EXPLANATORY MEMORANDUM TO

THE CO-ORDINATION OF REGULATORY ENFORCEMENT (ENFORCEMENT ACTION) ORDER 2009

2009 No. 665

THE CO-ORDINATION OF REGULATORY ENFORCEMENT (REGULATORY FUNCTIONS IN SCOTLAND AND NORTHERN IRELAND) ORDER 2009

2009 No. 669

THE CO-ORDINATION OF REGULATORY ENFORCEMENT (PROCEDURE FOR REFERENCES TO LBRO) ORDER 2009

2009 No. 670

1. This Explanatory Memorandum has been prepared by the Department for Business Enterprise and Regulatory Reform (BERR) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1. Three instruments are being laid. These instruments relate to Part 2 of, and Schedule 4 to, the Regulatory Enforcement and Sanctions Act 2008 (the Act). The Act contains a number of order-making powers which allow the Secretary of State to make statutory instruments regarding the operation of the Primary Authority scheme.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1. None.

4. **Legislative Context**

4.1. The Primary Authority scheme ("the Scheme") was established under Part 2 of the Act. The Scheme will address many of the concerns expressed regarding local authority regulatory enforcement, including inconsistent advice, wasted resources, duplication of effort and the absence of an effective dispute resolution mechanism when two local authorities cannot agree on a regulatory approach. The Scheme is designed to provide more co-ordinated, consistent and proportionate regulatory enforcement for those organisations that operate across more than one local authority. In addition, it will assist local authorities in increasing their operational efficiency and effectiveness.

5. **Territorial Extent and Application**

5.1. These instruments apply to all of the United Kingdom.

5.2. The Scheme has limited application in Scotland and Northern Ireland because of the devolution settlement. The Scheme applies in Scotland and Northern Ireland in relation to local authority trading standards, environmental health, and some fire safety functions where they are exercised under legislation where legislative competence has not been devolved to either the Scottish Executive or the Northern Ireland Assembly.

5.3. In Scotland, the regulatory functions carried out by local authorities in respect of matters that remain the responsibility of the UK Government are within the scope of the Scheme. Broadly, these are functions in respect of:

- Consumer and product safety;
- Consumer credit;
- Explosives licensing;
- Fair trading;
- Health and safety; and
- Metrology.

5.4. In Northern Ireland, the regulatory functions carried out by local authorities (district councils) in respect of matters that remain the responsibility of the UK Government are within the scope of the Scheme. In brief, these are functions in respect of:

- Consumer and product safety
- Implementation of some European technical standards legislation.

6. **European Convention on Human Rights**

6.1. As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. **Policy background**

7.1. Businesses, charities and other organisations that operate across more than one site can be subject to regulation and enforcement action by multiple local authorities. As a result, these organisations can find themselves subject to inconsistent regulatory enforcement.

7.2. Attempts have been previously made to address this problem through voluntary arrangements – such as the Home and Lead Authority schemes operated by the Local Authorities Coordinators of Regulatory Services and the Health and Safety Executive respectively. These voluntary schemes have brought benefits to regulators, businesses and consumers. However, these benefits have not been as wide ranging as they could be, as it has not always been possible to deliver the agreements consistently or effectively. Subsequently, inconsistent regulatory enforcement remains a problem.

7.3. Part 2 of the Act establishes a statutory Scheme, which is specifically designed to build on the successes and address the deficiencies of these voluntary schemes. The Scheme allows businesses, charities or other organisations that operate across more than one site, to enter into a partnership with a local authority for it to become a Primary Authority. A Primary Authority is a local authority registered by the Local Better Regulation Office (LBRO) as having responsibility for giving advice and

guidance on trading standards, environmental health, and some fire safety functions to a particular business or organisation that is subject to regulation by more than one local authority.

7.4. Where LBRO has registered a Primary Authority, any other local authority (known as an 'enforcing authority' for the purposes of the Scheme) that proposes to take enforcement action against an organisation must contact the Primary Authority first. The Primary Authority can block the proposed enforcement action if it believes that the proposed action is inconsistent with advice or guidance that it has previously given.

7.5. The Scheme is designed to ensure that local authorities communicate early, agree a regulatory approach, and are consistent and co-ordinated in the way that they regulate organisations that operate across more that one local authority.

7.6. Where a local authority and Primary Authority are unable to agree a regulatory approach, a dispute can (with the consent of the LBRO) be referred to LBRO for determination. It is required to consider whether:

> i. The proposed enforcement action is inconsistent with advice or guidance that the Primary Authority has given to the organisation concerned; and
>
> ii. The advice or guidance of the Primary Authority was 'correct' and 'properly given'. This is to help ensure that proposed enforcement actions are not blocked on the basis of inconsistency with advice or guidance that should not have been given.

7.7. During this process, LBRO must consult any relevant regulator and may consult any other person that it thinks is appropriate.

7.8. If, after consideration, LBRO is satisfied that the proposed enforcement action is inconsistent with the advice or guidance given by the Primary Authority to the regulated organisation, and that the advice was correct and properly given, it must direct that enforcement action should not be taken.

7.9. LBRO must reach its decision within 28 days of giving consent to the reference being made.

<u>The instruments</u>

7.10. The instruments set out further detail to enable the operation of Part 2 of the Act.

7.11. The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 specifies what is to be regarded as enforcement action for the purposes of the Scheme. This is important, as it is the taking of an "enforcement action" which triggers the requirement to consult the Primary Authority before taking that enforcement action forward. The Order also sets out "exclusions" from the requirement to consult. Two enforcement actions appear in both Articles 2(1) and 3; an abatement notice under section 80 of the Environmental Protection Act 1990 and

emergency prohibition notices under the Food Safety Act 1990, and Feed and Food Hygiene and Enforcement Regulations.

7.12. This may appear anomalous. However, ensuring information flow between local authorities as regards enforcement action being taken is a key component of the Scheme. If an enforcement action is excluded from the requirement to consult the Primary Authority before taking the action, the Primary Authority must be informed of that action as soon as reasonably possible after taking it (section 29(2) of the Act). This ensures that the Primary Authority is aware of issues with the business for which it is Primary Authority, and may allow it to issue additional advice and guidance to ensure compliance of the business in the future.

7.13. The Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009 makes provision for the application of the Scheme to local authorities in Scotland and Northern Ireland. As noted in the Act, the Scheme only applies to local authority functions which relate to matters which are devolved or not transferred. The Schedules to the Order set out the relevant legislation under which regulatory functions are carried out which are considered reserved, and in relation to which the Scheme will operate in Scotland and Northern Ireland.

7.14. The Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 makes provision for the procedure to be followed by the parties to a reference to LBRO for a determination under Schedule 4 to the Act as to whether or not a proposed enforcement action should be taken. It sets out the information to be provided by each party when the enforcing authority, the regulated person or the Primary Authority makes an application; time limits for making an application; the making of representations; and withdrawal of applications.

