

BERR

Department for Business
Enterprise & Regulatory Reform

**IMPACT ASSESSMENT :
REGULATORY ENFORCEMENT
AND SANCTIONS BILL**

Revised for the House of Commons
May 2008

Regulatory Enforcement and Sanctions Bill

Impact Assessment: Executive Summary

1. The following impact assessments have been prepared to deal separately with the three key aspects of the Regulatory Enforcement and Sanctions Bill (the Bill).

2. The Bill implements three important aspects of the Government's better regulation agenda:

- Parts 1 and 2 establish the Local Better Regulation Office (LBRO) as a statutory corporation with the objective of promoting more effective regulation by local authorities, and encouraging co-ordination consistency of regulatory enforcement by local authorities.
- Part 3 creates a power for regulators to acquire access to a suite of more proportionate and flexible civil sanctions to deal with non-compliance.
- Part 4 creates an order making-power to give regulators a statutory objective of reviewing, reporting and reducing unnecessary regulatory burdens.

3. The following table gives a cross-cutting assessment of the overall costs and benefits of the Bill as a whole:

| Regulatory Enforcement and Sanctions Bill: Annual Costs and Benefits ¹ | |
|---|---------------------------------|
| Annual Costs | £73m (PV: £627m) |
| Annual Benefits | £152m-£321m (PV: £1358m-£2759m) |
| Annual Net Benefits | £79m-£248m (NPV: £732m-£2131m) |

4. The Bill will have a number of costs for particular sectors. These are described in the individual impact assessments below.

Parts 1 and 2: The Local Better Regulation Office and Co-ordination of Regulatory Functions

5. Part 1 establishes LBRO as a statutory corporation, with the objective of securing more effective and less burdensome approaches to the delivery of local authority trading standards, environmental health, licensing and fire safety services. Part 1 also confers a number of statutory functions on the LBRO.

¹ The tables used throughout this summary uses rounding to the nearest £1 million. NPV is calculated over 15 years.

6. Part 2 of the Bill promotes more coordinated and consistent regulatory enforcement by local authorities through the establishment of the Primary Authority Principle. The main costs and benefits are associated with the introduction of a statutory basis for Primary Authority partnerships, which will give businesses operating across multiple authorities the right to request a partnership with a particular local authority, and for other authorities to check any enforcement action for consistency with the advice that the business has been given within that partnership. There will be benefits and costs for Primary Authorities, for businesses, and for local authorities.

7. LBRO's wider work will have impacts on businesses and local authorities, deriving from LBRO's role in (i) issuing guidance for local authorities, (ii) promoting good practice, and (iii) giving advice to government on the way in which regulations are enforced by local authorities.

| Parts 1 and 2: Annual Costs and Benefits | |
|--|---------------------------------|
| Annual Costs | £25.5m (PV: £258m) |
| Annual Benefits | £73-104m (PV:£744m -£1058m) |
| Net Benefits | £48m -£79m (NPV: £486m – £800m) |

Part 3: Civil Sanctions

8. Part 3 will give regulators access to an extended range of civil sanctions that will be an alternative to criminal prosecution in cases of non-compliance.

9. There will be direct costs for non-compliant businesses where the sanctions are applied, but there will also be related benefits for business from the use of alternatives to the more costly processes involved in criminal prosecution.

10. The implementation and use of the new sanctions, together with the related safeguards in the Bill will also result in costs and benefits for the regulators themselves, and the courts system.

| Regulatory Sanctions: Annual Costs and Benefits | |
|---|------------------------------|
| Annual Costs | £47m (PV: £368m) |
| Annual Benefits | £78m-211m (PV: £615m -1650m) |
| Net Benefits: | £31m-164m (NPV: £247m-1282m) |

Part 4: Regulatory Burdens

11. Part 4 of the Bill will create a power for Ministers to impose a duty, by exception, on regulators who are judged to be imposing or maintaining information or policy burdens that have been assessed as unnecessary or inappropriate to the successful delivery of their functions and objectives. The review to determine whether the burdens imposed are unnecessary will be conducted by the regulator to whom the duty is applied. The process to apply the duty is set out in the Guidance accompanying the Bill.

12. This is an enabling power, and will exist in parallel with a number of other related better regulation initiatives. Additional information and policy requirements assessed as required by the regulators to fulfil their objectives will be unaffected by this power, in so far as they do not impose unnecessary burdens.

13. The Government will ensure that, if and when the duty is imposed, it will be done in circumstances where the benefits are proportionate to the costs involved and an in-depth analysis will be conducted at that time. There will be some additional cost on regulators to implement and undertake annual reviews but it is anticipated that these costs will be more than offset by the potential additional savings from reductions in unnecessary information and policy burdens on those subject to affected regulations. These savings will be assessed on a case by case basis as and when reforms are proposed and agreed, and full impact assessments are undertaken.

14. The duty has been applied to the following 5 economic regulators, on the face of the Bill, at their request.

- the Gas and Electricity Markets Authority (Ofgem),
- the Office of Fair Trading (OFT),
- the Office of Rail Regulation (ORR),
- the Postal Services Commission (Postcomm), and
- the Water Services Regulation Authority (OFWAT)

Consequently we are able to estimate costs and benefits as a result of this.

| Part 4 Duty: Annual Costs and Benefits | |
|--|------------------------------|
| Annual Costs | £0 - £0.51m (PV: £0 - £1.4m) |
| Annual Benefits | £0m-£5.2m (PV: £0m -£51 m) |
| Net Benefits: | £0m-£4.7m (NPV: £0m-£50 m) |

Summary: Intervention & Options

| | | |
|---|--|------------------------------|
| Department /Agency: BERR | Title: Impact Assessment of Regulatory Enforcement and Sanctions Bill Parts 1 and 2 | |
| Stage: Final | Version: 2 | Date: 24 October 2007 |
| Related Publications: Regulatory Enforcement and Sanctions Bil; Implementing the Hampton Vision: Consultation on the Draft Regulatory Enforcement and Sanctions Bill | | |

Available to view or download at:

http://bre.berr.gov.uk/regulation/enforcement_sanctions_bill/index.asp

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

The Hampton Report (Reducing Administrative Burdens: effective inspection and enforcement, HM Treasury: 2005) raised two issues regarding the enforcement of regulation by local authorities:

- a) Inconsistency. The existing, diffuse, structure of local authority regulation increases uncertainty and administrative burdens for business who are required to deal with different approaches throughout the country;
- b) Lack of co-ordination: the lack of a central communications function results in duplication of effort at local level, and overall approaches which are insufficiently strategic.

What are the policy objectives and the intended effects?

The Government accepted the Hampton Report recommendations. It has already created a Local Better Regulation Office (LBRO) as a company limited by guarantee; the Bill will give the LBRO statutory powers with a number of objectives, including: (a) more consistency for businesses operating across multiple local authorities through the creation of a statutory Primary Authority Partnership scheme; (b) enforcement of regulation by local authorities in a way that is consistent with the Principles of Better Regulation through guidance and programme spend; (c) improved and more strategic policy-setting by government for the enforcement of regulations by local government.

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

Throughout this impact assessment, the status quo, including voluntary Home/Lead partnership schemes, has been used as a basis for comparison with the costs and benefits associated with the creation of LBRO as a statutory corporation. The net effect of the "do nothing" option can be taken as cost and benefit neutral. For the purposes of this final Impact Assessment no further options are being considered; in particular, non-regulatory options are not addressed. The creation of LBRO is intended to deal with the shortcomings of existing, voluntary, arrangements to address the issues set out above.

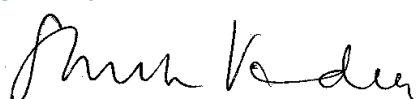
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

3 years after creation of LBRO as a statutory corporation.

Ministerial Sign-off For final proposal/implementation stage Impact 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 impacts of the policy; and (b) that the benefits justify the costs.

Signed by the responsible Minister:



Date: 13/05/2008

Summary: Analysis & Evidence

Policy Option: 1

Description: Impact Assessment of Regulatory Enforcement and Sanctions Bill Parts 1 and 2

| | | | |
|---|---|------------------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' Business annual costs: £7.5 million Local Authority annual costs: £13.6 million Central Government costs: £4.4 million |
| | One-off (Transition) | Yrs | |
| | £ 2.2 million | 5 | |
| | Average Annual Cost (excluding one-off) | | |
| £ 25.5 million | | Total Cost (PV) | £ 258m |
| Other key non-monetised costs by 'main affected groups' None. | | | |

| | | | |
|---|--|---------------------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Business annual benefits: £72.8 million (mid-point) local authority annual benefits: £16 million (mid-point) |
| | One-off | Yrs | |
| | £ | | |
| | Average Annual Benefit (excluding one-off) | | |
| £ 73.4m - £104.4m | | Total Benefit (PV) | £ 744m-1058m |
| Other key non-monetised benefits by 'main affected groups' local authorities: economic and development benefits from hosting a Primary Authority partnership; central government: access to enhanced advice and evidence on local authority enforcement. | | | |

Key Assumptions/Sensitivities/Risks Number of partnerships adopted; scale of cost savings from business and local authorities from LBRO guidance; hours' work entailed in aspects of Primary Authority schemes; extent to which Partnerships take up cost recovery power.

| | | | |
|-------------------------|-------------------------|--|---|
| Price Base Year 2005 | Time Period Years 15 | Net Benefit Range (NPV) £ 486m-800m | NET BENEFIT (NPV Best estimate) £ 643m |
|-------------------------|-------------------------|--|---|

| | | | | |
|---|-------------|-------------|--------------|-------------|
| What is the geographic coverage of the policy/option? | UK-wide | | | |
| On what date will the policy be implemented? | 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? | £ 0 | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro £0 | Small £0 | Medium £0 | Large £0 |
| Are any of these organisations exempt? | No | No | N/A | N/A |

| | | | |
|---|-----|-----------------------|------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | |
| Increase of | £ 0 | Decrease of | £ 0 |
| | | Net Impact | £ 0 |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Parts One and Two: Regulatory Enforcement by Local Authorities

Local Better Regulation Office Impact: Summary

| Category | Annual Costs² |
|--------------------------|----------------------------------|
| Business costs | £7.5m |
| Business benefits | £59.2m-£86.4m |
| Local Authority costs | £13.6m |
| Local Authority benefits | £14.2m-£17.9m |
| Central Government Costs | £4.4m |
| Total Annual Costs | £25.4m |
| Total Annual Benefits | £73.4m-£104.3m |
| Net Annual Benefits | £45.4m-£73.4m |
| | One-off costs³ |
| Business | £0.3 m |
| Local Authorities | £1.8 m |

Introduction / Rationale for intervention

15. Fuller background to the policy is addressed in the consultation document which introduced the draft Bill published in May 2007, which is available at: http://bre.berr.gov.uk/regulation/documents/consultation/pdf/res_bill.pdf

16. The Hampton Report⁴ argued that the diffuse structure of local authority regulation increases uncertainty and administrative burdens for business. Uncoordinated action on the ground means that businesses can receive unnecessary inspections or even conflicting advice. The lack of a central communications function results in duplication of effort at local level.

17. The Report identified a number of related issues in the enforcement of regulation, including the following points relating to local enforcement:

² Figures in the table are rounded to the nearest £100,000

³ We anticipate that these will be spread over five years.

⁴ <http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf>, p. 4.

- a. the use of risk assessment is patchy;
- b. regulators do not give enough emphasis to providing advice in order to secure compliance;
- c. the structure of regulators, particularly at local level, is complex, prevents joining up, and discourages business-responsive behaviour;
- d. there are too many interfaces between businesses and regulators.

18. The Government accepted the recommendations of the Report in full. It is taking forward a number of mergers and other initiatives to take these forward at the level of the national regulators. Part 1 of the Bill will create a statutory NDPB, the Local Better Regulation Office (LBRO), with a remit to deliver the Hampton recommendations which affect regulatory enforcement at the specifically local level.

Policy objectives

19. Working in partnership with local authorities, it is proposed that the creation of a Local Better Regulation Office should tackle some of the key issues in local government enforcement identified by Hampton, by promoting:

- a. more effective priority-setting by central government
- b. more consistent levels of inspection and enforcement
- c. more consistency in the application of the Primary Authority Principle
- d. more co-ordinated risk assessment.

20. LBRO's intended effects include: savings in the administrative burdens facing multi-site businesses, clarity and guidance for local authorities on how to implement central government priorities, and savings for small and medium size enterprises who will benefit from LBRO's work to promote more consistent enforcement activity.

The LBRO impact assessment: options and methodology

21. This impact assessment considers the one policy option being taken forward in the Regulatory Enforcement and Sanctions Bill: the creation of LBRO with a range of statutory powers, benchmarked against the status quo. Alternative options are not considered in detail; LBRO will not be able to function effectively except as a statutory NDPB, and its role in relation to Primary Authority partnerships is intended to supersede existing voluntary arrangements.

22. LBRO will fill a number of gaps in this area, where currently no statutory body has a role. It will:

- a. give a statutory basis for Home/Lead Partnerships between multi-site businesses and particular local authorities;
- b. give statutory guidance to local authorities with a view to promoting better regulation;
- c. support the spread of best practice in other ways; and
- d. give statutory advice to government on legislation enforced at local level, and the priorities that the centre should set for local government enforcement.

23. There have been a number of voluntary and non-regulatory initiatives to address these issues.

24. Home / Lead Partnerships. The Hampton Report considered the difficulties associated with existing, non-statutory, approaches to the Home Authority Principle, an informal agreement between local authorities that tries to correct the inevitable problems that arise from cross-boundary issues in trading standards and food.⁵ He noted that problems of inconsistency still arise despite the existence of the agreement. Part 2 of the Bill is relevant here.

25. Guidance and Best Practice. A number of bodies give guidance to local authorities in support of their regulatory functions. These include central government, independent regulators, as well as representatives of the sector themselves, like LACORS. LBRO is not intended to supersede these arrangements; on the contrary, it will be working in close contact with them. It is however expected that the existence of a body with a specific statutory remit for promoting better regulation at the local level will provide an additional impetus and focus for more co-ordinated guidance and best practice. Part 1 of the Bill is relevant here.

26. Statutory Advice to Government. The Hampton Report highlighted the problems that arise for local authority regulatory services when they are asked to implement multiple uncoordinated requirements set by the many central government departments with an interest in their work. He also highlighted the failure of initiatives by central government in the past to set a more strategic lead.⁶ With Hampton's recommendations in mind, the Government asked Peter Rogers to review the evidence relating to regulatory enforcement by local authorities, and to make recommendations on the national enforcement priorities for local government: he reported in March 2007, recommending six national enforcement priorities,⁷ and the importance of an ongoing role for LBRO in continuing to give evidence-based and independent advice to Ministers on priorities on a regular basis, as well as advising central government and local authorities on implementation of them and associated best practice. Part 1 of the Bill is relevant here.

27. The Government believes therefore that there is no satisfactory alternative to an approach which is based on the creation of a strategic, expert, NDPB with a statutory objective to promote better regulation at local level in all these areas.

