

BIS | Department for Business
Innovation & Skills

**TRANSFORMING REGULATORY
ENFORCEMENT**

Government Response to the
Consultation on Transforming
Regulatory Enforcement

DECEMBER 2011

We will work closely on all the issues raised in this paper with the Devolved Administrations in Northern Ireland, Scotland and Wales, taking account of the fact that some aspects of regulation are UK wide and others are devolved matters.

Foreword



Over the last 18 months we have made significant progress in the way we as a government approach and use regulation. But however hard we bear down on the flow of new regulation and remove unnecessary measures from the statute book, what often matters most to businesses and individuals across the country is their day to day experience of the way regulation is enforced.

That's why, over the summer, we ran a consultation to gather your views and experiences on a range of proposals for change. While it is clear that there is good practice in places – regulators working constructively to help business and others comply with the law – there is still considerable scope for improvement.

Creating the conditions for a business-led economic recovery means we need to do everything possible to remove all unnecessary burdens on business, whilst ensuring that the important protections provided by regulators continue.

This Government response sets out our ambitious plans for reform. These include a thorough review process to drive fundamental reforms in the regulatory landscape; delivery of the Coalition commitment to extend sunset clauses to regulators; improving and broadening the successful Primary Authority scheme to bring more coherence and accountability to local enforcement; and the huge potential we see for Local Enterprise Partnerships to bring regulators and business together.

I am very grateful to the many businesses, trade associations, individuals, local authorities, regulators and others who have given us their views and engaged so constructively. I hope that they will continue to do so over the coming months as we take forward this important work.

A handwritten signature in black ink, appearing to read 'Mark Prisk', written over a horizontal line.

Mark Prisk

Minister of State for Business and Enterprise

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Executive Summary

Why do we need to take action on enforcement now?

- (i) In May 2010, we announced a new approach to regulation: to reduce the burdens felt by businesses and create a business environment that promotes growth and enterprise. A business-led economic recovery will depend, at least in part, on our ability to get to grips with every aspect of regulatory enforcement that restricts the ability of businesses to grow, creating jobs and prosperity, without reducing the important protections essential to a mature democratic society.
- (ii) Our approach to reducing the burden of regulation has three key parts:
 - we are pushing hard within the EU for an outcomes-focused approach to regulation, based on a real understanding of its impact, and for the EU as a whole to take deregulation seriously;
 - domestically we have brought in tough controls on the flow of new regulation, to ensure that the UK government does not increase the financial burden of regulation on UK business;
 - we are going through the entire stock of existing UK regulation – and we are identifying many hundreds of existing regulations that can be simplified, liberalised, or removed altogether.
- (iii) But none of this is enough without addressing the most pressing concern for millions of businesses: the day to day experience of regulatory enforcement at the front line. For that reason we consulted over the summer, so that we could hear, first-hand from businesses, views on where reform of enforcement was needed and where the state's methods of enforcing regulation could be lightened or made to work in more constructive ways with business. We also wanted to understand better what works well, so that we can learn from and build on it.
- (iv) There were two parts to the consultation. One was a discussion document asking for views on the general principles of enforcement, and of ways in which the system of regulatory enforcement could become more accountable, more transparent, and better reflect the efforts business already makes to comply. The second asked for views on our proposals to extend and improve the successful Primary Authority Scheme, and to make changes to the Local Better Regulation Office.

What did the consultation tell us?

- (v) A summary of the responses received to both discussion documents follows. The summary and analysis of responses in respect of the Local Better Regulation Office have been published separately - see www.bis.gov.uk/Consultations/transforming-regulatory-enforcement-discussion?cat=open
- (vi) Overall, what we heard was that while there is evidence of good practice of regulators and business working together on compliance, there are too many areas where the enforcement of regulation is heavy-handed, inefficient, overly prescriptive and culturally risk-averse, all of which combines to act as a drain on productive business time and resources.
- (vii) We heard that the local regulatory system is too often a burden - it can be difficult to engage and influence decision-making - and business complains of inconsistency and unpredictability. And we heard that the whole regulatory landscape is overly complex. There is a suspicion, particularly among businesses, that 'public sector creep' has led to a proliferation of enforcement bodies, leading to overlap, significant additional cost and lack of transparency.
- (viii) None of this should be taken as overlooking the important role regulation plays: safeguarding public health, for example, or protecting consumers and the environment. There are some great examples of regulation working well, and we should make sure we build on and learn from them. We give some examples of these at Annex B.

Our response

- (ix) This paper sets out our plan for making a significant contribution to a business-led recovery by beginning a transformation in the way regulation is enforced. We need to move to a different and more mature relationship with business, working with – not against – the grain of all the good practice already out there. We need a transparent and light-touch system based on real risks. And we need to end the tick-box approach to inspection, freeing up useful time so that business can instead get on with the urgent work of helping return the economy to sustained growth.

A different and more mature relationship with business

- (x) **We will review all regulators**, not just to examine the case for continued existence, but to make sure each one is making the fullest possible use of the range of alternatives to conventional enforcement models, working with business and others and reducing state activity wherever possible. We will expect to see a significant reduction in state-led enforcement activity each and every year throughout this Parliament. The reviews will also identify areas of good practice, and we will build on them.

- (xi) There will be a **presumption that co-regulation be introduced** wherever this is practical - we recognise that co-regulation may sometimes be more expensive and burdensome for business. This should apply both to regulators and to those designing regulatory regimes; doing away with the assumption that compliance is always something for the state to enforce alone, whilst recognising that it will not be the answer in every case. There is a huge untapped potential for business and others to be more involved – co-designing enforcement strategies with the regulator, using certification or accreditation so as to tailor regulation with the business in mind, rather than the state – and, while a start has been made, we need to see more.
- (xii) We want to see existing regulatory regimes make **much more use of “earned recognition”**. This means developing approaches that incentivise and reflect businesses’ own efforts to comply with the law. If businesses are already compliant, regulators should recognise that, and focus their inspection activities elsewhere.
- (xiii) **We will work with businesses and local authorities through Local Enterprise Partnerships to promote better local regulation.** Many businesses’ experience of regulatory enforcement is at the local, rather than national level. So we will encourage Local Enterprise Partnerships to build on the good work already begun, including the two pathfinder LEPs of Greater Birmingham and Solihull and Leicestershire, transforming the relationship between regulators and business from one based on central oversight and intervention, towards one built upon better local accountability and transparency, to support business competitiveness.
- (xiv) **We will establish a presumption that regulators should help businesses comply with the law.** The aim of any interaction with business should be to support the business in achieving compliance. This presumption will be considered for inclusion in the Regulators’ Compliance Code as part of a post-implementation review which will be launched in 2012.
- (xv) **We will also clarify that no business should face a sanction for simply having asked a regulatory authority for advice.** This could also be achieved through extending the Regulators’ Compliance Code. Exceptions will be defined and are likely to include where there is an emergency or imminent risk to health.

A transparent and light-touch risk-based system

- (xvi) **We will put a new partnership between government, regulators and businesses at the heart of the regulatory system, bringing the expertise of the Local Better Regulation Office into government.** The Local Better Regulation Office (LBRO) has had a positive impact in a short space of time, working with businesses and regulators to deliver improvements in locally delivered regulation. In line with the Government’s wider agenda on public bodies reform, we want bring LBRO’s expertise closer to Ministers, to feed more directly into the policy-making process and also to deliver cost savings. So we will make changes to the LBRO, transferring its functions to a new unit, the Better Regulation Delivery Office, in BIS, but maintaining its operational independence in order to run the Primary Authority

scheme. It will work with businesses and regulators to provide clear, impartial advice so as to drive improvements in local regulation.

- (xvii) **We will extend the Primary Authority scheme to improve the coherence, accountability and transparency of local regulation.** The ‘primary authority’ is a specific local authority that serves as a business’ first point of call for advice on regulatory issues. Any other local authority must consult with the primary authority before taking enforcement action - promoting consistency and proportionality in the way these businesses are regulated and providing confidence for the business in the information it receives.
- (xviii) We will make changes in three areas:
- **Strengthening inspection plans to deliver earned recognition for business.** We will change the law to strengthen inspection plans, offering business the scope for much more targeted and better quality inspections, and in some cases the opportunity to significantly reduce the number of inspections. This will also free up local authorities to enable them to target their scarce resources on high-risk organisations.
 - **Allowing more organisations to participate, benefiting small business.** Many businesses have told us that the current scheme is overly restrictive and is holding back many businesses from developing Primary Authority partnerships that would otherwise allow them and regulators to manage compliance in a more cost-effective and consistent manner. Currently some businesses that share an approach to compliance (such as franchises and company groups) are excluded from receiving ‘assured advice’ which provides protection from prosecution if it can be demonstrated that it has been followed. We therefore intend to change the law and extend the scheme to allow other types of businesses and those that provide advice to businesses (such as trade associations) to access assured advice.
 - **Including specific policy areas which are currently out of scope.** We will legislate to extend the Primary Authority scheme to age-related sales of gambling and knives. 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. Given the views raised by the police and some local authorities that linking Primary Authority to age-restricted sales of alcohol will take power and flexibility away from local authorities, we will continue to consider this issue carefully in consultation with local authorities and the police, including the consideration of a pilot within existing legislation.

Ending the tick-box approach to inspection, freeing up productive business time and resource

- (xix) **We will establish sunset review clauses on new statutory regulators created in the future** to prevent the proliferation of new regulatory bodies, ensuring that they are regularly reviewed and, if no longer needed, removed. This will ensure that

the principle of regular review becomes a cornerstone for the future of regulatory enforcement.

- (xx) **We will retain the Regulators' Compliance Code, giving it a higher profile, placing it at the heart of the reviews of regulators and ensuring that it is understood by customers.** Our consultation has revealed that awareness of the Code is low among businesses and that its potential as a means of holding regulators to account is not being fulfilled. We will therefore ask regulators to give the Code more prominence in their publications and websites. We will review the Code itself, to see whether it should be enhanced. And – in the course of our review of regulators – we will specifically look at how far they have applied the Code.
- (xxi) **Above all, we will ensure that government departments think carefully about how regulations will be enforced – and about the costs of enforcement for business and the taxpayer** – when new regulations are being designed or when existing regulations are being challenged as part of the Red Tape Challenge. To ensure that this happens, we will build an assessment of the costs of enforcement into the Impact Assessments that form part of the One-In, One-Out regime.
- (xxii) Taken together, all of these actions will transform the culture of enforcement so that businesses will see a real difference; becoming more like customers, rather than simply on the receiving end of the regulatory enforcement system.

Consultation on Transforming Regulatory Enforcement – Summary of Responses Received and Government Response

1. The way regulation is enforced is every bit as important as managing the overall volume of regulation. As part of the strategy for reducing the burden of regulation, the Government published two documents in June 2011 as part of a formal consultation on regulatory enforcement. The purpose was to seek views on proposed changes needed to improve the front-line experience of regulation, and to deliver commitments made in the Growth Review as part of a package of measures to free up business from unnecessary regulatory burdens.
2. The two consultation documents were: a discussion paper on improving the implementation of regulation and a second paper on the future of the Local Better Regulation Office (LBRO) and the Primary Authority (PA) scheme. Views were invited from interested parties on both of these documents. The consultation ran until 16 September 2011, and this paper summarises those responses and sets out the Government's plans for reform. In order to meet the relevant legislative timetable, a Government response in respect of the future of the Local Better Regulation Office has already been published separately.
3. The consultation responses made clear the need for reform of front-line delivery of regulation. While regulation can play a vital role in safeguarding public health and in protecting consumers and the environment, there are still too many areas where regulation is heavy-handed, inefficient, overly prescriptive and culturally risk-averse, combining to act as a drain on productive business time and resources. Second, the local regulatory system is too often a burden - it can be difficult to engage and influence decision-making - and business complains of inconsistency and unpredictability. And third, the whole regulatory landscape is overly complex. There is a suspicion, particularly among businesses, that 'public sector creep' has led to a proliferation of enforcement bodies, leading to overlap, significant additional cost and lack of transparency.
4. The Government is therefore setting out a plan for making a significant contribution to a business-led recovery by beginning a transformation in the way regulation is enforced. We need to move to a different and more mature relationship with business, working with – not against – the grain of all the good practice already out there. We need a transparent and light-touch system based on real risks. And we need to end the tick-box approach to inspection, freeing up useful time so that business can instead get on with the urgent work of helping return the economy to sustainable growth. Examples of working with the grain of good practice can be found in case studies at Annex B.

5. There follows below a summary of the responses received to individual questions in both consultation documents. At the end of each group of questions and the summarised views of respondents, the Government sets out, in bold text, its formal response.

110 responses were received. Not all respondents answered all specific questions inviting a yes/no response with a positive or a negative. We have examined answers given against the individual questions and, where it appears clear, have allocated a 'yes' or 'no' answer.

