

02 October 2014

**Name of Cabinet Member:**

Cabinet Member (Policing and Equalities) – Councillor Townshend

**Director Approving Submission of the report:**

Executive Director, People

**Ward(s) affected:**

All

**Title:**

Primary Authority Partnerships - a revised model for delivering regulatory advice to businesses

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**Is this a key decision?**

No

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**Executive Summary:**

Regulatory Services consists of various teams delivering Environmental Health, Environmental Protection, Trading Standards, and Licensing functions. Currently the service provides free advice to all types of businesses, large and small. Some requests made by companies can be quite complex and involve significant officer time, which places a drain on the service.

As a way of formalising the working arrangements between local authorities and companies seeking detailed advice, the Regulatory Enforcement and Sanctions Act 2008 introduced the concept of 'Primary Authority Partnerships'. A Primary Authority Partnership (PAP) is effectively a written agreement setting out the terms on which a company that operates across two or more local authorities can seek detailed advice. The advantage to companies is that any advice is regarded as 'assured advice' (meaning it has to be taken into account by any other regulator). The advantage to the local authority is that it can better manage its resources and it can charge for its services in delivering a PAP scheme.

Approval is sought to introduce Primary Authority Partnerships to Coventry and offer them to companies who wish to seek specialist help from Regulatory Services, over and above that which would be provided for free.

**Recommendations**

**Cabinet Member is asked to:**

- (1) approve the introduction of the Primary Authority Partnership Scheme with businesses which meet the statutory criteria and who wish to work with regulatory officers.
- (2) approve the proposed charging summary for Primary Authority Partnerships detailed in Appendix 1.
- (3) request a further report be presented by officers in 12 months' time detailing the initial outcomes of implementing the Primary Authority Partnership scheme.

**List of Appendices included:**

- (1) Primary Authority Partnership - Charging Structure
- (2) Equalities and Consultation Analysis

**Other useful background papers:**

- a) Dedicated government website pages giving overview of Primary Authority Partnership schemes and access to public register of companies already signed up.

<https://primaryauthorityregister.info/par/index.php/home>

- b) Copy of Statutory Guidance relating to Primary Authority Partnerships

<https://www.gov.uk/government/publications/primary-authority-statutory-guidance>

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

**Report title: Primary Authority Partnerships - a revised model for delivering regulatory advice to businesses**

**1. Context (or background)**

- 1.1 Regulatory Services currently provides all types of advice and guidance free of charge to all types of businesses, some of which is quite resource intensive. Primary Authority Partnerships (PAPs) provide a statutory framework to assist businesses in complying with regulations enforced by local authorities whilst also enabling the local authority to better manage its resources.
- 1.2 The scheme only applies to businesses operating across two or more local authorities. It does not apply to small local businesses that will continue to receive advice for most matters without charge.

**2. Options considered and recommended proposal**

- 2.1 The Regulatory Enforcement and Sanctions Act 2008 introduced the concept of 'Primary Authority Partnerships'. The Better Regulation Delivery Office, a non-government department of BIS, oversees the scheme. The scheme only applies to businesses, trade associations, or franchises that operate in two or more local authority areas. It is not applicable to small local businesses.
- 2.2 There are now 120 local authorities with Primary Authority Partnerships benefiting 1,500 businesses, covering 73,000 premises.
- 2.3 Some of the values/benefits of the scheme are:
  - Once legally nominated by the Better Regulation Delivery Office, partnerships are automatically recognised by all local regulators. A central register of the partnerships provides an authoritative reference source.
  - By working closely with the business, a Primary Authority will provide robust, consistent, and reliable advice which must be respected by all local regulators.
  - A business can choose what level of support it needs from its primary authority. Resourcing the partnership is up to the local authority and the business concerned. The local authority often chooses to recover its costs.
  - A well-run Primary Authority Partnership can help promote growth through consistency of regulatory advice and assistance tailored to the company concerned. The scheme is valued by businesses and Coventry City Council has already been approached by several businesses wishing to establish a partnership.
- 2.4 Regulatory Services currently offer 'voluntary' partnerships to local businesses under existing schemes, such as 'Home Authority' and the HSE's former 'Lead Authority' scheme. The Trading Standards team has 47 'Home Authority' companies. The Health & Safety/Food team has one 'Lead Authority' agreement. These schemes will continue for existing companies until transition to PAPs is offered in due course.
- 2.5 Whilst these have a certain amount of recognition, they do not provide a statutory framework for giving 'assured advice' or the opportunity to seek cost recovery.

