Department for Business Innovation & Skills

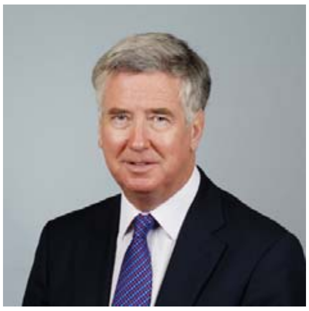
Better Regulation Delivery Office

Government Response

Non-economic Regulators: Duty to Have Regard to Growth

July 2013

Foreword



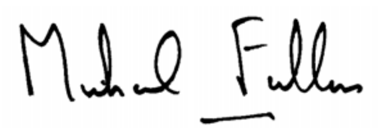
Following the worst economic crisis in history, the Government is committed to taking all the steps it can to promote economic growth. As the World Bank recently noted, smarter business regulation supports economic growth[1]. Those who enforce the rules, and provide advice and guidance on how to comply with them – the non-economic regulators – often determine how businesses experience that regulation. Each day there are thousands of interactions between businesses and regulators, which need to be consistently helpful, efficient and whenever possible conducive to productivity and growth.

The Government recently consulted on a legal duty to require regulators to have regard to the impact of their actions on economic growth. This document sets out the Government's response.

It should not be forgotten that regulators exist primarily to regulate – for the protection of the vulnerable, or other social or environmental objectives. The Government does not wish to detract from nor undermine the core purpose of these regulatory bodies. But there are more than 50 non-economic regulators with a combined budget of over £2 billion and 55,000 employees. This resource should be encouraging compliant businesses to grow through proportionate regulatory activity and provision of reliable advice, without compromising the protection of the public.

Supply side reforms such as this will support the private sector-led recovery. The new growth duty is designed to be complementary to regulators' existing duties, requiring them to take proper account of the economic consequences of their actions and to carry out their existing duties in a proportionate manner. The duty will create a direct line of accountability for this by amending the legal framework within which regulators operate.

This document sets out how we see the growth duty working in practice and will inform debate during pre-legislative scrutiny of the Government's draft Deregulation Bill. We believe this duty provides the most effective means of achieving both prosperity and protection. Achieving this balance is crucial in ensuring that the UK is the best place for businesses to thrive.



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

[1] World Bank *Doing Business 2013*, October 2012

Executive summary

1. The UK economy is recovering from the financial crisis and the Government is committed to using all the tools in its power to promote economic growth. Regulation is a key factor for business confidence and investment and non-economic regulators are instrumental in determining the business experience of that regulation.

2. The consultation, *Non-economic Regulators: Duty to Have Regard to Growth*, published in March 2013, proposed a new duty in primary legislation for non-economic regulators to have regard to growth, and sought views on how the duty should work.

3. 117 responses were received from individual businesses, business representative groups and trade bodies, special interest groups, regulators, professional bodies and interested individuals. The following provides a summary of these responses:

   - Businesses and industry representative bodies were strongly in favour of the growth duty.

   - A wide variety of respondents including regulators special interest groups, businesses and trade associations said that regulators' first priority should be protection and that a growth duty should not take precedence over regulators' core statutory duties.

   - Whilst businesses, trade associations and some regulators felt primary legislation was required, other regulators said they considered existing Better Regulation measures – including the Regulators' Compliance Code – already achieved the policy objective, and over a third of regulators said they considered they already had regard to growth.

   - Around a third of respondents felt the duty should be principles-based, while only a very small number said it needed to be prescriptive. However, nearly half agreed that guidance was needed.

   - Respondents cited a variety of ways in which regulators could support growth. These include coordinating inspections, providing more targeted advice, being generally risk-based and proportionate, and helping businesses achieve compliance. Some respondents said that regulation is key in creating a level playing field and providing market confidence, both of which support growth.

4. The Government is grateful to all those who responded to the consultation and, in preparing this response, has reflected on any concerns or issues articulated.

5. It is the Government's view that the growth duty will deliver clear benefits which will be instrumental in creating a regulatory environment conducive to economic growth. The Government is clear that a growth duty will not compromise the independence of regulators or undermine the importance of the essential protections that they are there to deliver; rather it will provide clarity that growth is an important factor to be taken into account in the delivery of those protections.