Proposal:

We propose an enforcement strategy built around three basic principles:

- Greater accountability;
- Recognising and promoting good practice; and
- Greater transparency.

Question 1:

Are these the right principles to underpin the frontline delivery of regulation?

Question 2:

Are there other principles you would like to see included?

Q1: 93% of respondents were in favour.

Q2: Of those who responded, 82% suggested other principles.

6. The majority of respondents generally supported and agreed with the three principles; including all of the business respondents. There were general pleas for consistency, proportionality and for prosecution to be the last resort after all other avenues had been explored.
7. Trade associations, in particular liked the suggestion that the default setting in the relationship between regulators and businesses should be trust, as did local authorities. Professional bodies suggested some additional principles including improvement in public health and removal of the cumulative burden, especially for SMEs. Local authorities also suggested partnership working, fairness and proportionality and suggested that they should be meshed with the Regulators' Compliance Code.

8. National regulators suggested that the principles should include: ‘outcome focused’, and should encourage ‘empowerment’, recognising the role played by citizens and consumers in better regulatory delivery. They also highlighted the importance of empowering businesses to take co-regulatory approaches.
9. Environmental health officers and trading standards groups agreed with the principles. They suggested that every new piece of legislation should include a clear rationale, and guidance for effective enforcement. The voluntary sector felt that the principles should reflect the necessity to balance the needs of business and consumers.
10. Individual responses included concerns about lack of reciprocity on the part of business – that businesses should be more accountable and transparent; that self-regulation by business would encourage some to flout the law - inspection and enforcement are essential to maintaining a level playing field for all businesses in compliance; that the principles should emphasise proportionality, consistency and ‘targeted only when necessary’; and the principles should ensure against bias by regulators and limit the scope for victimisation of complainants/appellants.
11. Other respondents expressed a wish to see more trade associations agree Memorandums of Understanding with regulators, effective co-ordination between national and local agencies and with European counterparts. There was also a plea to guard against inhibiting competition, in particular if transparency in one area enables companies to co-ordinate policies so they compete less energetically, or use regulatory burdens to hinder entry by smaller competitors.

Question 3:

What aspects of regulatory enforcement are most problematic to you?

Generally all respondents identified problems with enforcement both from the business and regulator perspective. Some examples are described below.

12. Business groups commented on the inconsistency of interpretation of regulation by some regulators. The enforcement of age-restricted legislation was highlighted as a problem and it was stated that not all local authorities were sufficiently aware of existing Primary Authority partnerships. The pub sector has to comply with a large amount of regulation covering diverse areas including licensing, gambling, health and safety, food hygiene, planning and employment law and enforcement actions in some of these areas have been problematic. Businesses were often apprehensive about complaining and feared potential consequences, and it was essential to find appropriate mechanisms that enable business concerns to be heard in a way that is constructive and solutions-focused.
13. Trade associations reported weak management leading to maverick individual enforcers; lack of engagement with the business, lack of awareness of how national companies operate, disparity in inspection procedures and inconsistency between

individual inspectors. Additionally they complained of overly strict interpretation of EU Directives that put UK-based companies at a disadvantage.

14. Professional bodies reported that there were too few opportunities to complain about enforcement, that there was a lack of knowledge of SME and business efforts to comply. They also highlighted too much high profile enforcement to make an example and failure of regulators to co-operate with one another; and that the requirements relating to paperwork and systems required in order to comply with regulations should be reviewed.
15. National regulators stated that duplication and overlapping interests exist across regulators and other bodies and that an inconsistent application of enforcement action can cause confusion to consumers, business and the general public as well as leading to a sense of injustice when different sanctions and processes are used by different regulators in response to similar types of misconduct. Local authorities commented that legislation sometimes provides as many problems for regulators as it does for businesses.
16. One individual respondent highlighted potential problems arising from proposed changes in the Legal Aid, Sentencing and Punishment of Offenders Bill 2011, arguing that there was a risk that more businesses would plead guilty to offences of which they were innocent as the cost of defence could prove greater than the fine.
17. Comments from other respondents included concerns about the ability of the Trading Standards Service to support the consumer protection role and protect legitimate businesses and consumers from counterfeiting and consumer fraud; and that any appeals process should be carefully designed so it does not constitute a burden on other regulators or business, and cannot be used strategically to delay and deter enforcement.

Question 4:

Do you have an example of when you have been treated unreasonably?

Of those who replied, 77% provided examples.

18. Examples came from businesses, trade associations, and professional bodies. A common theme from businesses and their representative groups was heavy-handed enforcement, particularly relating to under-age sales. Trade associations reported that staff were sometimes subjected to 'criminal treatment' including DNA swabs and fingerprinting for an under-age sales offence.
19. Professional bodies were also concerned about a narrow approach to enforcement based on high fines. Local authorities, in contrast, tended to express concern about businesses that were hostile or failed to play by the rules.

20. A consumer group referred to research findings suggesting that consumers wanted regulators to adopt a more risk-based approach, with unannounced inspections and spot checks on potentially rogue businesses. A voluntary group expressed concern that not enough effective enforcement action was being taken when problems had arisen.

Question 5:

How frequently have these problems occurred?

21. Generally this question was not answered in any detail.

Question 6:

Do you feel that there are effective mechanisms in place for you to appeal or complain about the way regulations are enforced?

Of those who replied, 47% felt that effective mechanisms existed.

22. Generally, stakeholder views were split between businesses and regulators. For example, trade associations felt that there were too few mechanisms to complain and that if members did report a concern it created difficulties. Some business groups complained that they had no available means to challenge regulators' actions, and one business group felt complaint issues were over-complicated by the range of different authorities involved in licence provision and enforcement.
23. Local authorities reported that there were already plenty of appeal mechanisms available to businesses and that the Government should not add another mechanism.

Question 7:

What aspects of regulatory enforcement work best for you?

We received some very good examples from both businesses and regulators about what works well.

24. Several businesses referred to the positive results of the Primary Authority scheme. More generally, some welcomed how particular regulators had enabled them to take remedial action before considering enforcement action. One gave Camelot as a

good example of a regulator who would meet on a regular basis, give good feedback and allow businesses to correct issues before taking formal action.

25. Trade associations named certain regulators and some of their specific initiatives. For example, they reported that enforcement by the National Measurement Office works well because it is based on a set of clear principles which are pragmatic and sensible. There is also an official complaint mechanism if the need arises. It was also argued that the Food Standards Agency's funded course on specialist cheese had significantly improved Environmental Health Officers' understanding of the industry.
26. Professional bodies reported that clear guidance, mutual respect and dialogue between regulators and businesses and the promotion of good practice worked well.
27. Local authorities generally liked the Home Authority principle, the Primary Authority scheme and Local Economic Partnerships and cited specific examples of local initiatives that worked well for businesses in their areas including award schemes for businesses that promote high standards e.g. "Made in Cornwall", organised by Cornwall Council, which promoted local producers and offered start up advice.

Question 8:

What are the best examples of when you have been dealt with?

28. Business groups highlighted the benefits gained from the Primary Authority scheme, which has been instrumental in steering some businesses towards compliance, and also gave examples of where they were appreciative of efforts by enforcement officers who, on finding a breach of legislation, have met with businesses to discuss local issues, run through processes and formulate action plans.

Question 1 – 8: Government Response:

29. **In the Coalition's programme for government¹ we set out our commitment to end the culture of 'tick-box' regulation, and instead target inspections on high risk organisations. This means addressing all regulation that is overly prescriptive, poorly designed, poorly delivered or which fails to achieve its desired outcomes. When it works well, regulation and its delivery can be positive and supportive of good business. When delivered poorly, it feels like a low-trust relationship, with a focus on fault-finding and with little recognition being given to businesses' own efforts to comply.**
30. **Accountability, transparency and the need to recognise the efforts of business to comply with the law are themes that run throughout the**

¹ "The Coalition: our programme for Government"; May 2010;
http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

Government's strategy to transform regulatory enforcement. They are central to our proposals – set out in more detail below – for working towards a more mature relationship between regulators and those they regulate (see response to questions 16-22); they are also at the root of the reforms we will be making to local regulation and expansion of the Primary Authority scheme, and to our intention to look in detail at the entire regulatory landscape, making the culture of regulators more responsive to the needs of business.

31. **The forthcoming review of regulators – see question 9 below – will look at the ease with which business and others are able to challenge the actions of regulators, and the extent to which their concerns are taken seriously and acted upon where appropriate. Our plans to reinvigorate use of the Regulators' Compliance Code – question 28 – will play an important part; increasing the accountability of regulators.**

Proposal:

We intend to impose sunset clauses on new regulators. But we also want to simplify and improve the existing landscape and to give business an opportunity to inform changes through sector based reviews which will examine whether all existing regulators are still needed.

Question 9:

How would you want to be involved in this sort of sector based review of enforcement and the regulatory landscape?

32. The majority of professional bodies said they would like to be involved in sector based reviews and could bring their appropriate field of expertise with them.
33. Two retail businesses reported that they would seek to get involved through their trade body, and a legal firm planned to collate clients' views. Several regulators responded that they would like to provide input through further consultation and discussion.
34. There was generally strong interest from local authorities in being involved with sector based reviews. Some local authority representatives such as trading standards and environmental health in Scotland also wished to be involved. A voluntary group wanted to be able to feed in evidence of consumer problems, and a trading standards group wanted to take part in any reviews that linked to their work.
35. Other respondents commented that it was important that the competition implications of regulatory reform were considered, and that there should be discussion meetings between business, regulators and trading standards.

Question 10:

How can reviews be used to strike a better balance between 'self managed compliance' and intervention by state regulators?

36. Those business groups that commented welcomed greater self-regulation, with one business arguing that every new regulatory policy should have the scope for self-regulation considered.
37. Trade associations cited several examples including: extension of the Regulators' Compliance Code to require regulators to introduce co-regulatory approaches; recognition of the various accredited schemes of which business can take advantage and the opportunity for regulators to make greater use of these in enforcing regulation; support for efforts to reward businesses for steps taken to comply with regulations.
38. Professional bodies thought that businesses should be rewarded for consistently good behaviour, for example by reducing their burden of inspections. They felt that assurance schemes were key to this, but that there needed to be effective communication between the schemes and regulators. Regulators themselves also needed greater clarity about what might happen if something went wrong after they had delegated any of their powers. However some professional bodies were not sure that self regulation would work in all cases, with one expressing concern that small businesses rely on free advice from regulators and have little interest in self managed compliance.

Question 11:

What are the key things you would like to see reviews cover?

39. Business groups suggested consistency of approach and proportionality were important, as well as reviewing whether the original justification for any regulation was still valid and what alternatives were available. There were also suggestions that a code of practice that acted as a common and binding enforcement policy for all regulators should be in place.
40. Trade associations made several suggestions including: published data on the number of inspections and specified non-compliances; opportunities to pilot new approaches that increase the extent to which regulatory activity is based on actual risk; looking at where good practice is being developed.
41. Professional bodies suggested looking at the use of alternatives (including accreditation) and consistency of advice between regulators and business,. They

also stressed that the process should involve all stakeholders including businesses and consumers.

42. Local authorities also made several suggestions including examining: self managed compliance and codes of practice set up by regulators; the activities of courts; analysing what regulators can offer in terms of advice and education to business. Some stressed that the process should involve Government Departments who create legislation.
43. The voluntary sector thought that the reviews should include an examination of the possible impact on consumer welfare.

Question 12:

How can such reviews be made effective at delivering improvements in the way that regulation is enforced?

44. Business groups suggested that reviews should: set specific targets to be met by regulators, driven by performance and/or value for money; take into account businesses with Primary Authority status; and have due regard to future inspection plans and earned recognition proposals.
45. Professional bodies commented that reviews should be evidence-based and risk-informed, challenge the status quo and include transformational improvement and doing things differently. They stressed the importance of developing a strong evidence base to support any work arising from the reviews.
46. National regulators welcomed proposals for improved links between regulatory delivery and the design of regulation and felt clear communication of any proposed improvements was an essential part of ensuring reviews were effective. They also wished to see reviews build upon the findings from previous reviews and relate to ongoing/future review processes.
47. Other respondents wanted to see consistency of action, both by regulators and trade associations; evidence of action by trade associations against members who fail to comply; and timescales for joint meetings.

Questions 9-12: Government Response

We will implement a programme of reviews of existing regulators to examine the way in which regulatory functions are delivered at the front line.

48. Responses to both the consultation and the 'Red Tape Challenge' have reinforced the view that the regulatory landscape is very complex, with a large

number of different bodies enforcing regulations. For example, regulation is carried out at all tiers of government: central government, the devolved administrations, and local authorities. Many national regulators, while publicly funded, are constituted as Non-Departmental Public Bodies and Non-Ministerial Departments to give them effective operational independence from government. Particular arrangements apply in respect of certain regulatory functions in the Devolved Administrations.

