

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE SECRETARY OF STATE AND WELSH MINISTERS**
THE BETTER REGULATION DELIVERY OFFICE

Principles

This MOU sets out how the Secretary of State and the Welsh Ministers will work together in the exercise of their respective functions under Parts 1 and 2 of the Regulatory Enforcement and Sanctions Act 2008 (RES Act), as amended by the Local Better Regulation Office (Dissolution and Transfer of Functions, etc.) Order 2012, in the area of regulatory enforcement.

Statutory Obligation

There is a statutory obligation to enter into this MOU under Article 4(3) of The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012¹.

The Local Better Regulation Office (LBRO) was dissolved and its continuing functions transferred into the Department for Business, Innovation and Skills (BIS) on 1 April 2012, to be carried out by the Better Regulation Delivery Office.

Better Regulation Delivery Office (BRDO)

Formed within BIS as a unit with a distinct identity, the BRDO will carry out functions on behalf of the Secretary of State and Welsh Ministers to:

- Help simplify the regulatory system;
- Drive improvements in regulatory delivery that support growth;
- Provide a forum for business engagement at the heart of the regulatory system;
- Provide advice on regulatory delivery within central government; and
- Continue to operate the Primary Authority scheme.

BRDO will work across geographical boundaries and, wherever possible, will retain the working practices that were in place between the LBRO, and Welsh Ministers. The change of status from a NDBP changes elements of the relationships previously in place when this area of work was delivered by the LBRO. This MOU positions the BRDO so it can work effectively where the policies and working practices are aligned between UK and Welsh Ministers, but also where there are differences due to specific policies relating to devolved issues.

Oversight of activities (methods employed)

The UK and Welsh Governments will maintain an effective overview of all work undertaken by the BRDO using a number of methods, including:

- An annual business plan produced by BRDO on all of its activities;
- An annual report summarising progress over the previous 12 months;
- An annual Work Plan supporting additional activity of the BRDO in Wales, funded by the Welsh Government (WG);
- An Operating Agreement between the BRDO and BIS;
- The existence, and use of, BRDO-led Expert Panels, including the Welsh Regulators Forum (which is co-sponsored with WG);

¹ S.I. 2012/246

- Briefing sent to and/or requested by Ministers; and
- Updates to Ministers on matters relating to the Primary Authority scheme, including regular statistics on the take-up of the scheme and associated issues.

Key documents, including the BRDO business plan and annual reports, will be published. Where documentation is specifically intended for Welsh Ministers, BRDO will consult with the Welsh Government on the required format for the information prior to production.

Oversight of activities (working practices)

The working practices employed by the BRDO will be documented to include details of how Welsh Ministers are represented, including:

- Practical details of how policies relating to regulatory enforcement in devolved areas are developed;
- Procedures followed to fulfil the Work Plan obligations;
- Regular updates to Welsh Ministers on regulatory enforcement;
- How the BRDO and Welsh Ministers will work together via the BRDO Expert Panels (including the Welsh Regulators Forum);
- How the BRDO Representative Steering Group (RSG) will represent Welsh Ministers' interests and support Welsh interests on general matters of regulatory enforcement and delivery;
- Details of the mechanism by which the Welsh Regulators Forum will input to the RSG;
- Processes available to Welsh Ministers for approaching the Chief Executive of BRDO to seek updates and information. (The intention is that Welsh Ministers will have equal rights of access to the CE on Welsh Ministerial matters as UK Ministers will have on non-devolved matters.)
- Staffing in support of Welsh-specific delivery areas, namely that;
 - a member of the BRDO senior management team will be responsible for delivery of the Work Programme for Wales, and represent the interests of the Welsh Government at a senior level in the BRDO management team,
 - The Work Programme will be overseen by a dedicated 'Wales Officer', and will be delivered by a range of BRDO experts, and
 - Staffing levels required to support the Wales work programme will be considered in parallel with the development of the annual Work Plan.

