

**THE FUTURE OF THE
LOCAL BETTER
REGULATION OFFICE
AND EXTENDING THE
BENEFITS OF THE
PRIMARY AUTHORITY
SCHEME**

A CONSULTATION

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THE FUTURE OF THE LOCAL BETTER REGULATION OFFICE AND EXTENDING THE BENEFITS OF THE PRIMARY AUTHORITY SCHEME

Foreword by Mark Prisk MP, Minister of State for Business and Enterprise



As a Government, we have already introduced significant measures to address both the stock and the flow of regulation. But reducing burdens on business and supporting growth also requires us to look more closely at the way in which regulation is enforced. We need to renew our economy and secure growth for the longer term.

We are already reviewing and have acted upon the findings in specific areas such as health and safety, planning, agriculture and employment law. An important next step will be to build on the common lessons emerging from these thematic reviews and to shape a consistent reform strategy for regulatory enforcement.

At a time when much of the private sector is investing more in managing its own compliance, and when most public regulators are having their budgets cut, the objective is to find smarter ways of achieving and improving compliance.

In our Plan for Growth, we set out our intention to consult on simplifying the implementation of regulation. Enforcement is a significant part of the regulatory burden on business: 60% of businesses say that inspection is burdensome; 60% also believe that state inspection is not sufficiently risk-based, with a third of businesses saying that government inspectors do not recognise their efforts to comply with regulations. The way in which enforcement is carried out has a significant bearing on business experience of regulation.

Effective regulation requires confidence and mutual trust. Businesses must be able to rely on the advice and guidance they receive. The Primary Authority scheme boosts this confidence and trust. It reduces risk, reduces the cost of compliance and reduces the cost of failure. That is why we want to see it expanded.

Businesses, Local Enterprise Partnerships and regulators need to work together to improve local regulation and find a solution that works for everyone. LBRO should be replaced by a new organisation that builds on the expertise of LBRO's staff and continues the expansion of the Primary Authority scheme, but is part of the Department for Business, Innovation and Skills.

The new organisation will work closely with Local Enterprise Partnerships across the country to find the best way to tackle red-tape at a local level and share this knowledge. We would like to see it operate an expanded Primary Authority scheme to improve consistency in regulatory enforcement, reduce bureaucracy and create the right conditions for economic growth. This new organisation will be the driving force making sure that happens.

The responses to this consultation will be extremely valuable to us as we work to deliver the Government's vision for the future of regulatory enforcement.

MARK PRISK

Executive Summary

The Government is committed to transforming the way in which regulation is delivered at the front line. A particular focus of this commitment is to tailor enforcement to meet the needs of all parties concerned - from businesses to regulators to consumers – and moving away from a prescriptive ‘one size fits all’ approach.

The Coalition Agreement makes clear our intention to bring an end to this ‘tick-box regulation’ and the proposals that follow are a key element in our strategy for achieving this.

This document sets out for consultation a new strategy for important elements of front line regulation, which will bring more consistent and targeted enforcement, while reducing burdens for businesses and regulators alike.

We propose to make the following changes to the Local Better Regulation Office (LBRO) and to the Primary Authority scheme that it operates:

LBRO:

- Dissolve the LBRO as a public body
- Cease the LBRO’s function of direct service improvement in local authorities
- Continue with the LBRO’s other two functions of administering the Primary Authority scheme and simplifying the national framework for regulatory enforcement
- Constitute a ‘new LBRO’, within the Department for Business, Innovation and Skills to carry out the two continuing functions
- Further task the new LBRO with providing advice to central government on its work on regulatory delivery and providing a forum for business engagement at the heart of the regulatory system.

Primary Authority:

- Strengthen the role of inspection plans to deliver earned recognition for business
- Broaden the eligibility criteria to enable more organisations to participate in the scheme
- Extend the scheme to include specific policy areas which are currently out of scope.

These proposals will help to address tick-box regulation by promoting a more collaborative approach between regulators and the regulated. They also enable better targeting of front line regulatory resources. Importantly, they also provide a link between regulated businesses, central government and regulators.

Chapter One: The future of the Local Better Regulation Office

Proposal

The Coalition Government wants to reinvigorate the public's trust in democracy and ensure that the Government operates in a more efficient and business-like way by reducing the number of public bodies.

The recent review of the Local Better Regulation Office (LBRO), found that the LBRO in its current form should be dissolved and that its two most important functions should be transferred to the Department for Business, Innovation and Skills. These will be performed by a new organisation, the Better Regulation Delivery Organisation (BRDO), within the Department, drawing on the expertise of LBRO's staff and work to date.

New governance arrangements will be put in place. This will safeguard the independence that the Primary Authority scheme requires and that business values.

As well as delivering Primary Authority, the new body will:

- (i) Take forward work to simplify the regulatory system
- (ii) Provide advice to central government on its work on regulatory delivery
- (iii) Provide a forum for business engagement at the heart of the regulatory system.

Secondary legislation is required to change the status and remit of the LBRO. This change will deliver the following benefits:

- (i) Improved regulatory delivery to deliver Government commitments on growth
- (ii) More effective utilisation of expertise on regulatory delivery to enhance the policy development and impact assessment process
- (iii) Enhanced return on investment through focus on key objectives on regulatory delivery. This will result in improved value for money and efficiency savings
- (iv) Independence to continue to effectively run the Primary Authority scheme.

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

Introduction

- 1.1 The LBRO was established in 2007. It was subsequently given a range of statutory duties and powers under the Regulatory Enforcement and Sanctions Act 2008 and in 2009, with the commencement of the Primary Authority scheme. As a non-departmental public body (NDPB), LBRO has been governed by an independent Board which has overseen its development and impact to date.

- 1.2 As part of the Government's wider review of public bodies, which began in 2010, LBRO was reviewed to assess:
- (i) Whether there was a continuing need for the existing powers of LBRO to continue
 - (ii) Where there was a case for continuing work, how this ought to be delivered in the future.
- 1.3 The intention to change the status of the LBRO was announced in Parliament on 4 February 2011.¹ There is a requirement to consult with those that may be affected by the dissolution of LBRO, set out in Section 18 of the Regulatory Enforcement and Sanctions Act 2008. This consultation fulfils that obligation.
- 1.4 To ensure transition costs are minimised, the BRDO will retain its Birmingham location until at least January 2013. Some staff will transition over to the BRDO within the Department to ensure that the necessary expertise is maintained.

Governance

- 1.5 LBRO's independence has been one of the main drivers of its success and is important to stakeholders – supporting its ability to articulate business perceptions. Trade associations have cited it as giving them a voice within government for the first time. Independence is also necessary for determinations in case of disputes within the Primary Authority scheme and to provide advice on regulatory delivery and the wider regulatory landscape.
- 1.6 The organisation is moving from a relatively autonomous position to become part of the Department. This is a significant shift. To ensure a successful transition, a clear expression of expectations and careful management will be required. A Memorandum of Understanding (MOU) will be important to the independent roles of the BRDO, its governance arrangements and relationships with key stakeholders. A draft is attached at the end of this chapter.
- 1.7 The BRDO will report into BIS on operational matters and will work alongside the Regulatory Policy Committee (RPC) to deliver the Government's commitments to reducing regulation and transforming front line enforcement. It will be important to set out ways of working between the RPC, BIS and the new organisation, to build on respective strengths and ensure value for money.

