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LACORS report – Decisions and Actions Required

Decisions

1. Members are asked:
 - to comment and advise on the work undertaken by LACORS to engage with the Better Regulation Agenda.
 - to raise any questions following a presentation they will receive from the Local Better Regulation Office.

Actions Required

2. Officers to provide a progress update in the autumn of 2007 on the implementation of this strategy

Action by: LACORS officers

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Summary

1. This report takes a thematic approach in outlining the core areas of work that LACORS are currently engaged with to address developments in and around the better regulation agenda.
2. The report outlines work around a series of key areas and themes linked to the outcomes of the Hampton Review in 2005 and will consider LACORS involvement in;
 - i. The development and establishment of the Local Better Regulation Office (LBRO)
 - ii. The review of national enforcement priorities for local authority regulatory services (Rogers).
 - iii. The examination of penalties and the system of regulatory sanctions (Macrory)
 - iv. Regulators Compliance Code
 - v. Government simplification plans/lifting the burdens

Background

3. In 2005, Phillip Hampton on behalf of the Treasury published a review aimed at identifying ways in which the administrative burden of regulation on business could be reduced while simultaneously ensuring that regulatory outcomes were maintained. Hampton argued that the business community were concerned about the cumulative burden of regulations, particularly the issues of multiple inspections and overlapping data requirements and inconsistency in practice locally.
4. The Hampton Review identified a series of enforcement principles which included;
 - regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
 - regulators should be accountable for the efficiency and effectiveness of their activities
 - no inspection should take place without a reason;
 - businesses should not have to give unnecessary information, nor give the same piece of information twice;
 - the few businesses that persistently break regulations should be identified quickly;

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- regulators should provide authoritative, accessible advice easily and cheaply; and
- regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection

5. Aside from the recommendation that government establish a Local Better Regulation Office, the Hampton review initiated a series of policy work streams looking at various elements of the regulatory services agenda. This included the commissioning of Professor Richard Macrory in September 2005 to examine the system of regulatory sanctions, and in 2006, the commissioning of Peter Rogers, Chief Executive of Westminster City Council, to review national enforcement priorities for council regulatory services.

6. The report will now consider in greater depth these various policy streams and LACORS engagement with them.

The Local Better Regulation Office (LBRO)

7. Following the Hampton Review, it was recommended that a Consumer and Trading Standards Agency (CTSA) be established to oversee trading standards work and to consider a new approach to regulating “big business” (which included options to centralise this function). LACORS responded to the consultation, supporting parts of the CTSA agenda but expressing serious reservations about its limited scope and its options to take away parts of business regulation from local authority control.

8. Following this period of consultation, government announced the creation of a Local Better Regulation Office (LBRO) rather than the CTSA which would be wider in scope and look to improve local regulation across a broader scope of duties. Furthermore, removing big business regulation from local government seems to have dissipated, and the government have supported LACORS stance that future emphasis should be placed on improving and strengthening the existing home authority principle¹ rather than the removal of services from councils to improve consistency in advice and enforcement.

Role of the LBRO

¹ **Home Authority Principle** - A local authority acting as a home or originating authority will place special emphasis on the legality of goods and services originating within its area. It aims to prevent infringements by offering advice and guidance at source in order to maintain high standards of public protection at minimum cost

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9. The LBRO will be a new non – governmental department body set up to reduce burdens on business imposed by council trading standards and environmental health services without compromising the public protections that the regulations provide.

10. LBRO will implement key Hampton recommendations that council regulatory activities. This will help promote better targeting of resources on the areas where they can have the greatest impact and deliver more consistency for business.

11. During 2007, LBRO will be established as a company fully-owned by Government with a programme budget to support trading standards and environmental health services in applying innovative approaches and good regulatory practice to inspection and enforcement. With relevant business, local authority and national regulation skills, background and competence, the Board members will have the expertise and influence to change the behavior of local authority regulatory services.

12. The government is currently recruiting a board of directors for the LBRO and has recently appointed Clive Grace² as its Chairman. The process for appointing a Chief Executive is currently underway.