- 2.6 Regulatory Services have been approached by several businesses that are actively looking to set up a Primary Authority Partnership. These businesses are expecting to pay for this service, as it is cheaper than what they currently pay for business advice and it has the benefit that they receive 'assured advice'. Businesses wishing to be part of a Primary Authority Partnership must meet the qualifying criteria set out in the Statutory Guidance.
- 2.7 The level of involvement in any proposed PAP will be determined at the beginning of the agreement e.g.
- regulatory areas covered
  - setting up processes and procedures,
  - areas of highest risk for the business,
  - the cost of the service,
  - response times,
  - hours of operation,
  - channels of communication,
  - any relevant limitations to service provision.
- 2.8 In order for a PAP agreement to be formally recognised and entered on the national register, it must firstly be approved by the Secretary of State for Business, Innovation, and Skills, in accordance with section 25 of the Act and the Statutory Guidance. The terms and conditions of any agreement are specified by the BRDO, and must be included in any partnership agreement.
- 2.9 Section 31 of the Regulatory Enforcement and Sanctions Act 2008 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. The charges should be published in a clear and transparent manner, including the basis on which they are calculated, in line with the requirement of the Regulators' Code and the Statutory Guidance (section 5.6).
- 2.10 The main cost associated with supporting an agreement will be in providing complex advice and guidance to companies. The fairest way to manage this discretionary work is to charge an hourly rate, based on cost-recovery of £43.50, exclusive of VAT, plus any additional expenses, e.g. travel, testing costs.
- 2.11 One of the main benefits to a business is in receiving 'assured advice'. Any assured advice will be clearly headed as such, and will be signed off by a manager. Such advice will be covered by the Council's indemnity insurance and liability is limited in any year to the amount paid in that year for partnership services. In accordance with the terms and conditions laid out by BRDO, the Council will not be held liable for any unforeseeable loss which arises as a consequence of its involvement in a partnership.
- 2.12 Once the scheme has been introduced in Coventry, officers would look to consult with companies under the existing 'Home Authority' and 'Lead Authority' arrangements and offer a transition to Primary Authority if they still wish to receive services covered by the scheme. The transition process will be managed over a period of time, e.g. 12 months.
- 2.13 The impact of this is expected to be low as few companies seek the more complex and involved assistance that would trigger a charge in future. Regulatory Services receives several hundred business advice requests each year, which vary in complexity from very simple and quick enquiries to the more complex tasks that can absorb significant officer time. Most contacts are from small local businesses and would not be subject to

a PAP. It is estimated that only about 10% of all contacts would potentially fall under the remit of Primary Authority Partnerships.

2.14 Officers consider there is benefit in introducing Primary Authority Partnership agreements when working with the larger businesses that operate in Coventry. A PAP will provide a clear framework for the services that the Council will provide.

2.15 There is no obligation to charge businesses that enter into a PAP agreement. However, officers believe it is advantageous to have a charging structure in place going forward in order to manage the demand on the service. It is intended that the more basic general types of interaction that link to statutory functions will continue to be free of charge, but more complex input sought by a company would be chargeable.

2.16 Consideration has been given to maintaining the 'Home Authority' and 'Lead Authority' schemes and/or providing a 'Primary Authority Scheme' without charge. However, this does not take into account the potential burden on resources or provide flexibility in future should the demand change in some way (e.g. large national company moving headquarters to Coventry).

2.17 It is therefore recommended that Cabinet Member:

*1. approves the introduction of the Primary Authority Partnership scheme with businesses that meet the statutory criteria and who wish to work with regulatory officers.*

*2. approves the proposed charging summary for Primary Authority Partnerships detailed in Appendix 1.*

*3. requests a further report be presented by officers in 12 months' time detailing the initial outcomes of implementing the Primary Authority Partnership scheme.*

### **3. Results of consultation undertaken**

3.1 Primary Authority Partnerships were introduced under the Regulatory, Enforcement, and Sanctions Act 2008. The scheme only applies to businesses that operate within two or more local authorities and is therefore generally aimed at the national companies who have a vested interest in ensuring consistency of advice from regulators across the country. There is no statutory requirement under the Act to carry out a consultation when local authorities adopt the scheme.

3.2 Consideration has been given to the Department of Communities and Local Government 'Best Value Statutory Guidance' dated September 2011. However, as Primary Authority Partnerships are not generally intended to apply to small businesses, the requirements do not apply and therefore it does not give rise to a need for consultation.

3.3 Informal exchanges have taken place with companies interested in working with Coventry City Council and positive feedback has been received about taking advantage of any Primary Authority Partnership scheme established here. Such companies are keen to progress working together with the Council as soon as possible.

### **4. Timetable for implementing this decision**

4.1 Recommendation 1 and 2 will be implemented immediately.

4.2 Recommendation 3 will be implemented after a period of 12 months.

## **5. Comments from Executive Director of Resources**

### **5.1 Financial implications**

No additional resource will be required to implement the scheme. Any additional income generated by entering into agreements with companies is difficult to estimate at this point but is not expected to be significant. Any extra increase in income will contribute towards Council resources.

