Consultation on the
Draft Regulatory Enforcement and Sanctions Bill
May 2007

Implementing the Hampton Vision
Foreword by Hilary Armstrong,
Chancellor of the Duchy of Lancaster and Minister for the
Cabinet Office

The way in which regulation is enforced can make a major difference to businesses and society; I am pleased therefore to introduce this consultation on the draft Regulatory Enforcement and Sanctions Bill, which will help deliver a more effective and proportionate enforcement system.

In 2005, Philip Hampton published his report “Reducing Administrative Burdens”, which showed the importance of proportionate enforcement in delivering better outcomes on the ground – in the form of fairer markets, safer communities, a better environment for business, and economic growth. He identified two practical obstacles to delivering a proportionate and effective system of regulatory enforcement - there were difficulties in communications amongst national and local regulators, and there was inflexibility in an enforcement regime that restricted regulators to processes of criminal prosecution.

The draft Bill will take two important steps towards implementing his vision. Part One will give the Local Better Regulation Office statutory powers to promote better communication amongst local authorities, and between them and central government, providing a better basis for regulators to work together to keep the burdens of regulation to a minimum. The new enforcement powers in Part Two will allow regulators to respond in ways that are transparent, flexible, and proportionate - including responding to those who deliberately seek to gain an advantage over honest businesses by disregarding the law.

I believe that the Bill will have important benefits for all of us - for business, for regulators, for local and central government, and, above all, for citizens, who will benefit from the outcomes of a more effective regulatory system.

I look forward to hearing your views.

HILARY ARMSTRONG
Basic information regarding this consultation

To: Business groups, regulators, trade associations and professional bodies, members of the public, public authorities, the media and campaign groups (see Annex E).

Closing date: Wednesday 15th August 2007

Enquiries to: Sanjay Mistry, Telephone: 0207 276 1647 or e-mail: resbill@cabinet-office.x.gsi.gov.uk

How to respond: In writing to:
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Or by email to resbill@cabinet-office.x.gsi.gov.uk or using the online form at: www.cabinetoffice.gov.uk/regulation/enforcement_sanctions_bill

Additional ways to feed in your views: This consultation exercise is accompanied by an online discussion space which can be found via www.cabinetoffice.gov.uk/regulation/enforcement_sanctions_bill

The Cabinet Office will also organise events where the draft Bill and this consultation will be discussed. If you are interested in participating in such events, please contact Sanjay Mistry via the address, e-mail or phone number above.

Government response: The Government will publish a response to this consultation exercise by Friday 28 September 2007 at the website address above.

Further information on this consultation, can be found at Annex F
Consultation on the Draft Regulatory Enforcement and Sanctions Bill

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Draft Regulatory Enforcement and Sanctions Bill
INTRODUCTION

The Government is seeking your comments on the Regulatory Enforcement and Sanctions Bill (RES Bill). This draft Bill is comprised of two parts. The first establishes the Local Better Regulation Office (LBRO) as a statutory corporation with statutory powers and the objective of helping local authorities to regulate more effectively and more efficiently. The second will take forward key recommendations from Professor Macrory’s final report Regulatory Justice: Making Sanctions Effective to create an extended, more flexible and modern sanctioning toolkit that is better able to meet the needs of regulators in the Hampton world.

This consultation document sets out the proposals for the draft RES Bill. It invites views on the draft legislation and seeks responses to a number of specific questions.

BACKGROUND

The Better Regulation Agenda

The Government is committed to pursuing a programme of better regulation, including:

- Regulating only when necessary and doing so in a light-touch way that is proportionate to the risk;
- Setting exacting targets for reducing the cost of administering regulations; and
- Rationalising the inspection and enforcement arrangements for both business and the public sector.

Better regulation promotes efficiency, productivity and value for money. Proportionate regulation and inspection arrangements can help drive up standards and deliver better outcomes on the ground – whether that be in the form of improving public services, a better environment for business, or driving forward economic reform.

Hampton Agenda

In the 2004 Budget, the Chancellor asked Philip Hampton to consider “the scope for promoting more efficient approaches to regulatory inspection and enforcement while continuing to deliver excellent regulatory outcomes”.

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Philip Hampton’s report *Reducing Administrative Burdens* set out his vision for a risk-based approach to regulation which included a set of principles for regulatory inspection and enforcement, based around risk and proportionality, as well as a major streamlining of regulatory structures. In this, he proposed ten principles of inspection and enforcement.

The Hampton Report concluded that the world in which regulators operate continually changes: pressure on business to be more competitive means that regulators have to be adaptable in the way they enforce.

He argued that the enforcement of regulations affects businesses at least as much as the policy of the regulation itself. Therefore, enforcement must be efficient and support compliance. If this does not happen, the increase in administrative burdens reduces the benefits that regulations can bring.

The Government has committed to implementing the Hampton agenda. The proposed Regulatory Enforcement and Sanctions Bill is a further element to delivering on that commitment. It seeks to advance Hampton’s vision of a regulatory system, at both a national and local level, that is risk-based, consistent, proportionate and effective.

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EXECUTIVE SUMMARY: THE DRAFT BILL AND CONSULTATION DOCUMENT

i. The draft Bill is essentially comprised of two distinct but linked parts. The draft Bill establishes LBRO as a statutory corporation and enables its transition from its current status as a private company. The overall objective of LBRO will be to secure more effective and less burdensome approaches to the way in which regulations are enforced by local authorities. Its remit will initially apply to trading standards and environmental health services, including alcohol licensing, with the potential to extend this scope to other services later.

ii. We are recommending that LBRO has five key functions, these are:

- improving the coordination and consistency of regulatory functions and enforcement through the Primary Authority Principle, resolving disputes when they arise;
- issuing guidance to local authorities in respect of regulatory services;
- reviewing and revising a list of national priorities for local authority regulatory services;
- providing advice to Government on enforcement and regulatory issues associated with local government; and
- encouraging best practice, and innovative approaches to the provision of local authority regulatory services, including through the use of its programme budget.

iii. The second part of the Bill incorporates proposals that implement the key recommendations of the Macrory Review. This consultation is therefore seeking views on the operational and practical aspects of implementing the policy. Following on from the Macrory Review the Government proposes to provide for Monetary Penalties, fixed and variable; Discretionary Requirements; Cessation Notices and Enforcement Undertakings. These powers will be made available as a menu of powers to regulators that show themselves to be compliant with the Hampton and Macrory principles on an ‘opt-in’ basis.

iv. All of these (except for Enforcement Undertakings due to the nature of the agreement) will have a suitable appeal route open to them. Access to these powers will be by affirmative Statutory Instrument which requires the positive agreement of both Houses of Parliament. We intend that these new sanctions will reduce the burdens on the criminal courts.
v. This consultation is aimed at members of the public, public authorities, the media, campaign groups, business groups, regulators, trade associations and professional bodies. This is not meant to be an exclusive or exhaustive list; the Government would like to receive views from any interested party.

vi. A full list of consultation questions can be found at Annex A.

vii. The Impact Assessment Summary below shows annual costs and benefits.

<table>
<thead>
<tr>
<th>Category</th>
<th>Benefits</th>
<th>Costs</th>
<th>Net Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td>£95m - £174m</td>
<td>£49.5m</td>
<td>£45.5m - £124.5m</td>
</tr>
<tr>
<td>Local Authorities</td>
<td>£4m - £6m</td>
<td>£2.5m</td>
<td>£1.5m - £3.5m</td>
</tr>
<tr>
<td>Central Government, Courts, Regulators</td>
<td>£48m - £51m</td>
<td>£7m - £8m</td>
<td>£41m - £43m</td>
</tr>
<tr>
<td>Total</td>
<td>£147m - £231m</td>
<td>£59m - £60m</td>
<td>£88m - £171m</td>
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</table>

Consultees are invited to comment on the assumptions we have used in developing the Impact Assessment at Annex B.

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3 Figures rounded to nearest £0.5 million.
Part One: The Local Better Regulation Office

CHAPTER ONE

SUMMARY

1.1 In 2005 the Chancellor announced that the Government would establish a Local Better Regulation Office (LBRO).

1.2 The core aim of LBRO will be to support local authorities to regulate more effectively and more efficiently. It will be judged on its ability both to reduce burdens on business and to build the capacity of local authority regulatory services to deliver the Hampton agenda.

1.3 LBRO will build on the good practice already emerging on the ground, including examples from both trading standards and environmental health services highlighted in this consultation. But good practice is not uniform and there is little evidence of a risk based approach being applied consistently.

1.4 Part of the reason why good practice is not yet uniform is because of the competing demands and often limited resources that local authority regulatory services confront.

1.5 This is why the Government proposes that LBRO not only focus on reducing burdens on business and implementing the Hampton principles, but also on supporting the capacity of local authority regulatory services to help them to deliver more effectively. These three interlocking aims have been brought together within our proposal for LBRO’s objective.

<table>
<thead>
<tr>
<th>LBRO’s proposed objective</th>
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<tbody>
<tr>
<td>(1) In exercising its functions LBRO has the objective of securing that local authorities exercise their relevant functions:</td>
</tr>
<tr>
<td>a) effectively;</td>
</tr>
<tr>
<td>b) in a way which does not give rise to unnecessary burdens; and</td>
</tr>
<tr>
<td>c) in a way which has regard to the following principles</td>
</tr>
<tr>
<td>(2) Those principles are that:</td>
</tr>
<tr>
<td>(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;</td>
</tr>
<tr>
<td>(b) regulatory activities should be targeted only at cases in which action is needed</td>
</tr>
</tbody>
</table>

1.6 To help deliver this objective, the Government is proposing that LBRO should have five core functions:
Consultation on the Draft Regulatory Enforcement and Sanctions Bill

• improving the coordination and consistency of regulatory functions and enforcement through the Primary Authority Principle and resolving disputes when they arise;

• issuing guidance to local authorities in respect of regulatory services;

• reviewing and revising a list of national priorities for local authority regulatory services;

• providing advice to Government on enforcement and regulatory issues associated with local government; and

• encouraging best practice and innovative approaches to the provision of local authority regulatory services, including through the use of its programme budget.

1.7 In advance of legislation to place LBRO on a statutory footing, it has already been established as a private company and will be able to make use of its programme spend immediately. Once the legislation is in force, LBRO will be able to formally exercise the remaining statutory powers listed above.

1.8 As a result of LBRO’s activity, the Government expects to see compliant businesses benefiting from a regulatory regime that is less burdensome, more consistent, more co-ordinated and better targeted; and from overall improvements in the effectiveness, performance, delivery and support of local authority regulatory services.

Background

1.9 Whilst central government has a huge role to play in improving the design of regulation, it is local authorities that can make the biggest difference in the way regulation is delivered in their areas of responsibility. Local authorities are vital partners in the better regulation agenda.

1.10 Local authority trading standards and environmental health services, taken en masse, are the largest regulatory enforcement operation in the United Kingdom, and carry out 80% of business inspections. They enforce hundreds of pieces of legislation set by central government and national regulators in a diverse range of areas, including:

• Fair trading;
• Food standards and safety;
• Health and safety at work;
• Air and environmental pollution;
• Under-age sales;
• Alcohol licensing;
• Animal health and welfare; and
• Private sector housing.
1.11 Because of the breadth of their responsibilities and activities, local authority trading standards and environmental health services can make a difference locally and nationally in providing the advice that helps business flourish; in dealing with rogue traders; in protecting consumers and the environment; and in tackling anti-social behaviour and crime.

1.12 It is against this background, the direction set by the Local Government White Paper\(^4\) and the recommendations from the Hampton Review that the Government is setting up LBRO and proposing that it should have the statutory powers, duties and functions as set out in the draft Bill.

**Delivering Hampton**

1.13 In looking at the activities of environmental health and trading standards, the Hampton report argues that the diffuse structure of local authority regulation increases uncertainty and administrative burdens for business. Uncoordinated action on the ground means that businesses often receive unnecessary inspections, or even conflicting advice. The lack of a central communications function results in duplication of effort at local level.

1.14 In partnership with local authorities, it is proposed that LBRO address eight key issues raised by the Hampton Review, summarised in the table below:

<table>
<thead>
<tr>
<th>Issues identified by Hampton:</th>
<th>LBRO can:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of effective priority-setting by central government.</td>
<td>Prepare and publish a list of local authority regulatory priorities (see page 29 - 31). LBRO’s approach to determining national regulatory priorities will follow that of the Rogers Review(^5), will be evidence based and risk-focussed and will incorporate input from government departments, regulators, local authorities, citizens and businesses;</td>
</tr>
<tr>
<td>Lack of coordination of departments and local authorities at national levels.</td>
<td>Provide practical advice to central government on the enforcement of regulation by local authorities (see page 30)</td>
</tr>
</tbody>
</table>


### Issues identified by Hampton:

| Inconsistent levels of inspection and enforcement across local authorities. |
| Unnecessary administrative burdens for business through lack of coordination and consistency. |
| Lack of consistency in the application of the Home and Lead Authority Principles |
| Lack of coordinated risk assessment |

### LBRO can:

| Place the Home (Primary) Authority Principle on a statutory footing (see pages 20 - 27). This will deliver the 2006 Pre Budget Report and 2005 Labour Manifesto commitments. |
| Encouraging best practice, and innovative approaches to the provision of local authority regulatory services, including through the use of its programme budget. (see page 31) |
| Collect evidence of inconsistent regulatory enforcement to inform guidance to local authority regulatory services, to which they will be under a statutory duty to have regard (see pages 27 - 29) |
| Place the Primary Authority Principle on a statutory footing (see pages 20 - 27) and give all multi site businesses operating across more than one local authority access to a Primary Authority Partnership. |
| Provide a quick and effective method of dispute resolution when inconsistencies arise between a Primary Authorities and Enforcing Authorities (pages 25 - 26) |
| Place the Primary Authority Principle on a statutory footing (see pages 20 - 27) |
| Produce best practice guidance to local authorities, including the use of risk assessment. (see pages 27 - 29) |
### Issues identified by Hampton:

<table>
<thead>
<tr>
<th>LBRO can:</th>
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</thead>
<tbody>
<tr>
<td>Local authorities find it difficult to join up their work across boundaries and examples of best practice at a local level are not adequately disseminated nationally.</td>
</tr>
<tr>
<td>Disseminate guidance to all local authorities, or small clusters, to help support consistency and coordination. (see pages 27 - 29)</td>
</tr>
<tr>
<td>Strategic leadership to ensure a consolidated, coordinated and prioritised regulatory landscape drives up performance standards.</td>
</tr>
<tr>
<td>Use its programme budget to help drive and spread good practice within and across local authority regulatory services. It will fall to the discretion of the LBRO board as to how this is achieved. (see page 31)</td>
</tr>
</tbody>
</table>

### The Local Government White Paper

1.15 The Local Government White Paper sets out a number of challenges for local authorities, including:

- securing more collaboration between local authorities, and ensuring that administrative boundaries do not act as a barrier to service transformation and efficiency;
- delivering ambitious efficiency gains; and
- driving more extensive use of business process improvement techniques, including new technology to transform service delivery and focus services around the needs and preferences of users.

1.16 There are huge gains to be made in these areas by rethinking the way local authority regulatory services are provided. Local authorities are already adopting innovative approaches in service delivery and, supported by LACORS, TSI, CIEH and others, developing initiatives to promote consistency and share good practice.

### Working collaboratively to ensure consistency

1. **Consistent Enforcement- the Midlands**

Local authorities from across the Midlands, and representatives from the Society of Motor Manufacture and Traders, DEFRA and the Local Authority Unit of the Environment Agency, have come together to ensure a common understanding and consistent enforcement of legislation regarding car manufacturing plants.
Working collaboratively to ensure consistency

2. Scores on the Doors- Hampshire

Working in partnership, Winchester City Council, Basingstoke and Rushmoor Borough Council Hampshire have developed a unified approach to the food safety scheme ‘scores on the doors’. This scheme measures the level of hazard and compliance at a food premise to generate an easy to understand score for consumers as well as identifying where each local authority should target its advice, support and enforcement activity. A business may choose to display its rating, which will also be available online for any member of the public. This scheme encourages compliance, and also gives consumers in the county a consistent and easy to understand ‘score’ of food hygiene.

The Food Standards Agency is currently trialling ways to further encourage consistency of scores on the doors nationwide.

3. Single Business Inspections - Birmingham City Council

Birmingham City Council has established a pilot scheme designed to co-ordinate inspections for businesses that carry out small, discrete industrial functions, such as: concrete batching plants; drycleaners; vehicle repair workshops; and petrol stations.

Each of these businesses is subject to a range of inspections including; Local Authority Air Pollution Control (LAAPC), health and safety, fire safety and food safety. So as to reduce burdens, Birmingham City Council proposes that one inspection cover all these areas. The pilot scheme will be rolled out during 2007/2008.

1.17 Our proposals for LBRO are designed to continue to raise the standard of local authority environmental health and trading standards services. These are discussed in greater detail in Chapter Two.

1.18 A number of parallel initiatives and pieces of work also impact upon the work of local authority regulatory services. These include:

- The Compliance Code
- The Rogers Review
- The DTI consistency project
- Retail Enforcement Pilot

Each of these is discussed in greater detail in Annex C.
CHAPTER TWO

LBRO: INITIAL SET UP

2.1 LBRO will be established as a company limited by guarantee that will be wholly owned by the Government. The Chair, Chief Executive and Board members have now been appointed, and bring with them experience in national regulation, consumer protection, business and local authority regulatory services.

2.2 As a private company, LBRO does not have any statutory powers. However, setting up LBRO in this way now, before the Bill has been passed, means the Government can maintain the momentum generated by the Hampton Review, and in partnership with local authorities, make a real difference to the delivery of local authority regulatory services.

Innovative delivery of regulatory services - Trading Standards

1. Trading Standards of the North-West – Working Regionally

The work of Trading Standards of the Northwest is a great example of several local authority Trading Standards services working together regionally and in partnership with business to increase compliance, ensure the effective application of resources and reduce unnecessary burdens on business.

In March 2002 the eight Greater Mersey Trading Standards Authorities established a project group to identify the top ten most complained about businesses in the region. The work of the project group formed the foundation of a new regional approach to regulatory enforcement that sees 22 local authorities from across the North-West working closely with the businesses identified to increase compliance.

- This approach has a number of benefits including;
- increased compliance
- reduced burdens for Home Authorities (a regional approach means that Home Authorities need only deal with one group as opposed to 22 separate local authorities);
- strengthening the voice of trading standards services (a regional voice has proven to be more powerful, particularly where a region is predominantly made up of small authorities); and
- increased turn over for business.
### Innovative delivery of regulatory services - Environmental Health

#### 2. City of Westminster - High Risk Category ‘A’ Project

In 2002, Westminster Council adopted an innovative consultative approach to dealing with the highest risk food premises (72 out of a total of 5000 operating in Westminster). The owners of the premises, it was discovered, were a hard to reach group and special efforts were needed to get key messages across.

A consultation event was held with owners and managers, which was used to explore the reasons for non-compliance and the best ways in which the Food Team could shape services to help with compliance. As a result, a single officer took on a role of single point of contact to ensure consistency, and free training in hazard analysis was given to businesses through tailored workshops.

This initiative, which was recognised by the Beacon Scheme, had a number of benefits:
- Risk was reduced in 91% of the outlets;
- Despite the work put into reaching out to these businesses, officer time was saved through the consequent reduction in inspection frequency
- Complaints associated with those businesses reduced.

This model has now been expanded to persistent category B premises.

### Innovative delivery of regulatory services - Trading standards, health and safety, environmental health and fire safety

#### 3. Retail Enforcement Pilot

The Retail Enforcement Project (REP) is developing a new method for regulatory intervention of businesses and is a key regulatory reform project within the BRE. REP seeks to demonstrate early practical delivery of the Hampton agenda by reducing administrative burdens on business and improving the delivery of regulatory enforcement services.

The Better Regulation Executive is rolling out REP in up to 70 county, unitary and district councils nationwide during 2007/08. Such a diverse sample is necessary for the methodology to be tested extensively, and to provide robust evaluation of the benefits.

An official from a local authority which has taken part in the early phase of the pilot says “Participation in REP has meant that we have been able to provide a greater focus on 'problem solving' within the local area. The more efficient use of resources has facilitated joint working with other enforcement agencies. Experience to date suggests that there is a synergistic effect when working together, and that there are benefits to each agency, both from the exercises and the improved understanding officers gain of the respective roles and responsibilities of their counterparts in the other agencies, as well as positive feedback from businesses involved.”
2.3 Lack of resource, capacity, or national focus often means that examples of best practice remain locally based. Hampton’s observation in 2005 that “good practice is not uniform” still holds true.

2.4 To remedy this, the Government is giving LBRO a programme budget to help drive and spread good practice within and across local authority regulatory services. It will fall to the discretion of the LBRO’s board as to how this is achieved.

**Transition from a Private Company to a Statutory Corporation**

2.5 LBRO will convert to a statutory corporation as soon as legislation comes into force. LBRO’s functions and powers will then derive from statute. These powers and functions are discussed in full in Chapter 3.

2.6 Schedule 2 of the Bill allows for the necessary transfer of the LBRO company’s property, assets and liabilities, and staff to the statutory LBRO.

2.7 The LBRO company has been set up with its future role in mind. The Government has established the company so that it is as closely aligned with the future LBRO as possible. This will ensure a smooth transition on the ground. For example, the Office of the Commissioner for Public Appointments (OCPA) Code of Practice has been followed to recruit the Chair and Board; LBRO will not have to go through this process again when the company becomes a statutory corporation.

2.8 The memorandum of association of the company sets an objective and grants powers that broadly correspond to the overall functions and objectives of LBRO going forward.

**What will LBRO deliver?**

2.9 Success for LBRO will take many forms:

For business:

- £23 million - £46 million in savings for multi-site businesses, through better coordinated local authority regulatory services;

- £64 million in savings for all businesses through more effective and consistent enforcement activity.

For local authorities:

- more equal distribution of Primary Authority Partnerships amongst local authorities;
• clarity and guidance for local authorities on central government priorities and how to implement them, whilst enabling them to pursue local priorities that reflect the needs of their local areas. This should generate savings for local authorities of £570,000 per annum\(^6\);

• £3 million - £5 million\(^7\) in savings overall for enforcing authorities, through better collaboration with Primary Authorities; and -

• a source of expertise on local authority regulatory services for central government.

For regulators:

• better communications between all levels of the regulatory “system”: between local authorities dealing with multi-site businesses, and between the front line and policy makers;

For citizens:

• more efficient markets as a result of better targeting of local authority resources to dealing with rogue businesses and more proportionate and targeted regulatory approaches.

2.10 For individual regulatory services, the Government’s intention is that resources currently taken up by enforcement in areas of comparatively low risk should be freed up for more targeted use. This may include creatively and actively finding ways of tailoring advice to promote better compliance amongst the businesses that want it; and to focus enforcement in line with the sanctioning powers that Part 2 of the Bill will create.

**LBRO’s relationship with LACORS**

LACORS, the Local Authorities Co-ordinators of Regulatory Services, is an established local government representative body working with and on behalf of local authority associations across the UK. LACORS aims to facilitate the sharing of best practice and the delivery of consistency in the enforcement of regulatory services. It is funded from local government monies, and is politically accountable to the Associations. It and LBRO will both be working to supporting improvement in regulatory services; LBRO will work closely with LACORS as a representative body, to avoid duplication and to maximise the synergies, in their work.

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\(^6\) See Impact Assessment (page 78)
\(^7\) See Impact Assessment (pages 77 – 78)
CHAPTER THREE

WHAT THE STATUTORY LBRO WILL DO

3.1 LBRO’s overall objective is aimed at helping local authorities regulate more effectively and more efficiently, helping build the capacity of regulatory services to implement the Hampton agenda: see Clause 3 of the draft Bill.

3.2 To achieve this objective, the Government proposes that LBRO should have five core functions:

- improving the co-ordination and consistency of regulatory functions and enforcement through the Primary Authority Principle and resolving disputes when they arise;
- issuing guidance to local authorities in respect of regulatory services;
- reviewing and revising a list of national priorities for local authority regulatory services;
- providing advice to Government on enforcement and regulatory issues associated with local government; and
- encouraging best practice, and innovative approaches to the provision of local authority regulatory services, including through the use of its programme budget.

3.3 Each of LBRO's functions is discussed below.

3.4 The territorial scope of the draft Bill- which is discussed on pages 34-35, extends to England and Wales.

Improving Co-ordination and Consistency

I The Primary Authority Principle

For the purpose of the draft Bill and consultation document, we will refer to what is currently known as a Home or Lead Authority as the ‘Primary Authority’.
3.5 Improving the functioning of the Primary Authority Principle is the key to unlocking the most significant and tangible benefits of the LBRO to large business, and will deliver the policy announced in the 2006 Pre Budget Report.

3.6 This principle also addresses Hampton’s view that while trading standards and environmental health laws are designed to provide a broadly similar level of protection to all citizens of the country, “action needs to be taken to make services more consistent across the country.”

**What is the Primary Authority Principle?**

3.7 The Primary Authority Principle is based on the core idea that a business operating across the UK should be able to rely on a single local authority for regulatory advice and support. For example, a multi-site retailer who seeks guidance from one local authority on product labelling, should feel assured that if the guidance is followed, it will not be challenged in any of its individual outlets by other local authorities.

**How well is the Principle working?**

3.8 The Primary Authority Principle has existed for decades on a voluntary basis and delivers clear benefits for business when it works well. However, in practice, these benefits are not always being delivered consistently or effectively. The following issues have been raised by stakeholders and through the DTI consistency project:

- not all businesses that want a Primary Authority relationship are able to find a willing local authority partner;
- partnerships are not evenly distributed, with some local authorities investing more in this principle than others;
- businesses with Primary Authorities are not receiving a consistent service;
- there is a lack of contact between enforcing authorities and Primary Authorities, leading to inconsistent advice and action;
- where partnerships do exist they lack an effective dispute resolution system to resolve inconsistencies and disagreements between local authorities.

3.9 The consequence of this can be significant.

**Case study:** A manufacturer for a multi-site business recently cleared a new product line with their Primary Authority before dispatching the product to the retailer. Despite the Primary Authority’s advice, a different local authority believed the product violated food imitation regulations and threatened the store with prosecution. The manufacturing business claims this incident cost them £25,000 in wasted stock.

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8 See Annex C
3.10 A series of DTI case studies on multi-site businesses with primary authorities, demonstrated the potential impact when these partnerships do not work effectively. DTI found an average of 2-4 examples per case study of inconsistent advice between authorities, with the cost of one incident as high as £100,000.

3.11 Inconsistency is not only costly, it causes irritation, reduces the ability of a business to rely on the professional advice they receive, and it can undermine the credibility of regulatory services.

3.12 The ineffective operation of the Primary Authority Principle can also waste professional officers’ time and lead to an unnecessary duplication of work.

*How can these issues be resolved?*

3.13 Currently there are several aspects of the Primary Authority Principle where greater consistency could be achieved through legislation, including:
- who is eligible for a partnership;
- when an enforcing authority must contact a Primary Authority;
- effective dispute resolution when a disagreement arises between authorities; and,
- the role and status of risk assessments carried out by a Primary Authority.

*Giving business the right to a Primary Authority Partnership*

3.14 Partnerships are currently provided by authorities on a voluntary basis. This means that some businesses that have requested a partnership with a local authority have been turned down, often because the authority does not feel adequately resourced to operate such an arrangement.

3.15 Partnerships are also not evenly distributed amongst local authorities. The concentration of business headquarters means some areas such as Milton Keynes, Westminster and Edinburgh, act as Primary Authorities for many large multi-site organisations. Other authorities have far fewer or no partnerships at all.

3.16 To resolve these issues the Government proposes that:

(a) Any business operating across more than one local authority will have the option of having a Primary Authority Partnership. There is no “right” to a partnership spelt out on the face of the Bill, but clause 8 covers this point.

Charitable organisations or NGOs who operate across two or more local authorities, and are subject to the regulations covered in the Bill, will also be eligible for a partnership.
(b) If the business makes an approach to a local authority, and the authority does not agree to participate in the partnership, it will be LBRO’s responsibility to resolve the matter. It could do this by nominating an authority to take on the partnership. LBRO must consult the nominated authority and business first. We propose that LBRO also keeps in mind the location of the business’ decision making base, and any resource issues a potential Primary Authority may have.

**QUESTION 1: Do you agree with LBRO’s role in helping to facilitate new Primary Authority Partnerships?**

*Ensuring communication between Primary and Enforcing Authorities*

3.17 Local authorities and businesses that already have a Primary Authority Partnership are generally positive about the benefits it can deliver. However, partnerships are undermined when there is a lack of liaison between enforcing authorities and primary authorities.

3.18 The first step to improving communication is to make sure all enforcing authorities are aware when a business has a Primary Authority Partnership.

3.19 Currently Home and Lead Authority Partnerships are listed on separate websites hosted by LACORS and HSE. These databases are not used consistently by local authorities. Not all partnerships are registered and of those that are, not all of them are ‘active.’

3.20 Where a partnership exists, all local authorities need a quicker and easier way to know that the partnership exists and what the partnership covers. It would be unreasonable to expect an enforcing authority to communicate with a Primary Authority if it does not know who the Primary Authority is.

