

Agenda Item No: 14
Report To: **Cabinet**
Date of Meeting: 9 November 2017



Report Title: **Primary Authority Partnerships**

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Portfolio Holder Cllr G J Bradford.
Portfolio Holder for: Highways, Wellbeing and Safety

Summary: The purpose of this report is to seek delegated authority for the Head of Service to enter into Primary Authority partnerships with suitable businesses.

Primary Authority partnerships describe an arrangement between businesses and regulators, which improve the sharing of advice and guidance on regulatory matters relating to food hygiene, health & safety and licensing.

The benefit can be increased business confidence enabling them to concentrate more on enterprise; the regulator can make better use of limited resources and those protected by regulation benefit from greater compliance and raised standards.

Key Decision: NO

Significantly Affected Wards: All

Recommendations: **The Cabinet is recommended to:-**

- i. Delegate authority to the Head of Health, Parking and Community Safety to enter Primary Authority partnerships under the provision of Section 25 of the Regulatory Enforcement and Sanctions Act 2008 as amended by The Enterprise Act 2016 and the Co-ordination of Regulatory Enforcement Regulations 2017.**

Policy Overview: The Corporate Plan 2015 – 2020 seeks to promote a borough which is effective, efficient and sustainable in terms of finance, resources, service delivery and enforcement.

The underpinning aspirations of the plan go on to refer to 'a well-resourced council with effective governance, high quality services, good communications, safe surroundings,

demonstrating good compliance and high standards by ensuring that enforcement powers are used effectively and appropriately’.

Financial Implications:

Primary Authority partnerships are primarily about improved service delivery and not income generation.

The partnerships will be resourced within existing budgets. Under the Regulatory Enforcement and Sanctions Act 2008 and the ‘Statutory Guidance for Primary Authority’ made thereunder, a local authority is entitled to charge on a cost recovery basis for ‘primary authority services supplied through a partnership’.

Legal Implications:

The Primary Authority partnership agreement is statutory under the Regulatory Enforcement and Sanctions Act 2008. The scheme is managed by ‘Regulatory Delivery’ part of Department for Business, Energy and industrial Strategy.

The Secretary of State has issued statutory guidance under the Act that describes how the partnerships are to be managed, delivered and reviewed.

Entering into an agreement with a business does not fetter the enforcement powers or duties of the local authority in respect of the regulated areas included in the scope of the partnership agreement.

Equalities Impact Assessment:

Yes, see attached

Other Material Implications:

None

Exempt from Publication:

NO

Background Papers:

None

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Report Title: Primary Authority Partnerships

Introduction and Background

1. The Council has a responsibility to make sure it delivers its enforcement duties to the highest achievable standard making the best use of its limited resources.
2. Primary Authority is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008. They are positive legal agreements between a regulator and business offering improved compliance, and raised standards benefitting the business, the local authority in whose areas they operate and those protected by the regulation.
3. It has helped businesses avoid inconsistent and confusing red tape, by having a single authority provide advice and support to both the businesses and to other local authorities that have the businesses' outlets in their districts.
4. The partnership relates to duties the local authority has regulatory responsibility for and the regulator and business will agree the exact scope in each individual case. Most commonly they cover:
 - a. Food hygiene
 - b. Health and safety
 - c. Nuisance
 - d. Licensing
5. Once agreed, the proposal has to be approved by the Secretary of State and entered into the Primary Authority Register.

Proposal/Current Position

6. In August 2017 there were 16,431 businesses in partnerships involving 189 different local authorities across the UK.
7. The experience from existing partnerships is that the local authority regulator, the business and those protected by the regulation all experience benefits from the arrangement through:
 - a. Improved standards of compliance – resulting in safer and better managed establishments; and
 - b. Better working relationships between the regulator and the business as each understands the other better.
8. It has helped to increase business confidence and reduce operational costs, allowing enterprises to focus on expansion.

9. The agreements cover specific services: food hygiene, nuisance, health and safety and licensing, but do not presently cover housing, planning or economic development.
10. The benefits of the existing scheme are apparent to government and they have recently expanded it to make it easier for businesses and local authorities to enter into partnership agreements.
11. In addition the Food Standards Agency have recently published a paper entitled 'Regulation our Future' looking at how food regulation could be delivered from 2019 onwards. This shows movement to the enhanced Primary Authority partnership scheme for securing effective and efficient enforcement and regulation in the future.

