



BERR

Department for Business
Enterprise & Regulatory Reform

**GOVERNMENT RESPONSE TO THE
CONSULTATION ON EXTENDING THE
COVERAGE OF THE REGULATORS'
COMPLIANCE CODE AND THE
PRINCIPLES OF GOOD REGULATION**

MAY 2009

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REGULATION
EXECUTIVE

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1. Executive summary

- 1.1** The Government received a total of 43 written responses to the consultation on extending the coverage of the Regulators' Compliance Code and the Principles of Good Regulation to a range of regulators. 24 of the respondents answered the question on the extension to local authorities in Scotland, Northern Ireland and Wales; 17 responded to the question on extension to public sector regulators; 21 to the question on extension to additional national regulators; and 16 to the specific question on extension to anti-money laundering supervisors or regulators.
- 1.2** Overall, there was strong support for the proposal to extend the coverage of the Code and the Principles. Most of the respondents considered this justifiable because of the need to promote regulatory consistency across the UK and to create a level playing field for businesses operating in any part of the country. There was overwhelming business support for all the different strands of the proposal. Most of the regulators who would be subject to the Code and the Principles also favoured the proposal, although some had concerns.
- 1.3** In relation to the proposal to extend the Code and the Principles to relevant reserved functions of local authorities in the devolved administrations, the predominant view was supportive. All business respondents supported the proposal as did almost all of the local authority respondents. The main representative bodies, such as the Society of Local Authority Lawyers and Administrators, and the Chief Environmental Officers Group in Northern Ireland, supported the proposal. However, three respondents from the devolved administrations felt that the coverage of the Code and the Principles should extend to both reserved and devolved functions rather than just reserved functions as proposed.
- 1.4** The proposal to extend the application of the Code and the Principles to public sector regulators in England in relation to their business-facing functions also received strong support. Five of the seven regulators that would be covered by the extension raised no objections to the proposals. However, two regulators, Ofsted and the Audit Commission, questioned the appropriateness of applying the duty to their functions and the rationale behind the policy to extend the duty to functions relating to businesses and third sector bodies and not to the public sector.
- 1.5** Of the 21 respondents to the question on extending the coverage of the Code and the Principles to the additional regulators listed in the consultation document, 19 were in favour. All business respondents were in favour of the proposal and all but two of the regulators that would be covered fully supported the proposal. The predominant view of those who supported extension was that it would enable the Code and the Principles to achieve broader penetration across the regulatory landscape.

- 1.6 Although the majority of the respondents supported the proposal to extend the Code and the Principles to the regulatory functions of monitoring and enforcement of the anti-money laundering regulations a large number of respondents were strongly opposed. All business respondents were fully supportive. However, Her Majesty's Revenue and Customs (HMRC) expressed its preference for applying the Code and the Principles on a voluntary basis rather than being statutorily required to do so. HMRC expressed concern about legal challenges arising from having a statutory duty to have regard to the Code.
- 1.7 The Government consulted on extending the Code and the Principles to the 22 professional bodies with monitoring obligations under the Money Laundering Regulations. Ten of these bodies responded to the consultation; four representing lawyers and six were accountancy bodies. Three of the lawyers groups were in favour of the proposal, stating that such an extension would bring clarity to their monitoring obligations and therefore benefit their members.
- 1.8 However, none of the six accounting bodies that responded supported the proposal. They argued that membership and market pressures were already making them regulate in a way envisaged by the Code and the Principles and, therefore, a statutory requirement to have regard to the Code and the Principles would be unnecessary. The accountants were also concerned that a statutory duty in relation to their anti-money laundering (AML) function alone would result in two regulatory standards for their members; one relating to the AML monitoring function and the other to their other regulatory activities.
- 1.9 Few respondents offered comments on the draft Impact Assessment. While some of the respondents felt that the estimate and assumptions were reasonable and accurate, the majority argued that the estimate of local authority inspections and the assumption about likely reductions following compliance with the Code and the Principles were probably excessive.

The Government's response

- 1.10 **The Government is grateful to those who responded to this consultation and thanks them for their comments. All the views expressed have been taken into account, so far as possible, in developing our response in this document. After the consultation formally closed, the Better Regulation Executive met many of the respondents in preparing this response.**

2. Introduction

Background

- 2.1 The Government's better regulation agenda aims to change the way we regulate and the way regulations are enforced in practice. The enforcement of regulation is as important as its design; effective and well-targeted enforcement of regulation is essential to secure protection and support the productivity and competitiveness of the UK economy. The Government believes that regulation should be enforced in a risk-based, proportionate and targeted way, to increase the benefits that regulations can bring without placing any unnecessary burdens on businesses and other regulated bodies.
- 2.2 In 2008, the Government introduced the Regulators' Compliance Code ("the Code"), which is based on the "principles of effective inspection and enforcement" first set out in the Hampton Report.¹ The aim is to embed a risk-based, proportionate and targeted approach to regulatory enforcement. Regulators whose functions are listed in the Listing Order ("the order")² are required to have regard to the Code and the Principles of Good Regulation, when exercising the functions specified in the order.
- 2.3 Since April 2008, many national regulators and all English local authorities have been under a statutory duty to have regard to the Code when they carry out specified functions. The expectation is that as the regulators do this, they will become more efficient and effective in their work; in particular, they will be able to use their resources in a way that gets the most value out of the efforts that they make, while causing the least possible disruption to the economy.
- 2.4 Being listed in the order also means that relevant regulators are obliged to have regard to the Five Principles of Good Regulation ("the Principles") in their work. The principles are that regulatory activities should be carried out in a way which is transparent, accountability, proportionate, and consistent, and that regulatory activities should be targeted only at cases where action is needed.
- 2.5 Although the Code and the Principles already apply to many national and local regulators, the duties to have regard to them do not currently apply to some national regulators or to local authorities in Scotland, Northern Ireland and Wales. However, when the Government consulted on the order, a number of consultees argued that the Code and the Principles reflected best regulatory practice and should therefore apply across the UK as a whole and, where appropriate, be extended to all UK regulators in order to increase regulatory consistency and create a level-playing field for regulators and regulated organisations in the UK.

