Title: Duty for Regulators to have regard to growth	**Impact Assessment (IA)**
IA No:	**Date:** 12/11/2015
Lead department or agency:	**Stage:** Consultation
Department for Business, Innovation and Skills	**Source of intervention:** Domestic
Other departments or agencies:	**Type of measure:** Secondary legislation
	Contact for enquiries:

Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2014 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£m	£m	£m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

Evidence suggests that: (1) some regulators fail to take sufficient account of the economic consequences of their actions, and place unnecessary burdens on business in the exercise of their regulatory functions; (2) businesses believe that regulation is impacting negatively on business growth; and crucially for this measure (3) some regulators think they are unable to take account of growth as they do not have a statutory requirement to do so and/or their statutory objectives do not refer to growth. This duty will provide a framework for regulators explicitly to factor growth into their decision-making where they have not previously felt able to do so, enabling businesses to hold regulators accountable for their actions, and giving them the confidence to invest and grow.

What are the policy objectives and the intended effects?

The duty is part of a package of legislative and non-legislative measures that together will enable regulators to play their part in creating a business environment that promotes growth and enterprise. The overall aim is to foster an evolution in regulators' attitudes and purpose in relation to businesses. This specific measure - the growth duty - is intended to ensure that economic growth can form part of regulators' decision-making and purpose, thus supporting the change in behaviour being sought.

In practice, this will mean regulators will have regard to the economic consequences of their actions when dealing with individual businesses, or when considering more strategic approaches towards industry sectors, be more proportionate in the exercise of their regulatory functions.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Do nothing. This would involve relying on the advice in the statutory Regulators Code. A revised version was published in 2014. However, the Code only operates at the policy making level and not at the level of operational decision making. The previous iteration of the code has been in place since April 2008 and is felt to have made little difference to regulator behaviour because the regulators code is overridden by their statutory duties.

Option 2 - A statutory duty on regulators in respect of the exercise of specified regulatory functions to have regard to economic growth. The duty applies to operational decision making as well as at the policy making level and will be designed to improve the manner in which existing duties are carried out.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 10/2019

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ______________________ ***Date:*** ______________

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: -£11.48	**High:** Optional	**Best Estimate:**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	4.1		Optional	**11.5**
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

Maximum of 5 lines

Other key non-monetised costs by 'main affected groups'

Regulators - There may be annual costs associated with increased business engagement and the administration of procedures to demonstrate regard for the growth duty. We do not currently have information to quantify these costs. It is possible that these costs may be partially passed through to businesses.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

Maximum of 5 lines

Other key non-monetised benefits by 'main affected groups'

Maximum of 5 lines

Key assumptions/sensitivities/risks *Discount rate (%)*

Maximum of 5 lines

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs:	**Benefits:**	**Net:**	Yes	IN

Evidence Base (for summary sheets)

1. The growth duty is one of a suite of measures being taken forward following an announcement in the Autumn Statement 2012 (the 'Better Enforcement Programme' which is being driven forward by BIS[1]). The evidence base for this package rests primarily on the Focus on Enforcement reviews[2] and the post-implementation review of the Regulators' Compliance Code[3], which identify common, recurrent issues around regulators' treatment of growth across a range of sectors.

2. In relation to the growth duty, views from stakeholders showed that although the Regulators' Compliance Code created high level principles which support economic progress, there was also a need for a more explicit growth duty because:

   a. Some regulators believe that they are unable to take account of growth as they do not have a statutory requirement to do so; and

   b. In spite of the high level principles set out in the Regulators' Compliance Code, regulators often do not take account of impacts on growth;

   c. Although commitments to supporting economic progress exist at a policy level, there is a lack of accountability for decision-making at an operational level and the impact of those decisions on business growth; and

   d. The principles set out in the Regulators' Code are subordinate to other statutory duties, and some regulators perceive their primary duties of protection to be incompatible with economic considerations.

3. The growth duty is designed to be complementary to the existing Better Regulation Principles[4], including those set out in the now revised Regulators' Code. The growth duty applies to persons undertaking regulatory functions, i.e. regulators. It removes uncertainty about whether regulators are able to respond to economic concerns and requires regulators to "have regard" to the desirability of promoting economic growth by, for example, taking action only when it is needed.

4. The growth duty complements the Regulators' code and includes a provision for regulators to consider economic growth in their decision making. It will deliver this by placing the consideration of growth on the same statutory footing as existing duties of protection; this is different to the duty to have regard to the Regulators' Code, which is subordinate to all other duties. The growth duty specifically applies at all levels at which regulators exercise their specified regulatory functions, from organisational policies to the enforcement activity of officers. The duty stipulates that regulators must have regard to economic growth and consider this within their decision making.

5. In practice, how the growth duty is applied will depend on each regulator's scope, powers and range of interactions with business. However, regulators can demonstrate regard for economic growth in three primary ways:

   a. **Ensure that they understand the business environment**. In particular regulators should understand their own business community and the individual businesses that they regulate, so that they can consider the likely impact of their activities on those businesses, particularly in respect of growth.

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[1] The package which was announced in December 2012 comprises of: Accountability for Regulator Impact; revision of the Regulators' Compliance Code; Growth Duty; Focus on Enforcement Appeals Review; and Fees and Charges.

[2] www.discuss.bis.gov.uk/focusonenforcement/published-reviews-and-closed-focus-areas

[3] A summary of the post-implementation review of the Regulator's Compliance Code can be found in the Consultation Paper on Amending the Regulator's Compliance Code: http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-685-rcc-consultation.pdf

[4] Section 21 of the Legislative and Regulatory Reform Act 2006

b. **Apply their understanding of the business environment and their business community to their risk-based approach**, ensuring that they are acting only where needed and not impinging on economic growth unnecessarily.
c. **Apply their understanding of their business community and individual businesses they regulate to ensure that their actions are proportionate** and not overly burdensome.

6. There are examples of existing regulator behaviour that create disproportionate costs or do not factor in economic considerations (see further details in the evidence of benefits to businesses below):
   a. The enforcement of HACCP (Hazard Analysis and Critical Control Points) sometimes adopted a 'tick box' approach which could lead to extending controls more widely than necessary;
   b. In the chemical sector, some businesses are encouraged to limit their trading to avoid growing large enough to trigger additional regulatory requirements; and
   c. Many businesses require multiple permits from the Environment Agency, many of which require the same information.[5]
7. However, there are also examples of good practice in regulators; the growth duty will support practices such as these and help them to become more widespread[6];
   a. The new fee structure implemented by the Gambling Commission was designed to reduce the burden and to recover the costs of regulation more equitably. It also makes it easier for operators to move between bands as their businesses grow, thereby removing the risk of a significant increase in fees for a small number of extra premises.
   b. The Health and Safety Executive has worked with a number of trade associations and local authorities to create sector or topic specific guidance, consistent advice for industry and clarity on the requirements from regulation.
8. In practice, the expectation is that regulators should think about how to support businesses to be compliant at every stage of the regulatory process so that businesses can focus on their core operations as far as possible. The growth duty is therefore expected to result in the following practical examples of changes in regulator behaviour at a strategic level:
   a. Reducing administrative burdens by streamlining application processes and minimising data requirements.
   b. Engaging with business groups to understand the issues facing businesses and sectors.
   c. Ensuring guidance is provided in clear and accessible language, making a clear distinction between what is required by law and what is good practice.

9. The growth duty is expected to impose some implementation costs on regulators. These costs were estimated based on responses to a questionnaire that was circulated to the regulators in scope of the duty.

