

Fire and Rescue Service Pilots considering the application of Primary Authority to Fire Safety

Purpose of report

For discussion and direction.

Summary

The Government is considering applying the principle of Primary Authority to fire safety. Two pilot schemes have been running between 1 January and 30 June 2013 to consider an approach based on the statutory Primary Authority Scheme and a second non-statutory sector led approach.

This paper outlines the pilot approach and some of the interim findings.

Recommendation

Members are asked to consider the issues raised in the paper.

Action

Officers will take action as directed.

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Background

1. Primary Authority was introduced in 2009 with the aim of improving the relationship between businesses and local authorities in relation to the application of regulatory services.
2. The scheme gives businesses the right to form a statutory partnership with one local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance.
3. The Enterprise and Regulatory Reform Act 2013 introduced two changes to the Primary Authority Scheme:
 - 3.1. the extension of the scheme to trade associations; and
 - 3.2. making inspection plans binding on enforcing authorities.
4. The LGA welcomed the extension of the scheme to trade associations, but objected to inspection plans being enforceable.
5. When Primary Authority was established, the Regulatory Reform (Fire Safety) Order 2005 was excluded from its scope. The Government acknowledged that concerns about the impact on integrated Risk Management Plans could not be resolved at that time. The Government committed to reviewing this decision within 3 years.
6. In the Government's response, in December 2011, to the Transforming Regulatory Enforcement consultation, it stated that:

'In the case of fire safety, we will look to introduce pilots to see whether and how Primary Authority could fit alongside current legislation and enforcement mechanisms.'
7. At its meeting in September 2012, FSMC discussed the issue of Primary Authority. The Committee noted that the LGA was in general in favour of the Primary Authority Scheme 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. However, it reserved its judgement on the application to fire safety until the completion of the pilots. Following the meeting Cllr Kay Hammond wrote the responsible minister, Michael Fallon MP, offering support for the pilots and backing CFOA's call for a parallel pilot into a non-statutory scheme.

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8. The Chief Fire Officers Association (CFOA) position is that it remains to be convinced that the Primary Authority Scheme (PAS) can be applied to the fire safety enforcement regime and integrated risk management model. It is concerned that there is significant potential to cut across local decision making and there may also be additional costs incurred and / or a reduction in the ability for a local fire and rescue service (FRS) to accurately assess buildings subject to a PAS and covered by another FRS.
9. It has called for a non-statutory approach and following agreement with Ministers, it has run a non-statutory pilot concurrently with the pilot Primary Authority Scheme.

Pilots

10. Ministers announced the decision to engage in pilots for fire safety on 24 October 2012. Following representations from CFOA, Ministers agreed to test two schemes concurrently:
 - 10.1 a statutory scheme (an extension to the existing Primary Authority scheme) run by BRDO; and
 - 10.2 a non-statutory scheme, the Fire Authority Partnership Scheme, run by CFOA.
11. The pilots began 1 February 2013 and closed on 30 June 2013, engaging 19 Fire and Rescue Services and 21 businesses from varying sectors.
12. The aim of the pilots has been to assess:
 - 12.1 The efficacy of extending a primary authority scheme to fire safety, focusing on:
 - 12.1.1 The cost of implementation;
 - 12.1.2 Impact on Fire Service capacity; and
 - 12.1.3 Impact on Integrated Risk Management Plans.
 - 12.2 Whether the non-statutory or statutory scheme is preferred, should the concept be applied to fire safety.
13. The key differences between the pilots is that the non-statutory scheme seeks to mitigate the risk to local risk management planning by ensuring that any inspection plans respect local IRMPs and that specific provision is made for continuing visits by local response personnel. The non-statutory scheme will also enable FRAs to negotiate contributions from businesses to local community safety initiatives in addition to scheme cost recovery.

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14. The non-statutory pilot scheme, if adopted would be dependent on a binding memorandum of understanding between all fire and rescue authorities, in other words it would not be a voluntary scheme.

Emerging issues

15. Both schemes have been the subject of a single independent evaluation process which is being undertaken by acl consulting. An interim report was produced in May 2013 and a final report is due by the end of July.
16. It is clear that a substantial amount of work has been undertaken by fire and rescue authorities and their business partners in both pilot schemes. The pilots have been very well managed. Partnership working between FRAs and businesses across both pilot schemes has been very positive. In all cases FRAs and businesses are seeing this as the development of a long-term relationship.
17. To date, the pilots have not been able to provide, in any great depth, information on how the statutory and the non-statutory schemes would work in practice. This reflects the short timeframe for the pilots and that it has been necessary to use the time to develop the relationships between the FRAs and businesses within individual partnerships. Assured advice has been developed in some cases, and scenarios have been developed to test the inspection plan and adjudication processes.

Impact on integrated risk management

18. The key question is whether the provision of assured advice and the establishment of an inspection plan will undermine integrated risk management. The pilots have provided an opportunity for participants to gain a deeper understand of these tools and how they operate across other regulated areas. The evidence from these other areas is that assured advice is provided at a very strategic level. In terms of inspection plans, these have not been widely used in other regulated areas.
19. The pilots have gone some way to allaying the initial concerns about the application of a PAS type scheme to fire safety.
20. However, there is still concern about the application of the statutory scheme to the fire sector, including binding inspection plans, which could result in one fire authority determining practice in other fire authority areas. The concern arises from the wording of the Enterprise and Regulatory Reform Act 2013 which makes the adherence to inspection plans compulsory.
21. Those who favour the statutory Primary Authority Scheme point to current practice in other regulated areas to attest that assured advice and inspection plans will not be used to direct or restrict inspection activity. Those who favour the non-statutory approach point to the fact that, as drafted, the legislation is open to a different interpretation.

Costs

22. FRAs are providing information in both pilots on the costs of implementing the scheme and the extent to which they are likely to be covered by cost-recovery systems. The pilots also hope to provide information on costs accruing to enforcing authorities. Any such costs will need to be considered by DCLG in the context of new burdens.

Timescales for decisions and implementation

23. The six month pilots have now ended and Ministers have committed to making decisions quickly. If the decision is to apply either a statutory or non-statutory scheme to fire safety, the expectation is that this would begin in October 2013. Given that only a few fire authorities have been engaged in the pilot schemes an October 2013 start date for a full roll out seems too soon. There is value in delaying any implementation until April 2014.

Conclusion and next steps

24. The Pilots are demonstrating that the PAS approach can be applied to Fire Safety. There are still a number of issues to be resolved including costs to enforcing authorities and how these are dealt with.
25. CFOA has the agreement from all Fire and rescue services that the option of a sector led scheme should be provided to the Minister alongside the Primary Authority scheme. CFOA has written to ministers stating that the majority view from Chief Fire Officers is in favour of a non-statutory scheme. The Minister's response is attached as **Appendix A**. The Minister has asked for the LGA's view on the approach to be taken. Cllr Hammond will respond to the Minister's letter following FSMC's discussion.
26. A binding memorandum of understanding between all fire and rescue authorities is required for the non-statutory scheme to be credible and it would help ministerial decision-making if this were available now.