



Department  
for Business  
Innovation & Skills

**GROWTH DUTY**

Draft Guidance

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# 1. Introduction

- 1.1 Section 108 of the Deregulation Act 2015 ('the Act') establishes that any person exercising a regulatory function must have regard to the desirability of promoting economic growth (the "growth duty"). In performing this duty, they must, in particular, consider the importance for the promotion of economic growth of exercising the regulatory function in a way which ensures that regulatory action is taken only when it is needed, and any action taken is proportionate. The duty applies in respect of regulatory functions specified by order under section 109(1) of the Act. It applies whenever regulators exercise their specified regulatory functions, from, for example, the setting of policy to the individual actions of officers.
- 1.2 The growth duty is one of a number of statutory measures that support improvements in the implementation and delivery of regulation. These measures include the Regulators' Code<sup>1</sup> and the statutory principles of good regulation<sup>2</sup>.
- 1.3 The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.
- 1.4 Non-compliant activity or behaviour undermines protections to the detriment of consumers, employees and the environment and needs to be appropriately dealt with by regulators. It also harms the interests of legitimate businesses that are working to comply with regulatory requirements, disrupting competition and acting as a disincentive to invest in compliance.
- 1.5 The growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections. The purpose is to ensure that appropriate consideration is given by specified regulators to the potential impact of their activities and their decisions on economic growth, both for individual businesses and, more widely for sectors or groups that they regulate, alongside their consideration of their other statutory duties.

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<sup>1</sup> The Regulators' Code is issued under section 22 of the Legislative and Regulatory Reform Act 2006.

<sup>2</sup> The principles in section 21 of the Legislative and Regulatory Reform Act 2006 are that regulatory activities should be delivered in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

## Scope

- 1.6 The growth duty applies to a person exercising a regulatory function specified by Order<sup>3</sup> by a Minister of the Crown (such persons are collectively referred to as “regulators” for the purposes of this guidance). The regulatory functions that are specified for the purposes of the duty are, broadly, those of named national regulators and certain regulatory functions exercisable by a Minister of the Crown.
- 1.7 The regulatory functions of local authorities are not specified for the purposes of the growth duty.
- 1.8 Regulatory functions are broadly defined<sup>4</sup> for the purposes of the growth duty as functions under or by virtue of an Act or subordinate legislation:
- of imposing requirements, restrictions or conditions in relation to an activity<sup>5</sup>;
  - of setting standards or giving guidance in relation to an activity; or
  - relating to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to an activity.
- 1.9 In the context of criminal proceedings by a regulator, the growth duty applies to all functions up to and including the decision to refer the case to a prosecutor to review whether criminal proceedings should be instigated. The functions of instituting or conducting criminal proceedings are excluded from the growth duty<sup>6</sup>. Similarly, the function of conducting civil proceedings is excluded from the growth duty<sup>7</sup>.

## About this guidance

- 1.10 This guidance is issued under section 110(1) of the Deregulation Act 2015, and should be read in conjunction with the Act. All those exercising specified regulatory functions to which the growth duty applies must have regard to this guidance.
- 1.11 The guidance assists regulators in discharging their responsibilities under the growth duty. It also provides clarity for stakeholders as to what they should expect of regulators.
- 1.12 The requirement that regulators must have regard to the guidance means that regulators must consider the provisions of the guidance and give them due weight in determining how they will exercise their regulatory functions. They are not bound to follow a provision of the guidance in a particular case if they properly conclude that the provision is either not relevant or is outweighed by other considerations. However, the reasons for such a conclusion should be recorded (see section 6.4).

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<sup>3</sup> The Order will be made under section 109 of the Act.

<sup>4</sup> Section 111(1) – (3) of the Act.

<sup>5</sup> Section 111(3) of the Act provides that an ‘activity’ includes providing goods and services and employing or offering employment to a person.

<sup>6</sup> Section 111(2)(b)(i) of the Act.

<sup>7</sup> Section 111(2)(b)(ii) of the Act.

## 2. Summary

- 2.1 This guidance concerns the performance of the growth duty in section 108 of the Act and sets out ways in which regulators can exercise their regulatory functions in accordance with the growth duty by:
- a) ensuring that they understand the business environment, their business community and individual businesses that they regulate, and the likely impact of their activities on those businesses, particularly in respect of growth (section 3);
  - b) applying their understanding of the business environment and their business community to their risk-based approach, ensuring that they are acting only where needed (section 4); and
  - c) applying their understanding of their business community and individual businesses they regulate in order to ensure that their actions are proportionate (section 5).
- 2.2 The guidance also sets out ways in which a regulator can be transparent and accountable about the ways in which they have regard to the desirability of promoting economic growth (section 6).

