

LBRO

Local Better Regulation Office

Working for better local regulation – for business, consumers, workers and the environment

APPLYING THE REGULATORS' COMPLIANCE CODE AND ENFORCEMENT CONCORDAT

Local Better Regulation Office briefing for
local authority regulatory services

March 2008



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LBRO briefings provide helpful information about important topics for local authority regulators. They do not constitute legal advice or direction, and should not be treated as formal statutory guidance, which will be issued separately.

**COMPLIANCE WITH
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SERVICES.**

Introduction

This briefing is the second in a series produced by the Local Better Regulation Office aimed at helping local authority regulatory services operate in accordance with better regulation principles. It introduces the Regulators' Compliance Code, which comes into force in April 2008, and compares it with the current Enforcement Concordat.

Many local authorities will already be voluntarily following the requirements of the Concordat. This guide looks at what else regulatory services need to do to comply with the new statutory requirements of the Code. It should be read alongside the statutory code of practice published by the Department for Business, Enterprise and Regulatory Reform (BERR) and guidance from the Local Authorities Coordinators of Regulatory Services (LACORS).

The Regulators' Compliance Code introduces new statutory requirements for all English local authorities, including fire and rescue services. It does not replace the Enforcement Concordat.

Local authority regulatory services have a key role to play in supporting local economic prosperity and community wellbeing. They ensure that well-run, legally compliant businesses are supported and that consumers, workers and the environment are adequately protected.

Compliance with the Code will lead to increased transparency, responsiveness and targeting of local regulatory services, and help improve the service to businesses and the reputation of local regulatory services.

Background

The Cabinet Office published the central and local government Concordat on Good Enforcement – the Enforcement Concordat – in March 1998, setting out six principles of good enforcement. Following the Hampton review on administrative burdens, the BRE was established and has published the Regulators' Compliance Code, which aims to promote efficient and effective approaches to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens. The actions required by the Code reflect the principles of better regulation identified by the Better Regulation Task Force, which state that regulatory activities should be carried out in a way which is consistent, transparent, accountable, proportionate and targeted.



Comparing the Compliance Code with the Enforcement Concordat

The table below compares the Concordat with the Code.

The Concordat:	The Compliance Code:
<p>The Concordat is a voluntary, non-statutory code of practice to which all local authorities in the United Kingdom can sign up. It defines enforcement activity in the broadest sense, including advisory visits and other assistance, and is not limited in the regulatory activities it applies to. Once an authority commits to compliance, the Concordat becomes a central part of its policy and practice. Failure to meet these obligations could lead to a finding of 'maladministration' by the Local Government Ombudsman.</p>	<p>The Regulators' Compliance Code is a statutory code that comes into force on 6 April 2008, as specified within the Legislative and Regulatory Reform Act 2006 (Section 22). It applies to trading standards, environmental health and licensing as well as fire and rescue.</p>
<p>Local authorities can choose whether or not they wish to adopt the Concordat.</p>	<p>The Code is a statutory requirement for all English local authorities. A regulator must explicitly consider the Code and the five principles and any decision to depart from them must be properly reasoned and based on material evidence.</p> <p>The duty to "have regard to" the Code applies when authorities are developing general policies or standards (paragraph 2.5), and not to any regulatory function in individual cases (paragraph 2.4).</p> <p>In cases of conflict, other statutory duties take precedence over the Code. An authority is not bound to follow a provision of the Code if it properly concludes that this is:</p> <ul style="list-style-type: none"> • not relevant; or • outweighed by any other relevant consideration (paragraph 2.6). <p>Decisions to depart from the Code must be properly reasoned and based on evidence, which means that local authorities must follow a policy-making process that is documented and that records clear accountability for key decisions. This is particularly important to demonstrating why a decision has been made to depart from the Code.</p>

