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Primary Authority Handbook

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Introduction

Primary Authority is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance. This local authority is then known as its 'primary authority'.

Primary authorities play a valuable role in leading and shaping the regulation of businesses that partner with them. In doing so, they deliver benefits for the regulatory system as a whole, for the businesses they partner with, and for those that the regulations are designed to protect – consumers, workers and the environment.

Benefitting business

A business that chooses to participate in Primary Authority is demonstrating a commitment to working in partnership with regulators, and a desire to improve its experience of local regulation. The scheme enables primary authorities to develop positive relationships with such businesses, sowing the seeds for a new way of regulating businesses that are committed to compliance.

The businesses participating in Primary Authority range from large businesses operating across the country to very small locally based businesses with just a few employees. They include businesses as diverse as farm-based market traders, breweries, tyre fitters, betting shop operators and high street retailers.

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.

1 Feedback: A small business¹

All queries from enforcing authorities are now referred to our primary authority. These queries are quite frequent and in the past took up a great deal of our time... Our primary authority gives advice that is now entirely consistent and the time we spend on regulatory activity has reduced dramatically. Issues are resolved better, faster and more consistently – for us Primary Authority is a much more efficient way of proceeding.

2 Feedback: A large business²

Our relationship with Trading Standards has gone from being defensive and reactive to positive and proactive. We now have grown-up conversations with the regulatory authorities on a regular basis; these are usually extremely helpful to us.

¹ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013), an independent review of Primary Authority conducted by acl Consulting

² [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

3 Feedback: A small business³

...there is now regular contact between us, either face-to-face or by phone, on average around every six months. There is far more contact, and far more 'activity', than there would be in the absence of Primary Authority, but this is entirely beneficial and welcomed by us. Crucially, the *kind* of contact we have has changed. Whereas all a regulator can usually do is say something about what is happening *at present*, now our primary authority is actively involved in advising us on what we intend to do *in the future*.

4 Feedback: A large business⁴

The open and honest relationship we have with our PA Officer also allows us to discuss in advance new business ideas and opportunities in confidence to be sure that we can effectively land these across our business in a compliant manner and be right first time.

Benefitting regulators

Primary Authority allows local authorities to make an offer of valuable support to their business community, aligning their regulatory role with corporate commitments to ensure that the local economy prospers.

By leading regulation of a business or a group of businesses, on behalf of the local authorities that interact with those businesses at a local level, the primary authority brings coherence to the work of enforcing authorities and ensures that the benefits of local regulation are realised.

Every local authority, fire and rescue service and port health authority has primary authority businesses trading in its area and is therefore an 'enforcing authority' for the purposes of Primary Authority. The provisions of the scheme shape the enforcing authority's interactions with all businesses that have chosen to partner with a primary authority.

A primary authority is able to guide the use of scarce regulatory resources, ensuring that activity is targeted at areas where it is most needed, and that valuable feedback is shared. This increases the impact of local activities and, through improved co-ordination, can also reduce duplication of effort, freeing up resources at a local level.

5 Feedback: An enforcing authority officer⁵

We were getting nowhere speaking to the business directly so I contacted the primary authority about the issue; they raised it with the business and action to address the issue was taken almost immediately without me having to take the matter further.

³ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

⁴ Entry to Primary Authority Awards, 2013

⁵ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

6 Feedback: An enforcing authority officer⁶

We may not have to contact the business because the questions have been answered by the primary authority and this could mean we do not have to pursue a complaint further and not have to make an inspection.

Improving protection

Through its work with a business or businesses, and with enforcing authorities, a primary authority can actively support improvements in compliance ensuring better protection for consumers, workers and the environment.

7 Feedback: A primary authority⁷

[Business] was already a broadly compliant business but the primary authority partnership has raised standards even further by adding rigour to their internal systems... An improvement in the average Food Hygiene Rating Scheme rating from 4.3 in October 2011 to 4.8 in February 2013... 97% of its premises are now rated 5 or 4.

8 Feedback: A large business⁸

[Primary authority] has provided us with sound advice from a regulatory perspective but more so on a practical level to improve safety standards for our circa 8500 staff and circa 430,000 members.

The Handbook

The [Primary Authority Statutory Guidance](#) provides a framework for the operation of the scheme, adding detail to the provisions of the RES Act.

This handbook draws on experience gained through the early years of Primary Authority to provide further explanatory material on the practical operation of the scheme. It presents practical tips (in the red boxes) and explanations, and illustrates certain aspects of the scheme through hypothetical practical examples (in the green boxes). The handbook contains extracts from the statutory guidance (in the blue boxes) but does not include all of the content of the statutory guidance, which should be read alongside the handbook in order to gain a comprehensive understanding of the scheme.

The handbook has been written for officers in local authorities, but may also be of interest to businesses and to organisations acting in a co-ordinating role between primary authorities and businesses.

⁶ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

⁷ Entry to Primary Authority Awards, 2013

⁸ Entry to Primary Authority Awards, 2013

The handbook is presented in a modular format. All of the modules will be of relevance to officers in a local authority that is offering, or preparing to offer, primary authority services. However, officers whose interest in Primary Authority is only in relation to regulating businesses that are participating in the scheme should find that most of the information they need is in Modules 1 and 9.

Primary Authority Register

The [Primary Authority Register](#) has replaced the Primary Authority IT System which supported the scheme from April 2009. It is being implemented in phases, with further development expected through 2014.

The role of the Secretary of State and BRDO

Since April 2012⁹, Primary Authority has been the responsibility of the Secretary of State and is administered by the Better Regulation Delivery Office ('BRDO') which sits within the Department for Business, Innovation and Skills.

The Secretary of State fulfils the statutory functions of the scheme in relation to:

- a) nomination and revocation of partnerships;
- b) maintenance of a public register of nominated partnerships (the 'Public Register');
- c) consenting to inspection plans ([see 1.3](#));
- d) the determination process (see Module 9); and
- e) issuing [statutory guidance](#) on the scheme.

BRDO administers the scheme and facilitates its effective operation by:

- a) providing the web-based [Primary Authority Register](#) that hosts the scheme;
- b) providing explanatory materials and training;
- c) working directly with partnerships to develop good practice;
- d) managing the process for partnership applications and nominations;
- e) managing the consent process for inspection plans;
- f) managing the statutory determinations process; and
- g) working with relevant national regulators and Government policy departments in relation to the scheme.

⁹ Prior to April 2012, Primary Authority was operated by the Local Better Regulation Office (LBRO)

1 The role of enforcing authorities

Every local authority, fire and rescue service and port health authority has primary authority businesses trading in its area and is therefore an 'enforcing authority' for the purposes of Primary Authority. The provisions of the scheme will shape the enforcing authority's interactions with all businesses that have chosen to partner with a primary authority. All enforcing authorities therefore need to have a good understanding of the scheme and of their responsibilities.

The businesses participating in Primary Authority range from large businesses operating across the country to very small locally based businesses with just a few employees. They include businesses as diverse as farm-based market traders, breweries, tyre fitters, betting shop operators and high street retailers. A range of charities and public sector organisations are also participating.

Primary authorities play a valuable role in leading and shaping the regulation of businesses that partner with them, on behalf of local authority regulators. Increasingly, evidence shows that, in fulfilling this role, primary authorities are delivering clear benefits for businesses and for the regulatory system as a whole, by sharing information and knowledge that allows scarce regulatory resources to be better targeted and more effectively deployed. By actively supporting improvements in compliance, primary authorities are also seeing that citizens, workers and the environment benefit from greater protection.

Effective primary authorities are reliant on the co-operation of enforcing authorities. By referring issues to primary authorities where appropriate, and providing feedback on how well compliance policies and procedures are working in practice, the officers of enforcing authorities contribute to the primary authority's knowledge and understanding of the business or business sector, helping them to ensure better protection for consumers, workers and the environment.

1.1 Background to partnerships

Primary Authority is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act), as amended. It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance, in one or more categories of regulation, as listed in the table below. This local authority is then known as its 'primary authority'.

The scheme was introduced in 2009 and by March 2014 almost 1500 businesses from a broad range of sectors were participating, with over 120 local authorities providing partnerships. More than half of these businesses were small (less than 50 employees); just over a tenth were medium (50-249 employees); and almost a third were large (250+ employees).

Primary Authority (the scheme) establishes statutory duties for local authorities, fire and rescue services and port health authorities (referred to as 'enforcing authorities') regulating any business that has a primary authority.

1.1.1 Scope

The scheme applies to specified regulatory functions¹⁰ that are carried out by local authorities. These regulatory functions are grouped in 'categories' which are set out in the [List of Primary Authority Categories](#) published by BRDO.

Primary Authority operates in England, Wales, Scotland and Northern Ireland but the applicability of the scheme is different in each nation. The applicability is summarised in the table below.

Table 1: Geographic applicability of Primary Authority categories

Category	Geographic Scope			
	England	Wales	Scotland	Northern Ireland
Age Restricted Products	YES	YES	[1]	
Age Restricted Services	YES	YES	[1]	
Agriculture	YES	YES		
Animal Establishments	YES	YES		
Animal Health & Welfare	YES	YES		
Environmental Protection	YES	YES		
Environmental Protection (Welsh Regulations)		YES		
Explosives Licensing	YES	YES	YES	
Fair Trading	YES	YES	YES	
Fire Safety	YES	YES		
Food Safety & Hygiene	YES	YES		
Food Standards	YES	YES		
General Licensing	YES	YES		
General Licensing (Welsh Regulations)		YES		
Health, Safety and Welfare	YES	YES	YES	
Housing	YES	YES		
Metrology	YES	YES	YES	
Petroleum Licensing	YES	YES	[1]	
Pollution Control	YES	YES		
Product Safety	YES	YES	YES	YES
Public Health (Welsh Regulations)		YES		
Road Traffic	YES	YES	[1]	

[1] Some applicability

A business can only have one primary authority in relation to each of these categories but may have different primary authorities for different categories.

¹⁰ The legislative scope of the scheme is defined in section 4 and schedule 3 to the RES Act.

1

Practical example: Multiple partnerships

ABC Clothing is a nationally based retailer that has residential properties above some of its retail stores. The business enters into partnerships with:

- **Local authority A, a county council, in relation to the Fair Trading category**
- **Local authority B, a district council, in relation to the Health, Safety and Welfare category,**
- **Local authority C, a London borough, in relation to the Housing category; and**
- **Local authority D, a unitary authority in Wales, in relation to the Environmental Protection (Welsh Regulations) category**
- **Fire and rescue authority E in relation to the Fire Safety category**

1.1.2 Being a 'primary authority'

A local authority¹¹ is legally recognised as the primary authority for a business once it has been 'nominated' by the Secretary of State. In order to be nominated as primary authority for a business, a local authority must have responsibility for the regulatory functions that will be covered by the partnership, and must be 'suitable'. Suitability is assessed as part of the nomination process, with consideration being given to relevant expertise, ongoing competency arrangements, and resourcing. BRDO seeks views from any relevant national regulator(s) in relation to applications for nomination.

A local authority is entitled to recover the costs that it incurs in providing primary authority services, but is not obliged to do so. In practice, most primary authorities are choosing to cost recover to a certain extent as this allows them to resource a better service, particularly in relation to larger businesses, groups of businesses, and high activity partnerships. Primary authorities are more likely to decide not to recover their costs in relation to partnerships with small local businesses or charities.

On nomination, a partnership is recorded in the [Public Register](#) that is maintained by BRDO.

1.1.3 Business eligibility

When the scheme was introduced in 2009, participation was limited to businesses regulated by more than one local authority in relation to the regulatory category.

Changes to the statutory framework extended eligibility, from October 2013, to include businesses that 'share an approach to compliance'¹², where these businesses are collectively regulated by more than one local authority. The most common examples of a business that can access the scheme on this basis are:

- a) a member of a trade association that provides its members with advice on compliance;
- b) a business that operates as a franchise, following compliance controls specified by the franchisor;
- c) one of a group of related businesses that follow the same compliance controls, for example as part of a company group; or

¹¹ A 'local authority' includes a county, district or unitary council; a fire and rescue authority; a port health authority

¹² Section 3, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- d) a business that receives regulatory advice through a scheme that it subscribes to, such as an approval scheme.

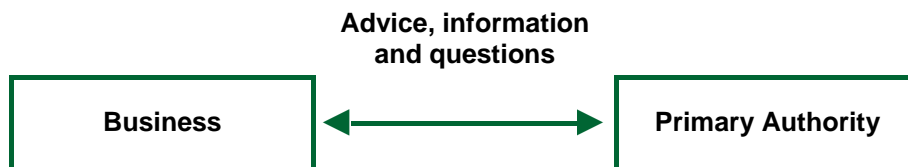
1.1.4 'Direct' and 'co-ordinated' partnerships

Within the scheme, a distinction is made between partnerships on the basis of the eligibility criterion that the business relied on in order to access the scheme:

- the term 'direct partnership' is used where the business accessed the scheme by virtue of being regulated by more than one local authority; and
- the term 'co-ordinated partnership' is used where the business accessed the scheme by virtue of the fact that it shares an approach to compliance with other businesses.

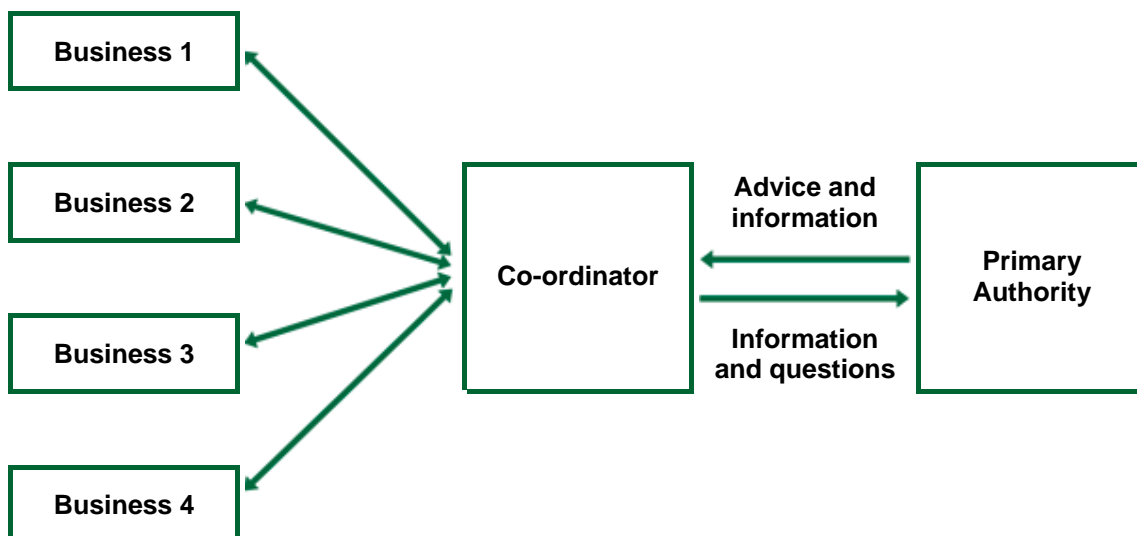
Enforcing authorities need to understand the key practical differences between direct and co-ordinated partnerships. The first of these relates to the communication route between the primary authority and the business. In a direct partnership, communication flows directly between the two parties.

Figure 1: Direct partnership: relationship between the parties



In a co-ordinated partnership, the nominated partnership is between the business and the primary authority, just as it is in a direct partnership. However, in the majority of co-ordinated partnerships, a third party referred to as a 'co-ordinator', such as a trade association or a franchisor, will act as a conduit between the primary authority and the businesses, co-ordinating or facilitating their partnerships. The relationships within which communication takes place will then be between the business and the co-ordinator, and between the primary authority and the co-ordinator, as illustrated in Figure 2 below.

Figure 2: Co-ordinated partnership: relationship between the parties



The statutory tools that are available to a primary authority are the same for both direct and co-ordinated partnerships – Primary Authority Advice can be provided to the business or to enforcing authorities, and an inspection plan may be developed. However, there will be key differences in the way that these tools are used, depending on the nature of the partnership. These differences are summarised in the table below¹³ and explored in more detail in Parts [1.3](#) and [1.4](#) of this module.

Table 2: Summary of key differences between direct and co-ordinated partnerships

	‘Direct Partnership’	‘Co-ordinated Partnership’
Primary Authority Advice	Issued directly to the business. Tailored to the individual business’ needs and circumstances, based on the primary authority’s detailed knowledge of the business.	Issued via the co-ordinator to the group of businesses. Tailored to the collective needs and circumstances of the group of businesses whose partnerships are being co-ordinated.
Inspection plans	Tailored to the individual business’ operations, based on the primary authority’s detailed knowledge of the business.	Tailored to the group of businesses whose partnerships are being co-ordinated.

Direct and co-ordinated partnerships are clearly distinguished in the Primary Authority Register, so that enforcing authorities can be clear as to the nature of the partnership that they are dealing with. Where the co-ordinator is a trade association, officers should not assume that every one of its members has chosen to participate in Primary Authority, but should check on the Primary Authority Register. Similarly, where the co-ordinator is a franchisor, officers should not assume that all of its franchisees are in co-ordinated partnerships.

1.2 Requirements for enforcing authorities

Once a partnership is nominated by the Secretary of State, it has legal status. All enforcing authorities¹⁴ that regulate the business will need to be aware of the partnership as the RES Act places legal obligations on them in relation to their interactions with the business.

1 **Practical tips: Four key questions for enforcing authorities and their staff**

When you have dealings with any business, ask yourself:

- 1. Is the business in Primary Authority?**

If so:

- 2. What must I do to comply with the law?**
- 3. How can the primary authority help me to do what I need to do more efficiently and effectively?**
- 4. How can I support the primary authority in regulating the business effectively?**

¹³ This table is an extract from Figure 2, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

¹⁴ Local authorities, fire and rescue services and port health authorities acting within the scope of Primary Authority.

Checking whether a business is in Primary Authority is quick and easy, by using the web-based Primary Authority Register, which records all nominated partnerships. All officers in enforcing authorities who work with businesses in regulatory areas that are covered by the scheme¹⁵ should register as users of the Primary Authority Register and this will allow them to access the secure area where they can:

- a) find the information that they will need in relation to businesses that have a primary authority;
- b) communicate securely with primary authorities; and
- c) fulfil certain statutory obligations in relation to inspection activities ([see 1.3](#)) and enforcement action ([see 1.5](#)).

It is important that officers in enforcing authorities understand how Primary Authority impacts on their dealings with businesses that are participating in the scheme, and how the service that a primary authority provides is likely to differ, depending on the nature of the partnership.

In particular, officers should understand the three statutory tools that are available to primary authorities, and how they need to take account of them:

- Inspection plans ([see 1.3](#));
- Primary Authority Advice to the business ([see 1.4.1](#)); and
- Primary Authority Advice to Local Authorities ([see 1.4.2](#)).

Officers also need to be aware that where enforcement action¹⁶ is being considered in relation to a primary authority business, the enforcing authority needs to make a statutory notification to the primary authority via the Primary Authority Register ([see 1.5](#)). In most circumstances, this notification must be made at the stage at which the action is being considered, allowing the primary authority to consider whether relevant Primary Authority Advice has been given. However, in certain limited circumstances, the notification may be made retrospectively.

The table below summarises the key points at which officers need to be mindful of the requirements of Primary Authority.

Table 3: Summary of key requirements of Primary Authority for enforcing authorities

A proactive visit to business premises is planned: what about Primary Authority?

If the business has a primary authority and an inspection plan has been published for the regulatory area in relation to which the visit is planned, you must follow the requirements of the inspection plan, unless you have obtained prior consent from the primary authority to follow an alternative approach ([see 1.3.6](#)).

If the business has a primary authority but no inspection plan has been published, your visit is not affected, but you can still feedback inspection findings to the primary authority, for their information. You may also find it helpful to contact the primary authority at an early stage to discuss any non-compliance identified during the inspection ([see 1.5](#)).

¹⁵ This will include officers working in regulatory areas including animal health, environmental health, fire safety, housing, licensing, port health, and trading standards, and may include officers working in other areas.

¹⁶ Enforcement action is defined in the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, and amending Orders, available at www.legislation.gov.uk

Non-compliance has been identified, or a complaint received: what about Primary Authority?

You should consider whether it is appropriate to contact the primary authority. This will depend in part on the nature of the partnership, and the information published on the partnership's page on the Primary Authority Register will help you to decide this.

Where the business has a direct partnership with the primary authority then the primary authority is likely to have a detailed knowledge of how the individual business operates. Similarly, where the business is a franchisee in a partnership co-ordinated by its franchisor, the primary authority will have detailed knowledge of how the franchise operates, and may be able to assist you in resolving the matter, or may provide information that will help you to determine an appropriate course of action ([see 1.5](#)).

Where the business is in a partnership that is co-ordinated by its trade association, it is less likely that the primary authority will have a detailed knowledge of the individual business, but it will have a good understanding of the sector and of compliance areas where it has worked with the trade association to develop advice and guidance.

Enforcement action is being considered: what about Primary Authority?

A statutory notification of enforcement action must be made to the primary authority via the Primary Authority Register ([see 1.5](#)). This notification is usually required at the stage at which the enforcement action is proposed. However, in limited circumstances, retrospective notification is allowed for by the legislation, for example in relation to the service of an emergency prohibition notice under food legislation, a prohibition notice under fire safety legislation, or a prohibition notice served in relation to an imminent and serious risk to health and safety ([see 9.2.2](#)).

2 Practical tips: Being an enforcing authority

The enforcing authority's internal procedures, business plans, work instructions and template documents should be reviewed to ensure that officers take proper account of Primary Authority in all of their dealings with businesses that are in a partnership. Its published service standards and enforcement policy¹⁷ should take proper account of Primary Authority.

The competencies expected of officers in relation to Primary Authority are included in the online [Regulators' Development Needs Analysis](#) ('RDNA') self-assessment tool.

BRDO has developed a slide pack, which you can use to provide basic training on Primary Authority to your staff, and to structure discussion on the implications of the scheme for their day-to-day activities. It is available via the [Enforcing Authorities](#) page of the Primary Authority Register, and a version tailored for fire and rescue authorities is available on the [Fire Safety](#) page.

All relevant officers of the enforcing authority should have access to the secure area of the Primary Authority Register with their own username and password, be familiar with its use, and use it when necessary. Any registered user with the 'Administrator' role is able to set up colleagues at his or her local authority as users. Further details are available in the '[Managing Users](#)' user guidance. In case of difficulty, you can ask BRDO for help at pa@brdo.bis.gsi.gov.uk.

¹⁷ [Regulators' Code](#) (BRDO, 2014)

1.3 Inspection plans

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-ordinating local activity across the operations of a multi-site business, or across a group of businesses. An inspection plan is written by the primary authority, using its knowledge of a business or group of businesses and of any current issues. An inspection plan can be used to provide practical guidance and background information to assist officers in their proactive checks on the business, or it may place specific requirements on enforcing authorities and can require feedback on their checks.

An inspection plan will usually require enforcing authorities to provide vital feedback to the primary authority, enabling it to build a detailed picture of where businesses are getting it right, and where there are problems that may need to be addressed.

1.3.1 Use of inspection plans by primary authorities

An inspection plan is an optional tool that is available to a primary authority. In practice, an inspection plan will not be appropriate for all partnerships. It is most likely to be seen as beneficial:

- where a business experiences a significant level of local checks on its compliance, for example, through inspection, sampling or test purchasing; or
- where there are particular issues with, for example, confusion about the business model, or inconsistency issues across different sites.

1

Statutory framework: Scope of inspection plans

Statutory guidance on the scheme¹⁸ makes it clear that 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.

The statutory guidance does not allow an inspection plan to:

- a) set out requirements in relation to reactive interventions that are undertaken in relation to matters of specific concern about the business;**
- b) seek to prevent enforcing authorities from taking any course of action that they are statutorily required to take; or**
- c) require a local authority to undertake a proactive inspection or other check on compliance of the business when it would not otherwise have undertaken a proactive inspection or other check on compliance at that time.**

¹⁸ Section 11, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Early experiences of primary authorities that have developed inspection plans have shown that developing, managing and evaluating the success of a plan can involve a significant level of resource and commitment. Partnerships are therefore considering carefully whether an inspection plan will be beneficial before embarking on this route.

An inspection plan aims to be a helpful resource for enforcing authorities, and to ensure that increasingly limited resources are used to best effect.

1 Feedback: Large business¹⁹

The main aim was to have inspections focused on the topic areas that provided the most challenge to [retailer] as a business, and give enforcing authorities the tools to not only identify compliance issues, but also the “language” used in the business to engage with store colleagues clearly.

Inspection plans will often relate to a single business that is in a direct partnership with a primary authority. However, a primary authority that has co-ordinated partnerships with a group of businesses may choose to develop an inspection plan in respect of that group of businesses. In this circumstance, statutory guidance on the scheme requires that the plan should be relevant to a ‘significant proportion’ of the businesses, and the primary authority is expected to make sure that the scope and applicability of the plan are very clear to enforcement officers.

The development, publication and management of inspection plans by primary authorities, and the statutory consent process, are covered in detail in Modules 7 and 8.

1.3.2 Inspection plan consent process

A primary authority that has developed an inspection plan is required to submit it to the Secretary of State for consent, prior to publication. The Secretary of State recognises that inspection plans are capable of impacting significantly on the way that enforcing authorities plan and conduct their regulatory interventions, and therefore expects primary authorities to develop plans in accordance with the statutory guidance, and to present their rationale for the content of the plan.

The Secretary of State consults with any relevant national regulator(s) on the requirements of the plan. So, for example, where a primary authority develops an inspection plan in relation to food safety and hygiene matters, the Secretary of State would seek the views of the Food Standards Agency before consenting to the plan.

Once it has been consented to by the Secretary of State, an inspection plan is automatically published by BRDO, via the Primary Authority Register, and it remains in effect until it expires or is revoked.

¹⁹ Primary Authority Awards entry, 2013

1.3.3 An enforcing authority's duty in relation to an inspection plan

The legislation requires enforcing authorities to follow inspection plans and it is therefore important that officers routinely check the partnership's page on the Primary Authority Register to see whether an inspection plan is in place before making proactive visits to a primary authority business. An inspection plan is published for the use of regulators only, and may contain information that is confidential and commercially sensitive. It should not be shared more widely, unless permission has been sought from the primary authority that prepared the plan.

2

Statutory framework: An enforcing authority's duty in relation to an inspection plan

The RES Act requires all local authorities exercising their inspection function to do so in accordance with any inspection plan to which the Secretary of State has consented, and to provide feedback where the plan requires it.

A local authority may only follow an alternative approach to that set out in the inspection plan if it has the prior agreement of the primary authority to do so, or where the primary authority has failed, within five working days²⁰, to respond to its request to follow the alternative approach ([see 1.3.6](#)).

The statutory guidance makes it clear that inspection plan requirements must be followed:

- **when planning and programming regulatory interventions at the business or businesses to which the inspection plan applies; and**
- **when conducting proactive, planned or programmed regulatory interventions at the business or businesses to which the inspection plan applies.**

An inspection plan is a flexible tool, and primary authorities are developing plans which can take a different approach, depending on their objectives in preparing the plan.

At one extreme, an inspection plan may be purely informative. For example, it might provide guidance on risk assessment of the business' premises, or on effective means of communicating with the business and the primary authority in relation to an inspection or other check on compliance. At the other extreme, an inspection plan may be very directional, setting out specific requirements, or establishing a national inspection strategy that enforcing authorities must follow, unless they are following an alternative approach as explained at [1.3.6](#) below.

In practice, most plans sit somewhere in between the two extremes. For example, an inspection plan might place requirements on enforcing authorities conducting programmed food hygiene inspections at outlets operated by the business to focus on a particular hazard and to provide specified feedback on their findings, but might go on to provide helpful guidance on how compliance controls in relation to this hazard should be operating at a local level, and what questions could be asked of particular staff in order to identify any issues. Statutory guidance on the scheme requires primary authorities to ensure that the inspection plan is very clear as to when it is providing information and when it is placing requirements on enforcing authorities that they must follow.

²⁰ Five working days beginning on and including the day after the request to the primary authority is made.

It can be helpful to think about inspection plans as operating at two different levels:

- a) An inspection plan can operate at the level of deciding whether or not a proactive check on the business is needed, whether that is an inspection, a sampling visit, or a test purchase ([see 1.3.4](#)). This can be more efficient for enforcing authorities as there is the potential for reducing the number of checks that they need to carry out, by eliminating those that are unnecessary.
- b) Where an inspection, sampling visit or test purchase is undertaken to check compliance, an inspection plan can guide what happens during that check ([see 1.3.5](#)). This can bring benefits to enforcing authorities in terms of allowing them to conduct more informed activity, focussing on the highest risks within a business. It can also mean that inspections can be shorter, whilst remaining effective, thereby freeing up resources for the enforcing authority as well as the business.

1.3.4 Guiding whether a regulatory intervention is needed

An inspection plan may provide guidance in relation to the risk assessment of a business' premises, and the enforcing authority can use this guidance to review and inform its risk score for the business. Guidance will be in relation to elements of any risk score that are common across the business' premises, and will not address elements that are solely 'local', as inspection plans recognise that there will be local variations in the way that the business is managed.

Alternatively, an inspection plan may establish a 'national inspection strategy', which means that the primary authority has taken on the responsibility for co-ordinating compliance checks on the business across all of its premises, products or activities through a risk-based programme. Where a national inspection strategy is in place, an enforcing authority that wishes to conduct an inspection, sampling visit or test purchase in relation to the business in its local area should volunteer to participate in the primary authority's programme.

Through its participation in a national inspection strategy, an enforcing authority feeds back its findings in specified areas to the primary authority, allowing the primary authority to build up a more detailed picture of compliance for the business or businesses covered by the plan. This, in turn, informs the primary authority's risk-based operation of the national inspection strategy. For example, where participating enforcing authorities report problems in a particular area of compliance, the primary authority can ask future participants to focus on that area, or it may decide that a higher level of inspection is needed. A primary authority that is managing a national inspection strategy will usually provide feedback on the results of the national inspection strategy to enforcing authorities that have participated.

Where an enforcing authority volunteers its participation but this is not required, for example because the primary authority judges that the appropriate level of checks is already being carried out, the enforcing authority will not need to carry out an inspection, sampling visit or test purchase.

3

Practical tips: Enforcing authorities and inspection plans

You should consider how you will ensure that inspection plans are followed when planning all proactive visits and other checks on compliance, including inspections, sampling, test purchasing and the use of self assessment questionnaires.

You should consider how the local authority's risk assessment of businesses will take account of inspection plans.

1.3.5 Guiding what a regulatory intervention addresses, and how

An inspection plan may place requirements on enforcing authorities as to checks that do not need to be made at a local level, or may require that local checks focus on particular areas, for example, where the primary authority has assessed these areas as higher risk. This can be very helpful to enforcing authorities in terms of allowing them to be more efficient in delivering inspections that focus on the highest risks within the business.

2 Practical example: A direct partnership

ABC Restaurants produces a 'Food Safety & Hygiene Pre-Requisites' document which focuses on the critical control points in the business' HACCP²¹ plan and gives clear instructions to the chefs in each of their restaurants about practices and procedures to follow, to ensure that these critical control points remain under control. At the request of the business, its primary authority, Anytown Council, reviews the document and issues Primary Authority Advice confirming that the controls set out are suitable and adequate.

The primary authority requires, in its inspection plan for ABC Restaurants, that local reviews of the adequacy and suitability of the Food Safety & Hygiene Pre-requisites document should not be undertaken by officers. It requires that local checks should be focused on implementation of specified cross contamination practices set out in the document and requires that officers report their findings to the primary authority via a checklist included in an annex to the inspection plan.

The primary authority makes it clear, in the inspection plan, that its requirements do not prevent officers from inspecting other areas, such as structural elements, in order to properly score the business under the Food Hygiene Rating Scheme. However, the primary authority provides helpful information in these areas to assist officers.

3 Practical example: Partnerships co-ordinated by a trade association

PQR Association, a small trade association, co-ordinates partnerships between 150 of its members and Anytown Council in relation to product safety.

Anytown Council develops Primary Authority Advice for the businesses, small manufacturers and importers, in relation to labelling and testing under specified regulations, and this advice is disseminated by the PQR Association.

The primary authority uses an inspection plan to draw attention to the Primary Authority Advice and to guide effective checks on whether appropriate testing is being carried out.

4 Practical example: A franchisor

FGH Foods operates 65 fast food outlets and has franchise agreements with 29 businesses who, between them, operate a further 86 outlets on the same business model. FGH Foods specifies the food safety controls that must be used in its company-owned outlets and the franchisee-operated outlets, and has a contract with third party auditors to audit both company-operated and franchisee-operated outlets on a regular basis.

²¹ A Hazard Analysis Critical Control Points plan, as required under food legislation

FGH Foods has a direct partnership with Anytown Council in respect of food hygiene and safety and also co-ordinates partnerships between its primary authority and its 29 franchisees.

Anytown Council works with FGH Foods to ensure that the temperature control procedures used in its company-owned and franchise-operated outlets are robust. The primary authority is satisfied that the controls set out meet the legal requirements and issues Primary Authority Advice to this effect to FGH Foods and, via the business to its franchisees.

The primary authority requires, in its inspection plan for FGH Foods, that local reviews of the adequacy of the temperature control procedures should not be undertaken at the company-owned outlets or at outlets operated by the franchisees. It requires that local checks on temperature control are focused on assessing the correct implementation of the agreed procedures.

1.3.6 An alternative approach to that set out in the inspection plan

Where an enforcing authority, having considered the requirements of an inspection plan, considers that it should not follow these requirements, but that an alternative approach is more appropriate, it can request agreement from the primary authority to follow this alternative approach. This request should be submitted via the Primary Authority Register and should include an explanation of the alternative approach that is being proposed, and the enforcing authority's reasons for considering it more appropriate than the approach set out in the inspection plan.

The primary authority should respond to the request within 5 working days. If the primary authority fails to respond, or if it agrees the request, then the enforcing authority is entitled to follow the alternative approach. If the primary authority refuses the request then the enforcing authority must follow the inspection plan.

1.4 Primary Authority Advice

A primary authority is able to provide Primary Authority Advice to a business that it is in a partnership with (see 1.4.1), or to other local authorities ([see 1.4.2](#)).

1.4.1 Primary Authority Advice to a business

Primary Authority Advice on compliance, provided by the primary authority to a business, or to a group of businesses, is the foundation of Primary Authority.

A business in the scheme that receives advice from its primary authority is entitled to rely on it and therefore should not be expected to have to do anything to comply in different ways which might be requested by other enforcing authorities. Primary Authority Advice to a business can address any matter relating to the categories of regulation covered by the partnership, extending to:

- legal obligations and interpretation of the law;
- controls such as regulatory procedures and compliance systems; and
- ensuring or monitoring the effective implementation of controls.

In the case of a direct partnership, the primary authority has a responsibility to provide advice that is correct and tailored to the circumstances of the individual business. In doing this, it draws on its unique knowledge of the business and the breadth of its operations.

5 Practical example: A direct partnership

ABC Supermarkets, a nationally based retailer, is in a direct partnership with Anytown Council. The business has an established and documented food safety management system that was developed by its in-house compliance team and it asks its primary authority to review this system.

Anytown Council reviews all of the documentation and visits a number of the business' premises to look at implementation. After some discussion, and amendments to strengthen the system in some areas, the primary authority is satisfied that the documented system sets out adequate controls and it issues written Primary Authority Advice to this effect.

The primary authority and ABC Supermarkets agree that the Primary Authority Advice will be made available via the secure area of the Primary Authority Register so that enforcing authorities are aware that the system has been thoroughly reviewed and confirmed by Anytown Council.

In the case of a group of co-ordinated partnerships, the primary authority has a responsibility to provide advice, via the co-ordinator, that is correct and relevant to a significant proportion of the businesses in the co-ordinated partnerships. The advice should be applicable for all of those businesses for which it is relevant.

6 Practical example: A franchisor

FGH Foods has a direct partnership with Anytown Council and also co-ordinates partnerships between Anytown Council and all of its franchisees. The business reviews with its primary authority the pricing promotions that it uses nationally and in local media. The business requires its franchisees to use the same promotional material in the outlets that they operate.

The primary authority reviews each promotion and, where it is satisfied that legal requirements are met, it issues Primary Authority Advice to this effect to the franchisor, in the context of their direct partnership. The primary authority also issues the same advice, via the franchisor, to the franchisees that are in co-ordinated partnerships.

FGH Foods and its franchisees can rely upon the advice issued.

7 Practical example: Partnerships co-ordinated by a trade association

TUV Association, a small trade association in the hospitality sector, provides regulatory advice to its members. It co-ordinates partnerships between a number of its members and Anytown Council in relation to the supply of age restricted products and services.

Anytown Council becomes aware that a proportion of businesses in the sector are not complying with recently introduced legislation in relation to the use of sunbeds by under 18s. It works with TUV Association to develop Primary Authority Advice in relation to appropriate age verification procedures, and this advice is disseminated by the trade association.

Those members of TUV Association that operate sunbeds, and that are in a co-ordinated partnership, can rely upon the advice issued.

Primary Authority Advice provided to a business in a direct partnership is not necessarily published via the secure area of the Primary Authority Register by the primary authority – this is a matter of choice for each partnership. Some partnerships are seeing that there are real benefits to sharing the advice with enforcing authorities.

2 Feedback: A primary authority officer²²

We did some work with a business partner regarding the installation of a temporary retail facility on-site whilst refurbishment to the existing premises was being undertaken: this was very specialist work. On the basis of our [primary authority] advice, most enforcing authorities were content not to inspect the temporary facility whilst it was in use in their area.