28. A number of assumptions were explicitly set out in the draft IA⁸ and consultees were specifically asked to comment on them; throughout the assessment these have been revised in the light of comments received. Participants in working groups from business and the enforcement community were also invited to make explicit comment on the Impact Assessment throughout the consultation. Where no comment was received, or where no alternative was suggested, the relevant figures have been used again, or in some cases have been revised for prudence (that is,

⁵ Hampton Report, 74.

⁶ Hampton Report, 71.

⁷ Air quality, Alcohol licensing, Hygiene of food businesses, Improving health at work, Fair trading, and Animal and public health. See: http://bre.berr.gov.uk/regulation/reviewing_regulation/rogers_review/index.asp

⁸ Published May 2007.

revised in such a way that the potential costs are emphasised, or the expected benefits are diminished) as appropriate.

Key groups affected by the LBRO provisions

29. Three main groups will benefit from the LBRO provisions: business, local authorities, and central government. Consumers and the public more generally will also benefit from LBRO's work in promoting a more effective regulatory regime.

Cost Benefit Analysis

Costs and Benefits for Business

30. Business will be the major beneficiary of LBRO's work. Larger businesses, particularly those operating over more than one local authority area will benefit from the new approach to Primary Authority Partnerships; smaller businesses, including those operating only in one enforcement area, will benefit from LBRO's work to promote innovative and more effective approaches to regulatory enforcement.

Local Better Regulation Office option: Costs and Benefits

31. There will be no obligatory costs for businesses associated with the LBRO proposals. It will be for them to decide if they wish to take up a Primary Authority Partnership with a local authority.

Number of multi-site businesses involved

32. This section deals with the minimal costs for businesses arising from the operation of the Primary Authority Partnership. For a fuller discussion of the scheme, see the discussion under business benefits, below.

33. It is estimated that there are 30,000 businesses operating across local authority boundaries in the UK.⁹ It is difficult to estimate the number of Partnerships that the LBRO proposals would have in scope; much will depend on LBRO's developing approach in practice. The majority of these operate only across a handful of authorities, and may not wish to take part in Primary Authority Partnerships. We believe, on the basis of consultation and changes to the draft Bill, that there will in the longer term be 900 registered partnerships.¹⁰ We estimate that, on average, these will be developed with firms that operate across an average of 200 local authorities each.¹¹

⁹ Source: Inter Departmental Business Register, March 2006.

¹⁰ The draft IA predicted that there would be 800. This modification reflects the wider territorial scope of the final Bill (which applies in Northern Ireland and Scotland on reserved matters) and the fact that businesses operating on a relatively small scale are unlikely to find partnerships cost-effective. Few alternative figures were offered by consultees: the likely level of take-up has been discussed with stakeholders throughout the consultation document. Whatever the final number, the costs and benefits would be proportionate to those set out here.

¹¹ This assumption has been modified upwards from the 130 in the draft impact assessment, reflecting views in the consultation that the number of sites would be considerably larger. However, many schemes will be purely local or regional in scope, and this figure therefore falls short of the 450 total local authorities involved potentially.

34. There will be some start up costs involved for businesses developing a new partnership with a local authority; this is likely to amount, at most, to a few days' liaison with the authority concerned, compared to the amount of routine contact which is necessary under existing arrangements. Throughout this assessment, we have adopted the "senior manager" hourly tariff adopted by the Better Regulation Executive Administrative Burdens Measurement exercise in 2005/6 to measure salary costs in regulation involved for business. Assuming approximately three days' work, the total cost to business is about £340¹² per partnership. For the 900 partnerships, the total would be approximately £300,000 in one-off costs for business.

35. We expect that the level of contact required with the Partnership Authority on an ongoing basis will be more than compensated by reduced interaction in other local authorities: in other words, the ongoing, annual, work associated with Partnerships for businesses will be less costly than the status quo. Some of these benefits are quantified below.

Cost recovery

36. It has been made clear on the face of the Bill that authorities taking on the role will be entitled to recover costs from the businesses involved. This will mean an overall cost to business of up to **£7.5 million** (the basis for this figure, and the result in terms of the related costs to the local authority, is discussed under local government costs and benefits below).¹³

Primary Authority Scheme

Consistency of advice

37. Local Authorities, under the new proposals, will be required to contact Primary Authorities before proceeding with enforcement action of various sorts - seeking their consent to proceed, or alternatively pursuing arbitration through LBRO. The intent is to create greater certainty and consistency for businesses operating across local authority boundaries. Informal consultation with businesses of different sizes has shown that losses from contradictory advice (where businesses begin to plan on the basis of advice given by their Primary Authority, only for this to be contradicted elsewhere) on particular occasions can result in losses up to £100,000, both in lost stock and in wasted planning time. Including all the associated benefits (including savings in potential court costs with LBRO providing a fast track arbitration process, and in increased confidence in planning) we assume here – conservatively – that LBRO will provide a net saving to business of £15,000 per incident of conflicting advice. Research and informal consultation suggest that there are a range of such incidents, from two to four a year per partnership.¹⁴ The annual

¹² The senior manager tariff is £16.23 per hour. For the background on Administrative Burdens Reduction, see for instance http://www.dca.gov.uk/pubs/reports/abr_tech_sum.pdf, p. 19. The draft Bill IA assumed that 2 days work would be involved; no comments were received, but the figure has been revised upwards for conservatism to three days' work of seven hours each.

¹³ This is an estimate and should in no sense be taken as a basis for charging on particular schemes. The costs of individual schemes will vary widely, reflecting factors like the size of the business, the number of local authorities involved, and the business's level of compliance with the underlying regulations. The same figure is included as a local authority benefit, below.

¹⁴ DTI consultation suggested that businesses found that losses ranged between a few thousand and, in a few cases which would entail national revision of a policy or procedure, as much as £100,000, and that these would happen 2-4 times a year. <http://www.dti.gov.uk/files/file37268.pdf>. The consultation on the draft Bill did not elicit any alternative figures in the formal

saving to business resulting from attempts to remedy inconsistency in this way would therefore fall in a range of at least between about **£24.3 million** and **£48.6 million** annually.¹⁵

Duty to contact the Primary Authority: other benefits for business

38. As well as these particular benefits, the requirement on enforcing authorities to contact the Primary Authority will have a number of additional benefits for business, enhancing consistency of treatment more generally, and more streamlined enforcement action across the country. It is hard to quantify these benefits, some of which are already delivered under informal referral processes in existing Partnerships in any case, but they are likely to be considerable. Communication between local authorities is likely to happen in practice earlier than is required by the strict statutory requirements, improving intelligence-sharing in a way that will help enhance business's national compliance systems. They have not been quantified here.

Inspection Plans

39. Multi-site businesses will also benefit from nationwide application of a consistent approach to risk assessment where an Inspection Plan forms part of the partnership. There will be consequent annual savings where, as a result, they are subject to more targeted, less indiscriminate, inspection and enforcement elsewhere. Not all Primary Authority Partnerships will necessarily adopt this part of the package, but, making conservative assumptions that:

- this will result in a reduction of 5 to 10 hours' work per business¹⁶ in those authorities where they operate (which would include the costs of inspection and other routine activity which a more intelligence-led and targeted approach would make unnecessary)¹⁷;
- that one-fifth¹⁸ of the total number of partnerships will involve a risk assessment component.

The overall savings for the multi-site businesses involved are likely to be above **£2.9 million** to **£5.8 million** per year.¹⁹

response; further discussions with a number of businesses throughout the consultation process have confirmed that losses on this scale and with this level of frequency are common.

¹⁵ That is, 2-4 incidents per year at £15,000 each over 900 partnerships. The total figures are likely to be higher. A small adjustment downwards (of 10%) from the highest possible savings has been made to reflect the fact that while the statutory contact provision will resolve many issues in line with the initial advice given to the firm, LBRO will not always find with the Primary Authority in the few cases that will go to arbitration, so that some of these costs will remain. This is likely to be an underestimate, as it reflects the position of businesses already involved in voluntary schemes; benefits for those with a new Partnership are likely to be considerably greater. The scheme is also likely to bring wider benefits in terms of information and intelligence-sharing beyond the strict terms of the statutory requirements.

¹⁶ To contextualise this assumption, the Hampton Report found that the inspectorates within its scope, national and local, conducted 3 million inspections per year: p. 3. No comments were received on our published assumption of 10 hours; for conservatism, we provide a range of potential savings starting at 5 hours.

¹⁷ This assumption is conservative, as many of the larger multi-site businesses will of course have multiple outlets within particular local authority areas which individually would experience comparable benefits.

¹⁸ We assumed one-eighth of businesses in the draft IA; responses from business suggest that take-up is likely to be larger.

¹⁹ That is, 5 to 10 hours work at the above hourly tariff, for each of 180 (one-fifth of partnerships) operating across 200 authorities each.

Other LBRO functions

40. All businesses, including SMEs, will derive substantial benefits from LBRO's other functions:

- guidance to local authorities will promote the spread of best practice in ways that reduces burdens to business;
- work on national priorities will create greater certainty for local authority enforcement, indirectly promoting greater certainty for businesses who are subject to regulation;
- LBRO's advisory function will improve the evidence base available to Government when it prepares new policies and reviews existing ones, ensuring that the regulatory frameworks established for local authorities by the centre do not in themselves impose unnecessary burdens.

41. We anticipate that LBRO's impact here will be significant for the economy as a whole. Potentially, for instance, LBRO could:

- a. set out guidance to local authorities proposing a more uniform and less burdensome approach for national implementation where currently practice is inconsistent across the country in relation to a particular regulation;
- b. advise Government on cases where the existing framework for local authority enforcement makes it difficult for local authorities to adopt more risk-based and advisory approaches;
- c. give more clarity to local authorities as to how central government's regulatory priorities should be taken forward
- d. work with local authorities to develop schemes to promote more targeted advice geared to harder-to-reach small businesses.

42. It is harder to quantify the impact of these initiatives than those under the Primary Authority scheme, especially as initiatives here are likely to overlap with work which will be taken forward by local authorities following the implementation of the Regulators' Compliance Code under Section 22 of the Legislative and Regulatory Reform Act 2006. However, the Government expects the cumulative additional benefits of this work to be very substantial.

43. There are over 3.9 million business enterprises operating in England and Wales²⁰. We cannot predict the exact directions that LBRO's work will take, but its work under all these headings is likely to mean significant savings of time and money for a large number of these businesses. We anticipate that the saving will amount to at least **£32 million** per year.²¹

Administrative Burdens Baseline

44. LBRO's work is likely to have an important positive impact on the Administrative Burdens baseline affecting multi-site businesses in particular. The most significant savings of the Primary Authority partnerships are likely to be policy costs, i.e. the costs arising from the need to implement regulatory requirements procedures in a way that is not consistent across the country. LBRO guidance and other work with local authorities are likely to promote better regulation in a way that will have a positive administrative burdens impact (e.g. working with local authorities on form design to reduce the administrative overheads associated with particular regulatory frameworks). It is not possible to estimate the particular impacts involved, as LBRO will be an independent body pursuing its own lines of inquiry, but it is highly unlikely that there will be any new significant administrative burden costs. These will of course be monitored as part of the Government's ongoing commitment to reduce them.

| Parts 1 and 2 Business Annual Impact: summary ²² | |
|---|---------------------------------------|
| Business annual benefits | Total: £59.2m-£86.4 million |
| Consistency: advice | £24.3 m-£48.6m |
| Consistency: risk assessment | £2.9 m - £5.8 m |
| Guidance and Priorities | £32 million |
| Business annual costs | Total: £7.5 million |
| Primary Authority cost recovery | £7.5 million |
| Net benefits | £51.7 million to £78.9 million |
| One off costs (spread over 5 years) | £300,000 |

²⁰ Source: the Small Business Service, 2005: <http://www.dtiStats.net/smes/200612/index.asp>

²¹ The precise impact is difficult to model, but significant, and should therefore feature in any realistic assessment of LBRO's work with business. The rationale for this assumption follows. Our draft IA explicitly consulted on the assumption that LBRO's work would save one hour's work annually for all businesses in the longer term – meaning an overall reduction of £64 million. No comments were made on this assumption, but it is of course unlikely that LBRO will have uniform benefits across all businesses in this way. Some will experience significantly more, many will experience less, if any. A more conservative prediction would be a comparable saving for half of these businesses only: resulting overall in benefits of approximately **£32 million** for all businesses. An alternative model might look at a different factor, the consequential benefits to other businesses following from the findings of LBRO's arbitration role, which is expected to give greater clarity on the regulations for all businesses, as the findings of arbitration cases are disseminated more widely. Retailers are likely to benefit particularly strongly from LBRO's work here. There are 183,830 VAT-registered retailers in the UK (source: OFT, quoted in Rogers Review: 2007). Assuming that all retailers benefit from just 0.5% of the benefits for individual firms directly participating in the Primary Authority scheme (on the basis that they will impact for the most part on single shops rather than chains of 200 outlets or more), this would give benefits in a range from **£25 to £50 million** across the board; £32 million falls at the lower end of this range.

²² This table addresses annually recurring costs and benefits. Figures are rounded to the nearest £100,000.

Public Sector Costs and Benefits

Costs and Benefits to Local Authorities

Local Better Regulation Office Option: Costs and Benefits

45. The most significant cost for particular local authorities will be the administration of Primary Authority Partnerships. The effect of more systematic partnerships will however be a reduction in the use of enforcement resources across the board as partnerships come to be put on a more systematic basis, with the results of their work accessible to all other authorities. The overall savings in routine work across the country will be considerable, outweighing the aggregate costs of individual schemes. Other aspects of LBRO's work will support better communication and feedback between local and central government, directly promoting a less burdensome operating environment for local authority regulatory services themselves.

46. The following data and assumptions will be used throughout this part of the assessment:

- there are approximately 450 local authorities with enforcement responsibilities across the UK;
- average hourly cost of the work of a Trading Standards or Environmental Health Officer: approximately £27.75²³;
- average number of enforcement authorities across which a multi-site business operates: 200; and
- in the longer term, there will be 900 Partnerships.

Primary Authority Partnerships

Costs

47. The evidence regarding the cost of administering existing partnerships is not consistent; much relates to experiences with the small number of firms with the largest national presence. Our estimate of costs needs to reflect the whole range of businesses, the majority of which operate on a smaller scale.

Start up costs

48. We estimate that a typical Primary Authority start-up would involve a single officer's time for 75 hours²⁴ - i.e. a cost of approximately £2100 per scheme. In total,

²³ There was a consensus amongst local authorities that the figure in the draft Bill IA was too low (£18.50). The figure has been revised upwards accordingly, by 50%; this represents the additional marginal salary and on-costs involved, but does not include overheads which would be incurred in any case like building and IT costs.

²⁴ That is two weeks' full time work; the estimate is based on discussion with local authorities operating a range of schemes. In the consultation, no comment on this specific figure in the draft IA was made.

900 new schemes would cost local authorities approximately £1.9 million. We expect the majority of these costs to be spread over at least five years.

