

## AGENDA MANAGEMENT SHEET

<b>Name of Committee</b>	<b>Community Protection Overview and Scrutiny Committee</b>
<b>Date of Committee</b>	<b>3<sup>rd</sup> September 2008</b>
<b>Report Title</b>	<b>Report on the Introduction of Regulatory Enforcement and Sanctions Act 2008, and the impact on the delivery of Trading Standards Services</b>
<b>Summary</b>	This report gives a summary of the main points of the legislation and an impact assessment for the Trading Standards Service.
<b>For further information please contact:</b>	Mark Ryder Head of Trading Standards Tel: 01926 414020 markryder@warwickshire.gov.uk
<b>Would the recommended decision be contrary to the Budget and Policy Framework?</b>	No.
<b>Background papers</b>	None.

**CONSULTATION ALREADY UNDERTAKEN:-** Details to be specified

- |                       |                                     |                                                                                                                       |
|-----------------------|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Other Committees      | <input type="checkbox"/>            |                                                                                                                       |
| Local Member(s)       | <input checked="" type="checkbox"/> | Not Applicable                                                                                                        |
| Other Elected Members | <input checked="" type="checkbox"/> | Councillor R Chattaway, Councillor D Shilton, Councillor B Kirton, Councillor C Davis                                 |
| Cabinet Member        | <input checked="" type="checkbox"/> | Councillor R Hobbs                                                                                                    |
| Chief Executive       | <input type="checkbox"/>            |                                                                                                                       |
| Legal                 | <input checked="" type="checkbox"/> | Alison Hallworth, Adult and Community Team Leader<br>Ian Marriott, Community and Environmental Legal Services Manager |
| Finance               | <input checked="" type="checkbox"/> | Chris Norton, Strategic Finance Manager<br>Paul Walsh, Financial Services Manager                                     |
| Other Chief Officers  | <input type="checkbox"/>            |                                                                                                                       |
| District Councils     | <input type="checkbox"/>            | .....                                                                                                                 |

- Health Authority
- Police
- Other Bodies/Individuals  Jane Pollard, Overview and Scrutiny Manager  
Michelle McHugh, Scrutiny Officer

***FINAL DECISION YES***

***SUGGESTED NEXT STEPS:***

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

**Community Protection Overview and Scrutiny Committee  
– 3<sup>rd</sup> September 2008**

**Report on the Introduction of Regulatory Enforcement and  
Sanctions Act 2008, and the impact on the delivery of  
Trading Standards Services**

**Report of the Strategic Director of Adult, Health and  
Community Services**

**Recommendations**

It is recommended that the Community Protection Overview and Scrutiny Committee:

- Supports the approach recommended in section 5 of this report.
- Uses this report as an opportunity to scrutinise this area of work and advise on areas for policy development.

**1. Introduction**

- 1.1 Consumer Protection Regulation provides essential protections to society and brings benefits to individuals. Good regulation can help ensure that businesses treat customers fairly whilst not standing in the way of effective competition which drives greater choice and value for money.

The Government is committed to pursuing a programme of Regulatory reform that promotes efficiency, productivity and value for money.

Proportionate regulation and inspection arrangements can help drive standards and deliver outcomes on the ground, including a better environment for legitimate business and a sensible level of protection for consumers.

This report is about legislative changes that will have an impact on Warwickshire's Trading Standards service (WCC TSS).

**2. Background**

- 2.1 Key to the Government's better regulation agenda is the implementation of the Hampton Review<sup>1</sup>. This review set out a vision of a regulatory system based on risk and proportionality. Hampton concluded that whilst there were

<sup>1</sup> Reducing Administrative Burdens: Effective Inspection and Enforcement, Hampton P, HM Treasury, March 2005.

many positive aspects to the work of local authority Trading Standards and Environmental Health Services there remained variation and inconsistencies in the application of national legislation as well as uncoordinated action.

The knock on effect of this inconsistency had potential for causing uncertainty for business and of the uncoordinated action, a duplication of effort at a local level.

Hampton also found that regulators penalty regimes were cumbersome and ineffective and recommended a review<sup>2</sup> of these.

In his review, Macrory found that regulators were over reliant on criminal prosecution and sanctions were lacking in flexibility. He set out a blueprint for transforming the regulatory sanctioning regime in the UK, including giving regulators access to a flexible set of sanctioning tools.

2.2 The Regulatory Enforcement and Sanctions Act 2008 (RES) is an important element in delivering on the Hampton agenda and seeks to advance a regulatory system that is based on the Principles of Good Regulation:

- Accountable
- Targeted only at cases in which action is needed
- Consistent
- Proportionate
- Transparent

In subsequent sections, this report will explain the main areas of RES, the impact they will have on WCC TSS and the recommendations that flow from it.

