



Department  
for Business  
Innovation & Skills

Better  
Regulation  
Delivery Office

**Consultation Paper**

**Primary Authority: Statutory Guidance**

**June 2013**

## Foreword



The Government is committed to providing businesses with the confidence and certainty to grow. Part of this commitment is improving the delivery of regulation by assisting businesses to comply in as simple and as cost-effective a manner as possible.

Primary Authority enables businesses to access robust, consistent advice on compliance issues, which is also tailored to their needs and cost-effective. It simultaneously allows local authorities to use their resources more efficiently so that these can be targeted at the likes of rogue traders, thereby creating a level playing field for legitimate businesses.

The scheme began in 2009 and has since grown with 759 businesses and 103 local authorities now participating in Primary Authority partnerships, covering in excess of 63,000 premises. It is a key tool in the Government's package to promote growth.

We are investing in Primary Authority by extending eligibility to potentially thousands more businesses, extending the scope of the scheme to include more regulations, and strengthening inspection plans to help deliver earned recognition for compliant businesses. The scheme assists regulators to work together which delivers benefits for business and regulators alike.

This consultation sets out how we see the scheme working in light of these changes and explains the proposed changes to the statutory guidance which underpins Primary Authority. The revision of the guidance provides clarity for all those using Primary Authority, thereby making the scheme more effective.

A handwritten signature in black ink that reads "Michael Fallon". The signature is written in a cursive style with a horizontal line underneath the name.

Michael Fallon  
Minister of State for Business and Enterprise  
Department for Business, Innovation and Skills

Consultation Summary	
<i>Who should read this document?</i>	This consultation is relevant to local authorities, national regulators, businesses and business groups who currently participate in the Primary Authority or who may wish to do so in future.
<i>Making your views heard</i>	We are keen to gather all views on the subject of the revised statutory guidance which underpins Primary Authority. You should not feel constrained by the specific questions nor feel obliged to offer responses to all of them. Concentrate on those in which you have the most interest.
<b>Views are requested by 16 August 2013</b>	
<i>Phone enquiries</i>	0121 345 1200
<i>Web responses</i>	<a href="https://www.surveymonkey.com/s/PA_Statutory_Guidance_Consultation">https://www.surveymonkey.com/s/PA_Statutory_Guidance_Consultation</a>
<i>Email enquiries and responses</i>	<a href="mailto:consultation@brdo.bis.gsi.gov.uk">consultation@brdo.bis.gsi.gov.uk</a>
<i>Written responses</i>	FAO Naomi Youngberg Better Regulation Delivery Office Department for Business, Innovation and Skills Victoria Square House Victoria Square Birmingham B2 4AJ
<i>Your details</i>	Representative groups may wish to give a summary of the views of the people and organisations they represent and, where relevant, how they consulted with them. You may wish to include contact details for follow-up.
<i>Confidentiality</i>	The position regarding the confidentiality of any information provided is set out on page 17 this document. Unless you state otherwise (and an automatic disclaimer generated by your IT system does not constitute such a statement), we will assume you are content for us to publish your response.
<i>Additional copies</i>	This consultation is available for download from: <a href="http://www.bis.gov.uk/brdo/publications/current-consultations">www.bis.gov.uk/brdo/publications/current-consultations</a>

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## Executive summary

Primary Authority assists businesses to comply with regulations at local authority level. It increases efficiency and saves costs for both businesses and local authorities, bringing benefits to the regulatory system as a whole. The scheme enables regulators to work together to improve consistency and helps to deliver earned recognition for businesses.

Statutory guidance is issued to assist local authorities using the scheme and sets out detail beyond the provisions in the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). Since the guidance was first issued in 2009, the scheme has developed significantly and continues to evolve with extensions to eligibility and scope set to occur in 2013. The guidance has been revised accordingly and this consultation seeks views on:

- whether the revised guidance is sufficiently clear on issues surrounding eligibility, including shared approach to compliance;
- whether the revised guidance is sufficiently clear on inspection plans, including the types of interventions to which inspection plans are applicable and the duties of primary authorities and enforcing authorities in relation to inspection plans; and
- how best to address certain anomalies which have become apparent in relation to categories.

### Shared approach to compliance

The guidance has been revised to take account of the extension of eligibility which will be effected by the Enterprise and Regulatory Reform Act 2013 (the ERR Act). It details the different routes by which businesses may be eligible to form Primary Authority partnerships and sets out the matters likely to be taken into account when assessing arrangements which may constitute a shared approach to compliance.

### Inspection plans

The revised guidance includes greater detail on inspection plans including BRDO's expectations as to the development of inspection plans and the role of national regulators. It also explains the changes which will be effected by the ERR Act, detailing in particular the responsibilities of enforcing authorities and primary authorities.

### Scope of the scheme

The scope of the scheme is set to expand with the addition of new regulations on the age restricted sale of gambling, sunbed tanning, the Housing Health and Safety Rating System and Welsh regulations on single use carrier bags. The revised guidance explains how these will fit into the scheme. This consultation also seeks views on how best to address certain anomalies which have been identified in relation to categories.

## 1. Introduction

- 1.1 Primary Authority is established under the RES Act. The scheme allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity.
- 1.2 The Better Regulation Delivery Office (BRDO) is responsible for administering the scheme. The Secretary of State issues guidance to assist those involved with the scheme. Primary Authority guidance was issued in 2009 to assist local authorities. The forthcoming expansion in regulatory scope and eligibility, in combination with the development of the scheme over the past four years, means that revision of the guidance is now necessary.
- 1.3 Since its inception in 2009, Primary Authority has grown to involve 759 businesses partnered with 103 local authorities, covering over 63,000 premises. Presently the scheme is available to businesses which are regulated by more than one local authority. The ERR Act will extend eligibility to businesses which share an approach to compliance, meaning that potentially thousands more businesses will be eligible to join the scheme. This extension is expected to commence on 1 October 2013.
- 1.4 Primary Authority covers a diverse range of regulations<sup>1</sup>, including environmental health and trading standards regulations. The Government has committed<sup>2</sup> to extending the scheme to the age restricted sale of gambling, sunbed tanning, the Housing Health and Safety Rating System and Welsh regulations on carrier bag charging. It is expected that these regulations will be included in the scheme from 1 October 2013.
- 1.5 The proposed guidance has been updated to reflect the development and maturation of Primary Authority. Whilst guidance was initially issued to assist local authorities, the revised version is also relevant to a wider audience – national regulators, businesses and others. This is reflective of the growing impact of the scheme and also of lessons learned during the first four years of its operation.
- 1.6 The revised guidance proposes a new layout to assist navigation through its contents, and contains more detail about the operation of Primary Authority and BRDO's expectations of those using it.
- 1.7 The revised guidance sets out BRDO's expectations around the interaction of primary authorities with national regulators and establishes the role of national regulators in the scheme in terms of providing input where this is useful. Although the scheme is concerned primarily with local regulation, it supports collaboration between local and national regulators, thereby improving consistency overall. Since it began, national regulators have become more engaged with Primary Authority and this is reflected in the revised guidance.

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<sup>1</sup> Regulatory Enforcement and Sanctions Act 2008, section 4(3); Schedule 3

<sup>2</sup> Extending the range of regulations covered by Primary Authority:  
<http://bis.gov.uk/brdo/publications/closed-consultations>

- 1.8 In addition to the extension of eligibility, the ERR Act will strengthen inspection plans to ensure that plans are followed by enforcing authorities unless the primary authority has consented otherwise, and to require that feedback be provided where relevant. The revised guidance provides greater detail on inspection plans, the consent process and national regulator involvement. This reflects not only the ERR Act changes but also the ongoing development of inspection plans as the scheme matures.
- 1.9 The extension of eligibility has provided BRDO with the opportunity to upgrade the secure IT system used to operate Primary Authority, and the statutory register of partnerships. From 1 October 2013, the Primary Authority Register will replace the current IT system. It will feature improved functionality and will make the application and nomination process completely electronic. The statutory register of partnerships will also be improved to allow identification of businesses in Primary Authority via mapping software, and a more functional search facility. The revised guidance reflects the introduction of the Primary Authority Register and explains its role in Primary Authority.
- 1.10 Primary authority agreements are based upon terms and conditions agreed between businesses and primary authorities. BRDO has previously provided model terms and conditions which may be amended, subject to approval by BRDO. These have been revisited in light of the extension of eligibility and, in the interests of simplicity, from 1 October 2013 all new partnerships will be required to accept a set of core terms and conditions, to be known as the Primary Authority Terms and Conditions. These will be standard to all partnerships and amendments will not be possible. Primary authority partners will be free to form agreements covering any other issues relevant to their partnership, but these will not be subject to scrutiny by BRDO. Partnerships nominated prior to 1 October 2013 will retain their existing terms and conditions unless they choose to adopt the new Primary Authority Terms and Conditions.
- 1.11 Primary Authority applies in its entirety across England and Wales. In Scotland and Northern Ireland, Primary Authority applies only in relation to reserved and non-transferred matters and the scope of the scheme is established slightly differently. The table in Annex 1 of the revised guidance shows the geographic scope of the scheme.

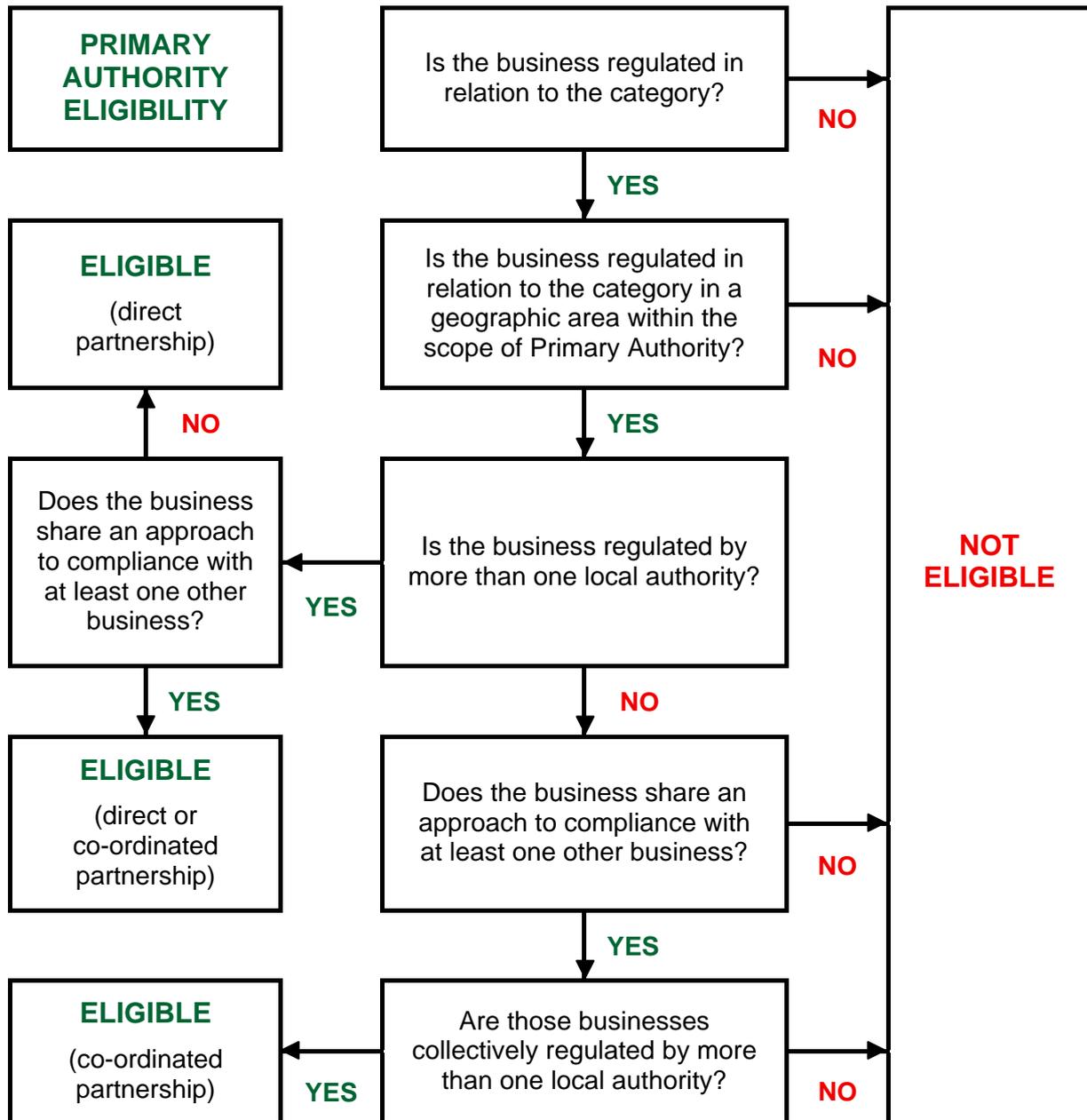
## 2. Proposed revised guidance

### Shared approach to compliance

- 2.1 Primary Authority has brought significant benefits to businesses already participating in the scheme, not only in terms of providing access to consistent, cost-effective advice but also in terms of reducing duplication and regulatory burden. As the scheme grew, it became evident that many businesses would benefit from having partnerships but were ineligible to do so because they are not regulated by multiple local authorities.
- 2.2 The ERR Act<sup>3</sup> contains provisions which will extend eligibility for Primary Authority so that a business may form a partnership where it has arrangements in place to share an approach to compliance with at least one other business, and collectively those businesses are regulated by more than one local authority. This extension has been designed to benefit small businesses in particular, which are least likely to have resources at their disposal to assist with compliance matters.
- 2.3 The existing eligibility criteria (where a business is regulated by more than one local authority) will remain unchanged. This means that there will effectively be two alternative routes by which businesses may be eligible to form primary authority partnerships. Those businesses which are eligible via both routes will be able to choose whichever best suits their circumstances.
- 2.4 The Primary Authority guidance needs to cater for these changes and meet the needs of those accessing the scheme via either eligibility criteria. The revised guidance introduces new language to distinguish each means of eligibility, where such distinction is necessary. It refers to partnerships accessing the scheme via the existing criteria as 'direct partnerships' and those accessing the scheme via the new criteria as 'co-ordinated partnerships'. This is because such partnerships will be required to have a co-ordinator to manage the partnership and act as a conduit for communication between the primary authority and the businesses. Whilst the co-ordinator itself will not legally be a party to the partnership, it will act as a single point of contact between the primary authority and the businesses to ensure that partnerships run efficiently. Where businesses are relying on their shared approach to compliance in order to be eligible for a partnership, BRDO will take account of the adequacy of co-ordination arrangements in making its assessment of eligibility.
- 2.5 The revised guidance contains detailed information on the eligibility criteria for both direct and co-ordinated partnerships. The flowchart below illustrates how a business may be eligible for a Primary Authority partnership.

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<sup>3</sup> Enterprise and Regulatory Reform Act 2013, section 67



2.6 It is envisaged that trade association members and franchisees will be the types of business most likely to access the scheme via the new criteria and have partnerships which are co-ordinated by their trade association and franchisor respectively. However, the language throughout the draft guidance does not use these terms, instead referring to ‘co-ordinators’ and ‘co-ordinated partnerships’. This is because there will be businesses in different circumstances who will also be eligible under the new criteria.

**Question 1:** Does the revised guidance explain the differences between direct and co-ordinated partnerships clearly? Please explain your answer.

- 2.7 The revised guidance has been split into three sections: one containing information for all partnerships, one for direct partnerships and one for co-ordinated partnerships. These sections are marked for ease of reference and are designed to assist with navigation through the guidance. The separate sections reflect the differing nature of each partnership type and BRDO's expectations and requirements. For example, there will be key differences in the way that Primary Authority Advice and inspection plans work in co-ordinated partnerships in comparison to direct partnerships. Setting out the guidance in this way will also assist enforcing authorities to identify the differences between direct and co-ordinated partnerships so they know what to expect when interacting with primary authorities.

**Question 2: Do you have any comments on the new structure?**

- 2.8 The ERR Act<sup>4</sup> allows for guidance to be provided in relation to the matters likely to be taken into account for the purpose of deciding whether arrangements constitute a shared approach to compliance. The revised guidance incorporates details as to what BRDO will take into account when assessing arrangements which may constitute a shared approach to compliance for the purposes for the new eligibility criteria set out in the ERR Act. In making its assessment of eligibility, BRDO will take account of:
- a) Evidence of an ongoing relationship with another business or businesses, in the context of which common compliance advice or guidance or compliance controls are provided to the businesses which are relevant and applicable to their circumstances. The business should indicate its commitment to having regard to that compliance advice or guidance, or to following those compliance controls;
  - b) Evidence that the compliance advice or guidance, or compliance controls, mentioned at (a) above, originate from a single point; and
  - c) Evidence of communication channels in place in the relationship mentioned at (a) above which are effective in communicating the compliance advice or guidance or compliance controls, and any changes to them.

**Question 3: Is the section explaining shared approach to compliance sufficiently detailed? Please explain your answer.**

### Inspection plans

- 2.9 Inspection plans are designed to efficiently target resources for both enforcing authorities and businesses alike. Section 30 of the RES Act allows a primary authority to prepare an inspection plan, in consultation with the business, which makes recommendations as to how inspections should be carried out in relation to that business. In order to be effective, the plan must receive the consent of the Secretary of State. BRDO consults with national regulators (where applicable) before giving consent, and expects primary authorities to engage with national regulators during development of inspection plans to take account of national regulator requirements.

