



Department
for Business
Innovation & Skills

Better
Regulation
Delivery Office

Consultation Paper:

**Extending the scope of the duty for
non-economic regulators to have
regard to economic growth and
defining the scope of the Small
Business Appeals Champions**

December 2014

Foreword



Growth duty

Non-economic regulators spend approximately £2bn each year on regulatory activities and employ over 25,000 people. A positive business environment is vital to ensuring that businesses are able to grow, prosper, and invest in the UK. The Government is using all the tools at its disposal to foster this positive environment so as to encourage economic growth.

The new statutory duty for non-economic regulators to have regard to economic growth will help regulators carry out their primary duties in a way which does not undermine, but rather is conducive to, economic growth. Through evidence such as the *Focus on Enforcement* reviews businesses reported multiple examples of inconsistent and disproportionate enforcement by regulators, and increased regulatory burdens which have resulted in detrimental economic consequences in terms of jobs and growth. The growth duty has the broad support of the business community and will encourage business growth by removing red tape and ensuring regulatory activity is consistent and proportionate, without compromising safety.

The Government is committed to creating a positive business environment right across the economy. Applying the growth duty to regulators across a broad range of sectors will help. Extensive consultation has already taken place with over 50 non-economic regulators included in the initial public consultation. This consultation paper is now seeking views on whether the duty should be extended to the non-economic regulatory functions of additional regulators to ensure that businesses in industries as far-ranging as legal services and architecture can benefit from fair, balanced regulation which does not hinder their opportunities for growth.

Small Business Appeals Champions

The ability of businesses to appeal against regulators' decisions also has significant impact on growth. Well-designed, clear and easy-to-access appeals processes can help businesses to correct regulator errors quickly and to avoid unnecessary costs. The new Small Business Appeals Champions, working within each regulator, will help ensure that small businesses can challenge regulatory enforcement when they feel they have been unfairly treated, minimising the impact on their ability to grow.

Our previous consultation on the Small Business Appeals Champions indicated that in broad terms a Champion should be appointed in respect of each national non-economic regulator currently in scope of the Regulators' Code. Following discussion with regulators and others the Government now proposes an initial list of regulators subject to the Regulators' Code in respect of which Champions should be appointed. This will provide greater assurance to business and Government about the effectiveness of appeals processes for the great majority of regulators. Our goal is no less than ensuring that Britain is the best place in the world to start and grow a business. These changes will help us in that aim.

A handwritten signature in blue ink, appearing to read 'Matthew Hancock', followed by a long, horizontal, wavy flourish.

Matthew Hancock

Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

| Consultation summary | |
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| <i>Who should read this document?</i> | This consultation is relevant to businesses and members of civil society subject to regulation by these regulators. |
| <i>Making your views heard</i> | We are keen to gather all views on the subject of extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions. |
| Views are requested by 9th January 2015 | |
| <i>Phone enquiries</i> | 020 7215 2148 |
| <i>Web responses</i> | https://www.surveymonkey.com/r/growthdutyappealschampionconsultation |
| <i>Email enquiries and responses</i> | <p>Growth duty & Small Business Appeals Champion Responses: betterregulation@bis.gsi.gov.uk Enquiries: betterregulation@bis.gsi.gov.uk</p> |
| <i>Written responses</i> | <p>Growth duty Better Regulation Delivery Office FAO Jo Kaczmarek 2 St Pauls Place Sheffield S1 2FJ</p> <p>Small Business Appeals Champions Better Regulation Executive FAO Lenroy Wallace 5th Floor Orchard 1 1 Victoria Street London SW1H 0ET</p> |
| <i>Your details</i> | Representative groups may wish to give a summary of the views of the people and organisations they represent and, where relevant, how they consulted with them. You may wish to include contact details for follow-up. |

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| <i>Confidentiality</i> | The position regarding the confidentiality of any information provided is set out on page 24 this document. Unless you state otherwise (and an automatic disclaimer generated by your IT system does not constitute such a statement), we will assume you are content for us to publish your response. |
| <i>Additional copies</i> | This consultation is available for download from: https://www.gov.uk/government/organisations/better-regulation-delivery-office |

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

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Executive summary

The way in which regulation is enforced can have significant effects on companies' ability and willingness to grow, and hence the overall economy. The Government has encouraged all parts of the public sector to contribute to the UK's recovery from financial crisis. As part of that, the Chancellor announced in the 2012 Autumn Statement several measures – now known as the Better Enforcement Programme – to improve the impact of regulatory enforcement on business. This consultation takes forward two of those measures:

- The duty for non-economic regulators to have regard to growth (the “growth duty”) which is part of the Deregulation Bill which began its passage through Parliament in January 2013.
- The appointment of a Small Business Appeals Champion to each regulator which is also before Parliament in the Small Business, Enterprise and Employment Bill introduced in June 2014.