6. The Government has brought forward a duty for non-economic regulators to have regard to growth in the draft Deregulation Bill.[2]

[2] The draft Deregulation Bill was published on 1 July 2013. https://www.gov.uk/government/publications/draft-deregulation-bill

Contents

1 Introduction

1.1 The UK is recovering from the biggest financial crisis in history and the economy is still approximately one per cent smaller than in 2008. It is widely recognised that good regulation can actually support growth[3] [4]. Regulators are a key point of interaction with businesses and in order for this considerable regulatory resource to play its part in supporting a private-sector led recovery the Government announced its intention to consult on a growth duty for non-economic regulators in the Autumn Statement 2012[5].

1.2 The proposed growth duty will be designed to be complementary to regulators' existing duties, requiring regulators to take account of the economic consequences of their actions and carry out their existing duties in a proportionate manner. The duty will create a direct line of accountability for this by amending the legal framework within which regulators operate.

1.3 The consultation opened on 8 March 2013 and closed on 19 April 2013, and sought views on the need for a growth duty, and how it could operate in practice. Responses highlighted a number of key issues which are addressed in this response.

1.4 117 responses were received from individual businesses, business representative groups and trade bodies, special interest groups, regulators, professional bodies and interested individuals. A list of respondents is available at Annex C. The following chapters provide a summary and analysis of responses to the individual proposals and the Government's response to them.

1.5 The growth duty is one of five projects which make up a suite of measures being taken forward following an announcement in the Autumn Statement. In addition to the growth duty, the package includes a revised Regulators' Compliance Code, the Accountability for Regulator Impact project, the Focus on Enforcement appeals review and an initiative to promote regulator efficiency, minimise costs and create transparency around fees and charges.

1.6 The evidence base for the package rests primarily on the recurring issues identified through the Government's Focus on Enforcement[6] reviews and a post-implementation review of the Regulators' Compliance Code[7]. Specific feedback included:

- Some regulators fail to see businesses as stakeholders.
- Some regulators lack knowledge of the businesses/sectors they regulate, both in terms of the composition of the industry and the economic and other key issues they face.
- Businesses experience inconsistent enforcement decisions or a lack of proportionality provisions in enforcement.
- There is a lack of availability of clear, consistent advice.

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3 The Rt Hon the Lord Heseltine of Thenford CH, *No Stone Unturned in Pursuit of Growth*, October 2012 https://www.gov.uk/government/publications/no-stone-unturned-in-pursuit-of-growth

4 IFF Research, *Business Perceptions Survey,* 2012 www.bis.gov.uk/assets/brdo/docs/publications-2012/12-p145-business-survey-2012.pdf

5 HM Treasury, *Autumn Statement 2012*, 5 December 2012, Para 2.161 p. 79 http://cdn.hm-treasury.gov.uk/autumn_statement_2012_complete.pdf

6 http://discuss.bis.gov.uk/focusonenforcement/

7 BIS, *Post Implementation Review of the Regulators Code*, 2012 www.bis.gov.uk/brdo/publications/current-consultations

- Some regulators fail to (or consider themselves legally unable to) consider the impact of their decisions on growth.

- Some regulators lack a transparent, impartial, effective appeals process and/or a route to a second opinion.

- Some instances of perverse incentives are created by regulator fees and charging regimes.

1.7 The proposed growth duty is intended to apply to all the non-economic regulators and to all those that deliver non-economic regulatory functions. Where regulators also operate in the devolved administrations, the duty will apply only in respect of reserved matters.

2. The need for a growth duty

2.1. The Government announced its intention in the Autumn Statement 2012 to consult on the establishment of a clear objective for non-economic regulators to have regard to growth when carrying out their functions. A growth duty in primary legislation would be designed to make clear that economic consequences can and should be a key factor taken into account in regulators' decision-making. The consultation sought views on whether primary legislation was needed for regulators to have regard to growth, and whether there is an alternative means by which the policy objectives could be achieved.

2.2. The primary objective for a growth duty is to ensure that regulators have a legal mandate for their approach to economic considerations, for which they are accountable. Amending the legal framework in this way should incentivise regulators to make improvements to the business experience of regulation and foster a regulatory environment conducive to compliant growth. To be clear, compliant growth is what is being sought, not non-compliant or illegal economic activity that undermines markets to the detriment of consumers, the environment and legitimate businesses.

Consultation responses

2.3. Roughly a third of respondents (38) were broadly in favour of the use of primary legislation to introduce a duty for regulators to have regard to growth and take account of the economic consequences of their actions, and just over half (63) were broadly against.

