

## **Government consultations on regulatory matters**

### **Purpose of report**

For decision.

### **Summary**

Over the summer the government has launched a number of consultations which have implications for regulatory services. These consultations cover empowering and protecting consumers; the future of the Local Better Regulation Office (LBRO) and the extension of the primary authority scheme; and, transforming regulatory enforcement to free up business growth. This report provides details of the consultations and set out draft responses to them for the Board to consider.

### **Recommendations**

Board members are invited to:

1. Discuss the three government consultations on Empowering and Protecting Consumers; the future of the LBRO and the primary authority scheme; and Transforming regulatory enforcement; and
2. Comment on the draft LG Group responses.

### **Action**

LG Group officers to finalise the Group's responses and submissions in light of members' comments.

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## **Government consultations on regulatory matters**

### **Background**

1. Over the summer the government has launched a number of consultations related to regulatory services, which therefore fall within the remit of the Board, and all of which require a response in September. These are:
  - 1.1. Empowering and Protecting Consumers (<http://www.bis.gov.uk/Consultations/empowering-and-protecting-consumers?cat=open>). A Department of Business, Innovation and Skills (BIS) consultation on changes for provision of consumer information, advice education advocacy and enforcement;
  - 1.2. The Future of the LBRO (Local Better Regulation Office) and Extending the Benefits of the Primary Authority Scheme (<http://www.bis.gov.uk/Consultations/future-of-local-better-regulation-office-and-primary-authority-scheme?cat=open>); and
  - 1.3. Transforming the regulatory Enforcement: Freeing up Business Growth (<http://www.bis.gov.uk/Consultations/transforming-regulatory-enforcement-discussion?cat=open>).
2. This paper provides the Board with a summary of the government's papers and sets out draft responses from the LG Group for members to comment on.

### **Empowering and Protecting Consumer Consultation**

3. The Department of Business Innovation and Skills (BIS) is looking to empower consumers as part of its aim both to hand greater power to the public and increase economic growth. The government takes the view that informed consumer choice stimulates competition and innovation. Consumers will only be empowered if there is a framework of competition and consumer law, with this law being enforced. BIS is therefore proposing a number of reforms to the current consumer enforcement arrangements to ensure that consumer advice, representation and enforcement are delivered efficiently and effectively.
4. The proposals BIS have developed are designed to achieve the following objectives:
  - 4.1. Reduce the complexity of the consumer protection landscape;
  - 4.2. Strengthen the effectiveness of consumer enforcement; and
  - 4.3. Provide more cost-efficient delivery, closer to the consumer front line.

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5. At present responsibilities for enforcement of consumer and competition law is split between councils' trading standards services and the Office of Fair Trading (OFT), with trading standards performing the vast bulk of this enforcement work. Trading standards in BIS's view face challenges due to the reduction in council spending, while the National Audit Office has pointed to problems of overlap and lack of coordination between trading standards and the OFT.
6. In order to achieve the three objectives BIS has identified the government is seeking to ensure that responsibility for each aspect of consumer advice, representation and enforcement is clear and rests with one of three institutions: Citizens Advice providing advice and education, and acting as the lead national consumer advocate; trading standards delivering consumer protection functions; and the proposed Competition and Markets Authority (CMA) which will be created from merging the functions of the OFT and Competition Commission.
7. If trading standards services are to fulfil the government's proposed role then BIS believes a number of issues have to be addressed. Funding for trading standards is expected to reduce from £213 million in 2009 to an estimated £140-170 million in 2014. This reduction in funding could lead in the view of BIS to capability varying considerably across the country. BIS fears this could mean activity which crosses council boundaries will not be properly addressed, so a long term strategy is needed to improve the effectiveness of enforcement against national and cross-authority threats.
8. BIS has therefore identified 3 main options for reform of consumer enforcement powers and responsibilities and has asked for views on the following:
  - 8.1. **Option 1:** All of the OFT's current consumer enforcement functions (and associated funding) are transferred to council trading standards services. The government does not favour this option as they believe it would make it more difficult to deal with structural problems in complex markets.
  - 8.2. **Option 2:** All enforcement other than at a local level is undertaken by the proposed Competition and Markets Authority. Council trading standards departments would deal with problems in their own area, but not those that crossed council boundaries. To enable the CMA to deal with cross-council threats, funding would probably have to be taken from councils to fund regional CMA teams.
  - 8.3. **Option 3:** The majority of OFT's current consumer enforcement functions are transferred to trading standards services along with the OFT resources (an estimated £15-20 million) that went with the functions. The CMA would retain responsibility for dealing with structural problems in complex markets. The

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new ring-fenced funds available to trading standards would be used to build capacity in trading standards to take on national and cross-authority cases and not used to support local activity against local threats.

