Department for
Business & Trade

Government Response to:

SMARTER REGULATION: Regulating for Growth Consultation

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Introduction

1. Following the consultation in Autumn 2023 on the extension of the Growth Duty the Government committed at Autumn Statement to extend the Growth Duty to include Ofwat, Ofgem and Ofcom.

2. The Growth Duty is set out in section 108 of the 2015 Deregulation Act ("the 2015 Act") and establishes that any person exercising a specified regulatory function must have regard to the desirability of promoting economic growth. The Growth Duty requires the regulator exercising a specified regulatory function, to do so in a way which ensures that regulatory action is taken only when it is needed, and that any action taken is proportionate. The Growth Duty currently applies to the named regulators and regulatory functions as set out in The Economic Growth (Regulatory Functions) Order 2017.[1]

3. Regulators who are subject to the Growth Duty must also have regard to the provisions of the Growth Duty statutory guidance. The Government decided with the launch of the Regulating for Growth consultation, that the time was right to revise the Growth Duty statutory guidance. This was in order to reflect the Growth Duty extension consultation responses, the extension of the Growth Duty to the economic regulators (Ofgem, Ofwat and Ofcom), the changes the economy has undergone since 2017, and to encourage transparency and accountability for growth across regulators.

4. The Regulating for Growth consultation sought views on the revised statutory guidance for the Growth Duty. This included views on the drivers of economic growth and the behaviours of smarter regulation identified in the guidance, alongside additional questions on reporting on the Growth Duty and improvements to the regulatory process. The revised Growth Duty statutory guidance will provide clarity and coherence to support regulators in their application of and reporting against the Growth Duty.

5. Regulation must be used only where necessary and be implemented in a way that provides the right foundations for our economy to thrive. Independent regulators themselves have the power to impose significant regulatory burdens on the sectors that they cover, so it is imperative that they do so in a way that is cognisant of the wider economic impacts. A well-regulated economy will deliver efficient outputs from its inputs, and thus drive economic growth and productivity. The updated Growth Duty guidance will therefore ensure that regulators consider

[1] https://www.legislation.gov.uk/uksi/2017/267/made

the desirability of growth alongside prioritising principles-based and outcomes-based regulation, providing stability and certainty to innovators whilst remaining flexible, proportionate and upholding consumer safety and protections.

6. The updated statutory guidance will assist regulators in discharging their responsibilities under the Growth Duty. It will also provide clarity for stakeholders as to what they should expect of regulators. The duty applies across a regulator's activities, from the strategic to the operational level, including in relation to individual activities and decisions.[2] Regulators should consider how they will ensure, at all levels, that regulatory action is taken only where needed. This currently includes minimising burdens on business productivity, proportionate decision-making and ensuring transparency.

7. The Environment Act 2021 introduces a legal duty on Ministers of the Crown to have due regard to the environmental principles policy statement. The Government has considered the issue and has concluded that it is not expected the extension of the Growth Duty to Ofcom, Ofgem and Ofwat will cause environmental harm. The Growth Duty does not override the existing environmental protections to which these three regulators must conform.

8. The following questions were asked in the consultation:

Q.1 - The draft revised guidance sets out economic growth as 'Sustainable Economic Growth'. This is in line with the recommendations of the McLean report and the Financial Services and Markets Act. Do you have any views on this definition of economic growth?

Q.2 - The draft revised guidance outlines that economic growth has a number of different drivers and behaviours and describes some but does not attempt to provide an exhaustive list.

- In this way, is the revised guidance clear on the Government's expectations of regulators on meeting the Growth Duty?

Q.3 - Do you have any examples of behaviour that encapsulate the application of the Growth Duty that the guidance would benefit from using as case studies?

Q.4 - Is there anything you think the draft revised guidance should or should not reflect?

[2] The extension of the Growth Duty to Ofcom, Ofgem and Ofwat will not extend the Growth Duty to include the concurrent CMA powers held by Ofcom, Ofgem and Ofwat.

Reporting Questions

Q.5 - Do you consider that the Government should commence the statutory reporting requirement of the Growth Duty in Section 110A of the Deregulation Act 2015?

Q.6 - The consultation document sets out a high-level alternative approach for non-statutory reporting.

- Would this approach deliver improved outcomes compared to the statutory requirement?
- Would this approach ensure suitable levels of transparency and accountability? Do you have any other comments?"

Q.7 - Considering the plurality of regulators and regulated sectors, which metrics would be effective for regulators to report against, to enable a comparative assessment of their application of the Growth Duty?

Regulatory Agility Questions

Q.8 - Would the International Fast Track outlined in this consultation help to improve the speed of regulatory decision making?

- What would you expect the impacts of such a process to be?

Q.9 - What is your view on the proposed Targets for Regulatory Approvals as outlined within this consultation document?

- What impact would you see from the enactment of this?

Q.10 - What is your view on the proposed Productivity lock as outlined in this consultation document?

- What impact would you see from enactment of this?

Monitoring Questions

Q.11 - In your view what would be the best way to monitor the regulatory application of the Growth Duty?

- Who would best undertake this role?

- What would be the most effective comparative metrics to assess performance against the Growth Duty?

Other Questions

Q.12 - Do you have anything else you would like to raise that is relevant to this consultation?

Conducting the Consultation

9. The consultation ran from the 22^{nd} of November to the 17^{th} of January (inclusive) for a period of 8 weeks. The consultation received 54 written responses from a range of stakeholders including Businesses, Charities, Environmental Organisations, Regulators and Utility Companies. The online Qualtrics submission portal saw a significant number of responses that were blank with no identifying data or completed with random text. These responses have been checked for relevant information, and then discounted from the total of completed responses.

