

Committee: **Executive Committee**

Date of meeting: **14<sup>th</sup> October 2020**

Report Subject: **Public Protection – Primary Authority Scheme**

Portfolio Holder: **Councillor J Wilkins, Executive Member for Environment**

Report Submitted by: **David Thompson – Service Manager, Public Protection  
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Reporting Pathway								
Directorate Management Team	Corporate Leadership Team	Portfolio Holder / Chair	Audit Committee	Democratic Services Committee	Scrutiny Committee	Executive Committee	Council	Other (please state)
22 July 20	23 July 20	29.09.20			N/A	14 Oct 20		

## 1. Purpose of the Report

- 1.1 This report advises Members of the Regulatory Enforcement and Sanctions Act (RES Act), which impacts on the administration of the Council's enforcement functions in respect of Environmental Health, Licensing and Trading Standards.
- 1.2 The report proposes the adoption of a policy where suitable businesses trading across local authority boundaries, start-up businesses or a single business can be given the opportunity to enter a legal Primary Authority Relationship with Blaenau Gwent Council in respect of regulatory functions.
- 1.3 Members are asked to approve the adoption of Primary Authority partnerships in principle and an associated local policy for Primary Authority.

## 2. Scope and Background

- 2.1 All businesses have a responsibility to comply with regulation and the majority take their duties seriously, however navigating legislation and finding the appropriate systems to comply with regulation can sometimes inhibit growth.
- 2.2 Consistent and integrated application of regulation, together with reliable and business friendly advice reduces costs for business whilst giving the assurance of a level playing field with competitors.
- 2.3 Businesses can be fearful of regulation and the powers officers hold in relation to enforcement. Business perception of regulators is changing to embrace the positive interaction regulators can have on business compliance and reducing the risk of falling foul of the law, the public protection risk, reputational damage and cost to the business. Primary Authority is an alternative means for businesses to comply with regulatory requirements.

- 2.4 Primary Authority is a means for businesses to receive assured and tailored advice on meeting statutory regulatory requirements including Environmental Health, Trading Standards and Licensing through a single point of contact. This ensures start-ups get it right from the outset and enables all businesses to invest with confidence in products, practices and procedures, knowing that the resources they devote to compliance are well spent.  
Building on the success of the scheme the eligibility criteria for Primary Authority was expanded and from 1 October 2017 all businesses can now benefit from Primary Authority.
- 2.5 In January 2018 the new national oversight body Office for Product Safety and Standards (OPSS) was launched by Government and tasked with identifying consumer risks and managing responses to large-scale product recalls and repairs. The new body enables the UK to meet the evolving challenges of product safety by responding to expanding international trade, the growth in online shopping and the increasing rate of product innovation. OPSS is a team within the Department for Business, Energy and Industrial Strategy (BEIS) who exercise the statutory responsibility for management and administration of the Primary Authority scheme on behalf of the Secretary of State.
- 2.6 There are now over 100,000+ businesses and over 200 Local Authority and Fire and Rescue Services in the UK in Primary Authority partnerships which is the Governments preferred route to business support in regulation.
- 2.7 Primary Authority enables a business to form a legally recognised partnership with one local authority (the 'primary authority') to get assured advice about how they can comply most efficiently with regulation. This advice, known as Primary Authority Advice, must then be considered by other local authorities when dealing with that business e.g. when carrying out inspections or addressing non-compliance. Primary Authority ensures consistent interpretation of regulations, regardless of where stores, factories or offices are based or products are sold, thus:
- reducing the costs of complying with regulations
  - reducing the risk of a major breach of compliance
  - reducing the costs associated with failing to comply
- 2.8 Historically, Local Authority regulatory services operated voluntary 'Home' and 'Lead' Authority schemes which aim to address this issue. This approach worked well and was effective for many years. Generally, the Local Authority where the businesses head office was based became a contact point for other authorities so that regulatory issues that apply across the business can be addressed centrally.
- 2.9 Whilst the majority of businesses have been content with the voluntary arrangements, there was a need for strengthening and improving consistency in business support through regulation. Experience has shown that fewer Local Authorities may be prepared to act as Home or Lead Authorities without being able to recover costs for their time.