7.15. In the case of a reference being made by a regulated person or the primary authority, under Schedule 4, LBRO must direct the enforcing authority not to take the proposed enforcement action if it is satisfied as to all of the following three matters:-

- that the enforcement action is inconsistent with advice or guidance previously given by the Primary Authority (generally or specifically),
- that the advice or guidance was correct, and
- the advice or guidance was properly given by the Primary Authority.

The regulated person or Primary Authority making the reference is therefore required to state why it considers that all three of these matters are satisfied.

7.16. An enforcing authority making a reference is, on the other hand, attempting to overturn a direction from the Primary Authority that it may not go ahead with the proposed enforcement action. Under Schedule 4, LBRO must confirm the direction if it is satisfied as to all of the three matters listed in the preceding paragraph. Therefore the enforcing authority needs only to argue that one of the following is the case for LBRO to be unable to confirm the direction:-

- that the enforcement action is consistent with the advice or guidance previously given by the Primary Authority (generally or specifically);
- that the advice or guidance was incorrect; or
- that the advice or guidance was not properly given by the Primary Authority.

8. **Consultation outcome**

8.1. The Department consulted on the instruments between September and December 2008 and the Government response to the consultation has been recently been published. Ninety responses were received during the 12-week consultation period. The response summarises the responses to the consultation and how the Department amended our policy. It is available from http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/sanctions-bills/page44047.html

9. **Guidance**

9.1. The department issued guidance to accompany the Act in July 2008.[1] This guidance provided details about the Scheme. In addition, LBRO is issuing statutory guidance on how the Scheme will work and its role within the Scheme. It is doing so under Section 33 of the Act. This guidance was consulted on from December 2008-Feburary 2009. LBRO's response to its consultation and the final guidance on the Scheme will be available in April 2009 via www.lbro.org.uk

10. **Impact**

10.1. An Impact Assessment has been prepared for this instrument and is attached to this memorandum. It was revised following public consultation on the statutory instruments.

11. **Regulating small business**

11.1. The Scheme is voluntary for business to choose to opt-into. If small and medium-sized businesses decide to enter into the Scheme they will enjoy the benefits of a more consistent regulatory approach amongst local authorities and reducing the burdens imposed on businesses by local authorities.

12. **Monitoring & review**

12.1. A review of the operation of LBRO and the Scheme will take place three years after LBRO became a statutory body, in October 2011.

13. **Contact**

13.1. Rachel Holloway at the Department for Business Enterprise and Regulatory Reform telephone: 0207 215 0328 or email: rachel.holloway@berr.gov.uk can answer any queries regarding the instrument.

Department for Business Enterprise and Regulatory Reform
March 2009

[1] Regulatory Enforcement and Sanctions Act 2008 Guidance to the Act, July 2008. Available from **http://www.berr.gov.uk/files/file47135.pdf**

IMPACT ASSESSMENT

Summary: Intervention & Options		
Department /Agency: BERR	**Title: Impact Assessment of Statutory Instruments Implementing the Primary Authority Scheme**	
Stage: Final	**Version:** I	**Date: 5th March 2009**
Related Publications: Impact Assessment - Regulatory Enforcement and Sanctions Bill; Impact Assessment - Consultation on the Primary Authority Scheme; Regulatory Enforcement and Sanctions Act 2008; Guidance to the Act		

Available to view or download at: http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/sanctions-bills/page44047.html

Contact for enquiries: Martin Dannhauser **Telephone: 020 7215 0824**

What is the problem under consideration? Why is government intervention necessary?

The diffuse structure of local authority regulatory services means that businesses frequently face problems associated with inconsistency of enforcement. Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (the Act) created the framework for the Primary Authority scheme, which is designed to ensure coordinated, consistent and proportionate local authority regulatory enforcement for those organisations that operate across more than one local authority. Part 2 of the Act contains a number of order-making powers which are necessary to ensure the practical effectiveness of the scheme. This Impact Assessment details the application of the Primary Authority scheme.

What are the policy objectives and the intended effects?

Part 2 of the Act allows businesses, charities or other organisations that operate across more than one site, to enter into a partnership with a local authority for it to become a Primary Authority. The statutory instruments (SIs):

- make provision for the application of the scheme to local authorities in Scotland and Northern Ireland;

- define what is and is not to be regarded as 'enforcement action' for the purposes of the Primary Authority scheme and create exclusions from the requirement to consult with a Primary Authority, in particular in circumstances where enforcement action is needed urgently to prevent serious harm to human health, the environment or the financial interests of consumers;

- make further provision regarding the dispute resolution procedure (known as determination) that will be carried out by the Local Better Regulation Office (LBRO).

What policy options have been considered? Please justify any preferred option.

The SIs implement policy intentions set out in the Act, which are essential to the effective operation of the Primary Authority scheme.

No other alternatives are proposed, but the Impact Assessment makes it clear where the approach that has been outlined here differs from the consultation.

This updated Impact Assessment reflects changes made in response to the public consultation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Act commits the Government to a review of LBRO "as soon as practicable after the end of the period of three years beginning with the day on which this section comes into force".[2] This is October 2011.

[2] ***The Regulatory Enforcement and Sanctions Act 2008,*** **Section 17. http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080013_en.pdf**

Ministerial Sign-off

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Stephen Carter

……. ……Date: 5th March 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: SIs Implementing the Primary Authority Scheme

COSTS

ANNUAL COSTS	
One-off	**Yrs**
£ 3.7m - 5.9m	5
Average Annual Cost (excluding one-off)	
£ 15.5m - 26.7m	

Description and scale of **key monetised costs** by 'main affected groups'

Costs for business £ 5.8m - £9.2 m

Costs for local authorities - £9.7m - £17.5 m

Total Cost (PV) **£ 161 m – 276 m**

Other **key non-monetised costs** by 'main affected groups'

Business: cost recovery by LBRO where the business chooses to make a referral to LBRO.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 1.7m - 2.7 m	
Average Annual Benefit (excluding one-off)	
£ 29.2m - 80.2m	

Description and scale of **key monetised benefits** by 'main affected groups'

Benefits for business: £18.9 m - £59.4 m

Benefits for local authorities if businesses choose to opt into the Primary Authority scheme: £10.3 million - £20.8 million

Total Benefit (PV) **£ 298 m – 815 m**

Other **key non-monetised benefits** by 'main affected groups'

Local Authorities: Economic and development benefits of hosting a Primary Authority partnership, Inspection Plans for business.

Key Assumptions/Sensitivities/Risks Number of Partnerships adopted and the rate of take up; hours' work entailed in apsects of Primary Authority schemes; extent to which local authorities use their power to recover costs from business.

