

ACS Response to the Consultation on the Future of LBRO and Extending the Benefits of the Primary Authority Scheme

1. ACS (the Association of Convenience Stores- Annex 1) welcomes the opportunity to respond to this consultation, which seeks views on the future of the Local Better Regulation Office (LBRO) and whether the benefits of the Primary Authority scheme should be extended. ACS represents 33,500 local shops and our member companies include national multiples, symbol groups and independent store owners.
2. Many of our members are challenged by the lack of a consistent enforcement approach across different local authority areas and different enforcement bodies. This lack of consistency can also make it difficult for retailers to source clear and definite advice on what they need to do in order to achieve compliance.
3. In light of these difficulties ACS welcomed the creation of the LBRO and we have worked closely with them to promote better enforcement at a local level. We are members of the Business Reference Panel and have participated in the sub-groups on underage sales and date coding. We have also supported the LBRO's work on creating the Primary Authority scheme.
4. ACS submitted a response to Ministers during the review of LBRO, which was carried out as part of the comprehensive spending review¹. In our response we urged for LBRO to be retained in some form, so that its important functions relating to national enforcement frameworks and Primary Authority schemes, could continue.
5. The Government listened to the views of the business communities and decided to retain the LBRO, with changes to the structure of the current body to ensure that it is streamlined and cost effective. We therefore welcome this opportunity to input into this consultation which explores the future role of the LBRO and its Primary Authority scheme. Please find our comments on the specific issues below.

The Future of the LBRO

6. The consultation outlines the proposed changes to the LBRO governing structure, name and core functions.

Name Change

7. We do not oppose changing the name of LBRO to Better Regulation Delivery Organisation (BRDO), if it is deemed that this is more representative of the new body's function.

Core Functions

8. We support the decision to transfer two of LBRO's core functions, reviewing national framework for regulatory enforcement and ownership of the Primary Authority scheme, to the BRDO. These are the functions which are most important to our membership.
9. It is disappointing that LBRO's other core function, direct service improvement among local authorities, will be removed. The decision to take away LBRO's powers to intervene against harmful practices or inconsistencies at a local level removes a

¹ Please see Annex 2 for a copy of our response

tool that has significant benefits in reducing regulatory harm. We recognise the Government's decision that other agencies, such as the reinvigorated Local Government Group, may be more suitable for taking on this responsibility. We are sceptical that such a take on this function successfully but we look forward to further details on how enforcement services can be improved in the upcoming Enforcement White Paper.

10. In place of the direct service improvement function, the BRDO will be tasked with providing 'advice to central government on its work on regulatory delivery and providing a forum for business engagement at the heart of the regulatory system.' This is a much needed and crucial function. While we recognise that there will be local differences in enforcement, many of these differences are created unintentionally and unnecessarily by unclear Government regulation and ambivalence in the accompanying Guidance. Tackling this uncertainty at the heart of regulation will enable businesses and enforcers to understand the basic requirements needed to ensure compliance.
11. However, while we welcome this new function, it needs to be ensured that BRDO is able to effectively deliver this message across all Government departments. Too often mechanisms to reduce business regulation do not appear to alter Government policy in any meaningful way. We look forward to working with Government on how this new function of the BRDO can be introduced effectively.

Governance

12. The shift from LBRO, an independent body, to the new BRDO which will be situated within Government is significant. It is important that the new Governance structure is developed, so that the BRDO is still representative of business interest and still has the autonomy required to represent any concerns and criticisms strongly to Government.
13. We agree that a Representative Steering Group, with members who represent particular organisations and sectors rather than being appointees in their own right, would be a credible approach. It is crucial to ensure that this board represents a wide range of businesses interest, businesses size and business types. ACS is keen to assist in the forming of this steering group.

Devolved Administrations

14. Devolved administrations clearly have varying degrees of autonomy in a wide range of enforcement areas. While it is unrealistic to expect the BRDO will be able to perform the same function with regard to the devolved administrations, it should continue to argue strongly, when appropriate, about the need for a consistent approach.
15. The proposals regarding Wales and Northern Ireland, to continue the arrangement currently in place with the LBRO, is sensible and an approach we support.
16. Scotland has a greater degree of autonomy. We therefore support the different proposal in relation to Scotland to strive for the creation of a similar body in the region. If a Scottish BRDO is achieved, there needs to be a good relationship and strong communication between the two organisations to help prevent duplication of efforts whenever possible. Knowledge and approach will also have to be closely shared.