Welsh Language

The BRDO will follow the principles detailed in BIS's Welsh Language Scheme. If the BRDO, in conjunction with Welsh Ministers, decides, or is required, to provide information in the Welsh Language over and above that statutorily required this will be agreed and documented as part of the Work Plan, and funded by it.

Intellectual Property

All Copyright and other intellectual property rights in work undertaken or commissioned by the BRDO will belong to the Crown copyright and appropriate assignments with any contractors will be secured.

Funding

The RES Act (as amended in 2012) gives Welsh Ministers the ability to fund the Better Regulation Delivery Office in relation to Wales-specific activities. Annual funding arrangements will be documented in the Work Plan, outlining details of activity to be undertaken and related costs. The Work Plan will be consistent with the key BRDO programme delivery areas, with clear links to relevant Welsh Government policy. The annual Work Plan will provide clarity on, and set clear boundaries for, the specific activity of the BRDO in Wales, relating to Wales, and funded by Welsh Government. Specifically, the Work Plan and associated documentation will:

- Recognise the status of BRDO as part of the UK central government;
- Include a detailed account of what the funding covers, including the programme/staff resourcing split to deliver the programmes detailed;
- Set out effective, outcome-focused business planning, performance monitoring and assessment measures; and
- Establish a detailed timeline with milestones for releasing funding.

Detailed terms and conditions for the funding referred to above will be issued to highlight the agreed outcomes and the provision of resources to achieve them. The terms and conditions will be:

- Based upon the format previously used by LBRO;
- Cleared with BIS and WG Legal prior to agreement;
- Include details of the lead Directorate in the Welsh Government responsible for the relationship with BRDO, including named contacts; and
- Include procedures for ensuring responsibilities and lines of communications remain effective under Ministerial and Machinery of Government changes (ensuring business continuity throughout times of change).

Governance

Review

An annual review of this MOU will be carried out by the Chief Executive of BRDO and the Director of the Local Government and Public Service Group in the Welsh Government. This review will be documented stating, as a minimum, the outcome and the factors considered in deciding whether the MOU remains fit for purpose.

Revisions

This MOU is a statutory requirement; therefore revisions to it must be agreed by the SoS and the Welsh Ministers.

Working practices

Working practices that existed between the LBRO and the WG will be used as a basis for those put in place between the BRDO (as a unit of BIS) and the Welsh Government. Exceptions to this will occur where statutory responsibilities have changed following the dissolution of the LBRO. Expanded details of these changes are set out in Annex A. It is understood that minor changes to working practices, including changes in officials' responsibilities, will occur over time. Such changes will be jointly agreed and documented by the Chief Executive of BRDO and Director of Local Government and Public Services Group in the Welsh Government.

Dispute resolution

Any dispute arising from the exercise of this MOU should be guided by the dispute avoidance and resolution protocol set out in a revised inter-governmental Memorandum of Understanding agreed between the UK Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee on 8 June 2011².

² <http://wales.gov.uk/about/cabinet/cabinetstatements/2011/8junememoofunderstanding/?lang=en>

ANNEX A

Statutory responsibilities

Article 4(1)(a) of, and Schedule 1 to, The 2012 Order³ made amendments to the RES Act that established the transfer of the LBRO's functions under Parts 1 and 2 of the RES Act to the Secretary of State and Welsh Ministers. Set out below is an analysis of the practical impact of this on BRDO's functions in Wales from 1 April 2012.