3.21 It is proposed that LBRO should be responsible for ensuring that a register of partnerships is available. In the short term, we envisage this will simply mean the continuation of the HSE and LACORS database. This is delivered by clause 8 (7).

*When should an Enforcing Authority communicate with a Primary Authority?*

3.22 Currently, there are some occasions when enforcing authorities do not communicate at all with a Primary Authority when dealing with a business in a partnership. Where this occurs it can undermine the effectiveness of the Primary Authority Principle.
Case Study:

A retailer with over 200 sites sought advice from its Primary Authority on compliance with food handling regulations. The Primary Authority advised that, in order to comply with the regulations, full wash hand basins should be installed in the servery/cookery areas in all new sites. However, given the design of the older premises and the health and safety issues of installing wash hand basins, the Primary Authority recommended that additional hand cleaning facilities would be good practice.

One enforcing authority challenged the approach taken in the older premises and issued the business with a notice. At no point did the enforcing authority contact the Primary Authority.

When the Primary Authority became aware of the issue and informed the enforcing authority of the alternate arrangements, the enforcing authority chose to proceed. The enforcing authority subsequently lost the case in court, and was ordered to pay the business over £15,000 in costs. This same business is currently facing action from another authority for the same issue. Again, the Primary Authority has not been contacted.

3.23 To resolve this issue, the Government proposes that:

- An enforcing authority must consult and obtain the consent of a Primary Authority before taking enforcement action against a business in a partnership. An enforcing authority will be exempt from this requirement where there is an imminent risk of serious harm to human health or the environment.

- For the purpose of the draft Bill, enforcement action, in relation to a breach of a restriction, requirement, or condition means-

  (a) any action which relates to securing compliance with the restriction, requirement or condition, or

  (b) any action taken with a view to or in connection with the imposition of any sanction, criminal or otherwise, in respect of the breach: see clause 10 (7).

  This provision is intended to include action taken by a local authority where there is thought to have been a breach, but will not cover routine engagements between businesses and local authorities.

- If the Primary Authority considers that the action is not appropriate (if for instance it is inconsistent with previous advice it has given) the enforcing authority may not take the action. The enforcing authority will have the option of referring the matter to LBRO if it disagrees with this decision.
3.24 Our aim here is to ensure that authorities communicate early when an issue arises with a business that has a Primary Authority Partnership. We do not wish to create a situation where an enforcing authority must liaise with a Primary Authority before every interaction with a business in a partnership, but wish to strike a balance between local autonomy and ensuring that the Primary Authority Principle works effectively.

3.25 We also have no intention of creating a hierarchy of authorities. We want the Bill to ensure that a meaningful discussion takes place between primary and enforcing authorities with a view to achieving consistency, and the right regulatory outcome. For the purpose of the Bill, the word 'consent' has been used to describe this communication. But, if a primary and enforcing authority do not agree a particular course of action, the ultimate decision will lie with LBRO.

**QUESTION 2: Do you agree with the way the Bill handles the communication between primary and enforcing authorities, including the definition of 'enforcement action'? If not, what alternatives do you propose?**

Effective arbitration

3.26 The third major issue to address is that where a dispute arises between a Primary Authority and an authority that proposes to take enforcement action, there is no quick and effective method of resolution. A local authority has the option of referring the issue to the HSE Local Authority Unit or LACORS, but this process is not mandatory, and there is little incentive for an Enforcing Authority to take part.

3.27 To resolve these issues, and to fulfil Government commitments, we propose that:

- LBRO be responsible for providing an arbitration system to cover circumstances where a Primary Authority and enforcing authority disagree over proposed formal enforcement action for a business with a Primary Authority Partnership, as set out above. LBRO may delegate this function under clause 11 (12).

- An enforcing authority or a Primary Authority will be able to refer a dispute to LBRO, which will then have 28 days to issue its findings. See clause 11 (10).

**QUESTION 3: Do you agree that LBRO should consider every case referred to it by a Primary or Enforcing Authority?**
- A business will also be able to request that LBRO resolve a dispute where
  - They have followed the advice of their Primary Authority, but now face enforcement action from an enforcing authority in respect of that matter, and the Primary Authority has consented to the enforcement action.
  - The Primary Authority and enforcing authority have not resolved a dispute in a timely manner.

3.28 Our objective is to provide a quick, cheap and effective arbitration mechanism for all parties and to prevent disputes going to court unnecessarily. To achieve this, LBRO’s decisions in cases it becomes involved in will be binding: where LBRO decides that enforcement action should not be taken, no action can be taken (save when enforcing authority considers there to be an imminent risk of serious harm to health or the environment).

3.29 Non-binding decisions are unlikely to be effective because:

- LBRO’s involvement may simply delay a case until it is brought to court rather than actually resolve an issue; and

- Businesses are more likely to decide that the cost of a possible court case is too great. They may therefore simply concede to an Enforcing Authority even where its advice conflicts with previous advice from their Primary Authority. If businesses do act in this way, then significant benefits from LBRO – £23 to £46 million – are likely to be lost.

3.30 LBRO will of course, be subject to the usual constraints of administrative law that apply to public bodies carrying out public functions and its decisions will ultimately be subject to judicial review.

3.31 To encourage consistency of advice further, the Government sees value in LBRO having an obligation to accept evidence from other national bodies when deciding a case. Although this is yet to be included in the draft Bill, we envisage these bodies may include the:

- Health and Safety Executive
- Food Standards Agency
- Office of Fair Trading

3.32 We envisage that LBRO would be obliged to accept evidence from equivalent bodies in the devolved administrations where this is appropriate.

**QUESTION 4:** Do you agree that LBRO should be obliged to consider evidence from national bodies when resolving enforcement action disputes?
Risk-based enforcement and Inspection

3.33 While the proposals outlined will tackle inconsistency in the interpretation of regulatory standards, it will not necessarily improve consistency in the way multi-site businesses are risk assessed and inspected across their whole business, or encourage greater use of the information and intelligence gathered by a Primary Authority.

3.34 Currently there are very few formal written agreements between local authorities and businesses. The Government does not wish to require that partnerships draft such agreements. This would be bureaucratic and would remove the flexible arrangements that both local authorities and businesses have told us makes these partnerships work. However, where a Primary Authority has undertaken a national risk assessment of a multi-site business and established an inspection plan, this should be taken into account by other authorities.

3.35 To ensure that firms operating in more than one local authority face a consistent and risk based approach across their business we have included a provision in the draft Bill which states that:

- Where a Primary Authority has produced a written inspection plan, they must ensure it is brought to the attention of enforcing authorities
- A local authority must have regard to the inspection plan in its dealings with the business
- If an authority wants to act outside of the recommendations in the plan, they must contact the Primary Authority (See clause 13).

3.36 Our policy intention is that there be a general presumption that businesses with good compliance records receive the lightest possible touch across all branches, but that breaches of requirements be dealt with more severely.

QUESTION 5: Is the duty to have regard to inspection plans strong enough, or should local authorities be obliged to “act in accordance with” plans drawn up between a business and a Primary Authority?

Savings to Local Authorities and Business

3.37 Taken as a whole, the Government believes these proposals will generate significant annual savings for both local authorities and business. These are detailed in full in the attached Impact Assessment, and are summarised below:

<table>
<thead>
<tr>
<th>Business</th>
<th>Local Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost</td>
<td>£0</td>
</tr>
<tr>
<td>Savings</td>
<td>£89 million - £112 million</td>
</tr>
</tbody>
</table>
II Guidance to Local Authorities

3.38 We propose that LBRO should have an important role in supporting and providing advice to local authorities in the way that they develop their regulatory services.

What type of guidance will LBRO issue?

3.39 The draft Bill gives LBRO the power to issue guidance relating to local authority regulatory services and to deliver its overall objective, including:

- how to operate a Primary Authority Partnership effectively (see Clause 15);
- how to enforce specific pieces of legislation or areas of regulation where there might be a lack of clarity or where other guidance, including statutory guidance, is unclear (see Clause 4);
- how local authorities operate regulatory services more generally, such as
  - how best to target resources at the most high risk areas, or
  - how to tailor advice to the needs of different types of business;
  - best practice in focusing on central government’s enforcement priorities (as set out in recommendation two of the Rogers Review).
- how to align the services offered by different regulators in a single local authority area, e.g. lessons learned from the Retail Enforcement Project (see Annex C); and,
- more specific issues arising from a case of arbitration where LBRO wants to promote consistent enforcement across the UK.

3.40 Issuing guidance will also be the primary vehicle through which small and medium size businesses, which may only operate within a single authority area, will benefit from the work of LBRO.

What kind of ‘weight’ will LBRO’s guidance have?

3.41 The draft Bill proposes putting local authorities under a statutory duty to ‘have regard to’ guidance issued by LBRO. This will require the authorities to give due weight to LBRO’s advice, but allow for local variation where there are good reasons for departing from it in particular cases.
3.42 For instance, if LBRO were to propose ways of offering better outreach services to business to support compliance, it would not be acceptable if this meant that local authorities which had already established high quality services on a different basis should be required to start again from scratch.

**QUESTION 6: (a) Do you agree with this approach? (b) Or should a stronger requirement be placed on local authorities to comply with LBRO guidance? If so, what is your argument?**

*How will LBRO’s guidance fit with other statutory obligations?*

3.43 Legally, it would not be acceptable for LBRO to issue guidance which puts local authorities under a duty to act in a way that contradicts other requirements placed upon them by the law. This will mean that where a local authority believes the guidance issued by LBRO is in conflict with another statutory requirement, the local authority will not be obliged to follow it.

**Issuing new guidance**

3.44 LBRO’s guidance will have an ongoing impact on the way in which regulation is handled by local authorities. It is therefore doubly important that LBRO engages stakeholders as it develops guidance.

3.45 The draft Bill requires LBRO to consult those parties who will be substantially affected by the guidance before it is issued. The list of consultees is likely to be different in particular cases, but it is likely to include: regulators (the Food Standards Agency, OFT and HSE in particular), local authorities, LACORS, businesses, consumers and central government. We believe that this will enable LBRO to act both flexibly, transparently and reduce the possibility of inconsistent guidance being issued.

**III The Government’s Regulatory Priorities**

3.46 Requirements on local authority regulatory services derive from a number of sources: from statutory guidance, legislation and the inclusion of measures in the performance framework.

3.47 The Hampton Report found that one of the impediments to more risk based working was inflexibility and overlap in the framework set by central government for local authority regulatory services.

3.48 The Rogers Review of the Government’s Regulatory Priorities, sought to provide a better focused, more evidence-based and shorter list of priorities. (see Annex D).
3.49 The publication of the list does not prevent local authorities pursuing their own local priorities in parallel; on the contrary, it is expected that an increasingly evidence based and focused framework from Government will free up resources for a more strategic approach. This should allow local authorities to target the work of regulatory services on those areas which matter most to local people.

3.50 The Rogers Review recommended that LBRO should have a continuing role in keeping this list up to date. It is our expectation that LBRO will build upon the evidence based consultative approach initiated by Peter Rogers, including:

- Consulting such persons as LBRO considers appropriate. Although this is not specified in the Bill, the Government would expect this to include the same representative groups used by Rogers, including citizens, business, local authorities, and government departments;
- Obtaining Ministerial consent to the list prior to publication; and
- Publishing any submissions and evidence provided as part of the review.

3.51 The Government proposes that LBRO review the list of priorities either at the Minister’s request, or on its own initiative. We would expect this to occur at least every three years, as recommended by Rogers.

3.52 As set out in Clause 7 of the Bill, local authorities must have regard to the list of enforcement priorities. It is our intention that the Rogers’ priorities become the enforcement priorities captured by this clause.

**QUESTION 7:** (a) *Do you agree with the process set out in the Bill, for evidence gathering and publication?* (b) *Should LBRO be required in the Bill to consult with specific stakeholder groups?*

**QUESTION 8:** *Should local authorities be put under a duty to have regard to the list when they plan their own priorities?*

**IV Advice to Government**

3.53 It is proposed that LBRO should have the ability to provide advice to Government on issues affecting local authority regulatory enforcement. LBRO will draw on the expertise of experienced local regulation professionals, will have close contacts throughout enforcement networks, and will have a high profile voice with access to Ministers and policymakers.
3.54 The intention is not for LBRO to become a report writing body, rather it will provide genuine evidence based advice to central government, reflecting issues impacting local authority regulatory services that need to be tackled at a national level.

In what areas is LBRO likely to offer advice to central government?

3.55 We would expect LBRO’s advice to cover a range of practical issues relating to enforcement by local authorities, for instance:

- advice about the way in which a current regulation is enforced by local authorities;

- advice on how a policy under development might be tailored better to reflect professional cultures and established ways of working where these have proved their value;

- advice about the resource implications of particular forms of regulation for local authorities, and how these might be better targeted, or aligned with other types of work; and

- recommendations to central government about cases where the existing framework set by central government and national regulators makes it difficult for local authorities to pursue an effective, or risk based overall strategy.

3.56 We expect in cases like this that LBRO’s advisory role would enhance the practical evidence base available to central government when it develops policy.

3.57 Clause 6 of the Bill sets out LBRO’s advice giving powers.

QUESTION 9: Do you agree that LBRO should have this advisory role?

V LBRO’s Programme Spend

3.58 Finally, we propose that LBRO should be able to encourage best practice, and improve the coordination and provision of local authority regulatory services through its programme spend.

3.59 LBRO’s power to make use of this programme spend, at the Board’s discretion, is set out in Clause 5 of the draft Bill.
CHAPTER FOUR

LBRO’S PROPOSED STRUCTURE AND SCOPE

4.1 Schedule 1 of the Bill sets the legal framework within which LBRO must carry out its functions, dealing with issues like Board membership, powers to employ and pay staff, and accountability.

The Board

4.2 LBRO’s Board will consist of a Chair, and between four and ten ordinary members. It is expected that, as with the Directors of the Company in LBRO’s current form, the Board will reflect a range of experience from local government and national regulation, business, and from consumer groups. This diverse range of backgrounds will enable the Board to reach better quality decisions than might otherwise be the case.

4.3 By its nature, the Board’s primary responsibility will be to LBRO and its objectives, and its members will not sit as representatives of any particular constituency.

4.4 The Board will be able to appoint, employ, and pay staff.

Accountability

4.5 LBRO will have substantial operational independence. However, it will be important to ensure its accountability to Ministers and to Parliament. The Government proposes to do this in a number of ways:

- It will submit a report on the discharge of its functions to the Minister for the Cabinet Office every financial year; the Minister will lay copies of the Report before Parliament.

- Its accounts will be subject to examination and audit by the National Audit Office.

- LBRO will, like other public bodies, be subject to the provisions of the Freedom of Information Act 2000, and will be subject to oversight by the Parliamentary Ombudsman under the Parliamentary Commissioner Act 1967.
Transition from the Company

4.6 Clause 2 dissolves LBRO as a private company: Schedule 2 of the draft Bill makes arrangements for LBRO as a statutory public body to take over its functions, property, and staff at the point when it acquires the powers set out in the Bill.

Dissolution

4.7 The Bill also makes provision for the dissolution of LBRO. LBRO’s role is to support culture change within local authority regulatory services and it is anticipated that at some point in the future its work will be complete. The draft Bill therefore allows for Ministers to dissolve LBRO, and to transfer property and functions as deemed appropriate, following consultation with relevant groups.

QUESTION 10: Do you agree with this approach to LBRO’s structure and legal powers?

Legislative Scope

4.8 It is our intention that LBRO’s scope extends to the functions of local authorities in relation to trading standards and environmental health. Unfortunately there is no existing statutory definition of those functions.

4.9 It has therefore not been possible to finalise the scope of LBRO’s general functions in the draft Bill. It is intended that a separate schedule of the Bill will eventually list the legislation in respect of which local authorities exercise these functions, where LBRO will have a role in giving guidance and providing advice to Ministers.

4.10 Broadly speaking, the list should include the whole range of work undertaken by trading standards and environmental health officers on behalf of local councils, and will be updated when any new responsibilities are given to trading standards or environmental health officers.

4.11 The list is likely to include the legislation at Annex E.

QUESTION 11: Are there any pieces of legislation on trading standards and environmental health that are enforced by local authorities, and should be added to this list?

QUESTION 12: Should anything be removed from this list?

QUESTION 13: Are there other areas that you believe LBRO’s work should extend to, and why?
**Territorial Scope: LBRO in Scotland, Wales and Northern Ireland**

4.12 Local authorities are responsible for the enforcement of a wide range of these regulations throughout the United Kingdom, within these areas of legislative scope.

4.13 The relevant regulations touch on a mixture of reserved, devolved, and (in Northern Ireland), transferred issues. Broadly speaking, responsibility for policy relating to consumer protection is reserved, and the law is similar in England, Scotland and Wales. But responsibility for policy relating to public health is devolved. The introduction of smoking bans at different stages (Scotland (March 2006), Wales and Northern Ireland (April 2007) and England (July 2007)) shows how the law can vary in practice, reflecting the different approaches of the administrations involved.

4.14 The organisational structure of local enforcement also varies across national boundaries: trading standards are enforced by local authorities in England, Scotland and Wales, for instance, but in Northern Ireland much of the relevant work is carried out by a central government service.

4.15 Many businesses trade throughout the United Kingdom, and it is important that local authorities, Whitehall, and the devolved administrations work closely together to ensure that - while we work together to secure the outcomes of regulation - the resulting burdens on business are kept to the minimum possible. Businesses and local authorities are already working together across borders to ensure that this takes place: Primary Authority Partnerships often operate across the UK, for instance, even in areas of devolved responsibility.

4.16 Officials from the Better Regulation Executive have been in discussion with officials from all three devolved administrations regarding the extent to which LBRO should operate beyond England. We have discussed a number of possible options – the Primary Authority Partnerships measures might extend across the UK in areas of reserved law, for instance, or the Bill could extend LBRO’s powers as a whole across the UK, tailored as appropriate to deal with those areas where it affects devolved policy. The exact answer - which is likely to differ across the UK - is a matter for agreement with the devolved administrations.

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9 Which would entail, given the possible impacts on the funding of local authorities, further discussion of legislative consent requirements in the Scottish Parliament.
4.17 A cross-border role for LBRO raises issues of accountability: it would not be reasonable for LBRO to seek consistency where the law differs across borders for good reasons, for instance. Ministers in the devolved administrations will rightly expect accountability to them to be upheld where LBRO operates in their areas of responsibility and competence.

4.18 The draft Bill illustrates how the Bill could work in relation to Wales – providing Welsh Ministers with powers to issue guidance or directions where the work of the LBRO ventures into devolved territory. This would allow for LBRO’s work to be tailored to ensure that Ministers are consulted or kept informed about its work where this is appropriate. For instance, Welsh Ministers might direct that LBRO should be required to keep Welsh Ministers informed of arbitration cases involving Welsh local authorities, or require that its statutory guidance should be subject to consultation with them where this applies to local authorities. The draft Bill also illustrates how Welsh Ministers could have access to, and direct, LBRO’s advisory function in relation to their own responsibilities.

4.19 There have recently been elections in Scotland, Wales and Northern Ireland and new Ministers will need time to consider the proposals in full. As our discussions resume, the draft Bill currently restricts LBRO’s role to England and Wales, but we believe that there are benefits potentially if LBRO took on a UK-wide role (tailored as appropriate to the different contexts), and, if this route is followed, the Bill will be updated accordingly.

**QUESTION 14:** To what extent should the Local Better Regulation Office operate across the UK, with respect to the following functions?

a) improving co-ordination and consistency  
b) guidance to local authorities  
c) work on regulatory priorities  
d) advice to Government  
e) awarding grants

**QUESTION 15:** How should its work be tailored to the different national contexts?
Summary: LBRO Costs and Benefits

4.20 The Government is committed to ensuring that no new unfunded net burdens are placed on local authorities. This principle applies to LBRO and the exercise of its functions.

4.21 The estimated costs and savings set out in the impact assessment demonstrate there will be annual net savings for English and Welsh authorities taken as a whole through proposals in part one of the Bill.

4.22 Consultees are invited to offer views on the treatment of costs and benefits throughout the document, and the results will feed into the final assessment which will be published alongside the Bill.

<table>
<thead>
<tr>
<th>Category</th>
<th>Annual</th>
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</thead>
<tbody>
<tr>
<td>Business costs</td>
<td>£0</td>
</tr>
<tr>
<td>Business benefits</td>
<td>£89m-£112m</td>
</tr>
<tr>
<td>Local Authority costs</td>
<td>£2.5m</td>
</tr>
<tr>
<td>Local Authority benefits</td>
<td>£4m-£6.2m</td>
</tr>
<tr>
<td>Central Government Costs</td>
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</tr>
<tr>
<td>Total Annual Costs</td>
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<tr>
<td>Total Annual Benefits</td>
<td>£93m-£118m</td>
</tr>
<tr>
<td>One off costs (partnership set up, spread over estimated six years)</td>
<td></td>
</tr>
<tr>
<td>Business</td>
<td>£0.1m</td>
</tr>
<tr>
<td>Local Authorities</td>
<td>£0.5m</td>
</tr>
</tbody>
</table>
CHAPTER FIVE

INTRODUCTION

5.1 The 2005 Hampton Report, *Reducing Administrative Burdens: Effective Inspection and Enforcement* found that penalty regimes are cumbersome and ineffective and recommended that a comprehensive review of regulators’ penalty regimes should take place.

5.2 As a result, the Minister for the Cabinet Office commissioned Professor Richard Macrory to investigate the area. The Macrory review culminated in a report *Regulatory Justice: Making Sanctions Effective* (November 2006). The report 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.

5.3 In this report, Professor Macrory noted that the current sanctioning regime was ineffective, over reliant on criminal prosecution and lacking in flexibility. His recommendations included introducing an alternative system of civil sanctions, or an ‘extended sanctioning toolkit’ for regulatory offences in order to set up a modern, targeted, fit for purpose sanctioning regime.

**What is the Government proposing to do?**

5.4 To help deliver the Macrory vision, the Government is proposing to introduce an alternative system of civil sanctions to implement four of Professor Macrory’s nine recommendations:

<table>
<thead>
<tr>
<th>Recommendations identified by Macrory:</th>
<th>Part 2 of the Regulatory Enforcement and Sanctions Bill will:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consider introducing Fixed and Variable Monetary Penalties.</td>
<td>Provide for Fixed Monetary Penalties schemes. Provide for Variable Monetary Penalties to be a Discretionary Requirement.</td>
</tr>
<tr>
<td>Consider introducing and extending current Statutory Notices.</td>
<td>Provide for Discretionary Requirements and notices requiring the cessation of activity.</td>
</tr>
</tbody>
</table>
Consultation on the Draft Regulatory Enforcement and Sanctions Bill

<table>
<thead>
<tr>
<th>Recommendations identified by Macrory:</th>
<th>Part 2 of the Regulatory Enforcement and Sanctions Bill will:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consider introducing Enforceable Undertakings and Undertakings Plus as an alternative to criminal prosecution.</td>
<td>Provide for Enforcement Undertakings as an alternative, flexible and creative regulatory sanction, which will help to tailor the enforcement response to individual circumstances.</td>
</tr>
<tr>
<td>Consider use of a separate tribunal to hear appeals against Monetary Penalties and Statutory Notices</td>
<td>Allow a right of appeal against Fixed Monetary Penalties, Discretionary Requirements and notices requiring the cessation of activity.</td>
</tr>
</tbody>
</table>

5.5 The ‘extended sanctioning toolkit’ will therefore comprise:

- Fixed monetary penalties (Clauses 21 - 23)
- Discretionary requirements: (Clauses 24 - 27)
  - Variable Monetary Penalties
  - Compliance and Restoration notices
- Cessation notices- permanent and temporary (Clauses 28 - 33)
- Enforcement undertakings (Clauses 26 and 34)

5.6 In proposing to provide regulators with this broader ‘toolkit’ of sanctions we have noted that the extent to which regulators already have these powers is variable. It is intended that these sanctions may be used in combination with each other and alongside existing sanctions available to regulators. The aim is to provide a broad range of regulatory sanctions to allow regulators to select the most appropriate and effective response to a particular instance of regulatory non-compliance.

5.7 In order to ensure that regulators have the powers that they need, the Bill will provide Ministers with delegated powers to ‘draw down’ those sanctioning options that are appropriate for the regulators that they have responsibility for. This will be done through secondary legislation once regulators in that policy area have been agreed as working to the Regulators’ Compliance Code. A public consultation will be required before the secondary legislation is agreed in Parliament.

5.8 In developing its proposals, the Government has been mindful of the seven Macrory characteristics.

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10 The Government is also separately consulting on a Statutory Code of Practice (The Regulators’ Compliance Code) which will place statutory obligations on regulators. (See annex D for summary)
The Seven Characteristics identified by the Macrory Review are:

- Regulators should publish an enforcement policy
- Regulators should measure outcomes not just outputs
- Regulators should justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament
- Regulators should follow up their enforcement actions where appropriate
- Regulators should enforce in a transparent manner
- Regulators should be transparent in the way in which they apply and determine administrative penalties
- Regulators should avoid perverse incentives that might influence the choice of sanctioning response.

**Who will benefit from the proposals?**

5.9 We believe that the proposals will be beneficial for regulators, business and those whom the regulation seeks to protect. The toolkit is an efficient and proportionate response to regulatory non-compliance. It focuses on restoration and increasing future compliance rather than the more time consuming and expensive criminal prosecution. The key financial gains to regulators and businesses are set out in the attached Impact Assessment (ANNEX B) and are summarised in the box below. The intended beneficiaries of the regulation will also gain from the more efficient, targeted and transparent sanctioning regimes.

**Impact Assessment Highlights**

- 60% of regulatory cases taken out of the Courts
- £1.25 million - £3.75 million savings for Courts
- Flexible toolkit will enable Regulators to give a more proportionate response
- £1.5 million savings on operating costs for Regulators
- Fully compliant business will not bear any costs
- £6 million - £62 million savings for business for not going to court
- Encouraging business to work with regulators
- Reduced need for inspection
- Overall benefit of **£2.05 million - £59.75 million**
CHAPTER SIX

SCOPE OF THE NEW POWERS

What is the territorial scope of the powers?

6.1 Part 2 of the Bill extends in principle to the whole of the UK, so provision could be made in respect of offences in Scotland and Northern Ireland as well as England and Wales. However, no provision can be made which trespasses into the legislative competence of the Scottish Parliament or Northern Ireland Assembly. We are currently discussing with the devolved administrations of Scotland and Northern Ireland whether they would like the provisions for alternative civil sanctions to extend to matters falling within their competence.

6.2 Welsh Ministers will, under clause 40, have powers equivalent to those of Ministers of the Crown to confer civil sanctioning powers upon regulators in relation to matters in Wales in respect of which they exercise functions. Ministers of the Crown must in certain circumstances consult with, or obtain the consent of, Welsh Ministers before making provision under Part 2 of the Bill. We are discussing with the Welsh Assembly Government how these powers might be exercised in Wales.

6.3 In summary, as currently drafted, these provisions mean that orders made under Part 2 of the Bill cannot cover matters that fall within the competence of the devolved administrations in Scotland and Northern Ireland, but may do so for Wales.

Who is eligible to receive the new powers?

6.4 The alternative civil sanctioning powers that are contained in Part 2 of the Bill will be applicable to a variety of regulators and the criminal regulatory offences that they enforce. The Bill covers two classes of regulators. The first class is those regulators listed at Schedule 3. The alternative sanctioning powers in Part 2 of the Bill extend to all the offences enforced by these listed regulators. The second class of regulators is those authorities who enforce the offences under the enactments listed at Schedule 4. These authorities are generally local authorities or bodies set up to enforce regulatory Ministerial functions. For example, the Insolvency Service enforces offences under the Companies Acts for the Secretary of State. These regulators are covered only in relation to the offences under the listed enactments. They often have a wide range of responsibilities but these alternative sanctioning powers can only be used in relation to these offences.
6.5 The Bill does not currently contain a power to add to the list of regulators in Schedule 3 or the list of enactments at Schedule 4. It is therefore very important that all the appropriate regulators and offences are listed. We thus seek views as to whether the content of these lists at Schedules 3 and 4 are correct and whether there are any omissions.

6.6 Regulators may only be granted these alternative sanctioning powers in respect of relevant offences. The relevant offences covered by the powers under Part 2 of the Bill are defined at Clause 20(3). Relevant offences are those offences in both primary and secondary legislation in relation to which a regulator listed at Schedule 3 has an enforcement function. For the second class of regulators, relevant offences are those offences under an enactment listed under Schedule 4. The enactments listed are all primary legislation. The alternative sanctioning powers can also be extended to offences contained in secondary legislation enforced by the second class of regulator by virtue of Clause 35. Clause 35 extends the power to create criminal offences by secondary legislation made under an enactment listed at subsection (3) to include the power to create alternative civil sanctioning powers. This extended power will allow for the creation of new civil sanctions provided for in this Bill, such as fixed monetary penalties, to be applied to offences in secondary legislation made under enactments listed in this clause. There is no provision which will allow for the later amendment of the list of enactments in subsection (3). Again, it is important to ensure that the powers listed here are accurate.

6.7 We therefore seek views as to whether the content of the list at subsection (3) is accurate and whether there are any omissions.

QUESTION 16: Are the lists contained in Schedules 3 and 4, and Clause 35(3) accurate and are there any omissions?

