



Chartered
Institute of
Environmental
Health

Extending the Range of Regulations Covered by Primary Authority

Response to the BRDO consultation

January 2013

Question 1

Do you have any comments on the draft statutory instruments at Annexes B and C?

For the reasons we set out in our response to Questions 3-5 below, we do not agree with the amendments proposed in Annexes B and C as set out in the Amendments to Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (Sections 2 (1), (2) and (3) and in the Amendments to the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (Sections 2(1)-(6)).

Question 2

Do you have any comments on how Primary Authority will function for the age-restricted sales of gambling?

No comment

Question 3

Do you agree that the Housing Health and Safety Rating System should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

On the proposal to extend the PA to include the HHSRS, we have revised our opinion. In our response to the "REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008: Consultation on the Primary Authority Scheme" we said:

"There are two issues concerning the scope of the legislation to which we would like to draw attention. Firstly, in reference to the Housing Act 2004, it is inconsistent that Part 1 of the Act, relating to the enforcement of the Housing Health and Safety Rating system, should be excluded from the scope of the Act, while Parts 2-5 of the Act - those relating to the regulation of houses in multiple-occupation - are included. We raised this matter during the RES Bill's passage through Parliament on several occasions, yet still the inconsistency remains. We have yet to receive any explanation for the thinking behind the current position. We are of the view that Parts 1 and 2-5 of the Housing Act 2004 should fall within the purview of the primary authority scheme".

We restated this position in our [2009 response](#) to the consultation on Primary Authority guidance

Our concern at that time, given the relatively short amount of time that the HHSRS had been in operation, was principally the perceived inconsistency in extending the scope to include Part II while Part I was not included. Furthermore, we have taken full opportunity to consult with our members working in housing, those with responsibility for the operation of the HHSRS in the private rented sector. Their responsibility in so doing is of course to protect and enhance the health and safety of tenants in rented property. Our revised position reflects completely the unanimous view of those that have responded to our own consultation on the question.

We have consistently supported the application of the Primary Authority scheme, but in terms of its specific extension to include Part 1 of the Housing Act 2004, we are now of the

view that this would blur a system that is so clearly focused upon risk, and interventions made proportionate by risk. The recommended inclusion of Part 1 of the Housing Act 2004 (and HHSRS) into the Primary Authority relationship is potentially of great significance for officers working in housing standards in local authorities and of course for businesses and landlords too.

The application of the HHSRS in improving and maintaining standards and correcting Category 1 and 2 hazards is unique to the property under inspection, since the system is built on a rigorous risk-based assessment and approach. HHSRS inspections need to continue to be performed on an individual basis without let or hindrance, as the consequence of making it possible for someone with (say) two properties to approach a PA would compromise the very point of the 'system' behind the Scheme.

The primary authority arrangements were established to address perceived inconsistency in dealing with systems such as safety policies where, in the context of retail chains, if one local authority found them adequate there was a reasonable expectation that others should agree. It was never intended to constrain dealing with site-specific issues; this was also the case when proposals were brought forward to include statutory nuisances within the scope of the primary authority – here too context is everything and the primary authority cannot take that into account.

The stated intention in the consultation document is that an officer's judgment to ascertain a Category 1 hazard and to initiate action accordingly should not be interfered with. If this is the case, we are unclear as to where might a Primary Authority seek to bring to bear its influence?

Nor do we feel that there are likely to be many "customers" of a primary authority arrangement in this regard. The obvious candidates for a primary authority relationship in the housing sector are the larger Registered Social Landlords (and possibly landlords specialising in student housing - although many of these are already signed up to the ANUK/UNIPOL Codes of Standards for Larger Student Developments). As a result of successive mergers to support the funding of new stock, some of the RSLs now have huge estates of homes under regular management, both rented and leasehold, in shared ownership, student blocks and supported units. Because of their roots, many will still have close relationships with particular boroughs and feature in their housing strategies. In the private rented sector however the vast majority of landlords are unlikely to be interested since 78% of landlords own one property.

Surely the application of Primary Authority to HHSRS can only have positive effect if landlords with larger portfolios of privately-rented single and multi-occupancy properties come aboard and only then where there is a degree of uniformity in the construction and condition of these properties. Only in such circumstances can a Primary Authority step in and explore a common approach across local authority boundaries.

Moreover, the private rented sector is characterised by predominantly older housing, a significant proportion of which was constructed with few if any construction related standards in place. The English Housing Survey 2010-11 found that:

- 40% of the Private Rented Sector was constructed before 1919
- 76.6% of the Private Rented Sector was constructed before 1980.

So the vast majority of private rented stock was built before recognised standards were introduced. The potential difficulties in allowing Primary Authority designation across parts of the rented sector is that it could cause significant problems to administer unless there were simple standards to meet i.e. a property must have been built to common/standardised construction methods and any subsequent changes must also meet the required standards, such as Building Regulations. There does however need to be a note of caution in assuming that all properties which meet current Building Regulation standards comply with HHSRS, as they do not.

Primary Authority delegation in relation to the HHSRS would therefore in our view, be difficult to administer due to the different construction methods used when the building was initially built and changed and the variety of accommodation used for private rented accommodation. There may also be difficulties in owners controlling the way that their accommodation is used or changed following the commencement of a tenancy.