10. Responses from multiple bodies or individuals that were received within one submission are counted as a single response for the purpose of this Government Response. (*Detail in Table One*)

Stakeholder	Number of Responses
Business	7
Charity	1
Environmental	3
Regulator	11
Business Representative Organisation	13
Think Tanks	1
Utility Companies	12
Others	6
Total Responses	**54**

Table One – Breakdown of Responses

11. Methods of analysis

11.1. Written consultation responses were analysed using mixed methods. Closed components of questions were analysed with standard dichotomous and multiple-choice quantitative techniques. Open ended components of questions were analysed using qualitative techniques involving breaking the text down into thematic categories, coding responses, and taking into account positive or negative sentiments. Those thematic categories were then grouped and consolidated to draw out common perspectives among the respondents.

12. During the consultation period the Department for Business and Trade (DBT) also engaged with consultation stakeholders through virtual meetings, and email. All respondents to the initial consultation on the Growth Duty extension were contacted by the Department for Business and Trade to advise of the launch of the Regulating for Growth consultation and were offered meetings.

13. The relevant policy team presented the detail of the Regulating for Growth consultation to a wide range of businesses and regulators at the OPSS Business Reference Panel meeting in December 2023, OPPS Consumer Reference Panel in January 2024 and raised the consultation to the attention of all relevant regulators within the Regulators Forum. The Growth Duty consultation was also discussed as part of the roundtables held on the Smarter Regulation Call for Evidence.

Summary of Question Responses and Government Response

14. In the following sections of this document, we set out the context, review of key themes received and the Government's response in respect of the Growth Duty measures together with the next steps to be taken.

Context

15. Section 108 of the 2015 Act establishes that a person exercising a specified regulatory function must have regard to the desirability of promoting economic growth in carrying out that function, known as the 'Growth Duty'.

16. The 2017 Order specifies the regulators and regulatory functions that the Growth Duty applies to.[3] This currently applies to more than 50 different regulators. The Growth Duty is supported by statutory guidance issued under s110(1) of the 2015 Act. All those within the scope of the 2017 Order must have regard to the guidance when exercising their regulatory functions[4]. The guidance assists regulators when they are giving consideration to allocating resources, setting enforcement policies, and making sanctioning decisions.

17. Section 16 of the Enterprise Act 2016 inserted a new section 110A into the 2015 Act and requires persons in scope of the Growth Duty to publish an annual performance report including the regulator's assessment of the views of business on the effect of the Growth Duty and the impact of the Growth Duty on them. Section 110A has not yet been commenced and the Government does not intend to commence it at this stage.

18. Before issuing revised statutory guidance, the Secretary of State must consult the persons representative of those whose functions are specified in the 2017 Order 2017 (S.I. 2017/267) and such other persons as the Secretary of State considers appropriate (s110(5) of the 2015 Act). The Regulating for Growth consultation sought views on whether the refreshed statutory guidance provides the right clarity for regulators to support their application of the Growth Duty.

[3] The Economic Growth (Regulatory Functions) Order 2017: https://www.legislation.gov.uk/uksi/2017/267/made

[4] Section 110(3) of the 2017 Order

Q.1 - The draft revised guidance sets out economic growth as 'Sustainable Economic Growth'. This is in line with the recommendations of the McLean report and the Financial Services and Markets Act. Do you have any views on this definition of economic growth?

19. Of the 54 respondents to the Regulating for Growth consultation, 79% responded that they supported the revised statutory guidance definition of economic growth. 8% were opposed to the definition, and 13% were unsure or did not offer a view.

20. The majority of respondents welcomed the clarity that this definition of 'Sustainable Economic Growth' brought to the statutory guidance and supported the alignment of the Growth Duty with the McLean report. It was suggested that setting out growth as meaning 'Sustainable Economic Growth' clarified the scope of the Growth Duty and enabled a clear understanding of medium- and long-term sustainable growth. Respondents welcomed that the Growth Duty does not encourage short-term unsustainable growth at the expense of medium-term, and long-term economic growth.

21. Of the 8% of respondents who opposed the definition (4 respondents in total), the central objection was that this definition was imprecise with arguments made that this definition was 'unclear' and therefore reflected the 'deficiencies of existing reporting'. Some of those who opposed the definition were keen to see growth established as a purely quantitative metric without any specification of short-, medium- or long-term growth included in the definition.

22. There were a minority of respondents who comprised part of both the opposing and supporting groups who called for the 'Sustainable Economic Growth' definition to go further and be clearer on what is meant by 'sustainable'. These included calls for explicit detail on costs due to environmental factors, and clarity relating to the scale at which growth is defined. These groups also called for explicit reference to the costs of environmental damage to be factored into any assessment of sustainable growth.

Government Response

23. The Government agrees with the majority of respondents to this question and will proceed with the definition of 'Sustainable Economic Growth' within the Growth Duty statutory guidance as consulted upon. The concept of 'Sustainable Economic growth' means that economic growth should be pursued without undermining future growth.[5] This updated definition within the Growth Duty statutory guidance provides clarity to regulators, enables regulators to determine

[5] The UN has defined sustainability as "meeting the needs of the present without compromising on the ability of future generations to meet their own needs.(United Nations, Brundtland Commission 1987)

how they can ensure they apply the Growth Duty, and ensures that regulators can clearly assess the impacts of their work on growth.