The Government is clear that non-economic regulators should have a responsibility to have regard to economic growth and reduce unnecessary burdens on business. Evidence from the *Focus on Enforcement* reviews and the post-implementation review of the Regulators Compliance Code (which preceded the new Regulators' Code) showed that although the Code created high level principles which supported economic progress, there was also a need for a more explicit duty to support growth. Although commitments to supporting economic progress exist at a policy level, there is a lack of accountability for decision-making and the impact of decisions on business growth at an operational level. Worse, some regulators believe that they are unable to take account of growth as they do not have a statutory requirement to do so. The growth duty makes it crystal clear that regulators must take care to support growth.

The growth duty will benefit businesses by making regulators' decision-making more proportional, increasing the transparency of the regulatory environment it operates in, and by keeping the burdens placed on business productivity to a minimum.

Evidence from the same sources also showed significant issues relating to appeals and complaints. These included:

- Deficiencies in the explanation or advertising of procedures, with businesses expressing concerns about lack of knowledge and understanding on their part as to how to go about querying, complaining about, or appealing against action taken by a regulator;
- The lack of opportunities for problems to be resolved informally before prohibitively costly formal processes are triggered;
- Concerns about the operational independence of the person considering the complaint or appeal; and
- The current lack of publication and collection of data on complaints and appeals that would allow third-party scrutiny of a regulator's performance.

In light of these concerns the Government has also introduced legislation to create a Small Business Appeals Champions for non-economic regulators. Each Champion will ensure that these issues are addressed for their regulator by regularly seeking business feedback on appeals and complaints processes, and making recommendations to regulators and Ministers about any changes which need to be made.

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

In this consultation the Government is seeking views on:

- Whether the duty for regulators to have regard to the desirability of promoting economic growth should be extended to non-economic regulatory functions of: approved legal services regulators under Schedule 4 to the Legal Services Act 2007; the Office of Rail Regulation; the Civil Aviation Authority; the Architects Registration Board; Ofqual; the Assay Offices and the Farriers' Registration Council¹; and
- The application of the Champions policy to selected regulators which are already subject to the Regulators' Code – all of which are listed at Annex A.

Our aim is to assure businesses that both policies will apply to all regulators exercising non-economic regulatory functions, unless there is an exceptional and compelling reason for them to be excluded. In broad terms a regulatory function^{2 3} is a function under or by virtue of an Act or subordinate legislation which involves regulating or enforcing. Regulatory functions will not be in scope of the growth duty or the Small Business Appeal Champions where they are exercisable in Scotland, Wales or Northern Ireland where those functions have been devolved.

¹ The Minister is required under Clause 84(2) of the Deregulation Bill, before making any order specifying regulatory functions to which the growth duty applies, to consult any person exercising functions to be specified in the order, and such other persons as the Minister considers appropriate.

² **Regulatory Function, in relation to the Small Business Appeals Champions, is defined In the Small Business Bill as having the same meaning as in section 32 (2) to (4) of the Legislative and Regulatory Reform Act 2006, that is:**

- (2) "*regulatory function*" means –
- (a) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
 - (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.
- (3) In subsection (2)(a) and (b) the references to a function –
- (a) include a function exercisable by or on behalf of the Crown;
 - (b) do not include –
 - (i) any function exercisable by any body of, or any person holding office in, the Church of England; or
 - (ii) any function of conducting criminal or civil proceedings.
- (4) In subsection (2)(a) and (b) the references to an activity include –
- (a) providing goods and services; and
 - (b) employing or offering employment to any person.

³ **Regulatory Function, in relation to the growth duty, is defined at clause 86 in the Deregulation Bill as:**

- (1) In sections 83 to 85, "*regulatory function*" means –
- (a) a function under or by virtue of an Act or subordinate legislation of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to an activity, or
 - (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which, under or by virtue of an Act or subordinate legislation, relate to an activity.
- (2) In subsection (1)(a) and (b) the references to a function –
- (a) include a function exercisable by or on behalf of the Crown;
 - (b) do not include –
 - (i) a function of instituting or conducting criminal proceedings;
 - (ii) a function of conducting civil proceedings.
- (3) In subsection (1)(a) and (b) the references to an activity include –
- (a) providing goods and services, and
 - (b) employing or offering employment to a person.
- (4) In sections 84 and 85, "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.
- (5) In this section, "subordinate legislation" has the same meaning as in the Interpretation Act 1978.