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<sup>4</sup> Section 67(5)(3)

2.10 Inspection plans are designed to act as a guide for officers conducting inspections of the business' premises, directing attention towards the highest risks. National inspection strategies may also be incorporated into inspection plans, to better co-ordinate inspection activity across business premises. Inspection plans may recommend areas on which inspection activity should be focused or recommend against inspection of clearly defined areas. Inspection plans apply to proactive checks on business compliance; they do not apply to reactive interventions, such as emergencies or responses to specific intelligence or complaints. Inspection plans should not seek to commit a local authority to undertaking a proactive inspection when it would not otherwise have done so.

**Question 4: Is the revised guidance sufficiently clear on the types of interventions to which inspection plans apply? Please explain your answer.**

2.11 In order take effect, inspection plans must be consented to by the Secretary of State and published via the Primary Authority Register.

2.12 The ERR Act<sup>5</sup> makes changes to the RES Act provisions dealing with inspection plans. These changes are summarised thus:

- An inspection plan may request enforcing authorities to provide feedback following an inspection, and provision of this feedback is then mandatory.
- Enforcing authorities must inspect in accordance with the inspection plan, unless the primary authority has given its prior consent to an alternative approach.
- Primary authorities may revoke inspection plans, with the consent of the Secretary of State.

2.13 The development of an inspection plan requires significant investment of time and effort by both the primary authority and the business. Data collected from partnerships with inspection plans in place indicated that inspection plans were frequently not followed, despite the RES Act requirement on enforcing authorities to have regard to them. Further, partnerships without inspection plans indicated that they lacked confidence to invest in developing inspection plans whilst there was no statutory requirement for plans to be followed by enforcing authorities. The changes effected by the ERR Act are expected to encourage more partnerships to develop inspection plans, thereby creating benefits for businesses, primary authorities and enforcing authorities alike.

2.14 The requirement to provide feedback where an inspection plan requires it formalises good practice. The provision of feedback is essential for primary authorities to gain a complete overview of businesses' compliance. The revised guidance explains the circumstances where an inspection plan may require feedback.

2.15 The revised guidance explains the duties of enforcing authorities in relation to inspection plans. In particular, it details how an enforcing authority should go about seeking primary authority consent to follow an alternative approach to that set out in an inspection plan.

**Question 5: Does the revised guidance contain sufficient guidance for enforcing authorities on their duties in relation to inspection plans? Please explain your answer.**

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<sup>5</sup> Enterprise and Regulatory Reform Act 2013, section 68.

- 2.16 The ERR Act will allow primary authorities to revoke inspection plans, with the consent of the Secretary of State. This corrects an anomaly in the RES Act which means that inspection plans cannot currently be revoked but must instead be left to expire. The revised guidance sets out the process for revocation of inspection plans.
- 2.17 The revised guidance provides greater detail on inspection plans more generally, informed by experience gained during the operation of Primary Authority to date. It sets out in detail BRDO's requirements for inspection plan development and expectations in terms of national regulator involvement. There are separate sections for direct and coordinated partnerships, as the content and nature of inspection plans will differ according to circumstance.
- 2.18 In the interests of consistency and clarity for enforcing authorities, BRDO requires that inspection plans follow a set format, which the revised guidance explains. Primary authorities are also required to complete a rationale, to be submitted with draft inspection plans. This provides BRDO and national regulators (where applicable) with detailed explanation for the content of the inspection plan. The revised guidance explains these requirements in detail.

**Question 6: Does the revised guidance contain sufficient information regarding the responsibilities of primary authorities in developing and maintaining inspection plans? Please explain your answer.**

### Scope of the scheme

- 2.19 Schedule 3 of the RES Act lists the regulations which are within scope of Primary Authority. Section 4(3) also specifies the matters to which enactments made under the European Communities Act 1972 are within scope of the scheme. In the interests of simplicity, the functions under these regulations are divided into categories for the purposes of administering Primary Authority. Partnerships are therefore nominated on the basis of categories rather than individual regulations.
- 2.20 The Government has committed<sup>6</sup> to including within the scope of Primary Authority the age restricted sale of gambling, sunbed tanning, the Housing Health and Safety Rating System and Welsh regulations on carrier bag charging. Subject to Parliamentary process, it is expected that these regulations will be included in the scheme from 1 October 2013. On this basis, the revised guidance has amended the categories listings to cater for these additional regulations (see below).
- 2.21 The Housing Health and Safety Rating System will be added to the Housing category. The age restricted sale of gambling and sunbed tanning (applicable in both England and Wales) will be added to the new Age restricted Services category. Further detail on this new category is set out below.
- 2.22 The inclusion of Welsh legislation on sunbed tanning and carrier bag charging will be the first time legislation has been included in Primary Authority that is applicable in Wales only. Legally, partnerships can only be nominated for Welsh legislation where the local authority is Welsh. This is because the RES Act permits only the local authorities which enforce any given regulation to be a primary authority for that regulation. As no English local authority has the function of enforcing Welsh legislation, an English local authority could not form a partnership which covered Welsh legislation.

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<sup>6</sup> Extending the range of regulations covered by Primary Authority:  
<http://bis.gov.uk/brdo/publications/closed-consultations>

To cater for this, a new category will be added for Welsh legislation only. This will mean that a business will be able to form a partnership with a Welsh primary authority for the Welsh legislation included in the scheme as it requires. If in future further Welsh legislation is included in the scheme, this will be added to the Welsh regulations category.

2.23 Some anomalies in relation to categories have become apparent since 2009 and the guidance will address these. The revised guidance has made some amendments to categories (Annex A):

- The Fair Trading category does not apply in Northern Ireland, as its previous limited application in relation to hallmarking is not enforced by local authorities.
- Clarification has been added to the Fair Trading category to ensure that regulations relating to misleading and excess packaging, and environmental standards (for example, energy labelling) are included in this category.
- Clarification has been added to the Health and Safety category and the Petroleum Licensing category to ensure health and safety requirements in relation to petroleum are included only in the latter category.

**Question 7: Do you have any comments on the proposed changes to categories?**

2.24 The inclusion of the age restricted sale of gambling within the scope of Primary Authority has prompted a review of the Age restricted Sales category. It is proposed that this category be re-named as the Age restricted Products category and will still apply at unitary and county levels. A new Age restricted Services category be introduced which will apply at unitary and district levels. The new Age restricted Services category would include services such as gambling, tattooing and sunbed tanning. Existing partnerships for the Age restricted Sales category will automatically have the Age restricted Products category and will be able to choose to apply for the new Age restricted Services category. BRDO will work with partnerships in this regard.

**Question 8: Do you have any comments on this proposed approach for age restricted products and services?**

2.25 BRDO has received suggestions that it may be useful for categories to better cater for regulations which are enforceable only at the border (for example, by port health authorities only) and that this could be achieved by introducing a new category specifically for border controls. A business is only able to form a single partnership with one local authority in each category and this means that, for example, a business which imports food is not able to access specialist food advice through a partnership with a port health authority and advice on its inland food operations through a partnership with a separate local authority. This consultation seeks evidence on whether a new border controls category should be introduced, or whether this situation could be addressed via alternative means.

**Question 9: Should categories be amended to better cater for regulations which are enforceable only at the border? If so, how could this be achieved?**

### 3. Consultation questions

- Question 1:** Does the revised guidance explain the differences between direct and co-ordinated partnerships clearly? Please explain your answer.
- Question 2:** Do you have any comments on the new structure?
- Question 3:** Is the section explaining shared approach to compliance sufficiently detailed? Please explain your answer.
- Question 4:** Is the revised guidance sufficiently clear on the types of interventions to which inspection plans apply? Please explain your answer.
- Question 5:** Does the revised guidance contain sufficient guidance for enforcing authorities on their duties in relation to inspection plans? Please explain your answer.
- Question 6:** Does the revised guidance contain sufficient information regarding the responsibilities of primary authorities in developing and maintaining inspection plans? Please explain your answer.
- Question 7:** Do you have any comments on the proposed changes to categories?
- Question 8:** Do you have any comments on this proposed approach for age restricted products and services?
- Question 9:** Should categories be amended to better cater for regulations which are enforceable only at the border? If so, how could this be achieved?

## Annex A: List of individuals / organisations consulted

Aneurin Bevan Health Board  
Animal Health and Veterinary Laboratories Agency  
Asda  
Association of British Bookmakers  
Association of British Travel Agents  
Association of Convenience Stores  
Association of Council Secretaries and Solicitors  
Association of Licensed Multiple Retailers  
Association of Port Health Authorities  
Association of Town Centre Management  
Assured Food Standards  
B&Q  
Bond Pearce  
British Air Transport Association  
British Association of Removers  
British Beer and Pub Association  
British Chamber of Commerce  
British Frozen Foods Federation  
British Home & Holiday Parks Association  
British Hospitality Association  
British Independent Retail Association  
British Jewellery & Giftware Federation  
British Marine Federation  
British Meat Processors Association  
British Parking  
British Retail Consortium  
British Sandwich Association  
British Soft Drinks Association  
British Toy and Hobby Association  
Caravan Club  
CBI  
Chamber of Commerce  
Chartered Institute of Environmental Health  
Chief Fire Officers Association  
Construction Products Association  
Convention of Scottish Local Authorities  
Council for Responsible Nutrition  
Dairy UK  
DWF, Business Law Firm  
EEF: The Manufacturers Association  
Environment Agency  
Federation of Master Builders  
Federation of Small Businesses  
Fire Authorities in England and Wales  
Food and Drink Federation  
Food Standards Agency  
Forum for Private Business  
Gambling Commission  
Geldards  
Health and Safety Executive  
Health Food Manufacturers' Association  
Higgs & Sons Solicitors

Hire Association Europe  
Home Retail Group  
Hornby  
Independent Electrical Retailers  
Institute of Directors  
Institute of Food Science & Technology  
Institute of Licensing  
Intellectual Property Office  
International Meat Trade Association  
John Lewis Partnership  
Ladbrokes  
Leatherhead Food  
Local Authorities in England and Wales  
Local Government Association  
Moto  
National Asian Business Association  
National Casino Industry Forum  
National Caterers Association  
National Farmers' Retail & Markets Association  
National Farmers Union  
National Federation of Fish Friers  
National Federation of Meat & Food Traders  
National Federation of Property Professionals  
National Federation of Retail Newsagents  
National Measurement Office  
National Trading Standards Board  
Northern Ireland Local Government Association  
Office of Fair Trading  
Petcare  
Plastikote  
Proprietary Association of Great Britain  
Provisions Trade Federation  
Road Haulage Association  
Rural Shops Alliance  
Safety Assessment Federation Ltd  
Sainsburys  
Seafish  
SOLACE  
Tesco  
The Co-operative  
The Giftware Association  
Trading Standards Institute  
UK Technology Industry  
UK Weighing Machine Federation  
Welsh Local Government Association  
Wilko  
Wine & Spirits Trade Association  
Wragge & Co

## Annex B: About this consultation

### Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

[Consultation Principles](#)

### Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

### Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,  
BIS Consultation Coordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 6402 or e-mail to: [John.Conway@bis.gsi.gov.uk](mailto:John.Conway@bis.gsi.gov.uk)

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Primary Authority: Statutory Guidance

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Department  
for Business  
Innovation & Skills

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Regulation  
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**Consultation Paper**  
**Primary Authority Statutory Guidance**  
**Supplementary – Revised Guidance**

**June 2013**

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## 1. Introduction

### The Regulatory Enforcement and Sanctions Act 2008

- 1.1 The Regulatory Enforcement and Sanctions Act 2008, as amended (referred to in this guidance as 'the RES Act'), and secondary legislation made under the Act, establishes Primary Authority as a statutory scheme in which a business can choose to form a partnership with a local authority, and this will affect the way in which they are regulated by all local authorities.
- 1.2 The Better Regulation Delivery Office (BRDO) administers Primary Authority, and provides the secure web-based Primary Authority Register that supports the scheme.

### Key elements of the scheme

- 1.3 Primary Authority applies to specified regulatory functions, primarily in the areas of environmental health, licensing and trading standards and applies to all local authorities that have responsibility for these functions. Some of the functions are devolved to the devolved administrations so the application of the scheme in England, Wales, Scotland and Northern Ireland differs (see sections 2.6 to 2.14 below).
- 1.4 A primary authority partnership is a statutory partnership between a business and a single local authority (known as the 'primary authority') which has been nominated by the Secretary of State, covering specified areas of regulation.
- 1.5 A primary authority partnership is available to a single business that is regulated by multiple local authorities, or to a business that is part of a group of businesses that are collectively regulated by multiple local authorities, where these businesses share an approach to compliance. A shared approach to compliance might be demonstrated, for example, through membership of a trade association that provides regulatory guidance, or through a franchisee relationship with a business that specifies compliance controls.
- 1.6 A primary authority has a role to play in:
  - acting as a single point of contact for a business that it partners with, in relation to the business's interactions with local authorities that regulate it (known within the scheme as 'enforcing authorities'); and
  - leading regulation of the business on behalf of local authority regulators, including through the co-ordination of intelligence and of responses to specific issues that arise.
- 1.7 The primary authority is able to share information about the business, and its approach to compliance with enforcing authorities, and may, with consent from the Secretary of State, publish an inspection plan where this will be of benefit in guiding or co-ordinating the activities of enforcing authorities.
- 1.8 The primary authority is able to provide advice and guidance on compliance to the business (known as 'Primary Authority Advice') in areas of regulation covered by the partnership, on which the business can rely. The primary authority is also able to provide statutory advice and guidance to other local authorities (known as 'Primary Authority Advice to Local Authorities') in relation to how they exercise their regulatory functions in respect of the business.

- 1.9 Where the business faces potential enforcement action by an enforcing authority, the primary authority will assess whether the proposed action is inconsistent with any Primary Authority Advice given. If the action is inconsistent, the primary authority is able to direct the enforcing authority not to take the action.
- 1.10 Primary Authority creates statutory duties for all local authorities in relation to their regulation of any business that has a partnership. These duties relate primarily to:
- following an inspection plan for the business, where one has been published by the primary authority (see sections 11.11 to 11.16 below), and providing any feedback required; and
  - notifying the primary authority of enforcement action in relation to the business (see section 12 below). In most circumstances this notification is required before the action can be taken. However, exemptions allow certain enforcement action to proceed immediately, for example where action is needed urgently to prevent harm, and in this circumstance the notification to the primary authority may be made retrospectively.
- 1.11 The Secretary of State is empowered to make a determination in the case of disagreement as to whether proposed enforcement action is inconsistent with Primary Authority Advice given by the primary authority, and whether that advice was correct and properly given.

#### The guidance

- 1.12 This guidance is issued by the Secretary of State under sections 22(3) and 33 of the RES Act and should be read in conjunction with the Act and Orders under it.
- 1.13 Section 33(3) of the RES Act requires a local authority<sup>1</sup> to have regard to any guidance given to it under section 33.
- 1.14 This guidance has been written to provide the framework for the operation of the scheme. Practical guidance on the operation of the scheme is available in BRDO guidance documents<sup>2</sup>, and should be read in conjunction with this statutory guidance.

#### The role of the Secretary of State and BRDO

- 1.15 The Secretary of State fulfils the statutory functions of the scheme in relation to:
- a) nomination of partnerships (see section 6 below);
  - b) revocation of partnerships (see section 7 below);
  - c) maintenance of a public register of nominated partnerships (the 'Public Register');
  - d) consenting to inspection plans (see section 11 below);
  - e) the determination process; and
  - f) issuing statutory guidance on the scheme.
- 1.16 BRDO administers the scheme and facilitates its smooth operation by making available the secure web-based Primary Authority Register that supports the scheme, allowing primary authorities and enforcing authorities to fulfil certain statutory obligations in relation to publication and communication, and to share information.

<sup>1</sup> As defined in section 23 of the RES Act, and including fire and rescue authorities and port health authorities

<sup>2</sup> Currently at [www.bis.gov.uk/brdo/primary-authority](http://www.bis.gov.uk/brdo/primary-authority)

- 1.17 BRDO supports the effective delivery of the scheme by making available practical guidance materials and competency products, by facilitating dialogue between parties, and by working to develop the scheme to deliver good regulatory outcomes.

### The role of a primary authority

- 1.18 By working in partnership with a business, or with a group of businesses, the primary authority is able to deliver benefits for the business, the regulatory community, and those that the regulation protects. It does this by leading and co-ordinating regulation of the business that is both efficient and effective, with a view to improving and maintaining compliance.
- 1.19 The primary authority provides a business, or a group of businesses, with appropriate regulatory advice on which they can rely, and with a single point of contact with local authority regulators.
- 1.20 Where the primary authority partners with a single business, it is able to support consistent interpretation and informed and proportionate responses to non-compliance by building a detailed picture of compliance across the business. The primary authority should encourage enforcing authorities to share information about the business with it, and should manage the data that it collates in a manner that allows it to identify compliance issues that may need to be addressed.
- 1.21 Where the primary authority partners with a group of businesses that operate in the same sector and share an approach to compliance, it is able to develop expertise in relation to the regulatory issues faced by that sector. Its detailed understanding of the sector is of value to its partner businesses and to the regulatory community.

