



**DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM**

**GOVERNMENT RESPONSE TO THE
CONSULTATION ON THE DRAFT
REGULATORS' COMPLIANCE CODE
AND THE APPLICATION OF THE
PRINCIPLES OF GOOD REGULATION**

OCTOBER 2007

BRE
**BETTER
REGULATION
EXECUTIVE**

Government response to the
consultation on the

Draft Regulators' Compliance Code and the application of the Principles of Good Regulation

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1. Introduction

Background

- 1.1 The Government asked Philip Hampton in 2004 to consider ways of reducing the burdens that regulatory enforcement imposes on business and other regulated entities without compromising regulatory standards or outcomes. While the UK regulatory enforcement regime had much to commend in it, Government recognised the need for improvement to reduce needless regulatory burdens and increase the benefits that regulations can bring.
- 1.2 In 2005, Hampton published his report¹, setting out several wide ranging recommendations on how to reduce the burden of regulation and at the same time maintain or even improve regulatory outcomes. Seven of these recommendations relate directly to the “principles of inspections and enforcement”, covering the following broad areas:
 - economic progress;
 - risk assessment;
 - advice and guidance;
 - inspections;
 - information requirements;
 - enforcement and sanctions; and
 - accountability.
- 1.3 The Government accepted the Hampton recommendations and confirmed its intention to issue a statutory code of practice for regulators to give the enforcement principles some statutory basis. The Legislative and Regulatory Reform Act 2006 provides in section 22(1) a power for a Minister to issue such a code of practice.
- 1.4 After an extensive period of informal consultations with various key stakeholders, a draft code of practice for regulators (the “Regulators’ Compliance Code”) was issued for public consultation.

The Public Consultation

- 1.5 On 15 May 2007, the Government published a consultation document containing a draft of the Compliance Code and a partial impact assessment. The consultation paper sought views on the draft Code, the application of the five Principles of Good Regulation and the draft impact assessment.

¹ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005.

- 1.6** The consultation document was sent to over 400 interested organisations. These included national regulators, local authority regulators, other government departments, businesses and business associations, Third Sector organisations and other key stakeholders. The consultation document was made available on the Cabinet Office and Better Regulation Executive (BRE) websites. We also publicised the consultation exercise through press releases and in the BRE's *Regulatory Services e-Update*, an online newsletter sent to several hundreds of subscribers.
- 1.7** In addition to the formal consultation, we held stakeholder events to discuss the Code with interested organisations and individuals. For instance, we held two workshops for national regulators in June, and a seminar, jointly organised with the Local Authorities' Co-ordinators of Regulatory Services (LACORS), for local authorities and fire authorities in July, and participated in several workshops hosted by some regulators on the Code. We also met with representatives of business organisations, consumer groups, and major national regulators such as the Environment Agency and Financial Services Authority.
- 1.8** The purpose of this document is to summarise the views received during the public consultation and to set out the Government's responses.

Responses to the public consultation

- 1.9** The consultation closed on 15 August 2007. A total of 105 responses were received. Some responded by completing the response form published on the website, others sent letters or emails. A breakdown of the responses is set out in the table below.

Category	Number of responses
National Regulators	20
Local Authorities and Fire Authorities	37
Local Authority Associations	9
Business groups	18
Individual businesses	7
Professional Associations	8
Trade Unions and consumer groups	3
Third sector organisations	2
Individual	1
Total	105

- 1.10** We are grateful to those who responded to the consultation and for all the responses received. In summarising these responses, we have tried to reflect the views offered, but we have not attempted to describe all the responses in detail.

Understanding this document

- 1.11 The consultation document, published in May 2007, presented 16 specific questions covering four broad areas. Eight questions were asked on the content of the draft Compliance Code; two on the Listing Order for the Code; four on the application of the five Principles set out in section 21 of the 2006 Act; and two on the partial impact assessment.
- 1.12 This response document follows the order of the May consultation document. An Executive Summary follows in Chapter 2. Chapter 3 covers responses to the questions on the Code, Chapter 4 focuses on questions on the listing order for the Code, and Chapters 5 and 6 deal respectively with the application of the five Principles and the impact assessment. Chapter 7 covers other issues and themes emerging from the consultation but which were not asked in the consultation questions.
- 1.13 Each chapter provides a summary of the views expressed by respondents on each of the questions covered. Not every respondent is cited. This is because there is significant duplication or similarity in the views expressed.
- 1.14 Where the question requires a “yes” or “no” answer, we identify the number in favour and the number against. And where we invited comments, we analyse the responses on the basis of the frequency of the opinion received across all responses in order to identify the prevalent views. In some cases we include an extract from responses to give a flavour of the comments provided. We try to reflect the opinions of a range of respondents, both positive and negative.
- 1.15 After analysing and summarising the views expressed by the respondents, we present the Government’s response to the views or points raised.
- 1.16 An electronic version of this response document can be accessed from the same website: http://bre.berr.gov.uk/regulation/reform/enforcement_concordat. If you have any enquiry about this response document, please contact **Olu Fasan** on 020 7215 0318 or by email on: olu.fasan@berr.gsi.gov.uk.

2. Executive summary

- 2.1 A total of 105 responses were received. However, not all respondents provided comments on all of the questions raised. Most concentrated on the specific issues or questions of concern to them, while some raised additional issues. Almost all the respondents welcomed the draft Compliance Code. The majority felt that, as a document which sets out good practice, it is a step forward.
- 2.2 Business respondents were generally more positive about the possible impact of the Code, although this view was dependent on the Code being implemented by regulators. Most business respondents wanted the Code to be strengthened, with additional provisions to ensure that regulators' compliance with the Code was effectively monitored.
- 2.3 National regulators welcomed the Code but felt that there was need to manage expectations among the regulated sector as to what the Code could deliver. As such, they suggested that words and expressions capable of material ambiguity should be clarified. In particular, they suggested that provisions relating to giving advice and guidance and data sharing be tempered to manage expectations.
- 2.4 Local authority respondents pointed out that they are already doing much that the Code requires and doubted whether the Code could add anything significant in the areas of their operations that it covers, such as environmental health and trading standards. They also expressed concerns about expectations which the Code could raise.
- 2.5 Business respondents generally felt that the Code struck the right balance between achieving regulatory outcomes and eliminating unnecessary burdens on regulated entities, but only if regulators comply with the Code. Regulators, both local and national, almost unanimously contended that the Code was skewed too much in favour of regulated entities.
- 2.6 Thus, while the majority of respondents welcomed the policy and object of the Code, there were concerns among regulators about possible unintended consequences, while regulated entities, particularly businesses, felt the purpose of the Code would not be achieved unless it was effectively monitored and enforced.
- 2.7 On the questions of regulatory functions that should be subject to the Code, almost all the respondents agreed that the Code should apply to as many regulators and regulatory functions as possible. In this regard, local authority respondents felt that making the Code applicable to a few local authority regulatory functions and the Enforcement Concordat to others would create confusion and inconsistency. However, both local authority and business respondents generally felt that the Code should not replace the Concordat, which applies to a wider range of regulatory services.

- 2.8** The majority of business respondents, including the main umbrella bodies, such as the Confederation of British Industries (CBI) and British Chambers of Commerce (BCC), felt that the Principles of Good Regulation, set out in section 21 of the Legislative and Regulatory Reform Act 2006, should apply to both the general and individual level functions of regulators. They believe these Principles are reasonable and should underpin all regulatory functions.
- 2.9** The majority of local authority respondents and some national regulators, however, argued that the Principles should apply at the general level only. Some national regulators specifically sought the exclusion of their individual level regulatory functions from the scope of the five Principles. However, the general view of many respondents, particularly from the business sector, was that applying these Principles to the individual level activities of regulators should present no problem. They argued that the duty to “have regard to” the Principles meant that regulators could depart from them in exceptional circumstances.
- 2.10** Few respondents offered comments on the Impact Assessment but none was able to provide hard evidence or data to challenge the assumptions and estimates in the draft impact assessment. Most local and national regulators claimed that they were already implementing most of the requirements of the Code, but also raised concerns about the possible costs of compliance. Business respondents generally felt that the Code would yield benefits but only if regulators complied with it.

The Government's response

- 2.11** **The Government is grateful to those who responded to the consultation. We will consider all the comments made and look at where the draft Code needs to be improved and revise it accordingly before laying it before Parliament. We will also deal with the question of whether any regulatory functions should be exempted from the individual level application of the five Principles based on the evidence received, taking also into account comments from the relevant stakeholders.**

3. Responses to questions on the Compliance Code

Background

- 3.1** The draft Compliance Code is set out in two parts. Part 1 consists of introductory statements that provide essential background information and context to aid proper understanding and interpretation of the Code. Part 2 sets out the specific obligations of the Code.
- 3.2** We consulted on the content of the Code and sought views on eight questions. In this chapter, we present a summary of the views expressed on each question, and provide at the end of each summary the Government's response to the views.

Question 1: Is there anything that should be added to or removed from the draft Compliance Code?

- 3.3** There were 68 responses to this question. Of these, 12 were from national regulators, including the major national regulators², 36 from local authorities and associations that represent local authority regulatory services; and 19 from businesses or business associations.
- 3.4** Most of the respondents welcomed and supported the principles and intent of the Code. However, virtually all the respondents considered that something should be added to or removed from the draft Code. For instance, of the 36 local councils or associations that responded to this question, 30 asked for some changes to be made, while the remaining 6 felt that the Code was comprehensive. Business respondents overwhelmingly, by a majority of 16 to 3, supported additions to the Code, while 8 of the 12 national regulators that responded to the question requested changes to clarify aspects of the Code.

² These are the Health and Safety Executive (HSE), the Office of Fair Trading (OFT), the Financial Services Authority (FSA), the Food Standards Agency (FoodSA) and the Environment Agency (EA)

- 3.5** The form or nature of changes suggested by the respondents, unsurprisingly, reflected their individual or collective interests or preferences. Most of the national regulators, including the major ones, stressed the need to manage expectations, especially around the obligations to provide advice to regulated entities, to undertake joint inspections and to share data. As a result, they suggested that words, which could unreasonably raise expectations of what the Code could deliver, should be deleted or tempered.
- 3.6** Local authorities stressed that they are already doing most of what the Code requires. However, the majority of the respondents raised the following concerns:
- Many of the requirements in the Code are more relevant to national regulators than local authorities. The Code should therefore make this distinction clearer.
 - The Code's requirement to adopt a positive and proactive approach to ensuring compliance ignores the challenges posed by rogue traders. So, the Code should rebalance this.
 - The Code should include a definitions section to clarify, for example, what an "inspection" is.
- 3.7** These views were broadly shared not only by individual local councils that responded to this question, but also by the associations of local authorities, such as LACORS, the South West of England Regional Co-ordinators of Trading Standards (SWERCOTS) and the London Trading Standards Authorities (LOTSAs), as well as professional bodies, such as the Institute of Licensing, the Trading Standards Institute and the Chartered Institute of Environmental Health.
- 3.8** Business respondents overwhelmingly, by a majority of 16 to 3, favoured strengthening the Code. Businesses felt that the Code lacked enforcement or monitoring mechanisms. As the Confederation of British Industry (CBI) put it, "The CBI would like to know how the Code will be enforced". Most of the business respondents, including the Federation of Small Businesses (FSB) and the Forum of Private Business (FPB) felt that the phrases "have regard to" and "properly conclude" in Part 1 of the Code were open to self-serving interpretation, and should be defined and tightened up.
- 3.9** The National Farmers' Union suggested that Part 1 of the Code should set out how compliance with the Code would be monitored. The National Consumer Council also stressed the need to establish "a firmer connection between policy and practice".
- 3.10** Some business groups supported strengthening the Code in other ways. For instance, PricewaterhouseCoopers, the accounting and auditing firm, proposed a provision requiring regulators to regularly review their regulatory actions "to ensure that the costs and benefits of regulations are still in the right balance, and to reconsider the regulatory action if the balance is not met". The Institute of Chartered Accountants of England and Wales (ICAEW) suggested that the Code should elaborate other Hampton Principles and make explicit connection with the Principles of Good Regulation.

- 3.11** By the “other Hampton principles”, the ICAEW was referring to those relating to the development of new rules or policies. Hampton had recommended that “when new regulations are being devised, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed”. The ICAEW felt that the Code focused only on the enforcement of regulations and not on their development, which it described as “mistaken” given that “major regulators also play a key role in recommending and establishing new regulatory policy”. The ICAEW proposed the Code “must, as priority, contain a requirement to follow the BRE’s Code for Impact Assessment”.
- 3.12** Some third sector organisations also responded to this question. The Association of Chief Executives of Voluntary Organisations (ACEVO), with 2,000 members, suggested that the term economic progress be broadened to include the “maximisation of social capital” to ensure that objectives of third sector organisations are fully embraced.
- 3.13** However, one charity, the Centre for Corporate Accountability, which promotes worker and public safety, considered that the Code placed too much emphasis on reducing burdens on regulated entities. The Trade Union Congress said that the statement in Part 1 of the Code that regulations and enforcement should be “proportionate and flexible enough” to boost the growth and competitiveness of regulated entities” implied that “the right to run a business is of equivalent value to a person’s right to fair treatment and to work in a healthy and safety environment”.
- 3.14** In sum, the views expressed on the content of the Code are wide ranging and divergent. The prevalent view is that some changes are needed to strengthen or clarify aspects of the Code.

The Government’s response

- 3.15** **The Government notes the views expressed. In asking whether anything should be added to or removed from the Code, we wanted to ensure that the Code is fit for purpose. We accept that some changes are needed to strengthen or clarify the draft Code, not least to ensure that it strikes the right balance and produces the desired result. The Government will, therefore, consider all comments made and, so far as possible, take them into account in issuing the final version of the Code. The Government is also considering introducing new clauses into the draft Regulatory Enforcement and Sanctions Bill in response to business’s recurring views that the Code should be further strengthened through other enforcement mechanisms.**
- 3.16** **As for the suggestion by the Institute of Chartered Accountants that the Code should elaborate other Hampton Principles, we understand the rationale behind this suggestion. However, we want to stress that the Code is solely about regulatory inspection and enforcement. The Government is tackling other aspects of regulatory reform, including the design of regulation, through other tools, such as the Legislative Reform Orders made under the Legislative and Regulatory Reform Act 2006 and the new Impact Assessment process.**

Question 2: Is the Code clearly written and easy to understand?

