The Committee will meet at 10.00 am in Committee Room 2 to consider the following agenda items:

1. **Adult Support and Protection (Scotland) Bill:** The Committee will take evidence on the Financial Memorandum from—

   Val de Souza, Group Manager, Planning and Services Division, West Lothian Community Health and Care Partnership, COSLA; and Alan McKeown, Team Leader, Health and Social Care, COSLA.

2. **Accountability and Governance inquiry:** The Committee will take evidence from—

   John Elvidge, Permanent Secretary, Scottish Executive; and David Robb, Head of Public Bodies Unit, Scottish Executive.

3. **Item in private:** The Committee will decide whether to consider a paper from its budget adviser on the review of Scottish Executive management of public finances in private at its next meeting. The Committee will also decide whether to consider themes arising from its Accountability and Governance inquiry in private at its meeting on 27 June.
The papers for this meeting are:

**Agenda Item 1**

Submissions from:
- Association of Chief Police Officers in Scotland (ACPOS)
- Crown Office and Procurator Fiscal Service
- NHS Fife
- NHS Highland
- NHS Lothian
- NHS Tayside
- NHS Orkney
- Mental Welfare Commission for Scotland
- Scottish Court Service (SCS) (Incorporating response from Public Guardian)
- COSLA

**Adult Support and Protection (Scotland) Bill** (previously circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

**SPICe briefings** on the Adult Support and Protection (Scotland) Bill (previously circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

**PRIVATE PAPER**

Scottish Executive Adult Support and Protection (Scotland) Bill Regulatory Impact Assessment (circulated in hardcopy only)

**Agenda Item 2**

Submission from the Scottish Executive

**PRIVATE PAPER**

Extracts from HM Treasury Reducing administrative burdens: effective inspection and enforcement (Hampton review on regulatory inspections and enforcement) (whole document available from HM Treasury website at [http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm](http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm))


**SPICe Briefing: Regulatory and Investigatory Bodies created by the Parliament since Devolution** (previously circulated to Members, available from Scottish Parliament website)
Finance Committee

17th Meeting 2006, Tuesday 13 June 2006

Scrutiny of Financial Memorandum – Evidence on the Adult Support and Protection (Scotland) Bill

1. The Adult Support and Protection (Scotland) Bill (“the Bill”) was introduced to parliament on 30 March 2006. The Health Committee has been designated the lead committee for the Bill at Stage 1.

2. The Finance Committee agreed at its meeting on 9 May to adopt a level 3 approach to its scrutiny of the bill. Specifically, the Committee agreed to issue its standard questionnaire to potentially affected organisations and take oral evidence from COSLA followed by evidence from Executive officials.

3. The evidence session on 13 June will consist of one panel of representatives from COSLA. The Committee will then take evidence from Executive officials on 20 June.

4. The following responses to the questionnaire have been received so far and these are attached:

- Association of Chief Police Officers in Scotland (ACPOS)
- Crown Office and Procurator Fiscal Service
- NHS Fife
- NHS Highland
- NHS Lothian
- NHS Tayside
- NHS Orkney
- Mental Welfare Commission for Scotland
- Scottish Court Service (SCS) (Incorporating response from Public Guardian)
- COSLA

Susan Duffy
Clerk to the Finance Committee
Submission from Association of Chief Police Officers in Scotland (ACPOS)

I refer to your correspondence dated 11 May 2006 in connection with the above subject, which has been considered by members of the General Policing and Finance Management Business Areas, and can now offer the following by way of comment.

On 10 February 2006, ACPOS responded to the Protection of Vulnerable Adults (Scotland) Bill – Partial Regulatory Impact Assessment, and highlighted the following therein:

‘Members acknowledged there will be accompanying financial implications for both the police service and other agencies, which is difficult to predict at this time. These are likely to include staffing, office accommodation, IT equipment, training, administrative support and transport costs.’

The figures in respect of policing costs quoted within the Financial Memorandum are based on the assumption of one referral per 1000 of the adult population, and on an estimation that, when taking the resulting number of cases together with associated case conference and strategy meeting attendance into consideration, this would equate to the work of two additional full time members of staff, in addition to a supervisory rank.

Members stress that this should be seen only as a minimum requirement, as due to the geographic area and structure of some forces, and dependent on the level of referrals, there may be a need to employ more staff. In addition, there are multiple variations associated with estimating the costs involved in carrying out the work in question. Not least, there could potentially be different ranks of officers carrying out the work, and even within the same rank, there is a pay structure dependent on an individual’s length of service, and various monetary benefits awarded to certain individuals but not others, e.g. housing allowance. The length of time taken to carry out each stage of the procedures could also vary significantly.

Notwithstanding, based on the minimum requirement of deploying two officers of the rank of Detective Constable (2 x £40,483 = £80,966) supervised by a Detective Sergeant at a rate for half the cost of a supervisor (£24,868), a more feasible estimate of staffing costs would be in the region of £105,800. These figures include an element for the officers National Insurance payments, Pension Liability, Special Priority Payment and Competency Payments. In addition, as stated, there would be further costs in regard to office accommodation, I.T. equipment, training, administrative support and transport. Whilst these are difficult to quantify, it is felt an overall conservative estimate would be in the region of £40,000, making a total of £145,800. If this were to be replicated across all eight Scottish forces, then the approximate minimum cost would be £1,166,000.
Members also noted that this would incur a new additional burden, which may require resources to be redeployed from other areas.

Given the significant amount of variables involved, estimation of the likely costs is difficult. Consequently the figures provided are purely speculative and should not be considered as providing any form of accurate reflection of actual costs.

I trust that the foregoing is of assistance to you.

Yours sincerely

Deputy Chief Constable
Assistant Secretary
Submission from Crown Office and Procurator Fiscal Service

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

We did not take part in the consultation “Protecting Vulnerable Adults – Securing their Safety” and did not therefore comment on the financial assumptions made. As a department of the Scottish Executive we do not normally comment in consultation exercises since the Lord Advocate, as a member of the Cabinet, may have to participate in Ministerial discussion and decision making.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not applicable.

3. Did you have sufficient time to contribute to the consultation exercise?

Not applicable.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Financial Memorandum refers at paragraph 158 to potential training costs for Procurators Fiscal to assist with decisions regarding prosecutions. It is likely that the proposed legislation will result in a small increase in workload for COPFS since it will increase the number of individuals reported to us, for example for breaching a Banning Order. Reports of such offences will require to be considered and, if appropriate, processed through Court. The Financial Memorandum states that it is difficult to estimate the number of cases that would proceed to court and on this basis it is difficult to assess the financial implications for COPFS. However, it is not envisaged that the introduction of these new offences will increase significantly the volume of cases being dealt with by COPFS.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Given that the increase in the number of cases referred to the Procurator Fiscal is anticipated to be relatively low we are content that our organisation can meet these financial costs.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
The Financial Memorandum does not address any of the anticipated costs for COPFS arising from this Bill. As indicated at paragraph 5 above we anticipate that these costs can be absorbed within existing resource levels.

**Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not applicable.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Not applicable.
Submission from NHS Fife

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

NHS Fife did not take part in the consultation.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A

Did you have sufficient time to contribute to the consultation exercise?

N/A

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

N/A

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

N/A

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

N/A
Submission from NHS Highland

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
Consultation was via our Director of Community Care who sits on the VA Bill Steering Group and participated in group work

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Yes

3. Did you have sufficient time to contribute to the consultation exercise?
Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
Costs have been estimated on anticipated increase in demand and administration costs. Seems appropriate but disappointing if no specific funding to be provided centrally. This could result in different prioritising across Boards and recruitment difficulties due to increased workloads.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
No, considering other pressures. Should get some specific funding to demonstrate the SE commitment to this as there was for child protection.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Yes but need to emphasise possible double running costs as move from remedial work to early intervention / prevention work.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
Yes

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
Need to build in costs for Quality Assurance audit and review.
Submission from NHS Lothian

The Bill is welcomed on behalf of NHS Lothian, and sees this, and anticipated supporting Guidance from the Scottish Executive as being a formal framework against which we can all work in a collaborative manner to support staff who have to deal with very complex matters, and who endeavour to achieve the right balance between the need to protect and support, and the right of people to achieve self determination for those in our communities and various institutions.

As it is the Local Authorities who have the lead and statutory responsibility for Adult Support and Protection, the majority of the costs will affect them, however owing to the collaborative nature of this complex work, other agencies including Health and Police, there will undoubtedly be additional costs associated with the implementation of the Bill for Health.

Yours sincerely,

ALISON MCCALLUM
Director of Public Health & Health Policy

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes

The opportunity to comment on the financial implications is welcome, however at the time of the consultation there were no specific financial assumptions made to comment upon.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Within the Memorandum, it has been helpful to reflect upon the current work undertaken in Edinburgh, Lothian and Scottish Borders, for others to comment upon. Clearly we are in new territory and it may take reflection over the next few years following introduction of the Bill, to provide a more accurate picture of associated costs.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs
4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not please provide details
Adult Protection Committees

If independent contractors, such as GPs, are to be involved in adult protection committees they may well require additional funding to pay for cover in their practices. Similarly, involvement of potential users as members with expertise by experience will require their costs to be refunded.

Adult Protection Units
The cost of setting up Adult Protection Units across Scotland estimated within the Memorandum, of £7.5m, is considered to be realistic, as this is indicated to allow for the fact that some larger authorities, with a greater population density or geographical area, may require a larger Adult Protection Unit. The costs though do need to be seen in the light of them being required on a continuous basis.

Operational Costs for Investigations and appropriate Support
Although the majority of the costs associated with the operational undertaking of investigations and support, will be within the local authorities, there will be occasions when NHS staff are involved in removal and assessment orders, where medical examinations, (carried out by either medical, nursing or midwifery staff), are required, as well as assistance with enquiries and investigations.

It has been helpful that the early work that you have done, which has been informed by the Edinburgh, Lothian and Scottish Borders Advisory Group, indicates that for Scotland in the region of 4,000 referrals will be made, requiring 174 additional Care Managers across Scotland at the cost of £5,111,250 per year.

Some costs have been identified for Police involvement.

The cost of NHS staff, is as yet not quantifiable, however there must be a recognition within the Memorandum that there will be additional costs associated with the additional activity in their supporting role, as well as the ongoing costs associated with line management and supervision and peer review audit. It would be helpful if the funding allocated reflected this, with agreement that implementation funds are allocated across the spectrum of agencies, with close recording and monitoring of input from each agency, in order that costs associated to each organisation is measurable. It is often the case that these costs are underestimated. It may be that in future the costs are allocated on the proportion of severity and complexity of cases that each area has to deal with.

Training Costs
It is acknowledged within the Memorandum that there is likely to be increased costs, particularly associated with specialist training for
• Risk assessment
• Risk management
• Effective investigation and
• Case conference chairing

It should be expected that some of the costs are contained within the Adult Protection Units, and existing training budgets, however the illustrative national costs within the Memorandum, based upon the experience in Edinburgh, Lothian and Scottish Borders, for the additional training and induction materials of £394,500, may be underestimated. The requirement to produce additional materials for induction of new staff, and changes when legislation and national guidance is updated will be a continuous and costly process.

It must be recognised that the materials described are for use by all agencies across the local authority, NHS and Police partnerships, and guidance within allocations should reflect this.

It is noted that the national estimate does not include the interagency training for each of the three levels, ranging from £100-£300 per person, with the potential for a cost of £500 per day for an external trainer to be purchased. This is likely to be a significant requirement, and should be considered within the national plan.

Costs to Health Boards
It is interesting that the Memorandum indicates that the costs to us would be low; the interagency role that is required to undertake Protection and Support for adults seems to have been terribly underplayed.

The training at level 2 and associated materials for Edinburgh, Lothian and Scottish Borders cover the NHS element and Police costs, this needs to be reflected as partnership funding when allocations are made.

The cost for Level 1 Training is predominantly met through the NHS Lothian Training & Organisational Development Department, however the rising cost of releasing staff to attend training is becoming more difficult to meet, and we remain committed to ensuring our staff are appropriately prepared to be aware of the signs of suspected abuse and know what appropriate action to take.

The associated costs of NHS staff involvement in the adult support and protection roles described above is not included. There is a view that as increased awareness occurs, so too will increased cases of suspected abuse, resulting in a far greater requirement for NHS staff to be involved in the assessment, investigation and interventions.

Additional costs that may arise are from the Board’s requirement to govern and performance manage as well as contributing to inquiries by
funding independent external reference groups, giving and receiving staff to act as independent assessors and funding the clinical and managerial leadership development required to ensure that the new regulations are applied.

The costs of doctors and dentists and, in future, nursing and allied health professionals, appearing in court and producing court reports does not seem to have been considered. Additional administration time or time away from base needs to be covered through a combination of covering absence and service redesign, that in part may need to be funded.

**Cost of Information Exchange**

This includes rapid introduction of SCI store, technical fixes for GPASS so that adults with caring responsibilities, particularly for other members of the family, can be identified easily. Our experience with children is that linking parents and children is difficult and we would urge that resources are devoted to addressing this problem as it affects vulnerable people of all ages.