13. It is intended that the LBRO will have powers to:

- tackle inconsistencies in enforcement for multi-site business between different local authorities including providing effective arbitration in disputes;
- issue guidance to local authorities to which they will have to have regard;
- review and revise a list of central government priorities for LA regulatory services; and
- Provide advice to Government on regulatory issues associated with local government.

LACORS Engagement with and Position on the LBRO

² Clive Grace is currently Chairman of Supporta plc, a company providing services to the public and private sectors. Until 2005 Clive was the Director General of the Audit Commission in Wales and Deputy Auditor-General for Wales, and prior to that he was Chief Executive of Torfaen County Borough Council

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14. LACORS will, on behalf of local government, work with the Better Regulation Executive to influence what the LBRO will look like and try to ensure that this new Government body adds value and not an unnecessary role and remit to council regulatory services.

15. LACORS has identified and addressed a series of key lobbying points including the retention of key regulatory services within local Councils and a risk based approach by Council regulatory services that focus enforcement on the businesses that put the public, consumers, workers and the environment at greatest risk.

16. LACORS has to date participated fully on all the relevant LBRO working groups and welcomes the broader scope afforded by the LBRO as opposed to the narrower one initially envisaged for the CTSA and will continue to ensure that LBRO does not add additional burdens to local authorities in relation to inspections, audits performance management regimes etc.

17. LACORS will continue to lobby, ensuring that councils, central regulators and departments are treated with equity by the LBRO. Currently some government departments and agencies are of the view that LBRO would not impact on them.

18. LACORS believes that any developing proposals need to be fully integrated with the wider agenda currently being developed by the LGA and partner organisations regarding performance improvement and monitoring within councils. It will be essential that a parallel structure is not developed in addition to the wider post CPA framework currently planned for the local government sector.

The Rogers Review of National Enforcement Priorities

19. During 2006, The Treasury announced that it would commission Peter Rogers, Chief Executive of Westminster Council, to undertake a review of national enforcement priorities for council regulatory services. Following the examination of 60 policy areas, the review recommended that government should specify 5 priorities for council trading standards and environmental health services which are:

1. Air quality, including regulation of pollution from factories and homes

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2. Alcohol, entertainment and late night refreshment licensing and its enforcement
3. Hygiene of businesses selling, distributing and manufacturing food and the safety and fitness of food in the premises
4. Improving health in the workplace
5. Fair trading (Trade description, trade marking, mis-description, doorstep selling)

20. The review also recommended that animal and public health should be a further, time limited enforcement priority. It is noted that the LBRO will be asked to refresh these enforcement priorities on a regular basis.

LACORS Position on the Rogers Review

21. In April, LACORS formally responded to the Rogers recommendations welcoming the findings contained in the report recognising that they reflect widely held concerns that government to date has set too many priorities for council regulatory services. LACORS believe that the review will help councils to be able to better balance and focus on what is most important to their local communities.

22. LACORS believes that fewer national priorities and a better definition of 'statutory' expectations, will allow local councils to better use their resources to more effectively meet the needs and expectations of their local communities as well as contribute to national priorities.

23. Furthermore LACORS believe that the national priorities should form an integral part of the new national performance framework for local services set out in the Local Government White paper and the subsequent Local Government and Public Involvement in Health Bill which is currently being developed. LACORS see it as essential that an emphasis is placed on performance indicators for some or all of these policy and legislative areas to form part of the proposed 200 performance indicators for local government currently being negotiated to secure better outcomes for communities in these important frontline council services.

24. LACORS does not want to see the 6 priorities being followed by an additional sub-set of priorities. We believe that this would eventually lead to a substantially larger number of overall priorities and increase the complexity of implementing this agenda locally. To address this issue, it will be vital

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that the Local Better Regulation Office (LBRO) engage with LACORS to ensure expectations are realistic, proportionate and risk focused. We are committed to helping that happen effectively.

25. It will be crucial that councils through LACORS and the LGA are able to negotiate and discuss the outcomes that government is looking for in the 6 priority areas which will need to be realistic; outcome focused and underpin the overarching objectives in the central/local shared priorities. Government should worry less about how councils deliver these outcomes and certainly be less prescriptive and input driven, enabling councils to be creative and innovative in the way they achieve the shared outcomes. We accept however, that government may want to see some progress in terms of moving towards desired outcomes and so discussion and agreement on direction of travel indicators which will be necessarily proportionate and appropriate.