- 3.17** There were 55 responses to this question: 9 from business and business groups; eight from national regulators and 38 from local authorities. An overwhelming majority of the respondents, 43 out of 55, considered the Code to be clearly written and easy to understand. Business respondents agreed, 8 to 1, that the Code passed the test of plain English. All the 8 national regulators that responded to this question shared the same view, and 27 out of 38 local authority respondents supported the view that the Code was clearly written.
- 3.18** The Pensions Regulator noted that the Code "is refreshingly plain English rather than legalese". The Housing Corporation said: "we are content with the clarity of the drafting of the draft Code", and the Office of Fair Trading (OFT) concluded that the Code "is clearly written". The Charity Commission said the Code "is clearly written and easy to understand".
- 3.19** However, some of the respondents felt that the Code was not easy to understand. These respondents argued that phrases such as "have regard to", "economic progress", and "general and individual level functions", were open to different interpretation, and could create confusion and inconsistency.
- 3.20** The British Retail Consortium (BRC) said that "in general, Part 2 of the Code (specific obligations) is clear and easy to understand, but Part 1 leaves something to be desired ... due to the caveats and exceptions that occur throughout Part 1". Some respondents suggested the inclusion of a definitions section to clarify ambiguous words or phrases.

The Government's response

- 3.21** **The Government is pleased that most respondents felt that the draft Code is clearly written and easy to understand, but we also accept that there is room for improvement to remove, so far as possible, the ambiguity around some words or phrases. Therefore, we will consider all the comments made with a view to making the Code easier to understand.**

Question 3: Our intention is that regulators use risk assessment to prioritise their work more systematically. Do you think the Code will achieve that?

- 3.22** A total of 67 respondents offered views on this question. 17 of these were businesses or business associations; 9 were national regulators; and 41 responses came from local authorities. A little over 50% of the respondents, 35 out of 67, felt that the Code would not increase the use of risk assessment by regulators. However, the majority of those who hold this view were local authorities. Only 13 out of 41 local authority respondents said that the Code would make a difference, while a majority of 28 said it would not. On the other hand, 12 out of 17 business respondents and 7 out of 9 national regulators believed that the Code would help to increase the incentive to use risk assessment.

- 3.23** The prevalent view among the local authority respondents is that local authority regulatory services, including trading standards and environmental health, have, for many years, used risk methodologies and strategies devised by national bodies, such as the Food Standards Agency and the Health and Safety Executive, who have also put in place monitoring regimes. As such, since risk assessment is already “embedded” in local authority work, the Code is, they argued, unlikely to have any significant impact in this respect.
- 3.24** However LACORS felt the Code would make a difference but only if it encouraged government departments responsible for giving direction to local authorities on regulatory interventions to move towards a more risk-based approach. The Trading Standards Institute suggested that the Code should ensure more consistent and uniform risk assessment methodologies across both local and national regulators.
- 3.25** Business respondents overwhelmingly said that the Code would encourage the increased use of risk assessment in regulatory activities. However, the CBI pointed out that a culture change was needed and that the Code must “enforce” the need for regulators to use risk assessment in prioritising their work.
- 3.26** The Forum for Private Business felt that the Code’s definition of ‘risk’ was left open to interpretation, as were the four relevant factors that the Code requires regulators to take into account in evaluating the likelihood of non-compliance. The FPB asked: “for example, how will ‘management competence and willingness to comply’ be measured?” It concluded that regulators “will come to their own conclusions and inconsistencies will continue to have knock-on effects”. The Chemical Business Association suggested that a short risk assessment checklist would be useful.
- 3.27** All the national regulators that responded to this question supported the view that the Code would encourage regulators to use risk assessment to prioritise their work more systematically, although some respondents, including the Gambling Commission and the Forestry Commission felt that this would not be achieved in isolation. Most respondents recognised the need to raise awareness of good risk management practices in the regulatory community, including promoting collaboration among regulators on the development of good practice.

The Government’s response

- 3.28** **The Government welcomes the thoughtful and considered views expressed. The Government accepts that where national risk assessment methodologies or schemes exist and local authorities already use them, that they should continue to do so. The Government notes that Philip Hampton’s view was that the use of risk assessment in the UK regulatory regime was patchy and not as thorough and as comprehensive as it should have been. We believe that the approach set out in the Code should encourage regulators to improve their existing approaches to risk assessment and use risk based interventions more systematically and comprehensively. The Code, as many respondents have noted, is a collection of good practices, and its aim is to bring about a culture change. The Government recognises that the Code alone will not achieve this, but will serve as an integral tool in promoting a more risk based regulatory approach.**

Question 4: The Code seeks to strike the right balance between regulators achieving their regulatory outcomes and eliminating unnecessary burdens on regulated entities. Do you think the Code strikes this balance?

- 3.29** There were 61 responses to this question: fifteen came from businesses; 36 from local authorities; and 10 from national regulators. Fewer than half of the respondents, 30 out of 61, felt that the Code strikes the right balance. While 11 business respondents out of 15 felt that the Code was balanced, only 4 out of 10 national regulators and 15 out of 36 local government respondents believed that the right balance was struck.
- 3.30** Business groups, such as the CBI, the British Chambers of Commerce, the National Union of Farmers and EEF, the manufacturers' organisation, echoed the views of the Chemical Industries Association that "as written, the Code strikes this balance". However, all of these respondents stressed that the test was whether regulators complied with the Code. The British Retail Consortium and Tesco, the supermarket chain, maintained the same line that "if regulators follow the spirit and letter of the Code, the right balance should be struck".
- 3.31** Some business respondents, however, felt the balance had not been struck. The Institute of Chartered Accountants of England and Wales said that "without the incorporation of the other Hampton Principles, the Code will not strike this balance for some of the largest regulators". And Lloyds TSB noted that for the balance to be struck, "greater emphasis should be placed on the proportionality of proposed actions and on the potential economic impacts thereof".
- 3.32** The majority of the national regulators that responded to this question believed that the Code was not balanced. These included the Environment Agency, the Forestry Commission, the Pensions Regulators, Natural England and the Information Commissioner's Office. These respondents considered that the Code was skewed too much in favour of businesses and other regulated entities. According to the Information Commissioner, "the approach of the Code is overly focused on the position of regulated entities and their perceptions." These views were also shared by most of the local authority respondents, including LACORS, which noted that there was too much emphasis on reducing burdens on business.
- 3.33** However, the Office of Fair Trading took the view that the Code struck the right balance. So did the Gambling Commission, Housing Corporation, Charity Commission and the Pesticides Safety Directorate. The London Trading Standards Authorities (LOTSAs) noted that the Code "strikes the correct balance", adding that "there is nothing in the Code that would prevent trading standards services from carrying out their regulatory functions as they do currently".
- 3.34** In sum, there are sharp differences in the views expressed by the respondents. While the majority of business respondents believed that the Code is balanced provided it is enforced, the majority of regulators, national and local, took a different view, stressing that the Code was tilted too much in favour of regulated entities.

The Government's response

- 3.35** The Government notes these comments but wishes to add its view that many of the comments concerning the perceived imbalance of the Code are not justified. At the heart of the Government policy and the Hampton agenda is the recognition that the right balance should be struck between imposing regulatory burden and maintaining regulatory outcomes. The Code is not designed to serve the interests of those who deliberately or persistently flout the law, but rather to ensure that regulators allocate their resources more efficiently to enable them to target more effectively the rogue operators. But in doing so, the aim should also be to reduce burdens on compliant businesses and organisations so that they can continue to thrive and prosper. So, the Government does not accept that the Code is imbalanced. No illegal or rogue business should take any comfort in the Code. But it should reduce needless burdens on compliant businesses and increase the benefits that regulation can bring.

Question 5: Our intention is to ensure that the regulators place emphasis on providing information, advice and guidance to help encourage compliance, within relevant constraints, such as resources. Do you think the section on advice is likely to achieve this objective?

- 3.36** There were 59 responses to this question: 15 from businesses and business organisations; 11 from national regulators; and 33 from local authorities. A majority of the total respondents, 32 out of 59, felt that the advice section of the Code could achieve the objective of encouraging regulators to focus their efforts more on giving advice and guidance to regulated entities.
- 3.37** An overwhelming majority of business respondents, 13 out of 15, considered the Code relevant in helping to achieve the objective of shifting emphasis towards proactive giving of advice. Six out of 11 national regulators that responded to the question believed the Code is likely to achieve this objective, while only 13 out of 33 local government respondents shared this view.
- 3.38** Business respondents generally took the view that if regulators followed the Code, the section on advice and guidance would lead to more emphasis being placed on provision of helpful information, advice and guidance that would enable regulated entities to comply with regulations. Some business respondents, such as the Federation of Small Businesses (FSB) and the Forum for Private Business (FPB) however, expressed concerns about regulators being able to charge a fee for advice without a guarantee that if business followed the advice they would achieve compliance.³

³ An adviser to the Liberal Democrats on business, enterprise and regulatory reform responded to the consultation to support the FSB's response on this issue, noting that "any significant fee for advice from any regulator would be self-defeating, as small business would be discouraged from asking for guidance".

- 3.39** Six out of 11 national regulators that responded to this question believed that the Code should increase the attention that regulators give to providing advice and guidance. The Pesticides Safety Directorate noted that “the Code contains good advice on giving advice”. However, a majority of the respondents expressed concern about the high expectations that the Code might raise among regulated entities.
- 3.40** The Environment Agency worried that the section on advice could be interpreted as regulators being obliged to provide “free, open-ended, environmental consultancy service”. Others, such as the Pensions Regulator and the Gambling Commission suggested that regulators should only have to give generic or generalised information and advice rather than providing targeted advice to specific regulated entities.
- 3.41** The majority of local authority respondents believed that most of the obligations under the advice section should fall to national regulators and government departments, who should, for instance, communicate legal requirements relating to their regulatory activities to the relevant regulated entities and consult with these entities in developing the format and style of advice and guidance. The majority of the local authority respondents also felt that giving advice was already part of their work and, therefore, the Code would have little effect in this area.

The Government’s response

- 3.42** **Government believes that regulators should give prompt and practical advice and guidance on the legal requirements they enforce in order to increase the regulated organisations’ understanding of these requirements and their capacity to comply with them. The Hampton review stressed the need for regulators to provide authoritative, accessible advice easily and cheaply as this is likely to increase compliance and improve regulatory outcomes. Therefore, while we will clarify the section to remove any ambiguity, the provision of both generalised and targeted advice will remain a core obligation that regulators must have regard to under the Code.**

Question 6: Our intention is to ensure that regulators base their data requests on risk assessment and share data to reduce burdens on regulated entities, within relevant constraints, such as resources and legal requirements. Do you think the sections on risk assessment and data requirements can achieve this policy intention?

- 3.43** There were 63 respondents to this question: of these, 16 were business or business associations; 11 national regulators; and 36 local authorities. The majority of the respondents, 36 out of 63, supported the view that the sections on risk assessment and data requirements could achieve the policy intention of ensuring that regulators base their data requests on risk assessment and share data. However, 27 respondents did not share this view.

- 3.44 The majority of business respondents, 12 out of 16, believed the Code would encourage risk based data requests and the sharing of data by regulators; 8 out of 11 national regulators that responded had the same view; but only 16 out of 36 local authority respondents felt the Code would make any difference in these areas.
- 3.45 One business respondent, the Chemical Industries Association, said, "We believe the contents of sections 6 and 7 will go a long way to achieving the desired outcome", and the British Chambers of Commerce noted that "the sections are adequate". However, almost all the business respondents that supported this view also added that the Code alone would not achieve the outcome unless regulators complied with it and government departments led the process of data sharing.
- 3.46 The common phrase among national regulators that responded to this question was "not by itself", meaning that while the Code could assist in achieving the policy intention, there was a need for central government to provide leadership. The Environment Agency pointed out that "regulators cannot data share exclusively acting by themselves". The Gambling Commission expressed the same view that sharing of data requires further impetus from central government.
- 3.47 The majority of the local authority respondents pointed out that there were several obstacles to achieving the objective of data sharing among regulators. And many doubted whether the Code of itself would change the practice on data sharing. LACORS noted that the letter from the Information Commissioner about data sharing had helped, "but concerns relating to the Data Protection Act mean local authorities are still uncertain about sharing information or simply their current system may not allow it".
- 3.48 However, one respondent, Hertfordshire County Council, indicated that it "wholeheartedly support the aims of section 7 of the Code", but felt that central government should issue guidance on how the process should work in practice, adding: "perhaps Memorandums of Understanding can be produced ahead of the Code's implementation in April 2008".

The Government's response

- 3.49 **Government notes all the comments on risk based data requests and data sharing. We accept that a fully fledged data sharing regime may not start in April 2008 when the Code is expected to come into force. The section of the Code on data sharing recognises this, and, as such, it provides that regulators should share data, where it is practicable to do so. Also the duty to "have regard to" the Code means that regulators should take all relevant considerations into account in deciding how to meet this obligation. However, the Government believes that if regulators begin with basing their data requests on risk assessment, this would, in itself, help reduce administrative burdens on regulated entities. In addition, if they share data where this is practicable and is not outweighed by other relevant considerations, it would lead to a further reduction of burdens on regulated entities. Although these steps would not involve extensive data sharing from the outset, they are nevertheless important and are encouraged under the Code.**

Question 7: We would welcome your views on the proposal to exempt local authorities from sections 9.2 and 9.3 of the Code regarding measurement of the performance standards on the grounds that they meet the requirements under the existing reporting frameworks.

