see sections 6.15 and 7.10); or
  - c) the proposed enforcement action is not inconsistent with the Primary Authority Advice.
- 24.35 An application to the Secretary of State by the enforcing authority must be made within 10 working days starting on and including the day after receipt of the primary authority's direction against the proposed enforcement action.
- 24.36 If the Secretary of State does not consent to a referral then the enforcing authority cannot take the proposed enforcement action.

### **The primary authority does not direct against proposed enforcement action**

- 24.37 Where the primary authority decides that the proposed action is **not** inconsistent with its advice then the primary authority is required to take reasonable steps to establish whether the business considers the proposed enforcement action to be inconsistent with the advice of a second primary authority<sup>74</sup> (see Figure 9 below).
- 24.38 Where the business indicates that it is relying on the advice of a second primary authority, the first primary authority will refer the notification of proposed enforcement action to that primary authority and will notify the enforcing authority and the business that it has done so<sup>75</sup>. The second primary authority is then required to consider the referred notification (see sections 21.15 to 21.18) but is not under the same duty as the first primary authority to establish whether the business considers the proposed action to be inconsistent with the advice of another primary authority<sup>76</sup>.
- 24.39 Where the business does not indicate that it is relying on Primary Authority Advice issued by a second primary authority, the primary authority should notify the enforcing authority that it will not direct against the proposed action.
- 24.40 Where the enforcing authority is not directed against taking the proposed enforcement action by a primary authority, within the relevant period (see section 21.10), then the enforcing authority is able to decide whether it still considers it appropriate to proceed with the proposed action. The enforcing authority should take account of any information provided by the primary authority(ies). Where it decides to proceed with the proposed action it must first make a notification to the business of the proposed action<sup>77</sup>:
- where the business has a direct primary authority, this notification should be made via the Primary Authority Register; and
  - where the business has a co-ordinated primary authority and no direct primary authority, the notification should be sent in writing, using the contact details provided for the business in the co-ordinator's Primary Authority Membership List.

<sup>74</sup> Section 29C(2) of the RES Act

<sup>75</sup> Section 29C(3) of the RES Act

<sup>76</sup> Section 29C(4)(b) of the RES Act

<sup>77</sup> Section 25C(6) of the RES Act

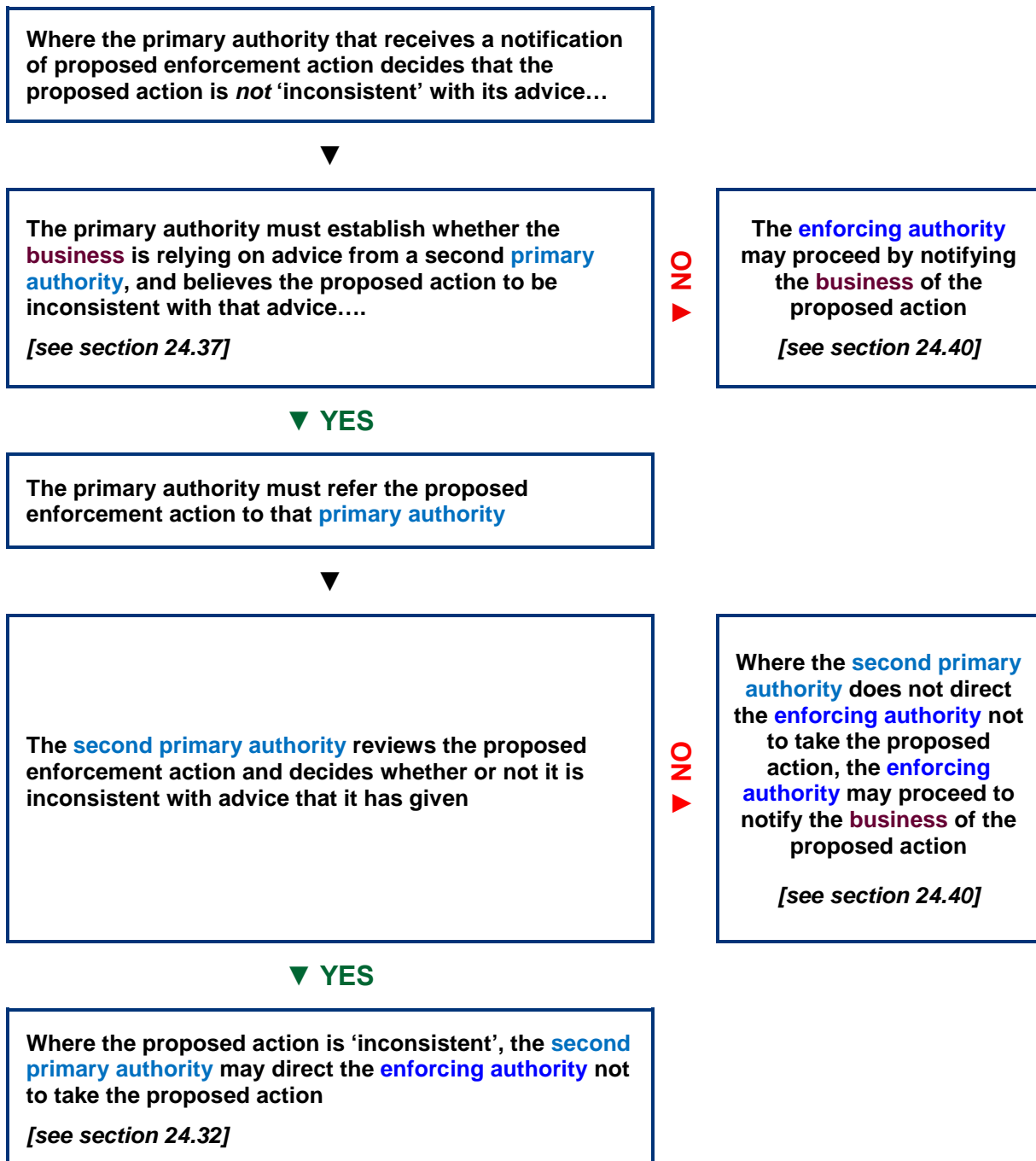


Figure 9. Referral of notification of proposed enforcement action

A copy of the notification to the business should be sent to the primary authority to which the enforcing authority sent its original notification of proposed enforcement action.

