

ANNEX B – RESPONDENT’S INFORMATION FORM AND CONSULTATION QUESTIONNAIRE



CONSULTATION ON PROPOSALS FOR A BETTER REGULATION BILL: RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

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3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

CONSULTATION QUESTIONS

Defining and implementing national standards

Question 1 - What in your view is the case for and against the proposed enabling power? Please provide evidence to support your answer

We support the proposal to disseminate a national best practice approach more effectively across various regulatory bodies; the opportunity for controlled, flexible opt-out and non-retrospective application. The evidence presented demonstrates that consistency is not being achieved through the existing framework and the new powers should help to improve the end-user experience.

We agree with the preferred option that the decision for opt-out requests should rest with Scottish Ministers, based on better regulation principles and national interest.

Question 2 - Should national standards be mandatory in future?

Yes No

See response to Question 1.

Question 3 - Should local authority or other regulators have the capacity to seek approval to opt-out from national standards on grounds of exceptional local circumstances?

Yes No

Opt-outs should be wholly exceptional and the case presented, evidence-based and compelling.

Question 4 - What criteria should be used to assess any request to opt-out from national standards?

We agree that to minimise the risk of diluting the proposed powers, criteria should be set to assess opt-out requests. These should include the principles of cost/benefit, support sustainable economic growth, the principles of better regulation and a better quality service /end-user experience.

Question 5 - Do you, on balance, favour opt-out decisions being the responsibility of

a) Ministers

b) Ministers, based on advice from the Regulatory Review Group

c) the Regulatory Review Group

Question 6 - Are there any specific regulations which should be candidates for new national standards in the future? If so, please explain why

No comment.

Question 7 - Which of the following options do you favour?

- a) the status quo
- b) mandatory national standards and systems for new regulations
- c) a flexible approach which includes the capacity to impose national standards and systems, where justified.

Question 8 - Do you think this could be supported in non-legislative ways? If so, please explain how

Yes No

A statement within in an existing publication on whether the organisation has complied or not with statutory duties/national standards and if not, why. This is consistent with the principle of “comply or explain”. See further details in the response to question 11.

We would support the setting up of a mechanism to ensure this is applied consistently.

Duty to promote economic and business growth in regulatory activity

Question 9 - What in your view is the case for and against introducing a new generic statutory duty on Scottish regulatory authorities to consider (and report on) the impact of their regulatory activity on business and/or promote regulatory principles? Please provide evidence to support your answer

A new statutory duty

Regulatory enforcement is a key function of local authorities and other regulatory bodies impacting on business/ others. We agree with the evidence that poor application can and has been cited as inadvertently hindering business growth/ efficient working and that there is potential for improving the way regulatory practice supports economic growth. Given the importance of this overarching priority, as well as the evidence that insufficient improvements and consistency are being generated through existing mechanisms, a step change is required. We agree that promotion of growth in regulatory activity merits being a statutory duty for all regulatory authorities.

ICAS strongly supports consistency and further embedding of better regulation principles across the policy development, implementation and enforcement parts of the cycle. It is sensible that the statutory duty in exercising regulatory functions should include alignment with the principles of better regulation.

Scope

Regulatory activity may not solely be on business; it may include other public sector bodies. For completeness and consistency, we suggest

considering the impact of regulatory activity on both business (as noted in paragraph 28 of the Consultation Paper) and wider “civil society/organisations” as regulatory bodies not only implement but are receivers of regulation. The duty includes promoting economic and business growth and should also include respecting the principles of better regulation. Alignment with the Public Services Reform (Scotland) Act 2010 is important to avoid duplication. Consideration could be given to including efficient working/ reducing unnecessary burdens/red tape.

