Foreword

The Coalition Government is committed to creating an environment in which the economy can thrive.

Doing all we can to free businesses from the unnecessary burden of regulation has never been more important. We need our business community to be confident to invest and grow. Where regulation is essential, businesses must feel secure in their ability to comply, and they must be able to do so simply and with as little cost as possible. Primary Authority helps to achieve this.

Regulation should be a tool to deliver growth, as opposed to an enemy of it. Rogue traders and persistent offenders can be targeted so that they are not able to stifle responsible businesses. Primary Authority allows local authorities to use their resources most efficiently, in creating a level playing field and fostering good business practice in their communities.

As part of our package to drive growth, this Government is taking forward plans to extend Primary Authority in three ways: to enable more businesses to join, to strengthen inspection plans and to bring more regulations in scope. We are investing in the scheme because it improves the way regulators work with businesses at the same time as improving crucial public protections and better supporting local authorities in targeting their resources.

With this consultation we set out how we see the scheme working for age-restricted sales of gambling, as well as making proposals to add further regulations. By expanding the scheme in this way, Government will be stripping out further red tape which holds business back.

Michael Fallon
Minister of State for Business and Enterprise
Department for Business, Innovation and Skills
# Consultation Summary

## Who should read this document?
This consultation is relevant to businesses which must adhere to regulations on sunbeds, housing health and safety, age-restricted sales of gambling, or Welsh regulations on single use carrier bag charging; business groups representing members who must adhere to the above regulations; local authorities; and consumer or community groups.

## Making your views heard
We are keen to gather all views on the subject of the extension of Primary Authority and any supporting evidence. You should not feel constrained by the specific questions nor feel obliged to offer responses to all of them. Concentrate on those in which you have the most interest.

## Views are requested by Thursday, 24th January 2013

<table>
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<th>Phone enquiries</th>
<th>020 7215 1191</th>
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| Email enquiries and responses | Responses: [consultation@brdo.bis.gsi.gov.uk](mailto:consultation@brdo.bis.gsi.gov.uk)  
Enquiries: [consultation@brdo.bis.gsi.gov.uk](mailto:consultation@brdo.bis.gsi.gov.uk) |
| Written responses | Better Regulation Delivery Office  
FAO Isobel Pastor  
5th Floor, Abbey 1,  
1 Victoria Street,  
London SW1H 0ET |
| Your details | Representative groups may wish to give a summary of the views of the people and organisations they represent, and, where relevant, how they consulted with them. You may wish to include contact details for follow-up. |
| Confidentiality | The position regarding the confidentiality of any information provided is set out on page 28 this document. Unless you state otherwise (and an automatic disclaimer generated by your IT system does not constitute such a statement), we will assume you are happy for us to publish your response. |
| Additional copies | This consultation is available for download from [www.bis.gov.uk/brdo/publications/current-consultations](http://www.bis.gov.uk/brdo/publications/current-consultations) |
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Executive summary

Primary Authority assists businesses in complying with regulation by allowing them to receive reliable, robust advice and coordination of inspection activity. It reduces the burden and cost of compliance, thereby supporting businesses to grow, whilst maintaining crucial public protections and allowing local authorities to better target their resources and tackle rogue traders.

With this consultation, the Government is building on our response to last year’s Transforming Regulatory Enforcement consultation, in which we committed to extending Primary Authority to cover age-restricted sales of gambling. We are seeking views on:

- The implementation of Primary Authority for age-restricted sales of gambling, and
- Further extension to cover:
  - the Housing Health and Safety Rating Scheme;
  - sunbed tanning; and
  - Welsh regulations on single use carrier bag charging

Age-restricted sales of gambling: Businesses will be able to access consistent advice on age-verification procedures. They will also have the option of developing an inspection plan to coordinate test purchasing and deliver comprehensive performance feedback. Primary Authority does not restrict local authorities from responding to complaints and the Police operate entirely outside of the scheme.

Housing Health and Safety Rating System: Landlords would benefit from clear advice on the standards they must achieve in their properties, thus improving protections for tenants. The critical discretion which officers have in deciding which enforcement action is most suitable for every case and the ability to act immediately in emergency situations would remain.

Sunbed tanning: Partnerships would be able to provide certainty on sunbed-tanning age-restriction regulations, as well as the further requirements which apply in Wales. This would enable businesses to be confident in the measures they are taking to comply with requirements, for example, on age-verification and store layout.

Welsh regulations on single use carrier bag charging: Those businesses which must comply with the Welsh regulations on single use carrier bag charging would be able to form a Primary Authority partnership to provide advice on the requirements. This only affects Wales and therefore government policy as regards carrier bag charging in England is unaffected.

Government believes that the benefits of Primary Authority should be extended to cover these important areas of regulation to ease the burden on business, increase efficiencies for local authorities and improve consumer protections.
1. **Introduction**

1.1 The Primary Authority scheme was designed to provide consistency for organisations operating in more than one local authority area. It was established under the Regulatory Enforcement and Sanctions Act 2008 and has been in operation in England and Wales since 2009.

1.2 The coalition agreement states Government’s intention to “end the culture of tick-box regulation”. Primary Authority is a crucial tool in changing the regulatory landscape and delivering on this commitment. As well as addressing inconsistency in enforcement between councils, Primary Authority supports a fundamental shift in the way regulators and businesses interact. It allows the development of a transparent and cooperative relationship which incentivises compliance because business is supported in its efforts and earns recognition for success. At the same time, Primary Authority facilitates local authorities in better targeting of their resources because duplication is stripped out and they can focus more effectively on non-compliance and rogue traders.