Price Base Year 2008	Time Period Years 15	**Net Benefit Range** (NPV) **£ 137- 597 million**	**NET BENEFIT** (NPV Best estimate) **£ 338 million**

What is the geographic coverage of the policy/option?			UK-wide	
On what date will the policy be implemented?			2009	
Which organisation(s) will enforce the policy?			n/a	
What is the total annual cost of enforcement for these			£ n/a	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **0**	Small **0**	Medium **0**	Large **0**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of	£ 0	Decrease of	£ 0	**Net Impact**	**£** 0

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

Introduction

1. **This Impact Assessment accompanies the SIs that make provision relating to the Primary Authority scheme established under Part 2 of the Act. The SIs will implement the Primary Authority scheme. This Impact Assessment accompanies the SIs and updates, where relevant, the figures given in the Impact Assessment that accompanies the consultation.**

2. **The scheme will address many of the concerns expressed regarding local authority regulatory enforcement, including: inconsistent advice, wasted resources, duplication of effort and the absence of an effective dispute resolution mechanism when two authorities cannot agree on a regulatory approach. The scheme is designed to provide more coordinated, consistent and proportionate regulatory enforcement for those organisations that operate across more than one local authority and it will assist local authorities in increasing their operational efficiency and effectiveness.**

3. **Part 2 and Schedule 4 of the Act, include a number of order-making powers which allow the Secretary of State to make SIs which set out the detail of how the Primary Authority scheme will operate. The Government has consulted on the content of these SIs, and this Impact Assessment deals with the likely costs and benefits associated with these.**

4. **LBRO was established as a statutory corporation under Part 1 of the Act and it became fully operational in October 2008. It will have responsibility for the oversight and administration of the scheme.**

Background – The Primary Authority Scheme

5. **The Primary Authority scheme gives organisations that are regulated by more than one local authority (these are most likely to be businesses, but could also be charities or not-for-profit organisations) access to a Primary Authority partnership with a local authority. A local authority can only be a Primary Authority for a particular organisation if it is nominated by LBRO to carry out this role. LBRO may nominate a local authority to act as a Primary Authority where a local authority and an organisation have already agreed in writing to a partnership, or where an organisation has requested that LBRO nominate a local authority to be its Primary Authority.**

6. **A nominated Primary Authority is responsible for giving the organisation that it partners advice and guidance regarding the relevant function or functions which the partnership is designed to cover. The relevant functions that a Primary Authority partnership can cover are: local authority trading standards, environmental health, licensing and fire safety. So, for example, a business could have a Primary Authority that is responsible for giving it advice and guidance regarding local authority environmental health and fire safety functions. Alternatively, a charity could have a Primary Authority that is responsible for giving it advice and guidance regarding local authority trading standards functions.**

7. **The scheme also makes provisions regarding consultation that must take place between local authorities when a Primary Authority is involved. Where a local authority other than the relevant Primary Authority (described in the Act as "enforcing authorities") proposes to take enforcement action against an organisation with a Primary Authority, the enforcing authority must notify the relevant Primary Authority first. The Primary Authority will then have the right to direct the enforcing authority not to take the proposed enforcement action if it believes that it is inconsistent with advice or guidance that it had previously given the organisation.**

8. **Where a proposed enforcement action has been referred to a Primary Authority and the parties involved cannot reach an agreement as to the action that should be taken, the enforcing authority, the Primary Authority or the organisation involved can refer the action to LBRO for determination.**

Policy Objective

9. **Part 2 and Schedule 4 of the Act contain four order-making powers which allow the Secretary of State to make SIs that elaborate on key aspects of the scheme outlined in paragraphs 5-8 above. These powers are listed in the table below.**

Reference	Purpose of the Order-making power	Policy objective
Section 24(1), Regulatory Enforcement and Sanctions Act 2008	**To define "relevant function" in relation to local authorities in Scotland and Northern Ireland.**	**To apply the Primary Authority scheme to local authorities in Scotland in respect of reserved matters and Northern Ireland in respect of non-transferred matters (i.e. to apply the scheme to local authorities in Scotland and Northern Ireland in respect of matters that have not been devolved to the Scottish Executive or the Northern Ireland Assembly).**
Section 28(6), Regulatory Enforcement and Sanctions Act 2008	**To define those activities undertaken by local authority regulatory services that should, or should not be regarded as enforcement action for the purposes of the Primary Authority scheme.**	**To ensure that routine activities of local authority regulatory services such as giving advice, inspecting and gathering intelligence can be carried out without the need for an enforcing authority to contact the relevant Primary Authority.**
Section 29, Regulatory Enforcement and Sanctions	**To exclude those activities undertaken by local authority regulatory services which, while they should be regarded as enforcement action, should**	**To ensure that where necessary local authorities can take enforcement action immediately without prior consultation with the relevant**

Reference	Purpose of the Order-making power	Policy objective
Act 2008	**also be carried out without delay.** **To specifically exclude those circumstances where:** **- enforcement action is required urgently, or in the opinion of the enforcing authority is required urgently, to avoid a significant risk of harm to human health or the environment (including the health of animals or plants) or the financial interests of consumers;** **- the application of the consultation provisions in Part 2 of the Act would be 'wholly disproportionate'.**	**Primary Authority. For example, when a local authority is taking enforcement action against a business so as to address a serious threat to human health or the environment.**
Paragraph 6(1) of Schedule 4 Regulatory Enforcement and Sanctions Act 2008	**To set out procedures to be followed when a proposed enforcement action is referred to LBRO for determination.**	**To allow for effective and efficient decision-making by LBRO.**

10. **These SIs are key to the effective functioning of the Primary Authority scheme.**

Methodology

11. **The original Impact Assessment accompanied the draft Regulatory Enforcement and Sanctions Bill (the Bill), the revision of which accompanied the consultation on the draft SIs.[3] Therefore, this Impact Assessment makes use of the evidence base from the previous two consultations.**

12. **The consultation specifically asked, "Do you believe the assessment of costs and benefits in the Impact Assessment are realistic? If not, is there any further evidence that you can provide that should be taken into account?". This gave respondents the opportunity to give opinions on the assumptions we used in quantifying the impact of the SIs.**

[3] ***Consultation of the Primary Authority Scheme,*** **September 2008 http://www.berr.gov.uk/files/file47801.pdf.**

13. **Consequently, this Impact Assessment draws on the responses given, and revisions have been made where consultees have given appropriate evidence.**

Costs and Benefits of the Primary Authority Scheme: General

14. **The following text draws extensively on the Impact Assessment that accompanied the consultation on the Primary Authority Scheme. The key assumptions used in this Impact Assessment are set out at paragraphs 43-59 below.**

Background

15. **It is estimated that there are 30,000 businesses operating across local authority boundaries in the UK.[4] However, it is difficult to estimate how many businesses will enter into a Primary Authority partnership.[5] Many businesses that operate across local authority boundaries will only operate across two or three local authorities and may not wish to enter into a Primary Authority partnership as a result. Some other businesses may not find the scheme cost effective.**

