



# Transforming Trading Standards in Scotland

A vision for the future of Trading Standards in Scotland  
SCOTSS - the Society of Chief Officers of Trading Standards in Scotland, August 2006

## **Executive summary**

The Wheatley Commission back in 1969 recognised the need for change:

*"evidence from all sides convinces us that the structure of local government cannot afford to remain static".*

SCOTSS recognises that **this** is a time of exceptional change and opportunity for Scottish local authority Trading Standards services; change to the regulatory and public sector service delivery landscape, and opportunity to improve services to deliver better and more effective outcomes. Trading Standards cannot afford to remain static.

This report outlines the current regulatory environment, and examines how a reconfiguration of the way local authorities deliver their Trading Standards services can bring added benefits to end users.

Trading Standards is small service, which serves to provide fundamental protection for citizens, for the environment, and for groups such as consumers and businesses. It has undergone extraordinary changes over the past 30 years in terms of delivery framework, in terms of the legislative duties it discharges, and in terms of the capacity it has to provide the outcomes required by the public, and by Government.

SCOTSS believes the time is right to review the framework through which Trading Standards services are delivered by local government. Despite every effort made to join up and coordinate services, SCOTSS remains concerned at the apparent and continuing reduction in the management and operational capacity of the service across Scotland, and its profile within local authorities. We believe significant benefits can be realised through an appropriate reconfiguration of this framework, by building on what has already been achieved and moving forward in partnership with other regulators, to provide better frontline services capable of delivering consistent high standards right across Scotland.

SCOTSS calls for an examination of the options outlined in this paper, for improving the capacity of Scottish local authorities to provide end users with the service that is required in the current regulatory environment. SCOTSS' vision is of a right-size, efficient framework of 'joined-up' authorities delivering excellent, effective services, and better outcomes for local consumers and businesses.

SCOTSS undertakes to work with COSLA, the Improvement Service in Scotland, the Scottish Executive, The Office of Fair Trading, and other stakeholders, to make that vision a reality.

## **1 Background**

Trading Standards is a local authority delivered regulatory service that provides fundamental protection for Scotland's consumers, communities, and businesses. It is a [mainly] statutory service currently provided by all 32 local authorities in Scotland, although most of the duties discharged<sup>1</sup> are from reserved consumer protection legislation, a large part of which is derived from EU Directives, governing the supply of goods and services across national and international boundaries.

The service has undergone significant changes in delivery structure in the last 30 years with a move into a regional framework in 1975 following the Wheatley Report<sup>2</sup>, and back into a smaller unitary framework in 1996 following the Local Government etc (Scotland) Act 1994<sup>3</sup>. The size of Trading Standards services range from one officer in the smallest, to just over 40 officers in the largest authorities.

There seems little or no disagreement from any quarter that the size of Trading Standards delivery units is a critical factor in their ability to provide an effective service, and to enable a strategic approach to many of the enforcement areas that cross local, national and some times even international borders.

Indeed the White Paper published in July 1993<sup>4</sup> acknowledged, in respect of Trading Standards:

*'Most of the responses to the recent consultation paper which mentioned this function, took the view that it is best provided by relatively large units which enable staff to develop specialist expertise in specific areas of the work.'*

The consultation<sup>5</sup> also asked for views on the desirability of joint authorities specifically for Trading Standards under the variety of structural proposals. Despite much support for some form of harmonised approach across Scotland the Government believed that:

*'..the new councils will be able to establish effective cooperation arrangements where these are required.'*

The earlier Stodart commission, tasked with looking at efficiencies between the tiers of local government, published its report<sup>6</sup> in 1981 and confirmed these views:

*'We are satisfied that consumer protection is best undertaken by Regional Councils. This gives a flexibility in staff deployment which is essential in a service that embraces such a diverse and complex range of activities. It also enables specialist equipment to be used more economically. For these reasons we think it would be much more costly to operate the service at District level and with no apparent advantage to the consumer.'*