10. Twenty-one regulators responded to the questionnaire on costs. Responses indicate that 71% of regulators expect extra costs in the short term, while 29% do not expect any. Those that do expect to see one-off costs referred to staff training and changes to guidance, procedures and strategy. 24% of regulators also expected to see potential annual costs. A more detailed calculation of the estimated costs to regulators is set out below.

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[5] It should be noted that the Environment Agency also has a number of good practices including a business forum and sector strategies.

[6] The intention is for the Growth Duty to be supported by guidance which can highlight good practice.

11. At this stage no monetised benefits to regulators have been identified, although it is possible that, as regulators look to reduce administrative burdens on business in response to the growth duty, there could be some reduction in regulator resource required to deal with administrative processes. There may also be some reduction in enforcement costs where regulators respond to the duty by amending their enforcement policies in favour of a more proportionate approach where action is taken only when it is needed.

12. The following table summarises the net impacts on regulators. The one-off impacts on regulators are estimated to be between -£0.4m and -£2.0m, while the annual impacts on regulators are estimated to be between on average -£0.2m.

Table 1 – Summary of net impacts on Regulators

Net Annual Profile	One-off impacts (Year 0)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Best	-£0.9m	-£0.3m	-£0.2m	-£0.2m	-£0.2m	-£0.2m	-£0.2m	-£0.2m	-£0.2m	-£0.2m
High	-£2.0m	-£0.8m	-£0.6m	-0.4m	-£0.4m	-£0.4m	-£0.4m	-£0.4m	-£0.4m	-£0.4m
Low	-£0.4m	-£0.1m	-£0.1m	-0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m

13. The previous Impact Assessment conducted at the time of the Primary legislation (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277417/growth-duty-impact-assessment.pdf) assumed that there were no direct costs to business with all costs incurred by the regulators. As a result the primary legislation Impact Assessment was considered out of scope by the Regulatory Policy Committee. Since then the department has further developed its understanding of the funding of the regulators and their ability to cost recover for various functions. As a result we think that some of the costs incurred by regulators could be passed through and impose a direct cost on businesses, creating a small 'IN'. In line with previous impact assessments (Small Business Appeals Champions and the Business Impact Target) we assume that 50.4% of the costs are passed through to businesses. This is calculated in this Impact Assessment for the secondary legislation.

14. The secondary legislation is the correct place to score the 'IN' as the measure cannot be implemented until the secondary legislation lists all the regulators in scope. As a result we do not intend to revise the primary legislation impact assessment as the correct EANCB would have been zero which was the recorded impact at the time.

15. We expect annual benefits to business arising from reduced administrative burdens, reduced inspection costs and less reliance on external contractors. As these are indirect they do not form part of the EANCB calculation. Table 2 summarises the monetised impacts on business.

16. In addition there are some benefits which we are unable to monetise. These include: benefits from improved advice and guidance; regulators' tailoring their approaches according to business size or stage in the lifecycle and having a more informed view of the challenges businesses face; business engagement; greater join-up between regulators; and reduced delays in decision making. There may also be small direct costs as a result of regulators cost recovering additional costs from businesses.

Table 2 – Summary of net impacts to business

Net annual profile	One-off impacts (year 0)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Best	-£0.9m	£81.6m	£81.7m	£81.7m	£81.7m	£81.7m	£81.7m	£81.7m	£81.7m	£81.7m
High	-£2.1m	£225.4m	£225.6m	£225.7m	£225.7m	£225.7m	£225.7m	£225.7m	£225.7m	£225.7m
Low	-£0.4m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m	-£0.1m

17. The table below sets out the assumptions undertaken in the analysis.

Table 3 – Assumptions used in the analysis

Assumptions	**Figures used in analysis**	**Evidence**
Discount rate	3.5%	HMT Green Book
Regulators in scope of the measure	60-70	Current policy advice
Regulators expecting one -off costs	71%	Survey of regulators undertaken at time of primary legislation consultation (2013/14)
Regulators expecting one off costs for training staff	52%	Survey of regulators undertaken at time of primary legislation consultation (2013/14)
Hours of training per full time equivalent member of staff	2	Median response from survey of regulators
Average number of staff at regulators in scope	469 Full time equivalents	Focus on Enforcement data
Hourly wage for regulators	£ 25.69	ASHE survey 2014
Non-wage labour costs	19.8%	Eurostat
Median Costs for updating guidance, strategies and procedures	£ 17,900	Survey of regulators undertaken at time of primary legislation consultation (2013/14)
Cost recovery rate for regulators	50.4%	Small Business Appeals Champions Impact Assessment
Regulators expecting annual costs	28%	Survey of regulators undertaken at time of primary legislation consultation (2013/14)
Rate of decline in annual costs over first 3 years	25%	Assumption
Rate of decline after 3 years	0%	Assumption
Number of business with 5+ employees	475,770	Business Population Estimates 2014
Businesses collecting data for regulatory purposes	36%	Regulatory Burdens Survey 2013
Average staff hours for collecting data	15 hours	Regulatory Burdens Survey 2013
Assumed reduction in data collection as a result of the growth duty	5%	Assumption
Additional number of hours spend my those experiencing duplication	4	Regulatory Burdens Survey 2013
Hourly wage for senior managers	£24.70	ASHE survey 2014
Proportion of businesses sending the same information to the same regulator for different purposes	19%	Regulatory Burdens Survey 2013
Assumed reduction in duplication as a result of the growth duty	1 hour	Assumption
Proportion of businesses inspected in any one year	22%	Regulatory Burdens Survey 2013
Time spent preparing for inspections by businesses	17.68 hours	Regulatory Burdens Survey 2013
Assumed reduction in time spent preparing for inspections as a result of the growth duty	5%	Assumption
Weighted average hourly wage for external agents	£ 22.39	Analysis of ASHE survey 2014
Proportion of businesses using external advice for 1-4 hours a month	69%	Regulatory Burdens Survey 2013

Assumptions	Figures used in analysis	Evidence
Proportion of businesses using external advice for 5-8 hours a month	9%	Regulatory Burdens Survey 2013
Assumed reduction in use of external agents as a result of the growth duty	5%	Assumption

Problem under consideration

18. Over half (51%) of businesses see regulation as an obstacle to their success and smaller businesses are particularly likely to see regulation as an obstacle[7]. For around one in ten (11%) of businesses, complying with regulations is seen as the greatest challenge to running their business[8] and businesses noted that the impact of regulatory changes largely depends on the way in which they are communicated and delivered on the ground[9].

19. Furthermore, 26% of businesses feel that regulators have impacted on their growth or expansion while 41% think that regulators' actions will have a bearing on their future plans[10].

20. Evidence (primarily from the Focus on Enforcement reviews and the post-implementation review of the Regulators' Compliance Code) showed that although the Regulators' Compliance Code creates high level principles which support economic progress, there was also a need for a more explicit growth duty to support economic growth as illustrated in paragraph 2.

Rationale for intervention

21. It has been recognised by the World Bank that the regulatory framework has a material impact on the willingness of businesses to invest. More specifically, evidence demonstrates that the manner in which regulation is enforced can also have an impact on business productivity. This can give rise to the negative perception of regulatory "burden".[11]

22. However, Lord Heseltine's report, *No Stone Unturned in Pursuit of Growth*[12], recognised that good regulation can actually encourage growth, and highlighted the importance of non-economic regulators' taking account of the economic consequences of their decisions.