24. The Government understands the points raised by those who oppose the definition of 'Sustainable Economic Growth' as set out in the consultation. The Government accepts that there is scope for quantitative metrics within the assessment of growth as set out by the Growth Duty statutory guidance, alongside qualitative metrics that recognise the specific context within which each regulator operates. The Government is currently working with stakeholders to develop a Regulatory Performance Framework for publication in the near future that will specify an approach to performance reporting. The Government will consider where and how the responses to this consultation calling for quantitative and qualitative growth metrics can contribute to this piece of work.

25. Although some respondents called for a greater degree of environmental sustainability to be included within the Growth Duty statutory guidance, the Government does not agree that this guidance is the right vehicle to contain this level of environmental detail. The importance of environmental considerations is recognised in the fact that environmental sustainability is one of the named drivers of economic growth. In addition, many regulators have specific environmental duties that set out the detail of their environmental obligations. Including further detail in the Growth Duty statutory guidance may cause confusion or ambiguity about statutory precedence.

Q.2 - The draft revised guidance outlines that economic growth has a number of different drivers and behaviours and describes some but does not attempt to provide an exhaustive list.

- In this way, is the revised guidance clear on the Government's expectations of regulators on meeting the Growth Duty?

26. The majority of respondents indicated the revised guidance has provided clarity and clearer expectations for regulators to meet the requirements of the Growth Duty. Most of the 54 respondents indicated support for the drivers and behaviours identified in the guidance.

27. Respondents welcomed the non- exhaustive nature of the 'drivers' and 'behaviours.' Also, the flexibility provided to enable regulators to determine the most appropriate for their context and the ability to adapt should other drivers emerge. It was noted that not all drivers and behaviours are applicable to every regulator, but the nature of the guidance provided sufficient flexibility to allow for this.

28. Respondents highlighted that the drivers and behaviours are broadly aligned to the existing approach of regulators. However, there is also the view that the behaviours and drivers are covered in existing duties and there could be potential conflict with other duties. It was noted duties to protect consumers and the environment should remain a priority for regulators.

29. Some concern was shared that the drivers and behaviours are too ambiguous which would cause regulators to approach the Growth Duty inconsistently and that a 'one size fits all' approach is not practical. Concern was raised that, whilst environmental sustainability is a driver, the broad definition could mean trade-offs and negative outcomes for the environment. There was a call for the guidance to go further and include climate and natural resilience.

30. Respondents also called for the inclusion of:

- Health and Safety
- Risk Management
- Design
- Investment as standalone driver
- Operations and oversight
- Timely decisions
- Openness of trade
- Property rights
- Regional growth
- SME development

Government Response

31. The Government would like to thank respondents for the ideas and input into the drivers and behaviours in the guidance. The Government will proceed with the list of behaviours and drivers outlined in the statutory guidance. The behaviours and drivers are not intended to be exhaustive, and regulators may identify other valid factors for consideration in meeting the duty. Whilst respondents have called for the inclusion of other drivers and behaviours there is sufficient flexibility

and scope within the guidance for regulators to consider these as part of the Growth Duty.

32. The Government has included specific detail in the refreshed guidance on environmental sustainability that covers the areas of concern raised by respondents. The guidance sets out that natural capital and the ecosystems in which we live are fundamental to economic growth, and therefore need to be safeguarded for economic growth to be sustained, alongside specifying that well-designed and proportionate actions that help to support achieving net zero are pro-growth.

33. The Government understands that regulators have other duties or objectives. The balancing of duties will be determined by a regulator considering growth alongside, or as part of, other duties and objectives. In situations where there may be tension, the Government is aware that, in some cases, other duties or objectives may take precedence to growth and understands that regulators are independent and are experienced and best placed to decide how to balance their duties.

Q.3 - Do you have any examples of behaviour that encapsulate the application of the Growth Duty that the guidance would benefit from using as case studies?

34. Many respondents provided detailed case studies or examples of the application of the Growth Duty. These are not summarised here for conciseness.

Government Response

35. The Government would like to thank all respondents who shared case studies, examples, and other information in response to this question.

36. The provided information will inform our policy thinking in relation to the Growth Duty statutory guidance, and the ongoing piece of work on a Regulatory Performance Framework.

Q.4 - Is there anything you think the draft revised guidance should or should not reflect?

37. Not all respondents to the consultation submitted a response to the question or indicated the points raised had already been submitted under question 1. There

were a range of responses received with the key themes centred on the environment, clarity on the application of the growth duty and balancing duties.

38. Respondents called for further reference to environmental sustainability, net zero and nature recovery. This included a call to strengthen the definition in line with the Financial Services and Markets Act 2023 as well as the inclusion of natural and climate resilience.

39. Respondents suggested that greater clarity on how existing duties would interact with the Growth Duty and how regulators will balance trade-offs in decision-making would be beneficial. There was a suggestion that regulators should be more transparent on trade-offs and demonstrate how decisions have been balanced in reporting.

40. Some responses highlighted that it would be beneficial to clarify whether the growth duty should focus on growth at individual organisational level or the wider economy. There was also call for clarification of whether all the activities undertaken by a regulator are subject to the Growth Duty. There was also a call to reference that the Growth Duty is not intended to prioritise deregulation over the interests of consumers and the environment.

41. Respondents emphasised that proportionate and well-targeted enforcement activity is consistent with the promotion of economic growth and that enforcement should be taken on a case-by-case basis.