Comparing the Compliance Code with the Enforcement Concordat

The Concordat:	The Compliance Code:
<p>The Concordat is based on six principles:</p> <ul style="list-style-type: none">• Setting clear standards.• Providing clear and open information.• Helping business by advising on and assisting with compliance.• Having a clear complaints procedure.• Ensuring that enforcement action is proportionate to the risks involved.• Ensuring consistent enforcement practice.	<p>The Code is a requirement for all English authorities. It is consistent with Hampton principles for improved inspection, enforcement and outcomes:</p> <ul style="list-style-type: none">• Regulators should allow, or even encourage, economic progress and only intervene when there is a clear case for protection.• Regulators should use comprehensive risk assessment to concentrate resources on the areas that need them most• Regulators should provide authoritative advice easily and cheaply• No inspection should take place without a reason;• Businesses should not have to give unnecessary information• Businesses that persistently break regulations should face meaningful sanctions• Regulators should be accountable for the effectiveness of their activities

Many authorities will have corporate standards that regulatory services must meet in dealing with business, for example governing how data is collected and how advice and information are provided. These standards should meet the requirements of the Concordat and Code.

Comparing the requirements of the Enforcement Concordat with the Regulators' Compliance Code

Many aspects of the Concordat and the Code require a similar approach to delivering regulatory services, as the table below shows.

Economic progress

How can regulatory activity promote the local economy?

The Concordat:	The Compliance Code:
The Concordat recognises that equitable, practical and consistent enforcement helps to promote a thriving national and local economy.	The Code requires local authorities to consider the impact that regulatory action has on economic progress, especially on small businesses. Burdens should be minimised and activities must be kept under review.

Risk assessment

When should assessment be used?

The Concordat states that costs to business should be minimised by ensuring that action is proportionate to risk.	<p>The Code puts risk assessment at the forefront of decision making (section 4) and it must precede and inform all aspects of regulatory activity, including:</p> <ul style="list-style-type: none"> • data collection and other information programmes; • inspection; • advice and support; • enforcement and sanctions. <p>Stakeholders should be consulted in the design of risk methodologies, which should also be published and regularly reviewed.</p>
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Advice and guidance

Does a local authority have to offer advice and guidance?

The Concordat:	The Compliance Code:
<p>The provision of advice and assistance is central to the Concordat, and it underpins the principle of helpfulness. It is a requirement to provide written advice on request and to distinguish a legal obligation from best practice advice.</p>	<p>The Code introduces additional requirements relating to the provision of advice and information:</p> <ul style="list-style-type: none">• All regulatory legal requirements must be communicated to relevant businesses.• Clear, concise and accessible information, advice and guidance, which meets the needs of business, must be provided to help businesses meet their obligations.• Advice and guidance aimed at meeting minimum standards must be distinguished from best practice.• Local authorities must consult on the content, effectiveness and additional costs incurred by businesses. <p>Basic advice and guidance on compliance is presumed to be free, although additional services may be charged for. Businesses with particularly complex practices may need specialist or professional advice.</p> <p>This is not a comprehensive list.</p>

Get online to compliance

Using email, webpages and links to other e-resources may help you meet these requirements. Do you need to rethink your use of electronic communication?

Inspections and other visits

Is a local authority free to act independently when setting inspection programmes?

The Concordat:	The Compliance Code:
<p>The Concordat requires clear standards to be published, setting out the level of service and performance sought, along with the actual results achieved.</p> <p>Wherever possible, local regulatory services should be co-ordinated and arrangements should be in place for liaison with other authorities and enforcement bodies.</p>	<p>The Code provides specific practical steps that are to be followed in designing inspection programmes.</p> <p>Inspections and other visits – such as meetings to provide advice about compliance – should result from risk assessment, reflecting the Hampton principle of “no inspection without a reason”. This does not apply if a business has asked for a visit.</p> <p>Greatest effort should be focused where both:</p> <ul style="list-style-type: none">• failure to comply would pose a serious risk; and• there is high likelihood of non-compliance. <p>Random inspection should be limited to tests of a risk-assessment method or the effectiveness of interventions.</p> <p>There is a duty for local authority departments to collaborate with other regulators, both internal and external, on planned inspections (paragraph 6.5), for example by attending together or sharing data.</p>

Relevant collaboration

The local regulatory landscape is complex, with many different regulatory bodies. In the duty to collaborate, local authorities should think about collaborating where relevant (this is covered by section 2.6) since there is a very large number of regulators.

