



Department  
for Business  
Innovation & Skills

Better  
Regulation  
Delivery Office

**Government Response**

**Amending the Regulators' Compliance Code**

July 2013

## Contents

1. Foreword	3
2. Executive summary	5
3. Introduction	7
4. Responses to consultation questions	8
5. Annex A: Respondents	20

## 1. Foreword

- 1.1 Well designed and well enforced regulation can play a vital role in improving the way markets work for the benefit of business, employees and citizens, assisting to deliver sustainable growth, trade and investment and improved social and environmental outcomes.
- 1.2 The Government firmly believes that protection and growth are not mutually exclusive, and is committed to ensuring that the regulatory system contributes to both. In December 2012, as part of the Autumn Statement, the Government announced a package of measures to tackle systemic issues and barriers to growth, improving the way regulation is delivered at the front line. This included 'removing the burdens of unnecessary and inefficient regulation' by reviewing the appeals processes to make appeals quicker and easier and the launch of the second phase of the Red Tape Challenge.
- 1.3 The Government is grateful to all those who responded to this consultation and thanks them for their comments. All the views expressed have been taken into account, so far as possible, in developing the response to this document.
- 1.4 The new Regulators' Code establishes a clear and accessible framework that encourages greater transparency about the way regulation is delivered. It seeks to enhance the relationship between regulators and those they regulate, encouraging trust, open dialogue and accountability, and allowing regulators' resources to be focused on the non-compliant.
- 1.5 The Code establishes clear guidelines for how regulators, be they national organisations or local authority officers, should interact with those they are regulating. It has been drafted to be shorter and easier to follow – accessible to both regulators and to those subject to regulation.
- 1.6 Businesses and other regulated bodies are responsible for their own compliance with the law. The Code supports regulators' statutory duties of protection to deal proportionately with behaviour that breaks the rules. It also requires regulators to adopt a proactive approach towards engaging and communicating with businesses and other bodies to ensure compliance in the least burdensome manner.
- 1.7 This Code sets out our expectations of how regulators will carry out their regulatory activities. It gives regulators the flexibility to fulfil the requirements in innovative and responsive ways. With this flexibility comes a responsibility for regulators to provide greater transparency to businesses and regulated bodies, explaining how they regulate in accordance with the principles of the Code to enable those they regulate to understand what they should be able to expect of regulators, and to hold them accountable.
- 1.8 A more mature and developed relationship built on early and productive dialogue, facilitated by the Code, will give businesses and other regulated bodies greater clarity and more confidence to invest and grow, while regulators' resources can be focused on the non-compliant, who present unfair competition to law abiding businesses and pose a risk to society and the environment.

## 2. Executive summary

- 2.1 The Regulators' Compliance Code (RCC) is a statutory code of practice concerning the exercise of regulatory functions. It was first published in 2008 in accordance with section 22 of the Legislative and Regulatory Reform Act 2006.
- 2.2 The RCC governs approaches to enforcement by non-economic regulators. Its role is to guide regulators' policy and behaviour to ensure that they follow the principles of good regulation.
- 2.3 As announced in the Autumn Statement 2012, this consultation '*Amending the Regulators' Compliance Code*' took forward the commitment to review and refresh the RCC, by publishing the findings of a post implementation review of the code, and by introducing a draft new code entitled the Regulators' Code (the 'Code').
- 2.4 The post implementation review found that whilst there were many instances of good regulatory delivery and whilst regulators had largely adopted the principles of the RCC, its delivery was inconsistent and it had not delivered its objectives to embed a change in regulatory culture and practice. The revised Code provides a framework that can address this issue promoting transparency and accountability in a proportionate manner.
- 2.5 The consultation opened on 8<sup>th</sup> March 2013 and closed on 3<sup>rd</sup> May 2013, seeking views on the new draft Code. In particular views were sought on:
- the draft requirements for regulators;
  - the principles-based approach taken in the Code;
  - how compliance with the Code should be monitored; and
  - regulatory functions and bodies within the scope of the Code.
- 2.6 BRDO has engaged with national regulators, local authorities, businesses and trade bodies to seek views and discuss the draft revised Code in detail, and we are grateful to all respondents for the detailed comments and feedback provided.
- 2.7 95 responses to the consultation were received from a variety of organisations including trade associations, local authorities, national regulators, devolved administrations and professional bodies. A full list of respondents is included at Annex A.
- 2.8 Each respondent's comments have been given careful consideration and, in preparing this response, the Government has reflected on the views articulated. The following provides a broad summary of views by each stakeholder group.
- I. Businesses and business representative bodies were supportive of the revised Code as it provides a clearer understanding and clarity of what can be expected from regulators. Businesses felt that it is shorter, sharper and more direct than the RCC, which, coupled with greater promotion and transparency through the provision of service standards will ensure it has greater visibility and impact among both regulators and those they are regulating.

