

Perspectives on Primary Authority

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Background

The Primary Authority Partnership scheme was introduced in 2009 to ensure businesses that trade across local authority boundaries receive consistent, tailored and assured advice on environmental health, trading standards and licensing requirements through a statutory partnership with a local authority. That local authority, the primary authority, provides assured advice which other regulators must follow.¹ Fire safety was added to the scheme in 2014.

Prior to the introduction of Primary Authority, businesses operating across local authority boundaries faced inconsistent and uncoordinated advice on regulation and compliance. The scheme was designed to improve support provided to businesses, boost confidence and ensure the delivery of effective regulation.

There are two types of Primary Authority Partnership: A business can form its own direct partnership where it receives tailored and assured Primary Authority Advice. Alternatively, a business can belong to a trade association (or other type of group) to benefit from a Coordinated Primary Authority Partnership. In these cases, advice is still issued by the primary authority, but via a trade association or equivalent, and is tailored to the general needs of its members. In the UK, there are currently 2,477 direct partnerships and 139 co-ordinated partnerships, covering 99,854 businesses.²

Primary Authority Advice must be considered by enforcing authorities when carrying out interventions and addressing non-compliance. There is also a requirement for enforcing authorities to consult the relevant primary authority when formal enforcement action is proposed. If the primary authority deems the enforcement action to be inconsistent with their advice, they can 'block' the enforcement action.

Primary authorities can also opt to publish inspection plans, setting out national inspection priorities for a business. These inspection plans aim to guide enforcing authorities through their inspection process and other checks, such as sampling visits and test purchases.

In 2017, criteria for the scheme were expanded to allow all businesses, including those operating in only one local authority area and pre-start-ups to form a Primary Authority Partnership. This was accompanied by a number of other changes to simplify the administrative arrangements. The Office for Product Safety and Standards (OPSS) suggested that these changes would enable 250,000 businesses to benefit from Primary Authority by 2020.

As part of an evaluation of the Primary Authority Scheme in 2013, the Better Regulation Delivery Office (BRDO) found that businesses were deriving a wide range of benefits from Primary Authority, including a reduction in time spent on regulatory activities, improved relationships with regulators and improved consistency in regulatory advice and guidance.³ The scheme was also found to reduce the need for formal enforcement action as deficiencies could be resolved through other means, short of serving a notice. While the evaluation found positive impacts on businesses, compliance and reductions in enforcement activity, it did not specifically investigate impacts on public protection.

However, public protection is the primary reason why most of the regulation covered by the scheme exists in the first place. While improved consistency and efficiency for businesses is welcome, it is important that Primary Authority is also evaluated in terms of its impact on public and worker protection.

¹ [Regulatory Enforcement And Sanctions Act 2008: Consultation on the Primary Authority Scheme](#), Department for Business, Enterprise and Regulatory Reform, 2008.

² Figures are for October 2019.

³ [Interim Evaluation of Primary Authority Final Report](#), Department for Business Innovation and Skills: BRDO, 2013.

Reviewing Primary Authority

Environmental Health Practitioners (EHPs) often have first-hand experience of Primary Authority and can provide valuable insight into how it is operating on the ground, whether that is through working for an enforcing authority, a primary authority providing advice to a business or as an employee or consultant to a business in a partnership.

To investigate this further, CIEH carried out a survey, exploring Primary Authority through the lens of EHPs. This report examines their perceptions on how well the scheme is working for local authorities, businesses and members of the public. CIEH remains impartial and hopes to work with OPSS, local authorities and businesses to implement the recommendations of this report.



Key findings

Our survey revealed mixed views on Primary Authority among EHPs. Of 107 respondents to our survey, 34% agree that Primary Authority schemes are generally working well to protect the public, while 46% disagree and 20% cannot say.

Respondents believe Primary Authority provides several significant benefits for businesses. Notably, they say the scheme ensures businesses operating across local authority boundaries are regulated more consistently and that it provides them with greater clarity and confidence that they are complying with the law. Rather than addressing problems reactively through local enforcement, primary authorities can help businesses to prevent non-compliance from occurring in the first place. Primary authorities can also help businesses identify priority areas for improvement and adopt a more strategic approach to improving practices.