¹ Hansard 4 Feb 2011/60WS

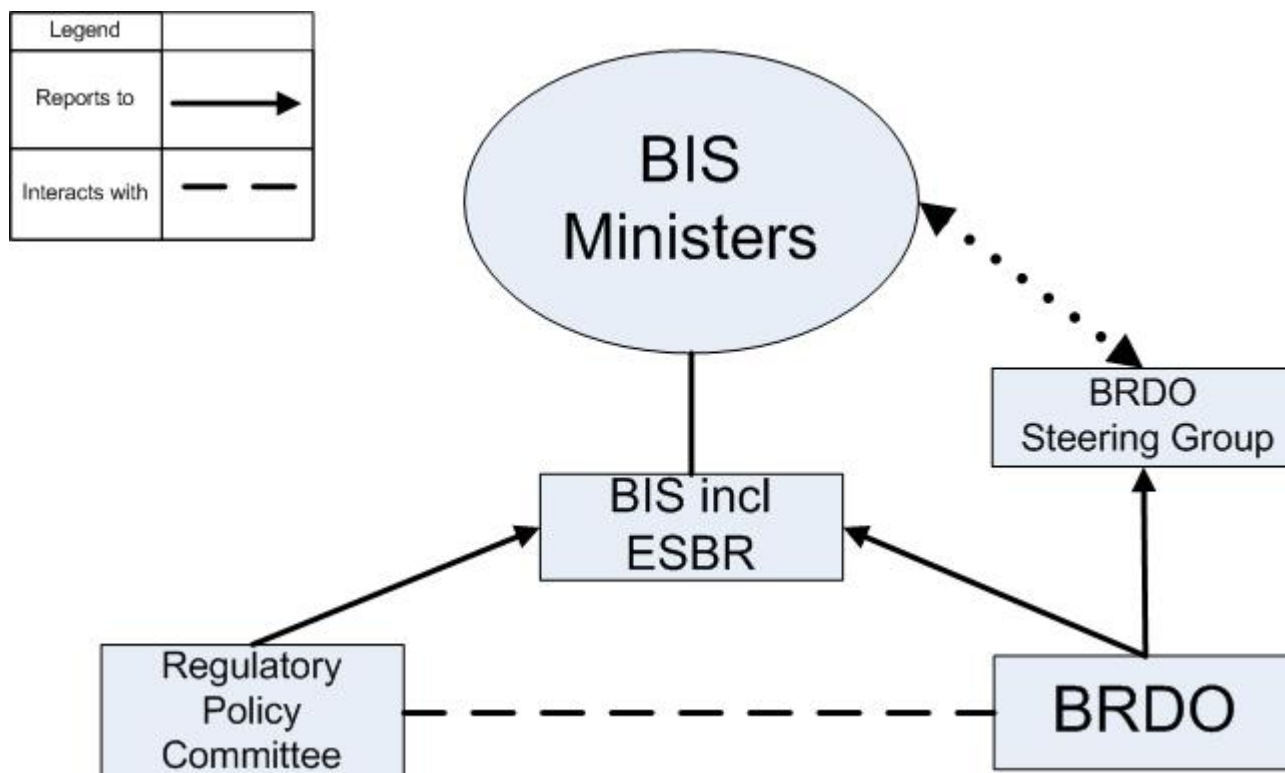


Figure 1: How the BRDO relates to the Department for Business, Innovation and Skills and the Regulatory Policy Committee

Representative Steering Group

- 1.8 New governance arrangements will be necessary to ensure that the BRDO is accountable and relevant to the businesses and the regulators that it serves.
- 1.9 Bringing the organisation in house removes the need for a non-executive Board. A mechanism will be required to ensure that the independence required to operate the Primary Authority scheme and to advise Ministers on regulatory delivery matters is maintained.
- 1.10 This will take the form of a Representative Steering Group – with members who represent particular organisations and sectors rather than being appointees in their own right, as is the case with NDPB board members. It is proposed that this group comprise nominated, representative individuals from a range of business and regulatory organisations that have an interest in the work of the organisation.
- 1.11 The draft terms of reference and membership are detailed in Annex A.
- 1.12 The Representative Steering Group will work with LBRO's three existing panels:
- (i) **The Business Reference Panel** - LBRO has formed strong relationships with the business community through its business reference panel and we expect the BRDO to continue this work. The current panel includes members from

over 25 different membership organisations, including sector representative bodies, national multi site businesses, trade associations and small and medium sized enterprises with access to a network of over 750,000 businesses. The panel will enable the BRDO to understand and articulate business concerns to shape better regulatory policy making

- (ii) **The World Class Coalition** – this coalition was established to address the inter-dependencies and complexities of the regulatory system. This delivery group harnesses the power of a coalition of national regulators, government departments and professional and representative bodies to develop and implement coordinated conditions that will align the relevant activities of national regulators and government departments, draw on resources efficiently, and enable effective and efficient delivery by regulatory professionals
- (iii) **Local Authority Reference Panel** – the panel has provided important practitioner input to LBRO’s work to simplify regulatory delivery. Representatives are drawn from a range of local authority regulatory services and the panel ensures that work undertaken by the World Class Coalition, such as the development of common frameworks, meets the needs of regulatory professionals.

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

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

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

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

QUESTION 6: Do you agree that the BRDO should continue to support LBRO’s existing stakeholder reference groups (World Class Coalition, Business Reference Panel and the Local Authority Reference Panel) and that these groups should work with the Representative Steering Group?

The Devolved Administrations

- 1.13 LBRO’s remit covers the whole of the UK, in line with the devolution settlements, and it liaises closely with the devolved administrations in Wales, Scotland and Northern Ireland.
- 1.14 Regulators in the four UK nations have recognised the importance of standards of enforcement and regulatory practice to promote economic prosperity and to support the development of the business community, local communities and the environment across the United Kingdom.

- 1.15 LBRO in its current form is accountable to Welsh Ministers. The Welsh Assembly Government has found real benefit in LBRO's work to support its agreement to deliver accountable, citizen-centred public services. LBRO's work includes creating national enforcement priorities for Wales for the first time. Welsh Ministers wish to retain the ability to direct and fund the BRDO's work. A separate MoU will be formed to address Welsh Government needs. A representative will also be invited to sit on the Representative Steering Group.
- 1.16 The Northern Ireland Government has developed a Statement of Intent with Northern Ireland's 26 District Councils, the Department of Enterprise, Trade and Investment's Trading Standards Service and LBRO. The purpose is to set out the principles of agreement and ensure that objectives are met and to provide an assurance to the business community of that commitment. It is our intention to continue this arrangement between the BRDO and the Northern Ireland signatories.
- 1.17 LBRO also works with the Scottish Government, engaging with regulatory reform in Scotland with representation on the Regulatory Review Group and through the Convention of Scottish Local Authorities. A recent analysis of Trading Standards services in Scotland recommended that a designated organisation or agency should provide advice and guidance to local regulatory services and share best practice, as LBRO does in England and Wales. This report highlighted the value of LBRO tools and services as good models to adopt.² It is our intention that the BRDO will continue discussions with the Scottish Government regarding regulatory reform and the potential for the BRDO to provide support.