24.41 The notification to the business should include the following details, which are provided for in the online form on the Primary Authority Register:

- a) full details of the contravention including, where appropriate, the address of the relevant premises;
- b) full details of any affected products or services;

- c) details of the proposed enforcement action;
  - d) confirmation that the enforcing authority has notified the primary authority of the proposed action; and
  - e) confirmation that the primary authority did not object to the proposed enforcement action.
- 24.42 On receiving notification of a proposed enforcement action, the business may, if it considers that the proposed action is inconsistent with Primary Authority Advice or Primary Authority Advice to Local Authorities issued, apply to the Secretary of State for consent to refer the matter for determination. This application must be made within ten working days beginning on, and including, the day after it receives the notification.
- 24.43 The enforcing authority cannot proceed with the proposed action within a period known as the 'referral period' of ten working days<sup>78</sup>. However this period:
- a) may be shorter, where the business notifies the enforcing authority, within the ten working days, that it is not applying for consent to refer the action to the Secretary of State;
  - b) may in exceptional circumstances be extended, by the Secretary of State, where there is evidence of good reasons to extend the period; or
  - c) may be extended, where the Secretary of State receives an application for consent to make a reference for a determination, to allow time for matters to be properly considered.
- 24.44 Where the enforcing authority is advised that an application has been received, from the business, for consent to make a reference to the Secretary of State then the enforcing authority cannot proceed with the proposed enforcement action until it receives confirmation that consent has not been given or confirmation of the Secretary of State's determination.

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<sup>78</sup> See Glossary for definition of 'working days'

## PART F: Guidance to Co-ordinators

This Part provides guidance to co-ordinators and prospective co-ordinators on their role and responsibilities within Primary Authority. It should be read alongside other parts of the guidance, in particular Part A (General guidance) and Part C (Co-ordinated partnerships) and cross referencing is provided.

### 25. The co-ordinator role

- 25.1 Primary Authority is open to any regulated group of businesses (see section 3.9). The group of businesses must have a single entity, known as a 'co-ordinator', who is nominated by the Secretary of State to co-ordinate the relationship between the primary authority and the businesses in the group. Once nominated, the coordinator works in partnership with the primary authority.
- 25.2 The co-ordinator role will usually be undertaken by an organisation, or individual, that has an ongoing relationship with the businesses in the group and is able to fulfil the responsibilities of the role as set out in this Part of the guidance. The relationship between the prospective co-ordinator and the group of businesses will usually be characterised by:
- a) the existence of an ongoing agreement between the prospective co-ordinator and each business in the group, for example a membership agreement, licence or similar agreement;
  - b) the provision of support for good practice, improved standards or achievement of a common standard amongst the group of businesses, including through the provision of advice and guidance to the businesses by the prospective coordinator;
  - c) effective two-way communication channels that allow the prospective co-ordinator to
    - understand the regulatory challenges faced by the group of businesses; their need for generic or tailored advice and guidance; and the potential need for co-ordination of local inspection activity; and
    - disseminate information to the businesses in a timely manner.

Examples of those undertaking the role of coordinator could include a trade association, a franchisor or an individual business within a group.

- 25.3 Prior to making an application to the Secretary of State for nomination of a partnership, the local authority and the prospective co-ordinator must be satisfied as to the suitability of the prospective co-ordinator to take on the co-ordinator role (see sections 15.5 to 15.6) as set out in the RES Act and in this guidance.
- 25.4 A prospective co-ordinator will need to agree appropriate working arrangements with the prospective primary authority, prior to applying for nomination. These arrangements should be set out in a written Summary of Co-ordinated Partnership Arrangements (see section 14.10). The co-ordinator should review these arrangements with the primary authority on a regular basis, to ensure that they are effective in delivering the benefits of Primary Authority in respect of the group of businesses.

25.5 The suitability of the primary authority and the co-ordinator may be considered by the Secretary of State through the nomination process (see section 15) and may also be considered as part of any subsequent review of the co-ordinated partnership (see sections 16.4 to 16.9).

### **Responsibilities of a co-ordinator**

25.6 A co-ordinator that is nominated in respect of a regulated group takes on the responsibility of:

- a) working with the primary authority, and with supporting regulators where appropriate, to support improved regulation of the businesses in the group;
- b) ensuring that businesses in the regulated group are aware that they have a co-ordinated primary authority (see section 26.3 in relation to inclusion of a business in the regulated group), what this means for them and what steps they might wish to take in order to make an enforcing authority aware that they have a co-ordinated primary authority;
- c) maintaining a definitive list of the businesses in the regulated group (see sections 26.5 to 26.12), and making available a copy of this list, within the required timescale, on request by the Secretary of State, a supporting regulator or any local authority (see section 26.13);
- d) requesting Primary Authority Advice to meet identified needs of businesses in the group and disseminating that advice (see section 27);
- e) responding to consultation by the primary authority, in the event that it develops an inspection plan (see section 29); and
- f) disseminating an inspection plan to those businesses in the group to whom the co-ordinator considers it may be relevant (see section 29).

25.7 The co-ordinator is required to confirm, as part of its application for nomination, that it is satisfied that it is suitable to deliver the co-ordinator role. The co-ordinator should ensure that it has suitable arrangements in place to deliver its responsibilities on an ongoing basis, including contingency arrangements that will allow it to continue to deliver its responsibilities in the absence of key personnel. The co-ordinator should review its arrangements periodically to ensure that they remain effective and that it continues to be suitable to deliver the co-ordinator role.

25.8 Where a co-ordinator has concerns about its ability to continue, in the future, to deliver its responsibilities it should notify its primary authority and the Secretary of State (see section 30).

