

## EXPLANATORY MEMORANDUM TO

### GUIDANCE ISSUED UNDER SECTION 110(1) DEREGULATION ACT 2015 ENTITLED “GROWTH DUTY: STATUTORY GUIDANCE REFRESH”

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business and Trade (“DBT”) and is laid before Parliament by Command of His Majesty.

#### 2. Purpose of the instrument

- 2.1 Under section 108 of the Deregulation Act 2015 (“the Act”), a person exercising a specified regulatory function must have regard to the desirability of promoting economic growth, known as “the Growth Duty”. Section 110(1) of the Act provides a Minister of the Crown with the power to issue guidance about the performance of the Growth Duty. The ‘Growth Duty Statutory Guidance Refresh’ comprises a revised guidance that will provide greater clarity to stakeholders by ‘defining growth’ and is intended to encourage regulators within the scope of the Growth Duty to be transparent and accountable for growth.
- 2.2 A draft of the “Growth Duty: Statutory Guidance Refresh” has been laid as an unnumbered act paper (alongside the draft Economic Growth (Regulatory Functions) (Amendment) Order 2024) as required under section 110(6) of the Act.

#### 3. Matters of special interest to Parliament

*Matters of special interest to the Joint Committee on Statutory Instruments.*

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The extent of this guidance (that is, the jurisdiction(s) which the guidance forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this guidance (that is, where the guidance produces a practical effect) is the United Kingdom.

#### 5. European Convention on Human Rights

- 5.1 The Minister for State at the Department for Business and Trade, Lord Dominic Johnson, has made the following statement regarding Human Rights:

“In my view the guidance issued under section 110(1) of the Deregulation Act 2015 entitled “Growth Duty: Statutory Guidance Refresh” is compatible with the Convention rights.”

#### 6. Legislative Context

- 6.1 Section 108 of the Act provides that a person exercising a specified regulatory function must have regard to the Growth Duty.
- 6.2 A UK Minister may issue guidance on the Growth Duty from time to time under section 110(1) of the Act, and those subject to the Growth Duty must have regard to such guidance (section 110(3) of the Act). New draft guidance entitled “Growth Duty:

Statutory Guidance Refresh” has been laid before Parliament alongside the draft Economic Growth (Regulatory Functions) (Amendment) Order 2024. Following approval of the draft guidance by a resolution of each House of Parliament, the Minister will issue the guidance under section 110(7) of the Act. The new guidance will supersede the previous guidance brought into force under the Deregulation Act 2015 (Growth Duty Guidance) Order 2017 (S.I. 2017/268) in March 2017.

## **7. Policy background**

### ***What is being done and why?***

- 7.1 The Growth Duty applies to over 50 different regulators but does not currently apply to Ofgem, Ofwat and Ofcom (responsible for the regulation of the energy, water, and telecoms sectors respectively).
- 7.2 Ofgem, Ofwat and Ofcom regulate critical economic sectors which account for around four per cent of the UK’s GDP, and over thirteen per cent of annual private UK investment. The Government recognises the importance of these regulators in shaping the UK economy, particularly at a time when we face investment challenges to meet our infrastructure needs across the energy, water, and telecoms sectors.
- 7.3 Bringing these three regulators within scope of the Growth Duty will help ensure they consider how best to promote growth in their sectors as they carry out their core functions, support businesses and the vital investment needed to ensure a quality service to current and future consumers.
- 7.4 The draft Economic Growth (Regulatory Functions) (Amendment) Order 2024 will extend the Growth Duty to Ofcom, Ofgem and Ofwat.
- 7.5 The Growth Duty statutory guidance has also been updated to reflect the anticipated extension of the Growth Duty to the economic regulators (Ofcom, Ofgem and Ofwat), the consultation responses, and the changes the economy has undergone since 2017.
- 7.6 The refreshed guidance provides a more detailed outline on how regulators should consider economic growth alongside principles-based and outcomes-based regulation, to help with decision making. The revised guidance intends to encourage transparency and accountability for growth across regulators. This revision provides clarity within the guidance to support regulators in their application of and reporting against the Growth Duty.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This guidance replaces the current “Growth Duty Statutory Guidance” issued under section 110(1) of the Deregulation Act 2015, that was published in March 2017.

## **10. Consultation outcome**

- 10.1 DBT consulted on the revised guidance (as required under section 110(5) of the Act) between 22<sup>nd</sup> November 2023 and 17<sup>th</sup> January 2024. During the development of the draft statutory guidance, meetings were held with multiple regulators including the UK Regulators Network and its members, the Environment Agency and Ofwat in

order to test policy ideas. During pre-consultation engagement, regulators at the Better Regulation Executives' Regulators' forum (which has representatives from over 50 regulators) were asked to comment and share reflections on the draft guidance. Following the publication of the consultation on the draft guidance, regulators and those that responded to the consultation on the extension of the Growth Duty to Ofgem, Ofwat and Ofcom were invited to respond and participate in a discussion meeting on the draft guidance. Ongoing engagement throughout the consultation period consisted of virtual meetings with regulators and engagement via email to address any questions.

- 10.2 The consultation received 54 written responses from a range of stakeholders including businesses, charities, environmental organisations, regulators, and utility companies. 79% of respondents supported the revised statutory guidance definition of economic growth. The majority of respondents welcomed the definition of 'Sustainable Economic Growth' and the clarification that the Growth Duty does not encourage short-term unsustainable Growth. A minority of respondents called for the 'Sustainable Economic Growth' definition to go further and for reference to environmental sustainability, net zero and nature recovery. Respondents welcomed the flexibility provided in the guidance and the clarity provided to meet the requirements of the Growth Duty.
- 10.3 Having considered the responses received from the consultation the Government is satisfied it is appropriate to proceed with the refreshed Growth Duty statutory guidance.
- 10.4 More information and the full consultation response is available on DBT's website at: [Smarter Regulation: regulating for growth](#). This provides further details on decisions regarding reporting by regulators, metrics for comparative assessment of regulatory performance, proposed Targets for Regulatory Approval, the International Fast Track and the Productivity Lock. Government intends to work with regulators to develop a Regulatory Performance Framework for publication in the near future and will further consider how the responses to this consultation can contribute to this piece of work.

## **11. Guidance**

- 11.1 The revised statutory guidance is written for regulators to assist them with discharging their Growth Duty obligations. This guidance sets out how the regulators in scope of the Growth Duty can better support sustainable economic growth through the decisions they take and through the way that they regulate. Updating this guidance will help to ensure regulators have a clearer understanding of what is expected from them, and the intention is for businesses to benefit from fair, balanced regulation.

## **12. Impact**

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

## **13. Regulating small business**

- 13.1 The guidance does not apply to activities that are undertaken by small businesses; the amendments made are unlikely to affect small businesses in any significant respect.

#### **14. Monitoring & review**

- 14.1 The approach to monitoring this legislation is 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. The Government will continue to review the statutory guidance, including in relation to the changes made by the Order, so as to monitor its impact both on the regulators and on businesses and consumers.
- 14.2 The objectives of reviewing the Growth Duty are to assess the impact of the duty in minimising the burdens of compliance on business and promoting growth. Also, to review the impact of the Growth Duty on regulators. We will consider whether the Growth Duty has led to changes in regulator behaviour. The Impact Assessment outlines further details on intended monitoring and review.

#### **15. Contact**

- 15.1 Craig Bowdery at the Department for Business and Trade email: [craig.bowdery@businessandtrade.gov.uk](mailto:craig.bowdery@businessandtrade.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 James Silcox, Deputy Director for Strategy and Regulator Performance, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Dominic Johnson of Lainston, Minister of State in the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.