

Report

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Report to:	Community Services Committee
Date of Meeting:	3 September 2013
Report by:	Executive Director (Community and Enterprise Resources)

Subject:	Scottish Government Consultation - Primary Authority Arrangements Relating to the Devolved Regulatory Responsibilities of Local Authorities in Scotland
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ inform the Committee of the details of the Council's response to a consultation by the Scottish Government on the proposal to introduce a Primary Authority Partnership in Scotland

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendations:

- (1) that the contents of the report be noted; and
- (2) that the Council's response to the Scottish Government consultation on the proposal to introduce a Primary Authority Partnership, detailed in Appendix 1 of the report, be noted.

3. Background

- 3.1 Primary Authority Partnerships were introduced by the UK Government through the Regulatory Enforcement and Sanctions Act 2008. The Primary Authority initiative allows a business to form a partnership with one local authority in order to receive tailored support in relation to a range of regulation. That "primary" authority is resourced by the business to assist in three ways: by issuing assured advice, co-ordinating enforcement action across all locations used by the business, and developing an inspection plan for the business as a whole.
- 3.2 The Scottish Government's Regulatory Reform (Scotland) Bill reflects its determination to improve the way regulation is applied in practice across Scotland and aims to ensure enforcement is undertaken consistently, efficiently and effectively. A proposal emerged from the consultation in 2012 that some equivalent of Primary Authority Partnerships was introduced in Scotland.
- 3.3 The intention of the initiative is that a Primary Authority Partnership would support a fundamental shift in the way regulators and businesses interact; allowing the development of a transparent and co-operative relationship which would incentivise compliance because business would be supported in its efforts and earn recognition for success. At the same time, a Primary Authority Partnership should help local authorities in better targeting of their resources because duplication could be stripped out and they could focus more effectively on non-compliance and rogue traders.

4. Primary Authority Partnerships

- 4.1. The Primary Authority Partnership is open to any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function as defined in the Regulatory Enforcement and Sanctions Act 2008 ('the Act') and Orders made under it. A local authority can form a partnership only in respect of those relevant functions for which it has regulatory responsibility.
- 4.2 As previously stated the Primary Authority initiative allows a business to form a partnership with one local authority in order to receive tailored support in relation to a range of regulation. The primary authority may assist a business in three ways: by issuing assured advice, co-ordinating enforcement action and developing an inspection plan that other local authorities must follow. The UK Regulatory Enforcement and Sanctions Act 2008 provides for a local authority to charge the business fees on a cost recovery basis in relation to the exercise of its functions as a primary authority.
- 4.3 The UK Government is making changes to the scheme through the Enterprise and Regulatory Reform Act, to allow more businesses to join by extending the eligibility criteria and strengthen inspection plans. The intention behind the changes now planned is to extend Primary Authority to businesses who share an approach to regulatory compliance, such as the members of a trade association, even if not all of them operate in the area of more than one local authority. The intention behind the planned changes is to strengthen inspection plans and increase their use: inspecting local authorities will be required to provide the primary authority with a report on relevant inspection activities; inspecting local authorities will not be able to deviate from an inspection plan unless the primary authority receives written notification of the deviation and gives its consent.
- 4.4 Scottish businesses and local authorities are already participating in UK Primary Authority arrangements in relation to matters which are reserved. The Scottish Government is keen to establish wider stakeholder views on whether some equivalent of the UK Primary Authority initiative should be adopted in Scotland, in the context of Scottish regulation. The consultation closed on 23 August and a copy of South Lanarkshire's response is attached at Appendix 1.
- 4.5 Environmental Services currently does not have a primary authority agreement with any local businesses. However, the Service does provide Home Authority assistance to a number of businesses and freely provides advice to all local businesses on compliance issues affecting the business. In 2012/2013, over 600 requests were received from local businesses for advice and assistance. A number of businesses that operate beyond South Lanarkshire have their head office based here and potentially could be interested in entering into a Primary Authority Agreement in respect of Environmental Health or Trading Standards requirements.

5. Employee Implications

- 5.1 There are no employee implications.

6. Financial Implications

- 6.1 The existing UK Primary Authority Partnership Scheme allows local authorities to recover all their costs associated with participation in an agreement with a business. Environmental Services would propose to recover the full costs if a Primary Authority Partnership was entered into in the future.

7. Other Implications

- 7.1 Some businesses may choose not to enter into a Primary Authority Partnership to avoid the costs associated with a formal agreement and some local authorities may decide to introduce charges for all business advice. Given the large number of business advice requests received by Environmental Services, it may be necessary to consider the need to introduce charges in respect of business advice in the future. It is recommended that this is reviewed after a Scottish Primary Authority Scheme has been established.
- 7.2. There are no implications for sustainability or risk in terms of the information contained within this report.

8. Equality Impact Assessment and Consultation Arrangements

- 8.1 This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and therefore no impact assessment is required.
- 8.2. There is no requirement to undertake any consultation in terms of the information contained in this report.