9. National and cross-council boundary enforcement would be undertaken in Option 3 by lead authorities or lead regional teams of trading standards officers. A Trading Standards Policy Board (TSPB) made up of trading standards chief officers could decide national, regional and cross-council boundary enforcement priorities, decide which authorities or regional teams had the expertise to deal with them, and then allocate cases and funding related to these priorities to councils or regional teams to take on. BIS proposes that political oversight of the work of the TSPB would be provided by the LG Group and BIS. Option 3 is the government's preferred option.
10. Having set out these three options the consultation states that the most realistic alternative to Option 3 is to broadly maintain the status quo in terms of powers and responsibilities, but to reform the way collaboration takes place between local and national enforcement. In what is effectively an additional option the CMA would take over the OFT's current responsibilities. However some of its resources for national enforcement would be handed to a joint enforcement board (JEB) made up of representatives from the CMA and trading standards. The JEB would fulfil much the same role as the TSPB in Option 3, with either the CMA staffing the JEB or it acquiring a legal personality of its own. From BIS's perspective the JEB model would not provide investment in national and regional trading standards infrastructure, it would have less scope to bind in trading standards, and would not be controlled by trading standards.
11. In terms of the LG Group's objectives of seeing greater powers and responsibility handed to local government from Whitehall, Option 3 would seem to provide a more localised model with greater influence for local authorities. Trading standards services would have the lead role in consumer enforcement not just in their area but regionally and nationally; there would be additional funding available to maintain and develop trading standards' expertise; and councils would have an even more visible role in tackling rogue traders and businesses.
12. However Option 3 carries risks. It would see chief trading standards officers making day to day decisions on what national, regional and cross-council boundary consumer protection issues were a priority and allocate resources to addressing these. It is not clear (other than through political oversight by the LG Group) how the TSPB's decisions would reflect the public's experiences as consumers, and their views on priorities or indeed the wider priorities of local authorities and the issues they would wish to see addressed. The TSPB would also be responsible for ensuring large and complex cases were dealt with, which would raise novel legal issues in the UK, and be necessary to ensure the UK was

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fulfilling its duties under European law. Furthermore the TSPB would have to manage cases to ensure they were designed and delivered effectively and there was some consistency, while those authorities taking on cases would have to have some form of insurance provided in the event they took a case and lost it in court.

13. Given these significant risks, option 3 therefore need to be considered very carefully. The proposed role for the Group would seem to provide little in the way of added value at a national level; is not clearly defined in the consultation proposal so it is difficult to assess the wider implications; and would stretch the capacity of the Group. More importantly, the Group might have liabilities arising from the handling of individual cases, could be held responsible for how cases were prioritised, and might have audit responsibilities for how funds were spent. There could also be an impact on the Group's relationships with its members with funding being provided to some member authorities to undertake the national regional, and cross-council boundary work, but not to others.
14. Understanding that trading standards chief officers will support this greater role for trading standards services, there is no reason that councils cannot fulfil the role outlined in the consultation. However a more appropriate role for the Group would be to help facilitate the spread of good practice through policy forums and the Group's Communities of Practice rather than an integrated and political oversight role. The Association of Chief Trading Standards Officers and the Trading Standards Institute will be submitting their own responses to the consultation, which will undoubtedly support a greater role for trading standards in consumer law enforcement. Members views of the draft response to the consultation set out at **Appendix A** are sought in light of all these considerations.

### **The Future of the LBRO (Local Better Regulation Office) and Extending the Benefits of the Primary Authority Scheme**

15. BIS is also consulting on its proposals to dissolve the Local Better Regulation Office (LBRO) in its current form and transfer its functions to the Better Regulation Delivery Organisation (BRDO) in the department. The BRDO would be responsible for simplifying the regulatory system and advising central government on regulatory delivery. It would also have responsibility for the Primary Authority scheme. As well as consulting on the dissolution of the LBRO the consultation also covers the development of the Primary Authority scheme, with proposals to:
  - 15.1. strengthen the role of inspection plans to deliver earned recognition for business;
  - 15.2. broaden the eligibility criteria to enable more organisations to participation the scheme; and