Through their partnerships with local authorities, respondents believe that businesses can gain a better understanding of regulatory issues from a regulator's perspective. Those with experience working in a primary authority say this collaborative approach to regulation gives them greater influence over businesses than they might have otherwise.

While these are aspects of Primary Authority which clearly work well, our survey identified some areas of concern. Respondents told us the scope and quality of partnerships is highly varied and many primary authorities have not published any assured advice, inspection plans, guidance or details of their partnerships.

There are also concerns around the financial model underpinning the scheme. Among respondents, there are some fears that the scheme could create a risk of regulatory capture because businesses pay local authorities directly for their services. There is

also a belief that financial incentives or imperatives attached to the scheme may push some local authorities to take on too many partnerships or to form partnerships with businesses in regulatory areas where they do not have sufficient expertise. These perceptions have the potential to undermine regulators' trust in the scheme.

Primary authority officers report that the costs of running the schemes are rarely fully recovered. The unrecovered time and resources combined with reductions to local authority budgets mean that Primary Authority is impacting on their authorities' ability to carry out other statutory functions. Some respondents say local authorities bear all the financial risk of Primary Authority, creating pressure to maintain existing partnerships or find new ones.

Many respondents to our survey report serious issues with the Primary Authority Register. The register lacks a central search function, making it very difficult for local authority officers to determine whether a business has a Primary Authority Partnership. Upgrades to the system have created new problems, and many local authority officers are choosing to communicate through other channels.

The impact of Primary Authority on enforcement is a contentious issue for EHPs. Some respondents say the scheme creates a barrier to enforcement, in that it generates significant additional administration and delays. There are also views that primary authorities should not have the power to block enforcement action, as it creates a perceived two-tier system between businesses which have formed partnerships and those which have not.

However, primary authority officers are clear that their power to block action helps them maintain good trusting relationships with their business partners, and, in cases where enforcement is obviously the right course of action, they would never seek to block it.

In October 2017, eligibility criteria for the Primary Authority scheme were expanded to allow businesses operating in only one local authority area and pre-

start-ups to form Primary Authority Partnerships.⁴ This expansion was accompanied by other measures, including a new requirement for primary authorities to cover all the regulatory functions that their local authority can offer. These changes were designed to simplify the administrative arrangements for the scheme and enable the successful expansion of Primary Authority to more businesses.

Our findings reveal some doubts as to whether businesses that only operate in one local authority area are really benefiting from the scheme. They do not have the same needs as businesses operating across local authority boundaries regarding consistency and pattern identification. However, our survey was carried out less than a year after the changes were introduced so it is difficult to assess the full impact.

Looking forward, we hope the findings of this report will help identify areas in which the scheme can be improved for all, particularly regarding public protection. Given that Primary Authority has expanded to include almost 100,000 businesses, it is important that the concerns we have uncovered are addressed.

Recommendations for the Office for Product Safety and Standards (OPSS)

- Make public and worker protection an explicit priority for Primary Authority and a key consideration for any future changes to the scheme.
- Provide a single point of contact for complaints about poor quality and ineffective partnerships and a commitment to investigate them.
- Publish guidance for primary authorities to ensure arrangements are in place to quality assure advice.
- Conduct regular audits against an appropriate quality standard to provide assurance that primary authorities have sufficient capacity and expertise to manage their partnerships effectively.
- Improve the Primary Authority Register to ensure it is fit for purpose, including the development of a more responsive search engine and increased administrator rights for local authorities to enable them to manage their accounts, network and share data.
- Provide easily-accessible, low-cost training for local authorities on Primary Authority enforcement procedures and clearer signposting to the Determination Process.
- Work with enforcement officers to better understand and address their concerns about the impact of Primary Authority on enforcement and set up more effective two-way communication with enforcing authorities to create greater trust in Primary Authority.
- Evaluate how well Primary Authority is working for businesses that only operate in one local authority area and other post-2017 changes to the scheme, including the requirement that primary authorities must offer the same level of service in new regulatory areas.

⁴ Primary Authority Changes 2017: Unlocking the Potential, BEIS: Regulatory Delivery, 2017.

