

CHESHIRE FIRE AUTHORITY

ITEM: 8

MEETING OF : **CHESHIRE FIRE AUTHORITY**
DATE : **12th FEBRUARY 2014**
REPORT OF : **DCFO MARK CASHIN**
AUTHOR : **M ABRAM**

SUBJECT : **PRIMARY AUTHORITY SCHEME**

Purpose of Report

1. To explain what the Primary Authority Scheme (PAS) is and how it affects the activities of fire and rescue services.
2. To provide information about how PAS will impact upon the Service's work.

Recommended: That Members

- [1] Note the information about the PAS in relation to fire and rescue authorities;
- [2] Note the implications of the PAS for the Service;
- [3] Agree the suggested approach to the PAS in paragraph 14 whereby officers are authorised to pursue partnerships in circumstances where a satisfactory assessment of the impact upon the other work of the Service has been completed.

Background

3. The primary authority partnership is a statutory partnership between a business and a single authority (known as the Primary Authority) which has been nominated by the Secretary of State, covering specified areas of regulation. The PAS has been in place for some time, but only in relation to regulatory functions carried out by local authorities, i.e. trading standards, environmental health and licensing.
4. The PAS allows a business to pursue a partnership with a local authority (and in the near future with a fire and rescue authority) which will alter the way that the business is regulated by all of the authorities that it deals with.
5. The Government committed to review its original decision to exempt fire safety enforcement under the Regulatory Reform (Fire Safety) Order 2005 (the Order) from the PAS as the Enterprise and Regulatory Reform Bill progressed. This resulted in the Chief Fire Officers Association (CFOA) and the Better Regulation Delivery Office (BRDO) running a six-month partnership pilot scheme that commenced in January 2013.

6. As a result of a successful pilot, the Order, subject to parliamentary process, will be included within the scope of the PAS from April 2014.
7. Additionally, the Enterprise and Regulatory Reform Act 2013 has also extended the right of access to partnerships to trade associations and franchises, opening the scheme to thousands of small businesses.

Information

8. The PAS allows a business to pursue a partnership with a local authority (and in the near future with a fire and rescue authority) which will alter the way that the business is regulated by all of the authorities that it deals with.
9. The Primary Authority partnership is a statutory partnership between a business and a single authority (known as the Primary Authority) which has been nominated by the Secretary of State, covering specified areas of regulation.
10. A Primary Authority has a role to play in acting as a key point of contact for a business that it partners with, both in relation to a business' interactions with the local authorities that normally regulate it (known within the scheme as 'enforcing authorities') and leading regulation of that business on behalf of local authority regulators generally. This includes the co-ordination of intelligence and of responses to specific issues that arise.
11. The Primary Authority is able to share compliance information with enforcing authorities, and may, with consent from the Secretary of State, publish an inspection plan where this will be of benefit in guiding or co-ordinating the activities of enforcing authorities.
12. The Primary Authority is able to provide advice and guidance on compliance to the business (known as 'Primary Authority Advice') in areas of regulation covered by the partnership, on which the business can rely. The Primary Authority is also able to provide advice and guidance to other local authorities (known as 'Primary Authority Advice to Local Authorities') in relation to how they exercise their regulatory functions in respect of the business in any local authority area.
13. Where a business faces potential enforcement action by an enforcing authority, the Primary Authority will assess whether the proposed action is inconsistent with any Primary Authority Advice given. If the action is inconsistent, the Primary Authority is able to direct the enforcing authority not to take the action.
14. The PAS creates statutory duties for all local authorities in relation to their regulation of any business that has a partnership. These duties relate primarily to:

- 14.1 Following an inspection plan for the business, where one has been published by the Primary Authority, and providing any feedback required; and;
 - 14.2 Notifying the Primary Authority of enforcement action in relation to the business. In most circumstances this notification is required before the action can be taken. However, exemptions allow certain enforcement action to proceed immediately, for example where action is needed urgently to prevent harm. In this circumstance the notification to the Primary Authority may be made retrospectively.
 - 14.3 By working in partnership with a business, or with a group of businesses, the Primary Authority is able to deliver benefits of efficiency of costs of compliance and consistent co-ordinated advice for the business, enforcing authorities, and those that the regulation protects.
15. It should be noted that the duty is to recognise PAS partnerships where they are established between the parties. There is no duty to enter into a partnership if requested to by a business. There are statutory obligations that flow from a partnership and not all authorities will be in a position to take these on.