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

² "Up to Standard? A Review of Trading Standards Services in Scotland", Consumer Focus Scotland, June 2010 available from <http://www.consumerfocus.org.uk/assets/3/files/2009/10/CFS-Up-to-Standard.pdf>

Chapter Two: Extending the benefits of the Primary Authority Scheme

Proposal

The Coalition Government has committed to “**end the culture of ‘tick-box’ regulation, and instead target inspections on high-risk organisations...**”

Through the cross Whitehall Growth Review, the Government identified that Primary Authority can play a key role in delivering this commitment. We propose to extend Primary Authority to ensure more businesses are able to access assured regulatory advice to support business compliance and economic growth.

There are several aspects of Primary Authority where the benefits could be extended to improve support for business through a new relationship with regulators and where greater consistency could be achieved through legislation. These are:

- Broadening the eligibility criteria to allow more organisations to participate in the scheme
- Strengthening inspection plans to deliver earned recognition for business
- Including specific policy areas which are currently out of scope.

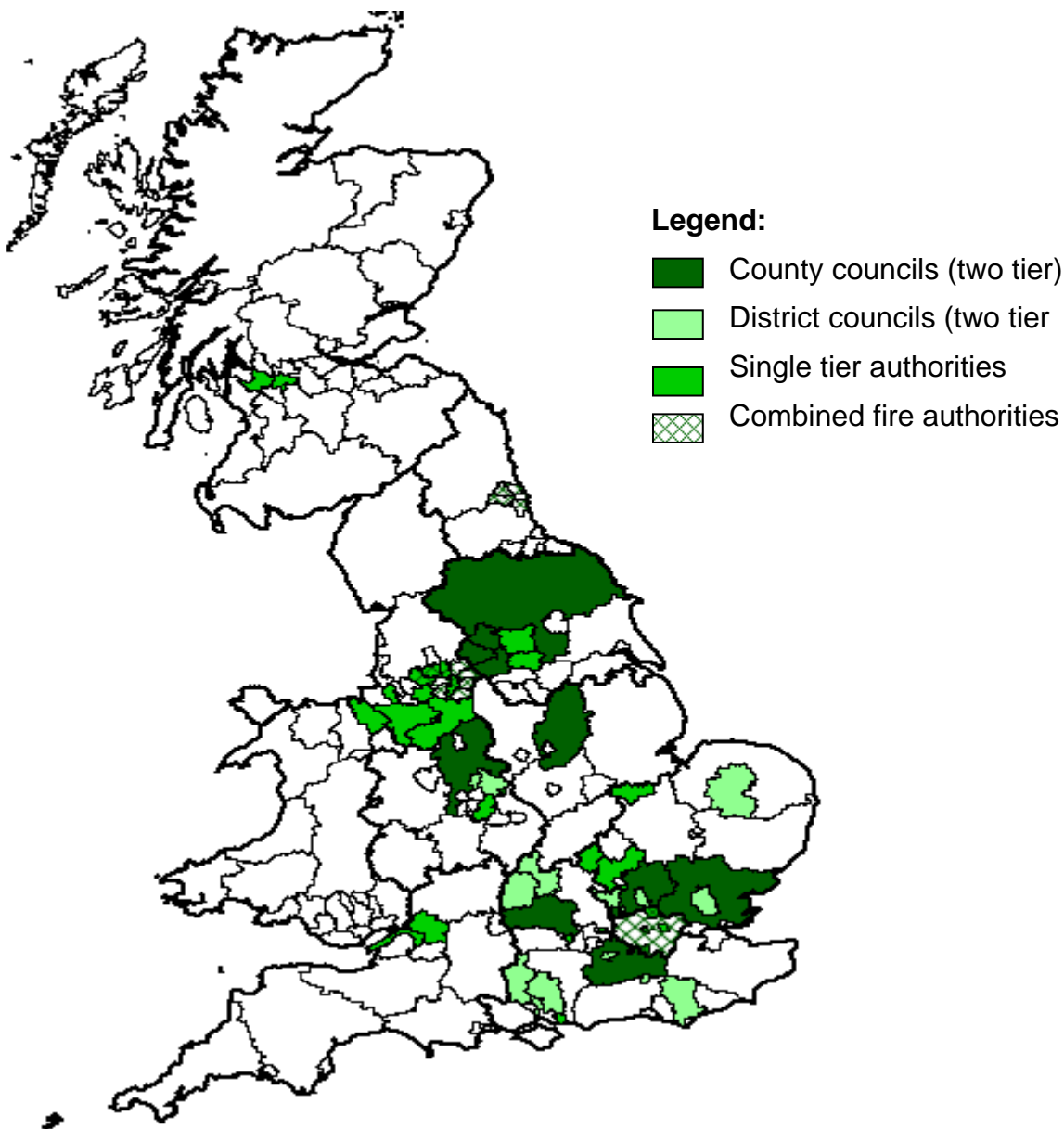
The Primary Authority Scheme

- 2.1 Primary Authority was established under the Regulatory Enforcement and Sanctions Act 2008 to provide more consistent regulatory enforcement for businesses, charities and other organisations operating in more than one local authority area. The scheme commenced in April 2009 and applies across England and Wales and, in regard to reserved and non transferred matters, in Scotland and Northern Ireland. Additionally, an agreed Statement of Intent enables businesses in Northern Ireland to benefit from a voluntary form of Primary Authority in respect of a devolved function. In Scotland, the scheme works effectively within the parameters of the devolution settlements. For example, Mackays Stores have a successful partnership with Renfrewshire Council covering health and safety. The decision to legislatively extend the scheme to Scotland and Northern Ireland is a matter for the Scottish Government and Northern Ireland Assembly. We do, however, work very closely with the devolved administrations and meet quarterly at a Better Regulation Forum.
- 2.2 Primary Authority ensures that any business operating across council boundaries can establish a partnership with a single local authority to access assured advice and support for its regulatory responsibilities. Primary authorities liaise with other councils to ensure that inspection and enforcement action taken anywhere in the UK reflects the advice given. This advice allows a business to agree its approach to compliance with one local authority and be assured that the advice given to the business will be respected by other local authorities. This provides a secure basis for businesses to plan investment and work strategically with local regulators in managing regulatory risks.