- II. Local authorities were supportive of the overarching principles but expressed concern about the draft requirements, indicating that some were too prescriptive.
  - III. National regulators had divided views on the new Code. Some were supportive of the proposed changes, stating that the requirement to make service standards clear and accessible would improve the service that they offer for those they regulate. However, a number felt that some of the requirements were burdensome, and were concerned about possible legal challenge.
- 2.10 It is the Government's view that the Code provides a sound framework for regulatory delivery to reflect the principles of good regulation. The revisions made will promote greater transparency, accountability and dialogue between regulators and those subject to regulation in a flexible, proportionate and localised manner.
- 2.11 Therefore, the Government intends to proceed with introducing the Code in the light of the responses provided to the consultation. A number of responses highlighted the need to provide clear guidance and practical examples to support use of the Code. It is the Government's intention to continue to liaise with regulators and business representatives to make guidance, practical examples and tools available to support delivery of the Code.
- 2.12 A large number of responses were received from Welsh regulators regarding the application of the Code in Wales and we will continue to work closely with Welsh Government and Welsh local authorities to ensure alignment with Welsh priorities.

### 3. Introduction

- 3.1 The Government is committed to delivering a regulatory environment in which healthy, sustainable business growth is encouraged and supported. The Regulators' Compliance Code (RCC), introduced in 2008, started the important process of developing a regulatory framework to make this possible. The Government believes that regulation should be delivered in a risk-based, proportionate and targeted way, to ensure that compliant businesses feel the benefits of good regulation without unnecessary burdens or bureaucracy whilst providing the tools for regulators to protect the vulnerable or the environment, or achieve social or other objectives.
- 3.2 The Government, through the post implementation review of the RCC and other sources such as the Focus on Enforcement reviews and Accountability for Regulator Impact programme, has a wide body of evidence. This suggests that whilst the RCC has been successful in certain measures it has not brought about the desired culture change in the relationship between regulators and those they are regulating. The Government is aware that this is a two way process and believes that the proposed changes made in the Regulators' Code (the 'Code'), making it shorter and easier to understand, whilst giving regulators the flexibility to meet its requirements, will achieve greater transparency and promote constructive two way dialogue.
- 3.3 The Code sets out a clear framework for good regulatory delivery whilst promoting local implementation and delivery to ensure the needs of service providers are met. The Code is intended to increase the transparency of information provided to service users, yet it does not mandate how this information should be provided. That is the decision of the individual regulator.
- 3.4 The Government is grateful to those who responded to the consultation and for all the views expressed. We have tried to reflect the views offered by respondents but have not attempted to describe all the responses in detail.

## 4. Responses to individual questions

### **Question 1: Do you agree that the Regulators' Compliance Code and the voluntary Enforcement Concordat should be replaced with a new Code?**

#### **Consultation responses**

- 4.1 The majority of respondents welcomed the proposal to replace the RCC and the voluntary Enforcement Concordat<sup>1</sup> with a new Code. It was widely believed that the result of this would be greater clarity for both regulators and business about the regulatory standards which could be expected. Of those responses in favour of replacing the RCC, respondents felt that it was not achieving its intended purpose, it was historic and rigid, and that any code of practice for regulatory enforcement should be simple, clear and enforceable.
- 4.2 Responses received from both businesses and regulators drew attention to the fact that the Enforcement Concordat covers some regulatory functions not within scope of the RCC. It was suggested that replacing the Enforcement Concordat would therefore result in a lack of guidance on good regulation in these areas, until they were brought within scope of the new Code. One charitable organisation emphasised the importance of better communication of such codes of practice.
- 4.3 A few respondents, including local authorities, stated that the Enforcement Concordat, though not mandatory, is a more practical tool than the RCC for establishing a framework for how a regulator meets the principles of good regulation and should not be replaced.

#### **Government response**

- 4.4 The Government believes that replacing the RCC and the voluntary Enforcement Concordat with one short, simple and easy to understand Code will drive a greater understanding of the principles of good regulation and greater transparency between regulators and those they are regulating.
- 4.5 It is the Government's intention to introduce a new statutory code of practice, the Regulators' Code, to replace the RCC, whilst exploring options to extend it to include areas currently covered by the Enforcement Concordat. The Government will continue to work with stakeholders and other Government departments, including the devolved administrations, to clarify how the scope of the Code should be defined and which regulators and regulatory functions are within scope.

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<sup>1</sup> The Enforcement Concordat, published in 1998, is a voluntary, non-statutory code of practice which sets out the 6 principles of good enforcement. For further information: [www.bis.gov.uk/assets/brdo/docs/publications-2008/08-1564-applying-the-rcc.pdf](http://www.bis.gov.uk/assets/brdo/docs/publications-2008/08-1564-applying-the-rcc.pdf)

- 4.6 Subject to agreement on any possible extension of the regulators and regulatory functions included, the new Code of Practice will be published using the same legislative foundation as the RCC. It will therefore be published in accordance with section 22 of the Legislative and Regulatory Reform Act 2006 ("the Act"). As required by the Act, non-economic regulators<sup>2</sup> must have regard to the Code when developing policies and principles that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators.