Information requirements

What must a local authority do before requesting information from businesses?

The Concordat:	The Compliance Code:
<p>Much of the Concordat is concerned with how information is provided. It includes commitments to:</p> <ul style="list-style-type: none">• publish clear standards for the level of service and performance, and performance against these standards;• provide advice and information in plain language;• provide contact information and publish complaints procedures.	<p>The Code is particularly concerned with the collection of information.</p> <p>Before requesting information, local regulators must consider the costs and the benefits to business, and consider how to minimise those costs.</p> <p>Businesses should be consulted about what data is required and how it is collected.</p>

How to reduce costs

The Code sets out ways to reduce the costs to businesses of information requirements:

- Base your requests on risk.
- Limit data collection to specific business sectors.
- Collect data less often.
- Obtain data from another source.
- Collect data electronically.



Compliance and enforcement actions

What is expected of a local authority as a law enforcement agency?

The Concordat:

The Concordat imposes both policy and procedure requirements. The policy requirements are:

- set standards
- discuss specific compliance failures
- provide prompt and efficient service
- set up complaints procedures with an explanation of how to appeal

Examples of procedural requirements are:

- provide clear and simple explanations of why remedial action is needed and by when, and this should be separate from best practice advice
- give businesses an opportunity to explain the circumstances of any non-compliance before enforcement action is taken
- explain why immediate action is needed and provide written confirmation
- provide a written explanation of how to appeal against formal action should be given at the time action is taken
- take action proportionate to risk;
- take attitude of operator into account in deciding action (as far as the law allows);
- avoid unnecessary expense to business;
- promote consistency;
- carry out duties in a fair and equitable manner.

The Compliance Code:

The Code has broadly similar requirements and sets out the following specific actions:

- Incentivise and reward businesses for good levels of compliance.
- Hold discussions with a business when considering formal enforcement action (exemption for serious breach or compromising the action).
- Apply sanctions and penalties consistent with the Macrory principles.
- Publish an enforcement policy.
- Measure outcomes.
- Justify the choice of enforcement actions year on year to interested parties.
- Follow up enforcement actions where appropriate.
- Enforce and apply penalties in a transparent manner.
- Avoid perverse incentives that might influence the choice of sanctioning response.
- Provide clear reasons for any formal enforcement action at the time it is taken, explain complaints and appeals processes and place these in writing at the earliest opportunity.
- Ensure inspectors are able to interpret and apply relevant legal requirements and enforcement policies fairly and consistently within and across regulatory agencies.

Train to gain

To help compliance, make sure that your authority includes training and development plans for staff as part of their continuous professional development, which is a requirement of the Code.

How are sanctions and penalties to be decided?