1.3 In short, the Primary Authority scheme improves the delivery of regulation by:

- reducing regulatory burden;
- improving regulatory efficiency; and
- enhancing protections.

**Primary Authority**

1.4 Primary Authority allows a business to form a partnership with one local authority in order to receive tailored support in relation to a range of regulations. Broadly, the primary authority may assist businesses in three ways: by issuing assured advice, coordinating enforcement action and developing an inspection plan. For further information on how Primary Authority works, please see the Better Regulation Delivery Office website.

i) **Assured advice**

The primary authority provides the business with assured advice on fulfilling its regulatory obligations. This advice must be followed by other local authorities where the business operates. For example; if a primary authority issues advice that a business’ procedures preventing slips and trips are sufficient to fulfil its legal obligation, another authority cannot insist that an alternative approach is used in its area.

Reliable advice provides businesses with the confidence to invest in their compliance efforts, knowing that they will be respected by all of the local authorities with which they interact. Similarly, enforcing authorities can be confident that assured advice provided to businesses by primary authorities is robust. Primary authorities work very closely with their business partners to understand operational procedures. Moreover, primary authorities are themselves regulators. So officers bring their wealth of experience, as well as in-depth understanding of the business to the partnership. In the unusual event of a dispute between the primary authority and an enforcing authority, BRDO has processes in place to manage the situation, for example through mediation.
Case Study: Itsu

National Japanese food chain Itsu received assured advice from its Primary Authority partner on controlling the temperature of sushi rice. The advice reflected results from several trials which demonstrated the ideal conditions in which to store the rice.

Local authority officers who are inspecting an Itsu outlet have access to the advice before they visit, meaning restaurant staff don’t have to explain the arrangements in place. This saves time for the business and means that the regulator can spend more time verifying that the correct temperatures are being achieved and that other business practices are compliant.

As a result of its Primary Authority partnership, Itsu can be confident that by following the agreed procedures, they protect their customers and provide the best possible service to them.

ii) Coordinating enforcement action

The primary authority coordinates enforcement action proposed against the business. Where enforcement action is proposed against the business, it must initially be notified to the primary authority, which assesses whether the proposed action is consistent with assured advice issued to the business. Experience of the Primary Authority scheme to date indicates a reduction in enforcement activity, as an approach to manage issues can often be agreed as a result of liaison between the enforcing authority and the primary authority, thereby reducing burden for enforcing authorities and businesses alike.

Where multiple enforcement actions are proposed against the business, the primary authority coordinates these which reduces duplication of effort. For example, where enforcement action is proposed in relation to an unsafe product sold across several local authority areas, the primary authority can act to resolve the situation without the need for each individual local authority to take separate action against the business.

iii) Inspection plans

Partnerships can also work together to develop an inspection plan, agreeing on national priorities for the inspection of the business. Inspection plans provide a roadmap for routine inspections. They can provide information about the management policies which are in place, allowing an inspector to prepare in advance of an inspection and focus on checking that procedures are being implemented when he or she is on site. An inspection plan may identify areas of weakness for the business, thereby helping local authorities to concentrate efforts according to where the greatest risks lie.

Inspection plans enable partnerships to take a strategic view of inspection across the business, targeting enforcement to increase the impact and maximising the value of feedback to deliver further protections through improvements in compliance. Crucially, inspection plans apply only to routine and proactive inspections: authorities are still free to react to emergency situations or local complaints should they arise.
Case Study: Sainsbury’s

“The Primary Authority Inspection Plan is an important element of the scheme. It enables very useful information about our business compliance activities to be shared proactively with regulators who are inspecting all our business outlets and therefore helps them better focus their inspection resources where they are most needed. The Inspection Plan enables feedback from inspectors to be channelled back to our Primary Authority and to the business itself, which provides accurate information for us about how our compliance systems are operating. This is an invaluable ‘reality check’ for us, making sure our systems are working on the ground, for the benefit of employees and consumers alike.”

Sharon Chambers
Safety Policy & Systems Specialist
Sainsbury’s

Scope of Primary Authority

1.5 The scope of the Primary Authority scheme, or the range of regulations which can be covered in partnerships, is established in legislation. In practical terms, to be included in the scheme in England and Wales, a regulation must:

- Be listed in Schedule 3 to the Regulatory Enforcement and Sanctions Act; and

- Be enforced by local authorities in a way which falls within the definition of an “enforcement action” given at Section 28 of the Regulatory Enforcement and Sanctions Act and the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009.

The benefits of Primary Authority

1.6 The Primary Authority scheme achieves cost reductions and increased efficiency for both businesses and regulators. Our evaluation indicates that it delivers net benefits of £19.9 million to businesses and local authorities. Overall, for every £1 of cost incurred in operating Primary Authority a benefit of £3.60 is generated. The net benefits to business alone are estimated at £12.5 million per year with three quarters of businesses saying they are satisfied or very satisfied with their involvement in Primary Authority. Overall, 26 per cent of businesses believed that the burden of compliance was reduced through their participation in Primary Authority with none believing that it had increased.

1.7 Businesses report reductions in the staff time and costs associated with regulatory compliance as a result of their partnerships and they tell us that they have confidence and certainty as a result of Primary Authority Advice. Well-informed businesses can plan investment while managing regulatory risk, allowing them to focus on serving their customers and generating growth.
1.8 The scheme allows local authorities to focus their regulatory resources where they will have the most impact. It saves time for officers and reduces duplication, while the primary authority's costs for providing the enhanced support can be recovered from the business. Improved protections are achieved both because scarce resources can be targeted at high risk or repeat offenders, and because Primary Authority partnerships foster a more collaborative approach to achieving compliance.