23. Regulators are already subject to various duties, including the Regulators' Code, to take account of the economic consequences of their actions and carry out their existing duties in a proportionate manner. However, in spite of this, there is evidence, mainly case studies from Focus on Enforcement reviews and from the review of the Regulators' Compliance Code[13], which suggests that certain regulators are not consistently achieving both protection and prosperity in the way they operate.

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[7] Source: Business Perceptions Survey 2014, BRE, BRDO and NAO. https://www.nao.org.uk/report/business-perceptions-survey-2014/

[8] Source: Business Perceptions Survey 2014.

[9] From the Business End of the Telescope (2010) www.bis.gov.uk/assets/brdo/docs/publications-2010/10-1396-business-end-of-the-telescope.pdf

[10] Regulatory Enforcement Business Survey 2013

[11] World Bank *Doing business 2013,* October 2012,

[12] http://www.bis.gov.uk/assets/biscore/corporate/docs/n/12-1213-no-stone-unturned-in-pursuit-of-growth

[13] A summary of the post-implementation review of the Regulator's Compliance Code can be found in the Consultation Paper on Amending the Regulator's Compliance Code: http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-685-rcc-consultation.pdf

24. The Focus on Enforcement[14] initiative has provided case study evidence through a series of sector-based reviews into how regulatory enforcement is experienced by industry. These reviews identified the following problems consistently across all sectors:
   a. inconsistent enforcement decisions;
   b. a lack of availability of clear, consistent advice;
   c. regulators lacking knowledge of the businesses/sectors they regulate;
   d. regulators failing to see businesses as stakeholders; and
   e. Regulators failing to consider the impact of their decisions in terms of growth.

25. There are examples of existing regulator behaviour that create additional costs or do not factor in economic considerations (see para 6). However, there are also examples of good practice in regulators (see para 7) and the growth duty should help these to become more widespread[15].

Policy Objective

26. As a result of the growth duty, regulators can positively influence economic growth in three primary ways:
   a. Keeping the burden on business productivity to a minimum.
   b. Being proportionate in their decision-making.
   c. Understanding the business environment.

27. The proposed growth duty is designed to be complementary to the existing Better Regulation Principles requiring regulators to have regard to the economic consequences of their actions and carry out their existing duties in a proportionate manner. The growth duty should increase the effectiveness of these existing Better Regulation Principles specifically in relation to promoting growth. It will deliver this by placing the consideration of growth on the same statutory footing as existing duties of protection; this is different to the duty to have regard to the Regulators' Code, which is subordinate to all other duties. As a result of this difference, the growth duty can have effect at different levels of regulatory activities, from organisational policies to the enforcement activity of officers to ensure measures are not overly burdensome or unnecessarily restrictive in the interests of economic growth.

28. The growth duty will also go beyond existing Better Regulation Principles, asking regulators to be more proactive in their consideration of how their actions can impact business growth both positively and negatively. This means thinking about how compliance requirements can be a burden on business and a barrier to growth, and also seeking ways to actively encourage growth at a sectoral level through regulatory delivery. It is expected that the growth duty will encourage greater dialogue and engagement between businesses and regulators, so that they can work together to achieve regulatory compliance and foster growth. The duty will not make regulators accountable for growth in the economy; it will make them accountable for whether they have properly considered business growth in their decision-making.

29. The duty will not override regulators' primary statutory duties. Indeed, regulatory enforcement is recognised as important in creating a level playing field in which compliant businesses can grow without being undercut by unfair competition from non-compliant businesses. Through securing compliance, regulators play a vital role in ensuring consumer confidence in the market, an essential driver of demand in the economy.

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14 http://discuss.bis.gov.uk/focusonenforcement/published-reviews-and-closed-focus-areas/

15 The intention is for the growth duty to be supported by guidance.

Options considered

30. The two options we have considered are outlined below – do nothing or impose a statutory duty on regulators, in carrying out specified regulatory functions, to have regard to growth. We have not considered any alternative options to amend regulators' behaviour as evidence (see para 33) suggests that a behavioural option alone will not be enough to ensure that regulators consider the economic impact of their actions.

31. The evidence from the Post Implementation Review alongside the Focus on Enforcement reviews confirmed that some regulators did not feel able to act outside the measures that are subscribed for them in statute. As was noted by the Joint Committee on the Draft Deregulation Bill one regulator, Ofsted (the Office for Standards in Education, Children's Services and Skills) stated that they were unable to consider growth without a statutory duty.[16] The statutory Regulators' Code has been insufficient to incentivise regulators to consider economic considerations because a non-statutory code is outweighed by the statutory duties affecting regulators.

32. **Option 1** - Do nothing. This option would involve relying on the advice in the statutory Regulators' Code which has been revised and was published in 2014. However, the Code only operates at the policy making level and not at the level of operational decision making.

33. The previous iteration of the Code has been in place since April 2008 and is felt by some businesses to have made little difference to regulator behaviour. The overarching findings from the Post Implementation review of the Regulators' Code are:

    a. Whilst at a policy level regulators appear to have adopted the principles of the Code, the extent to which regulators perceive their role in supporting business growth is not consistent. Whilst the Code contains the principle that regulators should support economic progress, regulators consistently see their role as being primarily to protect consumers and citizens.

    b. Business representatives are critical of the fact that the Code has failed to promote more open and early dialogue with regulators. Part of the issue here is that visibility of the Code amongst businesses is low – many businesses consulted had little or no knowledge of the Code's existence and were therefore unable to make effective use of it, for example.

    c. The other issue businesses cite is that the Code does not apply to individual enforcement actions. Those businesses who have tried to use the Code to hold regulators to account for their behaviour say that regulators' appeal mechanisms need to be strengthened to provide a clear route to raise concerns where regulation is not being delivered in accordance with the Code.

34. **Option 2** - A statutory duty on regulators to have regard to economic growth in the exercise of specified regulatory functions. The duty applies to operational decision-making as well as at the policy making level and will be designed to improve the manner in which existing duties are carried out. This option will be accompanied by clear safeguards that the duty does not override existing duties to protect but is a duty to consider growth in decision making.

[16] Joint Committee on the Draft Deregulation Bill, Session 2013-14, HL 101 HC 925

Option 1 – Do nothing

35. The option of ‘do nothing’ is a status quo, used as a benchmark against which the costs and benefits of the statutory duty proposals are assessed. Our status quo is the counterfactual of the non-introduction of the statutory duty.

36. This option would involve relying on the advice in the Regulators Code which has been revised. This Code operates at the policy making level only.

Costs

37. There are no additional costs associated with this option as the Code is already in existence and therefore is not a new requirement for regulators.

Benefits

38. Without the introduction of the statutory duty the regulators would operate as normal. There are no additional benefits to either regulators or businesses.

Option 2 – Statutory duty for regulators, undertaking specified regulatory functions, to have regard to economic growth

39. This option considers the introduction of a statutory duty for **specified regulators, undertaking specified regulatory functions,** to have regard to growth. The following section analyses the costs and benefits for businesses and regulators.

Regulators

40. The duty to have regard to economic growth requires those exercising regulatory functions to consider the economic impact that their actions are likely to have on individual businesses and, where appropriate, industry sectors.

41. The duty indicates that economic growth is desirable and enables regulators to take growth into account alongside existing economic duties. Where regulators have choices in how they exercise their functions, the duty gives rise to two possibilities:

    a. Where the economic impact of a regulator’s activity is likely to be adverse or negative, the regulator should consider how they could minimise that negative impact by adapting the way they carry out that activity.
    b. Where the economic impact of their activity is likely to be positive, the duty points them to adapt the way they carry out that activity in order to maximise that positive impact.