**Question 2: Do you agree with the name of Regulators' Code? If not, please suggest alternative titles for the Code.**

**Consultation responses**

- 4.7 The vast majority of respondents, 84 per cent, felt that the suggested name, Regulators' Code, was suitable for the revised Code or had no opinion/did not respond to this question.
- 4.8 Of those respondents who did not believe the name Regulators' Code was suitable, one suggested that it would be appropriate to include the role of business in the title, one felt there would be confusion with the existing name as it did not differentiate enough, one felt that greater emphasis should be put on a partnership approach, one felt that the term 'code' was not widely understood and another suggested the inclusion of the term 'protocol'.
- 4.9 Other suggested names included Regulators' Enforcement Rules, Code for Regulators and Business, the Regulators' Code – Supporting Business and the Consumer, The Code of Good Regulatory Practice, Business Regulation Code.
- 4.10 Two respondents believed that as well as a name change, an important aspect of ensuring the revised Code had a positive impact was a greater emphasis on its promotion to both businesses and regulators.

**Government response**

- 4.11 The Government has considered the suggested names for the revised RCC and thanks those who have recommended alternatives. The revised Code aims to be shorter and easier to understand and to increase transparency and communications for both regulators and those entities which are subject to regulation.
- 4.12 A number of respondents suggested that the title should highlight the role business has to play in delivering a joint approach to seeking compliance. The Code recognises the important role that regulated entities play in seeking compliance but we believe that as the Code is written for regulators, this should be reflected in the title.
- 4.13 The Government therefore believes that the name 'Regulators' Code' fits this criteria and is succinctly accurate to convey the overall message. It reflects that the Code is written primarily for regulators and sets the standard of regulatory delivery which those subject to regulation can expect to receive.

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<sup>2</sup> The regulators affected are those whose functions are specified by the Listing Order under section 24 (2) of the Legislative and Regulatory Reform Act. The Government will shortly be looking to revise that Listing Order to include additional non-economic regulators. Government will therefore publish alongside the new Code a simpler guide to the regulators and regulatory functions covered by the Listing Order.



**Question 3: Are the draft requirements of the Regulators' Code appropriate? Please provide any supporting evidence in your response.**

**Consultation responses**

- 4.14 The vast majority of respondents agreed with the five overarching principles proposed in the draft revised Code. Respondents felt that these principles were appropriate to achieve the aims of the revised Code and were a reflection of good regulatory practice. The intention of the Code to provide clarity for regulators and those subject to regulation was welcomed, and the principles based approach of the revised Code was well received.
- 4.15 Whilst the five overarching principles of the revised Code were broadly welcomed, respondents provided further detailed analysis of the underlying provisions, giving views where it was believed requirements were too prescriptive or were at odds with existing procedures. The Government was pleased to receive such detailed responses and has taken account of them in revising the draft Code.
- 4.16 Business respondents welcomed the clear focus on the need for regulators to provide guidance and advice and stated that some regulators still say they cannot provide advice on how businesses can comply with legislation. One business thought that the Code did not use strong enough language, highlighting the use of the wording 'should' rather than 'must' throughout the document and that this provides regulators a 'get out clause' which undermines the Code.
- 4.17 Some respondents, including businesses, felt there needed to be more clarity around what was meant by growth and others thought that highlighting the importance of sustainable growth was important.
- 4.18 Some negative responses were received from local authorities who disagreed with the detailed proposals made in the revised Code, expressing concern that some were overly prescriptive, particularly where they included having to have a process or mechanism in place. It was also suggested by some that the proposed requirement around detailed customer satisfaction surveys were incompatible with the Government's commitment to localism.
- 4.19 There was concern that some of the requirements placed unreasonable burdens on regulators, particularly from local authorities and bodies whose primary function is not regulatory. Requirements in the draft Code that were felt to be potentially burdensome included having mechanisms in place to allow regulated bodies to contribute to the development of policies and service standards, the requirement to understand the business sectors regulated, and the requirement to carry out customer satisfaction surveys. Respondents stressed the need for the Code to take a proportionate approach.
- 4.20 Many local authorities were concerned that the Code could be used as a mechanism for challenge, especially in regard to performance reporting and appeals data. Concerns were raised on the requirements of an independent appeals process, adding that additional appeals processes could be costly and time consuming.
- 4.21 A number of local authorities questioned at what level the Code would apply, for instance, whether an individual local authority was a regulator or whether the trading standards and environmental health services within a single local authority were considered as two separate regulators.