1.9 Examples of feedback we have received on the scheme can be found below.

**Case Study: John Lewis**

"John Lewis has now been part of the Primary Authority scheme for 2 years. As a multi-outlet business, the ability to have one point of contact with local authorities has proved invaluable. By involving the PA in any changes we make to our policies and procedures we are confident that our compliance activities are robust. Over the two years our PA has become increasingly familiar with our systems and processes and is able to answer questions from other authorities, reducing the number of direct enquiries we have had to handle.

The support and advice received is always of high quality and relevant to our needs and we believe this is cost efficient."

Jacquie Bloomfield  
Compliance & Food Safety Manager, Foodservice  
John Lewis Retail

**Case Study: Get Connected**

Get Connected has more than 70 stores in England and Wales selling mobile phones. The company entered a Primary Authority partnership with Monmouthshire in 2011, which allows information on fair trading compliance from trading standards officers across England and Wales to be coordinated. This provides a comprehensive understanding of how procedures are working across the business.

Based on this intelligence, the partnership has designed a check list to be completed by all customers to ensure they have received essential information about a purchase, and that they understand it. This has ensured greater clarity for consumers about what they are paying for and what service they can expect to receive.

Despite the company expanding, they have seen complaints reduce by one third since the checklist was introduced. Additionally, the one-to-one relationship between the primary authority and the company means complaints are resolved more speedily, benefitting both the consumer and the company’s reputation. Joint working has directly improved protections for consumers, who are better informed and served as a result of the partnership.
Case Study: Wakefield Council

“The Primary Authority scheme delivers real benefits for regulators and businesses. It promotes a consistent and targeted approach to regulation and, through our partnership with Asda, we can see how business and local authority resources can be more effectively utilised to deliver quality outcomes for all.”

Claudine Robertson
Senior Environmental Health Officer
Wakefield Council

1.10 Since its introduction, demand for the Primary Authority scheme has outstripped expectations. As of this month, there are 602 businesses and 93 local authorities involved in Primary Authority partnerships, covering over 58,000 premises and over 1.57 million employees.

1.11 In order to build on the success of Primary Authority, the Government is currently proposing changes to the scheme in the Enterprise and Regulatory Reform Bill. If passed, the measures will:

- allow more businesses to join by extending the eligibility criteria; and
- strengthen inspection plans.
2. Extending the range of regulations covered by Primary Authority

2.1 This document follows on from the Government response to the Transforming Regulatory Enforcement consultation, which was published last year. In that response, Government indicated its intention to proceed with adding the age-restricted sales of gambling to the scope of Primary Authority. Since then, we have received feedback on some other important areas of regulation which we feel should fall within the scheme. These are:

- the Housing Health and Safety Rating Scheme;
- sunbed tanning; and
- Welsh regulations on single use carrier bag charging.

2.2 In order to achieve this in relation to Primary Authority in England and Wales, it is necessary to amend Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 and the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (CORE). The draft statutory instrument at Annex B would add the relevant legislation to Schedule 3 to enable Primary Authority partnerships to be formed to cover sunbed tanning, housing health and safety and Welsh regulations on carrier bag charging.

2.3 The legislation relating to gambling is already included in Schedule 3. However, the definition of an “enforcement action” set out in CORE excludes action taken to enforce that legislation. For age-restricted sales of gambling to be included in Primary Authority, this exclusion must be removed. The draft statutory instrument at Annex C would achieve this by amending CORE, and also completes the picture by adding enforcement measures relating to housing health and safety and carrier bag charging in Wales to the definition of an “enforcement action” under Primary Authority.

Question 1 Do you have any comments on the draft statutory instruments at Annexes B and C?

2.4 The following sections of this consultation set out how we see the Primary Authority scheme working for age-restricted sales of gambling and seek your views on the other areas which we propose are added.

Devolved administrations

2.5 The Primary Authority scheme applies in its entirety across England and Wales, so the inclusion of the regulations described in paragraph 2.1 and below would be applicable in both countries with the exception of those relating to single use carrier bag charging and some sunbed tanning requirements, which are Wales-only. We have written to Welsh Ministers to seek their views and consent before legislation is laid in Parliament.

Proposals to include regulations which apply only in Wales is a first for Primary Authority. Government has considered how it should work within the legislative framework so that the benefits of the scheme are delivered as effectively as possible. A local authority can only become a primary authority with regards to regulations which it is able to enforce. So where regulations only apply to Wales, and are only enforced by Welsh local authorities, the Primary Authority partnership will need to be with a Welsh local authority.
For this reason, BRDO will create a new Primary Authority category for Welsh regulations. A business will be able to form a partnership in the category to cover all or some of the Welsh regulations covered by the scheme as it requires.

2.6 In Scotland and Northern Ireland, Primary Authority only applies in relation to reserved and non-transferred matters and the scope of the scheme is established slightly differently. Of the policy areas we are looking at in this document, gambling is reserved with respect to Scotland and we are working with the Scottish Government to explore implementing the extension there. A small change to the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009 may be necessary by means of secondary legislation.

2.7 All of the policy areas described below are matters which have been transferred to the Northern Ireland Executive, so the current extension will not affect how Primary Authority operates in Northern Ireland.