Introduction: The Better Enforcement Programme

1. Both the growth duty and the Small Business Appeals Champions policy form part of the Better Enforcement Programme, a suite of measures designed to create a healthier business environment by making regulation more proportionate, transparent, and accountable. In the interests of consistency and ease of understanding the Government aims, so far as possible, for the various measures of the Better Enforcement Programme to apply to the same regulatory bodies. One of these, the Regulators' Code, is already in force, and applies to regulators laid out in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007/3544 (as amended)⁴. As far as possible, our aim is for any regulator in scope of the Regulators' Code to also be in scope of the growth duty and the Small Business Appeals Champions policy, although there are exceptions. **A full list of those regulators and functions which are proposed to be included in scope of each policy is at Annex A.**

⁴ As amended by numerous enactments, in particular SIs 2009/2981, 2010/3028, 2014/860

The growth duty

2. There is a strong body of evidence suggesting that non-economic regulators are not consistently paying due attention to the economic consequences of their actions. Evidence from the Government's Focus on Enforcement reviews and the post-implementation review of the Regulators' Code showed that some regulators fail to (or consider themselves legally unable to) consider the impact of their decisions on growth. Lord Heseltine's report *No stone unturned: in pursuit of growth*⁵ recognised that regulation can encourage growth and emphasised the impact non-economic regulators can have on the economy in terms of reducing the unnecessary burdens they impose on compliant businesses.
3. In response the Government announced its intention to consult on a new duty for non-economic regulators to have regard to economic growth in the 2012 Autumn Statement.

The growth duty: where does it stand now?

4. A public consultation on the growth duty was conducted over March and April 2013. Twenty-two business groups and trade associations, representing hundreds or thousands of businesses each, voiced their support for primary legislation giving regulators a statutory duty to have regard to the economic consequences of their actions.
5. The duty is currently making its way through Parliament at clauses 88-91 of the [Deregulation Bill](#). At pre-legislative scrutiny, the Joint Select Committee concluded that the duty would be a welcome addition to the Bill.
6. The growth duty is a duty on all regulators to have regard to the desirability of economic growth when they exercise their non-economic regulatory functions. The growth duty will also apply to a significant number of non-economic regulatory functions exercisable by a Minister of the Crown. In broad terms, a regulatory function is a function under or by virtue of an Act or subordinate legislation of regulating or enforcing. (See footnotes 2 and 3 on page 8 for the definitions of a regulatory function.) A full list of regulators who have been consulted, or will now be consulted on, for inclusion in the growth duty is at Annex A. The growth duty will not take effect until the regulatory functions exercisable by regulators and the regulatory functions exercisable by a Minister of the Crown have been listed in secondary legislation.

Why extend the growth duty to more regulators?

7. The growth duty is expected to bring significant benefits to the economy by reducing regulatory burden and improving the relationship between regulators and businesses. It has enjoyed a broadly positive reception from stakeholders, and the Government wishes to extend the duty to additional regulators so that a clear and consistent regulatory environment can be applied more widely across the economy.

⁵ Heseltine Review: <https://www.gov.uk/government/publications/no-stone-untuned-in-pursuit-of-growth>

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8. Of the non-economic regulators included within scope at the time of the initial consultation, one has now been excluded from the growth duty: the Equalities and Human Rights Commission (EHRC). The EHRC enjoys 'A' status as a National Human Rights Institution, and this A-status is awarded by the UN International Coordinating Committee of National Human Rights Institutions, which reviews the EHRC's compliance with the UN's *Paris Principles*⁶.
9. Although the draft guidance for the duty is clear that the duty will not impinge on the operational independence of regulators, the criteria for deciding continued 'A' status are not clear. The Government has therefore decided to exclude EHRC from the duty in order avoid jeopardising its international standing.
10. In response to calls⁷ during the original consultation for the Advertising Standards Authority (ASA) to be brought into scope of the growth duty, the Government committed to explore this possibility further. Since then the Government has explored the issues raised with the respondents concerned – who were clear that they experience inconsistency from the ASA and that something needed to change. The Government has considered this matter further and, in the light of the fact that most of ASA's functions are non-statutory, and only one of its functions would come within the definition of regulatory function in the Deregulation Bill, it has concluded that it would not be appropriate to apply the growth duty to the ASA at this stage. Nor would applying the duty to this narrow function adequately address the concerns of business. Instead, the Government is exploring with ASA whether voluntary adoption of the principles in the Regulators' Code would address the specific concerns raised by industry.

