Regulatory Reform (Scotland) Act – Scottish Regulators’ Strategic Code of Practice
Title of Proposal

Regulatory Reform (Scotland) Act – Scottish Regulators’ Strategic Code of Practice

Purpose and intended effect

Background

The Regulatory Reform (Scotland) Act 2014 (“the Act”) seeks to promote greater regulatory consistency by placing a statutory duty on listed regulators to exercise functions in a way which contributes to achieving sustainable economic growth. This empowers regulators to align their activities and approach with the Government’s Purpose of sustainable economic growth, and take economic factors appropriately into account.

Part 1 of the Act was informed by responses to the Consultation on Proposals for a Better Regulation Bill¹. Responses in respect of the economic duty referred to the value of the UK Regulators’ Code, and further dialogue with stakeholders recognised the merit in providing guidance, through a Code of Practice, to provide clarification for regulators and those they regulate on what is expected and how the duty would work. Powers for Scottish Ministers to issue a Code of Practice are included in the Act, which require the Code to be consistent with the principles:

(a) that regulatory functions should be exercised in a way that is transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed, and

(b) that regulatory functions should be exercised in a way that contributes to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of such functions to do so.

We believe strongly that any Code of Practice must be developed by regulators and stakeholders and a short-life working group was established during 2013 to develop a draft Scottish Regulators’ Code of Practice for consultation. Group members included representatives from business, regulators, and Scottish Government. A full list of members and the remit of the group can be found at Annex B of the consultation paper. A consultation on the draft Code was held between February and April 2014.

Objective

The aim of the Scottish Regulators’ Strategic Code of Practice (the Code) is to describe in more detail how regulators should apply regulatory principles and build good practice in order to contribute to achieving sustainable economic growth while concurrently delivering their other core functions. The duty does not prioritise sustainable economic growth over other regulatory objectives; it requires regulators to

¹http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation/RRBConsultation


take economic factors appropriately into account, determine an appropriate balance where necessary and be accountable for their decisions.

We recognise that many Scottish local authorities and regulators already take economic and business factors appropriately into account in regulatory activity, and are determined to build on that existing good practice to drive further performance improvements and promote greater consistency. Having been developed by regulators and business, the Code builds on existing good practice and seeks to support an enabling approach, applying the five established principles of better regulation of transparency, accountability, consistency, proportionality and targeted where needed to help business and regulated bodies to comply and grow.

The Code is consistent with the recommendations of the Hampton Review of regulation Reducing administrative burdens: effective inspection and enforcement\(^2\), which has informed regulatory policy at a UK level since its publication in 2005. Additionally, the Code complements the existing UK Regulators’ Code - it is not intended that it will place additional or contradictory expectations on regulators or business dealing with both reserved and devolved matters.

The Code is also consistent with the EU’s Smart Regulation agenda in that both seek to simplify and improve the regulatory landscape. In his opening remarks to a Panel Discussion on Smart Regulation for SMEs in October 2013, Deputy Permanent Representative of Lithuania to the EU, ambassador Arūnas Vinčiūnas, noted that as a rotating Presidency Lithuania has placed special attention on smart regulation and SMEs in its Presidency Programme: “Smart regulation for SMEs is an important priority for the European Union as efficient and fit for purpose legislation in that area is a prerequisite for economic growth and for strengthening the competitiveness of Europe. Regulation has a direct impact on businesses, on performance of the companies. Our task during Lithuania’s presidency – to make at least a small step forward to make life easier for the creative and hard-working business people.”

**Rationale for Government intervention**

The Purpose of the Scottish Government is to make Scotland a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth. The Code will contribute to this aim by ensuring regulators take economic factors appropriately into account in the course of their duties.

The Code will also help achieve the National Outcome “We live in a Scotland that is the most attractive place for doing business in Europe”. Making Scotland the best place to do business in Europe requires a regulatory landscape that protects our citizens, our heritage and our environment while concurrently providing a favourable business environment in which companies can grow and flourish.

Consultation

Within Government

The Code has been developed collaboratively between the Scottish Government and other public bodies, business representatives, regulators and COSLA through a dedicated working group. The Scottish Regulators’ Code of Practice Working Group comprised Scottish Government officials and, among others, representatives from the following government organisations, public and professional bodies:

Convention of Scottish Local Authorities
Food Standards Agency Scotland
Scottish Environmental Protection Agency
Scottish Natural Heritage
Society of Chief Officers of Environmental Health in Scotland
Society of Chief Officers of Trading Standards in Scotland

We have consulted with the Scottish Government Legal Directorate, and taken views from officials in other Scottish Government Directorates including the Criminal Law and Licensing Division and the Regulation of Care & Sponsorship Team. We have also sought comments from other regulators to which the Code applies - VisitScotland, the Office of the Scottish Charity Regulator, the Scottish Housing Regulator, Scottish Fire and Rescue Service, Accountant in Bankruptcy, Healthcare Improvement Scotland and the Care Inspectorate.