2.4. More than half (22) of the responses in favour of a duty in primary legislation came from trade associations or other business representative organisations which represent hundreds or thousands of businesses each, whilst two fifths of those against were individuals. Those who responded in favour of primary legislation said it was necessary to ensure the duty was enforceable and to provide clarity around the role of a regulator.

2.5. A fifth of respondents (24) felt that existing measures, including the Regulators' Compliance Code, were enough to encourage regulators to have regard to growth and that there was no need to resort to primary legislation. Just under a fifth of respondents said that regulators already have regard to growth.

2.6. The only alternative to a statutory duty suggested by respondents was to rely on existing measures like the Regulators' Compliance Code, with some respondents calling for more training for regulators.

2.7. Some respondents, including nine regulators, expressed concerns that a statutory duty to have regard to growth might lead to more legal challenge or appeals against regulators' decisions in their particular fields. However, others were confident that a duty to have regard to growth would not subject regulators to any further burden, because good regulators should already be seeking to have sufficient regard to economic considerations by applying the principles of better regulation.

2.8. Many individual respondents objected to a duty to have regard to economic growth in principle on environmental grounds. They either saw economic growth as incompatible with the aim of protecting the environment, or felt that the duty should be for sustainable development rather than economic growth.

Government response

2.9. The role of Government is to create a framework for regulators which gives them the tools they need to carry out their role in a way that benefits everyone. In terms of the economy, Government can provide regulators with a clear mandate to have regard to growth, through the establishment of a duty in primary legislation.

2.10. The evidence gathered through the Focus on Enforcement initiative and the Post-Implementation Review of the Regulators' Compliance Code found that regulators can see economic considerations as inconsistent with their existing duties, and in some cases feel constrained from supporting growth when they would wish to do so as they do not have a clear objective in support of growth. This duty will provide a framework for regulators explicitly to balance growth with their existing duties to protect, where they have not previously felt able to do so.

2.11. The Government is clear that the growth duty will provide an important extension to the existing Better Regulation framework, and will incentivise regulators to fully understand how the way they carry out their functions impacts on those they regulate. A number of respondents felt that existing provisions were enough to enable regulators to have regard to growth, and some of those argued that the Regulators' Compliance Code was sufficient in this regard. However, business representatives were largely of the view that existing provisions had not had this effect, and felt that primary legislation would be more likely to result in change.

2.12. The Government has undertaken an initial impact assessment to identify the costs for regulators of implementing a growth duty and the benefits to society that the growth duty will deliver. Whilst costs and benefits are difficult to monetise, the Government undertakes to continue building the evidence base and to share this information with Parliament.

What is growth?

The Government recognises that the impact that an individual regulator's actions can have on economic growth in GDP terms is hard to discern. This is why the new objective for non-economic regulators to have regard to economic growth will not be described in terms of economic outcomes (regulators may find it difficult to demonstrate the impact their actions have had on GDP). Instead, it will be a duty on regulators to support growth in the process of exercising their functions at the level of individual businesses and in the provision of support to business communities and industry sectors. The Government intends that guidance to accompany the growth duty will include further detail as to the meaning of economic growth for regulators operating in different fields.

3. Interaction with other statutory duties

3.1. The aim of the growth duty is to provide regulators with a legislative duty that sits alongside – but does not override – their existing duties. The duty should provide a clear imperative for regulators to factor economic considerations into the way they undertake their regulatory functions, given that their role is to support prosperity as well as to protect. The consultation asked whether consultees agreed that the duty should be complementary to existing duties.

Consultation responses

3.2. Over two fifths of respondents (50) agreed that the duty should be complementary to existing duties and just over a tenth of respondents (14) disagreed. It is notable that all those who said that the duty should not be complementary were against the duty in principle. It therefore seems that the majority of these respondents were registering general opposition to a growth duty, rather than giving a view on how the duty should interact with existing duties.

3.3. Of the 50 who did think the duty should be complementary to existing duties, 13 were against the duty in principle. It should be noted that there was some difference in interpretation of this question as some respondents felt the duty should be complementary to existing duties in that it *should not override* them, whilst others thought it should be complementary in that it *should not be subordinate* to them.

3.4. Many respondents (46) highlighted that a regulator's primary concern should be protection. Some of these respondents were concerned that a statutory duty might detract from regulators' core statutory obligations. However, 12 respondents highlighted the need for a statutory duty to ensure that the measure is clear and enforceable. Overall, it appears that the majority view is that the growth duty should be complementary to existing duties, but should not override them.

