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<b>Report To:</b>	<b>Education and Communities Committee</b>	<b>Date:</b>	<b>30 October 2012</b>
<b>Report By:</b>	<b>Corporate Director Education, Communities &amp; Organisational Development</b>	<b>Report No:</b>	<b>EDUCOM/35/12/MM</b>
<b>Contact Officer:</b>	<b>Martin McNab</b>	<b>Contact No:</b>	<b>01475 714246</b>
<b>Subject:</b>	<b>Better Regulation Consultation</b>		

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## 1.0 PURPOSE

- 1.1 To advise Committee of Inverclyde Council's response to the Scottish Government's Consultation on Proposals for a Better Regulation Bill.

## 2.0 SUMMARY

- 2.1 The Scottish Government brought forward a consultation on proposals for a better regulation bill on 2 August 2012. The consultation period ended on 26 October 2012. Unfortunately these dates did not allow for committee approval to be sought for the response however the Council's response is appended for noting.
- 2.2 The consultation is fairly wide ranging covering regulatory activity, the bulk of which is carried out by Safer & Inclusive Communities although it does touch on Civic Government licensing. The consultation also covers some financial issues such as prompt payment and planning. Comments have been received from the Development and Building Standards Manager for the planning aspects. The Chief Financial Officer is of the view that the financial aspects have little impact on Inverclyde Council, the vast majority of invoices being paid within the timescales proposed.
- 2.3 The response to the consultation is appended. In general this is a technical consultation, however the proposal to impose a duty on local authorities to promote economic and business growth in regulatory activity would have significant impact on regulatory services. Whilst it may be at first sight a very laudable suggestion the impact would be very difficult to contain in current staffing levels for regulatory services.

## 3.0 RECOMMENDATION

- 3.1 That committee notes the response to the consultation.

## **4.0 IMPLICATIONS**

### **4.1 Financial Implications**

Precise financial implications will only be clear should these proposals progress to legislation.

### **4.2 Legal Implications**

Precise legal implications will only be clear should these proposals progress to legislation.

### **4.3 Human Resources Implications**

Precise implications for staffing will only be clear should these proposals progress to legislation.

### **4.4 Equalities Implications**

The proposals in the consultation should have no implications for equalities.

### **4.5 Repopulation Implications**

The proposals in the consultation should have no implications for repopulation.

## **5.0 LIST OF BACKGROUND PAPERS**

### **5.1 Scottish Government Consultation on Better Regulation.**

# 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

Organisation Name

Inverclyde Council

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

McNab

Forename

Martin

### 2. Postal Address

Safer & Inclusive Communities

40 West Stewart Street, Greenock

Postcode PA15 1YA

Phone 01475 714246

Email

### 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

National standards handed down from above seldom bring about the consistency sought unless they are incredibly detailed. The code of practice on Food Law Enforcement produced by the FSA for example is an incredibly detailed set of standards and supporting guidance which has probably brought about an increase in consistency by that very detail. It is however a very cumbersome document with revisions being slow and hard to agree. It is likely that any national standards which are detailed enough to prescribe the actions of regulators will suffer from the same problems. The FSA's guidance on Cross Contamination, which is cited in the consultation, was produced by a national regulator for enforcing authorities and businesses. This has proved to be an intensely problematic piece of "national" guidance which has required intensive effort from enforcing authorities acting together to agree something approaching a common and consistent approach to enforcement. It has shown however that there is a great desire amongst Scottish local authorities to act consistently which is further evidenced by the fact that it was Scottish enforcers who raised the issue of the anomalous treatment of mobile traders. Inverclyde Council is firmly of the view that further national standards may have the opposite effect to that sought and that existing liaison channels are actually very effective. The FSB report may cite difficulties with local regulation but, as is usually the case when this issue is raised, it is extremely light on statistics or times. It should also be noted that the bulk of the issues raised relate to the licensing regime rather than to general enforcement. The reprinting of a "case study" direct from an industry document with no comment whatsoever to give this context is particularly unhelpful.

Question 2 - Should national standards be mandatory in future?

Yes  No

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

Although in the opinion of Inverclyde Council mandatory national standards are not the answer to this perceived problem.

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

No Comments.

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

Comments

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

There are already good liaison mechanisms both between regulators and with industry representatives, for example SFELC, which perform a valuable role in promoting consistency.

### **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

At first sight this seems a very laudable objective however the consultation quite rightly points out that "the Government is keen to avoid new reporting or other requirements which may divert time or energy from front-line regulatory duties". A new reporting requirement such as this is particularly onerous for small authorities like Inverclyde. We operate a number of small teams carrying out a range of statutory enforcement duties. There is very little potential officer or management time available for new duties such as that proposed. Although we respond as a small council we strongly suspect that this will be the case across the board particularly in an era of shrinking budgets and resources.

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

Comments

### 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

Formal sunseting is probably not helpful except where new regulation is clearly put in place to address a time limited problem. A mandatory review mechanism for all new legislation with legislation being repealed or amended if it is no longer required or not achieving its desired outcomes would be far more useful. It should be borne in mind that a proportion of devolved legislation implements the requirements of EU directives and there is therefore not the scope to sunset the legislation without renegotiation of the directive.

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

Legislation implementing external requirements e.g. of EU directives could not be sunsetted.

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

Comments

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.

Comments

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

Comments

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

Yes  No

Comments

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

Comments

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

### 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

It would be helpful for both businesses and enforcers to introduce common commencement dates. This is currently a particular issue with complex legislation with sections being introduced by multiple commencement orders. If there were common commencement dates it should be possible to produce reports detailing all legislation coming into force on a particular date. This would be helpful to both regulators and those whose activities are regulated.

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

Although our response favours b) above this is not strictly speaking what is required to resolve this problem. The consultation depicts this issue as being about inconsistent enforcement and, whilst there may have been issues giving rise to the initial concerns, it must be made clear that the regulatory constraints leading to multiple inspections of mobile food vans were raised by local authority regulators through SFELC. It seems to be par for the course in any discourse about better regulation to print industry “case studies” with little attempt to put these in context. This is particularly unhelpful where the regulators are attempting to resolve the issue through the co-ordinating body. The root of the issue here is the requirement under the Civic Government (Scotland) Act 1982 for authorities to refuse a licence if they have not issued a Certificate of Compliance. Amend this requirement to require a licensing authority to refuse a Street Trading Licence if the operator is not in possession of a valid Certificate of Compliance from the local authority in which the vehicle is based and the issue will largely be resolved. Contrary to the impression given in this part of the consultation local authorities are generally keen to work together to resolve any such issues.

### **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.

The persistence in measuring the performance of a planning authority based on the overall time taken to determine a planning application is flawed. Planning application performance is not the sole domain of the planning authority; applicants, agents and statutory consultees all have an input and a time based performance measure is a reflection of all those involved in the process, not only the planning authority. Inverclyde Council presents no objection to linking fees to performance, but only if the performance measures are factual and not subjective and are limited to matters that are solely within the control of the authority itself.

### **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?

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

Comments

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

Comments

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

Yes  No

Inverclyde Council supports a consistent approach to ensure that the procedure for review should be made the same across all relevant legislation.

### Other issues

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

If the bill follows the proposals it will largely be a series of facile measures aimed at allowing something to be seen to have been done about issues of dubious merit. The main foreseeable costs will be in the development of endless national standards requiring input from government, enforcers and industry for debatable gains.

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

Comments

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.

Comments

### **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

It is revealing that all the costs cited in Annex a for 1. Define and Implement national standards and systems against option 1 are to do with licensing forms. Surely in that case this could be addressed as an individual issue rather than this all encompassing bill.

**Better Regulation:**

**Consultation on Proposals for a  
Better Regulation Bill**

**BETTER REGULATION:  
CONSULTATION ON PROPOSALS FOR A  
BETTER REGULATION BILL**

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## I - MINISTERIAL FOREWORD



The Purpose of the Scottish Government is to make Scotland a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth. I am convinced that better regulation has an important role to play in achieving a more successful and sustainable Scotland and delivering a favourable business environment in which companies can grow and flourish.

That view reflects what I am told when I visit businesses and business organisations across Scotland in my role as Minister for Energy, Enterprise and Tourism.

Surveys undertaken by the Federation of Small Businesses (Scotland) confirm that

- 29% of members in Scotland identify regulation as a barrier to business success;
- 62% report that costs of complying with regulation have risen;
- there are variations in costs and approach between regulators in different parts of the country.

I strongly believe that while regulation is necessary to protect the environment, consumers, people and business, our approach must also ensure that regulation is necessary and effective and meets the principles of better regulation – namely that it is transparent, proportionate, consistent, accountable and targeted only where needed. Regulation should deliver intended benefits and government, regulators and business all have a role to play in helping to achieve this and creating a culture where proportionate, effective and consistent regulation is the norm.

This government has a record of delivering better regulation. I know from personal experience that better regulation can make a real difference. As Minister for Community Safety I oversaw a review of fire safety regulations in the bed and breakfast sector of our tourism industry. The sector was unhappy with what it saw as over the top fire safety measures that were based on complex guidance. A working party simplified the requirements and reduced the average cost of compliance to business by over 90% while maintaining the necessary high safety standards.

The proposed Better Regulation Bill will focus on similar opportunities to improve the way regulations are applied in practice across Scotland in order to concurrently support business and economic activity and deliver societal or environmental benefits. The Scottish Government is committed to doing all that we can with powers we have to support businesses, jobs and communities.

I am grateful to the Federation of Small Businesses, the Institute of Directors, the Regulatory Review Group, COSLA, and others that have through informal discussion helped influence policy thinking. I look forward to hearing your views on the questions posed in this consultation.

**Fergus Ewing MSP**  
Minister for Energy, Enterprise and Tourism

## II - CONSULTATION ARRANGEMENTS

### Consultation on Better Regulation Bill

We are inviting written responses on this consultation by 26 October 2012  
**Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to the Scottish Government's Better Regulation team:**



Sandra Reid or Linda Green  
Better Regulation and Industry Engagement  
Scottish Government  
6<sup>th</sup> Floor, 5 Atlantic Quay  
150 Broomielaw  
Glasgow  
G2 8LU



Tel: 0300 244 1141  
Tel: 0300 244 1153



Email: [betterregulationconsultation@scotland.gsi.gov.uk](mailto:betterregulationconsultation@scotland.gsi.gov.uk)

We would be grateful if you would use the consultation questionnaire contained in Annex B. However, responses in any format are welcome – please clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid collation of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government now has an email alert system for consultations <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). This system complements, but in no way replaces Scottish Government distribution lists. It is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form (Annex B) which forms part of the consultation questionnaire as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002. We would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available on the Scottish Government consultation web pages by **23 November 2012**.