    To do this, regulators will need to understand the impact they are having on the business environment and adapt their approach accordingly.

Data

42. The following analysis uses assumptions based on a questionnaire on costs that was circulated to the regulators in scope of the Growth Duty at the point of the primary legislation consultation. The questionnaire asked regulators whether they expected to experience costs in both the short- and the long-term as a result of the Growth Duty, as well as asking regulators to provide estimates of the likely costs and time taken

associated with these activities. In addition, we use data from the Annual Survey of Hours and Earnings 2014[17].

Regulator Costs

Estimating the number of regulators who will face additional one-off costs

43. It is currently anticipated that around 60-70 regulators will be required to have regard to growth alongside their protection duties. We have used these figures in our high and low estimates and taken the mid-point (65) for the analysis in our best estimate. The final secondary legislation impact assessment will have a more accurate figure on the number of regulators to be included following the consultation on the secondary legislation.

44. The evidence gathered during the consultation on the primary legislation and subsequent regulator questionnaires show that the duty may have different impacts on different regulators. This is because some regulators feel they already take steps to consider growth and burdens in their work so feel this duty will have limited impact on their work. This accords with the examples above which show that some regulators are already making progress in this area. The accompanying guidance will clarify ways in which regulators can demonstrate regard to economic growth.

45. Twenty-one regulators responded to our questionnaire on the likely cost implications of the growth duty. A comparison of the size of the regulators who responded and the regulators in scope for the duty reveals that the distribution of those who responded to the survey is similar to the distribution of regulators in scope of the duty. It has therefore, not been necessary to reweight the results to reflect the sizes of the regulators in scope[18].

One-off costs on regulators

46. Of the 21 respondents (the list of respondents is in Annex 3), fifteen (71%) responded that they expect some one-off costs, while six (29%) expected no one-off costs as they will absorb any costs into their ongoing activities and reviews as efficiency savings.

47. For those regulators expecting to have one-off costs this was as a result of the regulators wishing to train staff on the new requirements, changes to operational procedures and reporting, rewriting guidance material for businesses and staff and updating advice provided on the website.

Estimating the cost of training

48. Evidence from the questionnaire responses show that 52% of respondents expect to experience costs associated with training staff – this equates to 34 out of the 65 regulators in scope of the duty.

49. Using data from those responses which indicated the number of staff that regulators expect to train together with Focus on Enforcement data[19] on the number of FTE staff

[17] http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2014-provisional-results/index.html

[18] 43% of respondents were small regulators, 43% medium regulators and 14% were large regulators.

[19] Data on the size and budget of National Regulators can be found on: http://discuss.bis.gov.uk/focusonenforcement/list-of-regulators-and-their-remit/

working on regulatory functions, we can calculate the number of training hours per FTE that regulators expect to provide. There were 7 respondents for which we had the necessary data for this calculation[20]. The median response from the consultation indicated that 2 hours per FTE would be necessary for training staff on the growth duty with a range from 0.5 to 5.5 hours per FTE[21]

50. FOE data[22] suggests that there is an average of 469 FTE at the regulators in scope. Applying the average ratio (2 hours) and hourly wage for regulators of £25.69[23] uprated by non-wage labour costs (19.8%) to all 34 regulators expecting costs from training, implies an estimated cost of £1.0m.[24] For sensitivity, we include estimates using the upper and lower responses from the consultation giving a range of costs from £0.2m to £3.0m.

Estimating the cost of updating guidance, revising strategy and operational procedures

51. As stated above, 71% of regulators expect one-off costs associated with the growth duty – this equates to 46 regulators out of the total 65 regulators in scope of the duty. These include updating guidance for businesses, revising strategy and revising operational procedures. These costs vary considerably depending on the size of the regulator and the type of functions they carry out. These costs ranged from £540 for a small regulator to revise strategy and operational procedures and update guidance for business, to £400,000 of set-up costs for a large regulator[25].
52. Based on the responses to the questionnaire and noting the scope for considerable skew of the costs, we have used the median[26] of the sample to estimate that this will cost £17,900 for each regulator in the first year[27] (46 regulators). This gives an overall total cost of £0.83m[28]. For sensitivity, we include a range of 25% above and below this estimate giving a range of £0.56m and £1.12m.

53. It is expected that some of these costs will be passed through to business through cost recovery. The estimates used for cost recovery are taken from the consultation with regulators undertaken as part of the development of the Small Business Appeals Champion policy. During the consultation, 58 regulators were asked if they would recover the costs of appointing the Champions. Responses were received from 24 regulators with 13 reporting that they would cost recover in full and 11 indicating they would not recover the costs. For those regulators which did not respond to this question we used the responses from the 2012 Regulators' Questionnaire on the extent to which their regulatory enforcement activity was fully, partially or not cost recovered. We assigned vales of 100%, 50% and 0% to these responses respectively. Where no information for a regulator was available from these two sources, we assumed 50%

[20] There was one response where we did not have the necessary data on FTE's to undertake this calculation.
[21] Here we have excluded one extreme outlier where their number of staff requiring training in the response was 3 times higher than the number of FTEs.
[22] The average number of FTEs is based on Focus on Enforcement data on National Regulators in scope of the Growth Duty. However, there is data missing for some regulators so this is an approximate value.
[23] From Annual Survey of Hours and Earnings 2014.
[24] Cost of training = (469, FTE for regulatory purposes*2.07 median hours per FTE * (£25.69, Hourly wage*1.198 for non-wage labour costs) * (34, regulators that expect training costs)
[25] We have defined the size of the regulator by their number of full time equivalent staff for regulatory activity. (Small < 100 FTE, Medium 100 – 1000 FTE, Large > 1000 FTE)
[26] Throughout this impact assessment, the average used is the mean rather than the median unless otherwise stated.
[27] This comes from the expected costs of regulators, taking into account that costs might vary depending on the size of the regulator.
[28] Total cost of guidance = (58, the number of regulators in scope)*(71%, the estimate of regulators expecting one-off costs)*(£17,900, the cost of guidance, IT, management procedures etc.)

would be recovered. Across the regulators we estimated that 50.4% of cost would have been recovered if regulators had to cover the costs of appointing the Champions. Although this relates to a different policy, it is the best estimate available of the extent to which regulators would cost recover from business. The figures below on one off costs to regulators are 49.6% of the costs above to include only costs borne by regulators. Business costs are included in the relevant section below.

Table 4 – Summary of one-off costs of regulators, in millions of £

	low	**High**	**best**
Training	£0.1m	£1.5m	£0.5m
Guidance, IT and operational	£0.3m	£0.6m	£0.4m
Total one-off costs	**£0.4m**	**£2.0m**	**£0.9m**

54. The sum of the costs of training and the cost of guidance changes will give a total one-off cost to regulators of between £0.4m and £2.0m.

Annual costs

55. Questionnaire responses show that 5 regulators responded “yes” to the question of whether they expect the growth duty to affect the way resources are deployed within the organisation over the medium to long term, 13 responded “no” and the remaining 3 were unsure[29]. If we assume that those who were unsure actually experience costs in similar proportions to those who responded “yes” or “no”, then the total number of regulators facing annual costs is estimated to be 18 out of the 65. The remaining 47 regulators therefore, would expect no annual costs[30]. These are the figures that we use in the subsequent analysis.

