



BERR | Department for Business
Enterprise & Regulatory Reform

CONSULTATION DOCUMENT

A Code of Practice on Good
Guidance on Regulation

JANUARY 2008

BRE
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REGULATION
EXECUTIVE

Basic information on this consultation

- To:** Businesses and third sector organisations affected by regulation or interested in guidance on how to follow regulations. We are also interested to hear from Non-Departmental Public Bodies and others that work with regulation.
- Duration:** From 07/01/2008 to 31/03/2008.
- Enquiries to:** Andrew Ratcliffe, 020 7215 0437 or guidance@berr.gsi.gov.uk
- How to respond:** In writing: Consultation on Good Guidance, Bay 3140, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London SW1H 0ET
By email: guidance@berr.gsi.gov.uk
- Government response:** Following the consultation a government response will be published at: <http://bre.berr.gov.uk/regulation/>

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Foreword

If regulation is to achieve its objectives in protecting consumers, workers, and the environment and making markets work efficiently, it must be clear what businesses and other organisations need to do to comply with the law. Guidance which follows the golden rules outlined in this consultation document will, I believe, make it easier for businesses to understand how to follow regulation, increasing compliance and reducing the need to pay for external advice which currently costs them £1.4 billion a year.



I am committed to improving the quality of guidance on regulation. I believe that guidance should give plenty of warning about new regulation coming into force to give businesses and other organisations time to prepare. It should be easy to follow, making it clear what needs to be done; and it should be written with the end user in mind.

This draft Code of Practice sets out the golden rules of good guidance that those who have to follow regulation – including small and large businesses, and third sector organisations – can expect guidance to follow. I believe that by following this Code of Practice we will be able to make a real difference to the experience of regulation on the ground.

I look forward to hearing your views.

A handwritten signature in black ink that reads "Pat McFadden". The signature is written in a cursive style.

Pat McFadden MP
Minister of State
Department for Business, Enterprise
and Regulatory Reform
(BERR)

Part 1

This consultation

This Consultation seeks your views on a Code of Practice on Good Guidance on Regulation. The Code sets out to provide a public statement of what any organisation can expect from government¹ and independent regulators guidance on regulation.

The Government has committed² to producing timely guidance; this Code of Practice sets out the golden rules of Good Guidance. We are seeking views from businesses and third sector organisations affected by regulation. We are also interested to hear from Non-Departmental Public Bodies and others that work with regulation. If you deal with regulation you are invited to respond to this consultation.

¹ Here 'government' refers to government departments, agencies, and non-departmental public bodies who issue guidance on how to comply with regulations.

² Small Business Service, 2000. *Guidance on implementation periods: timing of the issue of guidance to business on compliance with new regulation*. London.

Part 2

Proposals

The government is committed to improving the quality of guidance on regulation. Good guidance to legislation is important because:

Good guidance is important for compliance. Regulation is designed to change behaviour and it can only be successful if those affected understand what is required. Few businesses or third sector organisations will read the complex language of a piece of legislation so guidance is often the main route to compliance for most businesses.

Good guidance reduces the burden of regulation. If businesses are unsure about how to follow a regulation they may pay for external advice or over-comply³. Clear, easy to follow guidance reduces these costs.

The box overleaf outlines some of the evidence on why guidance on regulation is an important issue.

³ *Regulation and Business Advice: A report by the Better Regulation Executive.* Better Regulation Executive, London, 2007

Evidence on the importance of guidance

The *Regulation and Business Advice*⁴ report by the Better Regulation Executive highlights the importance of guidance for the delivery of regulation. It found that:

- **every year almost half of businesses seek external advice about how to follow regulations, and**
- **they spend at least £1.4 billion a year** on this advice.