Public Consultation

A public consultation on a draft Scottish Regulators’ Strategic Code of Practice ran from 3 February 2014 to 28 April 2014. The consultation paper was made available on the Scottish Government website and sent directly to key stakeholders. Sixty responses were received from a range of organisations including 18 from Public Bodies, 17 from Local Authorities, 16 from Business & Industry Associations, 4 from Professional Bodies, 3 from Third Sector and 2 from Individuals. The majority of respondents agreed that the draft Code clearly set out its purpose and policy intent, and how regulators can assist in bringing sustainable economic growth to local communities. Implementation was considered key by a number of respondents. An analysis of consultation responses has been published\(^3\).

Business

As detailed above, the Code has been developed collaboratively between the Scottish Government and other stakeholders. Business representation from outside government on the Working Group was provided by:

Federation of Small Businesses Scotland
Regulatory Review Group
Scottish Chambers of Commerce
Scottish Trade Union Congress

\(^3\) [Scottish Regulators’ Strategic Code of Practice consultation](#)
Sixteen responses (26%) to the public consultation on a draft Scottish Regulators’ Strategic Code of Practice came from Business & Industry Associations. While the majority considered the Code was clear in respect of purpose and intent, and how to support achieving sustainable economic growth, business in particular commented on the importance of ensuring delivery of, and compliance with, the Code.

**Options**

**Option 1 – Do nothing**

The Act provides Ministers with the powers to issue a Scottish Regulators’ Code of Practice: they are not obliged to do so. Doing nothing would mean that there would be no - or limited - change to how regulators currently discharge their duties and the aims of the Act may not be achieved, or delivered as quickly.

**Option 2 – Issue a Scottish Regulators’ Strategic Code of Practice**

The Code will describe in more detail how regulators should apply regulatory principles and build good practice in order to contribute to achieving sustainable economic growth while concurrently delivering their other core functions and apply established better regulation principles.

**Sectors and groups affected**

The Code will affect two main groups: Scottish regulators and businesses which they regulate. The specific regulators to which the Code will apply on introduction are:

- Accountant in Bankruptcy
- Food Standards Agency
- Healthcare Improvement Scotland
- Local authorities (excluding planning authority functions)
- Scottish Charity Regulator
- Scottish Environment Protection Agency
- Scottish Fire and Rescue Service
- Scottish Housing Regulator
- Scottish Natural Heritage
- Social Care and Social Work Improvement Scotland
- VisitScotland

**Benefits**

**Option 1 – Do nothing**

No familiarisation costs to regulators and no potential costs to regulators from reviewing and making changes to their operational policies and practices.

**Option 2 – Issue a Scottish Regulators’ Strategic Code of Practice**

The Code will provide transparency and clarification for regulators and those they regulate on what is expected and how the duty to exercise regulatory functions in a way which contributes to achieving sustainable economic growth would work. It will also provide greater regulatory consistency, help and encourage business compliance and encourage a proportionate, enabling risk-based approach. It will enable regulators to share and build on existing best practice and drive further improvement.
Costs

Option 1 – Do nothing
There are no direct monetary costs associated with doing nothing. However, the Scottish Government would be missing an opportunity to provide a key tool for regulators to contribute to achieving sustainable economic growth and further improving the regulatory environment.

Option 2 – Issue a Scottish Regulators’ Code of Practice
In addition to the negligible cost to the Scottish Government and working group of producing the Code, there would be dissemination and familiarisation costs for all regulators covered by the Code. The Annual Survey of Hours and Earnings 2013 Provisional Results⁴ states the mean hourly rate of pay in the public sector is £16.65. We estimate it would take regulatory officials around two and a half hours to familiarise themselves with/understand the Code. This represents an initial cost of approximately £41.62 (£16.65 per hour x 2.5 hours) per official to Scottish regulators. Due the variation in sizes between individual local authorities and other regulatory bodies, it is not possible to estimate an average cost to each regulatory body.

There may also be costs to regulators upon reviewing existing core operational policies, e.g. enforcement policy, customer service charter etc. to ensure alignment with the Code. However, as the Code will cover a number of Scottish regulators whose existing operational policies may or may not align with the Code to some extent, it is not possible to provide a monetised estimate of these potential costs.

Wherever possible compliance should be built into existing structures and practices.