Guidance on the growth duty

11. One of most common responses to the initial consultation was a desire for the Government to issue guidance on how the growth duty should be implemented. Draft guidance⁸ was published in January 2014 in order to clarify for regulators, businesses and parliamentarians how the duty would work in practice.
12. The guidance clearly sets out how regulators can positively influence economic growth in three primary ways:
 - **Keeping the burden on business productivity to a minimum.** Regulators can directly influence the growth prospects of a business by avoiding unnecessarily diverting resources away from core operational or strategic activity.
 - **Being proportionate in their decision-making.** This means ensuring that interactions with businesses are necessary and proportionate to the risks posed by non-compliance and ability of the business to incorporate change. This applies to both the provision of advice and guidance and enforcement action. Proportionality also means that regulatory action should only be taken when needed.
 - **Understanding the business environment.** This means tailoring regulatory activities according to an understanding of the business environment and stages in the business lifecycle, and applying this understanding when dealing with businesses on the ground.

⁶ The Paris Principles are a set of international standards that NHRIs are required to meet. They include issues such as an institution's independence from Government, the nature of its accountability mechanisms and how it avoids conflicts of interest.

⁷ From two large trade associations and a large business

⁸ <https://www.gov.uk/government/publications/growth-duty-draft-guidance>

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13. The guidance explains that the growth duty is a factor for regulators to consider in their decision making. It does not undermine or override necessary protections, nor challenge the independence of a regulator.
14. It will come into force after the Deregulation Bill is enacted following full legislative scrutiny. The Government is continuing to seek feedback from stakeholders on the draft guidance in the meantime.
15. If you have any comments on the [draft guidance](#) that you would like the Government to consider before it is finalised then you can either set out your comments in response to this consultation or simply email consultation@brdo.bis.gsi.gov.uk.

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

Proposals and evidence: extending the growth duty

The Office of Rail Regulation (ORR)

16. The ORR is the independent safety and economic regulator of Britain's railways as well as its competition and consumer authority. The Government is now seeking views on the inclusion of ORR's non-economic functions relating to health and safety.

Question 1: Do you consider that the non-economic regulatory functions of the ORR should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.

The Civil Aviation Authority (CAA)

17. The CAA is the UK's specialist aviation regulator and is in scope of the Regulators' Code. Where possible, we seek to apply the growth duty to any regulatory body which is in scope of the Regulators' Code. It is both an economic and non-economic regulator. In carrying out its non-economic functions the CAA ensures the aviation industry meets the highest safety standards, protects consumers by making sure they have choice and value and are treated fairly, drives improvements in airlines and airports' environmental performance, and ensures industry manages security risks effectively.

Question 2: Do you consider that the non-economic regulatory functions of the CAA should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.

Farriers Registration Council

18. The Farriers Registration Council regulates providers of equine foot care. The Regulators' Code already refers the Farriers (Registration) Act 1975 in a number of capacities. Where possible, the Government seeks to apply the growth duty to any regulatory body which is in scope of the Regulators' Code.

Question 3: Do you consider that the Farriers Registration Council should be subject to the duty for non-economic regulators to have regard to growth? Please provide reasons.

Legal services regulators

19. The original Government response to the consultation on the growth duty included two of the legal services regulators: the Legal Services Board (which is currently in scope of the Regulators' Code) and the Solicitors Regulation Authority. This consultation seeks views on applying the growth duty to all the 'approved regulators' overseen by the LSB in respect of their functions under the Legal Services Act 2007 where these fall within regulatory functions described above.

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These are:

- The Law Society
- The General Council of the Bar
- The Chartered Institute of Legal Executives
- The Council for Licensed Conveyancers
- The Chartered Institute of Patent Attorneys
- The Institute of Trade Mark Attorneys
- The Association of Costs Lawyers
- The Master of the Faculties
- The Institute of Chartered Accountants in England Wales

In addition, two further bodies from outside the traditional legal services sector are formally designated as approved regulators for probate activities, though neither has any members offering these services at present. They are:

- The Institute of Chartered Accountants in Scotland
- The Association of Chartered Certified Accountants in England and Wales

20. If these approved regulators, in addition to the Legal Services Board, were to be included in the scope of the growth duty it would ensure consistency across the legal sector. To apply the duty to one but not all of the legal services regulators would be at odds with the Better Regulation principles as it would be neither targeted nor consistent.

Question 4: Do you consider that all of the legal services regulators should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.