49. This complexity often translates into a system punctuated by overlapping regulatory remits, and can impose unnecessary burdens on the regulated through, for instance, duplication of data requests and inadequate risk assessment processes.
50. The Government has already taken a number of steps to address and review the way in which regulation and regulators interact with businesses in specific sectors. Some significant reviews addressing the institutional framework already under way or have reported: for instance, farming, employment, consumer protection and financial services.
51. The Cabinet Office has recently completed a review of the public bodies landscape which has included in scope all statutory Non-Departmental Public Bodies, Non-Ministerial Departments and Public Corporations. 15 bodies with regulatory functions will be abolished as a result of the process and those remaining will be subject to the Cabinet Office's 'triennial reviews', which will consider the continuing need for the bodies' existence every three years. However, the Cabinet Office's triennial reviews will operate on a body by body basis and, as a consequence, may miss the issue of overlapping remits.
52. We will begin a thorough review of all regulators responsible for enforcement on business and civil society organisations. The purpose will be to pick up on everything we have heard in the consultation and identify where enforcement is not working efficiently and where there is need for fundamental reform. The reviews will lead quickly to a transformation in the experience of front-line regulation and a step-change in the culture of regulators. We expect to see a sharp reduction overall in unnecessary programmed inspections, a presumption that regulators' primary role is to help business comply rather than to penalise them for not doing so, more recognition for business efforts to comply, coordination, less overlap, and ultimately a clearer and less cluttered regulatory landscape.
53. We will examine the performance of every regulator, and report back on progress in spring next year. We will gather and publish data listing all of the regulators, their size and budget, their level of activity including numbers of inspections and prosecutions, and business views on their behaviour and performance. We will also use a web-based tool to enable businesses and individuals to provide a challenge function and real time feedback on their experience of regulators. Its scope will be broad, encompassing local authority enforcement and other regulatory functions identified through the Red Tape Challenge Star Chamber process. We will make further announcements on this in due course, but anticipate this enforcement

“crowd-sourcing” outlasting the programme of reviews to ensure continual greater transparency.

- 54. Following the evidence-gathering we will announce our interim findings, and after discussions with business will set, working with each regulator, a series of stretching and ambitious goals to drive a phased series of reforms.**
- 55. Reviews will need to be flexible enough to take account of the whole range of bodies which play a part in the regulatory landscape. When considering regulation within a particular sector, the reviews will also take account of local enforcement activity in that sector, and the relationships between national bodies and local officers. In addition to the broad questions reviews will answer, there may be other more specific questions relevant to the sector in question, such as the extent to which regulatory activities enable or inhibit trade and investment².**
- 56. Where the regulator has a significant economic function, for example in relation to long term economic investment, reviews will need to be consistent with the principles of predictability, adaptability and coherence set out in the Principles for Economic Regulation.**
- 57. We will expect the relevant Departments to take a pragmatic approach, finding the most appropriate means in their sectors of securing better transparency. This will need to be consistent with the Government’s published Principles for Economic Regulation.**
- 58. Reviews should also consider the extent to which existing regulatory regimes could more effectively use the resources of the private sector to deliver good regulatory outcomes. For example, we will assess the extent to which earned recognition, professional standards and other co-regulatory models discussed earlier in this Government response might be appropriate. This will include a robust examination of any new costs so the result is not simply to create new or different burdens on the back of any new delivery model.**
- 59. We intend to implement this policy over the remainder of this Parliament, ensuring a comprehensive assessment of the existing system, leading to meaningful, effective reform. Beyond that, we believe that it would be good practice for reviews to be carried out on a cyclical basis, with review criteria being updated according to new and emerging priorities. The results of the reviews will be made public.**

² In some cases, we are already undertaking a sector-wide review that will meet these requirements. For example, Her Majesty’s Treasury is currently developing, and will in due course implement, fundamental reforms to the way financial services and markets are regulated, to ensure that the lessons of the financial crisis are acted upon.

We will establish sunset review clauses on new statutory regulators

- 60. It is also important that we put in place an effective system for handling the creation of new bodies. Sunset clauses are a legislative provision which results in the automatic expiry of a given law or regulation at a defined time. The Government has already put in place a system for sunsetting any new regulation that is likely to result in a net burden on business. This will also apply to new regulatory bodies that are created by legislation. Therefore new statutory bodies with regulatory functions created in future will be subject to a statutory review clause – a legislative duty, contained within its founding legislation, on the relevant Secretary of State to conduct and publish a review of the body, which will address the extent to which it has been successful in achieving the objectives that led to its creation, and the case for its continued existence after a given period³. The timing will be in line with Government policy on the sunsetting of regulations, and review cycles should operate on a default five year cycle.**

³ There are cases where special treatment will be important. Economic regulators (Ofgem, Ofwat, Ofcom, the Civil Aviation Authority and the Office for Rail Regulation) form vital parts of the national infrastructure. These infrastructure sectors are typically subject to network effects or economies of scale, such as natural monopolies, which are likely to require regulation to protect consumers into the medium to long-term. However, significant investment is also needed in these sectors and investor certainty is important to ensure this can be made at comparatively low cost. Meaningful operational independence of these regulators is necessary to give investors confidence that the conditions under which investments are made are not altered for short-term gain. Regulators in other sectors share some properties of economic regulators in that they are important for private sector investment and need to be seen as independent. For example, investor certainty and confidence and maintaining independence of the regulators is equally important in the regulation of the financial services sector and the nuclear sector. We will therefore exclude from the policy on use of sunset clauses the new regulatory bodies in the financial services and nuclear sectors and any future regulatory changes to the economic regulators. Any other exceptions to the policy will be agreed case by case.

Proposal:

We want businesses to have an opportunity to challenge and inform the day to day delivery of regulation including the high proportion of delivery that is managed by local authorities. We would like to see Local Enterprise Partnerships play a key role in bringing local businesses and government agencies together to look for smarter ways to deliver compliance and free businesses from unnecessary regulatory burden.

Question 13:

What are the key issues faced by business in the day to day experience of locally managed enforcement services?

61. The range of business groups who commented raised a series of issues – one pointed to local authorities failing to consider the wider economic impact of their business activity, and not showing sufficient consistency. Another cited local authorities not adhering to their own policies.
62. Trade associations' commented on the need for local authorities to adopt targeted, risk-based, compliance-led enforcement that requires less resource than a 'scatter gun' approach. They felt that some enforcement officers have insufficient knowledge and expertise to carry out enforcement effectively or provide authoritative guidance; additionally, they highlighted inconsistent application of regulations between regions or between different inspectors.
63. Professional bodies were concerned about inconsistent enforcement policies across local authorities, variations in advice, and the need for timely responses from primary authorities to local authorities. It was felt that a key issue is the ability to adapt regulatory services to local conditions, having clear requirements, and further developing communication between regulators and business.
64. National regulators highlighted lack of co-ordination in the regulatory system at local and national level resulting in duplication of information requests or inconsistency in inspection enforcement; lack of communication inhibiting regulators from providing advice and support that meets business needs; and local funding of managed services potentially leading to different priorities and levels of support in different areas.
65. Local authority respondents generally agreed that local businesses particularly small businesses rely and value advice from enforcement officers; small businesses need help to understand legislation and value inspections as an opportunity to check compliance.

Question 14:

What role do you think Local Enterprise Partnerships could play in driving improvements?

Generally across all stakeholder groups there was positive support for LEPs.

66. Trade associations said that LEPs were well placed to bring business people, local authority officers and elected members together to discuss enforcement issues, but that larger retail businesses did not really have the resources to deal with a large number of LEPs.
67. Professional bodies saw opportunities for LEPs to promote best practice across business sectors to improve compliance and play a role in facilitating Primary Authority relationships.
68. Local authorities believed LEPs would be essential in building greater understanding, and ultimately trust, between the business community and local authority regulatory services. They also saw it as a direct opportunity to support business growth and employment and share best practice; a good forum for discussing regulatory priorities and to act as project sponsors.
69. Other respondents suggested that LEPs could develop a formal meeting schedule between themselves and regulators, and commented that it would be interesting to see statistics showing the proportion of delivery managed by local authorities. Any future plans would also need to take into account the significantly reduced funding available to local authorities and the impact on their capacity to monitor compliance and take enforcement action.

Question 15:

What else could help?

70. Business groups wanted to see more use of assured guidance, and for enforcement officers to develop their commercial awareness and softer skills. Business also wanted to see regulators make greater use of the Regulators' Compliance Code.
71. Trade associations proposed that, with fewer resources to spend, local authorities should focus on adopting targeted, risk-based, compliance-led enforcement. They also felt that enforcement officers need a higher level of knowledge and expertise to carry out enforcement activity effectively and produce authoritative guidance. Additionally they proposed a ratings system for local authorities and regulatory services, to monitor the consistency of enforcement between regions or between different inspectors.

72. Professional bodies envisaged more opportunities for local regulators to educate and advise businesses, and for regional and sub-regional liaison between regulators and businesses. They suggested that the requirements relating to paperwork and systems needed to comply with regulations should be reviewed and that assured guidance and extending the Primary Authority scheme would help more businesses comply with their regulatory obligations. Additionally, they wanted to see professional standards used more widely. Many of the requirements of the Regulators' Compliance Code are difficult to apply locally and could be better applied on a national basis.
73. National regulators suggested centrally provided funding for activities that have an impact in more than one local authority. They stressed that a careful balance needed to be struck in order that the regulator maintains its independence and avoids blurring of responsibilities for the achievement of standards.
74. Local authorities suggested: working with representatives of Business Improvement Districts to improve enforcement in localised areas; education in micro businesses; better co-ordination and support for local authority regulatory services to meet business needs. Several local authorities commented that improving the drafting of legislation could help services and reduce the burdens on regulators by minimising central government guidance.
75. The voluntary sector supported assured guidance, provided it would take into account the needs of consumers and would not remove the ability to take enforcement action where appropriate.
76. Some responses suggested amending the Code for Crown Prosecutors Evidential Test, so that prosecutors would be required to certify (before commencing criminal proceedings) that the alleged charge was proved beyond a reasonable doubt (rather than the test of a realistic prospect of conviction).

Questions 13 – 15: Government Response

We will work with businesses and local authorities through Local Enterprise Partnerships to promote better local regulation

77. **The local regulatory system is complex, with over 400 separate local authorities responsible for delivery, covering around four-fifths of all enforcement activity. As a result, where businesses trade in different local authority areas they can find it hard to engage effectively with the regulatory system. For example, it may be difficult to obtain advice that applies in all localities; and it is difficult to get in-company compliance systems taken into account in shaping inspection strategies. Where businesses operate in more than one local authority area, they are potentially subject to variable approaches and conflicting enforcement actions. This can bring inconsistency, unpredictability and significant additional cost. Improving the coherence, accountability and transparency of local regulation through**

mechanisms such as Primary Authority and Local Enterprise Partnerships is, therefore, clearly a key part of transforming business' experience of enforcement.

78. The Government is committed to the principles of localism, working towards a more mature partnership in the way that central and local government work together. This will mean changing the relationship from one based on oversight and intervention from the centre, towards one built upon better accountability and transparency at all tiers of the system, and better design of services around the needs of the end user.
79. The consultation told us that it is often difficult to find the most appropriate mechanism for raising issues of concern to help drive improvements in enforcement. The emergence of Local Enterprise Partnerships (LEPs) - a new approach to locally driven economic growth - provides just such a mechanism.
80. LEPs are well placed to have a leading role in transforming the way that regulation impacts at local level, building strong strategies founded on regulation as one ingredient of business support more widely. A total of 38 local enterprise partnerships have now been asked to put their governance arrangements in place⁴. This is a landmark move, which will see business and civic leaders work together to drive sustainable economic growth and create the conditions for private sector job growth in their communities. As set out in the White Paper on local growth⁵, the partnerships will play diverse roles reflecting the differing local priorities of different areas. These roles can include ensuring that planning and infrastructure investment support business needs, and working with Government to support enterprise, innovation, global trade and inward investment. Local regulation is an important dimension of all of these activities, and we will support partnerships to play an active role, reflecting the experiences of business.
81. As well as securing protections for members of the public, local regulators can play a key role in the economic vitality of communities and set a real lead for business growth. Local authorities are responsible for securing compliance with a large and diverse range of regulations. They also provide support, and high quality tailored advice of the kind which is particularly important to smaller businesses and civil society organisations. Local regulatory professionals can provide low cost, authoritative advice that can make a real difference to the way that local businesses operate – helping communities and economies thrive at the same time as securing the right level of protection. They can also combine their work with other business services provided locally for a “one-stop-shop” approach giving businesses, particularly new ones, targeted support when they really need it. They are critical members of the regulatory system, bringing direct experience and understanding of the role of businesses in the community. The newly formed Better Regulation Delivery Office will take forward LBRO's role in working

⁴ As at 10 October 2011

⁵ <http://www.bis.gov.uk/news/topstories/2010/Oct/local-growth>

with the pathfinder LEPs of Greater Birmingham and Solihull and Leicestershire to share learning on delivering a better regulatory environment with other LEPs.

