

Wiltshire and Swindon Fire Authority

REPORT REFERENCE NO.	12
MEETING	Combined Fire Authority
MEETING DATE	13 th February 2014
SUBJECT OF REPORT	The Primary Authority Scheme (PAS)
LEAD OFFICER	Simon Routh-Jones, Chief Fire Officer & Chief Executive
RECOMMENDATIONS	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. Members note the extension of the PAS 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. 2. Members decide whether the Authority will undertake active or non-active participation in the PAS.
EXECUTIVE SUMMARY	<p>The government will legislate to extend Primary Authority to fire safety from 6 April 2014. The reform is part of the government's drive to reduce burdens on business by ensuring that necessary regulations are enforced more efficiently.</p> <p>Primary Authority enables businesses to form a statutory partnership with a single local fire authority, which then provides reliable advice and coordinates fire safety inspections and enforcement of their premises right across England and Wales.</p> <p>Primary Authority provides robust, bespoke advice that must be respected by all local regulators. This enables businesses to invest with confidence in products, practices and procedures knowing that the resources they devote to compliance are well spent.</p> <p>This will have an impact on how Wiltshire Fire and Rescue Service regulate and resource the Regulatory Reform (Fire Safety) Order 2005 (FSO) in a wide</p>

	variety of business sectors and premises. The ability to 'opt out' of this scheme is not an option.
APPENDICES	A: Partnership Scheme Frequently asked questions.

1. Introduction

- 1.1 This report is to bring to the attention of Members and officers the Primary Authority Scheme (PAS) and the Non-statutory Fire Authority Partnership Scheme and to provide an update on the trial led by the Chief Fire Officers' Association (CFOA) and the Department for Business Innovation and Skills (BIS).
- 1.2 This report also describes the statutory duty placed on the CFA in relation to the enforcement of fire safety legislation, as a result of the extension of the PAS to the Regulatory Reform (Fire Safety) Order 2005 (the Order).
- 1.3 The PAS is a statutory scheme available to businesses with a presence and premises in more than one local authority area. The businesses can enter into a legal partnership with a single local authority to secure greater co-ordination of regulatory and enforcement activities across their premises. It applies to a range of regulations.
- 1.4 Government has conducted a side-by-side pilot of the two partnership schemes (Primary Authority Scheme and Non Statutory Fire Authority Partnership sector led scheme) from January 2013 to July 2013. The outcome of the pilots will have an impact on how FRAs regulate the Regulatory Reform (Fire Safety) Order 2005 (FSO) in a wide variety of business sectors and premises. The PAS and non-statutory scheme both sought to support business to have confidence to invest and deliver growth to the economy. The final decision on which scheme will be selected has been made by Ministers following an independent evaluation of the pilots. The scheme chosen being the PAS. The ability to 'opt out' of this scheme is **not** an option.
- 1.5 The outcome of the pilot is that the PAS will be extended to fire safety law, subject to Parliamentary processes, in April 2014.

2. Background:

- 2.1 The PAS was introduced by way of the Regulatory Enforcement and Sanctions Act (RESA) 2008 part 2, as part of the better regulation agenda, established following the publication of Sir Phillip Hampton's report in 2005 'Reducing administrative burdens: effective inspection and enforcement'.

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- 2.2 Part 2 of the RESA was established as a statutory means to secure greater co-ordination and consistency of enforcement and activity by local authority regulators, thereby providing companies with confidence to invest and develop economic growth.
- 2.3 The Regulatory Reform (Fire Safety) Order 2005 (the Order) was exempt from the provisions of part 2 by statutory instrument following a failure to resolve concerns presented by CFOA and DCLG, which included:
- Concerns regarding the potential impact on Integrated Risk Management Plans (IRMP).
 - Concerns on the potential for local managed resources to be directed by another authority.
 - Concerns regarding the ability to be directed into partnerships by a Government body.
 - Concerns regarding an additional burden placed on finite resources.
 - Concerns on focusing resources on premises not regarded as high risk.
- 2.4 Government committed to review its original decision to exempt the Order from the PAS as part of the Enterprise and Regulatory Reform Bill. This resulted in CFOA and the Better Regulation Delivery Office (BRDO) delivering a six month partnership pilot scheme commencing in January 2013.
- 2.5 As a result of the pilot, the Order, subject to parliamentary process, will be included within the scope of the PAS from April 2014.
- 2.6 Additionally, the Enterprise and Regulatory Reform Act 2013 has also extended the ability to enter into a partnership to trade associations and franchises, giving access to the partnership scheme to thousands of small businesses.

3. Options

There are two options:

- 3.1 Active participation- Wilts FRS would (subject to a business case) enter into a partnership agreement with one or more national businesses or organisations.
- 3.2 Each partnership will be charged at a rate to recover all costs arising from the partnership. An annual review of the partnerships being carried out in accordance with the provisions of the scheme.
- 3.3 The scheme would provide the following to the partnered business:
- Assured advice- advice provided by the regulator to the business which is accepted on a national basis by other fire services

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- Inspection Plans- a plan agreed by the regulator and the business, which may contain frequency of inspections and what should be inspected.
- Enforcement referral- provides the ability for a regulator to block enforcement action being proposed by another Fire Authority, including prosecution.