How are powers to be awarded?

6.8 The Government believes that any department, regulator or enforcer which exercises relevant regulatory functions should in principle have access to the sanctioning powers subject to a number of pre-conditions and safeguards. In practice, access to these sanctions will be governed by whether the Minister with policy responsibility for the particular area has exercised the powers to make secondary legislation contained in the draft Bill. Before exercising the power, the Minister must be satisfied with the way in which the regulator carries out its enforcement activities using its existing powers. Regulators who want these powers must be able to demonstrate that they are enforcing in a manner that is in line with the principles set out in the Hampton Report. Evidence generated through audits and studies such as the Hampton Implementation Reviews will provide part of the evidence base to underpin decisions on the award of additional powers. (The criteria for the Hampton Implementation Reviews will be published in late May 2007).
6.9 It is proposed in the draft Bill that the relevant departmental Minister would give the named regulator(s) access to these sanctioning powers by an affirmative Statutory Instrument (SI) (see the order-making powers in clauses 21, 24, 28, 31, and 34). The affirmative SI will need to be subject to full consultation before it is agreed by both Houses of Parliament (see clauses 44 and 45). The draft Bill does not currently make any other provision about the granting of these powers to regulators. We are considering how these powers should be awarded and would welcome views on this.

6.10 In practice, we would expect that when a Minister believes a regulator within his responsibility is ready to use these additional sanctioning powers, he would, before granting these powers, where appropriate, seek the agreement of the Panel for Regulatory Accountability (PRA) and/or the views of the Minister of the Cabinet Office and provide appropriate evidence that the regulator(s) were working to the Regulator’s Compliance Code. We are seeking views on this process and that for local authorities (which follows) before adding specific elements to the Bill.

6.11 In the case of local authorities, the situation is slightly more complex. For some regimes, local authorities enforce regulation on behalf of a national regulator (for example the Health and Safety Executive or the Food Standards Agency). In these circumstances, when alternative sanctions are being put in place for the relevant criminal offences it makes sense to make them available to local authorities too. For this reason, in assessing the readiness of a national regulator to have these powers, consideration will also be given to the local authority implications.

6.12 We propose that the local authorities should be judged as to whether they as a whole are ready to receive these powers for specific offences. Whilst not separately specified in the Bill, it is proposed that the Cabinet Office working with an appropriate audit body would assess local authorities’ performance, in terms of the extent to which they are enforcing in a manner which is in line with the principles set out in the Hampton report. Once the Cabinet Office is satisfied that a suitably high proportion of local authorities are working to the Regulators’ Compliance Code, departments will be advised that the local authorities as regulators are ready to be given the extended sanctioning powers. These processes are set out in figure 1 below.

6.13 It is considered that this is the most straightforward manner in which the additional sanctioning powers could be awarded, but the Government is open to other proposals.
QUESTION 17: (a) Is the mechanism for awarding powers appropriate? (b) Are there other options or processes you would like to suggest?

Can powers be withdrawn or suspended?

6.14 The Government believes that there should be a mechanism to remove or suspend these extended sanctioning powers where a regulator is demonstrably not taking a proportionate and risk-based approach to enforcement although no provisions have yet been made in the Bill. We are considering whether triggers should be identified that may lead to the withdrawal or suspension of the sanctioning powers from the regulator and the timescale over which powers would be withdrawn. A trigger could include the number of successful appeals against penalties and/or other evidence of poor performance. Views are sought on when the extended sanctioning powers may need to be withdrawn or suspended.

QUESTION 18: Do you believe that there should be a process to withdraw or suspend powers? If so, what triggers do you believe could be used as a decision basis for withdrawing or suspending powers?
CHAPTER SEVEN

FIXED MONETARY PENALTIES

7.1 The Macrory Review found that there is currently a heavy reliance on criminal prosecution as a sanction against regulatory non-compliance. Criminal prosecution can be a disproportionate sanction and may not be the most appropriate option to deter regulatory breaches. In some instances, fines handed down in court do not reflect the financial gain a firm may have made by failing to comply with an obligation.

7.2 To resolve this, the Government proposes to provide for Fixed Monetary Penalties to be available as a sanctioning tool for eligible regulators.

What are Fixed Monetary Penalties (FMPs)?

7.3 Fixed Monetary Penalties are:

- fines applied in respect of low level, minor or high-volume instances of non-compliance;
- imposed directly by a regulator (without the involvement of the criminal courts) if the defaulter is found to have failed to comply with regulations;
- for relatively low fixed amounts.

7.4 The level of penalties will be predetermined by legislation and recipients of a Fixed Monetary Penalty would be able to appeal.

What are their advantages?

7.5 The Government believes that FMPs will be able to provide regulators with an additional sanctioning option that would allow for a flexible, quick and proportionate response to a regulatory breach. It is a low cost enforcement option that will reduce the burden on the criminal court for what are minor offences. This will also provide the regulated community with a far less onerous penalty scheme.

How can perverse incentives be avoided?

7.6 In coming to the decision to add Fixed Monetary Penalties to the sanctioning toolkit, the Government was alive to the concerns of the business community in regard to these penalties. The key issue was whether regulators would financially benefit from imposing them. It is proposed that all monetary penalties would go to the Consolidated Fund (a central Fund held by the Treasury) and individual regulators would not benefit. The Government is content that this provision will ensure that there is no incentive for a regulator to issue a disproportionately high number of such penalties.
**How will FMPs be issued?**

7.7 The proposed process for issuing Fixed Monetary Penalties is set out in clause 22 of the draft Bill. In brief they are:

- If the regulator decides that the offence warrants the issuing of a FMP the regulator must issue a penalty notice to the defaulter. The notice should include information on the circumstances of the alleged offence, state the consequences of non-payment, state the amount of the fixed penalty and how the penalty can be paid. To encourage the timely payment of monetary penalties regulators will be able to impose late payment penalties and offer early payment discounts.

- If the defaulter on whom the penalty has been imposed wishes to challenge the imposition of an FMP, they will first be able to request a mandatory internal review of the FMP by the regulator. Should the defaulter be unsuccessful; they would then have a right of appeal to an appellate body (see Chapter on Appeals for more information).

7.8 The Government believes that this process is simple and straightforward and will provide a means for dealing with more minor offences.

**QUESTION 19:** *Do you feel that the balance of safeguards and appeals is appropriate to this process?*
CHAPTER EIGHT

DISCRETIONARY REQUIREMENTS, CESSATION NOTICES AND OTHER NOTICES

8.1 The Macrory Review recommended improving and extending Statutory Notices to all regulators by:

- Expanding the use of Statutory Notices;
- Following up Statutory Notices in a systematic manner by Regulators using a risk based approach to regulation, and;
- Allowing regulators access to administrative financial penalties as an alternative to criminal prosecution in dealing with compliance failure.

8.2 To achieve this, the Government is proposing to provide for notices (see Clause 24) that may contain any of the following (collectively referred to as ‘Discretionary Requirements’):

- A requirement for a defaulter to pay a monetary penalty whose size will be determined by the regulator according to a number of factors (this corresponds to the Variable Monetary Penalty scheme as envisaged in the Macrory Report).
- A requirement on an offending business to do certain things to bring themselves back into compliance (referred to as ‘Compliance Notices’ in this consultation document for ease of reference); and/or
- A requirement on a defaulter to do certain things to restore the position, as far as possible, to the way it would have been had regulatory non-compliance not occurred (referred to as ‘Restoration Notices’ in this consultation document for ease of reference).

8.3 Furthermore, the Government proposes to provide for notices that require the cessation of activity that gives rise to regulatory non-compliance (referred to as ‘Cessation Notices’ in this consultation document for ease of reference). These may be used together with Discretionary Requirements and other sanctions.

8.4 The Government is also considering whether there is a case for another type of notice (see paragraphs on preventative notices below) and would welcome views on this proposal.
Discretionary Requirements

What are Variable Monetary Penalties?

8.5 The Government proposes that a regulator may require a defaulter to pay a monetary penalty the size of which will be determined by the regulator. It is proposed that this sanction is applied to more serious offences and would take into account aggravating and mitigating circumstances. The primary aim of a VMP is to remove, where possible, the financial gain made from regulatory non-compliance. The criteria for determining the level of the penalty is not set out in the draft Bill but the level of the monetary penalty will be determined by the regulator in accordance with its published penalty guidance (see Clause 36(4)).

What are Compliance Notices?

8.6 A regulator may require the defaulter to take such steps as the notice may specify, within a deadline, to make sure that the regulatory non-compliance does not continue or recur. For example, it may require that the defaulter makes good an unsafe piece of equipment, changes a process or provide suitable training.

What are Restoration Notices?

8.7 A regulator may require the defaulter to take such steps as the notice may specify, within a deadline, to restore the position, so far as possible, to what it would have been if the regulatory non-compliance had not happened. For example, it may require that the defaulter clean up an area that had been contaminated as a result of the defaulter’s non-compliant actions.

How are Discretionary Requirements issued?

8.8 The proposed process currently in the draft Bill for issuing Discretionary Requirements under Clause 24 is:

- A regulator discovers a case of regulatory non-compliance and decides to impose on a defaulter one or more of the following Discretionary Requirements by way of a notice:
  - Variable Monetary Penalty;
  - Compliance Notice; and
  - Restoration Notice.
- The regulator serves a notice of intent stating that it intends to impose a Discretionary Requirement;
- The defaulter then has a period of time to make representations and objections about the regulator’s proposed actions. The defaulter may also offer voluntary undertakings (see chapter on Enforcement Undertakings for further explanation of voluntary undertakings);
The defaulter has the same defences as are available under the original offence;
- The regulator may take these representations and objections into account and then serves the final notice. This notice will be effective immediately on issue;
- The defaulter may appeal the imposition of the final notice to a suitable appellate body.

8.9 The above procedure for issuing a Discretionary Requirement is currently set out in the draft Bill. However, we recognise that there may be other ways of issuing Discretionary Requirements. For example, it may not be appropriate in some circumstances for there to be a notice of intent stage for compliance and restoration notices. Instead of a representations and objections stage prior to the issue of the final notice, we could provide that the defaulter has a right to request an internal review after imposition of the final notice. Such a procedure may be suitable for situations where there is low-level regulatory non-compliance which does not merit a variable monetary penalty.

8.10 We seek views on whether the procedure for issuing Discretionary Requirements provided in the draft Bill is suitable in all situations and whether there may be circumstances where a lighter touch procedure may be more appropriate.

**QUESTION 20: Is the procedure for issuing Discretionary Requirements appropriate for all types of regulatory non-compliance? If not, is there another way of issuing Discretionary Requirements and, if so, under what circumstances?**

How are Discretionary Requirements enforced?

8.11 The Government proposes that Discretionary Requirements will be enforced in the following ways:

- As a general rule, imposition of a Discretionary Requirement gives immunity to the defaulter from later criminal prosecution for the regulatory offence to which the requirement was directed and from the imposition of another sanction, unless there is a further act of non-compliance, or failure to comply with the sanction.

- Where a variable monetary penalty is issued to address a particular instance of regulatory non-compliance, if the defaulter fails to pay the VMP, they may not be criminally prosecuted for the offence or have another Discretionary Requirement imposed on them for the same set of facts. The regulator may however enforce the monetary penalty through the courts as a civil debt (see Clause 41). The defaulter may also be subject to late payment charges.
Where there is non-compliance with a Discretionary Requirement or voluntary undertaking, liability for criminal prosecution and other civil sanctions may revive (see Clause 27). For example, if a defaulter fails to clean up some illegally deposited waste as required by the notice imposing the Discretionary Requirement, the regulator may pursue a criminal prosecution or variable monetary penalty for the offence that the Discretionary Requirement was directed at (and not for the defaulter’s failure to clean up).

If a defaulter has failed to comply with the Discretionary Requirement or voluntary undertaking, then a regulator may be able to impose a further monetary penalty on the defaulter for non-compliance with the Discretionary Requirement (see Clause 27(4)).

8.12 An alternative approach would be to make breach of the Discretionary Requirement itself a criminal offence that could be prosecuted in the normal manner, leaving the underlying offence unpunished. Whilst this at first sight might look an attractive option, it would risk going against the clean separation of criminal and civil sanctions that is at the heart of the Macrory Review’s approach and for this reason is not the approach we currently favour.

QUESTION 21: Do you agree with the proposed enforcement of Discretionary Requirements?

QUESTION 22: (a) Should all Discretionary Requirements be enforceable by criminal prosecution for the original offence? (b) Do you agree that breach of a discretionary requirement should not be in itself a criminal offence?

Cessation Notices

What are Cessation Notices?

8.13 Under Clauses 28 and 31, a regulator may require a defaulter to cease any activity that gives rise to regulatory non-compliance by way of a notice (‘cessation notices’). This can be for either a temporary period of six months maximum (‘temporary cessation notices’) or permanently (‘permanent cessation notices’). As these are more onerous requirements on a defaulter than Discretionary Requirements, the Government proposes that much more stringent tests will need to be met before such notices are served.

What are the tests for Cessation Notices?

8.14 The Government proposes that the test for permanent cessation notices should be:

- the defaulter is carrying on an activity which gives rise to a significant risk of serious harm to human health or the environment;
the regulator is satisfied that the defaulter in carrying on the activity in that way is committing an offence; and
- The defaulter has been previously convicted for the same criminal offence.

8.15 The Government proposes that the test for temporary cessation notices should be:

- The defaulter is carrying on an activity which gives rise to a significant risk of serious harm to human health, the environment or the financial interests of consumers; and
- The regulator is satisfied that the defaulter in carrying on the activity in that way is committing an offence.

How are temporary and permanent cessation notices issued?

8.16 The procedures for issuing temporary and permanent cessation notices are different. The proposed approach for issuing a permanent cessation notice is the same as the procedure for issuing Discretionary Requirements (see paragraph 8.8).

8.17 Temporary cessation notices are aimed at providing regulators with a quick means of dealing with regulatory non-compliance involving harm to human health, environment or consumer interests. They suspend an activity for a temporary period in order to allow for the defaulter to address the problem and bring itself back into compliance. Thus, temporary cessation notices are effective immediately on issue without the notice of intent or representations and objections stages. They are challenged by way of direct access to the appellate body.

8.18 Because of the onerous nature of cessation notices the Government also proposes that compensation schemes may be made available by the regulators in the event of a successful appeal or withdrawal of the notice by the regulator.

QUESTION 23: Do you agree that there should be stricter tests for the issue of cessation notices?

QUESTION 24: Do you agree with the criteria for temporary cessation notices (harm to human health, the environment, or consumer interests)?

QUESTION 25: Should there be further criteria in the temporary cessation notice test? If so could you suggest further criteria?

QUESTION 26: (For regulators) Would temporary or permanent cessation notices be a power that you would use? Please give examples of how you would use them.
QUESTION 27: Given the safeguards available before imposing a permanent or temporary cessation notice, is it reasonable to have a compensation scheme?

Other Types of Notices

8.19 Currently the draft Bill contains provisions that deal with regulatory non-compliance that has already taken place. There may be other types of notices that may be useful or appropriate.

8.20 An option on which the Government is seeking views is to allow a regulator to issue a ‘preventative notice’. This would require by way of a notice that a defaulter takes certain steps where an offence is highly likely to occur and which presents a significant risk of serious harm to human health and the environment. This would allow for a regulator to issue a notice in order to avoid an offence from occurring.

8.21 Such a preventative notice would be issued according to the same procedure for issuing a temporary cessation notice and would have similar routes for appeal and compensation. Please note that currently there are no clauses in the draft Bill that provide for preventative notices.

QUESTION 28: Are preventative notices a necessary addition to the regulatory sanctioning toolkit? Please give reasons for your answer.

QUESTION 29: Do you think that the test proposed is appropriate for preventative notices? If not, please give your reasons.

QUESTION 30: Do you think that there should be further safeguards around the use of preventative notices? If so, please provide further detail.
CHAPTER NINE

ENFORCEMENT UNDERTAKINGS

9.1 The Macrory Review noted that the current sanctioning regimes do not allow for creative ways of addressing regulatory non-compliance. There have been examples where companies have realised that they have fallen into regulatory non-compliance and proposed to regulators innovative and restorative ways to return to compliance, for example donating the profit made from non-compliance to a charity that would benefit victims of that type of non-compliance. However, regulators do not have the power to accept such proposals to remedy the non-compliance.

9.2 To achieve this, the Government proposes to introduce Enforcement Undertakings that will allow regulators to accept such undertakings. This will increase flexibility for both to the regulators and defaulters, while also allowing the regulatory response to be more restorative and targeted at the non-compliance itself.

What are Enforcement Undertakings?

9.3 Enforcement Undertakings are promises made by the defaulter to the regulator to take specific actions related to the non-compliance. They are an alternative option to pursuing enforcement action by instituting (civil or criminal) legal proceedings. The regulator may decide not to take more formal enforcement action against regulatory breaches by accepting the terms of Enforcement Undertakings offered by the defaulter instead. This can achieve better compliance outcomes, and maintain a better relationship with the regulated community, through settlement with the defaulter. The regulator’s use of Enforcement Undertakings should be set out in their enforcement policy and penalties guidance.

9.4 The Government specifically proposes that Enforcement Undertakings should be extended to all regulators in order for them to be able to:

- Accept undertakings from defaulter in a formal way;
- Monitor the compliance with those undertakings;
- Certify the completion of the undertakings.

9.5 The Government proposes that the consequences of accepting Enforcement Undertakings will be that the maker of the undertakings will be immune from prosecution or other sanction for that instance of regulatory non-compliance unless they fail to comply with the undertakings.
How will Enforcement Undertakings be issued?

9.6 The process that the Government proposes that this will involve is:

- A regulator, after inspection discovers a case of regulatory non-compliance and makes it known to the defaulter.
- The defaulter may then offer various undertakings to do one or more of the following:
  - Action to secure that the act or omission of the defaulter is not repeated or continued;
  - Action to secure that the position is, so far as possible, restored to what it would have been if the act or omission had not taken place;
  - Action (including the payment of a sum of money) to benefit any person affected by the act or omission.
- A period of negotiation takes place where the regulator either accepts or rejects the proposed Enforcement Undertakings' actions. The regulator may only accept the Enforcement Undertakings if it has reasonable grounds to suspect that an act or omission constituting a relevant offence has occurred.
- If the proposed Enforcement Undertakings are rejected then the regulator is free to choose any of the sanctions available for the original regulatory non-compliance.
- If the proposed Enforcement Undertakings are accepted then the Enforcement Undertaking is formally agreed and the following consequences flow from the agreement:
  - The defaulter may not at any time be convicted of the relevant regulatory non-compliance unless they have failed to comply with the undertaking or any part of it;
  - The regulator may not impose on the defaulter in respect of the non-compliance any other sanctions, such as VMPs or Discretionary Requirements, available to the regulator unless the defaulter has failed to comply with the undertaking or any part of it.
- The terms of the Enforcement Undertakings will be monitored by the regulator and on completion the regulator will issue a certificate to certify that the Enforcement Undertakings have been successfully complied with.
- If any part of the undertaking is deemed not to have been complied with then the Enforcement Undertakings have failed and the regulator may choose to do one of the following depending on the nature and severity of the failure of the Enforcement Undertaking:
 Consultation on the Draft Regulatory Enforcement and Sanctions Bill

- prosecute the original regulatory non-compliance;
- use another sanction for the original regulatory non-compliance, e.g. VMP or Discretionary Requirement.

9.7 It is proposed that Enforcement Undertakings should be as flexible as possible and we have therefore not been more prescriptive as to content.

9.8 The Government wants to reassure business that their completion of the Enforcement Undertaking is recognised and provide an incentive to complete the Enforcement Undertaking as fully as possible. It is therefore proposed that, on completion of the Enforcement Undertakings, a standard letter is issued to say that the Enforcement Undertakings have been completed to the satisfaction of the regulator.

QUESTION 31: Do you think that the publication of Enforcement Undertakings on a regulator’s website is an appropriate step?

QUESTION 32: Do you think that this could be tied with certification of Enforcement Undertakings by also publishing the fact that the Enforcement Undertakings have been successfully completed?

How do VMPs in Discretionary Requirements combine with Undertakings?

9.9 The Government is seeking views on its proposals to combine Variable Monetary Penalties in Discretionary Requirements with Undertakings (as described above) for sanctioning regulatory breaches.

9.10 The Government proposes that Discretionary Requirements and Enforcement Undertakings should be able to be combined to fully address an instance of regulatory non-compliance. For example, in response to a case of fly tipping a regulator could impose a financial penalty to capture the financial gain while also accepting an undertaking from the defaulter to clean up the site. Undertakings offered during the VMP process are called ‘Voluntary Undertakings’ to differentiate them from ‘Enforcement Undertakings’.

How are VMPS and Voluntary Undertakings enforced jointly?

9.11 The process for combining Variable Monetary Penalties and Voluntary Undertakings that the Government proposes is as follows:

- When the regulator decides that an offence warranting the imposition of a VMP has taken place it must serve a notice to the recipient explaining that the regulator intends to impose a financial penalty.
Once the defaulter has seen the notice of intent and the level of the financial penalty it can decide what, if any undertakings to offer in order to mitigate the level of the financial penalty. The defaulter may offer an undertaking that would do one or more of the following:

- Action to secure that the act or omissions of the defaulter is not repeated or continued;
- Action to secure that the position is, so far as possible, restored to what it would have been if the act or omission had not taken place;
- Action (including the payment of a sum of money) to benefit any person affected by the act or omission.

The undertakings should not be subject to lengthy negotiation. The defaulter will only have one opportunity to offer undertakings. Acceptance of the undertakings will take place at the same time as the issue of the penalty notice.

If the defaulter on seeing the final penalty notice is not satisfied that the penalty has been sufficiently reduced in response to their offer of an undertaking, then they have the right to appeal the notice to a suitable independent body.

Failure to comply with the voluntary undertakings within a specified time period can lead to the regulator imposing an additional monetary sanction.

**QUESTION 33: Are you satisfied with the proposed approach of allowing Voluntary Undertakings to be offered with a VMP?**
CHAPTER TEN

RESOURCING A SYSTEM OF ALTERNATIVE SANCTIONS

10.1 The sanctions provided for in the draft Bill are an alternative to sanctioning directly by the Criminal Courts. The increased use of administrative penalties by regulators would see the removal of the current possibility of a regulator reclaiming costs of enforcement through a cost order awarded by the Courts.

10.2 The Government wishes to ensure that the alternative sanctioning powers proposed in the draft Bill:

- Do not provide a financial disincentive to regulators;
- Do not provide direct financial incentive to impose financial penalties; and
- Allow the regulator to cover basic administration costs.

10.3 To ensure this, the Government proposes that monetary penalties will be paid into the Government’s Consolidated Fund. Discussions are currently taking place with the devolved administrations on how this would work in their territories.

10.4 The Government proposes that regulators should be able to recover administration costs and that there should be an effective mechanism for the collection of penalties. It is currently developing proposals for this.

10.5 The cost estimates in the table below only cover the sanctioning activities by the case regulators for one year, and do not include other administrative costs, inspection costs and / or other costs related to the regulator’s enforcement activities.\(^{11}\) These excluded costs will not be affected by introduction of the alternative civil sanctions.

\(^{11}\) The information has been provided by three ‘case regulators’ and presented as a representation of the current situation.
The current enforcement mix and costs for the case regulators have been estimated and are set out in the Table below.

**Case regulators’ current enforcement mixes and costs**

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Sanction</th>
<th>Number (per annum)</th>
<th>Percentage (of total enforcement actions)</th>
<th>Costs (£)</th>
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</thead>
<tbody>
<tr>
<td>Case Regulator 1</td>
<td>Prosecutions</td>
<td>900</td>
<td>11.7</td>
<td>1,575,000</td>
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<tr>
<td></td>
<td>Formal cautions</td>
<td>450</td>
<td>5.8</td>
<td>153,000</td>
</tr>
<tr>
<td></td>
<td>Statutory Notices</td>
<td>550</td>
<td>7.2</td>
<td>132,000</td>
</tr>
<tr>
<td></td>
<td>Warning letters</td>
<td>5,800</td>
<td>75.3</td>
<td>290,000</td>
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<td></td>
<td>Total</td>
<td>7,700</td>
<td>100</td>
<td>2,150,000</td>
</tr>
<tr>
<td>Case Regulator 2</td>
<td>Prosecutions</td>
<td>712</td>
<td>7.8</td>
<td>1,483,930</td>
</tr>
<tr>
<td></td>
<td>Statutory Notices</td>
<td>8445</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
<td>9,157</td>
<td>100</td>
<td>1,886,250</td>
</tr>
<tr>
<td>Case Regulator 3</td>
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<td></td>
<td>Warning Letters</td>
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<td>18,454,570</td>
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<td></td>
<td>Total</td>
<td>160,791</td>
<td>100</td>
<td>19,245,400</td>
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</tbody>
</table>

**QUESTION 34:**

(a) Would the financial implications to a regulators’ enforcement budget be a significant factor in deciding if a regulator would want to use these alternative sanctions?

(b) Would the recovery of cost for administering sanctions mitigate this?

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*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.*

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

*See Appendix for how the figures for Case Regulator 3 were arrived at.*
CHAPTER ELEVEN

PUBLICATION OF ENFORCEMENT POLICY AND PENALTY GUIDANCE

11.1 The Government believes that there is a need to be transparent and accountable when regulating. We are therefore proposing that all regulators who are eligible to receive the powers should publish penalty guidance and an enforcement policy. This will send a very clear signal to those in the business community and the public the kind of responses and standards that they can expect from regulators in dealing with regulatory non-compliance.

11.2 It is proposed that all regulators using the extended sanctioning tool kit should publish their enforcement policy (see Clause 37). This guidance would provide a broad overview of the range of sanctions available to the regulator including criminal sanctions. It would give some guidance as to when a particular sanction from the range of sanctioning powers might be more appropriate by reference to the Macrory characteristics (see Chapter 5). Such guidance would indicate when criminal prosecution instead of an administrative penalty might be a more appropriate response to regulatory non-compliance.

11.3 In addition, the regulator will be required to publish penalty guidance for each new sanctioning power conferred upon it (see Clause 36). This guidance will give information about the circumstances in which a penalty is likely to be imposed, the defences available, the criteria for determining the level of monetary penalty (where appropriate), the defaulter’s rights to make representations and objections or request an internal review, and the defaulter’s rights of appeal. The regulator must have regard to this guidance when exercising the new sanctioning powers.

QUESTION 35: Are there other guidance documents that should also be published such as guidance on prosecution?
CHAPTER TWELVE

APPEALS

12.1 Access to an effective and quick appeal route is an absolutely essential protection for any person or business served with a regulatory sanction. The Macrory Review considered the setting up of an independent Regulatory Tribunal dedicated to the appeals of monetary penalties and statutory notices (see recommendations 4 and 5). It was considered that diverting appeals away from criminal courts allowed for the concentration of regulatory cases and the building of expertise within the appellate body. This was supported by evidence which indicated that there was a real need to separate regulatory cases from mainstream criminal cases such as assault and theft.

12.2 Instead of setting up a separate independent Regulatory Tribunal, the Government proposes to work within the new unified tribunal system set up by the Tribunals, Courts and Enforcement Bill. That Bill will create a new, simplified statutory framework for tribunals bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions and new appeal rights. It will provide a new unified structure by creating two levels of tribunal, the First-tier Tribunal and the Upper Tribunal. Administrative support to the tribunal system will be provided by the Tribunals Service, an executive agency of the Ministry of Justice. The First-tier tribunal is likely to be divided into “chambers”, one of which will deal with regulatory matters. The Ministry of Justice will be consulting on the chamber structure later this year.

12.3 The draft Bill currently provides only that there is an appeal right for each regulatory sanction (see Clauses 22(2)(f), 25(2)(f), 29(2)(f), and 32(2)(c)). There is no right of appeal for enforcement undertakings (see Clause 34) because these are undertakings offered by a defaulter and not a sanction imposed by a regulator.

12.4 It is for the Minister to determine in secondary legislation where the appeal against the imposition of the regulatory sanction should be heard. The Government could decide, for example, to continue to use the criminal courts or existing tribunals (e.g. appeals against notices issued by the Health and Safety Executive are heard by the Employment Tribunal). However, it is the Government’s view however that it is preferable in general to use the new First-tier Tribunal as this better delivers the benefits of the Macrory recommendations on the Regulatory Tribunal, and the Government will not agree to the creation of any new tribunals.
Funding Appeals to the First-tier Tribunal

12.5 As noted above, the Government proposes that appeals against regulatory sanctions should be heard by the First-tier Tribunal. There will be costs associated with bringing new appeal rights to the Tribunal but the Government expects that the set up costs for each appeal right will be minimal. There will also be ongoing costs for using the Tribunal but it is expected that any costs to the regulator of using the First-tier Tribunal will be offset by the savings made in reducing the number of cases going to the more resource intensive criminal courts.

12.6 The Government is in the process of developing policy for both the funding and the charging of the cost to the Tribunals Service of providing appeal facilities.

Legal Costs of the Defaulter

12.7 The defaulter will be able to represent themselves before the First-tier Tribunal. It is also open to the defaulter to appoint legal representatives. The First-tier Tribunal will have the power to award legal costs to either party (see Clause 24 of the Tribunals, Courts and Enforcement Bill), but subject to Tribunal Procedure Rules.

