

Consultation on Primary Authority Partnerships Relating to Devolved Regulatory Responsibilities of Local Authorities

CONSULTATION QUESTIONS

Question 1 – Do you agree that the categories of regulation set out in the consultation document (paragraph 18) should be in scope for primary authority partnerships in Scotland?

Yes No

If no, please explain your answer

Question 2 – Does the legislation listed in Annex A represent the main primary legislation for the regulatory functions which are proposed to be in scope for primary authority partnerships in Scotland?

Yes No

If no, please provide more details

Question 3 – Are there any specific section of the Civic Government (Scotland) Act 1982 which could be included as in scope while still retaining the ability for local authorities to maintain legitimate variation?

Yes No

If yes, please list the relevant sections of the Act and explain your view

We feel that it is important for licensing authorities to retain the ability to vary arrangements in the light of local conditions. However it may well be that nationally published guidance would be helpful, without resorting to the strictures of the PAP legislative framework.

Question 4 - Would an arrangement including specific aspects of Civic Government Licensing be workable?

Yes No

Please explain your answer.

See answer to Q3 above

Question 5 – Do you agree that the regulations with regards to carrier bag charging should also be included as in scope?

Yes No

We see no reason to specifically exclude the Single Use Carrier Bag Charges (Scotland) Regulations 2014, and indeed we are aware of a number of interpretational issues, which were dealt with by SCOTSS when these regulations were introduced. We would note however the publication of enforcement guidance on these regulations by Zero Waste Scotland, in conjunction with SCOTSS and COSLA, and we believe this has been helpful.

Question 6 – Are there any other devolved regulatory areas of local authorities which should be considered for inclusion in scope?

Yes No

If yes, please provide details and the associated legislation:

Question 7 – Should the definition of ‘enforcement action’ contained in the Act additionally be supported by an explicit list of all sections of relevant legislation citing the specific actions which count as ‘enforcement action’?

Yes No

Please explain your answer

We feel the definition is reasonably clear in itself. The addition of a list means that would have to change as and when statutes are amended, repealed or replaced with the danger it becomes inaccurate. Even a list could be subject to interpretation. Where there are already definitions of ‘enforcement action’ in statute, for example in relation to the Food Law Code of Practice, then these should be considered as a definitive source of reference.

Question 8 – Do you agree that a Scottish primary authority partnership scheme should enable the primary authority to direct the enforcing authority to take action?

Yes No

On page 12 the question is “...direct the enforcing authority not to take action?” and we think that is how Question 8 above should read.

The power to direct local authorities not to take action is a powerful one, and although this is the situation for reserved matters, there is a case to suggest that the legal system in Scotland might provide enough safeguards to prevent unnecessary prosecution of business, without such a draconian and centralist regime. We would suggest the Crown Office is specifically consulted on this issue.

Of more concern might be what level of evidence of compliance the Primary Authority needs to produce in order to direct enforcing authorities not to take action.

Question 9 – Do you agree that the primary authority should have five working days to respond to proposed enforcement action?

Yes No

If not, what alternative timescale do you propose? Please explain your view.

Question 10 – If a primary authority has powers to direct, are there any circumstances, other than those described in paragraph 35) where this requirement should not apply?

Yes No

Question 11 - If a primary authority did not have powers to direct an enforcing authority not to take action, which model would provide the best process for engagement on enforcement action?

Notification only
Notification and discussion
Notification and discussion with dispute mechanism

Question 12 – is there any other option which you would suggest?

Yes No

If yes, please provide details

Question 13 - Which of the options do you prefer?

- a.
- b.
- a. or b. only
- a. or b. with c. as appropriate to the appeal

Please explain your answer

Resolution by a national competent authority is a preferred option, but it will not be available for all cases. Where relevant we would support an arrangement led by the professional societies including independent and/or lay persons.

Question 14 – Are there any other alternative options which you would suggest for an appeals panel or body?

Yes No

Question 15 – Should an appeals panel include an independent business representative?

Yes No

We anticipate that appeals will be rare, however we think it would be more transparent to include a business representative from the relevant sector. All trading standards services work to better regulation principles, so this would be entirely consistent.

Question 16 - Should an independent body or individual regulate agreements and oversee appeals in order to ensure fairness?

Yes No

We are unsure how this differs from Q15, however to ensure fairness, it is vital that an appeals body is independent and transparent in its operation.

Question 17 – Do you agree with the proposed appeals process?

Yes No

Question 18 – Do you think that timescales for application are appropriate?

Yes No

Please explain your answer

We see no reason why primary authorities only have 5 working days compared to 10 for others. Primary Authorities may experience similar resource issues as enforcing authorities and so we would favour 10 days for all parties.

Question 19 – Do you think that the timescales for determination of a decision are appropriate?

Yes No

Please explain your answer

Question 20 – Do you agree with this approach for legal agreements?

Yes No

Agree, however with the proviso that the suggested steps are taken on sharing good practice and agreement templates. In our experience local authority legal services can be very independent and like to individually scrutinise all agreements with third parties. Over scrutiny or lack of flexibility could undermine the chances of primary authority agreements being agreed, and might lead to inconsistency of deployment and additional costs to business.

Question 21 – Would it be helpful to have additional guidance on cost recovery?

Yes No

Existing guidance is sufficient

Question 22 – Please provide any comments on the partial Business and Regulatory Impact Assessment (Annex B)

We feel the local authority time spent setting up partnerships has been under-estimated in the consultative document. It is essential that local authorities can recover all costs in setting up and maintaining Primary Authority partnerships.

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RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

Daly

Forename

Kenneth

2. Postal Address

Environment Department

3 City Square

Dundee

Postcode DD1 3BA

Phone 01382 436263

Email
secretary@scotss.org

3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes **No**

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No