Enforcement actions: requirement to contact, and arbitration

49. The existing research relating to the costs of Primary Authority schemes deals with “referrals” – which are an important element of the existing, largely non-statutory Partnerships, but will not form part of the statutory measures proposed in the Bill. Referrals take place where enforcing authorities refer particular complaints and other issues to the Primary Authority for a particular firm for follow-up. Partnerships set up in the future are also likely to have a “referrals” component (which can be of enormous value both to business and to the regulatory community, by rationalising the channels of communication between them) but these will be purely voluntary between the authorities concerned, and so the associated costs and benefits are not dealt with here. However, this will help establish the likely scale of work under the LBRO proposals. DTI research and our own discussions with authorities has established that there is considerable variations in the scale of work for authorities processing referrals. Officers supporting some Partnerships had to field as many as 300 referrals in a year; in other cases only a handful of cases were referred.²⁵

50. The LBRO proposals are rather narrower in scope than the existing referrals-based schemes (though there will be some overlap): the requirement to consult the Primary Authority has effect only before the Enforcing Authority considers there has been a breach of the regulations, and proposes to take action accordingly. In other words, the LBRO proposals relate purely to more formal cases where there is a real prospect of enforcement action. Regulatory Services initiate a large number (tens of thousands at least, depending on definitions)²⁶ of enforcement actions in a given year. Some of these will be against smaller businesses, some of them will relate to private citizens. For the purposes of this assessment we will assume that nationally there will be, on average, 75 events per year²⁷ where there is a prospect of enforcement action against a particular business participating in a Primary Authority Partnership, thus triggering the statutory requirement to consult the Primary Authority in a particular partnership. The majority of these cases will be routine and reflecting this, we anticipate that on average these will take three hours’ additional work for the enforcing authority above and beyond the work that already goes into enforcement in any case. The result will be an annual cost of **£5.6 million**.²⁸ The follow-up costs for Primary Authorities are dealt with below.

51. We expect that arbitration will happen in a very small number of cases; and therefore we assume an average time cost of one week’s officer time per local

²⁵ Source: discussion with business representatives and DTI research published at: <http://www.dti.gov.uk/files/file37268.pdf>

²⁶ From CIPFA statistics for 2003-4, as used by Hampton Report.

²⁷ The figure of 100 used in the draft Bill IA has been revised downwards, reflecting the inclusion of a number of additional exemptions (including a de minimis exemption) to be made in the scheme set out in the final Bill. This will reduce the number of actions which require consultation.

²⁸ That is, 900 partnerships generating 75 “triggers” each, necessitating three hours’ work at the local authority tariff set out above. The consultation revealed a consensus amongst local authorities that the half-hour originally assumed was unrealistic – though we would not expect the consultation process to require significantly more information-gathering than is already required for an enforcement action. The time involved reflects the need for a meaningful consultation process.

authority per year. On this basis, we anticipate that arbitration costs for local authorities should not exceed **£500,000**.²⁹

Costs for the Primary Authority

52. The Primary Authority will have an ongoing advisory function in relation to the business. Often, this would be an important part of its routine relationship with the business in the ordinary course of events in any case, but under the LBRO proposals this work will include follow up from statutory contacts by enforcing authorities and will entail, we assume, an additional 300 hours of officer time over a year per partnership compared to current requirements (approximately one sixth FTE).³⁰ This would entail a national total cost of £7.5 million.³¹ This total is intended to include some annual maintenance of the Inspection Plan where this forms part of the Partnership.

Benefits

Primary Authority

53. The benefits of running a Primary Authority scheme are considerable: they include the wider economic advantages that comes to the local area through the existence of a strategic partnership with a major firm (which is an important element of the “place shaping” vision for local authority services set out in the Local Government White Paper³²). Within regulatory service departments, the benefits also include development opportunities for local staff given the opportunity to engage in ongoing work with a major business. We have not sought to quantify these benefits, but they should be taken into account when considering the overall impact of LBRO’s work on local authorities. Direct cost recovery for Primary Authorities would however directly offset the total cost of administering the scheme: i.e. a transfer of **£7.5 million**, as set out at paragraph 50 above.³³

Enforcing Authorities

54. The costs of the Primary Authority Scheme mentioned above are outweighed as we look to the wider benefits to the local authority regulatory community as a whole, with local authorities across the piece benefiting from the application of the expertise of the local authority best placed to take a strategic overview of how regulation should be applied to a particular firm. The work of an enforcing authority without the benefits of a Primary Authority partnership involves a number of costs: familiarisation, risk assessment, and follow-up work where there are enforcement issues, up to and including prosecution. The work undertaken under each of these headings by the Primary Authority will have a beneficial impact on the workload of all other authorities dealing with the firm.

²⁹ That is, 37.5 hours for each of the 450 authorities at the hourly tariff set out above.

³⁰ The workload of existing schemes varies considerably. This is based on discussions with authorities hosting multiple voluntary partnerships, which suggest a typical range of between 0.1 – 0.25 FTE for an “average” scheme. Some will involve substantially more work; more will involve substantially less.

³¹ 300 hours at the local authority tariff set out above for each of the 900 partnerships.

³² *Strong and prosperous communities: the Local Government White Paper*, 2006, pp 5-21.

³³ There is a risk that some costs will not be recovered where they go out of business. The Government expects that LBRO will continue to monitor the impacts of the scheme.

Inspection Plans

55. Currently, except in the small number of cases where national voluntary agreements exist, local authorities cannot rely on national intelligence about particular multi-site businesses. Consequently, local authorities individually need to engage in intelligence-gathering in order to focus their enforcement efforts. With partnerships addressing the work of firms operating across an average of 200 authorities³⁴, the resulting savings are likely to be considerable: conservatively, we assume that for a given local authority, 2 hours' work³⁵ could be saved with regard to a particular firm per year - as the local authority starts to take advantage of the more targeted approach to regulation suggested by the expert, Primary Authority. Assuming that 180 businesses (that is, one fifth of our total) take up this part of the proposals, the benefits to local authorities from the use of this single risk assessment is likely to be about: **£2 million**.³⁶

Duty to contact the Primary Authority

56. We anticipate that the requirement to contact the Primary Authority (although in itself a cost, see above) will also have quantifiable benefits in terms of resource for the enforcing authority.

57. As things stand, enforcement often proceeds without the awareness of the Home or Lead Authority, sometimes in ways that contradict the advice that the business has been given within its Partnership. It is likely that many enforcement actions – where the facts of the case are straightforward and where the law is clear and agreed – will go ahead much as at present. The LBRO proposals will however affect the number of enforcement actions in a number of ways:

- a. a number of more routine enforcement queries will be abandoned once reference has been made to advice that has been given by the Primary Authority on a particular issue. It is likely that this would save at least several hours of officer time.
- b. with some more difficult issues where there is basic disagreement between the authorities, the matter will go to a time-limited process of arbitration, which will be less costly than prosecution (and without the attendant risks). Such cases - as things stand - would cost a substantial amount of officer time.

58. Regulatory Services officers are engaged in thousands of enforcement actions in a particular year, some of which will relate to smaller businesses, some of which will relate to private citizens.³⁷ It is not clear how many of these relate to multi-site businesses. For this assessment, we will return to the assumption set out above that there will be 2 - 4 cases of conflicting advice per partnership per year. Using this figure over the 900 Partnerships, this range equates to 1800-3600 cases overall where it is likely that LBRO will remove inconsistency, making enforcement

³⁴ Rationale for this assumption set out above.

³⁵ The assumption in the draft IA that five hour's work would be involved has been revised downwards for conservatism.

³⁶ That is, two hours' work at the local authority tariff over the 200 authorities for each of the 180 partnerships involved.

³⁷ See for instance CIPFA statistics for 2003-4, used by the Hampton Report.

unnecessary. To capture the wide range of enforcement activities potentially involved (involving costs up to and potentially including prosecution³⁸), we assume that two week's total officer time is involved in each of these cases.³⁹ This part of the LBRO package is likely therefore to result in a range of quantifiable benefits, ranging from at least: **£3.7 million to £7.5 million.**⁴⁰ There will also be benefits to the enforcing authority following from consultation where there is no conflict, for instance, better intelligence-sharing. For conservatism, we have deliberately not sought to quantify these.

Other LBRO functions: costs and benefits

59. The impacts of LBRO's other functions are harder to quantify, but are likely to have significant benefits. LBRO's continuing work on the Government's priorities for local authority enforcement in the longer term will help streamline and reduce the number of demands placed by the centre upon local authorities. LBRO guidance is likely to focus on more risk-based approaches to enforcement, providing a more consistent message as to how to interpret regulatory frameworks imposed by the centre. LBRO's role as adviser to central government will ensure that issues relating to the use of local authority resources are factored into the policy-making process for regulation at an early stage.

60. In the long run these initiatives are likely to have a significant beneficial impact on senior staff time in local authorities, as the framework set by central government for local authority enforcement becomes more focused and strategic. A conservative assumption would be that, together, these initiatives annually would save local authorities the time of at least one officer for two weeks - 75 hours - after any costs involved in assimilating and reviewing guidance are taken into account. Taken nationally, this represents a benefit of approximately **£940,000**. This is likely to be an underestimate; other benefits are harder to quantify in the absence of detail about LBRO's precise decisions that lie in the future, but are likely to be larger: some nationally-set requirements involving very extensive operational activity are likely to be reformed or removed, for instance.

61. LBRO will also have programme money to spend to promote the spread of good practice. The destination of this money will be for LBRO to decide, but it is likely that some of this money will be of direct benefit to local authorities. This benefit has also not been factored into our assessment.

³⁸ For an indication of the high costs of prosecution to enforcers, see the Impact Assessment prepared for Part 2 of the Bill, below.

³⁹ The true benefits may however be greater; DTI research noted that cases of disagreement under existing arrangements - where the Primary Authority role does not have a statutory footing - results in considerable work for Primary Authorities as well: <http://www.dti.gov.uk/files/file37268.pdf>. In a complete analysis of the benefits, other significant costs, including legal costs and the risk of failed attempts at prosecution, should also be taken into account.

⁴⁰ That is 2-4 times in each of the 900 partnerships, times 75 hour's officer time at the local authority tariff set out at paragraph 44 above.

Part 1 and 2 Local Authority Annual Impact: summary ⁴¹

| | |
|--|----------------------------|
| Local Authority Costs | Total: £13.6 million |
| Requirement to contact PA | £5.6 million |
| Arbitration | £0.5 million |
| Advice and risk asst | £7.5 million |
| Local Authority Benefits | Total: £14.2-£17.9 million |
| Risk Assessment | £2 million |
| Requirement to contact | £3.7-£7.5 million |
| Cost recovery | £7.5 million |
| Other benefits (guidance, priorities, etc) | £940,000 |
| Net annual benefits | £0.5- £4.3 million |
| One-off costs (spread over 5 years) | £1.9 million |

Costs and Benefits to Central Government

62. The only significant cost to central government will be the resources allocated to LBRO itself: **£4.4 million**. LBRO will work to improve the enforcement of regulation at local level as a whole, ensuring that the intended outcomes of regulation are more effectively delivered. There will be significant but largely unquantifiable benefits of specific value to policy makers: for instance, Government Departments will also benefit from LBRO's developing evidence base and risk analysis regarding the priorities for enforcement, allowing them to prioritise their own resources to areas of the greatest risk and impact accordingly. No attempt to quantify these benefits has been made.

Risks and Unintended Consequences

63. Consultation raised two relevant issues that have been addressed in the final Bill. The most important of these were: a) the risk of lack of take-up of the Primary Authority scheme owing to the costs involved for local authorities; b) the unintended consequences following from too wide-ranging a role for the Primary Authority in scrutinising enforcement actions by other local authorities. The former has been addressed by making a power of cost recovery clear on the face of the Bill; the second by giving a more focused power to approve enforcement action on the basis of consistency with advice the authority has already been given. The rationale for this approach is set out in the Government's response to the consultation.⁴² The major risks with the Bill in its final form are: i) that the requirements for consultation between enforcing authorities hamper effective protections; and ii) that of serious divergence between the regulatory systems applying to different firms; iii) that local authorities may fail to take up the opportunity to recover costs for the Primary

⁴¹ This table addresses annually recurring costs and benefits. Figures are rounded to the nearest £100,000.

⁴² http://bre.berr.gov.uk/regulation/documents/res_bill_responses/res_bill_draft.pdf

Authority scheme from the relevant business. LBRO's powers to monitor and modify the schemes will help address this issue.

Post-Implementation Review

64. Part 1 of the Bill specifies that there should be a review of LBRO three years after it comes into effect. The review is likely to address issues including:

- a. the scale of take-up of Primary Authority partnerships;
- b. the extent of the benefits to business arising from the scheme;
- c. any unanticipated burdens on local authorities in maintaining Primary Authority partnerships;
- d. the effectiveness of the cost-recovery mechanism in financing the scheme.

65. Businesses and local authorities will be consulted as part of this process.

66. LBRO will itself be under a statutory obligation not to impose burdens that are unnecessary, nor to maintain those burdens which have become unnecessary, so review will also be a part of its ongoing work.

Summary: Intervention & Options

| | | |
|--|---|--------------------------|
| Department /Agency: BERR | Title: Impact Assessment of Regulatory Enforcement and Sanctions Bill Part 3 | |
| Stage: Final | Version: 2 | Date: 13 May 2008 |
| Related Publications: Regulatory Enforcement and Sanctions Bill; Regulatory Justice: making sanctions effective (November 2006) | | |

Available to view or download at:

http://bre.berr.gov.uk/regulation/enforcement_sanctions_bill/index.asp

Contact for enquiries: Robert Kinnaird

Telephone: 020 7215 0148

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

The Hampton Report (2005) suggested that there was a lack of proportionality in the sanctions available to national and local regulators when dealing with defaulters. Professor Richard Macrory reported to the Government in 2006 on the relevant issues.

He suggested that there was over-reliance on criminal prosecution and a lack of flexibility in some cases, and proposed an extended sanctioning toolkit for regulators. Legislation is required to create the toolkit.

What are the policy objectives and the intended effects?

The Government accepted the recommendations of the Hampton Report and the Macrory Review. The Bill will create an order-making power, whereby regulators can acquire access to an extended suite of administrative sanctions.

These are intended to be an alternative to criminal prosecution, allowing the response by regulators to defaulters to be more proportionate and effective. It is expected that the sanctions will promote increased compliance.

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

Throughout this impact assessment, the status quo has been used as a basis for comparison with the costs and benefits following from the creation of alternative sanctions for criminal offences. The net effect of the "do nothing" option can be taken as cost and benefit neutral.

Non-regulatory options have not been considered - changes to the existing regime can only be delivered through primary legislation.

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

There will be a post-implementation review of the order giving a regulator access to the new sanctions three years after implementation.

Ministerial Sign-off For final proposal/implementation stage Impact 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 impacts of the policy; and (b) that the benefits justify the costs.