Primary Authority Advice that is provided to a group of businesses in co-ordinated partnerships will always be published by the primary authority via the secure area of the Primary Authority Register.

The requirements for primary authorities for providing Primary Authority Advice to a business are covered in detail in Modules 5 and 6.

1.4.2 Primary Authority Advice to Local Authorities

Whereas Primary Authority Advice to a business relates to compliance, Primary Authority Advice to Local Authorities relates to how enforcing authorities exercise their regulatory function in relation to a business. However, this would not include providing advice on how to inspect, as this is the role of an inspection plan. A primary authority that chooses to issue Primary Authority Advice to Local Authorities is required to publish this advice via the secure area of the Primary Authority Register.

In practice, Primary Authority Advice to Local Authorities has more limited use than Primary Authority Advice to businesses and is being used relatively infrequently by primary authorities. However, enforcing authorities need to be aware of it as it may be helpful to them in carrying out their duties, and it will be referred to by a primary authority that receives a notification of proposed enforcement action. Primary Authority Advice to Local Authorities has the same statutory basis as Primary Authority Advice to a business and the primary authority is able to direct against proposed enforcement action that is inconsistent with this advice.

The requirements for primary authorities in relation to Primary Authority Advice to Local Authorities are covered in detail in Module 5.

1.5 Responding to possible non-compliance

Where an enforcing authority receives a complaint or information about non-compliance, or identifies an issue during a check on a business that has a primary authority, its response will always depend on the particular circumstances. Primary authorities have an important role to play in supporting enforcing authorities at this point.

²² [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

It is important for enforcing authorities to recognise that partnerships are not all the same. At one end of the spectrum are businesses that have very close relationships with their primary authority. These partnerships are likely to be characterised by regular meetings, a high level of sharing of compliance data, and a programme of reviewing controls and providing Primary Authority Advice. At the other end of the spectrum are businesses that view their primary authorities as a source of occasional advice, if the need arises.

The extent to which a primary authority will be able to support an enforcing authority when non-compliance arises will depend significantly upon the nature of the partnership. The statutory guidance requires an enforcing authority that encounters possible non-compliance to consider appropriate communication with the primary authority at an early stage. However, it recognises that the nature of this communication is likely to differ for direct partnerships (see 1.5.1) and co-ordinated partnerships ([see 1.5.2](#)).

1.5.1 Direct partnerships

A primary authority that has a direct partnership with a business will often have shared valuable information about compliance via the partnership's page in the secure area of the Primary Authority Register and this may help an enforcing authority to decide how it will respond to local non-compliance.

Partnerships work in different ways, to suit the needs of the primary authority and business, and most will have agreed how the partnership wishes to handle enquiries and referrals from enforcing authorities. It may be that the business prefers to receive all initial contacts itself, or it may have asked the primary authority to do so on its behalf. The partnership's page in the secure area of the Primary Authority Register includes contact details for the primary authority but will usually also give an indication of any particular communication preferences that the partnership has agreed, which will help officers to communicate effectively with the relevant primary authority contacts.

3

Statutory framework: Discussing possible non-compliance with the primary authority – direct partnerships

Statutory guidance on the scheme highlights the value of an enforcing authority discussing possible non-compliance with the primary authority at an early stage where:

- **the matter is likely to be a local example of wider non-compliance;**
- **the enforcing authority has identified a contravention that requires an amendment to a national system or process; or**
- **the problem cannot be addressed purely through local action, for example where the local premises requires input from its head office.**

The benefits of contacting the primary authority are two-fold. Firstly, a primary authority in a direct partnership will often hold valuable information that it can share with the enforcing authority in order to inform a proportionate and consistent response to the issue. Secondly, the primary authority will often be able to provide an efficient means of effectively resolving the non-compliance identified at a local level and can ensure that the business addresses the issue across all its operations where necessary.

3 Feedback: An enforcing authority officer²³

I was told that Primary Authority meant that you could not touch the business so contacted the primary authority of a business I had identified an issue with, without much hope. They were very happy for me to proceed with the matter on a formal basis with the local outlet concerned.

4 Feedback: A large business²⁴

Pre-Primary Authority, the lack of consistency in interpretation of the regulations by enforcing authorities was a real concern for us. Before the partnership we had many more enforcement notices and notifications of intention to prosecute, all of which had to be responded to by the business. Having an authoritative voice that is independent of the business and part of the regulatory regime say whether they feel there is or is not a case is tremendously powerful either way. If there is a case then our primary authority simply saying this is usually enough to get us to take immediate action; if our primary authority says that there is no case to answer then this is usually enough to get the enforcing authority to withdraw. All this means that we spend less time and suffer considerably less angst in our relationships with enforcing authorities with a Primary Authority partnership in place.

Primary authorities are heavily reliant on the vital role that enforcing authorities play. In particular, the information that they receive from enforcing authorities enables them to build up a more detailed picture of compliance across the business, and how the business' control systems are being implemented at a local level.

1.5.2 Co-ordinated partnerships

Co-ordinated partnerships work in different ways, depending on the nature of the relationships between the co-ordinator and the businesses, and between the co-ordinator and the primary authority. The common factor in these partnerships is that the primary authority is unlikely to have a detailed knowledge of each individual business that it is partnered with, and is therefore less likely to be able to answer questions in relation to these businesses. However, the primary authority will have knowledge and expertise in relation to the group of businesses, so it can be a useful resource for enforcing authorities. The co-ordinator will also have valuable knowledge and may be able to facilitate interactions between the business and an enforcing authority.

4 Statutory framework: Discussing possible non-compliance with the primary authority – co-ordinated partnerships

Statutory guidance on the scheme suggests that an enforcing authority should:

- **contact the primary authority in relation to any questions that it has about Primary Authority Advice that has been issued to a group of businesses;**

²³ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

²⁴ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

- provide the primary authority with any information that it has indicating that a business in a co-ordinated partnership does not share an approach to compliance; and
- provide the primary authority with intelligence on compliance issues in the sector that may be of relevance to the Primary Authority Advice issued to a group of businesses.

The primary authority and the co-ordinator will have agreed how they wish to handle enquiries and referrals from enforcing authorities and the partnership's page in the secure area of the Primary Authority Register will give an indication of any particular communication preferences alongside contact details for the primary authority.

8

Practical example: Partnerships co-ordinated by a small trade association

An officer of Midborough Council inspects a small local food producer and identifies a potential issue with temperature controls. The officer is already aware that the business has a co-ordinated partnership with Anytown Council, co-ordinated by XYZ Association, an association of specialist food producers.

When the officer raises his concerns about temperature control with the owner of the business, the owner confirms that he is a member of XYZ Association and follows its guidance, which he shows to the officer. The officer sees that the guidance has been issued by Anytown Council, via XYZ Association. The officer reads the guidance and sees that the business is not properly complying with its requirements. However, on questioning the owner further, it is evident that this is because he had misunderstood an element of the guidance.

The officer checks the Primary Authority Register and then contacts Anytown Council. The primary authority officer has no particular knowledge of the small food producer in Midborough's area but has expertise in relation to the specialist production processes being used. The primary authority officer welcomes the information that an element of the guidance is being misinterpreted and subsequently raises this with XYZ Association. They agree that clarification is needed and the primary authority re-issues amended guidance via the association. Midborough's officer is satisfied with the amended guidance and works with the local food producer to ensure that it is properly implemented.

9

Practical example: Partnerships co-ordinated by a franchisor

An officer of Midborough Council receives a complaint from a member of the public about a product purchased at a local fast food outlet which made him ill. The complainant, who has a nut allergy, alleges that he was assured by a member of staff that the product was OK.

On checking the secure area of the Primary Authority Register, Midborough's officer finds that the local fast food business has a partnership with Anytown Council co-ordinated by FGH Foods, its franchisor. The primary authority has published a set of FAQs explaining how food descriptions and allergen information are controlled by FGH Foods, and providing contact details for the relevant contact at the business. The primary authority makes it clear on the Primary Authority Register that it has issued Primary Authority Advice to FGH Foods, with which it has a direct partnership, but has not yet issued advice to franchisees that it has co-ordinated partnerships with, and that it would welcome intelligence from enforcing authorities in relation to issues that arise locally.

The officer visits the outlet and speaks to the owner who shows the officer a product information leaflet displayed near the tills which he says is provided by FGH Foods. The information clearly shows that the product in question may contain traces of nuts. The owner says that staff training is also provided by FGH Foods.

Midborough's officer contacts FGH Foods to discuss the staff training and is able to establish that the member of staff in question has not yet received training. The officer deals with the matter locally and sends a brief outline of the issue to the primary authority.

1.5.3 Statutory notification of enforcement action

Where an enforcing authority intends to take enforcement action against a business that has a primary authority, it must comply with the statutory requirement to notify the primary authority of the enforcement action.

5

Statutory framework: Enforcement action

The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended, defines actions that are 'enforcement actions' for the purposes of the notification requirements of Primary Authority. These include:

- Specified statutory notices, orders and certificates (as listed in the Order)
- Specified civil sanctions under the RES Act
- Commencement of proceedings in a court or tribunal (or referring a matter to a prosecuting authority with a view to proceedings)
- Imposition of any sanction
- Administering of a simple caution
- Acceptance by the enforcing authority of any undertaking
- A written indication that any of the above actions *will* be taken unless the regulated person acts, or ceases to act, in a specified manner by a specified deadline.

Statutory guidance on the scheme²⁵ explains that investigative activities are not enforcement action for the purposes of the scheme and do not require formal notification.

The statutory notification, which must be made via the secure area of the Primary Authority Register, is usually required in advance of taking the enforcement action. However, in limited circumstances, retrospective notification is allowed for by the legislation, for example in relation to the service of an emergency prohibition notice under food legislation, a prohibition notice under fire safety legislation, or a prohibition notice served in relation to an imminent and serious risk to health and safety. The notification requirements are explained in detail in Module 9.

²⁵ Section 12, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

2 Becoming a primary authority

2.1 Committing to offering primary authority services

Primary Authority allows local authorities to make an offer of valuable support to their business community, aligning their regulatory role with corporate commitments to ensure that the local economy prospers.

The primary authority provides benefits both to the business that it supports, and to the many local authorities that regulate the business at a local level. Through its work with the business and local authorities, it can ensure better protection for consumers, workers and the environment.

A local authority that commits to offering primary authority will find that the scheme is sufficiently flexible to allow it to tailor its provision to meet its own needs, and those of the businesses with which it enters partnerships. Whilst the scheme has a statutory basis, it is for the local authority to determine how it will operate within the statutory framework.

2.1.1 Benefits of offering partnerships

At its most basic, Primary Authority establishes a framework within which a local authority and a business can form a partnership that has a statutory basis. The legislation allows for a primary authority to direct against any enforcement action which is proposed by another local authority which would be inconsistent with Primary Authority Advice that it has given. This statutory basis for Primary Authority Advice provides assurance for the business, giving it confidence to rely on the advice. The legislation also provides for a primary authority to develop an inspection plan, guiding how checks on the business are carried out.

However, the real benefits of the scheme lie in its ability to transform the way that businesses are regulated. A primary authority is in a unique position that enables it to build a relationship with a single partner business, or with a group of businesses, allowing it to develop a detailed understanding of a business' operations, or of the issues affecting a whole sector.

By drawing on the information that it receives from other local authorities, and the information that a partner business or a group of businesses shares with it, the primary authority is able to develop a much clearer picture of compliance than has previously been available to local regulators. By providing assured regulatory advice that is tailored to the needs and circumstances of an individual business, or to a group of businesses, the primary authority has a positive impact on compliance, whilst delivering real benefits for business.

By sharing information and knowledge about partner businesses with the regulatory community through the secure Primary Authority Register, primary authorities help enforcing authorities to target their scarce regulatory resources in a more informed way. Enforcing authorities are therefore better equipped to target the matters most requiring attention and the duplication of effort is minimised. The feedback that enforcing authorities provide on their interactions at a local level allows the primary authority to build up a more comprehensive picture of compliance and it can then ensure that the partnership targets those areas where improvement is needed.

1 Feedback: A borough council²⁶

Primary Authority represents a different, more collaborative way of working with businesses which the Council wishes to encourage. The vast majority of businesses want to do things right, and want help with this, so a purely regulator approach is not particularly appropriate: being able to advise businesses proactively on what to do to comply is far better both for the businesses and for the health and wellbeing of local residents.

2 Feedback: A district council²⁷

Primary Authority helps our kudos and helps with the reputation of regulators more generally – it offers a more positive picture of regulation than many organisations seem to have.

Primary authority is open to any business, charity or other organisation that is regulated by local authorities in relation to legislation that is within the scope of the scheme, subject to certain eligibility criteria ([see 2.2.3](#)).

2.1.2 Business support

The local authority will need to consider how Primary Authority fits into its package of regulatory support for businesses, and what it aims to achieve by offering primary authority services.

Many local authorities will have previously offered ‘non-statutory’ partnerships to local businesses, under schemes such as Home Authority²⁸, RAFKAP²⁹ and the HSE’s former Lead Authority scheme. It is useful to take a decision at an early stage as to whether the local authority will operate Primary Authority in parallel to such schemes and, if so, how this will work.

For example, some local authorities have chosen to withdraw provision of regulatory advice through non-statutory partnerships, and have offered Primary Authority to all businesses that they previously supported through such partnerships. However, they have recognised that, where a business in their area does not wish to participate in Primary Authority, the local authority will still need to play a co-ordinating role in respect of the business on behalf of the local enforcement community.

In making decisions as to how regulatory support and co-ordination will be provided, it is important to understand the key differences between Primary Authority and non-statutory schemes such as Home Authority, so that these can be clearly explained to officers, elected members, and businesses. These lie in the statutory nature of Primary Authority, as summarised in the following table:

²⁶ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013), an independent review of Primary Authority conducted by acl Consulting

²⁷ [Interim Evaluation of Primary Authority: Final Report](#) (BRDO, 2013)

²⁸ Home Authority was formerly supported by Local Government Regulation and now has joint governance arrangements under the Joint Statement of Commitment signed in June 2011 by the Better Regulation Delivery Office, the Trading Standards Institute and the Chartered Institute of Environmental Health, with the Home Authority database being hosted by TSI. An explanation of these arrangements is available on the [Primary Authority Register](#).

²⁹ The Retail and Fire Key Authority Partnerships scheme was operated by the Chief Fire Officers’ Association and the British Retail Consortium from 2009 to 2013.

Table 1. Summary of key differences between Primary Authority and non-statutory schemes

<i>Primary Authority</i>	<i>Home Authority</i>
Statutory basis	Non-statutory basis
Involves a commitment on the part of the business	May exist without active participation from the business
Primary Authority Advice to the business is 'assured' i.e. once implemented, the business can have confidence that it is compliant and that another regulator can't require it to comply in a different way	Advice does not have a statutory basis and may therefore be disregarded by other local authorities
An Inspection Plan can be used to improve the focus of local programmed inspections, test purchases and sampling activity. Local intelligence is fed back to the primary authority providing a vital resource for the business	There are no provisions in respect of co-ordinating local checks on the business
Enables collation of local intelligence and co-ordination of enforcement responses	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 5 working days. The primary authority is able to direct against proposed action in certain circumstances	Voluntary notifications of enforcement action may be made. There is no requirement for a response, and no ability to direct against proposed action
The liability of a primary authority is legally limited by the terms of the Primary Authority Terms and Conditions	There is not a legal limitation on liability
Cost recovery allows local authority capacity to be supplemented to meet the needs of partnerships	Capacity to provide services is limited by local authority resources

It is important that the differences between Primary Authority and non-statutory schemes such as Home Authority are clear to staff and are carefully explained to businesses so that a business is not given the impression that the distinguishing feature between the options is that one is 'free' and the other is not.

2.1.3 Capacity

The local authority will need to be clear about its capacity to provide partnerships and it is helpful to consider the following factors:

- a) What officer resource will be available to develop, manage and deliver partnerships? It can be helpful to consider, at an early stage, the roles that different officers will play, and what their training needs might be ([see 2.3.2](#)). Some officers may be better suited to negotiating partnerships and managing relationships whilst other officers may be better suited to providing technical expertise and developing specialist regulatory advice.

- b) Which regulatory areas ([see 2.2.1](#)) will partnerships be offered in?
- c) How many partnerships are envisaged?
- d) What level of primary authority activity might be required by the different businesses?
- e) How will contingencies be managed? For example, periods of holiday or sickness. It can be helpful to ensure that at least two officers are sufficiently familiar with each partnership to be able to maintain cover if required.

2.1.4 Corporate commitment

The decision to offer Primary Authority is a corporate one, and it is usually beneficial to involve the various business-facing services of the local authority in early decision-making about how the scheme will be offered and which businesses should be targeted.

It can be helpful to involve Members in the decision to offer Primary Authority, and some local authorities have found that a report to Members is beneficial at an early stage. This can be used to explain the benefits of the scheme and also provides an opportunity to showcase the work of regulatory services, highlighting the commitment of officers to providing support to local businesses, and to delivering improved protections. BRDO makes available a template report via the [Setting up as a Primary Authority](#) page of the Primary Authority Register.

1

Practical tips: Key messages for senior officials and elected members

- **Primary Authority is a statutory scheme which provides the local authority with an effective way to support businesses of all sizes, providing them with greater confidence that they are doing what is needed to comply with legal requirements.**
- **Primary Authority delivers improved protections for citizens, workers and the environment.**
- **A primary authority takes a lead on regulating a business or a group of businesses, enhancing the effectiveness of other local authorities that deal with the business in their local area, and making its expertise available nationally.**
- **The local authority can focus its offer on local businesses or key local employers.**
- **The option of cost recovery under the scheme allows the local authority to improve its service to businesses at a time when resources are stretched.**
- **Cost recovery can be structured to ensure that some local-authority resourced compliance advice is available to smaller businesses ([see 2.3.3](#)). These businesses, particularly if they are new, or do not have in-house expertise, often have the greatest need for compliance support.**

2.2 Understanding the legal framework for partnerships

A local authority that is considering offering Primary Authority to businesses needs to understand the scheme and how it can be used to provide support to businesses and to the wider regulatory community, whilst fulfilling its role of delivering protection for its citizens, workers, and the environment.

1

Statutory framework: Functions of primary authorities

The RES Act sets out the functions of a primary authority in relation to:

- **giving advice and guidance to the business for which it is primary authority in relation to the functions covered by their partnership; and**
- **giving advice and guidance to other local authorities as to how they should exercise the functions covered by the partnership in relation to the business.**

It also enables a primary authority to make an inspection plan containing recommendations to local authorities as to how they should exercise the function of inspection in relation to the business.

Statutory guidance on the scheme³⁰ provides a framework for the exercise of these functions.

2.2.1 Scope

A prospective primary authority will need to have a good understanding of the regulatory scope of the scheme. This is defined, for England and Wales, in terms of:

- a) legislation listed in Schedule 3 of the RES Act, as amended;
- b) regulations enacted under the European Communities Act 1972, in areas specified in section 4 of the RES Act; and
- c) secondary legislation which defines 'enforcement action' for the purposes of the scheme.

The regulatory areas relate primarily to functions that are commonly referred to as 'animal health', 'environmental health', 'fire safety', 'housing', 'licensing', 'port health', and 'trading standards'. For the purposes of the scheme, the regulatory functions within scope are grouped into categories which are set out in the [List of Primary Authority Categories](#) published by BRDO.

The scheme operates in England, Wales, Scotland³¹ and Northern Ireland³² but the applicability of the scheme is different in each nation, with the scope in relation to Scotland and Northern Ireland being defined by Order³³. The geographic applicability of the scheme is summarised in Table 1 ([see 1.1.1](#)).

A business can only have one primary authority in relation to each of the primary authority categories but may have different primary authorities for different categories.

³⁰ [Primary Authority Statutory Guidance](#) (BRDO, 2013)

³¹ In Scotland, a local authority can offer a partnership only for the relevant functions that remain the responsibility of the UK Government. Relevant functions that have been devolved to the Scottish Government (for example, food standards and food hygiene) are outside the scope of Primary Authority.

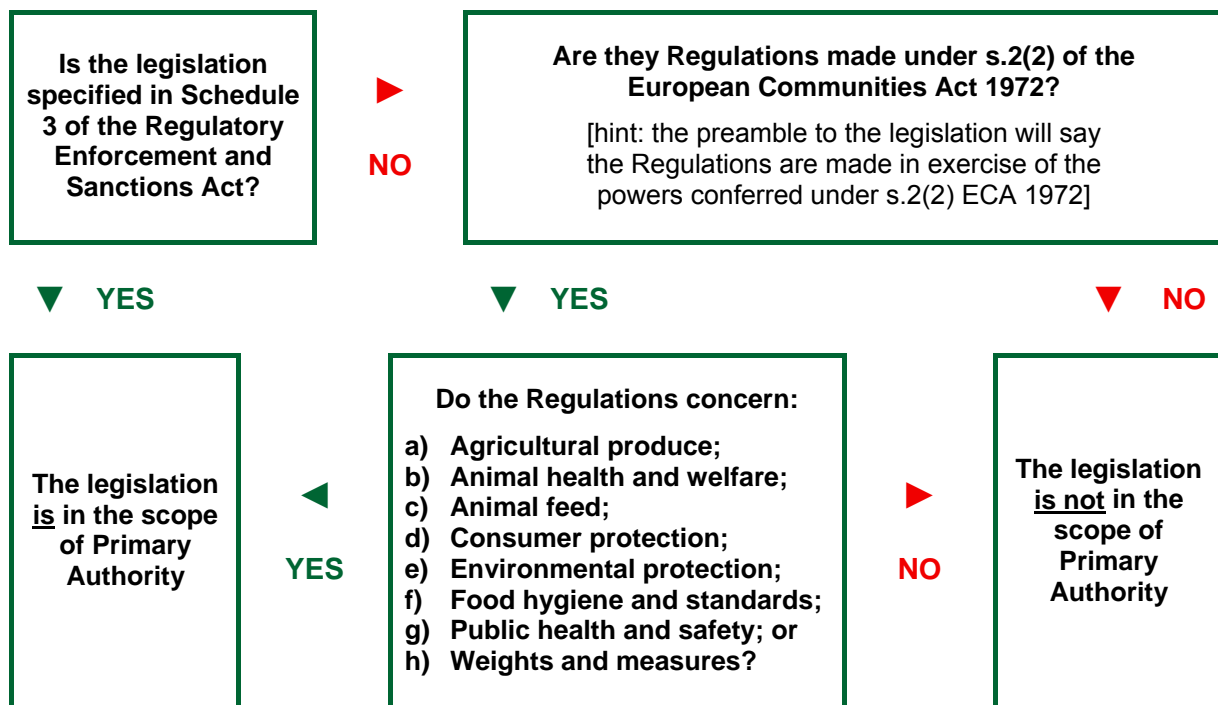
³² In Northern Ireland, a local authority can offer a partnership only for the relevant functions that remain the responsibility of the UK Government where these are delivered by local authorities. These are principally in relation to product safety.

³³ The Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009, available at www.legislation.gov.uk

Experience shows that businesses generally prefer a ‘one stop shop’ as far as possible when it comes to signing up with a primary authority, though in some cases, primarily for historical reasons, businesses have chosen to partner, for example, with one local authority for the food safety and hygiene category and with another for the health, safety and welfare category.

In most cases, a local authority’s offer to business will include all the categories of regulation that the local authority is responsible for. In other words, an environmental health service will offer food safety and hygiene, health, safety and welfare, environmental protection etc., rather than just one of these.

Figure 1: Is the legislation in the scope of Primary Authority?



2.2.2 Local authority suitability

In order to be nominated as primary authority for a business, a local authority must have responsibility for the regulatory functions that will be covered by the partnership. So, for example, a district council could not be nominated in respect of trading standards functions, and a local authority in England could not be nominated in respect of regulations of the Welsh Government. There are some very successful two-tier partnerships in existence involving a county and a district council working together to provide all the required primary authority services for a business.

The local authority must be ‘suitable’ to act as primary authority for the business. Suitability is assessed as part of the nomination process, with consideration being given to:

- the adequacy of the proposed arrangements for resourcing the partnership(s);
- relevant expertise of the local authority, and of the staff who will be supporting the partnership(s), both in terms of the business sector and the regulatory area(s);
- any evidence put forward by a relevant national regulator;

- proposed arrangements for preparing relevant local authority staff, and any other relevant persons, for the primary authority role and supporting them in that role on an ongoing basis; and
- the commitment of the parties to making the proposed arrangements operate effectively.

Statutory guidance on the scheme³⁴ recognises that local authorities use different models to deliver their services. However, the legislation only allows for nomination of a single 'local authority'. This means that where a number of local authorities are working together to provide services, for example through 'shared service' arrangements, the group of local authorities can't be nominated as primary authority for a business.

There are now a number of examples of local authorities agreeing practical solutions in this area. For example, the local authorities could agree that one of them will make all applications for nomination on behalf of the group. However, they will need to remember that a local authority can only be nominated in respect of regulatory functions that it has responsibility for.

2.2.3 Business eligibility

When the scheme was introduced in 2009, participation was limited to businesses regulated by more than one local authority in relation to the regulatory category. Changes to the statutory framework extended eligibility, from October 2013, to include businesses that 'share an approach to compliance'.

2 Statutory framework: Eligibility

Section 22 of the RES Act makes the scheme available to any 'regulated person' ie. a business, charity or other organisation that meets the eligibility criteria in (a) and / or (b) below:

- a) is regulated by two or more local authorities³⁵ in respect of a 'relevant function';**
- b) has arrangements in place to share an approach to compliance with at least one other business, provided that the businesses are collectively regulated by more than one local authority in respect of a relevant function.**

Relevant functions are defined in the Act, for England and Wales. The details of the scope of Primary Authority in relation to Scotland and Northern Ireland are defined by Order³⁶.

Statutory guidance on the scheme³⁷ provides details of what constitutes a shared approach to compliance, and this is explored in more detail in Module 4. However, in practice, the most common examples of a business that might access the scheme on this basis include:

- a) a member of a trade association that provides its members with advice on compliance;

³⁴ Sections 3.10 and 3.11, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

³⁵ A local authority is defined in Part 1 of the Act and includes a county or district council in England, a county or county borough council in Wales, a London borough council, a fire and rescue authority in England or Wales and a port health authority in England or Wales.

³⁶ The Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009, available at www.legislation.gov.uk

³⁷ Section 3, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- b) a business that operates as a franchise, following compliance controls specified by the franchisor;
- c) one of a group of related businesses that follow the same compliance controls, for example as part of a company group; or
- d) a business that receives regulatory advice through a scheme that it subscribes to, such as an approval scheme.

Within the scheme, a distinction is made between partnerships on the basis of the eligibility criterion that the business relied on in order to access the scheme. The term 'direct partnership' is used where the business accessed the scheme by virtue of being regulated by more than one local authority³⁸, and the term 'co-ordinated partnership' is used where the business accessed the scheme by virtue of the fact that it shares an approach to compliance with other businesses³⁹.

In the case of a co-ordinated partnership, a third party referred to as a 'co-ordinator' will usually play a co-ordinating role in relation to the businesses and the primary authority.

Some businesses will meet both of the eligibility criteria, and in this circumstance, they are able to choose whether they wish to form a direct partnership or a co-ordinated partnership. A business cannot have both a direct and a co-ordinated partnership for the same category of regulation.

The key practical differences between direct and co-ordinated partnerships are summarised in Module 1 ([see 1.1.4](#)) and explained in more detail in Module 4 ([see 4.4](#)). The following table gives just a few examples of the types of businesses that might wish to have a partnership:

Table 4. Examples of types of businesses that might enter a partnership

A multi-site retailer with branches in a number of local authority areas	Chooses to have a direct partnership with a county council in relation to age restricted products, fair trading and food standards.
A single site food manufacturer whose goods are distributed for sale across a number of local authority areas	Chooses to have a direct partnership with a unitary authority in relation to food standards and food safety and hygiene.
An internet retailer who imports goods and sells them across the UK	Chooses to have a direct partnership with a county council in relation to fair trading and product safety.
A national chain of gyms that offer tanning services to members	Chooses to have a co-ordinated partnership, through its trade association, with a district council in relation to age restricted services, and with a unitary authority in Wales in relation to health, safety and welfare (Welsh regulations).

³⁸ Section 4.2, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

³⁹ Sections 4.3 and 4.4, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

A charitable care home provider with premises in several local authority areas	Chooses to have a direct partnership with a district council in relation to food safety and hygiene and health, safety and welfare.
A national chain of petrol filling stations	Chooses to have a direct partnership with a fire and rescue authority in respect of petroleum licensing and fire safety.
A restaurant company that offers franchises across several local authority areas	Chooses to have a direct partnership with a unitary authority in respect of food standards and food safety and hygiene, and to work with its primary authority to offer co-ordinated partnerships to its franchisees.

2.3 Establishing policies and processes for primary authority services

3	Statutory framework: Arrangements to deliver primary authority services
<p>Statutory guidance on the scheme⁴⁰ requires that a local authority that offers primary authority services should have:</p> <ul style="list-style-type: none"> a) arrangements in place to ensure that staff it deploys to support partnerships have the required technical skills and knowledge and are competent in the delivery of primary authority services (see 2.3.2); b) arrangements in place to effectively manage and deliver partnerships (see 2.3.1 to 2.3.4); c) regard to the requirements for transparency and accountability in its delivery of primary authority services; and d) measures in place to promote consistency across the scheme. 	

2.3.1 Managing partnerships

The effective management and operation of partnerships is critical to their success in delivering benefits for the business and local regulators, and in improving compliance. The way in which each partnership operates is likely to vary between partnerships, with priorities and ways of working being negotiated between the primary authority and each business.

However, there are a number of key areas in which the primary authority will wish to establish its approach, and to consider the extent to which it is willing to negotiate variation. It is sensible to consider these areas before approaching prospective business partners. For example, the primary authority might wish to consider:

- a) How it will allocate responsibilities for negotiating, managing, delivering and reviewing partnerships? ([see 2.3.2](#))
- b) How it will operate cost recovery arrangements? ([see 2.3.3](#))
- c) How it will manage the provision of Primary Authority Advice? ([see 5.2](#))

⁴⁰ Section 3.8, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- Who will issue the advice?
 - How will the primary authority demonstrate 'due diligence' in terms of its provision of Primary Authority Advice? For example, it may decide that all Primary Authority Advice prepared by the primary authority officer for a business should be reviewed by a second officer prior to being issued, for example by a line manager. Alternatively, it may choose to set guidelines as to when review becomes appropriate, for example in particularly complex areas of law, in relation to new legislation, or in areas where there is known to be an issue with differing interpretations.
 - What will its arrangements for the review of Primary Authority Advice be?
 - How will Primary Authority Advice be recorded and stored, so that it can be easily retrieved and reviewed? For example, some primary authorities have found it helpful to maintain a 'Schedule of Primary Authority Advice' for each partnership, listing the broad areas in which advice has been provided, the issue date, any reference number, the officer responsible for the advice, the recipient, and the next review date.
- d) How will it manage and protect partnership information? ([see 2.3.4](#))
- e) How will it manage communications with enforcing authorities? For example, it has a responsibility to ensure timely responses to certain communications from enforcing authorities and will need to ensure that it is able to fulfil its obligations when officers are absent or there are staff changes.

2.3.2 Staff deployment and competency arrangements

A primary authority that intends to offer primary authority services will need to consider how it will allocate responsibilities to its officers, and how it will ensure that they have the necessary technical skills and knowledge and are competent to fulfil their primary authority role. The delivery of primary authority services presents a challenge for officers, requiring an understanding of the support needed by the business, and the service that should be provided to enforcing authorities. All officers who will be involved in developing the scheme and establishing new partnerships will need to have a good understanding of the statutory framework, and the responsibilities that it establishes for both enforcing authorities and primary authorities.

2 Practical tips: Training and competency

BRDO offers a number of training courses, providing an interactive method of learning in small groups, including time for questions about the scheme and an opportunity to hear about examples of primary authority in practice. Details of the courses are available via the training page of the [Primary Authority Register](#).

There may be development needs for officers in relation to Primary Authority that are identified during staff appraisal/assessment cycles or when roles change. The competencies expected of officers in relation to Primary Authority are included in the online [Regulators' Development Needs Analysis](#) ('RDNA') self-assessment tool.

Officers who use the Linked-In networking site can join BRDO's Primary Authority Network, which will allow them to participate in discussions about Primary Authority with other local authority officers, and to receive updates. Details are available on the page [Primary Authority Network](#).

Where just one partnership is being considered, it is common for a single officer to take responsibility for negotiating the partnership, managing it, and providing the primary authority services that are required on a day to day basis. A line manager will then provide oversight where required.

However, primary authorities that intend to establish multiple partnerships will usually identify at least two distinct officer roles, often referred to as a 'partnership manager' and 'primary authority officer'. The primary authority officer will typically take responsibility for operating the partnership on a day to day basis whilst the partnership manager will have an oversight role. Either or both may take responsibility for developing new partnerships with businesses. The table below illustrates how responsibilities might be divided between these two roles.

Table 3. Example of division of responsibilities between partnership managers and primary authority officers

Partnership Manager	Primary Authority Officer
Acts as a single point of contact for the business, particularly where the business has multiple primary authority officers (for example, in different regulatory areas).	Developing and maintaining a good working relationship with the business, for example through regular meetings and other contact.
Responsible for resolving any relationship issues between the business and its primary authority officer.	Developing detailed knowledge and understanding of the business and its approach to compliance.
'Sign off' of Primary Authority Advice, where required.	First point of contact for the business in relation to day to day operation of the partnership.
Managing capacity and contingency planning to deal with absence and changes in staff.	First point of contact for enforcing authorities in relation to day to day operation of the partnership eg. telephone calls and contact via the Primary Authority Register.
Responsible for monitoring officer competencies and performance.	Provision of technical expertise and development of Primary Authority Advice.
Oversight of invoicing arrangements and financial reporting, to the business and to management.	Review of Primary Authority Advice to ensure that it remains current.
Oversight of time recording arrangements.	Maintaining competencies and keeping relevant skills and knowledge up-to-date, including participating in arrangements to deliver consistency in advice, for example through sectoral topic groups.
	Accurate recording of time spent on partnership activities.

Experience shows that businesses place great value on their primary authority officer having a detailed understanding of their operations and a business will often invest significant resource in developing its relationship with its primary authority officer. For example, the officer may undergo a ‘familiarisation’ period which will involve visiting the business’ premises, reviewing procedures, sitting in on staff training, etc. The officer may be asked to accompany third party auditors, or to visit suppliers. This investment in officer time, and in developing a relationship of trust, pays dividends for both the business and enforcing authorities. Consequently, the business is likely to be frustrated by a change in its primary authority officer, and primary authorities should take this into account in their deployment of staff, and in planning for continuity in their delivery of primary authority services. Some local authorities have a policy of rotating officers between different service areas, for example in order to maintain skills and knowledge and to offer development opportunities. However, the application of such a policy to the delivery of primary authority services can be detrimental.

2.3.3 Operating cost recovery for primary authority services

4 Statutory framework: Cost recovery

Section 31 of the RES Act enables a local authority to charge the business fees on a cost recovery basis in relation to the exercise of its functions as a primary authority.

Statutory guidance on the scheme⁴¹ specifies that, in calculating the costs reasonably incurred in providing the service, a local authority should have regard to the guidance issued by HM Treasury in *Managing Public Money*⁴².

The experience of local authorities that have established direct partnerships is that businesses are willing to pay for the benefits of the scheme, where they are satisfied that the proposed charges are transparent and reasonable, and are justified by the expected benefits ([see 3.4.2](#) and [4.5.9](#)).

Equally it has been found that businesses are less concerned about minor differences in cost recovery charges which may be on offer from different local authorities but are instead more concerned with partnering with an authority which they feel they can work with professionally. They are influenced by the knowledge and understanding that a prospective primary authority has of their business and of their sector, and prefer a challenging and practical approach.

It is for each local authority to decide its own policy on providing primary authority services, ensuring that the operation of the scheme is consistent with the council’s approach to supporting local businesses, and that partnerships are adequately resourced, so that they can effectively deliver benefits.

⁴¹ Section 5, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁴² Annex 6.2 of the HM Treasury guidance, available at <https://www.gov.uk/government/publications/managing-public-money>

3

Practical tips: Questions to consider in developing a cost recovery policy

What factors will the local authority take into account in offering a partnership?

What level of support will be provided using the authority's own resources?

How will the local authority take account of the needs of smaller businesses that want Primary Authority?

Where a business requires a greater level of support, how will cost recovery be applied?

Can additional knowledge and expertise be obtained from outside the local authority from time to time as needs arise? For example, short-term support may be sourced from a neighbouring authority, or specialist input may be sought in respect of highly complex compliance issues.

In the interests of transparency a local authority that decides to charge for some or all of the primary authority services that it offers should publish clear and transparent information explaining these charges, and the basis on which they are calculated. This information should be easily accessible to businesses, including on the local authority's website⁴³.

Local authorities that are already participating in the scheme have recognised that the provision of a 'local authority resourced' service may limit their ability to support their businesses effectively and that cost recovery allows them to tailor the service to the level of support needed. An approach that is used by many local authorities involves specifying a certain level of support that will be funded by the local authority with any additional support being charged to the business. The following practical example illustrates how a local authority might consider its local context in developing its policy:

1

Practical example: Developing a policy for primary authority services

The local authority has a significant number of small, locally-based food manufacturers in its area. The council has a commitment to encouraging inward investment and supporting the growth of local businesses. Regulatory services have an important part to play in supporting these businesses and wish to offer them access to the benefits of Primary Authority.