All provisions of RES come into force on 1<sup>st</sup> October 2008 apart from the Primary Authority Provisions. These come in to force on the 6<sup>th</sup> April 2009.

### **3. Key Areas Explained**

#### **3.1 Local Better Regulation Office (LBRO)**

Local Authority Trading Standards and Environmental Health services carry out 80% of business inspection within the UK. RES has established the LBRO to drive improvements in local authority services in accordance with the principles of better regulation. The LBRO (based in Birmingham), has a range of statutory powers and duties to support it in achieving its objectives.

The objective of the LBRO is to help Local Authority (LA) Regulatory services carry out their functions in a way that is effective and in line with the principles of good regulation (quoted above).

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<sup>2</sup> Macrory Review - Regulatory Justice: Making Sanctions Effective BRE, Cabinet Office November 2006.

The existence of the LBRO creates a number of new responsibilities for LA TS services. Namely:

- A duty to have regard to any guidance given to the local authority by LBRO
- A duty to comply with guidance when directed by LBRO
- A duty to have regard to enforcement priorities published by LBRO (see 3.2 below)

These duties, along with the five principles will help in embedding consistent “better” regulation across the country.

The main impact here is that WCC TSS will have to be responsive to the direction and guidance of the LBRO, it is not predicted that this will have a big impact on the service. It is recommended that WCC TSS continues with our close engagement with the development of the office and are open to any guidance forthcoming.

### 3.2 Enforcement Priorities

In the 2007 budget the Government accepted all the recommendations of the Rogers Review<sup>3</sup>. The review evaluated 60 policy areas enforced by local authority Trading Standards and Environmental Health services and proposed 6 national priorities. Namely: -

- Air quality
- Alcohol, entertainment and late night licensing and it’s enforcement
- Food hygiene
- Health in the workplace
- Fair Trading (Trade descriptions, trade marks, misdescription and doorstep selling)
- Animal and public health, animal movements and identification

These priorities have statutory backing and LA’s must have regard to them when allocating resources.

The LBRO will have the ongoing responsibility for reviewing enforcement priorities having due regard to the risks presented by the regulated activity and the effectiveness of enforcement activity in addressing the risks.

The requirement to have regard to the list of priorities will not prevent councils giving weight to local priorities and meeting minimum legislative requirements.

WCC TSS have considered the national priorities when setting service objectives and plans and indeed all appropriate national priorities feature strongly within service plans. The recommendation is to continue to monitor the national priorities and give them the appropriate level of attention during service planning cycles.

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<sup>3</sup> National enforcement priorities for local authority regulatory services, Peter Rogers, March 2007.

### 3.3 Innovation

The LBRO will offer funding to LA's and groups of LA's to support projects to help in the objective of lowering the regulatory burden on business.

It is recognised that there is a lot of good practice within LA's and groups of LA's. The LBRO will use its position and finances to encourage innovative approaches to the provision of LA regulatory services.

For example from 1<sup>st</sup> September 2008 the LBRO will take on responsibility for the Retail Enforcement Pilot (REP). REP was largely developed in Warwickshire and it seeks to reduce the number of retail inspections to compliant business by better coordination, data sharing and risk basing.

It is recommended that WCC TSS engages with LBRO enabling us to pick up on areas of good practice from around the UK. Furthermore it is recommended that WCC TSS alone and in conjunction with our CENTSA (4) (4) Central England Trading Standards Authorities partners promote our own innovative work with the objective of sharing good practice with the LBRO and regulatory services nationwide.

### 3.4 Primary Authority

For many years, Trading Standards services across the country have been operating the voluntary Home Authority Principle. Put simply, any contact between a business and Trading Standards should be conducted through the "Home Authority". For example Warwickshire Trading Standards deal with, amongst others: Aldi Supermarkets; Adams Children's wear and Holland & Barrett. This ensures less complexity and helps with consistency of guidance and enforcement.

It is recognised that this principle offers benefits but it can be argued that due to the voluntary nature of the scheme it has not always been possible to deliver the agreements consistently. RES establishes a statutory footing for the new Primary Authority Partnership scheme (PAP).

Key changes will be:

- LBRO will administer the scheme, registering each PAP
- LBRO will have the power to nominate a LA to be its PA where a business has not been able to strike an agreement
- All businesses operating wider than in just one LA will have the right to ask for a PA
- It is expected that the PAP provisions will come in to force on the 6<sup>th</sup> April 2009
- A requirement to consult before enforcement action is taken will be introduced
- LBRO will provide a referrals system to resolve differences of opinion between LA's
- LA's can potentially charge business for the PAP service
- A PA can work with their business to establish an inspection plan. Other LA's should have regard to this when interacting with this

business at outlets.