25.9 The co-ordinator is required to accept the Primary Authority Terms and Conditions, as part of its application for nomination, and should ensure that it complies with these terms and conditions on an ongoing basis (see sections 4.6 to 4.7).



- 25.10 A local authority is entitled to recover the costs that it incurs, in fulfilling its functions as primary authority for a regulated group, from the co-ordinator. It is a matter for the co-ordinator to determine its own policy in respect of recovering some or all of the costs of Primary Authority from businesses in the regulated group. Where the co-ordinator decides that it will charge businesses in the regulated group it should provide clear information to the businesses explaining the basis on which these charges will be made and should also provide a copy of this information to the primary authority. The businesses should be able to understand:
- any charges for participation in Primary Authority; and
  - how the co-ordinator will manage any charges in respect of costs incurred relating to an individual business, in relation to enquiries or proposed enforcement action.
- 25.11 The accuracy of the Public Register and Primary Authority Register impacts on the effective operation of Primary Authority. The co-ordinator should ensure that relevant changes to information held on the Primary Authority Register are updated as soon as reasonably practicable (see sections 5.8 to 5.10 and 17).

## 26. Defining 'membership'

- 26.1 A nominated co-ordinator must maintain a list of the businesses that are members of the regulated group, known as the 'Primary Authority Membership List'<sup>79</sup>. The co-ordinator's Primary Authority Membership List is conclusive as to whether a business is a member of the regulated group at a particular time, for the purposes of Primary Authority, and the co-ordinator must ensure, as far as is reasonably practicable, that the list is accurate and remains up-to-date. Businesses in the regulated group are reliant on the co-ordinator's diligence in this regard, as the list will determine whether or not a business is entitled to rely on Primary Authority Advice.
- 26.2 A co-ordinator may have its own criteria for determining whether a business will be included in its regulated group. The co-ordinator should be clear with the businesses where there will be any time lag between satisfying these criteria and inclusion in the regulated group. For example, a trade association may use membership of its association as a criterion for inclusion in its regulated group and should be clear with potential members whether they will be included in its Primary Authority Membership List at the same time as they are accepted into membership of the association.
- 26.3 The co-ordinator should ensure that each business that it includes in its Primary Authority Membership List has given its agreement to its inclusion in the list and is aware of when and how the list will be shared by the co-ordinator (see [sections 26.13 to 26.14](#)).
- 26.4 If a co-ordinator acts on behalf of a business without proper authority the co-ordinator may be liable for any losses incurred by the business and the primary authority. The co-ordinator should, therefore, obtain legal advice if they are in any doubt as to the extent of their authority.

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<sup>79</sup> Section 23D(2) & (3) of the RES Act

## Maintaining the Primary Authority Membership List

- 26.5 The co-ordinator should update its Primary Authority Membership List as soon as reasonably practicable:
- a) to add a business that satisfies the co-ordinator's criteria for inclusion in the regulated group; and
  - b) to make clear that a business on the list is no longer included in the regulated group.
- 26.6 The co-ordinator must ensure, as far as is reasonably practicable, that its Primary Authority Membership List is accurate (see sections 26.7 to 26.12) and is kept up-to-date. The co-ordinator should explain to businesses in the group the potential implications of inaccuracies and should take reasonable steps to encourage the businesses to inform it of changes to these details in a timely manner.
- 26.7 The co-ordinator's Primary Authority Membership List must include the following details for each business:
- a) the name of the business (see 26.9a);
  - b) an address for the business (see 26.9b);
  - c) the date that the business became a member of the group; and
  - d) if applicable, the date that the business ceased to be a member of the group.
- 26.8 The co-ordinator should also include in its Primary Authority Membership List contact details for each business, including a contact name, business telephone number and, where possible, a business email address. Without these details it may prove difficult for primary authorities to comply with the statutory time limits (see sections 21.9 and 21.18) in respect of notifications of proposed enforcement action.
- 26.9 In preparing or updating its Primary Authority Membership List, the co-ordinator should ensure that:
- a) the name of the business is the full name of the legal entity, for example:
    - the registered name of a limited company;
    - the full name of a sole trader; or,
    - in the case of a partnership, the full name of at least one of the partners.
  - b) the address of the business is the address at which the co-ordinator usually communicates with the business.
- 26.10 The co-ordinator should make the businesses aware that where a business comprises a number of related legal entities (for example, where the business comprises a number of limited companies operating from the same head office or under the same brand name), each legal entity must be listed separately on the Primary Authority Membership List in order to participate in Primary Authority. The co-ordinator should ensure that the list makes provision for multiple legal entities to be listed, in relation to a single business, and should encourage such businesses to provide details for each of their related legal entities.

26.11 The co-ordinator may also include in its Primary Authority Membership List the following details, which will assist enforcing authorities to identify that a particular business is a member of the regulated group:

- a) any trading names or trading styles used by the business; and
- b) the registered office address of a limited company, where this is not the same as the address at which the co-ordinator usually communicates with the business.

The absence of such details, or the fact that they are not up-to-date, should not be taken into account in determining whether the business is a member of the regulated group for the purposes of notifying enforcement action.

26.12 A co-ordinator may satisfy the requirement to maintain a Primary Authority Membership List by agreeing suitable arrangements for a third party to maintain the list on its behalf. In this circumstance, the co-ordinator should be aware that it remains responsible for fulfilling the statutory duties of the co-ordinator within Primary Authority, including with regards to providing a copy of the list on request (see section 26.13). Where arrangements are agreed with a third party, the co-ordinator should make the primary authority aware of these arrangements and should monitor their effectiveness.

### Sharing the Primary Authority Membership List

26.13 Where the co-ordinator receives a request for a copy of its Primary Authority Membership List from its primary authority, an enforcing authority, a supporting regulator, or from the Secretary of State, the co-ordinator must make the copy available as soon as reasonably practicable and, in any event, not later than the third working day after the date of receiving the request<sup>80</sup> at no charge. A co-ordinator is considered to have satisfied this requirement where it:

- a) maintains the list in the secure area of the Primary Authority Register;
- b) includes a link, in the secure area of the Primary Authority Register, to an external site where the list is maintained;
- c) responds to the request by confirming the information included in the list in respect of a business or businesses specified in the request;
- d) responds to the request by providing a link to a published copy of the list;
- e) responds to the request by providing an electronic version of the list, in a format that is commonly used; or
- f) responds to the request by providing a paper copy of the list.