- 2.3 Consistent assured advice is essential for business confidence and growth. Primary Authority provides an accessible means for business to access this advice and the BRDO will work with professional bodies to maintain a network for regulators and business to work together to develop consistent, accurate advice. The value of assured, professional advice is enhanced by national inspection plans. Participating businesses are able to work with their primary authority to develop an inspection plan agreeing priorities for inspection nationally. Inspections plans help other local authorities focus their local inspection resources where they will have the most impact, eliminating unnecessary checks and saving time and resource for both the business and local authorities.
- 2.4 Whilst originally conceived as a mechanism to address inconsistency, the scheme is a key tool to deliver the transformational change needed to make the regulatory system function more efficiently and effectively, supporting local accountability and delivering assurance for business. Local authorities and businesses have reported that Primary Authority provides a number of additional benefits and delivers a fundamental shift towards more collaborative approaches to achieving compliance. This support was reflected in evidence provided for the review of LBRO in summer 2010. The scheme provides the basis for a new relationship between business and regulators, one that is focused on supporting businesses to comply and grow, offering advice and support to improve regulatory outcomes. Relationships are based on openness, transparency and trust and define the regulatory culture that the Government wishes to see embedded across the regulatory system.
- 2.5 At a time when public expenditure is under pressure, including local authority resources, Primary Authority is enabling businesses to invest in an improved approach to compliance through local authority regulatory services. The business case for this investment is made on the basis of it delivering significant reductions in the administrative cost of compliance, with additional benefits arising through improved compliance and reduced local authority costs. This is achieved through a cost recovery mechanism that is cost neutral for business.
- 2.6 Primary Authority allows local authorities to recover the cost of providing assured advice and business support, ensuring scarce resources are available to support small and medium enterprises. Improved advice and assistance to business by local regulators drives improved compliance, which in turn reduces enforcement and prosecution costs for local authorities. The availability of assured Primary Authority advice also enables businesses to plan and deliver national compliance strategies, confident that their investment will be properly recognised and accepted by all local authorities. This increased incentive to invest in compliance further improves levels of compliance and reduces regulatory costs.
- 2.7 The scheme has had significant take up during its first two years of operation with partnerships established with major supermarkets, retailers, manufacturers and a number of smaller, regional enterprises. There are currently 1090 partnerships covering 317 businesses and 63 local authorities³, and this rate of growth far exceeds original targets for the scheme, demonstrating the strength of business support for the principle of Primary Authority.

³ Figures as at 12 July 2011

Local Authorities with Primary Authority Partnerships



2.8 Against this background, Lord Young’s review of Health and Safety legislation acknowledged the success of Primary Authority and recommended a strengthening of the scheme, in particular a strengthening of inspection plans.⁴ The Government has accepted Lord Young’s recommendations and BIS, the Health and Safety Executive and LBRO have worked closely with other national regulators to trial approaches to strengthening inspection plans. This includes an enhanced role for national regulators

⁴ Lord Young Report recommendation, “Common Sense, Common Safety” available from http://www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf

“the scheme has been successful, but it has had insufficient impact on the inspection regime……I believe that we need to tackle this issue. The existing statutory framework underpinning the inspection plan provisions could be strengthened.”

in providing strategic oversight. These trials have informed the proposals outlined below.

2.9 This consultation considers several aspects of Primary Authority where the benefits of the scheme could be extended to improve support for business through a new relationship with regulators and where greater consistency could be achieved through legislation. These are:

- 1.1 Broadening the eligibility to allow more organisations to participate
- 1.2 Strengthening inspection plans to deliver earned recognition for business
- 1.3 Including specific policy areas which are currently out of scope.

“We can see many benefits of this partnership – not least being able to work closely with businesses, support economic prosperity and protect our communities by ensuring public health and safety is as good as it should be.”

Peter Box, Leader - Wakefield Council

“We feel this much more efficient way of working is beneficial to consumers, business and local authorities alike, and will help save millions of pounds in the process.”

Steve Harrison, Operational Director – Premises Management, Westminster City Council

Broadening eligibility for a Primary Authority partnership

- 2.10 Currently, a local authority must itself regulate the business in order for it to be a primary authority for a particular area of regulation. In many cases the business will wish to receive Primary Authority services from a single local authority. However, in some circumstances, a single local authority will not regulate the business for all of the relevant areas of regulation. For example, all of a business’ regulated activities may not coincide in a single local authority area. Local authorities should be able to provide Primary Authority services for all the areas that they regulate irrespective of whether they regulate the business wishing to enter a Primary Authority partnership. Removing this requirement would reduce burden and complexity for both businesses and local authorities by avoiding the need for multiple primary authorities for a single business.
- 2.11 Often, businesses that operate in just one local authority area share an approach to compliance with other, nationally based, businesses. This occurs, for example, across company groups, franchised businesses, and Trade Association members.
- 2.12 Primary Authority is currently available only to businesses that are themselves regulated by more than one local authority. Given the complex group structures of many businesses, this requirement is preventing businesses from accessing the assured advice and regulatory support available through Primary Authority. The requirement that each business within a corporate group must individually satisfy the eligibility criteria is restrictive for businesses with complex company structures. Businesses often want all of the companies within their corporate group to benefit

from the Primary Authority arrangement. The current requirement that each company within the group satisfies eligibility conditions means that a business may not be able to enter into a single Primary Authority partnership which covers all of its regulatory activities.

- 2.13 We will extend the Primary Authority scheme to allow businesses operating within the frameworks of company groups, franchises and trade associations to benefit from a consistent regulatory approach and access to assured guidance. Extending Primary Authority in this way will enable smaller businesses to benefit from the scheme through tailored, assured guidance.

Case study: Enterprise Inns

Enterprise Inns Plc own over 7,000 pubs in England and Wales and these pubs are leased to tenants who are, in the main, small businesses operating just one pub. Enterprise Inns has developed a compliance service to support tenant compliance with health and safety requirements. Around 40% of the company's tenants are currently signed up to this service and this proportion is growing as new tenants are required to take on the health and safety management system as a requirement of their tenancy. If the eligibility of the scheme were extended, its tenants would receive Primary Authority advice on the adequacy of the health and safety management system, which would then be respected by enforcing authorities across England and Wales.

Case study: The Association of Convenience Stores

The Association of Convenience Stores represents the interests of over 33,000 convenience stores (around two-thirds of the sector), operated by businesses of all sizes. More than half of these are symbol group retailers operating under nationally established brands such as Spar; Costcutter; or NISA Local. The association perceives a benefit to the businesses that it represents, a significant proportion of which do not operate across council boundaries, in being able to receive assured advice on issues that apply across the sector, in relation to regulatory requirements around, for example, underage sales.

Case study: British Independent Retailers Association (bira)

The British Independent Retailers Association (bira) was formed recently following the merger of two trade associations; the British Hardware Federation and the British Shops and Stores Association. The group represents in the region of 7,500 non-food retail businesses, the majority of these being micro businesses operating a single store. Members are provided with regulatory guidance by the group and have access to a helpline. Through calls to this helpline, the group has gathered evidence that its members experience inconsistent interpretation of legal requirements by local authorities. For example, in relation to age-restricted products legislation, member businesses have experienced confusion as to whether certain DIY tools can be sold to young people. The group sees a benefit to its members in being able to access assured advice on which they can rely in such areas.

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

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

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

- Company Group structures
- Franchises
- Trade Associations?

