

Title: Primary Authority – the Coordination of Regulatory Enforcement Regulations 2017 IA No: BEIS014(F)-17-RD RPC Reference No: RPC-4101(1)-BEIS Lead department or agency: Department for Business, Energy and Industrial Strategy Other departments or agencies:	Impact Assessment (IA)			
	Date: 01/01/2016			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
	Contact for enquiries: Catriona Stewart - 020 7215 8816 /catriona.stewart@beis.gov.uk			
Summary: Intervention and Options				RPC Opinion: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£m	£m	£m	Not in scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?
 Primary Authority, introduced in 2009, is making it easier for businesses, partnering with a local authority, to understand and follow regulation. Changes to the scheme introduced by the Enterprise Act 2016 will come into force on 1 October 2017. These will extend and simplify Primary Authority and will enable national regulators to take a more structured role in it. Secondary legislation is needed to specify the national regulators that will offer support and to provide some administrative measures needed for the scheme to operate in practice.

What are the policy objectives and the intended effects?
 To specify the Competition and Markets Authority, the Food Standards Agency, the Gambling Commission, the Health and Safety Executive and the Secretary of State (in relation to metrology and product safety) as supporting regulators.
 To ensure that Primary Authority can continue to operate as now in Scotland and Northern Ireland.
 To increase administrative efficiency and provide greater clarity to business by using a more general definition of 'enforcement action'.
 To ensure that the process for dealing with disputes about enforcement action can continue to operate.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Two options have been considered: (1) do nothing; or (2) introduce secondary legislation (the Co-ordination of Regulatory Enforcement Regulations 2017).
 To ensure that specified national regulators may fulfil the role of 'supporting regulator' and work with primary authorities and their partners, and to ensure that the scheme may continue to operate after 1 October 2017, the only viable option is to introduce secondary legislation.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 10/2021				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro Yes	Small Yes
			Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	
			Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Margot James Date: 11 August 2017

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

It is assumed that businesses that do not stand to net benefit from the involvement of national regulators are not informed of this option by the Primary Authority. Incurring familiarisation costs is thus permissive, where it is expected that the benefits to business are at least as high as the voluntary, indirect costs.

Other key non-monetised costs by 'main affected groups'

There may be costs for businesses if the supporting regulator decides to recover costs. Arrangements must, though, be agreed up-front so businesses will have an opportunity to resolve any concerns about charging before the supporting regulator gets involved. We cannot assess these possible charges at this stage but note their voluntary and net zero of benefit to business nature.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits have been identified as the measures in the SI are essentially administrative in nature and are needed to ensure that Primary Authority can continue to operate.

Other key non-monetised benefits by 'main affected groups'

The administrative measures will: enable specified national regulators to formalise their role in Primary Authority; ensure that Primary Authority can continue to operate in Scotland and Northern Ireland; ensure there is a system for dealing with disputes about enforcement action; and provide a clearer definition of 'enforcement action'.

Key assumptions/sensitivities/risks

Discount rate (%)

It is assumed that primary authorities will have knowledge of supporting regulators and the potential benefits of involving them and that they are well placed to make judgements as they have knowledge of their partners and also of the role of the national regulator and their strategic policy objectives. It also assumes that businesses that do not stand to net benefit from the involvement are not informed about the option and do not incur familiarisation costs.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	
			0

Evidence Base (for summary sheets)

INTRODUCTION

1. Primary Authority, established in 2009, is a statutory scheme in which a local authority ('a primary authority') can partner with a business, or with a group of businesses, in order to take on responsibility for providing regulatory advice and guidance to it. This advice and guidance then guides the way in which that business is regulated by all other local authorities ('enforcing authorities').
2. The statutory basis is provided by the Regulatory Enforcement and Sanctions Act 2008 (as amended) and associated secondary legislation. The scope extends to regulatory services provided by local authorities, principally environmental health, licensing, trading standards and fire safety services. UK businesses regulated by more than one local authority or businesses in a co-ordinated group that are collectively regulated by more than one local authority may participate in Primary Authority. The scheme is administered by the Regulatory Delivery Directorate within the Department for Business, Energy and Industrial Strategy and its practical operation is underpinned by statutory guidance.
3. The Enterprise Act 2016 included measures to amend the Regulatory Enforcement and Sanctions Act 2008 and the resulting changes to the scheme will be implemented from 1 October 2017. The changes enable more small businesses and pre-start-up enterprises to participate in Primary Authority giving them access to advice that other regulators must follow. They also enable national regulators to take a more structured role in Primary Authority. The Impact Assessment for the changes made by the Enterprise Act was independently verified by the Regulatory Policy Committee as delivering a regulatory saving of £25.77m per year.