26.14 The co-ordinator is not required to share its Primary Authority Membership List other than in response to requests as outlined above. However, the co-ordinator should consider whether proactively sharing its list is in the best interests of the businesses in the regulated group, by assisting enforcing authorities to identify that a particular business is a member of the regulated group. Where the co-ordinator chooses to proactively share its Primary Authority Membership List with enforcing authorities and supporting regulators it may do so by:

- a) maintaining the list in the secure area of the Primary Authority Register; or
- b) providing a link, within the secure area of the Primary Authority Register, to an external site where the list is maintained.

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<sup>80</sup> Sections 23D(4) & (5) and 28A(7) of the RES Act

## 27. Primary Authority Advice

- 27.1 The co-ordinator should ensure that it has mechanisms in place to identify where Primary Authority Advice would be of benefit to businesses in the group, whether this is all businesses or a subset of the group, in terms of supporting their compliance and providing certainty.
- 27.2 The co-ordinator should agree arrangements with the primary authority for the development of Primary Authority Advice. These arrangements should take account of the requirements for Primary Authority Advice set out in this guidance (see [sections 6.13 to 6.23](#)) and may include:
- consideration of the need to source particular expertise;
  - consideration of the role of any relevant supporting regulator(s); and
  - arrangements to prioritise the development of advice and guidance where needed.
- 27.3 The co-ordinator should agree arrangements with the primary authority for the review of Primary Authority Advice at regular intervals and when relevant circumstances change, to ensure that it remains correct and appropriate.
- 27.4 The co-ordinator has an ongoing responsibility to ensure that Primary Authority Advice that it receives from the primary authority, and any changes to existing Primary Authority Advice, are communicated in a timely manner to any businesses in the group to whom the co-ordinator considers the advice may be relevant. The co-ordinator should therefore ensure that it has appropriate communication mechanisms in place and should monitor the effectiveness of these mechanisms.
- 27.5 The primary authority is required to publish information, in the secure area of the Primary Authority Register, to enable enforcing authorities to identify the specific regulatory requirements in relation to which it has issued Primary Authority Advice to the co-ordinator (see section 6.22). The co-ordinator should agree with the primary authority the approach that will be taken to meeting this requirement and to providing clarity as to which businesses will receive the Primary Authority Advice.
- 27.6 A co-ordinator must communicate all Primary Authority Advice that it receives to any businesses in the regulated group to whom the co-ordinator considers it may be relevant<sup>81</sup>. The co-ordinator may wish to keep a record of the businesses to which it has sent particular Primary Authority Advice, in order to facilitate future dissemination of changes to the advice.
- 27.7 Co-ordinators should consider what steps they can take to encourage businesses to make enforcing authorities aware, at an early stage in their dealings with them, that they are relying on Primary Authority Advice.
- 27.8 Co-ordinators should recognise that some businesses that are members of their regulated group may also be members of one or more other regulated groups or may have a direct primary authority. They should, when disseminating Primary Authority Advice, encourage such businesses to consider it in conjunction with any Primary Authority Advice that they may have received from another primary authority. In particular, they should encourage any business that has a direct primary authority to make that primary authority aware if they intend to rely on the Primary Authority Advice from the co-ordinator.

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<sup>81</sup> Section 24A(4) of the RES Act

## 28. Enforcement action

- 28.1 Where an enforcing authority proposes to take enforcement action against a business that has a primary authority, it is required to make a statutory notification, of the proposed enforcement action, to the primary authority<sup>82</sup>. In the case of a business that is a member of a regulated group, and has a co-ordinated primary authority, this requirement applies only where the enforcing authority is aware that the business is a member of the regulated group<sup>83</sup>. The co-ordinator has an important role to play in:
- a) supporting and encouraging businesses to implement measures that will help to make enforcing authorities aware of their membership of the regulated group; and
  - b) providing transparency around the membership of the regulated group, to assist enforcing authorities wishing to identify a member or members.
- 28.2 Proposed enforcement action is notified, in the first instance, to the primary authority. The primary authority or enforcing authority will not usually notify a co-ordinator of enforcement action that is proposed in relation to a business in the regulated group or discuss such enforcement action with the co-ordinator but may do so where the law allows.
- 28.3 The RES Act makes provision<sup>84</sup> for a business that is a member of a regulated group to make a notification of proposed enforcement action to the co-ordinated primary authority. It is also possible for the co-ordinator to make this notification on behalf of the business.
- 28.4 This is the case only where the business (or its co-ordinator) has reason to believe that:
- a) the enforcing authority proposes to take enforcement action; and
  - b) the enforcing authority has failed to notify the proposed enforcement action to the primary authority.
- There is no provision for a business to make such a notification to its primary authority in the event that an enforcing authority has already taken enforcement action.
- 28.5 Co-ordinators should be aware that, as both of these conditions must be met, business (or co-ordinator) notifications to the primary authority are likely to be uncommon. Nevertheless, the co-ordinator will wish to understand the provision in order to be able to provide support to a business that is considering making such a notification, or has made such a notification, or to be able to make such a notification itself where it considers this to be appropriate (see the guidance to enforcing authorities on this provision at sections 24.12 to 24.14 and the guidance to primary authorities at [sections 21.19 to 21.25](#)).

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<sup>82</sup> Exemptions allow certain enforcement action to proceed immediately and the notification to the primary authority is then made retrospectively (see sections 24.15 to 24.18).