Signed by the responsible Minister:



Date: 13/05/2008

Summary: Analysis & Evidence

Policy Option: 1

Description: Impact Assessment of Regulatory Enforcement and Sanctions Bill Part 3

| | | | |
|--|---|------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' Business £30.5 million Regulator £16.7 million Courts None |
| | One-off (Transition) | Yrs | |
| | £ 0 | | |
| | Average Annual Cost (excluding one-off) | | |
| | £ 47.2 million | | Total Cost (PV) £ 368 million |
| Other key non-monetised costs by 'main affected groups' . | | | |

| | | | |
|--|--|------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Business £88.2 million (mid-point) Regulator £38.8 million Consolidated Fund £12 million Courts £6.1 million |
| | One-off | Yrs | |
| | £ 0 | | |
| | Average Annual Benefit (excluding one-off) | | |
| | £ 145 million | | Total Benefit (PV) £ 1,132 million |
| Other key non-monetised benefits by 'main affected groups' Regulators and business should save time and money following the reduction in criminal prosecutions, as a civil sanction should be quicker to impose than a full criminal prosecution. The wider range of sanctions should improve regulatory compliance and should help secure a level playing field for compliant businesses. | | | |

Key Assumptions/Sensitivities/Risks The main risks are that the sanctions will not be taken up by regulators at the level anticipated, or the use of the sanctions will not be in line with the breakdown envisaged...

| | | | |
|-------------------------|-------------------------|---|--|
| Price Base Year 2005 | Time Period Years 15 | Net Benefit Range (NPV) £ 247 million – 1282 million | NET BENEFIT (NPV Best estimate) £ 764 million (mid point) |
|-------------------------|-------------------------|---|--|

| | | | | |
|---|-------|---|--------|-------|
| What is the geographic coverage of the policy/option? | | UK wide | | |
| On what date will the policy be implemented? | | 2008 onwards | | |
| Which organisation(s) will enforce the policy? | | Regulators included in scope of the Bill (schedules 5, 6 and 7) | | |
| 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? | | No | | |
| What is the value of the proposed offsetting measure per year? | | £ N/A | | |
| What is the value of changes in greenhouse gas emissions? | | £ N/A | | |
| Will the proposal have a significant impact on competition? | | No | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large |
| | 0 | 0 | 0 | 0 |
| Are any of these organisations exempt? | No | No | No | No |

| | | | |
|---|-----|-----------------------|------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | |
| Increase of | £ 0 | Decrease of | £ 0 |
| | | Net Impact | £ 0 |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

What is the problem under consideration?

67. The 2005 Hampton Report, *Reducing Administrative Burdens: Effective Inspection and Enforcement* found that regulatory enforcement regimes can be cumbersome and ineffective and recommended that a comprehensive review should take place.

68. As a result, the Government commissioned Professor Richard Macrory to investigate the area. In his final report *Regulatory Justice: Making Sanctions Effective* (November 2006), he laid out his vision for transforming the regulatory sanctioning system in the UK. The proposals in the report were accepted in full by the Government.

69. Professor Macrory found that current enforcement regimes can be ineffective, over-reliant on criminal prosecution and can lack flexibility. He also identified anecdotal evidence of a compliance deficit, whereby non-compliance is identified but no enforcement action is taken because the regulator lacks the appropriate tools to effectively sanction the offence. His recommendations included introducing an alternative system of civil sanctions, or an 'extended sanctioning toolkit' for regulatory offences in order to enable regulators to set up a modern, targeted, fit for purpose sanctioning regime.

Why is government intervention necessary?

70. Sanctions are an important part of any regulatory system. They provide a deterrent and can act as a catalyst to ensure that regulations are complied with. A system of effective penalties can signal that behaviour that jeopardises citizen's health and safety, pollutes the environment, violates the rights of consumers or distorts a free and competitive market is not acceptable and should not be tolerated. It is important that regulators have access to a range of sanctions that lets them ensure the protection of workers, consumers and the environment. Such sanctions need to provide appropriate options for handling the regulatory needs of legitimate business as well as those businesses that intentionally fail to comply with their regulatory obligations.

71. The lack of a modern expanded range of sanctions has led to the following consequences:

72. *Disproportionate response*: In instances where there has been no intent or wilfulness relating to regulatory non-compliance, a criminal prosecution may be a disproportionate response. However, regulators may not have any other sanctions available to them. If the actual or potential consequences of the regulatory non-compliance are serious, regulators may want to take some action, and the public may expect the regulator to take some enforcement action, but the only option available is a criminal prosecution.

73. *Compliance deficit*: The Macrory Review identified anecdotal evidence of a 'compliance deficit', whereby non-compliance is identified but no enforcement action is taken because the regulator lacks the appropriate tools to sanction effectively the offence.

74. *Insufficient deterrent*: the Government is concerned that the current regulatory sanctioning systems prevent effective action from being taken against rogue businesses which, through their non-compliance, undercut or gain an unfair advantage over compliant businesses. Current sanctioning tools are not sufficient to deter the 'truly' criminal or rogue operators, and equally when cases do reach the courts, sentences imposed are not considered by industry to be a sufficient deterrent or punishment for the offences in question. A further concern from the business community is that some regulatory non-compliance is not sanctioned at all.

What are the policy objectives and the intended effects?

75. The Bill will give regulators an extended range of sanctions that will be an alternative to criminal prosecution. This will reduce the reliance on criminal prosecution and allow a more proportionate response.

Intended effects:

- a. risk-based and proportionate approach to enforcement by regulators and securing greater compliance outcomes;
- b. a system of penalties and sanctions that remove the financial benefits of non-compliance;
- c. criminal prosecution reserved for regulatory offences that have serious consequences and for those businesses that deliberately avoid compliance; and
- d. increased public confidence in regulatory regimes.

Territorial Scope

76. The scope of these provisions covers all reserved functions across the UK and all devolved matters for Wales. Devolved matters for Scotland and Northern Ireland are beyond the scope of the Bill.

Local Authorities

77. The proposals will have a minimal impact on local authorities and no foreseen extra financial burdens will be placed upon them. Local authorities already have many of the powers being introduced. It will allow them to operate more efficiently and have a range of sanctions which will enable them to issue a more proportionate response to non-compliance.

Impact of policy options

78. In order to illustrate the impact of the new sanctions we have taken the current enforcement action breakdown of a case regulator⁴³ and have shown how the two policy options could impact upon their enforcement approach.

Option 1 - Base Case

79. Under this option, regulators would continue to use the criminal courts for their prosecutions. In the event of a successful prosecution the regulator would continue to claim its legal and investigative costs.

80. Option 1 provides a benchmark against which the proposals under option 2 can be measured. Tables 1 and 2 below show the current enforcement mix of a typical case regulator.

Table 1 - Case regulator's current enforcement mix and costs

| | Number (per annum) | Proportion (of total enforcement actions) | Costs (£) |
|---------------------------------|--------------------|---|------------|
| Prosecutions | 900 | 12% | £1,575,000 |
| Formal cautions | 450 | 6% | £153,000 |
| Statutory Notices ⁴⁴ | 550 | 7% | £132,000 |
| Warning letters ⁴⁵ | 5,800 | 75% | £290,000 |
| Total | 7,700 | 100% | £2,150,000 |

Table 2 – Cases appealed under existing sanctions

| | Proportion of cases appealed | Number of appeals | Costs (£) |
|-------------------|------------------------------|-------------------|-----------|
| Prosecutions | 2% | 18 | £9,180 |
| Statutory Notices | 5% | 28 | £14,280 |
| Total | 3% | 46 | £23,460 |

Option 2 – Introduction of new administrative sanctions

81. Introduce an additional range of regulatory sanctions as an alternative to criminal prosecution with an appeals mechanism.

⁴³ These estimates are based on figures submitted by a single regulator to the Macrory Review.

⁴⁴ It should be noted that there are many different types of statutory notices with different costs, which makes it difficult to make a precise calculation.

⁴⁵ The number of warning letters does not include warnings given during site inspections

Policy Proposals

82. The Bill provides for four new civil sanctions:

1. Fixed monetary penalty (FMP) notices – under which a regulator will be able to impose a monetary penalty of a fixed amount;
2. Discretionary requirements – which will enable a regulator to impose, by giving a notice, one or more of the following:
 - a variable monetary penalty (VMP) determined by the regulator;
 - a requirement to take specified steps within a stated period to secure that an offence does not continue or happen again (compliance notice); and
 - a requirement to take specified steps within a stated period to secure that the position is restored, so far as possible, to what it would have been if no offence had been committed (restoration notice);
3. Stop notices – which will prevent a business from carrying on an activity described in the notice until it has taken steps to come back into compliance; and
4. Enforcement undertakings – which will enable a business, which a regulator reasonably suspects of having committed an offence, to give an undertaking to a regulator to take one or more corrective actions set out in the undertaking.

83. The new sanctioning powers will apply to a variety of regulators and the criminal regulatory offences that they enforce. The Bill allows the powers to be granted to three classes of regulators: first those listed by name in Schedule 5 to the Bill (such as the Financial Services Authority, the Environment Agency and the Food Standards Agency); secondly those who enforce offences contained in any Act, or the sections of an Act, listed in Schedule 6; and thirdly, those who enforce offences in secondary legislation made under enactments listed in Schedule 7.

84. Defaulters will have a right of appeal to a tribunal against imposition of one of the new sanctions (excluding enforcement undertakings). The tribunal, like the criminal courts, will be able to award costs to either of the parties to the hearing.

85. When imposing a discretionary requirement or stop notice, the regulator will be able to reclaim from the defaulter its costs for investigating the breach of legislation. The defaulter will have a further right of appeal against this.

86. We have assumed that the regulator's workload as set out in table 1 will change in the following ways. First, 60% of the prosecutions will result in one of the new administrative sanction being imposed instead. Secondly, the number of warning letters will be reduced by 20%, as this is where the compliance deficit is most likely to be addressed. For those cases that would in future result in an administrative sanction, we have mirrored the split of cases set out in table 1 in compiling table 4 below.

87. The costs for the case regulator of operating the current available mix of sanctions are estimated at £2.15 million.⁴⁶ The estimated cost of operating the new suite of penalty sanctions is £1.5 million, as set out in Table 4 below. This presents a saving of around £650,000 for the case regulator.

Table 3 - Future penalties powers and costs (excluding increase in enforcement action following closure of compliance deficit)

| | Number (per annum) | Costs (£) |
|----------------------------|---------------------------|-------------------|
| Prosecutions | 360 | £630,000 |
| Formal cautions | 180 | £61,200 |
| Statutory Notices | 550 | £132,000 |
| Warning letters | 4,640 | £232,000 |
| FMPs | 985 | £76,202 |
| VMPs | 394 | £157,430 |
| Enforcement Undertakings | 197 | £92,713 |
| Discretionary Requirements | 296 | £115,816 |
| Stop Notices | 98 | £6,489 |
| Total | 7,700 | £1,503,850 |

⁴⁶ As presented in Table 1.

Analysis and Evidence

88. This section sets out the estimates of the costs and benefits from implementing the proposed penalty regime described under option 2 above. The estimates are primarily based on information submitted to the Macrory Review by UK regulators in July 2006 and recent discussions with relevant departments. The estimates presented below represent the annual figures when all regulators have taken up the additional powers. It is envisaged that it would take several years for all regulators to seek the powers.

89. We have estimated that in 2006 there were approximately 38,900 prosecutions taken for regulatory offences, which fall in scope of the Bill and could in future, be considered for a civil sanction. Of these prosecutions currently being taken, we have estimated that 60 per cent could be dealt with by one of the new civil sanctions, approximately 23,300 cases. The intention is that the criminal prosecution should be reserved for the more serious cases. In practice the proportion may vary, but we think the 60:40 split provides a useful and realistic breakdown between criminal and civil sanctions.

90. As the new range of sanctions available to regulators will be more flexible, proportionate and less time consuming to impose, there is expected to be an increase in the number of businesses sanctioned. In other words, the new sanctions should help to close the 'compliance deficit' identified by Professor Macrory; and so the number of businesses subject to penalties is likely to rise in the short term. We estimate that there will be a 25 per cent increase in the number of sanctions imposed, approximately 29,200 civil cases a year. This figure is based on discussions with regulators during consultation, in reality, the figure may be higher or lower. In the longer term we expect the new sanctions to have a significant deterrent effect and for more businesses to become compliant with the regulatory regimes, which will lead to a fall in the overall incidents of non-compliance and therefore number of enforcement actions.

91. It was not possible to make estimates of the aggregate costs and benefits for each individual regulator or regulatory regime. In order to calculate the impact of Part 3 of the Bill we have used data provided by regulators during the Macrory Review and the consultation on the draft Bill. We have used this data to estimate the average cost of imposing each of the sanctions and the savings associated with fewer court prosecutions. These costs and savings have then been scaled up to reflect the overall number of sanctions being imposed and corresponding reduction in prosecutions.

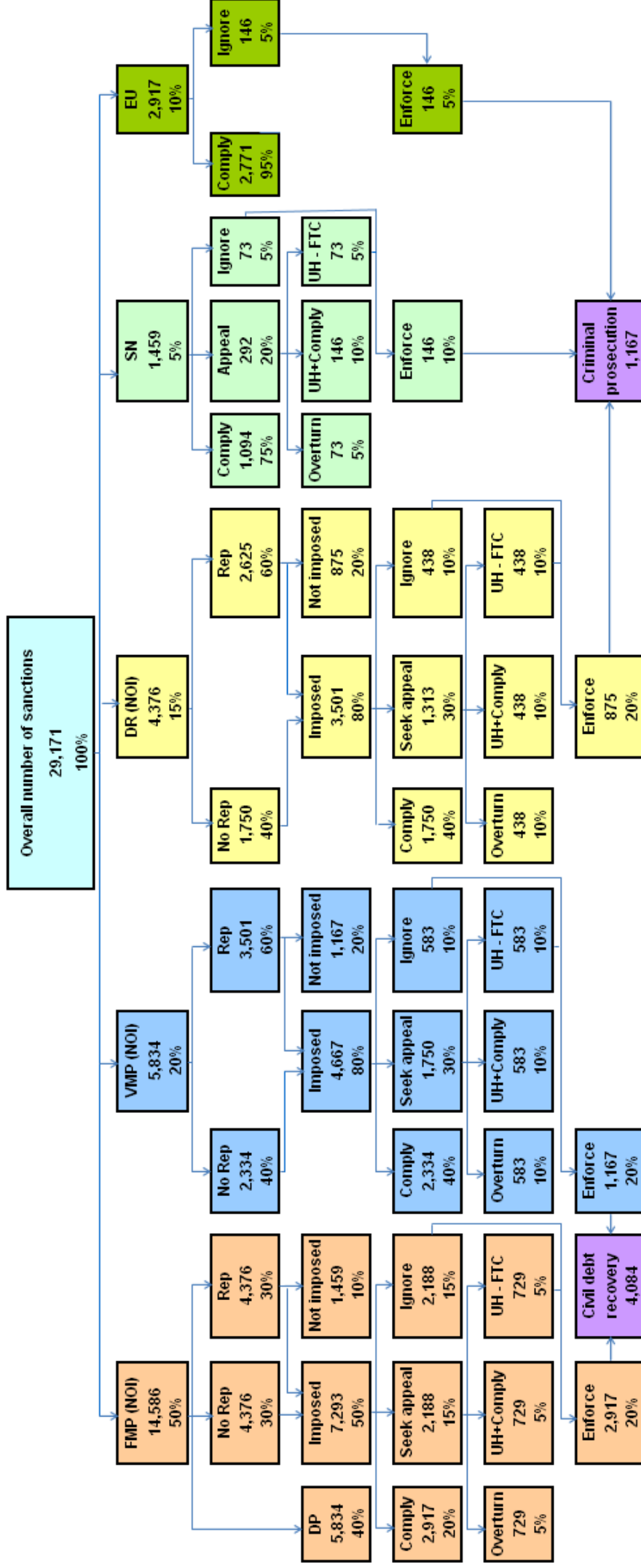
92. Clearly the costs and benefits for regulators and businesses will vary between different regulatory regimes. During consultation we actively sought information from businesses and business organisations on the estimated costs of complying with the current sanction regimes, to provide a baseline for estimating the impact of the proposed changes. However, the information provided was limited. Therefore we have had to estimate the average cost of a criminal prosecution and multiply this by the estimated reduction in the number of prosecutions. We believe the cost and benefits outlined in this document provide a useful indicative guide to the overall impact of Part 3 of the Bill.

