

Better regulation – implementing the Enterprise Act 2016

For Board approval	
For Board briefing	
For Board steer	
For Board information	

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Executive summary

1. This paper is to provide Board with an update on the Commission's progress in implementing the Enterprise Act 2016 ('the Act') and to give information about how the implementation of the Act fits with our wider better regulation agenda. It builds on the paper provided to the Board in November 2015¹ when the legislation was still proceeding through the Parliamentary process. A copy of that paper is attached at Appendix 1 for ease of reference.
2. The Commission was established as a regulator in line with the 'Hampton principles' and continues to ensure that those principles are embedded in our approach to regulation.
3. The Enterprise Act (the Act) places three requirements on the Commission:
 - **To conduct business impact target (BIT) assessments:** this is the most resource intensive requirement of the Act but does not represent a shift in policy for the Commission because we already consider the impact of our requirements (such as licence conditions). The requirement for BIT assessments places our approach on a more formal basis, with the requirement (when possible) for impact assessment to be monetised. It also requires external verification via the Regulatory Policy Committee and for the impact assessments to be published.
 - **To report to a small business appeals champion (SBAC)** on an annual basis, this person being appointed (and financed) by the Secretary of State. We consider that our existing processes already accommodate the principles which the small business appeals champion will seek us to demonstrate. There may be some minor amendments to clarify our appeals processes for small businesses, and there will be some additional reporting requirements (via the annual report for example). However, we do not anticipate the resource requirements to be significant.
 - **To produce an annual report regarding our compliance with the regulators code and 'growth duty':** The final requirement, to produce an annual report regarding compliance with the regulators code and the growth duty, is again something that should be accomplished via a section in the Annual Report.
4. The Commission is fully committed to the principles which sit behind the Act of the need to consider the business impact of the regulatory burdens alongside the regulatory costs and benefits and the importance of transparency of such assessments.
5. We continue to engage with BRE and other regulators about the manner in which the Act is implemented, and to seek support from DCMS in managing the processes emerging from the Act in a joined-up and proportionate manner. Although many of the requirements placed on the Commission by the Act are clear, various significant technical details are still being developed. We are closely involved in this process and are actively participating in the finalisation of these outstanding issues.
6. A significant update since the last Board paper is that following discussions with the Better Regulation Executive (BRE), it has been agreed that the National Lottery is excluded from the requirements of the Act. We successfully argued that the National Lottery fell within the scope of the exemption made for state monopolies.
7. We set out our overall approach to implementation of the Act at paragraph 8 and the overall timetable for implementation is summarised at the end of this paper.

¹ Board paper reference GCP(15)80, November 2015

Background

8. Our approach to the implementation of the Act takes account of the following key issues:
- The Commission is taking a proportionate approach to the additional requirements placed on us by the Act, mindful of the fact that any significant, additional resource requirements may potentially impact on our overall costs and therefore the fees charged to operators. We, and other regulators, have made clear this risk to BRE.
 - It is important that the way in which any requirement to take account of economic growth is framed does not result in any role for the Commission to promote the growth of the industry or to 'champion' industry growth in some way. As we have made clear publically in the past, this would not be an appropriate role for the regulator given the risk that it might cast doubt on our independence from the industry and on our ability to assess independently where the public interest lies. We continue to emphasise that whilst not an economic regulator, we are committed to ensuring we give a strong public message regarding the central importance of good regulation to economic growth more generally. We have continued to point to the importance of public confidence in the gambling industry underpinning the conditions to support growth.
 - The requirements in the Act are specifically not intended to alter the way regulators fulfil their regulatory duties in the public interest, but rather to ensure that we continue to regulate in a proportionate and transparent manner.
 - We must ensure that the way in which we implement the Act does not restrict our ability to respond effectively to any emerging risks in the market.
 - We are taking account of wider developments. These include in particular the **Regulatory Futures**² review of regulators, being led out of the Cabinet Office driven by regulators and the Commission's response to the Chancellor's report [Fixing the Foundations: Creating a more prosperous nation](#). We wish to manage the collective impact of these reviews and initiatives in a coherent manner and take account of them in the development of our corporate strategy.
9. It is important to note that the industry does not unilaterally support deregulatory measures, even when it applies to their own sector. (The consultation on personal licence deregulation received considerable resistance from the casino sector.) The resistance increases when it is may be applied to another sector of the industry.

