



Department for Business Innovation & Skills

Better
Regulation
Delivery Office

Primary Authority: An Introduction For Business



Background

Primary Authority offers businesses the opportunity to be regulated in a new way.

Primary Authority enables a business to form a legally recognised partnership with a single local authority. This 'primary authority' provides the business with robust and reliable regulatory advice which other local authorities must take into account in their dealings with the business. In this way, Primary Authority promotes consistency and fairness in the way that regulations are enforced locally.

Where appropriate, a primary authority is also able to guide the way that other local authorities carry out checks such as inspections, by developing an inspection plan.

This booklet summarises how Primary Authority operates and explains some of the benefits it delivers to businesses, local regulators, and those that regulations are intended to protect.

Primary Authority was established by the Regulatory Enforcement and Sanctions Act 2008 and is administered by the Better Regulation Delivery Office (BRDO). We exercise the statutory responsibility for its operation on behalf of the Secretary of State, nominating partnerships and issuing guidance.

The government is committed to developing Primary Authority and sees the scheme as playing a key role in its work to improve the way that regulations are enforced.

'The vast majority of businesses want to do things right, and we want help with this... being able to advise businesses proactively on what to do to comply is far better both for the businesses and for the health and wellbeing of local residents.'

A borough council

'The open and honest relationship we have with our PA Officer also allows us to discuss in advance new business ideas and opportunities in confidence to be sure that we can effectively land these across our business in a compliant manner and be right first time.'

A large business

'We may not have to contact the business because the questions have been answered by the primary authority and this could mean we do not have to pursue a complaint further and not have to make an inspection.'

An enforcement officer

'All queries from enforcing authorities are now referred to our primary authority.Issues are resolved better, faster and more consistently.'

A small business

How can Primary Authority benefit my business?

The key impacts of participating in the scheme vary from business to business. However, the benefits that partnerships aim to deliver include:

- **Expertise** – the primary authority develops expertise on your business and provides useful, authoritative and reliable advice
- **Understanding** – the primary authority can help other local authorities to better understand the challenges your business faces, and how you aim to comply
- **Reassurance** – improving your confidence in the measures you are taking to comply
- **Savings** – reducing the costs of complying with regulations



Is my business eligible?

If your business is regulated, in relation to the regulatory area that you want to partner in, by two or more local authorities in parts of the UK where the scheme applies, then you are eligible for a '**direct partnership**'.

Alternatively, if your business is part of a group of businesses that all follow the same regulatory approach, for example, relying on the same guidance, then you may be eligible for a '**co-ordinated partnership**' managed by a third party, usually your trade association or franchisor.



Key features

Primary Authority Advice

Primary authorities can use their understanding of a business, or a group of businesses, to provide robust regulatory advice.

Primary Authority Advice can provide support by:

- helping a business to understand how legal requirements apply in its particular circumstances;
- setting out a way that the business can achieve compliance; or
- confirming that the controls a business has put in place are acceptable.

Provided a business follows the Primary Authority Advice it receives, it doesn't need to worry about responding to conflicting advice or even facing enforcement action from another local authority that has a different interpretation of the legal requirements.

For this reason, Primary Authority Advice is often referred to as providing assurance, or simply as 'assured advice'. The assurance that is provided by following Primary Authority Advice can reduce the business' exposure to the costs of unfair or inconsistent regulatory action.

Crucially, the *kind* of contact we have has changed. Whereas all a regulator can usually do is say something about what is or is not happening *at present*, now our primary authority is actively involved in advising us on what we intend to do *in the future*.

A small business



‘The main aim was to have inspections focused on the topic areas that provided the most challenge to [retailer] as a business, and give enforcing authorities the tools to not only identify compliance issues, but also the ‘language’ used in the business to engage with store colleagues clearly.’

A large business

Inspection plans

Where a business experiences a significant level of local checks, a primary authority may think it appropriate to develop an inspection plan to guide how these checks are carried out. Inspection plans apply to routine and proactive inspections and other visits and can:

- inform enforcing authorities prior to local checks;
- reduce duplication;
- improve targeting and focus; and
- require officers to provide feedback that the primary authority can use to help the business raise standards.