The most recent detailed examination of local authority Trading Standards services in Scotland, was an Accounts Commission Performance Audit carried out by Audit-Scotland in 2001/02. Audit-Scotland were complimentary about many aspects of Scottish Trading Standards services, however they also stated in their report<sup>7</sup> that:

*'Small trading standards services perform worse overall than larger services and there is a risk that they do not have the capacity to further develop their services...'*

They also recommended that:

*'there is a strong case for councils looking at options to establish joined-up trading standards services (eg, through local consortia arrangements with their neighbouring councils).'*

The 'Made to Measure?' report is significant because it points to other challenges that local authorities need to respond to, if the trading standards services they provide are to improve. For example, in better management and organisational processes, in resource management, and in responding to the challenge of the National Performance Framework<sup>8</sup>. Perhaps most critically Audit-Scotland found significant variation in the level of service provided to consumers and business in different council areas. Evidence pointed to a variety of underlying reasons including low management profile and elected member engagement within local authorities, lack of leadership, and difficulties in recruitment and retention.

SCOTSS members have worked to minimise the effects that operating within smaller authorities has had on services, effects that have probably been more detrimental on such a small service like Trading Standards, as on other larger services that were disaggregated from the Regional Councils. SCOTSS members have taken a number of steps to help ensure that local authorities provide as consistent and effective a service as practicable right across Scotland, for example:

- National and sub-national functional liaison groups
- Employment of a Regional Coordinator
- Memoranda of Understanding with other agencies
- Lead authority arrangements for metrological and other functions
- Accessing and using external 'Modernisation Fund' monies to support cross-boundary projects, for example vehicle testing, digital forensics, e-business training of over 1000 Scottish businesses

More details of joint working initiatives taken by SCOTSS members are appended as table 2 to this document.

SCOTSS also recognises the advantages that operating within unitary authorities has given services, for example better engagement with local communities, and with other regulatory services such as Environmental Health. SCOTSS welcomes and supports the internal reconfiguration of regulatory services, where it results in better or more efficient services, and we have always taken the view that Trading Standards services should be delivered, and improved, from within local government.

However SCOTSS also recognises that significant improvements can be and need to be made to the Trading Standards services that councils provide, in order to meet the expectations of modern consumers and business.

We believe there is an opportunity to further reshape services over the short to medium term for the benefits of Scotland's communities.

## **2 Current issues**

### **2.1 Regulation**

Trading Standards services in the main discharge legislative duties contained in consumer protection legislation reserved to Westminster - in essence delivering on national UK and EU policy issues, in a local, devolved environment. However some duties, for example animal health, certain age restricted sales, and money and debt advice are devolved, and fall within the responsibility of the Scottish Parliament, creating an often confusing framework.

Central Government departments, and in the main the Department of Trade & Industry, have recognised the difficulties this has presented to small locally accountable delivery units, and have taken a number of measures to try and improve the quality, consistency and uniformity of trading standards services, and ensure an adequate balance between local and national priorities, for example:

- £30m Trading Standards Modernisation Fund
- National Performance Framework for Trading Standards
- Consumer Direct consumer advice contact centre network
- Peer Review

Fundamental regulatory advice and guidance is also provided by LACORS, the Local Authority Coordinators of Regulatory Services.

Despite these measures, a landmark review of the regulatory burdens on business by Philip Hampton<sup>9</sup>, reported in March 2005 and is changing the regulatory landscape in a number of ways that affect local authority Trading Standards services. Hampton recommended among other things that activity should be based on risk, that there should be no inspection without a reason, and that business should be able to access advice easily.

Hampton also commented that he believed many regulatory problems were rooted in, or exacerbated by the complicated structure of regulation in the UK.

Initial Hampton recommendations for a new Consumer and Trading Standards Agency were dropped in favour of an increased championing role for the Office of Fair Trading, and a new Local Better Regulation Office [LBRO] to help deliver a new risk-based 'Hampton' approach to Trading Standards and Environmental Health operations.

LBRO itself is not yet a reality, and proposals are currently subject to consultation, however the Better Regulation principles upon which it is based will have a significant influence on the shape of future regulation in Scotland, with or without a discrete LBR Office.