RATIONALE FOR INTERVENTION

Supporting regulators

4. The Enterprise Act 2016 enables national regulators to take a more structured role in Primary Authority as 'supporting regulators'. The Act requires that supporting regulators are specified in secondary legislation. Supporting regulators may assist primary authorities in developing advice and guidance and developing and managing inspection plans for the businesses and co-ordinators they work with. With prior agreement, supporting regulators will be able to recover reasonable costs incurred from the business or the co-ordinator (as primary authorities do). The aim of formalising the support of national regulators is to further increase consistency and certainty for businesses in investing in compliance. Local and national regulators will also benefit through closer working arrangements and sharing of knowledge and experience.

Scope of Primary Authority in Scotland and Northern Ireland

5. The scope of Primary Authority in Scotland and Northern Ireland extends only to reserved matters that are regulatory functions of local authorities. Currently, these regulatory functions are listed in the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009. The amendment of the Regulatory Enforcement and Sanctions Act 2008 by the Enterprise Act 2016 means the 2009 Order must be replaced for the scheme to continue to operate as it does now in Scotland and Northern Ireland.

Definition of 'enforcement action'

6. Where an enforcing authority proposes to take action against a business with a primary authority, it must notify the primary authority. In most cases this must be in advance so that the primary authority can consider if the action is inconsistent with any advice it has given to the business. In cases where there is a significant and imminent risk of harm, the action can be notified retrospectively. The definition of 'enforcement action' establishes which actions must be notified and is currently set out in the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 by listing individual notices under specific legislation and by some general provisions. This means that when new regulatory requirements are introduced that fall within scope of Primary Authority, the legal definition has to be amended to include any specific enforcement actions

associated with those new requirements that the current definition does not cover. In practical terms, this means drafting an amending statutory instrument, consulting on it and enacting it. Until the process is complete, enforcing authorities could take enforcement action against a business in a partnership in respect of the new requirements without notifying the primary authority. Consequently, the business does not have assurance during this period that the action could be blocked if it is inconsistent with primary authority advice it has followed. Frequent amendment of the legislation also creates an administrative burden and has resulted in the definition becoming increasingly complex.

Determination process

7. As part of Primary Authority, disagreements arising in relation to proposed enforcement action against a business in a partnership may be referred to the Secretary of State for determination. This safeguard mechanism is key to providing confidence to the parties involved in Primary Authority - businesses, enforcing authorities and primary authorities. The process is set out in the Regulatory Enforcement and Sanctions Act 2008 (as amended) and the Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009. Again, the introduction of the Enterprise Act 2016 means the 2009 Order must be replaced and updated.

POLICY OBJECTIVE

8. **Supporting regulators** - Following consultation with stakeholders and the national regulators themselves, the objective is for the following national regulators to become formally involved in Primary Authority as 'supporting regulators': the Competition and Markets Authority; the Food Standards Agency; the Gambling Commission; the Health and Safety Executive; and the Secretary of State (for metrology and product safety).
9. **Scope of primary authority in Scotland and Northern Ireland** - The objective is to ensure that Primary Authority can continue to operate as now in these nations.
10. **Definition of 'enforcement action'** - The objective is to provide a more general definition so that as soon as new regulatory requirements are introduced that fall within scope of Primary Authority, there will be an automatic requirement for enforcing authorities to notify primary authorities of any enforcement action they propose to take. This means that businesses in partnerships will have assurance in respect of the new requirements straight away. It will also be more administratively efficient and the definition will be clearer and easier to understand.
11. **Determination process** - The objective is to ensure that the determination process can continue to operate as now.

POLICY OPTIONS

Do nothing

12. This would mean that no national regulator would be able to fulfil the role of a 'supporting regulator'.
13. It would also mean there would be no legal basis setting out the scope of Primary Authority in Scotland and Northern Ireland. Similarly, there would be no legal basis for the determination process.
14. Continuing with the current definition of 'enforcement action' perpetuates the need for frequent amendments to the legislation and the associated administrative burden. The uncertainty it creates about when new legislation becomes included within scope of Primary Authority would also continue.