Specific infrastructure –technical and behavioural- needs to be in place before we can guarantee the quality of information sharing and its governance. The costs of implementing e-care will be a useful guide.

Putting protocols in place is not cheap if engagement with the process is to deliver improvement – investment in time and in developing champions is required.

**Amendments to other Acts**

It is helpful to note that there should be no additional costs to the NHS in these amendments.

5. **Are you content that your organisation can meet the financial costs associated with the Bill? If not how do you think these costs should be met?**

No

The ability to meet the financial costs associated with the Bill needs to be seen in a collaborative manner, across the local authority, NHS and police interface. If one partner is unable to meet the costs, this puts at risk the quality of identification, assessment, support and interventions.

There are substantial costs required to meet the ongoing needs identified within the Bill. It may be more helpful for partnership areas to respond collectively in the future.
The costs should be met in part through appropriate absorption within current systems such as training and development. However, the evident need to employ an additional 174 Care Managers, to deal with the anticipated 4,000 referrals per year, may result in a rebalancing of local authority resources from other areas, which may have an adverse impact on the whole system.

The additional Care Managers will undoubtedly result in a knock on effect within the collaborative partnership, indicated above. Additional resource, although not currently quantifiable, needs to be supported.

The additional resources thereafter to meet the requirements within the Bill should be funded by the Scottish Executive; this will indicate to collaborative partners and the public, that there is a commitment at the highest level to manage this matter.

Any additional costs falling on Health are not currently included within approved financial plans. Therefore if no additional funding is made available then prioritisation against a range of other competing priorities will require to be made.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates, and the timescales over which such costs would expect to rise?

The timescales seem reasonable.

As identified earlier in this response, there seems to be an under estimation associated with the costs, particularly to the NHS. In general, we are dealing with an unprecedented area of work, that needs to undergo a period of reflection about implementation in order to adjust accordingly.

Wider issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The associated amendments to the various Scottish Acts highlighted in the report, indicates, at this point, that no additional costs should be incurred by the NHS.

Acts highlighted;
• Adults with Incapacity Act 2000
• Social Work Act 1968 in respect of
  o Direct Payments
  o Ordinary Residence
  o Liable Relatives
• Mental Health Act 2003

This is reassuring.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

This is at present difficult to answer, as indicated, this is unprecedented work.

It is anticipated that the Scottish Executive will develop and issue Guidance to support the Bill, in a timely manner, to provide agencies with a framework against which to support this very complex work.
Submission from NHS Tayside

Consultation

1. NHS Tayside did not provide a response to the earlier consultation.

2. Not applicable.

3. Not applicable.

Costs

4. No, the financial implications for NHS Tayside have not been reflected within the Financial Memorandum. Estimated costs would be calculated as follows:
   - Provide locum doctors when GP’s are attending training - £200 per half day.
   - Indirect cost of other NHS staff attending relevant training courses - £30 per hour on average, plus expenses.
   - Indirect costs for staff when attending Adult Protection Committees - £30 per hour on average, plus expenses.
   - Financial implications of NHS staff attending Case Conferences - £30 per hour on average, plus expenses
   - Estimated provision of 3 additional specialist-nursing posts at £30k per annum each.

It is not possible to estimate the full impact of the introduction of this legislation, as we are unable to anticipate the volume of work.

5. We have concerns that the Act will place a financial burden on NHS Tayside and the only source of funding would be through existing resources. We believe that if costs are significant, the Scottish Executive should make a contribution towards implementation of the Act.

6. No, the Financial Memorandum does not currently reflect the additional expenses for delivery of the Act.

Wider Issues

7. There is no indication within the Financial Memorandum that this has been considered.

8. It is not possible to identify future additional costs until further changes have been illustrated from Scottish Parliament.
Submission from NHS Orkney

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes. A joint consultation exercise was undertaken during January 2006 between NHS Orkney, Orkney Islands Council and local partner service providers. Comments were submitted on the financial assumptions made, particularly with regard to:

- Costs associated with an independent Chair for the Adult Protection Committee
- Costs associated with the creation of an Adult Protection Unit
- Costs of additional staff to deal with referrals
- Training costs
- Costs of information exchange

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The financial assumptions in the Memorandum have incorporated some of the concerns that were raised, but we would be keen to ensure that full funding is received from the Scottish Executive for the statutory requirements when the Bill is enacted into law. Additional funding costed at the levels outlined in this document should be adequate, provided it is distributed at this level and not on an Arbuthnott, per capita or GAE basis. Smaller island health boards and local authorities will otherwise be unable to resource Adult Protection Committees, administration of protective processes, and training adequately.

There is an assumption in the financial memorandum that health care practitioner costs would be minimal. Given that such practitioners (GPs, AHPs, Mental Health professions etc.) would no doubt be required to commit sessional time to support the work of Adult Protection Committees and Teams it would seem that such costs, potentially including backfill, have not been identified.

Retrospective checks on the existing workforce: Whilst identified as a timing and volume issue from the perspective of Disclosure Scotland, is also a potentially immense cost issue for employers if an additional retrospective check has to be done outwith the routine 3-yearly check for registration purposes. or as a one-off on the very large numbers of frontline staff.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes, although this may be due to the already close, co-terminus working relationships with council colleagues in the context of a small island community.
Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Please note the concerns already stated at points 1 and 2 above. The assumption that earlier identification and investigation of alleged abuse will lead to cost savings (Para. 75 of the Bill) is highly contentious. All the evidence available, as cited here, suggests that abuse of vulnerable adults has been under reported and that protection has been ineffective and under resourced – so that costs have not been incurred. Rising public awareness, increasing rates of referral, higher expectations and rigorous standards can only lead to additional costs whether in preventative or reactive services.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

No. In addition to the response to question 2, the establishment of such committees and associated administrative processes always have fixed, minimal cost whether the service being provided is for 20 or 200 people and agreement of a mechanism which fully funds on a recurring basis such baseline costs (capital and revenue) would be most welcome. Given that all Health Boards are making considerable year on year efforts to ensure financial balance, appropriate, recurring funding mechanisms which reflect true cost should be allocated.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Those that have been identified within the financial memorandum are most welcome. It is difficult to quantify whether the margins of uncertainty and timescales are accurate due to the limited baseline analysis out with the experiences of Borders and Lothian. Isles communities, due in part to size and a smaller resource pool, often experiences a disproportionate level of impact on cost and timescales to that experienced on the Scottish Mainland.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

See earlier comments. Although the memorandum refers to the potential for some families needing extra support, this has not been quantified. There is little reference in the memorandum to associated costs for advocates, committee hearings, travel costs or training which is ongoing and beyond that being for Adult Protection Committee members. To embed such a scheme and make it robust requires a targeted and recurring training requirement amongst colleagues in several agencies across the community.
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

See previous comments.
Submission from Mental Welfare Commission for Scotland

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

A – We took part in the consultation. We made no specific comment about financial assumptions, other than to observe that there would be no or minimal financial impact on the Commission.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

A - Yes

3. Did you have sufficient time to contribute to the consultation exercise?

A - Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

N/A

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

N/A

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

N/A

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs? Not possible for us to answer these questions at present.
Submission from Scottish Court Service (SCS) (Incorporating response from Public Guardian)

It should be noted that Public Guardian is a part of SCS

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SCS is an executive agency of the Justice Department and its involvement with the Bill preceded the consultation phase. The Public Guardian was fully involved and consulted at all stages with and by both the Health Department in their ‘work up’ of those aspects of part 1 of the Bill which affect the Public Guardian and by the Civil Law Division in their drafting of the amendments of the Adults with Incapacity Act, now incorporated as part 2 of the Bill.

SCS undertook an assessment of the financial impact of the legislation and these have been incorporated in the financial memorandum to the Bill.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes

3. Did you have sufficient time to contribute to the consultation exercise?

N/A – see response to 1.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

These have been reflected as accurately as possible bearing in mind the fact that demand is not yet known.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

There will be a range of costs depending on different demand projections – a fee for this work has been assessed and in the interim there may be a need to cover a deficit – we intend doing this by increasing some of the other fees that are charged by Public Guardian.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes
Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

SCS is not placed to comment on the wider issues.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

SCS can only comment in respect of part 2 of the Bill; there will be need for subordinate legislation and more developed guidance but these are not anticipated to incur additional costs.
Submission from COSLA

1. We welcome the opportunity to present evidence to the Finance Committee.

2. We support the need for this legislation and are aware of the extensive research, attention to detail and consultation undertaken by the Scottish Executive’s Adult Support and Protection Unit and are in discussion with civil servants regarding the detail.

3. Awareness of the policy and practice requirements in the area of Adult Protection has grown exponentially over the last five years. This has been accelerated by the recent report on the Scottish Borders Inquiry and attendant requirements / expectation on local authorities.

4. Adult Protection in Scotland has suffered from a lack of guidance from the centre – in England the Department of Health produced the “No secrets” policy framework in 1998, likewise The Welsh Assembly produced “In Safe Hands” in 2002. Adult protection in Scotland has developed in an ad hoc and haphazard manner – there are areas that have given high priority to practice/ procedure and policy development but it would be safe to say that there are probably other areas that are still struggling to make sense of the complexities and increasing demands of identifying, assessing and managing adult risk and abuse. As such it is recognised that this is a very difficult area to quantify demand and cost service provision and support.

5. In recognition of these challenges we would like to make the following comments about the financial memorandum.

Our comments fall into three categories

1. General observations
2. Underestimated costs
3. Unidentified costs

General Observations
- Current work vs. additional work
- The chronic nature of the work
- Raising awareness, raising expectations – future trends

Underestimated costs
- Adult Protection Units
- Adult Protection Committees
- Training
- Care managers
- Role of Health professionals
- Role of the Police
- Strategic Development Officer posts
Unidentified costs/issues
• Advocacy and mediation
• Supervisory /Management costs
• Training costs
• AWI costs
• Administrative costs (including case management costs)
• Quality assurance/audit costs
• Evidence based research
• Impact on recruitment
• Allocation of funds to authorities that may not set up Adult Protection Units
ADULT SUPPORT AND PROTECTION (SCOTLAND) BILL

REGULATORY IMPACT ASSESSMENT

SCOTTISH EXECUTIVE
MARCH 2006
INTRODUCTION

1. This Regulatory Impact Assessment (RIA) provides information on the options considered in relation to the Adult Support and Protection (Scotland) Bill and the likely impact on the relevant sectors. Under Scottish Cabinet rules, any piece of legislation that will create or extend a regulatory regime must include a consideration of the impact of the legislation on the relevant sectors.

PURPOSE AND INTENDED EFFECT

(i) Objectives

2. The overall purpose of the Adult Support and Protection (Scotland) Bill is to put in place modern and strengthened measures to afford greater protection for those adults in Scotland who are at risk from abuse. It will improve and enhance protective measures for these adults and will also, in turn, improve inter-agency co-operation and enhance preventative action.

3. The main element of the Bill is the introduction of adult protection measures to take forward aspects of the Scottish Law Commission’s 1997 draft Vulnerable Adults Bill. These largely relate to the right of entry to settings where abuse of adults is thought to be taking place, and to the creation of exclusion orders so that perpetrators of abuse are removed from those settings. Statutory Adult Protection Committees, operating on a multi-agency basis, will be established to further develop strategic inter-agency working and collaboration.

4. The Bill also contains other policy subjects which require amendment via primary legislation. These include amendments to the Adults with Incapacity (Scotland) Act 2000 (see Annex A), amendments to the Social Work (Scotland) Act 1968 in respect of Ordinary Residence (see Annex B), Direct Payments procedures (see Annex C) and Liable Relatives (See Annex D) and Amendments to the Mental Health (Care & Treatment) (Scotland) Act 2003 (see Annex E).

(ii) Background

Adult Protection Measures

5. In the introduction to their 1993 discussion paper on vulnerable adults, the Scottish Law Commission (SLC) observed that there was “little or nothing available” to protect adults who are vulnerable but not mentally disordered and that there is “an increasing awareness that abuse, deprivation and exploitation of vulnerable adults generally occurs and that the existing law is often not capable of tackling it effectively”.

6. Whilst there have been advances since then in the protection of adults who lack capacity and adults who are mentally disordered by the Adults with Incapacity (Scotland) Act 2000 and by the Mental Health (Care and Treatment) (Scotland) Act 2003, the position of those adults at risk of abuse mentioned in the SLC discussion paper remains largely the same.
Local authorities currently have no power to intervene to help those adults who have no apparent mental disorder or incapacity but who are subject to or at risk of harm as a result of their increased vulnerability.

7. Many local authorities do have multi-disciplinary adult protection policies in place but these are at varying stages of development and some over-arching Adult Protection Committees do exist although, again, the structures, roles and responsibilities vary. Local authorities currently have a duty to offer a community care assessment to adults who they believe might be in need of community care services or, indeed, to any adult who requests such an assessment. However, in the case of an adult at risk of abuse, a local authority may be unaware that abuse is taking place and, as the adult are themselves unlikely to request an assessment, their needs may remain unmet. In some circumstances, there may be referrals by neighbours or other informal contacts but currently the local authority can choose whether or not to carry out an investigation.