- 3.50** The total responses to this question were 47, of which 38 were from local authorities; 7 from businesses and 2 from national regulators. Overwhelmingly, local authority respondents supported the proposal to exempt local authorities from requirements of sections 9.2 and 9.3 of the Code. Only one out of the 38 local authority respondents believed that local authorities should not be exempted. This dissenting respondent said: “we believe the proposal is a major mistake. Local authorities must be transparent and accountable”. The respondent noted that the level of information required in order to achieve the requirements of sections 9.2 and 9.3 “is not generally available in Service and Enforcement Plans, as has been suggested in the Consultation paper”.
- 3.51** Most of the national regulators that responded to the consultation offered no view or comments on this question. Only two, the Office of Fair Trading and the Pesticides Safety Directorate, did, and they supported the proposal.
- 3.52** Business respondents, however, were divided. Three supported the proposal and four were against it. The British Retail Consortium (BRC) argued that it would be preferable to standardise the accountability provisions for all regulators, including local authorities. The CBI was against the proposal. They said that local authorities should be required to identify and explain the principal risks against which they are acting. EEF, the manufacturers’ organisation, said that “it is unfortunate that local authorities are exempt from this section of the Compliance Code”. And the Forum for Private Business argued that “for clarity and simplification, it will make sense to include local authorities”.
- 3.53** However, three business groups, the British Chambers of Commerce, the National Farmers’ Union and the Chemical Industries Association supported the proposal if, as the BCC put it, “there is a significant overlap between the Code requirements and the existing requirements under the reporting framework”.

The Government’s response

- 3.54** **The Government is satisfied that the existing reporting framework is sufficient to ensure the transparency and accountability of local authorities. The existence of the newly established Local Better Regulation Office (LBRO) with its oversight functions would ensure that local authorities’ performance on the overall Hampton agenda will continue to be monitored with a view to seeking improvements where needed. We agree with the view expressed by LACORS in their response to the consultation that “reducing burdens on local authorities is as important as reducing burdens on business”.**

Question 8: Are there any other comments you would like the Government to consider in relation to the draft Code?

- 3.55** Only a few respondents offered any views on this question and the majority of these reiterated comments made in response to earlier questions. Some, however, offered general comments in support of the Code. For example, Cambridgeshire Council said: “we believe that the Code is a step forward”. Islington Council remarked that “we are supportive of the Code and it reflects what we seek to achieve in Islington”, and SWERCOTS noted that “we welcome this version of the draft Code”. Some issues or themes, however, emerged from the responses, which were not fully covered in the consultation questions. These other issues or themes will be discussed in chapter six of this document. The next chapter focuses on responses to questions on the Listing Order for the Compliance Code.

4. Responses to questions on the Listing Order for the Compliance Code

Background

- 4.1 The duty to have regard to the Code only applies to regulatory functions that are specified by an order (“the Listing Order”) made by a Minister under section 24 of the Legislative and Regulatory Reform Act 2006. Before making a Listing Order, the Minister is required to consult relevant stakeholders.
- 4.2 We consulted on the proposed content of the Listing Order and sought views on two questions. This chapter presents a summary of the views expressed on these questions and set out the Government’s response to the views.

Question 1: We would welcome your comments on the coverage of the Compliance Code i.e. the regulatory functions that it applies to. Are there regulators or regulatory functions carried out by any regulator that should be included in or excluded from the scope of the Code?

Question 2: If you think certain regulations or functions should be excluded from the scope of the Code or brought within it, please give reasons for your view.

- 4.3 There were 41 responses to these questions, mostly from local authority respondents (28). Only 8 business or business associations responded and only 5 national regulators offered comments. Most of the business respondents felt the list was “comprehensive at the present time. However, three suggested additions to the list.
- 4.4 The Institute of Chartered Accountants of England and Wales proposed that Her Majesty’s Revenue and Customs (HMRC) be included because “it is increasingly acting as a regulator and imposes high administrative burden on business”. Tesco noted that the Code set out good enforcement practice and should apply to all regulators for all functions, adding that “we see no reason why individual regulators should be excluded”.

- 4.5 Of the national regulators that responded, only the Environment Agency made specific suggestion for inclusion in and exclusion from the Code. The EA would like the Code to apply to its activities across England and Wales, but exclude its activities in respect of illegal operators and in particular illegal waste operators.
- 4.6 An overwhelming majority of local authority respondents, 22 out of 28, suggested additions to the scope of the Code. Some referred to specific legislation, which they felt should be included in the Listing Order. The East of England Trading Standards Officers Association wanted the Pharmaceutical Society of Great Britain to be included because "they enforce Medicines legislation".
- 4.7 The prevalent view of the local authority respondents, however, was that the Code should apply to all local authority regulatory functions and not just environmental health, trading standards, and licensing. LACORS, the Trading Standards Institute, and SWERCOTS supported the application of the Code to all local authority regulatory functions. The Institute of Licensing argued that planning development and building control "is an essential local authority function that should be included in the regulatory functions that the Code applies to".

The Government's response

- 4.8 **The Government notes the views expressed, and in particular the view that consistency is better achieved if the Code applies to all local authority regulatory functions. However, the Government believes that, in the light of the current reviews of building and planning legislation, it would not be appropriate to extend the scope of the Code to these areas. It therefore remains the Government intention at this stage that the legislative scope of the Code should extend to the functions of local authorities in relation to trading standards, environmental health and licensing. The Legislative and Regulatory Reform Act 2006, under which the Code and the Listing Order are issued, allows for the possibility of revising the Listing Order, and the scope will be kept under review with a view to revision as appropriate. Efforts have been made to ensure that the Acts that local authorities enforce in relation to environmental health, trading standards and licensing are accurately listed. However, we will continue to check the accuracy of the list before laying the statutory instrument before Parliament in the autumn.**

5. Responses to questions on the application of the five Principles of Good Regulation

Background

- 5.1 The Principles of Good Regulation are set out in section 21 of the Legislative and Regulatory Reform Act. The Act provides that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed. Section 21 of the Act provides that any person exercising specified regulatory functions must have regard to these five Principles in the exercise of any of those functions.
- 5.2 Thus, like the Compliance Code, the duty to have regard to the five Principles only applies to regulatory functions that are specified by an Order made by a Minister. However, unlike the Code, which, under section 22 of the Act, can only apply to general level regulatory functions, the section 21 duty could apply to both general and individual level functions. General level functions are those relating to determining general policy, setting standards and giving guidance on enforcement activities. Individual level functions, however, refer to the carrying out by inspectors and enforcement officers of inspections or enforcement actions in individual cases.
- 5.3 We consulted on the scope of the application of section 21 duty and sought views on four questions. In this chapter, we summarise the responses to these questions and outline the Government's responses to the comments received.

Question 1: Do you agree that the five Principles should apply to the same regulators as the Compliance Code? Please support your answer with reasons.

- 5.4 There were 63 responses to this question: 15 from business and business organisations; 10 from national regulators; and 38 from local authorities. All the business respondents suggested that the five Principles should apply to the same regulators as the Compliance Code. The general view was that these are high level Principles and, as the CBI put it, "there is no sound reason why all regulatory practices should not embed the Principles into their work". The Forum of Private Business argued that the Compliance Code informs regulators on how to apply the five Principles and, therefore, both should apply to the same regulators.
- 5.5 Equally, almost all the local authority respondents supported the application of both the five Principles and Code to the same regulators. According to Cambridgeshire County Council, "to have regulators required to comply with the Code but not these higher Principles seems out of step", while Durham County Council argued that the Principles "are the cornerstone of natural justice and should be practised by all regulators".
- 5.6 Most national regulators did not give their views on this question, but those that did supported the application of both duties to the same regulators. Those in support of this proposal included the Office of Fair Trading, the Pensions Regulator, the Pesticides Safety Directorate and the Security Industry Authority.

The Government's response

- 5.7 **The Government notes the overwhelming support for the application of the Compliance Code and the five Principles of Good Regulation to the same regulators. The Government sees no reason for doing otherwise, and, as such, the two duties will apply to the same regulators.**

Question 2: Do you think the five Principles should apply at the general and individual levels or at the general level only?

Question 3: If you think the Principles should apply at the general level only, should this be in respect of all or some of the regulators listed? If to some, please tell us which and why.

- 5.8 There were 63 responses to these questions: 15 from business and business organisations; 10 from national regulators, and 38 from local authorities. 13 of the 15 business respondents supported the application of the five Principles at both general and individual levels. These included the CBI, the BCC, the FSB and the FPB. The Chemical Business Association, which supported the application of the duty at both general and individual levels, argued that the Principles "must filter down into the industry/regulator interface and not just be seen as 'high level' requirements performed by policy makers".
- 5.9 However, the Institute of Chartered Accountants of England and Wales suggested that the Principles should apply at the general level, but with regulators ensuring that their individual level actions follow their policies. Lloyds TSB also supported application at the general level only, arguing that to apply the Principles at both general and individual levels would result in inflexibility on the ground.

- 5.10** Only 16 of the 38 local authority respondents felt the 5 Principles should apply at both general and individual levels, while 22 felt they should apply at general level only. One of the respondents who supported the application of the Principles at both general and individual levels simply said there was “no reason not to”, while another argued that the 5 Principles “are the bedrock of transparent enforcement”. SWERCOTS, the Trading Standards Institute and the Institute of Licensing were among the local authority associations that supported the general and individual level application of the Principles.
- 5.11** However, as noted above, the majority of local authority respondents, including LACORS and LOTSA, were against application of the Principles at the individual level. LACORS argued that it was “not convinced that more would be achieved by applying the Principles at both general level and individual level” Merseyside Environmental Health managers, who favoured general level application only, said that this would give enforcement officers flexibility to respond to situations at the local level. However, both the respondents who supported application at both general and individual levels and those who favoured only general level application felt the Principles should apply to all regulators.
- 5.12** Of the 10 national regulators that responded to question 2, 5 felt that the Principles should apply to general level functions only. Those who took this view included the Environment Agency, the Financial Services Authority, Housing Corporation, the Pensions Regulator and the Security Industry Authority. According the Environment Agency, “to avoid unnecessary abuse of process challenges, we think the Principles should apply at general level only”. The Food Standards Agency said that if the Principles were to apply to individual level functions, such a duty should be subject to other domestic and EU legal requirements and should recognise the need for flexibility to take into account all relevant factors.
- 5.13** Some national regulators, however, saw no reason why the Principles should not apply at both general and individual levels. These were the Office of Fair Trading, the Gambling Commission, the Pesticides Safety Directorate and the Forestry Commission. The OFT noted that “we are not aware of any reason not to apply the Principles to both levels, while the Forestry Commission asked: “why would any of the regulators not apply the five Principles?”

The Government’s response

- 5.14** **The Government is persuaded by the arguments of respondents who supported application of the Principles to both general and individual level functions. We believe, as many respondents have pointed out, that these are reasonable principles that should apply to the exercise of any regulatory function, whatever the level. As we argued in the May consultation document, there is, to some extent, an overlap between the five Principles and public law principles such as the duty to act rationally and fairly. We believe that the relevant question to ask is that posed by the Forestry Commission, namely: “why would any regulator not apply the five Principles” to its individual level functions? To the extent that any regulator seeking an exception can answer this question satisfactorily and with proper evidence, we will exempt the Principles from applying to the individual level activities of such regulator.**

Question 4: If any regulator seeks an exemption from the duty to have regard to the section 21 duty in respect of any individual level function, we would welcome evidence that supports the case for making that exemption.

- 5.15** Only a few of the national regulators that responded to this question sought the exclusion of their individual level functions from the scope of the five Principles. The Environment Agency said that “we would like to exclude illegal operators, and in particularly illegal waste operators, from the individual application of the 5 Principles. The Environment Agency’s main concern was that illegal operators could invoke the five Principles as an additional basis of argument in an abuse of process application at the outset of a criminal prosecution in order to delay or frustrate enforcement actions, such as prosecution.
- 5.16** The Information Commissioner’s Office (ICO) indicated that it was happy to give assurance to the BRE that it would endeavour to apply the five Principles in the particular circumstances of its regulatory functions, but felt that it was inappropriate to put the ICO under a statutory obligation in relation to the five Principles.
- 5.17** The ICO argued that it has an obligation under EC law to act with complete independence in exercising its functions, and, therefore, considered that if the ICO was placed under statutory constraints by the Code and the five Principles, it could not act with complete independence, especially as it had to challenge government in carrying out its data protection supervisory role.
- 5.18** The other regulator that sought exemption from the application of the five Principles to its individual level functions is the Financial Services Authority. The FSA’s main arguments were:
- We already have the appropriate mechanism in place for the firms we regulate to challenge our individual actions, with a final appeal to the Financial Services and Markets Tribunal
 - Overall, our average compliance with the complaints handling service standards has improved to 99%
 - Judicial review of individual level actions is not a key concern of our constituents; so no real or useful purpose will be served by applying the Principles to our individual level actions.
 - It is not better regulation to seek to tackle a problem that does not exist; no market failure situation exists.
- 5.19** However, the Association of British Insurers, a key stakeholder in the financial services sector, whose members provide 94% of UK domestic insurance, felt that applying the Principles to individual level functions should present no problem for regulators, since “the section 21 duty only imposes a duty to have regard to the Principles”. PricewaterhouseCoopers supported the inclusion of the Principles at both general and individual levels, pointing out that the “have regard to” duty allowed regulators to depart from the Principles in exceptional circumstances. As noted earlier, most of the major business groups, including the CBI and BCC supported application of the Principles at both levels, although the Institute of Chartered Accountants of England and Wales and Lloyds TSB favoured application at the general level only.

The Government's response

5.20 The Government notes all the views expressed by the regulators. In our consultation document in May, we indicated that we were inclined to apply the five Principles to both general and individual level functions of regulators. However, we also said that we would consider specific exemptions from the section 21 duty at the individual level where regulators could provide sufficient justification for exemption. To enable us to make such a decision, we asked regulators to provide evidence showing either that:

- Practices or policies which were otherwise sensible or reasonable are likely to conflict with the Principles if applied at the individual level, or
- The regulators requesting an exemption is likely to face greater vexatious litigation than other regulators in relation to the individual level functions if the Principles were to apply to them.

As all regulators were aware of these criteria, we will grant specific exceptions only if any regulator requesting exemptions provides satisfactory evidence for any of the above criteria. We will consider the requests in the light of the evidence provided. We will also consider the position taken by the relevant regulated sectors.

6. Responses to questions on the Impact Assessment

Background

- 6.1 As part of the public consultation, we published a partial Impact Assessment to accompany the draft Compliance Code. We consulted on the draft Impact Assessment and sought views on two questions. We present below the comments received, as well as the Government's response to the points raised.