### Terminology

- 1.22 In this guidance the following definitions are used: 'may' is used to mean actions that are discretionary in the light of the context and all of the circumstances; 'should' is used to mean actions that are compulsory as advised in this guidance and that therefore local authorities must have regard to; and 'must' is used to mean actions that are compulsory as set out in legislation.
- 1.23 A legal entity, such as a single limited company or sole trader, that satisfies the eligibility criteria for Primary Authority is referred to in the RES Act as a 'regulated person'. This guidance uses the term regulated person only where it is necessary to be specific about the legal entity. Elsewhere, the guidance reflects the terminology used in the practical operation of the scheme, where the term 'business' is used to mean both a single legal entity, and a collection of related legal entities. For example, a business might comprise several limited companies operating from the same head office or under the same brand name.
- 1.24 Terms used within Primary Authority are included in the Glossary at the end of this guidance.

## 2. Scope

### Regulatory scope

- 2.1 The regulatory scope of Primary Authority is defined, in the RES Act, and Orders made under the Act, in terms of 'relevant functions', and in terms of activities defined as 'enforcement action'.
- 2.2 Relevant functions cover matters that are commonly referred to as the 'environmental health', 'licensing' and 'trading standards' functions of local authorities, as listed in Schedule 3 of the RES Act, and in regulations enacted under section 2(2) of the European Communities Act 1972, in the following specified areas:
  - a) agricultural produce (quality standards and labelling);
  - b) animal health and welfare;
  - c) animal feed;
  - d) consumer protection;
  - e) environmental protection;
  - f) food hygiene and standards;
  - g) public health and safety; and
  - h) weights and measures (including measuring instruments).
- 2.3 Primary legislation introduced by an Act of Parliament or the Welsh Government since the RES Act was enacted in 2008 is not within scope of Primary Authority unless it has been brought within scope by an amendment of Schedule 3 of the RES Act, and where necessary, amendment of Orders made under the RES Act.
- 2.4 Regulations made by secondary legislation, by Parliament or the Welsh Government, under powers within primary legislation which is not within scope of Primary Authority are not themselves within scope of Primary Authority unless they have been brought within scope by an amendment of Schedule 3 of the RES Act, and where necessary, amendment of Orders made under the RES Act.
- 2.5 Regulations enacted under section 2(2) of the European Communities Act 1972 are within scope of Primary Authority, regardless of the date on which they came into effect, where they concern specified matters (see 2.2 above).

### Geographic scope

- 2.6 Primary Authority applies differently in the different parts of the United Kingdom. The details of the scope of Primary Authority in relation to Scotland and Northern Ireland are set out in the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009<sup>3</sup> and the geographical scope of each of the categories that can be covered by a partnership is detailed at Annex 1.
- 2.7 An English local authority can be a primary authority for all those relevant functions which it exercises. This excludes regulations of the Welsh Government.
- 2.8 A Welsh local authority can be a primary authority for all those relevant functions which it exercises, including regulations of the Welsh Government.

<sup>3</sup> Currently at [www.bis.gov.uk/brdo/primary-authority/about-pa/background](http://www.bis.gov.uk/brdo/primary-authority/about-pa/background)

- 2.9 In Scotland, a local authority can offer a partnership only for the relevant functions that remain the responsibility of the UK Government. In summary, these are principally included in the following categories:
- a) age restricted sales (limited applicability);
  - b) consumer credit;
  - c) explosives licensing;
  - d) fair trading;
  - e) health and safety (limited applicability);
  - f) metrology;
  - g) petroleum licensing (limited applicability);
  - h) product safety; and
  - i) road traffic (limited applicability).
- 2.10 Relevant functions that have been devolved to the Scottish Government – for example, food standards and food hygiene – are outside the scope of Primary Authority.
- 2.11 In Northern Ireland, a local authority can offer a partnership only for the relevant functions that remain the responsibility of the UK Government where these are delivered by local authorities. These are included in the product safety category.
- 2.12 BRDO responds to requests for advice from any local authority or business affected by issues concerning the geographical scope of Primary Authority on an individual basis.
- 2.13 BRDO expects primary authorities to provide information and support, on request, to enforcing authorities in Scotland and Northern Ireland where they are voluntarily operating in line with Primary Authority despite being outside its geographical scope for particular relevant functions. This will help to ensure that the business experiences consistent enforcement across the United Kingdom.
- 2.14 BRDO expects that where a business has a primary authority advising it in relation to regulations of the Welsh Government, and a different primary authority advising it in relation to related matters, these primary authorities will work closely together to ensure that the business receives a consistent approach.

### Scope of partnerships under Primary Authority

- 2.15 This guidance defines a number of categories which include all of the relevant functions within the scope of Primary Authority. Partnerships are required to cover one or more of the following complete categories of relevant function ('categories'):
- a) age restricted sales;
  - b) agriculture;
  - c) animal establishments and companion animal welfare;
  - d) consumer credit;
  - e) environmental protection;
  - f) explosives licensing;
  - g) fair trading;
  - h) farm animal health;
  - i) food safety and hygiene;
  - j) food standards;
  - k) general licensing;
  - l) health and safety;
  - m) housing;

- n) metrology;
- o) petroleum licensing;
- p) pollution control;
- q) product safety;
- r) road traffic; and
- s) Welsh regulations.

These categories are listed in full in Annex 1, where further information is provided on the scope of each category.

- 2.16 A business can have a partnership that covers a single category or multiple categories but may not partner with more than one local authority for each category.
- 2.17 A business is able to have partnerships with different local authorities for different categories. For example, retailer 'A' may enter into a partnership with district council 'B' for health and safety, with county council 'C' for product safety and food standards, and with fire authority 'D' for petroleum and explosives licensing.
- 2.18 BRDO expects that where a business has more than one primary authority, in relation to different categories, these primary authorities will agree arrangements to work together where appropriate to ensure that the business receives a consistent approach.
- 2.19 The scope of a partnership is determined at the point of its nomination by the Secretary of State, with reference to the categories covered by the partnership. Where there are subsequent changes to the regulatory scope of any category covered by the partnership then the partnership will be deemed to have the new regulatory scope. Where a category is redefined in the statutory guidance, or a new category is introduced, affected partnerships may be required to undergo a nomination process (see section 8.4 below).

### 3. Eligibility criteria

#### 'Regulated person'

- 3.1 Primary Authority is open to any business, charity or other organisation (referred to throughout this guidance as 'the business') that satisfies the eligibility criteria set out in 3.2 (a) or (b) below.
- 3.2 To satisfy the eligibility criteria, a business must:
  - a) be regulated by two or more local authorities in respect of a relevant function;OR
  - b) have arrangements in place to share an approach to compliance with at least one other business, provided that the businesses are collectively regulated by more than one local authority in respect of a relevant function.
- 3.3 Where a business seeks to access the scheme by virtue of arrangements as set out in 3.2(b) above, these arrangements will be assessed by the Secretary of State as part of the application for nomination process, in order to determine eligibility. This assessment will take account of:
  - a) Evidence of an ongoing relationship with another business or businesses, in the context of which common compliance advice or guidance or compliance controls are provided to the businesses which are relevant and applicable to their circumstances. The business should indicate its commitment to having regard to that compliance advice or guidance, or to following those compliance controls;
  - b) Evidence that the compliance advice or guidance, or compliance controls, mentioned at 3.3(a) above, originate from a single point; and
  - c) Evidence of communication channels in place in the relationship mentioned at 3.3(a) above which are effective in communicating the compliance advice or guidance or compliance controls, and any changes to them.
- 3.4 A business seeking to access the scheme by virtue of a shared approach to compliance should have arrangements for a single party to co-ordinate its partnership with the local authority (see section 4.2 below). The Secretary of State will take account of the adequacy of such arrangements in making his assessment of eligibility.
- 3.5 A business seeking to access the scheme by virtue of a shared approach to compliance should partner with the same local authority as the other business or businesses with which it shares that approach.
- 3.6 The diagram at Figure 1 in section 4 below summarises the eligibility criteria.

## 'Local authority'

- 3.7 A 'local authority', as defined in section 3 of the RES Act (see Glossary), may form a partnership with any business that satisfies the eligibility criteria (as outlined at 3.2 above), in respect of those relevant functions for which that local authority has regulatory responsibility. For example, a county council could become a primary authority for food standards matters but not food safety and hygiene matters. Similarly, an English local authority is not able to partner with a business in relation to Welsh regulations because it does not have regulatory responsibility for those regulations.
- 3.8 A local authority that offers primary authority services should ensure that it has:
- a) arrangements in place to ensure that staff that it deploys to support partnerships have the required technical skills and knowledge and are competent in the delivery of primary authority services<sup>4</sup>;
  - b) arrangements in place to effectively manage and deliver partnerships;
  - c) regard to the requirements for transparency and accountability in its delivery of primary authority services; and
  - d) measures in place to promote consistency across the scheme.
- 3.9 A local authority is able to enter a partnership with a business that it may not have regulated previously, provided it has regulatory responsibility for the relevant function(s) involved. For example, a local authority may enter a partnership with a business that does not trade in the local authority's area.
- 3.10 A local authority that partners with a business may provide services to that business under Primary Authority through arrangements with another local authority or third party, where this is agreed with the business. In this situation, the local authority nominated as primary authority remains accountable.
- 3.11 Two or more local authorities may make arrangements to work together to provide services to businesses under Primary Authority, for example through a shared service. In this circumstance, the group of local authorities must agree arrangements for one of their number to partner with businesses on behalf of the group as only a single local authority can be nominated as a primary authority by the Secretary of State.
- 3.12 Where a local authority seeks to form a partnership, its suitability to be nominated as primary authority for the business will be assessed as part of the application for nomination process (see sections 15 and 24 below).

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<sup>4</sup> The Common Approach to Professional Competency for Regulators provides tools to assist local authorities in addressing the development needs of their officers. Further information is currently available at <http://www.bis.gov.uk/brdo/resources/competency>

## 4. Partnership arrangements

- 4.1 A partnership under Primary Authority is an agreement between two parties, a business and a local authority, that is nominated by the Secretary of State. Once nominated, a partnership is listed on the Public Register maintained by the Secretary of State<sup>5</sup>.
- 4.2 A primary authority may have arrangements for its provision of primary authority services to a group of businesses, as listed below, to be co-ordinated by a third party. Where such arrangements are in place then each partnership is referred to, for the purposes of this guidance, as a 'co-ordinated partnership', and the third party is referred to as a 'co-ordinator' in these circumstances:
- a) the business authorises the co-ordinator to request Primary Authority Advice from the primary authority on its behalf; and
  - b) the primary authority issues Primary Authority Advice to the business via the co-ordinator; and
  - c) the business authorises the co-ordinator to respond to consultation on its behalf in the event that the primary authority develops an inspection plan (see section 11 below).
- 4.3 Where there are no arrangements such as those referred to at 4.2 above, or where there are arrangements with a third party that cover only the co-ordination of administrative matters such as cost recovery, then the partnership is referred to, for the purposes of this guidance, as a 'direct partnership'.
- 4.4 The diagram at Figure 1 below summarises the eligibility criteria, and the basis on which a partnership may operate.

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<sup>5</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/list-of-partnerships>

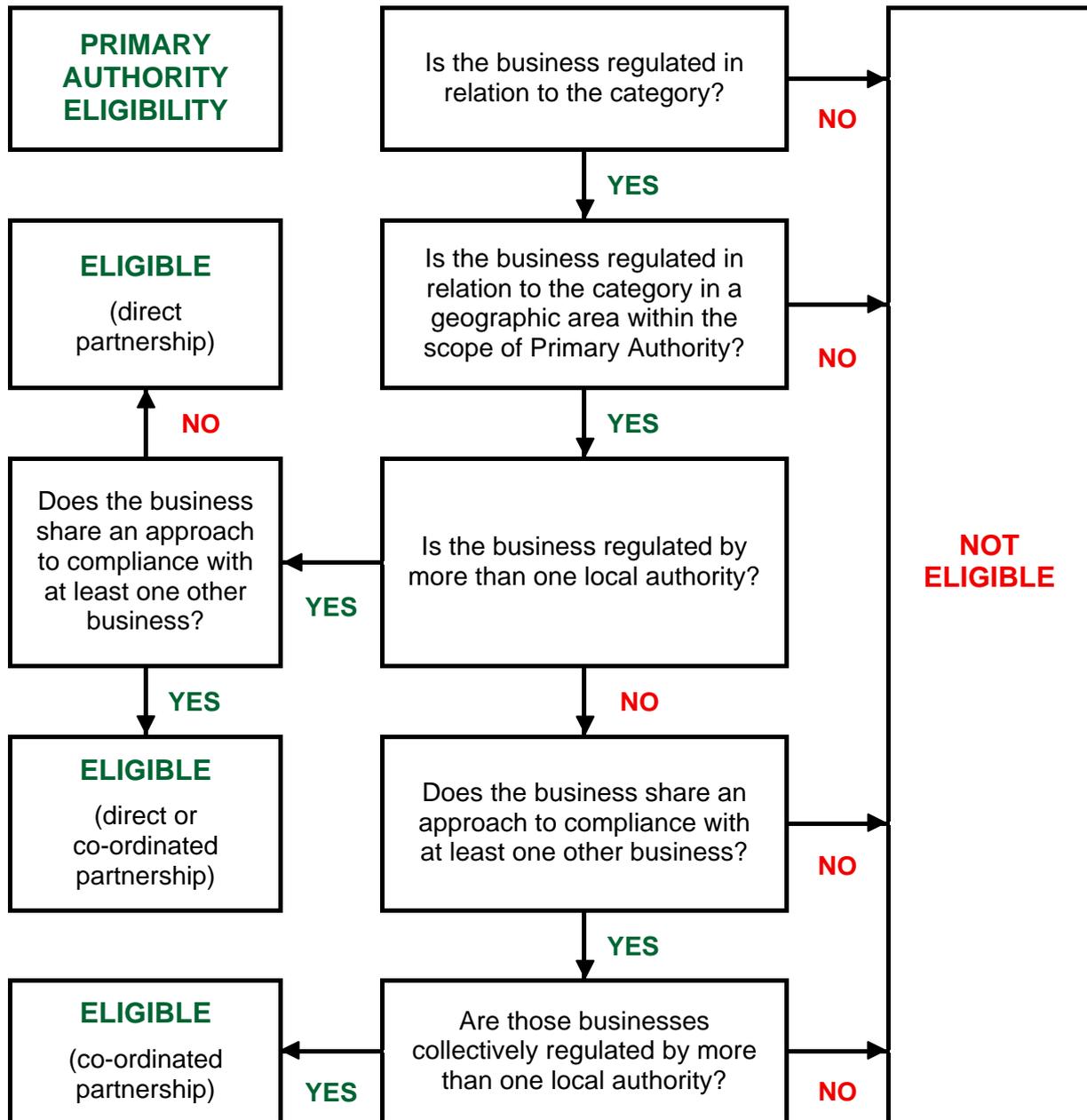


Figure 1. Summary of eligibility criteria

- 4.5 The essential elements of the scheme are available for both direct partnerships and co-ordinated partnerships. However, there are some practical differences in the application and operation of the scheme and any arrangements between a prospective primary authority, a business and a co-ordinator will therefore need to be in place prior to making an application for nomination of the partnership.
- 4.6 Where differences exist between direct and co-ordinated partnerships, this is highlighted in Part A of this guidance and further detail is provided:
- in Part B of this guidance for direct partnerships; and
  - in Part C of this guidance for co-ordinated partnerships.

A quick guide to the key differences is presented in the table at Figure 2 below.