### **What happens next?**

Following the closing date, all responses will be analysed and considered, along with any other available evidence from individuals, organisations and other interested parties. We aim to issue a report on this consultation **by the end of 2012**. The report will be posted on the Scottish Government Better Regulation webpages. Once this is done, we will seek to develop and implement a Better Regulation Bill.

### **Comments**

If you have any comments about how this consultation exercise has been conducted, please send them to the Better Regulation team. We welcome your views on any or all of the issues covered by this paper.

### III - EXECUTIVE SUMMARY

Better regulation is crucial to delivering sustainable economic growth and providing a favourable business environment in which companies can grow and flourish. The Scottish Government is wholly committed to better regulation and the 2011 Programme for Government signalled the Scottish Government's intention to develop and bring forward a Better Regulation Bill in 2012-13. It stated that the Bill would aim "to improve further the way regulations are applied in practice across Scotland, by better defining national expectations and standards and the context for local variations". This consultation sets out proposals for potential elements of the proposed Better Regulation Bill.

The core proposal is for new powers enabling duties to be placed on local authorities and other regulators to implement national regulation systems and policies except where a local authority makes a compelling case that local circumstances merit a variation. Such an approach would deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstance.

Over the last few years progress has been achieved in requiring regulators to have regard to economic and business considerations and the Scottish Government wants to continue to promote a broad and deep involvement amongst Scottish regulators in achieving Sustainable Economic Growth. To this end, consideration is being given to requiring regulators to consider (and report on) the impact of their regulatory activity on business and/or respecting the principles of better regulation.

Review measures and sunseting ensures regulation is kept up to date, is effective and removes that which is no longer needed. Such a policy could provide a systematic vehicle for looking at whether regulation is still required after a period of time and this consultation seeks views on this. Views are also sought on the introduction of common commencement dates for Scottish regulations impacting on business.

Another issue affecting business is cash flow. Cash flow problems can put at risk otherwise viable companies and while the public sector continues to support and improve prompt payment of invoices - the Scottish Government makes more than 98% of payments within 10 days - anecdotal evidence suggest that business to business performance is not following the same trend. Enforcement of European legislation on late payments, fixing payment periods and allowing business to claim interest, has proved difficult and views are being sought on measures which might help change the business culture, further encourage prompt payment and thereby support business competitiveness.

Consistency is one of the key principles of better regulation on which the development and implementation of regulation should be based. As a result of issues around inconsistent application of food safety standards in respect of a street trading vehicle operating in different local authority areas, it is proposed that a consistent national approach is achieved by requiring all Scottish food authorities to have regard to national standards and accept certificates of compliance issued by

other authorities. By removing duplication and delivering consistency, time savings for both business and local authorities would be achieved.

Finally, the Scottish Government has announced a package of proposals to help the planning system reach its potential in supporting economic recovery. While the emphasis is on non legislative measures, some legislative changes may be required. New powers are proposed, for example, to link the level of planning fee payable to an assessment of performance. This document seeks views on the most effective mechanism for introducing a link between fees and performance. It also seeks views on review mechanisms for challenging Scottish Ministers' decisions on infrastructure projects.

## IV - INTRODUCTION

1. The 2011 Programme for Government signalled the Scottish Government's intention to develop and bring forward a 'Better Regulation Bill' in 2012-13. It stated that the Bill would aim "to improve further the way regulations are applied in practice across Scotland, by better defining national expectations and standards and the context for local variations". The detail of the Bill will be developed through a dialogue with national and local regulators, COSLA and local authorities and the business community. The core proposal would establish powers enabling a new duty on local authorities and other regulators to implement national regulation systems and policies as approved by Government/Parliament except where a local authority makes a compelling case to Ministers that local circumstances merit a variation. With a focus on process rather than decision making, this will deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstance. It will however mean that Government will have to spend more time developing detailed models as part of any such legislative process in the future.

2. This consultation paper sets out wider and more detailed proposals for potential elements of a Better Regulation Bill. These have been developed through informal preliminary dialogue within Government and with national and local regulators, COSLA and the business community as represented by the independent, business-led Regulatory Review Group. We welcome their individual and collective contribution to this ongoing policy development process, and look forward to receiving their considered response to the questions now posed. Those preliminary discussions identified some areas of consensus and some more challenging issues, and were very valuable in shaping the contents of this document.

### **Policy Context**

3. The current business and economic context is well-documented. Following the deepest global recession in over 50 years the 2011 Government Economic Strategy confirmed that the Purpose of the Scottish Government would continue to be to make Scotland a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth. It also included a commitment to improve further the efficiency of the public sector, including a focus on better regulation.

4. Governments across the globe have well-established better regulation programmes, involving measures to reduce the stock of unused or out of date legislation, improve the way new legislation is developed and change the regulatory culture which shapes the way businesses are regulated in practice. Laws and regulations play an essential role in fostering a prosperous, fair and safe society. They support economic development while also providing essential rights and protections for citizens, consumers, workers, businesses, communities and the environment. However, regulations carry costs, and sometimes unintended consequences, as well as bringing benefits. Managing the balance between the two is key to delivering the goal of increased and sustainable economic growth, that is also fair, equitable and safe. So too is effective implementation in a complex

landscape. 'Multi-level governance' essentially means that businesses in Scotland have to comply with regulations from EU, UK and Scottish Governments and local authorities.

5. An overview<sup>1</sup> of the **European Union** rationale for and approach to better regulation confirms that EU Member States have agreed to work together through common policies to achieve common goals that require "*proposals to be proportionate to the problem at hand, and for actions to be taken at the right level: the principles of 'proportionality' and 'subsidiarity'*"<sup>2</sup> — *two principles cemented in the EU Treaty*". In addition the established EU Better Regulation programme, now referred to as smart regulation, includes a mix of conventional actions designed to improve the stock and flow of new legislation:

- introducing a system for assessing the impact and improving the design of major Commission proposals; factoring consultation into all Commission initiatives;
- implementing a programme of simplification of existing legislation;
- looking at alternatives to laws and regulations (such as self-regulation, or co-regulation by the legislator and interested parties).

6. Most of the regulations which impact on businesses in Scotland - including employment, tax, company law, competition and trading standards, and health and safety – are currently reserved to the **UK Government**. A recent OECD Review of the UK's Better Regulation policy implementation<sup>3</sup> states that: *The vigour and breadth of the United Kingdom's Better Regulation policies are impressive, which makes it well placed to address complex regulatory challenges such as climate change and the regulatory management issues flowing from the financial crisis. An effective balance, rare in Europe, has been achieved between policies to address both the stock and the flow of regulations. Progress has been especially significant as regards ex ante impact assessment and enforcement which is increasingly risk based. The United Kingdom is also very active in promoting the development of EU level Better Regulation. Policy is business-oriented and initiatives for citizens and frontline public sector workers could usefully be reinforced. Transparency is generally strong, and the United Kingdom has a well-established culture of open consultations, supported by a code of good practice. The gap between principles of good consultation and processes as experienced by stakeholders in practice needs continuing attention. The development of a more integrated and strategic vision for the longer term would be helpful, not least to confirm priorities and target remaining challenges.*

7. That said, there have been very significant developments associated with the UK Coalition Government's focus on *reducing regulation*, notably in terms of progressing elements of the published "The Coalition: our programme for government" document which includes the following commitments:

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<sup>1</sup> see [http://ec.europa.eu/governance/better\\_regulation/brochure\\_en.htm](http://ec.europa.eu/governance/better_regulation/brochure_en.htm)

<sup>2</sup> The principles of proportionality and subsidiarity limit the EU to doing what is necessary to achieve the objectives of the Treaty and only acting if objectives cannot be sufficient achieved by Member States, either at central, regional or local level.

<sup>3</sup> <http://www.oecd.org/dataoecd/61/60/44912018.pdf>

- We will cut red tape by introducing a 'one-in, one-out' rule whereby no new regulation is brought in without other regulation being cut by a greater amount.
- We will end the culture of 'tick-box' regulation, and instead target inspections on high-risk organisations through co-regulation and improving professional standards.
- We will impose 'sunset clauses' on regulations and regulators to ensure that the need for each regulation is regularly reviewed.
- We will give the public the opportunity to challenge the worst regulations.

8. A key feature of the UK Government's deregulatory approach has been the introduction of the Red Tape Challenge, which is using crowd-sourcing to rapidly review the perceived value of 21,000 existing regulations on a thematic basis. The presumption is that regulations will be abolished unless the consultation process identifies a compelling case for retention. The UK Government's update on progress One-in, One-out: Third Statement of New Regulation states that "We have also deregulated more than we have regulated – generating £16.44 million savings to business and we expect more deregulation to result from the Red Tape Challenge in due course".

9. In contrast, the **Scottish Government** remains wholly committed to better regulation as a means of supporting business and economic growth. The distinctive features of better regulation policy development and implementation here have been to:

- avoid approaches which involve over-complicated cost models or specific burden reduction targets, on the grounds that they would be disproportionate and ineffective;
- adopt 5 key principles requiring any regulation, where needed, to be: *transparent, accountable, proportionate, consistent, and targeted*;
- apply a risk-based approach to regulation;
- undertake a range of activity to tackle the stock, flow and culture of regulation, working collaboratively with business, regulators and other stakeholders and supported in particular by the independent, business-led Regulatory Review Group, to address specific regulatory problems identified by business.

10. The range and scope of devolved regulatory activities which impact on business is best demonstrated by listing Scottish regulators (excepting those with a public sector focus):

- Scottish Environment Protection Agency
- Scottish Natural Heritage
- Social Care and Social Work Improvement Scotland
- Historic Scotland
- The Food Standards Agency (Scotland)
- Office of the Scottish Charities Regulator
- Accountant in Bankruptcy
- The Scottish Housing Regulator
- VisitScotland
- Marine Scotland
- Transport Scotland

- Local Authorities

Some of these regulators, Local Authorities and SEPA in particular, have a complex regulatory role which includes reserved, devolved and local regulatory issues.

11. The proposed Better Regulation Bill will focus on opportunities to improve the way regulations are applied in practice across Scotland in order to support concurrently business and economic activity and deliver societal or environmental benefits.

## V – CONSULTATION

12. This chapter outlines specific proposals which may, subject to the response to this consultation, feature in the proposed Better Regulation Bill expected to be laid in the Scottish Parliament during the current parliamentary session.