LBRO will aim to deliver a significant reduction in the regulatory burdens on business while maintaining consumer protection. It will drive more consistency, coordination and better targeting of enforcement actions, and will deliver a simplified framework for interaction and priority setting between central and local government regulators.

SCOTSS is not convinced that an additional agency will add significant value to the Scottish regulatory environment, and in addition we believe that local authority regulators have already made great advances in business friendly approaches to

enforcement, with Trading Standards services being to the fore in most local authorities in piloting, promoting and adhering to the principles of the Enforcement Concordat. However we agree that a more joined up Trading Standards service delivery framework in Scotland, will be better placed to deliver to the Better Regulation agenda, helping improve consistency, helping improve efficiency and effectiveness, and building on best practice.

## 2.2 Modernisation

Alongside the regulatory factors outlined above, there is a growing recognition, both by COSLA and the Scottish Executive, that the public sector and local authority framework in Scotland should undergo some change in the short to medium term, in order to realise operational benefits for authorities and the general public. Without fundamental redrawing of boundaries a case can be made for more joined up or collective delivery of services, where appropriate in terms of size, scale or geography.

This relates most obviously to back office or shared services like payroll administration or support functions, but SCOTSS believes that Trading Standards, as a small yet strategic service, lends itself very much to this sort of approach. Although great efforts have been made in terms of coordination and collaboration, a more formal joined up approach would be of benefit in terms of critical mass, reduced duplication, better expertise, and the sharing of equipment. It is likely that the efficiencies of a more joined up approach would release additional resources for use on the 'frontline', helping drive fair markets and increasing consumer confidence, as well as enabling a better organised service able to meet the needs of the Better Regulation agenda.

## 2.3 'Internal'

If the above are taken as 'external' issues, then there remain significant 'internal' issues which must be acknowledged.

SCOTSS and the Office of Fair Trading have both held 'Visioning' events at Stirling Management Centre in the past 12 months, to look at the future of Trading Standards in the changing regulatory environment, and to identify key issues of concern that need to be addressed.

SCOTSS acknowledges that difficulties face most local authority services in the current financial climate, however we believe many of these are exacerbated by the small size of most Trading Standards units:

- Reducing status within the local authority structure - SCOTSS members from over 20% of Scotland's local authorities have retired over the last 12 months without their post being retained.
- Insufficient resources to provide training to grow officers from raw recruits and lack of incentives for staff retention.
- No uniformity of resource allocation
- Limited engagement with elected members and senior management
- Capacity of services does not meet the expectations of consumers, business, and Government.

SCOTSS are engaged on a Programme of Joint Action<sup>10</sup> with the Office of Fair Trading in order to revitalise the service in Scotland, but we also feel that action

needs to be taken quickly by local authorities, to reverse the decline in a service that offers fundamental protection to consumers and communities.

### **3. Options for change**

#### **3.1 Factors to be considered**

In examining any options for collective delivery there are a number of factors to take into account.

##### Geography

Given the geography of Scotland it is likely that collective delivery would become less effective where local authorities combined over wide areas. Any joining up should be of sufficient size to allow for economies of scale and the benefits discussed above, but not so wide such that the geography of the authorities involved would impinge on any potential benefits. In fact seven of the twelve former regional and island councils remain intact, and for reasons of geography it may be that there is no added benefit in these authorities delivering on a collective basis, although of course they must be part of any overall framework.

##### Cultural/Historical

There are groups of authorities who have historically worked closely together, and whose staff may already informally or formally work closely on specific matters, for example for metrological and calibration facilities.

##### Scope

Not all authorities provide exactly the same services across Scotland, and there may be opportunities to collectively deliver certain aspects of the Trading Standards service across a number of authorities, for example Animal Health or Metrology. Scope is particularly important when considering future partnerships with bodies such as the Office of Fair Trading or LBRO, whose scope may not fall precisely to cover the activities of the current Trading Standards framework.