- 2.10 Through Primary Authority, organisations can form a statutory partnership with a single local authority, which must then provide robust and reliable advice on compliance which other councils must take into account when carrying out inspections or dealing with non-compliance. The scheme proposes that:
- Formal partnerships are made between businesses/trade associations/charities and a local authority and for that local authority to act as a Primary Authority and provide advice and guidance on the legislation covered by the partnership.
  - Where a local authority other than the relevant Primary Authority (described as an “enforcing authority”) proposes to take enforcement action against an organisation with a Primary Authority, the enforcing authority must consult the relevant Primary Authority first.
  - The Primary Authority will then have the right to direct the enforcing authority not to take the proposed enforcement action if they believe that it is inconsistent with advice or guidance that they had previously given.
- 2.11 Where a proposed enforcement action has been referred to a Primary Authority and the parties involved cannot reach an agreement as to the action that should be taken, the enforcing authority, the Primary Authority or the organisation involved can refer the action to OPSS for determination. The purpose of this determination process is to examine whether the Primary Authority’s previous advice was correct, and the proposed enforcement action is inconsistent with that advice
- 2.12 The matter is proposed at this time as a result of a request from a business to enter into a Primary Authority relationship with the Authority’s Trading Standards Service. The request pre-dates the onset of the COVID 19 pandemic and the business remains interested to further this, if the Authority is supportive of Option1.

### 3. **Options for Recommendation**

#### **Option 1 (Preferred Option)**

- 3.1 That Members adopt the Draft Policy in **Appendix 1** and delegate authority to the Director of Regeneration & Community Services, to enter Primary Authority relationships on behalf of Blaenau Gwent County Borough Council for the purpose of the Regulatory Enforcement and Sanctions Act 2008 (RES Act).
- 3.2 That the Primary Authority scheme is offered to appropriate businesses on a cost recovery basis for the Local Authority as detailed in the Regulatory Enforcement and Sanctions Act.
- 3.4 Adoption of the policy will help to ensure legal compliance, embrace the principles of better regulation and support local businesses. Adoption of the policy will contribute to the Council’s aims to develop a vibrant economy in Blaenau Gwent where businesses of all sizes can access support to meet their regulatory requirements and enhance business growth and the associated benefits to our residents and communities.

- 3.5 Adoption of Option 1 does not compel the service to enter any Primary Authority partnerships but merely permits such an agreement, if deemed appropriate in line with the Draft Policy shown in Appendix 1.

## **Option 2**

- 3.6 That the Primary Authority Scheme is not approved at this time and the Authority continues to offer businesses informal regulatory support where possible and appropriate, noting that this would be without “assured advice” and without an ability to recover costs for providing the regulatory support given.

## **4.0 Implications Against Each Option**

### *Impact on Budget (short and long term impact)*

#### ***Option 1***

- 4.1 The Regulatory Enforcement and Sanctions Act (as amended) (section 31) provides that a Local Authority may recover its reasonable costs for acting as a Primary Authority. This will enable the Council to generate non-traditional funding for the authority and contribute to the Council priorities for developing a vibrant economy.
- 4.2 Regulatory burdens will be reduced if the Council embraces the Primary Authority Scheme. The requirement to consult the Primary Authority prevents unwarranted enforcement actions. Where an inspection plan is in place unnecessary checks and tests are avoided whilst undertaking intelligence/risk based local inspections.
- 4.3 Where businesses require a higher level of support and assistance, the Council will enter into formal agreement with the relevant business to make a charge for such services. This charge, which will be ratified annually by the Council as part of its fees & charges review process, will be set based on official guidance and will reflect the extra level of support and assistance given to Primary Authority businesses.
- 4.4 ***Option 2 offers a continuation of current services does not present any impact upon the budget.***

### ***Risk including Mitigating Actions***

- 5.1 Both Option 1 and Option 2 requires that any regulatory advice provided by the Local Authority is legally correct. Risks of provision of incorrect advice can leave the Council open to compensation claims and lead to businesses failing to properly comply with the law.