¹ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

² The original Listing Order, Legislative and Regulatory Reform (Regulatory Functions) Order 2007, came into force in April 2008.

- 2.6** The Government shares this view and decided to consult on a proposal to extend the coverage of the Code and the Principles to additional regulators omitted from the order when it was first made.

The Public Consultation

- 2.7** On 14 November 2008, the Government published a consultation document setting out its proposal to extend the coverage of the Code and the Principles to:
- Local authorities in Scotland, Wales and Northern Ireland when they exercise reserved functions relating to trading standards, environmental health, licensing, and fire and safety
 - Public sector regulators in England in relation to the exercise of business-facing functions; and
 - Certain other national regulators to which the Code and the Principles do not currently apply, including those exercising the function of securing compliance with the money laundering regulations.
- 2.8** Specifically, the consultation paper sought views on whether or not the application of the Code and the Principles should be extended to cover the additional regulators listed in the document. Views were also sought on the impact assessment that accompanied it.
- 2.9** The consultation document was sent to over 120 interested organisations, including national and local governments in the devolved administrations, national regulators, and public sector regulators. Copies were also sent to several other key stakeholders, such as businesses and third sector organisations. The consultation document was available on the website of the Department of Business, Enterprise and Regulatory Reform (BERR).
- 2.10** Two stakeholder events to discuss the proposals with interested organisations were held: one workshop for the national regulators whose functions would be included in the order; and another specifically for AML supervisors whose monitoring obligations were proposed to be brought under the scope of the Code and the Principles. Meetings with representatives of local authorities and the devolved administrations were also held before and during the consultation.
- 2.11** The purpose of this document is to summarise the views expressed by those who responded to the consultation and set out the Government's response to them.

Responses to the public consultation

- 2.12** The consultation closed on 13 February 2009. A total of 43 responses were received, which came from both regulators whose functions would be brought within the scope of the Code and the Principles, and businesses that are affected by the exercise of the regulatory functions. The table opposite shows a breakdown of the responses.

Category	Number of Responses
Local Authorities and Local Authority organisations in Devolved Administrations	10
National Regulators	13
Business and Business Groups	8
Professional bodies	12
Total	43

- 2.13** The Government is grateful to those who responded to the consultation and for all the views expressed. In the chapters that follow, we try to reflect the views offered by respondents. However, we do not attempt to describe all the responses in detail.

Structure of the document

- 2.14** In the consultation document we asked questions about extending the application of the Compliance Code and the Principles of Good Regulation in relation to three main categories of regulation:
- a. specified regulatory functions of local authorities in Scotland, Northern Ireland and Wales, where these functions concern matters which are reserved to the UK Parliament;
 - b. some specific business-facing regulatory functions that are carried out by regulators dealing largely with public sector matters in England; and
 - c. the regulatory functions of national regulators not included in the original order. These included those exercising functions in relation to the anti-money laundering regulations.
- 2.15** Chapter 3 summarises the responses to the questions on extending the coverage of the Code and the Principles to local authorities in the devolved administrations. Chapter 4 focuses on responses to the questions on extension to public sector regulators, and chapter 5 on the application to additional national regulators. Chapter 6 looks specifically at responses to the proposed extension to anti-money laundering (AML) supervisors. Finally, chapter 7 covers responses to questions on the draft Impact Assessment. In each of the main chapters, after analysing and summarising the views expressed on the consultation questions, we present the Government's response to the views or points raised.
- 2.16** An electronic version of this response document is accessible, along with all the written responses to the consultation, at <http://www.berr.gov.uk/consultations/page48886.html>. If you have any enquiry about the document, please contact **Olu Fasan** on 020 7215 0318 or by email on: olu.fasan@berr.gsi.gov.uk

3. Extending the Code and Principles to Local Authorities in the Devolved Administrations

Background

- 3.1** The Regulators' Compliance Code and the Principles of Good Regulation currently apply to many of the relevant functions exercised by local authorities in England but not to any regulatory functions carried out by local authorities in Scotland, Northern Ireland and Wales.
- 3.2** The Legislative and Regulatory Reform Act 2006 (the LRA 2006) restricts the extent to which the order can specify regulatory functions exercisable in the devolved administrations. Specifically, a Minister of the Crown may not specify:
- a. functions relating to matters devolved to Scotland;
 - b. functions relating to matters transferred to Northern Ireland; and
 - c. functions exercisable only in or as regards Wales.
- 3.3** Effectively this means that application of the Code is restricted to matters that are reserved to the UK Parliament: local authorities in Scotland, Northern Ireland and Wales may however be included within those limits: i.e. where they are carrying out a reserved function.
- 3.4** We consulted on extending the coverage of the Code and the Principles to local authorities' functions in Scotland, Northern Ireland and Wales (specifically, their trading standards, environmental health, licensing and fire and safety functions), where the relevant policy areas are reserved. In this chapter, we present a summary of the views expressed by respondents on each of the consultation questions, and in each case provide the Government's response to the views.