### Terminology

- 2.3 The collective term 'businesses' has different meanings dependent on context. In order to provide clarity, the following terms are used in this guidance:
- 'business environment' is used to indicate the environment in which all businesses operate, in terms of the factors that affect them, the challenges they face, including regulatory costs, and the support that is available to them;
  - 'business community' is used to indicate all businesses that fall within scope of the legislation for which the regulator is responsible. For some regulators, their business community will be just one industry sector, or part of a sector, that they interact with, whilst for other regulators their business community may comprise multiple sectors; and
  - 'individual business' is used to mean any single regulated entity, including regulated entities that might not match conventional views of a 'business', for example, licensed individuals, public sector bodies, not-for-profit organisations.
- 2.4 The term 'regulator' (see section 1.6) is used in this guidance to cover any person exercising a specified regulatory function, meaning both an organisation acting within scope of the growth duty and an officer or officers acting on behalf of that organisation.

## 3. Understanding the business environment

- 3.1 Regulation is one of the many factors that shape the environment within which businesses operate. Regulators need to have an appropriate level of understanding of the business environment; of the role that regulation and the activities of regulators play in that environment; of their own business community; and of individual businesses that they regulate. This understanding will inform their approach when they exercise their regulatory functions, allowing them to properly discharge their responsibilities in respect of the growth duty.
- 3.2 Regulators should ensure that their officers have a level of understanding of the business environment, their business community, individual businesses, and the impact of regulator activities on them that is appropriate to their duties and responsibilities, enabling them to deliver a risk-based, proportionate approach in their day-to-day activities. Appropriate steps that a regulator may take to ensure competency include:
- a) incorporating an understanding of business into recruitment considerations, induction programmes and early training;
  - b) considering business understanding as part of the performance management of staff, including in setting objectives;
  - c) supporting improvements in business understanding through the provision of staff development and training; and
  - d) sharing of relevant information and good practice in relation to business understanding.

### Business environment

- 3.3 Regulators should ensure that they understand the current business environment, and where their business community sits in that environment. Factors that may contribute to the regulator's understanding include:
- a) awareness of the current economic environment in which businesses are operating;
  - b) knowledge of how regulation, impacts on growth in both positive and negative ways;
  - c) knowledge of how a regulator's approach to delivering regulation, and the individual actions that a regulator takes, impact on businesses generally, and on business growth; including both direct economic impacts and indirect impacts;
  - d) awareness of the business lifecycle, and of key indicators of growth associated with it;
  - e) knowledge of how a regulator's approach to delivering regulation, and the individual actions that a regulator takes, impact at the level of individual businesses, and of how this impact varies at different stages of the business lifecycle; and

- f) awareness of business support mechanisms that are available, including online resources<sup>8</sup> and Government initiatives to support businesses.

## Business community

3.4 Regulators should ensure that they have a detailed understanding of their business community. Factors that will contribute to the regulator's understanding include:

- a) knowledge of the key issues in the business community, including regulatory issues;
- b) knowledge of other regulators that regulate the business community, particularly where these regulators may have complementary areas of responsibility;
- c) knowledge of relevant self-regulatory approaches that are operating in the business community, for example industry assurance programmes or accredited certification schemes;
- d) awareness of how supply chains work in the business community, including how this affects considerations of timeliness for regulatory interventions, and the extent to which actors in the supply chain are dictating compliance approaches;
- e) awareness of the maturity of the regulation in the business community and the extent to which compliance is embedded, for example long-established regulatory requirements are likely to be more embedded than new requirements, or requirements that are subject to frequent changes;
- f) awareness of the key benefits associated with regulatory compliance in the business community;
- g) awareness of the key risks associated with non-compliance in the business community.

3.5 Regulators should take appropriate steps to develop their awareness of innovation occurring in their business community, for example as a result of emerging business models, processes or products that may present a challenge to the existing regulations or the way the regulator operates. They should work with other regulators, policy departments and relevant businesses and representatives to develop suitable responses, where appropriate, which encourage appropriate innovation, for example by:

- explaining the ways in which they promote and support business innovation;
- considering what arrangements might be agreed to support safe testing of new products and services;
- engaging with their business community to establish their views on ways in which existing methods of operating might need to change to take account of technological or other innovation in the business community, including the development of new products and services; and

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<sup>8</sup> Online resources for businesses include the Government's Business is Great website and GOV.UK website.

- underpinning their approach with evidence and analysis drawn, for example, from horizon scanning and engagement with relevant businesses, including new market entrants.