Ofqual

21. Ofqual regulates qualifications, examinations and assessments in England and Parliament established Ofqual as a Non-Ministerial Department to report directly to Parliament, independent of Ministers. Ofqual undertakes statutory non-economic functions, to regulate the quality of the design and delivery of qualifications to ensure that they are a true test of candidates' performance. (Ofqual also has statutory economic functions, principally a power to cap fees and an efficiency objective in relation to the regulation of qualifications.) Ofqual has not previously been included within scope of the Regulators' Code as it was considered that inclusion may conflict its accountability to Parliament. The Government has now reconsidered this view and believes that bringing Ofqual's non-economic regulatory functions within scope of the growth duty would not challenge Ofqual's independence but would strengthen its relationship with Government and would be in accordance with Ofqual's statutory duty to have regard to such aspects of Government policy as are set out in published directions. The Government therefore proposes that the non-economic regulatory functions of Ofqual be included in scope of the duty.

Question 5: Do you consider that the non-economic functions of Ofqual should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.

The Assay Offices

22. The four UK assay offices in London, Edinburgh, Birmingham and Sheffield are separate legal entities. They have the power under the Hallmarking Act 1973 (“the Act”) to apply hallmarks to items made wholly or partly of precious metal if they are satisfied that the items comply with the prescribed standards of fineness. Otherwise, the assay offices engage in private commercial activities. The British Hallmarking Council’s role is to ensure that there are adequate facilities for assaying and hallmarking as required from time to time in the UK and for supervising the activities of the assay offices in that regard. The British Hallmarking Council also sets the maximum prices which assay offices may charge for assaying and hallmarking. The regulatory functions of the assay offices are limited to assaying items of precious metal and applying hallmarks in accordance with the Act. Though they have the power to take enforcement action under the Act, assay offices have never exercised such a power in view of the fact that the primary responsibility for enforcement lies with local Trading Standards teams. All of the assay offices, as well as the British Hallmarking Council, are subject to the Regulators’ Code by virtue of the 2009 amendment to the Legislative and Regulatory Reform (Regulatory Functions) Order and the Government has already proposed that the British Hallmarking Council would be included in scope of the growth duty. On the grounds of consistency with the Regulators’ Code and to ensure sector wide coverage, this paper seeks views on the inclusion of the Assay Offices in the growth duty.

Question 6: Do you consider that the Assay Offices should be subject to the duty for non-economic regulators to have regard to growth? Please provide reasons.

The Architects Registration Board (ARB)

23. The ARB carries out regulatory functions under the Architects Act 1997. These relate to functions such as prescribing the qualifications needed to become an architect, keeping the UK Register of Architects, ensuring that architects meet the conduct and practice standards set by the ARB and investigating complaints about an architect’s conduct or competence. This paper seeks your views on including the ARB in the growth duty.

Question 7: Do you consider that the ARB should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.

Other regulators

24. The Government is open to the possibility of extending the duty to other regulators particularly where their stakeholders believe this would improve the regulatory experience of businesses in that sector.

Question 8: Do you think that there are other regulators not included in this consultation or in Annex A which should be subject to the duty for non-economic regulators to have regard to growth? Please provide reasons.

Small Business Appeals Champions

25. Businesses – and in particular small businesses – need to be confident that they can ask for an explanation of or can challenge a regulator’s decision, outcome, advice or behaviour without fear, disproportionate cost or long delays. Evidence gathered under the Focus on Enforcement programme⁹ shows that this is not always the case.
26. The Government recognises that there is a varied and broad range of statutory remits, enforcement regimes, and types of intervention against which a business may wish to appeal or complain. For that reason, it believes that the most efficient means of improving businesses’ experience of appeals and complaints is to ensure that individual arrangements for audit and scrutiny are established within each regulator, rather than being centrally organised.

Current position

27. In March 2014 the Government consulted¹⁰ on a proposal to create in law and appoint for each non-economic regulator an independent Small Business Appeals Champion. In June 2014 the Government published¹¹ its response to the consultation, and introduced into Parliament the Small Business, Enterprise and Employment Bill¹² which includes clauses designed to implement the policy.
28. Paragraph 8 of the March 2014 consultation said that “Broadly, the intention is that Small Business Appeals Champions should be appointed in respect of the national non-economic regulators currently in scope of the new Regulators’ Code. However, given the range of different statutory arrangements and practices among these regulators the Government will need to give individual consideration to the application of the policy to each regulator before the policy is implemented.” The policy does not apply to local authorities or to regulators implementing devolved legislation.
29. The duty is currently making its way through Parliament at clauses 17-19 of the [Small Business, Enterprise and Employment Bill](#).