(iii) Rationale for government intervention

8. Abuse can be physical, sexual, financial and emotional. It can be by commission, or omission (i.e. neglect). However, there are no reliable statistics on the incidence of abuse of vulnerable adults, and much of it goes unreported. In 1992, a UK national prevalence study by Ogg and Bennett showed that up to 5% of older people in the community were suffering from verbal abuse and up to 2% were the victims of physical or financial abuse.

9. Abuse is not confined to older people as the Mental Welfare Commission has highlighted in its ‘Deficiency in Care’ reports. Most recently, the Commission worked closely with the Social Work Services Inspectorate (now the Social Work Inspection Agency (SWIA)) over investigations into Scottish Borders Council and NHS Borders services for people with learning disabilities. The findings, published in May 2004, highlighted a failure to investigate very serious allegations of abuse appropriately because of a lack of understanding of the legislative framework for intervention and its capacity to provide protection. The recommendations also resulted in the call for a Vulnerable Adults Bill to bring consistency of purpose and practice across Scotland.

10. Often simply having structures and procedures in place may not be sufficient. Whilst it is important that each local authority area has the required flexibility to meet the needs of its own community, it is essential to have consistent high quality assessment and intervention to recognised national standards which is led and managed by local specialist Adult Protection Committees.

(iv) Risk assessment

11. Within adult care services, local authorities in Scotland are providing care and support to meet the needs of some 150,000 older and vulnerable people, spending £1.5 billion per annum. Some 53,600 older people (65+) are receiving home care services, 33,400 older people are in 980 care homes and 11,600 older people attend 420 day centres every week. Services are provided to support 18,000 people with a learning disability, and a range of significant services are provided for 37,500 blind or partially sighted individuals.

12. There have been no recent prevalence studies undertaken in the UK on abuse – Comic Relief is however undertaking a UK-wide study which is due to report in 2007. In line with
the UK as a whole, Scotland has an ageing population – 44% of the 18+ population are aged 50 or over, and 9% are aged 75 or over (2004). 1,084,732 people are 60+, representing 21.4% of Scotland’s population. Age Concern Scotland estimate that between 7% and 9% of older people in Scotland are victims of at least one form of abuse, with over 40% of victims suffering more than one kind of abuse.

**CONSULTATION**

**Within government**

13. The following government agencies and departments have been consulted on the measures contained within the proposed Bill:
   - Relevant colleagues within Health, Justice and Education Departments of the Scottish Executive
   - Scottish Social Services Council (SSSC)
   - Care Commission
   - Mental Welfare Commission
   - Office of the Public Guardian

**Public Consultation**

14. All of the elements contained within the Bill have been subject to public consultation. The first consultation - “Consultation on Vulnerable Adults” - in 2002 asked if a new legislative framework was needed to protect those adults who are at risk of abuse. Specific proposals included the rights of entry to settings where abuse was alleged and exclusion orders for perpetrators. Respondents to the consultation broadly welcomed the proposed introduction of new measures for vulnerable adults.

15. A further consultation – “Protecting Vulnerable Adults – Securing their Safety” - was completed at the end of last year and concentrated on the proposed protection measures for vulnerable adults. There was broad support from respondents for the proposed role, structures and powers of the Adult Protection Committees and the vast majority felt that the Committee powers should be defined in statute.

16. In addition, key stakeholders have the opportunity to inform policy development through a national Adult Support and Protection Bill Steering Group and a number of face to face meetings have been carried out with groups of stakeholders to discuss the proposed measures.

17. A copy of the partial RIA was also issued for public consultation in January 2006 and the responses received indicated a high level of support for the legislative options proposed.

18. This RIA gives consideration to the impact, in terms of costs and benefits, of each of proposed elements of the Bill in turn.

**Adult Protection Measures**

**Annex A** Amendments to the Adults with Incapacity (Scotland) Act 2000

**Annex B** Amendments to the Ordinary Residence rules within the Social Work (Scotland) Act 1968
<table>
<thead>
<tr>
<th>Annex</th>
<th>Amendments</th>
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<tr>
<td>Annex C</td>
<td>Amendments to Direct Payments procedures within the Social Work (Scotland) Act 1968</td>
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<td>Annex E</td>
<td>Amendments to the Mental Health (Care and Treatment)(Scotland) Act 2003</td>
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ADULT PROTECTION MEASURES

PURPOSE & INTENDED EFFECT

19. This element of the Bill proposes to create local statutory Adult Protection Committees to further develop strategic inter-agency working and collaboration. The guiding principles, under which the Committees will operate, are those of most supportive and least restrictive. This means that action taken to benefit individuals, on a case-by-case basis, will employ the lowest level of intervention that is necessary to ensure their safety and well-being. The Committee’s functions will include the promotion of good inter-disciplinary practice in preventing and dealing with the immediate causes and effects of abuse and the identification of inter-agency training needs.

20. The Bill will also provide new powers to:

- investigate suspected abuse;
- carry out assessments of the person and their circumstances;
- intervene to remove the adult or manage the risk of abuse;
- if necessary and in the last resort, to exclude the perpetrator;
- if necessary and in the last resort, to force entry to perform the above functions.

OPTIONS

21. The options considered as part of the policy development process were as follows:

Option 1: Do Nothing

22. This option leaves many adults in Scotland, not covered by existing legislation, at continued risk of abuse. This position would be unsustainable given recent Ministerial commitments to legislate for better protections.

Option 2: Issue improved and detailed guidance on how adult protection measures should operate at a local level.

23. Existing adult protection measures are in place across Scotland, but many would benefit from strengthening of the multi-disciplinary input and co-ordination required to make them more effective.

Option 3: Introduce new legislative measures to afford Scotland-wide protection for adults at risk of abuse including the creation of statutory Adult Protection Committees to further develop strategic inter-agency working and collaboration.

24. This option would help to build upon existing local good practice with statutory powers to better protect those adults identified as at risk of abuse.

A cost / benefit analysis for the options considered is given below.
COST / BENEFIT ANALYSIS

Sectors and groups affected

25. A range of agencies will be directly affected by the proposed adult protection measures – including local authorities, the police and health boards. Initial assessments for private business and the voluntary sector in care settings indicate that the main impact is likely to be the need to determine the appropriateness of making a referral for an investigation to take place.

Benefits

Option 1: Do Nothing

26. There will be no additional benefits resulting from this option.

Option 2: Issue improved and detailed guidance on how adult protection measures should operate at a local level.

27. The alternative to including the adult protection measures, described above, as a statutory requirement would be to issue improved and detailed guidance on the kinds of circumstance and referrals that should prompt an assessment, and on the issues that should be included to ensure that abuse or potential abuse is adequately covered.

28. While this may offer some improvement compared to the current position there are likely to be problems with this approach. Aside from effectiveness, as agencies may be more inclined to follow guidance that is based on a legal requirement, there would be a concern about how long it would take for all the relevant central authorities to agree the content and format of guidance and to whom it should be addressed. This presents a real risk that abuse could continue without appropriate assessment or investigation. In addition, without an explicit duty for agencies to information share, there is a risk that some vital information will not be shared, or it will be shared too late, or that agencies receiving information on suspected abuse from another agency may give a low priority to the response.

29. Again, as an alternative to the specific power to intervene and exclude, guidance could be issued to all agencies, and particularly the police, about the availability of alternative measures which exist under current legislation (such as the Mental Health (Care and Treatment) Act 2003 or the Adults with Incapacity (Scotland) Act 2000) with a clear explanation of how, when and in which circumstances of abuse or vulnerability these existing powers can be used. However, this approach does not provide parity for all those adults who are at risk of abuse. While it may result in more targeted and effective use of existing legislation for those adults which it covers, it does nothing to improve the levels of protection for those vulnerable adults who are subject to or at risk of harm but who have no apparent mental disorder or incapacity.

Option 3: Introduce new legislative measures to afford Scotland-wide protection for adults at risk of abuse including the creation of statutory Adult Protection Committees to further develop strategic inter-agency working and collaboration.
30. The proposed adult protection measures contained within the Bill offer a number of clear benefits over the current position.

31. The specific requirement for agencies “to share information” when an investigation is thought to be needed is intended to ensure that agencies share information at a sufficiently early stage so that any subsequent investigation undertaken is comprehensive. The primary benefit from this duty will ultimately be the earlier detection of abuse (because information will be shared earlier) but it will also result in improved investigation (because the right people/agencies are involved at the outset and all perspectives can be taken into account) and the production of more comprehensive holistic person centred protection plans. It will reinforce the strategic imperative of Scottish Executive to all welfare agencies that partnership working is the key to long-term sustained improvement (e.g. Joint Future, Community Health Partnerships, Criminal Justice Partnerships etc.)

32. The inclusion of a “duty to investigate” is intended to ensure that all agencies and particularly the lead agency undertake thorough assessments and careful investigations when a referral of abuse or suspected abuse is received. The benefit arising from this requirement, in addition to the obvious benefit of improved protection through better investigation, is the contribution that it will make to the increased awareness of abuse, the circumstances that surround abuse and the issues surrounding vulnerability. It will create an increased priority for staff training, review/creation of interagency guidelines and will over time improve public awareness of abuse and of the responsibility to investigate.

33. The policy objective of the “powers to intervene” is to enable agencies to do something to reduce risk, prevent further abuse, provide additional protection to an adult at risk of abuse and, in particular, to be able to do so when that adult will not ask for help because they do not feel that it is necessary or they are afraid. Therefore, the primary benefit from these measures will be to those adults, who have no apparent mental disorder, no apparent incapacity but who are unable to complain or who simply accept that continuing abuse is an ongoing fact of life. These powers will enable appropriate agencies to intervene, regardless of physical barrier, to assess and protect individuals. They also oblige individuals to accept help from agencies in managing and reducing risk to prevent further abuse.

34. Many local authorities do have multi-disciplinary vulnerable adults policies in place but these are at varying stages of development and practice is still evolving. While many examples of good practice do exist, the risk of not establishing the Adult Protection Committees is that adult identification and investigation will continue to be uncoordinated, communication between agencies is unlikely to improve, appropriate information will not be exchanged and there will be weaker monitoring of joint practice. Adult Protection Committees will ensure that there is consistency of practice across Scotland. The structure and remit of the Committees will ensure that joint working between agencies is built upon and strengthened while avoiding duplication of effort.

Costs

Option 1: Do Nothing

35. There will be no additional costs.
Option 2: Issue improved and detailed guidance on how adult protection measures should operate at a local level.

36. The additional costs associated with this option are likely to be marginal. Much of the core work of guidelines already exists in documents such as “No secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse” issued by Department of Health in 2000. There may be costs associated with the review and updating of guidelines.

Option 3: Introduce new legislative measures to afford Scotland-wide protection for adults at risk of abuse including the creation of statutory Adult Protection Committees to further develop strategic inter-agency working and collaboration.

37. The costs relating to this option are discussed below and are essentially split into three main sections. At a strategic level, there will be costs associated with the establishment of over-arching Adult Protection Committees. In practice, local Adult Protection Units would act as a bridge between the strategic level (APC) and the operations level. Finally, at an operational level, additional staff will be required to conduct investigations and manage subsequent services and support. Given the recent work that has been completed in the Scottish Borders, their current model is used below as a basis for an illustrative example of the type of costs that may result.

Cost of Adult Protection Committees

38. The measures require that all public authorities establish formally constituted Adult Protection Committees (APCs) similar to those that currently exist for children and young people. However, it is expected that no significant additional costs would be associated with this requirement as support for the Committees, in terms of administration and professional advice, could be included in the costs of the Adult Protection Units described below. There could be some costs associated with the appointment of an independent chair and existing child protection guidelines do recommend that consideration be given to this. The Scottish Borders have appointed independent chairs to both adult and child protection committees. The cost of this is approximately £3,000 per year including expenses (equal to £96,000 if each local authority area had an APC, although this is unlikely).

Cost of Adult Protection Units

39. As part of their response to the SWIA investigation, the Scottish Borders have established an Adult Protection Unit. This consists of an Adult Protection co-ordinator, a training post and administrative support. The total cost of the Unit is estimated at £150,000, which is shared between the NHS, Scottish Borders Council and Lothian and Borders Police. This provides an estimate of the additional resources that may be required by other authorities across Scotland. If scaled up to cover Scotland on a population pro-rata basis (i.e. the Borders represents approximately 1/50th of the Scottish population), this element would total in the region of £7,500,000.

Cost of additional staff

40. At an operational level, it is anticipated that the overall effect of including the new duty to investigate and the powers to intervene, remove and exclude will be to increase the
need for care manager posts to conduct investigations and manage subsequent services and support. It is expected that the burden of this will fall on local authorities but there will also be an impact on the police (because of increased demand for assistance in investigations) and to a lesser extent the NHS (mainly involving primary care staff, such as GPs).

41. In addition to the above, there may be costs if other staff become involved in the investigative process and any subsequent action arising from the investigation, although this will not be required in all cases. Some cases may also require the provision of additional support for families following an investigation or assessment of the needs of the individual causing the abuse as they too may require help and support depending on their circumstances. For some individuals, low cost intervention may prove sufficient to meet needs, stabilise the situation and so reduce the risk of further abuse.