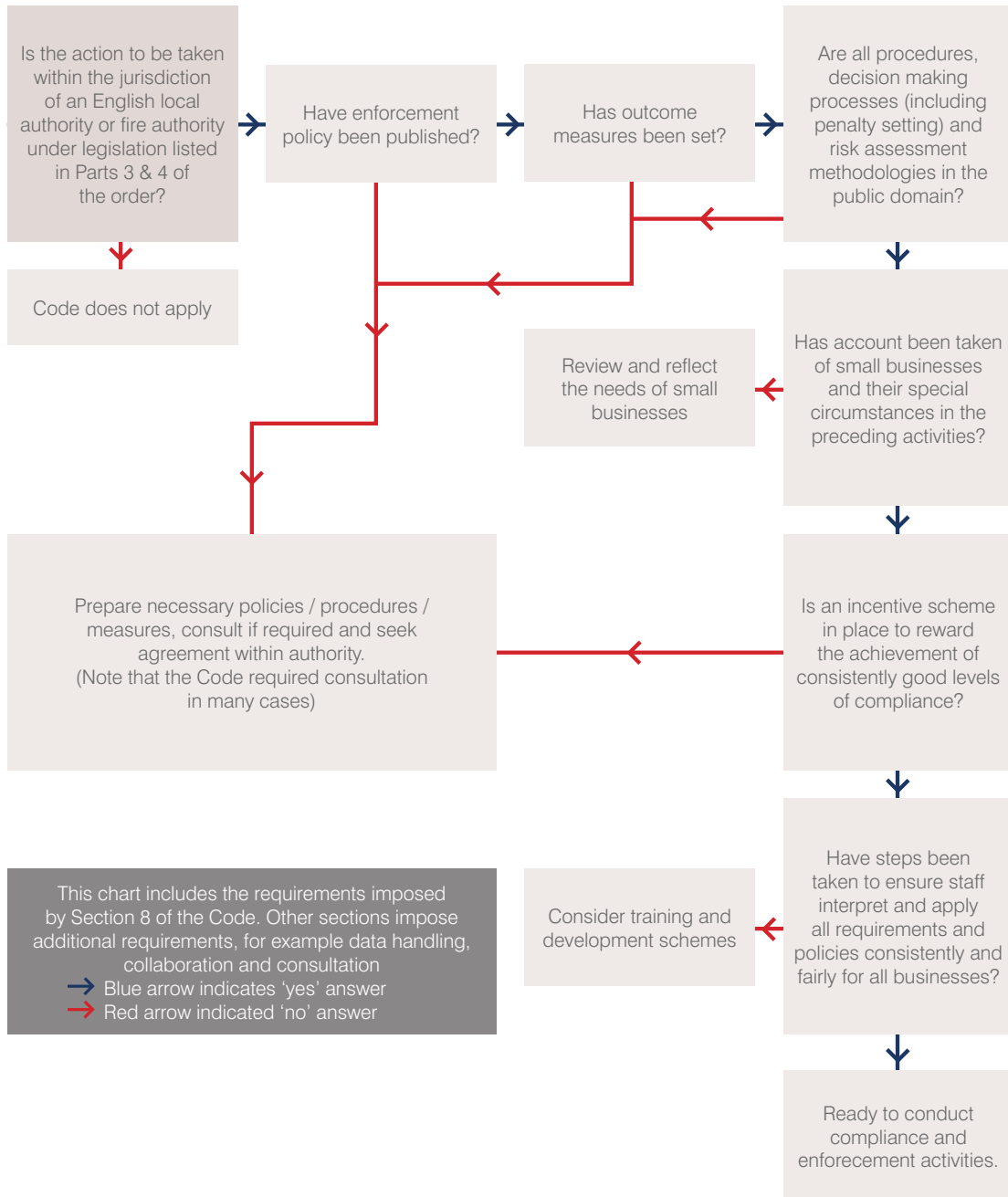
The Concordat:	The Compliance Code:
Not covered by the Concordat.	<p>The Code requires sanctions and penalties to be applied according to the following principles, which emerged from the Macrory review:</p> <ul style="list-style-type: none"> • Aim to change the behaviour of the offender. • Aim to eliminate financial gain or benefit from non-compliance. • Be responsive and consider what is appropriate for the particular offender and offence. • Be proportionate to the nature of the offence and the harm caused. • Aim to repair the harm done by the offence, where appropriate. • Aim to deter non-compliance in future.



The following flowchart will help put these principles into practice.