### Defining and implementing national standards and systems

13. The core proposition for the proposed Bill is that the Scottish Government should take new enabling powers to impose duties on local authorities and other regulators to implement national regulation systems and policies as approved by Government/Parliament *except* where the regulator makes a compelling case to Ministers that local circumstances merit a variation. This proposal emerged concurrently from two different yet substantive sources in 2010-11.

14. In 2010 COSLA's Regulatory Forum initiated a scoping exercise involving five practitioner working groups which were tasked with looking at the key challenges facing local authority regulatory services, including building control, environmental health and trading standards. The conclusions and recommendations of the working group focused on consistency stated that:

- *Consistency where appropriate is desirable from both the perspective of customers, in terms of clarity and ease of use, but also from the perspective of practitioners within Local Authorities from a best practice and resource utilisation standpoint.*
- *Consistency though should be applied primarily to process leading to the decision and not the level of decision making which still should be made at the point of greatest effectiveness to the outcome of legislation.*
- *..... a solution will require*
  - a) *a change in the way legislation is processed to a Scotland corporate presumption on legislation with a Scotland wide remit in terms of process.*
  - b) *the formation of 'centres of excellence' for each regulatory service combining practitioner bodies and lead policy officials on that area from national Government.*
  - c) *Scottish Government taking the lead where appropriate on the introduction of single IT systems which allow all parties to collect and share information sensibly and effectively.*
- *Resource allocation and capacity can be critical in these regulatory areas so ensuring sufficient resource is available to deliver the above is key and should be part of a wider policy of experienced based shared services or part of wider use of national process across Local Authorities. Where Government requires minimum standards of service then there may also need to be a minimum resource level to meet that requirement.*

15. The Federation of Small Businesses (Scotland) (FSB) 2011 Election manifesto "*The Journey back - how small businesses can drive the recovery*" stated

*"Businesses generally agree with the intended outcome of most regulations and recognise their potential to ensure that rogue traders and irresponsible businesses don't bring the majority of responsible enterprises into disrepute or unfairly undercut them. However, poor drafting and capricious implementation*



*of these perfectly well-intentioned regulations continue to hamper Scottish small businesses. Around 30 per cent of FSB members in Scotland have cited regulation as the biggest barrier to growth. In addition, 62 per cent of our members report that the costs of complying with regulation have increased over the past four years.*

*Recent reports on Scotland's regulatory performance (such as those published by the Scottish Government's Regulatory Review Group) have shown that regulatory bodies are not only missing opportunities for improvement but, through poor practice and a lack of understanding, are also unnecessarily hindering small businesses. Many problems stem from poorly designed primary legislation. While there is much in the Scottish Parliament's legislative process to be commended, Holyrood has become too ready to enact legislation containing high-level policy objectives, leaving details to be determined at a later date either by Ministers through subordinate legislation or by 32 different local authorities. This obviously leads to less scrutiny and, in the latter case, less consistency, less certainty and wasteful duplication. "*

16. The FSB subsequently published a paper entitled "Local regulation in Scotland – the case for change" (February 2012) which provided examples of inconsistent regulation and the impact on business. The FSB called for a new regulatory strategy that favours a standardised, national approach for any new regulation - unless there is an overwhelming case for a local approach.

Businesses experience a range of difficulties associated with local regulation including:

- a tendency to under or over-comply, due to lack of awareness or understanding of what is required;
- the cumulative impact of individual charges and fees for different licensing regimes;
- the variation in costs and approaches between councils for the same business activities such as, for example, the necessity for a street traders' licence for varying permissions required for placing tables and chairs on the pavement outside premises' and
- the vulnerability, particularly of small businesses to the judgement of individual inspectors with no perceived recourse to query negotiate or appeal.

FSB Scotland, February 2012

17. These strategic themes featured in the extensive engagement programme which underpinned the work of the (Christie) Commission on the Future Delivery of Public Services which concluded that:

*"If we are to have effective and sustainable public services capable of meeting the challenges ahead, the reform process must begin now. The principles informing this process are clear:*

- *Reforms must aim to empower individuals and communities receiving public services by involving them in the design and delivery of the services they use.*
- *Public service providers must be required to work much more closely in partnership, to integrate service provision and thus improve the outcomes they achieve.*

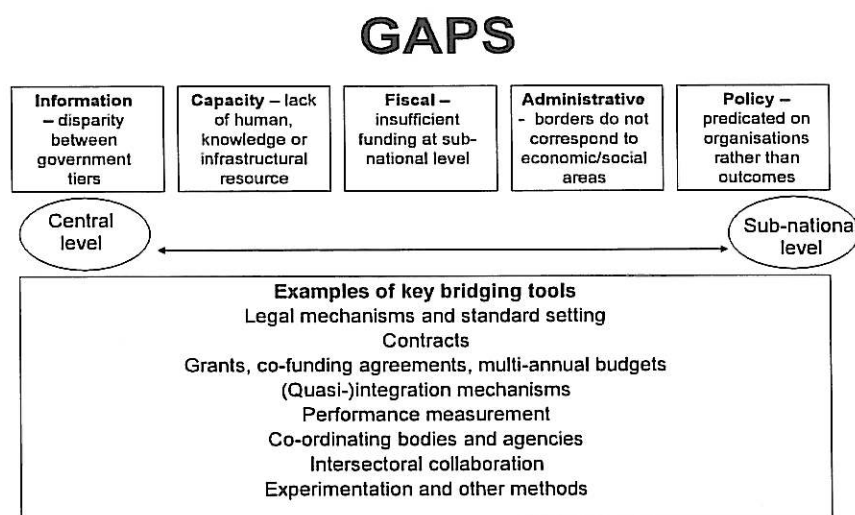
*Consultation on proposals for a Better Regulation Bill*

- *We must prioritise expenditure on public services which prevent negative outcomes from arising.*
- *And our whole system of public services - public, third and private sectors – must become more efficient by reducing duplication and sharing services wherever possible.*

*Experience tells us that all institutions and structures resist change, especially radical change. However, the scale of the challenges ahead is such that a comprehensive public service reform process must now be initiated, involving all stakeholders.”*

18. In response to the Christie Commission's recommendations, the Scottish Government gave a commitment to reform public services through: a decisive shift towards **prevention**; greater integration at a local level driven by better **partnership**; **workforce** development; and a sharper, more transparent focus on **performance**.

19. These themes also resonate with EU-level policy consideration of how best to support economic growth and societal goals in a complex and interactive Better Regulation. The OECD publication “*Multi-level Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence*” acknowledged that multi-level regulatory governance is becoming a priority in many OECD countries. A related OECD policy briefing on “*Bridging the gaps between levels of government*” (October 2009) recognised that “*it is crucial that different levels of government work together effectively, as governments are having to do more with less*”. The figure below summarises the types of strategic challenges faced by OECD members and the mechanisms adopted to address them.



20. All these factors and influences helped to shape the Scottish Government's view that there is scope to improve further the way regulations are applied in practice across Scotland by better defining national expectations and standards and the context for local variations.

21. At present, as noted by the Federation of Small Businesses, legislation framed by the Scottish Government and approved by the Scottish Parliament may require significant local decisions on implementation, as well as on specific cases.

The Regulatory Review Group's review of the Licensing (Scotland) Act 2005<sup>4</sup> found that standard forms for all councils exist only for some liquor licensing processes, and the absence of standard forms causes both applicants and the Licensing Officers difficulties and increased resource and time. Their report noted that "*Licensing Boards rightly make local decisions on license applications and changes, but we see no reason why the facts on which they base that decision cannot be drawn from standard forms used consistently across Scotland*".

22. The example above from RRG's review of the Licensing (Scotland) Act, together with those provided by the Federation of Small Businesses (and a recognition that these achieve a higher profile than examples of very good regulatory practice which are more representative of the performance of regulators in local authorities and public bodies) confirm the case for a more flexible approach to regulation in the future.

Case study from FSB Scotland's '*Local regulation in Scotland – the case for change*'

*I have had three visits from environmental health officers in as many months in three different city authorities. I run a chain of day spas and beauty salons. One council said we had to register as a food business because we serve tea and coffee to our clients. When we asked inspectors to tell us under what particular regulation they were saying this, they couldn't answer and then came back and said they were mistaken.*

*In a different council area, the environmental health officer said we needed a public entertainment licence at a cost of over £2k per annum, but again when asked under what regulation this was required they couldn't answer.*

*These visits have taken up a vast amount of management time and effort for inaccurate and misleading issues from the council officers. This does not help small businesses like ours and costs a lot of time and effort that could be used in concentrating on our business and growing employment. If officers are going out to small businesses, I think they should be provided training on dealing with small businesses and not be wasting our time with ridiculous regulation that doesn't even apply to us.*

*I wonder how many businesses they go round saying these things, who don't question the advice given and end up complying needlessly for licences or regulations that don't even apply.*

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<sup>4</sup> RRG Review of the Licensing (Scotland) Act 2005

23. The core proposal for the Better Regulation Bill is that the Scottish Government will take new powers enabling duties to be imposed, where appropriate, on local authorities and other regulators to implement national regulation systems and policies as approved by the Scottish Government and the Scottish Parliament. Key features of the proposals are that:

- national standards may not be the most appropriate solution for every regulatory issue, and there is no expectation that the powers will be applied retrospectively or as a matter of routine in future;
- where national standards are defined, individual local authorities and other regulators should have the capacity to seek Ministerial approval to vary these, not on cost grounds but in terms of social, environmental or economic considerations which are rooted in place or sector and do not perhaps align with the national perspective. They would have to present a case for variation or opt-out based on exceptional local circumstances.

24. The original premise was that decisions on any opt-out requests would rest with Scottish Ministers who would be expected to reach a view based primarily on the principles of better regulation and the national interest. That remains our preferred approach but we would also welcome views on two other options which could involve the Regulatory Review Group (RRG) in the process. The first alternative would be to require Ministers to take account of advice from the RRG in reaching a decision. The second alternative would involve passing the responsibility for such decisions from Ministers to the RRG. The potential merits of involving an independent business body in these ways are self-evident. However we have substantive concerns about the impact this would have on the RRG and the excellent work it does at present. We believe these alternative proposals would only work if the status of the group changed, and that if it became a more formal public entity it would not be able to contribute to better regulation in Scotland as at present. That does not seem consistent with the rationale for all aspects of the proposed Bill, which is to improve regulation in Scotland.

25. This approach will deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstances. It will however mean that Scottish Government will have to spend more time developing detailed regulatory models as part of any future legislative process, and do so in an inclusive multi-lateral way with the involvement and support of front-line regulators, the regulated and others.