Strengthening Inspection Plans

- 2.14 Inspection plans are a key feature of the Primary Authority scheme, providing a mechanism to reduce unnecessary inspections and adopt a more targeted, risk based approach to inspection. Duplication of effort by local regulators is an inefficient use of limited public resources. Inspectors need reliable intelligence on the key risks for a business and the systems that are in place to deal with them. Through inspection plans, primary authorities are providing this vital intelligence to other local regulators, helping to ensure that interventions are risk based and effectively targeted, and provide value to the business.
- 2.15 Independent evaluation demonstrates that recommendations made in inspection plans are already resulting in a reduction of about 20 hours' work per partnership per year for businesses.⁵ However, the provisions of inspection plans could be strengthened to realise more of their potential benefits and deliver Government commitments for increased use of co-regulatory approaches to compliance.
- 2.16 Inspection plans are produced by primary authorities to assist in the co-ordination of interventions across the local regulatory system. They enable the primary authority to make recommendations and, under the current provisions of the Regulatory Enforcement and Sanctions Act, local authorities are required to **have regard to** inspection plans produced by primary authorities. However, the role of inspection plans needs to be strengthened to fully deliver the benefits of earned recognition for business and deliver efficiency savings.
- 2.17 In addition to strengthening their role, inspection plans should also be used as the mechanism to deliver co-regulation and earned recognition in the local regulatory system. Strengthened inspection plans can be used to establish a co-ordinated programme of assessment for business compliance systems incorporating audits undertaken by approved inspectors employed by accredited third parties, audits by the

⁵RAND Europe (an independent not-for-profit research institute) has carried out an evaluation of Primary Authority commissioned by LBRO. The early data has been made available to us. The full report is due to be published soon.

primary authority, audits by the business and sample programmes of inspection by other local authorities. This would allow a regulatory approach to be designed by the primary authority, working with the grain of the business, to produce an approach tailored to the specific risks posed.

2.18 In line with Lord Young's review of health and safety '*Common Sense, Common Safety*', the Health and Safety Executive (HSE) will be using their national knowledge and experience of working with large businesses to support the LBRO in the development of the Primary Authority scheme in respect of health and safety regulation of large multi-site retailers. It will also be working with LBRO and local authorities to develop a sector intervention strategy. Together these initiatives will assist primary authorities in developing better targeted intervention plans and support co-regulation and earned recognition for the businesses involved.

2.19 To achieve this, we will amend the role of inspection plans in the following ways:

- Inspection plans developed by primary authorities, agreed with business and approved by the BRDO will signal an agreed national approach to compliance in that business
- There will be a presumption that other local authorities will act in accordance with the agreed compliance approach and provide feedback to the primary authority following any inspection activity to ensure that the plan remains robust and focused
- If an authority has reason to act outside of the plan, they must first obtain the consent of the primary authority (excluding exempted circumstances)
- Local authorities objecting to any element of an inspection plan can request that the BRDO reviews the appropriateness of the plan.

2.20 This will bring the following outcomes:

- Improved consistency in the way businesses that trade across local authority boundaries are inspected, with fewer inspections, better co-ordination of sampling and fewer test purchases (age-restricted products)
- Improved information flow between primary authorities, national regulators, local authorities and business, increasing the availability of intelligence within the regulatory system, allowing regulators to more effectively focus resources
- Focused regulatory activity on those areas needing improvement or monitoring to support risk based approaches to inspection and allow regulators to adopt proportionate responses to non-compliance, in line with the requirements of the Regulators' Compliance Code⁶
- Changes to inspection plans will, in turn, free up local authorities to better deploy diminishing resources on those activities which pose the greatest risks to consumers, workers, or to the environment. This will both improve protection and allow businesses to focus on generating economic growth.

⁶ The Regulators' Compliance Code: <http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>

“By agreeing the risk assessment with the Primary Authority Partnership this removes the need for every Local Authority across the country to examine the risk assessment whilst carrying out their inspections. The reduction in time and resource will benefit both the business sand Authority and assure a consistency nationally.”

View from an English Council expressed during the Review of the LBRO

QUESTION 10: Do you agree that:

- **The current duty to “have regard to” inspection plans should be amended so that local authorities are obliged to follow inspection plans drawn up by a Primary Authority**
- **The current duty for local authorities to “give notice” to Primary Authorities when deviating from inspection plans should be amended so that local authorities are obliged to obtain consent in advance from the Primary Authority**
- **Local authorities should be obliged to provide feedback on inspections to the Primary Authority so that inspection plans can be updated to accommodate current compliance activity by business and to ensure that local issues can be addressed**
- **Local authorities that object to any element of an inspection plan should be able to request that the BRDO (which consents to all plans before they are implemented) review the appropriateness of the plan**
- **The current exemptions for inspectors which cover enforcement action should be extended to cover deviations from inspection plans?**

Extending scope to specific policy areas currently out of scope

2.21 We will expand the scope of the Primary Authority scheme to a number of specific policy areas which are currently out of scope. These policy areas in part reflect omissions from the Regulatory Enforcement and Sanctions Act identified by business and regulators. Other areas were originally excluded and this consultation revisits that position as indicated in the government response to consultation at that time⁷. We are asking for stakeholder views on whether the exemptions remain valid as their continued exclusion means that the benefits of Primary Authority cannot be delivered in these areas.

2.22 Expanding the scope will enable the benefits of the scheme to be extended to those businesses covered by these regulatory regimes. These are:

- Acts related to the sale of age-restricted products
 - The Criminal Justice Act 1988

⁷ “Government Response to The Consultation on the Statutory Instruments under the Regulatory Enforcement and Sanctions Act 2008”, Published March 2009 <http://www.bis.gov.uk/files/file50500.pdf>

- The Offensive Weapons Act 1996
- The Licensing Act 2003 (see below)
- The Gambling Act 2005 (see below)
- Part 1 of the Housing Act 2004
- The Regulatory Reform (Fire Safety) Order 2005
- Licensing:
 - The Licensing Act 2003
 - The Gambling Act 2005.

Acts related to the sale of age-restricted products

- 2.23 A report prepared by business representatives in response to a call from LBRO for an independent review of the regulation of age-restricted products recommended that the Primary Authority system be extended to cover all age-restricted product legislation including alcohol.⁸
- 2.24 There are 14 separate categories of age-restricted products including alcohol, tobacco, aerosol spray paint, knives and fireworks, governed by 19 separate pieces of legislation across different government departments. The result is a legislative panorama involving different rules which has grown piecemeal over time and which represents a confusing compliance challenge for retailers, with onward implications for both businesses and enforcers as regards both cost and compliance.
- 2.25 While a single unifying piece of legislation delivering a standard government approach to age-restricted product sales is the optimum solution, particularly in terms of offences and defences, extending the Primary Authority scheme to cover all age-restricted product legislation would swiftly enable a more consistent cross-boundary approach to the compliance requirements of current legislation, one which, with the earned recognition approach to inspection plans proposed in this paper, also recognises the compliance activity of businesses.
- 2.26 A wide range of age-related legislation is in scope of the Regulatory Enforcement and Sanctions Act (RESA), with others proposed for inclusion elsewhere in this paper. But this leaves some legislation outside of scope and therefore those subject to the regulatory regimes unable to access the Primary Authority benefits, depriving business of cross-boundary consistency in interpretation over, for example, what constitutes a 'knife'. We therefore intend to include all legislation relating to the sale of age-restricted products within Schedule 3 of RESA.
- 2.27 In addition to the benefits this would generate for businesses, the proposed extension of the Primary Authority benefit of assured advice to Trade Associations, who are keen to help their members comply with the law⁹, would enable the delivery of more proactive compliance support to a large number of smaller businesses in a cost effective manner.