Government Response

42. The Government recognises the ask for further reference to and embedding of environmental sustainability in the statutory guidance. However, the Government would like to emphasise that it has included environmental sustainability in the drivers of economic growth in the Growth Duty statutory guidance. Many regulators have specific environmental duties that set out the detail of their obligations. Therefore, the Government's view is that further detail in the Growth Duty statutory guidance may add confusion, ambiguity or suggest an unintended hierarchy of existing duties.

43. The Government understands the points raised on further clarification about the definition of Growth and the activities in scope. Section 108 of the Deregulation Act 2015 defines the scope of the Growth Duty, establishing that a person exercising a specified regulatory function must have regard to the desirability of promoting economic growth.[6] Further detail on specific functions are set out in

[6] https://www.legislation.gov.uk/ukpga/2015/20/section/108/enacted

Section 111.[7] The guidance outlines that specified regulators should give appropriate consideration to the potential impact of their activities and their decisions on economic growth, for the wider UK economy, as part of their consideration of their other statutory duties[8]. The Government is of the view that regulators are best placed to determine their application of the Growth Duty. The guidance stipulates that having regard to the desirability of economic growth does not mean having 'less' regulation. When regulators act to protect consumers, employees and the environment using well designed regulation, this supports sustainable economic growth.

Q.5 - Do you consider that the Government should commence the statutory reporting requirement of the Growth Duty in Section 110A of the Deregulation Act 2015?

Q.6 - The consultation document sets out a high-level alternative approach for non-statutory reporting.

- Would this approach deliver improved outcomes compared to the statutory requirement?

- Would this approach ensure suitable levels of transparency and accountability? Do you have any other comments?

44. Due to respondents combining many of their answers to Question 5/6 we have analysed and responded to these questions together.

45. Respondents were evenly split on Question 5/6. 43.4% of respondents were opposed to the commencement of the statutory reporting requirement of the Growth Duty in Section 110A of the Deregulation Act 2015, whereas 41.5% of respondents were in favour, with 15.1% of respondents expressing no specific preference.

46. Those in opposition to the activation of statutory reporting raised similar concerns. The most prevalent topic was the perception of an increased burden that statutory reporting may bring to regulators. Multiple respondents were concerned that any statutory reporting could lead to burdens that require regulators to divert resources from their day-to-day functions to cover reporting. Similarly, respondents also addressed the potential inefficiencies of statutory

[7] https://www.legislation.gov.uk/ukpga/2015/20/section/111/enacted

[8] The Growth Duty Statutory Guidance sets out that there is no hierarchy of duties established by the Statutory Guidance. Regulators are independent and are experienced and best placed to balance their own decision-making on duties. Decisions on growth will involve a consideration of a regulator's other duties, for example relating to environmental or consumer protection (such as online safety), and there may be a need to balance multiple objectives.

reporting, with suggestions that specific Growth Duty reporting would be a duplication of existing reporting functions covered in annual reports. The duplication point was similarly raised by several respondents in relation to the timing of any potential Growth Duty report publication, with many suggesting that a standalone Growth Duty report would present the impression that the Growth Duty was of higher importance than all other primary and secondary regulatory duties.

47. The majority of those in opposition also raised the potential for unintended effects as a result of requiring statutory reporting. Respondents suggested that the introduction of statutory reporting may lead to the ‘gaming’ of any KPI’s included within the reporting requirements, whereby achieving high reporting scores is prioritised over thorough analysis and approvals. Some opponents of turning on statutory reporting also raised points around the lack of flexibility a statutory requirement would provide. The draft statutory guidance for the Growth Duty explicitly set out that *“The listed Drivers [and Behaviours] of Growth are not intended to be exhaustive, and regulators may identify other valid factors for consideration in meeting the duty”,* and concerns were raised that any statutory framework would be overly prescriptive and thereby prevent regulators from identifying further behaviours and drivers of growth.

48. Therefore, many respondents who opposed statutory reporting suggested that a non-statutory form of reporting would be more effective, as a flexible approach would allow regulators to meet the desired goal of transparency and accountability in a way that minimises burdens and is most coherent with the individual context of regulators. Multiple respondents who suggested a non-statutory mechanism as most appropriate were keen to see each regulator develop their own Growth Duty reporting framework in collaboration with the Department for Business and Trade and their wider stakeholders to ensure appropriate detail and capturing of relevant areas. Those who raised this point also emphasised their desire to see the Government engage closely with regulators of all sizes to understand the nature of their sectors and how best to demonstrate compliance with the duty.

49. Those in favour of the commencement of statutory reporting raised similarly consistent points in their responses. The most prevalent point raised was that requiring a statutory reporting against the Growth Duty would help to ensure that the Growth Duty was fully considered by regulators. Many raised concerns that without statutory reporting the Growth Duty would be a ‘toothless’ duty and that regulators would not apply the duty effectively.

50. Transparency and accountability concerns were equally raised by those in favour of statutory reporting. Respondents saw that, by requiring statutory reporting, businesses would be able to understand the decision processes made by

regulators more clearly. In turn this would ensure that business and consumers would be able to identify the impact of the Growth Duty on one another.

51. Of those who expressed no specific preference, many identified their lack of preference to be due to a request for further detail. Respondents called for further work to be done on the detail of what any statutory reporting framework would look like, with many suggesting that additional resourcing would be required alongside the addition of a reporting requirement to prevent any resource implications impacting approval times.

52. Finally, some respondents questioned the value of any Growth Duty-specific reporting, identifying that regulators are already reporting on many of the relevant metrics in their annual reports and that parliament has the powers to scrutinise this.