The report identifies five drivers behind this use of outside advice, three of which are directly relevant to guidance and this Code of Practice:

Drivers of external advice

- Poor quality government guidance
- Uncertainty, risk and lack of confidence
- Low awareness of government guidance

Relevant Golden Rule

- The whole Code of Practice
- Golden Rule 5
- Golden Rule 7

The National Audit Office *2007 Survey of Business' Perceptions of Regulation*⁵ also illustrates the importance of good guidance on regulation:

- **53 per cent** of businesses disagree with the statement *'it is straightforward to understand what you are required to do to comply with regulations'*.
- **74 per cent** of businesses think it is a burden *'finding information about which regulations apply to your business'*.
- **71 per cent** of businesses think it is a burden *'finding guidance and advice explaining what you have to do to comply with a given regulation'*.
- **80 per cent** of businesses said that *'improved access to information that spells out in clear and simple language which regulations apply to your business'* was very important.
- **78 per cent** of businesses said that *'provision of guidance that sets out in clear and simple language what your business has to do to comply with a given regulation'* was very important.

⁴ *Regulation and Business Advice: A report by the Better Regulation Executive*. Better Regulation Executive, London, 2007

⁵ National Audit Office, 2007. *2007 Survey of Business' Perceptions of Regulation – Technical Summary, 2007*. London.

The purpose of this Code of Practice is to spell out the golden rules of good guidance, and to make it clear what standards businesses can expect from government. This Code builds on evidence on the importance of guidance for the delivery of regulation from the Hampton Review⁶ and the recent *Regulation and Business Advice* report. The Government is grateful to the following organisations for their help in drafting this document:

- The Association of Certified Chartered Accountants;
- The Confederation of British Industry;
- EEF;
- The Federation of Small Businesses;
- The Forum of Private Business; and,
- The Institute of Chartered Accountants for England and Wales.

The Code will apply to guidance for new UK legislation with a significant effect⁷ on businesses – from the self employed person, though to the largest multi-national – and third sector organisations. We envisage that it will cover Acts of Parliament, Statutory Instruments and other legislation with such an effect. It will not affect regulation that is the responsibility of the devolved administrations. It will apply to guidance on regulations but does not mean that extra guidance would need to be produced as a result of the Code – the aim is to improve the quality of the guidance that would be produced anyway. It will not cover ‘best practice guidance’ – that is guidance which aims to describe best practice rather than how to comply with regulations – although the golden rules of good guidance may be useful when designing this.

The proposed Code of Practice on Good Guidance on Regulations is a non-statutory code of practice. This means it cannot take priority over other legal requirements that may apply to a government department or agency. In all other circumstances, however, Government departments and their agencies should follow the Code, unless there are very good reasons to depart from it, as it sets out best practice for issuing guidance.

For the Code of Practice to meet its objective the golden rules need to be the right ones to meet the needs of users of guidance. This is why they are being put out to formal consultation.

⁶ *Reducing Administrative Burdens: Effective Inspection and Enforcement*. Hampton, P., London, 2005.

⁷ Guidance should be issued in most cases where the legislation affects businesses or third sector organisations but there may be cases where the impact is minor and where it would not be a good use of resources to produce guidance.

The golden rules of good guidance

The guidance you receive should be...

- 1 Based on a good understanding of the audience**

Good guidance requires a detailed understanding of the target audience. Different organisations may have different needs for guidance.
- 2 Designed with input from the audience and their representative bodies**
- 3 Organised around the user's way of working rather than legislative or departmental structures**

As far as possible, guidance should contain the information relevant to the user's activities to help them see how the regulation fits into their day-to-day work.
- 4 Easy for users to understand**

Guidance should be written in simple, clear language without unnecessary jargon or acronyms. Guidance should be as concise as possible.
- 5 Reliable**

Businesses should know that the guidance will give them a good understanding of how to comply with the law. While many regulations have exceptions or complexities, it should be clear how to comply *in most cases* and simple checklists should be used wherever possible.
- 6 Issued in good time**

To give organisations time to prepare for regulation, guidance should be issued at least 12 weeks before a regulation comes into effect. Sometimes more than 12 weeks will be needed, for example if a regulation is complex or costly to implement.
- 7 Easy to access**

Guidance should be easily available to the user. It will always be accessible through businesslink.gov.uk. Other forms of communication, including sending guidance directly to businesses or communicating through intermediaries, will also be used where they will be effective.
- 8 Reviewed and improved**

Guidance should be reviewed to check it is up-to-date and works for the user. The guidance will say when it was prepared and when it is due for review. It will be withdrawn when it no longer applies.