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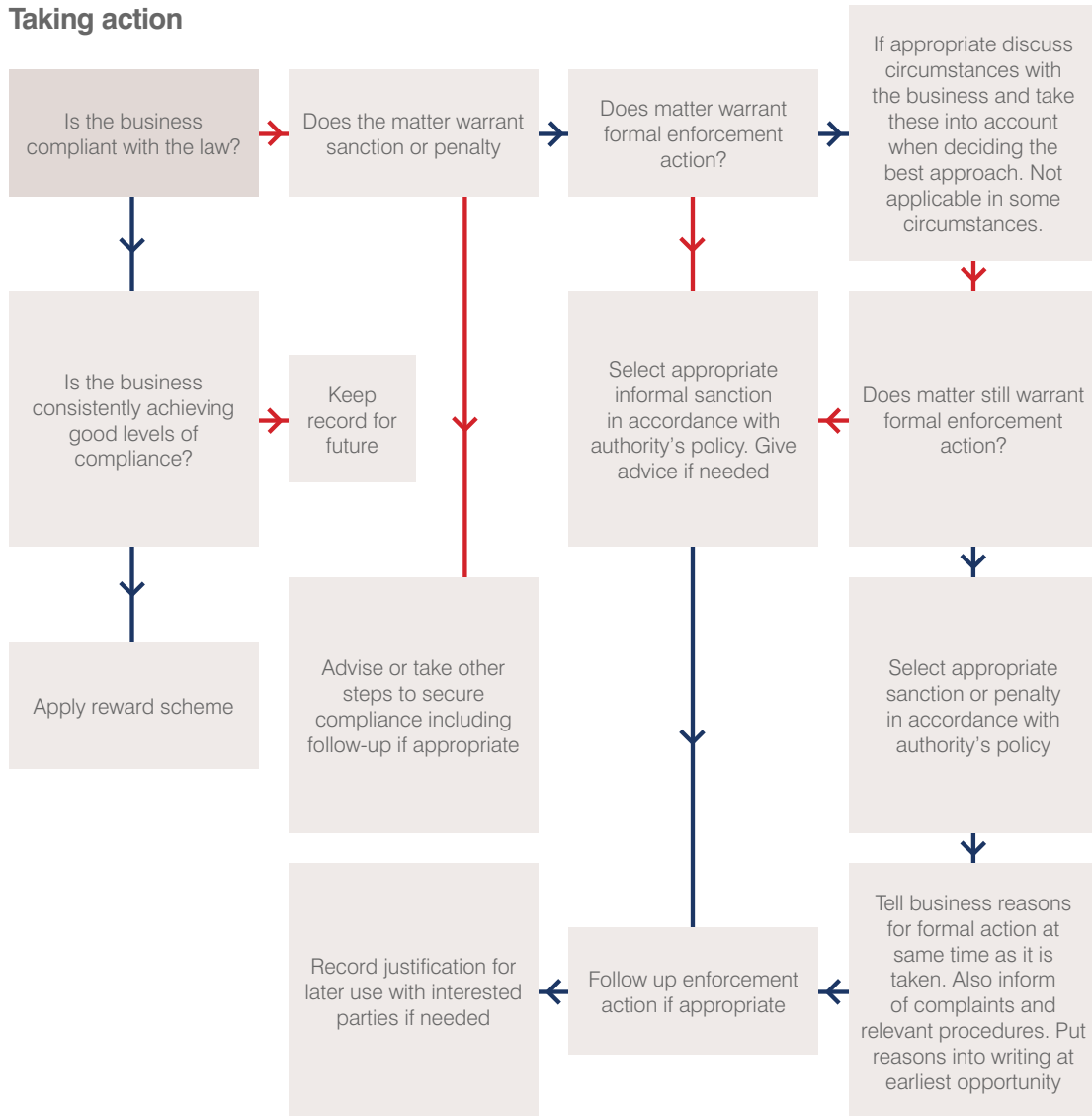
Preparing for action



This chart includes the requirements imposed by Section 8 of the Code. Other sections impose additional requirements, for example data handling, collaboration and consultation
 → Blue arrow indicates 'yes' answer
 → Red arrow indicated 'no' answer

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Taking action



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Accountability

What steps are needed to ensure regulatory services are accountable to stakeholders?

The Concordat:	The Compliance Code:
<p>Accountability is not a principle specifically covered in the Concordat. However, there are several requirements for openness that aim to improve accountability.</p>	<p>The Code requires effective consultation and feedback opportunities to be created, which will help forge effective relationships with business.</p> <p>Local authority employees are required to provide courteous and efficient services, taking into account comments regarding the behaviour and activity of inspectors.</p> <p>Timely and effective complaints procedures are to be published, including an appeal process to the Local Government Ombudsman.</p>

Measuring business perceptions

The new national indicator set for local authorities includes NI 182, measuring business satisfaction with local authority regulatory services. By surveying local companies in your area, this is one way your authority can begin to show its accountability to business and compliance with the Code.