16. **We have consulted on two occasions on the likely number of registered partnerships that will exist after five years. The Impact Assessment for the draft Bill suggested that 900 Primary Authority partnerships would be in place by 2014. Few alternative figures were offered when the Bill was subject to consultation. However, some responses to the Primary Authority consultation questioned whether this number of partnerships would be achieved. As the exact amount will only be known in due course, and the figure is open to conjecture, we feel it prudent to use a range to capture the sensitivity in the analysis. 900 partnerships set up by 2014 will be the mid-point, but the range of 700-1100 is used in this Impact Assessment. The rate of uptake remains constant throughout the range.**

17. **We estimate that partnerships will be developed with organisations that operate across an average of 200 local authorities each.[6]**

Businesses

Costs of the scheme for Business

18. **There will be some start up costs involved for businesses developing a new partnership with a local authority. This is likely to amount to a few days' liaison with the authority concerned, above and beyond the amount of**

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[4] Source: *Inter Departmental Business Register*, March 2006.

[5] While any organisation that operates across more than one local authority can enter into a Primary Authority partnership, the vast majority of organisations that will do so will be businesses. For this reason, the analysis of the costs and benefits of the Primary Authority scheme focuses on the costs and benefits to business, as well as those to local authorities.

[6] This assumption was modified upwards from the 130 in the Impact Assessment for the Bill, which reflected responses to that consultation that the number of sites would be considerably larger. However, many schemes will be purely local or regional in scope, and this figure therefore falls short of the 450 local authorities within the scope of the scheme.

routine contact which is necessary under existing arrangements. Throughout this assessment, we have adopted the 'senior manager' hourly tariff taken from Annual Survey of Hours and Earnings (ASHE) – Results 2008. This updates our previous figure taken from the Better Regulation Executive Administrative Burdens Measurement exercise in 2005/6. We estimated that this would involve approximately three days' work, up from two days in the Bill consultation. Some respondents noted that they would expect to spend more time setting up the partnership and we accept that this is potentially true for larger businesses. However, we believe three days represents the average for all Primary Authority partnerships. Therefore, the total cost to business of setting up a partnership will be costed at £489.[7] For the 700-1100 partnerships, this would mean approximately £0.3 million to £0.5 million in one-off costs for business.[8]

19. **The annual costs for managing the partnership with one Primary Authority will be greatly reduced compared to the annual costs associated with managing relationships with many different local authorities as is the current situation. However, we feel that these are difficult to quantify, and for prudence, we will assume that the overall cost of managing local authority relationships will not be reduced as a result of entering into a Primary Authority partnership.**

Cost recovery

20. **The Act allows primary authorities to recover the costs of operating a partnership from the business involved. The relevant local authority cost is, in effect, directly transferred to the business.[9] We estimated in the Impact Assessments that accompanied both the draft Bill and the consultation on the draft SIs that this will mean an overall cost to business of up to £7.5 million. However, we now estimate that this cost will be between £5.8 million and £9.2 million per annum, reflecting the range of partnerships. Just under £7.5 million remains the mid-point and our most likely scenario. This is based on our estimate of the relevant costs to the local authority, which are set out at paragraph 32 below.**

Benefits of the scheme for Business

21. **Enforcing authorities will be required to contact the relevant Primary Authority before taking enforcement action against a business. The intent is to create greater certainty and consistency for businesses operating across more than one local authority. Informal consultation with businesses of different sizes has shown that losses resulting from contradictory advice can be as high as £100,000 per annum. This could be due to wasted stock or wasted planning time. Including the associated**

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[7] The 'senior manager' tariff has been revised upwards from £16.23 per hour in the Primary Authority consultation to £21.75. Source: ONS Annual Survey of Hours and Earnings (ASHE) - 2008. http://www.statistics.gov.uk/downloads/theme_labour/ASHE_2008/2008_occupation.pdf.

[8] This is based on three days of 7.5 hours at the 'senior manager' rate of £21.75 for between 700 and 1100 Primary Authority partnerships.

[9] This is an estimate and should in no sense be taken as a basis for charging on particular schemes. The costs of individual schemes will vary widely, reflecting factors like the size of the business, the number of local authorities involved, and the business' level of compliance with the underlying regulations.

benefits of the Primary Authority scheme, such as savings in potential court costs as a result of LBRO's determination process, [10] and an increased confidence in planning, we have assumed – conservatively – that LBRO will provide a net saving to each business taking part in the scheme of £15,000 per incident of conflicting advice.[11] Following research and informal consultation, we suggested that a range of such incidents from two to four per partnership would occur.[12] We have since broadened the scope of enforcement action that was proposed in the consultation to capture enforcement undertakings, simple cautions and a specific type of warning letter.[13] Therefore, there is a case for increasing this range. For prudence, however, we have chosen not to do so. We therefore estimate that the annual saving to business would range from between £18.9 million and £59.4 million annually.[14]

22. **The Primary Authority can also work with its partner business to prepare a national Inspection Plan. This would give guidelines to other councils regarding the way the business ought to be inspected in their authorities to minimise unnecessary checks and tests. Inspection Plans, where they are produced, will assist with risk assessments of local businesses and in the better targeting of local authorities' resources. Businesses will benefit as they will have an input into the development of the national plans that set out the regulatory approach that they will receive from all local authorities. Once an Inspection Plan has been published, a local authority must have regard to the plan when inspecting the business. The local authority should satisfy this requirement through ensuring that contact with the business is in accordance with the Inspection Plan. A local authority can only deviate from a plan where there is an evidenced need for doing so, which relates to local complaints, local intelligence or particular local needs. There will be a small cost to business in the development of the plans. Although we believe the benefits will outweigh the costs, for prudence we have not quantified the potential net benefits to business.**

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[10] The scheme includes provision for a determination process if a local authority and Primary Authority are unable to agree on a regulatory approach. In these situations, a proposed enforcement action can be referred to LBRO for determination.

[11] DTI research suggested that businesses found that losses ranged between a few thousand and, in some cases, as much as £100,000, and that these would occur two to four times a year. http://www.dti.gov.uk/files/file37268.pdf The assumption here – that a typical incident will cost a business £15,000 – draws on this work and discussions with business throughout the consultation on the draft Bill.

[12] DTI research indicated that cases of inconsistency would typically happen two to four times a year. The consultation on the draft Bill did not elicit any alternative figures in the formal response and the Primary Authority consultation brought about a similar response. Further discussions with a number of businesses throughout the consultation process have confirmed that losses on this scale and with this level of frequency are common. This figure reflects the experiences of businesses currently in voluntary Home / Lead partnerships. Where a business enters a Primary Authority partnership without having been involved in the voluntary schemes beforehand, the benefits of increased consistency are likely to be larger than those given here.