42. In order to cost the additional staff who will be required to investigate, assess risk and care manage complex abuse situations we first need to estimate the incidence of referrals to investigate cases of abuse. Referral figures in the Scottish Borders are much higher in absolute terms and pro-rata the population than in other parts of the country, reflecting a greatly increased awareness in the Borders since the recent inquiry. However, figures from the wider Lothian and Borders Protection of Vulnerable Adults group show that the number of referrals in East and West Lothian have also risen following internal audits earlier this year. Perth and Kinross Council also saw a rise in referrals following the implementation of an initiative designed to protect vulnerable adults from abuse. This suggests that across the country, as the levels of public and in-service awareness rise, this growth in referrals is likely to be replicated.

43. Taking the Scottish Borders figures as a basis, in 2004/05 they were required to investigate 60 new cases and a further 29 in the first quarter of 2005/06, therefore the incidence of referrals for the Scottish Borders can be approximately calculated as 1 new referral per 1000 of the adult population.

44. The Scottish Executive report “Review of Care Management in Scotland”, published in 2002, suggests that around 23 complex cases per care manager is a norm (although clearly practice will vary slightly between different authorities). The figures suggest that, by 2008, it would not be unreasonable to anticipate levels in the region of 4,000 new referrals per annum across all age and client groups which will require investigation and, perhaps in some cases, additional protection measures and continuing care management. This would result in an estimated 174 additional care managers across Scotland at a cost of £29,375 per annum each (2005/06 cost). The total cost of which would be £5,111,250. While it is likely that the incidence of referrals will initially rise, as a result of extensive awareness raising within appropriate agencies, figures could be expected to stabilise once all agencies are sufficiently familiar with the procedures.

45. The increase in number of referrals, arising from the implementation of the adult protection measures, may also require additional police resources in order to assist with investigations and enquiries (although it should be remembered that not all referrals will necessarily result in a criminal investigation). Based on the assumption of one referral per 1000 of the adult population, Dumfries and Galloway Constabulary have estimated that the resulting number of cases together with associated case conference and strategy meeting attendance would equate to the work of two additional full-time members of staff - at a cost of around £60,000 for suitably experienced constables.
46. It is likely that some officers specialising in this work would be based within the existing Family Protection Unit and would be supervised by a Detective Sergeant as part of the role which has primary responsibility for the domestic abuse unit – at a cost of £18,000 for half the cost of a supervisor. Additional costs of £2,500 are estimated for office accommodation and set-up costs. Therefore, total additional costs would equal £80,500 and if this increase in staffing was replicated nationally (i.e. across eight forces) then an approximate cost would be £644,000. In addition, forces, particularly those based in rural areas, may require additional transport costs which may equate to an additional vehicle at a cost of approximately £10,500 together with associated running costs.

47. While the cost of criminal enquiries will be borne from the police budget, if an increase in referrals/investigations is assumed, there may be an associated rise in the wider costs as well (e.g. medical examinations, forensic lab tests, expert witnesses). Complex or serious enquiries may require additional staff to be brought in to provide a robust and proportionate response. This is difficult to quantify as each referral will be dealt with on a case-by-case basis with varying levels of investigation and intervention required.

48. All forces contribute to the cost of training at the Scottish Police College. Whilst there is no existing course looking specifically at vulnerable adult issues, as part of developing investigatory skills, officers would have to attend initial detective officer training for four weeks as a minimum. There would also be a requirement to attend any future identified specialist training.

Training Costs

49. There are likely to be some additional training costs although it is difficult to separate out what will actually be additional given that substantial investments in training on joint work, assessment and care management have taken place in recent years. It is expected that there will be a need for additional specialist training on risk assessment, risk management, effective investigation and case conference chairing. Some of the costs of this training could be contained within the costs of the Adult Protection Unit (outlined above) and existing training budgets. There may also be additional training required for procurator fiscals to assist with decisions regarding prosecutions.

50. This training need will be addressed in a number of ways. For example, the Scottish Social Services Council (SSSC) has agreed to 5 days mandatory training on child and adult protection issues as part of the qualification programme content for social workers. This will ensure that all new staff have a greater awareness of the types of issues involved. Other agencies may choose to take a similar approach.

51. In one model, currently being used in Lothian and Borders, a new post has been created to address training issues across the region. Under this model, Lothian NHS, Borders NHS, the police service and the five local authorities have joined together to create a regional development worker post to undertake common tasks across the region and agencies including the review and updating of procedures and the development and implementation of training across the region.

52. The cost of this post (including accommodation and admin support) is £65k p.a. and it is estimated that around five of these posts would be required to cover Scotland (at a total
cost of £325k). To illustrate some of the specific staff training and development that may be required, the training package that has recently been introduced in a systematic way across Lothian and Borders is described below. This has been undertaken on an inter-agency basis and has targeted staff from a range of services, including criminal justice, children and families, community care, the voluntary and the private sector. It recognises the benefit that can be gained from this multi-agency approach resulting in increased cross-over work, networking, communication and an understanding and appreciation of the role of other agencies.

53. Inter-agency training could be divided into 3 levels and the training programme that has been operational in West Lothian since 2004 is given as an illustrative model below. The programme could be rolled out in stages over a period of time, initially targeting key staff in the relevant agencies.

- Level 1 – aimed at frontline staff incorporating briefing session, awareness raising and signposting. Each session, lasting 2-3 hours, would accommodate approx 40-50 people. Approx cost of £100 per person including day release arrangements, venue, catering and training materials. This may not necessarily cover the cost of a trainer and, if purchased externally, this would cost around £500 per day.
- Level 2 – aimed at managers and those close to or in a position of undertaking and/or leading an investigation incorporating referral through to action planning. This is run as a full day session at an approx cost of £200 per person.
- Level 3 – this is just being considered and will be targeted at the Level 2 audience but will tackle the more skills based training elements such as case conference chairing, joint interviewing, managing conflict. This is run as a full day session at an approx cost of £300 per person.

54. In addition, consideration should be given to the cost of developing appropriate training and induction packages e.g. CD-ROMs, videos, publicly available information. Lothian and Borders have produced a video (approx cost of £3,500), are in the process of finalising a CD-ROM (approx cost £3500), have published 3,000 posters for Units/Offices/Wards (30p per unit) and have circulated around 30,000 pocket-sized quick guides (20p per unit) for all front line staff. If each regional development worker post were to produce similar types of training materials for their local area, the total cost would be in the region of £69,500.

Costs to Health Authorities

55. The additional financial impact on health authorities as a result of the adult protection measures is judged to be low. Primary care staff, such as GPs, will continue to have a role in making sure appropriate referrals are made and appropriate information shared for the benefit of their patients and so it is important that they are involved in specialist multi-agency training. They may also, in some cases, be involved in subsequent investigations, case conferences and in supporting adult protection plans. However, GPs do already carry out these functions and so this is not expected to have a significant additional cost impact.

Costs relating to information exchange

56. In addition to the above, the requirement to share information is likely to result in additional financial costs arising from the creation and implementation of systems of
information exchange and the related costs of conferences, records etc which arise from the consideration, investigation and response to concerns.

Small/Micro Firms Impact Test

57. The burden of the adult protection measures will fall mainly to local authorities to implement. The impact on small (or micro) businesses and the voluntary sector as result of these changes is likely to be limited to the costs associated with assessing whether or not a referral is appropriate in the first place and then post-investigation by putting the necessary supports in place, if required. This could only be determined on a case-by-case basis and costs could range from minimal to significant, however, many of these costs would not be additional as they would often form part of a range of existing processes and support.

“Test Run” of Business Forms

58. No business forms will be produced as a result of the measures proposed.

Competition assessment

59. It is not expected that the Bill proposals would have any impact on competition in the adult care sector. The measures proposed will ensure a greater degree of protection for those adults at risk of abuse and should increase public confidence in the services provided for them.

Enforcement, sanctions and monitoring

60. The new arrangements, plans and actions taken to implement the new adult protection powers and duties would, like other duties and powers of local authorities and other statutory bodies, be enforced through the range of regulatory and inspection services, for example, Social Work Inspection Agency and Audit Scotland.

Implementation and Delivery

61. As mentioned earlier, key stakeholders have had the opportunity to inform policy development through a national Adult Support and Protection Bill Steering Group. In the period, following royal assent and prior to the implementation of the adult protection measures contained within the Bill in 2008, this Group will be involved in drawing up a detailed code of practice, both for agencies and for those individuals affected by the changes. The code of practice will help to ensure effective implementation of the policy.

62. In addition, during 2007, the Department intends to carry out an audit of local implementation strategies to ensure that agencies are able to implement the Bill’s measures by 2008.

Monitoring and Review

63. The legislation will require those Adult Protection Committees, set up across Scotland as a result of the Bill, to prepare a general report on the exercise of the Committee’s functions every two years. A copy of this report should be submitted to the relevant council, each of the public bodies represented on the Committee and Scottish Ministers. It is expected that the
first reports would be due in 2010 (i.e. 2 years following the establishment of the Committees).

64. The Department intends to carry out a formal review of the policy within 4 years of implementation (i.e. by 2012).

### Summary and Recommendation

<table>
<thead>
<tr>
<th>Option</th>
<th>Benefits</th>
<th>Costs</th>
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<tbody>
<tr>
<td>Do nothing</td>
<td>There will be no additional benefits arising from this option.</td>
<td>There will be no additional costs arising from this option.</td>
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<tr>
<td>Issue improved and detailed guidance on how adult protection measures should operate at a local level.</td>
<td>May offer some improvement compared with the current position but:</td>
<td>The additional costs associated with this option are likely to be marginal. There may be some costs associate with the review and updating of guidelines.</td>
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<td></td>
<td>• Concern over how long it would take for all relevant authorities to agree the content and format of guidance</td>
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<td>• This approach does not provide parity for all those adults at risk from abuse as it does nothing to improve the levels of protection for those who are subject to, or at risk, from harm but who have no apparent mental disorder or incapacity.</td>
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<tr>
<td>Create statutory Adult Protection Committees to further develop strategic inter-agency working and collaboration.</td>
<td>Requirement for agencies to share information will bring benefits including the earlier detection of abuse and improved investigation. The “duty to investigate” will bring benefits of improved protection through better investigation and contribute to the increased awareness of abuse, the circumstances surrounding abuse and the issues surrounding vulnerability. The “powers to intervene” will allow the same level of protection to be provided to those adults who are at risk from abuse but who have no</td>
<td>Cost relating to independent chair for Adult Protection Committees – approx £96,000 (para 38 refers) Cost of Adult Protection Units – approx £7.5m (para 39 refers) Investigation, assessment, protection &amp; care management – approx £5,111,250 (para 44 refers) Cost relating to training &amp; awareness raising (including materials) = £394,500 (paras 52 &amp; 54 refer) Example of inter-agency staff training costs (para 53 refers):</td>
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apparent mental disorder or incapacity. Builds on existing good practice that is already in place while ensuring that there is consistency of practice across Scotland. The structure of the Adult Protection Committees will ensure that joint working between agencies is strengthened whilst avoiding duplication of effort. Level 1 - £100 per person Level 2 - £200 per person Level 3 - £300 per person Likely increase in police staffing costs of around £644,000. (para 46 refers)

65. Option 3 was chosen as the preferred option and it forms the basis of the Adult Support and Protection (Scotland) Bill.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed:

Deputy Minister for Health and Community Care

Date:

Contact:
Diane Strachan
Adult Support and Protection Unit
Scottish Executive Health Department
Area 2ER, St Andrews House
Regent Road
EDINBURGH
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 – PROPOSED AMENDMENTS TO PART 3 - INTROMISSION WITH FUNDS

TITLE OF PROPOSAL

66. Proposed amendment to Part 3 of the Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) - the intromission with funds scheme – to enable access to confidential information about bank accounts of adults with incapacity.

PURPOSE AND INTENDED EFFECT

(i) Background

67. The 2000 Act introduced comprehensive legal reforms to protect the interests of adults (persons of 16 and over) who are not able to make all or some decisions for themselves due to mental incapacity or severe communication difficulties. One of the measures in the Act is intromission with funds (IwF). IwF is a means by which individuals can have the legal authority to access and manage the day to day finances of someone who lacks the ability to do so for themselves. It was intended that this low-cost, non-court based measure would be the means by which many adults with modest means would be assisted with managing day to day living expenses but take-up has been lower than expected.

68. The Scottish Executive commissioned a two year consultancy in 2002 to explore issues arising from the implementation of the 2000 Act, including IwF. The project report highlighted that the 2000 Act had been widely welcomed and in general was working well but that some changes to the Act might be required, including some to improve accessibility to and operation of the scheme for IwF. The Executive carried out a public consultation, Improving with Experience, which closed on 4 November 2005 on a range of proposed changes to the 2000 Act, including changes to IwF. The consultation paper can be accessed at [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations). The legislative vehicle for making the changes is the Adult Support and Protection (Scotland) Bill.

(ii) Objective

69. We propose to amend the 2000 Act to empower the Public Guardian (PG) to authorise:

- applicants to request the necessary information from the adult’s bank or banks for the purpose of completing the IwF application; and
- banks to release the requested information.