	<b>'Direct Partnership'</b>	<b>'Co-ordinated Partnership'</b>
The partnership	<p>This is between the business and the local authority and is underpinned by Primary Authority Terms and Conditions for Direct Partnerships.</p> <p>(see section 13 below)</p>	<p>This is between the business and the local authority and is underpinned by Primary Authority Terms and Conditions for Co-ordinated Partnerships, which are supplemented by:</p> <ol style="list-style-type: none"> <li>1. a Memorandum of Understanding between the co-ordinator and the local authority;</li> <li>2. arrangements between the business and the co-ordinator; and</li> <li>3. a request from the business to the local authority and the Secretary of State to recognise the co-ordinator as acting on its behalf in respect of specified matters, as set out at 4.4.</li> </ol> <p>(see section 22 below)</p>
The application for nomination process	<p>The application is initiated by the local authority and completed by the business. It is then submitted to the Secretary of State for consideration.</p> <p>(see section 14 below)</p>	<p>Application for nomination is a two stage process.</p> <p>In the first stage, the local authority submits details of its proposed arrangements with the co-ordinator to the Secretary of State for consideration.</p> <p>In the second stage, the co-ordinator invites the business to make an application and that application is submitted to the Secretary of State.</p> <p>(see section 23 below)</p>
Primary Authority Advice	<p>Issued directly to the business.</p> <p>Tailored to the individual business' needs and circumstances, based on the local authority's detailed knowledge of the business.</p> <p>(see section 18 below)</p>	<p>Issued via the co-ordinator to the business.</p> <p>Appropriate to the group of businesses whose partnerships are being co-ordinated, and therefore not tailored to individual business circumstances.</p> <p>(see section 27 below)</p>
Inspection plans	<p>Tailored to the individual business's operations, based on the local authority's detailed knowledge of the business.</p> <p>(see sections 11 and 20 below)</p>	<p>Appropriate to the group of businesses whose partnerships are being co-ordinated, and therefore not tailored to individual business circumstances.</p> <p>(see sections 11 and 29 below)</p>
Public Register	<p>The business is listed, with its primary authority, on nomination by the Secretary of State.</p>	<p>The business is listed, with its primary authority and co-ordinator, on nomination by the Secretary of State.</p>
Primary Authority Register	<p>A secure page dedicated to the partnership, where the primary authority publishes relevant information.</p>	<p>A secure page dedicated to the co-ordinator, where the primary authority publishes Primary Authority Advice and other relevant information.</p>

**Figure 2. Key differences between a direct and co-ordinated partnership**

- 4.7 A business and a local authority that are in a co-ordinated partnership may agree to change the basis of their partnership, from a co-ordinated to a direct partnership, provided that the business satisfies the eligibility criteria set out at 3.2a above. In this circumstance, the primary authority and business should submit a request to BRDO (see section 26 below).
- 4.8 A business and a local authority that are in a direct partnership may agree to change the basis of their partnership, from a direct to a co-ordinated partnership, provided that there are appropriate arrangements in place with a co-ordinator (see section 22). In this circumstance, the primary authority and business should submit a request to BRDO (see section 17 below).
- 4.9 Where a business wishes to enter into a partnership with a local authority but has not found a willing and suitable local authority, it can seek assistance from BRDO. Where the business appears to meet the eligibility criteria, BRDO may suggest, or approach on behalf of the business, any local authority that it considers might be suitable. The Secretary of State will not consider a partnership as suitable for nomination without evidence that both the business and the local authority are committed to making the proposed partnership operate effectively.

## PART A: General Guidance

5. Resources and cost recovery
  - 5.1 The resources required to operate an effective partnership or group of partnerships will vary, depending on the scope of the partnership, and the scale of its activities. An assessment should be made, prior to making an application for nomination, of the resources that are likely to be required to operate an effective partnership that is capable of meeting the needs and expectations of the businesses and the regulatory community.
  - 5.2 Guidance on assessing resource requirements is given:
    - in Part B of this guidance for direct partnerships, at: [13. Assessing resource requirements](#)
    - in Part C of this guidance for co-ordinated partnerships, at: [22. Assessing resource requirements](#)
  - 5.3 A local authority is entitled to charge a business on a cost recovery basis for primary authority services supplied through the partnership. In deciding whether, and to what extent, to make a charge to the business, the local authority should consider all relevant matters, including:
    - a) the local authority's policy in respect of supporting local economic prosperity;
    - b) the existing resources provided to this business, both by the regulatory service and by other services of the local authority; and
    - c) any responsibility to provide advice and guidance to the business under the Regulators' Code<sup>6</sup>.
  - 5.4 Where a local authority decides to charge for some or all of the services provided to a business, it can recover only the costs reasonably incurred in providing the service. In calculating these costs, the local authority should have regard to the guidance issued by HM Treasury in *Managing Public Money*.<sup>7</sup>
  - 5.5 Where a local authority decides to charge for some or all of the services that it provides as a primary authority, it should publish clear and transparent information explaining these charges, and the basis on which they are calculated, in line with the requirement of the Regulators' Code. This information should be easily accessible to businesses, including on the local authority's website<sup>8</sup>.
  - 5.6 Guidance on cost recovery is given:
    - in Part B of this guidance for direct partnerships, at: [13. Cost recovery](#)
    - in Part C of this guidance for co-ordinated partnerships, at: [22. Cost recovery](#)

<sup>6</sup> The Government has recently consulted on a draft Regulators' Code. The requirements in relation to advice and guidance are included in section 5 of the draft Code and may be subject to amendment.

<sup>7</sup> [www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm)

<sup>8</sup> The Government has recently consulted on a draft Regulators' Code. This requirement is included in section 2.9 of the draft Code and may be subject to amendment.

6. Application and nomination of partnerships
- 6.1 BRDO manages applications for nomination of partnerships under Primary Authority on behalf of the Secretary of State and maintains the Public Register<sup>9</sup>.
- 6.2 Prospective partners should agree the arrangements for their partnership and prepare their agreements prior to making an application for nomination. The requirements in relation to these arrangements differ for direct and co-ordinated partnerships and are explained in detail:
- in Part B of this guidance for direct partnerships, at: [13. Partnership arrangements](#)
  - in Part C of this guidance for co-ordinated partnerships, at: [22. Partnership arrangements](#)
- 6.3 In order to have a partnership nominated by the Secretary of State, the prospective partners must submit an application for nomination via the Primary Authority Register. The requirements in relation to applications and nomination are explained in full:
- in Part B of this guidance for direct partnerships, at: [14. Applying for nomination](#) and [15. Nomination by BRDO](#)
  - in Part C of this guidance for co-ordinated partnerships, at: [23. Applying for nomination](#) and [24. Nomination by BRDO](#)
- 6.4 On nomination by the Secretary of State, a partnership is listed on the Public Register. The partnership remains on this register until it is revoked by the Secretary of State (see section 7 below).
7. Revocation of partnerships

### Revocation of nomination

- 7.1 A partnership will continue until it is ended by a revocation of the nomination by the Secretary of State. A partnership may be revoked:
- a) at the request of one or both parties;
  - b) where the Secretary of State determines that the local authority is no longer suitable to act as primary authority;
  - c) where the business no longer satisfies the eligibility criteria to access Primary Authority; or
  - d) where the Secretary of State considers it appropriate to do so for any other reason.

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<sup>9</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/list-of-partnerships>

7.2 Further details on revocation are provided:

- in Part B of this guidance for direct partnerships, at:  
[16. Revocation on request](#);  
[16. Revocation where the local authority is no longer suitable](#); and  
[16. Revocation where the business is no longer eligible](#)
- in Part C of this guidance for co-ordinated partnerships, at:  
[25. Revocation on request](#);  
[25. Revocation where the local authority is no longer suitable](#); and  
[25. Revocation where the business is no longer eligible](#)

8. Changes to partnerships

8.1 During the lifetime of a partnership, either party may make changes to the following details, which were disclosed during the application for nomination process:

- a) trading names of the business;
- b) contact details for the partners; and
- c) premises details for the business.

The accuracy of the Public Register and Primary Authority Register in respect of these details impacts on the effective operation of the scheme and the relevant party should therefore ensure that the relevant details are updated on the Primary Authority Register as soon as reasonably practicable, as set out:

- in Part B of this guidance for direct partnerships, at:  
[17. Maintaining up-to-date details on the Primary Authority Register](#)
- in Part C of this guidance for co-ordinated partnerships, at:  
[26. Maintaining up-to-date details on the Primary Authority Register](#)

8.2 There are a number of changes that the partners may wish to make to their partnership. Where these changes fall within the criteria set out below they are considered to be notifiable changes:

- a) the addition of a category to the scope of the partnership;
- b) the removal of a category from the scope of the partnership;
- c) altering the basis of the partnership from direct to co-ordinated;
- d) altering the basis of the partnership from co-ordinated to direct;
- e) changes to the business with regards to its name, its company number (where applicable), or the nature of the legal entity (sole trader / partnership / limited company etc); or
- f) the addition or removal of a regulated person or persons.

8.3 Where a partnership wishes to make a notifiable change then the primary authority should follow the processes set out:

- in Part B of this guidance for direct partnerships, at:  
[17. Notifiable changes to partnerships](#)
- in Part C of this guidance for co-ordinated partnerships, at:  
[26. Notifiable changes to partnerships](#)

8.4 Changes to the categories defined by the guidance may require the partnership to undergo a new nomination process. In this situation, BRDO will notify partnerships of the changes and of the process to be followed.

## 9. Primary Authority Advice

9.1 'Primary Authority Advice' is advice and guidance from the primary authority to a business or businesses, that covers matters relating to compliance in the categories of relevant function defined in the agreement. This advice and guidance may be used as a basis for directing against proposed enforcement action where the primary authority subsequently receives a notification of proposed enforcement action that would be inconsistent with the Primary Authority Advice.

9.2 Where a local authority has provided advice and guidance to the business prior to being nominated as a primary authority, this advice will not constitute Primary Authority Advice.

9.3 The requirements for Primary Authority Advice, and the arrangements for providing it, differ for direct partnerships and co-ordinated partnerships. Full details are provided:

- in Part B of this guidance for direct partnerships, at:  
[18. Arrangements for requesting, providing and managing Primary Authority Advice](#); and  
[18. Requirements for Primary Authority Advice](#)
- in Part C of this guidance for co-ordinated partnerships, at:  
[27. Arrangements for requesting, providing and managing Primary Authority Advice](#); and  
[27. Requirements for Primary Authority Advice](#)

## 10. Primary Authority Advice to Local Authorities

10.1 'Primary Authority Advice to Local Authorities' is advice and guidance from the primary authority to other local authorities that have responsibility for the relevant functions covered by the partnership, regarding the exercise of those functions in relation to the business.

10.2 The primary authority will need to consider who can provide Primary Authority Advice to Local Authorities on its behalf.

10.3 Primary Authority Advice to Local Authorities must be in writing and must be published via the Primary Authority Register. The primary authority should ensure that the published advice is kept up-to-date, and that it is withdrawn should it no longer be valid.

10.4 Primary Authority Advice to Local Authorities should be reviewed at appropriate intervals, and when circumstances change, to ensure that it remains current.

10.5 The requirements for Primary Authority Advice to Local Authorities differ for direct partnerships and co-ordinated partnerships. Full details are provided:

- in Part B of this guidance for direct partnerships, at:  
[19. Primary Authority Advice to Local Authorities](#)
- in Part C of this guidance for co-ordinated partnerships, at:  
[28. Primary Authority Advice to Local Authorities](#)

## 11. Inspection plans

- 11.1 An inspection plan is a document prepared by a primary authority and consented to by the Secretary of State following consultation with relevant national regulators, which guides local authorities in exercising their function of checking the business for compliance.
- 11.2 An inspection plan may provide helpful information on the business and its approach to managing compliance, and it may set out specific requirements for local authorities, with a view to:
- a) promoting more informed risk assessment of the business, or group of businesses;
  - b) co-ordinating risk-based regulation of a single business across its operations and improving targeting of premises or activities at a local level;
  - c) improving the allocation of local resources by focusing local checks on priority issues, reducing or eliminating local checks in clearly defined areas, addressing inefficiencies and duplication of effort, and enhancing the effectiveness of the enforcing authority's checks;
  - d) collating an improved national picture in key areas of compliance through better feedback on local interventions; and
  - e) ensuring an effective, consistent, communication process for businesses and enforcing authorities.
- 11.3 A primary authority that develops an inspection plan which includes specific requirements for enforcing authorities accepts responsibility for meeting the conditions set out for such requirements in this guidance, and for managing the inspection plan on an ongoing basis. The requirements will be examined by the Secretary of State and relevant national regulators through the consent process (see sections 11.22 to 11.26 below).
- 11.4 An inspection plan comes into effect once it has been consented to by the Secretary of State and remains in effect until its expiry date, or until it is revoked by the primary authority with the consent of the Secretary of State (see sections 11.30 to 11.32 below).
- 11.5 All inspections plans are published on the Primary Authority Register by BRDO once consent has been given and remain available until they expire or are revoked.

### Scope of inspection plans

- 11.6 An inspection plan may extend to proactive or programmed inspections, test purchases, sampling visits and other checks on compliance in regulatory areas that are within the scope of the partnership.
- 11.7 An inspection plan should not:
- a) set out requirements in relation to reactive interventions that are undertaken in relation to matters of immediate concern about the business;
  - b) seek to prevent enforcing authorities from taking any course of action that they are statutorily required to take; or

- c) require a local authority to undertake a proactive inspection or other check on compliance of the business when it would not otherwise have undertaken a proactive inspection or other check on compliance at that time.
- 11.8 An inspection plan may assist enforcing authorities by:
- a) providing information to guide local checks;
  - b) providing guidance on risk assessment of the business's premises and / or activities but should not seek to restrict a local authority's ability to make its own assessment of any elements of the risk score that relate to local implementation;
  - c) providing guidance on the most effective means of communicating with the business and the primary authority but should not seek to alter means or routes of communication with the business that are required by law; and
  - d) may draw attention to information that the primary authority has made available on the Primary Authority Register, which an enforcing authority might otherwise have requested from the business.
- 11.9 Subject to the conditions set out in this guidance (see 20.5 to 20.6 and 29.4 to 29.5 below), an inspection plan may:
- a) require that local checks are only carried out in line with a 'national inspection strategy' co-ordinated by the primary authority;
  - b) require that certain checks are not carried out locally;
  - c) require that specified procedures or systems are not reviewed locally to determine their suitability or adequacy;
  - d) require that local checks are focused on specified areas; and
  - e) require specified feedback to the primary authority on local checks.
- 11.10 An inspection plan for a business, or group of businesses, regulated in respect of the relevant function by both a national regulator and local authorities will only be binding on regulation undertaken by local authorities. However, inspection plans will be available to the relevant national regulators through the Primary Authority Register.

### **An enforcing authority's duty in relation to an inspection plan**

- 11.11 Where an inspection plan has been consented to by the Secretary of State and published via the Primary Authority Register, an enforcing authority must follow the requirements in the inspection plan:
- a) when conducting its risk assessment of the business or businesses to which the inspection plan applies; and
  - b) when conducting proactive or programmed checks on compliance at the business or businesses to which the inspection plan applies.
- 11.12 Where an inspection plan includes a requirement for the enforcing authority to provide a report of its activity under the plan to the primary authority then the enforcing authority must provide such a report, as soon as reasonably practicable following the activity, and should do so via the Primary Authority Register. This report will not be automatically copied to the business but may be shared with the business where the primary authority judges this appropriate.

- 11.13 Where a local authority, having considered the inspection plan, considers it appropriate to follow an alternative approach to that set out in requirements in line with 11.9 above, it should submit a request to the primary authority via the Primary Authority Register, setting out its alternative approach, and its reasons for considering this appropriate.
- 11.14 Where a primary authority receives, via the Primary Authority Register, a request from a local authority to agree an alternative approach to that set out in the inspection plan, the primary authority should provide its response to the local authority within a period of five working days beginning on, and including, the day after the request to the primary authority is made.
- 11.15 A local authority is entitled to follow an alternative approach to that set out in the inspection plan only where:
- it has made a request to the primary authority and either it has received the agreement of the primary authority via the Primary Authority Register, or the primary authority has failed to provide a response to its request within the period of five working days beginning on, and including, the day after the request to the primary authority is made; or
  - in the course of conducting a proactive check on compliance at the business, a possible non-compliance is identified, in which case that issue may be addressed.
- 11.16 An inspection plan is published for the use of regulators only, and may contain information that is confidential and commercially sensitive. It should not be shared more widely, unless permission has been given by the primary authority that prepared the plan.

### Development of an inspection plan

- 11.17 An inspection plan should be prepared using the template made available by BRDO<sup>10</sup>. This template will be revised from time to time and a primary authority should ensure that it uses the current version.
- 11.18 A primary authority that is developing an inspection plan should make any relevant national regulator aware of its proposals for the inspection plan, and should invite their input.
- 11.19 The requirements for developing an inspection plan differ for direct partnerships and co-ordinated partnerships. Full details are provided:
- in Part B of this guidance for direct partnerships, at:  
[20. Development of an inspection plan](#); and  
[20. Conditions relating to the requirements of an inspection plan](#)
  - in Part C of this guidance for co-ordinated partnerships, at:  
[29. Development of an inspection plan](#); and  
[29. Conditions relating to the requirements of an inspection plan](#)

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<sup>10</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/primary-authorities/inspection-plans>

## Seeking consent to an inspection plan

- 11.20 A local authority that has prepared an inspection plan, in accordance with this guidance, should submit the inspection plan to the Secretary of State for consent, via the Primary Authority Register. The submitted inspection plan should include the primary authority's rationale for the requirements included in the plan. The rationale provides the reasons for the requirements and highlights the supporting evidence, for the benefit of the primary authority, the Secretary of State, and any relevant national regulators. It does not form part of the inspection plan and will not be published with the inspection plan.
- 11.21 The requirements for the primary authority's rationale differ for direct partnerships and co-ordinated partnerships. Full details are provided:
- in Part B of this guidance for direct partnerships, at: [20. Inspection plan rationale](#)
  - in Part C of this guidance for co-ordinated partnerships, at: [29. Inspection plan rationale](#)

## The Secretary of State's role in relation to inspection plans

- 11.22 The Secretary of State will assess an inspection plan submitted via the Primary Authority Register and will consult with any relevant national regulator on the requirements of the proposed inspection plan.
- 11.23 The Secretary of State may request further information or clarification from the primary authority prior to making a decision on whether to consent to the proposed inspection plan and may request changes to the content of the plan where it considers that the plan does not meet the requirements of this guidance.
- 11.24 Where the Secretary of State is satisfied that the proposed inspection plan and rationale have been prepared in accordance with this guidance, it will give its consent and will publish the inspection plan on behalf of the primary authority through the Primary Authority Register, where it will be available to all local authorities, relevant national regulators and government departments. The rationale for the inspection plan will be deleted from the inspection plan prior to publication.
- 11.25 If the Secretary of State is not satisfied that the proposed inspection plan and rationale have been prepared in accordance with this guidance, it will not consent. In this event, BRDO will notify the primary authority and may provide feedback on the reasons for refusing consent.
- 11.26 The Secretary of State may consent to an inspection plan in which requirements are made by more than one primary authority where this is considered to be appropriate.