⁹ <http://discuss.bis.gov.uk/focusonenforcement>

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295851/bis-14-673-small-business-appeals-champions-and-non-economic-regulators-consultation.pdf

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320830/bis-14-859-small-business-appeals-champion-government-response-corrected.pdf

¹² <http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

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Proposals: Small Business Appeals Champions

Regulators excluded from scope of Small Business Appeals Champions

30. Since the consultation was issued, the Department for Business, Innovation and Skills has continued to engage with regulators about the policy. The Government's response to the consultation on the Champions announced that the Financial Conduct Authority and Prudential Regulation Authority would not be included in the scope of the policy, because they already have an extensive and specialised statutory framework in this area.
31. Subsequent consideration has shown that Champions need not be appointed in respect of three further regulators in scope of the Regulators' Code – the three UK General Lighthouse Authorities: Trinity House (in its capacity as a lighthouse authority), the Northern Lighthouse Board and the Commissioners of Irish Lights. All three bodies provide advice to ports about navigational safety matters: because that advice can have effects on the businesses of port operators and their customers, it is right that the bodies should be required to have regard to growth in making regulatory decisions. But because the three bodies do not have powers to enforce the advice they give, there are no decisions against which businesses need to appeal and so little purpose for a Small Business Appeals Champion.
32. Of the remaining regulators covered by the Regulators' Code:
 - The Government will review the decision to exclude Monitor (which is responsible for licensing businesses to operate in the NHS market) from scope of the growth duty in the future. The case for appointment of a Small Business Appeals Champion will be considered at the same time.
 - HM Revenue and Customs has two potentially relevant roles alongside its main business of tax collection, one of which will require further consideration in the context of the Small Business Appeals Champion appointment. Firstly, it shares supervisory responsibility for anti-money laundering legislation with 26 other statutory and professional bodies; all subject to the Regulators' Code. Secondly, its enforcement of the National Minimum Wage regulation (on behalf of the Department for Business, Innovation and Skills) is not subject to the Code. HMRC already has an Independent Adjudicator for complaints, who is responsible for highlighting failings on both a thematic and individual basis, founded on evidence from her investigations of individual complaints arising from all/any aspect of its work. If customers are dissatisfied with the Adjudicator's decision, they can approach the Parliamentary and Health Service Ombudsman who holds a statutory role looking across government. The Government will consider further how to secure the best approach to assuring sound appeals and complaints processes in respect of both anti-money laundering and national minimum wage legislation.

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

Regulators to be considered at a later date to align with the Growth Duty

33. The Legal Services Board (which is subject to the Regulators' Code) supervises the approved regulators of legal services (which are listed in paragraph 19 of this consultation paper and which are themselves outside the Code). Because the Legal Services Board does not itself regulate businesses directly, there is no case for appointing a Small Business Appeals Champion in respect of the Legal Services Board alone. However paragraph 19 above seeks view on whether all of the "approved regulators" overseen by the Legal Services Board should be made subject to the growth duty. In the light of the conclusion of this consultation the Government will consider further, in discussion with the Legal Services Board and the Approved Regulators, whether they should be brought within the scope of the Champions' policy.
34. If, subject to the views of this consultation, Champions were appointed in respect of the other regulators listed in Part 2 of Annex A (the Office of Rail Regulation, the Architects Registration Board and Ofqual), this would mean that the scope of the Champions' policy was broadly equivalent to the proposed scope of the growth duty in March 2013. The earlier part of this consultation paper seeks views on the possibility of extending the scope of the growth duty to a number of regulators not currently subject to the Code. The Government now intends to engage with those regulators to consider whether it might also be appropriate to bring them within the scope of the Champions' policy at a future date.

Question 9: What are your views about the possibility of bringing the additional regulators (list at Part 2 of Annex A) into the scope of the Champions policy in due course?

Regulators to be included in scope of the Champion at this time

35. This consultation paper seeks views on whether Champions should at this time be appointed in respect of the remaining regulators subject to the Code (listed at Annex A).

Question 10: Do you agree that the Small Business Appeals Champions should be appointed in respect of the regulators listed at Annex A? Please provide reasons.

Consultation questions

- Question 1:** Do you consider that the non-economic regulatory functions of the ORR should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 2:** Do you consider that the non-economic regulatory functions of the CAA should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 3:** Do you consider that the Farriers Registration Council should be subject to the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 4:** Do you consider that all of the legal services regulators should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 5:** Do you consider that Ofqual should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 6:** Do you consider that the Assay Offices should be subject to the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 7:** Do you consider that the ARB should be included in the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 8:** Do you think that there are other regulators not included in this consultation or in Annex A which should be subject to the duty for non-economic regulators to have regard to growth? Please provide reasons.
- Question 9:** What are your views about the possibility of bringing the additional regulators (list at Part 2 of Annex A) into the scope of the Champions policy in due course?
- Question 10:** Do you agree that the Small Business Appeals Champions should be appointed in respect of the regulators listed at Annex A? Please provide reasons.