93. The cost estimates only cover the sanctioning activities by regulators for one year, and do not include other administrative costs, inspection costs and/or other costs related to the regulator's enforcement activities. These costs will not be affected by the Part 3 proposals. There may also be some training costs for regulators taking up these powers, but these should be minimal.

Proposed breakdown of new administrative sanctions

94. Table 4 below sets out how we envisage the new sanctions will be used in practice. Throughout this assessment the numbers noted in the chart have been rounded.

Table 4 – Analysis of New Case Distribution and Processes



KEY:

- FMP** : Fixed Monetary Penalty
 - VMP** : Variable Monetary Penalty
 - DR** : Discretionary Requirement (non-monetary)
 - SN** : Stop notice
 - EU** : Enforcement Undertaking
 - DP** : Discharge Payment
 - No Rep** : Business makes no representations
 - Rep** : Business makes representations
-
- Imposed** : Sanction imposed by way of final notice
 - Not imposed** : Regulator does not impose sanction
 - Ignore** : Business ignores sanction
 - Overturn** : Sanction overturned by tribunal
 - UH+Comply** : Sanction upheld and the business complies with it.
 - UH-FTC** : Sanction upheld and the business fails to comply with it
 - Enforce** : Regulator takes enforcement action for non compliance with sanction

Breakdown of sanctions

95. In order to gauge the impact of Part 3 of the Bill we have made a number of assumptions regarding the number and type of sanctions imposed. Overall, we estimate that 50 per cent of cases subject to one of the new sanctions (**29,200**) will be dealt with by way of a fixed monetary penalty (**14,600 cases**), 20 per cent will be dealt with by variable monetary penalty (**5,800 cases**), 15 per cent with a non-monetary discretionary requirement (**4,400 cases**)⁴⁷, 10 per cent with an enforcement undertaking (**2,900 cases**) and in five per cent of cases a stop notice will be imposed (**1,500 cases**).

Fixed monetary penalties

96. We have made a number of assumptions regarding the fixed monetary penalties that will be imposed:

N.B. All proportions are based on the total number of cases where a notice of intent to impose a fixed monetary penalty has been issued (14,600 cases).

- Where a regulator decides to impose a fixed monetary penalty, the regulator must first issue a notice of intent outlining the details of the penalty that they intend to impose. We have therefore estimated that there will be approximately **14,600** notices of intent to impose a fixed monetary penalty issued.
- A business will then have the opportunity to a) pay a 'discharge payment' that will remove liability for the sanction, b) make representations to the regulator against the imposition of the sanction or c) do nothing. We have estimated that in 40 per cent of cases (**5,800**) the business will pay the discharge payment, 30 per cent (**4,400 cases**) will make representations and 30 per cent (**4,400 cases**) will do nothing.
- Once the period for making representations or paying a discharge payment has expired, the regulator will then decide whether to impose, vary or withdraw the sanction. We have assumed that in 50 per cent (**7,300 cases**) of cases where a notice of intent to impose a fixed monetary penalty is issued, the penalty will be imposed by way of a final notice. The remaining 50 per cent will either be withdrawn following representations made by the business or will have been discharged by payment of the 'discharge payment'.
- Once a fixed monetary penalty has been imposed, the business will then have the opportunity to appeal against the sanction to a tribunal, pay the penalty or refuse to pay the penalty. We have assumed that in 20 per cent of cases (**2,900 cases**) the business will pay the penalty, in 15 per cent (**2,200 cases**) businesses will appeal against the sanction and 15 per cent (**2,200 cases**) will neither pay the penalty or appeal against the sanction.

⁴⁷ For the sake of this impact assessment we have assumed that there will be no cases where a non-monetary requirement and variable monetary penalty are imposed for the same offence. This is to simplify the estimated costs of the new sanctions. In practice a regulator can impose both elements of the discretionary requirement for the same offence.

- The tribunal can decide to overturn the penalty, uphold it, vary or remit the decision back to the regulator. We have assumed that five per cent of cases (**700 cases**) will be overturned on appeal and 10 per cent (**1,400 cases**) will be upheld at appeal.
- If a business fails to pay any penalty that has been imposed, the regulator will take steps to recover the debt through the civil courts. We have estimated that regulators will pursue all unpaid debts, but will only be successful in recovering the debt in 75 per cent of cases. We have estimated that 20 per cent of cases will require enforcement action to be taken to recover unpaid penalties (2,900 cases), with **2,200 cases** being successful.

Discretionary requirements (variable monetary penalties (VMP) and other discretionary requirements)

97. We have made a number of assumptions regarding the discretionary requirements that will be imposed:

N.B. All proportions are based on the total number of cases where a notice of intent to impose a discretionary requirement has been issued (10,200 cases).

- Where a regulator decides to impose a discretionary requirement, the regulator must first issue a notice of intent outlining the details of the penalty or other requirement that they intend to impose.
- A business will then have the opportunity to make representations to the regulator against the imposition of the sanction. We have assumed that 60 per cent (**6,100 cases**) will make representations and the remaining 40 per cent (**4,100 cases**) will not.
- Once the period for making representations has expired, the regulator will then decide whether to impose, vary or withdraw the sanction. We have estimated that 80 per cent (**8,200 cases**) of cases where a notice of intent has been issued, will result in a discretionary requirement being imposed – **4,700** variable monetary penalties and **3,500** other discretionary requirements. The remaining 20 per cent will be withdrawn by the regulator following representations made by the business.
- Once a discretionary requirement has been imposed, the business will then have the opportunity to appeal against the sanction to a tribunal, pay the penalty or otherwise comply with the requirement, or it may refuse to pay the penalty or comply with the requirement. We have assumed that in 40 per cent of cases (**4,100 cases**) the business will pay the penalty or comply with the requirement, in 30 per cent of cases (**3,100 cases**) the business will appeal against the sanction and in 10 per cent of cases (**1,000 cases**) the business will not pay the penalty, comply with the requirement or appeal.
- The tribunal can decide to overturn the sanction, uphold it, vary it or remit the decision back to the regulator. For the purposes of this assessment, we

have assumed that in 10 per cent of cases (**1,000 cases**) the discretionary requirement will be overturned at appeal and the remaining 20 per cent (**2,000**) will be upheld at appeal.

- If a business fails to pay a variable monetary penalty that has been imposed, the regulator will take steps to recover the debt through the civil courts. We have estimated that enforcement action will be taken in 20 per cent of cases where a variable monetary penalty has been imposed (**1,200 cases**). Where a non-monetary penalty has been imposed, a regulator will have the option of imposing a non-compliance penalty. Alternatively, where a non-monetary penalty has been imposed alone and a monetary penalty has not been imposed as well, the regulator may seek a criminal prosecution for the original offence. For the sake of this assessment we have assumed that where a business has failed to comply non-monetary requirement, regulators will seek a criminal prosecution in all cases (**900 cases**).

Stop notices

98. We have made a number of assumptions regarding the stop notice that will be imposed:

N.B. All proportions are based on the total number of cases where a stop notice is imposed (1,500 cases).

- Unlike the other sanctions, due to the seriousness of the harm that is being cause or could be caused, businesses will not be able to make representations to the regulator against the imposition of a stop notice.
- Businesses will be able to appeal against the imposition of stop notice to an independent tribunal. We estimate that 20 per cent of businesses (**300 cases**) will appeal against the imposition of a stop notice.
- The tribunal can decide to overturn the notice, uphold it, vary or remit the decision back to the regulator. For the purposes of this assessment, we have assumed that five per cent of cases (**100 cases**) will be overturned at appeal and 15 per cent (**200 cases**) will be upheld.
- A business will be guilty of a criminal offence if they fail to comply with a stop notice, We estimate that ten per cent of business will fail to comply with a notice, resulting in **150** prosecutions.

Enforcement undertakings

99. We have made a number of assumptions regarding the enforcement undertakings that will be accepted:

100. N.B. All proportions are based on the total number of cases where an enforcement undertaking is offered by the business and accepted by the regulator (2,900 cases).

- A business can offer an enforcement undertaking at any stage prior to any other sanction being imposed. This could be before or after the issuing of a notice of intent for an alternative sanction. We have estimated that **2,900** enforcement undertakings will be accepted.
- While there is no formal stage of representations in respect of enforcement undertakings, there will inevitably need to be some form of discussion between the regulator and business in order to agree the undertakings. For the purposes of this assessment we have included a cost for this discussion for both regulators and business in all cases (**2,900 cases**), which is based on the cost of making representations against a discretionary requirement.
- There is no right of appeal against an enforcement undertaking, as the business will have voluntarily offered it.

101. Where a business fails to fulfil its undertaking, the regulator can either seek criminal prosecution for the original offence or impose an alternative administrative sanction. For the purposes of this assessment we have assumed that, businesses will fail to fulfil their undertakings in five per cent of cases (**146 cases**) and regulators will seek a criminal prosecution in every case.

IMPACT ON BUSINESS

102. The only businesses that will be affected by either the current system of criminal prosecution or the future alternative system of administrative sanctions are those that fail to comply with a regulatory regime. Compliant businesses will be largely unaffected by the proposals.

103. The introduction of the new sanctions will bring a number of costs and benefits for businesses.

Savings from the reduction in court costs

104. The main benefit to business from the introduction of the new sanctions will stem from the reduction criminal prosecutions; businesses will save on the costs associated with defending themselves in court cases. As already outlined, we anticipate approximately 22,200 fewer cases going through the criminal courts each year. This number is based on 60 per cent of the current prosecutions in scope (approximately 23,300 cases), less the number of prosecutions that will revert to criminal prosecution following non-compliance with a civil sanction (1,000 cases) and the number of prosecutions taken following failure to comply with a stop notice (150 cases)

105. The benefits to businesses of this reduction are estimated to be in the order of £25 million to £152 million per year.⁴⁸ Taking the mid-point we can assume an estimated saving of **£88 million**.

Cost of paying new monetary penalties

106. Businesses are already liable to pay fines following conviction in the criminal courts, so in terms of payment of monetary penalties this will not be a new burden. However, following the introduction of the new civil sanctions, we expect the number of enforcement actions taken to increase, as the compliance deficit is closed (estimated 25 per cent increase, see paragraph 90). We estimate that there will be around 3,900 new penalties imposed, generating approximately **£12 million a year**.⁴⁹

⁴⁸ The estimate is based on a reduction of 22,169 cases being criminally prosecuted per year. We have calculated a range based on 4 to 20 hours legal representation per case at £220 per hour (illustrative figure provided by a legal firm) and 1 to 10 days of two employees time at £16.23 per hour (hourly tariff for senior manager hourly pay costs was adopted by the Government as part of its Administrative Burdens Measurement exercise in 2005-6. See for instance http://www.dca.gov.uk/pubs/reports/abr_tech_sum.pdf, p. 19). Clearly the resolution of court cases can vary considerably depending on the case. We have provided a range of savings to reflect this, but have used the mid-point for the purposes of calculating the overall cost/benefit of Part Three of the Bill.

⁴⁹ This figure is based on 1,459 businesses paying a £750 discharge payment, 1458 businesses paying a £1,000 fixed monetary penalty and 1,021 businesses paying a £10,000 variable monetary penalty. For the purposes of this assessment we have assumed the penalties will be set at these rates, but in reality of course, they are likely to vary.

Cost of making representations against a sanction

107. We estimate that the total cost to business of making representations against the imposition of a sanction will be **£10.6 million a year**⁵⁰.

Cost of appealing against a sanction

108. A business will have the right to appeal to a tribunal against the decision to impose a fixed monetary penalty, a discretionary requirement and a stop notice. There is no right of appeal against an enforcement undertaking, as the business will have voluntarily offered the undertaking.

109. We estimate that in total, the cost of preparing for an appeal against a sanction will cost business **£4 million a year**.⁵¹

110. The tribunal will have the power to award the costs of and incidental to the tribunal hearing⁵². We have assumed that for unsuccessful appeals the defaulter will be ordered to pay the full cost of the hearing, although in practice this will be at the discretion of the tribunal. **This amounts to around £1.4 million a year**.⁵³

Cost of enforcement action

111. There will be a number of businesses that despite losing their appeal will refuse to pay the outstanding monetary penalty, at which point the regulator is assumed to undertake enforcement action. These cases are likely to be registered automatically in the county courts and so will have no cost implications for business or regulators. However, to start the recovery process a regulator will have to pay £55 for a warrant of execution. This cost will be transferred to the business when they pay the penalty. Assuming that enforcement action is successful in three-quarters of cases, this amounts to **approximately £170,000 per year**.⁵⁴

112. For the purposes of this assessment, where a business fails to comply with a non-monetary sanction, we have assumed that the regulator will seek a criminal

⁵⁰ This figure is based on 4,376 businesses making representations against fixed monetary penalties, 6,126 businesses making representations against discretionary requirements and 2,917 businesses holding discussions with regulators when offering enforcement undertakings. For fixed monetary penalties, we have assumed that representations against a fixed monetary penalties will require, on average, two hours of an employees time at £16.23 per hour and two hours of legal costs at £220 per hour- £472 per fixed monetary penalty. For discretionary requirements (variable monetary penalties and other requirements) and enforcement undertakings we have assumed that representations will require, on average, 7½ hours of an employees time at £16.23 per hour and 3.75 hours of legal costs at £220 per hour - £945 per sanction.

⁵¹ This figure is based on 2,188 businesses appealing against fixed monetary penalties, 3,063 businesses appealing against discretionary requirements and 292 businesses appealing against stop notices. For fixed monetary penalties, we have assumed that appealing against a fixed monetary penalties will require, on average, two hours of an employees time at £16.23 per hour and two hours of legal costs at £220 per hour- £472 per fixed monetary penalty. For discretionary requirements (variable monetary penalties and other requirements) and stop notices, we have assumed that representations will require, on average, 3.75 hours of an employees time at £16.23 per hour and 3.75 hours of legal costs at £220 per hour - £886 per sanction.