The difficulty of any primary authority arrangement in this context will also be increased by the mixed tenure of the stock. It is not just that, self-evidently, the housing stock as a whole exhibits a variety of tenures within a broad owned/leased distinction, but that many individual housing developments do likewise, thus renters may live next door to shared owners and next to long-lessees. Freehold owners (with whom, presumably, any primary authority arrangement will be made) may have varying degrees of control over their estates. Another issue is the possibility of opposition to (or alternative preferences for) primary authority from different groups of tenants.

The application of Primary Authority designation could, if implemented, only apply to very large portfolio property owners i.e. landlords such as 'Unite' that specialise in student accommodation and which is principally newly built and full management control is retained. However the designation should not be given to organisations such as landlord organisations (National Landlord Association, Residential Landlord Association etc) or agents (local or national) due to the fact that the private rented sector is characterised by its diversity and choice and landlord ownership and the control of properties remain the responsibility of the owner rather than the landlord organisation/agent. This is clearly demonstrated by the wide range of characteristics, attitudes, needs, expectations and experiences of those providing rented properties as well as the households who reside there. The DCLG 'Private Landlords Survey' 2010 revealed that:

- More than three-quarters (78%) of all landlords only owned a single dwelling for rent, comprising 40% of the total private rented housing
- 95% owned less than five dwellings in their property portfolio
- Only 3% of private individual landlords owned five or more dwellings. (These landlords, however, accounted for 22% of all dwellings owned by private individual landlords).
- Over three-fifths (63%) of all private individual landlords had no relevant experience or qualifications, although 17% had building trade experience with a further 6% experience of working in a property-related sector. Only 20% had a relevant professional qualification.

If it is the Government's intention to improve the standards of landlords, then we would submit that there are other, potentially more effective measures that might be adopted. We

have recently submitted evidence to the CLG Select Committee Inquiry into the private rented sector and on this subject we have:

- Supported the case for a national register of landlords, alongside action by LHAs to establish properly developed strategies for dealing with the PRS based on sound evidence.
- Argued that the criteria for establishing selective licensing schemes should be widened and the schemes made more flexible; this should be developed and prescribed by government and should form unequivocal guidance to LHAs
- Advocated the case for landlords to be required to be accredited
- Supported an exemption to notice of entry where an imminent risk is anticipated or where giving notice could be detrimental to the purpose of the visit or where the LHA cannot easily obtain contact details for the landlord

Question 4

Do you agree that the sun bed tanning regulations should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

The inclusion of the Sunbeds (Regulation) Act 2010 could assist sun bed tanning “chains” in setting agreed procedures in place for age verification, via a Primary Authority partnership. However it is much less clear about the practicality of a Primary Authority offering advice on the definition of a “restricted zone”. There is already considerable national guidance on the definition of a restricted zone and the exact set up of a tanning shop may well vary, depending on the size, structure and infrastructure of the specific premises. It is very possible that local set ups will not be identical, which could cause problems with setting Primary Authority advice.

In England the current requirements of the legislation are on age of use and restricted zones, it is unclear therefore of the value of any Inspection plan (given the limited number of issues to be considered). It is also understood that central advice will be provided shortly to regulators on Age related sales checks. The combination of these factors calls into question the value of extending Primary Authority to cover sun tanning facilities in England. The situation in Wales is more complex given the additional regulations

The consultation also suggests that some local authorities have difficulty in implementing the Regulations. When considering the cost benefit of including this legislation within the scope of Primary Authority it would be useful to understand the scale of this problem, particularly as CIEH are aware of successful interventions taking place.

Question 5

Do you agree that Welsh regulations on single use carrier bag charging should be included in the Primary Authority scheme? Please explain your answer and provide evidence.

No. To date there has been not a single prosecution for breaching the Single Use Carrier Bags Regulations; we can see no case for their inclusion in the Primary Authority scheme.

Question 6

Do you have any comments on the proposed analytical approach outlined in Annex A? Do you believe that the current assumptions are reasonable and that all impacts of the proposal are accounted for? Please provide practical examples where possible.

No comment

Question 7

Have you previously received inconsistent advice from different local authorities with respect to any of the regulations that we propose to bring into Primary Authority? Do you think being in a Primary Authority partnership could have avoided any of these instances? Please provide an estimate of the costs that these instances have imposed on your business?

Not applicable

Question 8

If you are currently in a Primary Authority partnership, which individual(s) in your organisation is responsible for day-to-day operation of the partnership (e.g. liaising with primary authority)? Please provide an indication of the costs incurred by your business in maintaining a Primary Authority partnership. Please provide an indication of the savings which maintaining the partnership delivers.

Not applicable

Question 9

We expect the costs of setting up and maintaining a partnership to cover one of the new regulations to vary depending on how the partnership is established. Do you agree with this? Do you have any evidence on how these costs will vary between each option? Which one of the 4 options is likely to apply to your business?

Not applicable

About the Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish guidance notes and magazines; run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,000 members across England, Wales and Northern Ireland.

Any enquiries about this response should be directed in the first instance to:

Bob Mayho
Principal Policy Officer
Chartered Institute of Environmental Health
Chadwick Court
15 Hatfields
London
SE1 8DJ

Tel. 020 7928 6006
Email information@cieh.org