##### Political

Political issues are paramount in any discussion of joining up of local authority services, and differing political outlooks in neighbouring authorities can be seen as a barrier to collective delivery. Political support through COSLA and individual councils will be a prerequisite for the success of any proposals.

##### Governance

Governance arrangements for any proposed collective delivery of services will be a key success factor, and it is clear that accountability at the most local level, and scrutiny arrangements for each partner authority, will need to be embedded in any service delivery model.

##### Other services

This document focuses on issues and proposals for local authority Trading Standards services in Scotland, however SCOTSS realises that other services are closely intertwined with our own and must be taken into account in any proposals.

Trading Standards are now 'brigaded' with Environmental Health in all authorities, due to the trend in wider discipline departments and reduced management overhead, and in some authorities services are even integrated to some degree.

Trading Standards officers may also work closely with other council officers involved in anti-social behaviour, or licensing, or local Police services. SCOTSS does not see that these arrangements detract from any proposals for collective delivery.

There are clearly a number of benefits that will accrue from a better integrated service:

- Less duplication, for example in accommodation, vehicles or equipment
- Better economy of scale
- Better utilisation of resources, for example in specialisms
- Greater flexibility, for example in deployment of staff
- Potential of co-terminosity with other public services such as Health Boards
- Greater capacity for delivery and consistency of specialist business advice
- Greater capacity to conduct more and more effective special projects
- Potential improvements in service standards

Where service delivery is over a wider more strategic area there are some potential risks that need to be guarded against:

- Loss of engagement with local communities
- Loss of engagement with other enforcement agencies

### 3.2 Possible frameworks

There are a number of possible frameworks that could deliver a Trading Standards service on a combined authority basis.

At one extreme would be a number of unitary authorities agreeing to a single management and staffing structure, combined budgets and a single service delivery plan with an appropriate local delivery framework. At the other extreme would be simply an enhanced coordination and cooperation effort to the present arrangements.

Some possible options might be:

#### Merged or integrated service

This option would have a single management and staffing structure, with combined budgets and a single service delivery plan. It would probably realise the best economies and be best prepared to deliver Better Regulation. Merged services are routinely evolving within councils themselves as layers of management are removed and managers of previously discrete services assume responsibility for others. There would no reason for this not to succeed in a cross boundary context, where appropriate accountability and scrutiny arrangements were in place.

#### Lead service

This option has one authority managing the service or parts of the service on behalf of others, probably within a minute of agreement or service level agreement.

In this option structures would remain largely unchanged, although the need for a Lead Authority could create a damaging imbalance in any arrangement. Benefits would accrue in terms of consistency and good practice, but economies of scale would not be as great as for an integrated service. There may also be some internal tensions due to existing delivery structures remaining in place. It is possible that this model might be applied to smaller Trading Standards functions such animal health and welfare where overall strengths may be more apparent for one authority and

hence tensions may not be so high in adoption of the model. There are existing lead authority arrangements for example with motor vehicle testing, and calibration facilities, which demonstrate this principle.

#### No change

In this option very little changes, except that there is an additional focus on coordination and cooperation between authorities.

This would be appropriate where the existing service and its co-operative arrangements meets the needs of stakeholders and the service itself. Some of the factors outlined above might render integration undesirable or unworkable, for example where wide geographic areas are involved.

#### National service

A national Trading Standards service has been advocated in the past in the belief that it would better deliver on national priorities, and provide the best economies of scale. SCOTSS stated position is squarely that Trading Standards should be delivered locally as a local government service, engaged with local communities, and connected with end users.

#### Outsourcing

SCOTSS is not aware of any potential organisations that would be capable at the current time to provide a comprehensive Trading Standards service in Scotland. It may be that this would be an option for particular elements of a locally provided local authority service, and SCOTSS can see the benefits in doing so, for example testing services.