The local authority wishes to make a clear, straightforward offer of support to all local businesses, which will particularly appeal to smaller businesses. It adopts a model which provides 10 'officer hours' to all direct partnerships, resourced by the local authority.

It anticipates that this basic allocation will cover the needs of many of its smaller businesses. Should a business require support over and above the basic allocation, then this is to be charged on a cost recovery basis at an hourly rate.

The local authority considers how it might apply cost recovery in respect of co-ordinated partnerships and decides that this will be negotiated on a case by case basis.

⁴³ Section 6, [Regulators' Code](#) (BRDO, 2014).

Where aspects of the service are to be provided on a cost recovery basis, it will be helpful to consider the following questions:

a) What is the cost recovery rate?

A re-chargeable hourly rate will usually be agreed with the local authority's finance team. The cost recovery rate may include the cost of the officer working with the business, accommodation overheads, management and legal support, etc.

The period of applicability of the cost recovery rate should be made clear, in any published policy and in discussions with business. For example, where the re-chargeable hourly rate is increased annually on a set date by the local authority, the policy should make this clear and agreements with businesses should address the issue of how this will be dealt with.

b) Will costs be recovered in respect of all primary authority services?

Statutory guidance on the scheme⁴⁴ includes an indication of the areas in which costs might be recovered ([see 3.4.2](#) and [4.5.9](#)).

c) Will the local authority charge VAT on primary authority services that it offers?

5

Statutory framework: Applicability of VAT charges

Article 13(1) of EU Directive 2006/112/EC:

'States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.'

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortion of competition.'

Whether or not VAT should be charged on Primary Authority services depends on the application of Article 13(1).

It is reasonably clear that the first limb of Article 13(1) is met in respect of primary authority services. Local authorities participate in Primary Authority as public authorities and under the RES Act, only local authorities may act as primary authorities.

The second limb of Article 13(1) may apply to some Primary Authority services but not to others, depending on the circumstances.

The applicability of VAT to charges for primary authority services is complex and local authorities have sought guidance from Her Majesty's Revenue and Customs on their particular circumstances.

⁴⁴ Sections 13.9 and 22.16, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

d) Will charges be made on the basis of 'hours used' or on the basis of an estimated level of annual or monthly support?

Practice in this area differs between primary authorities. Whilst some invoice in arrears on the basis of work done, others invoice in advance, on the basis of an estimated level of resource requirements agreed with the business.

Whichever route is chosen, a reliable time recording method is needed in order to underpin cost recovery calculations. Where invoicing is in advance, on the basis of an estimated level of resource, then the partners need to be clear about how they will manage any 'under provision' or 'over provision'.

e) Will there be an agreed commitment that a minimum level of support will be provided?

This could, for example, specify that a certain number of hours will be provided by the primary authority during the first six months of the partnership, to allow for the primary authority to familiarise itself with the business' operations and systems.

f) How will the local authority demonstrate to the business the basis of the charges made?

This varies amongst existing partnerships and can range from a brief summary of activities undertaken to full, documented time recording.

The following examples illustrate how different approaches to cost recovery may suit the needs of different partnerships:

2

Practical example: Direct partnership operating 'Pay As You Go'

Anytown Council sets up a direct partnership with ABC Farmfoods, a small local manufacturer, to cover the food safety and hygiene and food standards categories. In accordance with Anytown Council's policy on Primary Authority, ABC Farmfoods receives an allocation of support that is resourced by Anytown Council, in this case half a day of officer time each month.

Where a higher level of support is required, for example because the business develops a new range of products and requires a substantial level of advice on recipes, labelling and marketing, the primary authority officer records the time spent providing this support (using a reliable time recording system to log 'officer hours') and issues monthly invoices to the business for officer hours in excess of the half day to which the business is entitled. The invoices are calculated on the basis of a published hourly rate for the primary authority officer.

ABC Farmfoods also asks Anytown Council to assist it with the analysis of samples of the new products. The costs of sampling and analysis are also recovered through the monthly invoices.

3

Practical example: Coordinated partnerships operating 'Pay As You Go'

Anytown Council agrees arrangements with TUV Association, a locally based trade association, to offer co-ordinated partnerships to its members. It agrees with TUV Association that it will not recover any of the costs involved in agreeing ways of working together, and making the offer to the association's members. However, once co-ordinated partnerships are in place, Anytown Council will recover the costs of:

- meeting with TUV Association on a regular basis;
- developing Primary Authority Advice requested by TUV Association on behalf of its members; and
- meeting requirements of the scheme, for example in terms of reviewing Primary Authority Advice that it has given, responding to notifications of proposed enforcement action, and maintaining up-to-date information on the Primary Authority Register.

Anytown Council and TUV Association agree that Anytown Council will recover costs incurred in responding to enforcing authority queries in relation to Primary Authority Advice that it has given but will not recover its costs in relation to any other enquiries that it receives from enforcing authorities. The primary authority officer records the time spent and issues monthly invoices to TUV Association. The invoices are calculated on the basis of a published hourly rate for the primary authority officer.

4

Practical example: Direct partnership on an 'Annual Contract'

Anytown Council sets up a direct partnership with ABC Tyres, a regionally based business, to cover the health, safety and welfare category. It is clear from the outset that the business will require a higher level of support than that resourced by the local authority. After an assessment of the likely resource requirements, Anytown Council and ABC Tyres agree that at least twenty days of officer time will be required, over and above the local authority resourced support, to establish the partnership, review existing compliance systems and provide Primary Authority Advice in priority areas. Ongoing support of two days of officer time each month is also envisaged.

An annual invoice is issued to the business, based on the assessed resource requirement of 38 days which is in excess of the half day per month that will be resourced by the local authority:

<i>Initial resource requirement:</i>	<i>20 'officer days'</i>
<i>Ongoing resource requirement:</i>	<i>24 'officer days' (2 per month)</i>
<i>Resource entitlement:</i>	<i><u>6 'officer days' (0.5 per month)</u></i>
<i>Total:</i>	<i>38 'officer days'</i>

The primary authority officer records the time spent providing support to the business and regularly updates the business on the 'officer hours' used. Where additional time is used, a balancing invoice is issued at the end of the year. Where less time is used in supporting the business than had been anticipated, the business is offered additional support, or a 'credit' against its invoice for the following year.

2.3.4 Managing and protecting information

6

Statutory framework: Freedom of information

Information held by public authorities, including local authorities and BRDO, is subject to the Freedom of Information Act 2000 (the FOI), which provides a general right of access to information held by public authorities. A public authority must provide information in response to a request made under the Act unless one of a number of exemptions applies.

The FOI exemptions most likely to be relevant to information shared within a partnership are those which apply to:

- information which is provided in confidence (section 41 - 'the confidentiality exemption'); and
- information which, if disclosed, would or would be likely to prejudice the commercial interests of any person (section 43 - 'the commercial sensitivity exemption').

Information held by public authorities which relates to the environment may be subject to the Environmental Information Regulations 2004 (the EIR), rather than the FOI. The EIR include a similar range of exemptions as the FOI. The EIR exemptions most likely to be relevant to information shared within a partnership are those which apply to material:

- the disclosure of which would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic concern;
 - the disclosure of which would adversely affect the interests of the person who provided the information, where that person
 - was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - did not supply it in circumstances such that that or any other public authority is entitled apart from under the EIR to disclose it; and
 - has not consented to its disclosure;
- and
- which is still in the course of completion, unfinished documents or incomplete data.

The application of exemptions under the FOI or EIR is at the discretion of the public authority that receives a request, and other exemptions may be relevant in some circumstances.

Effective partnerships are reliant, to a greater or lesser degree, on the sharing of information, whether this is between the primary authority and a business or co-ordinator, or whether it is with enforcing authorities.

The information and data shared will often be confidential and may be commercially sensitive. It is likely to include personal details. Examples might include:

- contact details, including addresses and telephone numbers;
- Primary Authority Advice issued to the business;
- results of audits carried out by the primary authority and reports prepared by the primary authority on the business' compliance;

- compliance data held by the business, such as the results of internal audits or third party audits carried out; and
- potentially sensitive information, such as details of a business' planned price promotion.

The [Primary Authority Terms and Conditions](#), while acknowledging the primary authority's disclosure obligations under the FOI and the EIR, provide that within a partnership confidential and commercially sensitive information should be respected and safeguarded accordingly.

The terms and conditions also oblige the business to assist and co-operate with the primary authority to enable it to comply with FOI and EIR disclosure requirements. Such co-operation is likely to include providing timely responses to queries about the status or sensitivity of information.

4 Practical tips: Managing partnership information

a. Agree and maintain a robust system of information management

The disclosure obligations only apply to information which a public authority holds. It is sensible therefore for primary authorities to return or destroy information provided by a business which is out-dated or no longer required. All copies of relevant information should be accounted for by the primary authority to enable destruction or return to be effective. Particular care should be taken with electronic information. Simply pressing "delete" may not effectively destroy electronic information.

Example:

A business shares information with its primary authority to facilitate the development of an inspection plan. The business and the primary authority agree that whenever the plan is reviewed, all information shared during the development of the previous iteration of the plan will be returned or destroyed.

All information provided to the primary authority by the business is kept in a dedicated file which only the officers allocated to the partnership can access. The information held in this file is not copied or otherwise disseminated any further within the primary authority.

b. Only share information as required

The partners should consider whether headline or summary information would provide the primary authority with all of the information that it needs and whether this would be less sensitive if disclosed. It may be appropriate for the primary authority to be given access to certain information, rather than to hold it. For example the primary authority officer might visit the business to view full compliance data, or to access such data on the business' IT system.

c. Agree and record the basis on which information is shared and the purposes for which it may be used

The primary authority should be made aware of any information that is commercially sensitive or confidential when it is shared and the partners should be clear about the purposes for which the information is to be used.

Such information should be carefully recorded by the primary authority and kept up to date. The basis upon which the information is considered confidential and/ or commercially sensitive should also be recorded.

The sensitivity of information may change over time and the personnel dealing with a subsequent FOI request may not have been privy to discussions when the information was shared.

Example:

A primary authority and a business agree that all business information passed to the primary authority will be accompanied by a cover sheet on which the sensitivity of the information, the purposes for which it may be used, and the date on which it should be returned or destroyed is recorded. This information will be reviewed and up-dated on a regular basis.

d. Don't use 'confidential' markings indiscriminately

Marking information as confidential does not make it confidential in the eyes of the law. Publicly available or trivial information, for example, will not be considered confidential even if it is marked as such. On receipt of an FOI request the primary authority will have to look beyond any marking and consider whether the information actually is confidential or commercially sensitive. Indiscriminate marking of documents will make the primary authority's task more difficult and risks confusion and misunderstanding about which information really is confidential or commercially sensitive.

e. Ensure that documents under development are clearly marked as such

If unfinished or incomplete information is disclosed, the 'draft' status of the information should be obvious to the recipient, reducing any risk of confusion or misinterpretation.

f. Be aware that information produced collaboratively with the primary authority may be more susceptible to disclosure

The confidentiality exemption may only apply to information obtained by the primary authority from another person. It is unlikely to apply to information generated by the primary authority. However, the commercial sensitivity exemption may be relevant to the information generated by the primary authority.

g. Agree a consultation procedure in the event of an FOI request

The business will have a better understanding than the primary authority of the potential commercial impacts of disclosure and will be able to confirm whether and why information should be considered confidential or commercially sensitive. Circumstances affecting confidentiality and commercial sensitivity may have changed since the information was shared and a primary authority that receives an FOI or EIR request is likely to require the business' co-operation before it responds to the request.

Detailed guidance on the FOI and EIR is available on the Information Commissioner's website⁴⁵.

⁴⁵ <http://www.ico.org.uk>

3 Establishing direct partnerships

This module outlines the stages that a prospective primary authority will need to go through in order to establish a successful direct partnership with a business. Some of the content will also be of interest to officers involved in establishing co-ordinated partnerships. However, they should also read Module 4 which explores the practicalities of working with a co-ordinator to establish groups of co-ordinated partnerships.

3.1 Securing business interest

Once a local authority has taken the decision to offer primary authority services, it will need to decide how it will inform potential business partners that it may wish to work with of the availability and benefits of the scheme. Scoping which businesses to approach first is a good idea.

1

Practical tips: Deciding which business to approach

- **Do you want to start with a very small number of partnerships, while you get to grips with what is involved, or do you want to have a large 'launch'?**
- **Consider which businesses you currently work with, for example through existing arrangements, who know you and may welcome the opportunity to develop the relationship.**
- **Think about the businesses that regularly approach you for advice and will listen to and value your input.**
- **Think about the businesses that may be most in need of guidance and support, perhaps because they are in a heavily regulated sector, or because of a poor compliance record.**
- **Think about businesses that have their headquarters or a main activity in your area, and may be a significant local employer.**
- **Does your authority have a current focus on an industrial/business area of the town which it is seeking to support and grow?**
- **Do you have expertise in a particular sector?**
- **Think about the primary authority categories⁴⁶ that you will offer.**

Experience shows that a local authority embarking on offering Primary Authority is best placed to make its own decisions about which businesses to approach and how to do this. The team's knowledge of local businesses and their compliance issues will be vital at this stage so a 'brainstorming' team exercise could be a worthwhile step forward. Other business-facing services within the local authority could provide valuable input at this stage.

⁴⁶ These are set out in the [List of Primary Authority Categories](#) published by BRDO.

Once the initial list of businesses has been compiled, a decision will need to be made about how to approach them:

- a) some local authorities have chosen to set up individual meetings to discuss Primary Authority with each business on their list. Sometimes this is done following an intervention. However, a discussion about Primary Authority at the end of an intervention may not be well-received, especially if the time spent on site has already been considerable. Alternatively, a separate meeting may be arranged. This can be more successful but a one-to-one meeting with a busy business operator is often difficult to secure and these meetings can be time consuming and repetitive for the local authority officer.
- b) other local authorities have decided to host a seminar, inviting some or all of the businesses on their list. Business seminars have proven to be a cost effective and popular way of explaining the benefits of the scheme to a mixed business audience. Businesses are perhaps less sceptical about being 'singled out' when they are invited as part of a larger group and the atmosphere is often a positive one. Experience has shown that attendance at such an event is improved if an initial letter inviting selected businesses is followed up with some form of personal contact, such as a telephone call.

2

Practical tips: Hosting a business seminar

- **Decide how many businesses you want to invite – invitations to 50 well-chosen businesses may see an audience of perhaps 30 at the seminar. This could result in 15-20 'signings'.**
- **Holding the seminar in the early evening or early morning is popular as this is less likely to interrupt business operations.**
- **A 'welcome' from the Head of Service or senior elected Member is often well received at the start and demonstrates the local authority's commitment to supporting local business.**
- **The business seminar approach works particularly well if the officers assigned to work with the invited businesses also attend the seminar, making their guests welcome on arrival and during a refreshment break, chatting about which particular compliance issues for the business may benefit from Primary Authority Advice.**
- **Explaining the local authority's cost recovery policy is an important part of explaining the scheme as a whole and should not be avoided, however uncomfortable it may feel. It is sensible to schedule this element towards the end of the presentation, once the benefits of the scheme are understood. Experience shows that cost recovery is rarely a barrier to new partnerships if the benefits and purpose of the scheme are explained well.**
- **Compiling a pack of information for each delegate to take away from the seminar can be very useful. Such a pack might contain: information about the local authority and its regulatory services, details of the scope of Primary Authority, a summary of the services being offered by the local authority, contact details for officers, and the Primary Authority Terms and Conditions. Some local authorities have taken this opportunity to provide information on, for example, economic development goals.**
- **Follow up after the event is important too, as the benefits of partnership may be forgotten as time moves on.**

Whether initial interest from the business arises from a business seminar, a letter, an informal discussion during an inspection, or some other means, a one-to-one meeting will be needed to explore the detail of what the scheme has to offer for the particular business, whether a partnership between the local authority and the business would be beneficial, and the practical arrangements for such a partnership.

3.1.1 Explaining Primary Authority to a business

Each business is likely to have different questions about Primary Authority, so it is important that local authority officers have a good understanding of the scheme before meeting with prospective business partners, and are able to explain the key features to a business.

3

Practical tips: Explaining Primary Authority to a prospective business partner

Explaining the key features of Primary Authority to a business:

- **The partnership has a statutory basis**
- **The primary authority is ‘nominated’ by the Secretary of State in specific regulatory areas (‘primary authority categories’)**
- **Primary Authority Advice can be provided on issues of legal interpretation or applicability, and on the business’ compliance control systems**
- **Proposed enforcement action must be notified to the primary authority, except in a few defined circumstances, and the primary authority can direct against proposed action if it is inconsistent with Primary Authority Advice that has been given**
- **Information can be communicated to all local regulators via the secure area of the Primary Authority Register, improving their understanding of the business**
- **The business⁴⁷ can access their own partnership’s page in the secure area of the Primary Authority Register but cannot see information about other partnerships**
- **An inspection plan can be used to improve the focus of local programmed inspections, test purchases and sampling activity, and to provide better feedback to the partnership**
- **There is scope to fund the work of the primary authority through cost recovery, allowing it to supplement its capacity to provide support**

Businesses will always want to understand how they can benefit from participating in Primary Authority. In practice, the benefits will differ, depending on the business, the nature of the partnership, and the scale of partnership activities. It can be helpful to structure discussions about possible benefits around the following three areas:

- reducing the costs of complying with regulations;
- reducing the business’ risks and improving confidence in compliance; and
- reducing the costs associated with any compliance failure.

⁴⁷ Note, that a business in a direct partnership is registered as a user of the secure area whereas a business in a co-ordinated partnership is not able to access the secure area.

3.2 Understanding the business

The prospective primary authority will need to have a good understanding of the operating model of a prospective business partner and it is sensible for the parties to map out certain details about the business and its regulation by local authorities at an early stage.

The following table summarises the areas of discussion that the parties will usually wish to cover in early meetings, and provides suggestions for some of the questions that will need answering.

4	Practical tips: Understanding a prospective business partner
<p>Understanding the business:</p> <ul style="list-style-type: none"> • What is the scale of the business in terms of where it operates, the number of premises / employees / product lines? • How does the business operate? • Will the partnership cover a single legal entity (a 'regulated person') or several? • If the partnership will cover multiple legal entities, what is the relationship between them (eg. the company structure), and what does each legal entity do? 	
<p>Understanding how the business manages compliance:</p> <ul style="list-style-type: none"> • What are the most significant regulatory risks faced by the business? • What are the major compliance issues / challenges? • What sources of regulatory advice does the business currently rely on? • What is its compliance history? • Where there are related businesses, for example a company group, a landlord / tenant relationship, or a franchisor / franchisee relationship, is there clarity as to where responsibility for compliance lies? • Does any other business dictate how the business manages compliance? For example, a major customer. • Is the business currently facing any enforcement actions? 	
<p>Understanding how the business is regulated at a local level:</p> <ul style="list-style-type: none"> • What interactions does the business currently have with local regulators, in terms of compliance checks, samples or requests for information? • How does the business manage these interactions? • What is the likely level of enquiries and/or complaints to the primary authority from enforcing authorities? 	
<p>Exploring what the business expects of a partnership:</p> <ul style="list-style-type: none"> • Is the business clear about what it wants from the partnership? • What does it anticipate the key benefits to be? • What regulatory areas ('primary authority categories') would it like the partnership to cover? (see 3.3.1) • Is the business looking for intensive, ongoing support, or for an occasional source of advice, as and when it is required? • Does the business require advice on what it needs to do to comply, or does it want confirmation that its own interpretation of what is needed is acceptable? • Does the business want the primary authority to receive all initial queries from enforcing authorities, or does it prefer to retain this contact with enforcing authorities itself? 	

1

Practical example: Approaching a business

ABC Tyres is a tyre-fitting service, operating a large number of regionally-based outlets. The business allocates significant internal resources to its compliance activities and has a good history of compliance.

The business is currently frustrated by the lack of regulatory co-ordination and consistency that it experiences and wants a single point of contact with local authority regulators in relation to health and safety matters. It has confidence in its compliance systems but does experience challenge from local officers and would welcome advice on its compliance systems that it can rely on.

ABC Tyres approaches Anytown Council and they meet to discuss establishing a partnership in relation to the health, safety and welfare category. At the meeting, they work through the points listed in the practical tips box above.

3.3 Confirming eligibility and scope

Prospective partners will need to consider the scope and eligibility criteria established by the statutory framework and to be clear that they are eligible to form a direct partnership, and what the partnership will cover. The relevant criteria are explained in detail in Module 2 ([see 2.2](#)), and the relevant considerations are summarised in the table below.

Table 1: Confirming eligibility and scope

The local authority (see 2.2.2)	Does the local authority have responsibility for the regulatory area?	A local authority can only form a partnership for the relevant functions for which it has regulatory responsibility.
	Is the local authority 'suitable'?	In order to be nominated as primary authority for a 'regulated person' the local authority must be suitable ie. it must have the relevant expertise, resources and ongoing competency arrangements to deliver an effective partnership (see 2.2.2).
Business eligibility (see 2.2.3)	Is the business regulated by more than one local authority?	A 'regulated person' is eligible for a direct partnership in relation to a particular primary authority category (see 3.3.1) only where it is regulated by more than one local authority in relation to that category.
	Does the business already have a primary authority?	A 'regulated person' can only have one primary authority in relation to each primary authority category but may have different primary authorities for different categories.
Regulatory scope (see 2.2.1)	What regulatory areas are being considered?	The regulatory scope of the scheme is defined in terms 'relevant functions of local authorities', and these functions are grouped into the primary authority categories in relation to which partnerships can be established (see 3.3.1).

<p>Geographic Scope (see Table 1 at 1.1.1)</p>	<p>Where is the business regulated?</p>	<p>The scheme operates in England, Wales, Scotland and Northern Ireland but the applicability of the scheme is different in each nation.</p>
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In considering eligibility, it is important to recognise that a local authority is nominated as primary authority for a single legal entity – referred to as the ‘regulated person’. In everyday language, an organisation that is referred to as a business may actually comprise several legal entities, and the prospective primary authority will need to consider the questions of eligibility and scope in relation to each legal entity, as each will require separate nomination.

2 Practical example: Eligibility

ABC Clothing is a well known high street retailer. It is operated as a single organisation but structured as 4 legal entities:

- **ABC Clothing (Trading) Ltd**
- **ABC Clothing (Distribution) Ltd**
- **ABC Clothing (Online) Ltd**
- **ABC Clothing (Finance) Ltd**

ABC Clothing approaches Anytown Council and asks it to be its primary authority. Anytown Council explains to ABC Clothing that each of the four legal entities is a separate ‘regulated person’ for the purposes of the scheme, and they discuss whether each legal entity meets the eligibility criteria in the regulatory areas that ABC Clothing wishes to partner in.

Anytown Council is subsequently nominated as primary authority for each of the four legal entities, in relation to a number of different categories, and it delivers primary authority services to ABC Clothing through a single partnership.

3.3.1 Primary authority categories

The local authority and business will need to discuss which categories will be covered by the partnership. A summary of the categories that are available, and their geographic scope, is included in the [List of Primary Authority Categories](#) published by BRDO.

These categories have been designed to align with the ways that local authorities tend to organise their delivery of regulatory activities, and some legislation may divide across more than one category, for example where an Act covers a range of regulatory areas. There is no definitive list of primary and secondary legislation associated with each category – primary authorities and enforcing authorities are expected to take a pragmatic approach when considering whether or not a particular regulatory requirement sits in one category or another, and to discuss with each other any areas of uncertainty that arise.

Businesses often prefer a ‘one stop shop’ for Primary Authority, but there may be reasons why a business does not want a partnership for particular categories, or reasons why they wish to have a different primary authority for a particular category. The business ultimately decides which categories it needs or wants but there can be an element of negotiation, as the primary authority has to be sure that it can deliver what is required in each of the categories.

Primary Authority is a flexible tool and partnerships can be adapted to meet the needs of the parties. For example, a partnership might, at the outset, cover just one or two categories, but the parties could later choose to apply to extend the partnership to further categories by making a notification to BRDO via the Primary Authority Register.

3.4 Agreeing partnership arrangements

Experience shows that the success of a direct partnership between a business and its primary authority, in delivering benefits to the business and to other local regulators, is usually rooted in a shared understanding as to how the partnership will work, and what it is aiming to achieve. The groundwork for this shared understanding is best done at the stage at which a partnership is being considered, although further work is likely to be needed in the early stages of the partnership to confirm the detail in some areas.

1 Statutory framework: Agreeing how the partnership will work

Statutory guidance on the scheme⁴⁸ expects prospective partners to be clear, prior to making an application for nomination as to:

- a) each party's expectations of how the partnership will work ([see 3.4.1](#));
- b) what the objectives of the partnership will be ([see 3.4.1](#));
- c) how the parties will communicate with each other and with enforcing authorities ([see 3.4.3](#));
- d) the arrangements for requesting, providing and managing Primary Authority Advice ([see 3.4.3](#)); and
- e) the arrangements for resourcing the work of the partnership ([see 3.4.2](#)).

3.4.1 The nature and scope of the proposed partnership

In practice, partnerships are operating in very different ways, with different levels of activity and resourcing. One common feature of partnerships that are perceived by both partners to be 'successful' is that they have a good understanding of the objectives and priorities of the partnership, and the expected benefits for the business, the primary authority, enforcing authorities, and those that the regulation seeks to protect.

They are also clear about the scope of the service that is being offered by the primary authority, both to the business and to enforcing authorities, and the service levels that should be expected. The following list of primary authority services provides a useful framework for discussions about the primary authority services that will be provided:

- a) developing, providing and reviewing Primary Authority Advice;
- b) responding to queries and notifications from enforcing authorities;
- c) raising awareness and understanding of the partnership amongst enforcing authorities;
- d) developing, managing and evaluating an inspection plan;
- e) collating and analysing data and other information;
- f) training staff of the business; and
- g) conducting audits or other checks on compliance at the request of the business.

⁴⁸ Section 13, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

It can be helpful to discuss at this early stage how two or more local authorities might work together to offer primary authority services to a business. For example, there are some successful two tier partnerships in existence that involve a county and district council working together to provide Primary Authority in both trading standards and environmental health categories. This is also an appropriate time to discuss whether the prospective primary authority will provide any primary authority services through a third party, whether this is another local authority or a commercial organisation. The primary authority is able to do this, with the agreement of the business, but it should be clear to all parties that the primary authority remains accountable for the services provided.

3.4.2 Resourcing the partnership

In order to be effective, a partnership must be properly resourced to deliver its agreed objectives. It is therefore essential that both partners reach an agreement as to the resources that are likely to be required and how the required resources will be provided.

2 Statutory framework: Agreeing resource requirements

Statutory guidance on the scheme⁴⁹ expects that, in order to make an informed assessment of the resources that are likely to be required to operate an effective partnership, prospective partners should have a clear understanding of:

- a) the scale and scope of the proposed partnership;
- b) the needs of the business for regulatory advice;
- c) the expectations of both parties;
- d) the scope of the service being provided by the local authority to the business;
and
- e) the role that the local authority will play in leading regulation of the business on behalf of local authorities.

In assessing the resources that are likely to be required, the prospective primary authority will need to have a good understanding the business and its experience of local regulation ([see 3.2](#)). It will also need to discuss, with the business, how primary authority services will be provided. The table below summarises some of the questions that the parties would usually consider.

5 Practical tips: Considering resource requirements

Which categories will the partnership cover?

Which staff will support the partnership in each category?

What cover will be required for periods of holiday or other absence?

How will ongoing competency of the staff be ensured?

Will there be a need to commission a third party, for example to provide legal opinions, to test products, to provide audit services?

If there is an existing relationship, is the local authority able to quantify the support that it has previously provided to the business? Will this level of support change with the change in the relationship?

How will the partnership be resourced?

⁴⁹ Section 13, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

The prospective primary authority will already have determined its approach to cost recovery ([see 2.3.3](#)) and it will need to agree with the business how this approach will be tailored to the particular circumstances of the partnership.

3 Statutory framework: Agreeing cost recovery

Statutory guidance on the scheme⁵⁰ provides an illustrative list of primary authority services in respect of which partners might agree that costs will be recovered:

- a) establishing partnership arrangements;
- b) familiarising primary authority staff with the business;
- c) raising awareness and understanding of the partnership amongst enforcing authorities;
- d) developing, providing and reviewing Primary Authority Advice;
- e) developing, managing and evaluating an inspection plan;
- f) responding to queries and notifications from enforcing authorities;
- g) collating and analysing data and other information;
- h) training staff of the business; and
- i) conducting audits or other checks on compliance at the request of the business.

It is important that both parties are clear as to what partnership activities will be viewed as 'chargeable' by the primary authority, and how cost recovery arrangements will be operated.

6 Practical tips: Questions on cost recovery

- What will the invoicing arrangements be?
- Will the hourly 'cost recovery' rate be subject to an annual increase?
- How will the costs of commissioning a third party be recovered from the business?

3.4.3 Agreeing working arrangements

An effective partnership will need to have agreed arrangements in a number of areas, including those listed below. It is sensible to summarise these arrangements, as a reference point for both parties. BRDO makes available a template '[Summary of Partnership Arrangements](#)' that partnerships can use for this purpose.

a) Communication

The partners will want to agree how they will communicate and to share contact details. They may decide to schedule regular meetings, or they might prefer to agree that meetings will be arranged as and when they are needed.

⁵⁰ Section 13, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

b) Primary Authority Advice to the business

The partners will need to agree arrangements for managing Primary Authority Advice to the business at an early stage ([see 5.2](#)). They will also want to have a clear picture of what the business' advice needs are, and how they will prioritise these.

It is helpful to have a conversation at an early stage about the sharing of information, such as Primary Authority Advice to the business, via the secure area of the Primary Authority Register ([see 5.3](#)), so that the parties can agree their approach to this.

It is also sensible to discuss the primary authority's responsibility to ensure that Primary Authority Advice is reviewed as required so that it remains up-to-date and relevant. The parties will need to be clear about how this will be done, and to consider any resource implications.

c) Working with enforcing authorities

The parties will need to be clear that the primary authority has both a reactive role in terms of enforcing authorities, for example in responding to queries and notifications of proposed enforcement action, and a proactive role in terms of guiding how the business is regulated, and leading regulation of the business on behalf of all enforcing authorities.

4 Statutory framework: Working with enforcing authorities

Statutory guidance on the scheme⁵¹ sets out the role of a primary authority in a direct partnership in supporting consistent interpretation and informed and proportionate responses to non-compliance by building a detailed picture of compliance across the business. The primary authority should encourage enforcing authorities to share information about the business with it, and should manage the data that it collates in a manner that allows it to identify compliance issues that may need to be addressed.

It is helpful for the parties to discuss at an early stage how they see the primary authority fulfilling these roles.

7 Practical tips: Discussing arrangements for working with enforcing authorities

What role will the primary authority play in terms of receiving queries from enforcing authorities on behalf of the business?

How will the primary authority handle notifications of proposed enforcement action in respect of the business?

Is there information that could usefully be shared with enforcing authorities via the secure area of the Primary Authority Register to assist them in regulating the business at a local level? For example:

- **explaining key aspects of the business' operating model that will help local regulators to identify responsibilities and to address existing confusions;**

⁵¹ Section 1.23, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- **standardising sampling or complaints procedures;**
- **providing FAQs; or**
- **providing answers to questions that are commonly included in self-assessment questionnaires.**

Would it be beneficial to make available commonly requested business documents, such as procedures, via the secure area of the Primary Authority Register?

Are there areas where an inspection plan might be appropriate?

If so, what is the business' current experience of local enforcement activity in these areas, and how does it think an inspection plan might be beneficial?

d) Co-ordination

Where a business has more than one primary authority, it is important that the primary authorities understand where they will need to work together to ensure a consistent approach, both for the business and for enforcing authorities.

8

Practical tips: Discussing partnership arrangements with a prospective business partner

Does the business have any other primary authorities? If so, how will the partnerships co-ordinate?

Are there other primary authorities whose activities might have an impact on the business? If so, how will consistency issues be addressed?

For example:

- **where the business is in a franchise agreement with a business that has a primary authority**
- **where the business has major customers that have a primary authority**
- **where the business has suppliers that have a primary authority**

e) Maintaining and reviewing information on the Primary Authority Register

The partnership pages in the secure area of the Primary Authority Register act as a shop window for the partnership, where it can explain to enforcing authorities how the partnership is working and encourage them to read the information that is being made available. This in turn will help to improve the way in which the business is regulated at a local level.

Both parties need to be clear that the effective operation of the scheme is reliant on enforcing authorities being able to access up-to-date and helpful information via the secure area of the Primary Authority Register. They will therefore need to ensure that changes to critical information such as contact details is updated promptly. The business is able to change its own contact details, and details such as trading names or premises information, or it can arrange for the primary authority to do this on its behalf.

f) **Arrangements for reviewing and terminating the partnership**

Both parties will want to be sure that the partnership is operating effectively and that it is delivering the anticipated benefits. It is therefore sensible to agree at the outset arrangements to review the partnership and to assess the impact of the partnership's activities.

The parties will also want to be clear about how they will resolve any disagreements, and their arrangements if one or both parties wishes to end the partnership. For example, they may agree a formal notice period which will allow for any outstanding work to be finished off. Where the parties do decide to end their partnership, they will need to request revocation of the partnership by the Secretary of State via the secure area of the Primary Authority Register.

3.5 Applying for nomination

5 Statutory framework: The application process

A local authority becomes the primary authority for a business on nomination by the Secretary of State.

Statutory guidance on the scheme⁵² requires that an application for nomination of a direct partnership should be submitted via the Primary Authority Register.

The applicants are required to confirm that each regulated person is regulated by two or more local authorities in respect of each of the categories included in the application. Each applicant is also required to accept the Primary Authority Terms and Conditions.

The online application process is initiated by the prospective primary authority, which provides the following details:

- contact details for the local authority and business;
- the category or categories of relevant function to be covered;
- brief details of any cost recovery arrangements; and
- an explanation of the suitability of the local authority to fulfil the role of primary authority in respect of the business. This section should be used to set out the local authority's commitment to provide primary authority services to the business, relevant expertise, and the arrangements that are in place to meet the needs of the partnership and of enforcing authorities.

The local authority will also need to provide text to explain to enforcing authorities:

- the business;
- the partnership; and
- how they would like enforcing authorities to communicate with the partnership.

This text is automatically used to populate the partnership's page in the Primary Authority Register once the partnership has been nominated, but it can be amended by the primary authority subsequently. Further details of the online application process are available in the [Applications for nomination: direct partnerships](#) user guidance.

⁵² Section 6 and Section 14, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Once the local authority has completed its part of the online application and submitted it, a link to the application is sent to the business. The business then completes the remainder of the application, confirming the information already provided by the local authority and adding the following details:

- the number of employees;
- details of each regulated person requiring nomination, and confirmation of which categories they require, of those offered by the local authority; and
- details of the business' premises.

Both applicants are required to confirm that they are authorised to submit the application on behalf of their organisation and each applicant is required to accept the Primary Authority Terms and Conditions⁵³ which include provisions in relation to:

- confidentiality, freedom of information and data protection;
- limitations of liability for the local authority; and
- maintaining up-to-date details on the Primary Authority Register.

By accepting the Primary Authority Terms and Conditions, both applicants also make a commitment to have regard to the Primary Authority Statutory Guidance.

The applicants will usually have recorded the arrangements that they have agreed in respect of how they will operate their partnership, for example in a summary of partnership arrangements or a service level agreement, but this supporting documentation does not need to be submitted as part of the application process.

3.6 Nomination by the Secretary of State

Once an application for nomination has been received, via the Primary Authority Register, an assessment is made as to the eligibility of the business, and the suitability of the local authority, on the basis of the information provided by the parties. Details of the application are also sent to any relevant national regulator(s).

6 Statutory framework: Nomination of a direct partnership

Statutory guidance on the scheme⁵⁴ details the factors that may be taken into account in assessing whether the local authority is suitable for nomination as the primary authority for the business:

- **evidence of the adequacy of the proposed arrangements for resourcing the partnership;**
- **evidence of the relevant expertise of the local authority, and of staff who will be assigned to the partnership, both in relation to the business sector and the categories of the proposed partnership;**
- **any evidence from a relevant national regulator on the suitability of the local authority, with reference to the categories of the proposed partnership;**

⁵³ Available via the [Primary Authority Register](#)

⁵⁴ Section 15, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- **any proposed arrangements for preparing relevant local authority staff for the primary authority role and for supporting them in that role on an ongoing basis, including issues such as competency in the delivery of Primary Authority; and**
- **evidence of the commitment of both parties to making the proposed arrangements operate effectively.**

Processing of the application takes approximately three weeks, unless there are any queries or complications. Where the Secretary of State is not satisfied, either that the business is eligible or that the local authority is suitable, BRDO notifies the business and the primary authority that the proposed partnership has not been nominated. BRDO will usually provide an explanation of the reasons and may offer assistance in exploring whether the eligibility and suitability criteria can be met.

Where the Secretary of State is satisfied and nominates the primary authority, BRDO then notifies the business and the primary authority of the nomination and adds the partnership to the Public Register which it maintains. An electronic link is sent to the business, allowing it to download a certificate of participation. The Public Register lists all regulated persons that have a primary authority, with the name of their primary authority and the categories covered by the partnership. Partnerships remain on the Public Register until revoked by the Secretary of State.