Question 1: Do you think that the assumptions made in the Impact Assessment are realistic? If not, please be specific about why you think they are not.

Question 2: Does it reflect a reasonable estimate of the costs and benefits of complying with the Compliance Code and the five Principles? If not, please set out the specific data that you feel we should consider in developing our final analysis.

- 6.2 Out of a total of 105 respondents to the consultation, 42 made specific comments on the impact assessment. A majority, 24 of these, were from local authorities or local/regional networks of trading standards or environmental health officers. LACORS also responded along with a further two organisations representing trading standards and environmental health professions. These were the Trading Standards Institute and the Chartered Institute of Environmental Health (CIEH). Three fire authorities commented on the impact assessment, as did five national regulators and seven business organisations.
- 6.3 There is broad agreement that the impact assessment is reasonable in most aspects in its approach and estimates. The one aspect where there was strong disagreement from local authority respondents is the estimated reduction in inspection visits for local authority regulators. Overall there is a mix of comments, critical and supportive, but little additional evidence is offered by respondents.
- 6.4 Business was broadly content with the analysis, and confirmed that some regulators are already complying with many of the provisions of the Code. That said, there was some concern that not all regulators would comply fully and that this represented a risk to some of the assumptions on benefits to business in the impact assessment.

- 6.5 The great majority of local authority and fire respondents (including LACORS) stated that they had already introduced a risk based approach to inspection so that, they concluded, the impact assessment was unrealistic in its estimate of the potential officer time released in introducing risk based targeting.
- 6.6 Those local authorities who commented confirmed that the estimate of 10-15 days to review policies seemed about right, though a number suggested that a manager would carry out such a review and salary costs assumptions should therefore be increased. Respondents mentioned a range of other costs though only comments about the cost of advice and concern about the risk of increased legal challenge were mentioned by more than one or two.
- 6.7 Of the five national regulator respondents, the Environment Agency had serious concerns but the others said very little about the impact assessment.

The Government's response

- 6.8 **The Government notes all the points made. However, although we had requested evidence and data, little evidence was provided for most of the comments made to these questions. Most of the regulators that responded to the consultation claimed that they were already meeting many of the Code's requirements. We also note that business respondents were generally content with the draft Impact Assessment, and believed that the Code would yield some benefits. We accept that the evidence on which the draft impact assessment was based was not as substantial as possible and we had hoped that we would receive evidence and data to enable us to improve this. Nevertheless, we have reviewed the Impact Assessment and revised it based on expressed opinion, where it was possible to do so. Primarily we have adjusted the potential benefits to business downwards to reflect:**
- a) **Regulators' views that they have made more progress in reducing burdens than implicit in our baseline assumptions,**
 - b) **Regulators' views that it is not practical for them to achieve as much of the total reductions the Hampton Review supposed was possible; and**
 - c) **Business concerns that there is a risk that not all regulators will consistently implement the Code.**

7. Other themes from the consultation

Background

7.1 The consultation questions were specific on areas that we felt we should consult on. However, there were other issues that emerged from the consultation which went beyond the questions that we asked. In addition to responding to the questions asked in the consultation paper, some of the respondents raised or sought clarification on other issues. The themes are: economic progress, enforcement and monitoring of compliance with the Code, and the relationship of the Enforcement Concordat to the Compliance Code. In this chapter, we summarise the views expressed on these themes and provide the Government's response on these views.

The requirement on supporting economic progress

- 7.2 Many of the regulators, especially national regulators, raised concerns about the implications for them of the requirements in section 3 of the Code to ensure that their regulatory interventions support economic progress and to impose only the minimum burden compatible with achieving their regulatory objectives.
- 7.3 The Food Standards Agency felt that the emphasis on "supporting" economic progress appeared to give undue weight to economic considerations. It further argued that requiring regulators to "support" economic progress amounted to a significant change of policy from the Hampton principle to "allow, or even encourage, economic progress". The Financial Services Authority "strongly" argued for the removal of the words "economic progress" from the Code on the ground that "it is not within our statutory remit to pursue economic progress".
- 7.4 Both regulators were also against the concept of imposing "minimum burden compatible with achieving their regulatory objectives". The Food Standards Agency argued that while it agreed with the objective of applying the minimum burden compatible with achieving a regulatory outcome, it felt that it would be difficult to demonstrate meeting this objective in practice and that this might lead to vexatious or unmeritorious challenge.
- 7.5 The Financial Services Authority argued that the term minimum regulatory burden "is potentially misleading and is unnecessary to secure the desired outcome". The FSA said that in some instances there would be tension between achieving its regulatory objectives and delivering minimum burden to achieve desired outcomes. It also pointed out that the minimum burden of an intervention was unlikely to apply uniformly across all affected firms, and that it was required to consider the relative effect on different groups of firms taking account of their size or nature.

- 7.6 However, while the Food Standards Agency and the Financial Services Authority appeared to have different concerns with the concepts of promoting economic progress and applying the minimum burden compatible with achieving a regulatory outcome, the Office of Fair Trade fully supported the aim of the Code in these respects, arguing that “encouraging economic progress is integral to our role”.
- 7.7 The majority of the business respondents that raised the issue of economic progress strongly supported the obligations set out in section 3 of the draft Code. Indeed, Lloyds TSB proposed that the Code should be further strengthened, by placing “greater emphasis on the proportionality of proposed actions and on the potential economic impacts thereof”. PricewaterhouseCoopers proposed that “regular reviews of regulatory action should be embedded in all regulation to ensure that the costs and benefits are still in the right balance and that provision should be made to reconsider the regulatory action if the balance is not met”.
- 7.8 The Professional Contractors Group suggested that the definition of economic progress should be broadened to include an obligation on regulators to consider the impact of interventions on the viability of regulated entities. The PCG added that a duty of care should be placed on regulators such that regulated businesses could not be caused “significant financial losses as result of any activity of a regulator”.
- 7.9 In sum, while the concepts of supporting economic progress and imposing only the minimum burdens necessary to achieve an outcome present a problem for some regulators, the OFT and the vast majority of business respondents were comfortable with these requirements.

The Government’s response

- 7.10 **The Government notes the different views, including those in support of these obligations and those against. We recognise that both the term “economic progress” and what supporting economic progress entails need to be clarified, and we intend to do so. However, ensuring that protection or regulatory interventions do not unnecessarily stifle economic growth and prosperity is at the heart of Government’s regulatory reform agenda. As the Hampton report noted, “our regulatory system has the pivotal role in resolving the regular conflict between prosperity and protection”. The Code aims to strike this balance by encouraging regulators to ensure that, in carrying out their statutory objectives, they give consideration to the impact of their actions on economic competitiveness, innovation and productivity.**
- 7.11 **We believe that adopting the minimum burden compatible with achieving an outcome is not the same thing as adopting the “minimum burden at any cost”. It is about imposing only the minimum burden necessary to achieve the desired outcome. The Government believes that regulation should help rather than hinder the economy. The Government, therefore, intends to keep the obligation to encourage economic progress in the Code, although we will clarify what this entails.**

Enforcement and monitoring of the Code

- 7.12** One prevalent concern among business respondents to the consultation was how the regulators' compliance with the Code would be monitored. Many business respondents argued that the phrase "have regard to", coupled with the statement in the Code that regulators could depart from the Code if they *properly conclude* that the provisions are either not relevant or are outweighed by other considerations, form a broadly drawn caveat, which gives regulators "both permission and the justification to completely ignore the Code".
- 7.13** Most of the respondents, including the FSB, the FPB, BRC and National Association of Master Bakers suggested that the Code should set out how compliance by regulators would be monitored. They felt that the Code should also provide for a complaints system that allows businesses and other regulated entities to complain to an independent body about regulators' behaviour and compliance with the Code. Many respondents considered that, for local authorities, this monitoring body should be the LBRO, while a similar body should exist for monitoring compliance by national regulators.

The Government's response

- 7.14** **The Government notes all these points. We accept that the purpose of the Code would not be achieved if regulators depart from the Code other than on reasonable and rational grounds. The standard of legal obligation imposed under section 21 of the Legislative and Regulatory Reform Act is to have regard to the Code. This is not an absolute duty requiring regulators to follow the Code in all circumstances. Equally, the duty is not a weak one. Each regulator would have to justify that it has properly, with material evidence, taken the Code into account, and can only justifiably depart from any provision of the Code if the analysis proves that that provision is, in a particular policy setting, not relevant or is outweighed by other relevant considerations. So, we believe that the phrases "have regard to" and "properly conclude" are not meaningless.**
- 7.15** **The Government recognises business concerns about compliance monitoring for the Code. Section 9 of the Code includes a robust provision on complaints procedures, which end with an independent, external person. We also believe the LBRO will be in a position to monitor local authority compliance with the Code and offer appropriate guidance towards improving compliance. At the national level, we are considering the possibility of a monitoring role by both the BRE and the National Audit Office.**

The Status of the Enforcement Concordat

- 7.16** Business respondents, local authorities and some national regulators raised issues about the relationship of the Enforcement Concordat to the Compliance Code, although in different contexts.

- 7.17** Business respondents expressed concern about paragraph 2.8 of the draft Code, which says that “This Code supersedes the 1998 Enforcement Concordat for all the regulatory functions to which the Code applies”. Key business respondents, such as the CBI, FSB, FPB and BRC contended that the key advantage of the Enforcement Concordat was that it applies to individual level actions. They argued that the Code should not replace the Concordat because it would not offer the same direct benefits as the Concordat.
- 7.18** These respondents suggested that paragraph 2.8 of the draft Code be removed to allow the Enforcement Concordat to remain as an on the ground guide to good enforcement, and that the Code should make a positive reference to keeping the Concordat on that basis. Some suggested that the Enforcement Concordat should be revised and annexed to the Compliance Code as a good practice enforcement guide on the ground.
- 7.19** The Office of Fair Trading made strong points in respect of the Enforcement Concordat. It argued that as a voluntary agreement entered into by regulators and businesses, the Concordat could not simply be replaced by the Code. The OFT pointed out that it was desirable to ensure consistency between the Code and the Concordat, and suggested that the Government should amend the Concordat to ensure consistency with the Code.
- 7.20** Many local authority respondents also raised issues about the relationship between the Enforcement Concordat and the Compliance Code. The main concern of local authorities was that the Code would apply to only three areas of local authority regulatory functions, namely, environmental health, trading standards and licensing, while the Enforcement Concordat would continue to apply to other regulatory functions not covered by the Code. They suggested that this would create confusion and inconsistency in local authority regulatory regimes.
- 7.21** LACORS suggested that the Code should replace the Enforcement Concordat in its entirety and apply to all regulators and their functions. SWERCOTS also pointed to the inconsistencies created by having two regimes, one under the Code and the other under the Concordat.

The Government's response

- 7.22** **The Government notes the views expressed on the status of the Enforcement Concordat. We also note, however, that although nearly 96% of national and local government bodies with enforcement functions adopted the Enforcement Concordat, its implementation was patchy and inconsistent across the country. The Government does not accept LACORS' suggestion that the Code should replace the Concordat in its entirety and apply to all regulatory functions. To do this would extend the scope of the Code beyond the three broad local government functions, which is not government policy at the moment. However, the Government is considering amending the Enforcement Concordat so that it is consistent with the Code. But such a revised and updated Concordat will remain as a voluntary, non-statutory Code of practice, which regulators and regulated entities may choose to adopt.**

Annex A Respondents

Responses to the consultation were received from the following organisations. Please note this list excludes responses made in confidence or where anonymity was requested.

Organisation

Association of Chief Executives of Voluntary Organisations
 Association of British Insurers
 Bar Standards Board
 Bayer CropScience
 Bedford Borough Council
 British Metals Recycling Association
 British Retail Consortium
 British Vehicle Salvage Federation
 Cambridgeshire County Council
 Camelot
 Confederation of British Industries
 Central England Trading Standards Authority
 Ceredigion County Council
 Charity Commission of England and Wales
 Chartered Institute of Environment Health
 Chemical Business Association
 Chemical Industries Association
 Cheshire County Council
 Chief Fire Officers' Association
 City of Bradford Met District Council
 Civil Aviation Authority
 Civil Engineering Contractors Association Wales
 Crop Protection Association
 Durham County Council
 East of England Trading Standards Association
 EEF The manufacturers' organisation
 Environment Agency
 Environmental Services Association
 Ernst and Young LLP
 Federation of Small Businesses
 Financial Services Authority
 Food and Drink Federation
 Food Standards Agency
 Forestry Commission
 Forum for Private Business
 Gambling Commission
 Hampshire Fire and Rescue Authority
 Herefordshire Council

Sector

Third Sector
 Business Group
 Professional Body
 Business
 Local Authority (LA)
 Business Group
 Business Group
 Business Group
 LA
 Business
 Business Group
 LA Association
 LA
 National Regulator
 Professional Association
 Business Group
 Business Group
 LA
 Fire Association
 LA
 National Regulator
 Business Group
 Business Group
 LA
 LA Association
 Business Group
 National Regulator
 Trade association
 Business
 Business Association
 National Regulator
 Business Group
 National Regulator
 National Regulator
 Business Group
 National Regulator
 Fire Authority
 LA

Organisation

Hertfordshire County Council
 Housing Corporation
 Health and Safety Executive
 Hull City Council
 Human Fertilisation & Embryo Authority
 Information Commissioner's Office
 Institute of Chartered Accountants of England and Wales
 Institute of Licensing
 Institute of Occupational Safety and Health
 Islington Council
 Kirklees County Council
 Local Authority Coordinators of Regulatory Services (LACORS)
 Lancashire Association of Chief Environmental Health Officers
 Legal Complaints Service
 Leicestershire Fire & Rescue Authority
 Liberal Democrat BERR adviser
 Lloyds TSB
 London Borough of Greenwich
 London Fire and Rescue Authority
 London Trading Standards Authorities (LOTSAs)
 Merseyside County Council
 National Association of Master Bakers
 National Consumer Council
 National Farmers Union
 National Landlords Association
 National Lottery Commission
 Natural England
 North Devon Council
 North Yorkshire County Council
 Northumberland Council
 Office of Fair Trading
 OFWAT
 Pesticides Safety Directorate
 Pricewaterhouse Coopers
 Professional Contractors Group
 Redcar and Cleveland BC
 Restormel Borough Council
 Royal Institute of British Architects
 Salford City Council
 Scottish Environment Protection Agency
 Security Industry Authority
 Slough Borough Council
 Solihull Borough Council
 South Gloucestershire Council
 South Wales Fire & Rescue Authority
 Suffolk County Council
 South West of England Regional Coordination of
 Trading Standards (SWERCOTS)

Sector

LA
 National Regulator
 National Regulator
 LA
 National Regulator
 National Regulator
 Professional Body
 Professional Association
 Professional Association
 LA
 LA
 LA Association
 LA Association
 Out of Scope Regulator (OSR)
 Fire Authority
 Political Party
 Business
 LA
 Fire Authority
 LA Association
 LA
 Business Group
 Consumer/trade union
 Business Group
 Business Group
 OSR
 National Regulator
 LA
 LA
 LA
 National Regulator
 OSR
 National Regulator
 Business
 Business Group
 LA
 LA
 Professional Association
 LA
 OSR
 National Regulator
 LA
 LA
 LA
 Fire Authority
 LA
 LA Association

Organisation

Swindon Borough Council
Tesco Stores Ltd
Thames Water
The British Chambers of Commerce
The Centre for Corporate Accountability
The General Medical Council
The Pensions Regulator
The Trade Union Congress
UK Intellectual Property Office
West Lothian Council
West Midlands Fire & Rescue Authority
West Sussex County Council
Wolverhampton City Council
Wychavon District Council
Yorkshire and the Humber Trading Standards Group

Sector

LA
Business
Business
Business Group
Third Sector
Professional Association
National Regulator
Trade Union
National Regulator
LA
Fire Authority
LA
LA
LA
LA Association

Annex B List and descriptions of regulators within scope of the Code and the five Principles

Agricultural Wages Inspectorate (AWI)

The AWI has the responsibility for enforcing the agricultural wages orders issued by the Agricultural Wages Board. These orders fix minimum rates of wages and other terms of employment for workers employed in agriculture in England and Wales.