26. The Scottish Government would therefore welcome evidence and views on:

- The case for and against the proposed enabling power.
- Whether national standards should be mandatory in future?
- Whether, as proposed, local authority or other regulators should have the capacity to seek approval to opt-out on grounds of exceptional local circumstances?
- What criteria should be used to assess any such requests for an opt-out from national standards?
- Whether on balance you favour opt-out decisions being the responsibility of a) Ministers, b) Ministers, based on advice from the Regulatory Review Group, or c) the Regulatory Review Group.

- Any specific regulations which should be candidates for new national standards in the future? And why?
- Whether on balance you favour a) the status quo, b) mandatory national standards and systems for new regulations or c) a flexible approach which includes the capacity to impose national standards and systems, where justified.
- Do you think this could be supported in non-legislative ways? If so, please explain how.

### **Duty to promote economic and business growth in regulatory activity**

27. The functions of local authority and other public regulators are usually framed by legislation and objectives which protect individuals or assets or the environment, whether natural or built, from an identified risk or hazard. Over the last few years progress has been achieved in requiring regulators to have appropriate regard to economic and business considerations in the delivery of their duties. For example, the Public Services Reform (Scotland) Act 2010 introduced powers to remove or reduce burdens from any Scottish legislation or regulation which are obstacles to better regulation. It also imposes a range of duties on the Scottish Government and listed public bodies which have to publish a range of information annually, including an annual statement of the steps taken to promote and increase sustainable growth, and to improve efficiency, effectiveness and economy during the relevant financial year.

28. The Scottish Government is determined to promote in all Scottish regulators a broad and deep alignment with the government's purpose of sustainable economic growth, and recognises both the improvements that have already been delivered and those that remain an aspiration at present. A key question is whether further improvements will be delivered through existing mechanisms and non regulatory approaches or whether change would be delivered more quickly and more consistently if all regulatory authorities were required to uphold a generic statutory duty. This could be to consider (and report on) the impact of their regulatory activity on business and/or promote regulatory principles which could further encourage and support economic growth through regulatory enforcement, without undermining their core objectives or placing unnecessary burdens on business. Any new statutory duty might also involve respecting the principles of better regulation in exercising regulatory functions and could be combined with existing reporting requirements.

29. The evidence from recent reports of the independent Regulatory Review Group and indeed from the Federation of Small Businesses' report *Local regulation in Scotland – the case for change* (February 2012) strongly suggest that business sees scope for further improvements in the way regulatory practice supports their growth without undermining core objectives. That said, the Government is keen to avoid new reporting or other requirements which may divert time and energy from front-line regulatory duties.

30. The Scottish Government would therefore welcome evidence and views on:
- 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 which could further encourage and support economic growth without undermining their core objectives.
  - Whether on balance you favour a) the status quo, or b) the introduction of a generic statutory duty?
  - Whether this could be supported in non-legislative ways? If so, please explain how.

### **Reviews and sunseting**

31. One of the innovations introduced by the UK Government which may also have merit in a Scottish context is sunseting, which effectively means that each new regulation is regularly reviewed or falls automatically. The rationale is that this approach guarantees that where regulation is no longer needed, or where it imposes disproportionate burdens, sunseting will help ensure that it is removed. In other cases, it will help keep effective regulation up to date, and support improvements where necessary.

32. The key elements of the UK Government approach are as follows:

- Sunseting is now mandatory for new regulation introduced by UK Government departments where there is a net burden (or cost) on business or civil society organisations (or where the sunseting of other regulation would be beneficial).
- Domestic regulation enacted through secondary legislation is subject to the formal requirement of a statutory review and an automatic expiry date. Domestic regulation enacted through primary legislation and any legislation that implements international (including EU) obligations, is subject to a review obligation only.
- The first statutory review should in most cases be carried out and published no later than five years after the relevant regulation comes into force. Where the regulation is subject to automatic expiry, this will be scheduled to take effect seven years after the same date.
- The purpose of the statutory review is to ask whether the policy objectives that led to the introduction of the regulation are still valid and relevant; whether regulation is still the best way of achieving those objectives; and, if so, whether the existing regulation can be improved so as to reduce burdens on business and civil society organisations. For EU regulation, the principal focus will be on improving the transposition, and on enforcement, in order to reduce burdens.
- Reviews should be carried out in a way that is proportionate considering in particular, the scale of the expected and actual costs to business and civil society organisations resulting from the regulation.

33. Additional information on the UK Government approach is available in the UK Government's [Sunsetting Regulations Guidance](#).

34. At present there is no corresponding policy in place in Scotland - consistent with the previous advice of the independent Regulatory Review Group who favour regular reviews - but the Government recognises that this would provide a systematic vehicle for looking at whether regulation is still required, or whether the policy or regulatory challenge has changed in any way. However there are other factors at play, including the relative costs of review activity and action to renew or extend regulations where relevant, and uncertainty around the reasonableness of setting a common timeframe within which regulations might be expected to become redundant or less relevant.

35. The Scottish Government would therefore welcome evidence and views on:

- The case for and against introducing a sunseting policy in Scotland.
- Whether the policy should be mandatory? If not, what should be the rationale for any exceptions?
- Whether the regulations in scope, and the nature and timeframes for review activity should be equivalent to or differ from the UK approach? If different, please explain how and why?
- Whether on balance you favour a) the status quo, b) adopting the UK Government approach without any changes, or c) adopting a modified policy.

### **Prompt payment**

36. Recognising at an early stage of the recent recession that cash-flow problems might put at risk otherwise viable companies, the Scottish Government introduced a commitment to pay suppliers' invoices within 10 working days of receipt instead of 30 working days. Audited accounts confirm that the core Scottish Government made 98.1% of payments within 10 days over the year to 31 March 2011, compared to 94% in 2009-10<sup>5</sup>. Unaudited figures for financial year 2011-12 show 98.5% paid within the 10 day target. The Scottish Government has also inserted a new clause in their standard set of terms and conditions for contracts to ensure that any other payments within that public sector supply chain are made within 30 days and has encouraged other public bodies to do likewise.

37. Elsewhere in the public sector in Scotland bodies have been exploring the potential to either increase the proportion of invoices paid within 30 days or shorten that payment timeframe further. Transparency has been a factor in driving improvements over time. Scottish Local Authorities have been required to publish their invoice payment performance since 2003/4, and, for example, Edinburgh Council paid 72% of invoices within 30 days in 2005/06 compared to 95% in 2009/10.

38. The Local Democracy, Economic Development and Construction Act 2009 made a number of changes to payment provisions in the Housing Grants, Construction and Regeneration Act 1996. These changes came into effect on 1 November 2011. The legislation provides a right for suppliers to be entitled to stage payments in construction contracts (which are defined according to type by the legislation); what constitutes an adequate payment mechanism; and in what circumstances payment otherwise due can be withheld or reduced. It also prescribes, via secondary legislation, the terms of a default "Scheme for

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<sup>5</sup> [The Scottish Government Consolidated Accounts for the year ended 31 March 2011](#)

Construction Contracts" which can supplant the relevant terms of a construction contract which are found not to comply with the legislation's payment provisions.

39. While public bodies are committed to working with their supply chains and improving their payment performance in order to support local businesses, it is clear that progress has not been uniform and there is much we can learn from each other. The Scottish Government will continue to work with public sector partners to ensure we learn from best practice and also sustain and expand delivery of payment within 10 working days as the norm. However we would also welcome views on 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 welcome views on what any such lower period could or should be – and also scope to replicate the 10-day norm already achieved by the Scottish Government.

40. That said, anecdotal evidence from small businesses around Scotland suggests that business to business payment performance has not followed the improving trend in the public sector. This is consistent with research undertaken by Bacs Payment Schemes Limited (Bacs), the organisation behind Direct Debit and Bacs Direct Credit and by the Federation of Small Businesses.

41. UK Data published by Bacs in their May 2012 study reported that:

- Outstanding debts to the UK's small and medium-sized businesses have reached a high of £35.3 billion, an increase of almost £2 billion on the last reported figure from six months previously, and the largest overdue amount measured to date.
- The average amount owed to SMEs was £45,000 at the end of 2011, up from £39,000 earlier in the year. And despite the proportion of SMEs experiencing late payment having fallen (down to 785,000 from 861,000), their combined debt is now bigger than ever.
- Businesses are waiting longer for their invoices to be settled. In the second half of 2011, SMEs said they were waiting on average 29.6 days longer than agreed payment terms, an increase over the 28-day delay reported in the first half of 2011.
- SMEs stated larger companies are the biggest culprits of late payments owed to them.

42. The FSB research<sup>6</sup> found that:

- Almost three quarters (73%) of businesses have been paid late in the last 12 months, and for the majority (77%) it is by other businesses.
- Small firms do not have the same cash-flow buffers as larger businesses and so being paid late causes a vicious circle, meaning that 38% of members that are paid late say they then pay their suppliers late.
- 43% of members are currently waiting for between £1 and £4,999. And in the past 12 months, 56% of members have written-off invoices worth between £1 and £9,999 because of non-payment and 6% of members in the construction sector have written off £35,000 or more.

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<sup>6</sup> <http://www.fsb.org.uk/policy/Publications> - Late Payment



43. This problem persists despite the existence of relevant legislation:

- The Directive of the European Parliament and of the Council on combating late payment in commercial transactions (2000/35/EU recast and 2011/7/EU) specifies that *members states shall ensure that the period for payment fixed in the contract does not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor.*
- The Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by The Late Payment of Commercial Debts (Scotland) Regulations 2002 leaves parties free to agree payment terms including a specific payment period, but sets a default of 30 days in the absence of any such agreement. The provisions of the Act also allow businesses to claim interest for late payment (currently 8% over the bank base lending rate) and a fixed sum of compensation to cover debt recovery costs (£40-100).

44. Enforcement or use of this existing legislation has proved difficult. Anecdotal evidence again suggests that companies are reluctant to use this legislation because of the reasonable expectation that this might contaminate the prospect of an ongoing business relationship. The cost of taking action is another factor identified as an obstacle.

45. In theory these “flaws” might be addressed by moving from a position where a business has to decide to exercise these rights to one where the timescale and penalties are mandatory:

- Legislating to impose a standard 30 day payment period for commercial payments, with no capacity to increase that timeframe in the detail of a contract;
- Mandatory application of interest for all late payment of commercial debt.