A page for the partnership is automatically created in the secure area of the Primary Authority Register, which can be accessed by registered users of the system. This will include:

- a) local authority officers;
- b) nominated contacts at the business (who are able to access details of the business' own partnership(s) but can't access information relating to other businesses);
- c) relevant national regulators and policy departments; and
- d) staff of BRDO.

4 Establishing co-ordinated partnerships

This module outlines the stages that a prospective primary authority and co-ordinator will need to go through in order to establish successful co-ordinated partnerships with a group of businesses.

4.1 Understanding shared approaches to compliance

As explained in earlier modules ([see 2.2.3](#)), amendments to the statutory framework for Primary Authority on 1st October 2013 introduced a new eligibility route for businesses to participate in the scheme. A business is eligible to have a primary authority where it has arrangements in place which mean that it shares an approach to compliance with at least one other business, provided that the businesses are collectively regulated by more than one local authority.

1 Statutory framework: A shared approach to compliance

Statutory guidance on the scheme⁵⁵ specifies the factors that the Secretary of State will take account of in making his assessment of businesses' arrangements to share an approach to compliance:

- a) evidence of an ongoing relationship with another business or businesses, in the context of which common compliance advice or guidance or compliance controls are provided to the businesses which are relevant and applicable to their circumstances. The business should indicate its commitment to having regard to that compliance advice or guidance, or to following those compliance controls;**
- b) evidence that the compliance advice or guidance, or compliance controls, mentioned at (a), originate from a single point; and**
- c) evidence of communication channels in place in the relationship mentioned at (a) which are effective in communicating the compliance advice or guidance or compliance controls, and any changes to them.**

The statutory guidance recognises that, in the majority of circumstances, a single party, known as a co-ordinator, will play a role in co-ordinating partnerships between a primary authority and businesses partnering with it that share the same approach to compliance. However, in some circumstances, for example where the number of businesses sharing an approach to compliance is very small, the primary authority may choose to undertake the co-ordination role itself.

There are no specific requirements in the scheme as to who can be a co-ordinator, and what their relationship to the group of businesses should be. However, the most likely scenario is that the co-ordinator role will be taken by the organisation that is setting out the shared approach to compliance for the group of businesses.

The table below provides four examples of different groups of businesses that might be able to demonstrate a shared approach to compliance, in terms of meeting the requirements set out in the statutory guidance.

⁵⁵ Section 3.3, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Table 1: Understanding different models for sharing an approach to compliance

<i>The group of businesses</i>	<i>The co-ordinator</i>	<i>Evidence of a 'shared approach to compliance'</i>
Members of a trade association	The trade association	<p>The trade association provides sectoral guidance to its members and may provide tools to help members to comply.</p> <p>It may operate a code of practice or quality mark.</p> <p>The trade association communicates regularly with its members, for example through newsletters, e-bulletins and events.</p>
The franchisees of a franchise group	The franchisor	The franchisor specifies the compliance procedures to be used by the franchisee and may audit the franchisee to check that the specified procedures are being implemented effectively.
The companies in a company group	The parent or holding company	The parent or holding company specifies compliance controls that are used across the group of companies.
Businesses subscribing to a compliance or assurance scheme	The scheme operator	The scheme operator sets out a standard that must be met by the businesses subscribing to the scheme, and audits them for compliance with the standard.

The examples in this table are illustrative and do not indicate, for example, that all members of trade associations will share an approach to compliance, or that other groups of businesses can't share an approach to compliance.

4.2 Understanding the group of businesses

A local authority that is in discussions with a prospective co-ordinator about offering co-ordinated partnerships to a group of businesses will need to have a good understanding of the relationship between the prospective co-ordinator and the businesses, and of the regulatory issues faced by the businesses. This will help them to decide whether Primary Authority can deliver benefits for the group of businesses.

Regardless of whether there are just a handful of businesses in the group, or several thousand, the key questions for the prospective primary authority and co-ordinator are likely to depend on the nature of the relationship between the prospective co-ordinator and the businesses. This is illustrated below for two examples of groups of businesses, a franchise group (see 4.2.1) and a trade association ([see 4.2.2](#)).

4.2.1 Understanding a franchise group

The starting point for discussions between a local authority and a franchisor is likely to be different depending on whether or not the franchisor is itself eligible for Primary Authority and, if so, whether it is already in a direct partnership with a local authority.

Where the local authority is already acting as primary authority for the franchisor, the business should already have a good understanding of the scheme and its benefits, and they will simply need to explore what will be involved in offering co-ordinated partnerships to the franchisees. Where the franchisor does not have a partnership, either because it is not eligible or because it has not yet chosen to enter the scheme, then more detailed conversations are likely to be required.

1

Practical tips: Questions to ask a franchisor

1. Understanding the franchise operation

- Does the franchisor operate outlets itself? If so, how many?
- How many franchisees are there, and how many outlets do they operate?
- Where are the outlets? (England, Wales, Scotland, Northern Ireland?)
- Do any of the franchisees also operate under licence to other franchisors?
- Do any of the franchisees already have a primary authority?

2. Understanding how compliance is managed

- Does the franchisor specify how franchisees must manage compliance, for example by specifying a food safety management system?
- If so, does the franchisor specify the compliance approach in all regulatory areas, or just some? Which ones?
- Does the franchisor also monitor how franchisees implement the specified controls, for example through an audit programme?
- Is there always clarity as to where responsibility for compliance lies?

3. Understanding how the businesses are regulated at a local level

- What interactions does the franchisor currently have with local regulators and how does it manage these?
- How much does the franchisor know about the interactions that its franchisees have with local regulators, and what issues they face?
- Is the franchisor aware of any outstanding enforcement actions?

4. Exploring what the franchisor expects of Primary Authority

- Is the franchisor already in a direct partnership?
- If so, will it continue in the direct partnership or would it prefer to have a co-ordinated partnership alongside its franchisees ([see 4.3](#))?
- If the franchisor does not have a partnership, is it eligible, and does it want to have a primary authority itself?
- What does the franchisor perceive to be the benefits of co-ordinated partnerships for its franchisees?
- In which primary authority categories does it perceive that there will be benefits for its franchisees? (Table 1 at [1.1.1](#) provides a summary of the categories that are available, and their geographic scope. Further detail is available in the [List of Primary Authority Categories](#) published by BRDO)
- Will these categories be appropriate for all of the franchisees?
- Does the franchisor intend to invite its franchisees to apply for a co-ordinated partnership, or does it intend to mandate participation?
- If the franchisor intends to mandate Primary Authority for its franchisees, are there potential issues, for example with franchisees that already have a primary authority?

5. Exploring what the franchisees might ask

- Where the franchisor already provides compliance guidance or directs franchisees to undertake activities in a particular way, how will Primary Authority Advice differ i.e. will a franchisee be expected to do more or less?
- How will entering into a coordinated partnership affect a franchisee's existing relationship with their local regulators?
- If a franchisee has a multiple outlets, some of which are in parts of the UK where the category being offered is not in scope of Primary Authority, how will this impact on its operation?
- If a franchisee has previously been asked by a local regulator to operate in a certain way and Primary Authority Advice sets out a different approach, will the franchisee be expected to change what they do?
- If the franchisee is already in a direct partnership, what should it do?

4.2.2 Understanding a trade association

A local authority that enters discussions with a trade association about offering co-ordinated partnerships to its members will need to be aware that trade associations are diverse and the services that they offer to their members vary considerably. It is important for the prospective primary authority to have a good understanding of the relationship between the trade association and its members.

2

Practical tips: Questions to ask a trade association

1. Understanding the membership

- What sort of businesses belong to the trade association?
- What do the businesses need, in terms of support for compliance?
- How diverse are they, in terms of size/ operating model/ interest in particular regulatory areas?
- How many members are there?
- Are there different categories of membership eg. full/ associate?
- Where are the members operating? (England, Wales, Scotland, Northern Ireland?)
- Is it likely that any of the members already have a primary authority? For example, they might already have a direct partnership, or might have entered a co-ordinated partnership via another trade association.
- What are the membership retention rates like?

2. Understanding the trade association

- Does the trade association currently provide regulatory guidance to members?
- If so, what form does this take?
- How is the guidance developed, and who does this? What are their skills/ expertise?
- How does the trade association know what guidance is needed by its members?
- Does the trade association provide any tailored advice eg. through a legal helpline?
- Does the trade association operate a code of practice or quality scheme?
- If so, are members required to adhere to the code? Does the trade association monitor compliance, for example through an audit programme?

3. Understanding how the businesses are regulated at a local level

- How much does the trade association know about the interactions that its members have with local regulators, and what issues they face?
- Is the trade association aware of any outstanding enforcement actions?
- Does the trade association currently play any role in mediating in disputes between its members and regulators?

4. Exploring what the trade association expects of Primary Authority

- What does the trade association perceive to be the benefits of co-ordinated partnerships for its members?
- Is the primary authority in a position to identify sector specific issues in the area(s) in which the association operates? For example, can an intelligence picture be built from businesses operating from within the local authority's area?
- In which primary authority categories does the trade association perceive that there will be benefits for its members? (Table 1 at 1.1.1 provides a summary of the categories that are available, and their geographic scope. Further detail is available in the [List of Primary Authority Categories.](#))
- Are these categories likely to be appropriate for all of its members?
- Does the trade association intend to invite its members to apply for a co-ordinated partnership, or does it intend to mandate membership, for example through a code or quality scheme?

5. Exploring what the member businesses might ask

- What business benefits will being in a coordinated partnership bring?
- Where the trade association already provides compliance guidance to members, how will Primary Authority Advice differ i.e. will businesses be expected to do more or less?
- How helpful is Primary Authority Advice likely to be, given that it will need to be relevant to businesses that may be very different?
- How will entering into a coordinated partnership via a trade association affect an individual business' relationship with their own local regulators?
- Who at the trade association will have responsibility for Primary Authority Advice being requested, developed and disseminated?
- How will the trade association disseminate Primary Authority Advice?
- Will an individual business have any input into what advice is asked for, or how it is developed?
- How will local officers know that an individual business is participating in a coordinated partnership?
- If a business has previously been asked by a local regulator to operate in a certain way and Primary Authority Advice sets out a different approach, will the business be expected to change what they do?

4.3 Confirming eligibility, suitability and scope

The prospective primary authority and co-ordinator will need to consider a number of factors in determining whether co-ordinated partnerships can be offered to the group of businesses:

- a) whether the businesses share an approach to compliance in each of the regulatory areas being considered; and
- b) whether the local authority is able to offer primary authority in each of the regulatory areas of interest to the businesses.

1

Practical example: Confirming regulatory areas

ABC Foods Ltd has 29 franchisees who, between them, operate 86 outlets across England and Wales. The company specifies the food safety controls that must be used by its franchisees and also controls menu descriptions. It does not specify the approach that its franchisees take to health and safety compliance.

ABC Foods Ltd approaches Anytown Council to discuss the provision of primary authority services to its franchisees. Anytown Council, a unitary local authority in England, confirms that the franchisees appear to be eligible for co-ordinated partnerships in relation to the food standards and food safety and hygiene categories. They are not however eligible for co-ordinated partnerships in the health, safety and welfare category as they are not sharing an approach to compliance in this area.

ABC Foods Ltd also provides guidance to its 5 franchisees in Wales on compliance with regulations of the Welsh Government in respect of single use carrier bags. It asks Anytown Council whether co-ordinated partnerships could cover this area also. Anytown Council confirms that the business receiving this guidance appear to be eligible but explains that it does not have responsibility in this regulatory area and can't therefore provide primary authority. It suggests that ABC Foods Ltd approach a Welsh local authority and offers to liaise with that authority to ensure that the co-ordinated partnerships receive a consistent service.

- c) whether the businesses are trading within the geographic scope of primary authority. The applicability of the scheme in England, Wales, Scotland and Northern Ireland is summarised in the [List of Primary Authority Categories](#) .

2

Practical example: Considering geographic scope

Anytown Council, a local authority in England, is approached by MNO Group, the parent company for a chain of 16 hotels, each of which is operated by a separate limited company. MNO Group asks Anytown Council whether it could offer co-ordinated partnerships to the group in respect of several categories of regulation.

Anytown Council establishes that 9 of the hotels are in England, 2 are in Wales and 5 are in Scotland. It explains that all of the categories of regulation which the group has an interest in are within the scope of Primary Authority in England and Wales but that certain categories are not within scope in Scotland and it would not therefore be able to partner with the businesses in Scotland in relation to those categories.

It further explains that any Primary Authority Advice that it issues via MNO Group can be sent to all 16 hotels, but that where the advice is in regulatory areas that are out of scope in Scotland, the hotels in Scotland will not benefit from the same assurance that the advice provides in England and Wales.

- d) whether the businesses are collectively regulated by multiple local authorities;

3

Practical example: Regulation of the businesses by multiple local authorities

Anytown Council is approached by a local business enterprise organisation which operates two small business parks in the Anytown area, catering to start-up businesses. The organisation provides regulatory guidance to the new businesses in relation to health and safety, food hygiene and fair trading compliance issues, including in relation to online and mail order trading.

The business enterprise group asks whether the businesses would be eligible for co-ordinated partnerships. Anytown Council explains that, in relation to health and safety and food hygiene matters, the businesses are only regulated by Anytown Council and are not therefore eligible for partnerships. However, in relation to fair trading, those businesses that are trading outside of the Anytown area, for example where they are selling online, are eligible for co-ordinated partnerships.

- e) whether the local authority is suitable, with regard to its relevant expertise, ongoing competency arrangements and resourcing arrangements ([see 4.6.3](#)).

4.4 How co-ordinated partnerships differ to direct partnerships

Some businesses will find themselves in a position where they wish to have a primary authority and are eligible for either a direct partnership (because they are regulated by multiple local authorities) or a co-ordinated partnership (because they are part of a group of businesses that share an approach to compliance). In this situation, it is helpful to recap the key differences between a direct and co-ordinated partnership, from the business' perspective. These relate primarily to administrative arrangements (see 4.4.1) and how the primary authority can use the statutory tools of Primary Authority Advice and inspection plans ([see 4.4.2](#)). The practical impact of these differences is explored at [4.4.3](#).

4.4.1 Administrative arrangements

- a) In a direct partnership, the legally recognised partnership is between the business and the primary authority and it is underpinned by:
- the [Primary Authority Terms and Conditions](#); and
 - arrangements agreed between the business and the primary authority.
- b) In a co-ordinated partnership, where a co-ordinator is facilitating the relationship between the business and the primary authority, the legally recognised partnership is still between the business and the primary authority. However, it is underpinned by:
- the Primary Authority Terms and Conditions;
 - a Memorandum of Understanding for Co-ordination of Partnerships between the primary authority and the co-ordinator; and
 - arrangements between the business and the co-ordinator, including authorisation of the co-ordinator to act on behalf of the business in respect of certain matters.

The application process differs in that, for direct partnerships an application is initiated by the local authority and completed by the business then submitted to BRDO in a single stage process ([see 3.5](#)), whereas for co-ordinated partnerships there is a two stage process which involves agreement to the arrangements between the prospective primary authority and co-ordinator before the business is invited to apply ([see 4.6](#) to 4.7).

Once a partnership is nominated, there is a key difference in respect of use of the secure area of the Primary Authority Register. A business that is in a direct partnership is registered as a user of the secure area and is able to view information there about its partnership(s). For a business that is in a co-ordinated partnership, access to the secure area is by the co-ordinator, which manages this aspect of the partnership on behalf of the business.

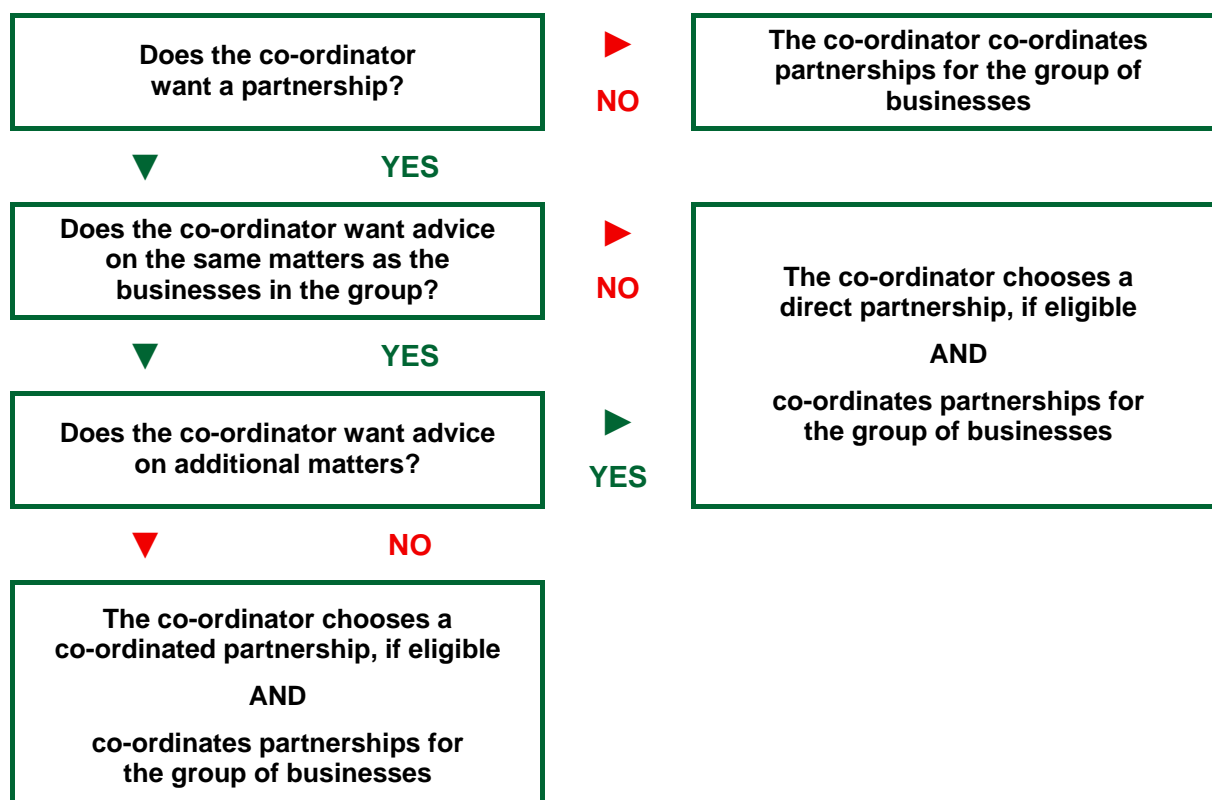
4.4.2 Using the statutory tools

The key differences between Primary Authority Advice and inspection plans, in relation to direct and co-ordinated partnership, are explained in Modules 6 and 8. In summary, in a direct partnership Primary Authority Advice can be tailored to the individual business' needs and circumstances, based on the primary authority's detailed knowledge of the business, and the partnership is able to choose whether or not to publish the advice via the secure area of the Primary Authority Register. In a co-ordinated partnership, Primary Authority Advice is tailored to the collective needs and circumstances of the group of businesses. It is issued by the primary authority to the group of businesses via the co-ordinator and is always published in the secure area of the Primary Authority Register.

Similarly, in respect of inspection plans, an inspection plan for a business in a direct partnership will be tailored to individual business' operations, while an inspection plan for a group of businesses in co-ordinated partnerships will be tailored to the group of businesses.

4.4.3 Choosing a direct or co-ordinated partnership

Figure 1: Choosing a direct or co-ordinated partnership



The question of whether a business chooses a direct or co-ordinated partnership can be of particular relevance for a business that wishes to act as a co-ordinator, offering co-ordinated partnerships to a group of businesses that it has a relationship with. Examples might include a franchisor or a parent company that manages compliance for a group of companies.

Where the prospective co-ordinator wants a partnership itself, and is eligible for Primary Authority, then the key questions for it to consider are:

- does it want the same advice that the group of businesses will receive, or different advice?
- If it wants the same advice then does it also want additional advice that will not be appropriate for the group of businesses?

These questions are explored in Figure 1 above.

4 Practical example: a fast food franchise

FGH Foods operates 65 fast food outlets and has 29 franchisees who, between them, operate a further 86 outlets.

FGH Foods and its franchisees all operate to the same food safety management system in the fast food outlets and would therefore require the same advice from a primary authority in respect of the food safety management system.

However, FGH Foods is also regulated in relation to food hygiene and safety in respect of food that it imports and distributes. It would like advice from a primary authority in these areas which would have no relevance for its franchisees.

FGH Foods and Anytown Council agree that a direct partnership will best meet the business' needs, and that they will work together to offer co-ordinated partnerships to FGH Foods' franchisees.

Anytown Council explains that any Primary Authority Advice that is relevant to both FGH Foods and its franchisees can be issued as a single document and that the heading will make it clear that it is being issued to FGH Foods, under the direct partnership, and to those franchisees that have entered co-ordinated partnerships.

5 Practical example: a direct sales franchise

JKL Products employs a small number of sales consultants to sell its products direct to consumers and also has over 100 franchisees selling its products direct to consumers.

JKL Products approaches Anytown Council to ask about Primary Authority and explains that it would like advice on product descriptions. This advice would be relevant and applicable to both JKL Products and its franchisees.

JKL Products and Anytown Council agree that they will work together to offer co-ordinated partnerships to JKL Products' franchisees, and that JKL Products will also have a co-ordinated partnership.

4.5 Developing working arrangements with a co-ordinator

The success of co-ordinated partnerships with a group of businesses, in delivering benefits to the businesses and to other local regulators, is usually reliant on the existence of a good working relationship between the primary authority and a co-ordinator who takes on responsibility for facilitating the partnerships.

The primary authority and the co-ordinator will need to have a shared understanding as to their objectives and priorities in working together, and the scope of the co-ordinated partnerships. They will also need to have agreed arrangements in a number of areas, including those listed below, and these should be captured in a Memorandum of Understanding for Co-ordination of Partnerships agreed between the parties ([see 4.5.10](#)).

4.5.1 Communication

The prospective primary authority and co-ordinator will want to agree how they will communicate with each other and with the group of businesses. They may decide to schedule regular meetings, or they might prefer to agree that meetings will be arranged as and when they are needed.

4.5.2 Primary Authority Advice

The prospective primary authority and co-ordinator will need to agree arrangements for managing Primary Authority Advice to the businesses ([see 6.2](#)). They will also want to have a clear picture of what the businesses' advice needs are, and how they will prioritise these. Arrangements should be agreed as to how Primary Authority Advice will be disseminated to the businesses, and the timing for doing so. The primary authority is required to publish all Primary Authority Advice that it issues via co-ordinated partnerships, and this requirement should be taken into account when considering the practicalities around disseminating the advice. For example, the primary authority and the co-ordinator may agree that the primary authority will not publish any Primary Authority Advice on the Primary Authority Register until after the co-ordinator has disseminated it to the businesses.

It is also sensible to discuss the primary authority's responsibility to ensure that Primary Authority Advice is reviewed as required so that it remains up-to-date and relevant. The parties will need to be clear about how this will be done, and to consider any resource implications.

4.5.3 Working with enforcing authorities

2

Statutory framework: Working with enforcing authorities

Statutory guidance on the scheme⁵⁶ sets out the role of a primary authority that has co-ordinated partnerships with a group of businesses in developing expertise in relation to the regulatory issues faced by that group of businesses that will be of value to the group of businesses and to enforcing authorities.

The statutory guidance recognises that the primary authority is best able to fulfil its role where it is well informed about compliance issues and it therefore encourages enforcing authorities to provide the primary authority with:

- a) any information indicating that a business in a co-ordinated partnership does not share an approach to compliance with other businesses in the group, for example where it is no longer a member of the trade association that co-ordinates its partnership; and**
- a) intelligence on compliance issues in the sector that may be of relevance to the Primary Authority Advice issued to the businesses in the group.**

⁵⁶ Section 1.24 and Section 30.2, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

The prospective primary authority and co-ordinator will need to be clear that the primary authority has both a reactive role in terms of enforcing authorities, for example in responding to queries and notifications of proposed enforcement action, and a proactive role in terms of guiding how the businesses are regulated, and leading regulation of the businesses on behalf of all enforcing authorities. It is helpful for the parties to discuss at an early stage how they see the primary authority fulfilling these roles.

Where the parties feel that there is a likelihood that they will want to consider an inspection plan, then it is sensible to discuss at an early stage how consultation with the group of businesses would be managed ([see 8.2.1](#)).

3

Practical tips: Discussing arrangements for working with enforcing authorities

- **What role will the primary authority play in terms of receiving queries from enforcing authorities on behalf of the businesses?**
- **Are there queries that would be better directed to the co-ordinator?**
- **How will the primary authority handle notifications of proposed enforcement action in respect of the businesses?**
- **Is there information that could usefully be shared with enforcing authorities via the secure area of the Primary Authority Register to assist them in regulating the businesses at a local level?**
- **Would it be beneficial to make available commonly requested business documents, such as procedures, via the secure area of the Primary Authority Register?**
- **Are there areas where an inspection plan might be appropriate?**
- **If so, would the inspection plan be relevant to all of the businesses in the group?**

4.5.4 Co-ordination

Where a co-ordinator is already working, or might in the future be working with multiple primary authorities, in different regulatory areas, it is helpful to discuss at an early stage how the primary authorities will work together to ensure a consistent approach, both for the co-ordinator and businesses, and for enforcing authorities.

4.5.5 Maintaining and reviewing information on the Primary Authority Register

The partnership pages in the secure area of the Primary Authority Register act as a shop window for each partnership, and the information that the primary authority makes available here can help to improve the way in which the businesses are regulated at a local level.

Both parties need to be clear that the effective operation of Primary Authority is reliant on enforcing authorities being able to access up-to-date and helpful information via the secure area of the Primary Authority Register. They will therefore need to ensure that changes to critical information such as contact details is updated promptly. A business in a co-ordinated partnership is not able to change its own contact details, and details such as trading names or premises information, so the primary authority and co-ordinator will need to agree how they will ensure that these changes are made.

The information that the primary authority and co-ordinator agree and provide via the Primary Authority Register will automatically populate the partnership pages of each co-ordinated partnership in the group of businesses.

4.5.6 Managing business details and the application process

Both the co-ordinator and the prospective primary authority will need to be clear that the co-ordinator has the authorisation⁵⁷ that it needs from businesses in the group before it:

- shares business details with the local authority, or BRDO;
- requests Primary Authority Advice on behalf of the businesses; or
- responds, on behalf of the businesses, to consultation by the primary authority on the development of an inspection plan.

Both parties will also want to agree practical arrangements around how they will manage the process of inviting businesses in the group to apply for co-ordinated partnerships, and then managing subsequent applications (see 4.7). For example, a discussion around the practicalities of handling applications might include agreeing how often the co-ordinator will forward batches of applications to the local authority, or what batch sizes are reasonable.

4.5.7 Maintaining up-to-date information

The prospective primary authority and the co-ordinator will need to agree how they will meet their responsibilities to ensure that information shared via the Primary Authority Register is kept up-to-date, and that the primary authority is made aware of any relevant changes to businesses that have a co-ordinated partnership, for example, if they cease trading or end the arrangements that evidenced a shared approach to compliance.

4.5.8 Arrangements for reviewing and terminating the arrangements

Both parties will want to be sure that their arrangements are operating effectively and that the co-ordinated partnerships are delivering the anticipated benefits for the businesses. It is therefore sensible to agree at the outset arrangements to review the arrangements and to assess the impact of their activities.

The parties will want to be clear about how they will resolve any disagreements. They will also want to be clear about arrangements if one or both parties wishes to end the arrangements, for example if the co-ordinator no longer wishes to continue co-ordinating partnerships between the primary authority and the group of businesses.

It is important to note that the only way the legal relationship between the primary authority and businesses can end is by revocation by the Secretary of State⁵⁸. Where a primary authority and a co-ordinator decide to end their arrangements, this does not automatically end the co-ordinated partnerships.

4.5.9 Resourcing the partnerships

In order to be effective, the arrangements between the primary authority and the co-ordinator must be properly resourced to deliver their agreed objectives. It is therefore essential that both parties reach an agreement as to the resources that are likely to be required and how the required resources will be provided.

⁵⁷ Section 22.5 to 22.10, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁵⁸ Section 25, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

3 Statutory framework: Agreeing resource requirements

Statutory guidance on the scheme⁵⁹ expects that, in order to make an informed assessment of the resources that are likely to be required to operate effective partnerships, the local authority and the prospective co-ordinator should have a clear understanding of:

- a) the scale and scope of the proposed arrangements;**
- b) the needs of the businesses for regulatory advice, and how this will be developed;**
- c) the expectations of the businesses and the co-ordinator; and**
- d) the scope of the service being provided by the local authority to the businesses and the co-ordinator.**

Consideration should also be given to the amount of staff resource and the level of expertise needed, both of the local authority and the co-ordinator, and to the amount of resource required of the co-ordinator in terms of acting effectively as a single point of contact.

In assessing the resources that are likely to be required, the prospective primary authority will need to have a good understanding the businesses and their experience of local regulation ([see 4.2](#)). It will also need to discuss, with the co-ordinator, how primary authority services will be provided. The table below summarises some of the questions that the parties would usually consider.

4 Practical tips: Assessing resource requirements

- **Which Primary Authority categories will be offered to the businesses?**
- **Which staff will support the partnerships in each category?**
- **What cover will be required for periods of holiday or other absence?**
- **How will ongoing competency of the staff be ensured?**
- **Will there be a need to commission a third party, for example to provide legal opinions, to test products, to provide audit services?**
- **How will the work be resourced?**

The prospective primary authority will already have determined its approach to cost recovery ([see 2.3.3](#)) and it will need to agree with the co-ordinator how this approach will be tailored to the particular circumstances of the co-ordinator and the group of businesses.

⁵⁹ Section 22, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

4 Statutory framework: Agreeing cost recovery

Statutory guidance on the scheme⁶⁰ provides an illustrative list of primary authority services in respect of which partners might agree that costs will be recovered:

- a) establishing working arrangements between the primary authority, the co-ordinator and the group of businesses;**
- b) familiarising primary authority staff with the practices of the group of businesses;**
- c) raising awareness and understanding of the partnerships amongst enforcing authorities;**
- d) developing, providing and reviewing Primary Authority Advice;**
- e) developing, managing and evaluating an inspection plan;**
- f) responding to queries and notifications from enforcing authorities;**
- g) collating and analysing data and other information;**
- h) providing compliance tools and training services to the businesses in the group; and**
- i) providing a service of checking compliance to the businesses in the group.**

It is important that both parties are clear as to what partnership activities will be viewed as 'chargeable' by the primary authority, and how cost recovery arrangements will be operated.

5 Practical tips: Questions on cost recovery

- Will the co-ordinator recover costs from the businesses and, if so, how?**
- Will the co-ordinator recover only the charges made by the primary authority or will it also recover an element of its own costs, incurred in operating the scheme?**
- What will the invoicing arrangements be between the local authority and the co-ordinator?**
- Will the hourly 'cost recovery' rate be subject to an annual increase?**
- How will the costs of commissioning a third party be recovered from the co-ordinator?**
- Does consideration need to be given to the costs of operating Primary Authority against the relative costs of membership i.e. small trade associations or business groups which require highly specialised technical advice may find the cost burden per member greater than larger organisations where the costs and benefits are shared by a greater number of members**

⁶⁰ Section 22, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

6

Practical example:

XYZ Association represents a small number of artisan manufacturers in the food sector and is proposing to enter into arrangements with Anytown Council to offer coordinated partnerships to its members.

The membership is small and members are primarily micro businesses, many of them home-based.

The members follow a code of practice issued by XYZ Association. Anytown Council suggests that this code could form the basis for developing Primary Authority Advice, and offers to review the existing code free of charge with a view to providing an estimate of the work required to develop it as Primary Authority Advice.

Following its review, Anytown Council and XYZ Association agree that charges for 10 hours work at £50 per hour are reasonable and XYZ Association decides to absorb these costs on behalf of its members.

Anytown Council advises that the code will also require on-going maintenance and review, on an annual basis or when there are any changes to legislation. An estimate is made of the work that is likely to be involved, and of how much time the primary authority may need to spend dealing with enquiries from enforcing authorities. Overall, the annual costs are estimated as being less than £20 per year per member.

XYZ Association consults with members and it is agreed that all costs will be absorbed by the association in the first year but that an increase to membership fees may be needed subsequently, to cover the costs. However, a decision on this will only be made once the costs and benefits of Primary Authority have been better understood by XYZ Association, its members and the primary authority.

4.5.10 Agreeing a Memorandum of Understanding

The prospective primary authority and co-ordinator are required to agree a Memorandum of Understanding for Co-ordination of Partnerships setting out the arrangements that they have agreed for the operation of partnerships. This Memorandum is submitted to BRDO as part of the application process ([see 4.6.1](#)).

BRDO makes available templates that can be used to prepare a Memorandum of Understanding for Co-ordination of Partnerships. Three versions of the template are made available on the '[Operating co-ordinated partnerships](#)' page of the Primary Authority Register:

- a [template](#) tailored to the needs of local authorities working with trade associations;
- a [template](#) tailored to the needs of local authorities working with franchise groups; and
- a [general template](#), that can be used with other organisations, such as company groups.

5

Statutory framework: Memorandum of understanding for co-ordination of partnerships

Statutory guidance on the scheme⁶¹ specifies the areas that should be set out in the Memorandum of Understanding for Co-ordination of Partnerships:

- a) arrangements for the co-ordinator to request Primary Authority Advice on behalf of the businesses in co-ordinated partnerships, and to disseminate it to them;
- b) arrangements for the primary authority to provide Primary Authority Advice;
- c) arrangements for the co-ordinator to provide the primary authority with details of the businesses in the group that share an approach to compliance, and to keep these details updated;
- d) arrangements for the primary authority and co-ordinator to manage consultation with the businesses in the event that the primary authority develops an inspection plan;
- e) any arrangements for cost recovery by the primary authority in respect of the primary authority services that it provides to the businesses; and
- f) provisions for meeting legal requirements in respect of data protection and freedom of information.

The Memorandum should detail the working arrangements the parties have agreed. It can be reviewed periodically to ensure that it continues to reflect the arrangements agreed by the parties. It should also make provision for meeting legal requirements in respect of data protection and freedom of information.

Where the primary authority itself is undertaking the co-ordination role, a Memorandum will not be necessary. Instead, the primary authority is expected to make arrangements with the businesses in respect of the matters covered in this section.

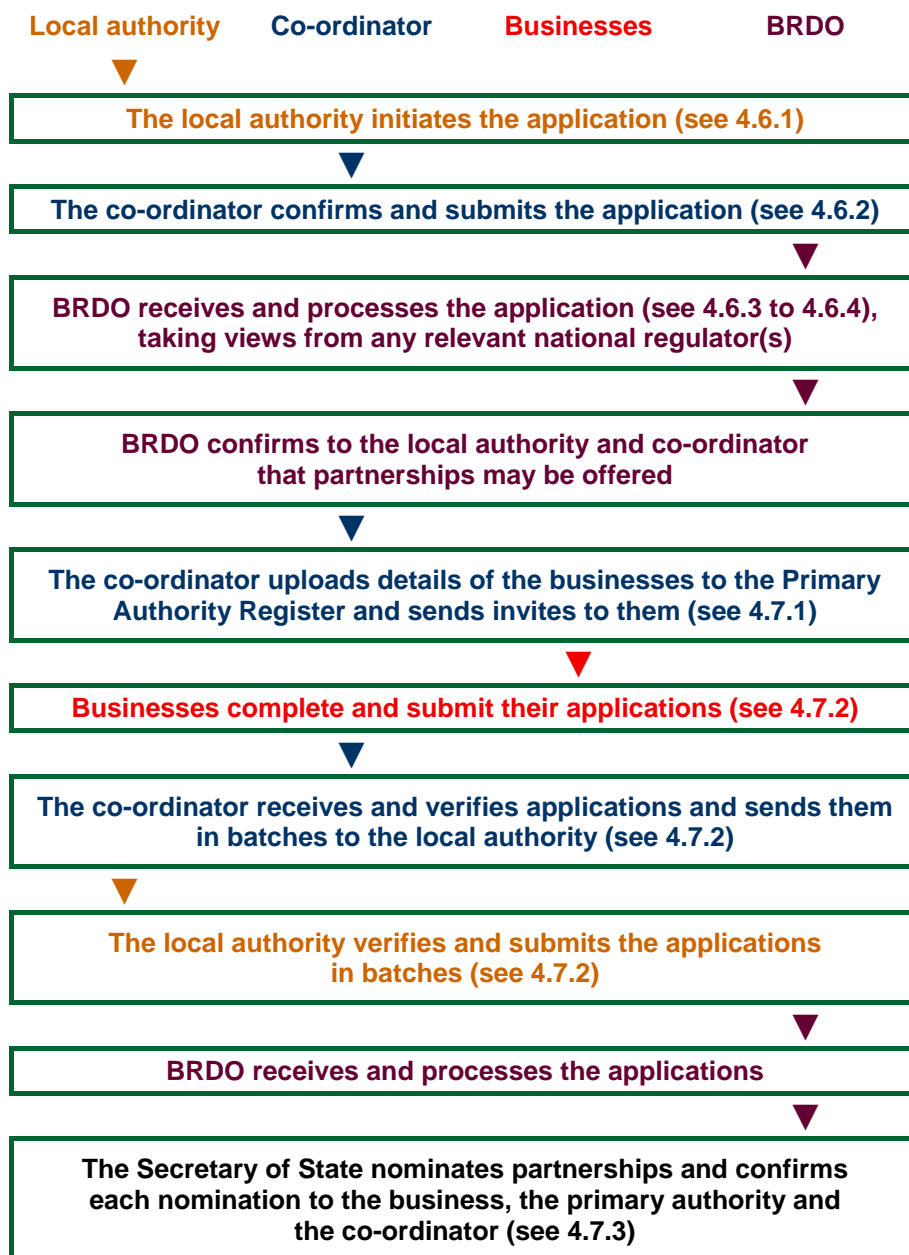
4.6 Local authority application to the Secretary of State

In contrast to the application process for direct partnerships, which involves a single submission to BRDO, the application process for co-ordinated partnerships is split into stages, with two submissions being made to BRDO. This is illustrated in Figure 2 below.