As an example, local authorities represent the sector with the highest number of external scrutiny bodies. To streamline the impact of various regulatory inspections on these bodies, [Audit Scotland](#) is working with other scrutiny bodies to ensure that the scrutiny of public sector bodies is better targeted and more proportionate to identified risks. A wider comprehensive definition across all sectors would be consistent with the spirit of these initiatives and help to relieve not only the impact of the regulatory body on business but also on the regulatory body itself from other regulatory activity. Although in the public sector, the impact may not directly be on “growth”, the same principle and benefit applies - it could be financial restraint and efficient use of resources which is consistent with the principles of Best Value and the Christie Commission.

To consider and report on the impact of their regulatory activity on business

An important consideration in encouraging the application of better regulation principles and minimising red-tape/burdens for business is for regulatory bodies to consider the impact of their regulatory activity on business. Again this is closing the loop in the policy development and implementation cycle; if a standard approach to impact assessments are considered in the design of regulation (through Business and Regulatory Impact Assessments (BRIAs) by both the Scottish Government (SG) and European Commission), the same principle should also be considered in their application and enforcement to help streamlining. Best practice guidance would help to ensure this is done consistently and efficiently.

We are not convinced that a light touch (non-regulatory) approach would be the most effective and quickest option for achieving consistent application of best practice across all regulatory bodies. As an example, a light touch approach to public performance reporting for local authorities from 2006 has not achieved sufficiently high or consistent standards across bodies. This is confirmed by Audit Scotland’s Local Government Overview reports in 2008 which state that councils need to “improve their public performance reporting to ensure that it is clear and balanced” (page 17) and further improvement points in 2011 (page 19). We support the suggestions of a statutory approach as outlined in paragraph 28 of the Consultation Paper. A light touch approach is shown to be more effective for organisations which have demonstrated adoption of best practice and continuous improvement on a voluntary basis (and therefore earned the option).

Transparency and public reporting can be effective tools for encouraging compliance. For accountability and public interest it is important for regulatory bodies to be able to demonstrate how they have considered and

moderated any negative impact on relevant bodies, particularly given the implications on growth and efficient use of resources. In particular, where a statutory duty to the public exists, we believe it is in the public interest for the regulatory body to confirm compliance through a published statement and cross-reference to further information, if available.

We would add that regulatory bodies may have various statutory duties. For example local authorities have statutory duties to secure best value and public performance reporting¹. A statement should cover not just regulatory enforcement but all statutory duties. A statement would help to demonstrate chief officer accountability by confirming whether statutory duties have been complied with / or not (and if not, why). This would not be a report; the intention is to clarify disclosure of compliance.

Further guidance would clarify expectations to avoid inconsistency and over-burdening. It would be up to the organisation to decide what further information should be cross referenced to back up the statement but guidance could set out good practice and key principles to consider.

The impact on resources of reporting publicly could be reduced if it were to form part of an existing disclosure e.g. a performance/directors report within the annual accounts. Notably not all public bodies are required to produce an annual report, for example, local authorities are required to produce annual accounts but not an annual report, so for consistency, it may therefore be more appropriate to situate such a report within the annual accounts.

A statement of chief officer responsibilities and compliance with the law and proper standards is consistent with the purpose of an Annual Governance Statement² which some organisations are required to provide in their accounts. It is a statutory requirement in England & Wales for local authorities but on a voluntary basis in Scotland. This would be a logical location. An alternative could be to locate this within a Directors Report or Operating and Financial Review in the annual accounts as a logical place to report performance against statutory duties and support greater accountability.

Additional comment on reporting, chief officer accountability and public interest

It is acknowledged that local authorities may be subject to various reporting requirements. There is nonetheless a lack of an overarching high level corporate performance review for each authority and therefore a deficit in accountability.

We believe there is considerable potential to streamline and improve public performance reporting for local authorities to demonstrate that they are delivering statutory duties, how well objectives are being achieved,

¹ Local Government (Scotland) Act 2003 section 1 and 13 accordingly

² Delivering Good Governance in Local Government 2007 – Framework and Guidance (CIPFA) – voluntary good practice guidance in Scotland (statutory requirement in England & Wales)

resources utilised and how effectively chief officers have discharged their responsibilities.