- 4.22 There was concern from some regulators that the revised Code put too much emphasis on requirements for regulators and did not recognise the responsibilities of businesses. It was highlighted that for regulation to be a productive process, business' responsibilities to achieve compliance should be recognised.
- 4.23 Some respondents felt that early dialogue was not always appropriate, and expressed reservations as to how this would apply in potentially criminal cases and conflict with the requirements of PACE (Police and Criminal Evidence Act). In addition, data sharing, although important, was subject to practical and legal barriers which make it difficult in practice.
- 4.24 Regulators were generally positive about engaging with the business community and felt that they were operating in accordance with Hampton principles. However some felt that the language of the Code was divisive, and encouraged an antagonistic relationship between regulators and those they are regulating. The need for a statutory code was also questioned.

### **Government response**

- 4.25 The Government is pleased to note that the broad principles contained within the draft Code are welcomed by both regulators and regulated entities. These principles set the standard for good regulatory delivery and whilst regulators may already be carrying out their duties to these standards, it is important that they are applied consistently.
- 4.26 The requirements contained under each general principle detail how these principles can be met. The Government is mindful that the Code covers a diverse range of regulators of varying sizes and therefore cannot contain prescriptive requirements but must be flexible to allow for local delivery.
- 4.27 From the responses received, it is clear that the principles contained within the draft Code are deemed appropriate. Concerns that some of the specific requirements will be burdensome and apply additional requirements on regulators have been heard. It is not the Government's intention for the revised Code to create new burdens for regulators but the Government does believe that the manner in which regulation is delivered should be transparent and that regulators should be accountable to those they regulate.

### **Examining the specific concerns raised in more detail**

- 4.28 The language of 'should' not 'must' in the revised Code reflects its legal status in the Legislative and Regulatory Reform Act (2006) which states that regulators must 'have regard' to the Code. Addressing the concern that regulators having a 'get out clause', this is not the Government's intention but the Code needs flexibility to reflect the broad range of regulators it applies to whilst not undermining existing legislative duties. The Code recognises that regulators will have different relationships with regulated entities, depending on their willingness and ability to comply.
- 4.29 The Government is aware that there are many examples of good regulatory practice in this area and intends to publish case studies and examples in subsequent guidance materials.
- 4.30 Local authorities raised concerns about how the Code will apply to their different service areas. It is the Government's view that the local authority is the regulator for the purposes of the Code, rather than each individual regulatory function, and it is therefore the responsibility of the local authority to act in accordance with the Code.

- 4.31 Regarding the publication of information, the Government disagrees that this creates a new burden for regulators. The existing RCC, and the Enforcement Concordat, both contain requirements to make information available to businesses and other regulated bodies, including enforcement policies. The new Code clarifies the information to be published, without mandating the format of such information.
- 4.32 The importance of the right of appeal was emphasised by business respondents. Regulators also raised a number of issues. In response, we have revised requirements relating to appeals to clarify the key principles covered by the Code, and reduce concern that the requirements could create burdens.

**Question 4: Are there additional requirements you consider important that are not captured by the draft Code? Please state these and your reasons.**

**Consultation responses**

- 4.33 40 detailed responses from local authorities, national regulators, businesses, business representative groups and professional bodies were received to this question. A smaller number, 21 responses, responded that no additional requirements were needed.
- 4.34 A number of suggestions were received for additional requirements or requirements needing additional emphasis within the revised Code. These related to the application of the Code to regulators' activities and to definitions used within the Code.
- 4.35 Regarding the application of the Code, some business respondents felt that it was at too high a level, and needed to apply to individual decisions by regulators and not just the setting of policy. There was strong emphasis on the need for the Code to include sanctions should regulators not abide by it. Some regulators felt that the Code should be clearer than 'have regard to' the requirements.
- 4.36 Many respondents, particularly regulators, felt that there was a need to emphasise the protection duties of regulators and the context of the Code, including that the Code sits alongside regulators' other statutory duties. Also, a number of responses indicated that the role of businesses in ensuring compliance and responding to advice and guidance could be highlighted. There was concern from many local authority regulators that the draft Code does not detail the expectation that regulated entities should be proactively seeking to be legally compliant.
- 4.37 Specific comments were received regarding the importance of the right of appeal. A number of business respondents suggested the need for a streamlined and simplified appeals process which was less expensive and time consuming. Some businesses suggested the possibility of a board to which business could bring complaints to act as a challenge function to regulators, and with the power to change decisions.
- 4.38 Many businesses felt that earned recognition could take a more central role and other respondents queried the definition of growth being used. A number of respondents mentioned competency as an additional requirement for regulators.

### **Government response**

- 4.39 We are grateful to respondents for the detailed comments and suggestions for additional requirements for inclusion in the revised Code, and these responses have been used to shape revisions to the draft Code. This includes emphasising the important role that regulators play in protection, and clarifying that the requirements of the Code aim to deliver both improved protection and business growth.
- 4.40 Government agrees with respondents emphasising the importance of a right of appeal. This issue has also been raised in evidence to Focus on Enforcement reviews. A Focus on Enforcement review looking specifically at appeal mechanisms is currently under way.
- 4.41 Regarding the application of the Code, Government believes that the Code should remain operational at the level of policy setting, rather than individual decisions. However, Government is clear that the accessibility and transparency of regulators' policies and standards to service users must be improved.