Question 1: Do you support the application of the Compliance Code and the Principles of Good Regulation to reserved functions exercisable by local authorities in Scotland, Northern Ireland and Wales? If no, please explain why.

- 3.5** There were 24 respondents to this question. Of these, ten were local authority bodies, seven were business groups, three were professional bodies, and four were national regulators.
- 3.6** The overwhelming majority of the respondents supported the proposal; of the ten local authority respondents, eight favoured extension.
- 3.7** In supporting extension the Local Better Regulation Office (LBRO) argued that it would encourage consistency of enforcement approaches across the UK, pointing out that its discussions with businesses, particularly those with branches in different parts of the UK, "indicated that they value a coherent approach envisaged by the Code".
- 3.8** Both the Northern Ireland Local Government Association (NILGA) and the Chief Environmental Health Officers Group in Northern Ireland supported extension of the Code and the Principles to relevant reserved functions exercisable by local authorities in Northern Ireland. No respondent opposed extension in Northern Ireland.
- 3.9** Five of the six respondents from Scotland supported extension. These include the Society of Chief Officers of Trading Standards in Scotland (SCOTTS), the Scottish Environmental Protection Agency (SEPA), the Society of Local Authority lawyers and Administrators in Scotland (SOLAR) and the East Ayrshire Council. Audit Scotland also favoured extension because it considered that the Better Regulation principles were consistent with its approach to Best Value Audit. The Society of Chief Officers of Environmental Health in Scotland supported extension but would want this to be linked to the creation of a Scottish equivalent of LBRO. Only Glasgow City Council considered the proposed extension to be unnecessary because "the Enforcement Concordat is working well".³
- 3.10** Regarding Wales, the only written response received was from the Welsh Local Government Association (WLGA). The WLGA opposed the proposed extension on the grounds that it would only cover reserved UK-wide functions and not those exercised only in or as regards Wales. The WLGA indicated that it would support extension if it related to both UK-wide and Welsh-specific functions rather than only to matters reserved to the Westminster Parliament.
- 3.11** All seven business respondents favoured the proposal. Key business respondents, including the Forum of Private Business (FPB), the Association of Convenience Stores, the Professional Contractor Group, the Environmental Services Association and the Advertising Association, considered the proposed extension to be

³ The Government introduced the non-statutory Enforcement Concordat in 1998 in collaboration with business and local and national regulators. Its aim is to promote good enforcement that brings benefits to business, enforcers and consumers. However, the Hampton Review noted that the application of the Concordat was patchy and inconsistent across the country.

appropriate and fully justified in the interests of greater regulatory consistency across the UK. As one business group put it, “businesses in the devolved administrations are equally as deserving as their English counterparts of the safeguards provided by the Code and the Principles”.

- 3.12** Only two professional bodies responded to this question. The Chartered Institute of Public Finance and Accountancy (CIPFA) supported the proposal, while CIPFA Scotland felt that the extension did not go far enough; that is, the extension should cover both reserved and devolved functions, and not just reserved ones.
- 3.13** The Office of Fair Trading (OFT) was the only national, UK-wide, regulator that responded to the this question. The OFT strongly favoured the proposed extension on the grounds that “at a national level, (the extension) will help in ensuring consistency for businesses and enforcement partners”.
- 3.14** To summarise, virtually all the respondents supported the proposal to extend the coverage of the Code and the Principles to relevant reserved functions exercisable by local authorities in the devolved administrations. The predominant view is that this would promote regulatory consistency across the country and create, to a large extent, a level playing field for businesses operating in any part of the UK. The few respondents who opposed the proposal did so mainly because they felt that the extension should cover not only reserved functions but rather both reserved and devolved regulatory activities.

The Government’s response

- 3.15** **The Government welcomes the overwhelming support for the proposal to extend the application of the Code and the Principles to local authorities in the devolved administrations. We note that the few respondents that opposed extension did so mainly because they felt it should cover both reserved and devolved matters rather than just matters which are reserved to the UK Parliament.**
- 3.16** **While we recognise the logic behind this view, we would like to stress that the Legislative and Regulatory Reform Act 2006 (“the LRRRA”) places restrictions upon the extent to which the order can specify functions exercisable in the devolved administrations. Specifically, the order may not include functions relating to matters that are devolved to Scotland, Northern Ireland and Wales.**
- 3.17** **However, while we would encourage the devolved administrations to adopt the Code and the Principles voluntarily in respect of matters that are devolved to them, we nevertheless believe that extending the coverage of the Code and the Principles statutorily to reserved functions should not be delayed.**
- 3.18** **We believe that the application of the Code and the Principles to reserved functions would deliver real benefits on the ground to businesses operating in Scotland, Northern Ireland, and Wales.**

Question 2: Do you agree that we should adopt the same approach with regard to local authorities in the devolved administrations as we have with regard to national regulators and ministers functions in the original Listing Order? If not, what alternative approach would you suggest?