12.8 The Government does not intend that the creation of these new alternative civil sanctions should be a burden on the Legal Aid system. Under the Access to Justice Act 1999, Legal Aid is not available to companies. Companies have the option of insuring against the possibility of having to take or defend legal action. In general legal aid for representation before tribunals is not available to individuals but there are provisions for funding in exceptional circumstances and so it may be available to sole traders in circumstances where their livelihood could be threatened.
ANNEX A

SUMMARY OF QUESTIONS

QUESTION 1: Do you agree with LBRO’s role in helping to facilitate new Primary Authority Partnerships?

QUESTION 2: Do you agree with the way the Bill handles the communication between primary and enforcing authorities, including the definition of ‘enforcement action? If not, what alternatives do you propose?

QUESTION 3: Do you agree that LBRO should consider every case referred to it by a Primary or Enforcing Authority?

QUESTION 4: Do you agree that LBRO should be obliged to consider evidence from national bodies when resolving enforcement action disputes?

QUESTION 5: Is the duty to have regard to inspection plans strong enough, or should local authorities be obliged to “act in accordance with” plans drawn up between a business and a Primary Authority?

QUESTION 6: (a) Do you agree with this approach? (b) Or should a stronger requirement be placed on local authorities to comply with LBRO guidance? If so, what is your argument?

QUESTION 7: (a) Do you agree with the process set out in the Bill, for evidence gathering and publication? (b) Should LBRO be required in the Bill to consult with specific stakeholder groups?

QUESTION 8: Should local authorities be put under a duty to have regard to the list when they plan their own priorities?

QUESTION 9: Do you agree that LBRO should have this advisory role?

QUESTION 10: Do you agree with this approach to LBRO’s structure and legal powers?

QUESTION 11: Are there any pieces of legislation on trading standards and environmental health that are enforced by local authorities, and should be added to this list?

QUESTION 12: Should anything be removed from this list?

QUESTION 13: Are there other areas that you believe LBRO’s work should extend to, and why?
QUESTION 14: To what extent should the Local Better Regulation Office operate across the UK, with respect to the following functions?

a) improving co-ordination and consistency
b) guidance to local authorities
c) work on regulatory priorities
d) advice to Government
e) awarding grants

QUESTION 15: How should its work be tailored to the different national contexts?

QUESTION 16: Are the lists contained in Schedules 3 and 4, and Clause 35(3) accurate and are there any omissions?

QUESTION 17: (a) Is the mechanism for awarding powers appropriate? (b) Are there other options or processes you would like to suggest?

QUESTION 18: Do you believe that there should be a process to withdraw or suspend powers? If so, what triggers do you believe could be used as a decision basis for withdrawing or suspending powers?

QUESTION 19: Do you feel that the balance of safeguards and appeals is appropriate to this process?

QUESTION 20: Is the procedure for issuing Discretionary Requirements appropriate for all types of regulatory non-compliance? If not, is there another way of issuing Discretionary Requirements and, if so, under what circumstances?

QUESTION 21: Do you agree with the proposed enforcement of Discretionary Requirements?

QUESTION 22: (a) Should all Discretionary Requirements be enforceable by criminal prosecution for the original offence? (b) Do you agree that breach of a discretionary requirement should not be in itself a criminal offence?

QUESTION 23: Do you agree that there should be stricter tests for the issue of cessation notices?

QUESTION 24: Do you agree with the criteria for temporary cessation notices (harm to human health, the environment, or consumer interests)?

QUESTION 25: Should there be further criteria in the temporary cessation notice test? If so could you suggest further criteria?

QUESTION 26: (For regulators) Would temporary or permanent cessation notices be a power that you would use? Please give examples of how you would use them.
QUESTION 27: Given the safeguards available before imposing a permanent or temporary cessation notice, is it reasonable to have a compensation scheme?

QUESTION 28: Are preventative notices a necessary addition to the regulatory sanctioning toolkit? Please give reasons for your answer.

QUESTION 29: Do you think that the test proposed is appropriate for preventative notices? If not, please give your reasons.

QUESTION 30: Do you think that there should be further safeguards around the use of preventative notices? If so, please provide further detail.

QUESTION 31: Do you think that the publication of Enforcement Undertakings on a regulator’s website is an appropriate step?

QUESTION 32: Do you think that this could be tied with certification of Enforcement Undertakings by also publishing the fact that the Enforcement Undertakings have been successfully completed?

QUESTION 33: Are you satisfied with the proposed approach of allowing Voluntary Undertakings to be offered with a VMP?

QUESTION 34: (a) Would the financial implications to a regulators’ enforcement budget be a significant factor in deciding if a regulator would want to use these alternative sanctions? (b) Would the recovery of cost for administering sanctions mitigate this?

QUESTION 35: Are there other guidance documents that should also be published such as guidance on prosecution?

IMPACT ASSESSMENT – Annex B

QUESTION 36: Do you believe the assessment of costs and benefits in the Impact Assessment is realistic? If not, is there any further evidence that you can provide that should be taken into account?
ANNEX B

Impact Assessment
SUMMARY: INTERVENTION & OPTIONS

Cabinet Office

<table>
<thead>
<tr>
<th>Stage</th>
<th>Version</th>
<th>Related Publications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultation</td>
<td>1</td>
<td>Draft Bill and Consultation Document</td>
</tr>
</tbody>
</table>

Available to view or download at: www.cabinetoffice.gov.uk/regulation/enforcement_sanctions_bill

Contact name for enquiries: Sanjay Mistry or Alan Pitt
Telephone number: 020 7276 1647 or 020 7276 3608

What is the problem under consideration? Why is government intervention necessary?
The Hampton Report (2005) raised two issues regarding the enforcement of regulation by local and national bodies that the Draft Bill seeks to address: (a) Inconsistency. The existing, diffuse, structure of local authority regulation increases uncertainty and administrative burdens for business, and the lack of a central communication function results in duplication of effort at local level. (b) Sanctions. The current system lacks a range of sanctions, limiting enforcement to criminal prosecution which is only appropriate for the most serious cases. There are insufficient deterrents, there is a compliance deficit, and the enforcement response is disproportionately on cases of no intent or wilfulness.

What are the policy objectives and the intended effects?
The Government accepted the Hampton Report recommendations. The draft Bill will establish a Local Better Regulation Office (LBRO) with statutory powers, and provide regulators with an extended range of sanctions:
(a) The Local Better Regulation Office will promote more effective communications both between authorities, and between authorities and central government, to reduce burdens for business and create more clarity for local authorities.
(b) The extended sanctions will be an alternative to criminal prosecution and remove the reliance on criminal prosecution so that regulatory response can be more proportionate.

What policy options have been considered? Please justify any preferred option.
The base case (status quo), and:
(a) the creation of an LBRO with the statutory powers set out in the consultation document.
(b) the introduction of additional regulatory sanctions that require regulators to opt in to.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?
a) LBRO – 3 yrs from creation; b) Enforcement powers - 3 years from first take up

Ministerial Sign-off For consultation stage Impact Assessments:
I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister: [Signature]

Date: 8th May 2007

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: [Signature]

Date:
### SUMMARY: ANALYSIS & EVIDENCE

#### Policy Option

<table>
<thead>
<tr>
<th>Description</th>
<th><strong>ANNUAL COSTS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One off</strong> (Transition)</td>
<td>£ 0.1 m Yrs 6</td>
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<tr>
<td><strong>Average Annual Cost</strong> (excluding one-off)</td>
<td>£ 59.4 m</td>
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</table>

**Description and scale of key monetised costs by 'main affected groups'**
- Business annual costs: £49.4 m (PV: £385 m)
- Local Authority annual costs: £2.5 m (PV: £26 m)
- Other annual costs: £7.5 m (PV: £67.8 m)

**Total Cost (PV)** £ 478.2 m

- **Other key non-monetised costs by 'main affected groups'**
  - (a) None.
  - (b) There will be a minimal amount of Legal Aid – but this is difficult to assess as govt. policy is not to give Legal Aid to businesses.

<table>
<thead>
<tr>
<th>Description</th>
<th><strong>ANNUAL BENEFITS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One off</strong></td>
<td>£ 0 Yrs</td>
</tr>
<tr>
<td><strong>Average Annual Benefit</strong> (excluding one-off)</td>
<td>£ 185 m</td>
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</tbody>
</table>

**Description and scale of key monetised benefits by 'main affected groups'**
- Business annual benefits: £130 m (PV: £1233.4 m)
- Local Authority annual benefits: £5 m (PV: £52 m)
- Other annual benefits: £50 m (PV: £386.3 m)

**Total Benefit (PV)** £ 1670.6 m

- **Other key non-monetised benefits by 'main affected groups'**
  - (a) Local Authorities - economic and development benefits from hosting a Primary Authority Partnership; Central Government - access to enhanced practical advice on LA enforcement; (b) Improved compliance rates; Monetary Penalties will be more cost-effective in the long-term as non-compliance dealt with before it becomes more serious; Flexible increased toolkit that is a proportionate response; Reduced need for inspection.

<table>
<thead>
<tr>
<th>Price Base</th>
<th>Time Period</th>
<th><strong>Net Benefit Range (NPV)</strong></th>
<th><strong>NET BENEFIT (NPV Best estimate)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>Years</td>
<td>£ 874-1583 m</td>
<td>£ 1192 m</td>
</tr>
</tbody>
</table>

**Key Assumption/Sensitivities/Risks**
- LBRO: number of partnerships, hourly savings per business and local authorities from LBRO guidance, hours' work entailed in aspects of Primary Authority schemes.
- What is the geographic coverage of the policy/option? England and Wales
- On what date will the policy be implemented? a) 2009; b) 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? N/a
- Will implementation go beyond minimum EU requirements? N/a
- What is the value of the proposed offsetting measure per year? N/a
- What is the value of changes in greenhouse gas emissions? Negligible
- Will the proposal have a significant impact on competition? No
- **Annual cost (£-£) per organisation (excluding one-off)**
  - Micro
  - Small
  - Med
  - Large
  - **Are any of these organisations exempt?** N N N N N

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

**Key:**
- Annual Cost: Constant Prices
- (Net) Present Value
Evidence Base for Summary Sheets

1. This impact assessment accompanies the consultation document for the draft Regulatory Enforcement and Sanctions Bill. Consultees are invited to offer their views on the treatment of costs and benefits, and to offer any additional evidence.

Part One: Regulatory Enforcement by Local Authorities

Local Better Regulation Office Impact: Summary

<table>
<thead>
<tr>
<th>Category</th>
<th>Annual</th>
<th>Present value¹</th>
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</thead>
<tbody>
<tr>
<td>Business costs</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Business benefits</td>
<td>£89m-£112m</td>
<td>£889m-£1119m</td>
</tr>
<tr>
<td>Local Authority costs</td>
<td>£2.5m</td>
<td>£25 m</td>
</tr>
<tr>
<td>Local Authority benefits</td>
<td>£4m-£6.2m</td>
<td>£40-£62m</td>
</tr>
<tr>
<td>Central Government Costs</td>
<td>£4.4m</td>
<td>£44m</td>
</tr>
<tr>
<td>Total Annual Costs</td>
<td>£6.9m</td>
<td>£69m</td>
</tr>
<tr>
<td>Total Annual Benefits</td>
<td>£93m-£118m</td>
<td>£930m-£1181m</td>
</tr>
</tbody>
</table>

One off costs (partnership set up, spread over estimated six years):

<table>
<thead>
<tr>
<th>Category</th>
<th>£0.1m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td></td>
</tr>
<tr>
<td>Local Authorities</td>
<td>£0.5m</td>
</tr>
</tbody>
</table>

LBRO impact: Introduction

2. By necessity, a number of assumptions have been made to model likely impacts - the key assumptions which have been used are set out at page 79 for the purposes of consultation. Consultees are invited to comment on these.

Problem under consideration

3. The Hampton Report (http://www.hm-treasury.gov.uk/media/A63/EP/bud05hamptonv1.pdf 2005) 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.

¹ Present values presented in the table are calculated over a period of 15 years. It assumes that the costs and benefits are proportionate in each year and build from the current position to full implementation over 6 years, with the first year being 2008/9. The first full year of implementation is 2014.
Policy objectives and the intended effects

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

   - more effective priority-setting by central government
   - more consistent levels of inspection and enforcement across local authorities
   - more consistency in the application of Primary Authority Principles
   - more co-ordinated risk assessment across local authorities.

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

The impact assessment

6. This impact assessment considers two options: the creation of LBRO with the statutory powers described in the consultation document, benchmarked against the status quo where there is no statutory body with comparable functions. Like the Draft Bill, it works on the basis that LBRO will operate in England and Wales.

Key groups affected by the LBRO provisions

7. 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 to promote a more effective regulatory regime.

Costs and Benefits for Business

8. Business will be a major beneficiary of LBRO’s work. 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, including more risk-based inspection and more effective approaches to providing advice to business. Larger businesses, particularly those operating over more than one local authority area, will benefit from the new approach to Primary Authority Partnerships.

Status Quo: Costs and Benefits

9. The status quo is used here as a benchmark against which costs and benefits of the LBRO proposals are measured.

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2 For the purpose of the draft Bill and consultation document, we will refer to what is currently known as a Home or Lead Authority as the ‘Primary Authority’.
Local Better Regulation Office option: Costs and Benefits

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

Number of multi-site businesses involved

11. It is estimated that there are 27,965 businesses operating across local authority boundaries in the UK. The majority of these operate only across a handful of authorities, and will not wish to take part in Primary Authority Partnerships.

12. It is difficult to estimate the number of Partnerships that the LBRO proposals would have in scope; here we have estimated the number of those which operate on a scale which makes a partnership worthwhile and where there will be significant costs and benefits. For the purposes of this impact assessment, we estimate that 400 already participate in more structured partnerships that are widely recognised. We know that a number of firms have asked for, but been denied, a partnership; we estimate that another 400 partnerships would take schemes up, once the new statutory provisions are in place.

13. Altogether, therefore, we assume for the purposes of this initial assessment that 800 partnerships will be subject to the new provisions in the Bill. We estimate that, on average, these will be developed with firms that operate across an average of 130 local authorities each.

14. There will however 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. 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. Over two days work, the total cost to business is about £240 per partnership. For the 400 new partnerships (see above), the total would be approximately £100,000 in one-off costs for business.

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3 InterDepartmental Business Register, March 2006.
4 Approximately 100 formal Primary Authority schemes under Health and Safety legislation are known to exist, but many of the other existing schemes are largely informal in character. LACORS has registered several thousand partnerships - but many of the businesses operate on a scale that make the additional costs and benefits of hosting the partnerships above and beyond “business as usual” negligible. Our smaller estimate draws on discussions with a range of authorities and seeks to establish the number which - in the absence of statutory powers - are widely recognised by other authorities in practice. If a larger figure were to be involved, capturing more but relatively smaller firms, the average costs and benefits of the individual schemes would be reduced accordingly: meaning that the net overall benefit will remain.
5 Based on discussions with some of the larger enforcement authorities regarding the number of firms that they have turned down.
6 This assumption reflects the wide range of firms’ geographical extent, from those operating on a national to regional and local bases.
7 The senior manager tariff is £16.23. For the background on Administrative Burdens Reduction, see for instance http://www.dca.gov.uk/pubs/reports/abr_tech_sum.pdf , p. 19.
15. 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.

Primary Authority Scheme

Consistency of advice

16. 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.

17. 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.

18. 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 that LBRO will provide a net saving to business of £15,000 per incident of conflicting advice. Research suggests that there are a range of such incidents from two to four a year per partnership. The annual saving to business resulting from attempts to remedy inconsistency in this way would therefore fall in a range between about £23 million and £46 million annually.

Duty to contact the Primary Authority: other benefits for business

19. 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.

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8 DTI research suggests that businesses found that losses ranged between a few thousand and £100,000, and that these would happen 2-4 times a year. [http://www.dti.gov.uk/files/file37268.pdf](http://www.dti.gov.uk/files/file37268.pdf)

9 That is, 2-4 incidents per year at £15,000 each over 800 partnerships. A small adjustment downwards (of 5%) 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 where cases go to arbitration, so that some of these costs will remain.
**Inspection Plans**

20. 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 10 hours’ work per business \(^{10}\) 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) \(^{11}\),

- that one in eight 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 £2.1 million per year. \(^{12}\)

**Other LBRO functions**

21. 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.

22. We anticipate that LBRO’s impact here will be significant for the economy as a whole, with benefits coming from a range of LBRO’s activity. Potentially, for instance, LBRO could:

- 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, with a large number of businesses potentially facing higher compliance costs in many local authorities;

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\(^{10}\) 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.

\(^{11}\) 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.

\(^{12}\) That is, 10 hours work at the above hourly tariff, for each of 100 partnerships in a total of 130 authorities each.
• 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;

• give more clarity to local authorities as to how central government’s regulatory priorities should be taken forward

• work with local authorities to develop schemes to promote more targeted advice geared to harder-to-reach small businesses.

23. 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. The Better Regulation Executive is currently consulting on the Code, and readers are referred to the associated Impact Assessment, published at www.cabinetoffice.gov.uk/regulation.

24. There are over 3.9 million business enterprises operating in England and Wales. 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 all businesses. Conservatively (setting aside the potentially larger benefits for bigger firms) we might assume that LBRO’s cumulative work would mean that an average of an hour’s work per year for all businesses would be saved from its developing work under three headings - guidance, advice and priorities: resulting overall in benefits of approximately £64 million for all businesses.

### Business impact summary

<table>
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<th>LBRO proposals:</th>
<th>Annual costs:</th>
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<tr>
<td>Ongoing benefits:</td>
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<tr>
<td>Consistency: advice</td>
<td>£22.8-45.6 m</td>
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<tr>
<td>Consistency: risk asst</td>
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<tr>
<td>Guidance, Advice etc</td>
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<tr>
<td>Annual benefits:</td>
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<td></td>
</tr>
<tr>
<td>One off costs:</td>
<td>Start up costs for new partnerships</td>
<td>£0.1 m</td>
</tr>
</tbody>
</table>

Figures are rounded to the nearest £100,000.

13 The Small Business Service estimated that there were 3,950,475 business enterprises in England and Wales at the start of 2005: [http://www.dttstats.net/smes/200612/index.asp](http://www.dttstats.net/smes/200612/index.asp)

14 An hour’s work each, multiplied by the number of small business enterprises in England and Wales, multiplied by the hourly tariff of £16.23. If LBRO saved two hours overall per business, the net saving would be £128 million; at half an hour, the total would be £32 million under this heading.
Costs and Benefits to Local Authorities

Status quo: Costs and Benefits

25. Here the status quo is used as a benchmark against which to assess the new costs associated with the LBRO proposals.

26. There are costs and benefits associated with the informal partnerships that already exist. The LBRO proposals have been deliberately designed not to require local authorities and businesses to start anew where partnerships already exist; the start up costs of those which already exist are therefore not addressed under the LBRO proposals.

Local Better Regulation Office Option: Costs and Benefits

27. 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.

28. 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.

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

- there are 410 local authorities with enforcement responsibilities in England and Wales;\(^{15}\)
- average hourly cost of the work of a Trading Standards or Environmental Health Officer: approximately £18.50;\(^{16}\)
- average number of enforcement authorities across which a multi-site business operates: 130;\(^{17}\)
- again, we anticipate that there will be 800 Partnerships, 400 of which will be new.

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\(^{15}\) 22 in Wales and 388 in England. There are 32 in Scotland and 26 in Northern Ireland.

\(^{16}\) This assumes annual salary costs -including pension overheads - of £36,000 with a 37.5 hour week, reflecting pay rates and scales in recent job advertisements.

\(^{17}\) While a number of the largest firms will trade across all authorities in England and Wales, this assumption reflects the wide range involved, with some firms operating only at regional level.
Primary Authority Partnerships

Costs

30. The evidence regarding the cost of administering existing partnerships is not consistent; much of the evidence about the costs of administration 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, many of which operate on a smaller scale.

Start up costs

31. Of the 400 anticipated new schemes, we estimate that a typical Primary Authority start-up would involve a single officer’s time for 75 hours\(^\text{18}\) - i.e. a cost of approximately £1,400 per scheme. In total, 400 new schemes would cost local authorities approximately £550,000. We estimate that take up is likely in fact to be staged over at least six years.

Enforcement actions: requirement to contact, and arbitration

32. 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.

33. 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.\(^\text{19}\)

34. 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.

\(^{18}\) That is two weeks’ full time work; the estimate is based on discussion with local authorities operating a range of schemes.

\(^{19}\) Source: discussion with business representatives and DTI research published at: [http://www.dti.gov.uk/files/file37268.pdf](http://www.dti.gov.uk/files/file37268.pdf)
35. Regulatory Services in England and Wales initiate a large number (tens of thousands at least, depending on definitions)\(^{20}\) 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 use a conservative assumption that for there will be, on average, 100 events per year, 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.

36. The bulk of these inquiries will be routine and reflecting this, we anticipate that on average these will take half an hour’s additional work for the Enforcing and Primary Authority combined (ie. checking for the existence of the partnership, conveying and receiving details to / by the Primary Authority) above and beyond the work that already goes into enforcement in any case. The result will be an annual cost of £\text{740,000}.\(^{21}\) The follow-up costs - beyond those of simply fielding initial inquiries - for Primary Authorities are dealt with below.

37. We expect that arbitration will happen in a very small minority of cases; and therefore we assume an average time cost of one week’s officer time per local authority per year. On this basis, we anticipate therefore that arbitration costs for local authorities should not exceed £\text{283,000}.\(^{22}\)

\textit{Primary Authority: ongoing responsibilities.}

38. The Primary Authority will have an ongoing advisory function in relation to the business. This would arise 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 100 hours of officer time over a year per partnership compared to current requirements. This would entail a national total cost of £\text{1.5 million}.\(^{23}\) This total is intended to include some annual maintenance of the Inspection Plan where this forms part of the Partnership.

\textbf{Benefits}

\textit{Primary Authority}

39. 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 Paper\(^{24}\)). 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.

40. 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.

\(^{20}\) From CIPFA statistics for 2003-4, as used by Hampton Report.

\(^{21}\) That is, 800 partnerships generating 100 “triggers” each, necessitating half an hour’s work at the local authority tariff set out above.

\(^{22}\) That is, 37.5 hours for each of the 410 authorities at the hourly tariff set out above.

\(^{23}\) 100 hours at the local authority tariff set out above for each of the 800 partnerships.

Enforcing Authorities

41. 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.

42. The work of an enforcing authority without the benefits of a Primary Authority partnership involves a number of costs:

- familiarisation
- risk assessment
- follow up work where there are enforcement issues, up to and including prosecution.

43. 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.

Inspection Plans

44. 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 130 authorities\(^{25}\), the resulting costs can be considerable: conservatively, we can assume that for a given local authority, 5 hours' work 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. Again, assuming that 100 businesses (that is, one in eight 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 at least: £1.2 million. \(^{26}\)

Duty to contact the Primary Authority

45. 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. Above, it was assumed that there would be 100 potential enforcement triggers per business in a year.

46. The LBRO proposal will impact on this number in two ways:

a. by requiring consent from the Primary Authority for pursuing enforcement action (except in certain defined emergency conditions);

b. or (failing agreement) promoting more consistency through arbitration.

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\(^{25}\) Rationale for this assumption set out above.

\(^{26}\) That is, five hours' work at the local authority tariff over 130 authorities for each of the 400 partnerships involved.
47. As things stand, enforcement often proceeds without the awareness of the Primary 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 several weeks of officer time.

48. 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. It is not clear how many of these relate to multi-site business.

49. 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. This is likely to be conservative: on the basis of evidence about referrals, the number of enforcement “triggers” where LBRO might have an impact is likely to be larger than this. Nevertheless, even using this smaller figure over the 800 Partnerships, this range equates to 1600 -3200 cases overall where it is likely that LBRO will remove inconsistency, making enforcement unnecessary. To capture the wide range of enforcement activities potentially involved (involving costs up to and potentially including prosecution), we might assume that two weeks’ total officer time is involved in each of these cases.

50. This part of the LBRO package is likely therefore to result in a range of quantifiable benefits, ranging from at least: £2.2 million to £4.4 million.

Other LBRO functions: costs and benefits

51. The impacts of LBRO’s other functions are harder to quantify, but benefits are likely to outweigh costs for local authorities:

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28 For an indication of the high costs of prosecution to enforcers, see Table below showing costs for one regulator (p.22).
29 The true figure for benefits is likely to 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.
30 That is 2-4 times 800 partnerships, times 75 hour’s officer time at the local authority tariff set out above.
1) LBRO’s continuing work on establishing more clarity and evidence regarding 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, releasing resource for allocation to enforcing local priorities;

2) 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;

3) 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.

52. 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 saving of £570,000.

53. In addition to these direct impacts on the costs of regulation for local authorities, LBRO will have programme money to spend to promote good practice and its dissemination. The ultimate destination of this money will be for LBRO management to decide, but it is likely that some of this money will be of direct benefit to local authorities. This money has not been factored into our assessment.

### Local Authority impact: summary

<table>
<thead>
<tr>
<th>LBRO proposals:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Annual costs:</strong></td>
<td>£2.5 million</td>
</tr>
<tr>
<td>Primary Authority Schemes</td>
<td></td>
</tr>
<tr>
<td>Requirement to contact PA</td>
<td>£0.7 m</td>
</tr>
<tr>
<td>Arbitration</td>
<td>£0.3 m</td>
</tr>
<tr>
<td>Advice and risk asst</td>
<td>£1.5 million</td>
</tr>
<tr>
<td>Other LBRO functions</td>
<td>£0</td>
</tr>
<tr>
<td><strong>Annual benefits:</strong></td>
<td>£4 - £6.2 million</td>
</tr>
<tr>
<td>Primary Authority Schemes</td>
<td></td>
</tr>
<tr>
<td>Risk Assessment</td>
<td>£1.1 million</td>
</tr>
<tr>
<td>Requirement to contact</td>
<td>£2.2-4.4 million</td>
</tr>
<tr>
<td>Other LBRO functions</td>
<td></td>
</tr>
<tr>
<td>Advice, Priorities, etc</td>
<td>£0.6 m</td>
</tr>
<tr>
<td><strong>One off costs:</strong></td>
<td></td>
</tr>
<tr>
<td>Start up costs for new partnerships</td>
<td>£0.5 m</td>
</tr>
</tbody>
</table>

Figures rounded to the nearest £100,000
Costs and Benefits to Central Government

Status Quo

54. Again, the status quo is used here as a benchmark.

Local Better Regulation Office option

55. 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:

1) Advice: Government Departments will have access to specialist advice on the design of regulatory provisions and the work of local authority regulatory services;

2) Regulatory Priorities: Government Departments will benefit from LBRO’s developing evidence base and risk analysis, allowing Departments to prioritise their own resources to areas of the greatest risk and impact accordingly.

Key assumptions used in the LBRO impact assessment:

Primary Authority Partnerships:

Number of existing effective Partnerships: 400
Number of Partnerships to be created after legislation: 400
Number of Partnerships involving an Inspection Plan: 100
Average geographical spread per Partnership business: 130 authorities

Hourly Costs, Regulatory Services officer: £18.50
Hourly Costs, Business representative: £16.20

Hours work for local authority: Partnership start-up: 75
Primary Authority: ongoing annual work per business: 100 hours
Enforcement Activity: time cost for each contact: 0.5 hours
Arbitration time: average officer time per authority: 37.5 hours

Inspection Plan: average time saved per business: 10
Inspection Plan: average time saved per authority: 5

Annual conflicting advice incidents per business: 2-4
Average cost of a conflicting advice incident to business: £15,000
Enforcement Activity triggers per business per annum: 100

LBRO: guidance, priorities and advice functions

Average work saved per business (hours): 1
Average work saved per local authority p.a. (hours): 75

31 In each authority.
32 Relative to each relevant business.
Part Two: Regulatory Sanctions

What is the problem under consideration?

56. The current system of regulatory sanctions only allows for a limited response to regulatory non-compliance of criminal prosecution, but this option should be only for the most serious cases. The absence of a range of sanctions has led to the current system not being a sufficient deterrent to non-compliance, the creation of a compliance deficit and there being a disproportionate response by regulators on cases of no intent or wilfulness.

57. The final report of the Hampton Review, published in March 2005, recommended that the Government establish a comprehensive review of regulators penalty regimes. Following the Review, Professor Richard Macrory led a review to examine the current system of regulatory sanctions to ensure that they are consistent and appropriate for the risk based approach to regulation set out in the Hampton Review.

58. The Macrory Review looked at a number of sanctioning regimes and penalty powers in detail and was informed by evidence submitted by a range of stakeholders that included government departments, academics and practitioners. It published a discussion paper, Regulatory Justice: Sanctioning in a post Hampton World in December 2005. In addition, an interim report went out for stakeholder consultation in May 2006. The Macrory final report ‘Regulatory Justice: Making Sanctions Effective’ was published in November 2006 and the Government accepted the recommendations in full. Some of the recommendations are being taken forward in this Draft Bill.

Why is government intervention necessary?

59. Regulatory sanctions are an essential feature of a regulatory enforcement toolkit and are central to achieving compliance by signalling the threat of a punishment for businesses that have offended. Sanctions demonstrate that non-compliance will not be tolerated and that there will be a reprimand or consequence that will put the defaulter in a worse position than those businesses that complied with their regulatory obligations.