56. Responses to the regulator questionnaire provided no estimate of the likely scale of the longer term costs. As a result we have assumed that for those who expect longer term costs, there will be some ongoing costs of training staff, updating guidance, revising strategy and operational procedures and providing advice. All those who expected to face annual costs were also amongst the set of regulators that expected one off costs. To profile the annual costs for these regulators, we take the one-off costs for just these 18 regulators using the same method as above (as in Table 7) as year 0 and assume these reduce by 25% in each subsequent year as the growth duty becomes “business as usual” over the first 3 years. After this we assume the cost remains constant.

57. Again regulator will be able to cost recover for some of these costs. As before we have assumed that they will cost recover 50.4% in line with other impact assessments.

58. The profile of estimated annual costs after cost recovery is outlined below:

Table 5 – Profile of estimated annual costs to regulators, in millions of £

	Year 0 – one off cost	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**
low	£0.16	£0.12	£0.09	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07

[29] Scaling this up to the total number of regulators, suggests that 14 of the 58 regulators expect annual costs, 36 expect no annual costs and 8 are unsure.

[30] Reassigning the 8 regulators, suggest that 2 would expect annual costs (= 14/50 * 8) and 6 would expect no annual costs (=36/50 * 8)

	Year 0 – one off cost	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
best	£0.43	£0.32	£0.24	£0.18	£0.18	£0.18	£0.18	£0.18	£0.18	£0.18
high	£1.00	£0.75	£0.56	£0.42	£0.42	£0.42	£0.42	£0.42	£0.42	£0.42

*note: the year 0 column is only included to illustrate the starting point for the cost profile and does not form part of the annual
cost calculation to avoid double counting.

Cost of judicial reviews/appeals

59. One of the regulators who responded to the questionnaire also expected some costs as a result of an increase in the number of judicial reviews. However, they did not provide estimates of these costs and these are difficult to estimate as it is unclear whether there will merely be a threat of judicial review, or actual cases of judicial reviews, and if so, how many or what the associated costs will be. This absence of evidence has made it difficult to quantify the cost of increased legal challenge.
60. Data suggests that in the past regulators have only received a small number of judicial reviews. For example, between 2007 and 2011, the Food Standards Agency received 3, the Health and Safety Executive received 5 and the Information Commissioner's Office received 10[31]. Although some regulators received considerably more than this during that period, there were also a large number of regulators who experienced no judicial reviews. In addition, judicial reviews are costly to mount for a business. The likelihood of judicial reviews therefore remains low.
61. Thus, we do not expect the incidence of legal challenge to increase significantly as a result of the growth duty.
62. However, there is a difference between judicial reviews or other court cases and a regulator's internal appeals process. We might expect businesses to challenge a regulator's decision through both formal and informal mechanisms outside of the courts. The Regulators' Code requires regulators to have transparent routes to appeal their decisions. It is expected that these mechanisms would be the routes through which decisions would be challenged under the duty. However, we would not necessarily expect an appeal to be mounted solely as a result of the growth duty. The Regulatory Enforcement Business Survey (REB) survey found that of the businesses who have disagreed with a regulatory decision only 37% had appealed that decision – just 7% of the overall survey sample.

Total annual costs

63. The total annual cost is based on the decreasing profile of ongoing costs such as training staff, updating guidance, revising strategy and providing advice for those regulators who expect to experience costs beyond the short term.
64. The average annual cost to regulators is between £0.1m and £0.5m

Table 6 – Profile of estimated total annual costs to regulators, in millions of £

[31] Data from the Ministry of Justice on Judicial Reviews lodged between 2007 and 2011. These figures should be considered illustrative only. It is important to note that these figures only include cases where the defendant name was given as the regulator in question. Some judicial reviews may have been launched against the government department rather than the regulator

Annual costs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Average
Best	£0.3m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m
High	£0.8m	£0.6m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.5m
Low	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m

Businesses

Data

65. The following analysis, unless otherwise specified, uses data from the REB Survey[32]. This survey was commissioned by BIS in order to collect data on the "systemic issues" identified in the Better Enforcement Package of the Autumn Statement 2012. The survey collected data from approximately 600 small and medium sized businesses (i.e. those with 5-249 employees) in England. [21][33] This was followed by 20 case-studies designed to inform the guidance for the growth duty.
66. For this analysis we have used the BIS Population Estimates 2014 (as for the weighting for the REB Survey) to identify the number of businesses likely to be affected by the duty. Given the scope of the growth duty however, we have widened the population to include all UK private sector businesses with 5+ employees, giving a business population estimate of 475,770.[34]
67. In addition, we have assumed that the staff costs to business are £29.60 per hour based on the mean hourly senior manager wage rate, uplifted by 19.8% to take into account non-labour costs in accordance with BIS guidance. This is in line with impact assessments for the Primary Authority Scheme. We have assumed that similar individuals within businesses will be involved in issues relating to regulation arising from both the Primary Authority Scheme and the growth duty[35].

Business Costs

68. As mentioned in paragraph 57, regulators will be able to cost recover for their additional costs of undertaking this duty. Using the calculations from the previous section and cost recovery rate of 50.4%, we would expect one-costs of between 0.39m and 2.06m to be cost recovered from businesses. There would also be an average annual cost recovery from businesses of between 0.08m and 0.48m
69. Businesses may also experience costs if they launch a judicial review against a regulator.
70. However, given that businesses choose whether or not to launch a legal challenge against regulators, we expect that they will only choose to do so if the resulting benefits are at least as large as the costs.

71. Therefore the estimated total costs to business are one-off costs of between £0.4m and £2.1m and average annual costs of between £0.1m and £0.5m.

[32] forthcoming research

[33] The survey focussed on businesses with more than 5 employees as these businesses were less likely to be subject to thresholds that would exempt them from regulation. We also wanted to survey businesses who had been in operation for at least three years to increase the chance of the business having had contact with regulators.

[34] In doing this we are assuming that the survey results can be extended to include businesses with 250+ employees.

[35] It is important to note however, that Primary Authority covers regulation delivered by local authorities while the growth duty covers regulation delivered by national regulators. Although some businesses will experience regulation delivered by both local authorities and regulators, there will be additional businesses that are primarily covered by regulation from regulators.

Table 6 – Profile of estimated total annual costs to businesses, in millions of £

Annual costs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Best	£0.3m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m
High	£0.8m	£0.6m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m
Low	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m

Business Benefits

72. The growth duty is expected to generate significant benefits to businesses by addressing the issues set out in the 'problem under consideration' and 'rationale for intervention' sections above. In particular, it will encourage regulators to find way to:
    a. Keep the burden on business productivity to a minimum.
    b. Be proportionate in their decision-making.
    c. Understand the business environment and apply this.

73. The growth duty requires regulators to have regard to economic growth when making decisions and to consider the economic impact that their actions are likely to have on individual business and where appropriate, the industry sector. There is potential for considerable business benefits resulting from the growth duty. According to the REB survey, 26% of businesses feel that regulators' actions have previously impacted on their growth or expansion, 34% feel that regulators have impacted on other business decisions while 41% feel that regulators' actions will have a bearing on their future plans. The most cited impact that regulators had involved finance/cost, with 16% mentioning this, time was also another consideration.

74. It is difficult to quantify the impact that the growth duty may have on business. Previous analysis for the Regulators Compliance Code predicted that a 10% reduction in administrative burdens by national and local regulators would lead to a business benefit of £22.5million[36]. However, we would expect the benefits from the growth duty to be larger than this because the duty is in effect at an operational level, where the effects of regulators activities are felt most directly by businesses.