<sup>83</sup> Sections 25C(1)(b) and 25C(2) of the RES Act

<sup>84</sup> Section 25C(3) of the RES Act

## 29. Inspection Plans

- 29.1 The co-ordinator should ensure that it has mechanisms in place to identify where there is potential to deliver improvements in the co-ordination or consistency of enforcing authority inspections, or other interactions with businesses in the group. Where such potential is identified, the co-ordinator may work with the primary authority to better understand the issues that might be addressed through an inspection plan. In doing so, the co-ordinator should, wherever possible, take account of the activities of any other relevant co-ordinated partnership and should bring these to the attention of its primary authority, for example where another co-ordinated primary authority has developed an inspection plan that covers some of the businesses in the co-ordinator's own regulated group.
- 29.2 Before making or revising an inspection plan in respect of a co-ordinated group the primary authority must consult with the co-ordinator<sup>85</sup>. In responding to this consultation the co-ordinator should:
- a) provide a list of those businesses in the regulated group for which the proposed inspection plan may, in its view, be relevant; and
  - b) take steps to ensure that it has an appropriate level of understanding of the experience and views of businesses in the group.
- 29.3 The co-ordinator may wish to offer businesses a choice as to whether or not they will be included in the list of businesses that will be covered by the inspection plan.
- 29.4 Where the inspection plan receives consent, and is published in the secure area of the Primary Authority Register, the nominated co-ordinator must communicate the inspection plan to any businesses for whom the co-ordinator considers it may be relevant<sup>86</sup>, and must inform those businesses of their inclusion in the list of businesses covered by the inspection plan.
- 29.5 An accurate list of these businesses, known as the Inspection Plan Coverage List, must be provided to the primary authority<sup>87</sup> for publication via the secure area of the Primary Authority Register (see [Part D. Guidance to Primary Authorities](#)). This list must include the following details for each business:
- a) the name of the business (as described at section 26.9a); and
  - b) an address for the business (as described at section 26.9b)
- and should include contact details for the business (as described at section 26.8).
- 29.6 The list may also include additional information that the co-ordinator and primary authority consider will be useful to enforcing authorities, such as trading names.
- 29.7 The co-ordinator must maintain the list accurately and must communicate any changes to the list to the primary authority as soon as reasonably practicable. For the purposes of Primary Authority, the co-ordinator's Inspection Plan Coverage List, as provided to the primary authority and updated, is conclusive as to whether an enforcing authority is expected to follow the requirements of the inspection plan in respect of a business (see section 23).

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<sup>85</sup> Section 26A(5) of the RES Act

<sup>86</sup> Section 26A(9)

<sup>87</sup> Section 26A(9)

- 29.8 Where any business is added to the Inspection Plan Coverage List, or removed from the list, the co-ordinator must update the primary authority and notify the business.
- 29.9 Where the inspection plan is revised, the co-ordinator must communicate the revised inspection plan to all businesses on the Inspection Plan Coverage List<sup>88</sup>.
- 29.10 Where the co-ordinator is notified, by the primary authority, that the inspection plan has been revoked<sup>89</sup>, the co-ordinator must inform all businesses on the Inspection Plan Coverage List that the plan has been revoked and no longer places requirements on enforcing authorities that inspect them. This notification should be sent in a timely fashion.
- 29.11 The primary authority will not usually notify a co-ordinator of feedback that it receives from an enforcing authority on an inspection, in relation to a business in the regulated group, but may do so where the law allows. The primary authority may share general compliance issues that are highlighted by inspection reports with the co-ordinator on an anonymised basis.

### 30. Withdrawing from the role of co-ordinator

- 30.1 Where the nominated co-ordinator considers that it may no longer be willing or able to fulfil the role of co-ordinator in Primary Authority it should, at the earliest possible opportunity, raise its concerns with the primary authority and should seek to assist the primary authority in identifying a suitable organisation or individual to take on the role of co-ordinator<sup>90</sup>, so that any disadvantage to the businesses in the regulated group is minimised (see section 17.3).

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<sup>88</sup> Sections 26A(9) and 26C(5) of the RES Act

<sup>89</sup> Section 26C(3) of the RES Act

<sup>90</sup> Section 23C(4) of the RES Act

## PART G: Supporting Regulators

This Part sets out the role and responsibilities of supporting regulators. It should be read alongside other parts of the guidance, in particular Part A (General guidance), and cross referencing is provided.

### 31. The supporting regulator role

31.1 A supporting regulator<sup>91</sup> is a national regulator, or other regulatory body, that has been specified by the CORE Regulations. A supporting regulator has a function that is the same as, or is relevant to, a partnership function and it is able to play a role in supporting primary authorities. The supporting regulators specified by the CORE Regulations are:

- the Health and Safety Executive;
- the Food Standards Agency;
- the Gambling Commission;
- the Competition and Markets Authority; and
- the Secretary of State, in relation to his role with respect to regulatory functions concerning weights and measures and product safety regulation.

31.2 A supporting regulator is able to agree arrangements to provide support to the primary authority in its provision of Primary Authority Advice or Primary Authority Advice to Local Authorities, or in its development and management of an inspection plan (see section 34). These arrangements may relate to a single piece of work, such as the preparation or review of specific advice, or they may relate more widely to the primary authority's partnership work with a business or a group of businesses.

31.3 The involvement of a supporting regulator can bring a range of benefits to the primary authority and the partner business, or group of businesses, which will support a robust and consistent approach, such as:

- a) access to the supporting regulator's technical expertise in their regulatory area;
- b) access to technical facilities such as, for example, testing facilities;
- c) links into networks of expertise, such as Expert Panels<sup>92</sup>; regional, national and international regulatory liaison groups; industry groups etc;
- d) the most up-to-date knowledge of forthcoming changes to regulatory requirements and guidance;
- e) the ability to draw on broad data and intelligence;
- f) improved co-ordination with other regulators;
- g) a wider perspective on inspection plans and national inspection strategies; and
- h) the ability to agree an interpretation of the supporting regulator's generic guidance that is tailored to the particular circumstances of the business, or group of businesses, for example, to take account of technological or other innovation.

<sup>91</sup> As defined in section 28A of the RES Act

<sup>92</sup> A list of expert panels is available from Regulatory Delivery.