Proposal:

We recognise that many businesses have taken steps to comply with regulations with some robust industry-managed schemes. They also use significant internal and external auditing systems to manage their own compliance. We want to give good businesses proper recognition for activities that support compliance. We would like to align this private activity with the functions of public regulators to find the most cost-effective routes to delivering compliance, removing unnecessary duplication, and targeting state enforcement as effectively as possible.

Question 16:

Do you have compliance measures in place that you feel are being overlooked?

Of those who responded, 75% felt that they had compliance measures in place that were being overlooked.

82. Business responses depicted a wide range of compliance measures. One business had commissioned private companies to undertake test visits to its premises for under-age sales. The test visit reports had indicated an excellent level of compliance. A retailer flagged that although it had comprehensive systems in place for all areas of the business covering food, non-food and service, many were overlooked because the areas were outside the scope of Primary Authority. Another retailer commented that despite having efficient systems in place for accident reporting and investigation, it was penalised for reporting - incurring more inspections than those that fail to report.
83. Professional body responses referred to: policies on earned recognition; accreditation schemes; and the need for a stronger focus on rewarding good behaviour rather than simply on punishment.
84. Local authorities felt that local regulators should be involved in early dialogue with businesses to understand compliance measures; ensuring confidence in the system. They also stated: that national risk assessment schemes should have the flexibility to reward accreditations (e.g. third party audit schemes); and that businesses should be required to share their own internal audit results with local authorities undertaking inspections.

85. Other respondents commented that many regulators, such as the Trading Standards Service, have good liaison arrangements with businesses which do not always receive the recognition they deserve. Such good practice should be more widely encouraged – for example through greater discussion between trade associations and regulators, and via formal Memorandums of Understanding.

Question 17:

How could we ensure that existing compliance measures are given proper consideration?

86. Businesses expressed preferences for: obliging all regulators to consult with primary authorities and to have regard to a common enforcement policy which has statutory backing; building mechanisms to allow businesses to achieve earned recognition, and making this recognition binding; focusing activity on businesses that systematically act aggressively, recklessly or unfairly, those that never report accidents etc., and ensuring that one body deals with such issues in a specific sector and does so on the basis of evidence, rather than non-compliant tests or unreasonable and onerous precautions.
87. Some national regulators had worked together in rolling out the Regulators' Development Needs Analysis (RDNA) tool and felt this would be useful in ensuring trading standards officers continue to give proper consideration to existing compliance measures when working with business. One regulator argued that it was not business efforts that should earn recognition, but the success of those efforts in delivering sustained compliance, and supported the Primary Authority scheme as one route to deliver earned recognition.
88. One individual respondent recommended that any audit of compliance measures should be independent of the business concerned and that the auditor's remuneration should preferably come from a source other than the business being audited.
89. Other respondents commented that: enforcement must be directed by risk assessment which must be a combination of effective compliance measures set against the relative risks to consumers; it is important that businesses do not feel that because they have 'ticked the box' for compliance training they then need not be concerned with the spirit of compliance itself; emphasis should be on rewarding carefully designed compliance programmes, and attempting to assess the 'real' reach of these within the organisation and their effect on relevant behaviour at all levels of the business.

Proposal:

Co-regulation involves the formal sharing of regulatory responsibility between business and government. The approach offers the scope to delegate regulatory functions beyond the public regulator, including through certification, independent audit bodies, accreditation, and in some cases industry-led bodies to set professional and operational standards. We expect options for co-regulation to be explored in the development of all new regulatory regimes, and we also expect the scope for it to be introduced into existing systems to be tested as well.

Question 18:

Are there areas where you think co-regulation could be applied to enable more formal sharing of regulatory responsibility, including delegating functions to business or third party providers?

Of those who responded, 67% answered “yes”.

90. Business group responses were generally supportive of greater use of co-regulation. Responses highlighted the value of cost effective accreditation schemes involving, for example, recognised competency standards for business and for staff in particular operating areas and of formally agreed inspection plans and earned recognition. Some voiced concerns that where co-regulation effectively exists, this can often be undermined by local authority action on specific areas of compliance.
91. Trade associations commented that there are clearly areas which would benefit from co-regulation, for instance small businesses complying with the Red Tractor scheme as required by large retailers. They would welcome co-regulation if it meant that members of a scheme would be subject to fewer inspections and less enforcement activity while maintaining a high level of compliance. However, they also highlighted the potential for unintended consequences, as some certification schemes can be expensive and above legal minimum standards.
92. Professional bodies responding were generally favourable, commenting that delegation of regulatory responsibilities to professional bodies and trade associations could create more effective regulation; and that any increased risk is outweighed by the benefit..
93. Some local authorities expressed concerns, such as that co-regulation could lead to a blurring of responsibility in major public enquiries. They also see the potential for conflicts of interests and for placing greater burdens on small businesses – there

need to be transparent accountability mechanisms in place in case something goes wrong.

94. Others responded that LEPs and trade associations could share some of the regulatory responsibility but must be ready to take positive action against members who fail to comply with requirements. Some stated that compliance could be managed through accredited procedures, while others highlighted the potential for the use of in-company laboratories to perform regulatory testing where there was demonstrable competence and a mechanism to resolve any disputes that might arise (for example through the use of a technically qualified referee). Many respondents value clarity on what is meant by co-regulation and self regulation, ensuring all businesses are clear on accountability when something goes wrong.

Question 19:

What specific functions do you think could be delegated from particular public regulators?

95. Business groups offered several suggestions including that local authorities should consider working with businesses to solve problems co-operatively, rather than by confrontation and, where possible, test visits should be delegated to businesses to undertake. Some told us that firework registration by retailers should be the responsibility of either trading standards or fire and rescue services but not both (based on experience of having been given conflicting advice), while others believe that age restricted test sales purchasing, routine food standards and non-food inspections could be best dealt with by Primary Authority agreed inspection plans.
96. National regulators felt co-regulatory approaches were already in place in some areas, particularly in product safety and weights and measures, with businesses responsible for implementation of appropriate controls and certification. One was developing an accreditation scheme for organisations that held voluntary registers for practitioners involved in health and social care. However, another regulator expressed concern that some accreditation schemes can be costly and burdensome, and that care should be taken to avoid the creation of a two-tier system or non-competitive practices

Proposal:

In some areas professional standards are a key part of regulatory compliance, they give business confidence that they have the capability to operate in a compliant way, and they can reassure the public and regulators that functions are being carried out to required standards. We would like to see professional standards used more widely to drive up levels of compliance and to provide a greater degree of industry management of compliance.

Question 20:

Are there existing frameworks of professional standards that you feel could be given greater consideration in managing regulatory compliance?

Of those who responded, 73% were positive.

97. Business groups supported adoption of standards developed by the BSI, the Royal Society for the Prevention of Accidents, and ISO standards where companies have achieved recognition. One business involved in the betting and gaming industry ensured all its staff were trained in all areas of regulatory compliance and more senior staff often had legal responsibilities regarding regulatory compliance, including a full understanding of the Gambling Act and the role of the Gambling Commission – however such knowledge and standards are often unrecognised, particularly by local authorities.
98. One trade association responded that professional standards should not be allowed to replace the law as it could create burdens for small businesses.
99. Professional bodies responding commented that: there should be a requirement to act in the client's interest; competence is a key criterion together with use of a joint framework; effective international co-ordination fora are important to standardise practices.
100. The BSI felt the use of standards could be an important step for businesses to demonstrate their commitment to best practice and continual improvement, either with or without an inspection regime, and believed all regulators should be encouraged to explore with BSI where it already had committees in areas of interest to them.
101. Local authorities expressed general support for professional competency training provided by the Trading Standards Institute (TSI), [the Chartered Institute of Environmental Health](#) (CIEH) and the LBRO national competency framework and suggested it should be utilised more widely by the public sector. Another said 'the

extension of simple guidance will undoubtedly assist businesses in ensuring they are compliant with legislative standards'. A trading standards group wanted to see professional standards used more widely. Regulators' own professional standards e.g. as trading standards officers, should also not be overlooked.

102. Other suggestions included the extension of schemes such as the effective 'Motor Trade Partnerships' developed by some regulatory services and the motor trade industry e.g. the South Yorkshire Motor Trade Partnership Scheme resulted in a drop of 17% in complaints about traders within the first year of operation.

Question 21:

Are there areas where you feel new professional standards schemes could be usefully developed?

Of those who responded, 64% answered "yes".

103. Businesses and their representative bodies commented that such schemes would only add benefit if given statutory backing, and as long as they did not replicate existing schemes, thus adding further unnecessary burdens.
104. One local authority commented that guidance should be provided for earned autonomy and recognition.

Question 22:

What barriers do you think might stop this approach from being used more widely?

105. Business groups were concerned some local authorities would oppose such responsibility being held centrally and that cost would be a barrier. Professional bodies felt professional standards were crucial. Barriers identified included lack of confidence in enforcement schemes; sanctions, or the lack of them, to address non-compliance; inconsistency in application; and conflicting priorities between schemes
106. One national regulator highlighted the risk that established businesses could use a standards-setting mechanism to make it more difficult for others to enter the market and compete effectively with them, and warned that if the total effect of earned recognition, co-regulation and jointly designed standards were to make the regulatory burden systemically lighter for established businesses than for new entrants, it would stifle innovation and conflict with the aim of freeing business resources to support growth. Another believed there was some resistance from local authorities to targeting scarce resources into qualifications and training and

that they needed encouragement and financial support to invest in professional standards.

107. Local authorities highlighted small businesses' capacity to seek out local guidance, language differences and staff turnover; local authority budget pressures will put pressure on professional competency frameworks. One commented that local authorities providing training to businesses could break down barriers.
108. A trading standards group wanted to see professional standards used more widely.
109. Individual responses included a comment that regulators have insufficient ways of measuring their performance and gain more publicity if they prosecute businesses - regulators should be supported and encouraged to demonstrate their support for business by advising on changes in systems and procedures, and prosecution should be a last resort. There was also a view that the advent of the 'global market' has meant that many companies have such a large customer base that they can ignore all but the most persistent and organised consumer pressure.
110. One other respondent thought there were too many small local authority regulators and ineffective co-ordinated action.

Question 16 – 22: Government Response.

We will expect regulators and policy-makers designing enforcement regimes to operate on a presumption of 'co-regulation first'

111. **The consultation responses confirmed our strong view that co-regulation (the formal sharing of responsibility for compliance between the state and third parties) offers the scope to maximise the role of business within state-led models of regulation. It involves recognised and complementary roles for both parties and combines elements of self-regulation and state regulation. It is a flexible model that can be applied to meet varied industry structures, business models and regulatory aims. In its fullest form it provides the opportunity for regulators and business to work together on both the design and delivery of regulations. The programme of reviews of all regulators will examine the scope for far greater use of co-regulation. The presumption - both for policy-makers, when designing enforcement mechanisms, and for regulators, when thinking about front-line delivery, should be to use co-regulation, and only if it is found clearly to be inappropriate, should it be discarded as an option.**
112. **We want to see a much stronger role for business in the design and delivery of enforcement. There are three strong reasons for this. Firstly, because we need to move away from the automatic assumption that the "state knows best", or is automatically best placed to enforce standards of behaviour through regulation. Secondly, private capability and approaches to compliance have been growing, with significant developments in some areas**

over the last decade or so. These include businesses expanding their own in-house capability, the growth of private advice and audit services, and the development of industry-led assurance schemes designed to drive up standards and provide greater consumer or market confidence. Thirdly, the steps required to rebalance the public finances mean the resources available to public regulators will remain constrained for the coming years. Working with the grain of the approaches already being used by business to ensure compliance means that the resources available to regulators can be deployed elsewhere to areas of higher risk.

