

Transport and Environment Committee

10.00am, Tuesday, 26 August 2014

Trading Standards Primary Authority Partnership Arrangements

Item number	7.13
Report number	
Executive/routine	
Wards	

Executive summary

Trading Standards provide advice to businesses on how they should comply with trading standards and consumer protection legislation.

Primary Authority is a statutory scheme that allows eligible businesses to form legally recognised partnerships with a Trading Standards Service. Such arrangements allow businesses to demonstrate commitment to working with regulators to improve compliance with regulation.

The Primary Authority scheme is administered by The Better Regulation Delivery Office (BRDO) which is an independent unit within the UK Government's Department for Business, Innovation and Skills.

Primary Authority Partnership arrangements will allow the Edinburgh Trading Standards Service (ETSS) to offer 'assured' advice to businesses and trade organisations as to compliance with specified aspects of trading standards legislation. Advice given has legal status and provided it was followed would normally prevent another local authority raising legal proceedings on any such matter. Traditionally the cost of providing business advice is met from the general council budget. The cost for providing the service will be recovered as a specific fee from participating businesses.

Links

Coalition pledges	P28
Council outcomes	CO26
Single Outcome Agreement	SO1

Trading Standards Primary Authority Partnership Arrangements

Recommendations

It is recommended that the Committee:

- 1.1 notes that Edinburgh Trading Standards Service will set up suitable Primary Authority arrangements with businesses and trade organisations that are either based in Edinburgh or operate within Edinburgh;
- 1.2 agrees that this facility be promoted within Edinburgh and qualifying businesses be invited to negotiate appropriate arrangements; and
- 1.3 agrees that the businesses and trade organisations are charged on a cost recovery basis for the primary authority services supplied through the partnership.

Background

- 2.1 The Regulatory Enforcement and Sanctions Act 2008, as amended, establishes Primary Authority as a statutory scheme in which a business can choose to form a partnership with a local authority. This will affect the way in which they are regulated by all local authorities.
- 2.2 When the scheme was introduced in 2009 participation was limited to businesses regulated by more than one local authority. In September 2013 BRDO amended the Primary Authority Statutory Guidance to extend participation to include trade associations and franchisors that provide members and franchisees respectively with advice on compliance. It applies UK wide.
- 2.3 Businesses trading in more than one local authority area have sometimes raised concerns that varying interpretations of the law have been given by different authorities. Primary Authority Partnership arrangements are a way of offering compliance advice and legal interpretations that can be relied on by the business. Businesses following advice provided by the primary authority will then not be required to operate in varying ways by different local authorities.

- 3.1 The primary authority definitively informs the business as to their legal obligations and provides interpretation of applicable legislation. Such arrangements allow guidance to be given with regards to compliance systems and enable the Primary Authority to monitor the effective implementation of controls.
- 3.3 A business may have a direct partnership with its primary authority, or may be one of a group of businesses that has their partnerships co-ordinated by a third party, such as a trade association or franchisor.
- 3.4 A Primary Authority is able to produce an inspection plan, as a means of improving the targeting and focus of local checks on businesses and co-ordinate activity across the operations of a multi-site business, or across a group of businesses. All inspection plans are included in the Primary Authority database.
- 3.5 An inspection plan can address proactive, planned or programmed regulatory interventions that are within the scope of a partnership including;
- Inspections
 - Test purchases
 - Sampling visits
 - Other checks on compliance; and
 - Advisory visits

When undertaking proactive visits to a business the enforcing authority is required to follow inspection plans that are in place.

- 3.6 Advantages of Primary Authority arrangements are
- Advice to the business is 'assured' i.e. once implemented, the business can have confidence that it is compliant and that another regulator cannot require it to comply in a different way.
 - Enables collation of local intelligence and co-ordination of enforcement responses.
 - The Primary Authority is notified of all enforcement actions, and is under an obligation to respond to proposed action within five working days. The Primary Authority is able to direct against proposed action in certain circumstances.
 - The liability of a Primary Authority is legally limited by the terms of the Primary Authority Terms and Conditions.
 - Cost recovery allows local authority capacity to be supplemented to meet the needs of partnerships.

- 3.7 Primary Authority Partnerships would assist the Edinburgh Trading Standards Service by;
- a) allowing services to be improved and drive up standards of local companies; and
 - b) allowing full cost recovery.
- 3.8 Based on current expressions of interest four businesses may wish to enter into Primary Authority arrangements in the first year. Future uptake will depend upon the marketing and promotion of the scheme. It should be noted that there are currently only two existing Primary Authority Partnerships in Scotland, both with Glasgow Trading Standards Service.

Measures of success

- 4.1 Partnership working within Primary Authority arrangements resulting in increased business compliance with trading standards legislative requirements.
- 4.2 Improve standards and increase consumer confidence in Edinburgh businesses.

Financial impact

- 5.1 All Primary Authority services will be provided on a cost recovery basis but the exact level of fees are still to be identified. This will allow the Council to recover these costs for the first time as opposed to funding the cost from the general revenue account.

Risk, policy, compliance and governance impact

- 6.1 The main risk is that businesses may withdraw from the partnership arrangements resulting in a reduction of income. Edinburgh business could elect to seek this service from other local authorities if the Council does not provide Primary Authority advice.
- 6.2 Advice given under a Primary Authority arrangement would be covered by the Council's Professional Indemnity policy. If the annual fee income is greater than £200,000 the policy requires that the insurers be notified.
- 6.3 Policy – The recommendations do not impact on any existing policy of the Council.
- 6.4 Health & Safety, Governance, Compliance, Regulatory – there are no identified implications.

Equalities impact

- 7.1 The contents, analysis and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.2 The contents, analysis or recommendations described in the report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe upon them.

Sustainability impact

- 8.1 The need to build resilience to climate change impacts is not relevant to the proposals in this report because the proposals are neither positively nor negatively affected by climate change. The issues identified will have no impact as relating to the Climate Change (Scotland) Act 2009.
- 8.2 Social justice is not considered to impact on the proposals in this report because the proposals do not change social conditions.

Consultation and engagement

- 9.1 Initial consultation and engagement has been undertaken between ETSS and two companies based in Edinburgh who operate UK wide. Also initial consultation has been undertaken with two trade organisations based in Edinburgh who are responsible for members throughout Scotland.
- 9.2 Further in-depth consultation will be required with the businesses and trade organisations if the recommendations are approved.
- 9.3 Engagement with other businesses, either based in or operating within Edinburgh, may be necessary in the future.

Background reading / external references

N/A

John Bury

Acting Director of Services for Communities

Contact: Susan Mooney

E-mail: susan.mooney@edinburgh.gov.uk | Tel: 0131 529 7587

Contact: Colin Baxter

E-mail: colin.baxter@edinburgh.gov.uk | Tel: 0131 469 5440

Links

Coalition pledges	P28 - Further strengthen our links with the business community by developing and implementing strategies to promote and protect the economic well being of the city
Council outcomes	CO26 - The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives
Single Outcome Agreement	SO1 - Edinburgh's Economy Delivers increased investment, jobs and opportunities for all
Appendices	n/a