Recommendations for primary authorities

- Publish partnership contact details and documentation at the earliest opportunity.
- Ensure appropriate charging mechanisms are in place for full cost-recovery so Primary Authority does not compromise other statutory duties.
- Share data, information and intelligence where possible to assist enforcing authorities.
- Ensure suitable arrangements are in place to provide resilience for partnerships, for example by appointing a minimum of two officers as registered contacts for every partnership.
- Ensure suitable arrangements are in place to safeguard against regulatory capture, such as by separating the responsibilities for giving advice and making decisions on enforcement.

Recommendations for businesses

- Commit to working with Primary Authority Partners in a constructive and collaborative way and to sharing data and information.
- Take steps to verify that Primary Authority Advice is being applied consistently across the whole business.

Recommendations for enforcing authorities

- Report inaccurate or inadequate Primary Authority Advice and inspection plans to OPSS.
- Follow Primary Authority Advice and inspections plans where they are in place and commit to working with primary authorities in a collaborative and constructive way.
- Share data, information and intelligence where possible to assist primary authorities.

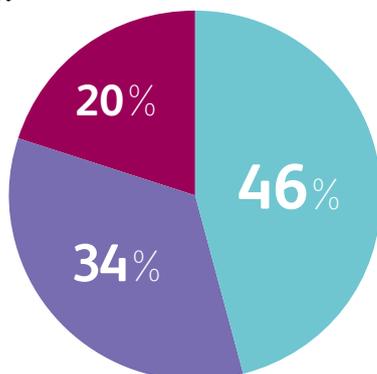
Detailed findings

Outcomes for public protection

The responses gathered in this report demonstrate that Primary Authority divides opinion among EHPs. Of the 107 respondents to this survey, 34% agree that Primary Authority schemes are generally working well to protect the public, 46% disagree and 20% cannot say.

A significant proportion of respondents to our survey are of the view that Primary Authority schemes are not working well in terms of public protection. This is a matter of concern, especially since most regulation within the scope of the scheme exists primarily to protect the public. We therefore recommend that OPSS makes public safety a more explicit consideration when expanding or changing the terms of Primary Authority in the future.

Do you feel PA schemes are generally working well at protecting the public?



■ Yes ■ No ■ Cannot say

Recommendation

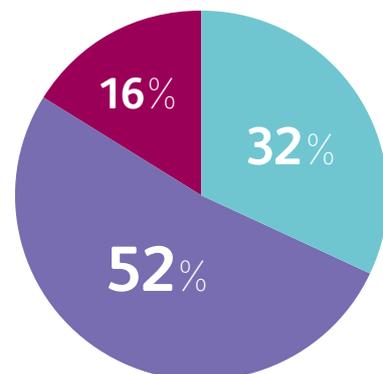
- OPSS to make public and worker protection an explicit priority for Primary Authority and a key consideration for any future changes to the scheme.

Views from primary authorities

While views are mixed, respondents to our survey who have experienced working in a primary authority are generally more positive about the scheme than those who have only encountered it through local enforcement. Of the 46 respondents in this category, 52% agree the schemes are generally working well at protecting the public, 32% disagree and 16% cannot say.

Primary authority officers tell us the scheme has improved levels of compliance which in turn has improved public protection outcomes. Rather than protection through enforcement, Primary Authority encourages a more collaborative approach, enabling

Do you feel PA schemes are generally working well at protecting the public? (PA only)



■ Yes ■ No ■ Cannot say

local authorities and businesses to work together to achieve compliance. Through improved relationships and communication, businesses gain a better understanding of regulatory issues from a regulator’s perspective. Rather than tackling problems retrospectively through enforcement, primary authority officers report the scheme helps prevent non-compliances from occurring.

Where a business operates across different local authorities, the scheme provides greater regulatory consistency, giving businesses greater confidence and reassurance. Primary authority officers say the scheme allows them to identify patterns and priorities for a business. Problems identified by enforcement officers at local sites or through a company’s own data can therefore be explored and addressed nationally across multiple premises.

“The principle of having one authority take responsibility for ensuring a business has appropriate procedures and to coordinate complaints about products provides consistency and enables a system of centralised control and trend analysis.”

However, there are concerns among primary authority officers who responded to our survey that businesses engaged with the scheme tend to already have high levels of compliance and robust systems and policies in place. If Primary Authority predominantly benefits businesses already following good practice, its scope for improving public protection may be limited.

