

## **Response to Consultation Paper Non-economic Regulators: Duty to have regard to Growth**

Thank you for inviting our comments on this consultation. The Optical Confederation represents the 12,000 optometrists, the 6,000 dispensing opticians and 7,000 optical businesses in the UK who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of the five optical representative bodies: the Association of British Dispensing Opticians (ABDO); the Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO) and the Federation of Opticians (FODO). As a Confederation, we work with others to improve eye health for the public good.

We are regulated by several of the regulators listed at Annex A of this consultation paper and are pleased to respond on behalf of the optical sector.

As a Confederation we strongly support appropriate and proportionate regulation for the protection of the public and in accordance with the Better Regulation Principles<sup>1</sup>. We also support 'enlightened regulation' - which seeks solutions without compromising the regulators' primary aims – rather than bureaucratic regulation, which can add burdensome costs to business and stifle innovation without any tangible public benefit.

### **Summary**

As significant employers and wealth generators in the UK we:

- agree with the Government that “the regulatory climate is a key factor that impacts upon the willingness of businesses to invest and grow” (Michael Fallon, Foreword, page 2)
- welcome the primary purpose of regulators to protect the vulnerable (or other social or environmental objectives) (Michael Fallon, Foreword, p. 2)
- agree that protection and prosperity are not inimical to one another (paragraph 1.8, p.7), and
- welcome the primary objective to make sure that regulators are mindful of the economic consequences of their actions without undermining their primary purpose (paragraph 2.2, p.10).

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<sup>1</sup> <http://www.bis.gov.uk/brdo/resources/knowledge/better-regulation-principles> (Last accessed April 2013)

We have thought long and hard about whether this should be achieved by a duty on regulators to have regard to growth rather than a lighter duty to have regard to the economic consequences of their actions. We consider, on balance, that the latter course would go no further than the current system of impact assessments (which often underestimate the impact of even small changes on businesses). We agree therefore with the Department of Business, Innovation and Skills (BIS) that the proposed focus of a duty to have regard to growth will make the duty more meaningful.

## **NHS**

We recognise that the current consultation relates only to public bodies defined as regulators, but regret that this does not encompass the now significant and widespread practice of commissioning public services by public authorities. In our case, this would be eye health services by the NHS. This is often simply another form of regulation and, if applied inappropriately, can add significantly to business costs and small business risk without public benefit. A similar duty on public sector commissioners might also be helpful.

We have seen considerable positive progress in this area under the current Government's NHS reforms and by the NHS Commissioning Board Authority's (now NHS England) commitments to a Single Operating Model for sight testing contract applications, contract compliance and the 'earned autonomy' model, and it is hoped that this will continue.

There are however aspects of the Any Qualified Provider (AQP), national contract and contract compliance for other services which provide very high barriers to market entry for small and large businesses alike.

We will be keen to work with NHS England on this as the new health and social care system becomes established during 2013-14 to see how these areas can be improved.

It is against this background that we respond to the following consultation paper's questions. The Optical Confederation are very happy for this response to be made public.

Please do not hesitate to contact us if you require any further information.

We would be very pleased to be involved further in developing this policy in particular in so far as it applies to the eye health and community hearing sectors.

## Consultation questions

**Question 1: Should primary legislation be used to introduce a duty for regulators to have regard to growth and the economic impact of their actions?**

**Answer 1:** Yes

**Question 2: Is there an alternative means by which these objectives, described in paragraphs 2.1 to 2.6 above, could be achieved?**

**Answer 2:** No. A statutory duty will focus regulators' attention on the impact of their actions (singly and in aggregate) on the market they are regulating as part of their primary function of public protection. The public is not protected if a market delivery system is so over-regulated that it ceases to function effectively to meet the needs and wishes of consumers.

There is a tendency amongst UK regulators to over-regulate what they know and can see, i.e. high street providers, whilst not seeking effective regulation over, for example, on-line suppliers where risks may be greater. This both skews the market and undermines the regulators' public benefit aims, neither of which is in the public interest.

**Question 3: Do you agree that the duty should be complementary to existing duties?**

**Answer 3:** Yes – the primary 'public good' functions of the regulators should be unaffected.

**Question 4: Should the duty be principles-based, for regulators themselves to interpret and apply to their operations, or should it also specify the manner in which economic growth should be supported?**

**Answer 4:** Given the wide variety of sectors regulated, the duty should be principles based (but these should be clear and tight and not allow for 'wiggle room'). The manner in which economic growth should be supported should be set out in accompanying guidance which can be easily updated as circumstances change and new insights are gained.

**Question 5: Do you think that guidance in how to implement the proposed growth duty would be useful? If yes, please provide examples of what it should cover.**

**Answer 5:** Yes, for example, the factors that regulators in particular sectors should take into account. We would be happy to work with BIS and the NHS on this in respect of eye health services, which are provided through a regulated retail market model both in the high street and online, together with colleagues in our sister professions community pharmacy and community hearing.

**Question 6: Do you agree that the measurement and monitoring mechanisms proposed above, allied to those of the revised Regulators' Compliance Code, would be adequate for this purpose? If not, please provide details.**

**Answer 6:** Yes. There is no point adding further costs to regulators (which have in turn to be met by businesses) unless it is first demonstrated that there is a need for this and that it is justified in the public interest. Let us try the existing mechanisms first and only change them if they are found wanting.

**Question 7: Do you agree that the duty should in principle apply to all non-economic regulators?**

**Answer 7:** Yes.

**Question 8: Should the Pensions Regulator be included in the scope of the growth duty?**

**Answer 8:** We have no view. The Pensions Regulator may be a special case.

**Question 9: Do you feel that a growth duty would reduce costs to business and remove or address barriers to growth?**

**Answer 9:** It should in theory do both.

**Question 10: How would you envisage a regulator's actions changing as a result of a growth duty? Please consider this in light of evidence presented above, and/or with reference to other situations where regulator actions impacted a company or industry's ability to grow. Where possible, provide a monetary indication of likely impact of a successfully operating growth duty on a company or industry**

**Answer 10:** Streamlining and standardising processes, moving to electronic submissions of data, communications and processing (eg of applications), reducing regulatory delays will all help business. The human element should at 'thinking' rather than 'processing' level and be focussed on seeking to resolve difficult or borderline situations in ways which both protect the public (or wider social goals) whilst also supporting business.

**Question 11: Is there any evidence that this will add significant burdens to regulators and why?**

**Answer 11:** This should not do so, as it is what good regulators should have been doing all along. The public interest is not best served if market systems are hobbled by unnecessary, disproportionate and non-risk based regulation or where barriers to market entry and exit are set unreasonably high. This should simply make explicit and transparent regulators' consideration of the impacts of their actions on business (singly and cumulatively) as part of primary functions of public protection.

**Submitted by Ben Cook**  
**On behalf of the Optical Confederation**  
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