Working Practices

Working practices that previously existed between the LBRO and the WG will be used as a basis for those put in place between the BRDO and the Welsh Government. Where statutory responsibilities have changed following the dissolution of the LBRO, BRDO will devise new procedures. These new procedures will include (but not be limited to):

- Consultation processes under Section 6 of the RES Act;
- A work plan between the BRDO and Welsh Government to clarify the working position of all parties under Section 10 of the RES Act;
- Mechanisms for all parties ensuing effective consultation and timely publication of lists of priorities under Section 11 of the RES Act;
- Processes for agreeing MOUs with national regulators, and how this will be achieved in practice, including the new requirement on the SoS to consult with the Welsh Ministers where an MOU relates to a devolved matter under Section 12 of the RES Act;
- Processes for encouraging Welsh Ministers to offer guidance to the SoS - adding value by engaging in joint policy creation where this is appropriate under Section 16 of the RES Act;
- Guidelines for funding arrangements for Welsh Ministers to provide conditional grants to the BRDO under Paragraph 11 of Schedule 1 to the RES Act;
- How guidance will be issued to Local Authorities to comply with the statutory requirements for mutual consultation and consent requirements, including when it would be appropriate to issue guidance on devolved and non-devolved matters simultaneously;
- Processes under which BRDO can advise Welsh Ministers on Welsh Ministerial Matters, including agreement of standard working practices, how changes of personnel both at Ministerial and policy levels will be dealt with, and how confidentiality of advice to Welsh Ministers will be ensured;
- Procedures for the Primary Authority scheme, namely:
 - A process by which the SoS can gain the Welsh Ministers' consent prior to specifying, by order, action which is or is not to be regarded as enforcement action under section 28(6) of the RES Act for the purposes of the Primary Authority scheme.
 - A process by which the SoS can gain the Welsh Ministers' consent prior to agreeing exclusions to enforcement action under section 28 (as required by section 29(1))
 - A process for consulting with Welsh Ministers prior to issuing guidance relating to charging fees in relation to the Primary Authority scheme, as required by section 33(5) of the RES Act.

³ S.I. 2012/246

In addition to these statutory consent requirements in the RES Act, the SoS will consult with Welsh Ministers on the development of Primary Authority policy more generally.

Section 6 of the RES Act (pre-2012) provided a power for the LBRO to give guidance to Local Authorities in England and Wales on how to exercise their regulatory functions. This power now sits with the Secretary of State and, as appropriate, the Welsh Ministers.

In practice this means:

- As previously, any local authority in receipt of such guidance must “have regard” to it when exercising the functions to which the guidance relates;
- However, the Welsh Ministers, rather than the LBRO, now have the function of giving guidance to Welsh local authorities as to how to exercise those of their regulatory functions which relate to Welsh Ministerial matters. BRDO will offer guidance to the Welsh Ministers in their use of this function (based on that previously provided by LBRO in past similar circumstances);
- Before giving such guidance in relation to Welsh Ministerial matters the Welsh Ministers are required to consult with various parties, including ‘appropriate’ persons. The Welsh Ministers will proceed on the basis that the SoS should be consulted as an ‘appropriate person’ in these instances. A mechanism for this consultation will be developed by BRDO and agreed by all parties.
- As previously, guidance under section 6 will be published. Mechanisms currently in place to publish such guidance will continue, and be reviewed in due course as to their effectiveness.
- The SoS is required to consult ‘appropriate persons’ before giving guidance under section 6 of the RES Act (this was previously undertaken by the LBRO). The SoS will proceed on the basis that the Welsh Ministers should be classed as an appropriate person and, therefore, there is a requirement for the SoS to consult the Welsh Ministers prior to such guidance being issued. A mechanism for this consultation will be developed by BRDO and agreed by all parties.

Section 10 of the RES Act (pre-2012) provided a power for the LBRO to give advice or make proposals to the Welsh Ministers in relation to the exercise by Welsh local authorities of their regulatory functions, as they related to Welsh Ministerial matters. This power to give advice now sits with the SoS.

In practice this means:

- The SoS, via officials, has the power to give advice or make proposals to the Welsh Ministers concerning Welsh Ministerial matters. This does not represent any real change in working practices. Prior to the dissolution of the LBRO the SoS could offer advice to the Welsh Ministers on such issues in the interests of ensuring policies were effective over geographical boundaries and, wherever possible, not running counter to each other;
- Welsh Ministers have access to the BRDO for matters in their scope. Most personnel in the LBRO have, under TUPE, transferred to BIS and work within the BRDO. Welsh Ministers therefore retain access to the same level of expertise as was available to them prior to the dissolution of the LBRO.