“It is difficult to say if a company would operate differently if it was not in a Primary Authority Partnership. Those companies that seek out a Primary Authority Partnership usually have good standards of compliance and willingness to improve their business.”

The time and resources allocated to partnerships with already compliant businesses may mean there is less time for interventions which target those businesses with a history of non-compliance. If local authorities lose the capacity to carry out regular interventions at these higher-risk premises, public protection could be compromised.

“Our resources are stretched at the moment and Primary

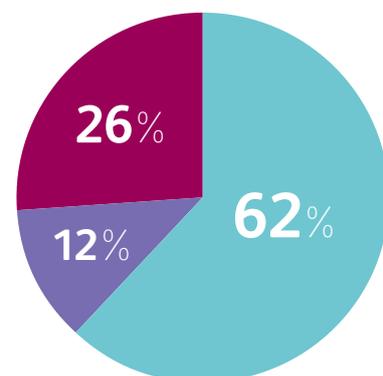
Authority is taking up too much of officers’ time which is affecting our statutory duties. I do not believe this is sustainable in the future and I believe we should be concentrating on our statutory duties and not wasting time on Primary Authority. Many of the partnerships are demanding and this is not sustainable for the future and is only reducing the food safety standards in our Borough with less of a frequency to inspections and less time to work with our businesses to improve food safety.”

Views from enforcement authorities

Respondents to our survey who have only experienced Primary Authority working in an enforcing authority are less convinced of its benefits for public protection. Of 53 respondents, only 12% agree the schemes are generally working well to protect the public, while 62% disagree and 26% cannot say.

Officers in enforcing authorities say that Primary Authority often inhibits their ability to carry out their

Do you feel PA schemes are generally working well at protecting the public? (Enforcement LA only)



■ Yes ■ No ■ Cannot say

public protection duties due to barriers and delays to enforcement action. Enforcement officers tell us the scheme introduces additional administration and notification procedures through the Primary Authority Register, which they see as unnecessary. More generally, they say the scheme gives too much power to primary authorities to override local inspection practices and decisions.

We found concerns among enforcement officers that Primary Authority potentially undermines the independence of regulators. They say that relationships between businesses and their partners can be too close and there are fears that the scheme may encourage local authorities to put financial concerns above other considerations.

“I do not believe that they offer any more protection to the public than regulation offered by local authorities without the presence of a primary authority. They protect the company and offer consistency to the company, but I do not believe that this offers any additional safe guards to protect the public.”

Views from the private sector

Respondents from the private sector are generally positive about the scheme. They tell us that having access to approved compliance documents and consistent advice raises standards and improves compliance. Through Primary Authority, businesses gain a “critical friend” to offer advice and review their policies and procedures.

However, there are also private sector reservations about the scheme. While 6 out of 10 private sector respondents to our survey agree the schemes are generally working well to protect the public, 3 disagree and 1 cannot say. There are concerns about enforcing authorities not being cooperative and inactive primary authorities devaluing the scheme.

Documentation and information sharing

Absence of documentation

Respondents to our survey are concerned about the large number of primary authorities that have not published advice, inspection plans or other supporting documents on the Primary Authority Register.

While it is not a requirement for primary authorities to produce an inspection plan, the Government recommends it is beneficial to do so if a business or group of businesses are subject to routine regulatory checks.⁵ However, enforcement officers tell us they rarely find inspection plans for the businesses they inspect.

It is worth noting that primary authorities tell us they would not have an appropriate level of knowledge about a business to create an inspection plan until they are at least one or two years into a partnership. This may at least partly explain why some primary authorities have not developed an inspection plan.

Perhaps more concerning is that some primary authorities fail to publish any information at all about their partnerships. Enforcement officers report that they often find partnerships on the register without any assured advice, inspection plans, contact details or even basic information. Tailored advice is a core part of what Primary Authority offers and without it, it is unclear what benefits a partnership is providing, especially from the perspective of enforcement officers.

“Many schemes have very little or no information on them for an inspecting officer to utilise. More information would be useful on the scope and whether inspection plans, or assured guidance are pending and in what time frame it will be available by.”

⁵ [Primary Authority: a guide for local authorities](#), Office for Product Safety and Standards, 2017.