113. The distinction between state regulation and self-regulation can be wrongly approached as if it were a simple binary choice, the implication being that self-regulation is entirely rejected in those cases where a state-led solution is adopted. However, few examples of state regulation are purely that. Within most there will be elements of self-regulation, with some businesses and industries putting significant measures in place to secure compliance and high standards of performance.
114. A collaborative approach, that overtly combines the resources and efforts of the public and private sectors, can deliver better outcomes more efficiently; supporting business and promoting growth.
115. The consultation provided many excellent examples of co-regulation, illustrating the breadth of models potentially available. Three such examples are certification, accreditation and standard setting or professional oversight.
116. Certification involves the checking of performance against required standards. It equates to an inspection, audit or testing role. This includes the functions that are carried out when assessing individual businesses or products within industry-led assurance schemes. An example is the Lion Mark scheme for British eggs.
117. Accreditation provides additional independent verification of the operational capability and standards of certifying bodies. This is a role, for example, carried out by the UK Accreditation Service (UKAS) and provides the option of additional rigour and assurance within a co-regulatory system. For example, national DNA testing and carbon measurement certification are accredited by UKAS.
118. Standard setting and professional oversight relates to the setting of professional or operational standards. It can involve initial training, ongoing professional development, and the development of regulatory requirements and standards. These are explored in more detail below.
119. In some sectors professional standards are a long-established and central part of the regulatory framework, for example in financial audit. However, in other areas they are a relatively under-used tool in driving and demonstrating compliance and there is scope to increase their use.

- 120. There are cases where standards have been developed by industry in parallel to the regulatory regime and have led to overlapping activities that are not properly aligned. There are also cases where industry groups have developed technical standards and certification schemes for their sector that are not recognised by regulators as indicative of a business' ability to comply. Public enforcement regimes can also sometimes be lacking in "regulatory conversations"⁶ and effective partnership working between the regulator and the regulated.**
- 121. There are, however, successful examples where regulators have worked with their sector to develop standards and have taken this into account in developing their inspection and enforcement strategies, for example, the Red Tractor Scheme.**
- 122. Professional standards can provide an innovative mechanism for securing regulatory compliance. In particular they can help build the capacity of businesses to self-comply, and provide the opportunity to set clear and transparent expectations, which can be agreed in collaboration between industry and regulators. Regulators can actively contribute by setting out priorities and expectations in relation to compliance, and by helping business to understand and meet legislative requirements more easily. At the heart of a professional standards-based approach to compliance is a partnership where regulators and key bodies in their sector develop consensus and a shared understanding of compliance. Jointly agreed professional standards would also provide a means for businesses to demonstrate earned recognition to enforcement bodies.**
- 123. A common approach to regulatory competency developed by LBRO in collaboration with the professional bodies, Trading Standards Institute and Chartered Institute of Environmental Health, will be an enabler of this approach in practice. Further details of the Common Approach to Competency for Regulators are available at <http://www.lbro.org.uk/lbro-projects-professional-competency.html>. At a local level, the Primary Authority scheme also has a significant role to play in helping develop co-regulatory approaches.**

We will work with businesses, regulators and policy-makers to apply earned recognition to all existing regulatory regimes

- 124. Within any regime there is scope for the regulator to take account of the steps that business takes to comply with regulations, and to make more use of approaches that incentivise and reflect businesses' own efforts. This is at the**

⁶ Black, J. (2002), Regulatory Conversations. *Journal of Law and Society*, 29: 163–196. doi: 10.1111/1467-6478.00215 defines regulatory conversations as "the communicative interactions that occur between all involved in the regulatory 'space'". The author argues that such interactions are constitutive of the regulatory process, serve important functions, and can be the basis of coordinated action.

heart of the Primary Authority principle, for example, and is happening in practice.

125. The principle of earned recognition will be built into all enforcement regimes. Many companies have introduced internal controls and management systems in line with regulatory requirements (for example big retailers in relation to food safety). These can be solely internal, while some use external auditors.
126. A number of regulators are already looking at how the expansion in industry-driven solutions can be reflected in the way they carry out their public duties on monitoring and enforcement. Some, such as the Food Standards Agency, are carrying out a review of current assurance schemes to see how they map to key legislative standards and to what extent they may be able to inform delivery of official controls. As an example, the Environment Agency helped design a module within one industry-led assurance scheme. It then gave farms the choice of an EA inspection or an inspection under the assurance scheme. If the farm chooses and passes the industry run scheme then EA reduce their inspections.
127. In some cases this has meant that the certifying bodies contracted within the schemes can deliver similar checks to those that the regulator would otherwise carry out. This has given businesses a choice in the route they take to secure and demonstrate compliance. “Earned recognition” does not necessarily require formally delegated responsibilities and there is really no reason for it not to be considered.
128. In future we will expect it to be made explicit how company systems or industry assurance schemes would affect the public regulator's risk assessment and lead to a reduction in planned inspections. Offered in the right way it will incentivise greater elements of self-regulation. We expect the scope to apply and incentivise earned recognition to be explored in all new and existing regulatory regimes.

For the Government Response to questions 23-25 see the changes to the Primary Authority Scheme (pages 45-53).

Proposal:

One of the most valuable services that a regulator can provide, especially to smaller businesses, is clear and simple guidance on what steps a business needs to take to comply with regulations. This service can also be provided by business support organisations or private providers. We would like to see such advice take the form of assured guidance. This would mean that a regulator would not sanction a business that had followed the guidance, but had in some way fallen short of compliance. In these cases the regulator would work with the business to correct any shortcomings. We would like to see more regulators providing this type of support.

Question 23:

Would you welcome assured guidance?

Of those who responded, 91% were in favour.

129. The majority of business respondents welcomed assured guidance, believing it would benefit all businesses; provide greater policy transparency; help to avoid the risk of non-compliance with the “spirit” of new regulations which are easily open to different or changing interpretation; enable local enforcement activity to be used to judge whether centrally agreed compliance activity is being delivered; and engender greater trust between regulators and business.
130. However, one business felt assured guidance would not necessarily have the same effect as following Primary Authority approved advice, and would prefer to see a nationally agreed code of practice.
131. Trade associations, professional bodies and local authorities generally supported assured guidance and the suggestion that regulators work with businesses was welcomed.
132. Other respondents felt that where regulators, LEPs and trade associations acted together, assured guidance would be accepted by all and welcomed by individual businesses.

Question 24:

What would be required to make it work?

133. Business respondents referred to a willingness on the part of regulatory officials to commit advice to writing, to engage on business critical issues and to provide a clear view. They also suggested a formalised agreement between the regulator and the regulated business. Where there was no central enforcement body, trust was seen as key, but the move to localism is regarded as a potential threat to this e.g. would one local authority do what was best for another's area?
134. One business respondent felt it may be helpful to ensure that approaches are carefully co-ordinated, for example, where sales practices are endorsed by the sectoral regulator in the form of 'assured guidance', it would be necessary to ensure that such assurances were respected by Trading Standards (or vice versa);
135. Professional bodies commented there was a need to be careful not to over prescribe. They believe the guidance should be endorsed by a regulator and written in plain English. It was suggested that the requirements relating to paperwork and systems needed to comply with regulations should be reviewed, and that assured guidance and extending the Primary Authority scheme would help more businesses comply with their regulatory obligations.
136. Local authorities commented that guidance should be clear and specific and regulators and courts should have regard to it. They also pointed out that both overarching guidance and assured advice are needed and should not conflict with one another.

Question 25:

How best could this be achieved?

137. One trade association felt that assured guidance could be achieved through the proposed scheme for trade association advice to be recognised by a Primary Authority.
138. The Trading Standards Institute produced a number of guidance leaflets on trading standards legislation which were available for local authorities to provide to businesses, and felt the knowledge and experience of its lead officer members should be at the forefront of developing assured guidance.

Proposal:

The skills of individual enforcement officers are an important factor in the way in which a regulator carries out its functions and manages its engagement with business. We are keen to support the development of enforcement officers to deliver improvements in regulatory services. We also believe it would be helpful if both regulators and businesses were clear about the standards of service which we expect regulators to achieve – which may lead us to update and place greater emphasis on the Regulators' Compliance Code.

Question 26:

Are there particular areas of skills and expertise that you feel could be helpfully developed for enforcement officers?

Of those who replied, 85% answered yes.

139. Business groups wanted to see more use of assured guidance, and for enforcement officers to develop their commercial awareness and softer skills. One trade association commented that enforcement officers should be aware of the full range of legislative affairs that a business they are dealing with might face.
140. Professional bodies suggested training for enforcement officers in the specific sectors they regulate, understanding business, and competency in proportionate enforcement. There was general agreement by national regulators that a better understanding of business was good for enforcement.
141. Local authorities suggested it would be beneficial for regulators to gain work experience with businesses, and all regulators should be clear about what is required by law.

Question 27:

What are your worst experiences of interactions with regulators, and how could these be improved through professional development?

142. Business groups mentioned failure to ensure that the principles of natural justice were applied to regulatory decision making. Also highlighted were instances where operational enforcement officers lacked knowledge of the wider horizons of enforcement (such as the Regulators' Compliance Code, the Enforcement Concordat, Primary Authority, and advice and inspection plans under that scheme)

and had too little or too much authority to make decisions (the latter causing problems particularly when quick decisions centred on a local business premise have implications for the wider business).

143. Professional bodies commented that regulators experience occasional abuse and obstruction while, on the other side of the coin, anecdotally a small proportion of officers perform poorly. They stated that greater contact with enforcement professionals is needed to provide support, and businesses should not be sanctioned where they have followed assured guidance.

Question 28:

Have you ever referred to the Regulators' Compliance Code when seeking to address an issue with a regulator?

Of those who responded, 26% answered "yes".

144. Business groups wanted to see regulators have to make greater use of the Regulators' Compliance Code. Trade associations were generally supportive, with some commenting that businesses need to be made more aware of the Code's requirements.
145. Professional bodies were generally supportive of the Code but one felt it was not very effective and needed to be promoted or enforced. It was felt many of the requirements of the Regulators Compliance Code are difficult to apply locally and could better be applied on a national basis.
146. Local authorities were generally supportive, with one commenting that it could be better promoted so that it is generally understood by businesses and regulators.

Question 29:

Are there ways in which you think the Regulators' Compliance Code could be enhanced to help improve regulatory services?

Of those who replied, 80% answered "yes".

147. All business group respondents felt that the Code could be enhanced. Comments included: regulators' guidelines should be regularly reviewed to ensure that they continue to protect the interests of consumers, adapt to the continued development of competitive markets and take account of new regulators/regulations. They also said that there should always be a requirement to consider alternative ways to drive compliance before direct intervention and suggested that the Code could be made

to apply to individual dealings with regulators as well as to broad principles. They also suggested that it be further developed to set measurable criteria against which to judge the performance of regulators.

148. One trade association was sceptical that ‘tinkering’ with the Code would transform actual regulatory enforcement to a degree that promotes any material business growth. Its difficulties with regulatory enforcement were much less at the strategic level of codes and concordats, and much more at the operational level between the regulators and the regulated.
149. National regulators highlighted the need for any changes to be carefully considered and to ensure that the Regulators’ Compliance Code remains workable (principles based and outcome focused) and that regulators retain the ability to tackle illegal operators - delivering public confidence.
150. One individual respondent suggested several ways in which the Code could be enhanced, including, amongst others: it should provide that prosecution is a last resort; the principles of good enforcement (Section 21 Legislative and Regulatory Reform Act 2006) should be set out in the main text rather than simply in a footnote; it should expand and explain the principles of good enforcement and give good examples; the Code should become the National Regulators’ Enforcement Policy, to avoid inconsistency created by numerous local policies.
151. One other respondent believed the principles of the Regulators’ Compliance Code remained valid and saw no need for wholesale changes but thought that it may need to be refreshed in light of current priorities.

Questions 26-29: Government Response

We will reinvigorate use of the Regulators’ Compliance Code

- 152. The Regulators’ Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) provides an important mechanism for helping improve the accountability of the institutional regulatory framework. It is a statutory code of good regulatory practice which applies to certain regulators and bodies that perform regulatory functions. Regulators are required to “have regard to” the Code, and to the five principles of good regulation⁷.**
- 153. This particular duty means that regulators must take into account the Code’s provisions when developing their policies in setting standards or giving guidance. It stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by helping and encouraging the regulated to understand and meet regulatory requirements more easily.**

⁷ Proportionate, Accountable, Consistent, Transparent and Targeted only at cases in which action is needed

- 154. The Code stresses key aspects of good practice such as the need for clear standards of performance and risk assessment. It also lays down an approach that regulators should take to their specific activities – such as providing authoritative, accessible advice and guidance, and the need for clarity as to the rules it will follow when taking formal enforcement action.**
- 155. Our consultation has revealed that awareness of the Code is low among businesses and that its potential as a means of holding regulators to account is not being fulfilled. We will, therefore, in the course of our review of regulators, specifically look at how far they have applied the Code. We will also ask regulators to give the Code more prominence in their publications and websites. We will carry out a post implementation review of the code, it is now three years old, to see whether its scope should be extended to include co-regulation.**
- 156. In addition, during the consultation many businesses raised a concern that they sometimes feel inhibited from asking for advice from regulators (perhaps for help in establishing whether a particular practice or operation complies with the law). We are clear: no business should face sanctions simply for having asked a regulatory authority for advice. It may be that a revised Code would provide an opportunity to put this commitment on a statutory footing. Reinvigorating use of the Regulators' Compliance Code will be supported by an active focus on professional competency; working with the professional bodies and ensuring a culture focused on supporting businesses to comply.**
- 157. Above all, we will ensure that government departments think carefully about how regulations will be enforced – and about the costs for business and the taxpayer of enforcement – when new regulations are being designed or when we are challenging existing regulations as part of the Red Tape Challenge. To ensure that this happens, we will ensure that an assessment of the costs of enforcement is included in the Impact Assessments that form part of the One-In, One-Out system.**

Analysis of responses to specific questions asked about the Primary Authority scheme.

