

CYNGOR SIR POWYS COUNTY COUNCIL.

CABINET EXECUTIVE

17th September 2019

**REPORT AUTHOR: County Councillor James Evans
Portfolio Holder for Corporate Governance, Housing and
Public Protection**

SUBJECT: Primary Authority Partnership Scheme Policy

REPORT FOR: DECISION

1. Summary

This report proposes the adoption of a policy to formalise the arrangements whereby suitable businesses trading across local authority boundaries, start-up businesses or a single business in Powys are given the opportunity to enter a legal Primary Authority Relationship with Powys County Council in respect of regulatory functions.

2. Proposal

2.1 Background

All businesses have a responsibility to comply with regulation and the majority take their duties seriously, however navigating legislation and finding the appropriate systems to comply with regulation can sometimes inhibit growth. Consistent and integrated application of regulation, together with reliable and business friendly advice reduces costs for business whilst giving the assurance of a level playing field with competitors.

Businesses can be fearful of regulation and the powers officers hold in relation to enforcement. Business perception of regulators is changing to embrace the positive interaction regulators can have on business compliance and reducing the risk of falling foul of the law, the public protection risk, reputational damage and cost to the business. Primary Authority is an alternative means for businesses to comply with regulatory requirements.

Regulators have more interaction with business than any other Local Authority service and are best placed to deliver the positive message that the County Council is a means of support.

In January 2018 the new national oversight body Office for Product Safety and Standards (OPSS) was launched by Government and tasked with identifying consumer risks and managing responses to large-scale product recalls and repairs. The new department enables the UK to meet the evolving challenges of product safety by responding to expanding international trade, the growth in online shopping and the increasing rate of product innovation. OPSS is a team within the Department for Business, Energy and Industrial Strategy (BEIS) who exercise the statutory responsibility for management and administration of the Primary Authority scheme on behalf of the Secretary of State.

Primary Authority is a means for businesses to receive assured and tailored advice on meeting statutory regulatory requirements including Environmental Health, Trading Standards, Licensing and Fire Safety through a single point of contact. This ensures start-ups get it right from the outset and enables all businesses to invest with confidence in products, practices and procedures, knowing that the resources they devote to compliance are well spent. Building on the success of the scheme the eligibility criteria for Primary Authority was expanded and from 1 October 2017 all businesses can now benefit from Primary Authority.

Primary Authority enables a business to form a legally recognised partnership with one local authority (the 'primary authority') to get assured advice about how they can comply most efficiently with regulation. This advice, known as Primary Authority Advice, must then be considered by other local authorities when dealing with that business e.g. when carrying out inspections or addressing non-compliance. Primary Authority ensures consistent interpretation of regulations, regardless of where stores, factories or offices are based or products are sold, thus:

- reducing the costs of complying with regulations
- reducing the risk of a major breach of compliance
- reducing the costs associated with failing to comply.

Historically, Local Authority regulatory services operated voluntary 'Home' and 'Lead' Authority schemes which aim to address this issue. This approach worked well and was effective for several years. Generally, the Local Authority where the businesses head office was based became a contact point for other authorities so that regulatory issues that apply across the business can be addressed centrally.

Whilst the majority of businesses have been content with the voluntary arrangements, there was a need for strengthening and consistency in business support through regulation.

Through Primary Authority, organisations can form a statutory partnership with a single local authority, which must then provide robust and reliable advice on compliance which other councils must take into

account when carrying out inspections or dealing with non-compliance. The scheme proposes that:

- Formal partnerships are made between businesses and a local authority for that local authority to act as a Primary Authority and provide advice and guidance on the legislation covered by the partnership. The drafting and agreement of these partnership arrangements is guided by the OPSS team who are experienced in this field of work and support the Local Authority throughout the process.
- Where a local authority other than the relevant Primary Authority (described as an “enforcing authority”) proposes to take enforcement action against an organisation with a Primary Authority, the enforcing authority must consult the relevant Primary Authority first.
- The Primary Authority will then have the right to direct the enforcing authority not to take the proposed enforcement action if they believe that it is inconsistent with advice or guidance that they had previously given.