Part 3

Consultation questions

We have set out eight golden rules of good guidance and for each we are asking whether it is the right golden rule. We would also like to know if there are any other golden rules which should be included (Question 17 on page 20). There is no need to respond to every question but we would be very grateful to receive any comments you have.

We would also welcome any examples of good guidance on regulation that you have used.

1. Based on a good understanding of the audience

Good guidance requires a detailed understanding of the target audience.
Different organisations may have different needs for guidance.

We will work to establish the target audience for the guidance. We will consider what types of organisation may be interested and how we can ensure we have all potential sectors covered.

Before designing guidance it is important to develop a good understanding of the audience. This will help to ensure that guidance is in the most appropriate format and clear language, and, once written, that it is distributed and publicised so that it has a good chance of reaching the target audience.

QUESTION 1: *Should Golden Rule 1 be included in the Code of Practice in this form?*

QUESTION 2: *If not, what alternative would you like to see?*

2. Designed with input from the audience and their representative bodies

The true test of whether guidance is effective is whether it meets the needs of the end-user and provides information that helps the organisation to comply with the law. When designing guidance, end-users should be involved at an early stage. This could take the form of a stakeholder panel or user-testing of specific pieces of guidance. Representative groups, such as trade associations, can be useful sources of knowledge and advice on how to make guidance work well for the target audience and should be approached when possible.

Input should be sought as early as possible to help ensure that guidance will work in practice.

QUESTION 3: *Should Golden Rule 2 be included in the Code of Practice in this form?*

QUESTION 4: *If not, what alternative would you like to see?*

3. Organised around the user's way of working rather than legislative or departmental structures

As far as possible, guidance should be structured around the user's processes to help them see how the regulation fits into their day-to-day work.

In the past, guidance has often focussed on a specific Act of Parliament or the work of a particular Government Department that created the regulation. We understand, that for a business trying to follow regulation, this approach can be unhelpful. We recognise that businesses and third sector organisations often think in terms of their own processes rather than legislative structures, and so may not realise some pieces of regulation apply in some circumstances.

For example, when hiring new staff a number of areas of regulation must be considered and it can be confusing for organisations to try to bring together different sources of guidance and apply them.

As far as possible, guidance should be organised around users' processes, making it clear what actions should be taken at each stage.

QUESTION 5: *Should Golden Rule 3 be included in the Code of Practice in this form?*

QUESTION 6: *If not, what alternative would you like to see?*

4. Easy for users to understand

Guidance should be written in simple, clear, language without unnecessary jargon or acronyms. Guidance should be as concise as possible.

We believe that the easier guidance is to understand the more likely it is to be followed correctly. So the language used should be as easy to understand as possible. We will avoid jargon and acronyms which are not familiar to the end user. Clear communication is not restricted to text. When appropriate we will use graphics, flowcharts and videos to help to make guidance easier to understand.

Users should be able to tell quickly whether the regulation is likely to apply to their organisation, so they can decide whether to continue reading the guidance.

Guidance should be as concise as possible so that users do not have to spend too much time reading it.

As far as possible guidance should also stand alone – most users should not need to consult other documents to understand the guidance (although there should be clear links to more detailed or technical guidance for those that need it).