75. Consultation responses also support the premise that the growth duty will have a positive benefit for businesses. The majority of respondents who were businesses or trade associations (71%) indicated they expected a positive impact on business from the growth duty, a further 26% were uncertain about the impact and only one respondent thought the growth duty had the potential to increase costs to business.[37]

Keeping the burden on business productivity to a minimum

76. The most immediate connection between regulatory activity and business growth is in the imposition of administrative burdens, and specifically the costs imposed by regulatory functions. Businesses incur compliance costs (time and money) to conform with regulation, for example in designing appropriate compliance solutions, monitoring existing processes, and reporting to oversight bodies. Significant costs can also be

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[36] http://www.berr.gov.uk/files/file45144.pdf

[37] Source: response to the Consultation with Non-Economic Regulators on the Duty to Have Regard to Growth. Implementation of the duty creates red tape, burden and cost to Regulators that is then can be potentially passed on to business. There is no expectation that regulators would pass on costs onto business. There is an existing work being done by HM Treasury looking at charges by regulators.

imposed by frequent amendments to regulatory requirements. Finally, there is an opportunity cost when a business owner is focused on regulation and not growing the business.

Administrative burdens

77. Many regulators require businesses to submit up-to-date information about their regulated activities. This information can allow the regulator to ensure the business is meeting the necessary requirements. However, businesses can become frustrated when they are required to submit information that is unchanged frequently or when the prescribed format or mechanism for reporting is burdensome.

78. Here we look at two potential impacts on administrative burdens from the growth duty. The first looks at the pure efficiency effect of lower admin burdens while the second looks at the reduced duplication effect.

79. The Regulatory Enforcement Business Survey found that 36% of businesses collect data for regulatory enforcement purposes. The average number of staff hours required for gathering information and completing paperwork that would not otherwise be gathered and completed was 15.29 hours per month. This equates to 183 hours per year at a cost of £930m to business[38].

80. As highlighted in one of the REB case studies, this can be a significant resource cost, especially to small businesses. *"We have forms to complete each month about how much waste we dispose of. There is guidance around who collects the waste and who is authorised to sign it over. […]This is becoming more of an issue with us as time goes on – how we control the waste, how we control the products, the forms we have to complete. It takes a lot of time to do that. I think sometimes it goes a little bit too far in expectations of smaller businesses and it takes a lot of time and resources."*

81. By reducing the amount of time it takes to complete additional information for regulators by just 0.75 hour per month (5% reduction), there would be a benefit to business of £45.6m. For sensitivity, we also include estimates assuming no reduction and a 1.5 hour reduction (10%) in information requests.

Replicated Data

82. Multiple/uncoordinated inspection activity or duplicate data requests impose significant burdens on businesses. The growth duty encourages regulators to consider the impact this has on businesses and regulators may reconsider their internal operations in order to save businesses both time and money which can be invested more productively. In addition, by working closely with other regulators they may develop ways to enable greater data sharing.

83. The REB survey found that 17% of all businesses send the same information to different regulators while 19% send the same information to the same regulators for different purposes. This represents a significant duplication of effort and an unnecessary additional administrative burden. According to the Business Perceptions Survey 2014 (BPS)[39], 63% of businesses find it burdensome to have to provide the same information more than once to government.

[38] Assuming staff costs of £29.60

[39] https://www.nao.org.uk/report/business-perceptions-survey-2014/

84. From the REB survey, we estimate that 3.94 additional hours per month[40] are required to send the same information to the same regulator[41]. Assuming a staff cost of £29.60, this suggests a cost of duplication to business of £126.5m per year for sending the same information to the same regulator.

85. Assuming a reduction in the amount of time it takes to send the same information to the same regulator (per business per month) by just one hour (a 25% time reduction), could result in a benefit to business of £32.1m. For sensitivity, we also include estimates of no reduction in the time taken and complete elimination of duplication.

86. Although there is the potential for the growth duty to reduce the costs associated with sending the same information to different regulators, this is likely to be a longer term benefit. Although there are currently proposals to improve data-sharing between regulators, this will require significant cultural (and potentially technological) change. There would be costs associated in doing this that we have not attempted to quantify in this impact assessment. As a result, we also make no assessment of the likely associated longer term benefits to business.

Table 8 – Potential annual benefits to business of reduced admin burdens

	Low	**High**	**Best**
Reduction in duplication costs	£0m	£126.5m	£32.1m
Reduction in information requirement costs	£0m	£91.3m	£45.6m
Annual benefit of reduced admin burdens	**£0m**	**£217.8m**	**£77.7m**

87. The growth duty has the potential to reduce administrative burdens to business. We have estimated this business benefit to be between £0m and £217.8m with a best estimate of £77.7m.

Inspections

88. The REB survey found that 65% of businesses have had an inspection in the past 3 years. Thus just under 22% of businesses are inspected in any one year[42]. Inspections are an important tool for regulators which allow them to check whether businesses are maintaining compliance with legal requirements. However, inspections can impose large preparatory and follow-up costs on businesses – for example in preparing documents, seeking information and external advice and other additional business activities. The BPS found that 46% of businesses find it burdensome to be ready for or to deal with inspections. In addition, the BPS found that 51% of businesses find it burdensome to prepare for overlapping inspections from more than one government agency. In the REB survey 16% of businesses that were inspected felt that there was unexplained duplication with a previous inspection by the same regulator. A further 1% felt that there was unexplained duplication with an inspection from another regulator.

89. The growth duty encourages regulators to avoid conducting inspections in a way that creates unnecessary burdens on businesses. The REB survey found that 53% of businesses had to prepare paperwork for the inspection, 17% sought information and 16% got external advice.

[40] An average of 18.32 hours for those that experience duplication from the same regulators and an average of 14.38 hours for those who experience no duplication

[41] Using the question: Approximately how many staff hours in total are spent in gathering information and completing paperwork for regulators that would not otherwise be gathered or completed - in a typical average month? and comparing those that answered yes/no about sending the same information to the same/different regulator.

[42] For the analysis this equates to 103,084 businesses inspected each year.

90. Data suggests that on average, businesses spend 17.68 hours[43] doing what is necessary before, during and after an inspection at a cost of £29.60 per hour[44]. This creates an average cost of £523 per inspection. If the growth duty could make inspections more efficient, avoid duplication and reduce the time spent on inspections by just under 1 hour (5% reduction in time), the benefit to business might be £2.7m. For sensitivity, we have also included estimates for a 0% and 10% reduction in time required for inspections. This gives an estimated range of £0m to £5.4m.

91. It is important to note that the estimate of the benefits could potentially be much higher if businesses experience more incidences of duplication than we have estimated here - it is likely that many businesses will experience more than one duplicated inspection in a 3 year period. The case studies carried out for the REB survey highlighted this*, "Over the last three weeks, we have been inspected seven times. Several inspection activities are duplicated, with officials from different authorities undertaking exactly the same control tasks. […] This implies a considerable investment for us in terms of time and paperwork."* However, without any data is the exact scale of the benefit is difficult to quantify and we have chosen to make a conservative assumption.

Table 9 – Potential annual benefits to business of a reduction in time spent on inspections

	Low	High	Best
Reduction in time required for inspections	£0m	£5.4m	£2.7m

92. The growth duty has the potential to reduce the time and costs associated with inspections. We have estimated this business benefit to be between £0m and £5.4m.