- 3.19** In paragraphs 3.12 to 3.14 of the consultation document, we set out an approach which would extend, subject to consultation, the Code and the Principles to local authorities in the devolved administrations simply by adding to the definition of “local authority” in the current order the same definitions as set out in the Regulatory Enforcement and Sanctions Act 2008 in relation to Wales, Scotland and Northern Ireland.
- 3.20** This approach, using general language rather than listing specific functions, would have the effect of extending the duties to have regard to the Code and Principles to the devolved local authorities without listing the specific enactments under or by virtue of which the local authorities exercise relevant reserved functions. Question 2 sought views on the proposed approach.
- 3.21** There were 14 responses to this question, of which the majority, 11, supported the proposed approach. Some of those in favour argued that the approach would correctly exclude the devolved functions. Specifically, responses from Northern Ireland and Wales were in favour of the proposed approach.

The Government's response

- 3.22** The Government notes the support for the “general language” approach. However, after further consideration we have decided to list specific legislation in relation to Scotland and Northern Ireland. Although we consulted on the general language approach, we think a more specific list would help give clarity about the application of the Code to local authorities and businesses alike in Scotland and Northern Ireland, especially as it may not be immediately clear from the current order that the functions are reserved and those that are devolved, to Scotland and Northern Ireland. Thus, we will produce a separate list for Scotland and Northern Ireland. The relevant list will be similar to those which have already been used in relation to the Primary Authority scheme in Scotland and Northern Ireland⁴.
- 3.23** However, we believe that the situation is different regarding Wales. The Government of Wales Acts 1998 and 2006 and the respective Transfer of Functions Orders are very specific and list enactments (both primary and secondary legislation) which confer functions which are now transferred to the Welsh Ministers. In addition, legislation made in Westminster has conferred further functions on Welsh Ministers. As such, the functions transferred are quite specific and easily identifiable, in a way which was not the case in respect of Scotland and Northern Ireland. We do not believe therefore that a list of legislation is required in the order in respect of Wales.

⁴ See The Coordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009 (SI 2009/669).

4. Applying the Code and Principles to functions of public sector regulators

Background

- 4.1 We consulted on whether the functions of public sector regulators should come into scope of the Compliance Code where they regulate private and third sector entities.
- 4.2 Generally speaking, the public sector regulators are subject to the Government Policy on Inspection of Public Services rather than the Regulators' Compliance Code and the Principles of Good Regulation. This reflects the fact that the Hampton Principles that underpin the original Code may not be relevant to the majority of public sector regulators' work.
- 4.3 There are however a number of cases where the regulatory functions of public sector regulators impact upon the private and third sectors as well as the public services. The regulatory oversight of childminders by Ofsted is just one example of where this occurs.
- 4.4 For similar reasons, we consulted on proposals to extend the coverage of the Code and the Principles to:
- Ofsted
 - Information Centre for Health & Social Care
 - Postgraduate Medical Education & Training Board
 - Care Quality Commission
 - General Social Care Council
 - Criminal Records Bureau
 - Audit Commission, functions relating to social housing'

Question 3: Do you support the application of the Compliance Code and the Principles of Good Regulation to the regulatory functions of the above public sector regulators that affect business or third sector organisations? If not, please tell us why.

- 4.5 There were 17 written responses to this question: nine from professional bodies, five from regulators, one from a business, one from a local authority (LA) and one from the National Association of Schoolmasters' Union of Women Teachers (NASUWT).

- 4.6 Most of the respondents supported the application of the Code and the Principles to the regulatory functions of the above public sector regulators that affect business or third sector organisations; twelve organisations took this view, including professional bodies, regulators and a trade union.
- 4.7 Many regulators whose functions would be included said that they already followed the standards of the Code. Others who would not be directly affected by the Code's remit; nonetheless favoured the proposed extension on the grounds that this would produce beneficial outcomes.
- 4.8 Both Ofsted and the Audit Commission questioned extension of the Code and the Principles to their regulatory functions. Ofsted believed that 'there is potential conflict between the Code and our statutory purpose and the legal framework in which we operate.' Furthermore, they expressed concern about 'the prospect of introducing different inspection and regulatory requirements for private/voluntary providers, even where they operate in the same sector and are legally required to provide the same levels of service'.
- 4.9 In opposing the proposed extension, the Audit Commission raised a number of points. First, they argued that they only carried out inspections on behalf of the Tenants Services Authority (TSA)⁵, which is the real regulator of social housing. As such, they exercise no regulatory functions to which the Code and the Principles could apply. Secondly, the Audit Commission pointed out the proposed future extension of the TSA's remit to local authority housing. They argued that if the Code was applied to the Audit Commission's social housing functions, it would follow that, once local authorities became social housing providers regulated by the TSA, the Audit Commission would be governed by the Code for its local authority housing inspections, but by the Government Policy on Inspection of Public Services for the rest of its local authority inspections. This would give rise to inconsistency.
- 4.10 To summarise, there was broad support for the proposal to extend the application of the Code and the Principles to the functions of public sector bodies that affect businesses or third sector organisations. However, both Ofsted and the Audit Commission questioned the appropriateness of extending the coverage of the Code and the Principles to their respective functions for various reasons.