Step-by-step guides to the online application process, from the perspective of a co-ordinator and that of a business applying for a co-ordinated partnership, are available on the '[Operating co-ordinated partnerships](#)' page of the Primary Authority Register. A local authority may find that it is helpful to share these with a prospective co-ordinator at an early stage in their negotiations so that both parties are clear about what will be required.

⁶¹ Section 22, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Figure 2: Local authority application to the Secretary of State



4.6.1 Initiating the local authority application

The local authority initiates the application via the secure area of the Primary Authority Register and provides the following details:

- contact details for the main primary authority contact, and at least one additional contact at the primary authority;
- contact details for the co-ordinator;
- the primary authority category or categories to be offered;

- an explanation of how the businesses satisfy the eligibility criteria ([see 4.1](#)), in that they share an approach to compliance and are collectively regulated by more than one local authority;
- an explanation of the suitability of the local authority to fulfil the role of primary authority in respect of the businesses ([see 4.6.3](#)); and
- an estimate of the annual cost recovery charges, for BRDO's information.

The local authority will also need to provide text to explain to enforcing authorities:

- the businesses;
- the arrangements between the primary authority and the co-ordinator; and
- how they would like enforcing authorities to communicate with them.

This text is automatically used to populate the partnership pages in the Primary Authority Register once the partnerships have been nominated, but it can be amended by the primary authority subsequently.

7

Practical example: explaining the partnerships to enforcing authorities

About the businesses:

TUV Association is a trade association representing the interests of around 50 businesses operating luxury hotels. Most of the membership are small businesses operating just one or two hotels. TUV Association provides written regulatory guidance to its members and offers a legal helpline to deal with members' questions.

About the partnership:

Anytown Council and TUV Association are working together to develop robust Primary Authority Advice for those members of the association that have co-ordinated partnerships. Our current focus is on developing a robust food safety management system tailored to the needs of the businesses.

Working with us:

We welcome contact from any officer who has general feedback on compliance issues in this sector, and we will be sharing such information with TUV Association in order to inform future work to address any compliance issues amongst their members.

Feedback via the Primary Authority Register would be appreciated. If officers have specific questions, please email pa.enquiries@anytown.gov.uk.

The local authority will need to upload the Memorandum of Understanding agreed with the co-ordinator ([see 4.5.10](#)) and the individual completing the application is required to accept the [Primary Authority Terms and Conditions](#), and to confirm that they are authorised to submit the application on behalf of the local authority.

Once the local authority has completed its part of the online application and submitted it, the co-ordinator is registered as a user of the Primary Authority Register and receives a link to the application form.

4.6.2 Completing the local authority application

The co-ordinator, once they have confirmed their registration as a user of the Primary Authority Register, can log in to the secure area and complete the application. They will need, at this stage, to confirm the information already provided by the local authority and add the following details:

- the number of businesses that may be eligible, for example, the number of franchisees, or the number of trade association members; and
- the standard industry classification code for the businesses, which is selected from a drop down menu.

The person completing this information is required to confirm that they are authorised to submit the application on behalf of their organisation.

4.6.3 Assessment of suitability

Once the local authority application has been received by BRDO, via the Primary Authority Register, an assessment is made as to the suitability of the local authority to provide co-ordinated partnerships to the businesses in the group, on the basis of the information provided by the local authority and the co-ordinator. Details of the application are also sent to any relevant national regulator(s), as indicated in the [List of Primary Authority Categories](#).

6

Statutory framework: A shared approach to compliance

Statutory guidance on the scheme⁶² details the factors that may be taken into account in assessing the suitability of the local authority to offer primary authority to the group of businesses:

- a) evidence of the adequacy of the proposed arrangements for resourcing the partnerships;**
- b) evidence of the relevant expertise of the local authority, and of staff who will be assigned to the partnerships, both in relation to the business sector and the categories of the proposed partnerships;**
- c) any evidence from a relevant national regulator on the suitability of the local authority, with reference to the categories of the proposed partnerships;**
- d) any proposed arrangements for preparing relevant local authority staff for the primary authority role and for supporting them in that role on an ongoing basis, including issues such as competency in the delivery of Primary Authority;**
- e) evidence of the commitment of the local authority and the co-ordinator to making the proposed arrangements operate effectively; and**
- f) evidence of the adequacy of the proposed arrangements for co-ordination ([see 4.5](#))**

⁶² Section 24, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

4.6.4 Assessment of eligibility

As part of this stage of the application process, an assessment is also made, on the basis of the information provided by the local authority and co-ordinator, of whether businesses in the group as a whole are capable of satisfying the eligibility criteria ([see 4.3](#)). An assessment is not made at this stage as to the eligibility of individual businesses.

4.7 Business applications for nomination

Where the Secretary of State is satisfied as to the suitability of the local authority, and the eligibility of the businesses in the group, BRDO will confirm to the local authority and the co-ordinator, via the Primary Authority Register, that they may offer partnerships to the businesses.

4.7.1 Inviting business applications

Once it has received confirmation from BRDO, the co-ordinator can proceed with sending invites to the businesses in the group. They will first need to upload details of all of the businesses into the Primary Authority Register. This can be done in one of two ways:

- a) details of each business are entered individually; or
- b) a csv file containing details of all of the businesses can be uploaded. An [information sheet](#) explaining how to create and upload a csv file is available via a link on the co-ordinator's page in the secure area of the Primary Authority Register.

Once the business details have been uploaded, the co-ordinator can send an email via the Primary Authority Register, to all of the businesses, inviting them to apply for a co-ordinated partnership. This email will need to explain the application process, and will also need to include a simple explanation of the scheme and of eligibility so that the businesses can easily understand whether or not they are eligible in each of the categories offered by the local authority.

6 Practical tips: Explaining eligibility

- Explain the primary authority categories being offered – descriptions of each category, and a summary of their applicability in each nation are included in the [List of Primary Authority Categories](#).
- For each category, the business will need to ask itself:
 - is this regulatory area relevant to my business?
 - does my business trade in England, Wales, Scotland, Northern Ireland? Are the business' activities in scope of Primary Authority in each nation we trade in?
 - does my business already have a primary authority? If so, the business will need to choose whether it wishes to remain in that partnership, or to request revocation of that partnership and form a new partnership. A business can never have more than one primary authority in a particular category.

4.7.2 Application for nomination

The business needs to provide the following details:

- details of each regulated person (legal entity) to be covered;
- the number of employees;
- the type of business (sole trader, partnership, limited company etc);
- its company number, where applicable;
- address details for all of its premises; and
- the categories which each regulated person wishes its partnership to cover.

When the business submits this application, it is sent to the co-ordinator and the co-ordinator gathers the applications that it receives and sends them in batches to the local authority ([see 4.5.6](#)).

When the local authority receives an application, or a batch of applications, from the co-ordinator, it has the opportunity to review these in order to be sure that it is willing to partner with the businesses and is satisfied with the information that they have provided. The local authority then submits the applications to BRDO.

4.7.3 Nomination

Once a batch of applications for nomination has been submitted, via the Primary Authority Register, to BRDO, an assessment is made as to the eligibility of each business on the basis of the information provided by the local authority, the co-ordinator and the businesses. Processing of the applications is quite quick, unless there are any queries or complications.

Where the Secretary of State is not satisfied that a business is eligible, BRDO notifies the business, the primary authority and the co-ordinator that the proposed partnership has not been nominated, and will usually provide an explanation of the reasons.

Where the Secretary of State is satisfied and nominates the primary authority, BRDO then notifies the business, the primary authority and the co-ordinator of the nomination and adds the partnership to the Public Register. An electronic link is sent to the business, allowing the business to download a certificate of partnership, which they can choose to display.

The partnership will be listed on the Public Register, with details of the regulated person(s), the primary authority, the co-ordinator and the categories covered by the partnership. Partnerships remain on the Public Register until revoked by the Secretary of State.

A page for the partnership is automatically created in the secure area of the Primary Authority Register, which can be accessed by:

- a) the primary authority;
- b) the co-ordinator;
- c) enforcing authorities;
- d) BRDO; and
- e) relevant national regulators and policy departments.

5 Providing Primary Authority Advice – direct partnerships

This module explores the advice function of a primary authority, providing practical tips and examples of how Primary Authority Advice is working in practice. The module focuses on advice in the context of direct partnerships. Much of the content will also be of interest to officers supporting groups of co-ordinated partnerships, however they should also read Module 6, which explores the practicalities of providing Primary Authority Advice in that context.

5.1 The need for advice

Businesses source information on legal requirements and develop their approach to compliance in a variety of ways. They may be drawing on internal expertise, making use of external sources such as legal advisors, consultants or trade associations, or may receive input from regulators. Businesses therefore have very different needs in relation to regulatory advice. While some businesses may be looking for help in identifying or interpreting legal requirements, others may be looking for assurance that a particular interpretation that they have made is correct or that the compliance systems that they have in place are accepted.

In acting as primary authority for a business, a local authority accepts responsibility for being the principal source of local authority regulatory advice to the business in the areas covered by the partnership. The legislation provides a primary authority with the function of providing advice to a business that it partners with, and it establishes the status of this advice by creating the opportunity for primary authorities to review proposed enforcement action in the light of the advice that they have provided.

Through its in-depth understanding of a business that it has a direct partnership with, the primary authority is best placed to provide robust, bespoke regulatory advice. This enables the business to invest with confidence in products, practices and procedures, secure in the knowledge that the resources it devotes to compliance are well spent. Primary Authority Advice provided to a partner business is therefore a fundamental element of an effective partnership. By supporting the business to achieve and maintain compliance, the advice enhances protection for citizens and workers, and helps local regulators to act consistently.

It is important for the business and the primary authority to have a shared understanding of what the advice needs of the business are, and it is sensible therefore for the partners to review the sources of advice that the business makes use of at an early stage in the partnership. This will help the partners to make informed decisions about the nature and extent of the advice that is required of the primary authority, the arrangements for providing it, and how it will be prioritised.

1

Practical tips: Questions for primary authority officers to ask on sources of advice

- **Has the business received previous advice from local regulators either generally or as part of a previous home authority or lead authority scheme? If so, is it making use of that advice? (part [5.1.1](#) below addresses the review of previous advice.)**
- **Does the business use multiple sources of advice?**
- **Is the nominated primary authority contact in the business aware of how all parts of the business receive advice?**

- **Does the business rely on input from external sources such as consultants, laboratories or test houses? If so, how will you work with them?**
- **In general, is the business looking for advice on how it should comply, or does it want to present you with its existing policies, procedures and / or practices and seek confirmation that they are adequate to achieve compliance?**
- **Does the business have another primary authority (or primary authorities)? If so, how will you need to work with them to ensure a consistent approach for the business and for enforcing authorities?**

Where the primary authority and business have agreed a risk-based programme of partnership activity, this will usually drive the provision of Primary Authority Advice. However, it is important to recognise that there may be advice requirements that neither the business nor primary authority had recognised at the outset of the partnership. This may arise because of new product development, changes in legislation, or the identification of new risks. In order to ensure that the business advice needs are properly served, the need for Primary Authority Advice should be reviewed on an ongoing basis, and this might include revisiting the questions at 'Practical Tips 1' above from time to time.

5.1.1 The costs and benefits of re-issuing previous advice

Where a business has received previous regulatory advice, either from local authorities or from other sources, the partnership will usually want to consider whether that advice should be reviewed and re-issued by the primary authority as Primary Authority Advice.

Re-issuing advice can be a resource intensive process, as it must be reviewed to ensure it is still correct and relevant to current business operations, and it is therefore important that the partnership weighs the costs and benefits of doing so.

The decision as to whether to review and re-issue any previous advice will be different for each partnership and will involve a consideration of the following factors:

- a) Does the business rely on the previous advice? If so, would it benefit from the greater assurance that Primary Authority Advice could provide?
- b) Is the previous advice in an area that has been prioritised in the programme of partnership activity?
- c) Is there a significant volume of previous advice? Is it recent?
- d) How is the previous advice recorded, if at all?
- e) Has there been relevant legal commentary, media coverage or case law decisions which might prompt a review?
- f) Have there been technological advances or changes in industry best practice that might prompt a review?

5.2 Managing Primary Authority Advice

A partnership will need to have agreed its arrangements around the management of advice at the outset. It is important that these arrangements are understood and observed to ensure that Primary Authority Advice is properly given, and that both partners are clear about the advice that the business is relying on.

1

Statutory framework: Arrangements for Primary Authority Advice

The RES Act allows a primary authority to make arrangements with a partner business as to how it will discharge its function of providing advice and guidance.

Statutory guidance⁶³ on the scheme requires the following matters to be included in these arrangements for direct partnerships:

- who can provide Primary Authority Advice on behalf of the local authority ([see 5.2.1](#));
- who can request and receive Primary Authority Advice on behalf of the business ([see 5.2.2](#));
- how both parties will know that Primary Authority Advice is being provided ([see 5.2.3](#));
- by what means Primary Authority Advice will be provided to the business, and how it will be recorded ([see 5.2.4](#));
- how Primary Authority Advice will be reviewed to ensure it remains current ([see 5.2.5](#)); and
- what will happen if there are circumstances in which a business requests Primary Authority Advice on a matter on which the primary authority is unable to provide assurance.

5.2.1 Who can provide Primary Authority Advice to the business

The primary authority will usually restrict those who can provide advice to named officers who are familiar with the business and satisfy the primary authority's competency criteria for providing primary authority services. For example, this might mean the primary authority officer and a deputy. Consideration will need to be given to ensuring that contingency plans are in place so that the service provided to the business and enforcing authorities continues in the event of, for example, sickness.

These officers will need to be familiar with the primary authority's processes in respect of providing and reviewing Primary Authority Advice ([see 2.3.2](#)).

5.2.2 Who can request and receive Primary Authority Advice on behalf of the business

It is common for partnerships to limit recipients of Primary Authority Advice to a small number of named contacts. For example, in a large business it might be reasonable to agree that two or three named staff at Head Office can request and receive Primary Authority Advice: perhaps the 'Compliance Manager' or 'Health and Safety Manager', and a nominated deputy. It would be unusual for a partnership to agree that individual store managers employed by the business could request and receive Primary Authority Advice on behalf of the business.

⁶³ Section 18, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

5.2.3 How both parties will be clear that Primary Authority Advice is being provided

A primary authority officer will often express a view or opinion on a compliance question, in the context of discussions about how a business will meet its legal responsibilities, without giving advice, but it needs to be clear to both parties that this is what is happening.

Whenever the primary authority does provide advice to the business, this advice has the status of Primary Authority Advice and the business is entitled to expect that it can have confidence in the advice.

1 Practical example: Providing views on compliance issues

ABC Imports is negotiating a licence deal with an overseas manufacturer to bring a range of products into the UK for the first time and contacts its primary authority at an early stage in the negotiations to discuss what might be needed in terms of a product safety testing regime. Over a period of several weeks, as negotiations progress, more information about the products to be imported gradually becomes available and ABC Imports is in regular contact with its primary authority officer, seeking views on questions that arise.

The primary authority officer provides views on the basis of the available information but makes it clear to the business that Primary Authority Advice is not being provided.

At the stage where ABC Imports is clear about the products that it is going to import, and how it is going to ensure that they meet product safety requirements, it requests Primary Authority Advice from its primary authority.

2 Practical example: Developing a compliance approach

ABC Restaurants experiences occasional challenges from local fire and rescue services in relation to its compliance in a particular area and approaches its primary authority, Anytown Fire to request assistance in reviewing and strengthening its procedures in this area. Anytown Fire audits the existing procedures and visits a sample of outlets operated by the business to examine local implementation. It then gives a view that the documented procedures are adequate in most areas but need strengthening in other areas, and it gives its opinion as to how this could be done. The primary authority also gives its view that implementation needs to be improved. It recommends improvements to the staff training programme and works with ABC Restaurants to develop and deliver refresher training for all staff.

Once ABC Restaurants has implemented the recommended changes, Anytown Fire issues Primary Authority Advice indicating that the controls in place are accepted as being adequate to deliver compliance.

5.2.4 How Primary Authority Advice will be provided to the business and how it will be recorded

It is vital that Primary Authority Advice is documented accurately and in a way which enables it to be easily retrieved and reviewed, not just by the officer issuing the advice, but also by colleagues or senior officers. Failing to do so could undermine the partnership and lead to preventable problems, for example, in a situation where an enforcing authority notifies proposed enforcement action and an officer who may have issued relevant advice is on leave, or has left the primary authority.

For this reason, primary authorities will usually set out a clear policy on providing, recording, storing and reviewing Primary Authority Advice that all staff can follow ([see 2.3.2](#)). This policy would normally allow for some elements to be tailored to the specific needs of individual partnerships.

The statutory guidance acknowledges that Primary Authority Advice will usually be provided in writing, and some partnerships have agreed that Primary Authority Advice to the business will **only** be given in writing. Others have agreed that Primary Authority Advice may be provided verbally, for example during a telephone conversation or meeting, but that, where this happens, the advice will subsequently be confirmed in writing. This might be by letter or email, or by means of a file note that is reviewed and agreed by both parties. It is sensible for both partners to retain a record of the Primary Authority Advice that has been provided.

While there is no prescribed method for recording Primary Authority Advice, many primary authorities have developed a standard template form for officers to use. This can be helpful as it provides a consistent structure for the advice. It is also sensible to consider whether Primary Authority Advice should be provided as a protected document so that unauthorised changes can not be made to it, for example by password protecting the document.

2

Practical tips: Developing a template for Primary Authority Advice

Key features:

- **A clear heading eg. 'PRIMARY AUTHORITY ADVICE'**
- **A unique reference number that can facilitate storage and retrieval**
- **An issue date**
- **Any comments on the scope of the advice, for example if the business operates retail outlets under different trading names, to which of these does the Primary Authority Advice apply.**
- **An outline of the need for advice ie. the question posed by the business**
- **The Primary Authority Advice that is provided by the primary authority ([see 5.5](#) for practical tips on drafting Primary Authority Advice)**

Whilst there is no obligation to retain a record of any discussions which occurred prior to the issue of the actual Primary Authority Advice, it is advisable to store copies of any notes, email exchanges and similar as an annex to the Primary Authority Advice. This ensures that the primary authority has a record of why it issued the advice, what factors it considered and how it reached any interpretation that it made. These annexes do not form part of the Primary Authority Advice itself but should simply be maintained for the primary authority's own records.

Where Primary Authority Advice has been provided subsequent to an examination of business data, the primary authority will need to consider whether, or to what extent, it should hold this data ([see 2.3.4](#) for practical tips on data sharing).

5.2.5 Review of Primary Authority Advice

2 Statutory framework: Review of Primary Authority Advice

Statutory guidance⁶⁴ on the scheme requires a primary authority to review Primary Authority Advice at appropriate intervals, and when circumstances change, to ensure that it remains current.

The partnership will need to be clear about how it will ensure that Primary Authority Advice is reviewed and updated where necessary. Whilst a regular, programmed review may be sensible, it is also important to remember that the advice may need to be amended in the light of changes to legislation, guidance, codes of practice, industry practices or other circumstances, such as changes to business systems. The primary authority and business will both need to consider how they will ensure that such factors do trigger a review of relevant advice.

A review of the advice should take into account any feedback received from enforcing authorities and should be seen as an opportunity to drive improvements in the business' compliance activities where required.

3 Practical tips: Review of Primary Authority Advice

A regular review provides an opportunity to jointly review records of the advice provided, to ensure that the two sets of records correspond.

Some direct partnerships are setting review intervals of 12 months for all advice that they provide, and are including the review date in written Primary Authority Advice. If the partnership chooses to adopt this approach, it is important that the primary authority takes responsibility for reviewing the Primary Authority Advice at the review date and either updating it or amending the review date in order to ensure that it remains current.

Annual partnership review meetings provide a good opportunity to revisit Primary Authority Advice that has been issued and to ensure that it has been reviewed and updated as required.

Where the basis of a partnership changes, from direct to co-ordinated or vice versa, the primary authority will need to review all current Primary Authority Advice that it has issued to the business and should consider whether it needs to revoke or re-issue any of this advice. This review should be done in consultation with the business and, where appropriate, the co-ordinator.

⁶⁴ Section 18, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

5.3 Publication of Primary Authority Advice

3 Statutory framework:

There is no statutory requirement for a primary authority to proactively publish Primary Authority Advice provided to a business.

However, statutory guidance on the scheme⁶⁵ requires that where the primary authority and business do agree to share Primary Authority Advice to the business with enforcing authorities, via the Primary Authority Register, the primary authority should ensure that the published advice is kept up-to-date.

The decision as to whether or not to publish Primary Authority Advice to a business via the Primary Authority Register is a matter for each partnership to consider.

Some partnerships are choosing to publish **all** of their Primary Authority Advice, taking the view that this is helpful to enforcing authorities and that the business will benefit from an open approach to the advice that is being provided, as enforcing authorities will have a greater understanding of its approach to compliance. Where this approach is adopted, the primary authority needs to:

- a) be sensitive to issues around confidentiality and potential commercial sensitivity of any of the details being published, and discuss these with the partner business;
- b) recognise that publishing some Primary Authority Advice is likely to lead enforcing authorities to assume that **all** advice is being published; and
- c) be particularly aware of the need to review and update Primary Authority Advice that it is publishing, as it is not helpful for enforcing authorities to see out-of-date documents.

Some partnerships have taken the view that it is preferable not to publish the Primary Authority Advice in full, but are choosing, instead, to publish a list of areas in which Primary Authority Advice has been issued or is being developed. This is seen as being beneficial as it informs enforcing authorities, without requiring them to work through large quantities of detailed information, and the list can be used to encourage officers to make early contact with the primary authority for further information where required.

4 Statutory framework: Sharing Primary Authority Advice when enforcement action is proposed

Statutory guidance on the scheme⁶⁶ requires that Primary Authority Advice that is not published should be shared with an enforcing authority where it is relevant to proposed enforcement action that has been notified to the primary authority.

Whilst there is no obligation to share Primary Authority Advice with enforcing authorities prior to any enforcement action being proposed, partnerships will often feel that it is helpful to do so, for example at the stage of early conversations between the primary authority and an enforcing authority that may be considering enforcement action. Sharing Primary Authority Advice at this stage can be valuable in terms of helping the enforcing authority to reach an informed decision about how to proceed.

⁶⁵ Section 18.6, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁶⁶ Section 18.7, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

5.4 The requirements for Primary Authority Advice

To provide value to the business, Primary Authority Advice must be properly given, within the statutory framework, and it must also be a legally correct interpretation of the law. This does not mean that the primary authority is giving a definitive interpretation of the law, or that it is 'usurping the role of the courts'. It is providing the business with an informed and considered professional view of the law, which is supported by a commitment that the regulatory community will stand by this interpretation. It is quite possible that there will be interpretations that differ from those agreed by the primary authority and that are equally valid, but this does not, of itself, make the Primary Authority Advice incorrect.

5 Statutory framework: Requirements for Primary Authority Advice

Statutory guidance on the scheme⁶⁷ requires a primary authority to ensure that Primary Authority Advice to a business:

- a) is specific, and tailored to the particular needs and circumstances of the business;**
- b) takes into account relevant legislation and published guidance from the Government, national regulators and others, including, for example, professional bodies;**
- c) takes into account obligations imposed on the business by any relevant national regulator;**
- d) takes into account industry practices and relevant and available advice being given to other businesses within the sector;**
- e) takes into account relevant Primary Authority Advice given to the business by other primary authorities with responsibility for different relevant functions;**
- f) takes into account any relevant and applicable Primary Authority Advice given to any other business which provides the compliance approach used; and**
- g) should support the regulation of the business in accordance with the statutory principles of good regulation⁶⁸.**

The provision of Primary Authority Advice needs to meet the requirements of the Primary Authority Statutory Guidance and be issued with the confidence that it will stand up to scrutiny.

To improve the operations of the business in relation to compliance, and to provide value to the business, Primary Authority Advice always needs to do more than simply signpost existing legislation, and it should never be accompanied by standard caveats such as '*ultimately only the Courts can decide*'.

There will be situations where the business' compliance solution is variable, for example because it is premises specific. In these circumstances, Primary Authority Advice will need to address these variations.

⁶⁷ Section 18.4, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁶⁸ Section 21, Legislative and Regulatory Reform Act 2006, available at www.legislation.gov.uk

1

Practical example: Recognising variable circumstances

JKL Housing, a registered social landlord, has properties in multiple local authority areas and has a direct partnership with Anytown Council in relation to housing legislation. It has worked with its primary authority officer to assess the range of properties in its portfolio and has taken the officer to visit a representative sample of properties.

JKL Housing has received advice which it considers to be contradictory from different local authorities in relation to appropriate measures to protect tenants from intruder entry. It asks its primary authority to provide advice in this area.

Anytown Council provides Primary Authority Advice setting out broad standards for appropriate locks and other security measures in areas with different crime ratings. It makes clear in its advice that in determining the exact specifications for each property, certain local factors, such as the vulnerability of tenants, should be taken into account. It provides guidance on these factors, and on factors, such as a change in tenant, which should trigger a review of the security arrangements.

5.5 The uses of Primary Authority Advice

Put simply, Primary Authority Advice is regulatory advice provided by a primary authority to a partner business in relation to an area of legislation that is covered by their partnership. Primary Authority Advice does not affect the responsibility that the business has to comply with legal requirements, but provides support for the business in meeting its obligations by:

- a) helping it to understand what it needs to do in order to achieve and maintain compliance;
- b) setting out a way in which the business might achieve compliance; or
- c) confirming that the method of achieving compliance that the business has chosen is acceptable.

The nature of Primary Authority Advice may vary, depending on the needs of a business, and it can be helpful to think of advice needs as falling into two broad areas:

- advice on interpretation and applicability of legislation; and
- advice on systems aimed at achieving compliance.

5.5.1 Advising on interpretation and applicability

At its most straightforward, Primary Authority Advice may interpret a legal requirement in the context of the business' operations or may give a view on the applicability of a particular requirement to the business. For example, a business may seek advice on whether a particular novelty item that it is considering importing would be classed as a toy for the purposes of product safety legislation, or on how a new product that is being developed will need to be labelled in order to meet legal requirements.

4

Practical example: Advising on interpretation

ABC Farmfoods wishes to describe a food product as ‘home-made’. Its primary authority considers the legal requirements and reviews the product’s formulation and production and is satisfied that the description can be used. It issues advice as follows:

Primary Authority Advice is given to ABC Farmfoods Ltd that the description of Product X as ‘home-made’ is in accordance with current legal requirements (as specified below), where it is produced in accordance with the recipe and processes outlined in the attached schedule.

5.5.2 Advising on compliance systems

The majority of the legislation enforced by local authorities creates strict liability offences but in many cases a statutory defence is made available, or there is a qualification of a statutory duty. For example:

- much consumer protection legislation incorporates a statutory defence of (i) taking all reasonable precautions and (ii) exercising all due diligence to avoid the commission of the offence; and
- the statutory duties under sections 2-6 of the Health and Safety at Work Act 1974 are qualified by the concept of reasonable practicability.

Primary Authority Advice may go beyond questions of interpretation and applicability, to address the control systems that a business puts in place in order to avoid breaching legal requirements. In other words, Primary Authority Advice can be used to confirm the suitability and adequacy of the systems that the business would rely on when seeking to demonstrate ‘reasonable precautions and due diligence’ or ‘reasonable practicability’.

It is for each partnership to decide the level of Primary Authority Advice that is appropriate but, in order to be able to provide Primary Authority Advice in relation to the systems which the business uses to ensure its legal compliance, the primary authority must have a thorough understanding of the business model and the decision-making process within the business with regard to matters of legal compliance.

Both the primary authority and the business should have a clear view of what is being advised on, and the extent to which systems are being ‘signed off’. It can be helpful to see this as a staged process so, in relation to any area of compliance, the primary authority might ask the questions:

- a) What is expected of the business?
 - is a duty absolute, or is it qualified by an expected standard of doing what is ‘practicable’, or what is ‘reasonably practicable’?
 - is a strict liability offence accompanied by a defence of taking all reasonable precautions and exercising all due diligence? If not, is there any defence in relation to which Primary Authority Advice could be valuable?
- b) Do the controls set out by the business in its central procedures, to ensure that it is compliant, meet the expected standard ie. ‘reasonable precautions’ or ‘reasonable practicability’?

- c) Does the system of checks established by the business, to monitor implementation of its controls, meet the expected standard?

5 Practical example: Advising on controls

ABC Supermarkets has a procedure for managing stock control and ensuring that it does not supply food that is past its 'Use By' date. The business asks its primary authority to review this procedure. The primary authority does so and forms the view that the procedure sets out a system of controls that meets the expected standard. It issues advice as follows:

Primary Authority Advice is given to ABC Supermarkets Ltd that the attached procedure demonstrates that the business is taking reasonable precautions in relation to its legal obligations under the regulations specified below in relation to selling food before its 'Use By' date expires.

Shortly after the issue of the Primary Authority Advice, an investigation into supplies of food products past their 'Use By' date is initiated by an enforcing authority when it finds a number of such products on display at the local store. The enforcing authority was satisfied that the stock control procedure was adequate but identified that inadequate checks were being carried out on the implementation of the procedure in stores.

Any proposed enforcement action could not be blocked by the primary authority as the Primary Authority Advice given to ABC Supermarkets Ltd related only to the procedures and not to ensuring their effective implementation.

6 Practical example: Advising on controls and checks

ABC Clothing has produced a central procedure which outlines how each of its premises should manage the health and safety risks associated with working at height. It asks its primary authority to assess this procedure for compliance. The primary authority reviews the legal requirements and the procedure and issues advice as follows:

Primary Authority Advice is given to ABC Clothing (Distribution) Ltd and ABC Clothing (Trading) Ltd that the attached 'Working at Height Plan' (Version 1, issued 1.2.13) outlines a system that, where it is properly implemented, would demonstrate suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.

Six months after the issue of the Primary Authority Advice, an accident investigation is commenced by an enforcing authority when an employee suffers a fall from a ladder at a local distribution centre operated by ABC Clothing. The 'Working at Height Plan' had been properly implemented in the premises and the employee had been trained but had failed, on this occasion, to follow the instructions he had been given.

Any proposed enforcement action could be blocked by the primary authority on the basis that it would be inconsistent with the Primary Authority Advice given to ABC Clothing (Distribution) Ltd.

It is important to recognise that, in issuing Primary Authority Advice on compliance systems, the primary authority is advising on whether the controls and checks set out by the business are capable of meeting the expected standard, for example, that they amount to taking all reasonable precautions and would, if followed, amount to exercising due diligence. The primary authority cannot state, at the time of issuing the Primary Authority Advice, that the business has already met the expected standard because it is not, at that point, in a position to know whether the controls and checks will have been properly implemented at some point in the future.

4 Practical tips: Drafting Primary Authority Advice to a business

- **Primary Authority Advice should always reference the relevant legislation**
- **Primary Authority Advice should be worded with a view to providing the business with assurance in relation to how it can demonstrate that it is complying with its statutory responsibilities.**
- **Where Primary Authority Advice refers to policy documents or written procedures, it is sensible to list these by name; to include identifying features, such as an issue date or version number; and to retain a copy.**

A primary authority takes on a significant responsibility, particularly where it provides advice on business systems, and it should always be conscious that it is effectively leading regulation of the business, on behalf of all local authorities. Compliance issues that are raised by other local authorities, regardless of whether or not enforcement action is formally proposed or blocked, should usually trigger a review of the Primary Authority Advice given, to establish whether changes are needed in order to better support or drive improvements in the business' compliance.

5.6 Primary Authority Advice to Local Authorities

6 Statutory framework: Primary Authority Advice to Local Authorities

Section 27 of the RES Act provides a primary authority with the function of providing advice to other local authorities with the same relevant function, as to how this should be exercised in relation to the business.

Statutory guidance on the scheme⁶⁹ requires that a primary authority that is considering issuing Primary Authority Advice to Local Authorities should first consider whether it is appropriate for it to do so. In considering whether it is appropriate, the primary authority should take account of the views of local authorities that will be affected by the advice.

Whilst the Act makes provision for primary authorities to be able to issue Primary Authority Advice to Local Authorities, which is backed by the same statutory assurance mechanism as Primary Authority Advice to the business, the statutory guidance recognises that there are a number of different ways in which a primary authority can guide and influence enforcing authorities and a primary authority should consider whether Primary Authority Advice to Local Authorities is the most appropriate means of achieving its aims.

⁶⁹ Section 19.1, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

In issuing Primary Authority Advice to Local Authorities, a primary authority is taking on a significant responsibility, as it is instructing other local authorities on how to exercise their regulatory function in relation to the business. In areas where local discretion is seen as particularly important, the primary authority may anticipate challenge to its advice. In considering the views of local authorities that will be affected by the advice, it is therefore sensible to engage with a sample of local authorities to establish how the proposed advice might be interpreted in different local contexts.

In practice, very few primary authorities have chosen to make use of this tool to date as they have tended to find that, in most circumstances, the more appropriate tools are:

- a) Sharing information via the secure area of the Primary Authority Register to guide enforcing authorities eg. through FAQs and explanatory materials;
- b) Developing an inspection plan to guide proactive regulatory interventions (see Module 7); or
- c) Confirming an acceptable approach to compliance through Primary Authority Advice to the business.

5.6.1 Arrangements for Primary Authority Advice to Local Authorities

As with Primary Authority Advice to a business, the primary authority will need to be clear about who can provide Primary Authority Advice to Local Authorities on its behalf ([see 5.2.1](#)).

7

Statutory framework: Publication of Primary Authority Advice to Local Authorities

Statutory guidance on the scheme⁷⁰ requires that Primary Authority Advice to Local Authorities should be in writing and should be communicated to enforcing authorities by publishing it via the Primary Authority Register. The published advice should be kept up to date and withdrawn should it no longer be valid.

It is important that the advice is documented accurately and in a way which enables it to be easily retrieved and reviewed, not just by the officer issuing the advice, but also by colleagues or senior officers. It can be helpful for the primary authority to develop a template that can be used to provide a consistent format for the advice.

5

Practical tips: Developing a template for Primary Authority Advice to Local Authorities

Key Features:

- A clear heading eg. 'PRIMARY AUTHORITY ADVICE TO LOCAL AUTHORITIES'
- A unique reference number that can facilitate storage and retrieval
- An issue date
- Any comments on the scope of the advice
- The Primary Authority Advice to Local Authorities. This must relate to how enforcing authorities exercise their regulatory function – it is not about how the business complies.

⁷⁰ Section 10.4, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Whilst there is no obligation to retain a record of any discussions which occurred prior to the issue of the actual Primary Authority Advice to Local Authorities, it is advisable to store copies of any notes, email exchanges and similar as an annex to the advice. This ensures that the primary authority has a record of why it issued the advice, what factors it considered, how it reached any interpretation that it made, and how it took account of the views of other local authorities. These annexes do not form part of the Primary Authority Advice to Local Authorities itself but should simply be maintained for the primary authority's own records.

As with Primary Authority Advice to a business, the statutory guidance requires⁷¹ that Primary Authority Advice to Local Authorities is reviewed at appropriate intervals, and when circumstances change ([see 5.2.5](#)).

5.6.2 Requirements for Primary Authority Advice to Local Authorities

Whereas Primary Authority Advice to a business relates to compliance, Primary Authority Advice to Local Authorities must relate to how enforcing authorities exercise their regulatory function in relation to the business, although the statutory guidance prevents it from addressing proactive regulatory interventions, such as inspections, as this is the role of an inspection plan.

8

Statutory framework: Requirements for Primary Authority Advice to Local Authorities

Statutory guidance on the scheme⁷² requires a primary authority to ensure that Primary Authority Advice to Local Authorities:

- a. where it relates to the interpretation or applicability of legislation, takes into account relevant codes of practice and guidance from the Government, national regulators and others, including obligations imposed on the business by national regulators;
- b. relates to a specific issue or issues where the primary authority is actively addressing compliance on a national level with the business and is satisfied with the business' arrangements to deliver and maintain compliance;
- c. supports regulation of the business in accordance with the statutory principles of good regulation;
- d. seeks to limit requests to the business for specified information or documents only where it is providing the specified information or documents, or is directing local authorities to a readily available source to access them;
- e. does not relate to the frequency or conduct of inspections, or risk assessment for the purpose of planning or programming regulatory interventions at the business;
- f. does not seek to prevent local authorities from taking any course of action that they are under a statutory duty to take, or that is required of them by national regulators; and
- g. does not seek to prevent a local authority from following a legally defined route or means of communication.

Primary Authority Advice to Local Authorities should not seek to restrict a local authority's ability to make its own decision on what enforcement action is proportionate in accordance with its published enforcement policy.

⁷¹ Section 10.5, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁷² Sections 19.2 and 19.3, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

6 Providing Primary Authority Advice – co-ordinated partnerships

This module explores the advice function of a primary authority that is supporting co-ordinated partnerships. It provides practical tips and examples of how Primary Authority Advice works in practice, in the context of quite different groups of co-ordinated partnerships.