## Responsibilities of a primary authority that has a published inspection plan

- 11.27 A primary authority that has a published inspection plan will need to have robust internal arrangements in place for handling any request from an enforcing authority to follow an alternative approach, within the statutory timescale. In developing these arrangements, consideration should be given to:
- a) the appropriate person(s) to receive and respond to such requests;
  - b) the internal process for making a decision on such requests, and recording the reasons for the decision; and

- c) ensuring that such requests are reviewed with a view to considering whether they may reveal any inadequacy of the published inspection plan.
- 11.28 Where a primary authority has a published inspection plan that requires an enforcing authority to provide a report of its activity under the plan, it should:
- a) have arrangements in place to review and analyse the reports that it receives; and
  - b) consider the way in which it will share intelligence from feedback on inspections with the business.
- 11.29 Where a primary authority has a published inspection plan that sets out specific requirements for enforcing authorities, it should have arrangements in place to gather evidence to evaluate the success of the plan.

### Revocation of an inspection plan

- 11.30 Where a primary authority wishes to withdraw an existing inspection plan it should submit a request for consent via the Primary Authority Register. The request should give the primary authority's reasons for wishing to withdraw the inspection plan.
- 11.31 The Secretary of State will consider the request to revoke an inspection plan and may seek further information or clarification from the primary authority prior to making a decision on whether to consent to the request. Where the Secretary of State gives consent, the inspection plan will be revoked.
- 11.32 A primary authority that submits an inspection plan to the Secretary of State for consent may already have an inspection plan in place relating to the same business. In this circumstance, publication of the new inspection plan, on consent by the Secretary of State, automatically ends the effect of any previous inspection plan. The primary authority does not therefore need to request consent to the revocation of the existing inspection plan.

## 12. Responding to non-compliance

- 12.1 An enforcing authority that encounters possible non-compliance by a business that has a primary authority should consider appropriate communication with the primary authority at an early stage. The nature of this communication is likely to differ for direct partnerships and co-ordinated partnerships. Full details are provided:
- in Part B of this guidance for direct partnerships at:  
[21. Responding to non-compliance](#)
  - in Part C of this guidance for co-ordinated partnerships at:  
[30. Responding to non-compliance](#)

### Notifying the primary authority of enforcement action

- 12.2 Where an enforcing authority proposes to take enforcement action against a business, it is required to make a statutory notification of the proposed enforcement action to the primary authority.

- 12.3 The requirement to notify **proposed** enforcement action does not apply where a compliance issue is identified that requires immediate action in order to prevent harm, or in other specific circumstances defined in the secondary legislation<sup>11</sup>. These exclusions allow the enforcing authority to take enforcement action immediately, particularly where the need for action is urgent, for example emergency prohibition notices and abatement notices for noise. In these circumstances retrospective notification to the primary authority is required.
- 12.4 Enforcement action is defined by secondary legislation<sup>12</sup> and does not include investigative activities, for example:
- inspection of goods, records and documents;
  - exercise of powers of entry into premises;
  - seizure of goods, records and documents for evidential purposes;
  - deployment of surveillance or covert human intelligence sources under Part 2 of the Regulation of Investigatory Powers Act 2000; and
  - interviewing suspects under caution.
- 12.5 Investigative activities do not require formal notification to the primary authority. However, enforcing authorities will clearly benefit from a dialogue with the primary authority in relation to certain of these activities and should always consider at an early stage whether there may be an inspection plan or Primary Authority Advice to Local Authorities that is of relevance.
- 12.6 The statutory notification process arises only where enforcement action is proposed against the business<sup>13</sup>. It is not required where action is proposed against an individual employee of the business.
- 12.7 Notification of proposed enforcement action by the enforcing authority should be made via the Primary Authority Register.
- 12.8 The notification should include the following details, which are provided for in the online form on the Primary Authority Register:
- a) full details of the contravention;
  - b) where appropriate, the address of the relevant premises;
  - c) full details of any affected products or services;
  - d) details of the proposed enforcement action; and
  - e) the reasons for proposing the enforcement action.
- 12.9 Where the enforcing authority is proposing multiple enforcement actions, these should be itemised in the notification in order to allow the primary authority to consider and respond to each one separately.

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<sup>11</sup> The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 sets out exclusions to the requirement to notify in advance of taking enforcement action. ([www.bis.gov.uk/brdo/primary-authority/about-pa/background](http://www.bis.gov.uk/brdo/primary-authority/about-pa/background)). The government has committed to amend this order in relation to gambling.

<sup>12</sup> The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 ([www.bis.gov.uk/brdo/primary-authority/about-pa/background](http://www.bis.gov.uk/brdo/primary-authority/about-pa/background)). The government has committed to amend this order in relation to gambling.

<sup>13</sup> Referred to in the legislation as the 'regulated person'

- 12.10 Where the proposed enforcement action is in relation to a local failure to implement controls that the business has established, the enforcing authority should provide sufficient information about the circumstances of the non-compliance to the primary authority to allow the primary authority to make an informed judgment as to whether relevant Primary Authority Advice has been provided and whether the proposed enforcement action is inconsistent with that advice.
- 12.11 The enforcing authority cannot proceed with the proposed action within a period of five working days<sup>14</sup> beginning on, and including, the day after notification to the primary authority is made.
- 12.12 Retrospective notification of enforcement action that has been taken and that did not require prior notification, as set out at 12.3 above, should be made via the Primary Authority Register as soon as practicable after the action is taken.
- 12.13 Where an enactment limits the period within which the enforcing authority may take enforcement action, any time during which the authority is prohibited from taking the action because of the requirements of Primary Authority must be disregarded in calculating this period.

### **Responding to an enforcing authority's notification in respect of enforcement action**

- 12.14 Responding to notifications about proposed enforcement action is a key factor in achieving an effective partnership. The primary authority will need to have robust internal arrangements in place for handling notifications of proposed enforcement action within the statutory timescale. In developing these arrangements, consideration should be given to:
- a) the appropriate person to receive notifications;
  - b) the appropriate person to respond to notifications;
  - c) the circumstances in which notifications should be discussed with the business;
  - d) in the case of a business that has a co-ordinated partnership, the circumstances in which notifications should be discussed with the co-ordinator; and
  - e) the availability and form of information that will be needed to support any decision to direct an enforcing authority not to take a proposed enforcement action.
- 12.15 A primary authority that receives a statutory notification of proposed enforcement action is required to determine whether the proposed action is inconsistent with any Primary Authority Advice that it has given, whether to the business or to local authorities, and, where this is the case, it is able to direct the enforcing authority not to take the proposed action. Where no relevant advice has previously been given by the primary authority, it is not able to direct against the proposed enforcement action.
- 12.16 A primary authority that receives a statutory notification of enforcement action that has already taken place, under one of the exclusions set out at 12.3 above, is not required to respond to the enforcing authority but should consider whether the non-compliance identified by the enforcing authority indicates a need to review Primary Authority Advice that has been provided.

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<sup>14</sup> See Glossary for definition of 'working days'

- 12.17 The RES Act allows the primary authority five working days to respond to a notification of proposed enforcement action, beginning on, and including, the day after a notification is received. The primary authority should use the five working days to review its previous advice and guidance and to discuss the matter with relevant parties, which may include the enforcing authority, the business, BRDO and any relevant national regulator.
- 12.18 The primary authority should respond to the enforcing authority, either to direct against the proposed action where it is satisfied that the action is inconsistent with advice previously given, or to confirm that it will not be directing against the proposed action. Alternatively, the primary authority may apply to the Secretary of State for consent to refer the matter to the Secretary of State for determination within five working days of receiving the notification of proposed enforcement action from the enforcing authority.
- 12.19 The primary authority's response should be made, within the relevant period and via the Primary Authority Register, to the person making the original notification.
- 12.20 The RES Act does not allow a primary authority to revoke or revise its response to a notification once the five working days have elapsed.

### **The primary authority directs against proposed enforcement action**

- 12.21 Where the primary authority directs the enforcing authority not to take the proposed action, the response should include:
- a) details of the advice previously given with which the proposed enforcement action would be inconsistent;
  - b) details of how and when the advice was previously given; and
  - c) an explanation of the primary authority's reasons for believing that the proposed enforcement action would be inconsistent with Primary Authority Advice previously given. This explanation should include sufficient detail to allow the enforcing authority to make an informed judgment as to whether it accepts the decision.
- 12.22 Where the primary authority directs against proposed enforcement action, the enforcing authority cannot proceed with the proposed action. If, having considered the primary authority's reasons for its direction, the enforcing authority still feels that the proposed enforcement action is appropriate, then it may apply to the Secretary of State for consent to refer the matter to the Secretary of State for determination. This application must be made within 10 working days starting on, and including, the day after receipt of the primary authority's direction against the proposed enforcement action.
- 12.23 If the Secretary of State does not consent to a referral, then the enforcing authority cannot take the proposed enforcement action.

### **The primary authority does not direct against proposed enforcement action**

- 12.24 Where the primary authority does not object to the proposed action within the relevant period, the enforcing authority is entitled to proceed with the proposed enforcement action but is first required to make a statutory notification to the business of the proposed enforcement action via the Primary Authority Register. A copy of the notification will be automatically sent to the primary authority.

- 12.25 The notification should include the following details, which are provided for in the online form on the Primary Authority Register:
- a) full details of the contravention, including, where appropriate, the address of the relevant premises;
  - b) full details of any affected products or services;
  - c) details of the proposed enforcement action;
  - d) confirmation that the enforcing authority has notified the primary authority of the proposed action; and
  - e) confirmation that the primary authority did not object to the proposed enforcement action.
- 12.26 On receiving notification of a proposed enforcement action, the business may, if it considers that the proposed action is inconsistent with Primary Authority Advice previously given, apply to the Secretary of State within 10 working days starting on, and including, the day after it receives the notification, for consent to refer the matter to the Secretary of State for determination. The enforcing authority cannot proceed with the proposed action until the this period has expired
- 12.27 Where BRDO advises the enforcing authority that an application has been received from the business for consent to make a reference, then the enforcing authority cannot proceed until BRDO either confirms that consent has not been given or confirms the Secretary of State's determination.

### **The determination process**

- 12.28 The RES Act allows for questions that arise in respect of proposed enforcement action that has been notified to the primary authority to be referred to the Secretary of State for determination.
- 12.29 BRDO administers the determination process in accordance with the provisions in the RES Act; secondary legislation made under the Act; and its published determinations procedure.

## PART B: Guidance for Direct Partnerships

### 13. Partnership arrangements

**This section should be read in conjunction with: [section 4](#) and Part A, [section 5](#).**

#### The nature of the partnership

13.1 Prospective partners will wish to be clear, prior to making an application for nomination as to:

- each party's expectations of how the partnership will work;
- what the objectives of the partnership will be;
- how the parties will communicate with each other and with enforcing authorities;
- the arrangements for requesting, providing and managing Primary Authority Advice (see section 18 below); and
- the arrangements for resourcing the work of the partnership (see 13.6 to 13.8 below).

13.2 Prospective partners may choose to agree a service level agreement in respect of certain of these matters.

#### Partnership terms and conditions

13.3 Partnerships nominated on or after 1<sup>st</sup> October 2013 will be required to accept standard terms and conditions for their partnership (the 'Primary Authority Terms and Conditions for Direct Partnerships'). BRDO may vary the Primary Authority Terms and Conditions for Direct Partnerships and, should it do so, it will notify partners of any variation prior to it coming into effect.

13.4 Partnerships nominated prior to 1<sup>st</sup> October 2013 will have agreed a set of terms and conditions for their partnership and these terms and conditions will not be affected by the introduction of the standards terms and conditions. However, such a partnership may choose to adopt the relevant Primary Authority Terms and Conditions for Direct Partnerships.

#### Assessing resource requirements

13.5 In order to make an informed assessment of the resources that are likely to be required to operate an effective partnership, prospective partners will need to have a clear understanding of:

- a) the scale and scope of the proposed partnership;
- b) the needs of the business for regulatory advice;
- c) the expectations of both parties;
- d) the scope of the service being provided by the local authority to the business; and
- e) the role that the local authority will play in leading regulation of the business on behalf of the local regulatory community.

- 13.6 In assessing the resources required, consideration should be given to the amount of staff resource and the level of expertise needed, both in terms of knowledge of the relevant function and understanding of the business and its practices. Consideration should also be given to whether the primary authority will need to source resources externally.

### Cost recovery

- 13.7 Having made an assessment of the resource requirements of the partnership, the business and the local authority will need to agree how costs will be met.

## 14. Applying for nomination

**This section should be read in conjunction with: Part A, [section 6](#).**

### Applications for nomination

- 14.1 Where a business and a local authority agree that they wish to establish a partnership, and have agreed arrangements for the partnership, they should make an application to the Secretary of State to nominate the local authority as primary authority.
- 14.2 An application for nomination is initiated by the local authority via the Primary Authority Register and completed by the local authority and the business, providing the information required by the online form.
- 14.3 The applicants are required to confirm that each regulated person is regulated by two or more local authorities in respect of each of the categories included in the application.
- 14.4 The applicants are required to accept the Primary Authority Terms and Conditions (see section 13.3 above).

## 15. Nomination by the Secretary of State

**This section should be read in conjunction with: Part A, [section 6](#).**

- 15.1 On receipt of an application for nomination, the Secretary of State will assess whether the regulated person meets the eligibility criteria as set out in 3.2a above, and whether the local authority is suitable for nomination as primary authority for the regulated person.
- 15.2 In making an assessment of the suitability of the local authority, the Secretary of State will consult with any relevant national regulator, and will share details of the application with them.
- 15.3 In making an assessment of the suitability of the local authority, the Secretary of State will take account of:
- a) evidence of the adequacy of the proposed arrangements for resourcing the partnership;
  - b) evidence of the relevant expertise of the local authority and of the expertise of staff who will be assigned to the partnership, both in relation to the business sector and the categories of the partnership;

- c) any evidence from a relevant national regulator on the suitability of the local authority, with reference to the categories of the partnership;
  - d) any proposed arrangements for preparing relevant local authority staff for the primary authority role, and supporting them in that role on an ongoing basis, including issues such as competency in the delivery of Primary Authority; and
  - e) evidence of the commitment of the local authority and the business to making the proposed arrangements operate effectively.
- 15.4 Where he has concerns about a proposed partnership, the Secretary of State may require either or both applicants to provide further information.
- 15.5 Where the Secretary of State is satisfied, BRDO will add the partnership to the Public Register<sup>15</sup> and will notify the business and the primary authority. Where the Secretary of State is not satisfied, BRDO may seek to work with the applicants to explore whether the suitability criteria can be met.

## 16. Revocation

**This section should be read in conjunction with: Part A, [section 7](#).**

### Revocation on request

- 16.1 Where one or both parties wishes to end the partnership, either party may request the Secretary of State to issue a revocation notice in relation to the partnership, by notifying BRDO and the other party in writing.
- 16.2 When a notification is received from one party, the Secretary of State will consider whether it is appropriate to consult with the other party before revoking its nomination of the partnership.
- 16.3 When the Secretary of State is satisfied that it is appropriate to revoke the nomination, BRDO will notify both parties of the decision and will amend the Public Register accordingly. BRDO may also choose to notify others of the revocation, as it considers appropriate.

### Revocation where the local authority is no longer suitable

- 16.4 The Secretary of State will not review the suitability of a local authority to act as primary authority for a business on a routine basis but will consider reviewing suitability if certain information is drawn to his attention including:
- a) information about the relevant expertise of the local authority and of the staff assigned to the partnership;
  - b) information about the adequacy of arrangements for supporting local authority staff in the primary authority role, including issues such as developing and maintaining technical skills and knowledge, and competency in the delivery of primary authority services;
  - c) information about the adequacy of arrangements for resourcing the partnership;

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<sup>15</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/list-of-partnerships>

- d) information about the adequacy of standards of service to the regulatory community;
  - e) information indicating that the partnership is failing to operate in accordance with guidance on the scheme;
  - f) information that raises concerns about the independence and impartiality of the local authority, or any of its staff that are involved in supporting the partnership; and
  - g) information that raises concerns that the local authority is failing to meet its responsibility to act in a transparent and accountable manner.
- 16.5 Where the Secretary of State considers that a local authority may no longer be suitable to continue as primary authority for a business, he may consult with the parties before revoking the nomination of the partnership. The Secretary of State may also consult with others, as he considers appropriate.
- 16.6 When the Secretary of State is satisfied that it is appropriate to revoke the nomination BRDO will notify both parties of the decision and will amend the Public Register accordingly. BRDO may also choose to notify others of the revocation, as it considers appropriate.