Government Response

53. The Government is of the view that, at this stage, statutory reporting should not be commenced. The points raised by all respondents are crucial to understand further before any statutory requirement is considered and the Government agrees that there is significant value in terms of transparency and accountability by having some form of Growth Duty reporting. The Government is currently working with stakeholders to develop a Regulatory Performance Framework for publication in the near future that will specify an approach to reporting on performance metrics and narrative reporting. The Government will further consider where and how the responses to this consultation can contribute to this piece of work and whether a statutory reporting requirement would be a suitable approach.

54. The Government agrees with respondents that any Growth Duty reporting will need to ensure that there are no inadvertent side-effects brought about by the reporting requirements. Furthermore, the Government understands the perspective raised by respondents who suggest that without the statutory requirement for reporting, regulators may not apply the Growth Duty as rigorously as they otherwise may.

55. At this point the Government considers that there are advantages to taking an approach that retains the same high expectations of rigour, accountability, and transparency as a statutory reporting function, but that allows flexibility in important areas by being a non-statutory requirement. In particular, a non-statutory approach will enable the development of reporting requirements that reduce any disproportionate burdens on the smallest regulators.

56. The Government is clear that it expects regulators to report against the Growth Duty once the refreshed statutory guidance is active, and the Regulatory Performance Framework has been published. The Government will assess response rates and uptake of reporting against the Regulatory Performance Framework and depending on levels of engagement may consider commencing section 110A (statutory reporting) in the future.

Q.7 - Considering the plurality of regulators and regulated sectors, which metrics would be effective for regulators to report against, to enable a comparative assessment of their application of the Growth Duty?

57. Respondents to this question were largely unsure or in opposition to the development of and/or suggestion of metrics for comparative assessment of regulatory performance against the Growth Duty. 40% of respondents were unsure as to whether the development of comparative metrics would be a beneficial action, 34% of respondents were in opposition to the suggestion of comparative metrics and 26% returned a response in favour of comparative metrics. Many respondents suggested specific metrics that related to their industries but were not suitable for a comparative framework.

58. Of those who returned an unsure response, the significant factor raised by almost all respondents was a lack of understanding about the benefits of comparative metrics. Key points were raised around the comparison of different regulators, approving different things via various processes of varying complexity. Many raised the concern that they did not understand why a comparative metric was required, raising the point that there are many regulators of different sizes and remits and that it may be more important to identify tailored metrics for each individual regulator to measure and report their own progress in a transparent manner.

59. The key response from those opposed was that they see limited value in setting KPIs or metrics across all regulators for comparison. A common response was that to set comparative metrics across distinct regulators would require metrics to be very high level and respondents therefore questioned the value such metrics would carry. Many considered that, to support economic growth, the ‘high value’ areas of regulatory engagement of ‘guidance, advice and standards setting’ are central to any assessment of regulator performance but potentially impossible to consistently measure or count in any resource efficient manner.

60. Furthermore, those in opposition to the development of and requirement of comparative metrics cautioned against the unintended effects of the development of metrics for reporting. Many saw that comparative metrics may increase workloads and/or encourage regulators to adopt a different approach to meet performance metrics as opposed to benefiting those regulators that are detail

oriented and focussed. Similarly, points were raised around the value of any common metric such as ‘speed of decision making’ as, due to the very different decisions that regulators make, setting out a set of principles for regulators to follow and report against in a detailed qualitative fashion was seen to be a more effective mechanism of comparative assessment.

61. Of those who were in support of comparative metrics there was a consistent view that monitoring would enable a useful benchmark of performance between regulators. Many saw that the use of comparative metrics would incentivise regulators to increase performance. However, most of those in favour were equally cognisant of the challenges raised by those respondents who were unsure and in opposition, and called for further work to be done in conjunction with the regulated community and regulators to understand what metrics would enable an effective comparison.

Government Response

62. The Government agrees with the view that further work is required to identify suitable and effective metrics for any comparative reporting. As set out in the consultation, the Government recognises that the context of each individual regulator varies, and thus the Government expects that any comparative metrics would be complemented by free-form narrative reporting.

63. The Government is currently working with stakeholders to develop a Regulatory Performance Framework for publication in the near future that will specify an approach to reporting. This will include a balance of both comparative metrics as well as narrative reporting. The Government understands the point raised by respondents that the decisions and approvals made by different regulators are varied and applicable to specific sectors. However, the Government still sees that there would be value in working with regulators to consider options for comparative metrics to create transparency in regulator performance that factors in this diversity.

64. The Government will further consider where and how the responses to this consultation can contribute to this piece of work and what considerations should be included within any future comparative metrics. Metrics are expected to comprise quantitative and qualitative reporting mechanisms and will be developed in line with the consultation responses.

Q.8 - Would the International Fast-Track outlined in this consultation help to improve the speed of regulatory decision making?

- What would you expect the impacts of such a process to be?

65. Respondents to this question were largely unsure or in opposition to the development of an International Fast-Track as outlined. 57% of respondents indicated that an International Fast-Track would not be applicable to their area of regulation or business or were unsure as to how it would apply. 32% of respondents said that an International Fast-Track system would not lead to an increase in the speed of regulatory decision making. The remaining 11% of respondents were in favour of an International Fast-Track, in some cases citing possible benefits to SMEs or start-ups, although noting that precautions would be needed to ensure that organisations are not unfairly disadvantaged with high cost to access a fast-track service, and that regulatory standards are not compromised. The need to uphold consumer confidence/trust in products and services was a common theme across responses.