The Enterprise Act 2016

10. As noted above the Act contains three main requirements³ that impact on the Commission:
- The extension of the business impact target (BIT) to regulators
 - A requirement for regulators to appoint a small business appeals champion
 - A requirement for regulators to report annually on compliance with the Regulators Code and the growth duty.

² Philip Graf serves on the Steering Board of the Review.

³ The Act also contains modifications and extensions to the Primary Authority scheme. Details are emerging about the implementation of these changes and we are engaging in the discussions about the extent to which central regulators should take a more active role in Primary Authority schemes. We consider that these changes should not be permitted to significantly impact the role which the Commission currently takes in Primary Authority schemes.

Business Impact Target

11. The most significant requirement is the BIT. The Conservative Party manifesto included a commitment to reduce 'regulatory burden' by £10bn over the lifetime of the Parliament. The BIT is a means by which the achievement of this objective can be measured. DCMS are required to contribute £125m to this total.
12. The Commission must produce an assessment of the impact on business of regulatory changes that the Commission makes. These are defined as 'qualifying provisions' or QRP's.
13. Qualifying provisions must be measured to assess their impact, and in most instances this will be monetised. BRE have produced a calculator to assist regulators in arriving at an impact figure. The impact assessment of all qualifying measures will need to be conducted in a proportionate way, meaning that in some cases, an analysis specific to small businesses will be required. This is likely to be developed using existing methodologies such as those used by Treasury.
14. The analysis of impact is subject to scrutiny by the Regulatory Policy Committee (RPC) who are required to sign off (and publish) the Commission's calculations. The RPC's role is to provide a quality check on the accuracy and adequacy of the BIT analysis, not to comment on the change (for example, to a licence condition) in itself. Subject to RPC verification, the Commission will also have to publish verified impact assessments to demonstrate transparency.
15. The period covered by these requirements is the lifetime of the Parliament. The critical implication of this is that the Commission will be required to comply with it retrospectively from 8th May 2015. Notably, this means that an assessment must be produced for all of the changes which were implemented as part of the Strengthening Social Responsibility review, the Crime Review and any changes introduced following the consultation on 'Where gaming machines can be played'.
16. The Commission has now completed the task of identifying both qualifying and non-qualifying provisions from 8th May 2015 as required by the Act. Looking ahead, systems are being put in place to capture this information routinely in future.
17. In the case of the Commission, examples of qualifying provisions (for remote operators these only relate to those who are based in GB) are:
 - changes to licence conditions and codes of practice (LCCP) such as the requirement for operators to offer multi-operator self-exclusion
 - Changes in technical standards
 - Certain aspects of operator-facing IT changes, such as the implementation of customer funds reporting for remote operators.
18. Non-qualifying regulatory provisions (NQRPs) include such things as:
 - compliance activity, including fines and sanctions against individual operators and redress schemes which business are required to implement⁴
 - individual licence conditions (where these do not involve a change of policy)
 - enquiry handling

⁴ For example, and relevant to our work on unfair terms with the Competition and Markets Authorities, CMA remedies are considered to be non-qualifying provisions.

- changes which implement the requirements of EU Directives etc.
19. Non-qualifying provisions must be produced **annually in summary form**. This is essentially a list of the provisions that BRE deem to be non-qualifying. Our intention had been to publish this information in the Annual Report, however timetabling stipulations from BRE may well result in us having to publish separately and earlier in the year. We do not consider that publishing separately in this way raises particular risks.
 20. There is a further category of provisions which are exempt and notably we have now successfully argued that National Lottery amendments are exempt.