### Age-restricted sales of gambling

2.8 Primary Authority already applies to some areas of age-restricted sales legislation, notably tobacco products and fireworks. This enables businesses involved in supplying these products to receive assured advice from their primary authority regarding age verification procedures. Where partnerships are in place and a local authority is considering enforcement action, they must notify the primary authority and ensure that their decision is consistent with any relevant assured advice.

2.9 Partnerships also have the option of developing an inspection plan, based on the forthcoming Age Restricted Products and Services Code of Practice on Regulatory Delivery. It can be used to coordinate test purchasing activity and receive enhanced feedback. This will help them to identify where improvements are necessary, and deliver better protections for young people.

2.10 Commercial gambling activity is regulated in Great Britain under the Gambling Act 2005. Gambling operators (and some employees) are licensed by the Gambling Commission, whereas premises and some low stakes gambling activity are licensed by local authorities.

2.11 It is envisaged that Primary Authority will apply to the age-restricted sales of gambling in broadly the same way as it applies to age-restricted sales of tobacco products and fireworks. However, it should be noted that:

- Inclusion of gambling in the Primary Authority scheme will apply only to regulation by local authorities regarding age-restricted sales; premises licensing and regulation (including in relation to underage sales) undertaken by the Gambling Commission will not be affected.
- Police forces operate outside of Primary Authority and there are no plans to change this position; therefore any extension of scheme will only apply to local authorities.
- Under Primary Authority, local authorities responding to complaints relating to the underage sale of gambling will be able to investigate or conduct test purchases in the same way that they currently do.
- Non-compliance with age-related sales restrictions may be related to a failure in a business’ compliance procedures or the actions of individual employees. Primary Authority Advice is a means of coordinating processes across a business and as such, does not prevent actions taken in cases where an individual has failed to meet his or her obligations.
Question 2  Do you have any comments on how Primary Authority will function for the age-restricted sales of gambling?

Housing Health and Safety Rating System

2.12 Part 1 of the Housing Act 2004 establishes the Housing Health and Safety Rating System, which allows local authorities to assess and tackle problems in residential properties which may cause harm. This could include hazards like damp, mould, excess cold or risk of entry from intruders. Most inspections and enforcement actions relate to privately rented accommodation and follow complaints from tenants or neighbours.

2.13 We consulted on including the Housing Health and Safety Rating System within the scope of Primary Authority in 2011. The responses we received did not point in a clear direction, so we are now seeking further views.

2.14 Government believes that private landlords should be able to access Primary Authority support in complying with their obligations under the Housing Health and Safety Rating System. Assured advice, for example on interpreting the standards which are required, will enable them to act with certainty to protect their tenants, encouraging a proactive approach. In this way, partnership working should improve protections and minimise complaints.

2.15 We recognise the important flexibility which the Housing Health and Safety Rating System provides, in terms of enforcement actions chosen when breaches occur. It is vital for officers to be able to consider the local context and specific circumstances of each case in order to best serve the community in which they work. We do not believe that inclusion in the Primary Authority scheme will compromise this discretion. The primary authority, in issuing assured advice, sets out clear standards which the business must meet. If a primary and local authority agreed that those standards were missed, the inspecting officer would be free to decide on the best course of action.

As with other areas of regulation covered by the scheme, a local authority would not need to provide notification to a primary authority in cases where there is a significant threat of harm to human health which requires urgent action. For example, notification would not need to be given when taking emergency remedial action or making an emergency prohibition order under Part 1 of the Housing Act. In such cases, a local authority would be able to take immediate action to protect tenants.

Question 3  Do you agree that the Housing Health and Safety Rating System should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

Sunbed tanning

2.16 The Sunbeds (Regulation) Act 2010 creates a duty on businesses in England and Wales to ensure that no person under 18 years old uses or is offered the use of a sunbed on their premises. Under 18s are also restricted from being in the areas surrounding a sunbed (the ‘restricted zone’). In 2011, Welsh Ministers introduced measures in Wales which further regulate the sale and hire of sunbeds, provision and display of health information, and the provision of protective eyewear.
2.17 As with the regulation of other age-restricted products, businesses are keen to form Primary Authority partnerships which cover the regulations on sunbed tanning. Some local authorities report uncertainty over how to implement the new legislation and the expertise offered by a primary authority would help to clarify the rules for enforcing authorities.

2.18 If sunbed regulations were to be included in Primary Authority, businesses would benefit from assured advice on procedures for age verification, and on the interpretation of the legislation. For instance, if these regulations were included in Primary Authority, businesses could benefit from reliable advice on the definition of a ‘restricted zone’. This would allow them to better plan building layout and design in order to achieve maximum compliance. Additionally, businesses in Wales could work with their primary authority to optimise compliance policies for the Welsh regulations, such as the training and competency of sunbed supervisors. Businesses in both Wales and England would benefit from putting in place national inspection plans for test purchasing, removing duplication and allowing local authorities to focus resources on rogue traders or specific complaints.

**Question 4** Do you agree that the sunbed tanning regulations should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

**Welsh regulations on single use carrier bag charging**

2.19 In Wales, Scotland and Northern Ireland, waste reduction policy is a devolved / transferred matter and the Welsh Government introduced the Single Use Carrier Bags Charge (Wales) Regulations in 2010. These Welsh regulations created an obligation for businesses that sell or deliver goods in Wales to charge their customers for single use carrier bags, with the profits going to charity. We propose to add the Welsh regulation to the list of legislation in scope for Primary Authority. This only affects Wales and therefore government policy as regards England is unaffected.