Introduce secondary legislation – the Co-ordination of Regulatory Enforcement Regulations 2017

15. This will enable the specified national regulators to formalise their role in Primary Authority and will help primary authorities and their partner businesses to increase regulatory compliance.
16. The scope of Primary Authority in Scotland and Northern Ireland and the determination process must be described in statute so the only viable option is to introduce new secondary legislation.
17. A more general definition of ‘enforcement action’ means improved administrative efficiency and clarity on when new legislation is captured by Primary Authority. The term is defined in existing secondary legislation so new legislation is the only way of amending this.

STAKEHOLDER CONSULTATION

18. Stakeholder views on the draft Co-ordination of Regulatory Enforcement Regulations 2017 were sought through a public consultation that ran from 13 February to 7 April 2017. The proposals were also presented and discussed with local authority and business stakeholders at a number of engagement events during the consultation period.
19. Stakeholders were broadly supportive of the measures in the draft SI.
20. For the most part, both local authority and business stakeholders were positive about the more structured involvement of national regulators in Primary Authority and considered that those listed were appropriate. They found it difficult to predict demand at this stage but generally agreed that involvement of ‘supporting regulators’ is likely to be sought only on an *ad hoc* basis - rather than as a matter of routine - and in relation to complex, untested or unusual issues.
21. Continuation of Primary Authority in Scotland and Northern Ireland was considered to be important in enabling businesses operating across the UK and for co-ordinated partnerships with businesses in different nations to fully benefit from the scheme.
22. The more general definition of ‘enforcement action’ was welcomed by both business and local authority stakeholders on the basis that it is clearer and delays will be avoided following changes to the legislative scope of Primary Authority.
23. Continuing to have the determination process in place was considered to be important to ensure there is a mechanism to deal with disputes about enforcement action.

ASSESSMENT OF IMPACT ON BUSINESS

Supporting regulators

24. To provide clarity for businesses and for primary authorities on how the process will work in practice, a new section is included in the draft revised Statutory Guidance on Primary Authority. This outlines the role and responsibilities of a supporting regulator. This includes publishing clear information setting out the support that it will make available to primary authorities and their partner businesses, its cost recovery policy and the nature of the arrangements that it will expect to put in place with any individual primary authority and their partner business or co-ordinator. It is anticipated support will be provided only on an *ad hoc* basis – rather than as a matter of routine - and in relation to complex, untested or unusual issues.
25. In terms of the supporting regulator’s costs, businesses/co-ordinators will need to agree cost recovery arrangements with them up front so they will have an opportunity to resolve any concerns about charging before the supporting regulator gets involved.
26. The main impact on business is expected to derive from one off costs for familiarisation with the new option.
27. On the basis of the consultation responses, and at this stage, it is anticipated that supporting regulators are likely to be involved formally with a partnership in only a small proportion of cases and in relation to issues where specialised expertise, advice or guidance is needed.

28. Involving a supporting regulator is, in practice, likely to be raised as a possibility with a business or the co-ordinator by their primary authority and only in cases where the primary authority considers that the benefits for the business outweigh the potential costs arising from understanding the new role of the regulator (familiarisation) and charges that may be applied by the national regulator for any advice or guidance given. Only in these cases will businesses need to incur familiarisation costs of the option.
29. Primary authorities should know before informing businesses or co-ordinators that this is an option and that supporting regulator involvement would be beneficial to them. Primary authorities are well placed to make such judgements as they have detailed knowledge of their partners and how they operate and also of the role of the national regulator and their strategic policy objectives. We also assume that businesses that do not stand to net benefit from the involvement are not informed about the option and do not incur familiarisation costs.

Scope of Primary Authority in Scotland and Northern Ireland

30. There is no change to the scope of the scheme in either nation. The measures in the draft regulations simply ensure that there is a legal basis for the scheme to continue to operate in these nations. It is an administrative measure and there are no cost implications for businesses.

Definition of 'enforcement action'

31. The introduction of a more general definition does not change the range of enforcement actions that must be notified. This measure also is administrative in nature and there are no cost implications for businesses.

Determination process

32. The approach to, and process of, determination is the same as now – this is also an administrative measure – so there are no cost implications for businesses.

BUSINESS IMPACT TARGET SCORE/STATUS

33. The appraisal above suggests that, based on the proportional best-available evidence, this regulatory change is a very low cost and will be well under the limit of £1 million gross in any year.