Partnerships without supporting information or documents have little value from an enforcement perspective. Yet primary authorities which fail to provide information and documentation still retain their notification rights and the power to block enforcement action. Some respondents suggest that the only consequence of such partnerships is to create additional barriers to enforcement action.

Without a mechanism to hold inactive primary authorities to account, there is nothing to stop the proliferation of these “ghost” Primary Authority Partnerships. Respondents to this report suggest that primary authorities should have to meet more demanding minimum requirements, especially regarding documentation. More consistent provision of documentation might allow local enforcement officers to navigate the system more efficiently and effectively, as well as instilling greater trust in the system. Introducing a single point of contact through which local authority officers could report inactive or ineffective partnerships to be investigated may go some way towards ensuring that all primary authorities have more quality control and other authorities have a greater confidence in the scheme.

Recommendations

- OPSS to provide a single point of contact for complaints about poor quality and ineffective partnerships and a commitment to investigate them.
- Primary authorities to publish their partnership contact details and documentation at the earliest opportunity.
- Primary authorities to share data, information and intelligence where possible to assist enforcing authorities.

Quality of advice to business

Respondents tell us that the quality of advice, inspection plans, and other guidance produced by primary authorities is inconsistent. Some primary authorities have developed their own internal procedures to ensure advice has been properly audited and subject to rigorous and independent peer review. However, OPSS does not require primary authorities to carry out these checks, nor does it produce any advice or guidance on standards for such checks.

“Not all Primary Authority Partnerships are equal. Some are better resourced and have better checks and quality standards than others.”

We found concerns among respondents to our survey that OPSS does not conduct its own audits to check primary authorities are providing advice and services of a suitable quality. Conducting regular audits of primary authorities may give OPSS greater oversight of the scheme and may also help drive up standards.

Respondents also say they are concerned that qualification, experience and knowledge requirements for primary authority officers are insufficient. When a new partnership is formed, OPSS does ask for information about officer qualifications but if that officer leaves, there is no requirement for their replacement to submit new information and no guarantee that they have the same level of knowledge or expertise. However, statutory responsibility for ensuring that officers are suitably qualified lies with the primary authority. Ensuring suitable arrangements are in place to provide resilience for partnerships may go some way towards addressing this issue. For example, appointing a minimum of two officers as registered points of contact in a primary authority would ensure that knowledge and experience are not lost when people move around.

Recommendations

- OPSS to publish guidance for primary authorities to put suitable measures in place to ensure advice meets an appropriate quality standard.
- OPSS to conduct regular audits against an appropriate quality standard, to provide assurance that primary authorities have sufficient capacity and expertise to manage their partnerships effectively.
- Primary authorities to ensure suitable arrangements are in place to provide resilience for partnerships, for example by appointing a minimum of two officers as registered contacts for every partnership.
- Enforcing authorities to report inaccurate or inadequate Primary Authority Advice and inspection plans to OPSS.

Restrictive documentation

Respondents to our survey tell us that inspection plans developed by primary authorities can sometimes be too restrictive. If inspection plans are drawn up at a national level, it may be difficult to take local variation into account.

“Officer experience is that many inspection plans are not tailored in the way outlined above and are often too restrictive. An example of one inspection plan for Food Standards directed officers away from carrying out checks on substitution, alcohol strength and menu descriptions leaving little scope to do much else. However, locally the business subject to inspection may not be managed well and is subject to local factors where these areas may become an issue”

While some primary authorities have developed auditing systems or have access to data which gives them a better picture of what is happening at local sites, respondents tell us that primary authorities mainly interact with head office contacts. These contacts may well be very diligent and create systems and policies which comply with best practice. However, our respondents say that it cannot be assumed that

local implementation and management will always reflect this.

Primary authority officers report feeling frustrated when enforcing authorities do not follow or look for their inspection plans. Opportunities to identify patterns and address priority areas may be missed if enforcing authorities are reluctant to have regard to centrally issued inspection plans. Cooperation between primary authorities and local regulators is therefore essential for the scheme to be effective.

Introducing more rigorous audits and checks, as well as a more robust appeals system may facilitate greater cooperation and fewer disagreements between primary authorities and enforcing authorities if all parties feel confident that Primary Authority Advice has been subject to legitimate scrutiny.