26. Rogers suggests that through the LBRO, the list of priorities should be reviewed at least every 3 years. LACORS would suggest that a mechanism be created that would allow for a refresh of the analysis where evidence may emerge to support this. LACORS would also suggest that this process would allow for a more systematic involvement of other key stakeholders (including ourselves) in testing the evidence rather than rely solely on a single source of data from government departments which lead that particular policy area.

27. LACORS would also wish to reflect upon what is not included in the priorities but which may have future impact, in some cases unexpectedly. For example a major concern on product safety may require some quick legislation and/or enforcement that skew resources to an existing or new policy area. This will also be true for addressing national incidents such as chemical or food contamination. It will be important that the system has a degree of flexibility that allows partial movement to locally defined priorities but not wholesale movements from one to another without legitimate justification. Furthermore, it will be important to ensure that those services that are neither a local or central priority but require delivery on a statutory basis are also recognised.

The Macrory Review on Regulatory Sanctions

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28. In March 2005 the Hampton Review stated that existing penalty regimes were cumbersome and ineffective. The Government asked Professor Richard Macrory in September 2005 to examine the system of regulatory sanctions and penalties available to enforcers

In November 2006 professor Macrory issued his final report, laying out a vision including the introduction of alternative sanctions and allowing regulators to have full access to a wider toolkit of sanctions when undertaking their work.

29. Macrory argued that initial steps had already been undertaken by a number of central government regulators but believes there must be a 'change of culture' in order to become more transparent and accountable in their use of sanctions and the need for uniformity amongst regulators nationally.

30. He further argued that the effectiveness of criminal courts needed to be improved and that access to more imaginative sentencing options should be available, rather than rely on the simple imposition of fines. Where formal sanctions were required they should be less reliant on criminal prosecutions making greater use of statutory notices or fixed and variable monetary administrative penalties.

31. It was further recommended that a review should be initiated on the drafting and formulation of criminal offences relating to regulatory non-compliance. The Better Regulation Executive should facilitate a group of regulators and sponsoring departments to share best practice, application of sanction options and development of outcome measures and transparency in reporting.

32. Each regulator should publish a list on a regular basis of its completed enforcement actions and against whom such actions have been taken.

LACORS Position on the Macrory Review

33. LACORS believes councils are capable of meeting any challenges that this report may herald and we are committed to working with the Cabinet Office and other central government departments to ensure that the recommendations become workable solutions.

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34. LACORS recognises that regulators must have a broad sanctioning toolkit that is flexible and proportionate. Risk-based sanctions can provide a deterrent and help raise standards across industries thus creating a level playing field. However this must be available to all council regulatory service on an equal footing.

Regulators Compliance Code

35. The Better Regulation Executive (BRE) provided an update in 2006 to interested organisations and individuals regarding the proposed Regulators Compliance Code. Following the Legislative and Regulatory Act 2006, the Government now has the power to issue a Regulators Compliance Code which will legally oblige listed regulators to have regard to the Hampton principles (see above) when forming policy, rules, codes and guidance. The government intends that it should be enacted by autumn 2007, before coming into force on 1 April 2008.

36. The government will undertake a public consultation based on an updated draft code which is intended for the spring/summer of 2007. The timeframe is intended to give regulators plenty of time to prepare and make any necessary changes to their policies, procedures, rules and guidance, to become Hampton compliant by the date the code comes into force. This, in turn, should help minimise the likelihood of vexatious litigation. The government expects to see steady progress from regulators over the next 15 months, rather than a big bang approach from April 2008.

37. The government has confirmed it will need the help and expertise of the regulators – and their lawyers – in drawing the Order up. The BRE is currently having discussions with Treasury Solicitors as to how they believe the list might best structured. Options being considered include basing the list on the enabling Acts or looking to list areas which are regulated such as money laundering.

LACORS Position on the Compliance Code

38. LACORS continue to input into the draft compliance code and are discussing with government some of the ‘big issues’ of relevance to council regulatory services based on consultation with local practitioners and heads of service.