60. 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 behaviours that jeopardise 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 a sanctioning toolkit that lets them ensure the protection of workers, consumers and the environment. Such a toolkit needs to provide appropriate options to handle the regulatory needs of legitimate business as well as those businesses that intentionally fail to comply with their regulatory obligations.

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33 Reducing administrative burdens: Effective inspection and enforcement, Hampton P. HM Treasury, March 2005, Recommendation 8
61. The Hampton Review and submissions to the Penalties Review consultation documents found that regulator penalty regimes can be cumbersome and ineffective. Evidence submitted indicated that in many areas of regulation there are, at one end of the spectrum, what can truly be described as criminal or rogue operators intentionally avoiding compliance with regulatory requirements for economic gain. Between this and the other end of fully compliant businesses lie a range of others that are striving to comply with varying degrees of effectiveness. Under the current system, a single regulatory offence often in effect has to do a great deal of work - acting as a deterrent and sanction both for the “truly criminal” and the legitimate business that fails to comply with regulatory requirements for a range of reasons. In addition the review suggested that many regulators were heavily reliant on one tool, namely criminal prosecution, as the main sanction if businesses are unable or unwilling to comply. Criminal prosecution may not be, in all circumstances, the most appropriate sanction to ensure that non-compliance is addressed, any damage caused is remedied or behaviour changed.

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

63. **Insufficient deterrent:** Government is concerned that the current regulatory sanctioning system prevents 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.

64. **Compliance deficit:** During consultation over the Macrory review period there has been anecdotal evidence that a ‘compliance deficit’ exists. This is very difficult to quantify but the aim of the proposed legislation seeks to redress this deficit. The anecdotal evidence pointed to the heavy reliance on formal criminal sanctions which made the resolution of cases a costly and time-consuming exercise for both businesses and regulators.

65. **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 within their toolkits. 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.
What are the policy objectives and the intended effects?

66. The draft Bill proposes to give regulators an extended range of sanctions that will be an alternative to criminal prosecution and remove the reliance on criminal prosecution and regulatory response can be more proportionate. There is a new provision that will allow business to be involved in the process and offer an undertaking in order to change their behaviour on regulatory non-compliance and to make recompense. It will reduce the burdens on the court system by reducing the number of cases heard with an added effect of cutting the costs to the Court system.

67. These additional sanctions are a step towards introducing to the current systems the flexibility, efficiencies and responsiveness that can facilitate the full implementation of the Hampton agenda, resulting in better deterrence options for regulators, and better compliance for business. The proposals also intend to remove from business and the regulator the current reliance on criminal prosecutions for regulatory non-compliance.

<table>
<thead>
<tr>
<th>Box 1.1 Modern Penalties in Practice: The Financial Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Financial Services and Markets Act 2000 secures the Financial Services Authority (“FSA”) a broad range of civil, administrative and criminal sanctioning powers, including the power to issue monetary administrative penalties. The majority of FSA cases are dealt with by using administrative routes. Since 2000 more than 70 cases have been concluded with an administrative penalty. Only six cases have gone through the criminal court system.</td>
</tr>
</tbody>
</table>

Intended effects:

1) a system of penalties and sanctions that remove the financial benefits of non-compliance
2) risk-based and proportionate approach to enforcement by regulators and securing greater compliance outcomes
3) criminal prosecution reserved for regulatory offences that have serious consequences and for those businesses that deliberately avoids compliance
4) increased public confidence in regulatory regimes.

Territorial Scope

68. The scope of these draft provisions covers all reserved functions UK wide and all devolved matters for Wales. Devolved matters for Scotland and Northern Ireland are currently carved out of the scope of the draft Bill.

Local Authorities

69. The proposals set forward 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.
Options: Base Case

70. By not updating the current toolkit of regulatory sanctions we would continue to have an insufficient and ineffective regulatory regime that is dependent on criminal prosecutions. This provides a benchmark against which the proposals under option 2 can be measured.

Tables 1 and 2 are the current enforcement mix of a case regulator.\(^{34}\)

**Table 1 - Case regulator’s current enforcement mix and costs**

<table>
<thead>
<tr>
<th></th>
<th>Number (per annum)</th>
<th>Percentage (of total enforcement actions)</th>
<th>Costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutions</td>
<td>900</td>
<td>11.7</td>
<td>1,575,000</td>
</tr>
<tr>
<td>Formal cautions</td>
<td>450</td>
<td>5.8</td>
<td>153,000</td>
</tr>
<tr>
<td>Statutory Notices(^{35})</td>
<td>550</td>
<td>7.2</td>
<td>132,000</td>
</tr>
<tr>
<td>Warning letters(^{36})</td>
<td>5,800</td>
<td>75.3</td>
<td>290,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>7,700</td>
<td>100.0</td>
<td>2,150,000</td>
</tr>
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</table>

**Table 2 – appeals**

<table>
<thead>
<tr>
<th></th>
<th>Percentage of cases appealed</th>
<th>Number of appeals</th>
<th>Costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutions</td>
<td>2</td>
<td>18</td>
<td>9,180</td>
</tr>
<tr>
<td>Statutory Notices</td>
<td>5</td>
<td>28</td>
<td>14,280</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>46</td>
<td>23,460</td>
</tr>
</tbody>
</table>

Option – Introduction of an additional menu of regulatory sanctions requiring regulators to opt in

71. Introduce an additional menu of regulatory sanctions including administrative penalties and enforcement undertakings as an alternative to criminal prosecution with an appeals mechanism.

Policy Proposals

72. The Government proposes to introduce Fixed and Variable Monetary penalties which regulators can impose directly on a defaulter without the involvement of the criminal courts. Recipients of a Monetary Penalty (MP) would be able to appeal to a suitable appellate body. In addition it seeks to introduce a mechanism of extending Statutory Notices (SNs) across regulators in England and Wales and strengthening current SN regimes. Within the draft Bill they are described as Discretionary Requirements (DRs) to recognise the broad range of options available including Variable Monetary Penalties (VMP), which had been treated separately to SNs in the Macrory Review. A new system of Enforcement Undertakings will be added to the current sanctioning regimes in order to deliver more effective sanctions to regulators.

\(^{34}\) The tables present indicative information provided by a regulator and form the basis of the assumptions on which estimates of the costs and benefits from the change in the mix of regulators’ activities are made.

\(^{35}\) 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.

\(^{36}\) The number of warning letters does not include warnings given during site inspections.
Monetary Penalties

73. Regulators will have access to Fixed and Variable Monetary penalties as an option for sanctioning non-compliance with regulatory requirements. Monetary penalties (MPs) provide regulators with an additional sanctioning option, which allows for the flexible, quick and proportionate response to regulatory non-compliance. In countries where MPs are used they have been found to be an effective enforcement strategy that provides good regulatory outcomes.37

74. MPs are an appropriate addition to the regulator’s ‘toolkit’ of sanctions. They have the ability to remove or reduce the profit-making motive of regulatory non-compliance. MPs are a lower cost enforcement option and can keep the legal cost of sanctioning for both government and industry at a minimum. In addition it will provide a wider range of sanctions to regulators. This will result in better outcomes for the economy and society as a whole through improved compliance by business.

75. Monetary penalties are not new to the UK. The Hampton report identified that 15 regulators within the scope of the review were able to impose these penalties.38 However, as discussed in the Macrory Review, use of these penalties is limited in the UK compared with other OECD countries such as the US, Canada and Australia, where administrative penalties are the predominant sanctioning option for regulatory non-compliance.39

76. Of the existing monetary penalties in the UK they can either be in the form of Fixed Monetary Penalty (FMP) or a Variable Monetary Penalty (VMP). The decision as to which criminal offences should attract FMPs and which VMPs is to be left to departments exercising the delegated power in their secondary legislation. This will be subject to an Affirmative Statutory Instrument being laid before Parliament.

77. Proceeds of MPs are to go to the Consolidated Fund. This is to avoid creating financial incentives on regulators whereby they are encouraged to use MPs at the expense of other, more appropriate sanctions or to raise revenue.

78. The imposition of a MP removes the liability of a criminal prosecution from the defaulter for the same offence. This means that a defaulter can not be prosecuted for the same offence that is the subject of a MP. A regulator can impose a financial penalty, which may be either fixed or variable but it will not be able to impose both a fixed and a variable penalty.

Fixed Monetary Penalties (FMP)

79. Fixed monetary penalties are fines for relatively low fixed amounts that should be applied in respect of low level minor or high volume instances of non-compliance. They are to be applied directly by the regulator, where a defaulter has been found to have failed to comply with their regulatory obligations.

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38 Reducing administrative burdens: effective inspection and enforcement, Hampton, P. HM Treasury, March 2005, p23
80. FMPs already exist as an enforcement option in the UK for certain offences, for example HMRC can issue fixed penalties of £100 for failure to deliver a self assessment tax return. The Clean Neighbourhoods and Environment Act 2005 enables officers of a local authority to issue fixed penalty notices for failure to comply with some requirements of the Act.

Opportunity to Make Representations and Objections

81. Regulators should set time limits for the making of representations and objections after the issue of the notice of intent. VMPs are likely to be for large amounts based on wide ranging evidence and there would be a sufficient time for parties to review its content and calculate fines. The Government does not wish to impose an unnecessarily restrictive time period for both appellant and regulator as this might impact on the fairness of the appeal procedure. Time limits should be decided by the individual regulator and set out in their implementing legislation.

Discretionary Requirements (DRs)

82. The Government is proposing to introduce a mechanism of extending Statutory Notices (SNs) across regulators in the UK and strengthening current SN regimes. Within the draft Bill they are described as Discretionary Requirements to recognise the broad range of options available including Variable Monetary Penalties (VMP), which had been treated separately to SNs in the Macrory Review.

Variable Monetary Penalties (VMPs)

83. Variable monetary penalties are sanctions applied by the regulator without the intervention of a court at a level determined by the regulator. Instead of being for a small fixed amount predetermined by legislation, a variable penalty can, where appropriate and proportionate, be for a more significant amount determined at the discretion of the regulator in accordance with published Penalty Guidance. Relevant mitigating or aggravating factors, such the specific circumstances of the offence and the means of the non-compliant defaulter can be taken into consideration by the regulator when determining the level of the penalty in any particular case. The aim of such a penalty is to remove as far as possible the financial gain made from the regulatory non-compliance.

84. Discretionary Requirements will fall into four categories:

   I. Variable Monetary Penalty: A requirement for an offending business to pay a monetary penalty the size of which will be determined by a number of factors.

   II. Compliance Notices – A requirement on an offending business to do certain things to bring themselves back into compliance;

   III. Restoration Notices – A requirement on an offending business, as far as possible, to do certain things to restore the position to the way it would have been had regulatory non-compliance not occurred; and

   IV. Cessation Notices – Prohibits an offending business from carrying out non-compliant activity or activity that leads to non-compliant outcomes. These can be either permanent or temporary cessation notices.
Each of these will be made available to regulators that require them in their sanctioning regimes through Secondary Legislation. Regulators will be able to access these sanctions which will allow them to add, compliment or combine with their existing toolkits.

**ENFORCEMENT UNDERTAKINGS**

85. Enforcement Undertakings (‘EUs’) are agreements between a regulator and a defaulter. They are an alternative option to pursuing enforcement action by instituting legal proceedings. They are made by the defaulter to the regulator, which require the defaulter to undertake specific actions related to the non-compliance. It will be possible to have a form of Undertaking, known as Voluntary Undertakings with the Variable Monetary Penalties under Discretionary Requirements. EUs will be introduced as an option available to defaulters to offer to regulators during the enforcement process. Only the defaulter will be able to offer an Undertaking.

86. Regulators may gain access to the option of accepting Enforcement Undertakings as part of their sanctioning toolkit, should they require it. Undertakings will divert cases out of the criminal justice system and allow defaulters to undertake specific actions to mitigate the damage caused by regulatory non-compliance. Thus, undertakings have the potential to introduce a more restorative element. Undertakings are likely to be most appropriate for legitimate defaulters that have breached regulatory requirements in circumstances which call for a formal sanctioning response but without the need for a criminal prosecution and fine. The mechanism provides an opportunity for the defaulter concerned to offer a suitable response to a breach which can be agreed upon by the regulator.

**Enforcement Policy**

87. The regulators’ use of MPs, DRs and EUs should be set out in their enforcement policy and penalties guidance. This will conform to the Penalties principles as identified in the Macrory Review. An enforcement policy must explain under which circumstances EUs will be accepted. Penalties guidance may go into further detail about terms that the regulator may or may not accept and the detailed working of an EU.

**Enforcement**

88. Enforcement Undertakings are enforced by the regulator in one of the following three ways:

I. The imposition of a MP for the original offence

II. The imposition of a Discretionary Requirement for the original offence; or

III. Criminal Prosecution for the original offence (particularly important in cases of misrepresentation when entering into an EU).

89. The regulator will have responsibility for enforcing the EUs and ensuring that they have been complied with. Regulators will monitor compliance through a continued dialogue with the defaulter and initiate further action in situations of non-compliance, if it is in the public interest to do so.
90. The EU should make clear what the defaulter needs to do in order to come back into compliance, or face the consequences of not complying outlined above – e.g. ‘The defaulter undertakes to do x, y and z, or else the regulator will pursue further legal action that may result in an Enforcement Notice, a substantial MP or criminal prosecution for the original offence.’

Analysis and Evidence

91. The following 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. Moreover, the approach taken to determine the magnitude of the costs and benefits uses information on the change in behaviour of one “case regulator”, rather than determine the likely impact on all 56 regulators individually. In other words, we are assuming that the changes implemented by the case regulator are representative of the likely changes all other regulators will make. The estimates presented below represent the annual figures when all regulators have the additional powers. It is envisaged that it would take several years for all regulators to seek the powers.

92. A number of simplifying assumptions have been made to determine the estimates. Professor Macrory’s final report presented the view that there would be a reduction in the number of regulatory cases brought in any year as a result of adopting the new penalties. A reasonable estimate would be a reduction of around 60 per cent. The total number of cases brought to court by the relevant regulators in 2004/05 was a little over 15,000, implying a reduction of around 9,000 cases brought to court.

93. In addition, because the new range of penalties available to regulators is expected to make enforcement easier, there is expected to be an increase in the number of businesses caught by the extended toolkit. In other words, the extended toolkit of penalties would close the ‘compliance deficit’ as termed by Professor Macrory; and so the number of businesses subject to penalties is likely to rise. For the estimates presented here, we assume a 25% increase in the number of cases, from over 15,000 to almost 19,000 per year. So we assume an increase in regulatory penalties of almost 13,000 in total.

94. Once a regulator identifies a breach there are four responses open to a business, they can:
- Pay any penalty imposed;
- Appeal against the regulator’s findings;
- Refuse to pay so the regulator has to enter into enforcement proceedings;
- Offer an undertaking.

95. For the purposes of the estimates presented here, we assume that the number of businesses will be split between each option evenly, ie one quarter of businesses will opt to pay, and so on.

96. If a business appeals a decision by a regulator, there are three possible outcomes:
- The business can win the appeal and pay no fine;
• The business can lose the appeal and opt to pay the fine;
• The business can lose the appeal and continue to refuse to pay the fine.

97. For the estimates presented here we assume that of those businesses that appeal, the outcomes are split evenly between them, i.e. one third, win, one-third pay and one-third lose but don’t pay. For those businesses that refuse to pay having lost an appeal, the regulator is assumed to have taken enforcement action through the courts.

98. It was not possible to make estimates of the aggregate costs and benefits for all 56 regulators in scope for the Macrory review, as the proposed sanctioning options will not be applied universally to regulators. Instead, regulators will have to opt in for the particular sanctioning options that they find are appropriate for the specific sanctioning regime that they operate. These estimates therefore reflect the costs and benefits to a typical case regulator and are aggregated to cover all regulators.

99. The costs estimated only include the costs of the sanctioning activities of regulators. We do not estimate costs associated with other activities, such as inspections which would be expected to take place before sanctioning activities as we do not expect the levels of these pre-sanctioning activities to be affected by the Macrory proposals.

Current situation

100. The proposals set out can deliver the same or improved regulatory outcomes more efficiently, by providing regulators with a wider range of sanctions. The current situation provides a baseline against which to measure change as shown in tables 1 and 2.

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

<table>
<thead>
<tr>
<th></th>
<th>Number (per annum)</th>
<th>Percentage (of total enforcement actions)</th>
<th>Costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutions</td>
<td>900</td>
<td>11.7</td>
<td>1,575,000</td>
</tr>
<tr>
<td>Formal cautions</td>
<td>450</td>
<td>5.8</td>
<td>153,000</td>
</tr>
<tr>
<td>Statutory Notices[^40]</td>
<td>550</td>
<td>7.2</td>
<td>132,000</td>
</tr>
<tr>
<td>Warning letters[^41]</td>
<td>5,800</td>
<td>75.3</td>
<td>290,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,700</strong></td>
<td><strong>100.0</strong></td>
<td><strong>2,150,000</strong></td>
</tr>
</tbody>
</table>

Table 2 – appeals

<table>
<thead>
<tr>
<th></th>
<th>Percentage of cases appealed</th>
<th>Number of appeals</th>
<th>Costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutions</td>
<td>2</td>
<td>18</td>
<td>9,180</td>
</tr>
<tr>
<td>Statutory Notices</td>
<td>5</td>
<td>28</td>
<td>14,280</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>46</strong></td>
<td><strong>Total</strong></td>
<td><strong>23,460</strong></td>
</tr>
</tbody>
</table>

[^40]: 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.
[^41]: The number of warning letters does not include warnings given during site inspections.
101. The proposed changes will affect three main groups: business, regulators, and the Courts and Tribunal Service. Consumers, the public and employees will also be expected to benefit from improved compliance with regulations by businesses (depending on the regulations in question), although we do not attempt to estimate this benefit here.

**Impact on business**

102. The new sanctions options available to regulators will act as an increased deterrent on business to avoid complying with regulations since the risk and uncertainty of being caught and punished has increased and the expected penalty may outweigh the gains (eg lower costs) to business from non-compliance. The effect of the increased deterrent is accounted for through the assumptions about business responses to being issued with a penalty in paragraphs 95 to 98 above.

103. Firms which deliberately seek to be non-compliant with regulations will bear costs in becoming compliant and may face lower revenues as they are no longer able to pursue illegal activities to obtain revenue. We do not include the costs to such businesses in the analysis as ‘losses’ to businesses from removing illegal activities are not a reason for allowing such illegal activities to continue.

104. The impact on businesses associated with the penalty sanctions operated by regulators under current arrangements is not known. We are seeking information from businesses and business organisations estimates of the costs of complying with the current sanctions regimes in operation to provide the baseline for estimating the impact from the proposed changes.

105. Because we do not know the impact under the current situation, we are unable to estimate the full impact of the proposed changes. However, we expect that because fewer cases will be brought to court (of whichever kind) that there will be a benefit to firms who are found to be not in compliance with the regulatory requirements, for whatever reason, from lower costs associated with the non-court process.

106. The proposals do not seek to benefit non-compliant business. Currently it is very difficult to distinguish between businesses whose breach has been minimal and have gone to Court and those whose breach has been serious and gone to Court. It is the Government’s expectation that the new proposals would see only the most serious breaches reach Court. Other offences can be dealt with by using the extended toolkit. This would create a more proportionate response from regulators.

107. One benefit to businesses will be the savings from costs associated with defending themselves in court cases. If the proposed changes are used we expect to see the number of cases brought to court to fall. These benefits to non-compliant businesses are estimated to be in the order of **£6 million to £62 million** per year.42

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42 The estimate is based on an assumption of; 9000 cases per year; a range of 2 to 20 hours legal representation per case (business) at £220 per hour (source - illustrative costs from a legal firm); Preparatory and representative work by 2 employees of the business between 1 and 10 days at £16.23 per hour. The £16.23 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. In
108. There will however, be an increase in costs to non-compliant businesses, from changing the current situation, from having to pay fines under the expanded Monetary Penalties. The fines will vary depending on whether they are fixed or variable which will be dependent on the scale of the breach. The size of the fines will depend on the number of non compliant firms and whether they are fixed or variable – for the purposes of estimating the costs we assume there is an even split between fixed and variable fines. Assuming that one quarter of businesses opt to pay the new MP fine once imposed this amounts to around £17.6 million per year.43 As these fines are paid to the Exchequer, they are netted off against a benefit to the public purse.

109. If all businesses opt to pay the fine in the first instance, then the total levy from fines imposed by regulators could be around £70 million per year.44

110. Moreover, it is assumed that a quarter of businesses will undertake an appeal against the sanction imposed by the regulator. Conducting an appeal will involve costs for a business of around £3.9 million per year.45

111. Of those businesses that undertake an appeal, we assume that two-thirds lose at appeal. Of those businesses that lose their appeal we assume that half opt to pay the imposed fines following the loss of appeal. Assuming an equal split between fixed and variable fines46 suggests a further £5.9 million per year in fines would be levied.

Enforcement Action

112. The regulators will be expected to enter into enforcement action against business who are subject to MPs and DRs and choose not to pay the fines. Such an action would not be cost free for firms as they would incur potential representation costs from appearing in court, plus higher fines. We will be working with business associations to ascertain how much an impact this would be on businesses in terms of legal fees.

practice, as the resolution of court cases can take several months, the estimated costs are likely to be an underestimate. A reasonable mid point might be to assume 10 hours of legal costs and 5 days work for each employee for the business with cost savings of £30 million.

43 This is based on an assumed 12800 new cases, of which it is assumed one quarter, or 3200 businesses, opt to pay the imposed fine. The estimate assumes that half pay fixed penalty fines of £1000, and half are subject to variable penalty fines which average £10,000.
44 Assuming an even split between fixed fines at £1,000 and variable fines at an average of £10,000. If most fines imposed were variable fines, and set at the high end of the possible range, the fines levied would be significantly higher.
45 Based on the following assumptions: 2 employees spend 5 days each, working 7½ hours per day at £16.23 per hour in preparation for and at the appeal.
46 Assuming fixed fines set at £1,000 and variable fines set at £10,000 on average.
113. The assumption that enforcement action is taken against one quarter of businesses would lead to fines of around £17.6 million per year. In addition to paying the fines enforced through the enforcement action, business will also be liable to pay the costs incurred by the regulator in taking court action. This is around £60 per action to file the case at County Court. If all cases require a sanction the additional cost to non-compliant businesses of having to pay to cover regulators’ costs would be £768,000 per year. But if only one quarter of non-compliant businesses are subject to enforcement action, this falls to £192,000. In total therefore, overall costs paid as a result of enforcement action would amount to around £17.8 million per year.

114. Finally, there will be businesses that appeal against a penalty, lose their appeal and decide not to pay, at which point the regulator is assumed to undertake an enforcement action. The estimated cost to business of paying these fines is £4.2 million per year. If all of the assumed one quarter of businesses that appeal lose and enforcement action is taken, costs would amount to around £17.8 million. At an extreme, if all firms opt to appeal against the regulators’ decision, lose their appeal and enforcement undertakings are conducted, total costs would amount to over £70 million.

115. Therefore the total cost to businesses that are non-compliant is £45.5 million per year.

116. We do not include any estimate for administrative burdens as such burdens are estimated for normally efficient and compliant firms. Such firms will not have any new administrative burden associated with the proposed policy. As only non-compliant business will have any burden, these impacts are not included. We do not anticipate any change to the administrative burden on compliant firms as the provision of information is associated with inspection activities by regulators which are not expected to change directly as a result of the introduction of new sanctioning options in the event of finding non-compliance.

117. We have assumed that non-payment is registered as a civil debt, the regulator lodges this and the business pays the fine. Under this assumption there is therefore no cost recovery required by regulators as part of their court action against non-compliant businesses. The only costs we identify are the cost of lodging the papers with the courts to collect the outstanding MP debt. Cost recovery would increase the costs to non-compliant businesses on whom enforcement undertakings are conducted. We are in discussions with business groups and regulators over how much cost recovery might amount to. It would similarly potentially increase costs to HM Court Service.

**Impact on regulators**

**Benefits**

118. The main impact on regulators will be from enlarging the range of sanctions and associated activities available to them in enforcing their responsibilities. Determining the total costs associated with all regulators expanding the suite of penalties they use is not straightforward. We have information from the Case Regulator which we have assumed is representative for all the regulators that are covered by this Bill.
119. The costs for the case regulator of operating the currently available mix of sanctions are estimated at £2.15 million. Moving to the new suite of penalty sanctions available is estimated to cost £2.123 million, see Table 3. This is based on an assumption that MPs are split evenly between fixed and variable penalties. This presents a saving of £27,000 for the case regulator. If the savings are the same for each of the 56 regulators (on the Hampton list) the overall savings from lower operating costs associated with adopting the new suite of penalties sanctions is around £1.5 million per year.

Table 3 - Future penalties powers and costs (if the total volume of enforcement activities stays the same)

<table>
<thead>
<tr>
<th>Number (per annum)</th>
<th>Percentage (of total enforcement actions)</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutions</td>
<td>540</td>
<td>7,0</td>
</tr>
<tr>
<td>Formal cautions</td>
<td>180</td>
<td>2,3</td>
</tr>
<tr>
<td>Statutory Notices</td>
<td>550</td>
<td>7,1</td>
</tr>
<tr>
<td>Warning letters</td>
<td>4,640</td>
<td>60,2</td>
</tr>
<tr>
<td>FMAPs (50% of MAPs)</td>
<td>538</td>
<td>7,0</td>
</tr>
<tr>
<td>VMAPs (50% of MAPs)</td>
<td>537</td>
<td>7,0</td>
</tr>
<tr>
<td>Enforceable Undertakings</td>
<td>715</td>
<td>9,4</td>
</tr>
<tr>
<td>Total</td>
<td>7,700</td>
<td>100</td>
</tr>
</tbody>
</table>

120. There will therefore be additional benefits to the regulators from savings in time and effort to achieve the same desired outcomes.

Costs

Closing the ‘enforcement gap’

121. In addition, these costs are likely to underestimate the costs to regulators when a regulator has an ‘enforcement gap’. The purpose of the change to the penalty regime is to provide regulators with a toolkit to allow them to deliver regulatory outcomes more efficiently. In some instances, this might mean regulators will be able to pursue non-compliant firms in ways they would not have been able to do at present because it was disproportionate, creating an ‘enforcement gap’. We do not have any information on the extent of this gap and would welcome views on how the new penalty regime will help close it. For the purposes of estimating benefits and costs presented here we have made a number of assumptions, set out in paragraph 94. Where the penalty regime enables a closing of this ‘gap’ regulators’ costs will increase as they undertake sanctioning activities not previously undertaken.

122. In order to capture some of this increase in regulators’ costs from increased activities to close the ‘enforcement gap’, the estimates presented in the Impact Assessment are based on the assumption that regulators undertake 25 per cent more enforcement actions per year. The improved outcomes from

47 The costs by penalty activity are presented in Table 1
increased numbers of businesses complying with regulations have not been costed.

**Enforcement Action**

123. The estimate of savings to regulators above assumes full compliance by firms with the regulators’ first enforcement activity. If however the regulator needs to pursue more than one action against a non-compliant firm, the costs would be higher, and could include costs of taking court action. In such circumstances, the regulator would be expected to pursue the non-compliant firm for full recovery of costs.

124. It is possible that regulators will need to enforce MPs through the courts. There are a number of options available for them to take, from the issuing of warrants, to attachment of earnings and charging orders. Assuming the preparation of a form to initiate a county court action is around 1 hour for a regulator and if one quarter of cases need to be enforced through the courts, the cost to regulators of additional enforcement action is around £42,500 per year.\(^{48}\) There will also be some costs to regulators with sharing the case information with the courts, which we assume to be negligible.

125. Assuming that a representative of a regulator is in attendance for the duration of a court case, which is assumed to average 2 days, the costs to regulators of enforcement action through the courts would be around £900,000 per year.\(^{49}\)

126. The total cost to a regulator of enforcement action is therefore estimated to be a little under £1 million per year.

**Costs of conducting appeals**

127. It is possible that a number of businesses will appeal against the regulator’s decision to impose a MP or DR. For the purpose of estimating the associated costs of appeals it is assumed that around one quarter of non-compliant businesses appeal against the regulator’s decision. In the first instance appeals are to the regulator, to review the imposition of the MP or DR. Should the business be unhappy with the outcome of this appeal, they will have the right to appeal to a tribunal. Should they again be unhappy with the outcome of the tribunal, they will be able to appeal to the Upper-tier tribunal on a point of law.

128. Assuming the costs of hearing an appeal by the regulator is the same as hearing it at tribunal, the costs to regulators from hearing appeals will be around £800,000 per year.\(^{50}\)

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\(^{48}\) This estimate is based on the average Trading Standards or Environmental Health Officer hourly cost of £18.50. If all of the cases that would have previously gone through the courts and are now subject to MPs need to be enforced through the courts the preparatory costs for regulators would be around £170,000.

\(^{49}\) This estimate is based on the average Trading Standards or Environmental Health Officer hourly cost of £18.50.

