



Better regulation - update

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

Prepared by:

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Executive summary

1. There are currently a number of better regulation initiatives being developed by central government which could have an impact on the Commission's regulatory approach in future. The purpose of this paper is to provide the Board with background information on those in advance of the likely need for discussion of specific elements throughout the course of next year.
2. In particular the Board should be aware of the Enterprise Bill which is currently at Report Stage in the House of Lords and is scheduled to reach the statute book in mid 2016. The key proposals in the Bill that are likely to impact the Commission if enacted as currently drafted are as follows:
 - the extension of the business impact target 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
3. The most significant requirement contained in the Bill for the Commission will be the Business Impact Target (BIT). If enacted, this will be a statutory requirement on regulators to produce an assessment of regulatory impact for many (but not quite all¹) of new actions – such as advice notes, changes to licence conditions and so on. The methodology is not yet agreed but we expect it to be similar to that followed by government departments when completing impact assessments on policy proposals².
4. The second aspect of the Bill that would impact the Commission is the provision for a 'Small Business Appeals Champion'. The aim of this requirement is 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. While we do not yet have detail on the precise nature of the obligation on the Commission, we will be looking to bring to the Board in due course proportionate proposals for implementing this requirement within the Commission.
5. Finally, we expect to be able to meet the requirement to report annually on compliance with the regulators code and the growth duty by including a paragraph in the Annual Report.
6. A summary of the stated objectives of the Enterprise Bill is attached at Appendix A. A copy of the summary factsheet which BIS has produced as an accessible summary of the contents of the Bill is attached at Appendix B.

Background

7. The better regulation workstream is responsible for ensuring that the Commission remains compliant with the framework central government sets for national regulators and for the development of our response to any proposals for future changes to the framework.
8. The Commission was established as a regulator with the Hampton principles informing the way we work. The Commission was the first small regulator to undergo a Hampton review. This was conducted in 2009.

¹ For example, changes in fees and charges will be excluded, as will regulatory provisions that implement new or changed EU Regulations, Decisions and Directives.

² <https://www.gov.uk/government/collections/impact-assessments-guidance-for-government-departments>

9. The Commission is a member of the Regulators Excellence Forum, which was created by BRDO to provide an opportunity for the exchange of information and ideas between all national regulators and central government.
10. Our Statement of Principles for Licensing and Regulation and also for Compliance and Enforcement have regard to Hampton, the Regulators Code and related documents³ as well as such matters as the growth duty⁴.
11. The better regulation workstream has been responsible for preparation of the Commission's formal responses on such matters as the growth duty (April/May 2013) and the extension of primary authority (PA) to age restricted access to gambling premises (June 2013). The Commission has also appeared at Select Committee hearings on such issues⁵.
12. The key themes in our response to the requirement, contained in the growth duty – for regulators to 'have regard to growth' are as follows:
 - The growth duty is arguably implicit in the 'aim to permit' requirement
 - It is important to be cautious in the extent to which regulators are made responsible for growth as it may create a public perception of a conflict of interest
 - It requires the public to have confidence in good regulation in order to create the conditions for growth
13. Our work as a national regulator engaged with the Primary Authority scheme has been recognised as a good practice example by BRDO in a recent publication (Appendix C)⁶. ABB and BACTA have recently signed up to the scheme for the provision of assured advice and we are monitoring progress.

Enterprise Bill - summary

14. The Enterprise Bill⁷ is currently progressing through its Parliamentary stages. BIS is the lead department on the Bill and it is scheduled to be on the statute book in mid 2016. We are engaging with both BRE and DCMS on progress and its implication for the Commission. Inevitably the summary set out below is subject to change and depends on, for example, guidance notes that will not be available until the New Year.
15. In order to ensure that the Commission is sufficiently prepared for the changes that the Bill will entail we have engaged with BRE, DCMS as well as other regulators, such as Ofgem, both formally and informally.

³ 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

⁴ The growth duty requires (non-economic) regulators to have regard to growth and the economic impact of their actions
⁵ <http://www.parliament.uk/documents/joint-committees/draft-deregulation-bill/JCDDDBVolume1Evidence.pdf>

⁶ Copy appended

⁷ Summary document appended

16. The most significant requirement contained in the Bill for the Commission will be the Business Impact Target (BIT). The BIT will apply retrospectively and it will capture the commitment made by No10 to reduce 'red tape' over the lifetime of the Parliament by £10bn. We understand DCMS has not yet agreed their 'share' of this figure although we understand that initial discussions focused on a figure of £125m. We have been liaising with DCMS on this issue and are waiting for further clarification.
17. The Commission has made clear, as we have done on such matters as the growth duty, that any additional burden on us will risk in being translated as a burden on operators via fees.
18. We are monitoring the position closely and are starting to prepare ourselves for the requirements as far as possible, as well as seeking greater clarity from both DCMS and BRE on how the requirement is likely to be framed in practical terms. For example, we consider that the regulation of the National Lottery falls outside of the requirements as currently drafted (as it is a monopoly and other monopolies have been made explicitly out of scope). We are in the process of making submissions to that effect. We have also started an analysis of the requirements and implications of the new 'red tape' challenge.
19. The second aspect of the Bill that will impact us is the Small Business Appeals Champion. The aim of this requirement is 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.
20. Again, there has been a lack of detail which inhibits our ability to know precisely what the practical implications are. Subject to those details, we will be looking to implement this in a very proportionate way. One option, for example, may be that a Commissioner could be nominated in this capacity. We will bring advice to the Board on this point at the earliest opportunity. Alongside this we have started work to ensure that our existing processes are sufficient to meet the new requirements and to investigate the historic details of complaints received to assess the scale of the potential burden on a Champion.
21. The final area of the Bill which is likely to affect the Commission is a requirement for regulators to report annually on compliance with the regulators code and the growth duty. Indications from BIS are that it is likely to suffice to include a paragraph in the Annual Report in this regard.

Recommendations

22. The Board is invited to note the contents of this report which will provide context for more detailed advice on these issues in the course of the coming year as the detailed requirements become clearer.

Appendix A – Enterprise Bill summary of objectives

The Enterprise Bill’s objectives, as outlined by BIS, are as follows:

The Enterprise Bill will cement the UK’s position as the best place in Europe to start and grow a business, and will make sure everyone who works hard has the opportunities to succeed.

The Enterprise Bill contains measures to:

- set-up a Small Business Commissioner
- extend the Business Impact Target to include regulators
- support a positive shift in the way regulation is delivered by regulators through the Growth Duty and Regulators’ Code (“the Duties”)
- simplify the Primary Authority scheme
- introduce of a target for the total number of apprentices working in public sector bodies
- prevent misuse of the ‘Apprenticeship’ term;
- introduce a legal obligation for insurance claims to be paid within a reasonable timeframe
- allow the Valuation Office Agency to share business rates information about properties and ratepayers with local government;
- reform the Business Rates Appeals system;
- update the Industrial Development Act 1982; and
- cap exit payments for public sector workers.