Recommendations

- Enforcing authorities to follow Primary Authority Advice and inspections plans where they are in place and commit to working with primary authorities in a collaborative and constructive way.
- Businesses to take steps to verify that Primary Authority Advice is being applied consistently across the whole business.

Funding and resources

Local authorities are entitled to charge for Primary Authority services on a cost recovery basis. The terms and fees for partnerships are agreed on a case-by-case basis between businesses and local authorities.

Conflict of interest

Some respondents to our survey are concerned that the current funding system creates a potential conflict of interest. Given the increasing financial challenges facing local authorities, Primary Authority has become an increasingly important income stream. In many cases the scheme effectively pays for some or all of an officer's salary. Among our survey respondents, there are some fears that financial dependency could have potential implications for the independence of regulation. Alongside these concerns are fears that relationships between Primary Authority Partners are often too close, presenting a potential risk of regulatory capture.

"Some primary authorities appear to side with the regulated entity in the face of a clear case the entity is not compliant. I think it is very difficult for officers to avoid regulatory capture when funding comes from that entity."

Some primary authority officers argue that having close and trusting relationships with their business partners gives them greater influence and allows better access to their data and information, thus making the partnership more effective. The nature of these relationships is likely to vary and where businesses are keen to improve their practices and raise standards, having a close relationship with a partner may enhance public protection. Nevertheless, independent auditing and checks should be in place to ensure the scheme operates as intended.

Given the high level of concern among respondents to our survey, primary authorities should ensure that appropriate arrangements are in place to safeguard against the possibility of regulatory capture. For example, primary authorities could separate the responsibilities for providing advice to a business and making decisions on enforcement.

Recommendation

- Primary authorities to ensure suitable arrangements are in place to safeguard against regulatory capture, such as by separating the responsibilities for giving advice and making decisions on enforcement.

Financial pressure: limits to cost recovery

Respondents to our survey report concerns that some local authorities are taking on greater numbers of partnerships without the capacity to resource them properly. Establishing partnerships and developing assured advice and inspection plans is resource and time intensive. Yet local authorities under financial pressures may feel pressure to take on more partnerships than they can reasonably support.

"The scheme has failed as council resources have plummeted and also the lack of input from companies, so many primary authorities have little advice or inspection plans and so do not appear very active."

This is especially problematic where partnerships operate on a rolling basis rather than on fixed contracts, meaning local authorities cannot rely on the income generated. This may at least partly explain why we have heard so many cases of partnerships being agreed without them subsequently providing any assured advice or putting inspection plans in place.

Local authorities are entitled to charge businesses for all the costs reasonably incurred in providing Primary

Authority services. However, our respondents say full cost recovery is rarely achieved as partnerships can be demanding and developing quality assured advice and inspection plans can take up a significant portion of an officer's time.

"With council budgets being cut, funding of Primary Authority on a "cost recovery" basis is not going to be sustainable. I fear that companies like the one dealt with, want assured advice to cover the grey areas of legal compliance so that they can gain a competitive advantage. They fail to see that our primary role is to protect the public, not their reputation."

As demand for Primary Authority services increases, and other income streams dry up, there may be less time to carry out planned interventions. If delivering Primary Authority services becomes too resource and time-intensive, there is a risk the scheme will limit the capacity of officers to perform their statutory duties locally. Opportunities to identify and address non-compliant businesses that do not have a primary authority may be missed if local inspections do not take place.

"The emphasis local authorities have given to income generation has resulted in this work taking priority in some areas over enforcement work."

The success of Primary Authority relies on accurate and up to date information being provided by businesses and enforcing authorities. With perceived barriers to enforcement and the diminishing resources available to local authorities to carry out their day to day activities, we question whether there is sufficient information available to primary authorities to inform and amend advice, which may not be working well.

Recommendations

- Primary authorities to ensure appropriate charging mechanisms are in place for full cost-recovery so Primary Authority does not compromise other statutory duties.
- Enforcing authorities to share data, information and intelligence where possible to assist primary authorities.
- Businesses to commit to working with Primary Authority Partners in a constructive and collaborative way and to sharing data and information.

Primary Authority Register

The Primary Authority Register is an online system that contains information and details on every partnership in the scheme. Enforcement officers use the register to find out whether a local business has a Primary Authority Partnership and to access documentation, including assured advice and inspection plans. The register also provides a forum for communication between enforcement officers and primary authority officers.