6.1 The need for advice

Businesses source information on legal requirements and develop their approach to compliance in a variety of ways. Businesses therefore have very different needs in relation to regulatory advice. Smaller, independent businesses in particular are less likely to have in-house regulatory expertise and are more likely to be reliant on external sources of advice.

A key difference in the extent and nature of advice that is needed in the context of co-ordinated partnerships relates to the nature of the relationship between the business and the co-ordinator. This is best explained by examining three distinct examples: a trade association model (see 6.1.1), a franchise group model ([see 6.1.2](#)), and a company group model ([see 6.1.3](#)). These examples are used to explore how advice needs might differ – other groups of co-ordinated partnerships may see parallels in one or more of these models.

6.1.1 A trade association model for co-ordinated partnerships

Many trade associations provide regulatory advice and guidance to their member businesses and will have developed a wealth of knowledge and understanding of regulatory issues in the sector that they operate in. Such a trade association is well placed to understand where its members experience difficulties in complying, and where they have issues with local enforcement. The trade association will often be an important source of advice for member businesses, but these businesses may be diverse, perhaps ranging from small, single site businesses to large businesses that have their own in-house compliance resources. It is evident therefore that the trade association will not then be the sole source of advice for all of its members, and that the advice that it provides will not always be relevant to all members.

The common advice needs of the members of a trade association are most likely to be around issues of interpreting legal requirements and applying them in a particular sector, rather than about designing and implementing compliance systems. However, some trade associations also take a role in providing advice on compliance systems, and may provide services designed to help businesses to implement a compliance system and perhaps to monitor compliance, for example through provision of an auditing service.

In this co-ordinated partnerships model, the trade association acts as the co-ordinator and facilitates co-ordinated partnerships between its members and the primary authority.

1 Practical example: Trade association

XYZ Association has 250 members, a high proportion of which are micro businesses (up to 9 employees). Its members tend to have infrequent contact with local regulators and are reluctant to seek advice on compliance from them. XYZ Association provides written guidance to its members on new legislation and changes in legal requirements but is aware, from calls to its legal helpline, that its members sometimes experience issues with local regulators or commercial customers interpreting the requirements differently.

XYZ Association makes arrangements with a primary authority, Anytown Council, to offer co-ordinated partnerships to its members, and around two thirds of its members enter partnerships.

XYZ Association then works with Anytown Council to develop robust guidance on key legal requirements and Anytown Council is able to issue the guidance as Primary Authority Advice via XYZ Association. The members that have entered co-ordinated partnerships benefit from the assurance that if they follow the guidance they can not be required, by another local authority, to take a different approach. They are also able to reassure commercial customers that their approach is accepted.

6.1.2 A franchise group model for co-ordinated partnerships

A franchisor grants a franchise or licence to another business to market its products or services. Typically, the franchisor will set rules that its franchisees must follow and these will often include prescribing compliance procedures in some areas. The franchisor will often provide staff training and other services, which might, for example, include compliance related services such as auditing. Franchising in the UK is established in many business sectors but is most commonly thought of in relation to fast food outlets. This is a sector in which franchising is widespread, and in which the prescription of compliance procedures which franchisees must follow is the norm.

Franchisees range in size from sole traders operating a single outlet to large companies operating multiple outlets. These businesses are responsible for complying with relevant legal requirements. However, it is important to recognise that, in areas where the franchisor prescribes the compliance approach that must be followed, the franchisee could be in breach of the franchise or licence agreement if they were to deviate from this approach.

In this co-ordinated partnerships model, the franchisor acts as the co-ordinator and facilitates co-ordinated partnerships between the primary authority and its franchisees. Since all of the franchisees will be following procedures prescribed by the franchisor, their advice requirements in relation to these procedures will all be the same – a confirmation that following the procedures will deliver compliance.

It is often the case that the franchisor will be trading as well as franchising its model to other businesses. In this situation, if the eligibility requirements are satisfied, the franchisor can form a direct or a co-ordinated partnership with the primary authority, and still act as co-ordinator ([see 4.4](#)).

2 Practical example: Franchise group

FGH Foods operates 65 fast food outlets and has 29 franchisees who, between them, operate a further 86 outlets. FGH Foods specifies the food safety controls that must be used by its franchisees and has a contract with third party auditors to audit both company-operated and franchisee-operated outlets on a regular basis.

FGH Foods has a direct partnership with Anytown Council and has worked with its primary authority to ensure that its food safety management system is robust.

FGH Foods makes arrangements with its primary authority to offer co-ordinated partnerships to its franchisees, and all of its 29 franchisees enter partnerships. Anytown Council is now able to issue Primary Authority Advice in respect of the food safety management system FGH Foods and also to the 29 franchisees, via FGH Foods acting as the co-ordinator. The franchisees benefit from the confirmation that the procedures they are required to operate to are accepted.

6.1.3 A company group model for co-ordinated partnerships

Businesses may be incorporated via several companies (a company group) for a variety of reasons. For example, one business may consist of several companies which have been incorporated separately to limit liability, or to protect the remainder of the business if one part fails. Typically these companies operate in a similar, if not identical, manner, following the same compliance procedures and are often operated by the same individuals.

Where the companies are all operating in the same way and following the same compliance procedures, their advice requirements in relation to these procedures will all be the same – a confirmation that following the procedures will deliver compliance.

In this co-ordinated partnerships model, there may be a parent company or holding company which acts as a co-ordinator, facilitating co-ordinated partnerships between the primary authority and the companies in the group. Alternatively, the group of companies may choose for one of the companies that has a co-ordinated partnership to also act as the co-ordinator.

In some situations, the company group model may operate very similarly to a direct partnership, because the companies operate identically and are controlled by the same individuals. This model is aimed at overcoming difficulties where some or all of the companies in the group are ineligible for a direct partnership.

3 Practical example: Company group

MNO Group operates a chain of 16 hotels. Each hotel is established and operated as a separate limited company, for legal reasons. However, legal compliance for all 16 hotels is centrally managed by the group, with all hotels following the same procedures.

MNO Group co-ordinates partnerships in the food standards category between Anytown Council and each of the 11 limited companies in the group that operate hotels in England and Wales. It requests advice from Anytown Council on the menu descriptions used in the hotel restaurants and Anytown Council issues Primary Authority Advice, via the group, to the limited companies.

6.2 Managing Primary Authority Advice

A primary authority and a co-ordinator will need to have agreed at the outset what their arrangements will be for managing Primary Authority Advice. In many respects, the considerations around these arrangements will be the same as, or very similar to those for direct partnerships. Where this is the case, the relevant parts of Module 5 are referenced. This part of Module 6 therefore focuses on areas where the considerations differ for co-ordinated partnerships.

1 Statutory framework: Arrangements for Primary Authority Advice

Statutory guidance⁷³ on the scheme requires the following matters to be included in arrangements between the primary authority and co-ordinator, in respect of co-ordinated partnerships:

- a) how the co-ordinator will identify and gain sufficient understanding of the advice needs of the businesses in the group of co-ordinated partnerships ([see 6.2.1](#));
- b) how the co-ordinator and the primary authority will work together to ensure that the local authority has sufficient understanding of the businesses in the group of co-ordinated partnerships in order to provide advice that is relevant and applicable to their circumstances ([see 6.2.2](#));
- c) who can provide Primary Authority Advice on behalf of the local authority ([see 5.2.1](#));
- d) who can request and receive Primary Authority Advice on behalf of the businesses in the group of co-ordinated partnerships ([see 6.2.3](#));
- e) by what means Primary Authority Advice will be provided and how it will be recorded ([see 5.2.4](#));
- f) how both parties will be clear that Primary Authority Advice is being provided ([see 5.2.3](#));
- g) how the co-ordinator will pass Primary Authority Advice to the businesses, and ensure that they are aware of changes to the Primary Authority Advice ([see 6.2.4](#));
- h) how Primary Authority Advice will be reviewed to ensure it remains current, relevant and applicable to the businesses in the group of co-ordinated partnerships ([see 5.2.5](#)); and
- i) what will happen if there are circumstances in which the co-ordinator requests Primary Authority Advice on behalf of the businesses on a matter on which the primary authority is unable to provide assurance.

6.2.1 The co-ordinator's understanding of the businesses' advice needs

The statutory guidance expects the primary authority and co-ordinator to have a shared understanding as to how the co-ordinator identifies the regulatory issues in relation to which advice would be beneficial for its members, and how it ensures that it has sufficient understanding of these issues.

⁷³ Section 27, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

For example, a trade association that operates a legal helpline will often gain intelligence from this on the questions of legal interpretation that are concerning members, or the areas in which they are facing challenge from regulators. It may choose to explore these issues through its meetings with members, or in one to one conversations.

In a franchise group model, particularly where the franchisor is operating in the same way as its franchisees, this requirement is likely to have less relevance than in a trade association model.

6.2.2 The primary authority's understanding of the businesses

In order to provide informed Primary Authority Advice that is relevant and applicable, the primary authority needs to have a good understanding of the types of businesses in the group of co-ordinated partnerships, and the compliance issues that they face. Again, in the franchise group model this is likely to be relatively straightforward, particularly where the primary authority has a direct partnership with the franchisor and has developed a detailed understanding of the business.

In a trade association model, it is potentially more complex, particularly if the membership of the association is very diverse. It is for the trade association and the primary authority to work together to ensure that the primary authority has the necessary knowledge and understanding. A trade association that represents small businesses in a particular sector would need to ensure that the primary authority had a good understanding of that sector and could help it to gain this understanding by inviting it to meet with member businesses, for example at events, through visits to individual businesses, or by involving the primary authority officer in training that the trade association provides for its members.

6.2.3 Who can request and receive Primary Authority Advice on behalf of the businesses

It is common for the parties to limit those who can request Primary Authority Advice to a small number of named contacts. For example, in the case of a franchisor business it might be reasonable to agree that two or three named staff can request and receive Primary Authority Advice, perhaps the 'Compliance Manager' or 'Health and Safety Manager', and a nominated deputy. Similarly, in the case of a trade association, it might be reasonable to nominate two or three named staff.

The details as to how the co-ordinator will request advice on behalf of the businesses should be recorded in the Memorandum of Understanding for Co-ordination of Partnerships agreed between the two parties ([see 4.5.10](#)).

6.2.4 How will the co-ordinator disseminate Primary Authority Advice, and any changes to the advice

A primary authority that is issuing Primary Authority Advice to partner businesses via a co-ordinator needs to have confidence that the advice, and any subsequent changes to the advice, will be disseminated to all of the businesses. These effective communication channels for advice are an important element in demonstrating that the businesses have arrangements in place to share an approach to compliance.

The details as to how Primary Authority Advice will be disseminated should have been recorded in the Memorandum of Understanding for Co-ordination of Partnerships agreed between the two parties ([see 4.5.10](#)).

6.2.5 Publication of Primary Authority Advice

2

Statutory framework: Publication of Primary Authority Advice to a group of businesses

Statutory guidance on the scheme⁷⁴ requires that Primary Authority Advice issued to a group of businesses in co-ordinated partnerships should be shared with enforcing authorities via the secure area of the Primary Authority Register.

6.3 The requirements for Primary Authority Advice

In most respects, the requirements for Primary Authority Advice provided through co-ordinated partnerships mirror those for direct partnerships, which are explained in Module 5 ([see 5.4](#)).

The significant difference between the two is that Primary Authority Advice to a business in a direct partnership should be '*specific and tailored to the needs and circumstances of that business*', whereas Primary Authority Advice to a group of businesses in co-ordinated partnerships should be '*relevant to a significant proportion of the businesses in the group of co-ordinated partnerships and is applicable to all of those businesses for which it is relevant*⁷⁵'.

The differences in advice needs between groups of co-ordinated partnerships ([see 6.1](#)) can be seen as spanning a spectrum, depending on the relationship between the businesses and the co-ordinator.

At one end of the spectrum, where all of the businesses are operating in the same way, and following the same compliance procedures, then this requirement will clearly be met. Examples might include:

- Franchisees, following compliance procedures specified by the franchisor. Primary Authority Advice in relation to these procedures will be equally relevant and applicable to all of the franchisees.
- Businesses in a company group, following compliance procedures specified by the group. Primary Authority Advice in relation to these procedures will be equally relevant and applicable to all of the companies.
- Businesses that have made a commitment, for example through their participation in an approval scheme, code of practice or quality mark, to meet certain standards. Primary Authority Advice in relation to these procedures will be equally relevant and applicable to all of the businesses.

At the other end of the spectrum, where the group of businesses is diverse, they may not all face the same issues and, where they do, they may be affected by them in different ways. In this situation, Primary Authority Advice will not be tailored to the specific needs of the individual businesses, but will be 'industry specific', 'sectoral' or 'topic-based'.

The questions of relevance and applicability are illustrated in the following practical example of how these matters might be addressed in a trade association model.

⁷⁴ Section 27, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁷⁵ Section 27, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

4

Practical example: Trade association

XYZ Association's member businesses all have an interest in meat products. The majority are involved in production with a proportion also being involved in retail, for example through farm shops and market stalls.

XYZ Association is aware that those members involved in retail would benefit from advice on particular regulations that affect them but do not affect member businesses that are producers only.

XYZ Association works with Anytown Council to develop robust guidance on the requirements of the particular regulations, in the context of the retail supply of meat products by independent retailers. They take care to ensure that the advice will apply equally to all member businesses involved in retail.

Anytown Council issues the guidance as Primary Authority Advice to its partner businesses via XYZ Association, making it clear in the advice that it is only of relevance to retailers. Anytown Council publishes the Primary Authority Advice through the Primary Authority Register and enforcing authorities are able to easily see that the advice is relevant only to those businesses with co-ordinated partnerships that are retailing meat products.

Where a business in a co-ordinated partnership decides that it would benefit from tailored advice, then it would be sensible for the primary authority, the co-ordinator and the business to discuss whether a direct partnership would better meet the needs of the business.

6.4 The uses of Primary Authority Advice

Primary Authority Advice is regulatory advice provided by a primary authority to a group of businesses in relation to an area of legislation that is covered by their partnerships. Primary Authority Advice does not affect the responsibility of the businesses to comply with legal requirements, but provides support for the businesses in meeting their obligations by:

- a) helping them to understand what they need to do in order to achieve and maintain compliance;
- b) setting out a way in which the businesses might achieve compliance; or
- c) confirming that the method of achieving compliance that the businesses have chosen, or are operating, is acceptable.

The nature of Primary Authority Advice to a group of businesses may vary, depending on the needs of the businesses. It can be helpful to think of advice needs as falling into two broad areas, each of which is likely to have different applicability, depending on the nature of the relationship between the co-ordinator and the businesses:

- advice on interpretation and applicability of legislation ([see 6.4.1](#)); and
- advice on systems aimed at achieving compliance ([see 6.4.2](#)).

6.4.1 Advising on interpretation and applicability

At its most straightforward, Primary Authority Advice may interpret a legal requirement or may give a view on the applicability of a particular requirement to the businesses.

5

Practical example: Trade association

The members of XYZ Association are concerned about the interpretation of new regulations that will shortly be coming into effect, and, in particular, want to understand whether they will be able to continue to supply existing stock once the regulations are in force.

The primary authority works with the XYZ Association to understand the particular issues for its members and considers the new legal requirements in the context of the sector in which the businesses operate.

It issues Primary Authority Advice, via XYZ Association, to member businesses that are in co-ordinated partnerships, confirming the circumstances in which existing stock may continue to be sold, and interpreting the new requirements.

6.4.2 Advising on compliance systems

The majority of the legislation enforced by local authorities creates strict liability offences but in many cases a statutory defence is made available, or there is a qualification of a statutory duty. For example:

- much consumer protection legislation incorporates a statutory defence of (i) taking all reasonable precautions and (ii) exercising all due diligence to avoid the commission of the offence; and
- the statutory duties under sections 2-6 of the Health and Safety at Work Act 1974 are qualified by the concept of reasonable practicability.

Primary Authority Advice may go beyond questions of interpretation and applicability, to address the control systems that businesses put in place in order to avoid breaching legal requirements. In other words, Primary Authority Advice can be used to confirm the suitability and adequacy of the systems that a business would rely on when seeking to demonstrate 'reasonable precautions and due diligence' or 'reasonable practicability'.

Primary Authority Advice of this nature is of greatest value when it is tailored to the particular circumstances and approach of an individual business. It is therefore evident that it will be of greatest relevance to co-ordinated partnerships where all of the businesses are following the same compliance approach. The clearest examples of this would be in relation to:

- a group of franchisees, following compliance procedures prescribed by their franchisor;
- trade association members that have signed up to a code of practice operated by the trade association;
- businesses that have signed up to a particular compliance approach; or
- a group of related companies, all following a common set of compliance procedures.

In order to be able to provide Primary Authority Advice in relation to the systems which a group of businesses uses to ensure legal compliance, the primary authority must have a thorough understanding of the business models and, in particular, any differences between them. The primary authority will need to have a clear view as to what is being advised on, and the extent to which systems are being 'signed off' ([see 5.5.2](#)).

1

Practical tips: Drafting Primary Authority Advice to a group of businesses

- **Primary Authority Advice should reference the relevant legislation.**
- **The advice should make clear which businesses in the group it is of relevance to.**
- **Primary Authority Advice should be worded with a view to providing each business with assurance in relation to how it can demonstrate that it is complying with its statutory responsibilities.**
- **Where Primary Authority Advice refers to particular policy documents, written procedures or other materials, it is sensible to list these by name; to include identifying features, such as an issue date or version number; and to retain a copy.**

A primary authority takes on a significant responsibility, particularly where it provides advice to a group of businesses, and it should always be conscious that it is effectively leading regulation of the group of business, on behalf of all local authorities. Concerns that are raised by other local authorities about Primary Authority Advice given should usually trigger a review of the advice to establish whether changes are needed, for example in recognition of changes in industry practices or recent case law.

6.5 Primary Authority Advice to Local Authorities

In most respects, the arrangements and requirements for the provision of Primary Authority Advice to Local Authorities, in relation to businesses in co-ordinated partnerships, mirror those for direct partnerships ([see 5.6](#)).

In issuing Primary Authority Advice to Local Authorities, a primary authority is taking on a significant responsibility, as it is instructing other local authorities on how to exercise their regulatory function in relation to the business. In areas where local discretion is seen as particularly important, the primary authority may anticipate challenge to its advice.

In considering the views of local authorities that will be affected by the advice, it is therefore sensible to engage with a sample of local authorities to establish how the proposed advice might be interpreted in different local contexts. This is of particular importance in the context of co-ordinated partnerships where the primary authority could, in effect, be guiding the way in which a whole sector is regulated by local authorities.

7 Developing and managing inspection plans – direct partnerships

This module explains inspection plans for officers involved in supporting direct partnerships. Much of the content will also be of interest to those involved in supporting co-ordinated partnerships, however they should also read Module 8, which provides specific practical examples of how an inspection plan might work for different groups of co-ordinated partnerships.

7.1 Reasons for considering an inspection plan

As a primary authority, a local authority takes on the role of working in partnership with a business, both to improve and maintain its compliance, and to streamline its interactions with the local regulatory system. A key part of this role involves helping to co-ordinate visits to the business that are carried out by multiple local authorities, ensuring that these visits are effective in targeting key risks and that regulatory effort is not duplicated.

Many businesses report that premises-based visits by local officers form the most part of their experience of local regulation and they feel that improvements in the focus of these visits and the feedback provided would greatly improve their value. Businesses of all sizes, where they trade across local authority boundaries, report that it is unhelpful having their premises viewed in isolation by local officers and that they would welcome a more informed and co-ordinated approach to programmed or pro-active visits such as inspections and other checks on their compliance.

A primary authority has a number of options at its disposal when it wishes to influence how enforcing authorities interact with the business. For example, many primary authorities have found that sharing information with enforcing authorities about the business and its approach to managing compliance, via the secure area of the Primary Authority Register, can be very beneficial for enforcing authorities and the business. Examples of the information that is being shared include:

- Explanations of the business ownership and structure – this can be particularly helpful where the business has multiple trading names or trading styles, or where it is not immediately clear which areas or premises are within scope of the partnership. For example, explaining that company operated outlets are within scope of a direct partnership, but outlets operated by franchisees are not.
- Explanations of the compliance approach used in a particular area. For example, explaining how certain areas of the business are checked for compliance by internal auditors or third parties.
- Providing details of current issues, such as product recalls.
- ‘Jargon busters’, which translate regulatory language used by officers into the language used by the business – this can save time when asking staff at local premises for particular documents or evidence of particular compliance checks.

An inspection plan is one of the options available to a primary authority, and it differs from the options outlined above in that it has a statutory basis.

1

Statutory framework: The basis of inspection plans

Section 30 of the RES Act, as amended⁷⁶, provides for a primary authority to make an inspection plan, containing recommendations as to how local authorities should exercise their inspection function in relation to the business. In particular, the inspection plan may set out the frequency at which inspections should be carried out, or the circumstances which warrant inspection; and what an inspection should consist of.

The Act requires all local authorities⁷⁷ exercising their inspection function to do so in accordance with any inspection plan to which the Secretary of State has consented, unless consent to act otherwise has been requested from the primary authority and the primary authority has not refused consent. This requirement was introduced by an amendment to the Act from October 2013 – prior to this date a local authority was required to ‘have regard to’ the recommendations of an inspection plan.

Statutory guidance on the scheme⁷⁸ provides a framework for the development of robust, evidence-based inspection plans.

7.1.1 Potential benefits for all parties

Inspection plans enable businesses of all sizes to maximise the benefits associated with local regulation and to reduce the costs that can be associated with being regulated by multiple local authorities (see 7.1.2). Inspection plans can benefit large, multi-site operations but are equally relevant for small businesses, such as an operator of mobile premises that may visit several different local authority areas. Whilst they are of particular value for businesses that experience a high level of programmed inspections, they can also be used to address other regulatory interventions such as test purchases, sampling visits, other checks on compliance and advisory visits.

A large part of the value of inspection plans is that they are a flexible tool, capable of serving a number of different purposes. By targeting activity at areas where it is most needed and ensuring that valuable feedback is gathered and shared, an inspection plan is able to increase the impact of local inspections, enhancing protection for citizens, workers and the environment. Improved co-ordination of inspection activity can also reduce duplication of effort, freeing up resources at a local level.

Primary authorities are able to make use of the improved data on local compliance that can be generated through an inspection plan to build up a clearer picture of how things are actually working ‘on the ground’. This informs the future programme of partnership activity, ensuring that the partnership’s compliance activities are focused upon the areas of greatest risk, and are driving improvements where they are needed.

7.1.2 ‘Earned recognition’

‘Earned recognition⁷⁹’ is a concept that is being explored in many regulatory areas, with government, businesses and regulators asking how regulation, and regulatory delivery, can benefit from the significant investment that many businesses make in compliance.

⁷⁶ Section 68, Enterprise and Regulatory Reform Act 2013 amends section 30 of the RES Act.

⁷⁷ The primary authority is exempted from this requirement but must have regard to the inspection plan.

⁷⁸ Section 11, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁷⁹ The 2011 report of the [Farming Regulation Task Force](#) explains earned recognition as ‘using third party information and other personal evidence to assess risk and therefore the need for the state or its agents to inspect.’

To a significant extent, ‘earned recognition’ is nothing new to local regulators, who are well used to assessing risks at the premises level and to translating an assessment of lower risk into a reduced level of inspection, or other checks on the business. The challenge is to identify ways in which this assessment of risk can be extended from the premises or product level to a ‘business-wide’ assessment which takes account, not just of what is happening, for example, in one local store, but of a wide range of information, including:

- the business’ systems for managing compliance;
- data generated by the business’ internal compliance checks eg. through in-house audits;
- data generated by third party compliance checks on the business eg. through external auditing, accreditation checks, test purchases; and
- data generated by regulatory checks on the business.

Primary Authority provides an opportunity for a business and its primary authority to build a relationship of trust within which the business is able to share details of its approach to compliance management, and its compliance data. The primary authority can also collate data from across the local regulatory system on checks that enforcing authorities are carrying out on the business. The primary authority can therefore be in a position to generate a picture of compliance across the business’ operations. This allows it to make informed decisions about what compliance checks are needed in order to properly regulate the business across its premises, products or activities.

For this reason, inspection plans are one of the tools that are capable of delivering some forms of ‘earned recognition’, and Government acted in 2013 to strengthen the statutory framework around inspection plans to allow them to be better used in this way⁸⁰.

The strongest example of an inspection plan delivering ‘earned recognition’ might arise where a primary authority has evidence demonstrating that a business has appropriate systems in place for ensuring compliance in relation to particular legal requirements, and is consistently compliant. The primary authority might take the view that it has sufficient evidence that the level of risk posed by that business is significantly reduced and consider that a lower level of regulatory interventions is warranted. The primary authority could use an inspection plan to put in place a national inspection strategy ([see 7.4.5](#)), controlling the number of proactive visits to the business by implementing a risk-based inspection programme across all of the premises operated by the business. Such a programme would benefit enforcing authorities by allowing them to free up resources for use in dealing with matters which pose a greater risk.

7.2 Considering the partnership’s need for an inspection plan

There is no requirement for a primary authority to produce an inspection plan. However, it is sensible for all partnerships to consider whether an inspection plan could deliver benefits to the business and to enforcing authorities, recognising that the benefits are likely to be the greatest where the business currently experiences a significant level of visits from local regulators. This is perhaps most likely to be the case for regulatory areas where there are high numbers of premises-based inspections, for example in relation to food hygiene.

⁸⁰ Section 68, Enterprise and Regulatory Reform Act 2013

Producing and managing an inspection plan on an ongoing basis can be a significant commitment for a partnership and the evidence to date is that partnerships should consider whether the benefits that an inspection plan can deliver will justify the resources required. Some partnerships, particularly those that are newly established, take the view that a sensible first step is to share relevant information with enforcing authorities via the secure area of the Primary Authority Register, and to review the need for an inspection plan after an agreed period. During this period, it is sensible for both the primary authority and the business to collate information which will help inform a future decision on developing an inspection plan.

In order to make an informed assessment of the likely benefits, the partnership will need to go through a process of gathering and considering evidence of the business' current experience of regulatory interventions.

1

Practical tips: Exploring the business' experience of local regulation

a) What sort of interventions does the business experience?

The scope of inspection plans is widely drawn in the statutory guidance and includes inspections, sampling visits, test purchases, other checks on compliance, and advisory visits.

b) Do the interventions tend to be programmed, project-based, complaint-related, or random?

It is important to remember that an inspection plan can only relate to '*proactive, planned or programmed*' interventions and can't address reactive interventions undertaken in relation to '*matters of specific concern about the business*'.

c) What frequency / number of interventions does the business experience?

d) What proportion of the interventions identify compliance failures?

e) Do the local visits cause particular problems for the business?

For example, is inconsistent advice given to local staff of the business in relation to implementation of the business' procedures?

f) Is useful feedback received by the business on compliance issues?

g) What compliance data does the business have?

There will usually be more than one source for the relevant data. The business itself is likely to hold some records of the previous inspections it has received but these records may lack relevant detail and are likely to be incomplete as the business may be unaware of some interventions, for example where they have been dealt with only at a local level, or where no report has been provided by the enforcing authority.

In the case of many smaller businesses, much of the knowledge relating to previous inspections may be held by the people running the business. The less formal structure of many smaller businesses means that they may not hold documentary records of previous inspections. However, the proprietors and managers of such businesses are often sufficiently close to the operational activity that their first-hand knowledge will be adequate.

The primary authority may be able to access additional evidence in the form of previous notifications it has received from enforcing authorities. It may also choose to actively seek additional information from other local regulators.

In considering the possible benefits of an inspection plan, it is helpful to remember that once an inspection plan takes effect⁸¹, all enforcing authorities must follow any requirements of the inspection plan:

- when planning or programming regulatory interventions at the business; and
- when conducting proactive, planned or programmed regulatory interventions at the business.

This means that an inspection plan can have an impact at both of these stages.

2 Practical tips: Exploring the need for an inspection plan

Three key questions to ask

- 1. Could an inspection plan improve the targeting of regulatory resource in relation to the business, in terms of *when* and *where* interventions take place?**
- 2. Could an inspection plan improve the targeting of regulatory resource in relation to the business, in terms of the *focus* of interventions that take place?**
- 3. Could an inspection plan usefully improve the quality and flow of inspection data from enforcing authorities to the primary authority and in turn the business?**

It is also important, at this early stage, for the partnership to consider the objectives of relevant national regulators and how an inspection plan might help to deliver them.

7.3 Inspection plan priorities and objectives

Once a partnership has identified that an inspection plan will deliver benefits, its next step is to decide the inspection plan priorities and objectives. For most partnerships, it is unlikely to be feasible to develop a workable inspection plan, in the first instance, which covers all regulatory areas that might involve local visits. Such a comprehensive inspection plan would require significant resources to be committed by the partnership.

The priorities for developing an inspection plan are best determined by reviewing the partnership's objectives alongside the evidence gathered when considering the need for an inspection plan ([see 7.2](#)). The partnership can then ask itself how an inspection plan can best be used to achieve the agreed objectives, and what outcomes it seeks to deliver through the inspection plan. These need not be quantitative but should be outcome-focused rather than simple outputs.

It is sensible to maintain a documented record of the process which was followed in reaching the inspection plan priorities, including copies of any supporting evidence which influenced the decisions made. This record forms part of the primary authority's evidence that it is properly performing its duties and obligations in relation to the partnership and will prove a useful reference document when the primary authority conducts its review of the partnership, or when staff change. It will also prove valuable when the primary authority prepares the inspection plan rationale ([see 7.6](#)) which must be submitted to BRDO alongside the inspection plan.

⁸¹ An inspection plan takes effect once it has been consented to by the Secretary of State and published by BRDO. It remains in effect until it expires or is revoked, with consent of the Secretary of State.

7.3.1 Engagement

Before producing an inspection plan, the primary authority is required to consult with the business on the proposed content of the plan and this will usually be an iterative process which begins with early discussions about the possible benefits of an inspection plan and ends with the business confirming the accuracy of information and guidance to be provided in the inspection plan. The business will have its own views on what the inspection plan should include, and what it should achieve. However, it is important for both parties to remember that the inspection plan is ‘owned’ by the primary authority rather than by the partnership. In developing the plan, the primary authority needs to be conscious both of its responsibilities to the business, and its responsibilities in terms of leading regulation of the business on behalf of all local authorities.

It is sensible, at an early stage, to agree with the business arrangements for reviewing the inspection plan, and evaluating whether it is achieving its objectives.

The primary authority should also have discussions at an early stage with any other primary authority that has a partnership with the business in order to make them aware of the proposed plan. This can be helpful in terms of establishing whether that primary authority is also considering an inspection plan, and it can provide an opportunity for the primary authorities to identify areas where they can usefully work together. For example, a primary authority developing an inspection plan in relation to food safety and hygiene might identify that the primary authority for fair trading has no intention of developing a plan but does have an interest in receiving information from frontline officers visiting the business about certain areas of concern.

A single inspection plan document may draw together information and requirements from more than one primary authority, for the same business. However, if primary authorities choose to produce a joint plan, it must be clear which content originates from each primary authority.

2 Statutory framework: National regulators

Section 30(5) of the RES Act requires that a primary authority that is developing an inspection plan must take into account any relevant published recommendations relating to inspections.

The statutory guidance on the scheme⁸² specifies that the published recommendations that must be taken into account include relevant national regulators’ published strategies, guidance, priority topics or risk assessment methodologies, and obligations set by national regulators or government policy departments.

Where a primary authority is considering an inspection plan in a regulatory area where there is a national regulator, the primary authority will need to be aware of the importance of taking account of any relevant guidance published by the national regulator.

⁸² Section 20.4, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

The primary authority should, at an early stage, send details of the proposed approach for the inspection plan to any relevant national regulator(s). A template [Inspection Plan Proposal](#) form that can be used for this purpose is available via the ‘[Operating direct partnerships](#)’ page of the Primary Authority Register and this includes contact details for each of the relevant national regulators. The [List of Primary Authority Categories](#) specifies any relevant national regulator(s) for each category.

1 Practical example: Business engagement

Anytown Council has a direct partnership with ABC Restaurants and is working closely with the business to improve compliance with food hygiene requirements in its 500 catering outlets.

Anytown Council has discussed with the business the possible benefits of an inspection plan and is considering co-ordinating a risk-based national inspection strategy that will deliver a reduced number of inspections of the outlets.

Anytown Council completes an Inspection Plan Proposal form at an early stage and sends it to the Food Standards Agency. They discuss how Anytown Council will work with enforcing authorities to ensure that its approach aligns with the requirements of the FSA’s Code of Practice and its Brand Standard for the Food Hygiene Rating Scheme.

7.4 The inspection plan approach

Once an inspection plan has been consented to, and published by BRDO, all enforcing authorities must follow any requirements that the inspection plan places on them. It is clearly important therefore that an inspection plan should support effective regulation of the business, and that the requirements that it sets out for enforcing authorities are robust and evidence-based. Statutory guidance on the scheme sets out a framework for inspection plans which includes general criteria that should be met, and specific criteria where an inspection plan takes a particular approach.

3 Statutory framework: General criteria for inspection plans

Statutory guidance on the scheme⁸³ specifies that an inspection plan should not:

- **set out requirements in relation to reactive interventions that are undertaken in relation to matters of specific concern about the business;**
- **seek to prevent enforcing authorities from taking any course of action that they are statutorily required to take; or**
- **require a local authority to undertake a proactive inspection or other check on compliance of the business when it would not otherwise have undertaken a proactive inspection or other check on compliance at that time.**

The statutory guidance also specifies that inspection plans should be informed by available intelligence.

⁸³ Section 11.8, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

An inspection plan is a very flexible tool and primary authorities are preparing plans which take quite different approaches, depending on their objectives in deciding on an inspection plan and on the level of resources that the partnership decides to allocate to developing the plan and managing it on an ongoing basis.

4 Statutory framework: Inspection plan approach

Subject to certain criteria, statutory guidance on the scheme⁸⁴ provides for an inspection plan to:

- **provide helpful information on the business and its approach to managing compliance; and**
- **set out requirements that enforcing authorities must follow (subject to the provisions in the Act⁸⁵).**

It can be helpful to see inspection plans as spanning a spectrum. At one end of the spectrum, an inspection plan may be purely informative, providing guidance which will help officers conducting checks on the business ([see 7.4.1](#)). This type of inspection plan can be developed relatively easily and, for some partnerships, it will deliver real benefits in terms of improving the quality of inspections. Whilst it is important to ensure that the information in the plan does not become outdated, a purely informative inspection plan will not require significant resources to manage or review it, or to evaluate whether it has achieved its objectives.

At the other end of the spectrum, an inspection plan can set out specific, evidence-based requirements that enforcing authorities must follow, subject to the provisions of the Act ([see 7.8.2](#)). This type of inspection plan will inevitably require a greater commitment of resources but can have a significant impact on the way that the business is regulated at a local level. Where a plan places requirements on enforcing authorities, the partnership will need to agree arrangements to gather evidence to inform an evaluation of the success of the plan. All inspection plan content should fall into one of the areas set out in the statutory guidance, as detailed in the following ‘Statutory Framework’ extract.

5 Statutory framework: Inspection plan content

Using an inspection plan to provide information⁸⁶ ([see 7.4.1](#))

- a) providing information to guide local checks**
- b) providing guidance on risk assessment of the business’ premises and / or activities for the purposes of programming interventions (without restricting an enforcing authority’s ability to make its own assessment of any elements of the risk score that relate to local implementation)**
- c) providing guidance on the most effective means of communicating with the business and the primary authority (without seeking to alter any means or routes of communication with the business that are required by law)**
- d) drawing attention to information that the primary authority has made available (with the aim of reducing information requests to the businesses)**

⁸⁴ Section 11.5, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁸⁵ Section 30(7A), RES Act

⁸⁶ Section 11.9, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Using an inspection plan to set out requirements for enforcing authorities⁸⁷

- a) putting in place a national inspection strategy, subject to certain criteria ([see 7.4.5](#))
- b) requiring that certain checks are not carried out locally, where the primary authority will carry out the checks on behalf of enforcing authorities ([see 7.4.2](#))
- c) requiring that specified procedures or systems are not reviewed locally to determine their adequacy or suitability, where they have already been reviewed and confirmed by issuing Primary Authority Advice ([see 7.4.3](#))
- d) requiring that local checks are focused on specified areas, subject to certain criteria ([see 7.4.4](#))
- e) requiring specified feedback to the primary authority about the inspection, subject to certain criteria ([see 7.4.6](#))

In practice, most inspection plans take an approach which involves elements of both ‘*helpful information*’ and ‘*requirements*’.

7.4.1 Providing information to assist enforcing authorities

An inspection plan can be used to provide helpful information for officers conducting visits to the business, in one of the four areas set out in the ‘Statutory Framework’ extract above. For example, a primary authority might provide a range of information to guide local checks on the business, including:

- detail on how the business operates;
- explanation of any complexities in the structure of the business that might cause misunderstanding or confusion; or
- details of how the business manages compliance in a specific area.

2

Practical example: Guidance on risk assessment of the business’ premises and activities

ABC Supermarkets reports to its primary authority, Anytown Council, that local authority risk assessments under a national risk-rating framework often fail to take into account its systems, internal checks and compliance history, instead treating each of its premises in isolation.

Anytown Council develops an inspection plan that summarises the relevant information that an enforcing authority would usually be expected to take into account in allocating appropriate scores under the risk framework.