Checking compliance

The checklist below has been designed to help you audit your compliance with the code.

Responsibility	
Has the relevant legislation and the parts of the authority enforcing it been identified?	
Have staff responsible for ensuring compliance with the Code been identified and informed?	
Economic progress	
Is a process for measuring and minimising the burden of regulatory intervention in place?	
Is a means of review in place?	
Risk assessment	
Does risk assessment precede and inform all aspects of regulatory activity to ensure most effective targeting?	
Are businesses consulted on methodologies?	
Are methods subject to review and continuous improvement?	
Advice and guidance	
Are legal requirements relating to regulatory activities promptly communicated to businesses, including changes?	
Is advice, information and guidance made available to businesses in a range of formats?	
Are businesses involved in developing the guidance?	
Is the effectiveness monitored?	
In offering advice, are statutory requirements distinguished from 'best practice' guidance?	
Are basic advice services to businesses offered free of charge?	
Can help be sought by businesses without triggering enforcement action?	
Inspections and other visits	
Except for dealing with requests or acting on intelligence, do all visits and inspections come from a risk-assessment process?	
Is random inspection kept to a minimum and solely to test risk-assessment methodology?	
Is positive feedback from inspections given to businesses to reinforce and encourage good practices?	
Are steps in place to ensure collaboration between different regulators on inspections to minimise burdens on businesses?	

Information requirements	
Before asking businesses for data has a cost-benefit analysis been undertaken?	
Is there a process to ensure sharing of data between regulators?	
Are forms designed with input from businesses?	
Compliance and enforcement actions	
Are positive incentives in place to reward businesses that consistently achieve good levels of compliance?	
Are the circumstances of any breach discussed with a business before formal action is taken?	
Do any sanctions or penalties comply with Macrory principles?	
Is an enforcement policy published?	
Are outcomes of regulatory activity measured?	
Is the choice of enforcement action justified externally year on year?	
Does follow-up to enforcement action happen?	
Is the whole process of regulation transparent?	
Are reasons for formal enforcement action given to a business at the time it is taken, together with details of relevant appeals procedures?	
Are inspectors enabled to be consistent in similar situations?	
Accountability	
Are effective consultation processes with businesses in place?	
Are employees courteous and efficient in their dealings with businesses?	
Are comments and feedback acted on?	
Is the complaints procedure publicised, including the right to complain to the Local Government Ombudsman?	
Decision making	
Are reasons for decisions not to comply with the Code properly documented?	

Other sources of information

1. Regulators' Compliance Code: Statutory Code of Practice for Regulators, BERR, December 2007, <http://www.berr.gov.uk/files/file45019.pdf>
2. Guidance for councils on the Regulators' Compliance Code, LACORS, February 2008, <http://www.lacors.gov.uk/lacors/NewsArticleDetails.aspx?id=18760>
3. Legislative and Regulatory Reform Act 2006, HMSO, http://www.legislation.gov.uk/acts/acts2006/pdf/ukpga_20060051_en.pdf
4. The Legislative and Regulatory Reform (Regulatory Functions) Order 2007, HMSO, http://www.opsi.gov.uk/si/si2007/uksi_20073544_en_1
5. Government response to the consultation on the Draft Regulators' Compliance Code and the application of the Principles of Good Regulation, BERR, October 2007, <http://www.berr.gov.uk/files/file45144.pdf>
6. Enforcement Concordat, March 1998, <http://www.berr.gov.uk/consumers/enforcement/enforcement-concordat/index.html>
7. Enforcement Concordat – Good Practice Guide for England and Wales, Small Business Service, Dti, June 2003, <http://www.berr.gov.uk/files/file10150.pdf>
8. The Code for Crown Prosecutors, Crown Prosecution Service, November 2004, <http://www.cps.gov.uk/Publications/docs/code2004english.pdf>

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ABOUT LBRO

Set up by the Government in 2007, LBRO's role is help local authorities improve their enforcement of environmental health, trading standards, licensing and fire safety regulations – reducing burdens on businesses that comply with the law while targeting those who flout it.

For more information about the work of LBRO visit www.lbro.org.uk

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