Many respondents to our survey tell us the system has very poor usability. While there was an upgrade to the system in 2017, it failed to solve many of the usability issues and created new problems. The poor search facility means that it is difficult for local enforcement officers to find out whether a business in their area has a Primary Authority Partnership.

“The Primary Authority Register requires a complete overhaul to make it easier to identify primary authorities and respective documentation, contacts and inspection plans. The search facility is unintelligent and restrictive, and the export report production facility virtually non-existent.”

The system can be so unresponsive and unintuitive, that primary authority officers report they regularly receive emails and phone calls from local authority officers who are choosing to by-pass the register.

Primary authorities say they have trouble using the site to upload contact details and manage their accounts. Since the upgrade, primary authorities have lost their administrative rights and controls over their accounts and must now request updates through OPSS.

During site maintenance and upgrades, respondents report there were periods where they were unable to access the website for months.

“The website is difficult to negotiate and there is no consistency with the information uploaded.”

If OPSS intends to expand Primary Authority to cover greater numbers of businesses, we argue that it must first invest in creating the appropriate technological infrastructure to ensure it can function effectively.

Recommendation

- OPSS to improve the Primary Authority Register to ensure it is fit for purpose, including the development of a more responsive search engine and increased administrator rights for local authorities to enable them to manage their accounts, network and share data.

Enforcement

Primary Authority introduced a range of enforcement notification procedures and blocking powers. When an enforcement officer wishes to serve a notice on a local business with a Primary Authority Partnership, they must notify the primary authority via the Primary Authority Register. If after a notification and discussion period, the primary authority disagrees with the local officer's decision, the enforcement action may be blocked. This notification requirement applies in all cases except where urgent action is required in order to avoid a significant risk of harm to human health, the environment, or the financial interests of consumers.

Notification

Respondents to our survey are concerned the notification requirement compromises public protection. Delays mean that enforcement officers must often wait two weeks to take action against a non-compliant business. This creates a system in which local enforcement is applied inconsistently. Businesses with a Primary Authority Partnership are given two weeks before a notice is served, during which time they have the opportunity to demonstrate compliance, whereas other businesses do not have the benefit of this two-week grace period.

Enforcement officers also tell us the notification process generates significant additional work, making the enforcement process less efficient and more time consuming. While it may be true that Primary Authority generates savings and improves efficiency for businesses, the additional administrative burdens on regulators should be better acknowledged.

"If enforcement needs to be taken, you shouldn't have to go through a primary authority first. Our role is protecting the public and Primary Authority puts a barrier in front of this."

Power to block

Primary authorities are entitled to block enforcement action if it conflicts with Primary Authority Advice. Respondents to our survey say this power means some businesses view the scheme primarily as a mechanism through which to avoid enforcement action. Primary authority officers tell us that some businesses express little interest in their advice or the aim of public protection. Rather, certain businesses seem primarily concerned with meeting minimum requirements to avoid prosecution.

However, it is worth noting that many primary authority officers tell us they would not choose to partner with a business for whom avoiding enforcement is the main driver.

"We had a Primary Authority agreement where the company saw it as merely a means for us to stop them being prosecuted. They were not interested in our advice and simply ignored what we said in the end we had no option but to terminate the agreement."

Settling disputes

Where there is a disagreement between a primary authority and an enforcing authority over whether to pursue enforcement action against a business, the decision is referred to the Secretary of State, who has the power to determine the outcome. In one high-profile case where the enforcement authority refused to accept the outcome, an appeal rejected by the Secretary of State was won in the High Court.

Our survey revealed a lack of clarity and awareness around how disputes are settled, despite the existence of a published determination process. To increase transparency and trust in the system, OPSS should clearly signpost local authority officers to this process. Offering refresher training to local authorities could also

be a useful way to address knowledge gaps and increase trust in the scheme. It may also be worth conducting a review with enforcement officers to explore their concerns in an open and constructive way.

Recommendations

- OPSS to provide low-cost, easily-accessible training for local authorities on primary authority enforcement procedures and clearer signposting to the Determination Process.
- OPSS to conduct an evaluation with enforcement officers to better understand and address their concerns about the impact on enforcement and to set up more effective two-way communication with regulatory officers to create greater trust in Primary Authority.