The Government's Response

- 4.11 **The Government notes the largely positive responses to this question. Many respondents who would be included within the scope of the Code and the Principles stated that they were already following the standards reflected in both frameworks. The Government recognises the concerns expressed by both Ofsted and the Audit Commission, but believes that none of these concerns justify their exemption from the scope of the Code and the Principles.**

⁵ The TSA is referred to in the Legal Services Act 2007 as the Office for Tenants and Social Landlords.

- 4.12** In relation to Ofsted, we want to stress that the application of the Code and the Principles would not override Ofsted's other statutory responsibilities. This is because under the LRRRA the duty to have regard to the Code and the Principles is subject to any other legal requirement affecting the exercise of regulatory functions, including the obligations in the primary statutes and other legal frameworks of regulators.
- 4.13** On the distinction between functions affecting businesses and third sector bodies and those affecting public sector organisations, we would like to explain that the Code was drafted with the private and third sectors in mind, in line with the recommendations of the Hampton Review. However, while Ofsted would only be statutorily required to have regard to the Code and the Principles in respect of its functions affecting businesses and third sector organisations, it could voluntarily extend the standards of the Code and the Principles to the exercise of its functions affecting the public sector. So, there need not be two different approaches.
- 4.14** In relation to TSA and the Audit Commission, the Government considers the TSA as the specified regulator of the social housing sector under the Housing and Regeneration Act 2008. However, the TSA can authorise any person to carry out specified functions under the Act. As such, the Audit Commission will not be specifically named in the order; instead the scope of the Code and the Principles will include any person (which may include the Audit Commission) authorised by the TSA to fulfil a function under the 2008 Act.
- 4.15** Second, we acknowledge the point made by the Audit Commission about the desirability of promoting consistency across the social housing sector. However, as noted above regarding Ofsted, the Code was primarily drafted with the private and third sectors in mind. That said, we believe that the Audit Commission could, where appropriate, voluntarily apply the Code's standards to the exercise of the public sector-related functions.
- 4.16** In light of the above, we intend to extend the coverage of the Code and the Principles to the public sector regulatory functions as proposed.

Question 4: Is there any function of a public sector regulator included in section 2 of Annex B of the consultation document that should be excluded? If yes, please specify the functions and tell us why.

Question 5: Are there any functions of a public sector regulator excluded from section 2 of Annex B that should be included? If yes, specify the functions that should be included and why.

- 4.17** There were 13 responses to these questions: seven from professional bodies, three from regulators, one from a local authority, one from a business and one from a trade union.

4.18 Most responses did not consider that any functions excluded from the consultation should be brought within scope of the Code and the Principles or that any functions included in the consultation should be excluded. However, three respondents argued that functions which were excluded in the consultation (that is, those affecting the regulation of the public sector) should be included. The response received from the business requested that the functions common to all regulators should be listed together.

The Government's Response

4.19 **Government's view is that the scope of the proposed amendments to the order is appropriate. As noted earlier, we do not consider appropriate to exclude the relevant regulatory functions of any of the public sector regulator listed in this section from the order.**

5. Applying the Code and Principles to Additional National Regulators

Background

- 5.1 The duty to have regard to the Compliance Code and the Principles of Good Regulation already applies to regulatory functions exercisable by many national regulators. These include statutory bodies as well as executive agencies and private bodies that exercise functions on behalf of Ministers of the Crown. However, some regulators that should otherwise have been included within the scope of the Code and Principles were, for one reason or another, omitted from the order when it was made.
- 5.2 However, consistent with the Government's policy to broaden, as appropriate, the coverage of the Code and the Principles, we consulted on the proposal to extend their application to the additional regulators, whose relevant regulatory functions were specified in section 3 of Annex B of the consultation document.

Question 6: Do you agree with the proposed list of additional regulatory functions set out in section 3 of Annex B of the consultation document? If no, please tell us why.

- 5.3 There were 21 responses to this question: six from business or business groups; 11 from national regulators; and three from professional bodies. The overwhelming majority of the respondents supported the proposal. The predominant view of those who supported extension is that it would enable the Code and the Principles to achieve broader penetration across the regulatory landscape.
- 5.4 All the business respondents favoured the proposal arguing that this would be consistent with the Government's policy of reducing regulatory burdens on businesses. The three professional bodies that responded to the question also considered the extension would promote regulatory consistency among the regulators.
- 5.5 Nine of the regulators whose functions we proposed to include in the order (excluding the Anti Money Laundering supervisors, which will be covered separately) responded to the question. Of the nine, seven supported the proposal to extend

the application of the Code and the Principles to their regulatory functions. The Tenants Services Association and the Renewable Fuel Agency believed that extension would formalise and bring greater clarity to their regulatory practices, which they considered were largely compatible with the approach envisaged by the Code and the Principles. The British Hallmarking Council and the four Assay Offices were also in favour of the proposed extension.