(NB Questions 1- 7 of the Discussion Document on the Future of the Local Better Regulation Office (LBRO) and the Primary Authority Scheme referred to proposals to make changes to LBRO. The Government has published a separate response in respect of these proposals.

97 responses were received to this part of the consultation. Not all respondents answered all specific questions inviting a yes/no response with a positive or a negative. We have examined answers given against the individual questions and, where it appears clear have allocated a 'yes' or 'no' answer.

Proposal:

We plan to extend the Primary Authority scheme to enable more businesses to access assured regulatory advice to support compliance. We are considering how it can be used to deliver earned recognition - ensuring that corporate compliance is reflected and that enforcement action is managed in a co-ordinated way between all of a business' premises. We also plan to extend the benefits to smaller businesses through a new type of Primary Authority for trade associations and to extend the scope of the scheme to include additional areas of enforcement.

Question 8:

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

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

- 158. One local authority had reservations about the impact of extending the remit of Primary Authority on councils' ability to tackle crime and disorder.
- 159. One individual respondent highlighted concern in the enforcement community that businesses would "shop around" for the weakest enforcement authority so as to avoid compliance issues. There should be provision to challenge or even break Primary Authority arrangements where this could be shown to have happened.

160. The majority of respondents agreed that the Primary Authority scheme should be broadened. However, concerns were raised that if the scheme is extended within its current legislative framework it could increase the numbers of potential partners to an unmanageable level.
161. Businesses highlighted the value of being sure that the person they deal with has the required knowledge and competence. They can rightly expect agencies to communicate with each other. They do not necessarily need one authority to handle all these different areas of regulation.
162. It was noted that Primary Authority would only have credibility if all local authorities respected the primary authority's knowledge and depth of understanding of the business in question. Respondents felt that this extension was acceptable as long as primary authorities had sufficient skills and competencies in all the primary authority areas to ensure effective advice was being provided.
163. There were mixed responses about whether the Fire Safety Order should sit within or outside the scope of the scheme. Concern was also raised about the 'agreed inspection plan' approach. It was felt this did not reconcile with the responsibility for the local Fire and Rescue Service (FRS) to deploy its resources according to agreed local risk priorities.
164. Businesses that share a common approach to compliance, such as company groups, find the current practices which limit eligibility for Primary Authority restrictive. These businesses would benefit from assured advice and support for their regulatory responsibilities. It was also noted the current requirements prove limiting to those authorities that are keen to engage with a range of businesses.

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:

- a) Company Group structures;
- b) Franchises; and
- c) Trade Associations?

79% of those who replied were in favour of the proposal.

165. Businesses, trade associations and local authorities were broadly supportive. Fire authorities were split. Of the professional bodies that answered one replied yes and the other replied no to the question.
166. The majority of respondents agreed that eligibility for Primary Authority should be broadened so that the 'assured advice' benefits of the scheme become available to different business models.

167. Some businesses commented that they did not want to be compelled to join trade associations in order to benefit from assured advice and asked that such advice would not be restricted to members of particular trade associations.
168. Local authorities were concerned that Primary Authority would effectively remove local discretion and accountability with either licensing or gambling functions, given the importance of local decision making within these licensing regimes. It was noted that one of the fundamental principles of both the Licensing and Gambling Acts is to involve local communities in licensing decisions and that care needs to be taken not to hinder this
169. Concerns were raised about Primary Authority's ability to extend to inspection plans especially for franchises and trade associations and the mechanisms available to ensure that the member had actually received assured advice.
170. It was suggested that trade organisations could require that members sign up to a code of conduct to abide by the trade organisation's primary authority rulings. This measure was seen as a way of delivering the benefit of standardisation along with clarity of information for members.
171. However, it was also noted that where a large corporate company would easily work within this protocol, small-to-medium premises could struggle to accept or achieve the standards set. Clarity was requested on where liability starts and stops when 'assured advice' is followed and compensation claims result.
172. Concern was raised that extending Primary Authority could increase the costs for regulators/enforcers when many regulators face significant budget challenges; this may affect their ability to support such a move without a promise of support and additional funding.
173. A further risk may be that the sheer number of members in a trade association may make a Primary Authority relationship difficult to resource effectively and incentives to comply may consequently be diluted.

Question 10:

Do you agree that:

- a) 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;
- b) 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;
- c) 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;
- d) 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; and
- e) The current exemptions for inspectors which cover enforcement action should be extended to cover deviations from inspection plans?"

174. There was some support for the proposals. Businesses commented that in accordance with the Regulators' Compliance Code, they would expect to receive advice and support to reach compliance rather than immediate punitive sanctions and local regulators should be accorded the same approach. There was general support from businesses for Primary Authority giving businesses assurance that they will not be penalised if they comply with advice they receive from their primary authority even though they operate within several local authority areas.
175. All Fire and Rescue Service responses highlighted concerns that the proposals were at odds with the concept of integrated risk management, as required by the Fire and Rescue Services Act and the associated national framework document.
176. Some business noted their experience to date was that local authorities interpret 'have regard to' as meaning they note it and carry on regardless.

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?

- a) Part 1 of The Housing Act 2004
- b) Criminal Justice Act 1988: parts related to age restricted products
- c) Offensive Weapons Act 1996: parts related to age restricted products
- d) Regulatory Reform (Fire Safety) Order 2005
- e) Licensing Act 2003: only those parts related to age restricted products. Do you agree or disagree that these should be included?
- f) Alternatively, do you think that licensing authorities should 'have regard to' (rather than 'comply with') Primary Authority advice on those parts of the Licensing Act 2003 related to age restricted products?
- g) Gambling Act 2005: parts related to age restricted products
- h) Gambling Act 2005: do you think there may be a role for Primary Authority advice on other parts of the Act
- i) Is there any other legislation, particularly on age restricted products, which you feel should be included within the scope of the Primary Authority scheme?"

- 177. The majority of respondents agreed that the suggested Acts should be included within scope of the Primary Authority scheme.
- 178. Most Fire and Rescue Service respondees felt that the Regulatory Reform (Fire Safety) Order 2005 should remain outside the scheme, and that existing partnership arrangements are adequate.
- 179. However, businesses commented that including the Regulatory Reform (Fire Safety) Order within the scope of the Primary Authority scheme would enable businesses to develop a single point of contact for the review and approval of day to day fire safety processes that are currently subject to a wide range of interpretation across different authorities.
- 180. Some respondents were in favour of using the Primary Authority approach with the Licensing Act 2003. However, police responses were broadly against the inclusion of the Licensing Act.
- 181. With age-restricted products, some suggested that the legislation covering sun-beds be included.
- 182. Local authorities felt local intelligence-led enforcement should not be included because it is for the local licensing authorities to determine local implementation and, where a failure occurs, decide on the response having regard to their own enforcement policy.

Question 12:

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

183. Suggestions included working with insurers to develop specialist rates for businesses with a Primary Authority partnership and sliding scales to reflect the introduction of inspection plans and good practice. Another area that was suggested for inclusion was compliance with the Disability Discrimination Act 1995/2010.
184. Ability to set up agreements through local authority networks rather than with a single local authority would, it was suggested, allow for improved consistency and for those local authorities within a regional partnership to best use the expertise within the region to support businesses.

Questions 8 to 12 of Discussion Document on Proposed Changes to Primary Authority Scheme: Government Response

We will extend the Primary Authority Scheme, and use it to deliver assured advice and earned recognition for business

185. **The Growth Review⁸ identified the Primary Authority scheme as playing a key role in delivering the Coalition commitment to end the culture of ‘tick-box’ regulation. Responses to the consultation in the main supported our proposal to extend Primary Authority so that more businesses are able to access assured regulatory advice, supporting both business growth and compliance with the law, and bringing greater coherence and coordination to local authority regulation.**
186. **Primary Authority improves the way in which businesses trading in more than one local authority area are regulated by locally delivered environmental health and trading standards services. The primary authority serves as the business’ first point of call for advice on regulatory issues; providing assured advice. Any other local authority must consult with the primary authority before taking enforcement action to check that their plans are consistent with advice previously provided to the business. This approach promotes consistency and proportionality in the way these businesses are regulated and provides confidence for the business in the information it receives. It also provides a mechanism to co-ordinate and plan inspections for multi-site businesses so that good performance can be recognised, thereby reducing**

⁸ http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

the overall number of inspections a particular business receives (earned recognition).

187. The scheme has proved successful and been taken up by over 405 businesses, covering more than 48,000 premises and 71 local authorities⁹. Building on this success and the positive consultation responses received we intend to make changes to the Primary Authority scheme which will include:-
- strengthening inspection plans to deliver earned recognition for business;
 - broadening eligibility to allow more organisations to participate, benefiting small business; and
 - broadening the scope to include new policy areas.

Matters devolved to Scottish Government and to the Northern Ireland Government will continue to remain outwith the scope of the Primary Authority scheme.

Strengthening inspection plans to deliver earned recognition for business

188. As well as creating a more consistent approach for business, the scheme provides a more strategic way for the regulatory system as a whole to work. This includes the ability for the primary authority to work closely with the business to get an understanding of its compliance systems and compliance record. This can be used to determine an appropriate inspection plan, coordinated across the country for multi-site businesses, and prove the necessary levels of assurance on compliance. It provides a means to improve the feedback to businesses when improvements are required and for local authorities to operate on the basis of a fuller and shared understanding of priorities. This offers opportunities for local authorities to target their resources more effectively on a better informed risk assessment. For businesses, it offers the scope for much more targeted and better quality inspections, and in some cases the opportunity to significantly reduce the number of inspections.
189. Lord Young’s review “Common Sense, Common Safety” pointed out that while the scheme had brought real benefits in the way that enforcement action is carried out; it needed to be extended to bring a more streamlined approach to the way in which inspections are handled. His review also suggested an enhanced role for the Health and Safety Executive (HSE).¹⁰ We will therefore legislate to extend the scheme to address Lord Young’s recommendation and to ensure that the inspection plan element delivers benefits for all parties. Further, as set out in the recent Government Response

⁹ As at 22 November 2011

¹⁰ www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf

to the report by Professor Ragnar Löfstedt, HSE will work closely with the Local Better Regulation Office, who operate the Primary Authority scheme, to ensure that Primary Authority can help deliver reductions in burdens, and increased consistency of approach, in line with HSE policy. Local inspectors will still be able to use their local knowledge and experience to engage with local firms across a range of regulatory issues. We will also ensure that there are common standards for businesses across Britain and that they can rely on consistent application of health and safety law wherever they are located.