Some may provide a review of corporate performance on a voluntary basis, but it is neither consistent across all authorities or in content. This combined with the volume of information an authority can produce makes it more difficult for stakeholders to hold the authority to account.

ICAS would welcome such a development as being consistent with best practice in the Financial Reporting Manual³ and Companies Act 2006. We believe the public interest need for such a report (signed off by the Chief Executive) is pre-eminent.

Question 10 - Which of the following options do you favour?

- a) the status quo
- b) the introduction of a generic statutory duty

Question 11 - Do you think this could be supported in non-legislative ways? If so, please explain how

Yes No

An option to further reduce the burden of compliance could be to consider an alternative to the statutory duty - the Financial Reporting Council (FRC) "comply or explain" model. This has been found to be quite successful⁴ for listed companies due to its impact on reputation. Best practice is communicated through guidance and authorities would publicly disclose (say within a directors report) if they have complied or not, and if not they should state why. Best practice guidance helps to ensure this is done consistently and informatively. The Listing Rules include a requirement to ensure that a "comply or explain" statement is made. The FRC are planning to publish future guidance on what constitutes an acceptable explanation.

A concern with using this approach for regulatory authorities is the evidence that a light touch approach has not been effective for local authority public performance reporting as explained above. One of the reasons it works for listed companies is the strong investor influence whereas stakeholders in the public sector are more varied. Overall, we believe that in this example, for effectiveness, the principle can be applied to support reporting/disclosure of compliance, but not replace the statutory duty.

Reviews and sunseting

Question 12 - What in your view is the case for and against introducing a sunseting policy in Scotland? Please provide evidence to support your answer

³ http://www.hm-treasury.gov.uk/frem_index.htm

⁴ <http://www.frc.org.uk/News-and-Events/FRC-Press/Press/2012/February/FRC-publishes-paper-on-its-comply-or-explain-appro.aspx>

We support initiatives which seek to ensure that the benefits of better regulation filter through to both historic (perhaps through a risk-based audit) and future regulation (as proposed in the Consultation Paper). We agree that the approach set out in paragraph 32 is helpful and we support a proportionate approach to reviews based on impact and strategic priority including cost and growth.

We also agree with the scope of cost/ net burden being on business or civil society. Post implementation reviews are useful to help moderate regulatory burdens, as well as to ensure that the policy is still fit for purpose and aligned with strategic objectives to maximise the effective delivery of priorities. It should also consider whether additional evidence has come to light which may affect the judgement, that it reflects current better regulation principles and to identify any regulatory design problems, variances in implementation & whether further action is required to promote consistency/ dissemination of best practice.

Although the greatest focus is on domestic regulation, we suggest that there may be merit in gathering evidence of where EU regulation can be improved (even if it is out-with transposition and enforcement) to report to the EC and contribute to continuous improvement. Finally, a proportionate risk-based audit could further assist identifying where historic regulation has been burdensome or hindered growth so that the regulation could be reviewed and amended as appropriate.

Question 13 - If introduced, should a sunseting policy be mandatory?

Yes No

Question 14 - If non-mandatory, should there be exceptions and what should the rationale for these be?

Yes No

No comment.

Question 15 - If introduced, should the regulations in scope, and the nature and timeframes for review activity be equivalent to the UK approach? If not, please explain how they should differ and why?

Yes No

We have no evidence to suggest significant differences to the UK approach should be applied.

Question 16 - Which of the following options do you favour?

- a) the status quo
- b) adopting the UK Government approach without any changes

c) adopting a modified policy



Prompt payment

Question 17 - What are the merits (or otherwise) of introducing a new national standard requiring all public sector bodies in Scotland (including local authorities and NHS Boards) to pay suppliers' invoices in less than 30 days? We would also welcome views on what that lower period should be and the scope to replicate the 10-day norm already achieved by the Scottish Government.