Changes to the scheme

When Primary Authority was launched in 2009, the scheme was initially applied to businesses operating across local authority boundaries. In 2013, Coordinated Primary Authority was introduced to allow trade associations or other groups of businesses to participate in the scheme. In October 2017, a number of changes were introduced to facilitate a further expansion of the criteria to allow all businesses to benefit from Primary Authority, including those operating in a single local authority area.⁶

Coordinated Primary Authority

Businesses which are members of trade associations or other business groups can benefit from Primary Authority through a co-ordinator, such as a trade association or franchisor, which has a legal partnership with a single local authority: the primary authority. The advice provided by the primary authority is tailored to the needs of the businesses in the group, with the aim of making it simpler and easier for them to comply with legislation.

Some respondents to this report are unclear on how Primary Authority Advice to trade membership bodies can be effectively applied to their members. Coordinated primary authorities' advice must by its very nature be very general to account for the diversity and variation between member businesses which are independent from one another.

Trade membership bodies do not have direct control over their members so cannot address problems through a structural top-down approach in the way single businesses can. Some respondents say it is hard to see

how a coordinated partnership can provide consistency between disparate and separate businesses.

However, there are several possible benefits to Coordinated Primary Authority, especially where trade membership bodies represent businesses which engage in unusual or specialist processes that local authority officers may be less familiar with.

“Local authorities with specific expertise can pass on knowledge to Regulators who lack expertise in artisan, unique or unusual food safety issues.”

Extension to businesses operating in only one local authority area

Respondents to our survey questioned whether businesses that only operate in one local authority area are appropriate for the scheme as they cannot benefit from many of the key advantages that Primary Authority offers.

Businesses operating in one local authority area do not have the same requirements as businesses trading across local authority boundaries regarding regulatory consistency. The provision of guidance to other local authorities and the power to block enforcement action is also not applicable to these businesses.

Another concern among respondents is that many smaller businesses lack awareness of the aims of Primary Authority, with some businesses approaching the scheme as if it were a regular consultancy service or simply a way to avoid enforcement action.

The scheme could still be useful for obtaining tailored assured advice and may be beneficial for small businesses considering expansion. However, more information and evidence are required to establish whether Primary Authority is of any real value to businesses operating in only one local authority area.

⁶ Primary Authority Changes 2017: Unlocking the Potential, BEIS: Regulatory Delivery, 2017.

“The benefits of partnerships with very small single site businesses are not easy to see and devalue the scheme.”

Expansion of scope to cover all regulatory functions

In 2017 the Government introduced a new requirement whereby a partnership must cover all the regulatory functions that a local authority can offer. While this may have the intended effect of simplifying the central administration of the scheme, respondents to this report are concerned it could also undermine the success of certain partnerships.

Prior to the changes, a business could form multiple partnerships with different primary authorities to cover different regulatory functions. Partnerships could therefore be formed to reflect the expertise or geographical advantage a local authority had in a particular regulatory area.

Under the new system, a primary authority may be obliged to provide services in regulatory areas where it has less expertise, resource or capacity. Given that evidence from this report was collected before the effects of this change were fully bedded-in, further evidence-gathering is required to explore whether this change has weakened the quality of Primary Authority services.

Recommendation

- OPSS to evaluate how well Primary Authority is working for businesses that only operate in one local authority area and other post-2017 changes to the scheme, including the requirement that primary authorities must offer the same level of service in new regulatory areas.

Methodology

Environmental Health Practitioners (EHPs) with first-hand experience of Primary Authority were recruited on a voluntary basis to participate in this research through an online survey. The survey was live from July to September 2018 and was open to professionals from the whole of the UK, working in the public, private and third sectors. Respondents were asked a combination of multiple-choice and open-ended questions.

Responses were analysed, additional questions compiled, and telephone interviews were carried out to obtain further clarification on specific issues. The findings of this report are therefore based largely on qualitative analysis.

107 EHPs from England, Wales and Scotland responded to our survey. Of these, 53 had experienced the scheme as regulators working in enforcing authorities. A further 46 had experience working for a primary authority.

We received 10 responses from professionals employed in the private sector, of which 6 said they had also experienced Primary Authority when working for a local authority.

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