### **Question 5: Do you agree with the principles based approach of the Code, together with the requirement for each regulator to publish detailed, specific service standards?**

#### **Consultation responses**

- 4.42 The vast majority of respondents agreed with the principles-based approach to the Code. Where respondents disagreed, they primarily did so on the basis that they believed that the requirements underpinning the principles in the Code were overly prescriptive.
- 4.43 Many local authorities were concerned that some of the requirements sitting under the principles would impose a burden, and that the requirement to publish service standards was overly bureaucratic and prescriptive. However, there was some confusion as to what was intended in relation to publication of service standards and many respondents commented that they were already publishing information such as enforcement policies, details of their fees and charges, and customer service standards.
- 4.44 Several local authorities welcomed the provision of model templates for publication of service standards. BRDO is working with local authorities and the two regulatory pathfinder Local Enterprise Partnerships (LEPs) to develop such templates, that local authorities may choose to use.
- 4.45 Some respondents took particular issue with proposed requirements to include review dates on published information, and to publish annual data, including from customer satisfaction surveys, though some businesses welcomed this.
- 4.46 Many local authorities commented that they use risk frameworks developed by national regulators, and that it was inappropriate and unnecessary for them to publish details of these.
- 4.47 There was concern from some respondents that measurement against service standards would provide a cost burden, particularly to local authorities. Bodies which had a regulatory function, but were not primarily regulators, commented that there was a need for any measurement and processes to be proportionate to regulatory activity as they could place a disproportionate resource burden on such bodies.

- 4.48 Businesses welcomed the proposals regarding the publication of detailed service standards, allowing clarity about how regulators operated and improving businesses' understanding of what they could expect from regulators.

### **Government response**

- 4.49 The Government is pleased note the broad support for the principles-based nature of the Code and believes that this is the most appropriate means to set clear expectations of how regulators carry out their compliance and enforcement responsibilities, while recognising the broad range and diversity of regulators and those they regulate within the scope of the Code. We believe that the principles-based nature of the Code allows regulators flexibility in how they have regard to the provisions in order to best meet the needs of those they regulate and other service users.
- 4.50 It is Government's intention that regulators should set their own standards for regulatory delivery in line with the principles and requirements of the Code, enabling effective engagement, transparency and accountability. It is apparent from the consultation that the language of 'service standards' has raised concerns of central prescription. We wish to clarify that it is for regulators to develop their own standards, reflecting and explaining their own regulatory approaches. We are aware that many regulators already have established systems in place to provide this information to service users. However, this is not universal practice and we wish to promote greater transparency and accessibility of such information.
- 4.51 We are pleased to note that the draft template developed by local authorities and LEPs to demonstrate how service standards can be made easily accessible and transparent has been well received by local authorities and national regulators. Consultation responses have welcomed the provision of tools and good practice to support use of the Code and BRDO will continue to work with regulators and business groups to develop appropriate materials for voluntary use.

### **Question 6: What should be included in regulators' service standards to meet the requirements of the Code and ensure that these standards enable businesses and other regulated bodies to hold regulators to account?**

#### **Consultation responses**

- 4.52 As noted, there was some uncertainty among respondents regarding the purpose and content of service standards. Some respondents, mainly local authorities, mentioned narrow provisions relating to response times and the use of digital or typed communications focusing largely on customer care standards. Other suggestions for inclusion were more focused on setting out to businesses and other entities how regulators carried out their work, including:
- details of fees and charges;
  - sources of advice;
  - complaints procedures;
  - Primary Authority partnership details;
  - consultation mechanisms;
  - enforcement policies; and
  - service plans.
- 4.53 Some local authorities questioned the value in individual authorities publishing this information and the value of publishing information on processes and policies.

- 4.54 National regulators respondents felt that service standards should include:
- forums for business engagement and feedback;
  - customer service standards;
  - clear statements regarding their approach to dealing with enquiries and offering guidance;
  - policies on earned recognition and accredited assurance bodies;
  - statements on what is expected of regulated parties;
  - operating policies and procedures; and
  - information on fees and charges.
- 4.55 Businesses emphasised the importance of standards of service including an enforcement policy that was transparent and easily accessible. Other important elements to businesses included:
- information on mechanisms for earned recognition;
  - feedback mechanisms;
  - how to informally raise examples of poor practice and more formal complaints procedures;
  - provision for practical advice and guidance;
  - training and competency of regulatory officers; and
  - outcome related key performance indicators.
- 4.56 While most businesses felt that transparent service standards would enable businesses and other regulated entities to hold regulators to account against their published standards, one business representative group felt that it was not the place of business to hold regulators to account, and favoured an overarching regulatory body to do so.