Government response

3.5. The legislation which creates regulators normally specifies the main objective of the regulator. For example, the objective of the Food Standards Agency is to protect public health from risks which may arise in connection with the consumption of food and to otherwise protect the interests of consumers in relation to food. In response to the consultation, several regulators expressed concern that a growth duty could conflict with their main objective/protection principle and other European and domestic legal requirements. The Government has taken these concerns very seriously.

3.6. When delivered well, regulation plays an important role in the economy – creating a level playing field in which businesses can compete with one another, enabling markets to operate efficiently and providing an environment which supports industry when it seeks to increase productivity. The protections that regulation delivers can also play an important role in fostering public perceptions about the safety and fairness of industry sectors, which is an important factor in creating the confidence needed for growth.

3.7. The duty will not override existing duties to protect but will affect how those duties are met; it will create a legal obligation for regulators to have regard to promoting economic growth when carrying out their existing regulatory functions, so that growth is always a part of the decision-making process for a regulator. The growth duty will not undermine regulators' ability to carry out essential protection objectives, whether they derive from domestic or European law. However, the regulator must be able to justify a decision to intervene that does not support growth – for example if the intervention taken was the only means available to uphold the protection objective of that regulator. The regulator must therefore balance different factors when exercising its discretion and the duty makes economic growth an explicit factor in this consideration. The growth duty is intended to achieve the policy objective of encouraging regulators to take account of the economic consequences of their actions.

4. Guidance for regulators on the growth duty

4.1 There are a number of formats that guidance for regulators on the growth duty could take. The consultation sought views on whether the growth duty should be principles-based or whether it should specify the manner in which growth should be supported. It also asked whether guidance would be useful, and sought examples of the sorts of issues any guidance should cover.

Consultation responses

4.2 A third of respondents (39) said the duty should be principles-based, whilst only five said it should specify the manner in which growth should be supported.

4.3 Two fifths of respondents (50) felt that guidance on how to implement the growth duty would be useful whilst one tenth (12) thought it would not be required.

4.4 Of those who thought guidance would not be useful, most were respondents who had answered negatively to every question – the apparent intention of these responses was to register a general objection to the duty. However, three respondents said guidance would be inappropriate as the work regulators undertake is too diverse and growth too difficult to measure for any guidance to be meaningful. Two respondents also said that additional guidance risked creating an extra layer of bureaucracy.

4.5 Some respondents (21) specified that guidance should include what is expected of regulators if they are to comply with the requirements of a new growth duty, whilst some (14) felt they needed guidance on how growth would be defined for the purposes of the duty.

4.6 Some business respondents (6) felt that guidance should also be issued to businesses so they can understand how the new duty will operate and what accountability mechanisms would be in place.

4.7 Roughly a quarter of all respondents (28), including trade associations, businesses and regulators, felt that the duty should be principles-based but that guidance would be helpful.

Government response

4.8 Clarity on how regulators can support growth will greatly assist both regulators and businesses in understanding exactly what the duty is intended to achieve.

4.9 A number of consultation respondents were keen for greater clarity around the way growth would be defined for the purposes of the growth duty. Throughout the consultation period, regulators fed back that their main areas of discretion where they can support growth in the execution of their functions are:

- For an individual business, the regulator can largely choose what advice it gives on how to comply, its enforcement policies and actions, the registration or similar processes it puts in place, the forms it requires and the fees and charges it sets, within the bounds set by the legal and policy framework within which it operates.

- For the business community as a whole, the actions of a regulator can have wider economic impacts. For example, taking enforcement action can send a signal to the wider business community regarding 'level playing fields' and thus improve business confidence, while safety or consumer regulators can directly impact upon consumer confidence in certain sectors (such as civil nuclear or food safety). A regulator can also choose how and whether to engage with sector groups on the guidance it produces. For example, it might choose to frame risks in terms of sectoral considerations.

4.10 In order to have maximum beneficial impact, the growth duty needs to operate at both of the levels explained above in order to achieve the following:

- Benefits in terms of greater business productivity, from efficient and accessible regulatory processes and through keeping burdens to the minimum required to achieve the regulatory objective;

- Benefits for individual businesses where more proportionate decisions are made. The growth duty can stimulate the use of a greater range of interventions to achieve compliance, which may be more supportive of the growth aspirations of a business than traditional enforcement methods and sanctions;

- Benefits to individual businesses and to wider business sectors through improved advice and guidance and through proactive support for growth.