Broadening the eligibility to allow more organisations to participate

- 190. Primary Authority is currently available only to businesses that are themselves regulated by more than one local authority. We want to extend the benefits of the scheme to smaller companies. Many small businesses receive compliance advice from support organisations such as their trade bodies, and indeed some trade associations run certification schemes and third party audits of compliance. There is currently no mechanism to bring together the advice and compliance support offered through trade bodies. Extending the Primary Authority scheme to trade associations in this way would also incentivise more market and business-led solutions to compliance, make co-regulation more feasible and provide greater scope for earned recognition.**
- 191. Some large company groups are also excluded from taking part in Primary Authority or have to engage in a fragmented way, even when they have corporate compliance systems in place that would otherwise fit well with the scheme. The same difficulty also arises for franchise businesses where a chain operates nationally, and has common compliance systems in place, but where each franchisee is separately regulated by a single local authority.**
- 192. These restrictions are preventing businesses from accessing the assured advice and regulatory support available through Primary Authority which could otherwise be applied throughout their business structures. It also means the scheme is unable to recognise and adapt to the range of business models operated by companies and that it cannot respond flexibly where companies change their business models in ways that alter their eligibility under the current terms of the scheme. We therefore intend to extend the scheme to allow businesses – including SMEs - operating within the framework of company groups, franchises and trade associations to access assured advice.**
- 193. All these different company models are legally more complex than the current scheme – and we need to be sure that these extensions can be properly put into effect without any unintended consequences. But wherever we can find a suitable legal solution we will extend the scheme in these ways.**

Broadening the scope to include specific policy areas

- 194. Businesses have also told us that they believe the scope of Primary Authority should be extended to fire safety, underage sales of gambling, alcohol and knives to bring them fully within the scope of the scheme and reduce inconsistency in enforcement. Businesses can clearly see parallels with existing elements of Primary Authority and are keen to have a similar approach to managing compliance wherever this is feasible. We will legislate to extend the Primary Authority principle to age-related sales of gambling and knives. 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.. Given the views raised by the police and some local authorities that linking Primary Authority to age-restricted sales of alcohol will take power and flexibility away from local authorities, we will continue to consider this issue carefully in consultation with local authorities and the police, including the consideration of a pilot within existing legislation.**
- 195. Taken together, we estimate all these changes to the Primary Authority scheme to result in annual gross benefits to those businesses that choose to take advantage of them of between £15m and £25m. Similarly, local authorities stand to benefit from the reduced workload and cost recovery involved, with annual benefits of between £14m and £23m significantly outweighing the costs.**

We will work with regulators and third party providers to expand the availability of assured advice which will specifically help small businesses

- 196. One of the most challenging roles for regulators is the provision of good, tailored services for those businesses that do not have extensive in-house compliance capability. Simple, clear advice is often the most important intervention and service that the regulator can provide to these businesses. Making the requirements more transparent, and the steps to comply with them better understood, offers real scope to improve outcomes.**
- 197. Good examples of this kind of guidance exist and include the already-mentioned Food Standards Agency’s “Safer Food, Better Business”, and the Health and Safety Executive’s “Health and Safety Made Simple”¹¹. In addition to the materials provided by regulators themselves, there are a range of other bodies providing advice: from trade bodies, professional bodies, small firms support organisations and not-for-profit advice services through to commercial providers and the wider market in consultancy support. Regulators cannot always be sure how the courts will interpret regulations,**

¹¹ www.hse.gov.uk/simple-health-safety/

and therefore it is hard for them to give cast iron guidance on what will definitely be regarded as compliant. However, ideally we would expect regulators to provide information in the form of 'assured advice' wherever possible, meaning that, the regulator will deem the business to have taken all reasonable steps to comply if they have acted in accordance with the advice provided.

198. At local authority level, assured advice is being delivered through the Primary Authority scheme. The particular advantage of this scheme is that it gives businesses confidence that a coordinated approach will be taken across local authorities on assessing the appropriateness of in-company compliance systems and on assessing the nature of any possible non-compliance identified by any given local authority. Bringing national regulators together with local authorities and businesses within the Primary Authority mechanism provides a statutory infrastructure through which they can deliver assured and tailored advice.

Annex A

Transforming Regulatory Enforcement - consultation respondents

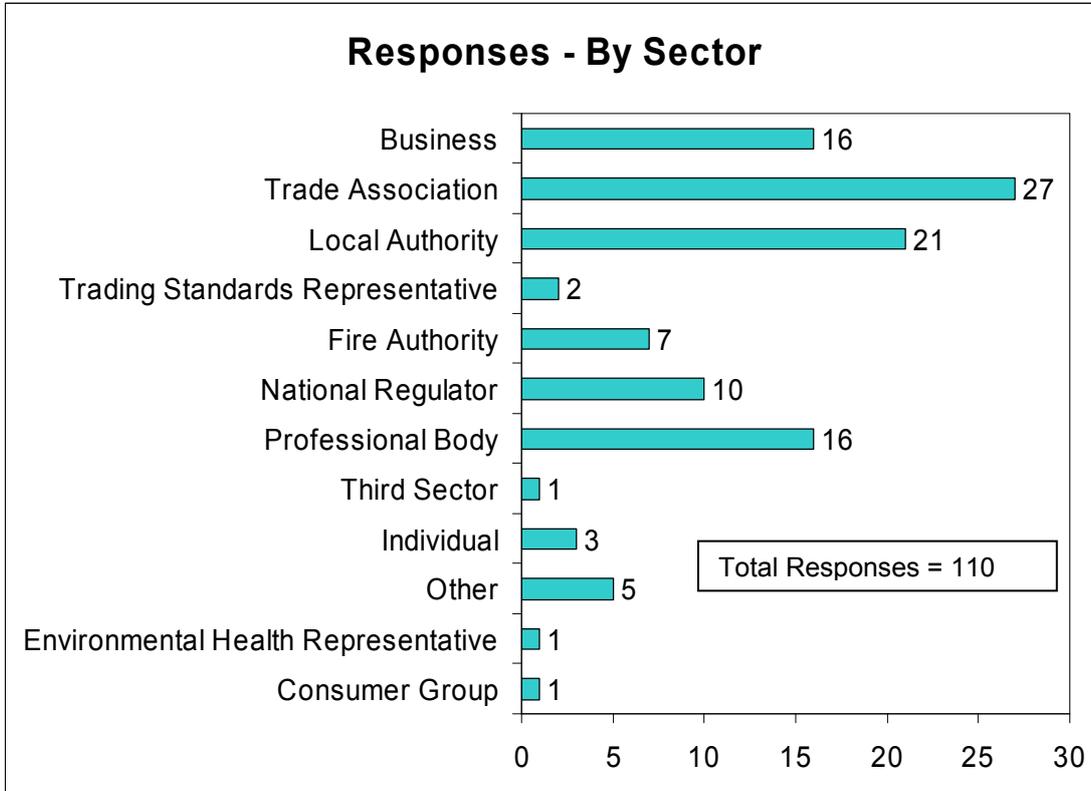
110 replies were received from 107 organisations listed below and three individuals.

Organisation

1	ASCO Numatics (emerson grp)
2	Asda Stores Ltd
3	Association of British Bookmakers
4	Association of British Certification Bodies (ABCB)
5	Association of Chief Trading Standards Officers
6	Association of Electricity Producers
7	Association of Independent Meat Suppliers (AIMS)
8	Association of Licensed Multiple Retailers (ALMR)
9	Association of Recruitment Consultancies
10	Bedfordshire and Luton Fire and Rescue Service
11	Bingo Association
12	Birmingham Assay Office
13	Birmingham City Council
14	Brighton and Hove City Council
15	British Beer & Pub Association
16	British Frozen Food Federation
17	British Hallmarking Council
18	British Hospitality Association
19	British Marine Federation
20	British Retail Consortium
21	British Standards Institution (bsi group)
22	C.S. Todd & Associates Ltd
23	Care Quality Commission
24	Chartered Institute of Environmental Health (CIEH)
25	Chartered Quality Institute
26	Chemical Business Association
27	Chemical Industries Association
28	Chief Fire Officers' Association
29	Citizens Advice
30	City of Wakefield Metropolitan District Council
31	Consumer Focus Wales
32	Cornwall Council
33	Council for Healthcare Regulatory Excellence (CHRE)
34	Defra
35	Devon County Council
36	Dundee City Council
37	EDF Energy
38	Environment Agency
39	Environmental Industries Commission
40	ESRC Centre for Competition Policy, University of East Anglia
41	Eversheds LLP
42	Federation of Communication Services
43	Federation of Small Businesses
44	Food and Drink Federation
45	Food Standards Agency

46	Forum of Private Business
47	Fresh Produce Consortium
48	Glass & Glazing Federation
49	Gloucestershire County Council
50	Government Chemist Technology & Policy Consultant
51	Greater Manchester Fire and Rescue Service
52	Greene King
53	Hampshire Fire and Rescue Service
54	Higgs & Sons
55	Home Retail Group plc
56	Institute of Chartered Accountants in England and Wales
57	Institution of Occupational Safety and Health
58	Islington Council
59	Ladbrokes plc
60	Law Society
61	LBRO
62	LBRO Local Authority Reference Panel
63	Leicester, Leicestershire and Rutland Combined Fire Authority
64	Local Government Group
65	London Borough of Haringey
66	London Fire Brigade Headquarters
67	Medway Council
68	Metal Packaging Manufacturers Association
69	Mid Suffolk District Council
70	Mineral Products Association
71	Moto Hospitality Ltd
72	National Casino Industry Forum
73	National Farmers Union (NFU)
74	National Federation of Property Professionals (NFOPP)
75	Natural England
76	Newham Council
77	Norfolk County Council
78	North East Trading Standards Association (NETSA)
79	Nottinghamshire Food Liaison Group and Nottinghamshire Chief Environmental Health Officers Group
80	Office of Fair Trading
81	Office of Rail Regulation
82	Ornamental Aquatic Trade Association Ltd (OATA)
83	Pet Care Trade Association
84	Portsmouth City Council
85	Proprietary Association of Great Britain (PAGB)
86	Provision Trade Federation
87	Residential Landlords Association (RLA)
88	Rhondda Cynon Taff CBC
89	Scotch Whisky Association
90	Scottish and Southern Energy plc
91	Scottish Power
92	Severn Trent Water Limited
93	Shakespeare Classic Line Limited
94	Smithfield Market Tenants' Association
95	South Bucks District Council
96	Specialist Cheesemakers Association
97	Trading Standards Institute
98	UK Liquid Petroleum Gas
99	UNISON
100	United Kingdom Accreditation Service
101	United Kingdom Weighing Federation (UKWF)
102	Wandsworth Council
103	Welsh Local Government Association
104	West Midlands Fire Service

- 105 West Yorkshire Fire and Rescue Service
- 106 Westminster City Council
- 107 Wigan Council



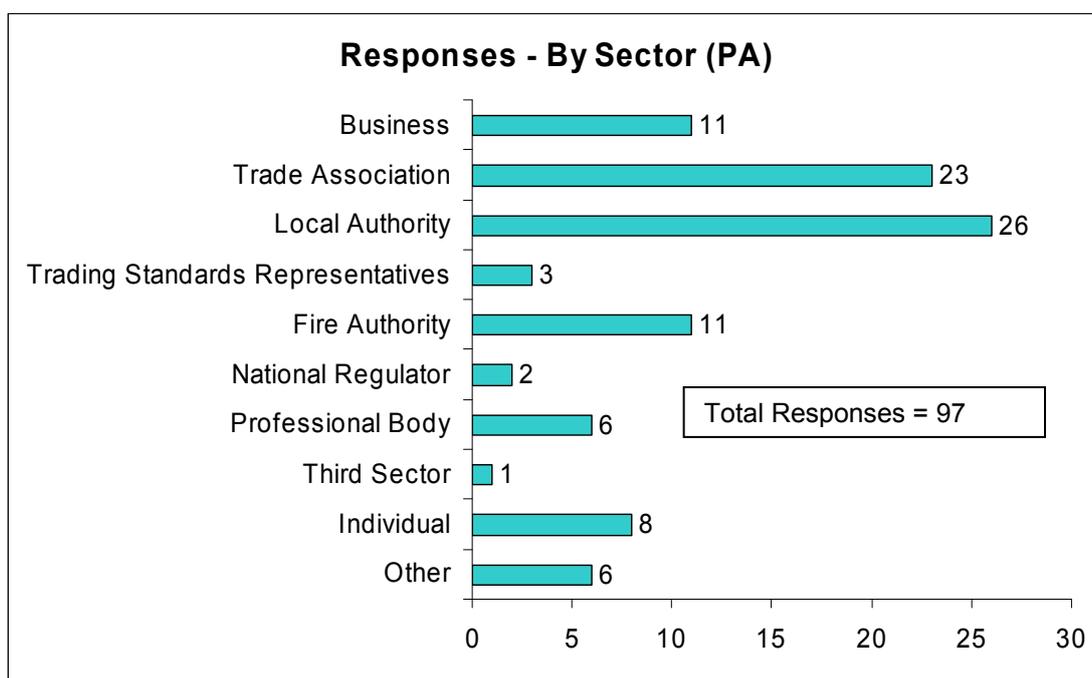
Changes to Primary Authority - consultation respondents