We have canvassed views from members across the public sector and both large and small business. Our view is that prompt payments forms part of the wider topic of improving ethical business behaviour and corporate values and how this can have a positive impact on the wider economy. Anecdotal evidence suggests that the largest problem relates to business to businesses payments and therefore this should be the area of greatest focus.

Further work is required to identify barriers to prompt payment across purchasers as well as suppliers; and how purchasers can demonstrate good business ethics through engaging and helping suppliers. We would encourage both sides to help address reasons for slow payment (for example invoicing, dispute settlements etc.) as part of continuous improvement and relationship management.

Public sector

We support the commitment of the public sector to lead with best practice, and applaud the achievement of the Scottish Government with its 10 day payment performance. We would stress that the policy is a best practice commitment set by ministers to support the economy and not a requirement for Scottish Government public bodies. There is no statutory precedent for paying within 10 days providing a compelling case for all public bodies to follow.

Whitehall departments⁵ also report against a 5 day target but to keep it realistic and encourage compliance, the target is set at less than 100% (80% of undisputed invoices⁶). Terms of contract remain at the usual payment period of 30 days upon receipt of a valid invoice. This can make it very difficult to assess the real benefit. It is possible that within the 10 day performance there is a large chunk of payments which makes the 5 day target anyway and rather than improve performance this may only change the basis of reporting rather than achieve the intended business benefits.

The commitment to a 10 day target by Scottish Government bodies and public reporting of performance has delivered improvements - core Scottish Government performance is 98.5% in 2012 and an improvement from 90% in 2010. This shows it can be done, without regulation.

⁵ [Cabinet Office Annual Report and Accounts 2011-12](#) page 105

⁶ http://www.hm-treasury.gov.uk/d/frab_102_04.pdf (NB the 80% target is stretching - Cabinet Office paid 74% of invoices within 5 days (2010-11: 76.3%).

Greater variety of performance is found across other bodies⁷. HMRC VAT repayments are an area which impact business and these have been cited by our members as suffering delays so we would urge that these problems are ironed out.

Alternative tools could be considered to encourage more consistent application of prompt payment periods. An example could be central government setting a payment target as part of funding agreements from sponsor directorates in their financial memorandum with the public body or perhaps as a condition within Single Outcome Agreements. Greater communication of best practice, the achievements and positive impact on reputation could also encourage other organisations to adopt best practice on a voluntary basis, supported by challenge from auditors and others where there is weaker performance or little evidence of continuous improvement.

The implementation of a reduced payment period will require additional effort and resource to set up in terms of measuring and reporting as well as getting the payments out of the door. The experience to date confirms that meeting the 10 day target can be difficult at times, particularly for those with various remote locations. The publication of payment performance information (for example since 2003/04 for Scottish local authorities) has shown significant improvement over time⁸. We are not convinced that the current level of performance and degree of variation is sufficient to warrant further regulation.

Overall a 30 day payment period is a reasonable timescale. It is good for the reputation if payments can be made in say 10 days, on a voluntary basis. We are not, however, sufficiently convinced by the cost benefit argument to introduce a new national standard significantly reducing the 30 day period for undisputed invoices. The 30 days period is also consistent with the proposed [EU directive on combating late payments](#).

Private sector

We are supportive of the changes in the [EU directive on combating late payments](#). We are not convinced that there is currently sufficient evidence to determine a proportionate statutory response to late payments on top of this.

Additional disclosure could help to provide the evidence that is currently lacking which can inform a decision on what, if any, further regulation is required. We note that greater transparency has been found to generate significant performance improvements in the public sector⁹. We support a “comply or explain” based approach, with its impact on reputation, to

⁷ For example, the [National Museums of Scotland](#) (NMS) do not report against the aspirational 10 day target stating the reason as “not practically achievable for NMS within available resources”. They report 86% invoices paid within 30 days (2009/10) dropping to 81% in 2010/11). The [NHS bodies in Scotland](#) made 74.7% of all payments within 10 days in 2011-12 (2010-11: 71.1%)

⁸ <http://www.audit-scotland.gov.uk/performance/council/>

⁹ Consultation paper paragraph 46.

encourage greater transparency.