4.11 It is the Government's intention to produce guidance for regulators which explains how they can meet the growth duty in the execution of their functions. This would be developed with the input of regulators and businesses and subject to consultation.

4.12 It is notable that other better regulation policies will support regulators to respond to the growth duty. The revised Regulators' Compliance Code will continue to provide a key statement of principles to guide regulatory activity. The Accountability for Regulator Impact (ARI) project provides a way for regulators to consult upon and take account of economic considerations, as measured by the impact of proposed changes on businesses, when they make changes to their policies or practices.

4.13 Regulators have capacity to support growth, as the case studies below illustrate. However these examples are isolated. A growth duty will ensure such activity continues, and spreads across non-economic regulators, to the benefit of all.

Case study 1: Supporting productivity

The Gambling Commission is statutorily obliged to provide advice about gambling and the gambling industry to the Secretary of State. To fulfil this obligation, the Commission requires licensed operators to complete regulatory returns, which provide information to the Commission on organisational, operational and financial matters as well as social responsibility implementation.

In 2010, after two years of collecting regulatory returns, the Commission consulted on revised regulatory returns forms. The aim of the consultation was to ensure that the Commission was receiving the information it needed, without imposing undue burden on operators.

As a result of the consultation, regulatory returns forms were amended to provide the Commission with better quality of information, whilst ensuring the burden on operators was kept to a minimum. The Commission allows flexible submission dates (allowing operators to submit their returns at dates suited to their business needs) and operators can choose whether to submit forms on paper or electronically. Significant investment has been made to streamline the regulatory returns process and ensure that submission is as simple as possible.

The Commission uses information gathered from regulatory returns to compile statistical information on the gambling industry. This information is made available to operators as well as Government and the general public.

Case study 2: Delivering benefits for business sectors

New seafarers and those holding tug qualifications have experienced difficulty in meeting complex regulatory requirements when seeking to operate in the tug industry. Existing certificates do not allow for the size of vessels required and demand competencies which are not relevant to operations. This is also true of the UK workboat industry, which since 2002 has expanded both domestically and internationally and is forecast to grow by 50 percent over the next 10 years.

The Maritime and Coastguard Agency (MCA) has worked closely with industry in the development of two new measures: the introduction of a new certification route based on industry advice (and knowledge of the industry within the MCA), and a specific Certificate of Competency for Master Workboats less than 500 GT - to accommodate the expanding workboat industry.

Close engagement with the main industry representatives, the British Tugowners Association and the National Workboat Association, allowed the MCA to create measures which are both supported by industry and proportional to the standards required for safe ship operations. The measures will be issued as Marine Guidance Notices without a need to amend legislation.

5. Demonstrating compliance and accountability to regulated sectors

5.1 The key benefit of the growth duty is that it will require regulators to consider the impact of their activities on business growth. The consultation asked whether the measuring and monitoring mechanisms set out in the Regulators' Compliance Code would be adequate in enabling regulators to be transparent in demonstrating how they have complied with the growth duty.

Consultation responses

5.2 Over a third of respondents (42) said that the measuring and monitoring requirements set out in the revised Regulators' Compliance Code would be adequate whilst just over one in eight (15) said that they would not.

5.3 Just under a fifth of respondents (21) were concerned that monitoring or measuring adherence to the growth duty would add an extra layer of bureaucracy and would be an additional burden on regulators, adding time and cost to their processes.

5.4 Some respondents (12) felt that regulators did not have the necessary resources to consider economic growth, for example it was suggested by a small group that proper consideration of growth would require access to professional economists.

5.5 It therefore seems that in general, consultation respondents were comfortable with the proposed mechanisms for measuring and monitoring the duty. However, some were concerned that in practice they might need to go beyond this to demonstrate compliance with the growth duty, and that this could create an additional burden.

Government response

5.6 At this stage the Government does not propose that the growth duty should impose additional reporting and monitoring requirements on regulators as they will already be bound by obligations under a revised Regulators' Compliance Code. However there will be a clear expectation that regulators will be transparent and make clear in public the steps they are taking to respond to the growth duty. If regulators feel unable to do this through existing mechanisms, guidance to accompany the duty will set out how this can be achieved.

5.7 If a regulated person has grounds for considering that a regulator has acted in a disproportionate manner, without having due regard for the impact that its actions have had on growth, then the growth duty will provide a mechanism for regulated persons to hold regulators to account. Where challenge mechanisms are already in place, the duty in primary legislation will provide a ground upon which businesses may challenge a decision taken by a regulator; and in addition, it will provide a ground upon which a regulated person could seek for a regulator's decision, policy or practice to be judicially reviewed. The risk of challenge will provide an important incentive for regulators to take the growth duty seriously and be transparent in how they respond to it.