[13] Please see the Government *response to the consultation on the Statutory Instruments* available from http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/sanctions-bills/page44047.html

[14] That is, two to four incidents per year at £15,000 each for between 700 and 1100 partnerships. The total figures are likely to be higher. A small adjustment downwards (of 10%) from the highest possible savings has been made to reflect the fact that while the statutory contact provision will resolve many issues in line with the initial advice given to the firm, LBRO will not always agree with the Primary Authority in the few cases that will go to determination, so that some of the costs will remain. This is likely to be an underestimate, as it reflects the position of businesses already involved in voluntary schemes; benefits for those with a new partnership are likely to be considerably greater. The scheme is also likely to bring wider benefits in terms of information and intelligence sharing beyond the strict terms of the statutory requirements.

Local Authorities

Costs and Benefits for Local Authorities

23. **Local authorities form the other group which derive the most costs and benefits from the Primary Authority scheme. While the scheme will bring some costs to those authorities that act as a Primary Authority, the effect of more systematic communication between local authorities and efficient dispute resolution by LBRO will be a reduction in the time and resources dedicated by all other local authorities to regulating those organisations involved in the Primary Authority scheme. The overall savings resulting from this are likely to be considerable.**

24. **Other aspects of LBRO's work, including its role in setting national priorities for local authority regulatory services, will support better communication between, and a more strategic approach amongst, central government, national regulators and local government. This will reduce the burdens experienced by local authorities when implementing the policies of central government and national regulators.**

25. **The following data and assumptions were consulted on as part of the consultation on the draft SIs on Primary Authority, and they are used throughout this part of the Impact Assessment:**

    - **There are approximately 450 local authorities with enforcement responsibilities across the UK;**
    - **The average hourly cost of the work of a Trading Standards or Environmental Health Officer are approximately £27.75; [15]**
    - **Businesses operating across more than one local authority operate in, on average 200 local authorities;**
    - **There will be between 700 and 1100 Primary Authority partnerships after five years of the scheme's operation.**

Costs

26. **The evidence regarding the cost of administering existing voluntary partnerships is not consistent; much relates to experiences with the small number of firms with the largest national presence. Our estimate of costs must reflect the whole range of businesses that might be involved in the Primary Authority scheme, the majority of which operate on a smaller scale.**

[15] There was a consensus amongst local authorities that the figure in the initial Impact Assessment for the draft Bill that was consulted on in May 2007 was too low (£18.50). Therefore the figure was revised upwards by 50% in the Impact Assessment which accompanied the consultation on Primary Authority SIs which was published in September 2008. The revised figure of £27.75 represents additional marginal salary and on-costs involved and covers the increase between 2007 and 2008. It does not include overheads which would be incurred in any case like building and IT costs. Two respondents noted that the average hourly cost of work in London would be higher than the revised figure, which we accept. However, we have used an average figure that applies across the country.

Start up costs

27. **We estimated that setting up a Primary Authority partnership would involve 90 hours of a single officer's time.[16] This includes setting up an Inspection Plan, which may be produced where a Primary Authority identifies that this would assist other local authorities in the risk assessment of premises, or in allocating resources within inspections. This equates to a cost of up to £2500 per scheme.[17] In total, 700 new schemes would cost local authorities approximately £1.7 million, while 1100 new schemes would cost £2.7 million. We expect the majority of these costs to be spread across local authorities over at least five years. As noted in the Act, costs incurred by a local authority acting as a Primary Authority can be recovered from the business on a cost recovery basis. For the purposes of this IA we assume that the option to claim full cost recovery will be taken up.**

Annual costs for enforcing authorities

28. **The main impact on enforcing authorities will be cost of notifying enforcement actions to primary authorities. Notifications (or referrals) take place where enforcing authorities refer complaints regarding a business to the relevant Primary Authority for it to follow-up with its partner business. Referrals form part of the statutory Primary Authority scheme. Partnerships set up under the provisions in the Act may well have a referrals component but these will be purely voluntary and the associated costs and benefits are not, therefore, dealt with here. However, experience with existing schemes does help establish the likely scale of work that will be required under the Primary Authority scheme. Research undertaken by the then DTI and our own discussions with local authorities established that there are considerable variations in the number of referrals that need to be processed in a year. Officers supporting some partnerships have to field as many as 300 referrals in a year; in other cases only a handful of cases were referred.[18]**

29. **The Primary Authority scheme is narrower in scope than the existing referrals-based schemes and the requirement to consult the Primary Authority only has effect where an enforcing authority proposes to take enforcement action against a business with a Primary Authority. Local authority trading standards, environmental health, licensing and fire safety services initiate a large number (tens of thousands at least, depending on definitions)[19] of enforcement actions in a year. Some of these will be against businesses that operate in only one local authority and will not, therefore, have access to the Primary Authority scheme. Some of them will relate to private citizens who will not have access to the scheme. For the purposes of the Impact Assessments for both the draft Bill and the**

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[16] The estimate put forward in the Primary Authority consultation was 75 hours, which is two weeks' full time work. That was based on discussions with local authorities operating a range of schemes and went unchallenged in the consultation on the Bill. However, in light of the response to the Primary Authority consultation, we feel it is appropriate to revise the figure upwards by two days, to 90 hours. This revision includes the potential start up costs associated with producing an Inspection Plan.

[17] 90 hours of a single officer's time at the average hourly cost of £27.75.

[18] Source: discussion with business representatives and DTI research published at: http://www.dti.gov.uk/files/file37268.pdf

[19] From CIPFA statistics for 2003-4, as used by Hampton Report.

consultation on the Primary Authority scheme, we assumed that there will be between 50-75 notifications per partnership per year. However, as we have broadened the scope of 'enforcement action' proposed in the consultation so that it now includes enforcement undertakings, simple cautions and a specific type of written warning, we believe it is necessary to revise this figure up to 60-85 incidents per partnership year. As noted in paragraph 21, we believe that these extra referrals will increase the amount of conflicting advice captured and resolved by the scheme, therefore making it more effective. However, for prudence, we have decided not to revise up the number of incidents of conflicting advice that are resolved by the scheme.