46. However those options may be equally difficult to enforce, and may also contravene EU requirements. The idea of a “penalty” for late payment is essentially the basis of the existing legislation, but while the rate is mandatory it is not applied as a matter of course. Following discussions with the Institute of Directors (Scotland) the Scottish Government recognises that mandatory application of a late payment penalty would create a powerful incentive for cultural change which would promote prompt business-to-business payment, improve cash-flow in many small businesses and help them to grow and create jobs. Alternatively introducing a requirement to adopt more transparent reporting of company payment performance may also be a feasible way to help to drive improvements (similar to the public sector). This area of corporate governance is reserved to the UK Government under the current devolution settlement. The Cabinet Secretary for Finance, Employment and Sustainable Growth wrote to the Chancellor of the Exchequer in March 2012 to suggest that more transparent reporting of companies’ payment performance could help SMEs get paid on time.

47. The Scottish Government is seeking views on whether any such measures - and in particular a practical and legitimate mechanism to provide the more consistent application of a penalty for late payment of commercial debt - would necessarily have a beneficial impact on the relative competitiveness of businesses in Scotland, particularly those trading across the UK and internationally.

48. The Scottish Government would therefore welcome evidence and views on:

- 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.
- Whether additional legislative or non-legislative steps might lead to a change in business culture and a bias towards prompt payment? If so, what might these involve? And would this have a beneficial impact on the relative competitiveness of businesses in Scotland?
- How any new arrangements could be fully enforced?
- Whether on balance 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, or d) actions to change corporate governance and reporting of payment performance?

### **Common commencement dates**

49. Under UK Government policy, most Westminster regulations that will have an effect on business come into force on one of two common commencement dates each year (in April and October). Published Statements of New Regulation set out details of the regulations Whitehall departments intend to introduce in the following period. The UK Government's established position is that by increasing transparency, small businesses in particular can better prepare for the introduction of new or amended regulations with a corresponding positive impact on awareness and compliance.

50. The Scottish Government would welcome evidence and views on whether on balance you favour a) the status quo, or b) the introduction of common commencement dates for Scottish regulations impacting on business?

### **Mobile food businesses, and a transferrable certificate of compliance**

51. Earlier this year the Scottish Food Enforcement Liaison Committee (SFELC), a non-statutory advisory Committee formed under the auspices of the Food Standards Agency (Scotland), completed a survey of local authority practice in respect of interpreting the food hygiene requirements for moveable food businesses. This followed a complaint of inconsistent application of standards from a food business in respect of a street trading vehicle which operates in different local authority areas and concerns expressed by food authorities in the North of Scotland relating to hand washing facilities at markets. These together suggested that this was a strategic issue for some 1300 mobile food businesses operating in Scotland.

### **Case Study:**

In 2011, Scottish Bakers, the trade association for all bakers in Scotland, provided details of regulatory inconsistency involving one of their members which sell hot savouries and bakery products in their local area using a specially purchased van. As the van operates across two local authority areas, it is subject to inspections by environmental health in both local authorities. These inspections include compliance with food hygiene regulations.

One Council used a risk based case-by-case approach and was satisfied with the van which has hand washing facilities and procedures in place to ensure hygiene and quality is maintained (keeping a supply of utensils in the van and returning to the bakery if all utensils have been contaminated). However the other Council asked that a utensils sink be installed in the van at a total cost estimated at £1000. This is consistent with their published guidance, which is intended to provide clarity to businesses and manage the volume of inspections in a way which is efficient for both the Council and businesses, and which requires all hot food units to have the capacity to clean equipment without resorting to a wash station at a home base.

52. SFELC was interested in determining if guidance was required in respect of interpreting the food hygiene requirements for moveable food businesses and if a set of nationally agreed standards could be adopted. Food authorities were invited to complete a questionnaire in respect of how food safety controls interact with council licensing provisions in respect of street trading vehicles and markets. The questionnaire also sought views on any issues that require to be clarified in relation to the hygiene requirements for these types of food business.

53. The survey received a good response with 31 of the 32 food authorities returning a completed questionnaire. An analysis of the responses highlighted the following key findings:

- Questions on Food Authority Interaction with Moveable Food Businesses were designed to get a feel for how food authorities deal with moveable food businesses and how the licensing provisions of the Civic Government (Scotland) Act 1982 impacts on the delivery of official food controls. The vast majority (29) of food authorities use a common rating scheme to determine the frequency of inspection and some food authorities tie this in with the licence renewal and issue the 'Certificate of Compliance' following the inspection. One authority indicated that it inspects moveable food businesses on an annual basis. The majority (24) also on occasions inspect vehicles when they are not operating; only 4 authorities stated that they always inspect the vehicles when they are operating. 14 food authorities currently have prescribed standards for moveable food businesses and in 11 of these authorities the standards extend beyond food safety requirements. Less than 25% of authorities (7) charge for the issue of a 'Certificate of Compliance' but where charges are levied there is a wide range in the cost (£25 - £125).

- Questions on guidance on food safety requirements for moveable food businesses considered the clarity of the legal requirements for moveable food businesses and the guidance available in the Industry Guides. A slight majority (55%) thought the existing legal requirements for moveable food businesses were quite clear. For those authorities who thought further clarification was required, 3 areas in particular stood out as being unclear: personal hygiene facilities; cleaning facilities (food and equipment); and cross contamination controls. In respect of the Industry Guides the majority of respondents indicated that the guides should be updated following the Food Standards Agency's "Guidance on avoiding cross-contamination with E. coli O157" which was issued in 2011.
- The final series of questions sought the views on changes that food authorities would like to see in respect of moveable food businesses. Although only 14 authorities have prescribed standards currently for moveable food businesses, 21 respondents thought there was a need for a set of national standards and 23 respondents indicated that they would be liable to adopt a set of national standards developed by SFELC. Interestingly, 24 respondents indicated that they would support a system whereby a 'Certificate of Compliance' issued by one food authority could be used for a street trading licence application in another food authority area.

54. In terms of the Civic Government (Scotland) Act 1982 a licensing authority must refuse to issue a Street Trading Licence to a person if the food authority has not issued a 'Certificate of Compliance' in respect of the vehicle from which the applicant will be trading. The 'Certificate of Compliance' states that the vehicle complies with food safety requirements. The Civic Government (Scotland) Act 1982 requires the certificate to state that the vehicle, kiosk or moveable stall complies with such requirements as the Scottish Ministers may make by statutory order. The current compliance requirements set by the Scottish Ministers are those specified in Schedule 2 to the Food Hygiene (Scotland) Regulations 2006. As a result mobile food vans have to be inspected separately by each authority in which they operate. This duplication of effort costs businesses and local authorities time, and represents an avoidable constraint on the profitability of around 1000 businesses.

55. The Scottish Government therefore plans to amend or introduce legislation to:
- require all food authorities to comply with relevant national standards, which will be developed with SFELC and others;
  - require moveable food businesses to be inspected only by the local authority in which the business is registered/based as opposed to every separate local authority in which it operates;
  - require local authorities to accept as valid a certificate of compliance issued by another local authority.

56. Taken together this will deliver consistent national food safety standards across Scotland, and a more efficient licensing process which saves time and costs for businesses and local authorities.

57. The Scottish Government would therefore welcome evidence and views on whether on balance you favour a) the status quo, or b) a change in legislation requiring all food authorities to comply with new national standards and through which moveable food businesses would be inspected by the local authority in which the business is registered/based as opposed to every separate local authority in which it operates.

### **Planning Reform: Linking planning application fees to the performance of the Planning Authority**

58. Major reforms to the planning system in Scotland were introduced in 2009 together with a programme of initiatives to support Planning's contribution to increasing sustainable economic growth in Delivering Planning Reform. On 28 March 2012, the Minister for Local Government and Planning made a statement to the Scottish Parliament setting out the Scottish Government's proposals for future reform of the planning system. The supporting document *Planning Reform – Next Steps* summarises a package of proposals which aim to help the planning system reach its potential in supporting economic recovery. It proposes focusing on further simplifying and streamlining the planning system where current practices and procedures add little or no value, with an emphasis on non-legislative measures. The document sets out the following priorities for the next stage of planning modernisation:

- Promoting the plan-led system
- Driving improved performance
- Simplifying and streamlining
- Delivering development

59. The Scottish Government is currently considering the responses to the following (now closed) consultations that were published alongside the statement:

- Development Delivery – gathering views on the efficacy of current processes in delivering development; and to invite views on proposals that could assist the delivery of development and infrastructure. View the full document [here](#)
- Miscellaneous Amendments to modernised planning system - seeking views on draft legislation for a number of refinements and amendments to the procedures on development management, schemes of delegation, local reviews and appeals. View the full document [here](#)
- Development Plan Examinations – seeking views on stakeholder experience to inform a decision on whether current arrangements should be altered. View the full document [here](#)
- Fees for Planning Applications – seeking views on draft regulations that set out a new fee structure and level for planning applications in Scotland. View the full document [here](#)
- Amendments to Non-Domestic Elements of Permitted Development - draft legislation for a number of refinements and amendments to the non-domestic elements of the General Permitted Development Order. View the full document [here](#)

60. Central to the Government's aspirations for the planning system are improved performance and resourcing of the system. Whilst overall resourcing of the planning service is the responsibility of local authorities it is clear that current levels of fee income are insufficient to fully cover the costs associated with processing planning applications. In consulting on an improved fees regime Ministers set out the intention to establish a link between fees and sustained improvements in performance, as measured through the Planning Performance Framework.

61. The Scottish Government therefore plans to amend the Town and Country Planning (Scotland) Act 1997, via the Better Regulation Bill, to give powers to Scottish Ministers to set the level of the planning fee payable in each authority based on an assessment of performance. These powers would ultimately enable Ministers to reduce the level of planning fee payable in an authority area where sustained improvements in performance did not materialise. The Scottish Government would work in partnership with planning authorities to ensure that every opportunity to support improved performance had been taken before a change to the level of planning fee was introduced.

62. The Scottish Government would therefore welcome evidence and views on the most effective mechanism for introducing the proposed link between fees and performance.

#### **Extending statutory review mechanisms to challenges against Scottish Ministers' decisions in infrastructure projects**

63. Scottish Ministers have an important role to play in deciding whether consent should be granted for major infrastructure proposals. In the context of the planning regime they decide whether planning permission should be granted for projects of national importance in exercise of their call in powers and in appeals against refusal of planning permission. They act as the confirming or approving authority for orders or applications in relation to roads and other transport works, harbours and ports, onshore and offshore wind farms, power stations, hydroelectric schemes and overhead power lines.

64. The Planning Acts and other relevant legislation concerning roads and other transport works, harbours and ports, and powers of compulsory purchase in connection with such projects confer an express right of appeal to the courts against decisions made by Scottish Ministers on people or bodies with a sufficient interest in the project.