5.8 Several regulators expressed concern that the duty could invite vexatious legal challenges intended to frustrate the regulatory system, which would consume resources and undermine their ability to carry out their statutory functions.

5.9 The Government recognises the concerns highlighted by regulators, but it is important that industry is able to hold regulators to account where they do not give proper consideration to growth matters. It is also clear that there are ways to minimise the legal risk of vexatious challenges, for example through guidance that articulates the sorts of measures regulators need to take to meet the growth duty in different regulatory fields. The Government's view is that the benefits of this policy for regulated sectors and the economy more widely outweigh the apparent risk of vexatious legal challenges.

6. Regulators in scope of the growth duty

6.1 In the consultation document the Government proposed that the growth duty should apply to all the non-economic regulators and to all those that deliver non-economic regulatory functions, and apply to the same regulators as the revised Regulators' Compliance Code. The consultation sought views on these proposals.

Consultation responses

6.2 Over a third of respondents (40) agreed that the duty should in principle apply to all non-economic regulators, whilst over a quarter (31) disagreed.

6.3 Of those who agreed that the duty should apply to all non-economic regulators, roughly two thirds (26) were either businesses, trade associations or other business representative organisations. Of those who disagreed, half (16) were individual respondents, many of whom had replied negatively to every question to register opposition to the growth duty in general. There were four regulators in favour of applying the duty to all non-economic regulators and four against.

6.4 There were eight respondents, including three regulators, who were against a statutory duty overall, but who agreed that if there is to be a duty it should apply to all non-economic regulators.

6.5 Thirty-three respondents answered the question on whether the Pensions Regulator should be included in the scope of the growth duty, and of those 16 respondents were in favour of its inclusion and 17 were against. Of the 16 in favour, ten were either businesses, trade associations or other business representative organisations, whilst 13 of the 17 against were individual respondents.

6.6 Through the consultation process, there were also discussions on the inclusion of other specific regulators or groups of regulators in the scope of the duty:

- Thirteen respondents, all businesses, trade associations or business representative organisations, called for local authority regulators to be brought in scope of the duty. The Local Government Association, however, opposed the inclusion of local authorities on the grounds that they are already focused on fostering economic growth.

- Two professional bodies in the financial services sector called for the inclusion of the Financial Conduct Authority.

- Three respondents called for the inclusion of the Advertising Standards Agency (ASA), which is entirely independent of Government but which has certain regulatory functions conferred upon it.

6.7 Responses were also received from some regulators who expressly asked to be exempt from the growth duty:

- English Heritage and Natural England both felt they should be exempt from the duty, because they considered they already have regard to sustainable development through the National Planning and Policy Framework (NPPF). The Heritage Alliance also said these two regulators should be excluded, whilst the Royal Society for the Protection of Birds (RSPB) supported the exclusion of Natural England. It is also worth noting that 22 respondents, almost all individuals, objected to the growth duty in principle on environmental grounds and some mentioned environmental regulators specifically.

- The Homes and Communities Agency called for itself to be excluded on the grounds that it considers itself to be predominantly an economic regulator.

- The Solicitors Regulation Authority wished to be excluded from the duty on the grounds that legal regulators already have regard to growth, but its parent organisation, the Legal Services Board, felt that all legal regulators should be included.

6.8 The overriding view from the consultation appears to be that the duty should apply to all non-economic regulators. However, where regulators already had some form of existing duty to consider growth, some respondents were concerned that the growth duty could duplicate these existing duties.

Government response

6.9 It is the Government's view that all non-economic regulators and regulatory functions should be covered by this measure unless there is an exceptionally compelling case for their exclusion. Broadly, the principles for what constitutes a non-economic regulator or non-economic regulatory function in this context are that they should:

- be 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 (LRRA); and

- operate in respect of reserved regulatory functions.

6.10 The functions defined under s.32(2) of the LRRA are:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or

- 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.

6.11 The criteria above set out the grounds for inclusion of a regulator. Where a regulator performs both economic and non-economic functions, the duty would apply only in respect of its non-economic functions.