2.20 Businesses which operate in Wales have told us that they would welcome the opportunity to form Primary Authority partnerships which cover their arrangements for carrier bag charging. For example, if these regulations were included in Primary Authority, businesses would be able to access assured advice on the types of bags included and exempt, and on record keeping requirements. This would provide certainty and enable them to put into place suitable company policies, helping to achieve maximum compliance and reductions in unnecessary waste and the associated environmental damage.

**Question 5** Do you agree that Welsh regulations on single use carrier bag charging should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

**Analysing the economic effects of proposed extensions**

2.21 Annex A details a proposed methodology for analysing the effects of extending Primary Authority to cover age-restricted sales of gambling, sunbed tanning, housing health and safety and Welsh regulations on single use carrier bag charging. We would welcome your views on this, and we are seeking further data, as follows, where we have identified gaps in our knowledge.
Question 6  Do you have any comments on the proposed analytical approach outlined above? Do you believe that the current assumptions are reasonable and that all impacts of the proposal are accounted for? Please provide practical examples where possible.

Question 7  Have you previously received inconsistent advice from different local authorities with respect to any of the regulations that we propose to bring into Primary Authority? Do you think being in a Primary Authority partnership could have avoided any of these instances? Please provide an estimate of the costs that these instances have imposed on your business?

Question 8  If you are currently in a Primary Authority partnership, which individual(s) in your organisation is responsible for day-to-day operation of the partnership (e.g. liaising with primary authority)? Please provide an indication of the costs incurred by your business in maintaining a Primary Authority partnership. Please provide an indication of the savings which maintaining the partnership delivers.

Question 9  We expect the costs of setting up and maintaining a partnership to cover one of the new regulations to vary depending on how the partnership is established (see points 1-4). Do you agree with this? Do you have any evidence on how these costs will vary between each option? Which one of the 4 options is likely to apply to your business?
Consultation questions

Question 1 Do you have any comments on the draft statutory instruments at Annexes B and C?

Question 2 Do you have any comments on how Primary Authority will function for the age-restricted sales of gambling?

Question 3 Do you agree that the Housing Health and Safety Rating System should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

Question 4 Do you agree that the sunbed tanning regulations should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

Question 5 Do you agree that Welsh regulations on single use carrier bag charging should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

Economic Analysis Questions

Question 6 Do you have any comments on the proposed analytical approach outlined in Annex A? Do you believe that the current assumptions are reasonable and that all impacts of the proposal are accounted for? Please provide practical examples where possible.

Question 7 Have you previously received inconsistent advice from different local authorities with respect to any of the regulations that we propose to bring into Primary Authority? Do you think being in a Primary Authority partnership could have avoided any of these instances? Please provide an estimate of the costs that these instances have imposed on your business?

Question 8 If you are currently in a Primary Authority partnership, which individual(s) in your organisation is responsible for day-to-day operation of the partnership (e.g. liaising with primary authority)? Please provide an indication of the costs incurred by your business in maintaining a Primary Authority partnership. Please provide an indication of the savings which maintaining the partnership delivers.

Question 9 We expect the costs of setting up and maintaining a partnership to cover one of the new regulations to vary depending on how the partnership is established. Do you agree with this? Do you have any evidence on how these costs will vary between each option? Which one of the 4 options is likely to apply to your business?
Annex A – Economic analysis of Primary Authority

The extension of Primary Authority will impact on businesses and local authorities; both those acting as primary authorities and those who are enforcing authorities for participating businesses. This section outlines the impacts that we expect these changes to have and the approach we are taking to assess these impacts.

By expanding the scope of Primary Authority to include additional regulations we expect the number of Primary Authority partnerships to increase and existing partnerships to be expanded. The potential routes for expansion include:

1. Businesses that were previously not involved in Primary Authority that establish a partnership for one or more of the additional regulations.

2. Businesses currently participating in Primary Authority that establish a partnership for one or more of these new regulations within a new category and with a different local authority.

3. Businesses currently participating in Primary Authority that expand their existing partnership to include one of the new regulations within a new category (e.g. age-restricted sales).

4. Businesses currently participating in Primary Authority that add one or more of these additional regulations to an existing category.

To account for the impact of these proposals we first need to estimate the number of businesses that will fall into each of these categories. The total number of new and expanded partnerships is estimated through the following equation:

New/expanded partnerships = eligible businesses x take-up rate

For most of the regulations (age-restricted sales of gambling, sunbed tanning and Welsh regulations on single use carrier bag charging) we can estimate the number of eligible businesses by using data from the Inter-Departmental Business Register, recording those that operate in multiple local authorities and are likely to be subject to the regulations. For Housing Health and Safety we can make an assumption around the proportion of landlords that own multiple properties which are in more than one local authority. The take-up rate is based on data from existing partnerships, including expected increases over time.

The split of new and expanded partnerships by category (1-4 above) can be estimated using data for existing partnerships. For example, by looking at how many businesses currently participating in Primary Authority could be eligible for one of the new regulations, and if that would involve expanding a category, establishing a new category or establishing a new partnership with a different primary authority.