66. Respondents who were unsure or did not respond to this question considered their business areas out of scope of an International Fast-Track framework, due to the nature of their industry or operations. Some noted that the system of approvals or area of business does not have a relevant international component and therefore would not likely impact them. Others raised the point that they viewed the application of a higher fee for an expedited service, that would be based on taking account of the fact the product/service has been already authorised in another jurisdiction, would be unreasonable as a UK regulator may in practice may need to spend less time on scrutiny in light of a prior international authorisation.

67. Respondents who thought the International Fast-Track system would not speed up regulatory approvals cited examples of existing systems which they felt would not obviously benefit from a novel system to expedite international approvals, and in some cases may even be disrupted. Some respondents in opposition to an international fast-track also raised distributional concerns. This was reflected in the concern that an international fast track may make it easier for larger multinational foreign companies to compete with, and potentially out-compete, smaller UK companies by easing market entry which they say would reduce , transaction costs and thereby have a negative impact UK economic growth.

68. A number of respondents in favour of an International Fast-Track noted that an expedited regulatory process could help smaller businesses and the UK to be competitive in the international market by decreasing regulatory approval times. A majority of respondents of those in favour added that they would welcome more information about how the International Fast Track would operate, with positive responses qualifying that precautions would need to be taken to protect

smaller businesses from burdensome administrative costs, processing fees and competitive disadvantages from larger organisations who were more readily able to access UK markets.

Government Response

69. The Government recognises the concerns raised by respondents and will work closely with regulators and businesses to shape any future policy in this area and mitigate any potential barriers or disadvantages.

70. The Government is already working with and will continue to work with regulators and stakeholders more widely to ensure a comprehensive understanding of areas in which an international fast-track would be beneficial. The Government would like to understand where the development of an international fast-track would and would not be appropriate, including where is it possible to speed up approval times without negatively impacting upon consumer or environmental protections.

71. The Government has also noted the points raised surrounding potential distributional impacts of an international fast-track. The Government understands that an international fast-track may lead to increased regulatory approval of international organisations. This could lead to increased competition in certain markets with positive economic impacts for UK consumers. Similarly increased competition may require some businesses to adapt their models to ensure competitiveness. The Government is keen to ensure that any implementation of an international fast-track does not disadvantage UK SME's or startups and benefits consumers. The Government has decided to retain the wording in the statutory guidance that encourages regulators to consider whether there would be merit in offering international fast-track services. However, recognising the further work required to understand the potential opportunities and the practical hurdles, and any risks, the Department for Business and Trade has decided to convene a Fast-Track Working Group which it will invite regulators to participate in.

Q.9 - What is your view on the proposed Targets for Regulatory Approvals as outlined within this consultation document?

- What impact would you see from the enactment of this?

72. Of the responses to this question 43.5% of respondents were unsure in their response, with 30% of responses opposing the proposed targets and 26.5% of respondents in favour of targets for regulatory approvals as outlined within the

Regulating for Growth consultation document. Many respondents identified similar points as to their returns on comparative metrics (Q7) whereby they saw limitations in any attempt to compare regulators with entirely different sectors and remits. This may reflect a misunderstanding within the consultation questions, as the Government set out in the accompanying consultation document that individual regulators would set targets, as opposed to a central timeframe for all regulators set by government.

73. Those who were unsure of the benefits of targets were keen to emphasise that any targets must not lead to declining quality or thoroughness in regulatory approval processes. Many were concerned that regulatory targets could lead to a reduction in business confidence in regulatory decision-making and were keen to emphasise that, were Targets for Regulatory Approvals to go ahead, regulators' decision-making and speed must not come at the cost of rigour or diligence. Separately multiple respondents raised the point that many regulators already have KPIs against which they report, and therefore questioned the value of developing Growth Duty specific measures.

74. Those in opposition to targets were mostly of the view that speed in making regulatory decisions was unlikely to be a meaningful metric for assessing regulators' effectiveness or improvement over time. Further concerns were raised that, by setting targets, regulators may skew their behaviour to meet targets thereby negatively impacting regulatory outcomes. Instead, those who opposed this question raised the suggestion of more subjective forms of engagement, whereby regulators engage in a deliberative process of engagement and consultation that accompany decisions.

75. Of the respondents in support of targets, clear advantages were articulated by the majority of responses. In particular respondents suggested that regulatory approvals currently take too long and that, by setting public approval targets, there would be an increase in speedy decision-making by regulators thereby reducing inefficiencies in the market. Furthermore, respondents saw that by setting targets businesses would obtain clarity on approval timelines to expect and enable public transparency on approval timeframes by focussing regulators on achieving the desired target outcomes.

Government Response

76. The Government has noted the concerns raised by respondents relating to performance targets not being comparable between regulators. However, the Government is keen to emphasise that a one size performance target across regulators is not our intention. As set out in the consultation the Government invites regulators to consider *the merits of setting targets (where permitted by law) on the length of time in which they expect to make a decision on business*

applications, for approval. These time targets would be at the discretion of regulators and should be publicly communicated. The Government remains committed to the principle that regulators should determine their own targets for their sectors, and that there should not be one single target set centrally.

77. The Government agreed with the concern raised by respondents that targets must not lead to a decline in quality or thoroughness of the regulatory approval processes and will work with regulators to ensure that any targets set are measurable in a manner that does not displace resource from central approval processes.

78. The Government wants to work with regulators to understand what KPIs and targets they already have in place before determining an approach to targets for regulatory approvals. The Government is currently working with stakeholders to develop a Regulatory Performance Framework for publication in the near future that will specify an approach to quantitative and qualitative reporting. The Government will further consider where and how the responses to this consultation can contribute to this piece of work.

