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Draft Response to the Future of the LBRO (Local Better Regulation Office) and Extending the Benefits of the Primary Authority Scheme

Key questions from the consultation have been highlighted in italics followed by a suggested response.

Introduction

1. The Local Government Group (LG Group) is a voluntary membership body and our 422 member authorities cover every part of England and Wales. We work to promote, support and improve local government. This LG Group response has been drafted with the input from the LG Groups Stronger and Safer Communities Board. The response also draws on views put forward by chief officers on the Environmental Health and Trading Standards Policy Forum.

General comments

2. The LG Group supports the government's proposals to dissolve the Local Better Regulation Office (LBRO) and replace it with the Better Regulation Delivery Organisation (BRDO) based in the Department of Business, Innovation and Skills. We particularly welcome the proposal to cease the LBRO's direct service improvement function in local authorities.
3. It will be important under the new proposed structures for the BRDO and local authorities to engage with each other. Establishing a Representative Steering Group with the membership that is proposed in the consultation document will facilitate that, as will maintaining the LBRO's existing stakeholder reference groups.
4. While there are considerable benefits to businesses of the Primary Authority scheme there are tensions between the proposals in the consultation document and the government's wider commitment to localism and giving local communities greater freedoms and flexibilities to address local problems. We are concerned that strengthening inspection plans for example will limit a local authority's ability to act locally in a different way from that centrally prescribed.

Some of these issues are explored further in our detailed answers to the consultation questions as follows:

QUESTION 1: Are the functions identified for the new organisation (Primary Authority and system improvement) consistent with the aspirations identified by the government and does the name of the new organisation, Better Regulation Delivery Organisation, accurately reflect its scope and function?

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The primary authority scheme and high level work on strategies to deliver system improvement take no account of a range of other issues which will influence how well regulations are delivered including training, clarity of guidance, funding and use of the Home Authority Principle. Although we are not aware of local authorities being concerned about the new name proposed for the LBRO, we would comment that the word 'better' creates a suggestion of tension with local authorities and implies that local authority delivery is bound to need improving – which is not always the case.

QUESTION 2: Will the proposed governance arrangements for the BRDO, including the creation of the Representative Steering Group and the draft Memorandum of Understanding with BIS provide the necessary levels of independent decision making and accountability to stakeholders?

QUESTION 3: Do the arrangements for the Representative Steering Group and the draft Memorandum of Understanding with BIS provide sufficient assurance for businesses and local authorities in Primary Authority partnerships that the BRDO will be sufficiently independent?

Our main concerns are that the local authority enforcement side is properly heard and the detailed technical issues can be properly appreciated before decisions or pronouncements are made. Access to technical groups of local authority expertise will be necessary on issues of primary authority arbitration. Sufficient time and resource will need to be built into the arrangements to ensure the BRDO has the right information on which to reach balanced judgements.

QUESTION 4: Is the proposed membership of the Representative Steering Group appropriate?

Yes but it needs to be recognised that for any technical matters which need to be discussed relevant specialists might also be needed. It is not clear how the experts are sourced where necessary for the specialist sub group discussions.

QUESTION 5: Are the terms of reference and areas of responsibility for the Representative Steering Group appropriate?

Yes, although it doesn't make any reference to positive improvements such as sharing good practice and highlighting excellence. There is also no reference to posting advice back to the sector following clarification linked to a dispute resolution.

QUESTION 6: Do you agree that the BRDO should continue to support LBRO's existing stakeholder reference groups (World Class Coalition, Business

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Reference Panel and the Local Authority Reference Panel) and that these groups should work with the Representative Steering Group?

In terms of providing the technical advice we believe will continue to be needed, the Local Authority Reference Panel will be able to provide that expertise.

QUESTION 7: Are the arrangements for working with the Devolved Administrations appropriate?

We are not able to provide a comment on this at this stage.

QUESTION 8: Do you agree that eligibility for the Primary Authority scheme should be broadened by removing the requirement for:

- *A primary authority to itself regulate the business in all areas covered by the partnership?*
- *Businesses whose regulated activities do not coincide in a single local authority area?*

We have no objections to this in principle, but would be concerned if this leads to primary authorities offering advice on matters that they had little practical experience of and hence were not in a strong position to challenge the suggested line put forward by the businesses expert. For this reason the parallel development of support for Primary Authority officers in this position would be important.

QUESTION 9: Do you agree that eligibility for the Primary Authority scheme should be broadened so that the 'assured advice' benefits of the Scheme become available to different business models such as:

- *Company Group structures*
- *Franchises*
- *Trade Associations?*

We would comment that there is a potential that without effective coordination different interpretations might emerge where individual franchises agree something which may be inconsistent with other very similar operations in the same sector. In such scenarios it might be argued that consistency and simplification could be better served by using industry guides agreed between trade associations and enforcers.