⁸ "Better Regulation of Age-Restricted Products: A retail view", LBRO, August 2010 <http://www.lbro.org.uk/docs/age-restricted-products-report.pdf>

⁹ Ibid

2.28 We therefore intend to include the following within the scope of Primary Authority and the views of stakeholders are sought on these and any other pieces of legislation which may be suitable for inclusion within the scope of the Primary Authority scheme:

- The Criminal Justice Act 1988
- The Offensive Weapons Act 1996
- *The Licensing Act 2003 (see below)*
- *The Gambling Act 2005 (see below).*

“Given the investment made by businesses in compliance, the review group took the view that the Primary Authority scheme should be extended to cover all age-restricted products, including alcohol.

This offers the recognition of business efforts to prevent under-age sales in inspection plans and enforcement activity. There is little to be gained from ‘test purchasing’ at public expense in a business that already funds its own scheme of a similar nature and acts upon the results. This offers scope for efficiency savings and the ability to release public funds to target less responsible businesses.”

“**Better Regulation of Age-Restricted Products: A retail view**”, LBRO, August 2010¹⁰

Part 1 of the Housing Act 2004

2.29 Parts 2 to 5 of the 2004 Act are currently within scope of the scheme. Part 1 of the Act, however, is not.

2.30 Part 1 replaces the housing fitness standard contained in the Housing Act 1985 with the Housing Health and Safety Rating System. It also adapts and extends the powers of enforcement currently available to local housing authorities to tackle poor housing conditions.

2.31 This regulatory regime is similar to others already subject to Primary Authority, in that regulation is undertaken at the local level, although housing associations and letting businesses may operate at a regional or national level. Primary Authority would offer an assurance of consistency.

“..in reference to the Housing Act 2004, it is inconsistent that Part 1 of the Act, relating to the enforcement of the Housing Health and Safety Rating system, should be excluded from the scope of the Act, while Parts 2-5 of the Act - those relating to the regulation of houses in multiple-occupation - are included. We are of the view that Parts 1 and 2-5 of the Housing Act 2004 should fall within the purview of the primary authority scheme.”

Chartered Institute of Environmental Health¹¹

¹⁰ “Better Regulation of Age-Restricted Products: A retail view”, LBRO, August 2010 <http://www.lbro.org.uk/docs/age-restricted-products-report.pdf>

¹¹ Views received during the public consultation on the on the statutory instruments to implement the Primary Authority scheme

The Regulatory Reform (Fire Safety) Order 2005

- 2.32 The Regulatory Reform (Fire Safety) Order 2005 (the FSO) was excluded from the definition of enforcement action under RESA in response to feedback during the public consultation. The reasons for the exemption were set out clearly in the Government response to the consultation.¹²
- 2.33 The FSO places responsibility for compliance in the hands of businesses themselves and gives them the flexibility to decide what fire prevention and protection measures are necessary in individual buildings to adequately minimise the risk to life in the event of a fire. In delivering their responsibilities under the Order businesses may choose to appoint a competent person to help them carry out the risk assessment and implement specific fire safety measures.
- 2.34 Under the FSO, Fire and Rescue Authorities have a statutory duty to enforce the provisions of the Order in the majority of business premises and others to which the public have access. They do so on the basis of a locally determined risk-based audit programme. Fire and Rescue Authorities are required to have regard to the Statutory Code of Compliance for Regulators in delivering their enforcement responsibilities and have access to a range of enforcement powers to address compliance failures.
- 2.35 The Government has a statutory duty to make available such guidance as it considers appropriate, to assist those with compliance responsibilities under the FSO to deliver an acceptable level of safety. This is available on the DCLG website, local Fire and Rescue Services sites and on Business Link and the HSE website. A number of small businesses have reported that they are unaware of the existence of the guidance¹³ and that they often employ a consultant to carry out their risk assessment and to advise on safety measures, incurring significant expense¹⁴.
- 2.36 At the other end of the spectrum, larger businesses have reported that they generally have the skills in house to carry out the risk assessment. Their area of concern is around consistent enforcement by Fire and Rescue Authorities. During the review of the LBRO, and separately, businesses have called for an extension of Primary Authority to cover this policy area.
- 2.37 We wish to explore the proposal to extend the Primary Authority scheme to include the Regulatory Reform (Fire Safety) Order 2005 as indicated in our original response to the RESA consultation. This would allow larger businesses that trade across Fire and Rescue Authority boundaries to benefit from the more coherent, consistent approach to enforcement that Primary Authority has been proven to deliver in other areas.
- 2.38 We are aware that a number of voluntary partnerships have been formed between business and Fire and Rescue Authorities to assist in achieving consistent regulation. Extending Primary Authority to cover the Order would allow these partnerships to be moved to a statutory footing, if the participants wish.

¹² "Government Response to The Consultation on the Statutory Instruments under the Regulatory Enforcement and Sanctions Act 2008", Published March 2009 <http://www.bis.gov.uk/files/file50500.pdf>

¹³ "Initial Evaluation of the Effectiveness of The Regulatory Reform (Fire Safety) Order 2005", March 2009, <http://www.communities.gov.uk/documents/fire/pdf/regulatoryreformorder.pdf>

¹⁴ "Lightening the Load: The Regulatory Impact on UK's Smallest Businesses" available from <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/110-1251-lightening-the-load-regulatory-impact-smallest-businesses>

- 2.39 The Chief Fire Officers Association (CFOA) previously expressed concern over the capacity of Fire and Rescue Authorities to resource a Primary Authority partnership. Although the cost recovery provisions on Primary Authority mitigate against this, the BRDO would take account of this concern and when providing consent to Primary Authority partnerships covering the FSO, would, under existing statutory powers, have particular regard to any representations made by a Fire and Rescue Authority as to the resources available to support such a partnership.
- 2.40 Experience to date from other regulatory areas on the provision of assured advice under the Primary Authority scheme has demonstrated an increase in consistency of advice and approach, with liaison between the local authority and Primary Authority resolving any points of possible inconsistency. Were this not to be the case in the context of the FSO, referral could be made to the BRDO under the dispute resolution procedure. Although this has not yet arisen in the areas of fire safety currently within scope of the Primary Authority scheme, or indeed within the Primary Authority scheme as a whole, should the current exemption be removed, where such a referral is made by a Fire and Rescue Authority against a Primary Authority (i.e. another Fire and Rescue Authority), the BRDO would consult with an independent body, such as CFOA, to ensure fire safety expertise informed its decision.
- 2.41 It is important that Fire and Rescue Authorities are able to deal with local risks, as required by the Fire and Rescue Services Act and the National Framework, which requires an FRA to locally determine how to manage itself and allocate resources to deliver an appropriate fire prevention, protection and operational response to its community. Existing statutory provision requires that the primary authority must take into account any relevant recommendations relating to inspections which are published by any person (other than a local authority) pursuant to a regulatory function.
- 2.42 To ensure that the Primary Authority acts compatibly with local risks, Fire and Rescue Services, under the proposed amendment to RESA would be able to request that the BRDO reviews the appropriateness of any inspection plan which affects their service.
- 2.43 Additionally, the current exemptions which cover enforcement action are intended to be extended to include deviations from inspection plans.