This proposed amendment is the subject of this RIA because of its potential implications for banks.

(iii) Rationale for government intervention
70. It had been estimated that possibly as many as 20,000 people per annum might benefit from intromission with funds, but uptake is less than 200 people per year. The Scottish Executive has looked into the reasons for this. A number of barriers have been identified by key stakeholders through the consultancy, a stakeholders’ day held by the Office of the Public Guardian (OPG) earlier this year, and other forums. These barriers include the fact that currently banks cannot release information to enable an application to be made because they are bound by the Data Protection Act 1998 and by the ruling in Tournier v National Provincial and Union Bank of England (1924).

71. It is unclear how the original estimate of 20,000 was constructed. However, with only 200 applications per year, there must be many adults who are not benefiting currently from this option, and who could do so, which strongly suggests the need for change. The Scottish Executive believes that with some changes to the legislation and procedures, IwF will offer the envisaged simple yet effective measure to access and manage an adult’s funds, while at the same time safeguarding their interests.

CONSULTATION

Within government

72. The Scottish Executive Justice Department, which has policy responsibility for the IwF scheme, has worked in partnership with the OPG, which has operational responsibility, in taking forward the proposed changes.

Public consultation

73. As described in paragraphs 68 and 70, extensive consultation has been carried out about the operation of the IwF scheme. The consultation paper Improving with Experience included a specific question on the amendment described in paragraph 69. There was clear support for the proposal with only two responses from around the one hundred received which did not agree with it. Neither of these respondents offered any comments on why they did not support this proposal.

OPTIONS

74. The options are essentially to make this change or to do nothing about this barrier to uptake of this measure to assist adults with incapacity. If nothing is done, the full benefits to families and carers of the ground-breaking 2000 Act will not be realised. It will continue to be possible to access this provision only in those cases where sufficient information about the adult’s financial affairs is already available.

COSTS AND BENEFITS

75. It is anticipated that by making intromission with funds more accessible, fewer financial guardianships will need to be applied for. This is very much in accordance with the principles of the 2000 Act, one of which is that the action taken should be the least restrictive option to achieve the benefit for the adult.
76. The amendment described in paragraph 69 will have implications for banks as it will remove the present barriers to the release of information where it is requested for the purposes of the 2000 Act. The banks support this change. It is something which they themselves have been pressing for because they do not wish adults with incapacity to be disadvantaged in relation to proper management of their finances. The provision of information, in appropriate authorised circumstances, is part of the normal business of banks and will fit within existing charging structures.

MONITORING

77. Authority to intromit with funds is granted by the PG following checks to ensure that everything is in order. The PG investigates any complaints about the way in which a person authorised to IwF is carrying out their duties and has the power to revoke the certificate of authority if necessary. Where the applicant needs authority to access banking data, before a full application can be made, there will be a new two stage application process designed to protect adults from financial abuse. The use of the new provision will be monitored by the Public Guardian who will work closely with the banks to ensure its smooth operation.
SOCIAL WORK (SCOTLAND) ACT 1968 – PROPOSED AMENDMENTS TO THE ORDINARY RESIDENCE RULES

PURPOSE & INTENDED EFFECT

78. The purpose of the proposed amendment is to clarify and update the legislation in the Social Work (Scotland) Act 1968 (the ‘1968 Act’) determining which local authority is financially responsible for a person’s community care services.

Background

79. Current Ordinary Residence Guidance Circular SWSG 1/96 was issued to local authorities in Scotland to advise them how to identify the ordinary residence of people needing social work services under the 1968 Act. A review of this guidance in relation to community care services has been requested by local authorities in order to prevent unnecessary disputes between authorities which are costly and time-consuming to resolve. A review of the guidance is also needed to address the changing patterns of care provision, including free personal and nursing care and the growing use of supported accommodation rather than care homes.

80. The Executive’s long established policy and guidance is that normally, the local authority in which a person is ordinarily resident, is responsible for funding the community care services for that person. In cases where ordinary residence cannot be determined, the local authority “of the moment” – where the person is physically located – would be responsible. Where a local authority undertakes the care needs assessment and arranges the provision of services for a person living in their area, that authority should retain responsibility for funding these services even when it places that person in a care home in the area of another local authority. This ensures that the authorities with the greatest number of specialist, or most popular, care homes do not have to foot the bill where another local authority places a person in their area.

Proposed Change – Cross-Authority Placements

81. However, in the view of the Executive, it is not entirely clear that the established policy and guidance is in line with the current legislation. In addition, the ordinary residence guidance and legislation are virtually silent on people placed in settings other than care homes. Our objective is therefore to amend the 1968 Act to clarify local authorities’ responsibilities in relation to funding care home placements and to extend provision to cover funding for specified community care services for people in specialist supported accommodation.

Proposed Change – Cross-Border Placements

82. The existing power to enable Scottish local authorities to make community care placements in other parts of the UK under Section 5 of the Community Care and Health (Scotland) Act 2002 allows for regulations to modify the way the 1968 Act applies to them. The policy is that Scottish local authorities will continue to be responsible for such residents. The reciprocal proposal is that persons placed in Scotland by local authorities in other UK
countries should continue to be funded by those authorities. As there is no blanket exclusion in the 1968 Act for persons placed from elsewhere in the UK, the Executive proposes a new power to amend or modify the 1968 Act, to regulate how it should apply to persons placed into Scottish local authority areas by other UK countries.

CONSULTATION

83. The consultation on these proposals closed on 4 November 2005. The thirty-eight responses generally welcomed the review and supported the Executive’s proposals, while raising points of detail about the precise operation of the rules.

COSTS AND BENEFITS

84. The proposed amendments will have no impact on business or voluntary sector care providers. They are designed to clarify current practice and to reduce the administrative burden on local authorities. The provisions will not therefore put additional pressure on local authority expenditure.
ANNEX C

SOCIAL WORK (SCOTLAND) ACT 1968 – PROPOSED AMENDMENTS TO THE DIRECT PAYMENTS PROCEDURES

PURPOSE & INTENDED EFFECT

85. To make a short and simple amendment to section 12B(6) of the Social Work (Scotland) Act 1968 ("the 1968 Act") to make provision for the delegation of functions to local authorities so that they can exercise flexibility in designing a direct payments care package. The intention is to use the new power immediately through accompanying subordinate legislation to allow local authorities to determine whether exceptional circumstances exist which would justify using direct payments to employ a close relative in a particular case.

CONSULTATION

86. The proposed change was supported by the public consultation held on this issue (November 2004 to February 2005) details of which are at: http://www.scotland.gov.uk/consultations/health/dprer-00.asp. A follow-up letter to local authorities informed them of the outcome of the direct payments consultation carried out at the beginning of the year, and sought their views on the primary legislative mechanism by which this might be achieved. Assessment of responses strengthens the evidence of the original consultation.

COSTS

87. No costs are likely to be incurred as a result of this legal amendment.
AMENDMENT TO THE SOCIAL WORK (SCOTLAND) ACT 1968 IN RESPECT OF LIABLE RELATIVES

PURPOSE AND INTENDED EFFECT

88. An individual’s contribution towards the care home fees paid for them by the local authority is normally calculated solely on the basis of his or her own resources. However, section 42 and 43 of the National Assistance Act 1948 state that a man is liable to maintain his wife and children and this same duty applies equally to a woman who is liable to support her husband and children. This is known as the “liable relative rule” which allows local authorities to demand a contribution from the spouse of care home residents. The rule has long been unpopular.

PROPOSED CHANGE

89. The proposals remove the liable relative rule as it applies to charging for care home fees in Scotland. The rule has long been unpopular and is seldom used. Where it is used there is inconsistency in its application and it can cause considerable distress to those concerned.

CONSULTATION

90. A consultation letter headed – Residential Care Charging Rules – Taking Account of the Pension Credit – which included a section on the liable relatives rule, was distributed on 23 July 2003 to: Local Authority Directors of Social Work, COSLA, Association of the Directors of Social Work (ADSW) and voluntary organisations with an interest. 14 local authorities, COSLA, ADSW, Age Concern and Help the Aged gave views and there was clear support for the change. Only two local authorities said that they were currently receiving contributions from liable relatives. Most said that they rarely or never used the rule.

COST

91. When in 2004 Ministers announced their intention to remove the rule at the first appropriate legislative opportunity it was presented as part of the Executive’s overall cost-neutral response to the introduction of Pension Credit which ended the use of the liable relatives rule in assessing older people’s benefits entitlement. Pension Credit has more generous rules for assessing people’s capital than the benefits that it replaced. This has meant increased income to care home residents, resulting in an increase of approximately £700,000 per year in charging income to local authorities. This increase is likely to more than compensate for the cost of revoking the liable relatives rule.
AMENDMENTS TO THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

PURPOSE AND INTENDED EFFECT

92. A Compulsory Treatment Order (CTO) is made by the Tribunal following an application by a mental health officer. The Act also provides for extension, variation, review and revocation of these orders.

93. The CTO endures for a period of 6 months beginning with the date it is made. The patient’s responsible medical officer (“RMO”) is under a duty to review that CTO 2 months before it is due to expire and has a continuing duty to review the order. The RMO, if he is satisfied that the relevant criteria are still met, must then extend the CTO and comply with the requirements at sections 83 to 85. Section 86 then requires him to extend the CTO for a further 6 month period.

94. Section 101 prescribes those circumstances where the Tribunal must review the determination made by the RMO under section 86 and includes the provision that a review must take place where the Tribunal has not reviewed the patient’s case in the preceding two years.

95. The effect of section 101(2)(b) as drafted is that the Tribunal, at the first determination, is required to look back to a period of 2 years which commenced before the CTO was made and before the patient entered the mental health system and that, unless a decision has been made under section 103, the Tribunal must always review the section 86 determination after the first 6 months of the life of the CTO.

PROPOSED CHANGE

96. This amendment seeks to ensure that this review does not take place until the order has been in effect for 2 years which reflects the original policy intention.

CONSULTATION

97. The original policy intention was consulted on widely as part of the general consultation on the Mental Health (Care and Treatment)(Scotland) Bill.

COST

98. The current provision, which has not been commenced, would have resulted in both new and existing cases having to be reviewed by the Tribunal at the first renewal resulting in around 1200 additional hearings each year with the additional costs to the Tribunal operation and to the mental health system in time required by psychiatrists and MHOs to attend the hearings. The amendment will save these costs and ensure the numbers and costs of Tribunal hearings are as originally envisaged when the provision is brought into effect. It is estimated that the financial cost to the Tribunal alone of not making this amendment would be an additional cost of £2 million every year thereafter (on a budget of around £7m).
Finance Committee

17th Meeting 2006, Tuesday 13 June 2006

Accountability and Governance Inquiry

1. The Committee launched its Accountability and Governance Inquiry on 1 March 2006. The remit of this inquiry is to:
   - examine the growth in the number of independent, regulatory and investigatory bodies and the associated growth in funds allocated since devolution;
   - examine the adequacy of processes for setting and scrutinising the annual budgets of such bodies;
   - examine the appropriateness of existing lines of accountability and how this process works in practice; and
   - identify whether there are any potential overlaps in remits and responsibilities of independent, regulatory and investigatory bodies and any financial implications of such overlaps.

2. A call for evidence was issued and all submissions which have been received can be found on the Committee’s webpage.

3. The Committee has so far taken evidence on 16 May from the Auditor General and Audit Scotland, the Scottish Commission for Public Audit and the Scottish Legal Services Ombudsman; on 23 May from the Scottish Charity Regulator, the Standards Commission for Scotland and the Scottish Commission for the Regulation of Care; and on 6 June from Scotland's Commissioner for Children and Young People, the Scottish Information Commissioner, the Scottish Parliamentary Standards Commissioner, and the Scottish Public Services Ombudsman.

4. The evidence session on 13 June will involve taking evidence from John Elvidge, Permanent Secretary of the Scottish Executive. The written submission provided by John Elvidge is attached.

5. The final evidence session for the inquiry will take place on 27 June and will involve evidence from the Minister for Finance and Public Service Reform and the Scottish Parliamentary Corporate Body.

Roz Wheeler
Senior Assistant Clerk
Submission from the Permanent Secretary, the Scottish Executive

1. I note the Committee’s concerns relating to the statutory independence of Parliamentary commissioners and ombudsmen versus their accountability for expenditure of public funds and the Committee’s desire to establish, for bodies which are set up to have some degree of independence, whether different accountability mechanisms exist and the reason for any differences.

2. I note the remit of your inquiry to:
   - examine the growth in the number of independent, regulatory and investigatory bodies and the associated growth in funds allocated since devolution;
   - examine the adequacy of processes for setting and scrutinising the annual budgets of such bodies;
   - examine the appropriateness of existing lines of accountability and how this process works in practice; and
   - identify whether there are any potential overlaps in remits and responsibilities of independent, regulatory and investigatory bodies and any financial implications of such overlaps.

3. The Executive welcomes this inquiry and I hope that I will be able to assist by providing an explanation of the Executive’s general approach in these matters and by addressing the specific questions you have asked.