Animal Health (AH)

AH is responsible for ensuring that farmed animals in Great Britain are healthy, disease-free and well looked after. It aims to prevent – or manage – outbreaks of serious animal diseases and, in England and Wales, ensures that dairy hygiene and egg production standards are met. It also regulates the trade in endangered species.

Animals (Scientific Procedures) Inspectorate (ASPI)

ASPI provides scientific advice to the Home Secretary and to the Animals in Scientific Procedures Division (ASPD) officials who operate the licensing system and provide policy advice to Ministers. The inspectors maintain a programme of inspections of facilities where relevant work is carried out.

Centre for Environment, Fisheries & Aquaculture Science (Cefas)

Cefas is a scientific research and advisory centre working in fisheries management, environmental protection and aquaculture. It enhances the aquatic environment, promotes sustainable management of its natural resources, and protects the public from aquatic contaminants.

Charity Commission for England and Wales (CC)

The CC is the regulator and registrar for charities in England and Wales. Its aim is to provide the best possible regulation of charities in order to increase their effectiveness and public confidence and trust.

Civil Aviation Authority (CAA)

The CAA is the UK's independent aviation regulator, with all civil aviation regulatory functions (economic regulation, airspace policy, safety regulation and consumer protection) integrated within a single specialist body.

Commission for Equality and Human Rights (CEHR)	The CEHR is a Non-Departmental Public Body whose purpose is to reduce inequality, eliminate discrimination, strengthen good relations between people and protect human rights.
Companies House (CH)	CH's main functions are to incorporate and dissolve limited companies, to examine and store company information delivered under the Companies Act and related legislation, and to make this information available to the public.
Director of the Asset Recovery Agency (ARA)	The ARA disrupts organised criminal enterprises through the recovery of criminal assets, and also aims to promote the use of financial investigation as an integral part of criminal investigation. Its teams of financial investigators and lawyers work to stop people benefiting from the proceeds of crime.
Drinking Water Inspectorate (DWI)	The DWI regulates public water supplies in England and Wales. It is responsible for assessing the quality of drinking water in England and Wales, taking enforcement action if standards are not being met, and taking appropriate action when water is unfit for human consumption.
Driver and Vehicle Licensing Authority (DVLA)	The DVLA registers drivers and vehicles. Its primary aims are to facilitate road safety and general law enforcement by maintaining registers of drivers and vehicles, and to collect vehicle excise duty (car tax).
Driving Standards Agency (DSA)	The DSA promotes road safety in Great Britain by improving driving standards and in particular by testing drivers (including motorcycle riders) and driving instructors fairly and efficiently.
Employment Agency Standards Inspectorate (EASI)	EASI carries out routine inspections of employment agencies and investigates complaints about agency conduct.
English Heritage (EH)	EH exists to protect and promote England's historic environment and ensure that its past is researched and understood. Although sponsored by the DCMS, English Heritage works with a range of Government Departments, notably the ODPM and DEFRA, to help realise the potential of the historic environment.
Environment Agency (EA)	The Environment Agency (EA) is the leading public body for protecting and improving the environment in England and Wales. Its aim is to make sure that air, land and water are looked after by everyone in today's society.

Financial Reporting Council (FRC)	The FRC regulates and promotes high quality corporate reporting, auditing, actuarial practice and standards of corporate governance. It also promotes the integrity, competence and transparency of the accountancy and actuarial professions.
Financial Services Authority (FSA)	The FSA is an independent body that regulates the financial services industry in the UK. It has been given a wide range of rule-making, investigatory and enforcement powers by government in order to meet statutory objectives. Its overall aim is to promote efficient, orderly and fair markets and to help retail consumers achieve a fair deal.
Fire and Rescue Authorities in England	Fire and Rescue Authorities are set up by statute to protect life and property. This involves; being proactive, identifying hazards and taking action to reduce risks, promoting awareness and being an effective emergency response and planning service. Their responsibilities include: carrying out Fire Safety Inspections to all places of work; issuing Fire Certificates; inspecting and monitoring petrol stores; and issuing Petroleum Licenses.
Food Standards Agency (FoodSA)	The FoodSA is an independent Government department set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.
Football Licensing Authority (FLA)	The FLA's mission is to ensure that all spectators regardless of age, gender, ethnic origin, disability, or the team that they support are able to attend sports grounds in safety, comfort and security.
Forestry Commission (FC)	The FC is the government department responsible for the protection and expansion of Britain's forests and woodlands. Responsibilities span research, commercial timber production, sustainability programmes and policy, as well as learning and leisure.
Gambling Commission (GC)	The Gambling Commission regulates gambling in the public interest. It aims to keep crime out of gambling, ensures that gambling is conducted fairly and openly, and protects children and vulnerable people from being harmed or exploited by gambling. The Commission also provides independent advice to government on gambling in Britain.

Gangmasters Licensing Authority (GLA)	The GLA aims to curb the exploitation of workers in the agriculture, horticulture, shellfish gathering and associated processing and packaging industries.
Health and Safety Commission/ Executive (HSC/E)	The HSC is responsible for health and safety regulation in Great Britain. The HSE and local government are the enforcing authorities who work in support of the Commission. Its mission is to protect people's health and safety by ensuring risks in the changing workplace are properly controlled.
Hearing Aid Council (HAC)	The HAC is the government body that is responsible for setting standards of professional training, performance and conduct for individuals and companies involved in the assessment of hearing loss and subsequent sale of hearing aids.
Housing Corporation (HC)	The HC funds new affordable housing and regulates housing associations in England.
Human Fertilisation and Embryology Authority (HFEA)	The HFEA is the UK's independent regulator overseeing safe and appropriate practice in fertility treatment and embryo research. It licenses and monitors centres carrying out IVF, donor insemination and human embryo research. It provides a range of detailed information for patients, professionals and Government.
Human Tissue Authority (HTA)	The HTA regulates the removal, storage, use and disposal of human bodies, organs and tissue from the living and deceased.
Information Commissioner's Office (ICO)	The ICO promotes access to official information and protects personal information by promoting good practice, ruling on eligible complaints, providing information to individuals and organisations, and taking appropriate action when the law is broken.
The Insolvency Service (INSS)	The INSS's mission is to deal fairly and effectively with financial failure. It investigates the affairs of bankrupts, companies, and partnerships wound up by the court, and establishes why they became insolvent. It also authorises and regulates the insolvency profession.
Local Authorities in England	Local authorities deliver regulatory services and enforce wide ranging local regulations as well as those owned by central government departments and non-departmental public bodies. Local authority regulatory services vary but include those relating to environmental health, trading standards, and licensing.

Marine Fisheries Agency (MFA)	The MFA has responsibility for enforcing sea fisheries regulations within English and Welsh waters, in accordance with the Common Fisheries Policy and its associated regulations.
Maritime and Coastguard Agency (MCA)	The MCA is responsible throughout the UK for implementing the Government's maritime safety policy. It works to prevent the loss of lives at the coast and at sea, to ensure that ships are safe, and to prevent coastal pollution.
Medicines and Healthcare products Regulatory Agency (MHRA)	The MHRA is responsible for ensuring that medicines and medical equipment work and are acceptably safe. It regulates a wide range of materials from medicines and treatment devices to blood and therapeutic products/services that are derived from tissue engineering.
National Counter Terrorism Security Office (NaCTSO)	The NaCTSO contributes to the government's counter terrorism strategy by offering specialist advice regarding the security of explosives and pre-cursor chemicals, pathogens and toxins, radiological sources and other toxic chemicals. NaCTSO advisers provide help, advice and guidance on all aspects of counter terrorism protection across a variety of sectors.
National Weights and Measures Laboratory (NWML)	NWML is responsible for ensuring that all trade measurements are accurate, legal, and fair to buyer and seller. It has responsibility for policy on measuring instruments in use for trade and for the implementation of European Directives on measuring instruments, thereby providing the focus for legal metrology in the UK.
Natural England (NE)	Natural England works for people, places and nature to conserve and enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas, promoting access, recreation and public well-being and contributing to the way natural resources are managed.
Office of Fair Trading (OFT)	The OFT is the UK's consumer and competition authority. Its mission is to make markets work well for consumers. It encourages businesses to comply with competition and consumer law; stops hardcore or flagrant offenders; studies markets and recommends action where required; and helps consumers resolve problems with suppliers through Consumer Direct.

Pesticides Directorate (PD)	The PD aims to ensure the safe use of pesticides and detergents for people and the environment, to harmonise pesticide regulation within the European Community and provide a level playing field for crop protection and, as part of the strategy for sustainable food and farming, to reduce negative impacts of pesticides on the environment.
Plant Health and Seeds Inspectorate (PHSI)	The PHSI aims to prevent the entry or spread of serious plant pests and diseases in England and Wales. It also carries out duties in relation to plant and seed certification schemes, the export certification of plant material to meet third country plant health requirements, technical auditing and the enforcement of seeds legislation.
Rural Payments Agency (RPA)	RPA is responsible for the CAP payment functions formerly delivered by the Defra Paying Agency and the Intervention Board. The key services it provides are making rural payments, carrying out rural inspections, and livestock tracing.
Security Industry Authority (SIA)	The SIA is the organisation responsible for regulating the private security industry. It licenses individuals working in specific sectors of the private security industry and manages the Approved Contractor Scheme, which measures private security suppliers against a set of independently assessed criteria.
The Pensions Regulator (PR)	The PR is the UK regulator of work-based pension schemes. Objectives are: to protect the benefits of members of work-based pension schemes; to promote good administration of work-based pension schemes; and to reduce the risk of situations arising that may lead to claims for compensation from the Pension Protection Fund.
UK Sport	UK Sport works in partnership with the home country sports councils and other agencies to lead sport in the UK to world-class success. UK Sport is responsible for managing and distributing public investment and is a statutory distributor of funds raised by the National Lottery.
Vehicle and Operator Services Agency (VOSA)	VOSA provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles, ensuring the compliance of operators and drivers, and supporting the independent Traffic Commissioners.

- Vehicle Certification Agency (VCA)** VCA supports industry by providing internationally recognised Type Approval testing and certification for vehicles, their systems and components.
- Veterinary Medicines Directorate (VMD)** The VMD aims to protect public health, animal health, the environment and promote animal welfare by assuring the safety, quality and efficacy of veterinary medicines.

Annex C **Impact Assessment**

Dept. for Business, Enterprise and Regulatory Reform

Impact Assessment of the Regulators' Compliance Code

Stage	Version	Related Publications
Final	V1.1 11/11/07	"A Code of Practice for Regulators – A Consultation", May 2007; "Reducing administrative burdens: effective inspection and enforcement" Philip Hampton March 2005; "Implementing Hampton: from enforcement to compliance" November 2006

Available to view or download at: http://bre.berr.gov.uk/regulation/reform/enforcement_concordat.
 Contact name for enquiries: Sara Marsden or Michael Williams
 Telephone number: 020 7215 0372/0402

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

- The 2005 Hampton Report found evidence of inconsistent and unnecessarily burdensome approaches to enforcement across the country and made a number of recommendations to improve the regulatory system in the UK. These were accepted in full by the Government
- Much has been done by many regulators to adopt the Hampton recommendations and Better Regulation principles including signing up to the voluntary Enforcement Concordat. However there is still little evidence of its consistent and systematic implementation by all regulators.
- The Legislative and Regulatory Reform Act 2006 (LRRRA) therefore makes provision to ensure that regulators more consistently adopt these principles and reduce further the unnecessary burden of regulation on business and other regulated entities whilst maintaining, or even improving, regulatory outcomes. It is these provisions that are addressed in this assessment.

What are the policy objectives and the intended effects?

- The intention of the provisions of sections 21 and 22 of the LRRRA is to ensure regulators' decisions and actions are underpinned by the principles of good regulation (s21), and ensure there is more widespread application of the Hampton principles of inspection and enforcement (s22).
- The intention is to create culture change throughout organisations by introducing specific legal requirements to have regard to the Compliance Code and the five principles of good regulation.
- In particular, we are seeking to ensure that regulators consider the well-being of the economy when undertaking their duties as well as, for instance, making use of comprehensive risk assessment to ensure resources are targeted effectively.

What policy options have been considered? Please justify any preferred option.