The Fire Authority's Approach to PAS

16. The Authority must have regard to PAS partnerships and any inspection plans that relate to the business party of the partnership. The PAS could potentially significantly reduce the burden of repetitive inspections carried out by officers.
17. If the Authority chose to actively engage in a PAS partnership, its officers would need to provide consistent, professional advice to the partner business. This 'assured advice' needs to be of a quality that is respected within the business and fire sector. Partnerships could be established either by direct approaches from businesses or by the Service proactively attempting to engage with a particular business or sector.
18. The Primary Authority has a role in improving the co-ordination and efficiency of checks on compliance and, where it sees that an inspection plan would be beneficial in fulfilling this role, it can choose to develop one.
19. Where the Primary Authority partners with a single business, it is able to support 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.

20. The resources required to operate an effective partnership or group of partnerships will vary, depending on the scope of the partnership, and the scale of its activities. An assessment should be made, prior to making an application for nomination, of the resources that are likely to be required to operate an effective partnership that is capable of meeting the needs and expectations of the businesses and of local authorities.
21. The local authority is entitled, via the Regulations, to charge a business on a cost recovery basis for primary authority services supplied through the partnership.
22. Where a local authority decides to charge for some or all of the services that it provides as a Primary Authority, it 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 authority's website. It remains to be seen whether charges will provide a barrier to take-up of the PAS although this has not occurred with councils that have already entered such partnerships.
23. Responding to businesses that wish to create a partnership may provide the opportunity to engage with national companies that are considered to be well managed and therefore potentially low risk in relation to a partnership agreement and facilitate the spread of best practice across the country. However, it is possible that the Fire Authority is approached by less reputable companies seeking the perceived protection of PAS but who may use PAS as a smokescreen to avoid compliance with fire safety regulations. Such practices will inevitably require significant resources to satisfy a partnership especially in such matters as providing advice, resolving appeals and approving risk based inspection plans. Conversely working with a business that may be less compliant has the benefit of improving safety and lowering risk, although not necessarily in Cheshire.

Summary

24. The Government's economic growth agenda is focussed on providing consistent advice and enforcement and on reducing the regulatory burden on businesses.
25. The PAS is one element of this agenda. Active rather than passive participation would show that the Authority is meeting the expectations of Government in supporting local economic sustainability.

Legal Implications

26. The following points summarise the potential legal issues which may arise out of the PAS which does significantly change the present structure of enforcement by fire and rescue authorities:
 - 26.1 The statutory scheme is well established within local authorities and for local authority areas of enforcement. However, there is no experience of the interplay between

the fire safety legislation (from CLG) and the PAS (governed by The Regulatory Enforcement and Sanctions Act 2008, from the Business and Skills Department). It is inevitable that legal fine-tuning may occur which could have implications upon enforcement within fire and rescue authorities.

- 26.2 There is little concern from officers with experience of the scheme conducted under the previous voluntary regime that any partner would be accorded any kind of favourable treatment in an auditing or enforcement context. However, there is the need to have clear auditable records of all PAS contact to insure against allegations by commercial competitors of favourable treatment.
- 26.3 By ensuring that only officers with the requisite level of competency for the role of a partnerships officer, as specified in the CFOA fire safety regulator competency framework are used, the quality of advice will be maintained and risks limited.

Financial Implications

27. A fundamental condition of the PAS is that a local fire authority may recover the costs associated with running the partnership. The costs are bound by the Government publication – Managing Public Money.

Health & Safety Implications

28. There are no adverse health and safety implications arising from this paper.

Equality & Diversity Implications

29. There are no equality and diversity implications arising from this paper.

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BACKGROUND PAPERS: None