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

Annex A: Proposed scope of growth duty and Small Business Appeals Champions

The table below lists the regulators and non-economic regulatory functions that are:

- already in scope of the growth duty as outlined in the Government's response to the 2013 consultation, or who are now proposed in this consultation for inclusion within scope; and
- proposed for inclusion within scope of the Small Business Appeals Champions policy.

Regulatory functions will not be covered by the growth duty or Small Business Appeal Champions where they are exercisable in Scotland, Wales or Northern Ireland where those functions have been devolved.

The non-economic functions of those regulators in the table below *not* marked with an asterisk are currently proposed to be listed as named regulators or listed by reference to their regulatory functions. It is intended that this will be in the same manner as Part 1 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007/3544, as amended.

Those marked with an asterisk (*) are entities currently proposed to be listed by virtue of them having regulatory functions exercisable by a Minister of the Crown. i.e. they will not be listed by name, rather they are included by virtue of listing the enactments exercisable by a Minister of the Crown. This follows the approach taken in Part 2 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007/3544, as amended.

Part 1

| Functions and named bodies | Growth duty | Small Business Appeals Champions |
|---|--|---|
| Local authorities and fire and rescue authorities | Local regulators are not included in either policy | |
| Advertising Standards Authority | Not in scope of either policy | |
| *Animal Health and Veterinary Laboratories Agency (Animal and Plant Health Agency since October 2014) | Already in scope | Proposed 2014 |
| *Animals in Science Regulation Unit (excluding project licensing functions) | Already in scope | Proposed 2014 |
| Architects Registration Board | Proposed 2014 | For future consideration |
| British Hallmarking Council | Already in scope | Proposed 2014 |
| Care Council for Wales | Not in scope of either policy | |
| Care Quality Commission ¹³ | Already in scope | Proposed 2014 |
| *Centre for Environment, Fisheries and Aquaculture Science, Fish Health Inspectorate | Already in scope | Proposed 2014 |
| Charity Commission for England and Wales | Already in scope | Proposed 2014 |

¹³ The duty will apply to CQC only in so far as relating to their regulation of private sector or third sector bodies.

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

| | | |
|--|---|---------------------------------|
| Civil Aviation Authority (non-economic functions only) | Proposed 2014 | Proposed 2014 |
| *Claims Management Regulation Unit | Already in scope | Proposed 2014 |
| Coal Authority | Already in scope | Proposed 2014 |
| Commissioners of Irish Lights (in respect of UK regulatory functions only) | Already in scope | Not proposed – see paragraph 31 |
| Registrar of Companies in England and Wales | Already in scope | Proposed 2014 |
| Registrar of Companies in Scotland | Already in scope | Proposed 2014 |
| Registrar of Companies in Northern Ireland | Not in scope of either policy | |
| Competition and Markets Authority | Not in scope – Government will review this decision in the future | |
| Disclosure and Barring Service | Already in scope | Proposed 2014 |
| *Drinking Water Inspectorate | Already in scope | Proposed 2014 |
| *Driver and Vehicle Licensing Authority | Already in scope | Proposed 2014 |
| *Driving and Vehicle Standards Agency | Already in scope | Proposed 2014 |
| *Employment Agency and Standards Directorate | Already in scope | Proposed 2014 |
| English Heritage | Already in scope | Proposed 2014 |
| Environment Agency | Already in scope | Proposed 2014 |
| Farriers Registration Council | Proposed 2014 | Proposed 2014 |
| Financial Conduct Authority | Not in scope – has an existing specific duty | Not proposed – see paragraph 31 |
| Financial Reporting Council | Already in scope | Proposed 2014 |
| Fire and Rescue Authorities in England | Local regulators are not included in either policy | |
| *Food and Environment Research Agency (Inspectorate functions moved into Animal & Plant Health Agency from October 2014) | Already in scope | Proposed 2014 |
| Food Standards Agency | Already in scope | Proposed 2014 |
| Forestry Commission | Already in scope | Proposed 2014 |
| Gambling Commission ¹⁴ | Already in scope | Proposed 2014 |
| Gangmasters Licensing Authority | Already in scope | Proposed 2014 |
| Groceries Code Adjudicator | Already in scope | Proposed 2014 |
| Health and Safety Executive | Already in scope | Proposed 2014 |
| *Highways Agency | Already in scope | Proposed 2014 |
| Homes and Communities Agency | Already in scope | Proposed 2014 |
| Human Fertilisation and Embryology Authority | Already in scope | Proposed 2014 |