QUESTION 7: *Should Golden Rule 4 be included in the Code of Practice in this form?*

QUESTION 8: *If not, what alternative would you like to see?*

5. Reliable

Businesses should know that the guidance will give them a good understanding of how to comply with the law. While many regulations have exceptions or complexities, it should be clear how to comply *in most cases* and simple checklists should be used wherever possible.

If guidance is to be effective it should help most businesses understand how to comply with the regulations. This does not mean that guidance should aim to cover every possible scenario for compliance, as that would make it too complicated and unwieldy. It also does not remove the responsibility of businesses and third sector organisations to comply with the law, or the fact that compliance with the law is ultimately a matter for the courts.

Nonetheless, giving businesses a good idea of how to comply is essential. The *Regulation and Business Advice* report found that uncertainty and lack of confidence make businesses more likely to pay for external advice, increasing the costs of complying with the regulation. The Hampton Report also stressed the need for guidance to be authoritative.

Guidance should also make it clear when it was issued and how long it applies for, so that users can be sure they are using the most up-to-date version.

QUESTION 9: *Should Golden Rule 5 be included in the Code of Practice in this form?*

QUESTION 10: *If not, what alternative would you like to see?*

6. Issued in good time

To give organisations time to prepare for regulation, guidance should be issued at least 12 weeks before a regulation comes into effect. Sometimes more than 12 weeks will be needed, for example if a regulation is complex or costly to implement.

If guidance is not issued in good time it can greatly increase the costs of regulation for businesses and third sector organisations. Late guidance can mean that organisations do not have time to get their systems ready to meet the regulation and so compliance is affected. Late guidance can also cause over-compliance, as businesses take a 'better safe than sorry' approach because of the uncertainty about the regulation.

Guidance issued at least 12 weeks before a regulation comes into force gives businesses a reasonable amount of time to prepare for that legislation. If the legislation is particularly complex or expensive to comply with, we will consider whether a longer period to prepare may be appropriate. However, there will be also be a limited number of occasions, such as emergencies, some taxation changes, and some European law, where legislation has to come into force quickly and it may not be possible to meet the 12 week limit⁸.

There are two "Common Commencement Dates" (6th April and 1st October) when the government is committed to bringing in any regulation affecting businesses (unless the regulation is covered by an exemption). As far as possible, guidance will be issued 12 weeks before these dates.

QUESTION 11: *Should Golden Rule 6 be included in the Code of Practice in this form?*

QUESTION 12: *If not, what alternative would you like to see?*

⁸ See Small Business Service, 2000. *Guidance on implementation periods: timing of the issue of guidance to business on compliance with new regulation*. London.

7. Easy to access

Guidance should be easily available to the user. It will always be accessible through businesslink.gov.uk. Other forms of communication, including sending guidance directly to businesses or communicating through intermediaries, will also be used where they will be effective.

We recognise that high quality guidance will be ineffective if no-one reads it. Having understood our audience, we will produce guidance working with the audience and then ensure that it is made available in the most appropriate fashion.

Guidance will be accessible through businesslink.gov.uk.⁹

Qualitative research¹⁰ for the Better Regulation Executive has found that businesses would like government to be more active in informing them about new regulation. So we will consider direct communication of guidance where this is likely to be effective.

QUESTION 13: *Should Golden Rule 7 be included in the Code of Practice in this form?*

QUESTION 14: *If not, what alternative would you like to see?*

⁹ Except in exceptional circumstances such as where guidance is subject to national security restrictions.

¹⁰ IPSOS MORI 2007, *Businesses' Perceptions of Regulation: Research report prepared for the Better Regulation Executive*. London.

8. Reviewed and improved

Guidance should be reviewed to check it is up-to-date and works for the user. The guidance will say when it was prepared and when it is due for review. It will be withdrawn when it no longer applies.

Even guidance that has been well designed and tested before publication may not work perfectly. We will work to ensure that guidance is tested after it has been issued to see whether it is effective in informing users. If we identify problems, we will update the guidance.

We will ensure that guidance is clearly dated and marked with a review date.