- 5.6** The Legal Services Board (LSB) is already statutorily required to have regard to the Principles of Good Regulation and agreed that the Code should apply to its "direct" regulatory functions, that is, its regulatory and licensing powers over individual law firms. However, the LSB had concerns about extending the Code to its "oversight" functions, that is, its regulatory oversight of the nine "approved regulators" of the legal profession.
- 5.7** The LSB felt that the "approved regulators" should not be considered as "regulated entities" for the purposes of the Code as they are not individual firms but rather professional bodies. The LSB considered that including its oversight functions within the requirement to have regard to the Code could limit its ability to pursue its regulatory objectives of promoting, influencing and shaping good regulatory practice by each of the approved regulators.
- 5.8** The Traffic Commissioners (TCs) did not favour extension of the Code and the Principles to their regulatory functions. They argued that all their regulatory functions are exercised in their name by the Vehicle and Operator Services Agency (VOSA), which is already covered by the Code and Principles, and that their remaining functions are judicial or quasi-judicial in nature.
- 5.9** To summarise, most of the respondents to this question supported extending the coverage of the Code and the Principles to the additional regulators listed in the consultation document. Virtually all the business respondents favoured extension. The TCs opposed being included because they considered that all of their functions that were not delegated to VOSA were judicial or quasi-judicial. The Legal Services Board favoured extension but sought exclusion of their "oversight" functions.

The Government's response

- 5.10** **The Government notes the broad support for extending the application of the Code and the Principles to the additional regulators listed in the consultation document. We note, in particular, that most of the regulators whose functions would be specified in the order supported the proposal. However, we recognise the concerns raised by the LSB and the TCs.**
- 5.11** **Regarding the LSB, we believe it would be inappropriate to exclude its oversight regulatory functions from the scope of the Code and the Principles. The definition of regulatory functions in the Legislative and Regulatory Reform Act (which underpins the Compliance Code) makes no distinction between "direct" and "oversight" functions. Furthermore, the current order includes bodies, such as the Financial**

Reporting Council, that can be said to exercise comparable oversight regulatory functions. Therefore, there is no policy to exclude bodies with oversight functions from the scope of the Code and the Principles.

- 5.12** Furthermore, LSB's oversight of the approved regulators has an indirect impact upon legal services firms, as the burdens placed on the approved regulators could result in burdens being placed on their members. As such, we intend to extend the Code to all regulatory functions exercisable by the LSB as proposed.
- 5.13** Turning to the TCs, the Code would not apply to any of their functions insofar as it is a function of conducting criminal or civil proceedings. This is expressly excluded from the definition of regulatory function set out in the Legislative and Regulatory Reform Act 2006. Under the Public Passenger Vehicles Act 1981, the TCs have a number of functions and powers other than those of hearing and determining opposed applications for the grant of licences.
- 5.14** These other functions include the licensing of the operators of heavy goods vehicles (HGVs) and public services vehicles (PSVs), the registration of local bus services, the granting of vocational licences, and taking actions against drivers of HGVs and PSVs. As these are regulatory and enforcement functions which affect businesses, we believe that they should be covered by the Code and the Principles, and therefore included in the order.
- 5.15** We note that many of the TCs' functions are carried by the Vehicle and Operator Services Agency (VOSA). However, the TCs have the statutory function of setting standards or giving general guidance to VOSA concerning how VOSA should be carrying out the operational activities. As the Code applies to the policy-setting of regulators, we believe it should apply to the TCs when setting standards or giving guidance in relation to the exercise of its regulatory functions.
- 5.16** The Code does not apply directly to decisions taken in individual cases. As such, it would not cover the activities that the TCs carry out directly in individual cases or through their delivery agents. We are also satisfied that the application of the Code and the Principles would not affect any of the functions of the TCs when conducting criminal or civil proceedings. For these reasons, the Government intends to extend the coverage of the Code and the Principles to the regulatory functions of the TCs as proposed.

Question 7: Are there any regulators or regulatory functions not included in section 3 of Annex B of the consultation document that should be included? If yes, please tell us and give reasons for your view

- 5.17** There were seven responses to the question about whether or not there are other regulatory functions that should be added to those listed in the section 3 of Annex B of the consultation document. Of these, five felt that the published list was right. However, two respondents felt that the list should have included other regulators

or regulatory functions. For example, one business group considered that the list should have included HMRC's tax functions and not just their anti money laundering functions, which we consulted on including.

The Government's response

- 5.18** The Government notes the views expressed. The Government's longstanding view is that HMRC is a taxing authority and to a large extent its functions are not regulatory functions as defined by LRRRA. As such, it would not be appropriate to extend the coverage of the Code to the exercise of HMRC's tax powers, although we note that HMRC subscribes to the principles of good regulation.
- 5.19** In respect of any other relevant regulators whose functions may not have been included in the current order, we would like to state that the order is amendable, and, as such, the Government would consider in the future whether it is appropriate to include any additional regulator or regulatory functions.

6. Application to Anti Money Laundering Supervisors

Background

- 6.1 The duty to have regard to the Regulators' Compliance Code and the Principles of Good Regulation already applies to some of the national regulators⁶ with responsibility for business compliance with, or legal enforcement of, the Money Laundering Regulations 2007. However, to promote consistency of monitoring and enforcement among all the Anti-Money Laundering (AML) supervisors and regulators the Government consulted on extending the coverage of the Code and the Principles to the remaining AML supervisors, including the professional bodies that exercise this role.