12. **Five principles**

Government has given clear direction that regulatory services will be delivered differently in the future. Regulating our Future is structured with this in mind and is based around five principles:

- i. Businesses have a responsibility to be transparent about their products
- ii. Regulators should be measured in how they discharge their duties
- iii. Regulators should take all sources of available information into account
- iv. Businesses 'doing the right thing' should be recognised
- v. Businesses should meet the costs of good regulation

Primary Authority is a key part of delivering these principles.

Ashford Borough Council's position

13. At the present time the Council it is not party to any Primary Authority partnerships. However, it has been approached by two multi-site businesses interested in entering into a Primary Authority agreement.

Implications and Risk Assessment

14. Entering into a Primary Authority partnership raises the status and kudos of both the business and the local authority involved.
15. As the reasonable costs of setting up and delivering the partnership is recoverable from the business concerned, it means the resources needed are included so the partnership can be delivered within existing resources.
16. Should the scheme require additional resources in the future, these costs would be met under the terms of the relevant agreements.
17. The Statutory Guidance advises local authorities to recognise that the benefits of the scheme can be accompanied by an increased risk of bias and perceptions of regulatory capture.

'Primary Authorities should be mindful of this risk and should take appropriate steps to maintain their independence and objectivity and that of staff assigned to support partnerships'.

18. The statutory guidance also stresses the need for transparency and accountability under the partnership. Where the local authority decides to charge for some or all of the services it:

'should publish clear and transparent information explaining its cost recovery policy in line with the requirement of the Regulators Code. It is recommended this information is easily accessible to business and is included on the local authorities' website'.

Equalities Impact Assessment

19. Members are referred to the attached assessment. Equality must be taken into account at all stages of enforcement. The scheme must be delivered in accordance with the standards set externally by Regulatory Delivery which require transparency and equality.

Consultation Planned or Undertaken

20. Evidence from existing partnerships indicate the relationships developed though Primary Authority are welcomed by business and can have a positive impact for economic development.
21. As the partnerships also encourage early contact with regard to changes in a business including small scale refurbishment or larger scale expansion or development it can bring about better communication between regulators and development / building control and the business concerned.
22. Both Development Control and Economic Development have been consulted in preparation of this report and are supportive.

Other Options Considered

23. To not enter a Primary Authority partnerships.

There is no obligation or requirement to enter into such partnerships at the moment. However, the tone of reports such as Regulating Our Future, indicate it is likely there will be an expectation or direction for local authorities to enter into such agreements in the future.

Reasons for Supporting Option Recommended

24. Entering into a Primary Authority partnership has the potential to improve business compliance and raise standards in those businesses covered by the partnership.

25. Businesses have found that Primary Authority partnerships can enable them to release resources to concentrate on enterprise and business development due to reduced 'red tape' and removal of inconsistent advice where multiple regulators are involved.
26. The scheme is strongly supported by Government and local authorities are being encouraged to enter into them.
27. The scheme has the potential to raise the profile of Ashford Borough Council.

Next Steps in Process

28. Prepare a proposal specifying the Primary Authority services the Council wishes to provide.
29. Identify cost recovery levels and mechanisms.
30. Identify eligible businesses and engage with them with a view to forming agreements which can be put forward to Secretary of State for nomination and approval.

Conclusion

31. Evidence from existing partnerships shows they are of significant benefit to businesses, the regulator and those protected by the relevant legal provisions. The Government is encouraging local authorities and businesses to enter into Primary Authority partnerships and this represents a positive enforcement development for the council.

Portfolio Holder's Views

32. Entering into partnerships with business like this means we work better with them and help reduce the regulatory burden. I am pleased to support this opportunity to enhance our positive relationship with business particularly as it is expected to also improve standards affecting the health, safety and welfare of the public.