The table overleaf outlines the impacts that we expect this proposal to have to each of the key stakeholders and how we plan to quantify them.
## Extending the Range of Regulations Covered by Primary Authority

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<th>Proposed methodology</th>
<th>Data / Assumptions</th>
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<tr>
<td><strong>Business</strong></td>
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<td><strong>Benefits from more consistent advice</strong></td>
<td>Cost of inconsistent advice x number of instances of inconsistent advice mitigated</td>
<td>We are seeking evidence on the likely benefits</td>
</tr>
<tr>
<td><strong>Benefits from more consistent inspection</strong>&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Hours saved x cost per hour</td>
<td>We are planning to use a value of 20 hours per year per inspection plan&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Primary authorities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>One-off costs of setting up a new partnership</td>
<td>Hours taken x cost per hour</td>
<td>We expect this cost to vary depending on the nature of the new partnership (1-4 above) ranging from 30 hours to 0&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
<tr>
<td>One-off costs of developing an inspection plan&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Hours taken x cost per hour</td>
<td>We are planning to use a value of 20 hours per inspection plan&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
<tr>
<td>Recurring costs of administering partnership</td>
<td>Hours taken x cost per hour</td>
<td>We are planning to use a value of 3 hours per week for their 1&lt;sup&gt;st&lt;/sup&gt; partnership and 1.5 hours for subsequent ones&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

1. Data is sourced from the evaluation of Primary Authority carried out by RAND Europe.
2. Inspection plans are an optional component of a Primary Authority partnership. These impacts will only occur if businesses choose to develop an inspection plan.
3. This assumption is based on BRDO data
4. This assumption was made after discussions within BRDO
### Extending the Range of Regulations Covered by Primary Authority

<table>
<thead>
<tr>
<th>Area</th>
<th>Calculation</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurring costs of dealing with enforcement authorities</td>
<td>Hours taken x cost per hour</td>
<td>We are planning to use a value of 2 hours per week for their 1st partnership and 0.3 hours for subsequent ones¹</td>
</tr>
<tr>
<td>Benefits from cost recovery</td>
<td>Total costs x proportion of costs recovered</td>
<td>We expect that 48% of primary authorities will recover all of their costs, 12% will recover no costs and 40% will recover some costs (assumed to average 50%).³</td>
</tr>
</tbody>
</table>

#### Enforcing Authorities

<table>
<thead>
<tr>
<th>Area</th>
<th>Calculation</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs of notifying primary authorities of enforcement actions</td>
<td>Hours taken x cost per hour</td>
<td>We are planning to use a value of 1 hour per notification⁴</td>
</tr>
<tr>
<td>Costs of liaising with primary authorities</td>
<td>Hours taken x cost per hour</td>
<td>We are planning to use a value of 1 hour per week per partnership⁴</td>
</tr>
<tr>
<td>Savings from reduced workload</td>
<td>Hours saved x cost per hour</td>
<td>We are planning to use a range of values from 1 hour to 350 hours per partnership depending on the size of business⁵</td>
</tr>
<tr>
<td>Savings from the development of inspection plans</td>
<td>Hours saved x cost per hour</td>
<td>We are planning to use a value of 2 hours per year per inspection plan⁴</td>
</tr>
</tbody>
</table>

Primary Authority is a voluntary scheme, yet the number of businesses participating has grown steadily since its introduction. This implies strongly that the benefits that they experience from participating in Primary Authority outweigh the costs of doing so. We expect this also to be the case for the extended scheme.

Primary authorities are expected to experience costs in setting up and operating a partnership however, as enabled under the Regulatory Enforcement and Sanctions Act, these costs can be recovered through charges to participating businesses. Evidence suggests that primary authorities currently choose not to recover 100 per cent of costs therefore we are expecting primary authorities to experience net costs from these proposals in the short term. Authorities keep their Primary Authority arrangements under review and are free to renegotiate to recover up to 100 per cent of their costs for operating the scheme, should they decide to. It should be noted that a primary authority for one partnership may also be an enforcing authority in the context of other partnerships. Therefore, while we expect primary authorities to experience net costs in their role as primary authorities, we believe that local authorities as a whole will see net benefits from these proposals.

The Secretary of State, in exercise of the powers conferred by section 4(4)(a) of the Regulatory Enforcement and Sanctions Act 2008 and with the consent of the Welsh Ministers, makes the following Order.

In accordance with section 20(3) of the Regulatory Enforcement and Sanctions Act 2008, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Regulatory Enforcement and Sanctions Act 2008 (Amendment of Schedule 3) Order 2013 and comes into force on 6th April 2013.

Amendments to Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008

2.—(1) Schedule 3(b) to the Regulatory Enforcement and Sanctions Act 2008 (enactments specified for purposes of section 4(1): definition of “relevant function”) is amended as follows.

(2) In the appropriate places, insert—

“Single Use Carrier Bags Charge (Wales) Regulations 2010”(c); and

“Sunbeds (Regulation) Act 2010 (c. 20)”(d).

(a) 2008 c.13.
(b) Schedule 3 was amended by Part 4 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23), paragraphs 97 and 99 of Schedule 26 and Part 1 of Schedule 27 to the Equality Act 2010 (c. 15) (as amended by SI 2010/2279, Schedule 1, paragraph 6 and Schedule 2), paragraph 130 of Schedule 7 to the Charities Act 2011 (c. 25) and paragraph 4(1) and (2) of Schedule 6 and Part 1 of Schedule 8 to S.I. 2010/2960.
(c) S.I. 2010/2880, amended by S.I. 2011/2184.
(d) The Schedule to the Sunbeds (Regulation) Act 2010 was modified by S.I. 2011/1130 (W.156), regulation 9(3) and (4), in relation to matters arising under that instrument.
Extending the Range of Regulations Covered by Primary Authority

3. In the entry relating to the Housing Act 2004(a), for “Parts 2 to 5” substitute “Parts 1 to 4”(b).

Signed
Minister for Business and Enterprise,
Date
Department for Business, Innovation and Skills

EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (2008 c. 13) (“the Act”), adding legislation to the list in that Schedule. Enactments listed in Schedule 3, and the provisions of any secondary legislation made under a listed Act, are “relevant enactments” for the purposes of the definition in section 4 of the Act of a “relevant function” of a local authority in England or Wales. The definition of “relevant function” applies for the purposes of Parts 1 and 2 of the Act. It covers particular regulatory functions under any “relevant enactment” in relation to any activity, such as a statutory function of giving guidance in relation to an activity. It also covers functions relating to (broadly speaking) the enforcement of any restrictions or requirements which relate to an activity under or by virtue of any “relevant enactment”.