4. As will be clear from the following response, the existing arrangements have grown up through consideration of what is appropriate for each body, principally at the time of its creation. The arrangements for any particular body should take account of what is being done elsewhere and of changes which time and experience may suggest are useful or necessary.

Review of Regulation, Audit, Inspection and Complaints Handling

5. The Committee will also wish to be aware that Scottish Ministers are considering establishing a review of regulation, audit, inspection and complaints handling for devolved public services. Any review would focus on whether there are any potential overlaps in remits and responsibilities of the various regulatory and investigatory bodies and on the financial and practical implications of such overlaps, so the findings of your Inquiry will be of considerable assistance to Ministers in helping progress this work.

General Considerations

6. As the Committee has acknowledged, there are a number of different constitutional and governance models for the various and prospective Ombudsmen, Commissions, Commissioners, Inspectorates and other regulatory bodies in Scotland (including some which operate on a UK or GB basis but, for simplicity, I will not address them here). The pattern of organisational arrangements is diverse, reflecting the spread of activity required in the exercise of devolved functions. While provision is made for each body according to its role and functions, public bodies including regulatory and scrutiny bodies broadly fall into categories in each of which
the governance arrangements strike a different balance between independence and accountability – they differ mainly in the degree of operational freedom conferred on or delegated to each type of body. This is often referred to as the “arm’s length relationship”, and the main categories of bodies are discussed in more detail below.

7. In each case, the governance and accountability arrangements surrounding the activities of statutory office-holders and other regulatory and investigatory bodies have been arrived at after a careful consideration by Ministers, and often by Parliament, of the particular arrangements that should apply in each case. The chosen framework of controls must be proportionate to the role and functions of the office-holder or body and must take into account the need for proximity to Ministers.

8. Scottish Ministers expect all arm’s length bodies for which they have responsibility to be able to demonstrate that the public funds they are responsible for are:

(a) used properly, observing propriety and regularity; and
(b) used in a way that maximises value for money.

9. The exact means by which the expenditure of bodies is agreed and monitored, and their activities scrutinised, differs according to the degree of independence from Ministers it is judged necessary or desirable for each body to have. The different categories of public body which currently perform regulatory or investigatory functions are described in turn below. Further details and a classification of the bodies in which the Committee has expressed an interest are provided in Annex A.

Departments of the Scottish Executive

10. In some cases, the Departments of the Scottish Executive themselves provide support for statutory office-holders in the execution of their regulatory or investigative functions. For example, the Chief Inspector of Prosecution in Scotland plays an important part in the continuous improvement of the prosecution service – he and his staff are set up as a free-standing team within the Finance and Central Services Department, to ensure independence from the Crown Office and Procurator Fiscal Service and from the Justice Department. In the same way, the Drinking Water Quality Regulator is supported in his work to ensure that Scottish Water meet water quality standards by a small team within the Environment and Rural Affairs Department. Both these teams account for their financial activities to their respective Departmental Accountable Officers. Departments are directly accountable to Ministers. Departmental Accountable Officers are accountable to me, as Principal Accountable Officer for the Scottish Administration, for the regularity, propriety and value for money in relation to their budgets.

Executive Agencies

11. Inspection and regulatory activities are also lodged within the Executive Agencies that form part of the Scottish Executive Departments. Since devolution, four regulatory bodies have been established, or re-classified, as Executive Agencies: Communities Scotland; Her Majesty’s Inspectorate of Education; the
Buildings Standards Agency and the Social Work Inspection Agency. The annual budgets of the agencies are set and scrutinised as part of the annual budgeting exercise for the responsibilities of their parent Departments within the Executive. Direct lines of accountability to Ministers and parent Departments are clearly set out in agency framework documents.

Non-Ministerial Departments

12. In a small number of cases, the need to demonstrate operational independence from Ministers is such that bodies are established as Departments in their own right. The Office of the Scottish Charity Regulator (OSCR) has been operating as an executive agency, but, alongside its new powers, it will have a new status as a Non-Ministerial Department (NMD). As a NMD, OSCR will determine its operational practices, manage its own financial affairs and report directly to Parliament. OSCR’s budget is determined by the Executive as part of the Spending Review process and is considered by Parliament through the Budget process.

Non-Departmental Public Bodies

13. As the Committee has noted, since devolution the Parliament has approved legislation providing for the establishment of a number of new regulatory and investigatory bodies to operate with a much greater degree of independence from Scottish Ministers. Some of these new bodies (e.g. the Scottish Commission for the Regulation of Care, and the Water Industry Commission) have the status of Non-Departmental Public Bodies (NDPBs). Bodies classified as NDPBs operate within a clearly defined framework of financial accountability and performance management. Key features of the framework for NDPBs include:

- management statements
- financial memoranda
- corporate plans
- business/operating plans
- annual report and accounts
- Accountable Officer/Audit arrangements
- Annual budget letter

14. NDPBs are accountable to Ministers; and a key part of the framework is also the role of sponsoring Departments and teams within those Departments in supporting Ministers to exercise that accountability. The annual budgets for NDPBs are set and scrutinised as part of the annual budget exercise for the responsibilities of their sponsor Departments. The sponsor teams within Departments ensure that there are adequate procedures in place to give assurance to the Departmental Accountable Officers in relation to the regularity and propriety of the public finances under the stewardship of the sponsored bodies for which they are responsible.

15. The Standards Commission for Scotland (which comprises the Office of the Chief Investigating Officer and the Office of Administration and Hearings) is an independent statutory body funded directly by Ministers (who appoint its Members) and accountable to them for its financial and operational performance. The Commission is entirely independent of government when considering alleged
contraventions of the Councillors Code of Conduct and the Code of Conduct for Members of Devolved Public Bodies and in its decisions on complaints. Although it is not currently classified as an NDPB – its classification is currently under review – the framework of accountability and financial controls in place follows the NDPB model.

Public Bodies reporting to the Scottish Parliament

16. In a few cases, as is seen in other Parliamentary democracies, it has been deemed appropriate – because of functions relating to the protection of individuals rights or to the challenge of the legislature – to establish public bodies which operate with complete independence from Scottish Ministers. This category, which has grown as the natural consequence of devolution, includes the Scottish Information Commissioner, the Commissioner for Public Appointments in Scotland, the Scottish Public Services Ombudsman, and the Commissioner for Children and Young People in Scotland. The annual budgets of these bodies are set by the Scottish Parliament. In addition, the Scottish Parliamentary Corporate Body is responsible for the nomination to Parliament of the appointment of the Parliamentary Standards Commissioner whose role is carried out independently of Parliament.

17. Audit Scotland is an independent statutory body providing services to the Auditor General for Scotland and the Accounts Commission. The Auditor General is a statutory office holder appointed by the Crown and reports to the Scottish Parliament. He is responsible for securing the audit of the Scottish Executive – and is therefore independent from Ministers – and most other public sector bodies except local authorities and fire and police boards. The Accounts Commission is an NDPB and secures the audit of local authorities and joint boards (including police and fire services). The Auditor General is the Chief Executive of Audit Scotland and is its Accountable Officer. The Public Finance and Accountability Act 2000 provides for the Scottish Commission for Public Audit to examine Audit Scotland’s expenditure proposals and to report to the Parliament on these.

Financial Accountability of NDPBs and other Public Bodies

18. Turning now to a key area of concern to the Committee, I would like to describe in greater detail the general provisions for ensuring that all Executive-sponsored public bodies are held financially accountable.

19. Under section 15 of the Public Finance and Accountability (Scotland) Act 2000, in my role as the Principal Accountable Officer for the Scottish Administration – which, for the avoidance of doubt, does not include bodies who report to Parliament – I may appoint as Accountable Officers members of staff of the Scottish Administration or any other body the accounts of which are subject to audit by the Auditor General for Scotland. In practice this includes the heads of Scottish Executive Departments, senior officials in Non-Ministerial Departments, and the chief executives of Scottish Executive Agencies and executive NDPBs. Accountable Officers have a personal responsibility to the Parliament for the propriety and regularity of the finances under their stewardship and for ensuring that the resources for which they are answerable are used economically, efficiently and effectively. In addition the heads of Scottish Executive Departments, in their capacity as
Departmental Accountable Officers, must ensure in relation to NDPBs funded from their departmental budgets that:

- appropriate financial and other management controls are in place to safeguard public funds and that compliance with those controls is effectively monitored;
- the financial relationship between the department and the NDPB or Agency is clearly set out in a framework document and kept under regular review;
- the conditions attached to the funding of the NDPB conform with the terms of the Budget Act and that compliance with those conditions is monitored;

20. As a development of these long-established formal mechanisms, Scottish Ministers are currently extending new policies to ensure that arm’s length bodies are held fully accountable for their activities. As the Committee is aware, we are rolling out Best Value to the wider public sector by placing a duty on Accountable Officers; we are also promoting a vigorous Efficient Government agenda which applies no less to the scrutiny sector than to other parts of the public sector.

21. Scottish Ministers are determined to ensure that all publicly funded bodies are able, so far as is possible without compromising their essential functions, to demonstrate that they are best value organisations and are properly run, efficient and effective and deliver value for money. Arm’s length bodies should only have stand-alone support services where there is clear evidence that it is more efficient than shared provision.

Proposals to Establish New Regulatory Bodies

22. The Committee is aware of the proposals to establish the Scottish Civil Enforcement Commission as an NDPB and to appoint a Scottish Commissioner for Human Rights. In addition, I am aware that Scottish Ministers are currently considering three other proposals which may give rise to new regulatory bodies or ombudsmen:

- the Legal Complaints Commission is proposed as a new NDPB to replace the Scottish Legal Services Ombudsman;
- a new Police Complaints Commissioner is proposed as an independent statutory office holder; and
- a new Roadworks Commissioner is proposed, also as an independent statutory office holder.

Specific Questions

23. The general explanation above has sought to address many of the issues that are relevant to your inquiry. It may, however, be helpful to the Committee to address the specific questions raised in your letter by means of cross-references, or by supplying additional information:
• **What accountability mechanisms exist for such regulatory bodies?**
  See paragraphs 6-15 above, and Annex A.

• **How are the budgets for these bodies scrutinised and agreed by the Executive?**
  Bodies which fall under the responsibility of the Executive are controlled either under the Executive Agency or NDPB framework of controls.

• **What (if any) differences are there between these bodies in terms of accountability and budget setting and what is the reason for any differences?**
  The general principles are discussed at paragraphs 6 & 7.

• **What degree of independence from the Executive are these bodies expected to have and why?**
  Again, see paragraphs 6 & 7. Bodies set up to carry out regulatory functions on behalf of Ministers need to have operational independence but remain accountable to Ministers for performance and expenditure of public funds (NDPBs and Agencies). By comparison, and as is recognised in the Paris Principles, bodies which protect the rights of individuals or which perform challenge functions which may sometimes involve the scrutiny of Ministers and/or the Executive, require independence from Ministers to avoid compromising their ability to discharge their functions.

• **What are your views on the appropriateness of having some bodies within the control of the Parliament and some within the control of the Executive?**
  As outlined above, there are clearly circumstances where it would not be appropriate for certain types of body to be subject to Ministerial control (see para 16). Where bodies need to be beyond the Scottish Executive’s direct funding and influence, it is for the Scottish Parliamentary Corporate Body to exercise financial control.

• **In relation to commissioners and the Scottish Public Sector Ombudsman, how do you believe budgetary control can be balanced with independence?**
  This is a matter for the Parliament.

• **Is it possible to implement section B2 of the UN Paris Principles and retain suitable budgetary controls?**
  The Paris Principles relate specifically to national institutions for the promotion and protection of human rights, and we have noted the views of the Finance Committee in its recent consideration of the proposals contained in the Scottish Commissioner for Human Rights Bill. The central issue is the extent to which the operation of the body in question is open to influence by
government. As the Committee have highlighted, Paris Principle B2 states that:

“The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.”

The Executive’s experience is that it is possible for Ministers and Departments to exercise adequate financial controls over arm’s length bodies for which it is accountable, whilst permitting the bodies to exercise their functions free from political interference. The bodies which need to enjoy a greater degree of freedom (so that, for example, they may be properly critical of the activities of Scottish Ministers and/or the Executive) have been established in such a way as to place them beyond Ministerial influence at an operational level, but they should not be outwith proper scrutiny for their expenditure. As noted above, it is for the Scottish Parliamentary Corporate Body to exercise financial control over bodies which report to Parliament.

In this respect I note that Audit Scotland’s expenditure proposals (like those of the SPCB and ombudsmen/commissioners funded by the SPCB) represent a prior call on the Scottish Budget. The Public Finance and Accountability Act 2000 provides for the Scottish Commission for Public Audit (SCPA) to examine Audit Scotland’s expenditure proposals and to report to the Parliament on these.

Conclusion

24. I hope that this account of our general approach on accountability and governance, illustrated with reference to a number of bodies in which the Committee has expressed an interest, taken together with our answers to the specific questions posed by the Committee will be helpful to your in your Inquiry.