### **Revocation where the business is no longer eligible**

- 16.7 The Secretary of State will not review the eligibility of a regulated person to participate in the scheme on a routine basis but will consider reviewing eligibility if certain information is drawn to its attention including:
- a) information indicating that the regulated person may no longer be trading; or
  - b) information indicating that the regulated person is no longer regulated by two or more local authorities in respect of a relevant function.
- 16.8 The Secretary of State may consult with the business, the primary authority, or other parties in order to determine the question of eligibility.
- 16.9 Where the Secretary of State considers that the regulated person no longer satisfies the eligibility criteria, he will revoke the nomination and BRDO will amend the Public Register accordingly. BRDO will notify both parties of the decision and may also choose to notify others of the revocation, as it considers appropriate.

## 17. Changes to partnerships

**This section should be read in conjunction with: Part A, [section 8](#).**

### **Maintaining up-to-date details on the Primary Authority Register**

- 17.1 The relevant party should ensure that any changes to the details listed below are updated on the Primary Authority Register as soon as reasonably practicable:
- a) the trading names of the business;
  - b) contact details for the partners; and
  - c) premises details of the business.

## Notifiable changes to partnerships

- 17.2 Where the primary authority and the business agree that they wish to add a new category or categories to the scope of their partnership, the primary authority should submit a notification via the Primary Authority Register. The Secretary of State will treat this notification as an application for nomination in respect of the additional category or categories and will follow the nomination process as set out in section 15 above.
- 17.3 Where the primary authority and the business agree that they wish to remove a category or categories from the scope of their partnership, the primary authority should submit a notification via the Primary Authority Register. The Secretary of State will treat this notification as a request for revocation under section 16.1 above.
- 17.4 Changes to the business in respect of the matters listed below may impact on the validity of the partnership's nomination under Primary Authority and the primary authority should notify such changes via the Primary Authority Register. Where possible, this notification should be made in advance of the change(s) taking effect. Otherwise, the notification should be made as soon as reasonably practicable after the change(s) take effect. The Secretary of State will, where appropriate, treat this notification as a request for revocation of the existing partnership and an application for nomination of a new partnership. In this circumstance, the Secretary of State will usually follow a reduced nomination process which will not involve consultation with relevant national regulators.
- name;
  - company number (where applicable); or
  - the nature of the legal entity.
- 17.5 Where the business comprises multiple regulated persons, the addition of a regulated person to the partnership or the removal of a regulated person from the partnership will need to be recognised by the Secretary of State in order to be effective under Primary Authority. The primary authority should therefore notify any such a change via the Primary Authority Register. The Secretary of State will, as appropriate, treat this notification as either:
- a) a request for revocation of the named regulated person(s); or
  - b) an application for nomination of the new regulated person(s). In this circumstance, the Secretary of State will usually follow a reduced nomination process which will not involve consultation with relevant national regulators.
- 17.6 Where the primary authority and the business agree that they wish to make arrangements with a third party to act as a co-ordinator in relation to the partnership, the primary authority should submit a notification via the Primary Authority Register. The Secretary of State will make an assessment of the arrangements in place between the business and the proposed co-ordinator and between the primary authority and the proposed co-ordinator (see section 24 below). Where the Secretary of State is satisfied, BRDO will indicate to the primary authority that it may offer a co-ordinated partnership to the business. On receipt of confirmation from the business, which will include acceptance of the Primary Authority Terms and Conditions for Co-ordinated Partnerships, BRDO will change the basis on which the partnership is recorded on the Public Register and the Primary Authority Register and will notify the primary authority, the business and the co-ordinator.

## 18. Primary Authority Advice to the business

**This section should be read in conjunction with: Part A, [section 9](#).**

### **Arrangements for requesting, providing and managing Primary Authority Advice**

18.1 The primary authority will need to consider, and agree with the business:

- a) who can provide Primary Authority Advice on behalf of the local authority;
- b) who can request and receive Primary Authority Advice on behalf of the business;
- c) by what means Primary Authority Advice will be provided. This will usually be in writing;
- d) how Primary Authority Advice that is provided will be recorded. The primary authority will always need to have regard to its responsibility to review advice at a future date, for example to ensure that it remains current or if the compliance of the business is challenged by another local authority;
- e) how both parties will know that Primary Authority Advice is being provided. The primary authority will have discussions with the business that do not constitute Primary Authority Advice, and both parties will need to be clear that these discussions cannot later be relied on as Primary Authority Advice;
- f) how Primary Authority Advice will be reviewed to ensure it remains current; and
- g) what will happen if there are circumstances in which a business requests Primary Authority Advice on a matter on which the primary authority is unable to provide assurance.

18.2 Where the business has more than one primary authority, the primary authorities will need to have regard to the importance of working together and should make arrangements to ensure that the business receives advice and guidance that is consistent. For example, this will be of particular importance where:

- a) one primary authority is advising the business in relation to regulations of the Welsh Government (under the Welsh regulations category) that are in a legislative area that falls within a category in which the business is being advised by another local authority. For example, a business may have a partnership with local authority A in the age restricted sales category and with local authority B in the Welsh regulations category. The business might seek advice from both primary authorities in relation to age restrictions for sunbeds as they apply in the two nations.
- b) the business receives advice from two primary authorities (with regards to legislation that falls into different categories) in relation to the same compliance controls. For example, a business may have a partnership with local authority A in relation to food standards and with local authority B in relation to food safety and hygiene, and may seek advice from both primary authorities in relation to its staff training programme.

## Requirements for Primary Authority Advice

- 18.3 In acting as primary authority for a business, a local authority accepts responsibility for being the principal source of local authority regulatory advice and guidance to the business.
- 18.4 The primary authority should ensure that Primary Authority Advice to the business:
- a) is capable of having effect in all areas where the business may seek to rely on it;
  - b) is specific, and tailored to the particular needs of the business where appropriate;
  - c) is considered and well researched;
  - d) takes into account the relevant legislation and codes of practice;
  - e) takes into account relevant published guidance from the Government, national regulators and others, including, for example, professional bodies;
  - f) takes into account obligations imposed on the business by any relevant national regulator;
  - g) takes into account industry practices and is consistent with relevant advice being given to other businesses within the sector;
  - h) takes into account relevant Primary Authority Advice given to the business by other primary authorities with responsibility for different relevant functions;
  - i) takes into account any relevant and applicable Primary Authority Advice given to any other business which provides the compliance approach used;
  - j) takes into account relevant advice and guidance given to the business by any national regulator with responsibility for the same relevant function;
  - k) supports the business in identifying a method of achieving compliance;
  - l) recognises the need not to impose unnecessary burdens on the business; and
  - m) should support the regulation of the business in accordance with the statutory principles of good regulation<sup>16</sup>.
- 18.5 There is no statutory requirement for a primary authority to proactively publish Primary Authority Advice provided to a business. However, where the partners wish to share Primary Authority Advice with other local authorities, they may do so via the Primary Authority Register and, in this circumstance, the primary authority should ensure that the published advice is kept up-to-date.
- 18.6 Primary Authority Advice that is not published on the Primary Authority Register should be shared with an enforcing authority on request, where it is relevant to enforcement action that is being considered.
- 18.7 Primary Authority Advice to the business should be reviewed at appropriate intervals, and when circumstances change, to ensure that it remains current.
- 18.8 Where the basis of a partnership changes, from co-ordinated to direct or from direct to co-ordinated, the Primary Authority should review Primary Authority Advice that it has previously issued to the business and should consider whether it is appropriate to revoke or to re-issue this advice. In doing so, it will need to consider the views of the business and, where appropriate, of the co-ordinator.

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<sup>16</sup> Legislative and Regulatory Reform Act 2006, section 21

## 19. Primary Authority Advice to Local Authorities

**This section should be read in conjunction with: Part A, [section 10](#).**

- 19.1 Where the primary authority considers it appropriate to issue Primary Authority Advice to Local Authorities, then it should ensure that this advice:
- a) is considered and well researched;
  - b) where it relates to the interpretation or applicability of legislation, takes into account relevant codes of practice and guidance from the Government, national regulators and others, including obligations imposed on the business by national regulators;
  - c) relates to a specific issue or issues where the primary authority is actively addressing compliance on a national level with the business and is satisfied with the business's arrangements to deliver and maintain compliance;
  - d) supports regulation of the business in accordance with the statutory principles of good regulation;
  - e) seeks to limit requests to the business for specified information or documents only where it is providing the specified information or documents, or is directing local authorities to a readily available source to access them;
  - f) does not relate to the frequency or conduct of inspections, or the risk assessment of the business;
  - g) does not seek to prevent local authorities from taking any course of action that they are under a statutory duty to take, or that is required of them by national regulators; and
  - h) does not seek to prevent a local authority from following a legally defined route or means of communication.
- 19.2 Primary Authority Advice to Local Authorities should not seek to restrict a local authority's ability to make its own decision on what enforcement action is proportionate in accordance with its published enforcement policy.

## 20. Inspection plans

**This section should be read in conjunction with: Part A, [section 11](#).**

### Development of an inspection plan

- 20.1 The primary authority must consult the business on the proposed inspection plan.
- 20.2 Where a business has more than one partnership, the primary authority that is considering making an inspection plan should consult with the other primary authorities for the business to ensure a consistent and compatible approach.
- 20.3 An inspection plan may cover more than one regulated person where these regulated persons have partnered in a single relationship with the primary authority.

## Requirements for all inspection plans

20.4 An inspection plan:

- a) must take account of all relevant national regulators' published strategies, guidance, priority topics or risk assessment methodologies, and obligations imposed on the business by national regulators;
- b) should be informed by available intelligence;
- c) should define the scope of the relevant functions covered, and the geographical applicability of the plan;
- d) should be reviewed by the primary authority at appropriate intervals or in response to information received from enforcing authorities or other changes in circumstance; and
- e) should include an expiry date of no more than 18 months from the date of publication.

## Conditions for inspection plans that place requirements on enforcing authorities

20.5 An inspection plan that sets out a national inspection strategy should include a requirement for any feedback that the primary authority considers will be relevant and useful.

20.6 An inspection plan that requires that local checks are focused on specified areas:

- a) should make it clear whether the area identified is to be focussed on 'in addition' or 'in place of' areas that the enforcing authority would otherwise have checked;
- b) should include a basic explanation of the reasons for focussing on the areas, for the enforcing authority to use during inspection, if these reasons are not evident;
- c) should include a requirement for any feedback that the primary authority considers will be relevant and useful.

## Inspection plan rationale

20.7 The primary authority's rationale should include:

- a) an explanation of any issues that the partnership has with current enforcement activity at a local level, where the plan includes requirements that seek to address these issues;
- b) confirmation that the primary authority has consulted with any relevant national regulator during the development of the plan, and a summary of any issues that were raised;
- c) an explanation of the basis on which the primary authority has made any requirements in respect of risk assessment of the business;
- d) where a plan includes requirements against reviewing specified procedures or systems of the business locally to determine their suitability or adequacy, confirmation that the relevant procedures and / or systems are controlled centrally by the business, and an outline of what this control consists of;

- e) where consideration of particular procedures has been critical to the primary authority's development of the plan, a list of these procedures (with dates / version numbers);
  - f) where a plan includes requirements against carrying out specified checks locally, an explanation of how the primary authority will carry out checks on behalf of enforcing authorities; and
  - g) where a plan includes requirements in respect of the focus of checks at a local level, an explanation for the checks that are required, unless this is included in the plan.
- 20.8 Where the primary authority is proposing a national inspection strategy, its rationale should, in addition to the requirements of the preceding paragraph:
- a) identify whether it seeks to control the level of local inspection activity and, if so, provide its explanation of the proposed controls;
  - b) explain how it will manage the national inspection strategy, including ensuring that it is responsive to changing circumstances;
  - c) set out its method for securing specified activity by particular local authorities, where the national inspection strategy is reliant on this activity taking place;
  - d) set out how the primary authority will evaluate the effectiveness of the national inspection strategy; and
  - e) provide details of the primary authority's evaluation of the effectiveness of any national inspection strategy included in a previous plan for the partnership to which the Secretary of State has consented.

## 21. Responding to non-compliance

**This section should be read in conjunction with: Part A, [section 12](#).**

### **Communicating with the primary authority in relation to possible non-compliance**

- 21.1 Where an enforcing authority has identified possible non-compliance by a business that is in a direct partnership with a primary authority, it should engage with the primary authority at an early stage, in order to establish whether the primary authority has information that is of relevance, or may be able to provide an effective means of resolving non-compliance with the business. This is of particular importance where:
- a) the matter is likely to be a local example of wider non-compliance;
  - b) the enforcing authority has identified a contravention that requires an amendment to a national system or process; or
  - c) the problem cannot be addressed purely through local action, for example where the local premises requires input from the head office of the business.
- 21.2 Where an enforcing authority determines that enforcement action is an appropriate response to non-compliance, it must comply with the notification process set out in sections 12.2 to 12.13 of this guidance.

## PART C: Guidance for Co-ordinated Partnerships

### 22. Partnership Arrangements

**This section should be read in conjunction with: [section 4](#) and Part A, [section 5](#)**

#### The arrangements for co-ordination

22.1 The nature of the arrangements for co-ordinating partnerships is likely to vary significantly, depending on the relationship between the prospective co-ordinator and the group of businesses that might establish co-ordinated partnerships. Examples of this relationship include:

- a franchisor and its franchisees;
- a sectoral trade association and its members; or
- a single company and other companies that are in the same company group.

22.2 A local authority and a prospective co-ordinator will need to be clear, prior to initiating an application for nomination as to:

- a) whether the businesses in the group that they propose to offer primary authority services to can satisfy the eligibility requirements set out at 3.2b above;
- b) their expectations of how their relationship will work, and what they will seek to deliver for the co-ordinated partnerships;
- c) how they will communicate with each other, with the businesses, and with enforcing authorities;
- d) the arrangements for requesting, providing and managing Primary Authority Advice (see section 27 below); and
- e) the arrangements for resourcing the work of the partnership (see 22.9 to 22.11 below).

22.3 The local authority and the co-ordinator should agree a Memorandum of Understanding for Co-ordination of Partnerships, setting out:

- a) arrangements for the co-ordinator to request Primary Authority Advice on behalf of the businesses in co-ordinated partnerships, and to disseminate it to them;
- b) arrangements for the primary authority to provide Primary Authority Advice;
- c) arrangements for the co-ordinator to provide the primary authority with details of the businesses in the group that share an approach to compliance, and to keep these details updated;
- d) arrangements for the primary authority and co-ordinator to manage consultation with the businesses in the event that the primary authority develops an inspection plan;
- e) any arrangements for cost recovery by the primary authority in respect of the primary authority services that it provides to the businesses; and
- f) provisions for meeting legal requirements in respect of data protection and freedom of information.

## Arrangements between the business and co-ordinator

- 22.4 The co-ordinator will need to make arrangements with each business on whose behalf it is co-ordinating the partnership with the primary authority as to:
- a) how the co-ordinator will manage requests from individual businesses in the group of co-ordinated partnerships for advice or guidance from the primary authority;
  - b) how the co-ordinator will pass Primary Authority Advice to the businesses; and
  - c) how the co-ordinator will ensure that the businesses are aware of changes to the Primary Authority Advice.
- 22.5 The co-ordinator will require authorisation from the business to:
- a) provide the primary authority and BRDO with the relevant information needed to operate the scheme effectively; and
  - b) act as its agent in responding to any consultation by the primary authority on the development of an inspection plan;
- 22.6 The co-ordinator will require agreement from the business in respect of any arrangements for cost recovery by the primary authority for primary authority services provided to the business.

## Partnership terms and conditions

- 22.7 Partnerships nominated on or after 1<sup>st</sup> October 2013 will be required to accept standards terms and conditions for their partnership (the 'Primary Authority Terms and Conditions for Co-ordinated Partnerships').
- 22.8 BRDO may vary the Primary Authority Terms and Conditions for Co-ordinated Partnerships and, should it do so, it will notify partners that have accepted these terms and conditions of the variation prior to it coming into effect.

## Assessing resource requirements

- 22.9 Where a third party is co-ordinating certain aspects of the partnership between the primary authority and a number of businesses, the co-ordinator and the local authority will need to have a clear understanding of:
- a) the scale and scope of the proposed arrangements;
  - b) the needs of the businesses for regulatory advice, and how this will be developed;
  - c) the expectations of the businesses and the co-ordinator;
  - d) the scope of the service being provided by the local authority to the businesses and the co-ordinator.
- 22.10 In assessing the resources required, consideration should be given to the amount of staff resource and the level of expertise needed, both of the local authority and the co-ordinator, and to the amount of resource required of the co-ordinator in terms of acting effectively as a single point of contact.

## Cost recovery

22.11 Where a third party is co-ordinating cost recovery in the partnerships between the primary authority and a number of businesses, the co-ordinator and the local authority will need to have a clear understanding of how this will be managed in practice. For example, each business may agree that the co-ordinator will act on its behalf in making payment against the primary authority's costs. The business and the co-ordinator would then need to agree between them how the co-ordinator should recover these costs from the business.

## 23. Applying for nomination

**This section should be read in conjunction with: Part A, [section 6](#).**

23.1 Applications for nomination of co-ordinated partnerships involve a two-stage process, with a submission being made to the Secretary of State at each stage:

- a) the local authority makes an application to the Secretary of State to assess its suitability; and
- b) the individual businesses make their applications to the Secretary of State for nomination.