Under Part 1 of the Act the Secretary of State and the Welsh Ministers have powers and duties in relation to the exercise of “relevant functions” by local authorities in England and Wales, including powers to give guidance on the exercise of such functions so as to ensure that, among other things, they are exercised effectively and in a way that does not give rise to unnecessary burdens.

Part 2 of the Act applies where a person (“the regulated person”) carries on an activity in the areas of two or more local authorities and each of those authorities has the same “relevant function” in relation to that activity. Part 2 enables one of the local authorities to be nominated by the Secretary of State as the “primary authority” for the exercise of that “relevant function” in relation to the regulated person. The primary authority gives advice and guidance to the regulated person in relation to the “relevant function” in question and gives advice and guidance to the other local authorities as to how they should exercise that function in relation to the regulated person. The primary authority can prevent proposed enforcement action being taken against the regulated person by the other local authorities where the proposed action is inconsistent with advice or guidance previously given by the primary authority. And the primary authority is able to make an “inspection plan” containing recommendations as to how a local authority with an inspection function should exercise it in relation to the regulated person. For the purposes of Part 2 of the Act, “relevant function” has the same meaning, in relation to local authorities in England and Wales, as it does in Part 1.

Article 2 of this Order adds enactments to the list in Schedule 3 to the Act. Provisions of the added legislation, and of any secondary legislation made under a newly specified Act, will as a result constitute “relevant enactments” for the purposes of the definition of a “relevant function” of a local authority in England or Wales which applies for the purposes of Parts 1 and 2 of the Act. The new “relevant enactments” comprise: the Single Use Carrier Bags Charge (Wales) Regulations 2010; the Sunbeds (Regulation) Act 2010 (c.20) and regulations made under it; and Part 1 of the Housing Act 2004 (c.34), under which local authorities assess the condition of residential housing in their areas and enforce housing standards.

Article 2(3) also removes from Schedule 3 to the Act a reference to Part 5 of the Housing Act 2004, which has been repealed.

(a) 2004 c.34.
(b) Part 1 of the Housing Act 2004 was amended by S.I. 2009/1307, Schedule 1, paragraphs 272 and 273.
Extending the Range of Regulations Covered by Primary Authority


DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

REGULATORY REFORM

The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2013

Made - - - - ***
Laid before Parliament ***
Coming into force - - 6th April 2013

The Secretary of State, in exercise of the powers conferred by section 28(6) of the Regulatory Enforcement and Sanctions Act 2008(a) and with the consent of the Welsh Ministers, makes the following Order.

Citation and commencement

1. This Order may be cited as the Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2013 and comes into force on 6th April 2013.

Amendments to the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009

2.—(1) The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009(b) is amended as follows.

(2) In paragraph (1) of article 2, after sub-paragraph (c) insert—

“(ca) the making of a prohibition order under section 20 or 21 of the Housing Act 2004(c);”.

(3) In that paragraph, after sub-paragraph (e) insert—

“(ea) the making of an emergency prohibition order under section 43 of the Housing Act 2004;”.

(4) In that paragraph, after sub-paragraph (f) insert—

“(fa) the service of an improvement notice under section 11 or 12 of the Housing Act 2004;”.

(5) In that paragraph, after sub-paragraph (j) insert—

“(ja) the service of a hazard awareness notice under section 28 or 29 of the Housing Act 2004;”.

(a) 2008 c.13.
(b) S.I. 2009/665.
(c) 2004 c.34.
Extending the Range of Regulations Covered by Primary Authority

(6) In that paragraph, after sub-paragraph (l) insert—

“(la) the imposition of a fixed monetary penalty under Schedule 2 to the Single Use Carrier Bags Charge (Wales) Regulations 2010(a) or the imposition of one or more discretionary requirements under Schedule 3 to those Regulations;”.

(7) In article 2(2)(b)(iii), after “the Gambling Act 2005”(b) insert “(except in relation to Part 4 of that Act)”.

(8) In article 3(b), after “or (e)” insert “or the making of an order referred to in article 2(1)(ea)”.

Name
Minister for Business and Enterprise

Date
Department for Business, Innovation and Skills

EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (S.I. 2009/665) (“the 2009 Order”), which was made under Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (c.13) (“the Act”).

Part 2 of the Act applies where a person (“the regulated person”) carries on an activity in the areas of two or more local authorities and each of those authorities has the same “relevant function” in relation to that activity. Part 2 enables one of the local authorities to be nominated by the Secretary of State as the “primary authority” for the exercise of that “relevant function” in relation to the regulated person. “Relevant function” is defined in section 24. It covers particular regulatory functions of local authorities, including statutory functions of giving guidance and functions relating to the enforcement of statutory restrictions or requirements affecting activities such as the provision of goods and services. Where a primary authority has been nominated, section 28 of the Act provides for the other local authorities to notify the primary authority when they propose to take “enforcement action” against the regulated person pursuant to the “relevant function”. Where the proposed action is inconsistent with advice or guidance previously given by the primary authority, the primary authority may direct the other local authorities not to take that action.