### 3.3 Possible vehicles

There are a number of ways to deliver more integrated services that need to be considered, in order to realise the benefits, ensure local priorities are met, and ensure accountability and scrutiny is present. SCOTSS believes two in particular deserve examination:

#### Joint Boards or Committees

Joint boards or committees where appropriate would be a mechanism that helps ensure governance arrangements covering the constituent councils of any collective delivery arrangement. Joint boards are already in use for Police and Fire, Passenger Transport, and Valuations, and have not been uncommon in London in recent times. There were examples of this in Scotland pre-1975 for example Banff, Moray and Nairn Joint Weights & Measures Committee. However there is the potential for officer domination in such arrangements, and a loss of local accountability.

#### Joint ventures

A joint venture could take a number of forms including a contractual arrangement between combining authorities, or a not-for-profit trust or public sector limited company. Governance again could be assured under some sort of consortium agreement with appropriate local authority member representation.

### 3.4 Recent examples

The 2002 Audit-Scotland report 'Made to Measure' report provided the impetus for some preliminary discussions between groups of authorities on 'joining up.' The most notable examples of these were the Stirling, Clackmannanshire, and Falkirk councils, and the Lower Clyde group consisting of the Renfrewshire, East Renfrewshire, East Dunbartonshire, West Dunbartonshire, and Inverclyde areas.

Little progress was made by either initiative, although Clackmannanshire has recently merged with Stirling Council on a much wider basis. The Lower Clyde group encouraged closer working but has since ceased to meet, having been unable to identify areas for joint working that would not merely duplicate existing co-ordination mechanisms at regional and national level.

There have also been some examples of joint working in English authorities: Brent & Harrow have a formal consortium arrangement where all staff are employed by one authority, saving on fixed costs, providing better expertise and coverage, and allowing for more effective planning and budgeting. A joint consortium committee has elected members from each council.

West Yorkshire Joint Services provides services for five Metropolitan District Councils and operates under one administrative organisation with elected member support from each council. This framework provides a very efficient and effective service with specialist expertise, and allows for major project work without impacting on core activities.

#### **4. Conclusions and next steps**

SCOTSS is concerned that there seems to be a continuing significant reduction in the operational and management capacity of Scotland's Trading Standards services, even in some of the country's largest local authorities. We need to arrest this decline in a service that offers some of the most fundamental protection for Scotland's communities.

SCOTSS believes that the current public sector landscape of reform and modernisation, provides the opportunity to reconfigure, where appropriate, the way services are delivered by local authorities. A reconfiguration that must result in a more effective framework delivering excellent and increased frontline services to end users.

SCOTSS recognises the benefits that have been realised in unitary authorities with better engagement with communities, and with other regulatory services such as Environmental Health. Care must be taken such that any reconfigured delivery framework for Trading Standards must maintain and build on these benefits, to ensure that services move forward in a joined up way, not only within the service, but in partnership with other regulators, and with a focus on end users.

Care must also be taken that any reconfiguration is carried out on a strategic rather than ad-hoc basis, and where it will produce improved outcomes, rather than on a one size fits all basis. The resultant framework must be capable of consistent high standards of service right across Scotland, in centres of excellence rather than in pockets of good practice.

To achieve these aims SCOTSS commits itself and its members to work with COSLA, the Scottish Executive, the Office of Fair Trading, and any other stakeholder, to agree a framework of service delivery in Scotland fit for the future.

## **SCOTSS**

SCOTSS is the Society of Chief Officers of Trading Standards in Scotland, an association of professional officers representing every Scottish local authority trading standards service.

The Society is a LACORS Liaison Group and provides advisers to CoSLA on Scottish matters. It has its own constitution but is also a section of the Trading Standards Institute (TSI). The Society meets four times a year with the express objective of properly co-ordinating the enforcement activities of discrete trading standards services across the country.