## ***Legal***

- 6.1 As above, both Options requires that any regulatory advice provided by the Local Authority is legally correct and the risks of failure in this are outlined above.

6.2 Part 2 of the Regulatory Enforcement and Sanctions Act 2008 places a statutory duty on a Council to consult a “primary authority” before taking any local enforcement action against a business with a registered agreement with that “Primary Authority”.

6.3 The Council would be in breach of a statutory duty if it failed to comply with the statutory requirements in respect of notifications or determinations under Part 2 of The Act. Option 1 presents an opportunity to deliver direct support to businesses. Option 2 does not change the current situation of providing support where possible at no cost to businesses without the legal standing of the advice being “assured”.

## 7.0 Human Resources

7.1 There are no Human Resource implications of either option at this time. If Option 1 is adopted, Primary Authority arrangements would only be offered to businesses in a selective manner which is deliverable by the Authority, in accordance with the draft Policy attached as **Appendix 1**. Recharging such businesses for this service may offer opportunities to back fill posts covering Officer time devoted to it, should recovered cost levels be sufficient to do so.

## 8.0 **Supporting Evidence**

### 8.1 Performance Information and Data

There is no relevant performance data currently for Blaenau Gwent in relation to Primary Authority Partnerships as none exist.

### 8.2 Expected outcome for the public

Option 1 would support business compliance with regulatory legislation in a way which is more efficient and recovers the costs of businesses advice work.

Option 2 would continue to support businesses without an ability to provide assured advice or recover such associated costs for the Authority.

### 8.3 Involvement (consultation, engagement, participation)

The Primary Authority scheme has been developed by OPSS in close consultation with business, taking into account their needs. Primary Authority partnerships would require engagement with the businesses in question and consultation with them prior to setting up formal Primary Authority partnership arrangements.

### 8.4 Thinking for the Long term (forward planning)

The preferred Option allows the Authority to consider setting up more efficient and cost recoverable support arrangements for the longer term.

### 8.5 Preventative focus

The Primary Authority arrangements proposed would help to prevent business non-compliance with the law where formal partnerships are established and would prevent unnecessary investigations and inspections upon the businesses.

### 8.6 Collaboration / partnership working

The preferred Option 1 sets up formal partnerships with businesses in a more collaborative approach to regulatory compliance

### 8.7 Integration(across service areas)

Primary Authority Partnerships can be established to cover a number of regulatory functions, integrating teams in support of that business.

### 8.8 EgIA(screening and identifying if full impact assessment is needed)

Any actions arising from the promotion of this scheme to businesses will be underpinned by Council's Public Protection Enforcement Policy, which provides a clear, transparent approach to ensure that there is no discrimination in the Council's actions and that everyone is treated fairly by the Council's officers within the legal processes.

## 9. **Monitoring Arrangements**

9.1 No monitoring requirements at this stage.

## 10. **Background Documents /Electronic Links**

**APPENDIX 1** - Draft Primary Authority Policy to be adopted if **Option 1** is approved.

The following background papers are included for reference.

Primary authority guidance - <https://www.gov.uk/guidance/local-regulation-primary-authority>

Regulatory Enforcement and Sanctions Act - <https://www.legislation.gov.uk/ukpga/2008/13/contents>

Industrial Strategy: building a Britain fit for the future - <https://www.gov.uk/government/publications/industrial-strategy-building-a-britain-fit-for-the-future>

Blaenau Gwent Council Enforcement Policy - [https://www.blaenau-gwent.gov.uk/fileadmin/documents/Resident/Environmental Health/2018/Enforcement Policy - Final Jan 18.pdf](https://www.blaenau-gwent.gov.uk/fileadmin/documents/Resident/Environmental_Health/2018/Enforcement_Policy_-_Final_Jan_18.pdf)