Question 8: Do you agree with the proposal to extend the coverage of the Compliance Code and the Principles of Good Regulation to the remaining bodies with function to monitor or enforce the Anti-Money laundering Regulations that are not currently covered by the Code and the Principles? If no, please tell us why.

- 6.2 There were 17 responses to this question. Of these, three were from national regulators; five from businesses; and ten from professional bodies. A majority of the respondents, 9 out of 17, were in favour of the proposal.
- 6.3 All five business respondents supported the proposed extension, as one put it, "in the interests of the consistent application of the anti-money laundering legislation". Of the two national regulators that responded, one was in favour of the proposal. The Office of Fair Trading (OFT) felt that extension would promote consistency in the anti-money laundering regime. However, Her Majesty's Revenue and Customs (HMRC), whose AML function was proposed to be included in the order had some concerns.
- 6.4 HMRC stated that it would prefer to adopt the Code and the Principles on a voluntary basis but not as a statutory duty. HMRC said that it was concerned about the number and nature of potential legal challenges, which could result from having a statutory duty to have regard to the Code and the Principles. Furthermore, it expressed concern about the degree of transparency it would need to offer in relation to the risk factors informing its visits and whether limited disclosure could be in breach of the Code and the Principles and, therefore, potentially creating scope for legal challenge.

⁶ These include the Financial Services Authority, the Office of fair Trading, the Gambling Commission, the Pensions Regulator

- 6.5** The 10 professional bodies that responded to this question belonged to two categories: legal (4 responses) and accountancy (six responses). Of the legal professional bodies, the Law Society of England and Wales, and that of Scotland, as well as the Council for Licensed Conveyancers (CLC), supported extension to all the AML supervisors. Indeed, the CLC stated that “while the Code applied only to the CLC’s Anti-Money laundering regulatory functions, we are looking at similar principles for the whole ambit of our sphere of work”
- 6.6** In supporting the proposal, the Law Society of England and Wales, said that the inclusion of the AML supervisors in the order would:
- enhance the operation of the risk-based approach;
 - create a level playing field among all AML supervisors and those who are subject to the anti-money laundering regulation;
 - assist all members to better understand how their compliance with the AML obligations will be assessed; and
 - contribute towards the maintenance of high quality legal services.
- 6.7** Also supporting the proposal, the Law Society of Scotland said that the application of the Code and the Principles was consistent with “our move towards taking more risk-based assessment”; adding that it saw no barriers to the implementation a statutory obligation to have regard to the Code and the Principles in respect of its AML function. The Law Society of Northern Ireland said that “we in fact adhere to the Compliance Code in practice”. However, it stated that the operation of its anti-money laundering regime did not differ from its established practice in other areas. As such, it felt that extending the statutory Code to its anti-money laundering functions would lead to different standards: one for the anti-money laundering regime and the other for its other regulatory functions.
- 6.8** None of the six accountancy bodies that responded supported extension of the Code and the Principles to their AML monitoring obligations. Although they accepted that they could legally be covered by the Code and the Principles under the Legislative and Regulatory Reform Act 2006, they nevertheless felt that this would be unnecessary because:
- a. as professional bodies, they are accountable to their members who ensure that they regulate in a proportionate way; also as they are in competition with one another, market forces act as a pressure to regulate fairly;
 - b. they are already following good regulatory practice, so applying the Code to them would make no difference to the way they monitor their members;
 - c. there is the possibility of creating two types of regulatory standards for their members, if the AML function is under the Code but their other functions not;
 - d. extending the Code to their AML function could encourage their members to challenge how they regulate them in other areas, using the Code best practice standards.

- 6.9** To summarise, there were sharp divisions among the respondents to the question on extending the coverage of the Code and the Principles to the additional regulators responsible for business compliance with the AML regulations. The main concerns of those opposed to the proposal are potential legal challenges and impact on their internal structures and operations as membership organisations.

The Government's response

- 6.10** The Government recognises the concerns of the accounting bodies; however, we also note that there is broad support for the proposal among business stakeholders and the legal professional bodies, who felt that it would benefit their members.
- 6.11** The Government is not convinced that membership pressure or market forces have sufficiently acted to protect individual accounting firms from unnecessary compliance burdens, especially as there are still stakeholder concerns about levels of bureaucracy associated with compliance with the money laundering regulations. Therefore, our view is that the application of the Code and the Principles should deliver real benefits to the regulated firms through better-focused supervisory activity.
- 6.12** We do not believe that the application of the Code and the Principles should result in two regulatory standards for the professional bodies as they could voluntarily apply the Code's standards and the Principles to their other regulatory functions. We note in this regard that the Council for Licensed Conveyancers favoured this approach, indicating they would extend the Code's principles to the whole ambit of their sphere of work. As the Principles and the Code standards are widely believed to reflect good regulatory practice, we believe that they should inform the regulatory and enforcement approaches of regulators.
- 6.13** The Government takes the view that enforcement should be consistent and coordinated across the money laundering regulatory community. However, we are aware that some of the representative bodies were concerned about unnecessary bureaucracy, and argued that some current practices which are fit for purpose, and are more characteristic of their private sector operating context (for instance, the use of relatively informal consultation processes, and inspection cycles that are determined by factors other than levels of risk) would need to be revised in the light of the Code. The Code already applies to a wide range of regulators and has deliberately been drafted to fit with a wide range of regulatory contexts (for instance, national regulators and local government). It does not specify a uniform approach. It applies on a "have regard to" basis. Where there are other relevant considerations, it makes due allowance for these to be taken into account where it applies to a specific regulator's operating circumstances. It will not therefore impose inappropriate standards.
- 6.14** Turning to HMRC, we note their concern that having a statutory duty to have regard to the Code and the Principles could expose them to vexatious litigation. However, we see no evidence that this would be the case. To date, since the Code came into