6.12 The criteria above open up the possibility of including a wider number of bodies that regulate professionals e.g. the Architects Registration Board, the chartered institutes as well as potentially the Advertising Standards Authority (ASA) in line with the feedback received through this consultation. The Government has now consulted on the application of the growth duty in respect of most regulators, but before making an Order specifying the regulatory functions to which the growth duty applies, the Government will consult any regulatory bodies not previously aware of this measure to provide them with an opportunity to give their views.

6.13 Some regulators that are in scope of the criteria above deal with all the stages of enforcement action, from investigation to the decision to prosecute. Other regulators have investigatory powers but they refer cases to other agencies, such as the Crown Prosecution Service, who make the decision to prosecute. The Government recognises the importance of preserving the independence and integrity of prosecutorial decisions and the growth duty is not intended to infringe this. The Government will further consult with the relevant parties to assess the impact of the duty on prosecutions and the need for special provision, particularly on the independence of the decision to prosecute, to make this clear.

6.14 Some respondents were concerned that the growth duty could negatively affect public perceptions of what regulators are there to do. However the Government is clear that the wording of the clause will be sufficiently flexible to allow regulators to position their role as they need to, and growth will have a greater fit in some areas than others; guidance will help regulators in this regard. The principle remains that all regulators are required to play their part in the growth agenda while still being able to take necessary protective action.

6.15 While some regulators made a case for exclusion on the grounds of existence of related duties, for example the requirement to have regard to sustainable development in the National Planning Policy Framework (NPPF), the Government does not consider that any of the objectives cited in the consultation responses place sufficient emphasis on economic growth.

6.16 The new financial services regulators, the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA), were recently given statutory growth duties through the Financial Services Act 2012, which require them to have regard to *'the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term'*. They are also required to have regard to the principle of proportionality. The Government believes these duties are appropriately framed for regulators of financial services, given the nature of financial services markets and their role in the economy, while being sufficiently similar in intent to this growth duty to remove any necessity to apply it to them.

6.17 The consultation document sought views specifically on whether the Pensions Regulator should be within scope of the growth duty. In the Budget 2013, the Chancellor of the Exchequer announced the Government's intention to provide the Pensions Regulator (tPR) with a new objective to support scheme funding arrangements that are compatible with sustainable growth for the sponsoring employer. This announcement followed a call for evidence earlier this year by the Department for Work and Pensions (DWP) on whether a new employer-focused objective is appropriate. The majority of respondents to that call for evidence favoured such a change, recognising the importance of strong, healthy employers to defined benefit pension schemes. The new objective is therefore included in the Pensions Bill, currently before Parliament.

6.18 Given that there is already a growth-focused objective focusing on key tPR functions before Parliament, the Government has decided on balance not to apply the new growth duty to tPR for now. The Government considers that it is important to allow the new tPR objective to complete its passage through the Parliamentary process and to bed in before considering further the need for additional duties. Should it become apparent that the application of a growth duty to tPR's other functions is a sensible and proportionate change the Government will include tPR within scope of the growth duty.

6.19 The consultation saw 13 responses which argued that local authority regulatory functions should be within scope of the growth duty. In contrast the Local Government Association argued that they should not be covered because economic growth and job creation is already a priority for all local authorities, one which stretches across all local services that have the opportunity to support businesses or break down barriers to growth.

6.20 The defining feature of the growth duty is that it will provide a way for regulators and those delivering regulatory functions to be held to account. In respect of local authorities, local democracy already delivers a mechanism for local authority regulatory functions to be held to account for the impact of their actions on growth. As already stated at paragraph 6.12, the Government has now consulted on the application of the growth duty in respect of most regulators. The Government has also previously set out it does not intend to impose additional duties on local authorities[8].

6.21 However the Government recognises that where local authorities carry out regulatory functions on behalf of non-economic regulators who will be subject to the growth duty, there will need to be an agreement to work together for common aims. The Government undertakes to engage further with local authorities, national regulators and businesses to develop appropriate approaches for this, without imposing new burdens.

8 Government's response to the Heseltine review, March 2013

7. Next steps

7.1 The Government would like to thank all the organisations and individuals who have offered their views and advice in response to this consultation.

7.2 Having considered the responses to this consultation the Government has included a draft clause in its draft Deregulation Bill, which will be subject to pre-legislative scrutiny.