- Welsh Ministers will agree an annual, funded, Work Plan with the BRDO. In this they will agree specific areas of work they wish to take forward in conjunction with BRDO which relate to Welsh Ministerial matters.

Section 11 of the RES Act (pre-2012) imposed a duty upon the LBRO to prepare and publish lists specifying those matters to which local authorities in England and Wales should give priority when allocating resources to their regulatory functions. The LBRO could not publish a list in relation to Welsh local authorities without consulting the Secretary of State and obtaining the Welsh Ministers' consent. The duty to prepare lists of priorities is now the responsibility of the SoS and Welsh Ministers, as appropriate.

In practice this means:

- The SoS has a duty to prepare a list of regulatory priorities in respect of English local authorities; and
- The Welsh Ministers have a duty to prepare a list of regulatory priorities in respect of Welsh local authorities;
- Welsh Ministers have a duty to specify enforcement priorities in respect of local authorities' regulatory functions regardless of whether or not these relate solely to Welsh Ministerial matters;
- The SoS must consult Welsh Ministers before publishing such a list;
- Welsh Ministers must consult the SoS before publishing such a list; and
- Mechanisms for effective consultation and publication regarding lists under section 11 of the RES Act will be developed by BRDO and agreed with the SoS and Welsh Ministers.

Section 12 of the RES Act (pre-2012) required the LBRO to enter into MOUs with named national regulators, setting out how they will work together effectively. This requirement now sits with the SoS.

In practice this means:

- The processes relating to the creation of MOUs (relevant to section 12 of the RES Act) remain largely unchanged;
- From 1 April 2012 these will be devised by BRDO and issued on behalf of the SoS. BRDO will inform the SoS how this process will be undertaken on a day to day basis and a standard procedure agreed;
- There is a new requirement on the SoS to consult with the Welsh Ministers where an MOU relates to a Welsh Ministerial matter;
- This requirement applies equally both to new MOUs and when amending existing MOUs; and
- Welsh Ministers therefore have the opportunity to enter into discussion prior to new or revised MOUs taking effect.

Section 16 of the RES Act pre-2012 provided that Welsh Ministers could direct or give guidance to the LBRO in relation to Welsh Ministerial matters. From 1 April 2012 Welsh Ministers may give guidance to the SoS in relation to the SoS's functions under the RES Act so far as those functions relate to such matters.

In practice this means:

- Welsh Ministers can still offer guidance to the SoS and will be encouraged to do so for the purposes of good practice exchange, utilising the benefits seen across geographical boundaries, and adding value by engaging in joint policy creation where this is appropriate.
- Welsh Ministerial power to direct under this section of the RES Act ceased on 1 April 2012 as it would be inappropriate for the Welsh Ministers to have a power to direct the SoS (in the same way as previously the Welsh Ministers had a power to direct a NDPB).

Part 2 of the RES Act covers the Primary Authority elements of the legislation. These elements all transferred to the SoS on 1 April 2012.

In practice this means:

- Since Welsh Ministers had, and continue to have, limited involvement in these matters changes to the previous working practices will be minimal; and
- Since no amendments have been made to where the consent of, or consultation with, Welsh Ministers is required prior to the exercise of powers relating to Primary Authority, all previous processes are continuing.

Paragraph 11 of Schedule 1 to the RES Act pre-2012 gave the Welsh Ministers a power to provide conditional grants to the LBRO. From 1 April 2012 Welsh Ministers can fund the Better Regulation Delivery Office in relation to Wales-specific activities.

In practice this means:

- The existing ability of the Welsh Ministers to offer grants for BRDO's work specifically related to Wales is unchanged;
- A Work Plan will be devised between the BRDO and the Welsh Government. An example of the 2011-12 Work Plan between LBRO and the Welsh Government is attached at Annex B. This document will be used as a basis for the new agreement.