30. **The enforcing authority will need to provide the Primary Authority with information about the proposed action, but this information is what any local authority would normally have to collect at present in order to take formal action. The majority of these notifications to the Primary Authority would be routine and reflecting this, we estimated that these will take three hours' additional work for the enforcing authority above and beyond the work that already goes into enforcement in any case. This figure has not been altered in light of the consultation responses. The result would be an annual cost to the enforcing authority of between £3.5 million and £7.8 million.[20]**

31. **In the case that an enforcing authority wants to take an enforcement action against a business but is blocked from doing so by the relevant Primary Authority, it may refer the case to LBRO for determination. We expect that LBRO determination in disputes between primary authorities and enforcing authorities will happen in a very small number of cases. The Primary Authority consultation assumed an average cost of one week's officer time per local authority per year. On that basis, we anticipated that costs for local authorities for referring a case to LBRO for determination should not exceed £500,000.[21] This figure was not questioned in the response to the consultation. However, due to the range of primary authorities we are now allowing for, it follows that this figure must be adjusted for the different amount of partnerships entered into. We have used the same proportion of partnerships as in the consultation. Therefore, we expect the enforcing authority costs due to determination to range from just under £400,000 per annum for 700 partnerships and up to £600,000 for 1100 partnerships. The mid-figure, for 900 partnerships, is just under £500,000. LBRO will also incur costs but these have not been considered here as they formed part of the LBRO Impact Assessment.**

Annual costs for the Primary Authority

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[20] This range is wide due to account for the different scenarios that need to be taken into account. It is between 700 partnerships generating 60 'triggers' each (at the lowest level), and 1100 partnerships generating 85 'triggers' each (at the highest), necessitating three hours' work at the local authority tariff set out above. The Bill consultation revealed a consensus amongst local authorities that the half-hour originally assumed was unrealistic. However, we would not expect the notification process between the enforcing and Primary Authority to require significantly more information-gathering than is already required for an enforcement action. The time involved reflects the need for meaningful information exchange between enforcing authority and the Primary Authority.

[21] In the Primary Authority consultation, 450 local authorities were expected to spend one week of time on determination. The figure was calculated by 37.5 hours at the hourly tariff of £27.75 set out above across the 450 local authorities. We include a range to reflect the range of Primary Authority partnerships. Figures were rounded to the nearest £100,000.

32. **The Primary Authority will have an ongoing advisory function in relation to the business. Often, this would be an important part of its routine relationship with the business in the ordinary course of events, but under the Primary Authority scheme this work will include follow up from statutory contacts by enforcing authorities, including input to LBRO for determination cases. We assume that this will entail an additional 300 hours' officer time per year per partnership (approximately one sixth FTE).[22] This would entail a total cost to primary authorities of between £5.8 million and £9.2 million.[23]**

Local Authority Benefits

Hosting a Primary Authority Scheme

33. **The benefits of running a Primary Authority scheme are considerable and include the wider economic advantages that come to the local area through the existence of a strategic partnership with a major firm (which is an important element of the "place shaping" vision for local authority services set out in the Local Government White Paper).[24] Within regulatory service departments, the benefits also include development opportunities for local staff given the opportunity to engage in ongoing work with a major business. We have not sought to quantify these benefits, but they should be taken into account when considering the overall impact of the Primary Authority scheme.**

34. **It should be noted that the provision for primary authorities to recover costs from business will directly offset the total cost of administering the scheme: i.e. a transfer of between £5.8 million and £9.2 million, as set out in paragraph 32 above.[25]**

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[22] The workload of existing schemes varies considerably. This is based on discussions with authorities hosting multiple voluntary partnerships, which suggest a typical range of between 0.1 – 0.25 FTE for an 'average' scheme. Some will involve substantially more work; more will involve substantially less. The figure is intended to include any additional work involved in preparing and publishing Inspection Plans (see paragraphs 31 and 39).

[23] 300 hours at the local authority tariff of £27.75 set out above for each of the 700-1100 partnerships.

[24] *Strong and prosperous communities: the Local Government White Paper*, 2006, pp 5-21.

[25] There is a risk that some costs will not be recovered in a situation where a business ceases to trade. The Government expects that LBRO will continue to monitor the impacts of the scheme.

Enforcing Authorities

35. **We anticipate that the functions carried out by the Primary Authority will have quantifiable benefits for enforcing authorities which will be achieved through the release of resources. All local authorities will benefit from the application of the expertise of the Primary Authority which will be best placed to take a strategic overview of how regulation should be applied to a particular business. The work of an enforcing authority without the benefits of a Primary Authority partnership involves a number of costs: familiarisation, risk assessment, and follow-up work where there are enforcement issues, up to and including prosecution. The work undertaken under each of these headings by the Primary Authority will reduce the workload of all other local authorities dealing with a particular business.**

36. **As things stand, local authority enforcement action often proceeds against a business without any consultation with the authority that partners that business. Often, this action contradicts the advice or guidance that the business has been given by its partner authority. By requiring that an enforcing authority contacts the relevant Primary Authority prior to taking enforcement action, the Primary Authority scheme will affect local authority enforcement actions in a number of ways:**

    I. **A number of routine enforcement queries will be abandoned once reference has been made to the advice or guidance that has been given by the Primary Authority on a particular issue. It is likely that this would save several hours' officer time.**

    II. **With some more difficult issues where there is basic disagreement between local authorities, the matter will go to a time-limited process of determination by LBRO, which will be less costly than prosecution (and without the attendant risks). Such cases - as things stand - would cost a substantial amount of officer time.**

37. **In the Impact Assessment that accompanied the draft Bill, we estimated – and tested in consultation – that there would be between two and four cases per partnership per year where advice to a regulated person conflicts with a proposed enforcement action. This was tested further in the consultation on the Primary Authority scheme. We received no additional evidence to alter our previous position, although, as noted we have increased the scope of enforcement action.**

38. **Using the figure of two to four cases per partnership across the expected 700-1100 partnerships, this equates to between 1400-4400 cases where it is likely that the Primary Authority scheme will remove inconsistency and make enforcement unnecessary. To capture the wide range of enforcement activities potentially involved (including costs up to and potentially including prosecution)[26] we assumed that two weeks' total officer time is involved in each of these cases.[27] This part of the Primary Authority**

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[26] For an indication of the high costs of prosecution to enforcers, see the Impact Assessment prepared for Part 2 of the Bill http://www.berr.gov.uk/files/file44594.pdf

[27] The true benefits may however be greater; DTI research noted that cases of disagreement under existing arrangements - where the Primary Authority role does not have a statutory footing - results in considerable work for Primary Authorities as well: http://www.dti.gov.uk/files/file37268.pdf. In a complete analysis of the benefits, other significant

scheme is likely, therefore, to result in a range of quantifiable benefits in the form of releasing resources that would otherwise have been used from £2.9 million to £9.2 million.[28] There will also be benefits to the enforcing authority following from consultation where there is no basic difference of view, for instance, better intelligence-sharing. For conservatism, we deliberately chose not to quantify these.