- Implementing the statutory Regulators' Compliance Code and 5 Principles of Good Regulation achieves the policy purpose behind sections 21 and 22 of the LRRRA 2006. The Government is confident that the Code will help deliver a risk-based approach to the exercise of regulatory activity. This will mean that compliant businesses bear less of a burden, with regulators focusing their efforts on rogue and higher-risk businesses.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? April 2011

Ministerial Sign-off For final proposal/implementation stage Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:



Date: October 2007

Policy Option Description

<p>ANNUAL COSTS</p> <p>One off Yrs (Transition) £33.2m 1</p> <p>Average Annual Cost (excluding one-off) £22.6m to 37.3m</p>	<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>National regulators (one-off): £33.2m Local authorities (one-off): £0 Business (one-off): £0 National regulators (annual): £4.4m to £7.3m Local authorities (annual): £18.2m to £30m Business (annual) £0</p> <p>Total Cost (PV) £227.7m to 354.2m</p>
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Other key **non-monetised costs** by 'main affected groups': comments from the consultation suggest that there may be some additional costs to regulators (and if true, also to business) of increased vexatious litigation.

<p>ANNUAL BENEFITS</p> <p>One off Yrs 0 1</p> <p>Average Annual Benefit (excluding one-off) £22.6m to 82.3m</p>	<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>National regulators (one-off): £0 Local authorities (one-off): £0 Business (one-off): £0 National regulators (annual):£4.4m to £7.3m Local authorities (annual): £18.2m to £30m Business (annual): range £0-£45m; mid-point 22.5m</p> <p>Total Cost (PV) £195m to £665m</p>
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Other key non-monetised benefits by 'main affected groups'
 We believe that society will benefit from improved compliance rates, improved regulatory outcomes and associated productivity gains.

Key Assumption/Sensitivities/Risks We assume full benefit of the Code accrues from 2010, all regulators being Hampton compliant by 2010, ongoing net costs for regulators equal zero after first year transition cost. The effect of the Code is intended to ensure resources are targeted where they are most effective. For annual costs to regulators we are assuming full transfer of the identified benefits to activities also required for compliance with the Code.

Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) £ -33.2m to £311.7m	NET BENEFIT (NPV Best estimate) £139 million
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What is the geographic coverage of the policy/option?	England + DAs partially			
On what date will the policy be implemented?	6 April 2008			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£0			
What is the value of changes in greenhouse gas emissions?	Negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excl. one-off)	Micro £0	Small £0	Med £0	Large £0
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)
 Impact on AB is included in the figures above; it is not included here to avoid double-counting.

Increase of Decrease of £ N/A Net Impact £ N/A £ (Increase – Decrease) N/A

Key: **Annual Cost: Constant Prices** **(Net) Present Value**

Evidence Base for Summary Sheets

Introduction

- 1 This Impact Assessment accompanies the document detailing the government's response to consultation on the Regulators' Compliance Code (the Code). Consultees were invited to offer views on the treatment of costs and benefits, and these views have informed this final assessment which is published alongside the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.
- 2 A little under half of respondents to the consultation made some specific comment on the Impact Assessment. We have taken these into account. We have also incorporated some of the feedback gained from several consultation events with a range of stakeholders. We have included a section summarising the main themes emerging from the responses.
- 3 This assessment covers both the impact of the Regulators' Compliance Code (issued under Section 22 of the Legislative and Regulatory Reform Act 2006) and the duty upon regulators under Section 21 of the Legislative and Regulatory Reform Act to have regard to five principles of good regulation ("the Principles") in the exercise of regulatory functions.¹
- 4 For the purposes of this Impact Assessment, the cost benefit analysis has been broken up into the following sections:
 - annual benefits for business² and others;
 - annual costs for business;
 - start-up costs for business;
 - annual benefits for national regulators and local authorities;
 - annual costs for national regulators and local authorities;
 - start-up costs for national regulators and local authorities.

Summary of responses

- 5 Out of a total of 105 respondents to the consultation, 42 made specific comments on the Impact Assessment. A majority, 24 of these, were from local authorities or local/regional networks of trading standards or environmental health officers. We also had responses from LACORS, the Trading Standards Institute (TSI) and the Chartered Institute for Environmental Health (CIEH) representing trading standards and environmental health professions. Three fire authorities commented on the Impact Assessment, as did five national regulators and seven business organisations.

¹ All costs and benefits of the Code are assumed to encompass the cost and benefits of the Principles. References to the Code in this document should be taken to include the Principles

² We acknowledge that the Code will also lead to benefits for others such as charities and the voluntary sector. These costs and benefits are subsumed, for the purposes of this analysis, in the total business costs and benefits

- 6 Overall there is a mix of comments with broad agreement that the Impact Assessment is reasonable in its approach in most respects. However, there was strong disagreement from local authority respondents to the estimated reduction in inspection visits for local authority regulators. Unfortunately respondents offered little additional evidence where they disagreed with the evidence presented in the Impact Assessment.
- 7 Business respondents were broadly content with the analysis, and confirmed that some regulators are already complying with much of the provisions of the Code. That said, there was some concern that not all regulators would comply fully and that this represented a risk to some of the assumptions on benefits to business in the Impact Assessment.
- 8 The great majority of local authority and fire respondents (supported by LACORS) stated that they had already introduced a risk based approach to inspection so that, they concluded, the Impact Assessment was unrealistic in its estimate of the potential officer time released in introducing risk based targeting. These comments are persuasive in their number, in particular from trading standards networks. However, they represent a minority of all local authorities and thus need to be considered alongside comments from business organisations with the view that a significant proportion of regulators who signed up to the Enforcement Concordat have not implemented its requirements.
- 9 Those local authorities who commented confirmed that the estimate of 10-15 days to review policies seemed about right, though a number suggested that a more senior manager would carry out such a review and salary costs assumptions should therefore be increased. Respondents mentioned a range of other costs though only comments about the cost of advice and the concern about the risk of increased legal challenge were mentioned by more than one or two.
- 10 Of the five national regulator respondents, the Environment Agency had serious concerns but the other four said very little about the Impact Assessment.

Response to the consultation

- 11 In the light of consultation responses, we have revised the estimates of the impacts of the Code. Primarily we have adjusted the potential benefits to business downwards to reflect:
 - Regulators' views that they have made more progress in reducing burdens than implicit in our baseline assumptions;
 - Regulators' views that it is not practical for them to achieve as much of the total reductions the Hampton Review supposed was possible; and
 - Business concerns that there is a risk that not all regulators will consistently implement the Code.
- 12 We have also explained our methodology and assumptions more clearly. Our assumption that the Code and 5 Principles would only deliver a minority (10%) of the maximum possible benefits calculated, and our reasons for this, did not appear to be widely understood. We have therefore improved our explanation of this.

Introduction and overview of the assessment

- 13 Year on year, business and other regulated entities will be the major beneficiaries of the Code bringing regulators further in line with the principles in Hampton and the 5 Principles of Good Regulation. We begin the assessment by identifying the main burdens faced by regulated entities and assess what proportion can be expected to be reduced. This forms the baseline for considering the contribution of the Code and 5 Principles to the reduction on those burdens.
- 14 The Code's provisions are based on 7 of the 10 Hampton principles that relate to regulatory enforcement. The specific obligations of the Code relate to a variety of themes (such as economic progress, risk assessment, accountability etc). There are likely to be a range of benefits from compliance with the Code and the 5 Principles of Good Regulation, not least improved regulatory outcomes bringing benefit to society. One respondent to the consultation (representing business) identified increased efficiency of their work resulting from good advice from regulators as a likely benefit to them of the Code. We have not attempted to quantify the full range of benefits, but focussed on key areas.
- 15 For the purposes of this Impact Assessment it is judged that the financial benefits to business will largely manifest in **three areas**:
- reduced administrative burdens as a result of reduced/simplified **data requirements**;
 - reduced administrative burdens as a result of fewer "routine" **inspections**; and
 - reduced policy costs from more streamlined sanctioning regime.³
- 16 The starting point is the Government's estimate of administrative burdens in 2005. Much progress has been made by regulators since then in tackling the burdens identified, so we take that progress into account in estimating the likely level of burden by April 2008, the proposed date for the Code to come into effect.
- 17 We calculate the maximum likely reduction in burden possible from the projected 2008 levels on the assumption that the Hampton Review's expectations are fully met by 2010. However, a whole range of measures will work in parallel to achieve this maximum reduction in the level of burdens, of which one will be the introduction of the Code and the 5 Principles.
- 18 Key to note in this assessment is the difference between what we have called "full Hampton compliance" and compliance with the Code. We assume that full Hampton compliance is the maximum reduction in unnecessary burden that Hampton estimated. This does not take into account competing priorities and the need to deliver other regulatory objectives alongside burden reduction. The LRRRA requires that regulators "have regard to" the Code, a demanding standard but one which falls short of "must comply with at all costs". This is likely to mean that actual "full Hampton compliance" will not be achieved. Respondents cited data sharing as a particular example of where what would be required to achieve the full potential of cross-government data sharing would require greatly disproportionate resource.

³ These costs and benefits are covered in the Impact Assessment accompanying the Regulatory Enforcement and Sanctions Bill and are not included or quantified here. (This will be available from the BERR website).

- 19 So, because the Code is only one of a range of better regulation initiatives, and because the duty is “to have regard to” the Code, we assume that the Code alone will deliver a small proportion of the estimated potential maximum reduction.
- 20 We then consider one-off costs for both business and regulators and ongoing costs for regulators. Another key point relevant to the Assessment is that the Code is about delivering regulatory outcomes efficiently for business and society. So, for those regulators who have not already systematically incorporated the Hampton principles into the way they work, it will involve early changes in focus and ways of working but not large ongoing costs. We recognise there will be costs associated with this adjustment, but assume that ongoing costs are more about reallocation of resources and ways of working. We also acknowledge, as some respondents have pointed out, that there are circumstances where regulators may not have the flexibility they need in allocating their resources to fully live the Code’s intention. The Impact Assessment does not specifically address this but it is taken into account in our assumption that the Code will deliver a minority (10%) of “full Hampton compliance”.

Establishing a baseline for business benefits

Administrative burdens in 2005

Data requirements and Inspections

- 21 The starting point for the analysis of business benefits resulting from fewer data requests and inspections has been the data obtained during the Administrative Burdens Measurement Exercise (ABME) based on the situation in 2005. This exercise measured the administrative costs imposed on businesses, charities and the voluntary sector as a result of central government, and European or other international regulation. It covered the vast majority of regulatory functions that are in scope of the Code.
- 22 The ABME was carried out using the Standard Cost Model (SCM) methodology⁴, which provides a simplified but consistent framework for estimating the administrative costs imposed by regulation. Administrative costs are defined as “the [recurring] costs of **administrative activities** that businesses are required to conduct in order to comply with the information obligations that are imposed through central government regulation”⁵. Policy costs were not included in the measurement exercise.
- 23 The ABME covered all regulations in force in May 2005 that contained an obligation to provide information to government (see figure 1).

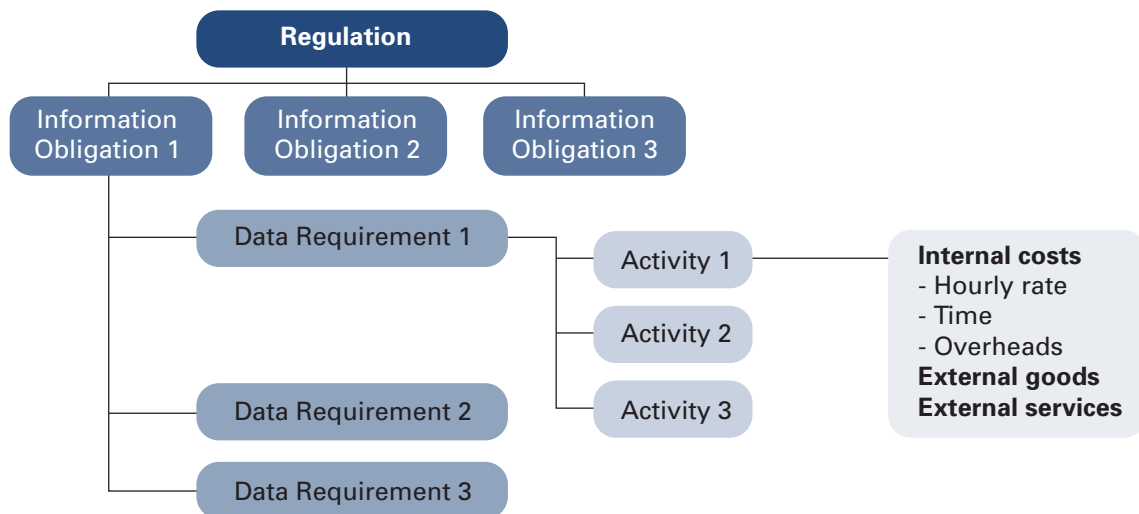
⁴ The Standard Cost Model is a pragmatic methodology developed by the Dutch to provide systematic measurement of the administrative costs of regulation. More information on the Model and the methodology can be found on the Cabinet Office website at <http://www.cabinetoffice.gov.uk/regulation/reform/simplifying/scm.asp>

⁵ “Administrative Burdens – Routes to Reduction” Cabinet Office September 2006

Figure 1: the Standard Cost Model

The Standard Cost Model requires that each regulation be broken down into Information Obligations and Data Requirements:

- an **information obligation** (IO) is a duty to procure or prepare information and subsequently make it available to a public authority or a third party, as well as a duty to facilitate the collection or preparation of information by others, e.g. by permitting and cooperating with an audit, visit or inspection. It includes regular requirements to read guidance and updated rules, for example rules which are updated annually. An IO does not necessarily require information to be sent to a public authority: it may also be directed towards third parties, such as consumers or employees. Each regulation may contain several IOs;
- each IO consists of a range of different information or data that a business shall provide in order to be able to comply with the IO – these are the **data requirements** (DR). Each IO may contain several DRs.



The SCM breaks IOs into three broad categories of obligation:

- Category A – obligations that are exclusively and completely a consequence of EU rules or other international obligations (i.e. the international rules describe which information businesses have to produce);
- Category B – obligations that are a consequence of EU rules and other international obligations where the purpose has been formulated in the international rules but where implementation has been left to individual Member States (i.e. the international rules do not describe which information businesses have to produce); and
- Category C – obligations that are exclusively a consequence of rules formulated at national level.