John Elvidge
Permanent Secretary
The Scottish Executive
April 2006
### Independent Statutory Office Holders supported by Scottish Executive Departments

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<th>Purpose</th>
<th>Key Characteristics</th>
<th>Comments</th>
<th>Regulatory and Investigative Bodies established since 1999</th>
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| Single person office holders set up to carry out statutory functions | • Appointed by Ministers (or the Monarch on the advice of Ministers).  
• Functions set out in legislation.  
• Functions reside in an individual rather than a body corporate.  
• Normally appointed in line with SCS recruitment procedures.  
• Size and number of staff involved do not warrant a separate structure - normally set up as a stand alone unit within a Department.  
• Operationally independent from Ministers in carrying out statutory functions.  
• Office holders may be civil servants.  
• Accounts are normally consolidated into those of the parent department. | • Staff are usually seconded civil servants. | • Drinking Water Quality Regulator  
• Chief Inspector of Prosecution  
• Scottish Legal Services Ombudsman (status under review) |

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<th>Regulatory and Investigative Bodies established since 1999</th>
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</table>
| To carry out a service or function within Government, by a well-defined business unit that has a clear focus on delivering specific outputs and a framework of accountability to Ministers. | • Directly accountable to Scottish Ministers, but Ministers do not concern themselves with the day to day running of the agency  
• Flexible and responsive framework, able to cover a wide range of organisational sizes and responsibilities.  
• Part of the Scottish Administration  
• Chief Executive is answerable on delegated operational issues to a Minister in the parent Department  
• The Chief Executive is a civil servant employed by the Scottish Executive and is normally recruited through open competition.  
• All staff (except secondees) are civil servants employed by the Scottish Executive.  
• Accounts are consolidated into those of the parent department. | Best suited in cases where:  
• It is appropriate for Ministers to have direct strategic and policy control but it is neither realistic nor appropriate for Ministers to take personal responsibility for day-to-day decisions  
• The function is predominantly concerned with the delivery of services to the public or arms of Government but can also, in some cases, have an important advisory role  
• The number of staff involved is large enough to justify a separate structure  
• The function can be independently accountable within the parent Department (i.e. it is possible to have specific targets and separate annual reports and accounts). | • Communities Scotland  
• HM Inspectorate of Education  
• Social Work Inspection Agency  
• Scottish Building Standards Agency |
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<th>Regulatory and Investigative Bodies established since 1999</th>
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</table>
| Small government departments in their own right, established to deliver a specific service and not funded by a sponsor department. | - Usually headed by a statutory office holder, commissioner or a board with statutory responsibilities.  
- Some NMDs may have links to Ministers in other interested Departments but that Minister will not be responsible for the NMD’s overall performance or delivery (eg Forestry Commission)  
- Staff are civil servants employed by the Scottish Executive  
- Usually responsible for their own accounts |                                                                                       | Office of the Charity Regulator                                      |
## Non-Departmental Public Bodies (NDPBs)

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<th>Comments</th>
<th>Regulatory and Investigative Bodies established since 1999</th>
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</table>
| To permit a service or function to be carried out at arm's length from the Government. | • Are established by statute such as an Act of Parliament or Royal Charter or set up under the companies Act as companies limited by guarantee.  
• **Carry out administrative, commercial, executive or regulatory functions on behalf of, and accountable to, Ministers.**  
• Can provide specialist advice to Ministers and others.  
• The Chief Executive is accountable to a board whose members are appointed by Ministers or by the Queen on the advice of Ministers.  
• Have a national remit.  
• Ministers are answerable to Parliament for the body and have the power to wind it up (subject to, where appropriate, the approval of Parliament or, where a Royal Charter has been previously granted, the Queen). | NDPBs function deliberately at one stage removed from Ministers, with a considerable measure of policy independence within strategic Ministerial direction and Ministerial target setting.  
**Ideally suited in areas where:**  
− political considerations should play little part in decisions (e.g. exercising some regulatory functions, or managing public services such as museums and art galleries) but where it is agreed that the function should still be carried out in the public sector.  
− it is desirable to involve many people, including the general public and representative groups, in decisions about delivery of the service  
− it is desirable to underwrite the body's independence, powers and obligations through legislation.  
Funding for NDPBs is subject to Departmental financial planning and the spending review process. Within these overall requirements and any | • Scottish Commission for the Regulation of Care  
• Scottish Environment Protection Agency  
• Scottish Social Services Council  
• Water Industry Commission for Scotland  
• Standards Commission (classification under review) |
| Staff are not civil servants and are employed directly by the body itself. | relevant legislation, the financial regime for each NDPB needs to be tailored to meet the individual circumstances. Most NDPBs will be financed by a grant-in-aid, appropriate where the Government has decided that the recipient body can operate at arm’s length, though subject to controls from the relevant Government Department and those from Parliament. |
| Most NDPBs are funded by grant in aid but some are funded by levies on particular sectors and receive no central funding. |
| An NDPB has an Accountable Officer with a personal responsibility to the Parliament for the propriety and regularity of the finances under their stewardship and for ensuring that resources are used economically, efficiently and effectively. |
Finance Committee

17th Meeting 2006, Tuesday 13 June 2006

Accountability and Governance Inquiry – Extracts from Hampton Review

1. At its meeting on 23 May, the Finance Committee took evidence from bodies regulated by the Scottish Executive, including Jacquie Roberts from the Care Commission. During this evidence session, Jacquie Roberts mentioned a publication from HM Treasury, Reducing Administrative Burdens: Effective Inspection and Enforcement (The Hampton Review). Jacquie Roberts explained that the Care Commission found this publication useful in regards to the principles of regulation and recommended this document to the Committee.

2. The Hampton Review was conducted on behalf of the Chancellor to consider regulatory inspection and enforcement, and to consider how to reduce the administrative cost of regulation while maintaining regulatory outcomes.

3. The extracts from the Treasury’s publication reproduced in this paper are from the executive summary, and chapter four of the report, titled “The Right Regulatory Structure”, which includes areas which the review felt could be streamlined, to reduce regulatory burden without reducing the outcomes of regulation.

4. The full text of this report, can be found on HM Treasury’s website at: [http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf](http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf)

Kristin Mitchell
Assistant Clerk
Reducing Administrative Burdens: Effective Inspection and Enforcement
Philip Hampton, March 2005

Executive Summary

1. The review’s aim has been to identify ways in which the administrative burden of regulation on businesses can be reduced, while maintaining or improving regulatory outcomes. It has considered the work of 63 national regulators and 468 local authorities, set out in more detail in chapter 1.

2. The administrative burden of regulation is the cost in time or money of regulators’ inspection and enforcement activities. The review has considered the burden imposed by licensing, form filling, inspections, and enforcement activity including prosecutions. It has also looked at how the structure of the UK’s regulatory system affects the ability of regulators to minimise administrative burdens when interacting with, and encouraging compliance from businesses.

3. The regulators within the scope of the review (see paragraph 1.10) carry out more than 3 million inspections each year. The national regulators covered send out 2.6 million forms for businesses to complete every year; reliable figures are not at present compiled for local authorities. This burden is felt most heavily in smaller businesses. A recent NatWest survey claimed that a business with two employees spends over six hours per month per employee on Government regulation and paperwork, while a business with over 50 employees spends only two hours per employee.\(^1\) Research by the OECD suggests that the same is true internationally, with businesses with fewer than 20 staff bearing a burden five times greater than businesses with more than 50 staff.\(^2\)

4. The review’s report is published alongside the Better Regulation Task Force’s (BRTF) report Less is More.\(^3\) The BRTF’s report discusses issues raised in this review’s interim report, regarding the establishment of a methodology for measuring administrative burdens in the UK and recommends the setting of targets to reduce administrative burdens. The recommendations set out here show how burden reductions to realise targets could be achieved.

Problems with the regulatory system

5. Survey data shows that businesses are very concerned about the cumulative burden of regulation. The level of concern has decreased slightly in

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\(^1\) SBRC/NatWest survey of small business, 2003.  
\(^2\) From Red Tape to Smart Tape, OECD, 2003  
\(^3\) Less is more, Better Regulation Task Force, March 2005.
recent years, but the burden of regulation remains one of the principal challenges of business.

6. The review’s conversations with business confirmed the extent of these concerns. Businesses spoke of multiple inspections and overlapping data requirements, and of inconsistent practice and decision-making between regulators. They also highlighted the cumulative burden of forms, particularly for small businesses. The review believes that all of these problems are present, to some degree, and that the costs of these and other problems in the regulatory system are higher than those an effective system would impose.

7. The current regulatory system contains much that is good, and many examples of excellent, innovative practice. However, the review believes that:
   - the use of risk assessment is patchy;
   - regulators do not give enough emphasis to providing advice in order to secure compliance;
   - there are too many, often overlapping, forms and data requirements with no scheme to reduce their number;
   - regulators lack effective tools to punish persistent offenders and reward compliant behaviour by business;
   - the structure of regulators, particularly at local level, is complex, prevents joining up, and discourages business-responsive behaviour; and
   - there are too many interfaces between businesses and regulators.

Risk assessments
8. Risk assessment is an essential means of directing regulatory resources where they can have the maximum impact on outcomes. Undertaking risk assessment makes regulators take proper account of the nature of businesses, and all external factors affecting the risk the business poses to regulatory outcomes. On the basis of this information, regulators can direct their resources where they can do most good. They can end unnecessary inspections or data requirements on less risky businesses, identify businesses who need more inspection, and release resources to improve broader advice services.

9. The use of risk assessment has been the subject of a number of policy studies from, among others, the HSE, an interdepartmental group and the Prime Minister’s Strategy Unit. Several recent strategy documents from the largest regulators are focused on risk assessment, and 36 of the 63 national regulators in the review’s scope use some sort of risk assessment. Only 25 of them, however, include an explicit element of earned autonomy, where good performers are visited less often, or have less onerous reporting requirements.

10. This failure to use risk assessment comprehensively and consistently means that resources are not always targeted at the riskiest areas. An example of the benefit of risk assessment is provided by the Environment Agency. In
2002, the Environment Agency was criticised by the NAO for over-inspection at waste sites. The NAO said:

“The Agency planned to carry out an average of 15 visits to each licensed [waste] site in 2001/02. This is more than [equivalent regulators in] a number of other countries, including France, Ireland and the United States. … The Agency is required to visit all licensed waste sites at least quarterly, and some low risk sites are inspected even more often; for example a pet cemetery we visited is inspected eight times a year.”

Following the NAO’s report, the Environment Agency introduced a risk assessment framework for inspections on waste management sites, the use of which has reduced inspections by a third, from 125,000 in the year the NAO reported, to 84,000 today.

11. The lack of comprehensive risk assessment also creates over-inspection at local level. During 2002-03, local authority trading standards officers only inspected 60 per cent of high risk premises in Great Britain, in 35,000 inspections, yet still inspected 10 per cent of businesses classified as low-risk, in over 72,000 inspections. The practical consequence of this is not only that unnecessary inspections are carried out, but also that necessary inspections may not be carried out. For example, in 2002-03 trading standards officers inspected 22 per cent of alcohol measures, with two per cent found to be erroneous. In the same year, only 10 per cent of traders’ weights were inspected, even though six per cent were discovered to be inaccurate. Had activity been focussed on the area of greater concern, and 20 per cent of traders’ weights inspected and five per cent of alcohol measures – a ratio of inspections more in line with the error rate – they would have undertaken a quarter of a million fewer inspections. However, given the low error rate and the low level of risk in error (most alcohol measures are designed to fail in the customer’s favour) even five per cent is a very high inspection rate.

Advice

12. The review believes that, by eliminating unnecessary inspection, more resources could be directed to advice. This can reduce administrative burdens by reducing the time taken to comprehend regulations, and any data requirements under them. It can increase the probability of compliance, and hence regulatory outcomes. More broadly, better advice eases businesses’ concerns about the requirements of regulation, and helps them to comply. The review’s work and recent surveys suggest a large unmet need for advice. A DTI report in 2002 said that small businesses were not clear what regulators expected of them, and an academic study in 2003 suggested that 62 per cent of small food business proprietors do not understand which food safety regulations are relevant to them.

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4 Environment Agency: protecting the public from waste, National Audit Office, December 2002
5 Premises classified as high risk and inspectable, although the rating system then used has since been abolished.
and 42 per cent do not understand hazard analysis – a fundamental part of current food safety requirements.⁷,⁸

13. These figures show that regulators are often failing to communicate their requirements simply and effectively to business. According to the Small Business Research Trust, 50 per cent of small businesses which try to find advice on regulation are unsuccessful in locating it.⁹ This is supported by surveys of business opinion. Of those surveyed by the Environment Agency for a recent report, 40 per cent said they wanted more guidance from regulators on their duties.¹⁰ Businesses the review spoke to often complained that they could not understand what was required of them, and 92 per cent of those responding to the review’s consultation said they wanted more advice from regulators.¹¹

14. The common complaint of advice being complex is supported by studying the list of past recipients of the Plain English Campaign’s Plain English award. This award is given to several bodies each year for particularly well-written information. The last time any national regulator covered by the review won an award was 1992 (by the organisation now called Companies House). By comparison, since 1993, the Inland Revenue has won two awards, NHS institutions have won seven awards, and local authorities have won eight awards.