Licensing

- 2.44 Licences covered by both the Licensing Act and Gambling Act are subject to tailored agreements between a local authority and a business, taking the specific locality into account. In light of consultation responses, the Government chose to maintain the existing position¹⁵, allowing time for local authorities to build on the recommendations which came out of the 2008 review of the Licensing Act, in order to achieve a more coherent and effective local strategy.

The Licensing Act 2003

- 2.45 There is a commitment to extend the scope of the Primary Authority model in the Growth Review, including age-restricted sales of alcohol. However, given the

¹⁵ "Government Response to The Consultation on the Statutory Instruments under the Regulatory Enforcement and Sanctions Act 2008", Published March 2009 <http://www.bis.gov.uk/files/file50500.pdf>

importance of licensing decisions to local democratic accountability and local authorities' responsibilities to create vibrant local places, it may not be appropriate to require licensing authorities to follow Primary Authority advice. As such, we are interested in hearing views and opinions on this issue. An alternative would be to require licensing authorities to have regard to Primary Authority advice in respect of age restricted alcohol products.

The Gambling Act 2005

- 2.45 The Act provides a regulatory framework for betting and gaming activity in Great Britain. Under the Act, operators and some of their employees are licensed by the Gambling Commission, which leads to a focus on higher impact issues of regional or national significance, while premises and forms of low stakes gambling are licensed by local authorities, whose focus is on matters within their geographical area. Enforcement powers rest with the police, Gambling Commission enforcement officers, and persons authorised by the local authorities.
- 2.46 The application of Primary Authority to the Gambling Act 2005 could potentially increase consistency in the application of the regulatory regime by local authorities, through assured advice. Where a Primary Authority inspection plan is created for a business operating under the Gambling Act, this would apply only to regulation undertaken by local authorities. Through inspection plans, local authority resource may be better focused to secure compliance, and inspection regimes could respond to businesses' own compliance activities.
- 2.47 We therefore propose to include within the scope of RESA those provisions in the Gambling Act relating to the sale of age-restricted products and stakeholder views are sought on this.
- 2.48 We do not consider that the granting or reviewing of local licensing decisions under the Gambling Act should be within scope of the extended scheme. Stakeholder views are sought however on whether there may be a role for primary authorities specifically regarding the provision of assured advice to businesses

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

- **Part 1 of The Housing Act 2004**
- **Criminal Justice Act 1988: parts related to age restricted products**
- **Offensive Weapons Act 1996: parts related to age restricted products**
- **Regulatory Reform (Fire Safety) Order 2005**
- **Licensing Act 2003: only those parts related to age restricted products. Do you agree or disagree that these should be included?**
- **Alternatively, do you think that licensing authorities should 'have regard to' (rather than 'comply with') Primary Authority advice on those parts of the Licensing Act 2003 related to age restricted products?**
- **Gambling Act 2005: parts related to age restricted products**
- **Gambling Act 2005: do you think there may be a role for Primary Authority advice on other parts of the Act**

- **Is there any other legislation, particularly on age restricted products, which you feel should be included within the scope of the Primary Authority scheme?**

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

Annex A: Draft terms of reference of the role of the Better Regulation Delivery Office Representative Steering Group

The responsibilities of the Representative Steering Group:

- to provide advice to the Secretary of State regarding Primary Authority nominations and determinations. The Representative Steering Group may nominate a subcommittee to provide recommendations regarding Primary Authority nominations and determinations. Any individual representing an organisation affected by any decision that may be taken must not participate in the subcommittee;
- to monitor the effectiveness of the operation of the Primary Authority scheme, ensuring correct and fair procedures are followed in line with the statutory and published BRDO procedures;
- to provide advice to the Secretary of State on current issues regarding regulatory delivery and the delivery landscape;
- to provide advice to the head of the BRDO in relation to strategic direction and stakeholder views; and
- to keep its own Terms of Reference under review.

Representative Steering Group Membership

The Representative Steering Group will comprise of nominated non-executive, representative individuals from the following:

- (i) **Business** - on the advice of the BRDO's Business Reference Panel;
- (ii) **the Devolved Administrations**, initially the Welsh Government;
- (iii) **Local Government**, drawn from the Local Government Association and Welsh Local Government Association;
- (iv) **National regulators** such as the Food Standards Agency and the Health and Safety Executive;
- (v) **Consumer groups**.

Membership should be between 8 and 10.

Membership should be reviewed annually. Membership can be refreshed to include other organisations such as, for example, the other devolved administrations or different local government or business representatives.

Members will not be remunerated

The Minister for Business and Enterprise will act as Chair of the Representative Steering Group

Confidentiality

Should the BRDO or any member of the Representative Steering Group request that particular issues be treated in a confidential manner, provided the Group as a whole agrees, all group members shall respect this confidentiality. In all other respects the Representative Steering

Group will aim to operate in an open and transparent manner. In the interests of transparency, details of serving members on the Group will be provided on the BIS website. Minutes of Representative Steering Group meetings will also be made available on the BIS website, except when confidential matters are concerned (for example, commercial aspects of Primary Authority determinations).

Meetings

The Representative Steering Group will meet at least 3 times a year.

Group members will work in a collegiate manner in relation to decision taking. The Chair of the Group will draw conclusions based upon discussions.

Annex B: Memorandum of Understanding between the Better Regulation Delivery Office and the Department for Business, Innovation and Skills

This MoU sets out the understanding of the Department for Business, Innovation and Skills (BIS) and the Better Regulation Delivery Office (BRDO) of the principles that underlie relations between them and confirms the framework for co-operation. This document also outlines how BIS, the BRDO, the Better Regulation Executive (BRE) and the Regulatory Policy Committee (RPC) will work together to deliver the Coalition Government's commitments to reducing regulation.

Related objectives

1. The Government is committed to raising UK levels of productivity, creating the conditions for business success and strengthening the economic performance of the UK. BIS has an important role across Government as the department for growth. Reducing regulation is central to the commitments of the Programme for Government and to achieving economic growth.
2. BIS priorities are to:
 - a. Secure an economy that is more dynamic and more balanced between public and private sectors and between regions;
 - b. Safeguard the UK's long term growth by promoting skills and by turning knowledge to commercial use;
 - c. Stimulate enterprise and trade to drive the rebalancing and private sector growth; and
 - d. Remove government as an obstacle to growth while ensuring responsible corporate behaviour.
3. BRE's aims include:
 - (i) reducing existing regulatory burdens affecting business, the third sector and frontline staff in the public sector; and
 - (ii) improving transparency and accountability for regulation.
4. The RPC exists to:
 - (i) comment on the quality of analysis supporting policy decisions on new regulations, and on whether the policy design will ensure the benefits justify the costs;.
 - (ii) review, advise and comment on the performance of regulators against the Hampton principles.
5. The vision of the BRDO is for regulation that delivers prosperity and protection for all. The BRDO focuses on the interaction between business and regulators, ensuring that demonstrable change is evident in the delivery and culture of regulation. The BRDO's two core functions are:
 - a. Operate and enhance the Primary Authority scheme and business relationships – the BRDO will extend the principles of Primary Authority to SMEs and trade associations and support partnerships in delivering benefits for businesses, regulators and consumers. The BRDO will work with pathfinder Local Enterprise Partnerships and Enterprise Zones to help them create the conditions for

improved regulatory delivery that is focused on the needs of business and provide a forum for business engagement at the heart of the regulatory system.