### **Government response**

- 4.57 The Government is grateful for the number of detailed comments received from respondents with suggestions for what should be included in service standards. As discussed above, Government is clear that it is for regulators to develop their own service standards and to explain them to those that they regulate. Under the Accountability for Regulator Impact scheme to be rolled out in July, before changing their policies or practices regulators will assess the impact of the proposed change on business and engage business representatives.
- 4.58 We are pleased to note the broad suggestions received for information to be published that reflects the provisions of the revised Code, including the importance placed by all stakeholders on publishing transparent enforcement policies, details on fees and charges and approaches to providing advice and guidance.
- 4.59 Those regulators who are in scope of the RCC are already obliged to 'have regard' to the principles contained within the Code. The revised Code simplifies and reduces these requirements, making it easier for both regulators and those subject to regulation to understand and be compliant with the Code. The Government believes that information should be published in a concise and easy to find location and that such information should include transparent enforcement policies, details on fees and charges and approaches to providing advice and guidance.

- 4.60 In conjunction with local authorities through the LEP partnerships, we have developed a draft model service standards template, which regulators can choose to use if they wish. This provides a framework for how Government believes the requirements contained within the Code could be provided to ensure transparency and accessibility. We will continue liaising with national regulators and their parent Government departments where appropriate to develop a service standards template that suits their requirements.

**Question 7: How should regulators' compliance with the requirements of the Code and their published service standards be monitored?**

**Consultation responses**

- 4.61 The views of regulators and businesses on monitoring regulators' compliance diverged significantly, although a general consensus was that any monitoring should be light touch and not impose additional burdens.
- 4.62 Many regulators, particularly local authorities, criticised the idea of monitoring, and felt that this went against the Government's commitment to localism. Some local authorities however thought that monitoring of the Code should be an internally driven process and believed it should be managed locally, to ensure flexibility and meet local needs, demands and priorities
- 4.63 Many regulators made the point that it was important not to duplicate functions, and many regulatory activities had existing monitoring requirements.
- 4.64 Regulators suggested a performance indicator measurement, local government reporting to elected members, scrutiny of returns to relevant departments, peer review, periodic external audit, self audit based on a scoring system built into guidance, or publishing a statement of compliance or publication of complaints received.
- 4.65 Business responses varied from those who felt there needed to be a strong independent panel, perhaps of business experts, with the power to hold regulators to account, and those who felt external monitoring would add bureaucracy and reduce resources available to frontline services. Business suggestions included primary authorities having a role in monitoring enforcing authorities, peer to peer review or audit.
- 4.66 Both businesses and regulators favoured an approach to monitoring that was simple and not overly burdensome.

**Government response**

- 4.67 The Government thanks respondents for providing such detailed and considered responses. It was noted that in the large number of responses, from both regulators and businesses, that any monitoring of compliance with the Code should not impose additional burdensome requirements.
- 4.68 A number of potential ideas for monitoring compliance with the Code were suggested both in the consultation as well as feedback received through workshops undertaken. A large number of respondents were concerned that monitoring would be linked to additional reporting mechanisms and therefore burdensome.

- 4.69 It is not the Government's intention for regulators to undergo an audit process or require the introduction of reporting mechanisms. However, we believe it is crucial to the success of the Code that Government maintains awareness of how it is being implemented and as such, we intend to use information that regulators publish in accordance with its requirements to monitor compliance.
- 4.70 The Government believes that whilst its monitoring of the implementation of the Code is very important, business also has an important role in holding regulators to account. This makes it very important to increase transparency and promote dialogue through the publication of clear and accessible information.

**Question 8: How can the Code be made more accessible to business and regulated bodies and how can they be encouraged to engage with regulators in developing policy and challenging poor practice?**

**Consultation responses**

- 4.71 Both regulators and businesses commented that business found it hard to find the time to engage with regulators in developing policy. They both felt that this was a particular problem for small businesses.
- 4.72 Most businesses and regulators said that there was mutual responsibility for engagement, although some businesses felt that it was regulators' responsibility to engage with them, and a minority of regulators felt that engagement was the responsibility of business.
- 4.73 Suggestions for engagement with the Code included publishing it on regulators' websites and promoting it during visits or inspections or through correspondence; engaging on a one-to-one level; and using social media, trade associations and Chambers of Commerce. Many local authorities mentioned the use of LEPs.

**Government response**

- 4.74 The Government believes that the revised Code being shorter and easier to understand should increase its accessibility and enable both regulators and those they regulate to comply with its principles.
- 4.75 We are mindful that for the Code to be fully embedded it needs to be widely promoted and we thank respondents for the useful suggestions including publishing information on websites and including reference to the Code in correspondence or providing leaflets.
- 4.76 There is a necessity not only on regulators to be transparent but also for those they are regulating to engage in dialogue and if necessary, challenge poor practice. Two way dialogue is vital to ensure the Code's aspirations are met and in conjunction with the Accountability for Regulator Impact initiative, encourage greater transparency.
- 4.77 The Government intends to widely promote the revised Code and will continue to discuss with respondents some of the ideas generated in the consultation. We will also envisage a role for utilising existing tools such as the BRDO Business Reference Panel and the excellent work being done in the LEPs such as the Better Business for All toolkits.