Where a proposed enforcement action has been referred to a Primary Authority and the parties involved cannot reach an agreement as to the action that should be taken, the enforcing authority, the Primary Authority or the organisation involved can refer the action to OPSS for determination. The purpose of this determination process is to examine whether the Primary Authority’s previous advice was correct, and the proposed enforcement action is inconsistent with that advice

The Regulatory Enforcement and Sanctions Act 2008 (as amended by The Enterprise Act 2016section 27A) provides that a Local Authority may recover its reasonable costs for acting as a Primary Authority. This enables Powys County Council to generate non-traditional funding for the authority and contribute to the County Council priorities for developing a vibrant economy.

Regulatory burdens will be reduced if the County Council embraces the Primary Authority Scheme. The requirement to consult the Primary Authority prevents unwarranted enforcement actions. Where an inspection plan is in place unnecessary checks and tests are avoided whilst undertaking intelligence/risk based local inspections.

Where businesses require a higher level of support and assistance, the Council will enter into formal agreement with the relevant business to make a charge for such services. This charge, based on actual costs will be set based on official guidance and will reflect the extra level of support and assistance given to Primary Authority businesses. The additional staffing resources required to deliver this service is fully recovered through fees, resulting in a net nil finance. Setting up such agreements with local businesses sees gains in reality for both parties and also helps build some resilience in our teams.

The policy attached at Appendix A to this report outlines the context and reasons why Powys County Council Service is adopting the Primary

Authority Partnerships Scheme (The Scheme) Policy. It goes on to set out the policy for accepting and declining requests from businesses to join the scheme and how these partnerships will operate.

3. Options Considered / Available

3.1 The options available would be to

- a) To adopt the policy as attached at Appendix A.
- b) Not adopt the Primary Authority Principle and leave businesses without clarity around the added support they may require.

4. Preferred Choice and Reasons

4.1 The preferred choice is to adopt the policy. This will help to ensure legal compliance, embrace the principles of better regulation and support Powys businesses. It will contribute to the Priorities of the Vision 2025 to develop a vibrant economy in Powys where businesses of all sizes can access support to meet their regulatory requirements and enhance business growth and the associated benefits to our residents and communities.

5. Impact Assessment

5.1 Is an impact assessment required? No

Any actions arising from the promotion of this scheme to businesses will be underpinned by the Powys County Council's Regulatory Services Enforcement Policy, which provides a clear, transparent approach to ensure that there is no discrimination in the Council's actions and that everyone is treated fairly by the Council's officers within the legal processes.

6. Corporate Improvement Plan

6.1 The principles of Primary Authority through the attached policy contribute to Vision 2025 where businesses of all sizes can access support to meet their regulatory requirements and enhance business growth and the associated benefits to our residents and communities.

7. Local Member(s)

7.1 The proposal would apply with equal force across the whole County

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

9. Communications

Have Communications seen a copy of this report?

Comment: The report does not require proactive communications action.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

10.1 Legal- The Principal Solicitor (Shire) supports this initiative which will provide a mechanism for enhanced communications with businesses with a view to ensuring statutory and regulatory compliance

10.2 Finance – The Finance Manager Place and Resources notes the contents of the report, the service will be charged for and a fee will be calculated to ensure all costs are fully recovered. Adoption of the policy will not generate a net additional income stream for the Council.

11. Scrutiny

Has this report been scrutinised? No

If Yes what version or date of report has been scrutinised?

Please insert the comments.

What changes have been made since the date of Scrutiny and explain why Scrutiny recommendations have been accepted or rejected?

12. Data Protection

If the proposal involves the processing of personal data then the Data Protection Officer must be consulted and their comments set out below.

13. Statutory Officers

13.1 The Solicitor to the Council (Monitoring Officer) commented as follows:
“ I note the legal comments and have nothing to add to the report.”

13.2 The Head of Finance (Section 151 Officer) notes the comments of the Finance Manager.

14. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
To adopt the Primary Authority Partnerships Scheme policy attached at Appendix A.	To support businesses and ensure the Council's policy for accepting and declining requests from businesses to join the Primary Authority scheme and how these partnerships will operate is clear and transparent.

Relevant Policy (ies):			
Within Policy:	Y	Within Budget:	Y

Relevant Local Member(s):	N/A
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Person(s) To Implement Decision:	B Cadwallader
Date By When Decision To Be Implemented:	With immediate effect

Is a review of the impact of the decision required?	N
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Background Papers used to prepare Report:

- [Primary authority guidance](#)
- [Regulatory Enforcement and Sanctions Act](#)
- **Draft Primary Authority Policy for Powys Council**
- [Powys County Council Regulatory Services Enforcement Policy](#)
[Industrial Strategy: building a Britain fit for the future](#)