Scottish Firms Impact Test

Business in Scotland will benefit from a Code which encourages regulators to carry out regulatory activities in a way which contributes to achieving sustainable economic growth and adopt an enabling approach which is proportionate, consistent, transparent, accountable and targeted where needed.

As at March 2013, there were an estimated 343,105 private sector enterprises operating in Scotland. This total comprises:

- 321,685 micro enterprises (0-9 employees)
- 15,445 other small enterprises (10-49 employees)
- 3,635 medium enterprises (50-249 employees)
- 2,250 large enterprises (250+ employees)

The collaborative approach used to develop the Code has included representatives from the business organisations and the Regulatory Review Group. We continue to remain engaged with these groups and the outcomes of discussions will feed into the process.

While we contacted more than 10 individual business and business organisations to request meetings to help better assess the costs and benefits of the Code for business, the response received was limited. Only one business responded positively and met with us. They supported the introduction of a Code which encouraged regulators to take an enabling approach, good communication and understanding between regulators and business, and consistency.

**Competition Assessment**

The Code neither directly nor indirectly limits the number or range of suppliers. It does not limit the ability of suppliers, or reduce their incentives, to compete vigorously. As such, we believe the Code will have no adverse impact on competition.

**Test run of business forms** - The Code does not introduce any new business forms.

**Legal Aid Impact Test**

The Code is not expected to impact on the Legal Aid Fund and we have consulted with the Access to Justice Team on this.

**Enforcement, sanctions and monitoring**

The Code will be enforced and monitored through individual regulators' own governance and accountability structures. We do not intend to introduce sanctions on regulators who do not have regard to the Code. However, regulators must offer an independent, impartial and transparent appeals procedure, and clearly advertise ways to challenge or appeal against a regulatory decision. This should include the option to discuss and receive advice about decisions taken. Regulators must also regularly publish information in accordance with the model Complaints Handling Procedure for Scottish Government, Scottish Parliament and Associated Public Authorities in Scotland and associated documents.

**Implementation and delivery plan**

On publication of the Code, regulators must:

- Review existing core operational policies, e.g. enforcement policy, service charters etc. and ensure alignment with the Code.
- Take account of the Code in developing new operational policies and build the Code into relevant staff training/awareness-raising.
- Ensure that the Code and core operational policies are available to regulated operators/persons so they know what to expect.
- Pursue continuous improvement under the Code and share and seek to understand good practice with other regulators.

It is expected that regulators will have in place mechanisms for gaining feedback on service delivery from those they regulate. Feedback on alignment with the Code should be integrated into this.

5 [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)
Post-implementation review

The Scottish Government is committed to making sure this Strategic Code is implemented fully and is effective. A broad review of the effectiveness and progress with embedding the Code will be commissioned 18 months after it comes into effect. The Review Group will be drawn from the regulators, business and other bodies that helped develop the Code. The review process will be inclusive and where possible involve a series of multi-lateral consultation events.

Summary and recommendation

The recommended option is **option 2 – Issue a Scottish Regulators’ Strategic Code of Practice**.

A Scottish Regulators’ Strategic Code of Practice will build on best practice and promote regulatory consistency. It will provide clarification for regulators and business on applying regulatory principles to contribute to achieving sustainable economic growth while concurrently delivering other core regulatory functions.

Summary costs and benefits table

<table>
<thead>
<tr>
<th>Options</th>
<th>Benefits</th>
<th>Costs</th>
</tr>
</thead>
</table>
| **Option 1**  
Do Nothing                                      | No familiarisation costs to regulators.                                   | This option presents no additional monetary costs.                    |
| **Option 2**  
Issue a Scottish Regulators’ Strategic Code of Practice  
*This is the recommended approach*                  | Provide clarification on duty to contribute to achieving sustainable economic growth.  
Promote consistency and build on good practice and support an enabling approach and apply the established principles of better regulation.  
Business would benefit from greater clarity, transparency and consistency. | Costs related to the production of the Code are minimal.  
Familiarisation and implementation costs for regulators.  
The estimated initial familiarisation costs for a regulatory official is around £ 41.62.  
Review of existing policies and practices – unknown. |
Declaration and publication
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. I am satisfied that business impact has been assessed with the support of business.

Signed:

Fergus Ewing
Minister for Energy, Enterprise and Tourism

Date:

9 October 2014

Scottish Government Contact point:

Sandra Reid
Better Regulation and Industry Engagement
Enterprise & Cities Division
Scottish Government
6th Floor, 5 Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU

Tel: 0300 244 1141
Email: sandra.reid@scotland.gsi.gov.uk