Further information can be found at: [www.bis.gov.uk/business/leps/bbfa-resources](http://www.bis.gov.uk/business/leps/bbfa-resources)



## **Question 9: How should the scope of the Regulators' Code be defined?**

### **Consultation responses**

- 4.78 Respondents felt that limiting the legislative scope of the Code (the regulators or functions it covers) to specified regulatory bodies risked it not keeping up with legislative developments. Several local authorities commented that listing specific local authority legislation as within the scope of the Code's provisions was overly complex, and for consistency and clarity all local authority regulatory services should be covered by the requirements of the Code. There was a preference for defining the scope of the Code in terms of the function of regulators.
- 4.79 Business respondents generally believed that the requirements of the Code should be applied as broadly as possible, and that the Code should be applicable across the UK; particularly should the Enforcement Concordat be replaced in the future. One business thought that it would be easier to state any organisations that were specifically excluded from the requirements of the Code to ensure that regulatory bodies were not excluded unnecessarily and that this clarity and broad coverage would create a level playing field.
- 4.80 Some respondents asked for greater clarity on the Code's application in Wales, Scotland and Northern Ireland in regard to reserved and devolved or transferred matters.

### **Government response**

- 4.81 Whilst the way in which the Listing Order setting out the scope of the Code is presented is a consequence of the terms of the Legislative and Regulatory Reform Act 2006, the Government agrees that it is not simple to understand. The Government will therefore publish alongside the new Code a simpler guide to the regulators and regulatory functions covered by the Listing Order. This list will be purely for information – the scope of the Code will continue to be determined by the Listing Order – but it is hoped that a simplified list should make the scope of the Code more transparent to stakeholders and easier to understand.
- 4.82 The RCC currently applies to non-economic regulators and regulatory functions as listed in the Legislative and Regulatory Reform Act 2006. Non-economic regulators within scope are currently:
- national bodies that are statutory regulators; parts of government departments; or bodies that have had regulatory functions conferred upon them by Parliament that perform regulatory functions or duties as defined under s.32(2) of the Legislative and Regulatory Reform Act 2006; and
  - regulatory bodies that operate in respect of reserved regulatory functions.
- 4.83 The Government will continue to work with stakeholders and other Government departments, including the devolved administrations, to clarify how the scope of the Code should be defined and which regulators and regulatory functions are within scope.

**Question 10: Should the scope of the Regulators' Code be amended? Please provide reasons and any supporting evidence for your answer.**

**Consultation responses**

- 4.84 Several respondents, including businesses and local authorities, felt that the legislative scope of the Code should extend to all regulatory activity rather than specific legislation at a local and national level, particularly should the Enforcement Concordat be replaced. It was felt that such an approach would increase consistency and transparency. One business also felt that the Code should cover the activities of non-statutory regulators, such as those involved in self and co-regulation.
- 4.85 Specific objections were made to including the planning functions of local authorities within the scope of the Code by the Local Government Association and the Planning Officers' Society.
- 4.86 Welsh local authorities expressed a desire for greater clarity on the applicability of the Code in Wales. Welsh local authorities felt it would be helpful to both businesses and regulators to have a generic approach to all regulatory functions, whether reserved or devolved matters.
- 4.87 On the issue of the application of the Code, and whether the Code should apply at an operational or policy setting level, some business respondents argued that the Code should apply to individual decision making by regulators.

**Government response**

- 4.88 The proposals of the new Code aim to increase transparency and accountability between regulators and those they are regulating and the Government therefore believes that the Code should apply to the broadest range of non-economic regulators and functions as possible. This approach will ensure that the principles of good regulation are applied in a consistent manner.
- 4.90 Regarding the application of the Code, the Government is not proposing to amend the application of the Code to cover individual regulatory decisions. The Code will continue to be a statutory Code that applies at a policy level only to named regulators and regulatory functions.
- 4.91 Following the consultation, the Government believes there is no evidence to suggest that the scope of the Code – in applying to all non-economic regulators – should be reduced. The Code sets a standard for good regulatory delivery, promoting transparency and enabling greater engagement between regulators and those subject to regulation and we therefore believe that it should be applied to the broadest range of non-economic regulators and functions as possible. The Government intends to publish the Code before its statutory introduction and therefore enable regulators preparation time to adopt its principles.
- 4.92 Respondents from local authorities in particular questioned the rationale for the current exclusion of certain regulatory functions delivered at the local level, and the Government accepts that this requires further consideration. Some respondents expressed concern at the extension of the Code to functions such as planning enforcement, and the Government therefore intends to continue discussions with local authorities, stakeholders and other Government departments to explore the potential inclusion of additional local authority regulatory functions within the scope of the Code.

- 4.93 The Government will continue to work with stakeholders and other Government departments, including the devolved administrations, to explore potential inclusion of additional non-economic regulators and regulatory functions within scope of the Code. Extension of the regulators and regulatory functions within scope of the Code will ensure the application of the principles of good regulation are applied to the broadest range of regulators as possible and provide greater clarity for both regulators and those they are regulating.