Replies were received from the 89 organisations listed below and 8 individuals

Organisation

1	Asda Stores Ltd
2	Association of British Bookmakers
3	Association of Chief Police Officers (ACPO)
4	Association of Chief Trading Standards Officers (ACTSO)
5	Association of Convenience Stores (ACS)
6	Billericay Cookshop Ltd
7	Bingo Association
8	Birmingham City Council (1)
9	Birmingham City Council (2)
10	Bolton Council
11	Brighton and Hove City Council
12	British Frozen Food Federation
13	British Hospitality Association
14	British Independent Retailers Association (bira)
15	British Marine Federation
16	British Retail Consortium (BRC)
17	British Toy and Hobby Association
18	Cambridgeshire County Council
19	Chief Fire Officers' Association (CFOA)
20	Chartered Institute of Environmental Health (CIEH)
21	Citizens Advice
22	City of Wakefield Metropolitan District Council
23	Council for Responsible Nutrition (CRN)
24	County Durham & Darlington Fire & Rescue Service
25	Derby City Council
26	Devon County Council
27	Dundee City Council
28	East of England Trading Standards Ltd (EETSA)
29	Federation of Small Businesses
30	Food Standards Agency
31	Forum of Private Business
32	Glass and Glazing Federation
33	Gloucester City Council
34	Greater Manchester Fire And Rescue Authority
35	Greene King
36	Hampshire Fire and Rescue Service
37	Haringey Council
38	Hertfordshire County Council
39	Home Retail Group (operating companies Argos Ltd Homebase Ltd)
40	Institution of Occupational Safety and Health (IOSH)
41	Kent and MedwayTowns Fire Authority
42	Knowsley MBC
43	Ladbrokes plc
44	Leeds City Council
45	Leicester, Leicestershire and Rutland Combined Fire Authority
46	Local Government Group (LG Group)
47	London Fire Brigade Headquarters
48	McDonald's Restaurants Limited
49	Medway Council
50	Milton Keynes Council
51	Moto Hospitality Ltd
52	Muller Dairy (UK) Ltd

- 53 National Association of Licensing and Enforcement Officers (Naleo)
- 54 National Caravan Council (NCC)
- 55 National Farmers Union (NFU)
- 56 National Joint Utilities Group Ltd
- 57 North East Trading Standards Association (NETSA)
- 58 Office of Fair Trading (OFT)
- 59 Ornamental Aquatic Trade Association
- 60 Oxfordshire County Council, Trading Standards
- 61 Oxfordshire Fire and Rescue Service
- 62 Pet Care Trade Association
- 63 Pizza Hut UK Ltd
- 64 Portsmouth City Council
- 65 Proprietary Association of Great Britain
- 66 Provision Trade Federation
- 67 Residential Landlords Association
- 68 Retail Motor Industries Federation
- 69 Rhondda Cynon Taff County Borough Council
- 70 Safer Stockton Partnership (Stockton on Tees Council)
- 71 Sainsbury's
- 72 Staffordshire Fire and Rescue Service
- 73 Supersave Ltd
- 74 Sussex Police
- 75 Torridge and North Devon District Councils (Licensing Services)
- 76 Trading Standards Institute
- 77 Trading Standards South East Limited
- 78 TSI Business Members Group
- 79 Tyne & Wear Fire and Rescue Service
- 80 UNISON
- 81 United Kingdom Weighting Federation (UKWF)
- 82 Wandsworth Council
- 83 Watford Borough Council
- 84 West Midlands Fire Service
- 85 West Yorkshire Fire and Rescue
- 86 West Yorkshire Trading Standards Service
- 87 Westminster City Council
- 88 Worcestershire Regulatory Services
- 89 World Bank Group Investment Climate Advisory Services



Responses to Red Tape Challenge

In addition to BIS's 'Transforming Regulatory Enforcement' discussion documents, responses to which are summarised above, we also sought comments via the Red Tape Challenge.

The enforcement theme was live on **the Red Tape Challenge**¹² from 23rd June to 16th September 2011.

We asked the public to respond to the following questions:

- How enforcement has placed an unnecessary burden on you or your business
- Whether you have experienced overlap between different enforcement organisations? If so how?
- Your experiences of particularly overzealous enforcement that is beyond the remit of the regulation
- Where you feel that you or your sector could manage compliance without intervention by enforcers
- Where enforcement works well and is helpful

We received over a hundred responses. Examples were provided of overly-burdensome enforcement and some respondents gave us examples of where different enforcement regimes overlap. We were told that some inspectors are too focussed on finding particular breaches of requirements, rather than concentrating on the actual aim of the regulations. Some respondents wanted to see greater use of risk-assessments so that intervention by enforcers would be targeted towards high-risk businesses. Several respondents said that inspectors don't always appreciate that small businesses vary from large businesses, and some stated that small businesses, in particular, value the advice and guidance that regulators provide, and would welcome this happening more frequently. Others stressed the continuing need for regulation to exist and wanted to ensure rogue businesses did not flourish at the expense of compliant ones.

We also held **three consultation events** in August 2011, attended by around 35-40 stakeholders from a range of business organisations and sectors. They gave us the clear message that: they supported the Hampton principles and wanted to see more of them in practice, with regulators penalised if they don't use them; regulators needed a culture change with more business understanding, support and advice and greater customer service skills, more partnership working and less confrontation; the aim of regulators should be achieving compliance rather than enforcement, and they should take action in proportion to the problem being considered and be more transparent and consistent.

¹² www.redtapechallenge.cabinetoffice.gov.uk/

Annex B

Case studies

Co-regulation and the welfare of racing greyhounds

New regulations to promote the welfare of racing greyhounds were introduced by Defra in 2010 in response to concerns expressed by the public. A scheme was subsequently developed by Defra in conjunction with the industry and the UK's independent accreditation body, the United Kingdom Accreditation Service (UKAS), following public consultation.

Under the scheme, welfare standards are set by government covering veterinary care, the provision of kennels and record keeping, including the recording of injuries. But wherever possible these standards are enforced by the industry itself through a recognised industry body - for example the Greyhound Board of Great Britain (GBGB).

Businesses who are members of one of the recognised bodies are exempted from the local authority licensing requirements whilst those who are not members are required to apply to their local authority for a licence to operate, and will come under the local authority's inspection and compliance regime. To ensure that the industry bodies are effective, they are approved to regulate their members through a requirement to be accredited by UKAS bringing additional independence and rigour to the system.

There are around 30 greyhound tracks in Great Britain, of which 80% are members of the GBGB, who undertake inspections of their members' tracks as part of a UKAS accredited certification scheme. This means the vast majority of greyhound racing tracks in England require no separate licensing, and are not subject to any additional visits by public sector inspectors as a result of the new regulations. The advantages of this co-regulatory approach are that it:

- is proportionate to the problem;
- ensures minimum standards are set;
- complements industry efforts to comply by recognising the existing self-regulatory system;
- allows businesses a choice of regulator;
- minimises the administrative impact of regulation on small business;
- avoids unnecessary duplication of effort, allowing public regulators to target resources on higher risk businesses.

The Pensions Regulator’s “Trustee toolkit”

The Trustee toolkit is a free, online training package to help trustees to access the learning they need to meet their legal requirements for knowledge and understanding, introduced in the Pensions Act 2004. It was developed with the trustee community, and others involved in pension provision, in response to a gap in the market for training, and provides a flexible, modular training tool with role plays, tutorials and case study examples. It has been very successful and it has some 30,000 registered users and a 98% satisfaction rating.

Certification is provided to those who have completed the toolkit, and while this does not represent a formal qualification, it should provide the learning required to then complete the Pensions Management Institutes’ award in Pensions Trusteeship. Indeed, the toolkit is a part of a wider framework of guidance issued by the Regulator which comprises a code of practice, an indicative “syllabus” and supporting guidance on how to meet the requirements.

Earned recognition - pig and poultry assurance scheme

The Environment Agency (EA) and the National Farmers Union (NFU) launched an initiative in 2010 to cut red tape and reduce costs for pig and poultry farmers covered by the Integrated Pollution Prevention and Control Directive. Over 1,000 large pig and poultry farms fall under these regulations (these facilities are responsible for 21% of the UK ammonia inventory).

The scheme aims to provide the EA with reliable farm data without having to collect it from low risk enterprises. It was developed with industry bodies so that it worked in parallel with sector-led assurance schemes such as Red Tractor and British Lion Eggs. The Environment Agency defined specific content, and licenses the certification bodies operating under these schemes to inspect on its behalf. The farmers have a contract with the certification bodies to audit against both schemes, which saves time, money and reduces the bio-security risk. Certification bodies will inspect and collect data for the EA and, whenever possible, do it when carrying out audits for the Red Tractor scheme to decrease the number of visits to farms.

Farms can opt to be audited under this scheme or continue to be audited by the EA. 550 of these large farms have been classed as low risk, and were invited to join the scheme in April 2010. 430 of those have opted in. The advantages of this approach are that it:

- reduces inspection numbers – the EA inspects the farm once every three years instead of twice a year, minimising disruption for the farmer;
- reduces costs to business – each farm joining the scheme pays the EA £880 less every year due to less frequent inspection requirement;
- avoids unnecessary duplication of effort - allowing the EA to target resources on higher risk non-compliant farms (which are ineligible for the scheme);
- is voluntary - a farmer can choose not to join the Scheme, and will continue to be inspected as normal;
- retains public oversight and responsibility, but the public inspection regime is informed by assurance scheme findings; and

- has helped improve the relationship with business

NFU Acting Director General Martin Haworth cited it as a “*groundbreaking better regulation initiative*”... “*where the agriculture industry and the Environment Agency have worked together to help reduce costs for producers and reward farmers that have demonstrated good environmental practice.*”

Leicester and Leicestershire Local Enterprise Partnership pilot scheme to enable business growth by improving regulatory enforcement

Leicester and Leicestershire LEP (LLEP) are working alongside LBRO to develop practical ways to improve the trading environment through regulatory support, removing barriers to business growth and improving business confidence.

Their Better Business for All (BBfA) programme is intended to create the conditions for an effective and efficient regulatory system to support business growth through removing the real and perceived regulatory barriers to growth.

They formed a partnership between the Chambers of Commerce, local authorities, Fire and Rescue Service, and the Federation of Small Businesses to develop a new relationship between businesses and regulators across the LLEP area. Leicestershire Chamber of Commerce worked closely with their members to identify the specific issues faced by local businesses in the area, including the needs of diverse business.

As a result, their pilot programme is now:

- making it easier for business to access the advice and guidance they need from both local and national regulators;
- providing regulatory staff with a greater understanding of the pressures faced by business;
- working with regulators to enhance their softer skills when carrying out inspections;
- improving the way that the different regulatory services work with each other, so that when visiting a business if regulatory officers become aware that the business needs advice or guidance from another regulatory service the officer will take ownership of the enquiry and refer the matter to the Business Support Scheme officer, who will then deal with the enquiry in the same way as the phone line enquiries; and
- encouraging greater partnership working between business and regulators

With the support of the LLEP leadership, these priorities are being progressed and learning from this pathfinder pilot will be shared with other LEPs using improved regulatory support to remove barriers to growth in their localities.

More information about Better Business for All can be found at www.llep.org.uk/betterbusinessforall

Common approach to regulatory competency

LBRO has worked in partnership with the Chartered Institute of Environmental Health, the Health and Safety Executive, the Trading Standards Institute, and the Institute of Licensing to introduce the first set of common and transparent professional standards of competency in regulatory services. This approach simplifies the regulatory system by providing a single, nationally recognised and agreed framework that regulators can use to ensure their competency is maintained.

The framework is used by local authority regulators, national regulators and other bodies. It focuses on the skills and knowledge needed to support businesses into compliance and to protect citizens, and embeds the competencies needed to deliver better regulation. This approach encourages personal empowerment and responsibility. The new professional standards will provide an efficient and robust means of maintaining a competent and highly flexible workforce, while their application will lead to better outcomes for businesses and citizens.

Figure 2



Primary Authority and co-regulation

B&Q has well over 300 stores and is one of the UK's leading DIY and garden centre retailers. It formed a Primary Authority partnership with Eastleigh Borough Council in April 2009. The introduction of Primary Authority was viewed as the opportunity to focus on health and safety compliance. At a six month review both B&Q and Eastleigh felt that the co-regulatory partnership had achieved their aims of increasing visibility, confidence and consistency of compliance, whilst working with the grain of the business and its approach to delivering that compliance. The open, honest and consultative approach has brought barriers down, and working together has served to instil confidence on both sides. The company was keen to make advice available through the LBRO website so that all local authorities could easily find out what solutions B&Q were implementing to address common compliance issues such as vehicle movements. It also saw the partnership as a means of ensuring that operational procedures were fully observed at all sites. Raising the visibility of how B&Q manages health and safety was another aim, to encourage dialogue with regulatory officers.

Food Standards Agency and the Food Hygiene Rating Scheme

The Food Standards Agency, in partnership with local authorities, is introducing the national Food Hygiene Rating Scheme in England, Wales and Northern Ireland (a scheme with similar aims - the Food Hygiene Information Scheme - is being rolled out in Scotland). Businesses that sell or serve food direct to consumers are given a rating on a scale from 0 (urgent improvement necessary) up to 5 (very good), indicating the hygiene standards of found at the time of inspection.

Businesses are encouraged to display stickers showing their rating at their premises and all ratings are published online at www.food.gov.uk/ratings so that consumers can check these before making an informed decision about where to eat out or shop for food.

The Agency anticipates that harnessing consumer power will drive up hygiene standards in the sector. Studies of similar schemes operating in other countries show that businesses with good hygiene standards have seen a rise in their profits.

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