- b. Simplifying regulatory delivery – the BRDO will provide advice to central government on its work on regulatory delivery and will work with partners to reduce duplication and complexity in the regulatory system. This will ensure that professional regulators can focus on meeting the needs of business and consumers in the most effective and efficient way.

Responsibilities and accountability

6. The BRDO is a part of BIS, but retains a distinct identity. The BRDO has responsibility for operating Primary Authority and for creating the necessary conditions for a simpler, more effective framework for regulatory delivery.
7. As part of BIS, the BRDO shares its commitment to openness and transparency. The BRDO is publicly accountable for all its responsibilities. The BRDO will publish information about its objectives and use of resources to promote regulatory outcomes through an annual report to BIS ministers and other appropriate mechanisms.
8. The BRDO will support the Secretary of State in fulfilling his responsibilities, including by providing information for answering Parliamentary Questions and Ministerial correspondence and by appearing before Select Committees as necessary.
9. The BRDO is also accountable to Welsh Ministers on matters relating to Wales. A separate MoU between the Welsh Government and the BRDO will cover these matters.
10. The work of the BRDO will be supported by a Representative Steering Group, comprised of nominated, non-executive representative individuals from the following:
 - (i) **Business** - on the advice of the BRDO's Business Reference Panel;
 - (ii) **the Devolved Administrations**, initially the Welsh Government;
 - (iii) **Local Government**, (drawn from the Local Government Association and Welsh Local Government Association);
 - (iv) **National regulators** such as the Food Standards Agency and the Health and Safety Executive.
 - (v) **Consumer groups**.
11. The Representative Steering Group will be chaired by the Minister for Business and Enterprise.
12. The Representative Steering Group has an advisory function, providing advice to the Secretary of State regarding Primary Authority determinations and nominations and issues relating to regulatory delivery. The group will also be able to provide advice to

ministers on regulatory delivery matters. It also provides advice to the head of the BRDO on issues of strategic direction and stakeholder perceptions.

13. The Terms of Reference for the Representative Steering Group will be published on the BIS website.

Relationship

14. In agreeing this MoU:
 - a. BIS recognises the operational independence of the BRDO;
 - b. The BRDO recognises that its overall work must support BIS priorities and that BIS has specific interest in the effectiveness of the BRDO, in its achievement of its objectives and in its financial management; and
 - c. The BRDO and BIS are committed to open dialogue at senior levels. The relationship is intended to operate relatively informally, based on willingness to sound out ideas or raise issues before they become problems.
15. The complementary nature of the objectives of the BRDO, the RPC and BRE requires excellent working relationships. The BRDO, BRE and RPC are committed to work together in a spirit of co-operation and partnership, ensuring that each organisation acts consistently and in a co-ordinated manner in relation to the others for the purpose of promoting better regulatory outcomes.
16. The BRDO will maintain its own bilateral relationships with bodies such as businesses, business representative bodies, local authorities, professional bodies, national regulators and other government departments. The BRDO will keep BIS informed of key strategic developments that may affect BIS policy interests.
17. The BRDO should have MoUs with the Food Standards Agency, the Health and Safety Executive, the Environment Agency, the Gambling Commission, the Office of Fair Trading and the National Measurement Office. These will set out agreed ways of working and matters relating to the role of the regulator in respect of Primary Authority.
18. The BRDO should form additional agreements with whoever it deems necessary to provide for the promotion of economic prosperity and to secure regulatory delivery in accordance with the principles of good regulation.

Reporting

19. The head of the BRDO will report into the Economics, Strategy and Better Regulation unit of BIS.
20. The BRDO Representative Steering Group will report to the Secretary of State.

21. The head of the BRDO is responsible for operational delivery of the BRDO under powers delegated by the Secretary of State. This includes delegated powers regarding Primary Authority nominations and determinations.
22. The BRDO will produce an annual business plan to be agreed with the Director General of the Economics, Strategy and Better Regulation unit of BIS. This document will be published.

Communications

23. BIS recognises the importance of the separate brand identity of the BRDO in maintaining stakeholder confidence in the independence of the BRDO. This includes provision for distinct brand identity in terms of communication activity, in line with Government policies and procedures regarding communication and marketing activity.

Protection of information

24. Information of a sensitive nature will often be shared. Such information received should be treated as confidential and not be disclosed to any other party without the prior agreement of the disclosing party.
25. In the event that a request is made under the Freedom of Information Act 2000 which relates to the BRDO, BIS will consult with the BRDO before responding to the request and in particular when considering any potential exemptions from disclosure.

Financial arrangements

26. The BRDO will be funded directly by BIS and by the Welsh Government. Funding provided by the Welsh Government is subject to separate arrangements agreed between the Welsh Government and the BRDO.
27. The BRDO will have the ability to agree contracts for the purpose of building capacity, developing knowledge assets, providing technical assistance and supplying relevant services to other UK and international organisations within the usual departmental limits and in accordance with Government policies and procedures, including those of the Efficiency and Reform Group.
28. Delegated responsibility for the control of resources is granted to the head of the BRDO from the Secretary of State. This includes procurement of facilities, services and premises, and recruitment and retention of human resources in accordance with departmental policies, including pay remit.
29. The BRDO will work with BIS in the business planning and budget setting process, specifically in regard to its budget and strategic and spending priorities.

Status, review and public availability of this Memorandum of Understanding

30. This MoU is not legally binding and is intended to have no legal effect.

31. This MoU shall be kept under review and will be amended, as necessary, in the light of experience. This MoU will be reviewed no less frequently than a year after signature, and at least three-yearly thereafter.

32. A copy of this MoU will be placed on the BIS website.

Annex C: How to respond

A copy of the Consultation Response form is available from:

<http://www.bis.gov.uk/consultations/regulatory-enforcement-strategy>

If you decide to respond in this way, the form can be submitted by letter, fax or email to:

Cris Flack
Transforming Regulatory Enforcement Team
Better Regulation Executive
Department of Business, Innovation and Skills
5th Floor,
1 Victoria Street,
London, SW1H 0ET

Fax: 0207 215 6172

Or

Email: treconresponse@bis.gsi.gov.uk

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group(s) on the consultation response form and, where applicable, how the views of members were assembled.

The deadline for responses is: **Friday 16 September 2011**

You may make copies of this document without seeking permission.

An electronic version can be found at:

<http://www.bis.gov.uk/consultations/regulatory-enforcement-strategy>

Annex D: Confidentiality & 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.

A copy of the Code of Practice on Consultation is in Annex E.

Annex E: The Consultation Code of Practice

Formal consultation should take place at a stage when there is scope to influence policy outcome.

Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

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:

Tunde Idowu,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Tunde on 020 7215 0412
or e-mail to: Babatunde.Idowu@BIS.gsi.gov.uk

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This publication is also available on our website at <http://www.bis.gov.uk>

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

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