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39. LACORS have noted that there is a degree of confusion from councils regarding where responsibilities fall to them locally and where they fall to Government at the centre. LACORS have also commented on the issue of 'new burdens' and the extent to which their impact on regulatory services has been properly considered. There are some concerns that some of the sections of the code appear to create significant new expectations with associated cost implications for local services.

40. LACORS will continue to input into the development of the compliance code in the coming months.

Simplification Plans

41. In 2006, the government unveiled an action plan identifying numerous ways to reduce regulation. The 'Simplification Plans' are designed to save business and the third sector over £2bn in administrative costs. The measures across 19 departments and agencies have been identified as a result of comprehensive consultations with business, the third sector and members of the public. The intention is to cut administrative burdens by 25% by 2010.

42. Specifically for local authorities, the government is proposing that council regulatory services move to a risk-based approach, which will result in 33% less inspections for compliant businesses.

LACORS Position on the Simplification Plans

43. LACORS has attended a number of meetings with representatives from government to discuss the role of regulatory services in this process. LACORS are encouraged by the government's proposals to help reduce regulatory burdens on businesses and councils. Local authorities are keen to support good businesses to help them secure compliance with those regulations that are in place to protect people.

44. Inspections by council regulatory services that are risk based, targeted and joined-up have an important contribution in delivering regulatory excellence. By creating a level playing field and ensuring fairer competition, regulatory services can directly benefit the local economy. With finite resources available, councils recognise that they need to deploy those resources in the most effective and efficient way and ensure the delivery

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of regulatory outcomes and that the regulations themselves do not act as a barrier to innovation and business vitality.

45. To date, LACORS have been engaged with a number of government departments in developing their simplification including those of the Health and Safety Executive (HSE) and the Department for Environment, Food and Rural Affairs (DEFRA).

46. The Defra simplification initiative aims to deliver a 30% reduction on the £528m annual burden that Defra regulations currently impose, including a £25m reduction from 'environmental regulations'. The simplification plan aims to reduce the burdens on business and regulators by introducing the Environmental Permitting Programme (EPP) – a streamlined permitting systems for waste and major industrial operations covered by PPC, which will reduce administrative costs and introduce efficiency savings through the integration of two permitting regimes. Improvements to the interface between land use planning and pollution control systems are also expected to deliver a reduction in administrative costs.

47. LACORS is engaged with the Lifting the Burdens Taskforce (see below), looking at reducing the burdens on councils from each of the government departments, and has fed into the review of Defra burdens on councils, including those relating to environmental protection. LACORS is also engaged with both Defra and the Environment Agency on the better regulation agenda relating to environmental protection – including the Environmental Permitting Programme

Lifting the Burdens Task Force

48. The Lifting the Burdens Task Force was announced in July 2006 by the Secretary of State for Communities and Local Government. The Task Force is an independent practitioner body that has been set up to review the bureaucratic and performance management burdens that exist as a consequence of the current relationship between Central and Local Government. The Task Force will identify which requirements cause the most difficulty on the ground and which add the least value and agree packages of burden reduction with Government

49. The Task Force is initiating a range of reviews over the coming 18 months to examine the nature of the relationships between individual

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Government Departments and local government with a view to identifying specific recommendations for change in the way in which local services are monitored, regulated and held to account by sponsor departments. Targets and performance indicators will be a significant theme as the Government delivers its White Paper commitment to reduce them to 200 and set up new LAAs with fewer targets.

LACORS Position and Involvement with Lifting the Burdens Task Force

50. To date, LACORS have contributed to three reviews of departmental burdens in conjunction with the LGA which have included the DCLG review of Housing, DCMS' review of licensing and Defra's review of animal health.

51. LACORS will shortly be contributing to a further review on Local Area Agreements as commissioned by DCLG.

Implications for Wales

52. A substantial element of our work within the 'Transforming Regulatory Services' intervention including our recent work with Tavistock has a direct overlap with Wales and partially with the other UK devolved administrations .

Financial/Resource Implications

53. This project is part of LACORS core business and will be funded through our standard top slice allocation and currently have no wider financial implications.