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

| | | |
|--|---|---|
| Human Tissue Authority | Already in scope | Proposed 2014 |
| Information Commissioner ¹⁵ | Already in scope | Proposed 2014 |
| *Insolvency Service including Insolvency Practitioner Unit | Already in scope | Proposed 2014 |
| *Intellectual Property Office | Already in scope | Proposed 2014 |
| Legal Services Board | Already in scope | Proposed 2014 |
| Marine Management Organisation | Already in scope | Proposed 2014 |
| *Maritime and Coastguard Agency | Already in scope | Proposed 2014 |
| *Medicines and Healthcare Products Regulatory Agency | Already in scope | Proposed 2014 |
| Monitor | Not in scope – Government will review this decision in the future | |
| *National Counter Terrorism Security Office | Already in scope | Proposed 2014 |
| *National Measurement Office | Already in scope | Proposed 2014 |
| National Minimum Wage enforcement functions (currently exercised by HMRC on behalf of BIS) | Already in scope | For future consideration – see paragraph 32 |
| Natural England | Already in scope | Proposed 2014 |
| Natural Resources Wales | Not in scope of either policy | |
| Northern Lighthouse Board | Already in scope | Not proposed – see paragraph 31 |
| *Office for Fair Access | Already in scope | Proposed 2014 |
| Office for Nuclear Regulation ¹⁶ | Already in scope | Proposed 2014 |
| Office of Rail Regulation (non-economic functions only) | Proposed 2014 | For future consideration |
| Office for Standards in Education, Children's Services and Skills ¹⁷ | Already in scope | Proposed 2014 |
| Office of the Regulator of Community Interest Companies | Already in scope | Proposed 2014 |
| The Office of Qualifications and Examinations Regulation (Ofqual) | Proposed 2014 | For future consideration |
| The Pensions Regulator | Not in scope – has an existing specific duty | Proposed 2014 |

¹⁵ Excluding: Freedom of Information Act 2000.

¹⁶ Excluding: The Nuclear Installations Act 1965 Schedule 1, Section 2, The Import of Good (Control) Order 1954, The Nuclear Industries Security Regulations 2003, Regulations 4 & 5 of The Uranium Enrichment Technology (Prohibition on Disclosure) Regulations.

¹⁷ The duty will apply to Ofsted only in so far as relating to the their regulation of private sector or third sector bodies

Extending the scope of the duty for non-economic regulators to have regard to economic growth and defining the scope of the Small Business Appeals Champions

| | | |
|--|--|---------------------------------|
| Prudential Regulation Authority | Not in scope – has an existing specific duty | Not proposed - see paragraph 30 |
| *Rural Payments Agency | Already in scope | Proposed 2014 |
| Security Industry Authority | Already in scope | Proposed 2014 |
| Sports Ground Safety Authority | Already in scope | Proposed 2014 |
| Guardians of the Standard of Wrought Plate in Birmingham (The Birmingham Assay Office) | Proposed 2014 | Proposed 2014 |
| Incorporation of Goldsmiths of the City of Edinburgh (The Edinburgh Assay Office) | Proposed 2014 | Proposed 2014 |
| Wardens and Commonalty of the Mystery of Goldsmiths of the City of London (The London Assay Office) | Proposed 2014 | Proposed 2014 |
| Guardians of the Standard of Wrought Plate within the town of Sheffield (The Sheffield Assay Office) | Proposed 2014 | Proposed 2014 |
| Traffic Commissioners | Already in scope | Proposed 2014 |
| Trinity House Lighthouse Services | Already in scope | Not proposed – see paragraph 31 |
| UK Border Agency (Abolished 2013) Replaced by UK Visas and Immigration | Not in scope | Not in scope |
| *Vehicle Certification Agency | Already in scope | Proposed 2014 |
| *Veterinary Medicines Directorate | Already in scope | Proposed 2014 |
| Professional bodies listed in Schedule 3 to the Money Laundering Regulations 2007 | For future consideration | Not proposed – see paragraph 32 |

Part 2: Additional regulators

The following regulators are currently proposed for inclusion in the growth duty but not the Small Business Appeals Champions policy. For the reasons given in paragraph 35 above the Government also now intends to engage with these regulators to consider whether they should be brought within the scope of the Champions policy at a later date.

- Office of Rail Regulation
- Architects Registration Board
- Ofqual
- Approved Regulators under the Legal Services Act 2007:
 - The Law Society
 - The General Council of the Bar
 - The Master of the Faculties
 - The Institute of Legal Executives
 - The Council of Licensed Conveyancers
 - The Chartered Institute of Patent Attorneys
 - The Institute of Trade Mark Attorneys
 - The Association of Law Costs Draftsman
 - The Institute of Chartered Accountants in Scotland
 - The Association of Chartered Certified Accountants

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Annex B: About this consultation

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

[Consultation Principles](#)

Confidentiality and data protection

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In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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