Colin McDowall

Executive Director (Community and Enterprise Resources)

6 August 2013

Link(s) to Council Objectives and Values

- Council Value: Accountable, effective and efficient
- Council Priority Objective: Support the local economy by providing the right conditions for growth, improving skills and employability

List of Background Papers

Consultation on Primary Authority Arrangements relating to the Devolved Regulatory Responsibilities of Local Authorities in Scotland

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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APPENDIX 1 RESPONSE TO CONSULTATION QUESTIONS

Question 1 – In principle, do you favour the introduction of Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland?

Yes ☒ No ☐

Why? What impact would this have on current local discretion?

This could be a useful addition to the range of options available to local authorities in respect of providing businesses regulatory advice. The introduction of the primary authority partnership scheme would enable local authorities to provide businesses with an enhanced service that would help ensure their regulatory compliance and could provide the business with economic advantages. Successfully introducing a scheme in Scotland could benefit both businesses and local authorities. The current experience in Scotland indicates that a successful partnership can result in fewer complaints being received by a business due to their increased level of compliance. Local authorities will get the benefit from having fewer complaints to deal with and more flexibility to redirect enforcement staff to the areas of greatest need. This in turn could improve overall levels of compliance and benefit members of the public.

Care would need to be exercised to prevent the scheme limiting a local authority's ability to respond to local situations in order to protect public health and safety. Any arrangements concerning inspection plans and enforcement actions should not restrict a local authority's ability to deal effectively with imminent risks to public health and safety.

A Scottish scheme should also incorporate a mechanism to resolve disputes between a primary local authority and an enforcing authority. This may not require the establishment of an appeals body as it exists in England. However, the cost of an appeals process should be covered by the Scottish Government if they are operating the scheme.

Question 1A – If you do not support, in principle, the introduction of Primary Authority arrangements for the devolved regulatory responsibilities of local authorities in Scotland, do you favour an alternative model which would optimise consistency and compliance, including costs and administration? Please provide details.

N/A

Question 2 – Should relevant devolved regulatory responsibilities of local authorities in Scotland be specified in legislation as “in scope”? Why?

Yes ☒ No ☐

Having the responsibilities specified in legislation would provide clarity for both the business community and local authorities. If introduced the range of regulatory responsibilities included should mirror those that exist in other parts of the UK. This will give Scottish businesses the same opportunity as their competitors elsewhere in the UK.

Question 2A – Which specific devolved regulatory responsibilities of local authorities in Scotland should be specified in legislation as “in scope”?

Food safety and standards are devolved and are within the scope of the existing scheme in England, these functions should be included in a scheme introduced in Scotland.

Why?

This will provide Scottish food businesses with the same opportunity as food businesses in England. Local authorities will also have the ability to enter into a PAP with a Scottish food business.

Question 2B – Are there any specific devolved regulatory responsibilities of local authorities in Scotland which should **not** be specified in legislation as “in scope”? Please explain your rationale for such exclusion.

Not aware of any regulatory responsibilities that should not be included.

Question 3 – Should business eligibility to engage in a Primary Authority Partnership be restricted to “any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function”?

Yes ☐ No ☒

Please explain your view

Scotland has a number of local authorities that cover a very large geographical area and they could have a business that operates in various locations through the council area. Regional business should have the same opportunity to obtain enhanced regulatory support and advice as other similar businesses that may operate over two local authority areas.

The proposal to allow trade bodies to enter into a primary authority partnership also has some merit and would be particularly beneficial to single outlet small and medium sized businesses. This would be workable where the trade body currently provides regulatory advice to its members and would deliver the same benefits to the members as if they were an individual partner with a local authority.

Question 4 – Should Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland follow the current or planned UK model in terms of the focus on assured information and advice, inspection plans and enforcement action?

Yes ☒ No ☐

Please explain your view, particularly in relation to any scope to optimise consistency and compliance, including costs and administration.

If introduced this should provide consistency for businesses trading across the UK. It will also allow enforcement bodies nationally to target their resources at the areas of greatest need. This should lead to improved compliance with legislation.

Question 5 – Should Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland follow the UK model in terms of fees and charging regimes? If not what alternative model should be adopted?

Yes ☒ No ☐

Please explain your view.

The introduction of the scheme would be in addition to the existing business advice obligations that local authorities have and would be to offer a business an enhanced level of provision. The business could expect to benefit a competitive advantage through the partnership as they will be receiving additional support to competitors who are not in a partnership. It is reasonable therefore that the business pays for this enhanced level of service being provided. Local authorities are liable to employ additional resources due to the workload associated with the partnership and should therefore have the ability to recover their full costs for participating.

Question 6 – What, if any, additional considerations should be taken into account in considering whether there is broad support for Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland, and what would that involve? What measures, if any, should be considered to avoid the potential for forum shopping? Please explain your view.

Currently the majority of local authorities operate on the home authority principle and business advice is given without charge. It is anticipated that the home authority principle would continue and this might be a suitable time to revitalise business advice arrangements in general. The current provision of business advice on the home authority principle benefits small and medium sized businesses in particular and provides local authorities with an opportunity to assist businesses operating in their area to trade legitimately and successfully.

South Lanarkshire Council is aware that some local authorities in England, where the Primary Authority scheme is in operation, now charge for all business advice. If Scottish local authorities were to charge in all instances for business advice it would introduce a cost to Scottish businesses that does not exist at present.