\(^{50}\) We assume that regulators’ costs for conducting an internal appeal hearing are the same as the cost of tribunal hearings. The average cost of a tribunal, based on a survey of cases and associated costs of central government tribunals, is £363 per case.
**Impact on Consolidated Fund**

*Revenue from fines*

129. 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 MPs and DRs imposed, that is £45.5 million from above.

*Revenue from enforcement action*

130. In addition to the revenue from MP fines paid, the Consolidated Fund will also receive the additional fine paid due to non-compliance which resulted in an enforcement procedure being taken through the courts. As identified above, the maximum revenue based on the assumption that all businesses require enforcement action to be taken by the regulators would be £540,000. This is an extreme case and assumes no businesses pay their MP fines in the first instance. More likely, around one-third of businesses are assumed to be non-compliant and therefore pay additional enforcement costs, totalling around £180,000.

**Legal Aid**

131. Parties taking forward appeals to a Tribunal may, on occasion, choose to appoint legal representatives at their own cost. It will be at the discretion of the Tribunal to award legal costs to either side in the same way as the courts. 51

132. 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. Businesses have the option of insuring against the possibility of having to take or defend legal action. The Government does not believe that the taxpayer should meet the legal costs of businesses who fail to do so. 52 This approach will help to deter frivolous appeals but will preserve the incentive to appeal where a business believes that they have a strong case. There will, however, be a minimal cost to Legal Aid where action is brought against a sole trader and their livelihood is threatened. However, we believe that this would be in very limited numbers. After talking to small business groups and assessing evidence on sole traders we believe that there would be between 0-8 cases a year. We are currently working with the relevant Department to assess the impact and develop a fuller understanding of any costs involved.

**Impact on Court and tribunal service**

*Savings from fewer cases in court*

133. The Macrory review estimated that the impact of the recommendations would be a 60% reduction in regulatory cases taken to court (crown and magistrate). As noted above, in 2004-05 over 15,000 regulatory cases were held in the courts. A 60% reduction would mean around 9000 fewer cases held in each year.

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51 As set out in clause 24 of the DCA Tribunals, Courts & Enforcement Bill
52 Access to Justice Act 1999, Explanatory notes, chapter 22, clause 77
134. The costs of a court case are difficult to establish and depend on the context of each case. The reduction in the number of regulatory cases taken to court is estimated to save around **£1.25 to £3.75 million** per year.\(^{53}\)

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

**Cost to courts of enforcement action**

136. The new suite of penalty sanctions available to regulators is intended to remove around 9000 cases from the courts each year. As identified above, this is expected to save around £1.25 million to £3.75 million per year. However, should all of the expected new cases\(^{54}\) require enforcement through the courts, the full savings will not be achieved. Assuming around one quarter of the cases return to court for enforcement action, there will be additional costs to the courts of around **£0.5 million to £1.3 million** per year.\(^{55}\)

**Cost of appeal**

137. The Bill includes a route for business to appeal against MPs and other sanctions. There are two routes a business can take to appeal:

- To the regulator;
- To the Tribunal.

138. In either case, the process is intended to lead to decisions being made more quickly than at present. Hence the savings made are from less time spent by business, courts and regulators on this activity enforcement activity through the courts.

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\(^{53}\) The average cost of a case (including all court cases, regulatory as well as non-regulatory) in which the defendant pleads guilty is £138; the average cost when a defendant pleads not guilty is £415. The estimate reflects the range of costs saved if all cases involve guilty pleas and if all include not guilty pleas. Source: HM Court Service

\(^{54}\) The number of new cases comprises of around 9000 cases that would have previously gone through the court system plus around 4000 cases from the new penalty regime enabling a closing of the ‘enforcement gap’.

\(^{55}\) The average cost of a case (including all court cases, regulatory as well as non-regulatory) in which the defendant pleads guilty is £138; the average cost when a defendant pleads not guilty is £415. The estimate reflects the range of costs saved if all cases involve guilty pleas and if all include not guilty pleas.
139. The estimated costs to regulators of holding appeals are outlined above. Assuming one third of businesses that appeal to the regulator’s own appeal hearing choose to subsequently appeal to the tribunal the associated cost would be in the order of £390,000. Should a further one third appeal to the second tribunal, further costs to business would be around £130,000. We therefore estimate the costs of the cost to the tribunal service of hearing appeals will be around **£520,000 per year**. These costs will be paid by the regulator and where appropriate be reclaimed back. Therefore, this should not impact on the Ministry of Justice.

140. There may be additional costs on the Courts if regulators fine more non-compliant businesses. This is being assessed and will be tested for its impact in due course.

141. Present values presented in the following table are calculated over a period of 15 years. It assumes that the costs and benefits are proportionate in each year and build from the current position to full implementation over 10 years, with the first year being 2008. The first full year of implementation is 2017.

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56 The estimate is based on the assumption of almost 13000 new cases per year and the average cost of a tribunal, based on a survey of cases and associated costs of central government tribunals, of £363 per case.
### Summary\(^{57}\)

<table>
<thead>
<tr>
<th>£ million, 2004-05 prices</th>
<th>Annual Average</th>
<th>Present Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost savings to businesses from fewer court appearances</td>
<td>£6 million to £62 million</td>
<td>£47 million to £484 million</td>
</tr>
<tr>
<td>Cost savings to regulators from using the new suite of sanctions</td>
<td>£1.5 million</td>
<td>£11.7 million</td>
</tr>
<tr>
<td>Cost savings to courts from fewer cases</td>
<td>£1.25 to £3.75 million</td>
<td>£9.75 million to £29.25 million</td>
</tr>
<tr>
<td>Fines paid to the Exchequer</td>
<td>£45.5 million</td>
<td>£355 million</td>
</tr>
<tr>
<td><strong>Total benefits</strong></td>
<td><strong>£54.25 million to £112.75 million</strong></td>
<td><strong>£423 million to £879 million</strong></td>
</tr>
<tr>
<td><strong>Costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fines paid by businesses, of which</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immediately</td>
<td>£17.6 million</td>
<td>£137.3 million</td>
</tr>
<tr>
<td>After Appeal</td>
<td>£5.9 million</td>
<td>£46 million</td>
</tr>
<tr>
<td>Following Enforcement</td>
<td>£17.8 million</td>
<td>£138.9 million</td>
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<tr>
<td>Following enforcement after a failed appeal</td>
<td>£4.2 million</td>
<td>£32.8 million</td>
</tr>
<tr>
<td>Costs to business of conducting appeals against regulators decisions</td>
<td>£3.9 million</td>
<td>£30.4 million</td>
</tr>
<tr>
<td>Costs to regulators of enforcement action</td>
<td>£1.0 million</td>
<td>£7.8 million</td>
</tr>
<tr>
<td>Costs to regulators of conducting appeals</td>
<td>£0.8 million</td>
<td>£6.2 million</td>
</tr>
<tr>
<td>Costs to courts and tribunals from enforcement activities</td>
<td>£0.5 million to £1.3 million</td>
<td>£7.8 million</td>
</tr>
<tr>
<td>Costs to courts and tribunals from appeal activities</td>
<td>£0.5</td>
<td>£3.9 million</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td><strong>£52.2 million to £53 million</strong></td>
<td><strong>£407.3 million to £413.5 million</strong></td>
</tr>
<tr>
<td><strong>Total net benefit</strong></td>
<td><strong>£2.05 million to £59.75 million</strong></td>
<td><strong>£16 million to £466.2 million</strong></td>
</tr>
</tbody>
</table>

142. Non-quantified benefits:

- Savings in time and effort to regulators to achieve same outcome
- Improved regulatory outcomes from closure of ‘enforcement gap’.
- Improved outcomes for consumers and the public from improved compliance with regulations by business.
- Released resources within the court and tribunal system from fewer regulatory cases per year.
- Hence the savings made are from less time spent by business, courts and regulators on enforcement activity through the courts

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\(^{57}\) Assumption in the table: annual full year costs for Hampton Compliant Regulators – assumes 56 regulators.
143. Non-quantified costs:
   - If penalties upheld by the courts require further enforcement through other mechanisms, eg bailiffs, costs will be incurred, including by HMCS.

**Specific Impact Tests**

144. **Competition**: The LBRO proposals will help create a less burdensome regulatory environment for all businesses. The proposals being taken forward will allow Hampton compliant regulators an extended toolkit of sanctions.

145. **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 much more sophisticated enforcement regime’. They raised concerns about clarity and asked for regulators enforcement polices 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.

146. 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; it will not impact adversely on small firms.

147. **Legal aid**: There will be a minimal impact on Legal Aid. We are currently working with the relevant department to assess the impact.

148. **Environment and Sustainability**: We do not believe that there will be any impacts on these areas. We have looked at the initial tests are satisfied that they do not apply. LBRO will be under a duty to promote more effective regulation. However, increased compliance from business will have positive benefits on the environment.

149. **Health**: we do not believe that the Bill will have a health impact.

150. **Equality**: We do not believe that there will be an impact on the equality strands as the proposals are on business not on individuals. We have, however, looked at each of the equality impact initial tests individually and are confident that there is no impact.
151. **Human Rights:** Part 1 of the Bill sets out the objective and functions of LBRO and together with Schedules 1 and 2, sets out the way in which LBRO will be established and constituted. Part 2 of the Bill together with Schedule 3 sets out a number of enabling provisions that empower the Minister of the Crown to confer upon regulators, including local authorities, a range of civil sanctioning options. None of the provisions in the Bill give rise to concerns as to their compatibility with ECHR.

152. **Rural proofing:** We have looked at the initial test on rural proofing and are confident that there is no impact on rural communities.
Specific Impact Tests - Checklist

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

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

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

QUESTION 36: *Do you believe the assessment of costs and benefits in the impact assessment is realistic? If not, is there any further evidence that you can provide that should be taken into account?*
ANNEX C

Descriptions of related Government activities

The Compliance Code

The Regulators’ Compliance Code (the Code) is a statutory code for regulators based on seven of the Hampton Principles covering: risk assessment, inspection, data requirements, advice, compliance and enforcement action, supporting economic progress and accountability. The Code will be issued under the powers of Part 2 of the Legislative & Regulatory Reform Act 2006.

The Code will cover all national Regulators that were covered by the Hampton Review, as well as a number of regulatory functions carried out by local authorities such as Environmental Health, Trading Standards and Licensing. National regulators must have regard to the code when setting standards or guidance in relation to local authority regulatory functions.

The duty on regulators in scope is to “have regard to the code” and is “subject to any other duty” (for example regulators founding statutes or EC law requiring them to act differently). In addition, the Code applies at the general level at which regulators specify policy, procedure and guidance for inspectors, not at the individual level of specific cases of inspection or enforcement action.

The Government intends that the Code should be enacted by the autumn of 2007 and will come into force on 1 April 2008.

The Rogers Review

THE ROGERS PRIORITIES FOR LOCAL AUTHORITY ENFORCEMENT

The 2007 Rogers’ Review used an evidence based approach to prioritise over 60 policy areas enforced by local regulatory services. For each policy area the risk, effectiveness of actions taken by local authorities, and views of consumer and business groups were taken into account.

The review recommended five main national enforcement priorities for local authority Trading Standards and Environmental Health services. These are:

- Air quality, including regulation of pollution from factories and homes;
- Alcohol, entertainment and late night refreshment licensing and its enforcement;
- Hygiene of businesses selling, distribution and manufacturing food and the safety and fitness of food in the premises;
- Improving health in the workplace;
- Fair trading (trade description, trade marking, mis-description, doorstep selling); and,
- The review also recommended an additional time-limited enforcement priority of:
  - Animal and public health, animal movements and identification.
An independent review led by Peter Rogers, Chief Executive of Westminster City Council, recently made recommendations to central government as to the priorities which it should set for enforcement by local authorities. The Government has accepted its recommendations.

One of LBRO’s roles will be to keep this work and list up to date (See pages 29-30).

The DTI Consistency Project

In September 2006, the DTI set up the Consistency Project to make recommendations on how to improve consistency of enforcement approaches for businesses that operate across local authority boundaries. The project was overseen by an Advisory Committee with members from business, local authorities, national regulators, Whitehall departments, the devolved administrations and professional bodies. An expert working group was also set up compromising representatives from local authorities and businesses with operational experience of home and lead authority partnership schemes.

The Project reported in March 2007 setting out a series of recommendations for the future development of partnership schemes. The Government are grateful to the DTI team and all those who contributed to the Project. Its recommendations have informed this consultation document and we hope will prove valuable to LBRO as it develops its thinking on how to implement the proposed statutory partnership arrangements.

Reducing administrative burdens by improving the delivery of regulatory enforcement services

The Retail Enforcement Pilot

The Retail Enforcement Pilot is developing a new method for regulatory intervention of businesses and is a key regulatory reform project within the Better Regulation Executive. REP seeks to deliver the Hampton agenda by improving the delivery of regulatory enforcement services and reducing administrative burdens on business.

REP provides a framework for collaborative working between local authorities and national regulators, which will help reduce the burden of inspections for compliant businesses; promote targeting of risk based interventions across the regulatory piece; increase the efficiency of local authority regulatory services through joint local working; and enhance consumer and employee protection.

The regulatory domains covered by REP include trading standards, health and safety, environmental health and fire safety. Through the use of mobile technology and data sharing, regulators are able to work jointly across these domains and generate intelligence. By analysing this intelligence, regulators are able to assess the competence of businesses in how they manage risk.
This allows regulators to act flexibly by differentiating between businesses and targeting their efforts away from well run businesses and onto poor performing businesses and illegal traders.

The savings in regulatory capacity made from reducing routine visits will be redirected into methods of alternative regulatory intervention such as business advice and information provision.

The Better Regulation Executive is rolling out REP in up to 70 county, unitary and district councils nationwide during 2007/08. Such a diverse sample is necessary for the methodology to be tested extensively, and to provide robust evaluation of the benefits.
ANNEX D

LEGISLATION ENFORCED BY LOCAL REGULATORY SERVICES

ENVIRONMENTAL HEALTH
Agriculture Act 1970
Agriculture (Miscellaneous Provisions) Act 1968
Agricultural Produce (Grading and Marking) Act 1928
Agricultural Produce (Grading and Marking) Amendment Act 1931
Animal Boarding Establishments Act 1963
Animal Health Act 1981 (also 2002?)
Animal Welfare Act 2006
Breeding of Dogs Act 1973
Breeding of Dogs Act 1991
Business Names Act 1985
Caravan Sites and Control of Development Act 1960
Caravan Sites Act 1968
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Chronically Sick and Disabled Persons Act 1970
Chronically Sick and Disabled Persons (Amendment) Act 1976
Cinemas Act 1985
Control of Pollution Act 1974 (as amended by the Noise and Statutory Nuisance Act 1993).
Control of Pollution (Amendment) Act 1989
Crime and Disorder Act 1998
Criminal Justice and Public Order Act 1994
Dangerous Dogs Act 1991
Dangerous Wild Animals Act 1976
Disabled Persons Act 1981
Dogs Act 1906 (as amended)
Dogs (Fouling of Land) Act 1996
Environment Act 1995 (Powers of Entry)
Environment and Safety Information Act 1988
Environmental Protection Act 1990
Factories Act 1961
Food and Environment Protection Act 1985
Food Safety Act 1990
Food Standards Act 1999
Legislation Enforced By Local Regulatory Services

Game Act 1831
Health and Safety at Work Act 1974
   *Sections 20, 21, 22, 25 and the provisions of Acts specified in the third column of Schedule 1*
Health Services and Public Health Act 1968
Highways Act 1980
Housing Act 1985
Housing Act 1996
Housing Grants, Construction and Regeneration Act 1996
Land Compensation Act 1973
Litter Act 1983
Local Government and Housing Act 1989
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982
Medicines Act 1968
Mines and Quarries Act 1954 - Section 151
Mines and Quarries (Tips) Act 1969
National Assistance Act 1947
National Assistance Act 1948
National Assistance Act (Amendment) 1951
National Health Service Amendment Act 1986
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Office, Shops and Railway Premises Act 1963
Pesticides (Fees and Enforcement) Act 1989
Pet Animals Act 1951
Pet Animals Amendment Act 1983
Petroleum (Consolidation) Act 1928
Planning (Hazardous Substances) Act 1990
Police and Criminal Evidence Act 1984
Pollution Prevention and Control Act 1999
Prevention of Damage by Pests Act 1949
Protection of Animals Act 1911
Protection of Animals Act 1934
Public Health Act 1936
Public Health Act 1961
Radioactive Substances Act 1993 (as amended by the Environment Act 1995)
Refuse Disposal (Amenity) Act 1978
Riding Establishments Act 1964
Riding Establishments Act 1970
Legislation Enforced By Local Regulatory Services

Safety of Sports Grounds Act 1975
Scrap Metal Dealers Act 1964
Sunday Trading Act 1994
Theatres Act 1968
Theft Act 1968
Theft Act 1978
Trade Descriptions Act 1968
Water Act 1989
Water Industry Act 1991
Water Resources Act 1991
Wildlife and Countryside Act 1981
Wildlife and Countryside (Amendment) Act 1985
Wildlife and Countryside (Amendment) Act 1991
Young Persons (Employment) Act 1938
Zoo Licensing Act 1981

TRADING STANDARDS
Access to Health Records Act 1990
Accessories and Abettors Act 1861
Accommodation Agencies Act 1953
Abandonment of Animals Act 1960
Administration of Justice Act 1970
Administration of Justice (Miscellaneous Provisions) Act 1933
Agriculture Act 1967
Agriculture Act 1970
Agriculture and Horticulture Act 1964
Agriculture (Miscellaneous Provisions) Act 1968
Agricultural Produce (Grading and Marking) Act 1928
Agricultural Produce (Grading and Marking) Act 1931
Airports Act 1986
Animal Health Act 1981
Animal Health Act 2002
Animal Health and Welfare Act 1984
Animal Welfare Act 2006
Antisocial Behaviour Act 2003 (As amended by CNEA 2005)
Bankers’ Books Evidence Act 1879
Broadcasting Act 1990
Broadcasting Act 1996
Business Names Act 1985
Cancer Act 1939
Legislation Enforced By Local Regulatory Services

Clean Air Act 1993
Charities Act 1992
Charities Act 1993
Charities Act 2006
Cheques Act 1992
Children and Young Persons Act 1933.
   (As amended by the Children and Young Persons (Protection from Tobacco) Act 1991)
Children and Young Persons Act 1963
Children & Young Persons (Protection From Tobacco) Act 1991
Christmas Day (Trading) Act 2004
Civil Aviation Act 1980
Civil Aviation Act 1982
Civil Aviation Act 1992
Civil Aviation Act 2006
Communications Act 2003
Companies Act 1985
Companies Consolidation (Consequential Provisions) Act 1985
Company Directors Disqualification Act 1986
Competition Act 1998
Consumer Credit Act 1974
Consumer Credit Act 2006
Consumer Protection Act 1987, Part iii, Misleading Price Indications
Contracts (Rights of Third Parties) Act 1999
Control of Pollution Act 1974
Copyright, Designs and Patents Act 1988
Copyright etc and Trade Marks (Offences and Enforcement) Act 2002
Courts and Legal Services Act 1990
County Courts Act 1984
Customs and Excise Management Act 1979
Crime and Disorder Act 1998
Criminal Appeal Act 1968
Criminal Attempts Act 1981
Criminal Justice Act 1925
Criminal Justice Act 1982
Criminal Justice Act 1987
Criminal Justice Act 1988
Criminal Justice Act 1991
Criminal Justice Act 1993
Criminal Justice Act 2003
Criminal Justice and Police Act 2001
Criminal Justice and Public Order Act 1994 (Touting)
Legislation Enforced By Local Regulatory Services

Criminal Justice (Terrorism and Conspiracy) Act 1998
Criminal Law Act 1977
Criminal Procedure and Investigations Act 1996
Dangerous Dogs Act 1989
Dangerous Dogs Act 1991
Development of Tourism Act 1969
Dogs Act 1906
Dogs (Amendment) Act 1928
Drug Trafficking Act 1994
Education Reform Act 1988
Electricity Act 1989
Employment Act 1989
Employment Agencies Act 1973
Energy Act 1976
Energy Conservation Act 1981
Energy Conservation Act 1996
Enterprise Act 2002
Environmental Protection Act 1990
Estate Agents Act 1979
Explosives Act 1875 (Manufacture and Storage of Explosives Regulations 2005)
Explosives Act 1923
Explosives (Age of Purchase etc) Act 1976
Explosive Substances Act 1883
Fair Trading Act 1973
Farm and Garden Chemicals Act 1967
Fatal Accidents Act 1976
Firearms Act 1968 (also 1982)
Fireworks Act 1875
Fireworks Act 1923
Fireworks Act 1951
Fireworks Act 2003
Food and Environment Protection Act 1985
Food Safety Act 1990
Forgery and Counterfeiting Act 1981
Gambling Act 2005
Hallmarking Act 1973
Health and Safety at Work, etc Act 1974
Housing Act 1996
Housing Act 2004
Legislation Enforced By Local Regulatory Services

Indictable Offences Act 1848
Industrial and Provident Societies Act 1893
Industrial and Provident Societies Act 1965
Industrial and Provident Societies Act 1967
Industrial and Provident Societies Act 1975
Industrial and Provident Societies Act 1978
Industrial and Provident Societies Act 2002
Insolvency Act 1986
Insurance Companies Act 1982
Interpretation Act 1978
Intoxicating Substances (Supply) Act 1985
Knives Act 1997
Law of Property (Miscellaneous Provisions) Act 1989
Licensing Act 1964
Licensing Act 2003
Licensing (Young Persons) Act 2000
Local Government (Financial Provisions) Act 1963
Local Government Act 1972 (also 1966, 1988, and 1999)
Local Government Act 1987
Local Government Act 2000
Local Government Act 2003
Local Government (Miscellaneous Provisions) Act 1982
Local Government (Miscellaneous Provisions) Act 1976
Magistrates' Courts Act 1980
Magistrates' Court Procedure Act 1998
Malicious Communications Act 1988
Medical Act 1983
Medicines Act 1968 (also 1971)
Merchant Shipping Act 1979
Merchant Shipping Act 1988
Mines and Quarries (Tips) Act 1969
Misuse of Drugs Act 1971
Mock Auctions Act 1961
Motorcycle Noise Act 1987
National Lottery Act 1993
Nurses Agencies Act 1957
Nurse, Midwives and Health Visitors Act 1997
Offensive Weapons Act 1996
Offshore Safety Act 1992
Legislation Enforced By Local Regulatory Services

Oil and Gas (Enterprise) Act 1982
Olympic Symbol (Protection) Act 1995
Patents, Designs and Marks Act 1986
Pet Animals Act 1951
Pesticides Act 1998
Pesticides (Fees and Enforcement) Act 1989
Petroleum (Consolidation) Act 1928
Petroleum (Transfer of Licences) Act 1936
Plant Varieties Act 1997
Plant Varieties and Seeds Act 1964
Poisons Act 1972
Police Act 1964
Police and Criminal Evidence Act 1984
Police (Property) Act 1897
Powers of Criminal Courts (Sentencing) Act 2000
Prevention of Crime Act 1953
Prices Act 1974
Prices Act 1975
Private Places of Entertainment (Licensing) Act 1967
Proceeds of Crime Act 1995
Proceeds of Crime Act 2002
Property Misdescriptions Act 1991
Prosecution of Offences Act 1985
Protection Against Cruel Tethering Act 1988
Protection from Harassment Act 1997
Protection of Animals Act 1911
as amended by the Protection of Animals (Amendment) Act 1954
and the Agriculture (Miscellaneous Provisions) Act 1968
Protection of Animals (Anaesthetics) Act 1954
Protection of Animals (Penalties) Act 1987
Protection of Animals (Amendment) Act 1988
Protection of Children (Tobacco) Act 1986
Public Passenger Vehicles Act 1981
Registered Designs Act 1949
Restriction of Offensive Weapons Act 1961
Road Traffic Act 1988
Road Traffic Act 1991
Road Traffic Act (Consequential Provisions) Act 1988
Road Traffic Offenders Act 1988
Consultation on the Draft Regulatory Enforcement and Sanctions Bill

Legislation Enforced By Local Regulatory Services

- Road Traffic (Foreign Vehicles) Act 1972
- Sale and Supply of Goods Act 1994
- Sale of Goods Act 1979
- Sale of Goods (Amendment) Act 1994
- Scotch Whisky Act 1988
- Scrap Metal Dealers Act 1964
- Serious Organised Crime and Police Act 2005
- Social Security Administration Act 1992
- Solicitors Act 1974
- Supply of Goods (Implied Terms) Act 1973
- Supply of Goods and Services Act 1982
- Sunday Trading Act 1994
- Telecommunications Act 1984
- Timeshare Act 1992
- Theft Act 1968
- Theft Act 1978
- Tobacco Advertising and Promotion Act 2002
- Torts (Interference with Goods) Act 1977
- Trade Descriptions Act 1968
- Trade Marks Act 1994
- Trading Schemes Act 1996
- Trading Stamps Act 1964
- Trading Representations (Disabled Persons) Act 1958
- Trading Representations (Disabled Persons) Amendment Act 1972
- Transport Act 2000
- Unfair Contract Terms Act 1977
- Unsolicited Goods and Services Act 1971
- Unsolicited Goods and Services (Amendment) Act 1975
- Video Recordings Act 1984
- Video Recordings Act 1993
- Weights and Measures Act etc 1976
- Weights and Measures Act 1985
- Welfare of Animals at Slaughter Act 1991
- Wildlife and Countryside Act 1981
- Wildlife and Countryside (Amendment) Act 1985
- Wildlife and Countryside (Amendment) Act 1991
- Youth and Criminal Evidence Act 1999
ANNEX E

List of Organisations to be consulted

Accounts Commission
Action with Communities in Rural England
Adam Smith Institute
Agricultural Industries Confederation AIC
Alliance of Voluntary Sector Organisations in Health and Social Care
Allied Industry Association
Amicus
ASDA
Association of British Insurers
Association of British Offshore Industries (ABOI)
Association of British Oil Industries (ABOI)
Association of British Travel Agents (ABTA)
Association of Chief Executives of Voluntary Organisations
Association of Chief Police Officers
Association of Convenience Stores
Association of Police Authorities
Association of Port Health Authorities
Association of River Trusts
Association of the British Pharmaceutical Industry
AstraZeneca
Audit Commission
Audit Scotland
Balfour Beatty plc.
Bar Council
Better Regulation Commission
Bio Industry Association
Black Environment Network
BP Amoco plc
British Association of Record Dealers (BARD)
British Cement Association
British Chambers of Commerce (BCC)
British Chemical Distributors and Traders Association Ltd
British Dental Trade Association
British Hallmarking Council
British Metals Recycling Association
British Potato Council
British Poultry Council
British Retail Consortium
British Vehicle Rental and Leasing Association
List of Organisations to be consulted

Camelot Group Plc.
Campaign to Protect Rural England
Charity Commission for England & Wales
Chartered Institute of Environmental Health (CIEH)
Chemical Industries Association
Citizens Advice Bureau
Civil Aviation Authority
Coal Authority
Commission for Equality and Human Rights
Companies House
Competition Commission
Confederation of British Industry (CBI)
Consumer Council for Water
Convention of Scottish Local Authorities (COSLA)
Co-Operative Group
Council of HM Circuit Judges
Council on Tribunals
Countrywide Farmers Plc
Cranfield University
De Montford University
Directors of Public Protection, Wales
Disability Rights Commission
Electrical Contractors Association of Scotland
Energy Industries Council
Energy Networks Association
Engineering Employers Federation (EEF)
English Partnerships
Environmental Services Association
Environment & Regeneration Services
Environment Agency
Environment and Heritage Service
Environmental Health Institute
Environmental Industries Commission (EIC)
Environmental Services Agency
Environmental Services Association
Equal Opportunities Commission
Exhibitions South West Ltd
ExxonMobil
Federation of Environmental Trade Associations
Federation of Master Builders
Federation of Small Businesses
List of Organisations to be consulted

Financial Reporting Council
Financial Services Authority
Fire and Rescue authorities
Fire Industry Confederation
Food and Drinks Federation
Food Standards Agency
Foodaware
Football Licensing Authority
Forestry Commissioners
Forum of Private Business
Friends of the Earth
Gambling Commission
Gang masters Licensing Authority
General Optical Council
George Wimpey Ltd
Gerber Foods Soft Drinks Ltd
Glaxosmithkline
Green Alliance
Greenpeace
Health and Safety Commission
Health and Safety Executive (HSE)
Health Protection Agency
Hearing Aid Council
Historic Buildings & Monuments Commission
Home Grown Cereals Authority
Home Office
Homebuilders Federation
House Builders Federation
Housing Corporation
Human Fertilisation & Embryology Authority
Improvement and Development Agency (IDeA)
Improvement Service, Scotland
Information Commissioner
Institute for Economic Affairs
Institute of Asian Business
Institute of Directors (IoD)
Judicial Studies Board
Justice
Justices’ Clerks’ Society
Kraft Foods UK & Ireland
Law Commission
List of Organisations to be consulted

Law Society
Law Society, Scotland
Liberty
Local Authorities
Local Authority Building Control (LABC)
Local Authority Co-ordinators of Regulatory Services (LACORS)
Local Government Association
Local Government Employers
London Hazards Centre
London School of Economics
Magistrates’ Association
Masterfoods
Medicines & Healthcare products Regulatory Agency (MHRA)
Morrissons Supermarkets plc.
National Audit Office
National Consumer Council
National Counter Terrorism Security Office
National Landlords Association
National Lottery Commission
National Planning Unit
National Union of Farmers
National Weights and Measures Laboratory
Natural England
Network Rail
New Local Government Network
NHS Counter Fraud and Security Management Service (CFSMS)
Northern Ireland Audit Office
Northern Ireland Executive
Northern Ireland Local Government Association
Northern Ireland Office
Northern Ireland Trading Standards Service
Office for National Statistics
Office of Communications (Ofcom)
Office of Fair Trading
Office of Gas and Electricity Markets (Ofgem)
Office of Rail Regulation
Office of the Scottish Charity Regulator (OSCR)
Office for Standards in Education (OFSTED)
Path National UK
Pennon Group Plc.
Pesticides Safety Directorate
Policy Exchange
List of Organisations to be consulted

Port Health Authority
Ports and Terminals Group
Postal Services Commission (Postcomm)
Premier Foods (Holdings) Ltd.
PricewaterhouseCoopers
Professional Contractors Group
Professor Richard Macrory
Qualifications and Improvement Agency
Radio Electrical and Television Retailers Association (RETRA)
Rail Safety & Standards Board
Restorative Justice Consortium
Royal Environmental Health Institute of Scotland
Royal Town and Planning Institute
Sainsbury’s plc
Scottish Environment Protection Agency (SEPA)
Scottish Executive
Scottish Trades Union Congress (STUC)
Sea Fish Industry Authority
Security Industry Authority
Simon Jones Memorial Campaign
Small Business Council
Small Business Service
Smith and Nephew
Society of Chief Trading Standards Officers (SCOTSO)
Society of Local Authority Chief Executives (SOLACE)
Sugal and Damani UK Limited
Sustainable Development Commission
Swift Construction Group
Tesco Plc
The Chamber of Shipping (CoS)
The Commission for Equality & Human Rights
The Environment Council
The National Energy Foundation
The Pensions Regulator
The Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
The Sports Industries Federation
The Water Services Regulation Authority (Ofwat)
The Wine and Spirit Trade Association
The Wise Group
The Young Foundation
Touchstone Exhibitions & Conferences Ltd
Trades Union Congress (TUC)
List of Organisations to be consulted

Trading Standards in Scotland (SCOTSS)
Trading Standards Institute
Trading Standards Regional Coordinators
Unite - the Union
United Kingdom Environmental Law Association (UKELA)
United Kingdom Sports Council
University of Manchester
Wales Audit Office
Water Companies
Welsh Assembly Government
Welsh Development Agency
Welsh Heads of Trading Standards
Welsh Local Government Association
Which?
World Wildlife Fund
About this consultation

This document and the consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Cabinet Office and is in line with the six consultation criteria, which are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department’s effectiveness at consultation, including through the use of a designated consultation co-ordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions, when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Cabinet Office will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual contributions will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

If you have comments or complaints about how this consultation is being handled, please contact the Cabinet Office’s Consultation Coordinator, Ian Ascough: ian.Ascough@cabinet-office.x.gsi.gov.uk.
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PART 1

REGULATORY ENFORCEMENT BY LOCAL AUTHORITIES

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5 Financial support and assistance to local authorities
6 Advice to Ministers

Enforcement priorities

7 List of enforcement priorities

Co-ordination of regulatory enforcement

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9 Advisory function of primary authority
10 Enforcement action: requirement to obtain consent
11 Enforcement action: procedure for obtaining consent
12 Enforcement action: guidance and directions
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Co-ordination: supplementary

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Ministerial powers

16 Guidance or directions by the Minister for the Cabinet Office
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22 Fixed monetary penalties: procedure
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28 Power to enable regulators to require permanent cessation of activity
29 Permanent cessation of activity: procedure
30 Permanent cessation of activity: effect

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PART 1

REGULATORY ENFORCEMENT BY LOCAL AUTHORITIES

The Local Better Regulation Office

1 Establishment of LBRO

(1) The Local Better Regulation Office is established as a body corporate.