In a commercial environment, payment policies can be subject to negotiation between the supplier and purchaser resulting in variable terms. Disclosures at a general level should help to manage commercial sensitivities. We suggest this should include disclosing the normal payment policy and performance against a norm (say 30 days).

Minimising extended and late payments is part of good business ethics. We would also encourage disclosures that help to demonstrate how good business ethics and corporate values are applied across the organisation (including the area of supplier payments) as part of strong corporate governance. As mentioned above, we would encourage both sides to help address reasons for slow payment as part of continuous improvement.

An approach needs to be proportionate and pass the cost benefit test. We suggest that action is focused initially on listed companies (FTSE 350). Presentation could be either in the annual report and accounts in a common format and/ or website (easily locatable). Audited figures would provide greater reliability and consistency to support benchmarking.

Achieving consistency in reported information is key and an agreed methodology is essential to enable meaningful results and benchmarking. Definitions are required for a start date, when an invoice is in dispute, the end date (a cheque sent by second class post will be in the recipients bank as cleared funds quite a number of days after a BACS payment sent on the same day). As an example, the Scottish Government issued guidance to public bodies and Audit Scotland provides guidance for local authorities on the payment statutory performance indicator. These could provide a starting point for a framework in the private sector.

ICAS highlighted in [Sustainable Growth for Scotland](#) (page 7) that the Scottish Government commitment of 10 days should be extended to sub-contractors to ensure wider benefit of these terms. We are pleased to see that the Scottish Government has recently taken action to insert a new clause in contract terms to extend prompt payment (30 days) down the supply chain. Further consideration should be given to including a review of suppliers payment history as part of the PQQ process and if the company is a poor payer, this could be a factor to reject the application and another method for spreading the message that good business ethics and prompt payments which promote a healthy business environment are rewarded. This would need to be proportionate to avoid over-burdening small contracts.

A definition of “public sector” is required to clarify the scope of proposals and to help ensure more complete adoption of good practice. Our preference is that the wider Scottish public sector is encompassed in best practice developments for completeness and to promote stronger accountability and transparent reporting to the public. This would include non-executive NDPBs and criminal justice authorities (who are out-with the Scottish Government consolidation boundary), education, housing, transport

and bridge authorities and local authority group entities.

For local authorities, we suggest the wider definition is used as per the 2011 Regulations for Local Authority (Scotland) Remuneration Report.

Question 18 - Would additional legislative or non-legislative steps lead to a change in business culture and a bias towards prompt payment? If so, what might these involve?

Yes No

Non-legislative measures – see response to question 17.

Question 19 - Would these additional legislative or non-legislative steps have a beneficial impact on the relative competitiveness of businesses in Scotland?

Yes No

In addition to the regulatory change being introduced by the EU Directive, greater transparency through “comply or explain” could help to kick start a change in culture for prompter payment and help to spread cash across the economy.

Commercial pressures and competition are considered as part of the suggested private sector disclosures in our response to question 17.

Question 20 - How could any new arrangements be fully enforced?

For the private sector, comply or explain has been shown to be effective through its impact on reputation. We also support naming and shaming.

To facilitate benchmarking and greater focus on the performance across all organisations which could help stimulate continuous improvement, we suggest a central point providing a summary comparison (perhaps DCLG/ Audit Scotland /Audit Commission (or successor) for the public sector) and Scottish Government / BIS for the private sector.

This would involve additional resource and the degree of performance variation may not be sufficient to warrant doing so routinely (as opposed to maybe doing it once). Alternatively, as a new disclosure in an area of public interest, this may be the type of information which the media would be keen to present as a league table.

Question 21 - Which of the following options do you favour?