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- 15.3. extend the scheme to include specific areas of regulation which are currently out of scope.
16. The LBRO was established in 2007 and given a statutory footing in 2008 as a non-departmental public body. The government reviewed the need for the LBRO as part of its review of public bodies in 2010 and concluded that it should be dissolved. The LG Group had pushed for the LBRO to be included in the review of public bodies and had argued there was little need for an independent body like the LBRO. The proposal from BIS to subsume the LBRO into the department is therefore entirely in line with the approach previously taken by the Group. The suggestion in the consultation is that the BRDO will focus on providing advice to central government on regulatory matters, and will cease its current functions of providing local authority service improvement guidance.
17. It would still be important for councils to have links to the BRDO to ensure local authorities' views are represented, and enforcement issues raised by businesses are understood. This would be facilitated by the proposal that the BRDO have a steering group, which would include LG Group (and WLGA) representation on it.
18. The Primary Authority scheme was established under the Regulatory Enforcement and Sanctions Act 2008 with the aim of providing more consistent regulatory enforcement for businesses, charities and other organisations operating in more than one council area. It means that a business can establish a partnership with a single council to access advice and support on its regulatory responsibilities, with the primary authority then liaising with other councils to ensure inspection and enforcement actions reflects this advice. Whilst this overall aim can be supported there are potential tensions which may arise with the localism agenda where in order to achieve uniformity, a local authority's ability to act locally in a different way from that centrally prescribed is constrained.
19. A key feature of the primary authority scheme is inspection plans, which reduce unnecessary inspection and allow for a more targeted risk based approach to inspections. Currently councils have to have regard to the inspection plans produced by primary authorities. The consultation proposes to strengthen inspection plans agreed with the Primary Authority, which are of some concern. The changes would mean a presumption that such inspection plans need to be adhered to, and local authorities wishing to look at other matters on a routine inspection of a premises in their area would be required to get written permission from the Primary Authority before so doing.
20. The consultation also makes reference to extending the Primary Authority Principle to other areas of legislation not previously covered. These include age related sales, Part 1 of the Housing Act (in relation to enforcement of the Housing Health and Safety Rating System), the Regulatory Reform (Fire Safety) Order

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2005, and the Licensing Act (particularly concerning age restricted products) and Gambling Act.

21. The scheme would allow larger businesses with premises in several different local authority areas to have a consistent benchmark of what would be accepted as minimum compliance. The intention being that a larger company could have some confidence that particular company-wide strategies would be widely accepted.
22. The draft LG Group response (**Appendix B**) suggests that extending the scope of the primary authority scheme in these areas would not necessarily be supported by the Group. If the use of the scheme will in effect simply be to clarify definition it would be hard to justify objection. The example given in the consultation of ensuring a clear definition to determine a consistent understanding of what a knife is from an age related sales perspective might be one such example. If however the extension of the scheme might restrict an authority's ability to act in a flexible way which is carefully designed to meet the interests of their locality, then this would not be in line with the Group's policies of seeking greater flexibility and discretion at a local level.

**Transforming the Regulatory Enforcement: Freeing up Business Growth**

23. The final better regulation consultation from BIS was launched as a Discussion Paper entitled 'Transforming the Regulatory Enforcement'. This is intended to explore the way regulatory enforcement is carried out, and puts forward some initial thinking on areas for reform that might help reduce burdens on business. The paper proposes an enforcement strategy built around three principles:
  - 23.1. greater accountability;
  - 23.2. recognising and promoting good practice (including earned recognition);  
and
  - 23.3. greater transparency.
24. It is understood from BIS that the feedback received on the transforming regulatory enforcement consultation will help to inform the production of a White Paper in the autumn.
25. The general tone of this consultation is not altogether positive from a local authority perspective. The specific questions asked of businesses appeared to be designed to elicit problems and difficulties businesses may have had with enforcers rather than to identify and quantify the vast majority of situations where the local authority/business relationship is positive. A draft consultation response is set out at **Appendix C**.

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**Conclusions and next steps**

26. As indicated the draft responses from the LG Group will be amended in the light of members' comments before being presented to the meeting to be held in September.

**Financial Implications**

27. Any costs associated with this work would be met from existing LG Group budgets and resources. Any functions devolved to local authorities from the OFT in relation to the 1<sup>st</sup> consultation would be funded in their entirety by the funds provided by BIS.