**Question 11: Do you agree with this approach to providing guidance on the Code?**

**Consultation responses**

- 4.92 The majority of respondents welcomed the provision of guidance, including FAQs, to assist in the implementation of the Code. Many felt this would be particularly useful given the short and sharp nature of the Code. Respondents highlighted the usefulness of case studies and practical examples in providing further examples of good regulatory practice.
- 4.93 Both businesses and regulators suggested that culture change was important in embedding the principles and that training and leadership were important aspects of this.
- 4.94 A small minority felt that guidance was unnecessary as the Code was written in a manner that did not require further explanation.

**Government response**

- 4.95 The Government was pleased to note that the majority of respondents favoured the approach set out in the consultation, by which additional guidance to the Code is produced.
- 4.96 The Government believes that the revised Code is not only shorter but also easier to follow and can be used as a stand alone document. Feedback received during consultation workshops highlighted that the provision of guidance and the development of a 'service standards' template would be extremely useful. Two pathfinder LEPs have been involved in the template development that authorities may wish to use to publish the required information and we will continue to working with regulators to develop the template and other materials further.
- 4.97 It is important to clarify that the requirement for transparency does not require the duplication of information already produced but to make information more accessible to service users.
- 4.98 The Government believes that there are many and varied examples of good regulatory practice and views the revised Code as a framework for developing this further by increasing the transparency, dialogue and ease with which information can be accessed. Good practice should be shared between regulatory bodies to enable peer to peer learning and enhanced local delivery. The LEPs are one example where such a joint, collaborative approach is having a positive effect.
- 4.99 We intend to continue to liaise with other Government departments, regulators and business representatives to make guidance, examples and tools available for use, such as the 'service standards' template which will add value to the Code and those who have regard to its principles.

## 5. Annex A: Respondents

Association of British Bookmakers  
Association of London Environmental Health Managers  
Association of Chief Trading Standards Officers  
Association of Convenience Stores  
Association of Professional Financial Advisors  
Avante Leisure Group  
Bond Dickinson  
British Hospitality Association  
British Retail Consortium  
Caerphilly County Borough Council  
Caerphilly Trading Standards  
Central Bedfordshire Council  
CentSA  
Chairman Wales Heads of Trading Standards  
Charity Commission for England and Wales (non ministerial department)  
Charnwood Borough Council  
Chartered Institute of Environmental Health  
Chemical Business Association  
Chief Fire Officers Association  
Cleveland Fire and Rescue Service  
Companies House  
Coordinator - Wales Heads of Environmental Health  
County Durham and Darlington Fire and Rescue Service  
Defra  
Derbyshire Fire and Rescue Service  
Directors of Public Protection Wales  
East of England Trading Standards Association  
English Heritage  
Environment Agency  
Environmental Services Association  
Federation of Small Businesses (FSB)  
Food Standards Agency  
Gambling Commission  
Gangmaster's Licensing Authority  
Harrogate Borough Council  
Hereford & Worcester Fire and Rescue Authority  
Hertfordshire County Council (HCC)  
Hinckley and Bosworth Borough Council  
Home Retail Group  
HOST Policy Research  
Hull & Goole Port Health Authority  
Humberside Fire and Rescue Service  
Information Commissioner's Office  
Islington Council  
Legal Services Board  
Leicestershire Environmental Health Managers Group  
Leicestershire Fire and Rescue Service  
Local Government Association  
London Borough of Barnet  
London Borough of Redbridge  
London Trading Standards Authorities Group  
Monmouthshire County Council  
Moto Hospitality Ltd  
National Federation of Meat and Food Traders  
National Measurement Office  
Natural England  
NFU

## Amending the Regulators' Compliance Code

North East Trading Standards Association  
Northumberland Fire and Rescue Service  
Nottinghamshire Fire and Rescue Service  
Ofsted  
Pathcreating Ltd.  
Pembrokeshire County Council  
Planning Officers Society  
Regulation and Enforcement Birmingham City Council  
Remote Gambling Association  
Royal Society for the Protection of Birds  
Safety Assessment Federation  
Security Industry Authority  
Southwark Council  
Spirit Pub Company  
Stockton-on-Tees Borough Council  
Telford & Wrekin Council  
Tesco  
The Co-operative Food  
The Highlands Council  
Tonbridge & Malling Borough Council, Environmental Health Service  
Trading Standards  
Trading Standards South East Ltd  
Traffic Commissioners  
United Kingdom Accreditation Service  
Vehicle Certification Agency  
Wakefield Council, Environmental Health  
Wales Heads of Trading Standards  
Wandsworth Borough Council  
Welsh Local Government Association  
West Midlands Fire and Rescue Authority  
West Yorkshire Trading Standards  
Westminster City Council  
Working Smarter - Welsh Government  
Yorkshire and Humber Trading Standards Group  
4 Individual responses were received

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