Small Business Appeals Champion

21. The second requirement, the small business appeals champion, aims to ensure that small businesses are treated fairly by regulators and that a regulator's processes are sufficiently tailored to their needs to ensure complaints are dealt with adequately.
22. The requirement means that each regulator will have an independent reviewer ('champion'), that will review and make recommendations for any improvements of a regulator's complaints procedure.
23. The Commission has discussed the management of this issue with several other regulators, including those within the remit of DCMS. Our aim is to minimise the resource burden on the Commission. One option we are considering is whether there might be scope to share a champion with another/other regulator(s), whether under the DCMS umbrella or elsewhere. This is an approach being considered by other Departments and/or their regulators in scope of the provisions. We are in the process of developing options for management of this issue for discussion within the Executive in the first instance.

Annual report on compliance with the Regulators' code and the growth duty

24. The third requirement is to report annually on compliance with the Regulators Code and the growth duty. Our Statement of Principles for Licensing and Regulation and also for Compliance and Enforcement states that we have regard to Hampton⁵, the Regulators Code and related documents⁶ as well as such matters as the growth duty⁷.
25. In line with many other regulators, we anticipate fulfilling this requirement by means of a section in the Annual Report.

Issues

26. As noted above there are a number of technical issues which are now being resolved with BRE and there are other matters which the Commission are still considering internally. We are in very close contact with both other regulators and BRE to finalise plans and to learn from others as to good practice examples. We are in discussion with DCMS to encourage them, in line with other parent departments, to establish a forum for

⁵ http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

⁶ These include the following -
Regulators' Code⁴

- report of the Hampton Review⁵
- report of the Macrory Review⁶
- Enforcement Concordat⁷
- Cabinet Office Consultation Principles⁸
- Scottish Improving Regulation Report⁹
- reports of the Regulatory Review Group in Scotland¹⁰
- Hampton Implementation Review Report into the Gambling Commission¹¹

⁷ The growth duty requires (non-economic) regulators to have regard to growth and the economic impact of their actions

regulators within their remit to work together in a cost effective way. Some of the key issues are set out below.

27. BRE had originally suggested that regulators would be required to publish a 'Statement of Policy'⁸ setting out their approach to the management of the BIT process. They have now revised this position, following feedback from regulators including the Commission, and have indicated that a Statement is not required but is good practice. We are in the process of setting out our plans and will, in due course share these with DCMS and BRE.

BIT assessments

28. One of the major challenges we are faced with is the training and resource requirements for the short to medium term. There are significant LCCP changes to measure as qualifying provisions – including last year's social responsibility changes and this year's crime review. BRE are rolling out a training programme to assist regulators in having the in-house skills to complete the BIT methodology and calculations. We have volunteered to host the first out of London training session in July for a number of regulators and are keen to ensure that as many Commission staff as possible can benefit from this.
29. The first monetized BIT assessment has now been published, alongside comments from RPC on the sources of information, the analysis applied and the overall assessment figure. We will take account of these comments in the production of our first assessments later this year.
30. We are not yet in a position to make accurate forecasts as to the full impact on resources. More detailed forecasting and discussions with programme directors and resources managers will take place over the next month. We will endeavour to limit the impact as far as possible. Internal awareness raising sessions will start shortly for key staff.
31. Some of the BIT assessments, but not all, will require us to engage with the industry to arrive at a costing which is sufficiently robust to satisfy the RPC requirements. There are a number of ways the Commission could approach this issue. A trade association, a sample of industry operators or a more general survey for example. Other regulators already have more experience in managing this and BRE have offered to share good practice examples and disseminate information in the BIT training. The concern, shared with BRE, is that this exercise, in itself is a burden on the industry. We will be adopting a proportionate approach to this issue, only requesting information from the industry when the change is significant (for example the multi-operator self-exclusion conditions).
32. Related to this, and it is something we are discussing informally with the RPC, is the stage at which we conduct the BIT assessment. For example, before we launch a consultation on changes to licence conditions and codes of practice, prior to implementation but once the consultation has been concluded or post-implementation. Whilst there are advantages to each of these approaches and we are not obliged to follow any of these options, the Commission is initially minded to conduct the assessment post-consultation and prior to implementation. The main reasons being that we only need to do one assessment, once we know the result of any changes to the proposals as a result of the consultation, rather than have to amend the assessment post-hoc. Secondly we would only need to gather data from the industry once rather than twice. However, we will consider this issue further as we carry out the first trial assessments.