65. The procedure for challenging decisions on wind farms is different. In most instances the right of appeal is to the Court of Session and the appeal must be made within 6 weeks of the relevant decision. However, for some types of infrastructure, such as onshore windfarms, power stations, hydroelectric schemes and overhead power lines there is no express right of appeal to the courts. Decisions made by Ministers in these cases can only be challenged by way of judicial review.

66. This gives rise to a confusing and complex picture, particularly in relation to projects that may require more than one form of consent. For example, there are different arrangements for those making applications for onshore windfarms and

applications for offshore windfarms and other forms of offshore energy related development. Offshore projects require not only a section 36 consent under the Electricity Act 1989 but a marine licence too.

67. Under the current arrangements an applicant wishing to challenge the Scottish Ministers' decision in respect of a marine licence may appeal to the sheriff against the refusal to grant a licence or the conditions attached to a licence. The sheriff may direct that Ministers must grant a licence or grant it subject to certain conditions. It is suggested there may be merit in bringing this procedure in line with other consenting regimes by providing that applicants may challenge the legality (rather than the merits) of the decision via appeal in the Court of Session.

68. The Scottish Government is seeking views on whether there would be merit in extending the express right of appeal to the Court of Session for people or bodies with a sufficient interest in the project to those classes of decision made by Scottish Ministers under legislation governing infrastructure projects.

69. The Government is also seeking views on whether such a statutory appeal procedure 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.

70. The Scottish Government would therefore welcome evidence and views on:

- Whether you agree or disagree that it is appropriate to expand the types of decisions subject to statutory review (instead of judicial review)?
- If yes: In your opinion, for what types of decisions would it be appropriate to introduce a statutory review mechanism?
- If no: In your opinion, for what types of decisions would it not be appropriate to introduce a statutory review mechanism?
- Whether you agree or disagree 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?
- Whether you agree or disagree that the procedure for review should be made the same across all relevant legislation?

### **Other issues**

71. The Scottish Government is committed to delivering better regulation. As part of an ongoing process, we would also welcome views on any specific regulations which have unintended consequences or are placing burdens on business, the impact of the Bill or further suggestions to improve the regulatory landscape.

## **VI - BUSINESS AND REGULATORY IMPACT ASSESSMENT**

72. A partial Business and Regulatory Impact Assessment (BRIA) setting out in more detail the costs, benefits and risks of proposed changes is included as part of this consultation at Annex C. As part of the BRIA process we will discuss our final proposals with those directly impacted by the Bill, and will refine the BRIA based on these discussions and consultation responses. We would welcome your comments and evidence in respect of the partial BRIA and in particular the sectors and groups affected, and costs and benefits identified.



## VII - OTHER RELEVANT REGULATORY DEVELOPMENTS

73. The Scottish Government has a very full and ambitious legislative programme across the lifetime of the Parliament but Parliamentary time is finite and we routinely look for ways to optimise these processes. As such the content of the Better Regulation Bill may also take account of two other relevant current developments.

74. First, the Scottish Government and the Scottish Environment Protection Agency (SEPA) are currently working on a joint programme of better environmental regulation; supporting SEPA in taking a simpler, more flexible, proportionate, and risk-based approach to environmental regulation. This risk-based approach would in turn be supported by strengthened enforcement measures to deter non-compliance and ensure remediation where environmental damage occurs.

75. As part of this programme of work SEPA set out the high-level components of change in a 2010 consultation entitled *Better Environmental Regulation*. The consultation document and responses are available at [http://www.sepa.org.uk/about\\_us/consultations/closed\\_consultations.aspx](http://www.sepa.org.uk/about_us/consultations/closed_consultations.aspx) and a progress report was published by SEPA in March 2012. A joint Scottish Government SEPA consultation document 'Consultation on Proposals for an Integrated Framework of Environmental Regulation' was published on 5 May 2012 which sets out more specific proposals, some of which may need legislative reform whilst others can be achieved through administrative, cultural and behavioural changes, both in SEPA and in those it regulates.

76. Second, the Scottish Government is focused on using procurement as a lever for economic growth and maximising the impact of the £9 billion annual procurement spend. There has been a great deal done to improve the way procurement operates in Scotland. There is no room for complacency, of course. That is why a key focus for the next few years will be a concerted effort to streamline the public sector's dealings with business, and adopt more efficient procurement practices that encourage competition and secure best value. Ministers have announced their intention to introduce a Sustainable Procurement Bill during the life of the current Parliament to make clear the legislative framework for procurement decisions and to maximise the economic, social and environmental benefits from procurement processes and public contracts.

## ANNEX A – THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically, Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government website enabling a wider audience to access the paper and submit their responses.

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: <http://www.scotland.gov.uk/consultations>. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

# 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

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

### 2. Postal Address

<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

### 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

Comments

Question 2 - Should national standards be mandatory in future?

Yes  No

Comments

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

Comments

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

Comments

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

Comments

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

Comments

### **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

Comments

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

Comments

### **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

Comments

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

Comments

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

Comments

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.

Comments

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

Comments

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

Yes  No

Comments

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

Comments

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

#### **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

Comments

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

Comments

## 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.

Comments

## 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?

Comments

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

Comments

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

Comments

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

Yes  No

Comments



## Other issues

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

Comments

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

Comments

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.

Comments

## 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

Comments

## Partial Business and Regulatory Impact Assessment

<p><b>Title of Proposal</b></p> <p>Better Regulation Bill</p>
<p><b>Purpose and intended effect</b></p> <ul style="list-style-type: none"> <li> <p>• <b>Background</b></p> <p>The Scottish Government has a long standing commitment to better regulation in support of its core purpose of delivering sustainable economic growth and providing a favourable business environment in which companies can grow and flourish. The 2011 Government Economic Strategy recognises the important role of better regulation in promoting competitiveness and delivering sustainable economic growth, and includes a commitment to further improve the efficiency of the public sector, including a focus on better regulation.</p> <p>Business benefits from regulation which is proportionate, consistent, transparent, accountable and targeted only at cases where action is needed. Better regulation helps reduce unnecessary burdens on business and the Scottish Government undertakes a range of activity to tackle the stock, flow and culture of regulation, working collaboratively with business, regulators and other stakeholders and supported in particular by the independent Regulatory Review Group (RRG). To date, substantial progress has been made on the better regulation agenda across a wide range of areas. For example, the Public Services Reform (Scotland) Act 2010 introduced powers to remove or reduce burdens from any Scottish legislation or regulation which are obstacles to better regulation, and Business and Regulatory Impact Assessments were introduced to ensure fullest consideration is given to the impact of regulation on business.</p> <p>The 2011 Programme for Government recognised the scope to improve further the way regulations are applied in practice across Scotland and set out the Scottish Government's intention to bring forward a Better Regulation Bill. The core proposal is to better define national expectations and standards, and the context for local variations; but consideration is being given to a range of measures which could help concurrently support business and economic activity and deliver societal and/or environmental benefits.</p> </li> <li> <p>• <b>Objective</b></p> <p>The Better Regulation Bill will aim to deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstance. The overarching objective is to improve the regulatory landscape and the way regulations are applied in practice across Scotland, delivering better and more effective regulation. The following options being considered through consultation seek to:</p> <ul style="list-style-type: none"> <li> <p>▪ deliver consistency and transparency through national expectations and standards.</p> </li> </ul> </li> </ul>

- encourage and support economic growth through regulatory enforcement which avoids unnecessary burdens on business.
- ensure regulations are removed when no longer needed or when they place a disproportionate impact on business.
- improve the competitiveness of firms.
- enable businesses to prepare for the introduction of new or amended regulations
- allow mobile food businesses to operate in more than one area with a single certificate of compliance.
- set the level of planning fees payable in each authority based on an assessment of performance.

#### • Rationale for Government intervention

The Scottish Government is committed to using all means possible to support economic and business growth. The Better Regulation Bill will further improve the way regulations are applied in practice across Scotland, by ensuring that all public bodies take a consistent and collaborative approach in supporting business, by implementing an outcomes based approach which can deliver better regulation more effectively.

This will contribute towards the National Outcome "We live in a Scotland that is the most attractive place for doing business in Europe" of the National Performance Framework. It will also help to achieve one of the Strategic Priorities of the Government Economic Strategy, providing a Supportive Business Environment.

Most of the regulations which impact on business in Scotland – including tax, employment, company law, competition, trading standards and health and safety – are reserved to the UK Government. The UK Coalition Government's better regulation strategy focuses on reducing regulation - removing or simplifying existing regulations that unnecessarily impede growth, reducing the overall volume of new regulation by introducing regulation only as a last resort; improving the quality of any remaining new regulation and a move to less onerous and less bureaucratic enforcement regimes where inspections are targeted and risk-based.

A better regulation strategy is also supported in Europe, aiming to simplify and improve the regulatory environment. This has already led to a significant change in how the Commission makes policy and proposes to regulate, and the current focus is for better regulation to become smarter regulation and be further embedded in the Commission's working culture. Smarter regulation takes into consideration the whole policy cycle, shared responsibility and consultation.

The Federation of Small Businesses (Scotland) (FSB) 2011 Election manifesto "*The Journey back - how small businesses can drive the recovery*" stated

*"Businesses generally agree with the intended outcome of most regulations and recognise their potential to ensure that rogue traders and irresponsible businesses don't bring the majority of responsible enterprises into disrepute or unfairly undercut them. However, poor drafting and capricious implementation of*

*these perfectly well-intentioned regulations continue to hamper Scottish small businesses. Around 30 per cent of FSB members in Scotland have cited regulation as the biggest barrier to growth. In addition, 62 per cent of our members report that the costs of complying with regulation have increased over the past four years.*

*Recent reports on Scotland's regulatory performance (such as those published by the Scottish Government's Regulatory Review Group) have shown that regulatory bodies are not only missing opportunities for improvement but, through poor practice and a lack of understanding, are also unnecessarily hindering small businesses. Many problems stem from poorly designed primary legislation. While there is much in the Scottish Parliament's legislative process to be commended, Holyrood has become too ready to enact legislation containing high-level policy objectives, leaving details to be determined at a later date either by Ministers through subordinate legislation or by 32 different local authorities. This obviously leads to less scrutiny and, in the latter case, less consistency, less certainty and wasteful duplication."*

The FSB subsequently published a paper entitled "Local regulation in Scotland – the case for change" (February 2012) which provided examples of inconsistent regulation and the impact on business. The FSB called for a new regulatory strategy that favours a standardised, national approach for any new regulation - unless there is an overwhelming case for a local approach.