- a) the status quo
- b) a practical and legitimate mechanism to promote prompt payment
eg mandatory application of interest and/or maximum payment periods
- c) actions to change business culture
- d) actions to change corporate governance and reporting of payment performance

Consultation on proposals for a Better Regulation Bill

Common commencement dates

Question 22 - Should common commencement dates be introduced for Scottish regulations impacting on business. Please provide evidence to support your answer

Yes No

No comment.

Question 23 - Which of the following options do you favour?

- a) the status quo
- b) the introduction of common commencement dates

Mobile food businesses, and a transferrable certificate of compliance

Question 24 - Which of the following options do you favour?

- a) the status quo
- b) the development of national standards and a change in legislation requiring moveable food businesses to be inspected only by the local authority in which the business is registered/based, and other local authorities to accept certificates of compliance issued by other local authorities

No comment.

Linking planning application fees to the performance of the Planning Authority

Question 25 - What in your view is the most effective mechanism for introducing the proposed link between planning application fees and performance? Please provide evidence to support your answer.

We support the principle / intention of linking fees with performance to drive customer focused improvement and reward excellence.

LEAN principles have been used by some organisations to maximise customer value. A comparative although complex example includes the NHS in England "payment by results" system which aims to support NHS modernisation by paying hospitals for the work they do, rewarding efficiency and quality and using patient experience to measure the quality of care.

Extending Statutory Review Mechanisms to Challenges Against Scottish Ministers' Decisions in Infrastructure Projects

Question 26 - Do you agree that it is appropriate to expand the types of decisions subject to statutory review (instead of judicial review)?

Yes No

Question 27 - If Yes, for what types of decisions would it be appropriate to introduce a statutory review mechanism?

No comment.

Question 28 - If No, for what types of decisions would it not be appropriate to introduce a statutory review mechanism.

No comment.

Question 29 - Do you agree that a statutory review mechanism for people or bodies with a sufficient interest to challenge the legality of Scottish Ministers' decisions in the Court of Session should replace the current arrangements for applicants wishing to challenge in respect of granting a marine licence?

Yes No

No comment.

Question 30 - Do you agree that the procedure for review should be made the same across all relevant legislation?

Yes No

No comment.

Other issues

Question 31 - What impacts – positive, negative, financial or other - do you think a Better Regulation Bill will have?

We are very supportive of the principles and intentions of Better Regulation and anticipate this to have a positive impact.

The evidence-based and inclusive approach to this consultation is welcomed, presenting options for consultees (rather than a fait-accompli) and opportunities to invite additional comments which may not be picked up. It is also very helpful to include the BRIA analysis accompanying the consultation to provide additional information, communicate the options cost benefit analysis and for this to be open to comment/correction.

Question 32 - What further suggestions do you have to improve the regulatory landscape?

Is there a complaints process whereby organisations can raise concerns centrally, to complement and expand the sources used by RRG and representative bodies? Perhaps the pending Business Portal being set up by Scottish Enterprise/ Cabinet Office could be used and include a section

on regulation (UK and EU).

Question 33 - Are there any specific regulations causing burdens on business or which have unintended consequences. Please provide details of the regulation, the impact and your proposed solution to address this.

No comment.

Partial Business and Regulatory Impact Assessment

Question 34 - Does the partial BRIA reflect the sectors and groups affected, and costs and benefits of the proposals? If not, please explain why and provide further information

Yes No

One point of clarification.

In Annex D, option 2, one of the costs cited is to introduce a system for monitoring performance. We agree that some additional resource would be required to kick off the change. However, many of the main public sector bodies already produce payment performance information which is often audited (including NHS Boards and local authorities who report performance against 30 days).

If the system is already in place for 30 days, any costs for < 30 days are likely to be marginal as it is expected that the existing system could be tweaked rather than replaced.

The cost of implementation would be greater for other, probably smaller organisations who are not currently reporting payment performance at all.