3.4 Active participation will involve extra work loads for the fire safety team; cost recovery allows full financial recovery but does not take into account the possible impact on current fire safety work and initiatives. Subject to which business or businesses Wilts FRS partners with would dictate the workloads required to provide the PAS advice. Only experienced, competent staff can be used for PAS work.

3.5 Entering into a Primary Authority Scheme with a business may provide opportunities for income generation from other activities. This could include provision of staff fire training or equipment maintenance.

3.6 Non-active participation- Wilts FRS would be legally bound to PAS but as an enforcing authority only. Wilts FRS would have to comply with the principles of PAS and before carrying out any enforcement action would need to make contact with the Primary Authority for the business under investigation. This Primary Fire Authority can then block any enforcement or prosecution action. (This is considered to be unlikely in the majority of cases)

4. Proposal

4.1 Every fire authority in England will be legally bound to comply with the terms and conditions contained within the PAS. This will either be as a primary authority partner, or as an enforcing authority should it choose not to commit resources to supporting the development of a partnership arrangement.

4.2 Wilts FRS would want to be chosen by businesses wishing to enter into a primary authority relationship, providing consistent, professional advice that is respected within the business and fire sectors.

4.3 In a time of resources being reduced, participation in the PAS will bring a number of benefits to the Wilts FRS, including:

- External funding based on recovering all costs and so supporting work to reduce risk.
- 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.

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- Entering into a partnership will allow Wilts FRS the opportunity to access support and funding from national companies to contribute to our community safety prevention activities.

4.4 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.

5. Financial Implications

5.1 The pilot has established the full impact on resources for Fire and Rescue Authorities. These have not yet been published, but it is likely there will be an additional burden on existing resources due to the establishment and on-going administration of partnerships.

5.2 Resource costs may be recovered as an element of the statutory scheme (but only as a partner authority, any costs incurred as the enforcing authority are borne by the enforcing authority). There may be additional software development costs for a risk management database that cannot be recovered.

5.3 Additional costs, for the training and on-going competency of regulatory staff have not been taken into account for the purpose of the pilot.

5.4 It is envisaged that initial PAS work can be absorbed within the fire safety team workload; this may change dependent on the size and requirements of the business partner.

5.5 Entering into a Primary Authority Scheme with a business may provide opportunities for income generation from other activities. This could include provision of staff fire training or equipment maintenance.

6. Significant Risks

6.1 When the statutory scheme is extended to the FSO in April 2014, it is not known how much influence Business Innovations and Skills (BIS) will have on Fire and Rescue Service resources as regulators, especially as there is an increasing focus on regulator competencies.

6.2 Reputational risk may arise if a business decision made as a result of advice received from Wilts FRS results in loss of business to the partner. This is controlled by only using competent staff for the advice given by the Primary Authority.

6.3 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 so there may be a temporary increase in net spending. Costs cannot be quantified at this time as partnerships will vary due to the size and requirements of the partner business.

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7. Community Impact Assessment

- 7.1 The number of people required to manage and administer any scheme will depend on the appetite of the CFA to 'enter' into the Primary Authority market.
- 7.2 Sufficient resources will be required to provide resilience to the fire safety team to reduce any potential reputational loss from misadministration.
- 7.3 It is expected that, if the number of partnerships grow, the team members will be drawn from experienced fire safety personnel. This is because of the level of competency expected from the business partners. This will have an impact on our day to day fire safety business (existing Fire Safety inspections and enforcement activities) if sufficient competent staff are not available. The potential combination with Dorset will offer some resilience however this will need close monitoring to ensure that capacity is maintained across all fire safety areas. An Equality Impact Assessment (EIA) is not required.

8. Conclusion

- 8.1 The Primary Authority Scheme seeks to create business investment in growth by developing confidence that regulators in different authority areas will not place competing demands on its resources and hence increase the financial burden on business.
- 8.2 Businesses having premises in various counties have concerns over differing advice given by Fire Authorities dependent on their location. The PAS is designed to address this by having one regulator dealing with the businesses portfolio across county borders.
- 8.3 Fire Safety Officers in Wilts FRS carry out approximately 400 fire safety inspections each year. These inspections are targeted through the risk inspection programme based on the level of risk. The introduction of PAS is unlikely to reduce the need in Wilts FRS for these inspections as the types of premises covered by PAS are predominately national chains such as supermarkets and super stores such as B&Q and Tesco's which are not deemed as high risk.
- 8.4 The implementation of PAS will not stop fire safety officers from responding to complaints and from carrying out post fire audits; it will delay enforcement action due to the need to consult with the Primary Authority.
- 8.5 Prohibition action is not affected.
- 8.6 The Government's economic growth agenda is focused 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.

8.7 The PAS is one element of this agenda and active, rather than passive, participation will ensure that the CFA is meeting the expectations of Government in supporting local economic sustainability.

9. Combination Implications

9.1 Dorset FRS carry out approximately 1300 inspections each year and they intend to adopt an active but targeted approach. It would be appropriate for the Authority make a recommendation in line with Dorset's approach.

10. Recommendations

10.1 It is the recommended that:

1. Members note the extension of the PAS 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.
2. Members decide whether the Authority will undertake active or non-active participation in the PAS.

Simon Routh-Jones,
Chief Fire Officer & Chief Executive

Unpublished document used in the preparation of this report:

Nil