## **Consultation**

### **• Within Government**

Within Central Government we have consulted with our colleagues in Licensing and Charity Law, Legal Services, Office of Scottish Parliamentary Council (OSPC), Public Service Reform, Local Government, Planning, Environment, Procurement, and Finance.

We have consulted with a number of NDPBs and public bodies including Scottish Natural Heritage (SNH), and Historic Scotland

At a Local Government level we have consulted with CoSLA, Society of Chief Officers of Trading Standards in Scotland (SCOTTS) and Environmental Health practitioners

All fed into the consultation paper by providing contributions and comments on an initial discussion paper and subsequent draft proposals for consultation. Further details will be provided following the public consultation.

### **• Public Consultation**

Informal consultation with some key stakeholders such as the Federation of Small Businesses, Consumer Focus Scotland, CoSLA and CBI, took place in the early part of 2012. This involved individual meetings which fed into the consultation paper. Further details will be provided following the public consultation.

A full twelve week public consultation will take place in summer 2012. This will be published on the Scottish Government website at

<http://www.scotland.gov.uk/Consultations> and will also be sent out to our key stakeholders. We will also be holding events throughout the country.

• **Business**

Substantive informal dialogue has taken place with the RRG whose membership is made up from representatives of: Confederation of British Industry (CBI); Scottish Chambers of Commerce; National Farmers Union of Scotland; Institute of Chartered Accountants of Scotland; Forum of Private Business; Scottish Trade Union Congress; Federation of Small Businesses and Consumer Focus Scotland. The feedback from this fed into the consultation paper.

We have also spoken informally with the Scottish Retail Consortium who had requested a meeting to find out more details of the proposals to be put forward. This meeting did not result in any changes to the draft consultation paper as it was more of an information sharing opportunity.

Engagement will continue during the consultation process with stakeholders and individual businesses who will be directly involved in the development of the measures as we finalise a Bill and subsequently implement it.

## Options

To further improve the way regulations are applied in practice, the following measures are being considered:

1. **Define and Implement national standards and systems** - A new enabling power allowing future legislation to include a duty on local authority regulators, or other relevant regulators, to implement national regulation systems and policies approved by Scottish Government/Parliament.
2. **Duty to promote economic and business growth through regulatory activity** - A duty on regulators to consider the impact of their regulatory activity on business and/or promote regulatory principles to further encourage and support economic growth through regulatory enforcement, without placing unnecessary burdens on business.
3. **Reviews and Sunsetting** - 'Sunsetting regulations' to ensure regulations are reviewed and removed when no longer needed or when they place a disproportionate impact on business.
4. **Prompt payment** - Consideration if any amendments are needed to improve compliance with existing late payment legislation and culture.
5. **Common commencement dates** - Common commencement dates for Scottish regulations impacting on business.
6. **Transferable certificates of food hygiene compliance for mobile food business** - A change in legislation through which moveable food businesses would only be inspected by the local food authority in which it is based only.

7. **Linking Planning Application Fees to the Performance of the Planning Authority** - Setting the level of planning fees payable in each authority based on an assessment of performance.

You will find our initial assessment of the options along with costs and benefits for each of these measures being considered in annexes a-g. At this stage we have been unable to quantify costs and benefits in any proper way, we will continue to work on this area with stakeholders and business throughout the consultation period.

### **Scottish Firms Impact Test**

Informal consultation with stakeholders took place in the early part of 2012. We held an event on 21 February 2012 that included representatives from regulatory organisations as well as members from the RRG. We also met with the RRG in January to discuss the proposals included in the bill.

An initial discussion paper was circulated to the RRG to allow views and comments on proposals. These were not published but have formed the basis of some of the measures which now feature in the consultation document. Engagement will continue during the consultation process. The RRG was largely positive and constructive, supporting the rationale for the bill and the importance of multi-lateral engagement throughout the consultation.

As part of the consultation process we will consult directly with between 6 and 12 individual businesses throughout Scotland, to better understand the direct impacts of this legislation on them. We will also remain engaged with the RRG and other key stakeholders representing business. The outcomes of these discussions will feed into the development of the legislation.

### **Competition Assessment**

Better regulation promotes competitiveness by reducing burdens on business and ensuring regulations are proportionate, consistent and targeted only where needed. The measures within the Bill aim to benefit business and should have no negative impact on competition.

- Will the proposal directly limit the number or range of businesses? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes? – *No, there would be no limit to the number or range of businesses as a result of the Bill. The aim of the bill is to ensure regulation is proportionate and targeted only where needed..*
- Will the proposal indirectly limit the number or range of businesses? e.g. will it raise costs to smaller entrants relative to larger existing businesses? – *No, it would not indirectly limit in any way the range of businesses in fact, it will promote competitiveness by reducing burdens and ensuring regulations are proportionate.*
- Will the proposal limit the ability of businesses to compete? e.g. will it reduce the channels they can use or geographic area they can operate in? – *No,*

*again it ensure regulations are proportionate, consistent and targeted only where needed and thereby removing any barriers.*

- Will the proposal reduce businesses' incentives to compete vigorously? e.g. will it encourage or enable the exchange of information on prices, costs, sales or outputs between businesses? *It will not reduce businesses' incentives to compete vigorously. The measures within the bill aim to benefit business, providing a favourable environment in which business can grow and flourish, and should have no negative impact on competition.*

We will continue to consider the impact on competition as the proposals develop.

#### **Test run of business forms**

The proposed measures and legislation will not introduce any new business forms. If any new business forms arise from secondary legislation they will be assessed and test run with business at that time.

#### **Legal Aid Impact Test**

It is not envisaged that there will be any greater demands placed on the legal system by this proposal. Accordingly, it is not considered that there will be any effect on individuals' right of access to justice through availability of legal aid or on possibly expenditure from the legal aid fund.

The Access to Justice Team have confirmed that there would be no additional impact on the legal system.

#### **Enforcement, sanctions and monitoring**

At this stage we are still only considering option and therefore cannot give any details on enforcement, sanctions and monitoring. This section will be completed fully post-consultation in the Final BRIA once we have finalised our options

#### **Implementation and delivery plan**

This section will be completed fully post-consultation in the Final BRIA

- **Post-implementation review**

This section will be completed fully post-consultation in the Final BRIA

#### **Summary and recommendation**

This section will be completed fully post-consultation in the Final BRIA

- **Summary costs and benefits table**

A more detailed analysis of costs & benefits will be available post consultation in Annexes A-G

**Declaration and publication**

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

**Signed:****Date: 12 July 2012****Minister's name,**

Fergus Ewing, Minister for Energy, Enterprise and Tourism

**Scottish Government Contact point:**

Sandra Reid

Better Regulation and Industry Engagement

Enterprise and Tourism Division

Business Directorate

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Glasgow, G2 8LU



### **1. Define and Implement national standards and systems**

*The core proposition is that the Scottish Government should take new enabling powers to impose duties on local authorities and other regulators to implement national regulation systems and policies as approved by Government/Parliament except where the regulator makes a compelling case to Ministers that local circumstances merit a variation*

**Option 1** - Do Nothing.

**Option 2** – Introduce mandatory national standards and systems for all new regulations.

**Option 3** – Introduce a new enabling power allowing future legislation to include a duty on local authority regulators, or other relevant regulators to implement national regulation systems and policies approved by Scottish Government/Parliament where appropriate and justified *except* where the regulator makes a compelling case to Ministers that local circumstances merit a variation.

#### **Sectors and groups affected**

This will affect all Scottish regulators implementing and enforcing regulations and in particular, local authorities who each implement their own regulatory systems.

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<b><u>Option 1</u></b> <b>Do Nothing</b>	This option enables local authorities to continue to take responsibility for decisions on how they will implement regulations.	Local regulatory systems and standards result in applicants, particularly those working in different areas, having difficulties with the process and forms required as they may differ from one local authority area to another. This also results in substantial duplication and additional cost where each area develops its own processes, systems and standards.
<b><u>Option 2</u></b> <b>Introduce mandatory national standards and systems for all new regulations</b>	This approach will deliver improved consistency, efficiency and effectiveness.  There will be efficiency savings to both business and regulators when a national approach is being delivered.  Businesses operating across Scotland will be subject to the same approach.	Time and resource will have to be spent on developing detailed models as part of any future legislative process.  This approach also does not leave any option for local variations due to circumstance – or to reflect a particular situation where flexibility may be required.

<p><u>Option 3</u>  <b>Introduce a power enabling national standards and systems where appropriate and justified</b></p>	<p>This approach will deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstances.</p> <p>Businesses operating across Scotland will be subject to the same approach which will provide efficiency savings.</p> <p>The power will only be applied where appropriate and justified.</p> <p>Regulators could make a case to Scottish Ministers for variation.</p>	<p>Time and resource will have to be spent on developing and rolling out detailed models as part of any future legislative process.</p> <p>Where a regulator wishes to opt out, time and resource will be required to make the case for this.</p> <p>Where a variation is agreed, businesses operating in different areas will still experience difficulties and need to spend time understanding the different standards and systems.</p>
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## **2. Duty to promote economic and business growth in regulatory activity**

The Scottish Government is determined to promote in all Scottish regulators a broad and deep alignment with the government's purpose of sustainable economic growth, and recognises both the improvements that have already been delivered and those that remain an aspiration at present. A key question is whether further improvements could be delivered through existing mechanisms, non regulatory approaches or if all regulatory authorities were required to uphold a generic statutory duty.

### **Option 1** - Do Nothing

**Option 2** - Place a duty on regulators to consider (and report on) the impact of their regulatory activity on business and/or promote regulatory principles to further encourage and support economic growth through regulatory enforcement, without placing unnecessary burdens on business. Any new statutory duty might also involve respecting the principles of better regulation in exercising regulatory functions and could be combined with existing reporting requirements.

**Option 3** – Use non-legislative means to further promote economic and business growth through regulatory activity. Avoiding new reporting or other requirements which may divert time and energy from front-line regulatory duties.

### **Sectors and groups affected**

This will affect all Scottish regulators implementing and enforcing regulations and in particular, local authorities as this would require them to give greater consideration to the economic and business impact of their regulatory activity, and add to their current duty to publish a range of information annually, including an annual statement of the steps taken to promote and increase sustainable growth, and to improve efficiency, effectiveness and economy during the relevant financial year

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<b><u>Option 1</u></b> <b>Do Nothing</b>	This may avoid potential duplication with existing duties such as the Public Services Reform (Scotland) Act 2010 which requires listed public bodies to publish a statement of steps it has taken during the year to promote and increase sustainable growth.	This option presents no additional implementation costs.