⁵² *Tribunals, Courts and Enforcement Act 2007 section 29*

⁵³ This figure is based on 3,719 unsuccessful cases being ordered to pay £363 per case (average cost supplied by Ministry of Justice).

⁵⁴ This figure is based on 4,084 businesses paying the £55 fee for the warrant of execution.

prosecution for the original offence or prosecute the business for failing to comply with a stop notice. We have not provided a cost here, as these cases were taken into account when calculating the savings associated with the reduction in the number of cases going through the criminal courts (see paragraph 104).

Cost of recovered regulators' investigative costs

113. Under the current system, in the event of a successful prosecution the criminal courts can award a regulator its costs in investigating the offence. So as not to provide a perverse incentive for regulators to favour criminal prosecution over the new administrative sanctions, we are proposing that regulators be able to reclaim their investigative costs from defaulters when imposing one of the new sanctions. The regulator would issue the defaulter with a costs notice covering its investigative costs and the defaulter would then have a right of appeal against the notice at the tribunal.

114. The cost recovery provisions will only apply to discretionary requirements and stop notices (i.e. regulators will not be able to reclaim the costs relating to fixed monetary penalties and enforcement undertakings).

115. We estimate the total annual cost to business for the recovery of investigative would be **approximately £2.3 million per year.**⁵⁵ This figure only includes the additional 25 per cent of cases that we expect to be sanctioned by regulators following the closure of the compliance deficit (see paragraph 90) and only includes cases where a sanction has been imposed (i.e. it does not include cases where the notice is withdrawn following the notice of intent or after appeal).

Total net benefit to business

116. The estimated total cost to business associated with the introduction and full-take up of the new sanctions is £30.5 million. This is offset by total savings of £88.2 million, giving a **net-benefit of £57.7 million for businesses per year.**

⁵⁵ We have estimated average investigative costs as £1,950 (based on a regulator's current criminal cases). This is multiplied by the projected total number of discretionary requirements and stop notices to be issued annually (9,626 cases).

IMPACT ON REGULATORS

Savings from fewer court cases

117. The main benefit to regulators from the introduction of the new sanctions will stem from the reduction in the number of criminal prosecutions. As already outlined, **we anticipate approximately 22,200 fewer cases going through the criminal courts each year.** This number is based on 60 per cent of the current prosecutions in scope (approximately 23,300 cases), less the number of prosecutions that will revert to criminal prosecution following non-compliance with a civil sanction (1,000 cases) and the number of prosecutions taken following failure to comply with a stop notice (100 cases)

118. The **benefits** to regulators of this reduction are estimated to be **£38.8 million a year.**⁵⁶

Cost of hearing representations

119. We have estimated that the cost of regulators hearing representations against the notice of intent to impose a fixed monetary penalty, discretionary requirement or the discussion prior to undertakings being accepted will cost regulators approximately **£4.6 million a year**⁵⁷.

Cost of cases going to appeal

120. A business will have the right of appeal to a tribunal against the decision to impose a fixed monetary penalty, a discretionary requirement and a stop notice.

121. We estimate that in total, the cost for regulators of cases going to appeal will be **£1.2 million a year**⁵⁸.

122. The tribunal will have the power to award the costs of and incidental to the tribunal hearing⁵⁹. We have assumed that for successful appeals (i.e. those

⁵⁶ This figure is based on 22,170 cases costing on average £1,750 per case.

⁵⁷ This figure is based on 4,376 businesses making representations against fixed monetary penalties, 6,126 businesses making representations against discretionary requirements and 2,917 businesses holding discussions with regulators when offering enforcement undertakings. For fixed monetary penalties, we have assumed that representations against a fixed monetary penalties will require, on average, two hours of an employees time at £27.75 per hour (based on the average hourly cost of a Trading Standards or Environmental Health Officer) and half an hour of internal legal costs at £35 per hour- £73 per fixed monetary penalty. For discretionary requirements (variable monetary penalties and other requirements) and enforcement undertakings we have assumed that representations will require, on average, 7½ hours of an employees time at £27.75 per hour and 7½ hours of legal costs at £35 per hour - £471 per sanction

⁵⁸ This figure is based on 2,188 businesses appealing against fixed monetary penalties, 3,063 businesses appealing against discretionary requirements and 292 businesses appealing against stop notices. For fixed monetary penalties, we have assumed that preparing for an appeal against a fixed monetary penalty will require, on average, two hours of an employees time at £27.75 per hour (based on the average hourly cost of a Trading Standards or Environmental Health Officer) and 3.75 hours of internal legal costs at £35 per hour- £187 per fixed monetary penalty. For discretionary requirements (variable monetary penalties and other requirements) and stop notices, we have assumed that representations will require, on average, 3.75 hours of an employees time at £27.75 per hour and 3.75 hours of legal costs at £35 per hour - £235 per sanction.

⁵⁹ *Tribunals, Courts and Enforcement Act 2007 section 29*

sanctions that are overturned) the regulator will be ordered to pay the full cost of the hearing, although in practice this will be at the discretion of the tribunal. We estimate that this will cost regulators around **£700,000 a year**.⁶⁰

Cost of enforcement action

123. Regulators will enforce unpaid monetary penalties through the county courts or High Court. There are a number of options available to them (e.g. an attachment of earnings to a charging order). For the purposes of this assessment, we have assumed that a warrant of execution will be issued for each unpaid monetary penalty. We have assumed that this will take one hour for a regulator to initiate. Therefore for the 4,100 cases that we have estimated will require enforcement action; we estimate the cost to regulators of additional enforcement action is approximately **£113,300 per year**.⁶¹

124. As noted above, in the event of successful enforcement action, court fees are recovered from the business. We have assumed that enforcement action will be successful in three-quarters of cases. For the remaining quarter, regulators will be unable to recover their costs, amounting to a cost of **approximately £56,000 per year**.⁶²

Cost of Publication

125. The Bill requires that regulators must, from time to time, publish the details of the business against whom enforcement action has been taken and one of the new sanctions has been imposed or undertakings have been accepted. We have assumed that this will take the form of an annual report published on a regulator's website. We estimate that this **will cost approximately £31,100 per year**.⁶³

Cost of investigatory costs no longer recoverable

126. Regulators will be able to recover investigation costs when imposing a discretionary requirement or stop notice. They will not be able to recover costs when imposing a fixed monetary penalty or when accepting an enforcement undertaking. Regulators would have been able to recover investigatory costs in all cases in the criminal courts. Therefore we have calculated the estimated cost of investigating

⁶⁰ This figure is based on 1,823 cases where a sanction is overturned at appeal, where regulators are ordered to pay £363 per case (average cost supplied by Ministry of Justice).

⁶¹ This estimate is based on the average Trading Standards or Environmental Health Officer hourly cost of £27.75.

⁶² This figure is based on the 25 per cent of cases requiring civil enforcement to recover debts that are unsuccessful, where the cost of issuing a warrant of execution (£55) cannot be recovered.

⁶³ This figure is based on one employee spending 20 hours a year, at £27.75 per hour (based on the average hourly cost of a Trading Standards or Environmental Health Officer), multiplied by 56 regulators.

fixed monetary penalties and enforcement undertakings where the cost will no longer be recoverable, approximately **£10 million pounds per year**⁶⁴.

Total net benefit for regulators

127. The estimated total cost to regulators associated with the introduction and full-take up of the new sanctions is £16.6 million. This is offset by total savings of £38.8 million, **giving a net-benefit of £22.2 million for regulators per year.**

⁶⁴ This figure is based on the number of cases where an fixed monetary penalty is imposed or enforcement undertaking accepted (10,210) multiplied by the average cost of investigation (£975. This figure is based on data provided by regulators. Regulators estimated that the average cost of an investigation was £1,950. Given FMPs will be imposed in cases of simple non-compliance and the fact that enforcement undertakings will have been voluntarily offered, we have reduced the figure by 50 per cent to reflect the lower average cost of investigation).

IMPACT ON CONSOLIDATED FUND

128. The revenue raised from penalties imposed by regulators will go to the Consolidated Fund. The size of the benefit to the Consolidated Fund will therefore be equivalent to the size of the monetary penalties imposed that is £46.7 million.

129. Businesses are already liable to pay fines following conviction in the criminal courts and this money is already paid into the Consolidated Fund, therefore the money gained through civil penalties is not entirely new. However, as discussed in paragraph 90, we have estimated that there will be an increase in the number of civil actions taken following the closure of the compliance deficit (25 per cent increase) and therefore there will be an increase in the number of penalties imposed. For the purposes of these calculations we have only included 25 per cent of the money gained through monetary penalties.

130. We estimate that there will be around 3,900 new penalties paid, **generating approximately £12 million a year**⁶⁵.

Legal Aid

131. Under the Access to Justice Act 1999, Legal Aid is not available to firms and companies. Sole traders may be allowed access to legal aid when pursuing a business matter. However, tribunals are designed to be accessible without professional advice, and legal aid for representation is generally only available where issues such as personal liberty are at stake (for example the Mental Health Review Tribunal). This suggests that there is unlikely to be any real change to the legal aid budget as a result of using the new sanctions (other than potentially a small saving arising from fewer court cases).

Total net benefit for the Consolidated Fund

132. We estimate that the total net benefit for the Consolidated Fund will be **£12 million per year**.

⁶⁵ This figure is based on 1,459 businesses paying a £750 discharge payment, 1458 businesses paying a £1,000 fixed monetary penalty and 1,021 businesses paying a £10,000 variable monetary penalty. For the purposes of this assessment we have assumed the penalties will be set at these rates, in reality of course, they are likely to vary.

IMPACT ON HER MAJESTY'S COURTS SERVICE

Savings from fewer court cases

133. As discussed above, we estimate there will be **approximately 22,200 fewer cases going through the criminal courts.**

134. The costs of a court case are difficult to establish and depend on the context of each case. For these purposes we have assumed an average cost of a case in which the defendant pleads guilty as £138 and the average cost when a defendant pleads not guilty as £415⁶⁶. The estimate reflects the range of costs saved from all cases involve guilty pleas and all involving guilty pleas. The reduction in the number of regulatory cases taken to court is estimated to save between £3.1 to £9.3 million per year⁶⁷. If we take the mid-point the savings will amount to **£6.1 million per year.**

135. It is expected that the court resources that would otherwise have been taken up in hearing such cases are spread across the court system and redeployed to other cases, thereby providing a boost in capacity and resource to other activities. We do not however, estimate the beneficial impact of the release of these resources to other activities.

⁶⁶ Source: HM Court Service

⁶⁷ These costs are separate to the enforcement costs and the savings in legal costs for business and regulators, resulting from fewer criminal prosecutions.

Risks and Unintended Consequences

136. The consultation on the draft Bill raised two major concerns regarding the introduction of the new administrative sanctions.

137. First, there is a fear that the new sanctions will not be taken up to the extent that that we have anticipated. We may find that regulators continue to pursue the criminal route. If this is the case, the estimated savings outlined within this assessment will be reduced.

138. By allowing regulators to recover their investigative costs from defaulters when imposing discretionary requirements and stop notices, we have removed the financial incentive to use criminal prosecution, and so this should mitigate the risk above. Furthermore, those regulators who are covered by the Compliance Code will have to have regard to the need to ensure they are enforcing in a proportionate way.

139. Second, there is a concern that regulators may misuse the new administrative sanctions. There was anxiety amongst business that regulators may adopt a 'parking ticket' mentality when issuing fixed monetary penalties in particular. The fear is that regulators will issue a FMP where advice, a warning letter or a non-monetary requirement would have been more appropriate.

140. The safeguards against this outcome are that:

- All money collected via monetary penalties will be paid into the Consolidated Fund and therefore regulators won't benefit directly from issuing a notice;
- Before Ministers give access to the administrative sanctions they must be satisfied that the regulator will exercise the powers in line with the principles of better regulation;
- The Minister who awards the new administrative sanctions to a regulator will be able to direct the regulator not to issue any notices imposing any of the new sanctions in the event of persistent misuse of the new sanctions; and
- Businesses will be able to appeal the decision to impose a sanction.

Post-Implementation Review

141. The Minister making the order conferring the new powers on a regulator will be under a statutory duty to conduct a post-implementation review of the order three years after the order was made. The review may consider such matters as:

- Whether the order has implemented the policy objectives effectively;
- Whether the order has implemented the policy objectives efficiently; and
- The effectiveness of the cost-recovery mechanism;

- The use of the sanctions and the split between criminal and civil sanctions; and
- Whether the sanctions had changed the behaviour of regulators.

142. Businesses, business groups, regulators, local authorities and the wider regulatory community will be consulted as part of this process and the Minister will be required to publish the results of the review.

Overall Summary of Costs

143. The total net benefit of the introduction and take-up of the new sanctions is estimated to be **£98,000,000 a year**.

| Savings | £ |
|--|--------------------|
| Business: Savings from fewer prosecutions | £88,200,000 |
| Regulators: Savings from fewer prosecutions | £38,800,000 |
| Courts: Savings from fewer prosecutions | £6,100,000 |
| Public: Penalties paid to Consolidated Fund | £12,000,000 |
| Total | 145,200,000 |
| Cost | £ |
| Business: Cost of making representations | £10,600,000 |
| Business: Cost of preparing for appeals | £4,000,000 |
| Business: Cost of unsuccessful appeals | £1,400,000 |
| Business: Cost of paying penalties | £12,000,000 |
| Business: Cost of enforcement action | £170,000 |
| Business: Recovery of investigative costs | £2,300,000 |
| Regulator: Cost of hearing representations | £4,600,000 |
| Regulator: Cost of preparing for appeals | £1,200,000 |
| Regulator: Cost of successful appeals | £700,000 |
| Regulator: Cost of enforcement action | £100,000 |
| Regulator: Cost of unsuccessful enforcement action | £56,000 |
| Regulator: Cost of publicising enforcement action | £31,100 |
| Regulator: Investigative costs no longer recovered | £10,000,000 |
| Total | £47,200,000 |
| Total net benefit | £98,000,000 |

Summary: Intervention & Options

| | | |
|--|--|--------------------------|
| Department /Agency: BERR | Title: Impact Assessment of Regulatory Enforcement and Sanctions Bill - Part 4 Regulatory Burdens | |
| Stage: Final | Version: 1 | Date: 13 May 2008 |
| Related Publications: Next Steps on Regulatory Reform (BERR: July 2007) | | |

Available to view or download at:

http://bre.berr.gov.uk/regulation/enforcement_sanctions_bill/index.asp

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

The Government's better regulation agenda is designed to improve regulatory outcomes to ensure intervention is targeted and measured to meet a purpose, while minimising the associated burdens. There is an absence of an effective mechanism, if and when it is deemed that a regulator needs to do more to comply with the requirements of the better regulation agenda.

What are the policy objectives and the intended effects?