N.B. existing Home Authority relationships can exist alongside the introduction of PAPS; there will be no requirement to establish a PAP if not requested by business.

It is recommended that WCC TSS maintains work on the HA principle, including the good practice associated with our mature relationships with local business and that PAP is promoted to them. If required WCC TSS will honour PAP contracts, whether directed by LBRO or requested by local business. In the short term this is unlikely to be a huge impact although elected members will have to be consulted further should there be resource issues associated with the developed PAP scheme. It is further recommended that WCC TSS engages fully with the consultation process around the development of the PAP scheme.

### 3.5 Effective Regulatory Sanctions

The government believes that regulators should have access to effective sanctions that are flexible and proportionate.

RES allows a Minister, by order, to give a regulator access to four new civil sanctions:

1. **Fixed Monetary Penalty (FMP) notices**  
Under which a regulator will be able to impose a monetary penalty of a fixed amount;
2. **Discretionary Requirements**  
Which will enable a regulator to impose, by notice, one or more of the following:
  - a variable monetary penalty (VMP) determined by the regulator;
  - a requirement to take specific steps within a stated period to secure that an offence does not continue or happen again (compliance notice); and
  - a requirement to take specified steps within a stated period to secure that the position is restored, so far as possible to what it would have been if no offence had been committed (restoration notice);
3. **Stop Notices**  
Which will prevent a business from carrying on activity described in the notice until it has taken steps to come back into compliance; and
4. **Enforcement Undertakings**  
Which will enable a business, which a regulator reasonably suspects of having committed an offence, to give an undertaking to a regulator to take one or more corrective actions set out in the undertaking.

The new powers are an alternative to criminal prosecution and it will be for the

regulator to determine the appropriate response to a particular instance of regulatory non compliance.

Within WCC TSS we already have some experience of utilising flexible sanctions in our work with the police on licensing reviews and issuing FMP's. Furthermore WCC TSS has experience with Enterprise Act Undertakings.

WCC TSS will not be awarded sanctions in isolation. There will be a national process to award sanctions to LA regulators.

Longer term this has potential for great benefit in improving the regulatory tool kit at the disposal of WCC TSS. However little impact is envisaged in the short term. It is recommended that WCC TSS engages fully with the consultation process around the development of the flexible sanctions.

### **3.6 Compliance Code**

Regulators are required to have regard to the Regulators Compliance Code, which came into force on 6<sup>th</sup> April 2008, when determining any general policy or principles for gaining compliance with regulation.

The code is framed around the principles of regulatory enforcement from the Hampton Review. Regulators working to these principles should be operating effectively and efficiently, without imposing unnecessary burdens.

Regulators should keep their regulatory activities and interventions under review with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

WCC TSS has already amended our schedule of review and production of key policies to reflect the Compliance Code and actual review is work in progress. It is recommended that WCC TSS continues with this approach. This is low impact and only reflects how we have already been operating.

## **4. Conclusion**

WCC TSS welcomes RES and the opportunity to work with the newly formed LBRO. There is potential for improving the regulatory offering in terms of consistency, lack of duplication and the sharing of good practice locally, as well a more cohesive approach at national level.

Having reviewed WCC TSS in light of this new legislation it is concluded that the impact in the short to medium term will be low. Where changes are required, these will be made with no impact on resources and the approach will be engaging and positive to the LBRO, supportive of the "big picture" potential for positive benefits for Local Authorities; consumers and businesses.

## **5. Recommendations**

- 5.1 It is recommended that WCC TSS continues with our close engagement with



the development of the office and are open to any guidance forthcoming.

The recommendation is to continue to monitor the national priorities and give them the appropriate level of attention during service planning cycles.

It is recommended that WCC TSS engages with LBRO enabling us to pick up on areas of good practice from around the UK.

It is recommended that WCC TSS alone and in conjunction with our CENTSA partners promote our own innovative work with the objective of sharing good practice with the LBRO and regulatory services nationwide

It is recommended that WCC TSS maintains work on the HA principle, including the good practice associated with our mature relationships with local business and that PAP is promoted to them. If required WCC TSS will honour PAP contracts, whether directed by LBRO or requested by local business.

It is recommended that WCC TSS engages fully with the consultation process around the development of the PAP scheme.

It is recommended that WCC TSS engages fully with the consultation process around the development of the flexible sanctions.

It is recommended that WCC TSS continues with the review and production of key policy in light of the compliance code.

**GRAEME BETTS**  
Strategic Director of Adult,  
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Warwick

August 2008