Guidance will also be withdrawn when it no longer applies.

QUESTION 15: *Should Golden Rule 8 be included in the Code of Practice in this form?*

QUESTION 16: *If not, what alternative would you like to see?*

QUESTION 17: *Other than the Golden Rules outlined in this document, are there any other principles of good guidance that should be included in the Code of Practice?*

Part 4

How to respond

1.1 To capture all your views, can we ask that you please email your comments to the address shown below. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

1.2 Responses to this consultation must be received by **31st March 2008**. You are invited to send comments, preferably by email to:

guidance@berr.gsi.gov.uk

1.3 If by letter, then to:

Consultation on Good Guidance
Bay 3140
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 0437
Fax: 020 7215 6087

Who we have consulted

1.4 A list of those organisations and individuals who have received a copy of this consultation document is provided in Annex B. We welcome suggestions as to any others who may be interested in this consultation.

1.5 Printed copies of this consultation document may be obtained by post from:

BERR Publications Orderline
ADMAIL 528
London SW1W 8YT

Tel: 0845 015 0010 (Calls are charged at local rate)
Fax: 0845 015 0020
Email: publications@berr.gsi.gov.uk

- 1.6** Electronic versions may be viewed on the BERR website at:

<http://www.berr.gov.uk/consultations/index.html>

Help with queries

- 1.7** Questions about the policy issues raised in the document can be addressed to Andrew Ratcliffe using the contact details given above.

- 1.8** If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Vanessa Singhateh
Consultation Co-ordinator
Department for Business, Enterprise and Regulatory Reform
Better Regulation Team
1 Victoria Street
London SW1H 0ET
E-mail: <mailto:vanessa.singhateh@berr.gsi.gov.uk>

- 1.9** A copy of the Government's Code of Practice on Consultations is at Annex A and may be viewed at the following website address:

<http://bre.berr.gov.uk/regulation/consultation/code/index.asp>

Confidentiality & Data Protection

- 1.10** Information provided in response to this consultation, including personal information, may be subject to publication or disclosure 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 other 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.

- 1.11** 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.

- 1.12** The Department 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.

Annex A: Code of Practice on Consultations

- 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 an Impact Assessment if appropriate.
- ⑦ The complete code is available on the Better Regulation Executive's website address:
<http://bre.berr.gov.uk/regulation/consultation/code/index.asp>

Annex B: List of Consultees

This consultation document has been sent electronically to the organisations listed below. Government departments and agencies will also be alerting their key stakeholders to the launch of this consultation exercise.

Please feel free to forward this document, a link to it, or the contact details set out at the beginning of this document to any individuals, organisations or businesses who you think might be interested.

Action with Communities in Rural England	British Hallmarking Council
Adam Smith Institute	British Metals Recycling Association
Advertising Association	British Overseas NGOs for Development
Advertising Standards Authority	British Potato Council
Age Concern	British Poultry Council
Agricultural Industries Confederation AIC	British Retail Consortium
Amicus	British Vehicle Rental and Leasing Association
Association of British Insurers	British Woodworking Federation
Association of British Offshore Industries (ABOI)	Campaign to Protect Rural England
Association of British Oil Industries (ABOI)	Centre for Environment, Fisheries and Aquaculture Science
Association of British Travel Agents (ABTA)	Chartered Institute of Environmental Health
Association of Chartered Certified Accountants	Chartered Institution of Water and Environmental Management
Association of Chief Executives of Voluntary Organisations	Chemical Industries Association
Association of Chief Police Officers	Citizens Advice Bureau
Association of Convenience Stores	City of London Corporation
Association of Police Authorities	Civil Aviation Authority
Association of Port Health Authorities	Cleaning and Support Services Association
Association of River Trusts	Coal Authority
Association of the British Pharmaceutical Industry	Commission for Equality and Human Rights
Audit Commission	Commission for Rural Communities
Better Regulation Commission	Competition Commission
Bio Industry Association	Confederation of British Industry (CBI)
Biosciences Federation	Consultation Institute
Black Environment Network	Consumer Council for Water
Black Training and Enterprise Group	Countrywide Farmers Plc
British Association of Record Dealers (BARD)	Demos
British Bankers Association	Disability Rights Commission (DRC)
British Beer and Pub Association	Economic and Social Research Council
British Cement Association	Electrical Contractors Association of Scotland
British Chambers of Commerce (BCC)	Energy Industries Council
British Chemical Distributors and Traders Association Ltd	Energy Networks Association
British Dental Trade Association	Energywatch
	Engineering Employers Federation (EEF)
	English Partnerships

