



Cabinet Office

Consultation on the Draft Regulatory Enforcement and Sanctions Bill

Northgate Information Solutions' response

August 2007

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Introduction

1. Northgate Information Solutions welcomes the opportunity to respond to the consultation on the Draft Regulatory Enforcement and Sanctions Bill. This brief memorandum focuses largely on the establishment of the Local Better Regulation Office (LBRO), the role of local authorities and the effective and efficient use of enforcement powers.
2. The consultation sets out a number of questions for which it seeks answers. This memorandum does not answer all of these but addresses issues which we believe should be considered during the passage of the Bill.
3. As we set out in our response to the earlier Hampton Review, Northgate believes that there is scope for promoting more efficient approaches to regulatory inspection and enforcement, while continuing to deliver excellent regulatory outcomes. Removing the reliance on criminal prosecution through extended sanctions has not only the potential to develop a more proportionate approach but also a more effective public service.
4. With local authorities together forming the largest regulatory enforcement operation in the UK, in tackling nuisance behaviour and protecting consumers, it is essential that their resources are used to best effect and that enforcement action is proportionate, consistent and based on an effective analysis of risk. The introduction of an extended toolkit for sanctions will facilitate local authority enforcement work.
5. Our response makes some general points around our approach to community justice and focuses on the need for open and effective communications between the Local Better Regulation Office, regulatory bodies, businesses and wider communities.

Community justice

6. Northgate welcomes the publication of the consultation on the draft bill. As a leading provider of services and enforcement systems to the police, local authorities and emergency services, our particular interest focuses on citizen-based service and community justice.
7. For Northgate, community justice encompasses both help and punishment. A safe and secure community promotes social cohesion, economic progress and environmental improvement as the guarantors of sustainable success.
8. If communities are to enjoy a sense of well-being, individual citizens need to be able to access their rights and shape public services according to their needs; healthy communities must educate and inform individuals and organisations about their rights and their responsibilities; and where crimes and misdemeanours are committed the civil and criminal justice systems must enforce the law in a proportionate and equitable fashion.

Part 1: The Local Better Regulation Office

9. Northgate believes that any systemic extension of civil enforcement must take place as part of a clear education and enforcement programme, with clear standards for the quality of enforcement. Enforcement systems must be responsive, transparent, accountable, equitable, audited and proportionate, and communication with key stakeholders must be prioritised.
10. The establishment of the LBRO is to be welcomed. Earlier research carried out by Northgate indicates that local authorities need to streamline their enforcement powers and communicate more effectively with business and their communities to ensure maximum compliance with regulations designed to protect the public and people at work.
11. The LBRO will provide guidance to local authorities, which will be published. It will also advise Ministers, as contained within clause 6 of the Bill. Northgate believes that on the face of the Bill provision should be made for this guidance to be made public to ensure that the Bill is consistent with the principles of ensuring that regulatory activities are carried out in a way which is transparent, accountable, proportionate and consistent.
12. Clause 7 of the Bill provides that LBRO must prepare a list of enforcement priorities and must review the list from “time to time”. Northgate recommends that this is carried out on an annual basis so that new legislation entailing regulatory enforcement can be taken into account.
13. Clause 7 also suggests that local authorities must have regard to these priorities. We believe that these should be considered within the context of local priorities and that the Bill should be amended accordingly.

Primary Authority Partnerships

14. Whilst we welcome the move to extend the option for a Primary Authority Partnership to all businesses operating across more than one local authority, our concern is whether the LBRO will have the capacity to facilitate the new partnerships in a way which is equitable to all business – both large and small.
15. Whilst it is estimated that there are 27,965 businesses operating across local authority boundaries in the UK, the impact assessment suggests that only 2.9% of these will be subject to the new provisions within the Bill and assumes that these will be larger enterprises with firms that operate, on average, across 130 local authorities each. This ignores the very real difficulties faced by micro and small to medium sized enterprises through inconsistent application of regulation, particularly during periods of expansion. If the regime is to be enacted fairly, provision needs to be made for those small and growing companies to ensure that they access fully the benefits available to them.
16. If the system is to be accessible to both small and larger sized enterprises then there is a need to ensure that the LBRO adequately promotes the service on offer. But this then creates the question of whether LBRO would have the capacity to meet potential demand.
17. Faced with a potential problem of demand and capacity, local authorities too may inherit the problem. Under clause 8(6) of the Bill, the LBRO must have particular regard to any

representations made by a local authority nominated by it to be a Primary Authority as to the resources available to it. But where a decision is taken by LBRO, it would appear that the local authority would have no rights to redress.

18. Northgate welcomes the proposal that LBRO should be responsible for ensuring a register of partnerships is available. We would like to see the earliest consideration of a central record of partnership information to ensure that data is available in the most complete form from one source only.
19. Under Clause 11 the procedures for obtaining consent for enforcement action contain no timelines for action for organisations other than LBRO, and in the possible context of capacity and resource problems enterprises may find that they are caught in a long drawn out process in which there is uncertainty about whether or not enforcement action will be taken. Northgate recommends that there should be time limits: under which the primary authority must respond for determining whether or not enforcement action is appropriate; as well as for any referral by the primary authority to LBRO so that there is a clear framework of time limits for all parties involved in the process.
20. Unlike Part 2 of the Bill, the decision of the LBRO is not subject to an independent tribunal and may act counter to the requirements under the Human Rights Act 1998. Without the right to an independent appeal, enforcement bodies may find themselves incurring huge expense if they are subject to judicial review.

Part 2: Regulatory Sanctions

21. Northgate welcomes the proposal to introduce an alternative system of civil sanctions to deliver more flexible enforcement. As we stated in our previous response to the Hampton Review's initial consultation, international experience, particularly that of the Australian federal government, has shown that penalty or other notices (known in Australia as 'infringement notices') have been used to deal with non-compliance effectively and quickly.
22. Whilst civil enforcement may provide an efficient and cost-effective means of dealing with minor offences, the system is only as fair as it is fairly enforced. Any extended use should take place as part of a comprehensive education and enforcement programme, with clear standards set for the quality of enforcement. Particular attention should be paid to the training and resources of those that issue and enforce the notices and penalties introduced by the Bill. We therefore welcome the proposal to assess whether local authorities requesting new powers are currently operating according to Hampton Review principles before such powers are granted.

Avoiding perverse incentives

23. We welcome the commitment to consult on how regulators should recover administration costs from the government, but are concerned that there is insufficient flexibility in the current arrangements where receipts from Fixed Monetary Penalties are returned to the Consolidated Fund. Northgate would like to see the situation kept under regular review to assess whether hypothecation would be beneficial in ensuring that enforcement was effectively resourced and driven by local priorities.

24. Avoiding perverse incentives is essential to any effective enforcement regime, but equally it is critical that effective processes are in place to effectively collect financial penalties. We would like to see publication of the proposals for effective collection at the earliest possible stage.
25. We support the ability of regulators to impose late payment penalties and offer early payment discounts, but would like to see a record of the procedures adopted by held centrally to ensure that there are not wide regional disparities that could lead to confusion.

About Northgate

Northgate is a technology services company with a difference. It is committed to high quality public services and understands the public sector. That knowledge is core to its business. Northgate's task is to enhance public sector value through the intelligent use of people and information technology systems and to share in the economic and social benefits that this brings.

Northgate assists the public sector to promote community well-being by helping them provide citizens with accessible and responsive one-stop services based on clear and detailed information; by engaging with public sector employees to transfer and enhance skills; and by working with public sector management to enhance performance management.

For more information

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