Understanding the business environment.

93. Businesses face multiple challenges and exist in a broader context. By displaying knowledge and understanding of these challenges when interacting with businesses, regulators will support a more productive dialogue, be able to target interventions to achieve compliance to best effect and will support businesses in feeling confident that they can approach a regulator for advice.

Quality advice and guidance

94. Many businesses view regulators as an authoritative source of advice on compliance issues and will seek advice from regulators. However, other businesses are fearful about approaching regulators and will choose to seek advice from other sources which may be less reliable and more costly. 19% of businesses feel that the advice available from regulators is insufficient, while 67% of businesses agree that it is important to obtain independent advice. As highlighted in one of the REB case studies, *"We know what the rules are – however, most of the time, we do not know how to comply with them. Regulators only set the rules and then it is up to us to dig information from different sources. […]."*

95. In addition, inconsistent advice on compliance and regulatory issues can increase uncertainty for businesses. 59% of businesses agree that advice varies depending on

[43] BIS Regulatory Enforcement Business Survey

[44] ASHE 2014 - mean hourly senior manager rate (£24.70), uplifted by 19.8% to take into account non-wage costs

who is asked, so it is best to consult more than one source. One case study highlighted this point: *"What is confusing and frustrating is that the law is interpreted differently by different people. So there is always something new they want us to do or to comply with, which does not make life any easier for us."*

96. Through the provision of general guidance and more specific and timely advice, businesses will have the confidence to comply with regulators in the most cost-effective way. This will help increase business confidence around compliance, reduce the cost and burden of finding the relevant information and reduce their reliance on independent and external contractors. According to the BPS, 70% of businesses have used external agents as a source of information[45].

97. Although there is little consensus around how much businesses spend on independent advice per year, research[46] suggests that businesses spent at least £1.4 billion in 2007 on advice to help them comply with regulation. This is a significant additional cost to business which could be reduced if regulators provided better advice and guidance.

98. Several of the case studies emphasised the lack of clear, consistent advice as being a key driver of the need to use consultancy services. It was stated in one case that because of the complexity of the communications and guidance documents set out by both Companies House and HSE, an accountant and a health and safety consultant were necessary to translate these communications to compliance.

99. Businesses use a range of external agents to help comply with regulations e.g. lawyers and accountants[47]. We have used the weighted average of the relevant ASHE 2014 wage rates for these occupations, uprated for non-labour costs, to calculate an hourly cost of external advice of £26.83. However, this will be an underestimate of the fees charged given that this only includes wage and non-wage costs, and external agents would be expected to cover all of their costs within the fee charged. As a result, our estimated benefit from reduced reliance on external advice is likely to be an underestimate of the true value.

100. A number of reasons were given for using external agents to help with compliance. Approximately 70% of respondents wanted independent advice, assurance or were worried about penalties for non-compliance[48]. It is unlikely that regulators will be able to reduce the use of external agents by these businesses. However, 62% use external agents due to lack of clarity in legal requirements and 49% because they feel the advice from regulators is insufficient.[49] The growth duty is likely to have the biggest impact on these businesses.

101. For the analysis, we assume that the maximum reduction in use of external contractors is likely to be 10%. However, the impact is likely to be much smaller as businesses use external agents for multiple reasons. Our best estimate is a 5% reduction in use of external contractors due to better advice and guidance.

102. Just over two-thirds (69%) of businesses using external agents for compliance help reported that they used the agent for between one and four hours per month with a further 9% using the agent for between five and eight hours[50]. The total annual cost to business of using external agents is therefore estimated to be £29.5m. If the growth

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[45] For the analysis, this equates to 311,745 businesses

[46] http://webarchive.nationalarchives.gov.uk/20070807081150/bre.berr.gov.uk/regulation/

[47] 31% of businesses surveyed used external lawyers, 48% used external accountants, 36% used external specialist consultants and 47% used external insurance companies

[48] REBS 2013

[49] Businesses were able to select more than one reason for using external agents.

[50] For the analysis we take the midpoint of these ranges, 2.5 hours and 6.5 hours.

duty could reduce the reliance on external contractors by 10%, the benefit to business would be £2.6m. For sensitivity, we estimate that the potential benefits are between £0m and £2.9m.

103. There are likely to be additional benefits to improved and targeted guidance, such as greater compliance, increased business confidence, and the avoidance of costs leading from regulator enforcement. However, we are unable to monetise this.

Business Engagement

104. For one in seven businesses, complying with regulations is felt to be the greatest challenge to running their business[51]. In order to understand the economic impact of regulatory activity on a business or industry sector, it is crucial that regulators engage with industry as they develop their policies and guidance, to understand their perspective and tailor their information appropriately. At present, only 44% of businesses feel that regulators generally understand the main issues they face as a business.

105. By engaging with business, regulators can gauge the impact of their policies and operation decisions on business growth. There are a number of ways to engage business, including public events, online forums and formal reference panels. It is up to the regulator to determine which engagement method is most appropriate, taking into account the size and scope of the both the regulator and its business stakeholders. At present, only 11% of businesses have been consulted about a change in the way a regulator operates, while only 7% of businesses have been asked to provide an evaluation of the services operated by regulators. In response to the REB survey one business noted "*As a small business, we are never solicited for feedback. In thirteen years, this is the first time we get to raise our concerns."*

106. The benefit to individual businesses of better engagement was highlighted in one of the REB case studies. Experience with the Solicitors Regulation Authority regarding the Practicing Certificate Renewal served as an example of best practice that should be replicated and adopted more consistently when communicating any changes. Clear communication through a variety of channels (including the website, regulatory press, post, emails) was central to this.

107. The evidence from the Focus on Enforcement reviews showed that there are still problems for businesses being able to contact regulators and receive prompt responses, which then have an impact on business growth and development of new services. This was highlighted in a REB case study from a small residential home. *"In the past, we have considered offering 'daytime services.' We got in touch with the CQC to obtain some information on how to proceed further. They just never got back to us."*

108. We are unable to quantify the impact of this change in behaviour for businesses.

[51] Business Perceptions Survey, 2012

Proportionate decision-making by regulators

109. In seeking compliance, regulators can impose costs and limit or stop a business from trading.

110. Businesses differ in their ability to absorb compliance costs or implement changes, particularly smaller businesses which can be disproportionately affected. The decisions made by regulators at both a strategic and operational level should be proportionate both to the risk, and to the size of the business or operation.

Reduced delays in decision making for permits/licences

111. Regulators use licences and permits to control which businesses are permitted to carry out certain regulated activities. 63% of businesses have applied for a permit or licence in the last 3 years. In some instances, the regulated activity will be the business' core function or primary source of income, meaning that it cannot operate fully until a licence or permit is granted. Delays in decision making and lack of certainty around permits or licences can therefore significantly impact the operations of a business. 7% of those who have applied for permits/licences have been dissatisfied with the length of time it took while 12% feel that the process took longer than expected.