Annex A – List of non-economic regulators in scope of the growth duty

Animal Health and Veterinary Laboratory Agency
Animals in Science Regulation Unit*
British Hallmarking Council
Care Quality Commission
Charity Commission for England and Wales
Civil Aviation Authority**
Claims Management Regulation Unit
Coal Authority
Companies House
Disclosure and Barring Service
Drinking Water Inspectorate
Driver and Vehicle Licensing Agency
Driving Standards Agency
Employment Agency Standards Directorate
English Heritage
Environment Agency
Equality and Human Rights Commission
Financial Reporting Council
Fish Health Inspectorate, Centre for Environment, Fisheries and Aquaculture Science
Food and Environment Research Agency
Food Standards Agency
Forestry Commission
Gambling Commission
Gangmasters Licensing Authority
Groceries Code Adjudicator
Health and Safety Executive
Highways Agency
HM Revenue and Customs (Money Laundering Regulations and National Minimum Wage)
Homes and Communities Agency
Human Fertilisation and Embryology Authority
Human Tissue Authority
Information Commissioner's Office
Insolvency Service including Insolvency Practitioner Unit
Intellectual Property Office
Legal Services Board
Marine Management Organisation
Maritime and Coastguard Agency
Medicines and Healthcare Products Regulatory Agency
National Counter Terrorism Security Office
National Measurement Office
Natural England
Northern Lighthouse Board
Office for Fair Access
Office for Nuclear Regulation
Office for Standards in Education, Children's Services and Skills
Office of the Regulator of Community Interest Companies
Professional Standards Authority
Rural Payments Agency
Security Industry Authority
Solicitors Regulation Authority
Sports Grounds Safety Authority

Traffic Commissioners
Trinity House Lighthouse Service
Vehicle and Operator Services Agency
Vehicle Certification Agency
Veterinary Medicines Directorate

* The duty will not apply to the project licensing decisions of the Animals in Science Regulation Unit
**The duty will not apply to the economic regulatory functions of the Civil Aviation Authority

Annex B – Respondents

Responses were received from the following organisations:

Business representative organisations or trade associations

Association of British Bookmakers
Association of British Insurers
Association of Convenience Stores
Association of Licensed Multiple Retailers
BACTA
BIRA
British Bankers' Association
British Chambers of Commerce
British Frozen Foods Federation
British Hospitality Association
British Metals Recycling Association
British Parking Association
British Retail Consortium
British Soft Drinks Association
Confederation of British Industry
Construction Products Association
Country Land and Business Association
Environmental Services Association
Federation of Small Businesses
Forum of Private Business
National Association of Pension Funds
National Casino Industry Forum
National Farmers Union
National Federation of Property Professionals
Optical Confederation
Proprietary Association of Great Britain
The Bingo Association
United Kingdom Weighing Federation

Businesses

3 Mules LLP
Bargain Booze Ltd
Bond Pearce
Home Retail Group
Ladbrokes
Moto Hospitality Ltd
Pathcreating Ltd
Tesco
The Co-operative Food

Charities and special interest groups

Council Watch
Families Against Corporate Killers
Friends of the Earth
Institution of Occupational Safety and Health
Liverpool Friends of the Earth Local Group

Primrose Hill Conservation Area Advisory Committee
RSPB
Steady State Manchester
The Heritage Alliance
UK Environmental Law Association
Wildlife and Countryside Link

Government departments

Department for Environment, Food and Rural Affairs

Local authorities

Babergh and Mid Suffolk Councils
Cheshire Fire and Rescue Service
Hull City Council Public Protection
Lincolnshire Fire and Rescue
Local Government Association
London Fire and Emergency Planning Authority
Staffordshire Fire & Rescue
Suffolk Fire and Rescue
Welwyn Hatfield Borough Council
Wolverhampton City Council

Professional bodies

Association of Professional Financial Advisers
Chief Fire Officers Association
Institute and Faculty of Actuaries
Institute for Archaeologists
Remote Gambling Association
The Royal College of Midwives
Wales Heads of Environmental Health

Regulators

Animal Health and Veterinary Laboratories Agency
Charity Commission
Claims Management regulator, MOJ
Driving Standards Agency
English Heritage
Environment Agency
Food Standards Agency
Forestry Commission
Gambling Commission
Information Commissioner's office
Legal Services Board
Maritime and Coastguard agency
National Measurement Office
National Trust
Natural England
Ofsted
Professional Standards Authority for Health and Social Care
Security Industry Authority

Senior Traffic Commissioner
Solicitors Regulation Authority
The Homes and Communities Agency
Trading Standards Institute
Vehicle Certification Agency
Welsh Language Commissioner

27 responses were also received from individuals.

This publication is also available on our website at: http://www.bis.gov.uk/brdo/publications/closed-consultations

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