Q.10 - What is your view on the proposed Productivity Lock as outlined in this consultation document?

- What impact would you see from enactment of this?

79. Respondents to this question were largely opposed to or unsure about the Productivity Lock as outlined in the consultation. Concerns centred on the applicability, unintended consequences and the resourcing within regulators to implement effectively.

80. Those in support identified that the Productivity Lock is something that all regulators should already be applying and that regulators should have a strong incentive to promote efficiency that matches the wider economy. Year on year improvements would demonstrate to investors and internationally that the UK is a growth market that brings innovations to market. Respondents raised that they could see merit in encouraging regulators to keep pace with economic growth but highlighted that regulators will need time to report on targets and ensure the right protections are in place to ensure quality decisions are maintained. Respondents highlighted the importance of regulators following transparency and efficiency principles and reporting on these requirements.

81. Respondents who were opposed or unsure raised concern about perverse incentives that the Productivity Lock could encourage reducing decision times at the expense of quality or best outcome, with unsuitable applications being approved. The central concern was that regulators would need to ensure there is

not a decline in the quality or thoroughness in processes. Respondents identified that investors and businesses welcome the engagement and consultation that frequently accompany decisions. Although this can extend the timeframes for decision timeframes, engagement is broadly positive. Faster decisions in these circumstances 'might only provide limited benefit to businesses. It was noted that it is important that businesses can retain a high level of confidence in regulators' decision-making, and engagement and consultation was noted as an element of retaining this trust.

82. The impact on operations and regulator resources was another key concern raised. It was highlighted that the approach does not consider the resource challenges regulators face and the impact a target would place on resourcing considerations.

83. Separate concerns focused on the measures of national productivity which can change yearly and vary between industries. It was highlighted that UK productivity levels are low and that decision-making speed is unlikely to have a significant impact on growth. It was suggested therefore that the speed of decision-making is not likely to be a meaningful metric for comparatively assessing the effectiveness of regulators. Furthermore, given the range of sectors covered by regulators it was suggested that a uniform metric would not be appropriate for any comparison across regulators. Finally, there were also concerns raised that a productivity lock would prioritise speed of approval and decision-making over wider social and environmental benefits and needs.

84. Respondents suggested that measures such as efficiency or subjective performance review or indicative targets would be a better measure and that regulators should not be rushed to meet a target. Preferences expressed by respondents was to have consistency in decision-making within an expected period of time. It was also highlighted that regulators do not just conduct approvals and approvals represent a small proportion of their overall activity. Therefore, respondents raised that a more strategic approach to assess planning decisions could contribute to economic growth.

Government Response

85. The Government sees that the regulatory approval process in many ways reflects a regulator's "service" to both businesses, and to society. The Government is committed to its ambition to improve public sector productivity and improving the speed of regulatory approvals offers an opportunity to do this. A quicker service from regulators, whilst maintaining rigour, will support businesses and deliver higher economic growth.

86. The Government has considered the various concerns raised on the Productivity Lock. The Government agrees that it does not want to set perverse incentives on regulators and set too high expectations, however the Government considers that expecting year-on-year improvements in line with trend economic growth is achievable and realistic. The Government wants to emphasise that the intention behind the Productivity Lock is to encourage efficiencies and improvements to be made to regulator procedures and processes on an ongoing basis, and not to require additional resourcing.

87. The Government intends to keep the current wording on the Productivity Lock in the statutory guidance. The Government is also currently working with stakeholders to develop a Regulatory Performance Framework for publication in the near future that will specify an approach to performance monitoring, and the Government will further consider where and how the responses to this consultation can contribute to this piece of work and what considerations should be included within any future monitoring framework.

Q.11 - In your view what would be the best way to monitor the regulatory application of the Growth Duty?

- Who would best undertake this role?

- What would be the most effective comparative metrics to assess performance against the Growth Duty?

88. There were a wide range of responses to this question with a number of respondents treating the question as an extension of Q.7 and Q.9 with a focus on the challenges of comparative metrics. The discussions on comparative metrics have been clearly assessed in the preceding questions and therefore this section will focus on the specifics of this question only.

89. Responses to who would best undertake a monitoring function were varied but contained a central theme of independence. Many respondents suggested that the Government should be the overarching monitor, with further respondents suggesting the Department for Business and Trade, Parliament, the Lords Industry and Regulators Committee, HM Treasury, and the National Audit Office as possible monitors of regulatory performance.

90. Across all suggestions there was the common theme of an independent overarching body that would take responsibility for monitoring application of the Growth Duty. There was a clear call for a single body to ensure consistent levels of accountability.

91. However, there was wide variation in the suggestions of the mechanisms of monitoring with respondents suggesting the Regulators' Code as the basis for a monitoring mechanism, annual reviews by the Government, and benchmarked performance against international comparators as the most frequent suggestions raised.

92. Many responses were very specific in their suggestions and for conciseness are not spelled out in this response, these will however inform ongoing work on how the Growth Duty will be monitored and be factored into ongoing policy work.

Government Response

93. The Government is committed to supporting regulators in delivering economic growth. Monitoring of regulators' performance in delivering the Growth Duty will allow for a comparison between regulators of their behaviour, as judged against this guidance, and as measured in a qualitative and quantitative way. This will enable examples of best practise to be identified and opportunities for improvement found.

94. The Smarter Regulation Call for Evidence that ran from the 17th October 2023 – 17th January 2024 also received responses on this topic. Alongside the responses to this consultation, the Government will consider the approach to monitoring application of the Growth Duty and the performance of regulators more generally and set out further information on our plans in this area in due course.