### Application by the local authority

23.2 Where a local authority and a co-ordinator agree that they wish to offer co-ordinated partnerships to a specified group of businesses, and have agreed arrangements for co-ordinating the partnerships, they should make an application to the Secretary of State to assess the suitability of the local authority as primary authority for businesses in the group, and the adequacy of the arrangements to share an approach to compliance.

23.3 An application to provide co-ordinated partnerships is made via the Primary Authority Register by the local authority, providing the information required by the online form.

23.4 The local authority is required to confirm that the businesses in the group are collectively regulated by two or more local authorities in respect of each of the categories included in the application.

23.5 The local authority is required to accept the Primary Authority Terms and Conditions for Co-ordinated Partnerships (see section 22.7 above).

23.6 Where the Secretary of State is satisfied, BRDO will confirm to the local authority and the co-ordinator that an invitation to apply for nomination may be sent to the businesses in the group. BRDO may specify details that should accompany this invitation.

### Application by the business

23.7 A business that wishes to enter into a partnership with the primary authority, co-ordinated by the co-ordinator, should complete the application process initiated by the primary authority via the Primary Authority Register, providing the details required by the online form.

- 23.8 The business is required to confirm:
- a) its relationship to the co-ordinator;
  - b) its commitment to having regard to the compliance advice or guidance, or to following the compliance controls referred to at 3.3a above; and
  - c) that each regulated person is regulated in each of the categories included in the application.
- 23.9 The business is required to accept the Primary Authority Terms and Conditions for Co-ordinated Partnerships (see section 22.7 above).

## 24. Nomination by the Secretary of State

**This section should be read in conjunction with: Part A, [section 6](#).**

### The nomination process

- 24.1 On receipt of an application from a local authority, the Secretary of State will assess whether the businesses in the group meet the eligibility criteria as set out in 3.2b above, and whether the local authority is suitable for nomination as primary authority for businesses in the group.
- 24.2 In assessing whether the businesses in the group meet the eligibility criteria as set out in 3.2b above, the Secretary of State will take account of evidence of:
- a) the arrangements that the businesses have in place to share an approach to compliance, as set out in 3.3 above;
  - b) the adequacy of the arrangements between the businesses and the co-ordinator; and
  - c) the adequacy of the arrangements between the co-ordinator and the primary authority.
- 24.3 In assessing the suitability of the local authority, the Secretary of State will consult with any relevant national regulator and will share details of the application with them.
- 24.4 In making an assessment of the suitability of the local authority, the Secretary of State will take account of:
- a) evidence of the adequacy of the proposed arrangements for resourcing the partnerships;
  - b) evidence of the relevant expertise of the local authority and of the expertise of staff who will be assigned to the partnerships, both in relation to the business sector and the categories of the partnerships;
  - c) any evidence from a relevant national regulator on the suitability of the local authority, with reference to the categories of the partnerships;
  - d) any proposed arrangements for preparing relevant local authority staff for the primary authority role, and supporting them in that role on an ongoing basis, including issues such as competency in the delivery of Primary Authority;
  - e) evidence of the commitment of the local authority and the co-ordinator to making the proposed arrangements operate effectively; and

- f) evidence of the adequacy of the proposed arrangements for co-ordination (see section 22 above).
- 24.5 Where he has concerns about a proposed partnership, the Secretary of State may require either or both applicants, or the co-ordinator, to provide further information.
- 24.6 Where the Secretary of State is satisfied, BRDO will add the partnership to the Public Register<sup>17</sup> and will notify the business, the primary authority and the co-ordinator. Where the Secretary of State is not satisfied, BRDO may seek to work with the applicants and the co-ordinator to explore whether the suitability criteria can be met.
25. Revocation

**This section should be read in conjunction with: Part A, [section 7](#).**

### **Revocation on request**

- 25.1 Where the primary authority wishes to end the partnership, it may request the Secretary of State to issue a revocation notice in relation to the partnership by notifying BRDO and the business via the Primary Authority Register. The Secretary of State will consider whether it is appropriate to consult with the business and with the co-ordinator before revoking the nomination of the partnership.
- 25.2 Where the business wishes to end the partnership, it may request the Secretary of State to issue a revocation notice by notifying BRDO and the primary authority in writing. Alternatively, the business may request the co-ordinator to pass its request to the primary authority via the Primary Authority Register. The Secretary of State will consider whether it is appropriate to consult with the primary authority and with the co-ordinator before revoking the nomination of the partnership.
- 25.3 The co-ordinator may not request revocation of partnerships that it co-ordinates but may pass information to the primary authority indicating that revocation might be an appropriate course of action.
- 25.4 When the Secretary of State is satisfied that it is appropriate to revoke the nomination BRDO will notify the business, the primary authority and the co-ordinator of the decision and will amend the Public Register accordingly. BRDO may also choose to notify others of the revocation, as it considers appropriate.

### **Revocation where the local authority is no longer suitable**

- 25.5 The Secretary of State will not review the suitability of a local authority to act as primary authority for a regulated person on a routine basis but will consider reviewing suitability if certain information is drawn to its attention including:
- a) information about the relevant expertise of the local authority and of the staff assigned to the partnership;
  - b) information about the adequacy of arrangements for supporting local authority staff in the primary authority role, including issues such as developing and maintaining technical skills and knowledge, and competency in the delivery of primary authority services;
  - c) information about the adequacy of arrangements for resourcing the partnership;

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<sup>17</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/list-of-partnerships>

- d) information about the adequacy of standards of service to the regulatory community;
  - e) information about the adequacy of the arrangements between the primary authority and the co-ordinator;
  - f) information that raises concerns about the independence and impartiality of the local authority, or any of its staff that are involved in supporting the partnership; and
  - g) information that raises concerns that the local authority is failing to meet its responsibility to act in a transparent and accountable manner.
- 25.6 Where the Secretary of State considers that a local authority may no longer be suitable to continue as primary authority for a regulated person, he may consult with the business, the primary authority and the co-ordinator before revoking the nomination of the partnership. The Secretary of State may also consult with others, as he considers appropriate.
- 25.7 When the Secretary of State is satisfied that it is appropriate to revoke the nomination BRDO will notify the business, the primary authority and the co-ordinator of the decision and will amend the Public Register accordingly. BRDO may also choose to notify others of the revocation, as it considers appropriate.

### **Revocation where the business is no longer eligible**

- 25.8 The Secretary of State will not review the eligibility of a regulated person to participate in the scheme on a routine basis but will consider reviewing eligibility if certain information is drawn to his attention including:
- a) information indicating that the regulated person may no longer be trading; or
  - b) information indicating that the business no longer has suitable arrangements in place to share an approach to compliance. This might include information indicating that the co-ordinator has withdrawn from the co-ordination role, or that the business has ended its arrangements with the co-ordinator.
- 25.9 The Secretary of State may consult with the business, the primary authority, and the co-ordinator in order to determine the question of eligibility. The Secretary of State may also consult with others, as he considers appropriate.
- 25.10 Where the Secretary of State considers that the regulated person no longer satisfies the eligibility criteria, he will revoke the nomination and BRDO will amend the Public Register accordingly. BRDO will notify both parties of the decision and may also choose to notify others of the revocation, as it considers appropriate.

## 26. Changes to partnerships

**This section should be read in conjunction with: Part A, [section 8](#).**

### **Maintaining up-to-date details on the Primary Authority Register**

- 26.1 The primary authority should ensure that any changes to its contact details are updated on the Primary Authority Register as soon as reasonably practicable.

26.2 The business should ensure that any changes to its contact details or trading names are notified to the co-ordinator as soon as reasonably practicable, and the co-ordinator should ensure that these changes are updated on the Primary Authority Register.

### **Notifiable changes to partnerships**

26.3 Where the primary authority and the co-ordinator agree that they wish to add a new category or categories to their offer to a group of businesses in co-ordinated partnerships, the primary authority should submit a notification via the Primary Authority Register. The Secretary of State will treat this notification as an application to assess the suitability of the local authority as primary authority for businesses in the group in respect of the additional category or categories and will follow the process as set out in section 24 above. Where the Secretary of State is satisfied, BRDO will confirm to the primary authority and the co-ordinator that an invitation to apply for nomination in the additional category or categories may be sent to the businesses in the group.

26.4 Where a business that is already in a co-ordinated partnership wishes to extend its partnership to a category that is already offered by the primary authority and co-ordinator, it should advise the co-ordinator, and the co-ordinator or primary authority should provide the facility for the business to complete the application process in respect of the additional category via the Primary Authority Register.

26.5 Where the primary authority and the co-ordinator agree that they wish to remove a category or categories from the scope of their offer to businesses, the primary authority should submit a notification via the Primary Authority Register. The Secretary of State will treat this notification as a request for revocation in respect of the category or categories, under section 25.1 above.

26.6 Where a business that is already in a co-ordinated partnership wishes to remove a category or categories from the scope of its partnership, it should advise the co-ordinator and the co-ordinator should pass the request to the primary authority. The primary authority should submit a notification via the Primary Authority Register and the Secretary of State will treat this notification as a request for revocation in respect of the category or categories, under section 25.1 above.

26.7 Changes to the business in respect of the matters listed below may impact on the validity of the partnership's nomination under Primary Authority and the business and co-ordinator should ensure that the primary authority is advised of such changes. The primary authority should then notify such changes via the Primary Authority Register. Where possible, this notification should be made in advance of the change(s) taking effect. Otherwise, the notification should be made as soon as reasonably practicable after the change(s) take effect. The Secretary of State will, where appropriate, treat this notification as a request for revocation of the existing partnership and an application for nomination of a new partnership.

- name;
- company number (where applicable); or
- the nature of the legal entity.

- 26.8 Where the business comprises multiple regulated persons, the addition of a regulated person to the partnership or the removal of a regulated person from the partnership will need to be recognised by the Secretary of State in order to be effective under Primary Authority. The co-ordinator should therefore ensure that the primary authority is advised of any such changes and the primary authority should notify the change(s) via the Primary Authority Register. The Secretary of State will, as appropriate, treat this notification as either:
- a) a request for revocation of the named regulated person(s); or
  - b) an application for nomination of the new regulated person(s). In this circumstance, the Secretary of State will usually follow a reduced nomination process which will not involve consultation with relevant national regulators.
- 26.9 Where the primary authority and the business agree that they wish to move to a direct partnership and that the co-ordinator will no longer have the role outlined in 4.2 above, then the primary authority should submit a notification via the Primary Authority Register. The Secretary of State will make an assessment of the arrangements in place between the business and the primary authority and of the eligibility of the business (see section 15 above). Where the Secretary of State is satisfied, BRDO will change the basis on which the partnership is recorded on the Public Register and the Primary Authority Register and will notify the primary authority, the business and the co-ordinator.

## 27. Primary Authority Advice to the business

**This section should be read in conjunction with: Part A, [section 9](#).**

### **Arrangements for requesting, providing and managing Primary Authority Advice**

- 27.1 The primary authority will need to consider, and agree with a prospective co-ordinator:
- a) how the co-ordinator will identify and gain sufficient understanding of the advice needs of the businesses in the group of co-ordinated partnerships;
  - b) how the co-ordinator and the local authority will work together to ensure that the local authority has sufficient understanding of the businesses in the group of co-ordinated partnerships in order to provide advice that is relevant and applicable to their circumstances;
  - c) who can provide Primary Authority Advice on behalf of the local authority;
  - d) who can request and receive Primary Authority Advice on behalf of the businesses in the group of co-ordinated partnerships;
  - e) by what means Primary Authority Advice will be provided. This will usually be in writing;
  - f) how the co-ordinator will pass Primary Authority Advice to the businesses;
  - g) how Primary Authority Advice that is provided will be recorded. The primary authority will always need to have regard to its responsibility to review advice at a future date, for example to ensure that it remains current or if the advice is challenged by another local authority;

- h) how both parties will be clear that Primary Authority Advice is being provided. The primary authority will have discussions with the co-ordinator and may have discussions with businesses in the group of co-ordinated partnerships that do not constitute Primary Authority Advice, and all parties will need to be clear that these discussions cannot later be relied on as Primary Authority Advice;
  - i) how Primary Authority Advice will be reviewed to ensure it remains current, relevant and applicable to the businesses in the group of co-ordinated partnerships;
  - j) how the co-ordinator will ensure that the businesses are aware of changes to the Primary Authority Advice; and
  - k) what will happen if there are circumstances in which the co-ordinator requests Primary Authority Advice on behalf of the businesses on a matter on which the primary authority is unable to provide certainty.
- 27.2 Where the group of businesses has more than one primary authority, the primary authorities will need to have regard to the importance of working together and should make arrangements to ensure that the businesses receive advice and guidance that is consistent. For example, this will be of particular importance where:
- a) one primary authority is advising the businesses in relation to regulations of the Welsh Government (under the Welsh regulations category) that are in a legislative area that falls within a category in which the businesses are being advised by another local authority. For example, a group of trade association members in co-ordinated partnerships with local authority A in the age restricted sales category may be in co-ordinated partnerships with local authority B in the Welsh regulations category. Both primary authorities might provide advice in relation to age restrictions for sunbeds as they apply in the two nations.
  - b) the group of businesses receives advice from two primary authorities (with regards to legislation that falls into different categories) in relation to the same compliance controls. For example, the franchisees of a business may have co-ordinated partnerships with local authority A in relation to food standards and with local authority B in relation to food safety and hygiene, and may receive advice from both primary authorities in relation to the staff training programme set out by the franchisor.

### **Requirements for Primary Authority Advice**

- 27.3 In acting as primary authority for a number of businesses that have assigned responsibility for co-ordinating their partnerships to a co-ordinator, a local authority accepts responsibility for being the principal source of local authority regulatory advice and guidance to those businesses.
- 27.4 The primary authority should ensure that Primary Authority Advice that it provides to the businesses, through the co-ordinator:
- a) is relevant to a significant proportion of the businesses in the group of co-ordinated partnerships and is applicable to all of those businesses for which it is relevant;
  - b) is considered and well researched;
  - c) takes into account the relevant legislation and codes of practice;

- d) takes into account relevant published guidance from the Government, national regulators and others, including, for example, professional bodies;
  - e) takes into account obligations imposed on the business by any relevant national regulator;
  - f) takes into account industry practices and is consistent with advice being given to other businesses within the sector;
  - g) takes into account relevant Primary Authority Advice given to the businesses, through a co-ordinator, by other primary authorities with responsibility for different relevant functions;
  - h) supports the businesses in identifying a method of achieving compliance;
  - i) recognises the need not to impose unnecessary burdens on the businesses; and
  - j) should support the regulation of the businesses in accordance with the statutory principles of good regulation.
- 27.5 The primary authority should share Primary Authority Advice that it provides to the businesses with enforcing authorities, via the Primary Authority Register.
- 27.6 Primary Authority Advice to the group of businesses should be reviewed at appropriate intervals, and when circumstances change, to ensure that it remains current.
- 27.7 Where the basis of a partnership changes, from co-ordinated to direct or from direct to co-ordinated, the Primary Authority should review Primary Authority Advice that it has previously issued to the business and should consider whether it is appropriate to revoke or to re-issue this advice. In doing so, it will need to consider the views of the business and, where appropriate, of the co-ordinator.

## 28. Primary Authority Advice to Local Authorities

**This section should be read in conjunction with: Part A, [section 10](#).**

- 28.1 Primary Authority Advice to Local Authorities:
- a) should be considered and well researched;
  - b) should, where it relates to the interpretation or applicability of legislation, take into account relevant codes of practice and guidance from the Government, national regulators and others, including obligations imposed on the business by national regulators;
  - c) should relate to a specific issue or issues where the primary authority is actively addressing compliance on a national level with the co-ordinator and businesses;
  - d) should support regulation of the business in accordance with the statutory principles of good regulation;
  - e) should seek to limit requests to the business for specified information or documents only where it is providing the specified information or documents, or is directing local authorities to a readily available source to access them;
  - f) should not relate to the frequency or conduct of inspections, or the risk assessment of the business;

- g) should not seek to prevent local authorities from taking any course of action that they are under a statutory duty to take, or that is required of them by national regulators; and
  - h) should not seek to alter legally defined routes or means of communication.
- 28.2 Primary Authority Advice to Local Authorities should not seek to restrict a local authority's ability to make its own decision on what enforcement action is proportionate in accordance with its published enforcement policy.

## 29. Inspection plans

**This section should be read in conjunction with: Part A, [section 11](#).**

### Development of an inspection plan

- 29.1 The primary authority must consult the co-ordinator on the proposed inspection plan.
- 29.2 Where the businesses in the group of co-ordinated partnerships have partnerships with another primary authority, co-ordinated by the same co-ordinator, the primary authority that is considering making an inspection plan should consult with the other primary authority to ensure a consistent and compatible approach.

### Requirements for all inspection plans

- 29.3 An inspection plan in respect of a group of businesses in co-ordinated partnerships:
- a) should be relevant to a significant proportion of the businesses in the group of co-ordinated partnerships that the plan applies to and should explain where it applies;
  - b) must take account of all relevant national regulators' published strategies, guidance, priority topics or risk assessment methodologies and obligations imposed on the business by national regulators;
  - c) should be informed by available intelligence;
  - d) should define the scope of the relevant functions covered, and the geographical applicability of the plan;
  - e) should be reviewed by the primary authority at appropriate intervals or in response to information received from enforcing authorities or other changes in circumstance; and
  - f) should include an expiry date of no more than 18 months from the date of publication.

