

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

Item No 10

MEETING: 24 MARCH 2014

SUBJECT: PRIMARY AUTHORITY SCHEME

REPORT OF THE CHIEF FIRE OFFICER

1 INTRODUCTION

- 1.1 This paper provides Members with a report on the Governments plans to extend the Primary Authority Scheme (PAS) to include the Regulatory Reform (Fire Safety) Order 2005 (FSO). The paper also describes the statutory duty placed on Tyne and Wear Fire and Rescue Authority in relation to the enforcement of fire safety legislation, as a result of the inclusion of the FSO into the PAS.
- 1.2 The PAS is one area the Government is promoting to assist in the economic growth strategy, whilst also aiming to support the better regulation agenda. The Government's economic growth strategy is focussed on providing consistency of advice, enforcement and reducing regulatory burden on businesses, whilst recognising that the people who do not wish to comply should be 'punished' to create a level playing field for all businesses.
- 1.3 The PAS is one element that is proactive, rather than passive, and full participation will ensure that the TWFRA is meeting the expectations of Government in supporting local economic growth and sustainability.

2 BACKGROUND

- 2.1 PAS were first introduced in 2009, under the Regulatory Enforcement and Sanctions Act 2008, and was aimed at local authority regulators in order to reduce the regulatory burden on business through better, more efficient co-ordinated activity.
- 2.2 PAS is a statutory scheme available to businesses with a presence in more than one local authority area. The businesses can enter into a legal partnership with a single local authority to secure greater coordination of regulatory and enforcement activities. It applies to a range of regulation categories.

- 2.3 The Government committed to review its original decision to exempt the FSO from the PAS as part of the Enterprise and Regulatory Reform Act 2013. The decision to run a pilot was agreed by the Department for Business, Innovation and Skills (BIS) and Department for Communities and Local Government (DCLG) to determine whether the PAS was suitable for fire safety law.
- 2.4 Additionally, the Enterprise and Regulatory Reform Act 2013 has also extended the ability to enter into a partnership to trade associations and franchises in October 2013, giving access to the partnership scheme to thousands of small medium enterprises.

3 PRIMARY AUTHORITY SCHEME

- 3.1 Better Regulation Delivery Office (BRDO) and Chief Fire Officers Association (CFOA) agreed to run the two schemes on behalf of BIS and DCLG, one managed the statutory PAS scheme and the other managed a voluntary scheme. The two pilots were ran simultaneously, going 'live' in the field on the 1st February 2013 and concluded on the 30th June 2013. The objective was to judge which of the two is most suitable for businesses in relation to the application of the FSO.
- 3.2 Fire and Rescue Services partnered up with businesses. TWFRS partnered with Sainsbury's and participated in the statutory side of the pilot, where we jointly attended training days and workshops facilitated by BRDO where Primary Advice and Inspection Plans were prepared, discussed and assessed in respect of the impact as part of the pilot scheme.
- 3.3 Sainsbury's covered the costs and expenses for a Station Manager (B) role during the pilot, using an appropriate costing model.
- 3.4 TWFRS have continued to work closely with Sainsbury's since the conclusion of the pilot, we have had tentative discussions regarding both parties being involved in a FSO PAS should legislative changes be enacted.
- 3.5 Consultation on the PAS was completed by Government at a national level and submissions were provided by CFOA, TWFRS, a number of other fire and rescue services and businesses.
- 3.6 The outcome of the pilot and consultation was that the PAS will be extended to cover fire safety law, subject to Parliamentary processes, in April 2014; therefore, the pending introduction will have a legislative impact on TWFRS.
- 3.7 Every Fire Authority in the country will be legally bound to comply with the terms and conditions contained within the PAS as an enforcing authority. Fire Authorities will decide if they wish to participate as a primary authority partner and seek businesses to partner with and agree terms and conditions within the parameters of the PAS.