(2) In this Part it is referred to as “LBRO”.

(3) Schedule 1 (which makes further provision about LBRO) has effect.

2 Dissolution of the LBRO company

(1) The company limited by guarantee with registered number 6237580 and the company name Local Better Regulation Office (in this Part called “the LBRO company”) is dissolved.

(2) The registrar of companies for England and Wales must strike the name of the LBRO company off the register of companies before the end of the period of seven days beginning with the day on which this section comes into force.

(3) Schedule 2 (which makes provision relating to the replacement of the LBRO company by LBRO) has effect.

General functions of LBRO

3 Objective

(1) In exercising its functions under sections 4 to 6 LBRO has the objective of securing that local authorities exercise their relevant functions—
   (a) effectively,
   (b) in a way which does not give rise to unnecessary burdens, and
   (c) in a way which conforms with the principles in subsection (2).

(2) Those principles are that—
   (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
   (b) regulatory activities should be targeted only at cases in which action is needed.

(3) In this Part “local authority” means—
   (a) a county or district council in England;
   (b) a London borough council;
(c) the Common Council of the City of London;
(d) the Council of the Isles of Scilly;
(e) a port health authority in England (not being an authority specified in paragraphs (a) to (d));
(f) a county or county borough council in Wales.

(4) In this Part “relevant function” means [functions carried out by local authorities under enactments relating to environmental health or trading standards - please see paragraphs 4.8 to 4.11 of the consultation document].

4 Guidance to local authorities

(1) LBRO has the function of giving guidance to local authorities as to how to exercise their relevant functions.

(2) Guidance under subsection (1)—
(a) may be given to any one or more local authorities;
(b) may relate to any one or more relevant functions;
(c) may relate to the exercise of one or more relevant functions in a particular case.

(3) A local authority must have regard to any guidance given to it under this section.

(4) Before giving guidance under this section in relation to any relevant function LBRO must consult—
(a) the persons likely to be affected by the exercise of that function, or persons representative of such persons, and
(b) such other persons as LBRO considers appropriate.

(5) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.

5 Financial support and assistance to local authorities

LBRO may provide financial support and assistance to local authorities in relation to their exercise of their relevant functions.

6 Advice to Ministers

(1) LBRO may at any time give advice or make proposals to a Minister of the Crown on—
(a) the way in which local authorities exercise any one or more of their relevant functions;
(b) the effectiveness of legislation relating to the exercise of those functions;
(c) whether any other regulatory functions could appropriately be exercised by local authorities.

(2) LBRO must give advice or make proposals to a Minister of the Crown on the matters referred to in subsection (1) if requested to do so by that Minister.

(3) LBRO may at any time give advice or make proposals to the Welsh Ministers on the way in which local authorities exercise any one or more of their relevant
functions in relation to any matter in respect of which Welsh Ministers exercise functions.

(4) LBRO must give advice or make proposals to the Welsh Ministers on the matter referred to in subsection (3) if requested to do so by the Welsh Ministers.

Enforcement priorities

7 List of enforcement priorities

(1) LBRO must prepare and publish a list specifying, from among the matters in relation to which local authorities exercise their relevant functions, those matters to which local authorities should give priority in allocating resources.

(2) LBRO must review the list—
   (a) from time to time on its own initiative, or
   (b) if requested to do so by the Minister.

(3) If following a review LBRO decides to revise the list it must publish the revised list.

(4) Before publishing the list or any revised list LBRO must—
   (a) consult such persons as it considers appropriate, and
   (b) obtain the consent of the Minister.

(5) LBRO must publish details of any representations made to it as the result of any consultation under subsection (4)(a).

(6) A local authority must have regard to the list or revised list for the time being published under this section.

Co-ordination of regulatory enforcement

8 Primary authorities

(1) This section applies in a case where—
   (a) a person (“the regulated person”) carries on an activity in the area of two or more local authorities, and
   (b) each of those authorities has the same relevant function in relation to that activity.

(2) A local authority with the relevant function may agree with the regulated person to be, for the purposes of sections 9 to 13, the primary authority for the exercise of that function in relation to the regulated person.

(3) In a case where no agreement has been made under subsection (2), LBRO may on the application of the regulated person nominate any local authority with the relevant function to be, for those purposes, the primary authority for the exercise of that function in relation to the regulated person.

(4) LBRO may in particular consider as suitable for nomination under subsection (3)—
   (a) the local authority in whose area the regulated person principally carries out the activity in relation to which the relevant function is exercised;
(b) the local authority in whose area the regulated person administers the carrying out of that activity.

(5) Before nominating a local authority under subsection (3) LBRO must consult—
   (a) that authority, and
   (b) the regulated person.

(6) LBRO must have particular regard to any representations made by a local authority under subsection (5) as to the resources available to it.

(7) Where by virtue of this section a local authority agrees to be or is nominated as the primary authority for the exercise of a relevant function in relation to the regulated person, it must register itself as such in a register maintained by (or on behalf of) LBRO.

(8) For the purposes of sections 9 to 13, a local authority is the primary authority in relation to a regulated person when it is registered as such under subsection (7).

9 Advisory function of primary authority

(1) The primary authority has the function of—
   (a) giving advice to the regulated person in relation to the relevant function;
   (b) giving advice to other local authorities with that function as to how they should exercise it in relation to the regulated person.

(2) The primary authority may make arrangements with the regulated person as to how it will discharge its function under subsection (1).

10 Enforcement action: requirement to obtain consent

(1) This section applies in a case where a local authority other than the primary authority (“the enforcing authority”)—
   (a) considers that the regulated person is or may be in breach of any restriction, requirement or condition to which the relevant function relates, and
   (b) proposes to take any enforcement action in respect of that breach.

(2) The enforcing authority must consult the primary authority before taking the proposed enforcement action.

(3) The enforcing authority may not take the proposed enforcement action unless—
   (a) the primary authority consents to it under section 11 (and the consent is not cancelled under that section), or
   (b) on a reference under that section, LBRO consents to it.

(4) Subsections (2) and (3) do not apply in a case where the enforcing authority considers that it should take the proposed enforcement action without delay because of an imminent risk of serious harm to human health or to the environment.

(5) In such a case the enforcing authority must inform the primary authority of the enforcement action it has taken as soon as it reasonably can.
(6) In subsection (4) the reference to harm to the environment includes harm to the health of animals and plants.

(7) In this Part “enforcement action”, in relation to a breach of a restriction, requirement or condition means—
   (a) any action which relates to securing compliance with the restriction, requirement or condition, or
   (b) any action taken with a view to or in connection with the imposition of any sanction, criminal or otherwise, in respect of the breach.

11 Enforcement action: procedure for obtaining consent

(1) Where a primary authority is consulted under section 10(2) it must, subject as follows, determine whether the proposed enforcement action is appropriate in all the circumstances.

(2) On a determination under subsection (1)—
   (a) if the primary authority determines that the proposed enforcement action is appropriate in all the circumstances, it must consent to the action;
   (b) if the primary authority determines that that action is not appropriate in all the circumstances, it may not consent to the action.

(3) If under subsection (2) the primary authority does not consent to the proposed enforcement action, the enforcing authority may refer the action to LBRO.

(4) On such a reference—
   (a) if LBRO agrees with the primary authority’s determination, it must confirm it;
   (b) if LBRO does not agree with the primary authority’s determination, it must cancel the consent given by the primary authority.

(5) If under subsection (2) the primary authority consents to the proposed enforcement action, the regulated person may refer the action to LBRO if—
   (a) the determination is inconsistent with advice previously given to the regulated person by the primary authority, and
   (b) LBRO consents to the reference.

(6) On such a reference—
   (a) if LBRO agrees with the primary authority’s determination, it must confirm it;
   (b) if LBRO does not agree with the primary authority’s determination, it must cancel the consent given by the primary authority.

(7) The primary authority may, instead of making a determination under subsection (1) in relation to a proposed enforcement action, refer the action to LBRO.

(8) If within a reasonable time after being consulted under section 10(2) the primary authority neither makes a determination under subsection (1) nor refers the proposed enforcement action to LBRO under subsection (7), the regulated person or the enforcing authority may, with the consent of LBRO, refer the action to LBRO.

(9) On a reference under subsection (7) or (8)—
(a) if LBRO determines that the proposed enforcement action is appropriate in all the circumstances, it must consent to the action;
(b) if LBRO determines that the action is not appropriate in all the circumstances it may not consent to the action.

(10) LBRO must resolve any matter referred to it under this section within 28 days.

(11) Where LBRO—
(a) cancels the consent of the primary authority under subsection (6)(b) or does not consent to a proposed enforcement action under subsection (9)(b), but
(b) recommends that some other enforcement action be taken, section 10(2) and (3) does not apply in relation to that action.

(12) LBRO may delegate its functions under this section to such other person as it considers appropriate.

12 Enforcement action: guidance and directions

(1) LBRO may give guidance or directions to any one or more local authorities about any enforcement action referred to it under section 11.

(2) A local authority must have regard to any guidance, and comply with any direction, given to it under subsection (1).

(3) LBRO must publish (in such manner as it considers appropriate) any guidance or directions given under this section.

13 Inspection plans

(1) Where a relevant function consists of or includes a function of inspection, the primary authority may prepare a plan containing recommendations as to how local authorities with that function should exercise it in relation to the regulated person.

(2) The plan may set out—
(a) the frequency at which, or circumstances in which, inspections should be carried out;
(b) what an inspection should consist of.

(3) The primary authority must bring the plan to the notice of other local authorities with the function in such manner as the primary authority considers appropriate.

(4) A local authority (including the primary authority) must have regard to the plan in deciding how to exercise its function of inspection in relation to the regulated person.

(5) Where a local authority other than the primary authority proposes to exercise the function of inspection in relation to the regulated person otherwise than in accordance with the plan, it must consult the primary authority.

(6) A primary authority may from time to time revise a plan prepared by it under this section; and subsections (3) to (5) apply in relation to any revision of the plan.
Co-ordination: supplementary

14 LBRO support to primary authorities

(1) LBRO may do anything it considers appropriate for the purpose of supporting a primary authority in the exercise of the authority’s functions under sections 9 to 13.

(2) That includes making grants to a primary authority.

15 LBRO guidance

(1) LBRO may give guidance to any one or more local authorities about the operation of sections 8 to 13.

(2) The guidance may include, in particular, guidance to primary authorities about arrangements under section 9(2).

(3) A local authority must have regard to any guidance given to it under this section.

(4) Before giving guidance under this section LBRO must consult such persons as it considers appropriate.

(5) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.

Ministerial powers

16 Guidance or directions by the Minister for the Cabinet Office

(1) The Minister may give LBRO—
   (a) guidance, or
   (b) general or specific directions,
   as to the exercise of its functions.

(2) The Minister may vary or revoke any guidance or directions given under this section.

(3) The Minister must publish (in such manner as the Minister considers appropriate) any guidance or directions given under this section.

(4) LBRO must have regard to any guidance, and comply with any directions, given under this section.

17 Guidance or directions by Welsh Ministers

(1) The Welsh Ministers may give LBRO—
   (a) guidance, or
   (b) general or specific directions,
   as to the exercise of its functions in relation to any matter in respect of which the Welsh Ministers exercise functions.

(2) The Welsh Ministers may vary or revoke any guidance or directions given under this section.
(3) The Welsh Ministers must publish (in such manner as they consider appropriate) any guidance or directions given under this section.

(4) LBRO must have regard to any guidance, and comply with any directions, given under this section.

Supplementary and general

18 Power to dissolve LBRO

(1) The Minister may by order—
   (a) provide for LBRO to be dissolved, and
   (b) make consequential, supplementary, incidental and transitional provision in relation to its dissolution.

(2) An order under subsection (1) may in particular—
   (a) provide for the transfer of the property, rights and liabilities of LBRO to another person;
   (b) provide for the transfer of the functions of LBRO to another person;
   (c) provide that anything done by or in relation to LBRO is, so far as is necessary for continuing its effect, to have effect as if done by or in relation to another person;
   (d) provide for anything (which may include legal proceedings) which is in the process of being done by or in relation to LBRO when a transfer under the order takes effect to be continued by or in relation to another person;
   (e) provide for a reference to LBRO in an enactment, instrument or other document to be treated as a reference to another person;
   (f) repeal, revoke or amend any enactment whenever passed or made (including an enactment contained in this Act).

(3) Provision under subsection (2)(a) may include provision for property, rights or liabilities to be transferred—
   (a) whether or not they would otherwise be capable of being transferred,
   (b) without any instrument or other formality being required, and
   (c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.

(4) Provision under subsection (2)(a) for the transfer of rights and liabilities relating to employees of LBRO must include provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) to apply in relation to the transfer.

(5) Provision under subsection (2)(a) or (b) may include provision establishing a body corporate to which property, rights and liabilities, or functions, are transferred.

(6) Before making an order under this section the Minister must consult such persons (or persons representative of such persons) as appear to the Minister to be substantially affected by the dissolution of LBRO.

(7) An order under this section is to be made by statutory instrument.
(8) The Minister may not make a statutory instrument containing an order under this section unless a draft has been laid before, and approved by resolution of, each House of Parliament.

19 Interpretation of Part 1

In this Part—
“LBRO” has the meaning given in section 1;
“the LBRO company” has the meaning given in section 2;
“local authority” has the meaning given in section 3;
“enforcement action” has the meaning given in section 10;
“the Minister” means the Minister for the Cabinet Office;
“the regulated person” is to be construed in accordance with section 8(1);
“relevant function” has the meaning given in section 3.

PART 2

REGULATORY SANCTIONS

Introductory

20 “Regulator” and “relevant offence”

(1) In this Part “regulator” means—
(a) a designated regulator, or
(b) an authority with an enforcement function in relation to an offence under a designated enactment.

(2) For the purposes of this section—
“designated regulator” means a person specified in Schedule 3;
“designated enactment” means an enactment specified in Schedule 4;
“enforcement function” means a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where an offence is committed.

(3) In this Part “relevant offence” means—
(a) in relation to a designated regulator, an offence in relation to which the regulator has an enforcement function;
(b) in relation to an authority referred to in subsection (1)(b), an offence under a designated enactment in relation to which the authority has an enforcement function.

Fixed monetary penalties

21 Power to enable regulators to impose fixed monetary penalties

(1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).
(2) That purpose is to enable a regulator to impose a fixed monetary penalty on a person (“the defaulter”) in a case where the condition in subsection (3) is satisfied.

(3) The condition is that the regulator is satisfied that an act or omission of the defaulter constitutes a relevant offence.

(4) For the purposes of this section a “fixed monetary penalty” is a requirement to pay to the regulator an amount specified in, or calculable solely by reference to criteria specified in, an order under this section.

(5) Where the relevant offence is—
   (a) triable summarily only, and
   (b) punishable by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the fixed monetary penalty may not exceed the maximum amount of that fine.

(6) A fixed monetary penalty under this section is to be imposed by a notice.

(7) An order under this section may include provision as to the standard of proof to be met before the regulator may be satisfied, for the purposes of the order, that an act or omission of the defaulter constitutes a relevant offence.

22 Fixed monetary penalties: procedure

(1) An order under section 21 may only enable a regulator to impose a fixed monetary penalty in relation to an act or omission if the order secures the results in subsection (2).

(2) Those results are that—
   (a) where the regulator decides to impose the penalty, the regulator is required to serve on the defaulter a notice requiring payment which complies with subsection (3),
   (b) the defaulter has the same defences in relation to the imposition of the penalty as are available to the defaulter under any enactment in relation to the relevant offence,
   (c) the defaulter is able to require the regulator, by notice, to review the imposition of the penalty,
   (d) the regulator may, on such a review, decide to withdraw or confirm the penalty,
   (e) the regulator is required to give reasons for its decision on such a review, and
   (f) the defaulter is able to appeal against a decision of the regulator to confirm the penalty.

(3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to—
   (a) the grounds for imposing the penalty,
   (b) the amount of the penalty and (if appropriate) how it was calculated,
   (c) how payment may be made,
   (d) the period within which payment must be made,
   (e) any early payment discounts or late payment penalties,
   (f) the defences referred to in subsection (2)(b) that are available,
   (g) the defaulter’s rights to require review and rights of appeal, and
(h) the consequences of non-payment.

(4) Provision pursuant to subsection (2)(c) must secure that any review takes place within a period provided for in the order, such period not to exceed the period of 28 days beginning with the day on which the defaulter’s notice requiring review is received by the regulator.

23 Fixed monetary penalties: effect

An order under section 21 which enables a regulator to impose a fixed monetary penalty in relation to an act or omission must secure that the imposition of the penalty has the following effects—

(a) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission, and

(b) where by virtue of section 24 the regulator would otherwise have power to impose another requirement on the defaulter in respect of the act or omission, the regulator may not do so.

Discretionary requirements

24 Power to enable regulators to impose discretionary requirements

(1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).

(2) That purpose is to enable a regulator, in a case where the condition in subsection (3) is satisfied, to impose on a person ("the defaulter") one or more of the requirements specified in subsection (4).

(3) The condition referred to in subsection (2) is that the regulator is satisfied that an act or omission of the defaulter constitutes a relevant offence.

(4) The requirements referred to in subsection (2) are—

(a) a requirement to pay a monetary penalty to the regulator of such amount as the regulator may determine;

(b) a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the act or omission does not continue or recur;

(c) a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the act or omission had not occurred.

(5) A requirement imposed under this section is to be imposed by a notice.

(6) An order under this section may include provision as to the standard of proof to be met before the regulator may be satisfied, for the purposes of the order, that an act or omission of the defaulter constitutes a relevant offence.

25 Discretionary requirements: procedure

(1) An order under section 24 may only enable a regulator to impose a requirement in relation to an act or omission if the order secures the results in subsection (2).

(2) Those results are that—
(a) where the regulator proposes to impose the requirement, the regulator is required to serve on the defaulter a notice of what is proposed which complies with subsection (3),
(b) the defaulter has the same defences in relation to the imposition of the requirement as are available to the defaulter under any enactment in relation to the relevant offence,
(c) the defaulter is able to make written representations and objections to the regulator in relation to the imposition of the requirement,
(d) after the end of the period for making such representations and objections, the regulator is required to determine whether to—
   (i) impose the requirement,
   (ii) withdraw or vary the requirement, or
   (iii) impose any other requirement which the regulator has power to impose under section 24 in relation to the act or omission,
(e) where the regulator decides to impose any requirement, the notice imposing it complies with subsection (4), and
(f) the defaulter is able to appeal against the imposition of any requirement.

(3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to—
   (a) the grounds for imposing the requirement,
   (b) the defences referred to in subsection (2)(b) that are available,
   (c) the defaulter’s right to make representations and objections, and
   (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice is received by the defaulter.

(4) To comply with this subsection the notice referred to in subsection (2)(e) must include information as to—
   (a) the grounds for imposing the requirement,
   (b) where the requirement is a requirement to pay a monetary penalty—
      (i) how payment may be made,
      (ii) the period within which payment must be made, which may not be less than the period of 28 days beginning with the day on which the notice is received by the defaulter, and
      (iii) any early payment discounts or late payment penalties,
   (c) the defaulter’s rights of appeal, and
   (d) the consequences of non-compliance.

26 Discretionary requirements: voluntary undertakings

(1) An order under section 24 which enables a regulator to impose a requirement to pay a monetary penalty to the regulator in respect of any act or omission may include provision—
   (a) for the defaulter, after service of a notice referred to in section 25(2)(a) proposing the imposition of a requirement to pay a monetary penalty, to be able to offer undertakings as to action to be taken by the defaulter,
   (b) for the regulator to be able to accept the undertakings before making a determination as specified in section 25(2)(d), and
   (c) for the undertakings to be taken into account by the regulator in making its determination under section 25(2)(d).
(2) The action specified in any such undertaking may only be action of a description referred to in section 34(4).

27 Discretionary requirements: effect

(1) An order under section 24 which enables a regulator to impose one or more requirements in relation to an act or omission must secure the results in subsection (2), so far as applicable.

(2) Those results are that—
   (a) in a case where a requirement to pay a monetary penalty, but no other requirement, is imposed on the defaulter—
      (i) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission, and
      (ii) where by virtue of section 21 or 24 the regulator would otherwise have power to impose a fixed monetary penalty or another requirement on the defaulter in respect of the act or omission, the regulator may not do so;
   (b) in a case not falling within paragraph (a), where a requirement is imposed on the defaulter or undertakings from the defaulter are accepted by the regulator—
      (i) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission unless the defaulter fails to comply with the requirement or the undertakings (or any part of the undertakings), and
      (ii) where by virtue of section 21 or 24 the regulator would otherwise have power to impose a fixed monetary penalty or another requirement on the defaulter in respect of the act or omission, the regulator may not do so unless the defaulter fails to comply with the requirement or the undertakings (or any part of the undertakings).

(3) An order under section 24 may for the purposes of subsection (2)(b)(i) make provision for any period within which criminal proceedings may be instituted against the defaulter to be extended.

(4) An order under section 24 which enables a regulator—
   (a) to impose any requirement on the defaulter which is not a requirement to pay a monetary penalty, or
   (b) to accept any undertakings from the defaulter,
may provide that, if the defaulter fails to comply with the requirement or undertakings (or any part of the undertakings), the defaulter must pay a monetary penalty to the regulator.

(5) An order under section 24 making provision as specified in subsection (4) may—
   (a) specify the amount of the penalty to be paid,
   (b) provide for the amount to be calculated by reference to criteria specified in the order,
   (c) provide for the amount to be determined by the regulator, or
   (d) provide for the amount to be determined in any other way.

(6) An order under section 24 making provision as specified in subsection (4) must secure that—
(a) the regulator is required to serve on the defaulter a notice requiring payment, and
(b) the defaulter is able to appeal against that notice.

**Permanent cessation of regulated activity**

28 **Power to enable regulators to require permanent cessation of activity**

(1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).

(2) That purpose is to enable a regulator to require a person (“the defaulter”) to cease carrying on an activity in a case where the conditions in subsection (3) are satisfied.

(3) The conditions are that—
   (a) the regulator is satisfied that the defaulter is doing something, in or in relation to the carrying on of that activity, which presents a significant risk of serious harm to human health or to the environment,
   (b) the regulator is satisfied that the defaulter is committing a relevant offence in doing that thing, and
   (c) the defaulter has previously been convicted of that offence.

(4) A requirement imposed under this section is to be imposed by a notice.

(5) An order under this section may include provision as to the standard of proof to be met before the regulator may be satisfied as specified in subsection (3)(a) and (b).

(6) In subsection (3) the reference to harm to the environment includes harm to the health of animals and plants.

29 **Permanent cessation of activity: procedure**

(1) An order under section 28 may only enable a regulator to require the cessation of an activity if the order secures the results in subsection (2).

(2) Those results are that—
   (a) where the regulator proposes to impose that requirement, the regulator is required to serve on the defaulter a notice of what is proposed which complies with subsection (3),
   (b) the defaulter has the same defences in relation to the imposition of the requirement as are available to the defaulter under any enactment in relation to the relevant offence,
   (c) the defaulter is able to make written representations and objections to the regulator in relation to the imposition of the requirement,
   (d) after the end of the period for making such representations and objections, the regulator is required to determine whether to impose or withdraw the requirement,
   (e) where the regulator decides to impose the requirement, the notice imposing it complies with subsection (4), and
   (f) the defaulter is able to appeal against the imposition of the requirement.
(3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to—
   (a) the grounds for imposing the requirement,
   (b) the defences referred to in subsection (2)(b) that are available,
   (c) the defaulter’s right to make representations and objections, and
   (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice is received by the defaulter.

(4) To comply with this subsection the notice referred to in subsection (2)(e) must include information as to—
   (a) the activity which must cease and the date by which it must cease,
   (b) the grounds for imposing the requirement,
   (c) the defaulter’s rights of appeal, and
   (d) the consequences of non-compliance.

(5) An order under section 28 may include provision for compensation (including compensation by a Minister of the Crown) where—
   (a) the defaulter successfully appeals against the requirement, or
   (b) the notice is withdrawn by the regulator.

30 Permanent cessation of activity: effect

(1) An order under section 28 which enables a regulator to require the cessation of an activity must secure that, if the defaulter fails to comply with that requirement, the defaulter must pay a monetary penalty to the regulator.

(2) An order under section 28 making provision as specified in subsection (1) may—
   (a) specify the amount of the penalty to be paid,
   (b) provide for the amount to be calculated by reference to criteria specified in the order,
   (c) provide for the amount to be determined by the regulator, or
   (d) provide for the amount to be determined in any other way.

(3) An order under section 28 making provision as specified in subsection (1) must secure that—
   (a) the regulator is required to serve on the defaulter a notice requiring payment, and
   (b) the defaulter is able to appeal against that notice.

Temporary cessation of regulated activity

31 Power to enable regulators to require temporary cessation of activity

(1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).

(2) That purpose is to enable a regulator to require a person (“the defaulter”) to cease carrying on an activity for a period specified by the regulator in a case where the condition in subsection (3) is satisfied.

(3) That condition is that the regulator has reasonable grounds to suspect that—
(a) the defaulter is doing something, in or in relation to the carrying on of
that activity, which presents a significant risk of serious harm to—
   (i) human health,
   (ii) the environment, or
   (iii) the financial interests of consumers, and
(b) the defaulter is committing a relevant offence in doing that thing.