### Conditions for inspection plans that place requirements on enforcing authorities

- 29.4 An inspection plan that sets out a national inspection strategy should include a requirement for any feedback that the primary authority considers will be relevant and useful.
- 29.5 An inspection plan that makes requirements in relation to areas on which to focus local checks:
- a) should make it clear whether the area identified is to be focussed on 'in addition' or 'in place of' areas that the enforcing authority would otherwise have checked;

- b) should include a basic explanation of the reasons for focussing on the areas, for the enforcing authority to use during inspection, if these reasons are not evident;
- c) should include a requirement for any feedback that the primary authority considers will be relevant and useful.

### **Inspection plan rationale**

29.6 The primary authority's rationale should include:

- a) an explanation of any issues that the partnership has with current enforcement activity at a local level, where the plan includes requirements that seek to address these issues;
- b) confirmation that the primary authority has consulted with any relevant national regulator during the development of the plan, and a summary of any issues that were raised;
- c) an explanation of the basis on which the primary authority has made any requirements in respect of risk assessment of the business;
- d) where a plan includes requirements against reviewing specified procedures or systems of the business locally to determine their suitability or adequacy, confirmation that the relevant procedures and / or systems are controlled centrally by the business, and an outline of what this control consists of;
- e) where consideration of particular procedures has been critical to the primary authority's development of the plan, a list of these procedures (with dates / version numbers);
- f) where a plan includes requirements against carrying out specified checks locally, an explanation of how the primary authority will carry out checks on behalf of enforcing authorities; and
- g) where a plan includes requirements in respect of the focus of checks at a local level, an explanation for the checks that are required, unless this is included in the plan.

29.7 Where the primary authority is proposing a national inspection strategy, its rationale should, in addition to the requirements of the preceding paragraph,

- a) identify whether it seeks to control the level of local inspection activity and, if so, provide its explanation of the proposed controls;
- b) explain how it will manage the national inspection strategy, including ensuring that it is responsive to changing circumstances;
- c) set out its method for securing specified activity by particular local authorities, where the national inspection strategy is reliant on this activity taking place;
- d) set out how the primary authority will evaluate the effectiveness of the national inspection strategy; and
- e) provide details of the primary authority's evaluation of the effectiveness of any national inspection strategy included in a previous plan for the partnership to which the Secretary of State has consented.

## 30. Responding to non-compliance

**This section should be read in conjunction with: Part A, [section 12](#).**

- 30.1 Where an enforcing authority has questions about Primary Authority Advice that has been issued to a group of businesses, then it is appropriate for it to raise these questions with the primary authority. However, where the enforcing authority is concerned with the failure of a particular business to implement the Primary Authority Advice, then it will need to recognise that the primary authority's knowledge and understanding of the individual business and its operations will depend upon the nature of the co-ordinated partnership. For example, the primary authority may be able to provide the enforcing authority with valuable insight into implementation issues in a business that is a franchisee, with tight controls on compliance being exercised by the franchisor. However, the primary authority may be less able to provide such insight where the business is a member of a trade association with a large and diverse membership.
- 30.2 The primary authority's role in relation to the group of businesses in co-ordinated partnerships is best served where the primary authority is well informed about compliance issues and it is therefore valuable for enforcing authorities to provide the primary authority with:
- a) any information indicating that the business does not share an approach to compliance with other businesses in the group, for example an enforcing authority might learn that a particular business is no longer a member of the relevant trade association; and
  - b) intelligence on compliance issues in the sector that may be of relevance to the Primary Authority Advice issued to the businesses in the group.
- 30.3 Where an enforcing authority determines that enforcement action is an appropriate response to non-compliance, it must comply with the notification process set out in sections 12.2 to 12.11 of this guidance.

## GLOSSARY

Application for Primary Authority nomination	The process which a local authority and business complete, via the Primary Authority Register, requesting the Secretary of State to nominate the local authority as primary authority for the business.
Category of relevant functions	This guidance groups the legislation that is within the scope of Primary Authority into a number of broad categories on which partnerships may be based. These categories are described in Annex 1.
Change notification	A notification to the Secretary of State, via the Primary Authority Register, requesting a change to a nomination.
Consent process for determination	The process by which the Secretary of State assesses applications made to him for consent to referring a matter to determination, and makes his decision.
Consent process for inspection plans	The process by which the Secretary of State assesses inspection plans submitted to him, in consultation with any relevant national regulator and makes his decision.
Co-ordinated partnership	A primary authority partnership in which the provision of specified primary authority services to the business is co-ordinated by a third party, as set out in this guidance.
Co-ordinator	A third party that co-ordinates the provision of primary authority services by a primary authority to a group of businesses that share an approach to compliance.
Determination	The process the Secretary of State operates, having granted consent to an application from one of the parties, to determine whether the proposed enforcement action can proceed.
Directing (sometimes referred to as 'blocking')	A Primary Authority may direct an enforcing authority not to take proposed enforcement action (thereby 'blocking' the enforcement action) where such action is inconsistent with Primary Authority Advice.
Direct partnership	A primary authority partnership in which there are no arrangements for co-ordination of the primary authority's services by a third party, or where such arrangements are limited to administrative matters such as cost recovery.
Enforcement action	Enforcement actions are those actions defined in The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 <sup>18</sup> . They are actions that must be notified to the primary authority, either in advance or retrospectively.

<sup>18</sup> Currently available at [www.bis.gov.uk/brdo/primary-authorityabout-pa/background](http://www.bis.gov.uk/brdo/primary-authorityabout-pa/background). The government has committed to amend this order in relation to gambling.

Enforcing authority	All local authorities have the role of enforcing authority in respect of relevant functions in their geographical area. This means that a primary authority for a business will also act as the enforcing authority within its own geographical area.
Inspection plan	A plan that a primary authority may choose to produce to guide other local authorities in discharging their relevant functions relating to proactive interactions with the partner business or businesses. All local authorities are required to follow an inspection plan which has been consented to by the Secretary of State and published via the Primary Authority Register.
Local authority	A local authority is defined in section 23 of the Regulatory Enforcement and Sanctions Act 2008 and includes county, district and unitary councils (including London boroughs, county boroughs and metropolitan boroughs), port health authorities, and fire and rescue authorities in England and Wales; councils <sup>19</sup> in Scotland; and, district councils in Northern Ireland <sup>20</sup>
Memorandum of Understanding for Co-ordination of Partnerships	The agreement between a primary authority and a co-ordinator, setting out how they will work together in respect of co-ordinated partnerships between the primary authority and a number of businesses.
National inspection strategy	A primary authority may choose to take on responsibility for co-ordinating proactive checks on compliance across a business's operations, and may implement its strategy through an inspection plan.
National regulator	National regulators that have a role to play under Primary Authority include the Animal Health and Veterinary Laboratories Agency, the Environment Agency, the Food Standards Agency, the Gambling Commission, the Health and Safety Executive, the National Measurement Office, and the Office of Fair Trading.
Nomination	Nomination is the process through which a local authority is recognised by the Secretary of State as the primary authority for a business in relation to a specified category.
Notifiable change	This guidance requires that certain changes to partnerships are notified to the Secretary of State via the Primary Authority Register.
Notification of enforcement action	The statutory notification required from an enforcing authority to a primary authority in the event of enforcement action. In most circumstances this notification is required prior to taking the enforcement action. However, in certain circumstances it will be retrospective.

<sup>19</sup> Councils constituted under section 2 of the Local Government etc (Scotland) Act 1994

<sup>20</sup> District councils constituted under section 1 of the Local Government Act (Northern Ireland) 1972

Partners	The parties to a primary authority partnership are a local authority and the regulated person. Where the partnership is co-ordinated by a third party, that third party is not a partner.
Primary authority	The primary authority is the local authority that has formed a partnership with the business in relation to a specified category or categories, and is listed in the Public Register.
Primary Authority Advice	Advice and guidance provided by the primary authority to the business under the provisions of the scheme.
Primary Authority Advice to Local Authorities	Advice and guidance provided by the primary authority to other local authorities with the same relevant function as to how they should exercise that function in relation to the business.
Primary Authority Agreement	This was a written agreement used by partners prior to October 2013 to set out the terms and conditions of their partnership. As of October 2013 standard Primary Authority Terms and Conditions are accepted by all new partnerships.
Primary Authority Terms and Conditions for Direct Partnerships	These are standard terms and conditions that underpin all direct partnerships nominated by the Secretary of State from October 2013.
Primary Authority Terms and Conditions for Co-ordinated Partnerships	These are standard terms and conditions that underpin all co-ordinated partnerships nominated by the Secretary of State from October 2013.
Inspection plan rationale	The rationale provides the reasons for the requirements of the inspection plan, and highlights the supporting evidence, for the benefit of the primary authority, the Secretary of State, and any relevant national regulators. BRDO makes available an inspection plan template <sup>21</sup> , which makes provision for the primary authority to explain its 'rationale'.
Primary Authority Register	The secure IT system operated by BRDO to facilitate communication between primary authorities and enforcing authorities.
Public Register	The public list <sup>22</sup> of all existing partnerships that have been nominated by the Secretary of State. Details of all nominated partnerships are also available on the secure Primary Authority Register.

<sup>21</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/primary-authorities/inspection-plans>

<sup>22</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority/list-of-partnerships>

Regulated person	The legal entity listed on the Public Register as the business partner in a primary authority partnership.
Relevant function	The functions are defined in terms of legislation listed under Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008 and certain legislation made under the European Communities Act 1972.
Relevant period	This refers to a defined period of time set out in the Regulatory Enforcement and Sanctions Act 2008 or the Co-ordination of Regulatory Enforcement (Procedure for References to BRDO) Order 2009 <sup>23</sup> .
Shared approach to compliance	An approach to achieving regulatory compliance that is shared by a group of businesses, as demonstrated by their commitment to following common compliance controls, or having regard to common compliance advice or guidance.
Working day	The Act defines working days as days other than a Saturday, Sunday, Christmas Day, Good Friday or certain bank holidays in England, Wales, Scotland and Northern Ireland. BRDO includes a clear indication of the relevant bank holidays in guidance on the scheme <sup>24</sup> .

<sup>23</sup> [www.bis.gov.uk/brdo/primary-authorityabout-pa/background](http://www.bis.gov.uk/brdo/primary-authorityabout-pa/background)

<sup>24</sup> Currently available at <http://www.bis.gov.uk/brdo/primary-authority>

## Annex 1: Categorisation of relevant enactments

### Age restricted sales

- Relevant enactments and secondary legislation that control the sale and supply of goods and services that have an age restriction associated with them
- Unitary<sup>25</sup> and county
- Some applicability in Scotland where matter is reserved
- Not within scope of Primary Authority for Northern Ireland

### Agriculture

- Relevant enactments and secondary legislation concerning the manufacture, composition and labelling of animal feed and fertilisers, and food hygiene at primary producers
- Unitary and county
- Not within scope of Primary Authority for Scotland or Northern Ireland

### Animal establishments and companion animal welfare

- Relevant enactments and secondary legislation concerning the licensing of animal establishments and the welfare of companion animals
- Unitary and district
- Not within scope of Primary Authority for Scotland or Northern Ireland

### Consumer credit

- Relevant enactments and secondary legislation concerning the licensing and operation of consumer credit
- Unitary and county
- Applicable in Scotland
- Not within scope of Primary Authority for Northern Ireland

### Environmental protection

- Relevant enactments and secondary legislation concerning environmental protection, including the control of noise, pollution (other than permitting), statutory nuisance, contaminated land, waste
- Unitary and district
- Not within scope of Primary Authority for Scotland or Northern Ireland

### Explosives licensing

- Relevant enactments and secondary legislation concerning the licensing and storage of explosives
- Unitary, county and fire and rescue authorities
- Applicable in Scotland
- Not within scope of Primary Authority for Northern Ireland

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<sup>25</sup> As defined in section 3 of the Regulatory Enforcement and Sanctions Act 2008.

**Fair trading**

- Relevant enactments and secondary legislation concerning business operations including pricing, description of goods and services, trading practices, intellectual property, misleading and excess packaging, and environmental standards eg. energy labelling
- Unitary and county
- Applicable in Scotland
- Not within scope of Primary Authority for Northern Ireland

**Farm animal health**

- Relevant enactments and secondary legislation concerning the movement, importation and marking of farm animals and the control of animal disease
- Unitary and county
- Not within scope of Primary Authority for Scotland or Northern Ireland

**Food safety and hygiene**

- Relevant enactments and secondary legislation concerning the safety and hygiene of food, the controls under which food is manufactured, prepared and sold, and matters of pest control
- Unitary and district
- Not within scope of Primary Authority for Scotland or Northern Ireland

**Food standards**

- Relevant enactments and secondary legislation concerning the labelling and composition of food
- Unitary and county
- Not within scope of Primary Authority for Scotland or Northern Ireland

**General licensing**

- Relevant enactments and secondary legislation concerning the licensing of people, places and vehicles, including hackney carriage and private hire licensing, house-to-house collections, sex establishments, Sunday trading, charity collections, scrap metal dealers and pavement cafes, but not alcohol licensing or gambling<sup>26</sup>
- Unitary and district
- Not within scope of Primary Authority for Scotland or Northern Ireland

**Health and safety**

- Relevant enactments and secondary legislation concerning the health and safety of workers and visitors to local authority-regulated premises, but not fire safety (see footnote) or petroleum
- Unitary and district
- Applicable in Scotland (Part 1 of the Health and Safety at Work Act 1974 only)
- Not within scope of Primary Authority for Northern Ireland

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<sup>26</sup> The following legislative areas are within the scope of the Regulatory Enforcement and Sanctions Act 2008 but are excluded from the definition of enforcement under Primary Authority and are therefore outside the scope of the scheme:

- Alcohol licensing
- Fire safety
- Gambling licensing

**Housing**

- Relevant enactments and secondary legislation concerning housing, provisions for area improvement, responsibilities of landlords, compulsory purchase, housing in multiple occupation, licensing of housing and the Housing Health and Safety Rating System
- Unitary and district
- Not within scope of Primary Authority for Scotland or Northern Ireland

**Metrology**

- Relevant enactments and secondary legislation concerning the control of weighing and measuring equipment and the sale of goods by quantity
- Unitary and county
- Applicable in Scotland
- Not within scope of Primary Authority for Northern Ireland

**Petroleum licensing**

- Relevant enactments and secondary legislation concerning the licensing and storage of petroleum, and health and safety requirements in relation to petroleum
- Unitary, county and fire and rescue authorities
- Some applicability in Scotland
- Not within scope of Primary Authority for Northern Ireland

**Pollution control**

- Relevant enactments and secondary legislation concerning the permitting of premises with respect to pollution control
- Unitary and district
- Not within scope of Primary Authority for Scotland or Northern Ireland

**Product safety**

- Relevant enactments and secondary legislation concerning the safety, labelling and importation of products
- Unitary and county
- Applicable in Scotland and Northern Ireland

**Road traffic**

- Relevant enactments and secondary legislation concerning the control of overloaded and inappropriately loaded vehicles
- Unitary and county
- Some applicability in Scotland
- Not within scope of Primary Authority for Northern Ireland

**Welsh regulations**

- Relevant enactments and secondary legislation of the Welsh Government
- Welsh local authorities only
- Not within scope of Primary Authority for England, Scotland or Northern Ireland

Category:	Local Authority:				Geographic Scope:			
	1	2	3	4	5	6	7	8
	<b>1 Unitary Council</b> <b>2 County Council</b> <b>3 District Council</b> <b>4 Fire and Rescue Authority</b>				<b>5 England</b> <b>6 Wales</b> <b>7 Scotland</b> <b>8 Northern Ireland</b>			
<b>Age Restricted Sales</b>	YES	YES			YES	YES	[1]	
<b>Agriculture</b>	YES	YES			YES	YES		
<b>Animal Establishments &amp; Companion Animal Welfare</b>	YES		YES		YES	YES		
<b>Consumer Credit</b>	YES	YES			YES	YES	YES	
<b>Environmental Protection</b>	YES		YES		YES	YES		
<b>Explosives Licensing</b>	YES	YES		YES	YES	YES	YES	
<b>Fair Trading</b>	YES	YES			YES	YES	YES	[1]
<b>Farm Animal Health</b>	YES	YES			YES	YES		
<b>Food Safety &amp; Hygiene</b>	YES		YES		YES	YES		
<b>Food Standards</b>	YES	YES			YES	YES		
<b>General Licensing</b>	YES		YES		YES	YES		
<b>Health &amp; Safety</b>	YES		YES		YES	YES	[1]	
<b>Housing</b>	YES		YES		YES	YES		
<b>Metrology</b>	YES	YES			YES	YES	YES	
<b>Petroleum Licensing</b>	YES	YES		YES	YES	YES	[1]	
<b>Pollution Control</b>	YES		YES		YES	YES		
<b>Product Safety</b>	YES	YES			YES	YES	YES	YES
<b>Road Traffic</b>	YES	YES			YES	YES	[1]	
<b>Welsh Regulations</b>	YES					YES		

### [1] Some applicability

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