The objective of the policy is to secure that the exercise of a regulatory function does not involve the imposition of burdens which have been assessed as unnecessary or the maintenance of burdens that have become unnecessary. The Government is introducing a power which would allow a Minister to apply an additional duty on a regulator, by exception, to ensure regulators address any unnecessary burdens they impose and/or maintain in carrying out their regulatory functions. Additional information and/or policy requirements that are assessed and agreed as required by a regulator to fulfil its objectives will be unaffected by this power, in so far as they do not impose unnecessary burdens.

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

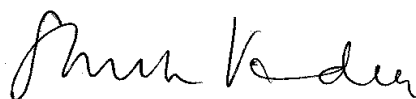
A number of initiatives have been put in place to reduce the burdens associated with regulation, including the Regulators' Compliance Code under s. 21 of the Legislative and Regulatory Reform Act 2006. The order-making power is designed to ensure that there is an effective requirement to act in a way that is consistent with better regulation principles; the potential for naming and shaming as an alternative approach has been considered. However, this adds little to existing mechanisms for public scrutiny and has therefore not been pursued.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The post-implementation review process will be announced at the point the duty is applied to a specified regulator. A review of the impact of the Compliance Code will be made in 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: 13/05/2008

Summary: Analysis & Evidence

Policy Option: 1

Description: Impact Assessment of Regulatory Enforcement and Sanctions Bill - Part 4 Regulatory Burdens

| | | | |
|--|--|------------|--|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' |
| | One-off (Transition) | Yrs | |
| | £ 17,000 | 1 | The duty is being applied to 5 regulators on the Bill and we have calculated costs for all of these to be £975 to £511,000 Regulator and department (shared) £3,600 to £17,000 |
| | Average Annual Cost (excluding one-off) | | Total Cost (PV) |
| £ 975 – 511,000 | | £ 0 – 1.4m | |
| <p>Other key non-monetised costs by 'main affected groups'</p> <p>Regulators and departments will face some additional costs from conducting the required review and implementing change. Business may also face costs if regulatory practices are changed.</p> | | | |

| | | | |
|--|---|------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' |
| | One-off | Yrs | |
| | £ 0 | 0 | Business will benefit from the resource savings resulting from the removal of unnecessary burdens of between £0 and £5.2m |
| | Average Annual Benefit (excluding one-off) | | Total Benefit (PV) |
| £ 0 – 5.2m | | £ 0 – 51m | |
| <p>Other key non-monetised benefits by 'main affected groups'</p> <p>Regulated entities will receive benefits, in the form of resource savings from the removal of unnecessary burdens, which may be passed on to consumers in the form of lower prices. These benefits will be assessed on a case by case basis as and when they are identified and impact assessments are undertaken.</p> | | | |

Key Assumptions/Sensitivities/Risks

Estimates of total costs and benefits can be made only for those regulators that have the duty

| | | | |
|-------------------------|-------------------------|---|---|
| Price Base Year 2005 | Time Period Years 15 | Net Benefit Range (NPV) £ 0 – 49m | NET BENEFIT (NPV Best estimate) £ 25m (mid point) |
|-------------------------|-------------------------|---|---|

| | | | | |
|---|------------------------|------------|-------------|------------|
| What is the geographic coverage of the policy/option? | UK-wide | | | |
| On what date will the policy be implemented? | 2008 | | | |
| Which organisation(s) will enforce the policy? | Sponsoring Departments | | | |
| What is the total annual cost of enforcement for these organisations? | £ 0 | | | |
| 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? | £ 0 | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro 0 | Small 0 | Medium 0 | Large 0 |
| Are any of these organisations exempt? | No | No | No | No |

| | | | |
|---|-----|-----------------------|-----|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | |
| Increase of | £ 0 | Decrease of | £ 0 |
| | | Net Impact | £ 0 |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

INTRODUCTION

144. The Government is largely confident that that its better regulation policies (see below) will deliver, but the challenge set to those who exercise regulatory functions, to achieve culture change and make the requirements from the Hampton Review⁶⁸ a reality, is very high. It is possible that in some cases, more action may be needed.

145. Part 4 of the Regulatory Enforcement and Sanctions Bill will provide a power to allow Ministers to impose a duty, by exception, on regulators who need further legislative support to meet the requirements of the Government's better regulation agenda. The duty will require any specified regulator to:

- keep their functions under review to ensure they do not impose or maintain unnecessary burdens;
- reduce those that are found to be unnecessary and unjustifiable; and
- report on progress annually.

RATIONALE FOR INTERVENTION

146. The Government's better regulation agenda has been developed and strengthened over the last couple of years. Its overall objective is to improve regulatory outcomes to ensure intervention is targeted and measured to meet a purpose and that where intervention takes place it is delivered in the most effective and efficient way, minimising the burdens associated with achieving the objectives.

147. A fundamental element of delivering regulatory outcomes efficiently and effectively is that the regulated entities (which can include businesses, charities and other public sector bodies) are not made subject to burdens which are unnecessary.

Working towards optimal regulation

148. The Government intervenes in the form of regulation or through other mechanisms, such as economic instruments, to ensure the delivery of a desired outcome. Achieving such a desired outcome will often involve changing the behaviour of those regulated, making them do something they would not otherwise do. As such, intervention involves imposing a burden on the regulated entities. In addition, regulators impose costs on those regulated by requiring them to report or provide information, because regulators generally have less information than those they are regulating and they need such information to fulfil their functions. Such burdens are essential to the delivery of the desired outcome.

149. Diverting resources in regulated entities, especially business, towards ensuring the desired regulatory outcome is achieved can negatively impact on business productivity, investment and innovation. At the same time, regulation can

⁶⁸ Available at http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

also encourage innovation and investment. The challenge to the Government when deciding to intervene is to get the balance right, to ensure incentives to invest and innovate are where possible increased and not unduly constrained.

150. Because intervention can have harmful effects, it is important therefore that any intervention is as well-designed as possible. This means ensuring that any burden that is imposed, which distracts resources from more productive activity, is necessary and justified. Put another way, no unnecessary burdens, which divert resources from productive activities, should be imposed (or maintained if rendered unnecessary by changing circumstances) on businesses, the public sector or the voluntary sector.

151. Impact Assessment and cost benefit analysis are the mechanisms by which the Government determines whether intervention is justified, and that the benefit of intervening justifies the cost. In some cases this is clear cut, but not in all and judgement is required.

Delivering the better regulation agenda

152. Since the publication in 2005 of the Hampton Review, which looked at the scope for reducing the administrative burdens caused by regulators' inspection and enforcement activities, the Government has been introducing new tools to deliver the better regulation agenda. These include the Administrative Burden Measurement Exercise and targets for the reduction of administrative burdens, the publication of Simplification Plans and the introduction of Hampton Implementation Reviews.⁶⁹

The introduction of the Legislative and Regulatory Reform Act 2006 (LRRRA)⁷⁰ also requires regulators to have regard to the five principles of better regulation and the regulators' Compliance Code. In particular, section 21 of the LRRRA imposes a duty on any person exercising a regulatory function to have regard to the 5 principles of good regulation⁷¹. Section 22 provides the Minister with the power to issue a code of practice in relation to the exercise of regulatory functions and imposes a duty on any person exercising regulatory functions specified by order to have regard to that Code (the "Compliance Code"). The Compliance Code came into effect in April 2008 and requires regulators and local authorities to have regard to the Hampton principles of inspection and enforcement. In particular, it states that "*Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.*"

153. The Government hopes and expects that in the large majority of cases the duty under LRRRA section 21 and the Compliance Code will be effective in securing that most regulators exercise their functions in a Hampton compliant way.

⁶⁹ See <http://bre.berr.gov.uk/regulation/reform/simplifying/index.asp> for details on Simplification Plans and targets for reducing administrative burdens.

⁷⁰ http://www.uk-legislation.hmso.gov.uk/acts/acts2006/pdf/ukpga_20060051_en.pdf

⁷¹ These are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted.

154. However, the Compliance Code requires regulators to '*have a view to removing*' unnecessary burdens, whilst the duty in Part 4 of the RES Bill requires those who have the duty to remove burdens that they consider to be unnecessary where it is proportionate or practicable to do so. The Part 4 duty could be applied to strengthen the requirement of the Compliance Code to reduce unnecessary burdens where it is appropriate to do so and should satisfy the concerns businesses made in responding to the consultation on the Code.

155. In addition, the LRRRA excludes the functions conferred on or exercisable by any of the following:

- a. the Gas and Electricity Markets Authority (Ofgem),
- b. the Office of Communications (Ofcom),
- c. the Office of Rail Regulation (ORR),
- d. the Postal Services Commission (Postcomm), and
- e. the Water Services Regulation Authority (OFWAT)

156. The better regulation agenda, outlined above, requires regulators to consider their approaches to introducing, implementing and enforcing regulation. Identifying and removing unnecessary burdens, a key objective of this policy, will be an essential part of the success of the agenda.

POLICY OBJECTIVE

157. The objective of the policy is to secure that the exercise of a regulatory function does not involve the imposition of burdens which are unnecessary or the maintenance of burdens that have become unnecessary. That is, that regulated entities are not subject to more burdens than are necessary to ensure the delivery of the intended regulatory outcome.

Naming and Shaming

158. If a regulator is found not to be sufficiently following the better regulation agenda, for example, having regard to the regulators' Compliance Code, then the Government could name and shame that regulator. If such naming and shaming encouraged the regulator to act then it could be effective. But there are already many such opportunities within the better regulation agenda, through the large amount of transparency on the performance of regulators. For example, published Simplification Plans allow scrutiny of proposed actions to remove administrative burdens for those regulators involved; a review of the performance of the Compliance Code will make transparent areas where a regulator is not fully having regard to the requirements of the Code; and Hampton Implementation Reviews will identify areas for further action for those regulators that undergo one. Given that such public scrutiny already exists, further naming and shaming, which would effectively repeat and build on previous public comments, is unlikely to be sufficient to make a regulator that needs to do more change its approach. A more rigorous approach is necessary.

A power to apply a duty to review, reduce and report on unnecessary burdens

159. The Government is introducing a power which would allow a Minister to apply a duty on regulators who need further legislative support to meet the expected standards of the better regulation agenda and more is required to help the regulator to bring them up to that standard. This includes, in particular the Compliance Code, and that the regulator is failing properly to review and reduce where appropriate the burdens it imposes. To this end, it is an action to be taken where there is evidence that other levers designed to deliver the better regulation agenda are failing or have failed. The main focus for this policy is therefore:

- To ensure regulators address any unnecessary burdens they impose and/or maintain in carrying out their regulatory functions;
- To require a specified regulator “to do” something, not simply “have regard to” doing something, as is the case under section 22(2) LRRA in relation to the Compliance Code. Action will be required to bring a regulator that is falling short up to the required standard.

160. The duty will require any specified regulator to:

- keep their functions under review to ensure they do not impose or maintain unnecessary burdens;
- reduce those that are found to be unnecessary and unjustifiable; and
- report on progress annually.

161. The intention is that the duty be applied where it can make a difference, by changing the culture and behaviour of a regulator. Where it can add very little, it will not generally be applied. The main area where this applies is with regard the competition functions of the economic regulators, in particular those of the Competition Commission. Moreover, the duty is not intended to apply to individual cases, but rather to the general approach taken by a regulator, so that specific case decisions and remedies imposed under competition law can not be re-opened by recourse to this duty.

Why might the duty be applied?

162. There are two main triggers to the power being exercised: either (i) a regulator could request that the duty be applied, or (ii) the duty could be applied where there is evidence that other levers designed to deliver the better regulation agenda are failing or have failed. In any of these circumstances it would add to what the regulator is doing to remove unnecessary burdens:

163. The duty has been applied to the following 5 economic regulators, on the face of the Bill, at their request.

- the Gas and Electricity Markets Authority (Ofgem),
- the Office of Fair Trading (OFT),
- the Office of Rail Regulation (ORR),
- the Postal Services Commission (Postcomm), and
- the Water Services Regulation Authority (OFWAT)

COSTS AND BENEFITS

164. The ultimate objective of the policy is to remove any unnecessary burdens imposed in the delivery of regulatory outcomes. This could involve removing regulations no longer needed; or amending regulations and/or how they are implemented and enforced to achieve a more effective and efficient approach. Both possible actions will involve costs and benefits for regulators and the regulated entities.

165. There will be two stages to the application of the duty and hence impacts:

- The first is associated with the collection and assessment of evidence to determine whether a Minister should impose the duty;
- The second stems from the actions required once the duty is imposed.

166. The baseline for the assessment is the current situation plus the assumption that the expected developments in the better regulation agenda are largely implemented. Any person exercising a regulatory function could potentially be within the scope of the duty. The exact scope will be determined at the time at which the duty is applied.

Impact in deciding to apply the duty

167. Save for the 5 regulators named on the Bill (see paragraph 161 above) who requested to have the duty applied by Parliament to safeguard their regulatory independence from Ministerial interference, evidence will be required to persuade the Minister to apply the duty to a regulator. The evidence could potentially come from:

- Review of performance against the Compliance Code;
- Hampton Implementation Reviews;
- NAO or other independent reports;
- Business or other regulated entities presenting evidence;
- Ongoing scrutiny between the BRE and the regulator or from between the regulator and its parent department.

168. In other words, evidence to suggest action is required might readily come from existing and expected future activities.

169. Once evidence has been put forward, it will be discussed internally within government, including the specified regulator, its sponsoring department, any other relevant departments and the Better Regulation Executive. Such activity will involve a marginal cost to those involved for each regulator. The work required to conduct the internal discussion will involve an opportunity cost: an indicative estimate is in the range £650 to £1,525 per regulator per examination of evidence.⁷² There may also

⁷² The range is derived from the following assumptions: between 5 and 9 people are involved in the internal discussion (2-4 within the specific regulator, 2-4 within the sponsoring department, 1 within BRE). Work is undertaken by officials in pay range £42,000 to £54,000. 2 meetings of 1.5 hours length are held, with 2 hours additional work each. An additional 21% is included for on-costs (pensions and employer NICs). The actual costs per regulator will vary, depending on the number of officials likely to be involved in examining the evidence.

be additional external costs to any specified regulator, for example use of legal expertise not available within the regulator itself or within their sponsoring department.

170. Should a Minister decide to proceed to apply the duty, the proposal will be subject to a formal public consultation and affirmative procedure through Parliament. This will involve additional work for the civil servants and regulator involved: an indicative estimate is of the order of £2,000 to £7,200 per consultation.⁷³ For larger regulators and departments, the costs may be higher if a range of officials from across the regulator and sponsoring department need to be involved.

171. Of course, these costs are not relevant to the 5 regulators named on the Bill.

Impacts from applying the duty

172. There will be impacts on both the regulator and the regulated entity from the application of the duty. It is not possible to estimate the magnitude of these impacts because the Bill provides a power to act in the future if there is evidence to support action. Indeed, the evidence presented to support the application of the duty will need to demonstrate that the benefits of doing so outweigh the costs involved. The benefits and costs are discussed below.

Impact on regulators

173. Once the duty has been applied to a regulator, the specified regulator must:
- Review the burdens imposed in fulfilling its objectives and regulatory functions;
 - Act to reduce any burdens which are found to be unnecessary; and
 - Report on an annual basis the outcome of the review and subsequent action taken.