Once an inspection plan has been consented to by the Secretary of State, all local authorities must follow its requirements.

Relationship management

Partnerships within Primary Authority enable a collaborative approach where local authorities work with businesses to deliver improved protections and an efficient and joined-up system.

The business and enforcing authorities benefit from the primary authority acting as a single point of contact, saving time and effort, and using its understanding of the business to resolve issues quickly and effectively.



How does Primary Authority work in practice?

Advising on interpretation

Example 1

ABC Farmfoods wishes to describe a food product as 'home-made'. Its primary authority considers the legal requirements and reviews the product's formulation and production and is satisfied that the description can be used. It issues Primary Authority Advice to this effect.

An enforcing authority receives a consumer complaint that the product is mis-described and approaches the primary authority to discuss the complaint. It is satisfied with the primary authority's explanation of the basis of the advice given and decides not to sample the product for analysis, instead explaining to the consumer that the product description is justified.

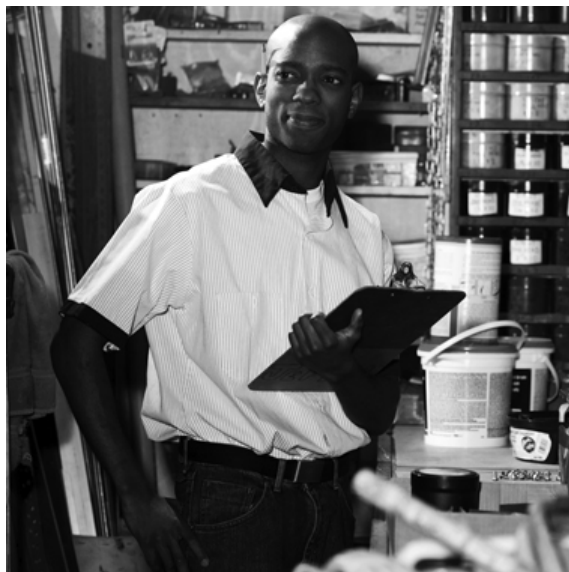


Example 2

The members of XYZ Association are concerned about the interpretation of new regulations that will shortly be coming into effect, and, in particular, want to understand whether they will be able to continue to supply existing stock once the regulations are in force.

The primary authority works with the XYZ Association to understand the particular issues for its members and considers the new legal requirements in the context of the sector in which the businesses operate.

It issues Primary Authority Advice, via XYZ Association, to member businesses that are in co-ordinated partnerships, confirming the circumstances in which existing stock may continue to be sold, and interpreting the new requirements.



How does Primary Authority work in practice?

Advising on controls

Example 3

ABC Clothing has produced a central procedure which outlines how each of its premises should manage the health and safety risks associated with working at height. It asks its primary authority to assess this procedure for compliance. The primary authority reviews the procedure and works with the business to strengthen it in certain areas. It then issues Primary Authority Advice confirming that the controls that are in place are acceptable.

Six months after the issue of the Primary Authority Advice, an accident investigation is commenced by an enforcing authority when an employee suffers a fall from a ladder at a local distribution centre operated by ABC Clothing. The 'Working at Height Plan' had been properly implemented in the premises and the employee had been trained but had failed, on this occasion, to follow the instructions he had been given.

Any attempt by the enforcing authority to require ABC Clothing to change its procedures, or to take action against it, would be considered by the primary authority in the light of the Primary Authority Advice that was being followed by the business. If the action proposed by the enforcing authority was inconsistent with the advice, the primary authority would be able to direct against it.

Example 4

FGH Foods operates a number of fast food outlets itself, and has franchise agreements with several businesses that, between them, operate over a hundred further outlets on the same business model. FGH Foods specifies the food safety controls that must be used in its company-owned outlets and the franchisee-operated outlets, and has a contract with third party auditors to audit both company-operated and franchisee-operated outlets on a regular basis.