### **5.2 Legal implications**

Primary Authority Partnerships were introduced by part 2 of the Regulatory Enforcement and Sanctions Act 2008, as amended by the Enterprise and Regulatory Reform Act 2013. This creates a statutory basis for the introduction of such schemes, and for the ability to charge for the advice given (section 31). Section 33 (3) of the Act requires a local authority to have regard to any guidance given, the most recent of which is dated September 2013. Officers have taken this guidance into account when setting up potential arrangements for a PAP scheme and drafting this report.

Companies who have entered into Primary Authority Partnerships are still subject to regulation in the usual way. The fact of the Partnership does not preclude any authority from taking enforcement action against a company, but the scheme requires a notice period to be given to the Primary Authority, and section 28 of the Act allows a Primary Authority to direct that such enforcement action should not be taken. The Primary Authority may, therefore, effectively veto proposed action which another Authority might wish to take.

## **6. Other implications**

A number of businesses are currently part of either 'Home Authority' or 'Lead Authority' support arrangements, which are provided at no cost. These are not recognised by statute. It is intended to replace these schemes with the Primary Authority Partnership scheme, subject to a consultation and transition period over the next 12 months.

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The introduction of Primary Authority Partnerships will give businesses the support they look for in terms of 'assured advice', which must be recognised by other regulators across the UK. This in turn helps provide them with consistency in their decision making and so generally contributes towards the growth agenda.

### **6.2 How is risk being managed?**

The key risk relates to having sufficient capacity to meet any demand from businesses wishing to sign up to Primary Authority Partnerships. However, the statutory scheme enables fees to be charged (at a cost recovery rate) and so if demand proves greater than expected, further resource may be provided using some of the additional income. There is no obligation to create a Primary Authority Scheme and if the authority was unable to meet the need, the scheme could be terminated, subject to a notice period and consultation.

Any advice provided by officers will be covered by the Council's insurers. Due to the low income levels anticipated and the low volume of cases likely to require more specialised input, the overall risk is considered to be low.

Any contracts entered into between the Council and companies for the provision of any services will be subject to approval by legal services, in accordance with Part 2M (section 5, sub-point 18) of the constitution.

It is possible, although unlikely, that enforcement action might need to be considered at some point against a partner company where compliance on an important matter is not achieved. Whilst the fact a Partnership exists does not preclude any enforcement, it would be likely to cause a breakdown in the relationship and the termination of the Partnership Agreement. This risk is considered to be at a low level.

### **6.3 What is the impact on the organisation?**

None

### **6.4 Equalities / EIA**

Consideration has been given to the public sector duty under the Equality Act 2010 to reduce inequalities when making decisions of a strategic nature. However, as Primary Authority Partnerships are not intended to apply to small businesses or individuals there will not be any impact on the 'protected characteristic groups.

Part 1 of the Equalities and Consultation template has been completed and is attached at Appendix 2. Officers consider there is no need for further consultation in this case.

### **6.5 Implications for (or impact on) the environment**

None

### **6.6 Implications for partner organisations?**

None

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[www.coventry.gov.uk/meetings](http://www.coventry.gov.uk/meetings)



## **Appendix 1**

### **Primary Authority Partnership - Charging Structure**

Where relevant, the services below will be charged at an hourly rate, based on cost-recovery of £43.50, exclusive of VAT.

Any separate expenses incurred would be agreed in advance and charged in addition to the hourly rate (e.g. travel costs, testing fees).

#### **Services provided without charge:**

General advice on the areas covered by Regulatory Services is provided without charge and will include;

- the provision of leaflets
- links to useful websites for help
- discussing some examples of products and/or services
- explaining what is covered as part of an inspection
- explaining the steps that need to be taken to ensure compliance with regulations

Access to such advice can be obtained via;

- Coventry City Council Contact Centre
- Citizens Advice Consumer Service
- Website self-service
- ERWIN website – Everything Regulation When It's Needed
- Signposting from Chamber of Commerce, Federation of Small Businesses and, in future, the Growth Hub

#### **Services provided subject to a charge (non-exhaustive list):**

- Assessment of and guidance on product labels at the request of the business (e.g. food and safety labels)
- Assessment of brochures or advertisements on request
- Assessing new or existing terms and conditions of business on request
- Introducing a national inspection plan to avoid repeated checks by other regulators
- Feedback of product/store inspections to aid business improvement
- Auditing of processes and signing off procedures
- Site visits at the request of the business to assess compliance of processes, systems or products
- Delivery of training in relevant subjects on request
- Education and prevention work (e.g. under age sales, licensing matters, food safety issues)
- Testing of equipment (separate rates apply)
- Sampling projects agreed with the business.