⁷³ The range is based on the following assumptions: the work involved on consultation and briefing takes 5-7 days by 1-2 officials in both the sponsoring department and specified regulator, in pay range £42,000 to £54,000. An additional 21% has been added for on-costs (pensions and employer NICs).

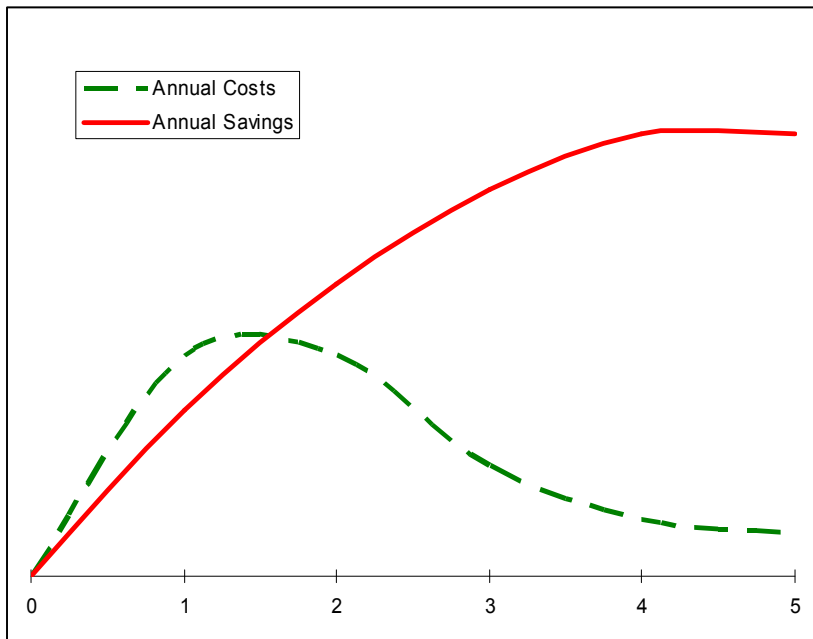


Figure 1

174. We have made an assumption of costs and benefits based on the graph at figure 1. This shows that in the first two years we expect the review of burdens, identification of those that are unnecessary, and their removal to incur cost for the regulator. These costs will be over a short time period. Once all the regulatory functions have been reviewed, the process should require less resource as the review will take more of an ongoing monitoring form; all unnecessary burdens should ultimately be removed and annual savings to business will level out. In contrast, the benefits to those regulated, in the form of the removal of costs, will exist in every year going forward.

175. Conducting a review will involve new costs, although these will vary between regulators and will depend on the extent to which any reviews have already been undertaken and how recently. For example, evidence from a Hampton Implementation Review could form much of the required review, thereby reducing the amount of new work involved. Other sources could include an NAO report, for example.

176. Some of the regulators who will have the duty from commencement of the Act expect to allocate between one and two staff years to reviewing and removing unnecessary burdens at a cost of between £60,000 and £100,000 (including on costs)⁷⁴. As the functions have been reviewed we would expect this figure to reduce to between £30,000 and £50,000 in year three, £15,000 to £25,000 in year 4 and approximately £10,000 to £18,000 in year 5⁷⁵. In subsequent years we believe the majority of unnecessary burdens will have been identified and the culture of removing them will have been embedded into the regulators normal working practices at no additional cost.

⁷⁴ These are 2007 prices. We have adjusted these for the summary to 2005 prices.

⁷⁵ These figures are indicative and not objected to by the regulators involved.

177. Other regulators already review their functions on a regular basis, have reduced their burdens or indeed have no unnecessary burdens in any cases. In these cases, there should be little additional cost to the regulator of having the duty applied or little benefit gained.

178. The review may also involve other officials in the regulator and its sponsoring department, in addition to those carrying out or coordinating the review, in providing and examining evidence for the review. This could take the form of meetings or workshops to explore evidence for the review. The costs of such activities could sum to between £975 to £8300 per review per regulator.⁷⁶ As noted above, these costs could be mitigated by building on the results of relevant recent reviews.

179. There will be costs involved in any action undertaken by the regulator to remove any unnecessary burdens that have been identified. It is not possible, at this stage, to estimate the magnitude of these costs because they will be dependent on the specific nature of the unnecessary burden and the identified action required to remove it. The range of costs could be potentially very large, from a small revision to a guidance manual, to redeveloping an approach to an issue. Similarly it is not possible to estimate the benefits to those regulators from removing the identified unnecessary burden.

180. The requirement to report on the review of burdens, any ongoing reviews, action being taken to remove unnecessary burdens or justification for not removing an unnecessary burden (because it is not proportionate to do so) falls to any regulator to whom the duty is applied. An annual statement is required. The length of the statement and its form is for the regulator to decide. Similarly, regulators are free to use the most appropriate vehicle in which to report, for example their Simplification Plan. Given the large number of variations this could take, it is very difficult to estimate any value. However, we would expect a regulator to minimise the marginal costs by utilising existing and relevant reporting vehicles.

181. Therefore, the total costs to regulators of complying with the duty will depend on a number of factors, including the nature of the burden and the response taken, as well as the number of regulatory functions listed in the order to apply the duty.

Impact on regulated entities

182. The removal of unnecessary burdens by any specified regulators will deliver **benefits** for those regulated entities on whom the burden is to be lifted. As with estimating the associated costs to regulators, it is not possible to estimate the size of the benefits at this time. This will depend on the magnitude of any unnecessary burdens identified and the action the regulator takes to remove or amend the regulation or the way it is implemented or enforced. However, there are large potential benefits, in the form of cost savings that could be found from the regulatory system, from fully applying the principles of better regulation and the Compliance Code etc and the application of this duty. For example, the commitment to reduce

⁷⁶ This work is assumed to be undertaken by various staff across the regulator and its sponsoring department, involving 1 to 2 staff at any time in pay ranges £42,000 to £60,000 pa and to sum to between 37.5 and 112.5 hours of work (between 1-3 weeks) in total. These basic staff costs are increased by 21% to allow for on costs, including pension contributions and employer NICs payments

administrative burdens by 25% by 2010 will identify about £3.5 billion in reduced costs to business; and the Government has announced a commitment to reduce the burden of data that central Government departments ask the front line to provide by a total of 30% by 2010.⁷⁷ Similarly the introduction of the Compliance Code will deliver net benefits of £139 million over 10 years.⁷⁸

183. OFCOM, who has a similar duty to remove unnecessary burdens under Section 6 of the Communications Act 2003, reported savings to business in their 'Simplification Plan', which includes the removal of unnecessary burdens, of £3.48m in 2006-7 (year 3 of the duty)⁷⁹. It is difficult to identify what proportion of these savings are attributable to the duty. The Regulators Compliance Code does not apply to OFCOM but burdens may have been removed in any case. Unlike the duty in the RES Bill where unnecessary burdens must be removed where it is proportionate and practicable to do so, the OFCOM duty is rather narrower in scope as it is required to *have a view* to removing unnecessary burdens. We will assume, in the absence of any decisive evidence that the duty accounted for a third of the savings (£1.1m).

184. Of the 5 regulators on the face of the Bill, only OFT has to have regard to the Regulators Compliance code. Consequently, the duty in Part 4 should be the main factor in the removal of unnecessary burdens by these regulators.

185. We have already mentioned that regulators may have already reduced their burdens or indeed have no unnecessary burdens to remove. Consequently, we consider that annual savings to business could range between zero and £1.1m per regulator.

186. However, there may be associated **costs** for the regulated entities if a regulator, in order to remove an unnecessary burden, decides to amend the way in which a regulation is implemented or enforced. These may include costs associated with changing processes or adopting new procedures or requiring changes to equipment. The costs involved will be upfront costs to deliver a stream of benefits over the future.

187. The application of the duty requires that any decision to remove or amend an unnecessary burden be proportionate and practicable. That is, that the costs involved are justified by the benefits from doing so.

⁷⁷ Comprehensive Spending Review, see www.hm-treasury.gov.uk

⁷⁸ See Annex C of the Government's response to consultation on the Compliance Code at http://bre.berr.gov.uk/regulation/documents/consultation/pdf/gov_response_consultation.pdf

⁷⁹ These are 2007 prices. We have adjusted these for the summary to 2005 prices.

| Part 4 Duty: Annual Costs and Benefits | |
|---|------------------------------|
| Annual Costs (for 5 regulators to apply the duty) | £0 - £0.51m (PV: £0 - £1.4m) |
| Annual Benefits (to regulated entities) | £0m-£5.2m (PV: £0m -£51 m) |
| Net Benefits: | £0m-£4.7m (NPV: £0m-£50 m) |

188. The duty will be enforced by the transparency of the annual statement that will be seen by, amongst others, the Minister, the Better Regulation Executive and those regulated.

RISKS AND UNINTENDED CONSEQUENCES

189. The purpose of the power and the duty is to remove unnecessary burdens from the regulatory system and to make the regulatory interventions optimal, where regulators are failing to do so as part of meeting the wider requirements of the better regulation agenda. The circumstances envisaged under which the duty could be applied are discussed above.

190. Because the duty gives a Minister a power to require a regulator to review the burdens they impose and address any that are unnecessary, in the light of good evidence that this approach is necessary, an unintended consequence could be an adverse reaction in a market if this was interpreted or perceived as a Minister interfering in a specific decision of a regulator or directing them in how they should meet their objectives. This will be of particular concern to regulators that are independent and operate at arms length from Government. The duty is not intended as a mechanism by which a Minister will be able to direct regulators, and indeed does not give Ministers that ability. In a strict sense the Minister will require a regulator to act but only to review the burdens they impose. As such it does not give a Minister the ability to interfere in the operational independence of a regulator. Moreover, the duty is intended to be applied only where it can add value and achieve a difference. If the duty can add very little then it would generally not be applied. In addition, the duty is not intended to apply to individual cases, but rather to the general approach taken by a regulator, so that specific case decisions and remedies imposed under competition law, for example, can not be re-opened by recourse to this duty.

191. There is a risk that some businesses might seek to bring claims for loss against regulators on the grounds that unnecessary burdens had been applied. Such actions would involve costs for the regulators concerned, in managing the challenges. However, we do not think that the costs will be significantly changed by

the Bill. The duty to remove unnecessary burdens will only apply to the specified regulator from the date the order is made and would not of itself found retrospective claims for compensation. Unfortunately unmeritorious legal challenges are always a possibility. A regulated person could argue that the lifting of a burden amounted to an admission that it had been applied unnecessarily regardless of whether or not the duty in the Bill has been applied.

MONITORING AND EVALUATION

192. The power will be available to Ministers to use at any time in the future. It would be sensible to evaluate the duty once the power has been used and the duty applied to a specified regulator. The timing of the evaluation of the application of the duty to a specified regulator will need to be decided by the Minister applying the duty at the time the listing order is made and set out in the accompanying Impact Assessment. Indeed, the duty allows that the actions taken by a regulator when acting to remove or reduce the unnecessary burdens that have been identified by the review of burdens be proportionate. The cost-benefit analysis in the Impact Assessment will determine whether there will be net benefits from applying the duty to a regulator and inform whether the regulator should remove or reduce any unnecessary burdens.

193. The regulators' Compliance Code will be evaluated in 2011. This would also present an opportunity to evaluate whether the duty should be applied to any regulators.

194. Monitoring of the duty will effectively also be possible through different routes:

- Use of the power to apply the duty will be assessed by DA Committee and Parliament when the duty is applied;
- The requirement on a regulator to report will allow assessment of how thorough they have been in their review and in their action to remove any identified unnecessary burdens.
- The Impact Assessments undertaken when the duty is applied to a regulator will need to demonstrate that the benefits justify the costs involved.

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.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | No | Yes |
| Small Firms Impact Test | No | Yes |
| Legal Aid | No | Yes |
| Sustainable Development | No | Yes |
| Carbon Assessment | No | Yes |
| Other Environment | No | Yes |
| Health Impact Assessment | No | Yes |
| Race Equality | No | Yes |
| Disability Equality | No | Yes |
| Gender Equality | No | Yes |
| Human Rights | No | Yes |
| Rural Proofing | No | Yes |

Regulatory Enforcement and Sanctions Test

Specific Impact Tests

195. The following text deals jointly with Parts 1 to 4 of the Bill. It is annexed to all three impact assessments.

196. Competition and small firms: throughout the Macrory review and subsequent work there has been extensive contact with small businesses and small business groups, both national and international. This was conducted in several ways, through submissions, bi-laterals, one-to-ones and focus groups. The responses pointed to the general welcoming of the proposals and from this we concluded that the negative impact on small business would be minimal and proportionate as the new sanctions would be applied across all business. The benefits were highlighted in submissions from the Federation of Small Business who stated that 'Macrory Review is welcome because it seeks to create a much more sophisticated enforcement regime'. They raised concerns about clarity and asked for regulators enforcement policies to be published. This is now being taken forward in the draft Bill. The Small Business Council said they 'agree it would be useful to explore' these new sanctions. They raised a concern about consistency of enforcement. We have taken this on board and have ideas on how to make enforcement consistent and this will be consulted on during formal consultation.

197. There has been extensive informal discussion with small businesses and their representatives in work to develop the Local Better Regulation Office proposals. LBRO will create benefits for all businesses, creating a more consistent regulatory environment for business generally, and working to reduce administrative burdens. The LBRO proposals have been discussed with small businesses and their representatives as policy has developed. The results of LBRO's work to create greater consistency between enforcing authorities for multi-site businesses will be extended to smaller firms through its guidance function. It will be under a duty to reduce burdens for all businesses in its work, and will not impact adversely on small firms.

198. Part 4 of the Bill will help reduce the burdens of regulation on businesses of all sizes.

199. Legal aid: There will be a minimal impact on Legal Aid under Part 3 of the Bill, as the sanctions will largely affect defaulting businesses rather than individuals.

200. Environment and Sustainability: The Bill directly supports two of the five principles of sustainable development as set out in the Government's sustainable development strategy i.e. of 'ensuring we are a strong, healthy and just society' and 'promoting good governance'.

2. It indirectly supports two of the three remaining principles 'living within environmental limits' and 'achieving a sustainable economy' as these rely on robust and fair regulation and clear sanctions to back up regulators in their duties

3. The Bill supports the principle of a strong healthy and just society by facilitating the fair equitable and consistent treatment of business by local authorities; by the administering of fair and appropriate sanctions; and by enhancing consumer confidence and facilitating redress where appropriate in the market in which they participate.

4. We anticipate a small environmental benefit in reduced bureaucracy as a result of a more flexible sanctions regime and less need therefore for criminal prosecutions.

201. Health: we do not believe that the Bill will have a health impact. The absence of impacts under Part 4 is because it will only address unnecessary burdens.

202. Equality: we do not believe that there will be an impact on any of the equality strands. We have, however, looked at each of the equality impact initial tests individually and are confident that there is no impact.

203. Rural proofing: we anticipate no adverse impact on rural communities. The absence of impacts under Part 4 is because it will only address unnecessary burdens.