FGH Foods has a direct partnership with Anytown Council in respect of food hygiene and safety and also co-ordinates partnerships between its primary authority and its franchisees.

Anytown Council works with FGH Foods to ensure that the temperature control procedures used in its company-owned and franchise-operated outlets are robust. The primary authority is satisfied that the controls set out meet the legal requirements and issues Primary Authority Advice to this effect to FGH Foods and, via the business to its franchisees.

The primary authority requires in its inspection plan for FGH Foods that local reviews of the adequacy of the temperature control procedures should not be undertaken at the company-owned outlets or at outlets operated by the franchisees. It requires that local checks on temperature control are focused on assessing the correct implementation of the agreed procedures.

Frequently asked questions

1. What can a partnership cover?

A partnership can extend to a broad range of the regulatory areas covered by local councils and fire and rescue authorities. These areas are defined under the Regulatory Enforcement and Sanctions Act 2008 and include, for example, food hygiene, health and safety, fire safety, product safety, fair trading, age restrictions and some areas of local licensing, including explosives and petroleum.

Alcohol and gambling licensing are not covered but age-restrictions in these areas are covered.

Within the scheme the regulatory areas in scope of Primary Authority are referred to as 'categories' and are detailed in the List of Primary Authority Categories¹ published by BRDO.

The table on page 10 provides a summary of the regulatory areas in scope, and their applicability in England, Wales, Scotland and Northern Ireland.

It is not necessary for your partnership to cover all aspects of your business and it is possible to partner with different councils for different categories. For example, you may choose to partner with one council for food hygiene, and another for fair trading.

The scheme is concerned with regulation by councils and fire and rescue authorities, and does not extend to the local enforcement activity of national regulators such as the Health and Safety Executive.

2. Who is already taking part in the scheme?

Since its launch in April 2009, Primary Authority has been welcomed by businesses and business organisations. As at 6 April 2014, over 1500 businesses were in partnerships with more than 120 different local authorities and fire and rescue authorities.

You can see an up-to-date list of the businesses that are in partnerships by visiting the public register² on the Primary Authority Register.

3. How much will Primary Authority cost my business?

A primary authority is entitled to recover its costs for developing and providing Primary Authority Advice, and for other work that it does to support a partnership under the scheme. However, it is not able to make a profit from these activities. This means that the cost of joining the scheme is completely dependent on how much work is done within your partnership.

If you are thinking of a direct partnership, talk to the local authority about what work you think might be needed and ask for an estimate of likely costs.

If you are thinking of a partnership co-ordinated by your trade association or franchisor, they will be able to explain any costs to you.

Many businesses have found that covering the costs of a primary authority is cheaper than paying for regulatory advice from other sources – and brings benefits that can't be obtained elsewhere.

¹ See: <https://primaryauthorityregister.info/par/images/documents/pa-categories.pdf>

² See: <https://primaryauthorityregister.info/par/index.php/publicregister>

4. How is a partnership set up?

A partnership is legally recognised under Primary Authority once a local authority is nominated by the Secretary of State as the primary authority for a business. The application process is managed by BRDO via its secure online Primary Authority Register.

The first step for a business and a local authority wishing to establish a partnership is to agree how they will work together. They should then make an application to nominate the local authority as 'primary authority'. Both the local authority and the business are required to accept the standard Primary Authority Terms and Conditions³ as part of their application.

In the case of a co-ordinated partnership, there is a two-stage process. After the local authority and the co-ordinator agree to offer primary authority services to a group of businesses sharing an approach to compliance, both the local authority and the businesses make submissions via the Primary Authority Register.

As part of the nomination process, proposed primary authorities submit evidence to BRDO demonstrating suitability to fulfil the role. Factors which may be taken into account include the authority's expertise in relation to the business, sector and regulatory area concerned. BRDO consults with any relevant national regulator as part of the application process.

5. Can Primary Authority prevent enforcement action against my business?

A local authority that proposes to take enforcement action against a business in Primary Authority will usually need to notify the primary authority in advance of taking the action. There are some exemptions from this requirement, for example where emergency action is required.

