

## **Primary Authority Scheme and the Fire and Rescue Service**

### **Purpose of report**

To outline the proposed Primary Authority approach to regulating businesses and provide the FSMC with the opportunity to consider the impact on fire and rescue services.

### **Summary**

Primary Authority is now a well established approach to supporting and regulating businesses in relation to both trading standards and environmental health responsibilities. It has been welcomed by industry because it promotes consistent enforcement and reduces burdens on businesses.

Government will be working with pilot fire authorities from autumn 2012 to explore how Primary Authority will work as part of the approach to regulating fire safety. FSMC are asked to provide their initial views on the implications of Primary Authority for fire authorities in order to inform future LGA work on this area.

### **Recommendation**

Members to note the information and discuss the FSMC perspective on the Scheme; and consider whether a letter should be sent to the relevant Minister at the Department for Business, Innovation and Skills signalling our interest in this issue.

### **Action**

Officers to progress as appropriate.

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## **Primary Authority Scheme and the Fire and Rescue Service**

### **What is Primary Authority?**

1. Any business operating across council boundaries can form a primary authority partnership with a single local authority. These partnerships are generally contractual and cover environmental health and trading standards legislation, or specific functions such as food safety or petroleum licensing.
2. Primary Authority was introduced to address concerns raised by businesses about contradictory advice provided by different councils, leading to wasted resources through engaging with a multitude of councils about the same issue and a lack of an effective means for resolving disputes when councils disagreed.
3. The scheme was introduced in 2009. There are currently 554 businesses with a primary authority, which involves 92 councils and over 53 000 premises. Tyne and Wear FRS, Manchester FRS and London Fire and Emergency Planning Authority already have direct experience of acting as a Primary Authority for petroleum and/or explosives licensing. County councils with responsibility for fire and rescue will also have experience of Primary Authority, albeit primarily within the trading standards service.

### **What is the role of the primary authority?**

4. The primary authority provides the business with a single point of contact for reliable advice across their business irrespective of the location of the activity or premise. The primary authority is able to develop an in-depth understanding of processes and working practices to ensure advice is tailored to the unique needs of the business. This knowledge helps inform work undertaken by other authorities.
5. The primary authority receives information from enforcing authorities on areas of non-compliance, which can be used to inform discussions with the business and identify consistent issues that need to be addressed. The primary authority is also required to review any enforcement action proposed by other authorities to ensure it is consistent with advice they have given and proportionate. The primary authority can block enforcement action by other authorities.
6. A primary authority can choose to work with a business to develop an inspection plan, which informs the work undertaken by other authorities with that business.
7. A business can choose what level of support it needs from its primary authority. Resource allocated to a partnership is decided by the authority and business. Where necessary, a Primary Authority can recover its costs from the business under a contractual agreement. The contractual nature of the partnerships serves not only to specify the responsibilities of both the business and the authority, but importantly is used to restrict the liability of the authority.

### **Proposed changes to Primary Authority**

8. The Enterprise and Regulatory Reform Bill proposes the extension of Primary Authority in two key ways – by making inspection plans binding on enforcing authorities and allowing trade associations to join the scheme.
9. Inspection plans are produced in partnership by the primary authority and business. They include recommendations about how enforcing councils should work with the business, including the frequency, nature and circumstances of proactive checks on the business, and requiring feedback on those checks. Guidance states that inspection plans should not be used to influence how enforcing authorities respond to intelligence, complaints or local issues.
10. There are currently only 11 inspection plans in place. Businesses have suggested to Government that the low uptake of inspection plans is because councils are not legally required to adhere to these.
11. The Enterprise and Regulatory Reform Bill will make inspection plans produced by primary authorities binding. Enforcing councils may not deviate from the plan without prior consent and primary authorities can require feedback to be provided after inspections.

### **LGA view on Primary Authority for councils**

12. The LGA supports Primary Authority as one of the key tools that councils can choose to use to provide individual businesses with tailored support, reduce red tape, promote consistent advice from councils and ensure limited enforcement resource is risk based and focused on priorities. Experience has shown that Primary Authority relationships can have benefits for all concerned. However, we have always believed in retaining a strong element of local discretion and have therefore resisted moves from Government to mandate agreements. The LGA continues to support councils that choose to use the voluntary 'Home Authority Principle' if this is considered more appropriate. The Home Authority Principle is a long established approach to providing larger businesses with a single council to contact for advice and guidance in relation to regulatory services.
13. The LGA remains concerned about areas where Primary Authority has the potential to impact on local working arrangements and decision making, particularly in relation to risk management and prioritisation. We recognise this will be of concern to Fire and Rescue Authorities.
14. Specifically, we do not believe that it is appropriate for central government to intervene in these local partnerships by directing authorities to follow inspection plans. Central direction will reduce flexibility and introduce an unnecessary layer of bureaucracy.