- 31.4 Primary Authority provides an opportunity for supporting regulators to work closely with businesses and local authorities to improve and maintain compliance, in support of their regulatory objectives. They can further their knowledge and understanding of the regulated business community, and individual businesses, improving their ability to regulate effectively and efficiently.
- 31.5 A supporting regulator is able to provide support, to the primary authority of a business or a group of businesses, regardless of whether or not the supporting regulator itself regulates that business or group of businesses. Where the supporting regulator does regulate the business, Primary Authority provides a mechanism for increased consistency between its approach and that of local authorities (see sections 34.3 to 34.5).

## 32. Managing Primary Authority involvement

- 32.1 A supporting regulator will need to manage its involvement in Primary Authority to ensure that it delivers the intended outcomes. It should ensure that:
- a) it is clear as to which of its staff can provide support to primary authorities on its behalf and has arrangements in place to ensure that these staff:
    - i. have the required technical skills and knowledge; and
    - ii. are competent in the delivery of primary authority support, including having sufficient knowledge and understanding of the requirements of this guidance in relation to Primary Authority Advice (see section 6), Primary Authority Advice to Local Authorities (see section 7) and inspection plans (see section 8);
  - b) it is clear as to how the support provided will be communicated to other staff, within the regulator's organisation, who may have an interest in the advice or inspection plans being supported, for example, in relation to the duty to act consistently (see section 34.3 to 34.5);
  - c) it has effective arrangements in place to manage its work with primary authorities;
  - d) it has effective measures in place to deliver consistency in relation to the support that it provides to different primary authorities that present similar issues;
  - e) it has regard to the importance of transparency and accountability in its delivery of primary authority support; and
  - f) it has measures in place to promote consistency across the scheme, for example through its input to Expert Panels, networks, liaison groups etc.
- 32.2 A supporting regulator is entitled to charge a business in a direct partnership or a co-ordinator on a cost recovery basis for support that it provides to the primary authority, where the recovery of costs has been agreed by the business or co-ordinator prior to the supporting regulator incurring the costs. In deciding its policy on whether, and to what extent, it will seek to recover its costs, the supporting regulator should consider all relevant matters, including:
- how cost recovery for support provided to primary authorities would fit with any existing charging regime;
  - the extent to which the support provided through Primary Authority will further its own objectives; and
  - the extent to which the support provided will deliver benefits to businesses beyond the individual partnerships being supported.

- 32.3 Where a supporting regulator decides to recover costs, it can recover only those costs reasonably incurred in providing the support to the primary authority. In calculating these costs, the supporting regulator should have regard to the guidance issued by HM Treasury in *Managing Public Money*<sup>93</sup>.
- 32.4 A supporting regulator should publish clear information setting out the support that it will make available to primary authorities and their partner businesses. This information should be easily accessible to local authorities and businesses.
- 32.5 The supporting regulator's published information should include:
- details of the nature and extent of the support it offers;
  - any criteria that it will use in assessing whether it will provide support to a primary authority;
  - any information that it will require from a primary authority in order to make its assessment as to whether it will provide support;
  - its cost recovery policy (see section 32.2); and
  - the nature of the arrangements that it will expect to put in place with any individual primary authority and their partner business or co-ordinator.

### 33. Arrangements with partnerships

- 33.1 Where a primary authority and a supporting regulator intend to work together, the supporting regulator, the primary authority and the business or co-ordinator, should all agree the nature of their working arrangements so that each party is clear as to what it can expect of the others.
- 33.2 The parties may choose to agree a written summary of their working arrangements and might choose to include matters that are of particular concern to them, for example matters relating to confidentiality. They should not agree any arrangements that are in contravention of this guidance or that seek to alter the Primary Authority Terms and Conditions (see sections 4.6 to 4.7).
- 33.3 Prior to agreeing to provide its support, the supporting regulator should make an informed assessment of the resources that are likely to be required to deliver the support requested. In assessing the resources required, consideration should be given to the amount of staff resource and the level of expertise needed and the capacity of the supporting regulator to meet the requirements and timescales expected by the partnership. The supporting regulator may wish to consider the resources required to:
- familiarise its staff, to an appropriate extent, with the business or group of businesses;
  - develop technical input including, for example, through undertaking research or testing; liaising with Expert Panels etc;
  - review draft Primary Authority Advice or Primary Authority Advice to Local Authorities;
  - review a draft inspection plan;
  - collate and analyse data and other information; and
  - liaise with other regulators.

<sup>93</sup> [www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm)

33.4 Having made an assessment of the resource requirements, the supporting regulator should, where applicable, seek agreement from the co-ordinator or business to any charges that would apply in line with its cost recovery policy. The primary authority may, with the permission of the co-ordinator or business, facilitate this agreement.

## 34. Primary Authority Advice and Inspection Plans

34.1 A supporting regulator is able to provide support, to a primary authority, in respect of:

- the development and provision of Primary Authority Advice (see [section 6](#)) or Primary Authority Advice to Local Authorities (see [section 7](#));
- the development and management of an inspection plan (see [section 8](#));
- the evaluation of the impact of Primary Authority Advice, Primary Authority Advice to Local Authorities, or an inspection plan;
- the review of Primary Authority Advice, or Primary Authority Advice to Local Authorities, that the primary authority has previously issued; or
- the review of an inspection plan.

34.2 Where a supporting regulator works with a primary authority, in support of the preparation of Primary Authority Advice or an inspection plan, and subsequently becomes aware of factors that would significantly change its own advice to the primary authority, it should bring these factors to the attention of the primary authority. Such factors might include:

- a) forthcoming changes to its own published guidance;
- b) forthcoming changes to relevant legislation or standards;
- c) relevant information, data or intelligence;
- d) relevant technological developments; or
- e) relevant court decisions.

34.3 Where a supporting regulator works with the primary authority to support the preparation of Primary Authority Advice, Primary Authority Advice to Local Authorities, or an inspection plan, in relation to a business or group of businesses that the supporting regulator itself regulates, it is then required to act consistently<sup>94</sup> with that advice or inspection plan.