Contact and Email

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Appendix A: Equalities Impact Assessment

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Lead officer:	
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	Delegated authority to enter into Primary Authority partnerships.
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	9 th November 2017
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	<p>Aim and objective:</p> <p>The report seeks delegated authority to the Head of Health, Parking and Community Safety to enter into partnerships with businesses and to request nomination of partnerships under the provision of Section 25 of the Regulatory Enforcement and Sanctions Act 2008 as amended by The Enterprise Act 2016 and The Co-ordination of Regulatory Enforcement Regulations 2017.</p> <p>Primary Authority is a statutory scheme which allows businesses to form partnerships with local authorities in order to receive advice and guidance on regulatory matters. It is based on the creation of a statutory partnership between a multi-site business and its “Primary Authority”.</p> <p>Key actions:</p> <p>No immediate action. The delegated authority once granted enables the Council to seek or enter into partnerships with appropriate and selected businesses. This would be delivered alongside existing statutory functions and within existing resources.</p> <p>Expected outcomes:</p> <p>Experience elsewhere shows that once established, primary authority partnerships can lead to increased business confidence and higher levels of compliance with resultant better standards.</p> <p>One of the aims of the scheme is to reduce inconsistency in the enforcement of regulation at the local level.</p> <p>Who will be affected and how:</p> <p><i>Internal staff resources:</i> The partnerships will be scoped and secured using existing resources. The costs of establishing a partnership can be recharged to the business concerned so should additional hours or support be necessary these can be resourced and agreed. Although the partnerships once entered into are statutory, there is no legal pressure or</p>

	<p>timetable which means how and when such agreements are sought and developed can be managed.</p> <p><i>Businesses:</i> As above, the agreement once entered into is statutory, but it is the choice of a business if they wish to do this or not. Evidence indicates that successful partnerships reduce red tape for the business, can increase their confidence in regulatory services. There are currently over 16,000 agreements in place. Business reports being able to release resources to concentrate on enterprise and business development.</p> <p><i>Public.</i> The subject of the agreements cover enforcement functions relating to food hygiene, health and safety and licencing. The public affected are unlikely to be aware of the partnerships but will benefit from raised standards in the premises affected by them.</p> <p>How many people will be affected:</p> <p>‘The public’ refers to all those using premises covered by the regulatory scope of food hygiene, health and safety and licensing within the Borough and in some cases beyond the borough boundaries.</p>
<p>Information and research:</p> <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	<p>Primary Authority was introduced by legislation in 2008. The scheme is a statutory one overseen by the Regulatory Delivery part of the Government Department for Business, Energy and Industrial Strategy.</p> <p>The scheme is managed by statute supplemented by statutory guidance.</p> <p>Information about the scheme is also publically available on the primary authority website and the .gov.uk website: https://www.gov.uk/guidance/local-regulation-primary-authority</p> <p>Officers from the Health, Parking and Community Safety service have been on specific training courses on Primary Authority.</p> <p>Key findings: Primary Authority partnerships benefit business, regulators and those using the services by better use of resources and higher standards.</p>
<p>Consultation:</p> <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	<p>No public consultation.</p> <p>Consultation with finance and legal colleagues on the implications, which have not resulted in any negative consequences.</p>

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Low	Neutral
Middle age	Low	Neutral
Young adult	Low	Neutral
Children	Low	Neutral
<u>DISABILITY</u> Physical	Low	Neutral
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE-ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	Low	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
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Is the decision relevant to the aims of the equality duty? No

Guidance on the aims can be found in the EHRC's [Essential Guide](#), alongside fuller [PSED Technical Guidance](#).

Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	No
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	No
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	No

Conclusion:

- Consider how due regard has been had to the equality duty, from start to finish.
- There should be no unlawful discrimination arising from the decision (see guidance above).
- Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.
- How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?

The services covered by a primary authority partnership are regulatory duties relating to food hygiene, health & safety, nuisance and licensing.

These duties are all delivered within a statutory framework as interpreted within enforcement policies already agreed by Cabinet such as Food Safety Policy agreed by Cabinet September 2016.

Monitoring: The policy will be monitored internally as part of the enforcement policies referred to above and externally by the framework provided by the Regulatory Enforcement and Sanctions Act 2008 and the statutory guidance issued thereunder.

The council's revised policy register will assist services to meet this

EIA completion date:

19th October 2017