3.6 Regulators should take steps to understand the views of their business community, in particular in relation to how they experience regulation. This will involve developing and maintaining productive relationships with relevant businesses and business organisations that are representative of the business community. Appropriate steps for the regulator to take include:

- a) engaging with their business community to understand any economic impacts and perceived impacts of
  - the regulator's current approach to delivering regulation;
  - proposed changes to the regulator's approach;
- b) engaging with their business community to establish their views on
  - relevant compliance drivers, pressures and threats;
  - opportunities arising from good regulation that the regulator could facilitate, for example in terms of sharing information to enable consumer choices which benefit legitimate businesses;
  - current challenges that the regulator could address, for example through the provision of information, guidance or tools to support compliance.
- c) providing mechanisms for businesses to easily provide feedback on their interactions with the regulator<sup>9</sup>.

## Individual businesses

3.7 Many businesses are committed to meeting regulatory requirements and invest considerable time and resources in achieving and maintaining compliance, and a significant proportion of them source expertise to develop or check their compliance systems. Other businesses are willing to comply but may lack either the understanding or capacity to achieve or maintain compliance. In general, those businesses that wilfully disregard regulatory requirements are a small minority, although this may vary in different sectors. Regulators should ensure that they have a good understanding of the approaches that individual businesses take to achieve compliance and the reasons for these. This will enable them to regulate in a cost-effective way that recognises the good track record of compliant businesses; effectively motivates and supports compliance improvements where needed; and tackles significant non-compliance.

3.8 Factors that regulators should understand in their interactions with individual businesses include:

- a) the stage the business is at in the business lifecycle;
- b) how the business is managing compliance and where it sources regulatory guidance and advice;

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<sup>9</sup> The Regulators' Code (section 2) sets out specific provisions in relation to feedback and complaints.



- c) what the business' internal drivers are, and where the responsibility for relevant decision-making lies;
- d) what the business needs from the regulator. For example, in relation to advice, some businesses need clarity on how the regulatory requirements apply in their business context, whilst others want to have confidence that the compliance decision they are making will be acceptable (see 4.3).

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## 4. Minimising burdens on business productivity

- 4.1 Section 108(2)(a) of the Act provides that regulators must consider, in particular, the importance for the promotion of economic growth of exercising their regulatory functions in a way which ensures that regulatory action is taken only when it is needed. This can be achieved by using the regulator's understanding of the business environment and their business community to inform the regulator's risk-based approach, ensuring that the nature and level of their interventions is necessary to address the regulatory risks posed.
- 4.2 The growth duty applies across a regulator's activities, from the strategic to the operational level, and regulators should consider how they will ensure, at all levels, that regulatory action is taken only where needed. Indicators that a regulator has considered how the duty will be discharged at all levels include:
- a) recognition in the regulator's strategic priorities, aims and objectives of the desirability of promoting economic growth, both in relation to their business community and in relation to individual businesses;
  - b) recognition in relevant operational policies and procedures, including the regulator's enforcement policy, that economic growth is a factor to have regard to;
  - c) providing services in a way that meets identified business needs and maximises cost-effective delivery, in particular through digital delivery and using networks that already exist in their business community;
  - d) appropriate recognition of self-regulatory and third party assurance programmes, to reduce duplication of effort;
  - e) an assessment of relevant regulatory barriers associated with key stages of the business lifecycle and measures put in place to address these.

### Compliance support

- 4.3 Simple, clear and timely guidance and advice<sup>10</sup> is often the most important contribution that the regulator can make to supporting compliance. It can provide businesses with clarity and certainty, minimising the cost to them of complying with regulatory requirements. Good guidance and advice provides assurance for businesses that gives them and others, such as their customers, confidence that what is required is being delivered. It supports investment in new products, processes or markets and can help businesses to grow. Indicators that a regulator is meeting business needs for compliance support include:
- a) working with business representative groups, such as trade associations, to agree clear, straightforward guidance that meets the needs of their businesses;

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<sup>10</sup> The Regulators' Code (provision 5) sets out specific provisions in relation to information, guidance and advice.

- b) publishing clear, robust compliance guidance in areas where the regulator has evidence that this is needed;
- c) making available tailored compliance advice for those businesses whose needs are not met by the regulator's existing standards and guidance, for example, in relation to innovative products or processes;
- d) providing reassurance to businesses which gives them confidence to rely on guidance or advice issued by the regulator<sup>11 12</sup>;
- e) working with other regulators to ensure that guidance and advice is consistent and streamlined;
- f) making available timely compliance support that is tailored to the needs of pre-start and start-up businesses.