⁸⁷ Section 11.10, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

3

Practical example: Guidance on effective communication with the business

ABC Stores, a regionally-based chain of convenience stores operating under multiple trading styles, reports to its primary authority, Anytown Council, that inspecting officers routinely provide inspection reports and follow-up communications to its local stores but do not always communicate with the head office. This makes it harder for the business to identify where local staff are failing to follow its procedures, and to be sure that it has a comprehensive picture of local inspection activity.

Anytown Council, in its inspection plan for the business, provides an explanation of the different trading styles of the business and asks enforcing authorities to copy all communication in respect of inspections to the business' head office, providing the relevant contact details.

4

Practical example: Reducing repeat information requests to the business

ABC Tyres receives regular requests from local fire safety officers for copies of particular procedures, and is frustrated at having to repeatedly provide and explain these procedures. It has already made these procedures available to its primary authority and it asks the primary authority to respond to such requests on its behalf.

The primary authority makes the procedures available in the secure area of the Primary Authority Register. It then requests in its inspection plan for the business that officers wishing to view the specified procedures should do so via the partnership's page. It goes on to ask that any officers wishing to ask questions about the procedures should, in the first instance, contact the named primary authority officer.

5

Practical example: Reducing repeat information requests to the business

ABC Snacks, an operator of mobile catering units, regularly receives standard pre-event communications from local authorities each time that he takes his units to an event such as a show. These communications often include a checklist that he is asked to complete. The business asks its primary authority, Anytown Council, whether it can provide answers to these checklists just once.

Anytown Council works with the business to agree responses to the questions that are included in these checklists and makes this information available in the secure area of the Primary Authority Register. It then requests in its inspection plan for the business, that enforcing authorities refer to this information rather than sending such checklists to the business.

3

Practical tips: Providing helpful information

Be aware of the importance of producing an inspection plan that is concise and to the point, so that it is of value to officers.

Consider whether detailed supporting information should be made available via the secure area of the Primary Authority Register, rather than including it in the inspection plan. For example, FAQs, explanations of the compliance approach operated by the business etc ([see 7.1](#))

Before sharing any business documents with enforcing authorities via the Primary Authority Register, confirm that you have consent from the business to do this.

7.4.2 Requiring that specified checks are not carried out at a local level

A primary authority may take responsibility for carrying out certain checks on the business' compliance itself and may then place a requirement on enforcing authorities that they should not carry out these checks at a local level.

For example, where particular compliance activities are centrally controlled and monitored by the business, and records are maintained at head office, checks on those activities at the local level are not always efficient or effective, and it can be beneficial for both the business and the enforcement community for the checks to be carried out by the primary authority. Similarly, where checks can be carried out more efficiently at a particular stage in the supply chain, it may be beneficial for the primary authority to undertake checks at this stage.

6

Practical example: Specified checks not carried out at a local level

ABC Pies distributes 'bake-off' products to its regional chain of retail outlets from a single distribution depot.

The business agrees with its primary authority, Anytown Council, a robust sampling programme to be undertaken by the primary authority at the depot.

Anytown Council develops an inspection plan for the business in which it requires that sampling for food standards compliance must not be conducted by officers at the retail outlets.

It is sensible for the primary authority and the business to agree exactly how the primary authority will carry out the specified checks on behalf of enforcing authorities, and to be clear about how the work will be resourced on an ongoing basis.

The primary authority will need to explain the approach being taken in its inspection plan rationale ([see 7.6](#)).

7.4.3 Requiring that centrally controlled procedures are not reviewed locally for suitability or adequacy

Where a primary authority has reviewed a business' approach to compliance in a particular area and has confirmed that it is satisfied with it by issuing Primary Authority Advice, it may use an inspection plan to ensure that the business does not experience repeated review of its approach at a local level. This reduces duplication of effort for enforcing authorities and eliminates the risk that the business will receive inconsistent or duplicated advice on its approach to compliance from different enforcing authorities.

In this situation, the primary authority is ensuring that enforcing authorities do not review the **adequacy** or **suitability** of policies and procedures that it has already reviewed and judged to be satisfactory. This does not mean that the primary authority is preventing local checks on the implementation of these policies or procedures.

7

Practical example: Centrally controlled procedures not reviewed locally

Anytown Council has reviewed the HACCP⁸⁸ plan operated by ABC Restaurants and has issued Primary Authority Advice to the business indicating that the plan sets out appropriate controls to deliver compliance.

In its inspection plan for the business, Anytown Council includes a requirement that enforcing authorities must not assess the HACCP plan for suitability or adequacy but may assess local implementation of the plan.

The primary authority could go on to require checks on local implementation to be focused on specified elements (see 7.4.4).

The primary authority will need to confirm, in its inspection plan rationale ([see 7.6](#)), that it has reviewed the specified procedures or systems and issued Primary Authority Advice. The procedures should be listed in the inspection plan rationale, with identifying dates and / or version numbers.

4

Practical tips: Removing local reviews of agreed procedures

Consider maintaining a schedule of Primary Authority Advice provided to the business, with details of the relevant procedures / policies etc, including identifying dates / version numbers / review dates etc.

Ensure that the business understands the importance of updating the primary authority on any changes to the procedures, or to activities or practices that might affect the procedures. When such changes take place, the primary authority will need to review its Primary Authority Advice and the inspection plan.

7.4.4 Requiring that local checks are focused on specified areas

The primary authority will often have access to a significant amount of data on the business' compliance performance. This may include, for example, both business data and input from local authorities and consumer complaints. This puts it in a position where it can make an informed assessment as to the greatest risks associated with non-compliance at a local level and it can direct local checks towards these areas. It is important that the requirements in this area are clear so that enforcement officers can understand what is expected of them, and why.

6

Statutory framework: Criteria for inspection plans: focus of local checks

Statutory guidance on the scheme⁸⁹ specifies that an inspection plan that requires that local checks are focused on specified areas:

- a) should make it clear whether the area identified is to be focused on 'in addition' or 'in place of' areas that the enforcing authority would otherwise have checked;**

⁸⁸ A Hazard Analysis Critical Control Points plan, as required under food hygiene legislation.

⁸⁹ Section 20.7, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- b) should include a basic explanation of the reasons for focusing on the areas specified, for the enforcing authority to use during inspection, if these reasons are not evident; and
- c) should include a requirement for any feedback that the primary authority considers will be relevant and useful ([see 7.4.6](#))

The primary authority will want to ensure that it receives good feedback from enforcing authorities on these checks, to inform its compliance work with the business.

8 Practical example: Local checks focused on specific areas

ABC Logistics operates a national chain of warehousing and distribution depots. It has robust procedures in relation to preventing staff being struck by moving vehicles, which it has reviewed with its primary authority, Anytown Council, and it monitors implementation of those procedures. Nevertheless, the number of such incidents is not declining significantly.

Anytown Council, in its inspection plan for the business, requires enforcing authorities inspecting the business in their area to speak to staff and local managers about the procedures that are in place, to assess whether the business' procedures are being implemented effectively, and if they are not then to ascertain why. It makes the relevant procedures available to enforcing authorities via the Primary Authority Register and requires specific feedback.

9 Practical example: Local checks focused on specific areas

ABC Clothing owns a number of residential properties which are above its high street retail stores. Most of these properties meet the house in multiple occupation ('HMO') definition, with the majority requiring a mandatory HMO licence. The business experiences proactive inspections of the properties by enforcing authorities.

ABC Clothing has a direct partnership with Anytown Council covering several primary authority categories, including housing, and has received Primary Authority Advice in relation to the Housing Health and Safety Rating Scheme.

Anytown Council develops an inspection plan which outlines ABC Clothing's compliance approach in relation to its residential properties. It sets out priority areas for local checks on implementation of the business' procedures and requires feedback from local inspections in these priority areas.

The feedback provided by enforcing authorities allows Anytown Council to identify that the business' approach to tackling damp in certain older properties is not being implemented effectively and it works with the business to tackle this problem across its estate.

The primary authority will need to explain the basis for requiring the specified checks, in its inspection plan rationale ([see 7.6](#)), unless this explanation has been included in the inspection plan.

5

Practical tips: Local checks focused on specific areas

1. Consider whether any procedures referred to in the inspection plan should be shared with enforcing authorities via the secure area of the Primary Authority Register, or whether a brief summary of the key points in the procedure would be useful. Agreement will be needed from the business before sharing confidential procedures or other business documents, and the primary authority will need to ensure that it manages the published information eg. through a regular review to ensure that it remains current.
2. Consider carefully before requiring enforcing authorities to focus their attention on an area where Primary Authority Advice has not yet been issued, or has only recently been issued – the business will want to have adequate opportunity to implement any changes that Primary Authority Advice requires of it before being subject to focused inspections by enforcing authorities.
3. Consider the areas identified as a focus for local checks in the context of how an enforcing authority would be likely to conduct the intervention in the absence of the inspection plan. So, for example, if an officer inspecting the business would normally look at areas 'A', 'B' and 'C', then an inspection plan that requires the officer to focus on D will have to be clear as to whether the officer should now be checking 'A', 'B', 'C' and 'D', or just 'D'.
4. Consider whether the inspection plan will cause difficulties for officers following national regulator guidance. For example, where inspections are being conducted in line with the Food Standards Agency's Brand Standard for the Food Hygiene Rating Scheme, the inspection plan should also be aligned with this.
5. Record the basis on which particular areas have been identified as a focus for local checks, so that this is clear to the primary authority in the future.

7.4.5 National inspection strategies

An inspection plan may be used to require that local checks are only carried out by enforcing authorities in line with a 'national inspection strategy' co-ordinated by the primary authority.

In establishing a national inspection strategy, the primary authority is taking on responsibility for designing, managing and evaluating a risk-based programme of proactive regulatory activity in relation to the business.

7

Statutory framework: Criteria for inspection plans: a national inspection strategy

Statutory guidance on the scheme⁹⁰ specifies that an inspection plan that sets out a national inspection strategy should include a requirement for any feedback that the primary authority considers will be relevant and useful ([see 7.4.6](#)).

Whether a business operates regionally or nationally, in a few local authority areas, or in hundreds, a national inspection strategy allows the primary authority to take a high level view and to guide an appropriate level of checks across the business' estate.

⁹⁰ Section 20, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

A national inspection strategy is an appropriate route by which a primary authority can seek to influence the level of proactive activity, but it may also be used by a primary authority to improve the co-ordination of activity and to generate feedback which will give it a clearer view of compliance across the business.

10 Practical example: A national inspection strategy

ABC Restaurants operates over 500 catering outlets, all of which are risk rated and inspected every 12 to 18 months in relation to food hygiene. ABC Restaurants has a direct partnership with Anytown Council. It works closely with its primary authority to improve its compliance with food hygiene requirements and shares with it all compliance data from its third party auditor.

Anytown Council undertakes to co-ordinate a risk-based national inspection strategy that will deliver a reduced number of inspections of the outlets. It consults with the Food Standards Agency and develops an inspection plan seeking participation from local authorities.

11 Practical example: A sampling programme

ABC Pop, a bottled drinks manufacturer, has its products sampled occasionally across the country, with little or no joined-up planning of which products to sample. It receives little or no helpful feedback on the results of sampling. The business shares data from its own sampling programme with its primary authority, Anytown Council.

Anytown Council develops an inspection plan that sets out a co-ordinated sampling programme, requiring that only enforcing authorities participating in this risk-based approach should take proactive samples of the business' products. It also requires participating local authorities to provide specified feedback.

The primary authority will need to include supporting information in relation to the proposed national inspection strategy in its inspection plan rationale ([see 7.6](#)). This will include:

- a) explaining whether it seeks to control the number of local checks and, if so, how it proposes to do this;
- b) explaining how it will manage the national inspection strategy, including ensuring that it is responsive to changing circumstances;
- c) setting out its method for securing specified activity by particular enforcing authorities, where the national inspection strategy is reliant on this activity taking place; and
- d) setting out how the primary authority will evaluate the effectiveness of the national inspection strategy.

Where the primary authority has previously established and managed a national inspection strategy in relation to the business, then details of its evaluation of the effectiveness of that strategy will also need to be included in the inspection plan rationale.

6

Practical tips: Preparing a national inspection strategy

The practical steps involved would usually involve:

1. Collating details of:
 - current levels of local inspection activity; and
 - compliance levels identified by local inspection activity.
2. Considering whether any control on the number of local interventions is justified.
3. Quantifying the number of local interventions that is considered to be appropriate.
4. Considering how the national inspection strategy will be managed, and how the primary authority will ensure that its management of the national inspection strategy will be responsive to changing circumstances. The time input required from both the primary authority and the business is likely to be significant if a national inspection strategy is to be operated successfully.
5. Considering how the primary authority will secure specified activity by particular local authorities, where the national inspection strategy is reliant on this activity taking place. For example, where the primary authority wishes to deliver efficiencies by ensuring that products are sampled at distribution centres rather than at store level, it would need to reach agreement with those enforcing authorities with a distribution centre in their area, prior to eliminating checks at store level.
6. Considering how the primary authority will evaluate the effectiveness of the national inspection strategy.
7. Completing an evaluation of the effectiveness of any national inspection strategy included in a previous plan for the partnership to which the Secretary of State has consented ([see 7.8.3 below](#)).

7.4.6 Requiring feedback

An inspection plan may be used to require specified feedback to the primary authority on the inspection.

8

Statutory framework: Criteria for inspection plans: requiring feedback

Statutory guidance on the scheme⁹¹ specifies that a primary authority that requires, in an inspection plan, that enforcing authorities provide specified feedback should:

- a) only require feedback that it believes will be relevant and useful;
- b) be mindful of the need to avoid creating overly burdensome requirements on enforcing authorities;
- c) ensure that the feedback relates to the requirements set out in the inspection plan; and
- d) be clear about how the feedback should be provided.

⁹¹ Section 20.8, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

The primary authority will need to explain, in its inspection plan rationale ([see 7.6](#)), why it believes that the specified feedback will be relevant and useful.

7 Practical tips: Requiring feedback

- **Consider what inspection feedback will help you to work with the business to improve its compliance.**
- **Be aware that enforcing authorities will be recording details of the inspection for their own records and think carefully before asking them to do more, or to record the same thing twice.**
- **Think about how you can make it easier for officers to quickly provide the information that you want – would a copy of their inspection report be sufficient? Could a short online questionnaire be a quick way for officers to feed back to you?**

7.5 Drafting the inspection plan

9 Statutory framework: The inspection plan template

Statutory guidance on the scheme⁹² specifies that an inspection plan should be prepared using the template made available by BRDO via the Primary Authority Register. This template will be revised from time to time and a primary authority should ensure that it uses the current version.

The statutory guidance requires that all inspection plans should:

- a) define the scope of the relevant functions covered, and the geographic applicability of the plan; and**
- b) include an expiry date of no more than 18 months from the date of publication.**

The inspection plan template has been developed to help primary authorities to easily meet the criteria set out in the statutory guidance in respect of the content of plans and to help them structure their plan. Guidance on possible content and wording has been incorporated into the template. The use of the template by primary authorities helps enforcing authorities by ensuring that all inspection plans are presented in a consistent manner, and that key sections of each plan are easily found.

A partnership is only able to have a single inspection plan. However, this may cover multiple categories and two versions of the template are therefore available, one for a [single category](#) inspection plan, and one for an inspection plan that covers [multiple categories](#).

In drafting an inspection plan, it is important that the primary authority considers carefully the level of detail that it is providing, and the volume of information provided. Enforcing authorities will usually value inspection plans that provide clear, concise information, summarising the key points that will help them to do their job better. However, they will not want to read through lengthy documents in order to find information that is relevant to them. Where the primary authority feels that a greater level of supporting detail is needed, it can be helpful to share this via the secure area of the Primary Authority Register and to signpost to it in the inspection plan.

⁹² Section 11.18, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

It can be helpful to look at inspection plans that have been developed by other primary authorities, in order to see how they have drafted particular requirements. However, the primary authority should always use the latest template published by BRDO when preparing its own inspection plan, as this will be up-to-date, and includes guidance on what is required.

7.6 Preparing the inspection plan rationale

The inspection plan rationale document is part of the inspection plan template. It is used to document the underlying reasons for the content of the inspection plan and to summarise the supporting evidence, for the benefit of the primary authority, BRDO and any relevant national regulator(s). The inspection plan rationale also presents any evaluation of the success of a previous inspection plan in achieving its objectives ([see 7.8.3](#)), and outlines the approach that the primary authority will take to evaluating the success of the proposed inspection plan.

Where an inspection plan is purely concerned with providing information and practical guidance to enforcing authorities, rather than placing requirements on them, then very little detail is needed in the rationale document. Where an inspection plan sets out requirements for enforcing authorities, then the rationale required will be more substantial. It does not require primary authorities to reproduce all of the data and evidence that they hold, nor to provide full details of how they will fulfil their responsibilities in respect of the plan. However, it should include sufficient information to demonstrate that the inspection plan is evidence-based, for example through the inclusion of a summary of evidence, and that it will deliver benefits to the business and / or enforcing authorities.

10 Statutory framework: The inspection plan rationale

Statutory guidance on the scheme⁹³ specifies that the inspection plan rationale should include:

- a) an explanation of any issues that the partnership has with current enforcement activity at a local level, where the plan includes requirements that seek to address these issues;**
- b) confirmation that the primary authority has consulted with any relevant national regulator during the development of the plan, and a summary of any issues that were raised;**
- c) where a plan includes requirements against reviewing specified procedures or systems of the business locally to determine their suitability or adequacy, confirmation that the relevant procedures and / or systems have been reviewed by the primary authority and it has issued Primary Authority Advice;**
- d) where consideration of particular procedures has been critical to the primary authority's development of the plan, a list of these procedures (with dates / version numbers);**
- e) where a plan includes requirements against carrying out specified checks locally, an explanation of how the primary authority will carry out checks on behalf of enforcing authorities;**
- f) where a plan includes requirements in respect of the focus of checks at a local level, an explanation for the checks that are required, unless this is included in the plan; and**
- g) where a plan includes a requirement to provide specified inspection feedback, an explanation as to why the primary authority believes that the specified feedback will be relevant and useful.**

⁹³ Section 20.9, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

More detail will be required where the primary authority is proposing to co-ordinate a national inspection strategy, both in respect of the evidence on which the plan is based, and in respect of the primary authority's arrangements to manage the inspection plan.

11 Statutory framework: National inspection strategy rationale

Statutory guidance on the scheme⁹⁴ specifies that where a national inspection strategy is proposed, then the inspection plan rationale should also:

- a) identify whether the primary authority seeks to control the number of local interventions and, if so, provide an explanation of the proposed controls;**
- b) explain how the primary authority will manage the national inspection strategy, including ensuring that it is responsive to changing circumstances;**
- c) set out the primary authority's method for securing specified activity by particular local authorities, where the national inspection strategy is reliant on this activity taking place;**
- d) set out how the primary authority will evaluate the effectiveness of the national inspection strategy; and**
- e) provide details of the primary authority's evaluation of the effectiveness of any national inspection strategy included in a previous plan for the partnership to which the Secretary of State has consented.**

The primary authority's inspection plan rationale is not published and will not usually be shared by BRDO with other local authorities⁹⁵. It is used by BRDO to help determine whether it is appropriate for the Secretary of State to consent to the inspection plan, and it helps any national regulators that are consulted on the inspection plan to understand its basis.

7.7 The consent process

Once a partnership has completed the necessary development work, and the primary authority has prepared the inspection plan documentation, this should be submitted for consent via the partnership's page on the Primary Authority Register.

12 Statutory framework: The inspection plan consent process

Inspection plans must be submitted for consent by the Secretary of State. The consent process is administered by BRDO.

An inspection plan that is submitted for consent will be assessed with reference to the primary authority's compliance with statutory guidance on the scheme, and the benefits which the plan is anticipated to deliver. BRDO will consult with any relevant national regulator as part of the consent process.

Where the Secretary of State consents to an inspection plan, BRDO publishes the plan on behalf of the primary authority on the Primary Authority Register. It then remains in effect until its expiry date, or until it is revoked.

⁹⁴ Section 20.10, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

⁹⁵ Information held by BRDO is subject to the Freedom of Information Act 2000. In responding to requests under this Act, BRDO will respect the confidentiality and commercial sensitivity of information provided to it, where this has been highlighted by the party providing the information.

Upon receipt of the submitted inspection plan and rationale document, BRDO will assess:

- the suitability of the plan and rationale by reference to the statutory guidance;
- whether the inspection plan is written in clear language, such that enforcing authorities can easily understand what the primary authority expects of them. In particular, whether requirements placed on enforcing authorities are clearly distinguished from helpful information, guidance or requests;
- whether the proposed duration of the plan is reasonable. The statutory guidance allows for a duration of up to 18 months. However, a shorter duration may be reasonable where a plan is developed to address a specific issue that is expected to be short-lived.

Where it has concerns, BRDO may at this stage seek explanation from the primary authority or may refer the inspection plan back to the primary authority, with suggestions as to how it should be amended.

Once any issues with this initial assessment have been resolved, BRDO will share the submitted inspection plan and rationale with any relevant national regulator(s) identified in the [List of Primary Authority Categories](#). These include:

- Animal Health and Veterinary Laboratories Agency
- Environment Agency
- Food Standards Agency
- Gambling Commission
- Health and Safety Executive
- National Measurement Office
- Natural Resources Wales
- Competition and Markets Authority

This consultation with relevant national regulators allows them an opportunity to identify any potential conflict between the inspection plan and any guidance that they publish. Where the primary authority has already shared details of the plan with relevant national regulators ([see 7.3.1](#)), any such issues should already have been resolved. There is no formal requirement for a national regulator to consent to an inspection plan. However, BRDO will consider any comments put forward by a national regulator, and may share these with the primary authority. Where necessary, BRDO will ask for further information or clarification.

Where the Secretary of State is not satisfied that it would be appropriate to give his consent, BRDO will refer the plan back to the primary authority, and will usually provide feedback on the reasons. The primary authority may re-submit the inspection plan via the Primary Authority Register once it has addressed these comments.

7.7.1 Consent and publication

Once consent is granted, the Inspection Plan is published by BRDO via the partnership's page in the secure area of the Primary Authority Register, where it is accessible by:

- the parties to the partnership;
- all local authorities; and
- relevant national regulators and Government departments.

An inspection plan is published for the use of local regulators only, and may contain information that is confidential and commercially sensitive. It should not be shared more widely, unless permission has been sought from the primary authority that prepared the plan.

7.7.2 Expiry and revocation

The primary authority will be sent a reminder of the expiry date of a published inspection plan around eight weeks prior to expiry. On its expiry date, the inspection plan will be removed automatically from the Primary Authority Register, unless it has already been removed at the request of the primary authority, or has been replaced by a new inspection plan to which the Secretary of State has consented.

If a primary authority wishes to withdraw a current inspection plan prior to its expiry, it should submit a request via the Primary Authority Register, giving its reasons. BRDO may ask for further information or clarification on the primary authority's request. When the Secretary of State gives consent to the revocation of the inspection plan, it will be removed from the Primary Authority Register.

7.8 Managing and evaluating the impact of an inspection plan

It is important that primary authorities recognise that in developing and operating an inspection plan they are guiding inspection activity by other local authorities and, as such, are embracing significant responsibility. If the inspection plan is not properly researched and managed, regulatory risks may increase, and the statutory guidance therefore requires that a primary authority has arrangements in place to manage and review a published inspection plan. The need for active management is increased where the primary authority elects to operate a national inspection strategy.

7.8.1 Feedback generated by an inspection plan

The partnership should put in place arrangements to collate any data and feedback that is received by either the business or the primary authority in respect of inspection activity, and to regularly review this data, ensuring that it informs the partnership's ongoing compliance activity, and the primary authority's management of the inspection plan.

13 Statutory framework: Inspection feedback

Section 30(7E) of the RES Act⁹⁶, specifies that an enforcing authority that exercises its inspection function must provide a report to the primary authority where it is required to do so by an inspection plan.

The statutory guidance⁹⁷ requires the primary authority to:

- a) have arrangements in place to review and analyse the reports that it receives; and**
- b) consider the way in which it will share intelligence from feedback on inspections with the business.**

The feedback that the primary authority receives from enforcing authorities, through requirements that it has included in its inspection plan, is an important element of the data that the primary authority will need to analyse in order to assess:

⁹⁶ Section 68, Enterprise and Regulatory Reform Act 2013 amends section 30 of the RES Act.

⁹⁷ Section 11.30, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

- a) whether there are compliance issues that the business needs to address; and
- b) whether the inspection plan is achieving its objectives.

7.8.2 Enforcing authority notifications of an alternative approach

14 Statutory framework: Requests to follow an alternative approach

Section 30(7A) of the RES Act⁹⁸, specifies that an enforcing authority must exercise its inspection function in accordance with an inspection plan, other than where it has notified the primary authority in writing of how it intends to exercise its function, and has received the primary authority's consent. Where the primary authority fails to respond to the enforcing authority within 5 working days, it is treated as if it had consented.

The statutory guidance⁹⁹ requires the primary authority to have robust internal arrangements in place to handle such notifications from enforcing authorities within the statutory timescale.

The primary authority will need to be clear as to the internal process for deciding the primary authority's response to such requests, and should ensure that the reasons for making its decisions are recorded. It is important to allocate responsibilities for receiving, reviewing and responding to requests, and to plan for any absence of key staff.

Requests to follow an alternative approach to that set out in the inspection plan may indicate that the inspection plan is unclear or inadequate in some way and they should therefore be carefully reviewed with a view to considering whether changes are needed to the inspection plan.

7.8.3 Evaluation

As discussed earlier in this module ([see 7.2](#)), the development and management of an inspection plan will often require significant resources, and it is important that the success of the inspection plan in delivering the anticipated benefits is evaluated before a decision is made on whether to develop a further plan.

Effective evaluation is likely to be dependent on the quality of the data gathered during the period of the inspection plan, and the quality of any baseline data which was available. It is helpful for the primary authority and the business to agree at the stage at which an inspection plan is being developed, how its impact will be monitored, and what data will be captured by each partner. Variables to measure might include:

- the number of local checks on compliance undertaken;
- any indications that local officers are using information provided in the plan;
- any indications that local officers are unaware of the inspection plan;
- any indications that local officers are choosing to disregard requirements of the plan;
- the amount and quality of feedback provided by officers;
- the number of requests received by the business for procedures etc;
- examples of where feedback has been helpful in driving improvement.

⁹⁸ Section 68, Enterprise and Regulatory Reform Act 2013 amends section 30 of the RES Act.

⁹⁹ Section 11.29, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

The level of detail that is appropriate and helpful in any evaluation will depend upon the approach taken in the inspection plan. Where it simply provides information to assist enforcing authorities, then a commentary on any feedback received from enforcing authorities would be sufficient. However, where the inspection plan involves the primary authority taking a degree of control by setting out requirements for enforcing authorities, then a more detailed evaluation of the impact of the inspection plan would usually be appropriate.

This is particularly true where an inspection plan establishes a national inspection strategy. In this circumstance, the partners need to be aware of the importance of good evaluation throughout the duration of the inspection plan. Where the primary authority wishes to propose a further inspection plan including national inspection strategy, it will need to include an evaluation of the previous national inspection strategy as part of its inspection plan rationale.

15 Statutory framework: Sharing evaluation

Statutory guidance on the scheme¹⁰⁰ requires a primary authority that sets out specific requirements for enforcing authorities in an inspection plan should have arrangements in place to gather evidence to evaluate the success of the plan, and it should give consideration to whether it is appropriate for it to share this evaluation with certain local authorities and, if so, how it will do this.

7.8.4 Review

16 Statutory framework: Review of inspection plans

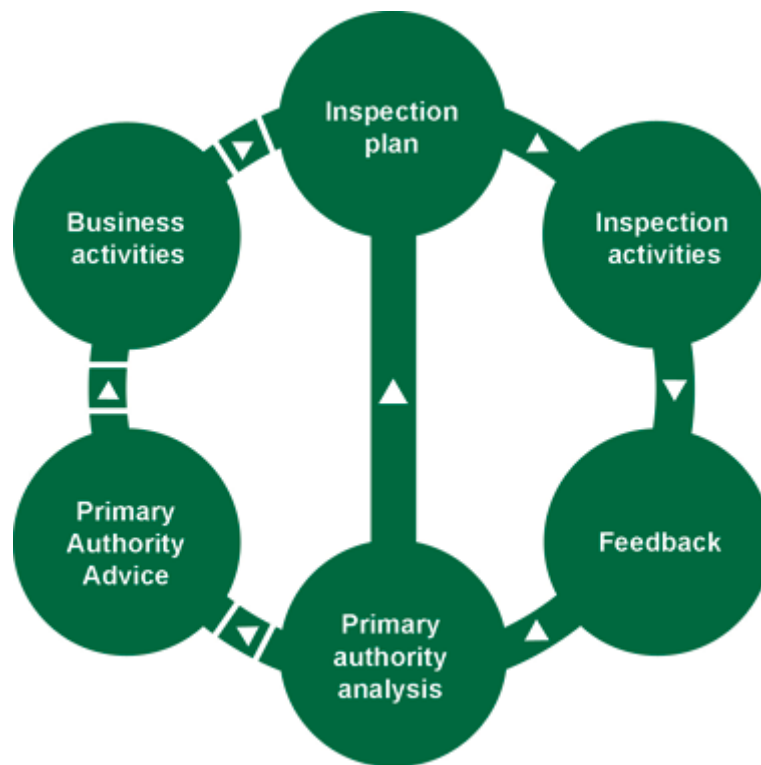
Statutory guidance on the scheme¹⁰¹ requires that inspection plans should be reviewed by the primary authority at appropriate intervals or in response to information received from enforcing authorities or other changes in circumstances.

The development of an inspection plan is a cyclical process: the analysis of feedback drives its amendment, which in turn affects the activities and data collection undertaken by enforcing authorities. The analysis of feedback can also result in new Primary Authority Advice that shapes the activities of the business, with consequent implications for the inspection plan. The following diagram shows the cycle which should occur in managing the inspection plan.

¹⁰⁰ Section 11.31, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

¹⁰¹ Section 20.4, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Figure 1. Inspection plan cycle



Following the cycle from top centre shows that the inspection plan drives local inspection activities and other compliance checks, which provide raw data and feedback to the primary authority. Analysis and interpretation of that data and feedback by the primary authority may lead to a revision of the inspection plan, and re-submission to BRDO. The feedback may also lead to the issue or review of Primary Authority Advice to the business. As a result of any Primary Authority Advice the business partner will modify its business activities and those modified activities will be subject to inspection under the revised inspection plan. This cycle of continuous improvement, and revisions to the inspection plan on the basis of regulatory risk, ensures that the inspection plan delivers ongoing benefits.

To ensure that it remains current, an inspection plan will need to be reviewed by the partnership at appropriate intervals. The frequency with which this is done will depend on its nature and what it is seeking to achieve. Review of the inspection plan may also be prompted by changes to the procedures of the business; or by an external event, such as a change in legislation or the revision of national regulator guidance.

8 Developing and managing inspection plans – co-ordinated partnerships

This module explains inspection plans for primary authority officers supporting groups of co-ordinated partnerships. It has been written on the basis that Module 7, which explains inspection plans for direct partnerships, has already been read and understood, and it focuses therefore on those considerations that differ for co-ordinated partnerships, and on practical examples. It does not explain the statutory framework in full. For example, this module does not explain the inspection plan consent process, as this does not differ significantly from that set out for direct partnerships ([see 7.7](#)).

The requirements of the statutory guidance in relation to inspection plans are very similar for direct and co-ordinated partnerships. There are just two key differences and these relate to the need for consultation when developing a plan ([see 8.2.1](#)), and to two additional criteria in the statutory guidance ([see 8.1.1](#)).

8.1 Determining an appropriate approach

As with a direct partnership, there is no requirement for a primary authority that has co-ordinated partnerships with a group of businesses to produce an inspection plan. However, where the primary authority does decide to develop an inspection plan, the approach taken is likely to vary, depending on:

- the reasons for deciding to develop a plan;
- the objectives and anticipated benefits of the plan; and
- the level of resources allocated to developing the plan and managing it on an ongoing basis.

Producing and managing an inspection plan on an ongoing basis can be a significant commitment and the primary authority and co-ordinator will want to consider whether the benefits that an inspection plan can deliver will justify the resources required. Considering an inspection plan for a group of businesses, rather than for a single business, can involve an additional layer of complexity, particularly in relation to identifying potential benefits and in determining what is appropriate for the group of businesses.

For some groups of businesses it is likely to be harder to gather good evidence of the businesses' current experience of regulatory interventions (see Practical Tips 1 at [7.2](#)), and this lack of evidence means that any potential benefits are harder to quantify. The primary authority may decide that it is sensible, as a first step, to share relevant information with enforcing authorities via the secure area of the Primary Authority Register, and to review the need for an inspection plan after an agreed period. During this period, it is sensible for both the primary authority and the co-ordinator to collate information which will help inform a future decision on developing an inspection plan.

1 Practical example: Partnership management

PQR Association co-ordinates the partnerships between its 150 members and Anytown Council. The trade association helpline periodically receives calls from members experiencing difficulties with the requirements of local officers and it has received reports of very lengthy inspections by officers who appear to lack understanding of the sector.

PQR Association and Anytown Council would like to know whether the experiences reported to the helpline are isolated instances or whether there is a more widespread issue.

Anytown Council develops an information sheet for inspectors, addressing some of the common compliance issues in the sector, and uses the partnership pages of the Primary Authority Register to make an offer to share its specialist knowledge with inspectors.

PQR Association places a short questionnaire on its website and encourages members to complete this questionnaire when they are visited by a local inspector. It collates the information received during a six month period and then reviews it with the primary authority as part of a discussion about whether an inspection plan would deliver benefits.

For other groups of businesses, the evidence available may be as comprehensive as that available to direct partnerships. This is more likely to be the case in a tightly controlled company group or franchise group, or where the businesses are subscribing to a compliance scheme, such as an assurance scheme, which means that they are all following the same procedures and their compliance with those procedures is being monitored, for example by third party auditors.

2 Practical example: Partnership management

FGH Foods has a direct partnership with Anytown Council and also co-ordinates partnerships between its 29 franchisees and Anytown Council.

FGH Foods has comprehensive data in relation to local inspections, both at its company-operated fast food outlets, and the outlets operated by its franchisees.

FGH Foods requires all of its franchisees to operate the same food safety management system as its company-operated outlets, and it includes all franchisee-operated outlets in its audit programme. Anytown Council has reviewed the food safety management system and has issued Primary Authority Advice to FGH Foods, and to the franchisees, indicating that the system is accepted.

Anytown Council and FGH Foods are clear that there is an issue with the food safety management system being reviewed and challenged by local inspectors. These challenges are subsequently resolved but involve significant resource on the part of the business and primary authority. Anytown Council and FGH Foods agree that there would be benefits in developing an inspection plan to:

- a) require enforcing authorities not to review the suitability or adequacy of the food safety management system; and**
- b) require enforcing authorities to focus their checks on local implementation of the food safety management system on specified areas which have been identified, using the data held by FGH Foods and Anytown Council, as higher risk.**

The inspection plan will cover both company-operated and franchisee-operated outlets.

As explained in Module 7 ([see 7.4](#)), the statutory guidance provides for inspection plans to provide helpful information and to place requirements on enforcing authorities, which they must follow subject to the provisions in the RES Act¹⁰², as summarised in the table below.

The statutory guidance sets out criteria that inspection plans should meet, including specific criteria in relation to when it is appropriate to place certain requirements on enforcing authorities. These are all explained in more detail in Module 7 ([see 7.4](#)).

5	Statutory framework: Inspection plan content
Using an inspection plan to provide information¹⁰³ (see 7.4.1)	
<ul style="list-style-type: none">a. providing information to guide local checksb. providing guidance on risk assessment of the businesses' premises and / or activities for the purposes of programming interventions (without restricting an enforcing authority's ability to make its own assessment of any elements of the risk score that relate to local implementation)c. providing guidance on the most effective means of communicating with the businesses and the primary authority (without seeking to alter any means or routes of communication with the business that are required by law)d. drawing attention to information that the primary authority has made available (with the aim of reducing information requests to the businesses)	
Using an inspection plan to set out requirements for enforcing authorities¹⁰⁴	
<ul style="list-style-type: none">a. putting in place a national inspection strategy, subject to certain criteria (see 7.4.5)b. requiring that certain checks are not carried out locally, where the primary authority will carry out the checks on behalf of enforcing authorities (see 7.4.2)c. requiring that specified procedures or systems are not reviewed locally to determine their adequacy or suitability, where they have already been reviewed and confirmed by issuing Primary Authority Advice (see 7.4.3)d. requiring that local checks are focused on specified areas, subject to certain criteria (see 7.4.4)e. requiring specified feedback to the primary authority about the inspection, subject to certain criteria (see 7.4.6)	

As with direct partnerships ([see 7.4](#)), inspection plans for co-ordinated partnerships can be seen as spanning a spectrum. At one end, they may closely resemble an inspection plan for a direct partnership. This is most likely to be the case where the businesses within the scope of the plan are operating in the same way, for example businesses that are in a franchise group and are following the same compliance procedures. At the other end of the spectrum inspection plans may be more 'generic' and tend to contain primarily helpful information rather than specific requirements. This is more likely where the group of businesses within scope is more diverse.

¹⁰² Section 30(7A), RES Act

¹⁰³ Section 11.9, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

¹⁰⁴ Section 11.10, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

8.1.1 Additional inspection plan criteria

The criteria for inspection plans for co-ordinated partnerships mirror, on the whole, those for direct partnerships. However, they include two additional criteria ([see 7.4](#)).

2 Statutory framework: Additional inspection plan criteria

Statutory guidance on the scheme¹⁰⁵ requires that an inspection plan in respect of a group of businesses in co-ordinated partnerships should be relevant to a significant proportion of the businesses in the group of co-ordinated partnerships.