Q.12 - Do you have anything else you would like to raise that is relevant to this consultation?

95. Not all consultation responses included a response to question 12. The responses that were received covered a variety of themes including the definition of economic growth, balancing of duties, barriers to growth, regulator resourcing and environmental sustainability.

96. Some respondents commented on the definition of Growth. It was suggested that regulators already have requirements to consider businesses in their sectors and therefore that the Growth Duty should focus on defining economic growth against impact on GDP per capita which would lead to a specific focus on GDP. On the other hand, there were calls for Government to adopt the view of economic growth with the inclusion of social elements of sustainability included. There was also a call for regulators to have their own Green Duty to mandate on towards positive environmental outcomes.

97. There was the view that regulators must have clear strategic steers and backing from Government and that a strategic regulatory framework would be set out the long- term vision for regulated sectors. Also, questions were asked as to how this would deliver for environmental targets and outcomes. It was also noted there needs to be greater join-up between regulators and Government departments. Similarly, it was suggested it would be useful for the Government to consider ways how rapid legislative changes could address unnecessary or disproportionate barriers to growth that are in legislation.

98. A concern was shared that balancing duties could lead to the erosion of standards. Views were also shared that in the case of major infrastructure the balancing of duties was seen to have led to the prioritisation of the growth at the expense of environmental protection. There was a perception that the guidance reinforced decision-making bias in favour of growth. It was further suggested that all regulatory mechanisms need to consider building in environmental sustainability and nature recovery at the beginning of process to improve timescales for delivery to help counter the perception that environmental concerns hold up development.

Government Response

99. As mentioned in response to question one, although some respondents called for a greater degree of environmental sustainability to be included within the Growth Duty statutory guidance, the Government does not agree that this guidance is the right vehicle to contain this level of environmental detail. Many regulators have specific environmental duties that set out the detail of their obligations including further detail in the Growth Duty statutory guidance may add confusion, ambiguity or suggest an unintended hierarchy of existing duties. The Growth Duty guidance also clearly recognises that environmental sustainability is one of seven named drivers of growth.

100. The Government agrees with the importance of clear strategic steers from Government. In October 2023 Government launched a Call for Evidence on the regulatory landscape to understand what works well and what could be improved in how regulators operate. The call for evidence gave respondents an opportunity to share information with us to further understand the detail of any regulatory challenges, providing an evidence base from which to identify improvements to the regulatory landscape that can be made over the short and longer term.

101. The Government understands that regulators have other duties or objectives. The balancing of duties and competing pressures will be determined by a regulator with an understanding of what approach might best support sustainable growth. There may be instances where a regulator has considered

growth and reached a view that other duties or objectivities may take precedence. Regulators are independent and are experienced and best placed to make their own decisions on balancing duties.

Overall Conclusion

102. As announced by the Chancellor at the Autumn Budget on the 22nd of November, the Government will be taking forward the plan to extend the Growth Duty to Ofcom, Ofgem and Ofwat, with effect from April 2024, subject to Parliamentary approval of the necessary secondary legislation.

103. The Government will also be proceeding with the refreshed statutory guidance as drafted for the Regulating for Growth consultation. Minor changes have been made to the guidance, and the final draft guidance is on the government response page pending parliamentary approval.

104. The UK is home to world class regulators who protect consumers, promote competition, and help drive forward progress in their sectors. The Growth Duty provides clarification for regulators that they need to consider growth as part of their duties.

105. The Growth Duty Guidance sets out how regulators in scope of the Growth Duty can better support sustainable economic growth. It assists regulators in discharging their responsibilities under the Growth Duty as well as providing clarity to stakeholders as to what they should expect from of regulators.

106. Regulators play a vital role in shaping the UK economy through the way in which they regulate. Regulators set strategies and make decisions that significantly affect the types, the scale and the locations of economic activity in important sectors. Regulators can improve the attractiveness of their sector to investors, bringing new products to market by encouraging innovation and ensuring competition to deliver the best service to consumers. It is a regulator’s responsibility to design rules that set a level playing field between businesses and to ensure adequate protections for consumers and the environment. The regulations and licence conditions established by regulators set out the frameworks for businesses to be able to buy and sell in any given sector.

107. We start from a strong foundation. Our regulators are already recognised worldwide as commanding respect for their technical expertise and diligent enforcement of reliable trustworthy regimes. However, there is an opportunity for regulators to foster economic growth, become more speedy and agile in decision-making and forward thinking to anticipate and facilitate change in response to new technologies or business models. Making the right decisions, alongside setting the right strategy and taking a proportionate approach is vital.

108. The statutory guidance sets out how the regulators in scope of the Growth Duty can better support sustainable economic growth through the decisions they take and through the way that they regulate.

109. The Government will also set out a Regulatory Performance Framework for publication in the near future that will specify an approach to performance reporting. The Government is currently working with stakeholders to develop this piece of work and will consider where and how the responses to this consultation calling for quantitative and qualitative growth metrics can contribute to and inform this piece of work.

Next Steps

110. The Government would like to thank all the respondents who took the time to share their views and advice on the issues raised in this consultation.

111. The Government intends to lay the relevant statutory instruments to bring the regulators Ofgem, Ofwat and Ofcom and their regulatory functions into scope of the Growth Duty measure in early 2024.

112. The Government intends to lay the refreshed Growth Duty Statutory Guidance for parliamentary approval alongside the extension of the Growth Duty SI.

113. Subject to parliamentary approval the extension and updated Growth Duty Statutory Guidance will come into force in Spring 2024.

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