force in April 2008, there has been no legal challenge arising from its application. Although judicial review is possible, the policy intention is to promote partnership working between regulators and those that they regulate, and, to this end, the Code provides for non-judicial means of resolving disputes.

- 6.15** Furthermore, the Code supports regulators' responsibility to deliver desirable regulatory outcomes, and there is nothing in it that should limit the ability of regulators to do this. First, regulators only need to have regard to the Code's obligations. This means that while the duty is not trivial, it is clearly not an absolute one; any of the Code's provisions can be overridden by a relevant consideration which carries greater weight. Also, the duty to have regard to the Code is subject to any other legal requirement affecting a regulator's exercise of its regulatory functions. So, we believe that the application of the Code would support rather than undermine the ability of the HMRC to carry out its AML function.
- 6.16** For the above reasons, the Government intends to extend the application of the Code and the Principles to HMRC and other AML supervisors in relation to the exercise of their anti-money laundering functions.

7. Views on the draft Impact Assessment

Background

- 7.1 As part of the public consultation, the Government published a draft Impact Assessment along with the consultation document. We consulted on the draft Impact Assessment and specifically sought views on two questions.

Question 9: Do you think the assumptions made in the draft Impact Assessment are realistic? If not, please explain why you think they are not.

Question 10: Does the draft Impact Assessment reflect a reasonable estimate of the costs and benefits of complying with the duties to have regard to the Compliance Code and the Principles of Good Regulation? If not, please set out the specific data that feel should be considered in completing our final analysis.

- 7.2 There were 11 respondents to these questions, of which five felt that the assumptions and estimate made in the draft Impact Assessment were realistic and reasonable, while the others disagreed. The three local authority respondents, who disagreed with the assumptions, considered the estimated number of inspections used in the impact assessment was “excessive”.
- 7.3 Some respondents said that their existing structures and frameworks were compatible with those envisaged by the Code. As such, they did not consider that implementing the Code would result in any significant additional costs to them. Consequently, they felt that the estimate of costs of benefits was exaggerated and should be reduced.

The Government’s response

- 7.4 **The Government is grateful for the comments made on the assumptions set out for consultation in the Impact Assessment, and will address the issues in the final version which will be laid before Parliament alongside the statutory instrument.**

Annex: List of Respondents

There were 43 responses to the public consultation. These are listed below, with the exception of one respondent who wished to remain anonymous.

Organisation	Sector
Freight Transport Association	Professional Body
HMRC	National Regulator
Postgraduate Medical Education and Training Board	National Regulator
Chief Environmental Health Officers' Group of Northern Ireland	Local Authority Group
Office of the Traffic Commissioner	National Regulator
Forum of Private Business	Business Group
Chartered Institute of Public Finance and Accountancy	Professional Body
Law Society of England and Wales	Professional Body
Environmental Services Association	Trade Association
Chartered Institute of Taxation	Professional Body
Association of Taxation Technicians	Professional Body
Tenant Services Authority	National Regulator
Advertising Association	Trade Association
East Ayrshire Council	Local Authority
Office of Fair Trading	National Regulator
Professional Contractors Group	Trade Association
Audit Commission	National Regulator
Welsh Local Government Association	Local Authority Body
Society of Chief Officers of Trading Standards in Scotland	Professional Body
Association of Convenience Stores	Trade Association/ Business Group
Council for Licensed Conveyancers	Professional Body
Scottish Environment Protection Agency	National Regulator (Scotland)
Chartered Institute of Public Finance and Accountancy, Scotland	Professional Body
Association of Accounting Technicians	Professional Body
Association of International Accountants	Professional Body
Institute of Chartered Accountants in England & Wales	Professional Body
Legal Services Board	National Regulator
Law Society of Scotland	Professional Body
Chartered Institute of Management Accountants	Professional Body
Renewable Fuels Agency	National Regulator
National Association of Schoolmasters Union of Women Teachers (NASUWT)	Professional Body

Organisation	Sector
Ofsted	National Regulator
National Federation of Property Professionals	Trade Association/ Business Group
British Hallmarking council	National Regulator
Society of Local Authority Lawyers and Administrators in Scotland	Trade Association/ Business Group
Royal Environmental Health Institute of Scotland	Professional Body
Local Better Regulation Office	Local Authority Body
Accounts Commission	National Regulator (Scotland)
Glasgow City Council	Local Authority
Law Society of Northern Ireland	Professional Body
Society of Chief Officers of Environmental Health, Scotland	Local Authority body
Association of Certified Chartered Accountants	Professional Body

Better Regulation Executive
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Website: <http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html>

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