112. The following question was asked to those respondents who felt that they had experienced a delay "Which of the following, if any, describe the impact of the longer than expected time in applying for the permit or licence?": The results below show the response to this question:

a. Operations stopped until the licence/permit came = 36%
b. Activities had to be outsourced = 29%
c. Additional staff had to be employed = 13%
d. Recruitment of staff was delayed = 10%
e. Had to obtain additional insurance = 15%
f. Delayed launch of new product/service = 25%
g. Costs incurred e.g. storage/quarantine = 40%
h. Any other impact = 13%

113. The results of a delay in the application for a permit or licence varies between exporting and non- exporting firms. The REB survey suggests that, overall, exporting businesses are impacted more by a delayed application. For example, the costs incurred for extra storage and quarantine are particularly acute for exporting firms with 58% citing this as a major problem

114. By providing greater clarity and certainty to businesses around the length of time taken to apply for permits and licences, there is considerable scope to reduce the impact on businesses and allow them to plan their operations accordingly.

115. We also received evidence that permits and licenses can be barriers to businesses growing. This was also found in the Focus on Enforcement review where certain thresholds were a barrier to further activity or to taking up an activity. "*We considered the possibility to provide our clients with the service of green waste removal when completing landscape projects. However, we found out that it is necessary to obtain a licence even when transferring a very small amount of grass*

and plant cuttings. Considering the small size of the projects, we decided not to provide this additional service as we could not afford the fees required."

116. As part of the growth duty it is expected that regulators will consider their licensing and permitting structure to remove threshold effects and ensure that it is proportionate to the size of the operation and risk. However, we are unable to monetise these benefits.

Summary

117. The annual benefits to business are estimated to be between £0m and £226m. However, this is likely to be a lower bound of the estimate of likely benefits given that we have not been able to quantify a number of the benefits associated with the growth duty.

Table 10 – Annual benefits to business

	Low	**High**	**Best**
Reduction in duplication costs for information	£0m	£91.3m	£45.6m
Reduction in information requirement costs	£0m	£126.5m	£32.1m
Reduction in time required for inspections	£0m	£5.4m	£2.7m
Reduced reliance on external contractors	£0m	£2.9m	£1.5m
Total annual benefits	**£0m**	**£226.1m**	**£81.9m**

118. As business benefits are considered indirect and the costs are direct this measure will score as a small regulatory "in". The EANCB is 0.28. However taking into account the indirect benefits businesses will clearly benefit from this measure. The total net present value to society is £700.11m with all these benefits going to businesses.

Risks

Uncertain benefits to businesses

119. The benefits outlined here are based on the Business Perceptions Survey and the Regulatory Enforcement Business Survey, which are both largely perceptions-based surveys. It is important to be aware that perceptions surveys may not always give the full picture. Perceptions can be influenced by a number of sources and it is often hard to determine what directly influences perceptions. For example, the BPS indicates that businesses feel that the burden of regulation is increasing, despite the fact that Government has considerably reduced the burden of regulation in recent years.

References

- The Focus on Enforcement reviews: http://discuss.bis.gov.uk/focusonenforcement/published- reviews-and-closed-focus-areas/
- Post Implementation Review of the Regulators Compliance Code - The PIR has not yet been published – a link to the final report will be added once published
  A summary can be found in the Consultation Paper on Amending the Regulator's Compliance
  Code: http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-685-rcc-consultation.pdf
- Lord Heseltine's report - No Stone Unturned in Pursuit of Growth: http://www.bis.gov.uk/assets/biscore/corporate/docs/n/12-1213-no-stone-unturned-in-pursuit-of- growth
- Business Perception Survey 2012: http://www.bis.gov.uk/assets/brdo/docs/publications-2012/12- p145-business-survey-2012.pdf
- Annual Survey of Hours and Earnings 2012: http://www.ons.gov.uk/ons/rel/ashe/annual-survey- of-hours-and-earnings/2012-provisional-results/2012-provisional-table-14.zip
- Consultation with Non-Economic Regulators on the Duty to Have Regard to Growth: http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-684-growth-consultation.pdf
- Government Response to Consultation on the draft Regulators' Compliance Code and the application of the principles of good regulation (2007) http://www.berr.gov.uk/files/file45144.pdf
- Framing regulation task force implementation group: 'one year on' assessment: https://www.gov.uk/government/publications/farming-regulation-task-force-implementation-group- one-year-on-assessment
- Environment Agency – Improvement Plan, July 2012: http://www.environment-agency.gov.uk/static/documents/Utility/EA_Improvement_Plan_FINAL_-_July_2012(1).pdf
- World Bank *Doing business 2013,* October 2012

Annexes

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a Sunset Clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below:

Basis of the review:

We intend to review the impact of the statutory duty on **regulators, who undertake specified regulatory functions in scope of the duty,** to have regard to economic growth.

Review objective:

(1) Review the impact of the growth duty in minimising the burdens of compliance on business and promoting growth.
(2) Reviewing the impact of the growth duty on regulators.

Review approach and rationale:

1) Review of monitoring data to look at for example, costs to regulators and appeals under the growth duty
2) Evaluation of the growth duty - Consider whether the costs and benefits have been realised and if not why. This is likely to be as part of the wider evaluation of the Better Enforcement Package including the Small Business Appeal Champions and the Code. The Regulatory Burdens Survey 2013 will provide a baseline for the evaluation.
3) Ongoing analysis of stakeholder views
4) Evaluate lessons learned and feedback into the policy making process

Baseline:

Focus on Enforcement Reviews
Success criteria:
Costs and benefits in line with expectations or benefits exceeded

Monitoring information arrangements:

Regulators to provide BRDO with data on the number of appeals by businesses on the grounds that the Growth Duty wasn't applied and the outcome of such appeals and the costs of these appeals to Regulators.

Annex 2: Specific impact tests

Equality Impact Test

120. We do not believe that there will be any impacts in the area of equality.

Small and Medium Business Assessment

121. The growth duty will apply equally to all businesses.

122. This measure is expected to impact on all businesses. Although the proposal to introduce the Growth Duty will largely benefit businesses (indirectly), some costs will be incurred by small and micro business as regulators recover a proportion of the costs from this duty. We assume that the distribution of costs among businesses (including small and micro businesses) will reflect the structure of existing fees and charges, and so should not produce a disproportionate burden on small or micro businesses.

123. We have considered the possibility of fully exempting small and micro businesses from these costs as well as a number of potential mitigating options e.g. a temporary exemption, voluntary contributions, or different cost recovery rates for small and micro businesses. However, all of the options would require revision of the fee structures of all or most of those regulators which pass on the costs of the policy. Changing fee structures, as well as levels, would be a very complex undertaking creating further costs and would not be proportionate to the scale of this proposal. We would encourage regulators to consider whether they could change structures in this way as part of their implementation of the duty.

Other Impact Tests

124. We do not believe that there will be any impacts in the areas of competition, greenhouse gases, wider environmental issues, health and well-being, human rights, rural proofing or sustainable development. Clearly, some of these things are affected by the activities of regulators, but as the Duty is considered alongside their statutory remits in these areas there should be no overall impact.

125. In addition, there will be no new burdens for local authorities as a result of the growth duty as they are not in scope.

Annex 3

List of regulators responded to the Questionnaire

- Animal Health and Veterinary Laboratory Agency
- Civil Aviation Authority
- Claims Management Regulation Unit
- Companies House
- Environment Agency
- Fish Health Inspectorate, Centre for Environment, Fisheries and Aquaculture Science
- Food Standards Agency
- Highways Agency
- Information Commissioner's Office
- Gambling Commission
- Gang masters Licensing Authority
- Legal Services Board
- Marine Management Organisation
- Maritime and Coastguard Agency
- National Measurement Office
- Natural England
- Office for Fair Access
- Office for Nuclear Regulation
- Office of Rail Regulation
- Office of the Regulator of Community Interest Companies
- Veterinary Medicines Directorate