⁸ The Statement as proposed by BRE is an explanatory set of technical details related to the BIT covering such things as how the Commission plans to group provisions (for onward submission), the reporting schedule (how often we make submissions) and other details.

33. The Commission has options in relation to both the frequency of the submission of assessments (for qualifying provisions to RPC) and how they are grouped. In relation to the frequency of reporting, they can be submitted quarterly, every 6 months or annually.⁹ Our preferred position is to do so every 6 months as this is likely to be a less burdensome requirement on the Commission whilst avoiding a large peak of activity on an annual basis. With regards to the grouping of qualifying provisions we have obtained agreement from BRE that we are able to make a judgement about how best to organise this, for example it might be that this is done thematically. We intend to develop the grouping¹⁰ structure as the process develops.
34. The Commission has now clarified a number of technical issues with BRE. In particular these relate to whether certain measures are classified as qualifying, non-qualifying or are exempt altogether. For example it has now been agreed that it is only remote operators whose (remote services) are provided from GB are qualifying. The Guidance to Licensing Authorities (V5 September 2015), which is statutory advice to licensing authorities, is subject to further discussion with RPC as to whether it is a qualifying or non-qualifying measure. Trade association pilot schemes, which they establish of their own volition, are exempt altogether.

⁹ Measures with an impact over £5m must be reported immediately and therefore fall outside of this cycle.

¹⁰ The groupings are a means by which we bundle a number of related changes together, rather than calculating and reporting them separately. This will make the process more streamlined and efficient.

Next Steps

35. The key milestones for implementation are set out below.

<p>June – September 2016</p>	<ul style="list-style-type: none"> • BRE training on Business Impact Target assessment methodology • Internal awareness training on Enterprise Act 2016 and specific training on BIT assessments disseminated • Statement of Policy on how we will approach BIT assessments shared with RPC; and published at a later date if required (see paragraph 27 for more detail) • Continue to assess approach and timetable for Small Business Appeals Champion and make recommendations to Board at later date
<p>September 2016 – April 2017</p>	<ul style="list-style-type: none"> • Carry out BIT assessments for all qualifying provisions implemented from 8 May 2015 to 26 May 2017 • Seek RPC verification on assessments • A communications plan will be put in place as appropriate to support these changes
<p>1 October 2016</p>	<ul style="list-style-type: none"> • Small Business Appeals Champion regulations come into force
<p>9 June 2017</p>	<ul style="list-style-type: none"> • Publish non-qualifying regulatory provisions summary/ list • Publish BIT assessments
<p>Mid 2017</p>	<ul style="list-style-type: none"> • Gambling Commission annual report to include section on compliance with the Regulators’ code and the growth duty
<p>26 June 2017</p>	<ul style="list-style-type: none"> • Government Annual Report (which may cover the £10bn savings target)
<p>2017 onwards</p>	<ul style="list-style-type: none"> • ‘Business as usual’ BIT assessment reporting will follow a different timetable with assessments being published half-yearly and the summary of non-qualifying provisions published annually.

Recommendations

36. The Board is asked to note the contents of the paper and is invited to make any comments on the general approach.

37. We will provide the Board with regular updates on our progress in relation to the implementation plan summarised above. We will also bring recommendations to the Board in relation to the Small Business Appeals Champion in due course.