

NORTH LINCOLNSHIRE COUNCIL

**HIGHWAYS & NEIGHBOURHOODS
CABINET MEMBER**

PRIMARY AUTHORITY SCHEME

1. OBJECT AND KEY POINTS IN THIS 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, Trading Standards and Licensing matters.
- 1.2 The key points of this report are:
 - The existing arrangements in place for dealing with Home Authority Businesses.
 - The role of the Local Better Regulation Office (LBRO).
 - The reasons for introducing the Primary Authority principle.

2. BACKGROUND INFORMATION

- 2.1 In May 2007 the Government set up the Local Better Regulation Office (LBRO). The role of LBRO is to improve local authority enforcement of environmental health, trading standards, fire safety and licensing regulations. Its aim is to reduce burdens on businesses that comply with the law while targeting those who flout it.
- 2.2 Businesses that operate across more than one site can be subject to regulation and enforcement action by multiple local authorities. As a result, LBRO has found that on occasions these organisations may find themselves subject to regulatory enforcement using different approaches in different locations.
- 2.3 Currently, there are voluntary 'Home' and 'Lead' Authority schemes which aim to address this issue. Generally, the Local Authority where the businesses head office is based will become a contact point for other authorities so that regulatory issues that apply across the business can be addressed. For example the company would agree with the home authority that their policy in relation to food standards requirements complied with the legislation. This information would be confirmed to any other authority which felt it had a problem with any of the company's products

- 2.4 Whilst the majority of businesses have been content with the voluntary arrangements some others, particular national retailers, have not and so pressed for the introduction of a statutory ‘Primary Authority’ scheme, which is specifically designed to build on the successes of the current arrangements whilst addressing deficiencies. The RES Act provides for the introduction of this statutory scheme.
- 2.5 For the first time companies gain the legal right to 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 and a local authority 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.
 - 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 LBRO 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.
- 2.6 Regulatory Burdens will be reduced if North Lincolnshire Council embraces the Primary Authority Concept. 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. The Act provides that a Local Authority may recover its reasonable costs for acting as a Primary Authority.
- 2.7 The RES Act states in section 31 that ‘the primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated person. The approach that must be taken by local authorities in recovering costs is set out in treasury guidance.

- 2.8 The Council already acts as Home Authority for many of the major suppliers/manufacturers based in North Lincolnshire. These businesses already pay business rates to the council but, importantly, have embraced advice and adopted good practice. It is therefore proposed not to charge companies at the initial stages for a basic level of support, subject to a review of costs after one year of signing the agreement.
- 2.9 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. Details of these charges are set out in Section 10.2 of this report.

3. OPTIONS FOR CONSIDERATION

- 3.1 Option 1
The Council adopts the Primary Authority scheme as defined in the Regulatory Enforcement and Sanctions Act 2008
- 3.2 Option 2
The Council continues with the existing Home Authority Scheme

4. ANALYSIS OF OPTIONS

- 4.1 Option 1
This provides a clear means by which partnership working between North Lincolnshire Council and members of the business community will benefit both parties. It will assist local businesses by ensuring that regulatory advice issued by the council must be accepted throughout the UK and it will provide a means whereby the council is able to recover reasonable expenses incurred in providing that advice.
- 4.2 Option 2
Would mean no change to existing arrangements. It may mean that other authorities could in fact become the primary authority for some of our existing Home Authority premises and thus deprive the council of income and influence.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Finance
Regulatory Burdens will be reduced if North Lincolnshire Council embraces the Primary Authority Concept. 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.

The Act provides that a Local Authority may recover its reasonable costs for acting as a Primary Authority.

The RES Act states in section 31 that ‘the primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated person’. The approach that must be taken by local authorities in recovering costs is set out in treasury guidance.

5.2 Staffing

This can be implemented using existing staffing resources.

5.3 Property

No Implications.

5.4 IT

The existing Civica APP application can handle any changes required.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory

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.

6.2 Diversity

Any actions arising from the promotion of this scheme to businesses will be underpinned by the Council's 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. Also taken into account will be the special needs of minority groups where English may not be the first language.

6.3 Crime and Disorder Act

There are no implications under this Act.

7. OUTCOMES OF CONSULTATION

7.1 LBRO has been consulted on this particular policy. The Primary Authority scheme has been developed by LBRO in close consultation with business, taking into account their needs. Before we formally implement the Primary Authority scheme in 2012 we will endeavour to closely consult our business community to ensure the adoption of the scheme meets our respective needs.

7.2 The Licensing Manager and the Food and Safety Team Manager have been consulted over this report and have no concerns regarding the proposed actions.

8. RECOMMENDATIONS

- 8.1 That the Cabinet Member delegates authority to the Head of Trading Standards to enter into Primary Authority relationships on behalf of the Council for the purpose of the Regulatory Enforcement and Sanctions Act 2008 (RES Act).
- 8.2 That the Primary Authority scheme is offered to appropriate businesses based on an arrangement of an initial setup fee, up to 10 hours support with no additional charge per annum and any additional activities and support are provided at a chargeable rate in line with the LACORS Trading Standards Officer rate (currently £42 an hour) for additional time, and that agreements are negotiated as appropriate on that basis.

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Background Papers used in the preparation of this report: Nil