<p><u>Option 2</u>  <b>Place a duty on regulators to consider, and report on, the impact of their regulatory activity on business and/or promote regulatory principles.</b></p>	<p>A statutory duty would ensure that further improvements be delivered more quickly and more consistently in all Scottish regulators. There would be a benefit of transparency and accountability for decision making.</p> <p>Minimise business burdens and unintended consequences as all regulators would be required to consider and demonstrate the business impact of their regulatory activity.</p>	<p>This may divert time and energy from front-line regulatory duties. There will also be additional costs of gathering information and reporting it.</p>
<p><u>Option 3</u>  <b>Use non-legislative means to further promote economic and business growth</b></p>	<p>This would avoid additional legislation or potential duplication and create a culture change.</p>	<p>Considerable time and effort would be required in promoting and implementing a non legislative approach to change the culture from top down.</p>

### **3. Reviews and Sunsetting**

*Introduce 'Sunsetting and review clauses' to ensure regulations are reviewed and removed when no longer needed or when they place a disproportionate impact on business.*

#### **Option 1** - Do Nothing

**Option 2** – Introduce 'Sunsetting and review clauses' to ensure regulations are reviewed and removed when no longer needed or when they place a disproportionate impact on business that reflects UK approach

**Option 3** – Introduce 'Sunsetting and review clauses' to ensure regulations are reviewed and removed when no longer needed or when they place a disproportionate impact on business (with parameters which may differ from UK)

#### **Sectors and groups affected**

Businesses will benefit from having regulation that is kept up to date and is removed when no longer required.

Regulators, public bodies etc will be affected by the requirement to undertake reviews and extend or update regulations where relevant.

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<b>Option 1</b> <b>Do Nothing</b>	Regulation will remain in place unless repealed.	Unnecessary or outdated regulation on business remains extant – as no automatic review period.  Could lead to cumbersome sets of regulations which make it difficult to ensure full compliance.
<b>Option 2</b> <b>Introduce a sunseting and review policy that reflects UK approach</b>	This would provide a systematic vehicle for looking at whether regulation is still required, or whether the policy or regulatory challenge has changed in any way.  Where regulation is no longer needed, or where it imposes disproportionate burdens, sunseting will help ensure that it is reviewed and removed. In other cases, it will help keep effective regulation up to date, and support improvements where necessary	There would be substantial resource costs involved with review activity and renewal of regulation where necessary.

	Regulations across UK would be subject to the same review periods etc	
<b>Option 3</b> <b>Introduce a Scottish sunseting and review policy (with parameters which may differ from UK)</b>	<p>This would provide a systematic vehicle for looking at whether regulation is still required, or whether the policy or regulatory challenge has changed in any way.</p> <p>This would allow a system that would suit Scottish standards and needs – determining appropriate review and sunseting periods. The independent RRG have taken the view that, where appropriate, it is review that is the critical requirement.</p>	There would be substantial resource costs involved with review activity and renewal or updating of regulation where necessary and there would be a resource implication for introducing a Scottish System.

#### **4. Prompt payment**

*Consideration if any amendments are needed to improve compliance with existing late payment legislation and culture.*

##### **Option 1** - Do Nothing

**Option 2** – Introduce a national standard requiring all public bodies (including Local Authorities and NHS Boards) to pay invoices in less than 30 days

**Option 3** - Use legislative means to change business practice on prompt payment, such as imposing a standard 30 day payment period for commercial payments, with no capacity to increase that timeframe in the detail of a contract and mandatory application of interest for all late payment of commercial debt.

**Option 4** – Use non-legislative means to change business culture on prompt payment, such as increased and more transparent reporting of company payment performance.

##### **Sectors and groups affected**

Businesses and Public Bodies will be affected by these proposals. Businesses will be affected by a change to business practice enforcing a mandatory 30 day payment period which would also improve cash flow. Public Bodies will be affected by a possible change to their business payments practice in changing payment periods.

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<b><u>Option 1</u></b> <b>Do Nothing</b>	Doing nothing would mean that business would not be required to familiarise themselves with new legislation, and could retain existing payment practices.	Anecdotal evidence suggests that companies are reluctant to use this legislation because of the reasonable expectation that this might contaminate the prospect of an ongoing business relationship.  Business need to claim interest on late payments and the cost of taking action is another factor identified as an obstacle. The average amount each GB SME is owed in late payments at any one time is £25,000.
<b><u>Option 2</u></b> <b>Introduce a national standard requiring all public bodies to pay invoices in less than 30 days</b>	This would improve the cash-flow of suppliers to the public sector.	There would be some additional resource required by public bodies, specifically local authorities and NHS Boards to implement and ensure payment made within the specified period.

		A system for monitoring performance would need to be introduced.
<p><u>Option 3</u>  <b>Use legislative means to change business practice on prompt payment, such as a mandatory 30 day payment period for all contracts and the application of interest for all late payments</b></p>	<p>It would improve current performance - anecdotal evidence from small businesses suggests that business to business payment performance has not followed the improving trend in the public sector. A study by Bacs Payment Schemes reported that the average time beyond the agreed payment date the GB SMEs have to wait until they are paid is 41 days.</p> <p>Financial penalties being automatically levied on late payments would work as deterrent and improve the general cash flow between businesses.</p> <p>Businesses would not need to make claims to ensure prompt payment or interest received.</p>	<p>The average amount each GB SME is owed in late payments at any one time is £25,000. There would be costs of enforcing this and implications on how and who would do so.</p>
<p><u>Option 4</u>  <b>Use non-legislative means to change business culture on prompt payment, such as increased reporting of payment performance</b></p>	<p>Introducing a requirement to adopt more transparent reporting of company payment performance may help to drive improvements (similar to the public sector), improving the cashflow of all businesses.</p> <p>Transparency and reporting has over time driven improved performance for local authorities.</p>	<p>There would be resources required to gather and publish any material.</p> <p>There would be costs associated with monitoring performance and also issues around confidentiality, resources to publish etc.</p>



## **5. Common commencement dates**

*Introduce common commencement dates for Scottish regulations impacting on business.*

**Option 1** - Do Nothing.

**Option 2** – Set specific dates during the year when legislation impacting on business will be introduced. This will increase transparency and mean small businesses in particular can better prepare for the introduction of new or amended regulations with a corresponding positive impact on awareness and compliance.

### **Sectors and groups affected**

Any businesses having to comply with regulations would be affected by this as there would be specific dates throughout the year that any new legislation would come into force.

Central Government would also be affected with regard to implementing the legislation on common commencement dates.

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<u>Option 1</u> <b>Do Nothing</b>	Legislation can be implemented at appropriate time	Under the current system, it can be difficult for businesses to keep on top of legislative changes as they may have to make a number of changes throughout the year, sometimes at short notice.  This can result in less awareness of the full extent of the legislation or when it is due to be implemented, and increased non compliance.
<u>Option 2</u> <b>Set specific dates during the year when legislation impacting on business will be introduced</b>	This would enable business to prepare for the introduction of new or amended regulations, and through greater awareness and certainty compliance levels may improve. Publishing details of forthcoming legislation can also help encourage compliance.	There would be a resource implication for policy officials taking forward legislation due to deadlines.  Could prevent legislation being implemented at the appropriate time or could delay the policy implementation.

## **6. Transferable certificates of food hygiene compliance for mobile food business**

*A change in legislation through which moveable food businesses would be inspected by the local authority in which it is based only.*

**Option 1** - Do Nothing.

**Option 2** – Establish national standards and enable local authorities to accept certificates of compliance from the Local Authority where a mobile food business is registered/based. This will deliver consistent national food safety standards across Scotland, and a more efficient licensing process which saves time and costs for both businesses and local authorities.

### **Sectors and groups affected**

The main groups affected by this proposal would be local authorities and mobile food businesses, *reducing duplication and clarifying expectations.*

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<p><b><u>Option 1</u></b> <b>Do Nothing</b></p>	<p>Local authorities would retain the ability to operate their own standards and systems.</p>	<p>Currently there is a lot of duplication involved in the application of licences and associated inspections - both for businesses and local authorities. This duplication for businesses operating in more than one area costs businesses and local authorities time, and represents an avoidable constraint on the profitability of around 1,000 businesses.</p>
<p><b><u>Option 2</u></b> <b>Establish national standards and enable local authorities to accept certificates of compliance from the local authority where a mobile food business is registered/based</b></p>	<p>Moveable food businesses would be inspected only by the local authority in which the business is registered/based as opposed to every separate local authority in which it operates.</p> <p>Enabling consistent national standards across Scotland, saving time for businesses and local authorities, by improving understanding and expectations while encouraging more consistent food safety standards for consumers.</p>	<p>There would be efficiency savings for local authorities and businesses with a reduction in the number of inspections required.</p> <p>Establishing, implementing and raising awareness of new national standards may have resource implications.</p>

	<p>This measure would also protect consumers and boost consumer confidence as there would be a national standard and therefore consistency across every area.</p>	
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## **7. Linking Planning Application Fees to the Performance of the Planning Authority**

*A change in legislation through which the level of the planning fee payable in each authority would be based on an assessment of performance.*

### **Option 1** - Do Nothing

**Option 2** – Establish powers enabling Ministers to apply a fee which reflects performance. These powers would ultimately enable Ministers to reduce the level of planning fee payable in an authority area where sustained improvements in performance did not materialise. The Scottish Government would work in partnership with planning authorities to ensure that every opportunity to support improved performance had been taken before a change to the level of planning fee was introduced.

### **Sectors and groups affected**

The main groups affected by this proposal would be local authorities, businesses and individuals making planning applications as it would affect costs for individuals and businesses and fees applied by local authorities on planning applications..

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<b><u>Option 1</u></b> <b>Do Nothing</b>	The fee level remains the same in each planning authority.	No encouragement for sustained, improved performance within a planning authority.
<b><u>Option 2</u></b> <b>Establish powers enabling Ministers to apply a fee which reflects performance i.e. reduce the level of planning fees payable in an authority where sustained improvements in performance did not materialise.</b>	Establishing a clear link between planning fees and performance will help to encourage a culture focused on continuous improvement. This link will ensure that performance is considered in wider discussions on resourcing the planning services.	Overall resourcing of the planning system is a matter for local authorities. Reducing the fees of individual authorities would mean that those authorities would need to find additional resources to cover the costs of relevant services. For applicants submitting an application in those authorities, this would mean a reduced planning application fee which may reflect the quality of service.  Resources required to monitor performance



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