34.4 This duty, to act consistently, takes effect once the supporting regulator has given its agreement to:

- the Primary Authority Advice as issued, to the business or group of businesses, by the primary authority (see section 6.23);
- the Primary Authority Advice to Local Authorities as submitted to the Secretary of State for consent; or
- the inspection plan as submitted to the Secretary of State for consent.

The duty does not therefore take effect where a supporting regulator has provided support at an early stage in the development of advice or an inspection plan but has not agreed the final version.

<sup>94</sup> Section 28A(3) of the RES Act

- 34.5 The supporting regulator is required to act consistently when exercising a designated function in respect of a business covered by the advice or inspection plan. However, in the interests of promoting wider consistency, the supporting regulator should also consider acting consistently with the advice or inspection plan in related matters. This might include, for example, where the Primary Authority Advice relates to retail premises and the supporting regulator has a regulatory role in relation to non-retail premises of the same business.

## Glossary

### Glossary

Application for nomination	The process which a local authority and a business or co-ordinator complete, via the online Primary Authority Register, requesting the Secretary of State to nominate the local authority as primary authority as provided for in section 23A of the RES Act (see sections 11 and 15 of this guidance).
Application for consent to a determination	The process by an application is made to the Secretary of State for consent to refer a matter to determination (see section 9 of this guidance).
Consent process for inspection plans	The process by which the Secretary of State assesses an inspection plan submitted to him for consent and makes his decision (see section 8 of this guidance).
Consent process for Primary Authority Advice to Local Authorities	The process by which the Secretary of State assesses Primary Authority Advice to Local Authorities submitted to him for consent and makes his decision (see section 7 of this guidance).
Co-ordinated partnership	The relationship between a nominated co-ordinator, representing a regulated group of businesses, and the local authority that is nominated by the Secretary of State as the co-ordinated primary authority for that regulated group, in respect of specified partnership functions.
Co-ordinated primary authority	As provided for in section 23A(1)(b) of the RES Act, a local authority that is nominated by the Secretary of State as the primary authority for the exercise of specified partnership functions in relation to the members of a regulated group of businesses
Co-ordinator	As defined in section 23C of the RES Act, an organisation or individual nominated by the Secretary of State to take on a role in Primary Authority, in partnership with a co-ordinated primary authority, of providing primary authority services to a regulated group of businesses.
Determination	As provided for in Schedule 4A of the RES Act and the CORE Regulations, the process the Secretary of State operates, having granted consent to an application from one of the parties, to determine whether proposed enforcement action that has been notified to a primary authority can proceed.

## Glossary

Devolved Welsh matters	<p>As defined in section 74 of the RES Act, matters that are:</p> <ul style="list-style-type: none"> <li>• within the legislative competence of the National Assembly for Wales (as defined in the Government of Wales Act 2006<sup>95</sup>), or</li> <li>• in relation to Wales in respect of which functions are exercisable by the Welsh Ministers.</li> </ul>
Directing against enforcement action	As provided for by section 25C of the RES Act, a primary authority may direct an enforcing authority not to take proposed enforcement action where such action is inconsistent with the primary authority's advice. (Such a direction is sometimes referred to as 'blocking')
Direct partnership	The relationship between a business and the local authority that is nominated by the Secretary of State as its direct primary authority in respect of specified partnership functions.
Direct primary authority	As provided for in section 23A(1)(a) of the RES Act, a local authority that is nominated by the Secretary of State as the primary authority for the exercise of specified partnership functions in relation to a regulated person
Enforcement action	As defined in section 25A of the RES Act, any action of an enforcing authority which is specified in the CORE Regulations as an enforcement action that must be notified to the primary authority, either in advance or retrospectively.
Enforcing authority	As defined in sections 25B and 25C of the RES Act, any local authority that is exercising relevant functions in respect of a business that has a primary authority.
Inspecting regulator	<p>As defined in sections 26A of the RES Act, any local authority that exercises an inspection function in respect of a business that has a primary authority.</p> <p>Inspecting regulators are referred to in this guidance as 'enforcing authorities'.</p>
Inspection plan	<p>As provided for by section 26A, a plan that a primary authority may choose to develop to guide enforcing authorities in exercising their relevant functions relating to proactive interactions with a business covered by the plan.</p> <p>All enforcing authorities are required to follow an inspection plan which has been consented to by the Secretary of State and published via the Primary Authority Register (see section 23 of this guidance).</p>
Inspection Plan Coverage List	A definitive list of those businesses in the regulated group for whom the co-ordinator considers the primary authority's inspection plan may be relevant (see section 29 of this guidance).

<sup>95</sup> The National Assembly for Wales' legislative competence to make primary legislation will change from a conferred powers model to a reserved powers model; under the provisions of the Wales Act 2017 which amends the Government of Wales Act 2006. It is anticipated that the new devolution settlement will take effect on or around 6 April 2018.

## Glossary

Inspection plan rationale	The evidence presented by the primary authority for consideration in determining whether it is appropriate for the Secretary of State to consent to an inspection plan submitted to him (see section 8 of this guidance).
Local authority	As defined in sections 3 and 22B of the RES Act, local authorities include county, district and unitary councils (including London boroughs, metropolitan boroughs and, in Wales, county councils and county borough councils), port health authorities, and fire and rescue authorities in England and Wales; councils in Scotland; and, district councils in Northern Ireland (see section 3.14 of this guidance)
National inspection strategy	A primary authority may choose to take on responsibility for co-ordinating proactive checks on compliance across a business' operations, or across a group of businesses, and may implement its strategy through an inspection plan (see section 8 of this guidance).
Nomination	As provided for in sections 23A and 23C of the RES Act, the formal recognition by the Secretary of State of: <ul style="list-style-type: none"> <li>• a local authority as the primary authority for a business or regulated group of businesses; or</li> <li>• a co-ordinator in relation to a regulated group of businesses.</li> </ul>
Notifiable change	A change to a primary authority, business or co-ordinator that may impact on the validity of the Secretary of State's nomination. Such changes require notification to the Secretary of State (see sections 5, 13 and 17 of this guidance).
Notification of enforcement action	The notification that an enforcing authority is required to make to a primary authority in the event of enforcement action. In most circumstances this notification is required prior to taking the enforcement action. However, in certain circumstances it will be retrospective (see section 24 of this guidance).
Partnership	The parties to a primary authority partnership are a local authority and <ul style="list-style-type: none"> <li>• the business, in the case of a direct partnership; or</li> <li>• the co-ordinator, in the case of a co-ordinated partnership.</li> </ul>
Partnership function	As defined by section 23A of the RES Act, a relevant function that is specified in relation to a partnership by the Secretary of State, as part of his nomination.
Primary authority	As provided for in section 23A of the RES Act, a local authority that has formed a partnership with a business or co-ordinator and is nominated by the Secretary of State to exercise certain functions through that partnership.

