

PRIMARY AUTHORITY SCHEME

Submitted by: Head of Environmental Health Services – Nesta Henshaw

Portfolio: Environment and Recycling

Purpose of the Report

To consider options for Newcastle under Lyme B.C. to form a partnership between the local authority and a business to provide environmental health regulatory advice and support by assessing both the benefits and implications of such an initiative.

Recommendation

That Cabinet agrees to pursue and enter into Primary Authority partnerships with businesses within the Borough provided that there is a business case to do so

And if agreed that the Cabinet delegates authority to the Head of Environmental Health Services (supported by the Head of Business Improvement & Partnerships), in consultation with Portfolio Holder to:

- (i) Explore opportunities for Primary Authority partnerships with businesses within the Borough**
- (ii) Explore opportunities for partnerships with other regulatory organisations to jointly enter into Primary Authority agreements**
- (iii) Explore pilot work areas to expand the principles of Primary Authority with the LBRO**
- (iv) Enter into Primary Authority relationships on behalf of the Council for the purpose of the Regulatory Enforcement and Sanctions Act 2008 (RES Act)**
- (v) Develop a process to implement the decision taken by Cabinet in line with existing legislation, regulation and good practice.**

Reasons

This report advises Members of the Regulatory, Enforcement and Sanctions Act (RES Act), which enables a Local Authority to provide contractual regulatory advice and support to a local, regional or national business for Environmental Health enforcement functions. In order to decide whether to pursue such a partnership.

The report outlines the primary authority scheme where local businesses trading across two or more Council areas will be given the opportunity to enter into formal Primary Authority Relationships with Newcastle under Lyme Borough Council.

1. Background

- 1.1 In May 2007, the Government set up the Local Better Regulation Office (LBRO). The role of LBRO is to improve local authority enforcement of environmental health, trading standards, fire safety and licensing regulations. Its aim is to reduce burdens on businesses that comply with the law while targeting those who flout it.
- 1.2 Businesses that operate across more than one site can be subject to regulation and enforcement action by multiple local authorities. As a result, LBRO has found that on occasions these organisations may find themselves subject to regulatory enforcement using different approaches in different locations.

- 1.3 The introduction of a 'Primary Authority' scheme, allows a statutory partnership between a business and a Local authority. The RES Act provides for the introduction of this statutory scheme.
- 1.4 Generally but not exclusively, the Local Authority where the businesses head office is based will become a contact point for other authorities so that regulatory issues that apply across the business can be addressed. For example, if the partnership covered health and safety, the company would agree with the Primary Authority that their policy for reporting accidents complies with the legislation.
- 1.5 Companies that enter into a Primary Authority arrangement gain the legal right to form a statutory partnership with a single local authority, which must then provide robust and reliable advice on compliance which all other councils must take into account when carrying out inspections or dealing with non-compliance. The scheme proposes that:
- Formal partnerships are made between businesses and a local authority for that local authority to act as a Primary Authority and provide advice and guidance on the legislation covered by the partnership.
 - Where a local authority other than the relevant Primary Authority (described as an "enforcing authority") proposes to take enforcement action against an organisation with a Primary Authority, the enforcing authority must consult the relevant Primary Authority first.
 - The Primary Authority will then have the right to direct the enforcing authority not to take the proposed enforcement action if they believe that it is inconsistent with advice or guidance that they had previously given.
 - Where a proposed enforcement action has been referred to a Primary Authority and the parties involved cannot reach an agreement as to the action that should be taken, the enforcing authority, the Primary Authority or the organisation involved can refer the action to LBRO for determination. The purpose of this determination process is to examine whether the Primary Authority's previous advice was correct, and the proposed enforcement action is inconsistent with that advice.
- 1.7 Informal approaches have been made to a number of businesses operating within the Borough in an attempt to gauge the level of interest in pursuing a Primary Authority approach. Some interest has been expressed, however to date; none of the businesses have indicated a firm commitment. Should the Council wish to pursue this approach, the proposed course of action is detailed in 4.1.