A primary authority is able to direct against proposed enforcement action that is inconsistent with Primary Authority Advice it has given.

6. Which local authority should we partner with?

You can apply for a direct partnership with any suitable local authority that has responsibility for the regulatory area that you want to partner in.

If you are interested in a co-ordinated partnership, this must be with the primary authority that has agreed arrangements with the organisation (usually a trade association or franchisor) that you have a relationship with.

If you aren't able to find a suitable and willing partner, contact BRDO by emailing pa@brdo.bis.gsi.gov.uk or calling 0121 345 1200 and we will try to put you in touch with a suitable local authority.

³ See: <https://primaryauthorityregister.info/par/images/documents/terms-conditions.pdf>

Summary of scope

	Local Authority:				Geographic Scope:			
	1 Unitary Council 2 County Council 3 District Council 4 Fire and Rescue Authority				5 England 6 Wales 7 Scotland 8 Northern Ireland			
Category:	1	2	3	4	5	6	7	8
Age restricted products	YES	YES			YES	YES	[1]	
Age restricted services	YES		YES		YES	YES	[1]	
Agriculture	YES	YES			YES	YES		
Animal establishments	YES		YES		YES	YES		
Animal health and welfare	YES	YES			YES	YES		
Environmental protection	YES		YES		YES	YES		
Environmental protection (Welsh Regulations)	YES					YES		
Explosives licensing	YES	YES		YES	YES	YES	YES	
Fair trading	YES	YES			YES	YES	YES	
Fire safety				YES	YES	YES		
Food safety and hygiene	YES		YES		YES	YES		
Food standards	YES	YES			YES	YES		
General Licensing	YES		YES		YES	YES		
General licensing (Welsh Regulations)	YES					YES		
Health, safety and welfare	YES		YES		YES	YES	YES	
Housing	YES		YES		YES	YES		
Metrology	YES	YES			YES	YES	YES	
Petroleum licensing	YES	YES		YES	YES	YES	[1]	
Pollution control	YES		YES		YES	YES		
Product safety	YES	YES			YES	YES	YES	YES
Public health (Welsh Regulations)	YES					YES		
Road traffic	YES	YES			YES	YES	[1]	

[1] Some applicability

BRDO was set up to drive better delivery of regulation.

Our aim is to promote a simple and clear regulatory environment in which businesses have the confidence to invest and grow, and citizens and communities are properly protected.

BRDO does this by ensuring that the business voice is heard in the delivery of regulation and developing practical tools for regulators.

This means:

- providing a centre of expertise for Primary Authority;
- simplifying delivery of regulation with business, regulators and government;
- tackling the regulatory delivery issues that matter to business and supporting Local Enterprise Partnerships; and
- supporting and sharing innovative approaches to good enforcement that encourage growth.

In the course of our work, we make evidence-based advice and support available to Government ministers and provide guidance to local regulators.

Our activity helps transform the way business experiences regulation on a day-to-day basis.

BRDO was created on 1 April 2012 as an independent unit within the Department for Business, Innovation and Skills. We operate across the United Kingdom from our base in central Birmingham.

‘Pre-Primary Authority, the lack of consistency in interpretation of the regulations by enforcing authorities was a real concern for us. Before the partnership we had many more enforcement notices and notifications of intention to prosecute, all of which had to be responded to by the business.’

‘Having an authoritative voice that is independent of the business and part of the regulatory regime say whether they feel there is or is not a case is tremendously powerful either way.’

‘If there is a case then our primary authority simply saying this is usually enough to get us to take immediate action; if our primary authority says that there is no case to answer then this is usually enough to get the enforcing authority to withdraw.’

‘All this means that we spend less time and suffer considerably less angst in our relationships with enforcing authorities with a Primary Authority partnership in place.’

A large business

For further information on Primary Authority, including FAQs, guidance and explanatory materials, visit the business support pages on the Primary Authority Register⁴. Alternatively, email pa@brdo.bis.gsi.gov.uk or call 0121 345 1200.

⁴ See: <https://primaryauthorityregister.info/par/index.php/business-support>

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