## Authorisations

4.4 Where regulators impose requirements, restrictions or conditions as part of an authorisation regime, such as a licensing regime, there are associated compliance costs for businesses in terms of time and money. By applying their understanding of the business community and individual businesses they regulate, regulators are able to ensure that such requirements, restrictions or conditions are proportionate and used only when necessary; that associated costs are reduced to the minimum necessary, and that then maximises the positive impacts of authorisation regimes. Indicators that a regulator is taking steps to minimise unnecessary regulatory burdens associated with authorisations include:

- a) the regulator collaborates with others who operate related authorisations to ensure a consistent approach;
- b) the regulator takes care to minimise the requirements and the frequency of changes to them, recognising every authorisation process and every change of plan to them is a cost for business;
- c) the regulator takes steps to streamline application and renewal processes, and provides clear guidance on them;
- d) the regulator takes steps to minimise and streamline data requirements associated with the authorisation;
- e) the regulator makes considered choices as to whether an applicant should be subject to a pre-authorisation check, such as an inspection, based on the circumstances and risk

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<sup>11</sup> The Regulators' Code (provisions 1.2 and 5.4) provides that regulators in scope should consider how they can provide greater certainty and confidence in compliance for those they regulate.

<sup>12</sup> Regulators that deliver through or in conjunction with local authorities should be aware of the ways in which Primary Authority delivers assurance for businesses regulated by local authorities. Clause 17 of the Enterprise Bill proposes an amendment to the Regulatory Enforcement and Sanctions Act 2008 which would provide for specified national regulators to play a greater role in Primary Authority, dependant on these provisions in the Enterprise Bill receiving Royal Assent.

## Interventions

- 4.5 Where regulators intervene to conduct checks on businesses with a view to securing compliance, such as by inspection, the manner in which these interventions are conducted will influence the degree to which costs are incurred by the businesses. Indicators that a regulator is taking steps to minimise unnecessary costs and maximise the benefits of interventions include:
- a) the regulator evaluates the outcomes of its interventions and is clear about their value;
  - b) the regulator uses a robust risk assessment framework<sup>13</sup> to determine intervention frequency;
  - c) the regulator draws on all relevant information that is available to it to improve the targeting and focus of interventions;
  - d) the regulator collaborates with other regulators to improve the efficiency and streamlining of interventions, minimising duplication of effort for both the businesses and regulators;
  - e) the regulator makes considered choices as to whether businesses should receive advance notification of interventions, based on the circumstances and risk;
  - f) the regulator recognises where a business has established its own compliance system or participates in a wider compliance scheme and has regard to this in conducting its interventions;
  - g) the regulator provides feedback on interventions, being clear about the areas checked, to the person in the business who will need to respond to the feedback;
  - h) the regulator uses interventions as an opportunity to provide details of upcoming changes to regulatory requirements or other relevant information, and to signpost to sources of support or relevant Government initiatives which may be of interest to the business.

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<sup>13</sup> The Regulators' Code (section 3) sets out specific provisions in relation to risk-based activities.

## 5. Proportionate decision-making

- 5.1 Section 108(2)(b) of the Act provides that regulators must consider, in particular, the importance for the promotion of economic growth of exercising their regulatory functions in a way which ensures that any regulatory action they take is proportionate<sup>14</sup>. This can be achieved by applying their understanding of the impact of regulatory action on their business community and on individual businesses, in order to respond to particular issues in a manner that is appropriate, having regard to the facts and circumstances.
- 5.2 Regulators have a range of interventions at their disposal when responding to non-compliance, from those designed to incentivise and support compliance to those intended to tackle the most serious or persistent non-compliance. In some circumstances they may also refer a matter to an organisation, such as another regulator, that is better suited to dealing with it. Certain enforcement actions, and other activities of the regulator, can be particularly damaging to the growth of individual businesses. These include, for example, enforcement actions that limit or prevent a business from operating; financial sanctions; and publicity, in relation to a compliance failure, that harms public confidence.
- 5.3 Regulators, therefore, should ensure that their enforcement policy sets out clearly the hierarchy of their enforcement actions and the factors that guide their use, so that their interventions are deployed in a proportionate manner on a day-to-day basis. Indicators that a regulator has regard to the growth duty in making decisions on how to respond to non-compliance involve recognition in their enforcement policy of relevant factors<sup>15</sup> including:
- a) the nature and level of risks to regulatory outcomes associated with the non-compliance, including the risks to economic growth;
  - b) the steps taken by the business to achieve compliance and any clear reasons for the failure;
  - c) the willingness and ability of the business to address the non-compliance;
  - d) the likely impact of the proposed intervention on the business, both in terms of remedying the non-compliance and in terms of economic costs; and
  - e) the likely impact of the proposed intervention on the wider business community, both in terms of deterring non-compliance and in terms of economic benefits to legitimate businesses.