Inspection Plans

39. **Benefits in the form of cost and time savings to business and enforcing authorities will arise from the development of Inspection Plans due to more targeted inspections. We estimated that for a given local authority in relation to a particular business, 2 hours' work per year[29] will be saved as a result of the local authority taking advantage of the more targeted approach to regulation suggested by the expert Primary Authority in an inspection plan. Assuming that between 140-220 businesses[30] (that is, one fifth of our total partnerships) take up this part of the proposals, the benefits to local authorities from the use of inspection plans is likely to be between £1.6 million and £2.4 million.[31]**

Costs and Benefits to Central Government

40. **The SIs will mean no additional costs to central government. There will be significant but largely unquantifiable benefits of specific value to policy makers (the Primary Authority scheme is likely to promote a more intelligence-led approach to enforcement which will help inform LBRO's advice to Government, in turn promoting better policy-making). No attempt to quantify these benefits has been made.**

Summary

41. **The effects of all these developments for the impacts of the Primary Authority scheme as a whole are summarised in the table on the next page.**

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costs, including legal costs and the risk of failed attempts at prosecution, should also be taken into account.

[28] That is two to four times in each of the 700-1100 partnerships, at 75 hours' officer time at the local authority tariff set out at paragraph 21.

[29] The assumption in the draft Bill Impact Assessment that five hours' work would be involved was revised downwards for conservatism.

[30] This assumption was set out in Impact Assessment accompanying the draft Bill and the Impact Assessment accompanying the Primary Authority consultation. No convincing alternative figures were received. The number will be significantly smaller than the number of partnerships as a whole, for two reasons: (i) Local Authorities will not be required to draw up inspection plans; the measure set out in section 30 is purely permissive in character; (ii) Inspection Plans will not be relevant in many of the relevant regulatory functions where routine inspection is not common.

[31] That is, two hours' work at the local authority tariff of £27.75 over the 200 authorities that we estimated the average Primary Authority partnership would operate across (see paragraph 17) for between 140 and 220 partnerships involved.

Annual costs and benefits of Primary Authority scheme: Summary [32]	
Business costs **(Primary Authority cost recovery)**	**£5.8 million - £ 9.2million**
Business benefits **(Improved consistency)**	**£18.9 million - £59.4 million**
Net Business benefits	**£13.1 million - £50.2 million**
Local Authority Costs	**£9.7 million - £17.5million**
Enforcing Authority: requirement to contact PA (notification)	**£3.5 million - £7.8 million**
Primary Authority costs	**£5.8 million – £9.2 million**
Enforcing Authority costs for LBRO determination	**£0.4 million - £0.6 million**
Local Authority Benefits	**£10.3 million – £20.8 million**
Risk Assessment (Inspection Plans)	**£1.6 million – £2.4 million**
Enforcing Authority: requirement to contact PA	**£2.9 million - £9.2 million**
Cost recovery	**£5.8 million – £9.2 million**
Net local authority benefits	£0.6 million - £3.2 million
NET OVERALL BENEFITS*	£13.7 million - £53.5 million#

Note:
 # figure reflects rounding.

[32] **This table gives annually recurring costs and benefits. Net start-up costs, spread over five years, will be between £300,000 and £500,000 for business and between £1.7 million and £2.7 million for primary authorities. The latter figure can be can be recovered from the partner business on a cost recovery basis. Figures are rounded to the nearest £100,000.**

42. **Our best estimate is that the net overall annual benefits of the scheme for all parties are expected to amount to £30.7 million (the midpoint of the range given in the table above. This is based on 900 partnerships).[33]**

43. **The cover sheet to this Impact Assessment gives Net Present Value estimates of the key costs and benefits associated with the SIs; the midpoint of the net benefit range, estimated over 15 years, amounts to £298.0 million**

Key assumptions used in this Impact Assessment

44. **The following** new **estimates were used in this Impact Assessment.**

Subject	Assumption
Number of enforcement actions triggering requirement to consult the Primary Authority per Primary Authority partnership per year	**60-85**
Number of partnerships set up by 2014	**700-1100**
Hours work per partnership start up	**90**

45. **The most significant change to the Impact Assessment which accompanied the Primary Authority consultation is a shift from a fixed number of partnerships that we felt would be established by 2014, to a range. This was in response to consultees' views who questioned the achievability of our original estimate of 900 Primary Authority partnerships within five years. In the absence of any alternative suggestions, we decided to present the impact as a range to reflect this uncertainty.**

46. **Those aspects of the Primary Authority consultation dealing with the costs and benefits of the Primary Authority scheme are set out above. The figures have not been fundamentally affected by the SIs under consultation, but there are details in the SIs which have been reflected in a revised assessment of costs and benefits.**

Legislative Scope in Scotland and Northern Ireland

47. **The changes made to the SI relating to Scotland and Northern Ireland have no significant impact on the costs and benefits of the scheme as set out in the Impact Assessment which accompanied the Primary Authority consultation. We have not been able to quantify the impacts, but expect that the net benefits will be of a similar proportion to those in England and Wales.**

[33] **For comparison, the comparable set out in the Bill Impact Assessment was a net annual benefit of £30.4 million**

Definition of enforcement action and exclusions to the requirement to contact the Primary Authority

48. **The SI relating to enforcement action has been refined in light of the consultation. Enforcement undertakings, simple cautions and specific warning letters are now considered enforcement action.**

49. **The SIs make it clear that informal enforcement action, including advice, will not be considered enforcement action for the purposes of the Primary Authority scheme.**

50. **The Chartered Institute of Public Finance and Accountancy (CIPFA) collect statistics on enforcement action taken by Trading Standards Officers in Great Britain. In 2006, there were 99,903 occasions where informal cautions and advice were given in writing, as opposed to 5,382 formal cautions and 4,525 prosecutions commenced. Of course, the great majority of these relate to businesses that will not be eligible for a Primary Authority partnership, but the proportion between informal and formal action is approximately 10:1. A similar ratio is evident from Food Standards Agency statistics in relation to environmental health services. These show that in 2006, 95% of all relevant enforcement action took the form of written warnings – many of which would be excluded by the proposed SIs from any consultation requirement.[34]**

51. **The warning letters that have been included within the definition of enforcement action are specific. To be classified as a written warning, the letter needs to:**
    - **contain information about a breach of the law;**
    - **contain a deadline to take the corrective action (or stop an infringing action);**
    - **contain a statement that a specific enforcement action will be taken after that deadline if the organisation does not comply**

52. **By including these forms of letters within the definition of enforcement action, we are confident that they will not be used more extensively than they currently are by local authorities. They should be used rarely, and we also believe from anecdotal evidence gathered at consultation events that simple cautions and enforcement undertakings are infrequently taken against businesses. However, we wanted to reflect the fact that the definition of enforcement action has been widened in light of the consultation response, and as a result we have increased the average amount of times enforcing authorities will notify a Primary Authority from 50-75 to 60-85 per partnership.**

53. **The wider cost to the enforcing authority of contacting the Primary Authority was predicted to be between £3.7 million and £5.6 million in the Impact Assessment accompanying the Primary Authority consultation. We have revised this figure, now predicting the costs to be between £3.5 million and £7.8 million. This takes into account the extra enforcement actions that need to be notified to the Primary Authority, and the spread is greater, due to the introduction of a range of partnerships used in the analysis. The calculation is based on three hours' additional work for each**

[34] http://www.food.gov.uk/multimedia/pdfs/board/info080302.pdf

enforcing authority at the rate of £27.75 per hour, and can be found in paragraph 30.