(4) The period referred to in subsection (2) may not exceed six months.

(5) A requirement imposed under this section is be imposed by a notice.

(6) In subsection (3) the reference to harm to the environment includes harm to the
    health of animals and plants.

32 Temporary cessation of activity: procedure

(1) An order under section 31 may only enable a regulator to require the cessation
   of an activity for a specified period if the order secures the results in subsection
   (2).

(2) Those results are that—
   (a) where the regulator decides to impose that requirement, the regulator
       is required to serve on the defaulter a notice imposing the requirement
       which complies with subsection (3),
   (b) the defaulter has the same defences in relation to the imposition of the
       requirement as are available to the defaulter under any enactment in
       relation to the relevant offence, and
   (c) the defaulter is able to appeal against the imposition of the
       requirement.

(3) To comply with this subsection the notice referred to in subsection (2)(a) must
    include information as to—
    (a) the activity which must cease and the date by which it must cease,
    (b) the grounds for imposing the requirement,
    (c) the defences referred to in subsection (2)(b) that are available,
    (d) the defaulter’s rights of appeal, and
    (e) the consequences of non-compliance.

(4) An order under section 31 may include provision for compensation (including
    compensation by a Minister of the Crown) where—
    (a) the defaulter successfully appeals against the requirement, or
    (b) the notice is withdrawn by the regulator.

33 Temporary cessation of activity: effect

(1) An order under section 31 which enables a regulator to require the cessation of
   an activity for a specified period must secure that, if the defaulter fails to
   comply with that requirement, the defaulter must pay a monetary penalty to
   the regulator.

(2) An order under section 31 making provision as specified in subsection (1)
    may—
    (a) specify the amount of the penalty to be paid,
(b) provide for the amount to be calculated by reference to criteria specified in the order,
(c) provide for the amount to be determined by the regulator, or
(d) provide for the amount to be determined in any other way.

(3) An order under section 31 making provision as specified in subsection (1) must secure that—
(a) the regulator is required to serve on the defaulter a notice requiring payment, and
(b) the defaulter is able to appeal against that notice.

Enforcement undertakings

34 Power to enable regulators to accept enforcement undertakings

(1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).

(2) That purpose is—
(a) to enable a regulator to accept an enforcement undertaking from a person (“the defaulter”) in a case where the regulator has reasonable grounds to suspect that an act or omission of the defaulter constitutes a relevant offence, and
(b) for the acceptance of the undertaking to have the consequences in subsection (5).

(3) For the purposes of this Part, an “enforcement undertaking” is an undertaking by the defaulter to take such action as may be specified in the undertaking within such period as may be so specified.

(4) The action specified in an enforcement undertaking must be of one or more of the following descriptions—
(a) action to secure that the act or omission of the defaulter is not repeated or continued;
(b) action to secure that the position is, so far as possible, restored to what it would have been if the act or omission had not taken place;
(c) action (including the payment of a sum of money) to benefit any person affected by the act or omission.

(5) The consequences in this subsection are that, unless the defaulter has failed to comply with the undertaking or any part of it—
(a) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission, and
(b) where by virtue of section 21 or 24 the regulator would otherwise have power to impose a fixed monetary penalty or other requirement on the defaulter in respect of the act or omission, the regulator may not do so.

(6) An order under this section which makes provision for enforcement undertakings may in particular include provision—
(a) as to the procedure for entering into the undertaking;
(b) as to the terms of the undertaking;
(c) as to publication of the undertaking by the regulator;
(d) as to variation of the undertaking;
(e) as to circumstances in which the defaulter may be regarded as having complied with the undertaking;
(f) as to monitoring by the regulator of the defaulter’s compliance with the undertaking;
(g) as to certification by the regulator that the defaulter has complied with the undertaking;
(h) in a case where the defaulter gives inaccurate, misleading or incomplete information in relation to the undertaking, for the defaulter to be regarded as not having complied with it;
(i) in a case where the defaulter has complied partly but not fully with the undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the defaulter;
(j) for the purpose of enabling criminal proceedings to be instituted against the defaulter in respect of the relevant offence in the event of breach of the undertaking or any part of it, for any period within which those proceedings may be instituted to be extended.

Subordinate legislation

35 Offences under subordinate legislation

(1) This section applies where, by virtue of a relevant enactment, a Minister of the Crown has, or the Welsh Ministers have, power by statutory instrument to make provision creating a criminal offence.

(2) That power includes power to make, in relation to a relevant enforcement authority, any provision which could be made by an order under this Part if, for the purposes of this Part—
(a) the relevant enforcement authority were a regulator, and
(b) the offence were a relevant offence in relation to that regulator.

(3) In subsection (1) “relevant enactment” means any of the following—
(a) the Sea Fish (Conservation) Act 1967 (c. 84), section 5;
(b) the Hovercraft Act 1968 (c. 59), section 1;
(c) the Health and Safety at Work etc. Act 1974 (c. 37), section 15;
(d) the Animal Health Act 1981 (c. 22);
(e) the Fisheries Act 1981 (c. 29), section 30;
(f) the Electricity Act 1989 (c. 29), section 29;
(g) the Food Safety Act 1990 (c. 16);
(h) the Water Industry Act 1991 (c. 56), sections 67 and 69;
(i) the Merchant Shipping Act 1995 (c. 21);
(j) the Environment Act 1995 (c. 25), section 97;
(k) the Pollution Prevention and Control Act 1999 (c. 24), section 2;
(l) the Regulatory Reform Act 2001 (c. 6), section 1 (so far as continuing to have effect).

(4) In subsection (2) “relevant enforcement authority” means a person, other than a designated regulator, with an enforcement function in relation to the offence.

(5) For the purposes of subsection (4) “designated regulator” and “enforcement function” have the same meanings as they have for the purposes of section 20.
Guidance

36 Guidance as to use of powers under this Part

(1) No provision may be made under or by virtue of this Part—
   (a) to impose a fixed monetary penalty,
   (b) to impose a requirement under section 24, 28 or 31, or
   (c) to accept an undertaking under section 34,
   unless the instrument containing the provision secures the results in subsection (2).

(2) Those results are that—
   (a) the regulator is required to publish guidance about the imposition of
       the penalty or requirement or acceptance of the undertaking,
   (b) in the case of guidance relating to the imposition of a fixed monetary
       penalty or of any other requirement, the guidance contains the relevant
       information,
   (c) the regulator is required to revise the guidance where appropriate,
   (d) the regulator is required to consult such persons as the order may
       specify before publishing any guidance or revised guidance, and
   (e) the regulator is required to have regard to the guidance or revised
       guidance in exercising its functions.

(3) In the case of guidance relating to the imposition of a fixed monetary penalty,
    the relevant information referred to in subsection (2)(b) is information as to—
    (a) the circumstances in which the penalty is likely to be imposed,
    (b) the defences available,
    (c) what the penalty is or how it is calculated, and
    (d) rights to require review and rights of appeal.

(4) In the case of guidance relating to the imposition of a requirement under
    section 24, the relevant information referred to in subsection (2)(b) is
    information as to—
    (a) the circumstances in which the requirement is likely to be imposed,
    (b) the defences available,
    (c) in the case of a requirement to pay a monetary penalty, the matters
        likely to be taken into account by the regulator in determining the
        amount of the penalty, and
    (d) rights to make representations and objections and rights of appeal.

(5) In the case of guidance relating to the imposition of a requirement under
    section 28, the relevant information referred to in subsection (2)(b) is
    information as to—
    (a) the circumstances in which the regulator is likely to impose the
        requirement,
    (b) the defences available, and
    (c) rights to make representations and objections and rights of appeal.

(6) In the case of guidance relating to the imposition of a requirement under
    section 31, the relevant information referred to in subsection (2)(b) is
    information as to—
    (a) the circumstances in which the regulator is likely to impose the
        requirement,
(b) the defences available, and
(c) rights of appeal.

37 Guidance as to enforcement of relevant offences

(1) Where powers are conferred on a regulator under or by virtue of this Part in relation to any relevant offence or offences, the regulator must prepare and publish guidance about how the offence or offences are enforced.

(2) The guidance must, for each offence to which it relates, include guidance as to—
   (a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
   (b) the action which the regulator may take to enforce the offence, whether by virtue of this Part or otherwise, and
   (c) the circumstances in which the regulator is likely to take any such action.

(3) A regulator may from time to time revise guidance published by it under this section and publish the revised guidance.

(4) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this section.

Devolution

38 Scotland

(1) An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

(2) Before making an order under this Part in relation to an offence in Scotland, the Minister making it must obtain the consent of the Lord Advocate.

(3) Before making an order under this Part in relation to a regulator which is a local authority in Scotland, the Minister making it must consult the Scottish Ministers.

(4) In subsection (3), “local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

39 Northern Ireland

An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly.

40 Wales

(1) The powers conferred on a Minister of the Crown under sections 21 to 34 may also be exercised, in relation to matters in Wales in respect of which Welsh Ministers exercise functions, by the Welsh Ministers after consulting the Secretary of State.
(2) A Minister of the Crown must consult the Welsh Ministers before making any provision under this Part which relates to an offence which applies in or in relation to Wales.

(3) A Minister of the Crown must obtain the consent of the Welsh Ministers before making any provision under this Part which relates to an offence which—
   (a) applies in or in relation to Wales, and
   (b) relates to a matter in respect of which Welsh Ministers exercise functions.

(4) An order under this Part which makes provision which would be within the legislative competence of the National Assembly for Wales if it were contained in a Measure of the Assembly (or, if the order is made after the Assembly Act provisions come into force, an Act of the Assembly) may only be made with the consent of the Assembly.

Supplementary and general

41 Monetary penalties

(1) An order under this Part which enables a regulator to require a person to pay a monetary penalty may include provision—
   (a) for early payment discounts;
   (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
   (c) for the regulator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt.

(2) Where by virtue of this Part a regulator receives—
   (a) any monetary penalty, or
   (b) any interest or other financial penalty for late payment of a monetary penalty,
the regulator must pay it into the Consolidated Fund.

42 Appeals

(1) An order under this Part which makes provision for an appeal in relation to the imposition of any fixed monetary penalty or other requirement on a person may include—
   (a) provision suspending, pending determination of the appeal, the fixed monetary penalty or other requirement;
   (b) provision as to the powers of any person to whom the appeal is made.

(2) The provision referred to in subsection (1)(b) includes provision conferring on the person to whom the appeal is made power—
   (a) to withdraw the penalty;
   (b) to confirm the penalty;
   (c) to take such steps as the regulator could take in relation to the act or omission to which the penalty relates;
   (d) to remit the decision to confirm the penalty, or any matter relating to that decision, to the regulator.
Supplementary powers

(1) An order under this Part may repeal, revoke or amend any enactment.

(2) An order under this Part may include consequential, supplementary, incidental and transitional provision.

(3) The supplementary provision referred to in subsection (2) includes provision for the purpose of facilitating the use of powers conferred by an order under this Part, and in particular provision which for that purpose—
   (a) confers or extends powers to require information;
   (b) authorises the use of information in evidence which could not otherwise lawfully so be used;
   (c) confers or extends powers of entry or search.

Consultation

(1) A person proposing to make an order under this Part must consult the following (in addition to any persons who must be consulted under sections 38 and 40)—
   (a) the regulator to which the order relates,
   (b) such organisations as appear to that person to be representative of persons substantially affected by the proposals, and
   (c) such other persons as that person considers appropriate.

(2) If, as a result of any consultation required by subsection (1), it appears to that person that it is appropriate to change the whole or any part of the proposals, the person must undertake such further consultation with respect to the changes as the person considers appropriate.

(3) If, before the day on which this Part comes into force, any consultation was undertaken which, had it been undertaken on or after that day, would to any extent have satisfied the requirements of this section, those requirements may to that extent be taken to have been satisfied.

Other procedural requirements

(1) An order under this Part is to be made by statutory instrument.

(2) A statutory instrument containing an order under this Part made by a Minister of the Crown may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(3) A statutory instrument containing an order under this Part made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

PART 3

GENERAL

Interpretation

In this Act “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).
47  Extent
(1) Part 1 extends to England and Wales only (except that the amendments made by Schedule 1 have the same extent as the enactments to which they relate).
(2) Part 2 and this Part extend to England and Wales, Scotland and Northern Ireland.

48  Commencement
(1) Part 1 comes into force on such day as the Minister for the Cabinet Office may by order made by statutory instrument appoint.
(2) Part 2 comes into force at the end of the period of two months beginning with the day on which this Act is passed.

49  Short title
This Act may be cited as the Regulatory Enforcement and Sanctions Act 2008.
SCHEDULES

SCHEDULE 1

LBRO: SUPPLEMENTARY

Status

1 (1) LBRO is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The property of LBRO is not to be regarded as the property of, or property held on behalf of, the Crown.

Membership

2 LBRO is to consist of ordinary and ex officio members.

3 (1) There are to be at least five and no more than ten ordinary members.

(2) One of the ordinary members is to be the chair of LBRO.

(3) The chair and other ordinary members are to be appointed by the Minister.

(4) The Minister must consult the chair before appointing the other ordinary members.

(5) LBRO is to pay to or in respect of the ordinary members such sums as the Minister may determine by way of or in respect of remuneration, allowances, expenses, pensions or gratuities.

(6) If the Minister thinks that there are special circumstances that make it right for a person ceasing to be an ordinary member of LBRO to receive compensation, LBRO must pay to that person such compensation as the Minister may determine.

4 (1) The ex officio members are to be—

   (a) the Chief Executive of LBRO (see paragraph 7), and
   (b) such other employees of LBRO as may for the time being be appointed by the Chief Executive after consulting the chair.

(2) The number of ex officio members appointed under sub-paragraph (1)(b) may not at any time exceed—

   (a) such number as may for the time being be specified by the Minister, or
   (b) the number of ordinary members.

5 Service as a member of LBRO is not service in the civil service of the State.
Tenure

6 (1) Subject to the other provisions of this Schedule, a person holds and vacates office as a member of LBRO in accordance with the terms and conditions of their appointment.

(2) A person may not be appointed as an ordinary member of LBRO for a term of more than five years.

(3) A person may at any time resign as an ordinary member of LBRO by giving notice in writing to the Minister.

(4) The Minister may remove a person as an ordinary member of LBRO at any time if —
   (a) the ordinary member has, at any time, been convicted of a criminal offence, or
   (b) in the opinion of the Minister —
      (i) the ordinary member has failed to comply with the terms of their appointment, or
      (ii) the ordinary member is otherwise unable, unfit or unwilling to perform their functions.

(5) A person who has ceased to be an ordinary member is eligible for reappointment for a further term or terms but the total period of appointment of an ordinary member (whether or not in consecutive terms) may not exceed ten years.

Employees

7 (1) LBRO is to have a Chief Executive.

(2) The Chief Executive is to be an employee of LBRO.

(3) The first Chief Executive is to be appointed by the Minister and subsequent appointments are to be made by LBRO with the approval of the Minister.

(4) LBRO may appoint other employees, subject to the approval of the Minister as to numbers and terms and conditions of employment.

(5) Service as an employee of LBRO is not service in the civil service of the State.

(6) LBRO may pay to or in respect of an employee sums by way of or in respect of remuneration, allowances, expenses, pensions, gratuities or compensation for loss of employment, subject to any conditions imposed by the Minister under sub-paragraph (4).

(7) The Chief Executive may not take part in the determination of the amount of any remuneration, allowance, pension, gratuity or compensation payable to him or her.

Committees

8 (1) LBRO may establish one or more committees.

(2) A committee established under this paragraph may include persons who are neither members nor employees of LBRO.
(3) A committee established under this paragraph may establish one or more sub-committees.

(4) LBRO may pay sums by way of or in respect of expenses to or in respect of a person who is a member of a committee or a sub-committee established under this paragraph but who is not a member or employee of LBRO.

**Proceedings**

9 (1) Subject to this Schedule, LBRO may regulate—
   (a) its own proceedings (including quorum), and
   (b) the proceedings (including quorum) of any of its committees.

(2) A committee of LBRO may regulate the proceedings (including quorum) of any of its sub-committees.

(3) The validity of proceedings of LBRO, or of any of its committees or sub-committees, is not affected by—
   (a) a vacancy, or
   (b) a defective appointment.

**Delegation**

10 LBRO may delegate any of its functions to any of its members, employees, committees or sub-committees.

**Ancillary powers**

11 (1) LBRO may do anything which it thinks necessary or expedient for the purpose of, or in connection with, the exercise of its functions.

(2) In particular, LBRO may—
   (a) enter into agreements;
   (b) acquire or dispose of property;
   (c) borrow money;
   (d) accept gifts;
   (e) invest money.

**Annual report**

12 (1) LBRO must send to the Minister a report on the discharge of its functions during each financial year.

(2) A report must be sent under sub-paragraph (1) within such period beginning with the end of the financial year to which the report relates as the Minister may direct.

(3) The Minister must lay before Parliament a copy of each report received under sub-paragraph (1).

**Accounts**

13 (1) LBRO must keep proper accounts and proper records in relation to the accounts.

(2) LBRO must prepare a statement of accounts for each financial year.
The statement must comply with any directions given by the Minister with the consent of the Treasury as to—
(a) the information to be contained in the statement;
(b) the form which the statement is to take;
(c) the manner in which the information is to be presented;
(d) the methods and principles according to which the statement is to be prepared.

(4) LBRO must send copies of the statement to the Minister and the Comptroller and Auditor General within such period as the Minister directs.

(5) The Comptroller and Auditor General must—
(a) examine, certify and report on the statement received under sub-paragraph (4), and
(b) send a copy of the certified statement and report to the Minister as soon as possible.

(6) The Minister must lay before Parliament a copy of each statement and report sent under sub-paragraph (5)(b).

Financial year

14 (1) The financial year of LBRO is the period of twelve months ending on 31 March.

(2) But the first financial year of LBRO is the period—
(a) starting on the day on which section 1 comes into force, and
(b) ending on the following 31 March.

Instruments and authentication

15 (1) The fixing of the seal of LBRO shall be authenticated by the signature of the chair or of another person authorised by LBRO to act for that purpose.

(2) A document purporting to be duly executed under the seal of LBRO, or to be signed on LBRO’s behalf, shall be received in evidence and, unless the contrary is proved, shall be treated as having been so executed or signed.

Records

16 In the Public Records Act 1958 (c. 51), in Schedule 1 (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert—
“Local Better Regulation Office.”

Parliamentary disqualification

17 In the House of Commons Disqualification Act 1975 (c. 24), in Schedule 1, in Part 2 (bodies of which all members are disqualified), at the appropriate place insert—
“The Local Better Regulation Office.”

Investigation

18 In the Parliamentary Commissioner Act 1967 (c. 13), in Schedule 2
(departments etc. subject to investigation), at the appropriate place insert—

“Local Better Regulation Office.”

Freedom of Information Act 2000 (c. 36)

19 In the Freedom of Information Act 2000, in Schedule 1, in Part 6 (other public bodies and offices: general), at the appropriate place insert—

“The Local Better Regulation Office.”

Transitional provisions

20 (1) A person who immediately before the day on which section 1 comes into force is the chair of the LBRO company is to be treated—

(a) as having been appointed as the chair of LBRO under paragraph 3(3), and

(b) as having been so appointed on the day on which, and for the term for which, that person was appointed as the chair of the LBRO company.

(2) A person who immediately before the day on which section 1 comes into force is a director of the LBRO company is to be treated—

(a) as having been appointed as an ordinary member of LBRO under paragraph 3(3), and

(b) as having been so appointed on the day on which, and for the term for which, that person was appointed as a director of the LBRO company.

(3) A person who is the Chief Executive of the LBRO company immediately before the day on which section 1 comes into force is to be treated as appointed as the first Chief Executive of LBRO under paragraph 7(3).

(4) A committee or sub-committee of the LBRO company which was in existence immediately before the day on which section 1 comes into force is to be treated as having been established as a committee or sub-committee of LBRO under paragraph 8(1) or (3).

SCHEDULE 2

REPLACEMENT OF THE LBRO COMPANY BY LBRO

Transfer of staff

1 (1) For the purposes of TUPE—

(a) the functions conferred on LBRO by this Act are to be treated as transferred to LBRO from the LBRO company on the day on which section 2 comes into force;

(b) that transfer of functions is to be treated as a transfer of an undertaking to which TUPE applies;

(c) each person who was, immediately before the day on which this Part comes into force, employed by the LBRO company under a contract of employment is to be treated as employed in the undertaking immediately before the day on which section 2 comes into force.
(2) In sub-paragraph (1) “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Transfer of property, rights and liabilities

2  (1) All the property, rights and liabilities to which the LBRO company was entitled or subject immediately before the day on which section 2 comes into force become on that day property, rights and liabilities of LBRO.

(2) In sub-paragraph (1) the reference to rights and liabilities does not include rights and liabilities under or in connection with a contract of employment which are transferred pursuant to paragraph 1.

(3) Sub-paragraph (1) operates in relation to property, rights and liabilities—
(a) whether or not they would otherwise be capable of being transferred;
(b) without any instrument or other formality being required;
(c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.

Continuity between the LBRO company and LBRO

3  (1) Anything done by or in relation to the LBRO company which has effect immediately before the day on which section 2 comes into force is, so far as is necessary for continuing its effect on or after that day, to have effect as if done by or in relation to LBRO.

(2) If before the day on which section 2 comes into force any consultation was undertaken by the LBRO company which, had it been undertaken by LBRO on or after that day, would to any extent have satisfied any consultation requirement to which LBRO is subject, that requirement may to that extent be taken to have been satisfied.

4  Anything (including legal proceedings) which, immediately before the day on which section 2 comes into force, is in the process of being done by or in relation to the LBRO company may be continued by or in relation to LBRO.

5  So far as is necessary or appropriate in consequence of paragraph 2, on and after the day on which section 2 comes into force, a reference to the LBRO company in an enactment, instrument or other document is to be treated as a reference to LBRO.

SCHEDULE 3

DESIGNATED REGULATORS

British Hallmarking Council
British Potato Council
Charity Commission for England and Wales
Civil Aviation Authority
Coal Authority
Competition Commission
Disability Rights Commission
Environment Agency
Equal Opportunities Commission
Financial Services Authority
Fire and rescue authorities
Food Standards Agency
Football Licensing Authority
Forestry Commissioners
Gambling Commission
Gangmasters Licensing Authority
Health and Safety Executive
Hearing Aid Council
Historic Buildings and Monuments Commission for England ("English Heritage")
Home-Grown Cereals Authority
Housing Corporation
Human Fertilisation and Embryology Authority
Information Commissioner
Natural England
Office of Fair Trading
Office of Rail Regulation
Pensions Regulator
Sea Fish Industry Authority
Security Industry Authority
United Kingdom Sports Council

SCHEDULE 4

DESIGNATED ENACTMENTS

Animal health and welfare

Animal Boarding Establishments Act 1963 (c. 43), section 1(8)
Breeding of Dogs Act 1973 (c. 60)
Animal Health Act 1981 (c. 22)
Animals (Scientific Procedures) Act 1986 (c. 14)
Breeding of Dogs Act 1991 (c. 64)
Animal Welfare Act 2006 (c. 45)

Fish and fisheries

Diseases of Fish Act 1937 (c. 33)
Sea Fisheries (Shellfish) Act 1967 (c. 83)
Sea Fish (Conservation) Act 1967 (c. 84)
Salmon and Freshwater Fisheries Act 1975 (c. 51)
Import of Live Fish (England and Wales) Act 1980 (c. 27), section 3
Salmon Act 1986 (c. 62), section 32(1)

Water

Water Industry Act 1991 (c. 56), sections 70(1), 86, 109, 111 and 118

Environment

Agriculture and Horticulture Act 1964 (c. 28), sections 14 and 15
Agriculture Act 1967 (c. 22), section 14(2)
Mines and Quarries (Tips) Act 1969 (c. 10), Part 2
Agriculture Act 1970 (c. 40), Part 4 and section 106
Control of Pollution Act 1974 (c. 40), Part 3
Energy Act 1976 (c. 76), section 18
Refuse Disposal (Amenity) Act 1978 (c. 3), sections 2(1), 2B(2)
Wildlife and Countryside Act 1981 (c. 69), Parts 1 and 2
Litter Act 1983 (c. 35), section 5(9)
Food and Environment Protection Act 1985 (c. 48), section 9
Control of Pollution (Amendment) Act 1989 (c. 14), section 5
Environmental Protection Act 1990 (c. 43), section 23, Parts 2, 2A and 3,
and sections 118 and 150(5)
Environment Act 1995 (c. 25), section 110

Food standards and safety

Poisons Act 1972 (c. 66)
Food and Environment Protection Act 1985, sections 2 and 16 and
Schedule 2
Food Safety Act 1990 (c. 16), Parts 2 and 3
Food Standards Act 1999 (c. 28)

Public health and safety

Explosives Act 1875 (c. 17), sections 30 to 32, 43, 73 and 80
Public Health Act 1936 (c. 49), Part 2 and sections 269, 288 and 290
Prevention of Damage by Pests Act 1949 (c. 55), sections 3(4), 17, 22(4)
Health and Safety at Work etc. Act 1974 (c. 37), section 33
Safety of Sports Grounds Act 1975 (c. 52), section 12(1)
Dangerous Wild Animals Act 1976 (c. 38)
Public Health (Control of Disease) Act 1984 (c. 22), sections 15 to 55
Building Act 1984 (c. 55)
Clean Air Act 1993 (c. 11), Parts 1 to 6
Fireworks Act 2003 (c. 22), section 11

Housing
Rent Act 1977 (c. 42), sections 77 and 81
Protection from Eviction Act 1977 (c. 43), section 1

Planning
Town and Country Planning Act 1990 (c. 8), sections 65 and 106, Parts 7 and 8, sections 325 and 330
Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9), sections 9 and 43
Planning (Hazardous Substances) Act 1990 (c. 10), section 23

Road transport
Highways Act 1980 (c. 66), Part 9
Road Traffic Act 1988 (c. 52), sections 27(1), 123, 133C and 133D
New Roads and Street Works Act 1991 (c. 22), section 51
Transport Act 2000 (c. 38), sections 143 and 148 and Part 3

Marine transport
Protection of Wrecks Act 1973 (c. 33)
Pilotage Act 1987 (c. 21)
Merchant Shipping Act 1995 (c. 21), Parts 1 to 5 and 9 to 11

Anti-social behaviour
Criminal Justice and Public Order Act 1994 (c. 33), sections 77(3) and 78(4)
Noise Act 1996 (c. 37)
Anti-social Behaviour Act 2003 (c. 38), sections 54 and 75
Clean Neighbourhoods and Environment Act 2005 (c. 16), sections 3 to 7 and Part 7

Licensing
Local Government (Miscellaneous Provisions) Act 1976 (c. 57), Part 2
Local Government (Miscellaneous Provisions) Act 1982 (c. 30), Part 8, Schedules 3 and 4
London Local Authorities Act 1995 (c. x), sections 24 and 25
Licensing Act 2003 (c. 17), Part 7
London Local Authorities Act 2004 (c. i), sections 22, 26 and 29

Children
Children and Young Persons Act 1933 (c. 12), section 7(1)
Children and Young Persons Act 1963 (c. 37), section 40
Intoxicating Substances (Supply) Act 1985 (c. 26), section 1
Regulatory Enforcement and Sanctions Bill
Schedule 4 — Designated enactments

Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23)

Education

Education Reform Act 1988 (c. 40), section 214

Companies

Companies Act 1985 (c. 6), sections 242 and 363
Companies Act 1989 (c. 40), section 41

Intellectual property

Copyright, Designs and Patents Act 1988 (c. 48), sections 107 and 198
Trade Marks Act 1994 (c. 26), section 92

Consumer protection

Petroleum (Consolidation) Act 1928 (c. 32), sections 1, 5 and 18
Accommodation Agencies Act 1953 (c. 23), section 1
Mock Auctions Act 1961 (c. 47)
Scrap Metal Dealers Act 1964 (c. 69), sections 1 and 5
Trade Descriptions Act 1968 (c. 29)
Medicines Act 1968 (c. 67), sections 67, 91, 93(1) and 94(2)
Administration of Justice Act 1970 (c. 31), section 40
Unsolicited Goods and Services Act 1971 (c. 30), section 2
Fair Trading Act 1973 (c. 41), sections 23, 30 and 120
Hallmarking Act 1973 (c. 43), sections 1, 3 and 6
Prices Act 1974 (c. 24)
Consumer Credit Act 1974 (c. 39), Parts 1 to 3, 6 to 8, 10 and 11
Business Names Act 1985 (c. 7), section 7
Food and Environment Protection Act 1985 (c. 48), section 16
Consumer Protection Act 1987 (c. 43), section 20
Timeshare Act 1992 (c. 35)
Sunday Trading Act 1994 (c. 20)
Criminal Justice and Public Order Act 1994 (c. 33), sections 166 and 167
Enterprise Act 2002 (c. 40), section 227E

Weights and measures

Weights and Measures Act 1985 (c. 72), Parts 2 to 6

Estate agents

Estate Agents Act 1979 (c. 38)
Property Misdescriptions Act 1991 (c. 29)

Employment agencies

Employment Agencies Act 1973 (c. 35), sections 5(2), 6(2), and 10(2)
Entertainment

Video Recordings Act 1984 (c. 39), sections 9 to 14