English Heritage	Institute of Asian Business
Environmental Services Association	Institute of Chartered Accountants of
Environment Agency	England and Wales
Environment Council	Institute of Directors (IoD)
Environmental Health Institute	Institute of Interim Managers
Environmental Industries Commission (EIC)	Involve
Environmental Services Agency	Judicial Studies Board
Environmental Services Association	Justice
Equal Opportunities Commission	Justices' Clerks' Society
European Commission	Law Society
Federation of Environmental Trade	Liberty
Associations	Local Government Association
Federation of Master Builders	London Investment Banking Association
Federation of Small Businesses	London School of Economics
Financial Reporting Council	MIND
Financial Services Authority	National Consumer Council
Fire and Rescue authorities	National Council for Voluntary
Fire Industry Confederation	Organisations
Food and Drinks Federation	National Energy Foundation
Food Standards Agency	National Grid
Foodaware	National Housing Foundation
Football Licensing Authority	National Institute for Clinical Excellence
Forestry Commissioners	(NICE)
Forum of Private Business	National Landlords Association
Friends of the Earth	National Union of Farmers
Gambling Commission	Natural England
Gangmasters Licensing Authority	Office of Communications (Ofcom)
General Optical Council	Office of Fair Trading (OFT)
General Medical Council	Office of Gas and Electricity Markets
General Social Care Council (GSCC)	(Ofgem)
General Teaching Council for England	Office of Rail Regulation (ORR)
(GTCE)	Oxfam
Genewatch UK	Path National UK
Green Alliance	Pension Protection Fund (PPF)
Greenpeace	Policy Exchange
Hearing Aid Council	Policy Studies Institute
Health and Safety Executive	Postcomm
Healthcare Commission	Proprietary Association of Great Britain
Historic Buildings & Monuments	Radio Electrical and Television Retailers
Commission	Association (RETRA)
Home Grown Cereals Authority	Regulatory Policy Institute
Homebuilders Federation	Restorative Justice Consortium
Homeless Link	Royal Institute of British Architects
House Builders Federation	Royal Institute of Chartered Surveyors
Housing Corporation	Royal National Institute for the Blind
Human Fertilisation & Embryology	Royal National Institute for the Deaf
Authority	Royal Society for the Prevention of
Institute for Economic Affairs	Accidents

Royal Society for the Protection of Birds
Royal Town and Planning Institute
Sea Fish Industry Authority
Security Industry Authority
Shelter
Small Business Council
Small Business Europe
Small Business Service
Society of Chief Officers of Trading
Standards in Scotland (SCOTSS)
Society of Motor Manufacturers and
Traders
Society of Pension Consultants
Sports Industries Federation
Stonewall
The Pensions Regulator (TPR)
Trades Union Congress (TUC)

Trading Standards Institute
Trademarks, Patents and Designs
Federation
Turning Point
United Kingdom Environmental Law
Association
United Kingdom Sports Council
Waste Working Party of the UK
Environmental Lawyers Assoc.
Water Services Regulation Authority
(Ofwat)
Water UK
Wellcome Trust
Which?
Wine and Spirit Trade Association
World Wildlife Fund

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Website: <http://bre.berr.gov.uk/regulation>

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