The 2009 Order, made under sections 28(6) and 29(1) of the Act, specifies action which is and is not to be regarded as “enforcement action” for these purposes. It also prescribes circumstances in which the notification procedure under section 28 does not apply. Article 2(1) to (6) of the present Order amends the 2009 Order by adding a number of statutory enforcement actions under the Housing Act 2004 (c.34) and the Single Use Carrier Bags Charge (Wales) Regulations 2010 (S.I. 2010/2880) to the list of actions which are to be regarded as “enforcement actions” for the purposes of Part 2 of the Act. This is connected to amendments made to Schedule 3 to the Act by the Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) Order 2013 (S.I. 2013/XXXX), which extend the coverage of Part 2 of the Act so that a primary authority may be nominated in relation to (for example) the enforcement of the requirements of this legislation as it affects businesses operating in the areas of more than one local authority.

(a) S.I. 2010/2880, amended by S.I. 2011/2184.
(b) 2005 c.19.
Article 2(7) of this Order amends article 2(2)(b)(iii) of the 2009 Order. That provision currently prevents any action listed in article 2(1) of the 2009 Order from being regarded as “enforcement action” for the purposes of Part 2 of the Act where it is taken by a local authority pursuant to or in connection with the exercise of any function under the Gambling Act 2005. The amendment to article 2(2)(b)(iii) has the effect that any such action taken by a local authority pursuant to or in connection with the exercise of functions under the Gambling Act 2005 in relation to Part 4 of that Act will now constitute “enforcement action” for these purposes. Part 4 of the Gambling Act 2005 contains offences for the protection of children and young persons.

Article 2(8) of this Order amends article 3 of the 2009 Order so that the requirements of section 28(1) to (4) of the Act for a local authority to (among other things) notify the primary authority before taking enforcement action and not to take the proposed action if so directed by the primary authority do not apply to the making of emergency prohibition orders under Part 1 of the Housing Act 2004.
Annex D – List of individuals/organisations consulted

Heads of Regulatory Services (covering Environmental Health and Trading Standards) for all local authorities in the UK.
Animal Health and Veterinary Laboratories Agency
Asda
Association of British Bookmakers
Association of Chief Police Officers
Association of Convenience Stores
Association of Licensed Multiple Retailers
Association of Port Health Authorities
Association of Residential Letting Agents
Assured Food Standards
B&Q
Betfred
Bingo Association
Bond Pearce
British Amusement Catering Trade Association
British Association of Leisure Parks, Piers and Attractions
British Association of Removers
British Beer and Pub Association
British Brands Group
British Chamber of Commerce
British Frozen Food Federation
British Holiday and Home Parks Association
British Hospitality Association
British Independent Retail Association
British Jewellery & Giftware Federation
British Marine Federation
British Meat Processors Association
British Medical Association
British Photodermatology Group
British Retail Consortium
British Soft Drinks Association
British Toy and Hobby Association
Business in Sport & Leisure
Cancer Research UK
CARE
Casino Operators Association
CBI
Central and North West London National Problem Gambling Clinic
Chartered Institute of Environmental Health
Chief Fire Officers Association
Chisholm Bookmakers Ltd
Church of England
Committee on Medical Aspects of Radiation in the Environment
Consol Suncentre
Construction Products Association
Co-op
Co-ops UK
Council for Responsible Nutrition
Dairy UK
DWF, Business Law Firm
Easy Tan Ltd
EEF: The Manufacturers Association
Environment Agency
Evangelical Alliance
Federation of Food & Drink
Federation of Master Builders
Federation of Private Business
Federation of Private Residents' Association
Federation of Small Businesses
Food & Drink Federation
Friends of the Earth
GalaCoral
GamAnon
Gamblers Anonymous
Gambling Commission
Gambling Therapy
Gamcare
GREaT Foundation
Green Alliance
Greenpeace
Health Protection Agency
Higgs & Co Solicitors
Higher Association Europe
Home Retail Group
Hornby
Independent Bookmakers Association
Independent Operators Association
Institute of Directors
Institute of Licensing
John Lewis Partnership
Ladbrokes
Leatherhead Food
Leicester and Leicestershire Enterprise Partnership
Local Authority Casino Network
Local Government Association
Moto
Muller (Dairy UK)
National Casino Industry Forum
National Caterers Association
National Farmers' Retail & Markets Association
National Farmers Union
National Federation of Fish Friers
National Federation of Meat & Food Traders
National Federation of Retail Newsagents
National Landlords Association
National Trading Standards Board
One Stop
Petcare
Proprietary Association of Great Britain
Provisions Trade Federation
Quakers Action on Alcohol and Drugs
Rank Group
Remote Gambling Association
Responsible Gambling Trust
Road Haulage Association
Rural Shops Alliance
Safety Assessment Federation Ltd
Seafish
Shelter
Skcin
Teenage Cancer Trust
Tenovus
Tesco
The Giftware Association
The Sunbed Association
The Sunbed Studio
Trading Standards Institute
UK Weighing Machine Federation
Welsh Tenants Association
William Hill Organisation
Wilkinsons
Wine & Spirits Trade Association
Working Men's Club and Institute Union
Wragge & Co
Annex E. About this consultation

Consultation Principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.


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.

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:

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BIS Consultation Coordinator,
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London
SW1H 0ET

Telephone Sameera on 020 7215 2888
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