The figures identified by the measurement exercise were then adjusted to take account of activity that business would choose to do even if the regulation did not exist (business as usual or BAU).

- 24 The ABME determined that the total administrative burden to the UK's businesses, charities and voluntary sector organisations was some **£13.7 billion** in May 2005, stemming from around 20,000 Information Obligations identified⁶.
- 25 In order to determine the amount of the total administrative burden that could be affected by increasing compliance with Hampton principles through the introduction of the Code the data was filtered in the following way:
- all Information Obligations (IOs) that are not either wholly or partially enforced by regulators in scope of the Code were removed from the full dataset;
 - all IOs of 'Category A' origin (see figure 1) were removed from the dataset, as regulators are unable to influence directly the administrative burden of these regulations;
 - IO types not related to the specific obligations of the Code were removed (see figure 2).

Figure 2: IO types identified by ABME

IO type	IO types related to the Code
Keeping records	Keeping records
Providing statutory information for third parties	Providing statutory information for third parties
Updating commercial emergency plans & programmes	Updating commercial emergency plans & programmes
Statutory labelling for the third parties	Statutory labelling for the third parties
Notification of activities	Notification of activities
Carrying out inspections of...	Carrying out inspections of...
Applications for authorisation	Applications for authorisation
Returns and reports	Returns and reports
Cooperating with audits/inspections of...	Cooperating with audits/inspections of...
Applications for permission for or exemption from...	Applications for permission for or exemption from...
Entry in a register	Entry in a register
Carrying documentation	Carrying documentation
Agreeing contracts	Agreeing contracts
Applications for subsidies or grants for...	Applications for subsidies or grants for...
Framing complaints and appeals	Framing complaints and appeals
Requesting information	Requesting information

⁶ Copies of this data are also held by most of the departments and regulators covered by the ABME

- 26 This filtration of the ABME data suggests that in May 2005, the total administrative burden due to regulatory functions in scope of the Code was around **£3.6 billion**.
- 27 The IO types related to the Code (see figure 2) were then grouped into the broad themes of 'Inspection' and 'Data Requirements' (see figure 3). This allowed the total May 05 administrative burden of £3.6bn to be analysed by these two categories. The administrative burdens associated with Inspection and Data Requirements were then broken down, as far as is possible, by the type of regulator responsible for enforcement:
- 'National regulator' – result from inspection by or data request from organisation with national remit;
 - 'National and Local Regulators' – result from inspection by or data request from a combination of national regulator and local authorities;
 - 'Local Regulators' – result from inspection by or data request from local authorities.⁷

Figure 3: grouping of the IO types related to the Code

Administrative burdens in April 2008 when the Code is due to come into force

IO type	Hampton theme
Keeping records	Data Requirements
Notification of activities	Data Requirements
Entry in a register	Data Requirements
Applications for authorisation	Data Requirements
Returns and reports	Data Requirements
Applications for subsidies or grants for...	Data Requirements
Requesting information	Data Requirements
Framing complaints and appeals	Data Requirements
Applications for permission for or exemption from...	Data Requirements
Cooperating with audits/inspections of...	Inspections
Carrying out inspections of...	Inspections

⁷ These figures are all mutually exclusive

- 28** Following the completion of the ABME exercise, targets to reduce administrative burdens (25% in most cases) were set for those departments and regulators covered by the measurement exercise, and Simplification Plans⁸ have been drawn up showing how these targets would be met⁹. Since that time, there has been action taken by regulators to reduce administrative burdens and move towards Hampton compliance. The majority of those regulators who responded to the consultation believe they have indeed contributed significantly to this.
- 29** Analysis of the planned administrative burden reduction trajectories from all departments' and regulators' Simplification Plans which organisations expect to have, reduce administrative burdens by the time the Compliance Code is proposed to come into force (April 2008) by 8%. This provides a baseline against which to assess the impact of the Code. However, the consultation response from local authorities suggests that this may be an underestimate; a significant number of local authorities said they are further along this trajectory. There is uncertainty about the proportion of regulators who can make this claim and business views are that many regulators still need to make improvements. In response we have considered an upper estimate of a further 4% reduction in burdens to be achieved by 2008, i.e. 50% more than departmental plans predict. Thus at April 2008 we estimate that total administrative burdens due to the regulatory functions in scope are around 3.2 - 3.3bn, and consider that the lower end of this range likely to be the more realistic given the feedback from consultation.

Estimating achievable reductions in burdens

- 30** Hampton estimated that full adherence to a risk-based approach to inspection would lead to a 33% reduction in the number of inspections¹⁰ across the regulatory landscape from 2005 levels. Evidence from simplification initiatives across government has suggested that this estimate is challenging but achievable:
- preliminary results from the Retail Enforcement Pilot¹¹ show a 20-30% reduction in routine planned inspections;
 - since the Hampton Report, the Environment Agency's risk-based assessments have led to a 20% reduction in the number of inspections. This figure is set to increase as their risk-based system is extended across their regulatory regime¹².
- 31** However, local authorities argued in their responses to the consultation that assuming the full 33% reduction in inspections from 2005 levels may be optimistic. We have therefore considered a lower estimate suggested by the Retail Enforcement Pilot of 20% achievable reductions in inspection levels from April 2005 burden levels.

⁸ The 19 Departmental, Regulator and Agency Simplification plans can be found at <http://www.cabinetoffice.gov.uk/regulation/reform/simplifying/plans.asp>

⁹ For brevity we shall refer to this process as the Simplification Process from here forward

¹⁰ Reducing administrative burdens: effective inspection and enforcement – Philip Hampton March 2005 – pg8 <http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf>

¹¹ Interim report on the Retail Enforcement Pilot can be found at <http://www.dti.gov.uk/files/file36218.pdf>.

¹² "Implementing Hampton: from enforcement to compliance" HMT report November 2006 pg 18 http://www.hm-treasury.gov.uk/media/2DA/8A/hampton_compliance281106.pdf

- 32 Hampton also estimated that following his principles around forms and paperwork would result in a 25% reduction in the burden of data requirements¹³ across the regulatory landscape. Evidence from simplification initiatives across government suggests that this estimate is realistic:
- the Health and Safety Executive (HSE) conducted a fundamental review of its forms and identified 54% to be removed by the end of 2006¹⁴. Savings to business from the removal of these forms are estimated at £250,000 a year
 - the Civil Aviation Authority's (CAA) Safety Regulation Group initiated a project to review all internal and external forms. 25% of forms (100 out of 400) were found to be redundant and were withdrawn¹⁵
 - the Environment Agency has carried out a review of all external forms and associated guidance. An example from the review is the agricultural waste management licensing exemption which was reviewed and a new form developed in consultation with farmers. This reduced the form in length by 93% (75 pages to 5)¹⁶.
- 33 No specific comments were made by respondents to the consultation on these estimates, so we have left them unchanged.
- 34 Hence the reduction of 20 - 33% for inspections and 25% for data requirements were established as our revised indicator for full Hampton compliance. These reduction factors were applied to the May 2005 administrative burden baseline figures to give the total reduction in administrative burdens to businesses, charities and voluntary sector organisations at the point where all regulatory functions in scope are fully Hampton compliant (see rows G-I in figure 4).
- 35 The difference between the administrative burdens at our previous and revised estimates of "full Hampton compliance" and the predicted total administrative burdens at April 2008 is some **£450 million to £650 million per annum** (see row J of figure 4).
- 36 However, as noted above, not all of the reduction in burdens can be attributed to the Compliance Code. We assume that the Code will deliver about 10% of the reduction, or some **£45 million to £65 million** (row K in figure 4). For the purposes of estimating the impact of the Code as noted above, we are using the lower revised estimate of **£45 million** possible savings.

¹³ Reducing administrative burdens: effective inspection and enforcement – Philip Hampton March 2005 - pg8.

¹⁴ "Implementing Hampton", pg 8

¹⁵ "Implementing Hampton", pg 8

¹⁶ "Implementing Hampton", pg 8

Figure 4: Administrative Burden benefit of the Code to business (2005 prices)¹⁷

	Regulations enforced by National Regulators (£m)	Regulations enforced by National and Local Regulators (£m)	Regulations enforced by Local Regulators (£m)	Grand Totals (£m)
A Total AB due to Inspections (May 05)	99	20	246	365
B Total AB due to Data Requests (May 05)	1,654	1,179	432	3,266
C Grand Total (May 05)	1,753	1,199	678	3,631
D Total AB due to inspections (April 08, 88 – 92% of 2005 levels)	87 - 91	17 - 19	216 - 226	321 - 336
E Total AB due to data requests (April 08)	1456 - 1,522	1038 - 1,085	380 - 398	2874 - 3,005
F Grand Total April 08	1,613	1,104	624	3195 - 3,340
G Total AB due to inspections at full Hampton compliance (66% - 80%) of May 05 level)	65 - 79	13 - 16	162 - 196	241 - 292
H Total AB due to data requests at full Hampton compliance (75% of May 05 level)	1,241	884	324	2,449
I Grand total at full compliance with Code for inspections and data requirements	1,306 - 1320	898 - 900	487 - 521	2,690 - 2742
J Administrative burdens business savings at full Hampton compliance	223 - 307	155 - 206	76 - 137	450 - 650
K Estimated administrative burdens business savings due to Code & 5 Principles (10% full Hampton compliance)	22.3 - 30.7	15.5 - 20.6	7.6-13.7	45 - 65

¹⁷ The AMBE database does not include figures for the Financial Services Authority as the organisation conducted its own measurement exercise. Consequently, the administrative burdens imposed by the FSA have not been included in this analysis. As many of the Financial Services Authority's regulatory functions are in scope of the Code, the omission of this data means that the total annual benefits to business will be an underestimation.

Impact of the introduction of the Code and 5 Principles

Annual benefits for business

37. The status quo is the benchmark against which costs and benefits of the Code proposals are measured, that is the total estimated administrative burden imposed on business by regulatory functions in scope of the Code as at April 2008 (see previous section).
38. The Code should be seen as part of a comprehensive package of measures that are designed to implement fully the recommendations of the Hampton Report. The Administrative Burdens Reduction Target and the Simplification process are vital, strategic initiatives essential to achieving this vision. However, we believe that these need to be complemented by a 'bottom-up' approach to encourage a fundamental cultural change in regulators, which may not necessarily have occurred through the Simplification Process alone. The Simplification Process will ensure that legislation is less burdensome; the Code will ensure that regulatory functions are in line with Hampton.
39. As set out above, both the Simplification Process and the Code will contribute to achieving the identified administrative burden reductions of up to £650million. The consultation response has led us to revise this to an estimate of £454million for this total. It is not possible at this point to determine the proportion of the reduction that could be solely attributed to the Code, but according to this calculation the range of business savings lies between £0-450 million
40. However, as the Code is only one of a range of better regulation initiatives, and because the duty is "to have regard to" the Code, it is expected that the Code will deliver a minority of the total benefit of full Hampton compliance. For the purposes of this assessment, a plausible assumption is that the total business benefit of the Code will be 10% of the total achievable burden reduction predicted by Hampton, so up to £45 million. We have assumed for the purposes of this Impact Assessment that the best estimate of the business benefit of the Code is the mid-point of this range. The business benefit is therefore estimated to be £22.5 million.
41. This total business benefit will not be realised immediately as there will be a transitional period whilst regulators make the necessary changes to implement the Code. Taking into account other constraints and priorities, we are assuming that that full benefits will accrue by April 2010. It is assumed that one third of the business benefit will be realised in each of the two preceding years (2008 and 2009).

Sanctions

42. The Code will require regulators to have regard to the Macrory Penalties Principles and Characteristics¹⁸ when producing their enforcement policies. The associated costs and benefits to businesses and regulators are covered in the Impact Assessment accompanying the Regulatory Enforcement and Sanctions Bill¹⁹ and have not been included in this analysis.

Annual costs for business

43. There will be no obligatory annual costs for business associated with the introduction of the Code. A number of regulators expressed concern about the risk of increased vexatious legal challenge by business and point out that, should this be the case, it would involve increased costs to business, as well as to the regulators. However, respondents have not been able to provide evidence of the likely scale of this so we are assuming for this assessment that it is not a significant cost. This is an issue that should be specifically considered in a post-implementation review.

Start-up costs for business

44. We do not expect there to be any additional costs to business as a result of the Code. Therefore a plausible assumption is that the start-up costs to business are **zero**. There may be very minimal administrative costs to businesses due to time spent familiarising themselves with new regulatory enforcement processes that result from the Code's introduction. However, a key objective of the Code is to make it easier for businesses to comply with regulation and understand what is required of them, so the net start-up impact should in fact be beneficial.

Business impact summary

Code proposals:	Annual costs:	£0
	Annual benefits:	£0-45m
	One-off costs:	£0

¹⁸ These principles are set out in the Macrory Review of Regulatory Penalties. The review can be found at http://www.cabinetoffice.gov.uk/regulation/reviewing_regulation/penalties/index.asp. A parallel consultation exercise was also launched on 15 May for the Regulatory Enforcement and Sanctions Bill

¹⁹ This can be found at the following address <http://www.cabinetoffice.gov.uk/regulation/consultation/current/index.asp>

Annual costs and benefits for national regulators²⁰ and local authorities²¹

45. Again, the status quo is the benchmark against which the costs and benefits of the Code are assessed, based on non-introduction of the Code:

Regulator Costs – without the introduction of the Code, regulators would operate as normal under the aegis of the Enforcement Concordat, the Better Regulation Agenda and their existing enforcement policies. There are no additional costs to either national or local regulators.

Regulator Benefits – without the introduction of the Code, regulators would operate as normal. There are no benefits to either national or local regulators.