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Strengthening Inspection Plans

QUESTION 10: Do you agree that:

- *The current duty to have regard to inspection plans should be amended so that local authorities are obliged to follow inspection plans drawn up by a Primary Authority*

No. We believe the current requirement on councils to have regard to inspection plans reflects the right balance between providing consistency for businesses, with a degree of local flexibility to deal with specific issues that occur in a particular locality. Requiring councils to seek the consent of the primary authority to act outside the plan would limit local discretion and flexibility, and would also in our view limit, rather than encourage councils, in taking a more targeted and risk based approach to inspection. We also do not believe that requiring councils to seek the consent of the primary authority will necessarily deliver the benefits outlined in paragraph 2.20 – these can flow from the coordinated inspection process that the plans produce.

- *The current duty for local authorities to give notice to Primary Authorities when deviating from inspection plans should be amended so that local authorities are obliged to obtain consent in advance from the Primary Authority*

No, for the reasons outlined immediately above.

- *Local authorities should be obliged to provide feedback on inspections to the Primary Authority so that inspection plans can be updated to accommodate current compliance activity by business and to ensure that local issues can be addressed*

While obliging councils to feed back on the results of inspections to primary authorities would enable inspection plans to be updated, we believe this is a matter of good practice which should be developed by the local government sector, based on the financial benefits that result from the ability to use diminished resources to achieve the greatest return. We therefore believe councils should be strongly encouraged to feed back to primary authorities but not obliged.

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- *Local authorities that object to any element of an inspection plan should be able to request that the BRDO (which consents to all plans before they are implemented) review the appropriateness of the plan.*

Yes, this should be allowed and encouraged where it appears there is an area that needs improvement.

- *The current exemptions for inspectors which cover enforcement action should be extended to cover deviations from inspection plans?*

Yes, deviating from an inspection plan where necessary creates an important check in the scheme which would otherwise be unhelpfully balanced in favour of the business. This would also provide a useful check for the business at head office that compliance matters out of scope of the plan are still being effectively maintained as was envisaged when the plan was devised.

QUESTION 11: Do you agree that that the following Acts should be included within scope of the Primary Authority scheme so those covered by the regulatory regimes may benefit from the Primary Authority Scheme?

- *Part 1 of The Housing Act 2004*
- *Criminal Justice Act 1988: parts related to age restricted products*
- *Offensive Weapons Act 1996: parts related to age restricted products*
- *Regulatory Reform (Fire Safety) Order 2005*
- *Licensing Act 2003: only those parts related to age restricted products.*

Do you agree or disagree that these should be included?

We are concerned that extending the primary authority scheme in this way, especially in relation to sale of age related products, including alcohol and knives, will undermine the ability of councils to tackle specific issues in their area. The involvement of young people in under-age drinking and the purchasing of knives and other offensive weapons varies from place to place and within places. Action to deal with under-age sales in conjunction with local businesses may work for a significant period of time but demographic changes in an area or changes in license holders can lead to a problem reoccurring.

Taking concerted action alongside the police to tackle threats to public order and safety may require significantly more inspections and test purchasing operations than included in inspection plans. Such action often has to be taken at short

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notice, and extending the primary authority scheme in these areas, with the changes around inspection plans could in our view limit the ability of local partners to deal with crime and disorder issues in their area.

Just as businesses are concerned about inconsistency of approaches from local government, councils find that in spite of corporate compliance regimes, actual implementation of them varies in practice. Managers of stores or premises will take different approaches to corporate compliance regimes and unless there is a rigorous enforcement regime in the company concerned individual stores or premises can be in breach of both the law and corporate regimes due to lack of training in that particular outlet or due to the actions of members of staff that have not been addressed.

While we note the reference in the consultation to the Licensing Act specifically states that it is not the intention to constrain local decision making, it is easy to imagine scenarios where inspection plans or other centrally approved procedures may not take into account conditions or previous history linked to a local outlet, which would more ideally be dealt with in a different way from that prescribed by the Primary Authority.

In our view the primary authority scheme introduces an element of rigidity which may be unhelpful when set against the need for local initiative and flexibility to deal with serious issues affecting a community, and for these reasons we would not wish the scheme to be extended. As an alternative to extending the primary authority scheme businesses with outlets in several different local authorities could work with their local authority at head office to agree procedures and communicate these using existing home authority arrangements with an effective new database to be hosted by the Trading Standards Institute.

The option of extending the scheme to cover licensing, but maintaining the current wording for licensing authorities such that they should have regard to (rather than having to comply with) Primary Authority advice is noted. However in the LG Group's view this would merely create a confusing picture of different approaches, which apply in different premises, and which would do little to simplify the regulatory environment at least from a local authority perspective.

QUESTION 12: Are there any other ways in which you feel that the Primary Authority benefits may be extended?

NO



**Safer and Stronger
Communities Programme
Board**

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