## Glossary

Primary Authority Advice	<p>As provided for by section 24A of the RES Act, Primary Authority Advice is advice and guidance provided by the primary authority in relation to a partnership function to:</p> <ul style="list-style-type: none"> <li>• the partner business; or</li> <li>• the co-ordinator for dissemination to businesses in the regulated group.</li> </ul> <p>(see section 6 of this guidance)</p>
Primary Authority Advice to Local Authorities	<p>As provided for by section 24A of the RES Act, Primary Authority Advice to Local Authorities is advice and guidance provided by the primary authority to other local authorities as to how they should exercise the partnership function in relation to:</p> <ul style="list-style-type: none"> <li>• a partner business; or</li> <li>• a business in the regulated group.</li> </ul> <p>(see section 7 of this guidance)</p>
Primary Authority Register	The secure web-based register operated to facilitate the effective operation of Primary Authority.
Primary Authority Terms and Conditions	These are standard terms and conditions that all partnerships nominated by the Secretary of State are required to agree to (see section 4 of this guidance).
Primary Authority Membership List	As provided for in section 23D of the RES Act, a co-ordinator's conclusive list of the businesses that are members of the regulated group in respect of which it is nominated by the Secretary of State (see section 26 of this guidance)
Public Register	<p>As required by section 23B of the RES Act, the public list of nominations maintained by the Secretary of State.</p> <p>(Details of all nominated partnerships are also available in the secure Primary Authority Register)</p>
Qualifying regulator	<p>As defined in section 22B of the RES Act, a qualifying regulator is any local authority acting within the scope of Primary Authority, whether as a primary authority or an enforcing authority.</p> <p>Qualifying regulators, are referred to in this guidance as 'local authorities' as no other regulators are currently specified as qualifying regulators.</p>
Receiving primary authority	<p>A primary authority that receives a notification of proposed enforcement action from an enforcing authority.</p> <p>(This term is used in this guidance to distinguish between two primary authorities that have the same partnership function, in the situation where one of the primary authorities refers a notification of proposed enforcement action to the other primary authority, as provided for in section 29C of the RES Act).</p>



## Glossary

Referral period	As set out in schedule 4A of the RES Act and the CORE Regulations, a defined period of time within which a business may make an application to the Secretary of State for consent to refer a matter for determination (see section 24.43 of this guidance).
Referral primary authority	<p>A primary authority that receives a referred notification of proposed enforcement action from another primary authority.</p> <p>(This term is used in this guidance to distinguish between two primary authorities that have the same partnership function, in the situation where one of the primary authorities refers a notification of proposed enforcement action to the other primary authority, as provided for in section 29C of the RES Act).</p>
Regulated group (or regulated group of businesses)	As defined in section 22A(2) of the RES Act, a regulated group is a group of businesses in respect of which the Secretary of State is able to nominate or has nominated a co-ordinated primary authority.
Regulated person	As defined in section 22A(1) of the RES Act, a regulated person is a legal entity in respect of which the Secretary of State is able to nominate or has nominated a direct primary authority.
Regulatory function	<p>As defined in the Legislative and Regulatory Reform Act 2006 (specified in section 74 of the RES Act), regulatory functions include functions:</p> <ul style="list-style-type: none"> <li>• of imposing requirements, restrictions or conditions in relation to an activity;</li> <li>• of setting standards or giving guidance in relation to an activity; or</li> <li>• relating to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to an activity.</li> </ul>
Relevant function	<p>As defined in sections 4 and 22C of the RES Act, a regulatory function of a local authority that is within scope of Primary Authority by virtue:</p> <ul style="list-style-type: none"> <li>• of the legislation listed in Schedule 3 of the RES Act;</li> <li>• of section 4(3) of the RES Act (certain legislation made under the European Communities Act 1972); or</li> <li>• in Scotland or Northern Ireland, of the CORE Regulations.</li> </ul>
Relevant national regulator	A national regulator or government department that has a role to play in relation to legislation that is in scope of Primary Authority.
Relevant period	As set out in section 25C of the RES Act, a defined period of time within which a primary authority considers a notification of enforcement action that is proposed by an enforcing authority (see sections 21.9 to 21.10 of this guidance).

## Glossary

Summary of Co-ordinated Partnership Arrangements	A written summary of the partnership arrangements agreed between a (prospective) primary authority and a co-ordinator (see section 14 of this guidance).
Summary of Direct Partnership Arrangements	A written summary of the partnership arrangements agreed between a (prospective) primary authority and a business (see section 10 of this guidance).
Supporting regulator	As defined in section 28A of the RES Act, a supporting regulator is a regulator specified by regulation and is able to provide support to a primary authority in its provision of Primary Authority Advice or Primary Authority Advice to Local Authorities, or in its development and management of an inspection plan.
Working day	As defined in section 30D of the RES Act, any day other than a Saturday, Sunday, Christmas Day, Good Friday or certain bank holidays in England, Wales, Scotland and Northern Ireland.  (A clear indication of the relevant bank holidays is available at <a href="http://www.gov.uk/bank-holidays">www.gov.uk/bank-holidays</a> )

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