## **Impact on Fire and Rescue Authorities**

15. When Primary Authority was established in 2009, the Regulatory Reform (Fire Safety) Order 2005 was excluded from its scope. The Government felt the nature of risks presented by fire meant that Fire and Rescue Authorities (FRAs) would need to take into account local and premise specific issues when ensuring compliance with Fire Safety Orders. The Government is now proposing to bring Fire Safety Orders into Primary Authority and has begun to consider what legislative changes are required to facilitate this.
16. Fire and Rescue Authorities have a great deal of experience at working closely with each other in order to support and regulate businesses. CFOA already provides a great deal of leadership and practical support to promote collaborative working. Primary Authority represents an opportunity to build on these existing strengths and provide fire authorities with an alternative way to help businesses if considered appropriate.
17. However, it is vital that Primary Authority does not undermine local decision making, risk based enforcement or the reputation of Fire and Rescue Authorities. As such, we have begun to explore the implications that Primary Authority could have for Fire and Rescue Authorities.
18. Service planning
  - 18.1 Fire and Rescue Services acting as primary authorities can work with the business to develop inspection plans.
  - 18.2 Advice issued by primary authorities and inspection plans can be used to inform Integrated Risk Management Plans (IRMPs), acting as an additional and useful source of information.
  - 18.3 There is understandable concern that the proposed introduction of compulsory inspection plans could cut across localism and risk based enforcement, however, the advice given under existing Primary Authority relationships has generally been at a 'business policy level' and does not tend to restrict the ability of individual authorities to take local action. Indeed it is local actions and inspections that 'test' the business policies to see if they have been implemented correctly.
19. Advice and guidance
  - 19.1 A Fire and Rescue Service acting as a primary authority on fire safety would be able to issue advice and guidance across the business activities which should be considered by all other authorities. This helps to provide consistent enforcement and maximises resources for authorities and the business. Expert advice of this type also improves business practices.
  - 19.2 In the rare circumstances when a primary authority and enforcing authority disagree then this can be resolved through a process run by the Better

Regulation Delivery Office (BRDO). This is an area where the LGA remains uncomfortable with the need for central intervention.

20. Enforcement action

- 20.1 It is established working practice for environmental health and trading standards services to liaise with the primary authority as soon as they have concerns about business activities in their area. It would be beneficial for Fire and Rescue Authorities to adopt a similar approach and maximise collaborative opportunities from existing regional and national networks, as this can often help resolve problems without the need for formal enforcement action.
- 20.2 Under Primary Authority, an enforcing authority must formally notify the primary authority of any enforcement action it proposes to take. A primary authority can then decide whether the proposed enforcement action is consistent with advice it has given previously and choose to allow or block the action. Enforcement action cannot be blocked unless the primary authority has given advice in relation to the specific issue. BRDO has a role in mediating between the two if required.

21. Costs of Primary Authority

- 21.1 Fire and Rescue Authorities acting as a primary authority can recover their costs from the business concerned. Primary authorities will need to ensure risk based activities are not impacted and this may be more difficult for smaller services.
- 21.2 Some additional resource is required by enforcing authorities to consider advice provided by primary authorities and liaise with the primary authority if required. However, this is partially balanced by the additional intelligence and in-depth business knowledge that can be gained when working with a primary authority.

**Fire and Rescue Pilots**

- 22. The BRDO is currently planning to launch several pilots in October to test Primary Authority on fire safety. All Fire and Rescue Authorities will be invited to participate. It is anticipated that 8-10 authorities and businesses will be selected to pilot with a mix of authority types and business sectors. Progress and results of these pilots will be shared with FSMC.

**CFOA position on Primary Authority**

- 23. CFOA expressed their concerns to BIS over the inclusion of the Fire Safety Order in Primary Authority, feeling that the scheme would create extra burdens including more capacity pressure for Fire and Rescue Services. If this were to occur, there is concern that this would reduce the ability of individual Fire and Rescue Services to gather building information outside of its regulatory role

24. CFOA believes that Primary Authority is not compatible with the ethos of the Integrated Risk Management Plans and therefore the Fire Safety Order is not necessarily suitable for inclusion within the PAS, particularly if inspection plans were made compulsory. Compulsory inspection plans could also clash with the current CFOA audit process, which could result in a costly refresh of forms and systems.
25. CFOA has explicitly highlighted that Primary Authority allows the Government to direct an authority into a partnership, even if it has insufficient resources to be able to act as a primary authority. This approach has yet to be used by BRDO.

### **Retail and Fire Key Authority Partnerships**

26. The Retail and Fire Key Authority Partnerships (RAFKAP) scheme was established in 2006 by CFOA and the British Retail Consortium (BRC). It is a voluntary scheme that enables a retail business with multiple outlets to establish a relationship with a single authority for advice and guidance. CFOA currently hosts a register of partnerships on their website and work is underway to improve information exchange. Enforcing authorities can also liaise with the lead authority about any concerns they may have. Partnerships with 22 businesses are now in place.
27. RAFKAP is a strong example of how Fire and Rescue Services have explored new and innovative ways to support businesses by working collaboratively on a voluntary basis. Partnerships in place work well, however, CFOA believe the benefits of a non statutory scheme are only just being realised by both business and Fire and Rescue Services and it will take time for this approach to become embedded.

### **Proposed LGA action**

28. It is proposed that the LGA write to BRDO and the Department for Communities and Local Government to provide an update on discussions at the FSMC.
29. We recommend that the letter convey support for the principles behind Primary Authority, while emphasising the importance of local decision making and minimising bureaucracy for authorities. The letter can also signal clear LGA interest in the pilots, as they will be fundamental to understanding the unique implications of Primary Authority for Fire and Rescue Authorities. It is proposed that we recommend the pilot also considers what can be achieved through a voluntary approach, such as the RAFKAP model.

### **Additional information**

#### **30. Review of Fire Safety Enforcement**

- 30.1 BIS, in partnership with recently undertook a Review of Enforcement of the Regulatory Reform (Fire Safety) Order 2005. This Review sought to explore the experiences of businesses and organisations of working with fire safety officers and local fire and rescue authorities. The Government is keen to understand business perceptions of local regulators and enforcement bodies to ensure that

businesses - particularly small - medium enterprises - are able to get the advice and support they need to comply with regulations in a helpful and proportionate way. Responses were invited on the online forum which can be viewed here:

<http://discuss.bis.gov.uk/focusonenforcement/sample-page-2/>