Chairman: Ken Daly, Dundee City Council

Vice-Chairman: David Thomson, South Ayrshire Council

Secretary/Treasurer: Harry Miller, Comhairle Nan Eilean Siar

Regional Coordinator: Angela Blair

## References

1. Main legislation appended as table 1 below
2. Royal Commission in Local Government in Scotland 1966-69 (the Wheatley Commission) (1969) Report, Cmnd 4150
3. The Local Government etc (Scotland) Act 1994
4. The Structure of Local Government. Shaping the Future - The New Councils, July 1993, Cm 2267
5. The Structure of Local Government in Scotland - Shaping the New Councils, October 1992, Dd 4563
6. The Committee of Inquiry into Local Government in Scotland (Stodart Commission) 1981
7. Made to Measure? An overview of trading standards services in Scotland, Audit-Scotland, October 2002, ISBN 1 903433 72 X
8. Department of Trade and Industry National Performance Framework for Trading Standards Services.
9. Reducing administrative burdens: effective inspection and enforcement, Hampton Review, March 2005, ISBN 1 84532 088 3
10. OFT/TSS Programme of Joint Action, June 2006: 4 project themes:
  - 1 - Profile, sustainability, Scope and remit of TS
  - 2 - Intelligence and knowledge management
  - 3 - Consumer and business advice
  - 4 - Funding

Table 1 - Trading Standards Primary Legislation

Agriculture Act 1970  
Animal Health Act 1981  
Animal Health and Welfare Act 1984  
Anti-social Behaviour etc (Scotland) Act 2004  
Children and Young Persons (Protection from Tobacco) Act 1991  
Consumer Credit Act 1974  
Consumer Protection Act 1987  
Control of Pollution Act 1974  
Copyright, Designs and Patents Act 1988  
Development of Tourism Act 1969  
Environmental Protection Act 1990  
Estate Agents Act 1979  
European Communities Act 1972  
Explosives Act 1875  
Fair Trading Act 1973  
Fireworks Act 2003  
Hallmarking Act 1973  
Health and Safety at Work etc. Act 1974  
Medicines Act 1968  
Motor Vehicles (Safety Equipment for Children) Act 1991  
Olympic Symbol etc (Protection) Act 1995  
Petroleum (Consolidation) Act 1928  
Poisons Act 1972  
Prices Act 1974  
Prices Act 1975  
Property Misdescriptions Act 1991  
Telecommunications Act 1984  
Tobacco Advertising and Promotion Act 2002  
Timeshare Act 1992  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Trading Schemes Act 1996  
Video Recordings Act 1984  
Weights and Measures Act 1985

## Table 2 - Trading Standards joint working initiatives

### 1 Shared calibration and metrological facilities

Based around statutory requirements in relation to the maintenance and access to local standards of mass and length, there are five centres which provide these services to other local authorities on a lead authority basis.

### 2 Motor vehicle testing

Funded initially by DTI Modernisation monies, this initiative is managed by Dundee Council and is a service involving the provision of a vehicle testing unit to around 18 local authorities. No single authority has the resources to maintain such a unit itself.

### 3 Community Safety

Funded by DTI Modernisation monies, this initiative involves Scottish Borders and the Edinburgh and Lothian councils, working together on an underage sales project.

### 4 Digital Crime

Funded initially by DTI Modernisation monies, this initiative is led by Aberdeen Council and provides training and support on computer forensics to other Scottish authorities.

### 5 Illegal Moneylending

Funded by DTI monies this initiative is based in Glasgow and operates throughout Scotland cracking down on illegal moneylending.

### 6 Regional intelligence and scambusters

Funded by DTI monies this is a UK wide initiative aimed at improving the analysis and dissemination of intelligence, and cracking down on common scams.

### 7 Consumer Direct

Funded by DTI this initiative has introduced a UK wide network of consumer advice contact centres one of which is in Scotland. All Scottish local authorities work closely with Consumer Direct to provide an advice and intervention service for Scottish consumers.

### 8 Tobacco test purchasing

A SCOTSS initiative, which has also had financial support from the Scottish Executive, to help provide a consistent approach to dealing with sales of tobacco to young people.

### 9 Peer review and audit

Backed by DTI funding, this is a scheme to help facilitate improvement within trading standards services through the use of self assessment and the EFQM model.

### 10 SCOTSS liaison groups

A network of professional officer liaison groups operating at a regional and national level to provide technical support to local authorities, and highlight issues of concern.