54. **In addition, there will be situations where action is urgently required to prevent harm and, in these circumstances, we wanted to continue to allow local authorities to proceed immediately. Therefore, there are provisions in the relevant SI to exclude enforcement actions from the obligation to pre-notify the Primary Authority prior to taking the action. These are on the grounds of urgency and where it would be 'wholly disproportionate' to do so.**

55. **Following the consultation, we have removed the differentiation between 'serious' and 'minor' harm. The test is now one of urgency to avoid 'harm'. We have also specifically excluded Section 80 of the Environmental Protection Act 1990 from the need to pre-notify the Primary Authority. However, we do not see these changes as having significant effects on the Impact Assessment.**

56. **As noted above (paragraph 21), associated benefits of the Primary Authority scheme will provide a net saving to each business taking part in the scheme of £15,000 per incident of conflicting advice. Following research and informal consultation, we suggested that a range of such incidents from two to four per partnership per year would occur.**

57. **The majority of these benefits derive from cases where formal types of enforcement action proposed by the enforcing authority cannot go ahead as they conflict with advice that has previously been given by the Primary Authority. Consequently, the business benefits by not having to incur the costs of revising policies, product lines or procedures across the country. The local authority does not incur the expense of investigation and preparation as well as the intrinsic costs (including legal costs) of formal action against a business. The exclusions set out in the SIs allow for emergency action in specific cases or immediate action where pre-notifying the Primary Authority would be 'wholly disproportionate'. These will not affect the vast majority of actions which are the most costly cases of inconsistency.**

<u>Referrals and determination procedure</u>

58. **The SI relating to LBRO's role in referrals and determination sets out rules including deadlines for referrals to it. This added clarity will have the effect of reducing the amount of cases referred to LBRO.**

59. **In practice, we believe that many of these cases will not reach the stage of formal determination. We estimate that up to 50% of the possible cases will not progress to determination or alternatively will be resolved informally.[35] We have not revised the anticipated costs downward from those outlined in the Primary Authority consultation, as even those cases which are resolved informally, or which are not suitable for determination by LBRO, will still entail costs for the local authority involved: including those of discussion with the Primary Authority, and possibly with LBRO.**

[35] **Source: conversations with LBRO.**

60. **The costs that a business incurs if it refers a case to LBRO to determine have not been quantified. This is because the decision as to whether to refer an enforcement action to LBRO is purely voluntary. The SI permits LBRO to recover any costs associated with the referral by a business from that business should it chose to do so. On the basis of initial discussion with LBRO, we believe that this *may* cost up to several thousand pounds' worth of LBRO staff time in more difficult cases. However, given the uncertainty (and the fact that the business would only make such a referral if it was likely to be cost effective in terms of likely outcome), we have not factored this into our estimates.**

Risks and Unintended Consequences

61. **The main potential impact on the figures given here were identified and addressed in the Impact Assessment accompanying the draft Bill. These risks remain and the most important of these were: (a) the risk of lack of take-up of the Primary Authority scheme owing to the costs involved for local authorities; (b) the unintended consequences following from too wide-ranging a role for the Primary Authority in scrutinising enforcement actions by other local authorities.**

62. **The former has been addressed by making a power of cost recovery clear on the face of the Act; the second by giving a more focused power to approve enforcement action on the basis of consistency with advice the authority has already been given. The rationale for this approach is set out in the Government's response to the consultation on the draft Bill.[36] The major risks with Part 2 of the Act in its final form are: i) that the requirements for consultation between enforcing authorities damage essential protections; and ii) that of serious divergence between the regulatory systems applying to different sized business; iii) that local authorities fail to take up the opportunity to recover costs for the Primary Authority scheme from the relevant business. LBRO's powers to monitor and modify Primary Authority partnership arrangements will help address this issue.**

63. **The SIs have a number of less serious, but specific, risks:**

    a. **the risk that areas of relevant legislation in Scotland and Northern Ireland may have been missed from the listing SI;**

    b. **the risk that the definition of enforcement action is either too wide, preventing swift action by local authorities, or too narrow, meaning that all the expected benefits for businesses may not be realised.**

64. **To mitigate the impact of these risks, we have worked closely with both local authorities and the devolved administrations to ensure the relevant legislation is listed.**

65. **We have been specific about what should and should not be considered enforcement action and feel we have reached the right balance between**

[36] ***Government Response to the Consultation on the draft Regulatory Enforcement and Sanctions Bill,*** **September 2007 http://www.berr.gov.uk/files/file45167.pdf**

defining it too widely, and therefore overburdening the scheme and defining it too narrowly, therefore lessening the potential benefits to business.

66. **We have also mitigated the risk of lack of take-up of the scheme by analysing a broad range of partnerships in this Impact Assessment.**

Post-Implementation Review

67. **Part 1 of the Act, which came into force in October 2008, specifies that there should be a review of LBRO and its work three years after it comes into effect. Therefore, this will be after October 2011.**

68. **The review will address a number of issues which are relevant to the Primary Authority scheme:**

    a. **the scale of take-up of Primary Authority partnerships;**
    b. **the extent of the benefits to business arising from the scheme;**
    c. **any unanticipated burdens on local authorities in maintaining Primary Authority partnerships;**
    d. **the effectiveness of the cost-recovery mechanism in financing the scheme.**

Specific Impact Tests

69. **<u>Competition and small firms</u>: There has been extensive discussions with small businesses and their representatives during the development of the Act and throughout the consultation phase. It is expected that small and medium sized businesses will benefit from LBRO's work in creating a more consistent regulatory approach amongst local authorities and reducing the burdens imposed on businesses by local authorities. Those small and medium sized business that enter into Primary Authority agreements will also enjoy the benefits discussed above.**

70. **<u>Sustainability</u>: The SIs support two of the principles of sustainable development as set out in the Government's sustainable development strategy: (i) ensuring we are a strong, healthy and just society; and (ii) achieving a sustainable economy. Both of these principles rely on robust and fair regulation and clear sanctions to back up regulators in their duties.**

71. **The remaining specific tests are not relevant:**

- **<u>Legal aid</u>: There will be no impact on legal aid.**
- **<u>Environment</u>: We do not believe that there will be any impacts on this areas. We have looked at the initial tests and are satisfied that they do not apply; LBRO will be under a duty to promote more effective regulation, including environmental regulation.**
- **<u>Health</u>: We do not believe that the SIs will have a health impact.**

- **Equality: We do not believe that there will be an impact on any of the equality strands. We have looked at each of the equality impact initial tests individually and are confident that there is no impact.**

- **Rural proofing: We anticipate no adverse impact of the proposals on rural communities.**

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No