- 3.8 All partnership agreements would be managed on behalf of TWFRA by the AM Community Safety. Annual review of all partnerships in accordance with provisions of the scheme will be conducted by the Fire Safety department. Partnerships should be assessed and evaluated at an early stage to consider the benefits to both parties and longevity of the partnership. PAS protocol must be followed if either party wishes to disengage from the partnership agreement.
- 3.9 In a time of resources being reduced, participation in the PAS will bring a number of benefits to TWFRA, including:
- external funding based on recovering all costs and so supporting work to reduce risk and making a safer community in Tyne and Wear;
 - ensuring that existing resources are targeted at high risk premises and free up businesses that wish to comply, to invest, grow and contribute to the local economy; and
 - entering into a partnership will allow TWFRS the opportunity to access support and funding from national companies to contribute to our community safety prevention activities.
- 3.10 TWFRS and J Sainsbury Plc. currently have an existing statutory PAS agreement framework for the storage of fireworks under the Manufacture and Storage of Explosives Regulations (MSER). Our partnership with Sainsbury's has realised benefits to both organisations including; sharing best practice in management processes, Ban the Pan campaign and Sainsbury's support with SafetyWorks and other community safety campaigns.
- 3.11 The current Government has indicated it is committed to promoting business growth and reducing regulatory burden. BIS have recently produced a report on the Focus on Enforcement Regulatory Review, which focused on the practical application of the FSO particularly in relation to small and medium enterprises. This is one of a number of reviews examining the impact of regulatory delivery and enforcement in specific areas of the economy, which included updating the Regulators Compliance Code.

4 RISK MANAGEMENT

- 4.1 Loss of funding – each partnership is charged at a rate to recover all costs arising from the partnership. If a partnership is dissolved there will be a loss of income but it may not be possible to reduce the related costs immediately.

- 4.2 Conflict of Interest – TWFRA are the enforcing authority in Tyne and Wear for ensuring compliance with the FSO and for providing general fire safety advice to businesses. A conflict of interest may arise if TWFRA provide Primary Authority Advice (fire safety advice) to a partner business through the PAS which is challenged by the enforcing authority outside the Tyne and Wear area. The BRDO determination process is in place for resolving these areas of difference, it is not the same as the FSO determination process which looks to resolve technical fire safety issues between the business and an enforcing authority.
- 4.3 Legal – TWFRA may be seen as a duty holder under the FSO Article 5(3) and may be liable to legal proceedings. BRDO legal advisors have not dismissed this but advice was given that this would not be in the public interest for an enforcing authority to enforce the provisions of the FSO on another enforcing authority.
- 4.4 Reputational risk – this might arise if a business decision made as a result of advice received by TWFRA results in loss of business to the partner. The level of competency required to undertake the role of a partnerships officer will be assessed against the principals of the CFOA fire safety regulator competency framework, which should ensure the quality of advice and limit the reputational risk.

5 FINANCIAL IMPLICATIONS

- 5.1 Human resources – the number of people required to manage and administer partnerships will depend on the appetite for TWFRS to enter into the PAS partnership market. Sufficient resources will be required to provide resilience to a partnerships team to reduce any potential reputational loss from misadministration of the partnership scheme.
- 5.2 Physical resources – office accommodation may be required depending on the number of partnerships. The cost of office accommodation has been factored into the cost of an officer appointed to a PAS scheme.
- 5.3 Information and communications technology resources – it is expected that, as the number of partnerships grows, the team member(s) will be drawn from experienced business fire safety personnel. This is because of the level of competency expected from the business partners. Existing ICT resources will be utilised.
- 5.4 Financial implications – one of the key fundamentals of the PAS is that the local authority may recover the costs associated with running the partnership. The costs are bound by the Government publication – Managing Public Money. This results in all associated personnel being externally funded, although transitional funding may be required until full cost recovery is established.

6 EQUALITY AND FAIRNESS IMPLICATIONS

6.1 There are no equality and fairness implications in respect of this report.

7 HEALTH AND SAFETY IMPLICATIONS

7.1 There are no health and safety implications in respect of this report.

8 RECOMMENDATIONS

8.1 The Authority is recommended to:

- 8.1.1 Note the extension of the Primary Authority Scheme to the Regulatory Reform (Fire Safety) Order 2005 and the requirement to abide by the terms and conditions of the Scheme when undertaking its regulatory activities.
- 8.1.2 That TWFRA endorse the active participation of TWFRS in delivering the Primary Authority Scheme and seek prospective partners.

BACKGROUND PAPERS

The under mentioned Background Papers refer to the subject matter of the above report:

- Government Response, Primary Authority Statutory Guidance, 2013
- Managing Public Money, HM Treasury, 2013