46. We anticipate the type of regulatory activity that the Code will encourage will lead to improved regulatory outcomes and associated productivity gains. However, for the purposes of this Impact Assessment, we have not attempted to quantify these.
47. We believe the Code will realise efficiency savings for regulators. For example, following a risk-based approach will lead to a reduction in the number of inspections conducted. We estimate that a reduction of 20-33%²² in the number of inspections could realise savings of nearly **£4.4 million to £7.3 million** for national regulators and around **£18.2 million to £30 million**²³ for local authorities. It is the purpose of the Code that these resources should be redirected to the more cost-effective, outcome-focussed regulatory activities required by the Code, such as advice-provision and awareness-raising. Whilst there are undoubtedly costs to national regulators and local authorities in moving towards a more advice-oriented service, we assume that the resource savings identified above, some **£22.6 million to £37.3 million**²⁴ can be re-directed to providing advisory services. Therefore overall, the net burden is **zero**.
48. Although we expect that the additional costs for regulators of providing a more advice-orientated service would be covered by a redistribution of resources away from inspection we are aware that there are some concerns among regulators that redistribution alone will not cover the full cost of the advice-provision encouraged by the Code, and that they may have to explore other options. The Environment Agency, for example, estimate that providing advice visits to just 1% of the businesses it regulates would cost an additional £7.5m²⁵. However, the Code does not require that advice activity be undertaken at all costs – regulators are required to have regard to the Code, so that they can take account of other relevant considerations such as budgetary constraints.

²⁰ 63 National regulators were covered by the Hampton Review in 2005. Since that date, a number of regulators have merged. The total number of national regulators in scope at the point of this Impact Assessment exercise is 56.

²¹ 388 local authorities have enforcement responsibilities in England

²² See paragraph 15

²³ These figures assume a wage cost of £18.50 for an inspector (based on 37.5hr/wk and salary of £36,000, including both pension costs and overheads, for LA Trading Standards and Environmental Health Officers), 2 hours per inspection, 2.5 million inspections carried out by Local Authorities, and 600,000 inspections carried out by national regulators (2003-04 figures)

²⁴ £30 million for local authorities and £7.3 million for national regulators. In other words, we are assuming that the costs associated with the new activities have an identical profile over time to that of the benefits.

²⁵ 25,000 visits (1% of approx 2.5m businesses regulated by EA) at estimated cost of £300 per visit

49. The purpose of the Code is to effect a shift in resources from routine inspection and other enforcement activity towards advice provision and information campaigns. This means that regulators' existing total resources will be used in a different way. Therefore, the budgets of national regulators and local authorities in scope are not expected to change as a result of the introduction of the Code.

Start up costs for national regulators and local authorities

50. In order to comply with the Code, a regulator may have to make changes to its practices in the seven key areas of activity covered by the Code's specific obligations: economic progress, risk assessment, information & guidance, inspections, information requirements, compliance & enforcement actions and accountability.
51. The figures identified in this section are our best estimates, but they are based on a very limited amount of data. Respondents to the consultation were able to add very little additional evidence on start-up costs to regulators.
52. When considering the costs presented in this analysis, it is important to note that where regulators have a legal duty to have regard to the Code, in deciding whether to follow a particular requirement under the Code they can take account of budgetary and other relevant considerations.

National regulators

53. In order to estimate the start-up costs for national regulators, this analysis uses indicative data from the Environment Agency and the Food Standards Agency. This data has been broken down by area of activity affected by the Code.
54. **Economic Progress** – the specific obligations of the Code in this area of activity do not require any significant operational/policy changes in most national regulators. This section simply requires the regulators to consider certain principles when carrying out their existing activities.
55. **Risk Assessment/Inspections** – the Environment Agency estimates that rolling out a risk-based approach to compliance assessment (including inspections) in all of their regulatory regimes will cost £4.2m (excluding IT costs). They are on course to do this by 2008. Scaling this up to cover all regulators covered by the Code²⁶ suggests that rolling out a risk-based approach across all regimes of national regulators could cost some **£21 million**.
56. **Information and Guidance** – providing businesses with information and advice, and regularly reviewing and updating this advice, could be regarded as good practice for regulators. It could therefore be argued that the specific obligations of the Code will not result in any start-up costs for national regulators. However, it is likely that Code implementation will lead national regulators to conduct more comprehensive reviews of their guidance materials and processes than would normally be the case under 'business as usual' conditions.

²⁶ This estimate is based on the calculation that the Environment Agency comprises around 18% of the total enforcement activity of all national regulators. In 2003-04, the total number of enforcement staff employed by all national regulators within scope of the Code was some 13,432. The total number of enforcement staff employed by the EA was 2,417, around 18% of the total.

57. Early estimates from one national regulator that has a comparatively small number of pieces of guidance suggest that a review to diagnose the necessary changes could cost around £100,000, with a further cost of around 2 months of staff time (around £6k of resource) to revise each piece of guidance requiring amendment. Figures provided by the Environment Agency, which is responsible for many pieces of guidance, are consistent with these estimates – the Environment Agency is undertaking a full review of both forms and guidance between 2008 and 2011 and estimate that this will cost £1.3m (roughly £430,000 per annum). Scaling up as described in paragraph 41 using the Environment Agency’s cost estimates allows an estimate to be made of the total cost to all national regulators of reviewing and updating information and guidance – **£7.2 million**.
58. **Data Requirements** – regularly reviewing and updating forms could be regarded as good practice for regulators, and associated costs could therefore be regarded as ‘business as usual’ under the Better Regulation Agenda. However, it is likely that Code implementation will lead national regulators to conduct more comprehensive reviews of their forms and data-gathering processes than would normally be the case, leading to start-up costs that must be factored into this analysis.
59. The Food Standards Agency is currently reviewing its forms in-house, at an estimated cost of £50,000 (around £2,000 to review each of the 25 forms directed at businesses). Scaling up using the Food Standard Agency’s estimated costs allows us to establish an indicative estimate of the total costs to national regulators of reviewing their forms and data collection, around **£5 million**²⁷.
60. The specific obligations of the Code require regulators to give consideration to sharing data with each other to reduce the burdens on business. Changing IT systems and creating new databases for the purposes of data-sharing is undoubtedly very expensive. We accept that making such significant changes across all regulatory regimes by all regulators poses significant challenges. However, it is expected that regulators will balance the legal requirement to “have regard” to the Code against other priorities and budgetary considerations. If the costs of a data-sharing scheme are disproportionate to benefits the Code would not require the regulator to adopt such policies on data sharing.
61. **Compliance and Enforcement actions** – the costs and benefits to regulators of complying with the Macrory Penalties Principles and using an expanded sanctions toolkit are covered in the Impact Assessment for the Regulatory Enforcement and Sanctions Bill²⁸. Following the principles and using the expanded toolkit is expected to provide a net benefit to regulators.

²⁷ The breakdown of the administrative burdens as detailed in this analysis shows that the Food Standards Agency imposes 0.85% of the total administrative burden imposed by national regulators’ data requirements (2005 figures). This can then be multiplied by 99.15 to provide an indicative figure for all regulators in scope of the Code

²⁸ <http://www.cabinetoffice.gov.uk/regulation/consultation/current/index.asp>

62. **Accountability** – the specific obligations of the Code require regulators to have transparent outcome measures. In many cases, national regulators will have these types of measure in place and incur no additional costs. Where a national regulator does not have these types of measure in place, the Code will require the regulator to design such a measure. In practice, these costs may be offset by replacing an existing output-focussed measure, but start-up costs are likely nevertheless. Estimating costs in this area of activity is very difficult, as the extent to which new measures will be required is unclear.
63. The specific obligations of the Code require regulators to have appeals procedures. We anticipate that the vast majority of regulators already have such procedures in place and therefore estimate that associated start-up costs will be minimal. A cost benefit analysis of the new appeals procedures associated with the Macrory expanded sanctions tool kit can be found in the Impact Assessment for the Regulatory Enforcement and Sanctions Bill.
64. Previous paragraphs show that the total start-up costs to national regulators attributable to the Code are estimated at around **£33.2 million**.

Local authorities

65. Overall, we expect the proportionate burden to be lower for local authorities compared with national regulators, which have a larger role in determining enforcement procedures. The main start-up costs to local authorities will derive from the need to review their enforcement policies and procedures and make any necessary changes to bring them into line with the Code.
66. Many local authorities regularly review their enforcement policies, even in the absence of new legislation such as the Code. However, it is likely that the Code will require a more comprehensive review than is usually the case. Estimates obtained from local authorities²⁹ during informal consultation suggest that reviewing and updating an enforcement policy to ensure Code compliance will take 10-15 days of staff time. Assuming that all 389 local authorities in England have to spend around the same amount of time updating their enforcement policies, the total gross cost (excluding savings) lies between £540,000 and £800,000³⁰. One respondent to the consultation offered an estimate of £80,000 start-up costs for one local authority, but with no breakdown. The majority of those who commented on the costs did agree that this was a reasonable estimate, though a few suggested that we should assume a higher graded member of staff in our wage cost calculation. No figure was suggested but if we increase the wage cost used by 25% (from £18.50 to around £23.00) to better reflect some input from senior managers, the gross wage cost lies between £675,000 and about 1 million.

²⁹ Estimates in this section are based on informal consultation with Cambridgeshire Trading Standards, Oxfordshire Trading Standards and Wealdon District Council and are indicative

³⁰ Assumes wage costs of £18.50 across all 388 LAs. Total cost expressed as range because estimated staff time expressed as a range (10-15 days)

67. Local authorities will also have to review and amend their operational procedures to ensure they are in line with the Code. While local authorities do this regularly anyway to take account of the various changes in regulation at national level, the Code may require more changes than would usually be necessary in the same period.
68. So, local authorities will face additional start-up costs in implementing the Code, but overall the start-up costs will be offset by benefits that the Code will deliver. These benefits derive mainly from reduced inspection volumes due to more comprehensive use of risk-assessment in inspection planning (these were identified in paragraph 33). In the first year of the Code some of the resource that would, on an ongoing basis, be redirected to advice from inspection will be used to update local authorities' enforcement policies and operational procedures as part of the change to outcome-focused regulatory activities as described in paragraph 33. It is therefore expected that net start-up costs for local authorities will be zero.
69. It is important to note that the costs expressed in this section are indicative. We hoped to obtain more evidence on the costs and benefits through the consultation process but respondents were unable to provide much that was concrete. This will be carried forward into the post-implementation review.

Social and environmental impact

70. We have not attempted to quantify these benefits, but believe the Code will increase the efficiency of regulation and should therefore lead to increased compliance by business with a range of regulations and a more targeted focus by regulators on high risk and/or non-compliant businesses. There should therefore be substantial benefit in terms of fairness, protection from harm and other relevant and desired regulatory outcomes.
71. We see negligible social or environmental cost impacts from the process of implementing the Code and the change in practices of regulators in achieving compliance.

Review

72. The Government is committed to a post implementation review in April 2011. We will consider the actual costs and benefits at this time. To do so we will further engage with relevant stakeholders to gather views and evidence of the impact and effectiveness of the Code. Responses to the consultation suggested a need for more oversight and monitoring; Government is developing policy in response which will ensure a more regular review of progress. Hampton Implementation Reviews of national regulators will be a source of information as will be indicators of perception of regulation by business – a requirement of the Code.

Specific Impact Tests

Below is a list of the other specific impact tests we have considered.

Competition Assessment

The proposals being taken forward will put the Hampton principles that relate to regulatory activity on a statutory footing. After looking at the four questions on the initial test we do not see any impacts on competition, either directly or indirectly.

Small Firms Impact Test

The proposals are designed to streamline bureaucracy in order to help companies boost their growth and competitiveness. The Code should lead to a more consistent and efficient 'light touch' regulatory environment for businesses generally. As such, it is of significant potential benefit to small firms and will not impact adversely on small firms.

The annual benefits to business from the introduction of the Code have been estimated at £650 million per annum. These figures have been calculated using the data gathered by the Administrative Burdens Measurement Exercise (ABME). The ABME featured a great deal of input from small firm groups. We can therefore state with confidence that the savings represented in this Impact Assessment will very much apply to small firms.

Throughout the informal consultation stage there has been contact with small businesses groups.

Legal Aid

There will no impact on Legal Aid.

Sustainable Development, Carbon Assessment, Other Environment

We do not believe that there will be any impacts on these areas. We have looked at the initial tests and are satisfied that they do not apply.

Health Impact Assessment

Having gone through the initial assessment we do not believe that there is a health impact.

Race, Disability, Gender and Other Equality

We do not believe that there will be an impact on the equality strands as the proposals impact on business and regulators not on individuals. We have, however, looked at each of the equality impact initial tests individually and are confident that there is no impact.

Human Rights

The Compliance Code contains guidance for regulators setting policies or principles about the exercise of regulatory functions. Regulators will be under a legal duty to have regard to the Code, but this duty is subject to any other legal requirement affecting the exercise of the relevant regulatory function. National regulators and local authorities are public authorities for the purposes of the Human Rights Act 1998, and section 6 of that Act makes it unlawful for them to act in a way that is not compatible with the Convention rights (the human rights protected by the European Convention on Human Rights).

Regulators will also be under a duty to have regard to five principles of good regulation set out in s.21 of the Act. This duty is again subject to any other legal requirements affecting the exercise of the function.

The Code and the five Principles of Good Regulation are concerned with how regulators regulate. The Code or five principles may affect the way in which that public body exercises its regulatory functions which in turn may engage a person's human rights (for example, article 1 protocol 1 (protection of property)). In these circumstances, the way in which the public body acted would need to be justified. In such cases, we do not consider that compliance with the Code or 5 Principles of Good Regulation should require any interference with protected rights. Moreover, as the duty to have regard to the Code and the five Principles of Good Regulation is expressly subject to any other legal requirements, such as the Human Rights Act, the proposals are compatible with the Convention Rights.

Rural Proofing

We have looked at the initial test on rural proofing and are confident that there is no impact on rural communities.

Specific Impact Tests – Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

<i>Type of testing undertaken</i>	<i>Results in Evidence Base? (Y/N)</i>	<i>Results annexed? (Y/N)</i>
Competition Assessment	Y	N
Small Firms Impact Test	Y	N
Legal Aid	Y	N
Sustainable Development	Y	N
Carbon Assessment	Y	N
Other Environment	Y	N
Health Impact Assessment	Y	N
Race Equality	Y	N
Disability Equality	Y	N
Gender Equality	Y	N
Human Rights	Y	N
Rural Proofing	Y	N

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Publication date: October 2007

URN 07/1471

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