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<sup>14</sup> Proportionality is one of the principles of good regulation that regulators must have regard to – see footnote 2.

<sup>15</sup> Other factors will usually be recognised in the regulator's enforcement policy in addition to those listed.

- 5.4 Where a business fails to comply with regulatory requirements regulators may be able, by applying their understanding of the business community and individual businesses that they regulate, to ensure that the costs associated with remedying the non-compliance are reduced to the minimum necessary. Indicators that a regulator is taking steps to minimise unnecessary costs include:
- a) The regulator discusses with the business the non-compliance and potential reasons for it, in order to be able to provide the best guidance and advice on sustainable solutions;
  - b) The regulator takes account of the business' own approach to delivering compliance, including establishing whether this is based on advice or guidance that the business has received, for example from a regulator or consultant;
  - c) The regulator explains clearly to the business what compliance would look like in the business' context and acknowledges where there might be different ways of delivering compliance, recognising that these might incur different costs for the business;
  - d) The regulator clearly explains the potential consequences of non-compliance;
  - e) The regulator is clear about the expected timescale for remedying the non-compliance, taking into account representations from the business about what is reasonable;
  - f) The regulator communicates any decision to take enforcement action to the business clearly and promptly, and provides a timely explanation of the business' right to appeal<sup>16</sup>.
- 5.5 Regulators should, where appropriate, follow the principle that enforcement action is a last resort and they should help businesses first. In particular, businesses that are in the 'start-up' period, for example, require a specific style of intervention to enable them to meet the particular challenges that they experience in achieving compliance in all areas, whilst becoming established in their business. A regulator's response to identified non-compliance by start-up businesses should recognise these challenges.

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<sup>16</sup> The Regulators' Code (provision 2.3) provides that regulators within scope should provide an impartial and clearly explained route to appeal against a regulatory decision.

## 6. Demonstrating regard for the growth duty

- 6.1 Regulators should ensure that they are transparent<sup>17</sup> about the ways in which they have regard to the desirability of promoting economic growth across their activities. This will ensure that those they regulate, Government, and others with an interest in the regulation are able to hold the regulator accountable<sup>18</sup>.
- 6.2 Acting in a transparent manner means that the regulator should:
- a) explain their approach to promoting economic growth and set out what businesses and others can expect from them in relation to the growth duty;
  - b) engage with their business community, consulting publicly where appropriate, on proposed changes to their policy or practices which may have a significant economic impact on businesses they regulate, and publish the results of any consultations; and
  - c) publish any assessments that they choose to undertake<sup>19</sup> of the impacts that they have on their business community. For example, assessments of:
    - where and how their current approaches impact on their business community;
    - the likely impacts of proposed changes to their approach
- 6.3 Regulators may choose to incorporate information published to meet the provisions of this guidance into existing publications, such as their annual reports and service standards<sup>20</sup>.
- 6.4 Regulators should keep records of their decisions and the reasons for them. In doing so, they should record where the duty to have regard to the desirability of economic growth and the provisions of this guidance were relevant to their decisions and, where having regard to all the circumstances, those matters were not relevant or were outweighed by other considerations.

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<sup>17</sup> Transparency and accountability are two of the principles of good regulation that regulators must have regard to – see footnote 2.

<sup>18</sup> Clause 16 of the Enterprise Bill proposes an amendment to the Deregulation Act 2015 which would require regulators in scope to publish annual performance reports as to the effect of the performance of the growth duty on the way the regulator exercised its relevant functions, dependant on these provisions in the Enterprise Bill receiving Royal Assent. There will be guidance on the reporting requirement in the event that it comes into effect.

<sup>19</sup> Clause 14 of the Enterprise Bill proposes an amendment to the Small Business, Enterprise and Employment Act 2015 which would require regulators in scope to assess the impact on business of changes in the regulator's policy and practice, dependant on these provisions in the Enterprise Bill receiving Royal Assent.

<sup>20</sup> The Regulators' Code (provision 6) provides that regulators within scope should publish 'service standards' including clear information on how they communicate with businesses; their approach to providing information, guidance and advice; their approach to checks on compliance; their enforcement policy; any fees and charges; how to comment or complain about the service provided; and, routes for businesses to appeal.

- 6.5 Regulators should have in place mechanisms to ensure that their officers are applying their understanding of the business environment and of individual businesses in order to deliver a risk-based, proportionate approach in their day-to-day activities<sup>21</sup>.

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<sup>21</sup> The Regulators' Code (provision 6.4) provides that regulators within scope should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.



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