The statutory guidance also requires that the inspection plan should explain where it applies.

The practical effect of these criteria is that inspection plans will focus on those areas where the similarities between the businesses in the group are the greatest and can not, for example, relate to just one of the businesses. It is the responsibility of the primary authority to be sure that the inspection plan is relevant to a significant proportion of the businesses that it is partnered with, and sets out which businesses the plan applies to and which it does not apply to. The primary authority should be aware that enforcing authorities need clarity as to when an inspection plan applies and when it doesn't, and it will need to explain this clearly.

3 Practical example: Trade association

XYZ Association's 250 members all operate in the meat products sector.

Around two thirds of the members are involved in retailing meat products and have received Primary Authority Advice from Anytown Council in relation to temperature control of cooked meat products in retail premises.

Anytown Council could develop an inspection plan providing helpful information in relation to the temperature control procedures being followed by these businesses, and asking for feedback from enforcing authorities on any issues with the implementation of these procedures.

The inspection plan would need to make it very clear that it was applicable only to members of XYZ Association in co-ordinated partnerships that were operating at the retail level, and not to those involved only in wholesale, distribution or manufacture.

4 Practical example: Franchise group

FGH Foods does not specify health and safety procedures that must be followed by its 29 franchisees. However, it does offer the option for its franchisees to subscribe to a health and safety compliance package. These franchisees then operate to the same health and safety procedures as company-operated outlets and are included in the company's in-house audit programme.

Only those franchisees that subscribe to the compliance package have co-ordinated partnerships with Anytown Council in respect of the health, safety and welfare category.

¹⁰⁵ Section 29, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

Anytown Council could produce an inspection plan including requirements in relation to the company-operated outlets and all franchisees that it has co-ordinated partnerships with in respect of health, safety and welfare.

Anytown Council could maintain, in the secure area of the Primary Authority Register, a list clarifying which franchisees are within scope of the inspection plan, to help enforcing authorities.

8.2 Developing the inspection plan

The preparatory work required in developing an inspection plan typically involves a number of stages and these are explored in some detail in Module 7. The significant differences in respect of co-ordinated partnerships relate to engagement (see 8.2.1) and drafting the inspection plan (see 8.2.2).

8.2.1 Engagement

3 Statutory framework: Consulting the business

Section 30 of the RES Act requires that a primary authority consult with the business before making an inspection plan.

Statutory guidance on the scheme¹⁰⁶ provides for a primary authority to satisfy this requirement by asking the co-ordinator to consult with the group of businesses on its behalf, where the primary authority and the co-ordinator have agreed arrangements to this effect.

The co-ordinator will need to have authorisation¹⁰⁷ from the businesses in the group of co-ordinated partnerships to respond to such a consultation on their behalf.

A primary authority and co-ordinator should consider the requirements in relation to consultation when they are establishing their arrangements to provide co-ordinated partnerships. Any arrangements that they agree should be recorded in their Memorandum of Understanding for Co-ordination of Partnerships (see 4.5.10).

5 Practical example: Trade association

XYZ Association agrees arrangements with Anytown Council to offer co-ordinated partnerships to its 250 members. XYZ Association and Anytown Council are uncertain as to whether an inspection plan would be beneficial but agree that, in the event that Anytown Council does consider developing a plan, XYZ Association will consult with its members by:

- inviting views via a piece in its monthly newsletter to all members;
- including explanatory materials and an invitation to give views on its website; and
- talking to members that attend its regional events.

¹⁰⁶ Section 29.1, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

¹⁰⁷ Section 22.6, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

These arrangements are recorded in the Memorandum of Understanding and XYZ Association also amends its membership terms and conditions to provide that any member entering a co-ordinated partnership with Anytown Council, co-ordinated by XYZ Association, authorises the trade association to act as its agent in responding to any consultation by the primary authority on its behalf.

6 Practical example: Franchisor

FGH Foods operates 65 fast food outlets and has a direct partnership with Anytown Fire. In addition, ABC Foods Ltd co-ordinates partnerships between Anytown Fire and all of its 29 franchisees who, between them, operate a further 86 fast food outlets.

FGH Foods and Anytown Fire are clear that an inspection plan would be beneficial and should cover all the company-operated and franchised outlets.

They agree that Anytown Fire will consult with FGH Foods in relation to any plan it develops, and that FGH Foods will send an invitation to its franchisees, via its regular bulletin, to contribute evidence that will inform the development of the plan, and to comment on the proposed plan.

These arrangements are recorded in the Memorandum of Understanding and FGH Foods ensures that it has the authorisation that it needs from its franchisees to act as their agent in responding to the consultation by the primary authority.

Where the primary authority is fulfilling the co-ordination role itself, in respect of a group of co-ordinated partnerships, it will not usually be appropriate for it to obtain authorisation from the businesses to respond to a consultation on the development of an inspection plan on their behalf, as this would effectively mean that the primary authority would be consulting itself. This does not mean that the primary authority would need to consult with each of the businesses in the group individually, but it should give each of the businesses the opportunity to provide views. For example, it could do this by emailing all of the businesses with an explanation of what it proposes, and an invitation to express their views.

The consultation with the group of businesses is likely to be a single exercise, at the point at which the primary authority is considering developing an inspection plan and needs to take account of the views of the businesses. However, there is likely to be ongoing consultation with the co-ordinator, as the plan is developed.

The primary authority should, at an early stage, send details of the proposed approach for the inspection plan to any relevant national regulator(s). A template [Inspection Plan Proposal](#) form that can be used for this purpose is available on the '[Operating co-ordinated partnerships](#)' page of the Primary Authority Register and this includes contact details for each of the relevant national regulators. The [List of Primary Authority Categories](#) specifies the relevant national regulator(s) for each category. For example, in relation to food legislation, the relevant national regulator is the Food Standards Agency. National regulators are likely to have a particular interest in inspection plans that have the potential to change the way that a whole sector is regulated, for example, where a primary authority has a large number of co-ordinated partnerships co-ordinated by a sectoral trade association.

7 Practical example: Trade association

PQR Association represents businesses operating in a specialist sector which is identified by national regulator A as a high risk sector. PQR Association's membership represents 95% of the businesses in the sector.

PQR Association has mandated participation in Primary Authority as a membership condition and all of its 150 members have co-ordinated partnerships with Anytown Council.

An inspection plan developed by Anytown Council in respect of these businesses will clearly be of interest to national regulator A, which will want to be satisfied that the inspection plan will align with its own guidance and will support delivery of its policy objectives.

Anytown Council sends its Inspection Plan Proposal to national regulator A at an early stage and they collaborate on the development of the inspection plan.

It is sensible, at an early stage, for the primary authority and co-ordinator to discuss arrangements for reviewing the inspection plan, and evaluating whether it has achieved its objectives ([see 7.8](#)).

In developing and operating an inspection plan, the primary authority is guiding inspection activity by other local authorities, often in relation to a very large number of individual businesses. The primary authority is embracing significant responsibility and needs to be clear that its arrangements to research, manage, review and evaluate the plan are adequate. It is important to recognise at the outset that the evaluation of an inspection plan for co-ordinated partnerships may present different challenges to those experienced by a direct partnership, for example in terms of gathering data on how the inspection plan is impacting at the individual business level.

8.2.2 Drafting the inspection plan

The inspection plan should be prepared using the inspection plan template made available by BRDO. Separate templates are provided for co-ordinated partnerships.

The template helps primary authorities to structure their plans and to easily meet the criteria set out in the statutory guidance. The use of the template by primary authorities helps enforcing authorities by ensuring that all inspection plans are presented in a consistent manner and that key sections of each plan are easily found.

An inspection plan may cover multiple categories and two versions of the template are therefore available, one for a single category inspection plan, and one for an inspection plan that covers multiple categories.

A single inspection plan document may draw together information and requirements from more than one primary authority, for the same group of business, if they have more than one primary authority. However, if primary authorities choose to produce a joint plan, it must be clear which content originates from each primary authority.

A single inspection plan can also cover multiple businesses, where appropriate. This will clearly be the case where an inspection plan is developed for a group of businesses in co-ordinated partnerships but, in addition, it means that the same inspection plan could cover one or more businesses in direct partnerships.

This is illustrated in Practical Example 2 ([see 8.1](#)), where a primary authority has a direct partnership with a franchisor operating fast food outlets, and co-ordinated partnerships with some or all of its franchisees. A single inspection plan could apply to both the company-operated outlets and the outlets operated by franchisees in co-ordinated partnerships.

8.3 Visibility of the inspection plan

When an inspection plan is consented to by the Secretary of State, it is automatically published in the secure area of the Primary Authority Register ([see 7.7.1](#)). However, unlike a business that is in a direct partnership, a business that has a co-ordinated partnership is not able to access the secure area itself, and can't view the published inspection plan.

It is sensible therefore for the co-ordinator to take responsibility for ensuring that businesses within scope of the inspection plan are aware of the plan, and of its contents. The co-ordinator may also choose to give the businesses some guidance on what to do if they are visited by a local officer who is not aware of the inspection plan. The co-ordinator may want to collate details of such occurrences and share them with the primary authority.

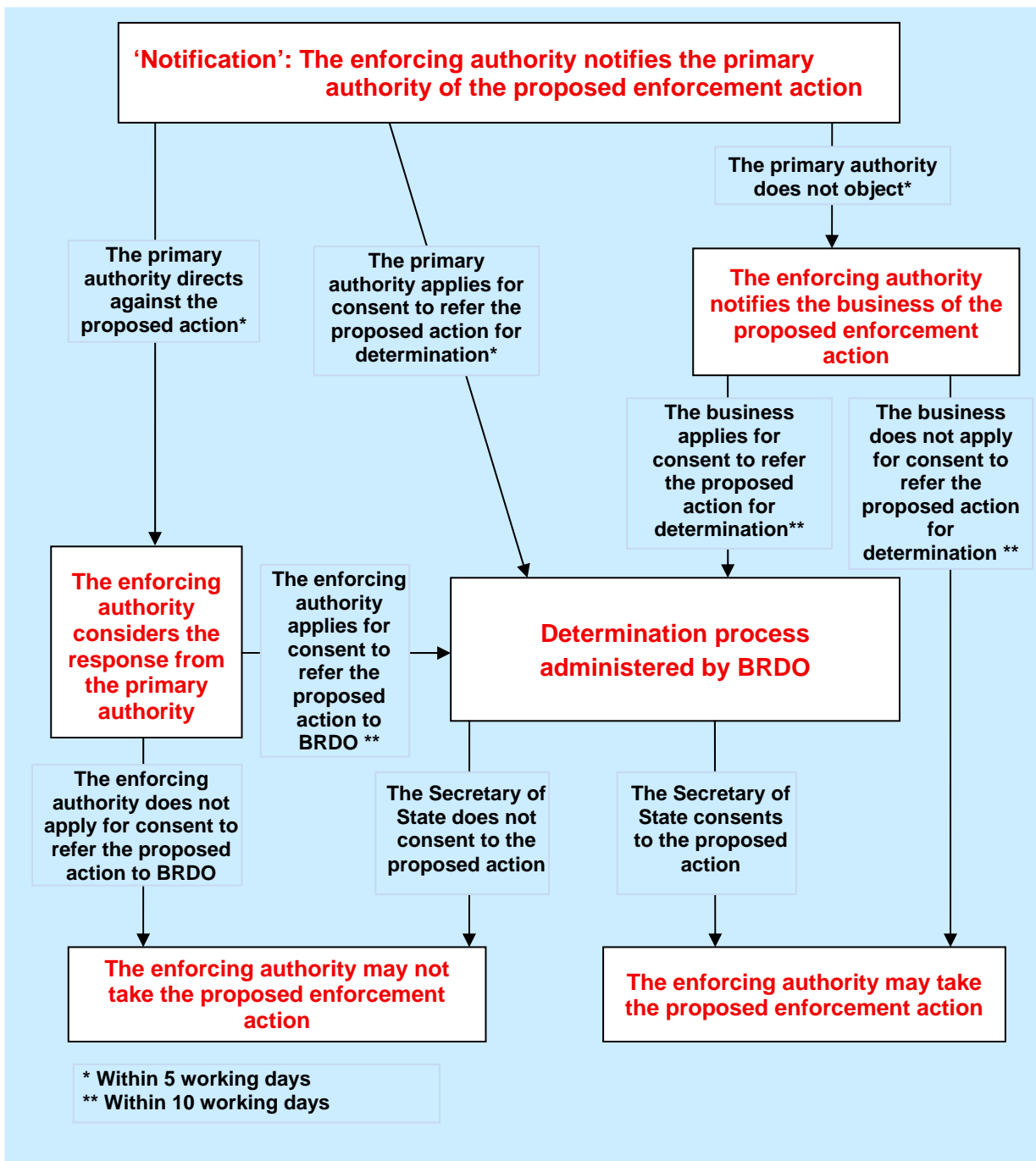
The inspection plan should make it very clear when it applies and when it doesn't. Where the number of businesses covered by the plan is large, and there is potential for some change during the lifetime of the plan (for example, a business might terminate its membership of a trade association and no longer be eligible to have a co-ordinated partnership) then the primary authority might find it helpful to maintain a schedule of the businesses that are within scope of the plan. This schedule could be shared with enforcing authorities via the secure area of the Primary Authority Register where it can be easily updated.

The primary authority and the co-ordinator may also want to consider how they can encourage the businesses to make inspectors aware of their participation in Primary Authority. The Primary Authority logo, which is available to primary authorities and co-ordinators to download from the [Primary Authority Register](#), can be used, subject to certain conditions, by any business that has a primary authority and it can be helpful to include this logo on documents such as compliance manuals and visitor log books, as a reminder to staff, and to any inspector visiting the business.

9 Notification

9.1 An outline of the notification process

The notification of enforcement action by an enforcing authority is a key aspect of Primary Authority. By providing primary authorities with an opportunity to review proposed enforcement action, the scheme allows them to ensure that their Primary Authority Advice is respected, and to support proportionate and consistent responses to non-compliance. Notification brings benefits by providing a comprehensive picture of compliance across the business that informs the compliance activities of the partnership and can be shared with all local regulators.



A 'determination' process is provided for in the legislation and acts as a measure of last resort. In practice, the scheme is focused on encouraging early and constructive dialogue between businesses, primary authorities and enforcing authorities, with an emphasis on resolving compliance issues. In the early years of the scheme, relatively few situations have arisen in which the determination process might have been used and, in each of these situations, resolution has been reached without recourse to determination.

9.2 Notifying enforcement action to the primary authority

Where an enforcing authority is considering enforcement action against a business that has a primary authority (for the category under which enforcement action is being considered), it is required to make a statutory notification to the primary authority. In most cases, this notification must be made before the action can be taken (see 9.2.1), however, in certain circumstances the notification can be retrospective ([see 9.2.2](#)).

9.2.1 Notification of proposed enforcement action

1	<p>Statutory framework: Notification of proposed enforcement action</p>
<p>Section 28 of the RES Act requires an enforcing authority that wishes to take enforcement action against a business which has a primary authority, to first notify the primary authority of the proposed action (other than where an exclusion to this requirement applies).</p> <p>Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended (see 1.5.3).</p> <p>Statutory guidance on the scheme¹⁰⁸ requires that the notification of proposed enforcement action by the enforcing authority :</p> <ul style="list-style-type: none"> • should be made via the Primary Authority Register; • should be itemised, where multiple enforcement actions are being proposed; and • should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register. <p>The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that, during the five working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.</p>	

Other than in the circumstances set out at [9.2.2](#) below, an enforcing authority must always notify proposed enforcement action to the primary authority, via the Primary Authority Register, before proceeding to take the action.

Notification of proposed enforcement action allows a primary authority to consider whether the action would be inconsistent with existing Primary Authority Advice that it has already given, either to the business or to local authorities. In these circumstances, the primary authority can direct that the action should not proceed.

¹⁰⁸ Sections 12.2 to 12.15, [Primary Authority Statutory Guidance](#) (BRDO, 2013)

In order for the primary authority to be able to make an informed decision, it is important that the notification provides it with sufficient detail. This is particularly important where enforcement action is being proposed on the basis, for example, that the business' systems were not adequate to demonstrate that it had taken 'reasonable precautions' or exercised 'due diligence'. If the primary authority has given relevant Primary Authority Advice on the business' systems, it will need to understand where these failed to meet the expectations of the enforcing authority in order to determine whether the proposed action is inconsistent with its Primary Authority Advice.

The definition of enforcement action excludes investigative activities¹⁰⁹ and there is therefore no need to notify the primary authority before commencing these. However, it is sensible to check the partnership page on the Primary Authority Register to see what the nature of the partnership is. Where a business is in a direct partnership and is working closely with its primary authority, it can be helpful to have an early conversation with the primary authority as this may help shape the investigation, or may mean that a decision is reached that an investigation is not required. For example, the primary authority may be able to provide documentation and responses to questions that are commonly asked during PACE interviews when exploring statutory defences. This can help an enforcing authority to ascertain whether the business would be able to establish a statutory defence, without spending resource on a lengthy investigation and possibly a PACE interview. Where a business is in a co-ordinated partnership, it is less likely that the primary authority will be able to provide such detailed information, but it will indicate on the partnership's page on the Primary Authority Register whether it would like to be contacted at this stage.

Notification is not required where enforcement action is being proposed against an employee of the business, rather than against the business itself ie. the legal entity that has a primary authority. However, discussion with the primary authority for the business may provide useful information, for example in relation to training procedures.

1

Practical tips: Understanding the statutory notification requirements

You will need to be clear about when prior notification of proposed enforcement action to the primary authority will be required and when you can take the enforcement action immediately ([see 9.2.2](#)) and notify retrospectively.

Where you initiate an investigation in respect of a primary authority business, that may lead to legal proceedings being instituted, the time taken for the notification process under the Primary Authority scheme is disregarded when calculating statutory time limits¹¹⁰ for the laying of informations.

The process that is initiated by the required notification to the primary authority is explained in the following parts of this module and is summarised in the 'Outline of the Notification Process' diagram ([see 9.1](#)).

9.2.2 Retrospective notification of enforcement action

The legislation recognises that there will be times when the need to act swiftly is critical and it allows for notification to the primary authority to be retrospective in certain defined circumstances.

¹⁰⁹ Section 12.6, [Primary Authority Statutory Guidance](#) (BRDO, 2013) includes an illustrative list of 'investigative activities'

¹¹⁰ RES Act, section 28(8)

2

Statutory framework: Enforcement action without prior notification

An enforcing authority may take enforcement action against the business without prior notice to the primary authority as permitted by Order¹¹¹. In brief, this applies for:

- **abatement notices under section 80 of the Environmental Protection Act 1990;**
- **emergency prohibition notices under specified food hygiene legislation;**
- **prohibition notices under section 31(1) of the Regulatory Reform (Fire Safety) Order 2005;**
- **notices of emergency remedial action under section 40(7) of the Housing Act 2004;**
- **emergency prohibition orders under section 43 of the Housing Act 2004;**
- **enforcement action that is required urgently to avoid a significant risk of harm to human health, the environment or the financial interests of consumers; and**
- **enforcement action where the ‘pre-notification’ requirements of the scheme would be wholly disproportionate.**

In these circumstances, the enforcing authority is required to notify the primary authority of the enforcement action taken, via the Primary Authority Register, as soon as it reasonably can.

Clearly, in this situation, the primary authority is not able to direct against the enforcement action. However, it will usually wish to discuss the matter with the enforcing authority in order to understand the circumstances and to assess whether there might be a wider issue that it will need to address.

1

Practical example: Dealing with imminent risk – a direct partnership

An officer of Midborough Council inspects a local distribution centre that is operated by ABC Clothing, a nationally-based business that has a direct partnership with Anytown Council. The officer finds unguarded machinery that poses an imminent and serious risk to health and safety and immediately serves a Prohibition Notice on the business.

Later the same day, the officer makes the required notification of enforcement action to Anytown Council through the Primary Authority Register and also rings the primary authority contact to discuss the incident. The primary authority officer contacts ABC Clothing to discuss in the incident at the Midborough distribution centre, and to establish whether the same machinery is being used elsewhere by the business.

¹¹¹ See The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended by the Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2013

2

Practical example: Taking urgent action in relation to noise – a direct partnership

An officer of Midborough Council is contacted by a local resident late one evening, about noise from an intruder alarm at a nearby property. The property belongs to ABC Tyres, a tyre-fitting business that has a direct partnership with Anytown Council. The officer visits the site and serves a Noise Abatement Notice under s.80 of the Environmental Protection Act 1990, by displaying it at the property. The business is closed so a warrant is quickly obtained to enable the officer to enter the property and disconnect the alarm to stop the noise nuisance.

On arriving at the office early the next day, the officer makes the required retrospective notification of enforcement action to Anytown Council through the Primary Authority Register and also telephones the primary authority contact to discuss the incident.

The primary authority officer contacts ABC Tyres and discussions soon identify that the business' arrangements for responding to activated premises alarms have become out of date and little used, following a change of staff and responsibilities at its head office. The primary authority works with the business to reinstate effective arrangements for responding to activated alarms throughout its network of 20 sites across the region.

3

Practical example: Taking immediate action in relation to infestation – a co-ordinated partnership

An officer of Midborough Council inspects the premises of a takeaway outlet operated by a local business under licence to FGH Foods, a nationally-based franchise. The takeaway business has a partnership with Anytown Council co-ordinated by its franchisor. The officer finds an active rodent infestation and immediately serves an Emergency Prohibition Notice on the business.

That afternoon, the officer makes the required notification of enforcement action to Anytown Council through the Primary Authority Register, providing details of the infestation and the approach to pest control being operated by the takeaway outlet.

The primary authority officer responds to the notification by contacting the enforcing authority to discuss the incident, and the enforcement officer explains that in his view the pest control procedures specified by the franchisor are inadequate.

The primary authority officer then contacts the franchisor to discuss the alleged inadequacies in the pest control procedures and they agree that the primary authority will undertake a full review of the procedures. This review results in the procedures being strengthened across all takeaway outlets operating under the franchisor's brand – both those operated by the company and those operating under franchise.

9.3 Proposed enforcement action – the primary authority's role

The statutory notification of proposed enforcement action by an enforcing authority provides the primary authority with an opportunity to review any relevant Primary Authority Advice that it has given, either to the business or to local authorities. The primary authority's role is to decide whether the proposed enforcement action is inconsistent with that advice.

3

Statutory framework: Responding to notification of proposed enforcement action

Following receipt of a notification, the primary authority has a period of five working days (beginning on the day after the notification is given) to determine whether the proposed enforcement action is inconsistent with Primary Authority Advice previously given. If it considers that the proposed enforcement action is inconsistent, the primary authority may direct the enforcing authority not to take enforcement action. This direction must be given within the period of five working days.

In responding to a notification, the primary authority is entitled to consider only whether the proposed enforcement action is inconsistent with any Primary Authority Advice to the business or any Primary Authority Advice to Local Authorities that it has previously given. Where no relevant advice has previously been given by the primary authority, it is not able to direct against the proposed enforcement action.

9.3.1 Reviewing proposed enforcement action

Notifications of proposed enforcement action are sent to the primary authority by an enforcing authority through the Primary Authority Register, and the system will send an email notification to the relevant primary authority contact(s).

The primary authority will need to be clear about its decision-making process in relation to responding to notifications and will usually wish to introduce checks into the decision-making process, in order to ensure that a decision to direct against proposed enforcement action is not made solely by the officer who has provided the Primary Authority Advice.

On receipt of a notification, the primary authority will need to consider the information provided by the enforcing authority and make an assessment as to whether it has already provided Primary Authority Advice that is of relevance. In most cases, the primary authority will already be aware of the matter and will have discussed it with the enforcing authority prior to the formal notification. Where this has not happened, it will usually be helpful to contact the enforcing authority at an early stage after receipt of the notification, to discuss the proposed enforcement action and to ensure that the primary authority has a good understanding of the circumstances, and the reasons for the proposed enforcement action.

The primary authority will also need to consider at what stage it is appropriate to discuss the notification with the business. In most cases it will be appropriate for the primary authority to make the business aware of the notification at an early stage. However, this will very much depend on the circumstances and decisions will need to be made on a case by case basis.

Where relevant Primary Authority Advice has been given, the primary authority's responsibility is to decide whether the proposed enforcement action is inconsistent with that advice. Whilst this will often be straightforward where the advice relates to interpretation, or the applicability of legislation, it will inevitably be more complex where the advice relates to business systems or controls, or to the checks that the business carries out on implementation of those systems or controls.

Where the proposed enforcement action relates to a local failure to implement the business' controls, the primary authority is unlikely to be able to determine whether the action would be inconsistent with Primary Authority Advice that it has given on those controls without having a detailed picture of the local failure and its causes.

Ideally, the primary authority will have had an opportunity to work through these issues prior to the formal notification. However, where this has not happened, this may mean that the primary authority will need to request further information from the enforcing authority and the business. In this situation, the deadline of five working days to respond to the notification is likely to be challenging.

Whilst Primary Authority Advice may ultimately be subject to scrutiny through the determination process ([see 9.7](#)), the decision as to whether proposed enforcement action is inconsistent with advice given always falls first to the primary authority.

9.3.2 Responding to proposed enforcement action

The primary authority should respond to any notification within five working days ([see 9.6](#)) of receiving the notification of proposed enforcement action from the enforcing authority, beginning with and including the day after receipt of the notification from the enforcing authority, either:

- a) to direct against the proposed action, where it decides that the action would be inconsistent with advice previously given; or
- b) to confirm that it will not direct against the proposed action.

Alternatively, the primary authority may apply for consent to refer the matter to the Secretary of State for determination. This would not usually be an appropriate course of action for the primary authority to take, as it is best placed to decide whether it has given relevant Primary Authority Advice, and whether proposed enforcement action is inconsistent with that advice. However, it may be appropriate in exceptional circumstances.

The primary authority must respond to any notification of proposed enforcement action via the Primary Authority Register. The system is designed to send the primary authority's response immediately where the primary authority 'directs against the proposed enforcement action'. However, where the primary authority allows the action, the system will not send the response until the five working days expires. This is to allow the primary authority to revisit its response before the deadline expires.

2

Practical tips: Responding to notifications

You need to ensure that the email addresses used for primary authority notifications are regularly monitored so that you can make the most of the five working days allowed to respond to notifications of proposed enforcement action.

Encouraging enforcing authorities to telephone you at an early stage, where they may be considering enforcement action, gives you an opportunity to share information with them and, where appropriate, to resolve a matter before it reaches the stage of a notification of formal enforcement action. You can use your partnership's page on the Primary Authority Register to do this.

Once the primary authority has responded to the proposed enforcement action, the legislation allows for the other parties to the proposed action to make a referral to the Secretary of State, through a formal determination process ([see 9.7](#)). An enforcing authority is able to make such a referral if the primary authority **does** direct against proposed enforcement action, and the business is entitled to make a referral if the primary authority **does not** direct against the proposed enforcement action.

In the case of a co-ordinated partnership, the co-ordinator does not receive copies of notifications, or responses to notifications, and is not entitled to make a referral to the determination process.

A notification of proposed enforcement action may trigger a review of relevant Primary Authority Advice by the primary authority, in order to ensure that it remains current and appropriate ([see 5.2.5](#)).

9.4 Proposed enforcement action – the enforcing authority's perspective

4

Statutory framework: Summary of statutory constraints on proceeding with enforcement action

Enforcement action cannot be taken:

- at any time during the period of five working days following notification to the primary authority; or
- in the event that the primary authority directs against the proposed enforcement action;
- at any time during the 10 working day period following notification of proposed enforcement action to the business; or
- in the event that a referral is made to the statutory determination process by the business, for the duration of the determination process.

The legislation provides for any period during which it constrains an enforcing authority from taking proposed enforcement action to be disregarded when calculating statutory time limits for the enforcement action¹¹².

Once an enforcing authority has made a statutory notification of proposed enforcement action to a primary authority ([see 9.2](#)), it is constrained from taking the enforcement action for five working days ([see 9.6](#)). At the end of that period, the enforcing authority may find itself in one of three situations:

a. The primary authority indicates that it is not directing against the proposed enforcement action, or fails to respond

Where the primary authority does not direct against the proposed enforcement action then the enforcing authority will receive notification from the Primary Authority Register, on expiry of the deadline, that it is entitled to proceed. In this situation, the enforcing authority should consider whether it wishes to proceed with the proposed enforcement action. If it does, it must first notify the business of the proposed enforcement action via the Primary Authority Register.

Statutory guidance requires that the notification of proposed enforcement action by the enforcing authority should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register.

¹¹² RES Act, section 28(8)

Once the required notification has been made, the business is then allowed a period of 10 working days within which it may decide to apply for consent to refer the proposed enforcement action to the statutory determination process. During this period, the enforcing authority is constrained from taking the proposed enforcement action. A business might choose to go down this route where, for example, it has been given Primary Authority Advice and it believes that its primary authority should have directed against the proposed enforcement action on the basis of this advice.

Where BRDO advises the enforcing authority that it has received an application for consent to refer the proposed enforcement action for determination, the enforcing authority is constrained from taking the proposed action until BRDO either confirms that the Secretary of State has not given consent or confirms the determination ([see 9.7](#)).

b. The primary authority directs against the proposed enforcement action.

In this situation, the enforcing authority is prevented from taking the enforcement action and should consider the rationale provided by the primary authority.

If, after considering the reasons provided by the primary authority, the enforcing authority still believes its proposed enforcement action to be appropriate, it is sensible to contact the primary authority as soon as possible to discuss the situation. The enforcing authority will need to be aware that the legislation does not permit the primary authority to withdraw a direction against the proposed enforcement action once the five working days have expired.

Where discussions with the primary authority fail to resolve matters, the enforcing authority may consider whether it believes that it is appropriate for it to make its case through the statutory determination process. This is likely to be appropriate only in very limited circumstances.

An enforcing authority may choose to apply for consent to refer the proposed enforcement action for determination ([see 9.7](#)) where it can demonstrate the following:

- that the proposed enforcement action is consistent with the Primary Authority Advice given; and / or
- that the Primary Authority Advice given was not correct; and/ or
- that the Primary Authority Advice was not properly given.

An application to refer the matter for determination can only be made within 10 working days, beginning with and including the day after receipt of a direction from the primary authority, and will need to set out the enforcing authority's case. The relevant application form is available from BRDO by emailing pa@brdo.bis.qsi.gov.uk, and the completed application must be submitted via the Primary Authority Register.

c. The primary authority makes an application for consent to refer the proposed enforcement action to BRDO

Where a primary authority has given relevant Primary Authority Advice, it is best placed to decide whether proposed enforcement action is inconsistent with that advice. It is therefore unlikely that a primary authority would choose to make an application for consent to refer proposed enforcement action to the statutory determination process other than in very unusual circumstances.

Should this happen, the enforcing authority will receive notice from BRDO via the Primary Authority Register that it has received an application, and may be asked to provide representations to BRDO.

3 Practical tips: Enforcement action

An application for consent to refer proposed enforcement action to the statutory determination process should be considered carefully to decide whether it is an appropriate course of action for the enforcing authority to take and whether you are able to make a good case that the Primary Authority Advice given was not correct, or was not properly given, or is consistent with the proposed enforcement action.

Where enforcement action is being initiated, the time taken for the notification process under the Primary Authority scheme should be disregarded in calculating any statutory time limit. The same applies for the determination process, where relevant. A template 'Extension of Limitations of Time' document which may be completed and submitted to Justices' Clerks and Legal Advisors is available on the '[Enforcement action](#)' page of the Primary Authority Register.

9.5 Proposed enforcement action – the business' perspective

Where an enforcing authority notifies proposed enforcement action to the primary authority and is not directed against taking the action, the enforcing authority is then required to notify the business of the proposed enforcement action. A business will usually be aware of proposed enforcement action before it receives this statutory notification from the enforcing authority. In most cases, it will already have discussed the matter with the enforcing authority and, in the case of a direct partnership, it is likely to have had discussions also with its primary authority.

Where the primary authority does not object to proposed enforcement action, this is likely to be because:

- it has not given relevant Primary Authority Advice to the business; or
- the business has not followed the advice given.

However, where the primary authority has given relevant Primary Authority Advice, and the business has followed or relied on that advice, it is possible for the primary authority and the business to have different views as to whether the proposed enforcement action is inconsistent with the Primary Authority Advice.

In this circumstance, where the primary authority does not direct against proposed enforcement action and the business has received notification from the enforcing authority that it intends to proceed with the proposed action, the business is entitled to apply for consent to refer the matter to the statutory determination process ([see 9.7](#)), explaining why it believes that:

- the proposed enforcement action is inconsistent with the Primary Authority Advice given; and
- the Primary Authority Advice given was correct; and
- the Primary Authority Advice was properly given.

5

Statutory framework: Business application for consent to a referral

On receiving notification of a proposed enforcement action, the business may, if it considers that the proposed action is inconsistent with Primary Authority Advice previously given, make an application within 10 working days starting on, and including, the day after it receives the notification, for consent to refer the matter for determination by the Secretary of State.

Where the business chooses to make an application, the enforcing authority is then constrained from proceeding with the proposed enforcement action for the duration of the determination process. The business may be required to pay costs that are reasonably incurred by BRDO as a result of the reference to determination.

In exceptional circumstances, the primary authority may choose, rather than directing against or allowing the proposed enforcement action, to make an application to BRDO for consent to refer the matter for determination. This course of action does not constrain the enforcing authority from proceeding to notification of the business, so the business may choose to then make its own application for consent to BRDO. The enforcing authority would then be constrained from proceeding with the proposed enforcement action for the duration of the determination process. In this situation, BRDO would handle the application from the business alongside the application from the primary authority, and would not seek to recover its costs from the business.

9.6 The meaning of 'working day' in the scheme

The timescales involved in the notification process are often referred to as a 'relevant period' and then defined by reference to 'working days'. For example, a primary authority may direct an enforcing authority not to take enforcement action if it determines within the 'relevant period' that the proposed enforcement action is inconsistent with advice or guidance it has previously given. The 'relevant period' is defined as the period of five **working days** beginning with the day after that on which the primary authority was notified of the proposed enforcement action.

It is helpful for the primary authority, enforcing authorities and business involved in a notifications process to have an understanding of which days constitute 'working days' for the purposes of the scheme. However, the Primary Authority Register manages all deadlines associated with enforcement actions, in line with the definition of 'working days' provided here, notifying relevant parties of the correct deadlines and sending notifications when deadlines expire.

6

Statutory framework: Working days

'Working days' means any day other than:

- **A Saturday or Sunday;**
- **Christmas Day;**
- **Good Friday; or**
- **a day which is a bank holiday¹¹³ in either the part of the UK where the primary authority is or the part of the UK where the enforcing authority is.**

¹¹³ As defined under the Banking and Financial Dealings Act 1971

Bank holidays currently under the Act include the days listed below, but also include additional days that are appointed by royal proclamation. For example, the bank holidays known as 'New Year's Day' and 'Early May Bank Holiday' are appointed by royal proclamation.

Table 1: Bank holidays

England and Wales	Scotland	Northern Ireland
Easter Monday	New Year's Day, if it is not a Sunday or, if it is a Sunday, 3 January	17 March, if it is not a Sunday or, if it is a Sunday, 18 March
The last Monday in May	2 January, if it is not a Sunday or, if it is a Sunday, 3 January	Easter Monday
The last Monday in August	The first Monday in May	The last Monday in May
26 December if it is not a Sunday	The last Monday in May	12 July, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day
27 December in a year in which 25 or 26 December is a Sunday	The first Monday in August	The last Monday in August
	30 November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day	26 December, if it is not a Sunday
	Christmas Day, if it is not a Sunday or, if it is a Sunday, 26 December	27 December in a year in which 25 or 26 December is a Sunday
	Boxing Day	

A summary of the expected forthcoming bank and public holidays is available on the [Gov.uk](https://www.gov.uk) website.

9.7 Determination – the role of BRDO and the Secretary of State

The legislation provides for a 'determination' process, which acts as a measure of last resort in resolving differences between an enforcing authority and a primary authority in respect of proposed enforcement action. As outlined in 9.3 to 9.5 of this module, each of the parties to a proposed enforcement action could have recourse to this process in certain circumstances:

- a) A primary authority that has received notification of proposed enforcement action may refer the matter. However, this is unlikely to be appropriate other than in very unusual circumstances as the primary authority will usually be best placed to decide whether the proposed enforcement action is inconsistent with Primary Authority Advice that it has given.

- b) An enforcing authority may refer proposed enforcement action where the primary authority has directed against it proceeding with the action, and it can make a case that the proposed action is consistent with Primary Authority Advice, or that the Primary Authority Advice was not correct or was not properly given.
- c) A business may refer proposed enforcement action that has been notified to it by an enforcing authority, where the primary authority has not directed against the action.

Through the statutory determination process, the Secretary of State considers whether the proposed enforcement action is inconsistent with Primary Authority Advice that has been given and whether that Primary Authority Advice was correct and properly given.

Determination is a two stage process and is administered by BRDO:

- a) An application is made to BRDO for consent to make a referral for determination. The Secretary of State may choose to consent or may refuse leave to make the referral.
- b) Where consent to a referral has been given, the matter enters the determination process and the Secretary of State makes a decision as to whether or not the proposed enforcement action should be allowed to go ahead or not, or whether alternative enforcement action should be taken by the enforcing authority.

The two stages of the determination process are explained in detail in BRDO's 'Determinations – Policy and Procedures' document, available via the ['Enforcement action'](#) page of the Primary Authority Register.

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