2. **Issues**

- 2.1 The RES Act specifies the scope of Primary Authority scheme. This is available to all businesses that are regulated by more than one Local Authority.
- 2.2 The regulatory scope is also defined to include all Local and County Authority trading standards, licensing and environmental health legislation (except fire safety, gambling, and alcohol licensing). This giving an option to work with Staffordshire County Council to provide a wider range of regulatory support, such as trading standards, fair trading or product safety, for example alongside an environmental health food safety and health and safety functions.
- 2.3 In considering whether the Council should seek a Primary Authority partner there are benefits and implications for both the Business and the Local Authority, these are summarised as follows:

Local Authorities:

Benefits	Implications
Supporting local business and economic prosperity	Finding suitable business partners
Giving authoritative advice and ensuring consistency	Decision making is open for national scrutiny
Improved efficiency and effectiveness through better information	Advice and guidance is to be up to date and legally correct
Proportionate decision making	Resourcing and recharging the administration and professional officer time in undertaking a Primary Authority Partnership
The RES provides that the Local Authority can recharge the partner business for the costs incurred	Reputational damage to Local Authority

Businesses:

Benefits	Implications
Reduction in risks to the business	Implementing advice given by primary authority
Reduced costs of achieving compliance	Changes to policies and procedures relating to regulation
Reduced costs in dealing with compliance failures	
Ensuring consistent and reliable enforcing advise and interpretation of Legislation	
Obtaining support of a Local Authority	
Engagement of cost effective resources	
Potential for earned recognition and reduction of regulatory burden and a reduction in national local authority inspection/regulation	
High level of regulatory compliance	

In developing and implementing its chosen approach in terms of the Primary Authority scheme, the Council will need to take notice of these issues and also develop processes to ensure that every aspect of the scheme is undertaken properly and in accordance with the law and also recognising good practice in this area.

3. Options Considered

3.1 Cabinet is requested to decide on the following two options:

3.2 **Option 1** – For the Environmental Health Service to seek suitable and appropriate business within the Borough to enter into Primary Authority partnerships provided that there is a business case to do so.

3.3 **Option 2** - For the Environmental Health Service to continue to provide regulatory advice and enforcement based on the Councils current policies, work plan and statutory requirements to Businesses within the Borough and not to enter into a Primary Authority partnership.

3.4 The principles of primary authority are in line with current government policies and are actively supported by the Chartered Institute of Environmental Health. There are also proposals to extend Primary Authority to other regulatory activities. Officers would therefore recommend Option 1 of this report.

4. **Comments Received from Scrutiny**

4.1 Cleaner, Greener and Safer Scrutiny have received the report and scrutinised the benefits and implications for the Borough Council entering into a Primary Authority partnership, through consideration and discussion of the following matters:-

- Resource implications,
- Working relationships between the Primary Authority and Business,
- Working Relations between the Primary Authority and other Local Authorities
- Possible areas for conflict,
- Contractual arrangements and potential break clauses in the contracts for both the Primary Authority and the Business,
- The impact that entering into a Primary Authority has on taking enforcement actions against that business and other businesses with a Primary Authority.
- Other Local Authorities experiences of Primary Authority.

4.2 Scrutiny would support the Authority in pursuing and entering into Primary Authority partnerships.

5. **Proposal**

5.1 Should the Council wish to pursue option 1 of a Primary Authority partnership, it is proposed that the following actions would be initiated:

- Contact with Businesses to advise of Primary Authority Partnerships requesting expression of interest;
- Liaise with Staffordshire County Council with regard to potential partnership arrangements for joint Primary Authority regulatory services
- Explore potential for hosting a Primary Authority open day for Business to discuss Primary Authority arrangements and benefits
- Undertake individual meetings with Businesses
- Identify and confirm Primary Authority partners
- Engage in pre-contract discussions regarding contractual requirements and resource requirements
- Application forms completed, signed and sent to LBRO for endorsement

It is envisaged that these actions will form part of a project plan so that each stage of the process is undertaken and completed at the right time and in accordance with the requirements of the scheme.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 The proposals relate to the alternative delivery of Environmental Health regulatory advice and support on a national or regional level (depending upon potential partners), which would contribute to the following:

- Creating a Borough of Opportunity
 - By providing a partnership with a business that has interest within this and other Local Authorities.
- Transforming our Council to Achieve Excellence
 - By raising the profile of Newcastle under Lyme Borough Council Environmental Health Services with other Local Authorities, local and national Businesses

7. **Legal and Statutory Implications**

- 7.1 Regulatory Enforcement and Sanctions Act 2008 provides for Primary Authority partnerships to be created.
- 7.2 The provisions of the Act for participating in the Primary Authority scheme are discretionary for the Local Authority.
- 7.3 Part 2 of the Regulatory Enforcement and Sanctions Act 2008 places a statutory duty on the Council to consult a “primary authority” before taking any local enforcement action against a Company with a registered agreement with that “Primary Authority”. These duties in the main, relate to the Council’s Environmental Health, Trading Standards and Licensing Functions.

8. **Equality Impact Assessment**

- 8.1 Any actions arising from the promotion of this scheme to businesses will be underpinned by the Council’s Enforcement Policy, which provides a clear, transparent approach to ensure that there is no discrimination in the Council’s actions and that everyone is treated fairly by the Council’s officers within the legal processes. Also taken into account will be the special needs of minority groups where English may not be the first language.

9. **Financial and Resource Implications**

- 9.1 A Primary Authority responsibility would be an additional function for the Environmental Health Services to undertake. The work plan for the service currently prioritises and undertakes statutory functions within existing resources. It is not envisaged that Primary Authority functions will be able to be accommodated within existing resources.
- 9.2 However, the Act provides that a Local Authority may recover its reasonable costs for acting as a Primary Authority. It is proposed that such income is used to offset the resources required to undertake the responsibilities. Should it be decided that there is a valid business case to enter into Primary Authority partnerships options for the specific resourcing, depending upon the nature, extent and duration of the partnership will be subject to a further report.
- 9.3 The RES Act states in section 31 that ‘the primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated person’. The approach that must be taken by local authorities in recovering costs is set out in treasury guidance.
- 9.4 Where a Primary Authority function is undertaken the Council will enter into formal agreement with the relevant business to make a charge for such services. This ‘charge’, which will be ratified annually by the Council as part of its ‘fees & charges’ review process, will be set based on official guidance and will reflect the level of support and assistance given to Primary Authority businesses.

10. **Major Risks**

- 10.1 The primary authority scheme is dependant upon finding a suitable partner business. This is typically a business with a head office function within Newcastle under Lyme and has to be a business that operates within at least two Local Authorities. There is a risk that these types of business are limited within Newcastle under Lyme and those that do exist may not wish to participate in a Primary Authority agreement.
- 10.2 Depending upon the partnership arrangement, the resourcing of this additional duty is a risk, as the Council would be contractually obliged to provide a level and duration of service to the business. This additional function will not be accommodated within existing resources.
- 10.3 The Council would be in breach of a statutory duty if it failed to comply with the statutory requirements in respect of notifications or determinations under Part 2 of The Act, in respect of existing primary Authority arrangements and any inspections or enforcement action undertaken by the environmental health services against business with such arrangements.
- 10.4 That any prospective partner adheres to the contractual arrangements and also undertakes and complies with their own policies and procedures in respect of regulation and therefore gaining national earned recognition for the regulatory work they undertake.
- 10.5 That the anticipated additional workload as agreed through the contact, is either over or under estimated.
- 10.6 A risk map and further action report in respect of option 1 are attached as appendix 1 and 2 respectively.
- 10.7 No risk assessment of option 2 has been undertaken as this is a continuation of normal working practices covered within the Environmental Health operational risk assessment available on GRACE.

11. **Sustainability and Climate Change Implications**

- 11.1 There are no adverse impacts to climate change or additional risks that climate change may have on the policy or strategy in respect of this proposal.

12. **Key Decision Information**

- 12.1 This report is not a key decision as defined within the Councils Constitution. The report has been included in the Cabinets forward plan for the period.

13. **Earlier Cabinet/Committee Resolutions**

None

14. **List of Appendices**

Appendix A - Option 1 Risk Map
Appendix B - Option 2 Risk Further Action List

15. **Background Papers**

Regulatory, Enforcement and Sanctions Act 2008
www.lbro.org.uk