Extending the benefits of the Primary Authority Scheme

17. ACS supports the Primary Authority scheme both in principle and in practice. Some of our members have a Primary Authority relationship in place and have found it to bring benefits to their businesses.
18. We welcome the proposals for improving the Primary Authority schemes. These include strengthening the role of inspection plans to allow earned recognition for businesses and looking to extend the number of areas covered by Primary Authority agreements.
19. However to accompany this improvement work, more needs to be done to broaden the eligibility criteria of the scheme, enabling more organisations to participate. Otherwise Government's overhaul of enforcement will only benefit certain types of retailers. Smaller retailers and franchise models will not have the opportunity to have their compliance work recognised, meaning they will be faced with becoming the focus for local enforcement.
20. It is challenging but necessary to consider the way independent businesses and franchise models can benefit from the future expansion of the scheme. We therefore support the proposals to remove the two criteria which currently restrict when a Primary Authority scheme can be put in place. Removing these restrictions will give local authorities and businesses more freedom to operate.
21. The document outlines the possibility of trade associations acting as Primary Authority deliverers. ACS believes this proposal has potential to deliver significant benefits but all sides, central Government, Local Authorities and businesses, must clearly understand the limitations as well as the benefits of working in this way.
22. On one hand, it would be a clear benefit for a trade association to be able to offer their members certified compliance solutions and have a standard inspection plan agreed with their Primary Authority. It would bring real value to their members, as the trade association would be able to offer assured advice and compliance materials which would have to satisfy local enforcers unless there were exceptional circumstances. These benefits would also apply to franchise operators.
23. It would mean that trade associations would have to take a leadership role in the arbitration process between the business, its Primary Authority and the dissenting local authority.
24. It must also be clear what local enforcement agencies would gain from a trade association Primary Authority scheme. The current benefit of the Primary Authority scheme is that each store in that company is closely managed to ensure it follows compliance rules and inspection plans in every way. This guarantee that there will be strict internal management can take the need away for intensive local enforcement.
25. Franchise operators and trade associations do not have the same powers over their members as multiple operators. As a trade association we cannot tell our members what they should do, nor can we police and guarantee that they are doing it. A trade association cannot fill part of the role of the regulator as multiple companies can.

26. The current Primary Authority model would not work if transferred unchanged to trade associations and franchises. There has to be realistic assessment of what trade associations could deliver. We look forward to assisting Government and BRDO on this issue in the future.

Broaden the areas covered by Primary Authority agreements.

27. As mentioned, we fully support the decision to extend the scope of Primary Authority agreements. In particular it will be beneficial extending them to inspection plans.
28. We fully support the proposal to make Primary Authority agreements stronger by obliging enforcers to follow the inspection plans drawn up as part of a Primary Authority agreement. We also support the presumed assumption that all other Local Authority areas agree with the Primary Authority's decision once the agreement has been finalised and that they can only act outside this agreement in exceptional circumstances. While this may mean it is more challenging to reach an agreement, as Local Authorities are likely to monitor new agreements much more closely, it will mean once an agreement has been reached there will be a high level of certainty for the business involved. It strikes a good balance between Local Authority autonomy and business certainty.
29. We also welcome the proposals to extend the areas covered by Primary Authority agreements, in particular extending the measures to The Regulatory Reform (Fire Safety) Order 2005 which will have benefits to our members.
30. We also welcome the proposal to extend the scope of the Primary Authority to aspects of the Licensing Act 2003. There is no doubt that alcohol licensing is an area of significant political interest at a local level and that a number of aspects of tackling alcohol-related harm will require local solutions.
31. This does not mean that regulatory compliance issues such as preventing underage sales cannot be a feature of a Primary Authority scheme. Dealing with underage is an area of operational difficulties and high compliance costs² for businesses. Unlike many aspects of alcohol-related regulation there is a national approach to underage sales with little local discretion. It would therefore be appropriate to extend Primary Authority to under-age sales aspects of the Licensing Act 2003.
32. If you have any questions regarding this submission please contact Edward Woodall on 01252 533014 or Edward.woodall@acs.org.uk

² A recent Local Better Regulation Office report found that members of the Retail of Alcohol Standards Group invested over £3 million in 2009 on the introduction of 'Challenge 25', a form of age-restricted sales compliance,.

ANNEX 1- THE ASSOCIATION OF CONVENIENCE STORES

33. ACS is the trade body representing the interests of over 33,500 convenience stores operating in city centres as well as rural and suburban areas. Members include familiar names such as Martin McColl, Spar and Costcutter, as well as independent stores operating under their own fascia. Our members operate small grocers, off-licence or petrol forecourt shops with between 500 and 3,000 square feet of selling space.

ANNEX 2- LETTER IN SUPPORT OF LBRO

27th September 2010

Ministerial Correspondence Unit
Department for Business, Innovation & Skills
1 Victoria Street
London SW1H 0ET

Dear Minister

Local Better Regulation Office

We are writing to signal to you the value that we get from working with the Local Better Regulation Office. Since its creation the LBRO has provided a key challenge point to those engaged in the enforcement of regulation.

We have welcomed the important interface that the LBRO provides between the business community and the agencies that interact with businesses day-to-day. In particular the work of the LBRO on increasing awareness amongst public servants about the experience of working in business and coping with regulatory burden through the Trading Places scheme has been extremely well received and delivered tangible results.

We also welcome the policy work undertaken by LBRO, for example the recent Age Restricted Sales report highlighting the regulatory threats from unbalanced approach to enforcement and the confusing nature of the rules that businesses have to interpret and apply.

We understand completely the need for reducing government spending and that hard choices need to be made. We do not think that this should include removing the LBRO. An effective LBRO will save money, helping to reduce the cost of enforcement through encouraging smarter practice. It will also stimulate growth as business benefits from a continued focus on reducing the burden of regulatory compliance.

Further to this, as the Government pursues its agenda to localise decision making and provide greater autonomy to regulators at the local level, the LBRO will have a crucial role to play in mentoring authorities to ensure that localism works in a manner complimentary to the regulatory burden agenda.

We ask that you carefully consider our views and that you decide to retain the LBRO.

Yours sincerely

James Lowman

Chief Executive
Association of Convenience Stores