Form filling
15. Reducing the time businesses spend filling forms is an important element of any administrative burden reduction – national regulators distribute 2.6 million forms each year, yet carry out about 600,000 physical inspections. The wide variety of forms makes small reductions in data requirements, or improvements in design important. In 2002, the US Health and Human Services Department made one change to one data collection (on health insurance regulation), and saved 37 million hours of paperwork.¹² Currently there are no standard design guidelines for forms, or any unified way of filing them electronically. Risk assessment, better form design and IT solutions can all be used to reduce the burden.

Penalty regimes
16. Businesses and regulators have an interest in proper sanctions against illegal activity in order to prevent businesses operating outside the law from gaining a competitive advantage. At present, regulatory penalties do not take the
economic value of a breach into consideration and it is quite often in a business’s interest to pay the fine rather than comply. This is especially true where a business feels able to shrug off the reputational risk of prosecution. If businesses face no effective deterrent for illegal activity, some will be tempted to break the law, and regulators will need to inspect more businesses.

17. The review encountered numerous examples where penalties fell far short of the commercial value of the regulatory breach. One man prosecuted by the Environment Agency, for example, had been paid £60,000 to dump toxic waste that, when recovered, cost £167,000 to incinerate, yet he was only fined £30,000. In another example, a company had evaded waste licensing requirements for two years, thus saving over £250,000, but was only fined £25,000. In neither case were the fines imposed sufficient to recoup the gain that the offenders had made by operating illegally. In magistrates’ courts, where the overwhelming majority of cases are heard, the average fine in environmental cases in 2003-04 was £3,861. For health and safety offences prosecuted in 2003-04 by the HSE, it was £4,306. One company, which dumped thousands of tons of illegal waste over a ten-year period, was fined just £840 on conviction. If penalties do not reflect the advantage gained by a company in breaking the law, dishonest businesses are given further incentive to breach regulations, and undercut honest companies.

Regulatory structures

18. The review believes that some of the problems identified above are rooted in, or exacerbated by, the complicated structure of regulation in the UK. Regulatory inspection and enforcement is divided between 63 national regulators, 203 trading standards offices and 408 environmental health offices in 468 local authorities. When the Department of Trade and Industry coordinated a Government-wide list of priority areas for trading standards departments, it resulted in a list of 59 issues, all of which were identified as top priorities.

19. Different regulatory areas are structured in very different ways. The Environment Agency unifies almost all regulation of land, air and water, yet regulation on farms is the responsibility of over 20 different inspectorates. Some responsibilities are split between local and national regulators. One small local authority visited by the review was responsible for monitoring health and safety performance at one of the largest industrial installations in southern England, because it was classified as a warehouse rather than a factory. The HSE’s involvement was limited to the railway platform at which supplies were unloaded. This anomaly reflects structures and divisions established when the UK’s

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13 Environment Agency.
14 Environment Agency. Fines handed down to individuals and companies, some covering more than one offence.
economy was dominated by manufacturing, and the existence of huge mechanised warehouses was unimaginable.\textsuperscript{15}

20. There are many small regulators at national level – of the 63 regulators covered by the review, 31 have fewer than 100 staff, and twelve have fewer than twenty. Small regulators’ although focussed, are less able to join up their work, and are less aware of the cumulative burdens on businesses. It is more difficult and more expensive to have a comprehensive risk assessment system if data is split across several regulators with similar areas of responsibility. In such circumstances, a holistic view of business risk becomes difficult, if not impossible. Small regulators are also more expensive. Regulators with fewer than 200 staff are on average more than £8,000 per staff member more expensive than regulators with more than 200 staff members. Smaller regulators which undertake fewer inspections also appear to have higher inspection costs. For example, regulators that inspected between 2,000 and 10,000 businesses per year had an inspection budget of £7,600 per inspection while those that inspected more than 25,000 businesses per year had an inspection budget of £1,000 per inspection.\textsuperscript{16}

21. At local authority level, there is wide variation in standards of service to businesses and the public, as set out in a recent DTI report.\textsuperscript{17} The number of inspectable premises per trading standards officer in greater London varies from 381 (in Sutton) to 3,487 (in Lambeth).\textsuperscript{18} Nationally, the number of inspectable premises per environmental health officer varies from 38 (in Wokingham, Berkshire) to over 1,500 (in Lambeth).

22. Even those measures designed to provide national consistency have had unintended consequences. The Home Authority Principle is designed to route any major trading standards and environmental health issues with large businesses through the local authority where the headquarters is situated. This has improved consistency, but at the price of burdening authorities in areas where head offices are concentrated.

Principles
23. In considering how to tackle the problems found in the UK’s regulatory system, the review has set out a number of principles for regulatory enforcement, which appear in the box below. The regulatory system should move towards these goals.

Box E2: Principles of inspection and enforcement

\textsuperscript{15} Under the Railways Bill, currently before Parliament, regulation of health and safety on railways will become the responsibility of the Office of Rail Regulation.
\textsuperscript{16} Data from regulator submissions to review questionnaire.
\textsuperscript{17} Extending Competitive Markets: Empowered Consumers, Successful Businesses Department of Trade and Industry, July 2004.
• Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
• Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
• All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;
• No inspection should take place without a reason;
• Businesses should not have to give unnecessary information, nor give the same piece of information twice;
• The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions;
• Regulators should provide authoritative, accessible advice easily and cheaply;
• When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed;
• Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
• Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

**The review’s recommendations**
24. The review’s central objective is to raise both the quality and the effectiveness of our regulatory system. If anything, the review believes it should be possible to achieve greater excellence in regulatory outcomes – but to do so substantially more efficiently, by:

- entrenching the principle of risk assessment throughout the regulatory system, so that the burden of enforcement falls most on highest-risk businesses, and least on those with the best records of compliance;
- in particular, ensuring that inspection activity is better focused, reduced where possible but, if necessary, enhanced where there is good cause; at present, not only are unnecessary inspections carried out but necessary inspections are not carried out;
- making much more use of advice, again applying the principle of risk assessment;
- substantially reducing the need for form filling – in practice, most businesses’ most frequent and direct experience of regulatory enforcement – and other regulatory information requirements; and
- applying tougher and more consistent penalties where these are deserved.
25. The review seeks to build on the strengths of our present regulatory system, especially regulatory independence – a principle the review strongly supports.

26. It does so by:
   - setting out a number of core principles of effective regulation – the standard against which all regulators’ performance should be judged;
   - substantially reducing the number of regulatory bodies with which businesses has to deal;
   - making proposals to strengthen regulators’ accountability for implementing the approach recommended in this report, suggesting a more prominent role both for the independent National Audit Office and for Parliament;
   - ensuring that regulators are more business-focused in the way they operate, and that they take more account of businesses’ views and needs;
   - for the first time, coordinating local authority regulatory functions and holding them more effectively to account; and
   - significantly enhancing the capacity of Government to promote better regulation, with a new Better Regulation Executive, led by a senior business person in the Cabinet Office.

27. The review estimates, based on regulators’ past experience, that its proposals could:
   - reduce the need for inspections by up to a third, which means around one million fewer inspections; and
   - reduce the number of forms regulators send out by perhaps twenty five per cent.

28. Its proposals also have the potential, in time, significantly to reduce the direct cost of regulation to Government and regulated sectors, substantially offsetting any one-off costs of change.

29. To deliver this, the review’s principal recommendations are that:
   - regulators should follow the principles of regulatory enforcement set out in Box E2 above;
   - risk assessment should be used comprehensively by every regulator; information requests, and penalties should also be based on risk assessment;
   - regulators should use the resources released through full implementation of risk-based assessment to provide improved advice, because better advice leads to better regulatory outcomes, particularly in small businesses. Regulators should judge the effectiveness of their advice by monitoring business awareness and understanding of regulations; regulators should make on-site advice visits and tailored advice available to businesses;
   - regulators should reduce the number of duplicated data requests and reduce the overall burden of forms by: involving business at all stages
when introducing a new form, and business groups should vet the design of forms; when designing new forms, all regulators should include a statement detailing how long they will take to complete; and all regulators should keep a tally of how many forms they issue and set targets to reduce them;

- over the longer-term regulators should look to improve cooperation and data sharing to reduce the need for businesses to submit the same data more than once; no proposal for significant upgrades or enhancements to existing regulators’ IT systems should go ahead without prior scrutiny by the proposed Better Regulation Executive;

- every Regulatory Impact Assessment should include, in addition to implementation on regulatory costs, an assessment of the practicality of enforcement;

- the penalty regime should be based on managing the risk of re-offending, and the impact of the offence, with a sliding scale of penalties that are quicker and easier to apply for most breaches with tougher penalties for rogue businesses which persistently break the rules;

- early warning before enforcement action should allow companies to correct problems before going to court, and therefore cut the administrative burden;

- regulators should be structured around simple, thematic areas, in order to create fewer interfaces for businesses, to improve risk assessment and to reduce the amount of conflicting advice and information that businesses receive;

- thirty one national regulatory bodies should be consolidated into seven, with individual regulators covering the entire scope of environment, health and safety, food standards, consumer and trading standards, animal health, agricultural inspections, and rural and countryside issues;

- a new consumer and trading standards agency, incorporating the work of four existing regulators, should help coordinate local authority services to improve the use of risk-based inspection and consistency for businesses whilst maintaining national standards for consumers;

- all regulators should ensure they have a performance management framework and systems in place to deliver fully risk based inspection, improved advice services and to monitor the impact of these changes on those they regulate;

- the administration of all new policies and regulations should be based on the principles set out in this report, so new regulations are, where possible, implemented through existing inspection services and data collection channels; no new regulator should be set up if an existing regulator is able to carry out the task effectively;

- the accountability of regulators for implementing the approach recommended in this report should be increased through for example suggesting enhanced Parliamentary scrutiny. This should not affect regulators’ independence on individual regulatory decisions;
• in place of the existing Regulatory Impact Unit, a new Better Regulation Executive, led by a senior business person, should be created in the Cabinet Office to drive through this reform programme.

30. The review’s detailed recommendations are in Annex D. The review believes that if the recommendations in the report were to be carried through into practice, businesses would see a more open, more comprehensible regulatory system, while regulators would be able to direct their resources as efficiently as possible. Better focus from regulators, and easier routes to compliance for business should mean that regulatory outcomes would certainly not reduce, and could well improve.

31. The next chapter outlines the regulatory system as it operates today. Chapter 2 considers how regulatory practice can embed risk assessment to reduce administrative burdens. Chapter 3 makes recommendations on how the burden of form filling can be eased, and Chapter 4 sets out the review’s proposals for changes to the regulatory structure.
Chapter 4 - The Right Regulatory Structure

4.1 The earlier chapters of this report set out the case for change in regulatory inspection and enforcement, and made specific recommendations concerning regulatory practice and data collection. This chapter considers the structure of regulators in the UK, and makes recommendations for rationalisation, to create a regulatory system that delivers the same or better outcomes more efficiently, and to simplify cross-boundary working leading to reduced administrative burdens. This will reduce the number of regulators businesses have to interact with. It will ensure the same or better outcomes, and a more comprehensive approach to risk assessment.

4.2 The review believes that there are six areas where reform would be useful, to streamline the regulatory system and reduce the burden of administration on business, without reducing regulatory outcomes. These areas are:

- better Regulatory Impact Assessments to create regulations that are easier to enforce, and easier to understand;
- consolidation in national regulators to create a simpler, more consistent structure;
- fewer regulators for individual businesses to deal with, leading to better risk assessment;
- better coordination of local authority regulatory services;
- clearer prioritisation of regulatory requirements by Government Departments and national regulators; and
- better accountability throughout the regulatory system.

THE RIGHT REGULATIONS

4.3 One of the most important aspects of good inspection and enforcement is having good regulations to enforce. It is not within the review's remit or competence to examine existing regulations and make judgements on whether they are good or bad. It is, however, appropriate for the review to make recommendations on the way in which inspection and enforcement of regulations should be considered when future regulations are being drafted.

4.4 The review argues that inspectors and regulatory staff should have input into the discussions in which regulations are created. There is a broader point, however: that policy makers should have a decision-making structure that requires them to consider the ways in which regulations are going to be implemented. In general:

- those considering new regulations should be required to follow the principles of enforcement set out earlier in this report;
- new tasks should be given to existing regulators unless there is a compelling reason to create a new body;
- where regulators can use existing data sources, those data sources should always be used;
• where existing forms, systems, inspections or penalty regimes can be used to secure a new regulatory requirement, they should be used;
• goal-based regulation should be preferred to prescriptive regulation; and
• regulations should, where possible, be ‘self-enforcing’.

Self-enforcement and the ‘Table of Eleven’

4.5 In designing regulation, and contemplating the inspection and penalty regimes that will need to be set up, regulators or policy staff in Departments should aim to devise regulations which, through their incentive structures, point towards self-enforcement. For example, if a regulation is hard to understand, poorly publicised, and the penalty for non-compliance is trivial, only the most determined business – assuming they know about it – will ever comply with it. If a regulation is clearly drafted and well publicised, with self-monitoring routines that fit with day-to-day business practice, and if checks on enforcement are known to happen from time to time, with condign punishments for non-compliance, then the regulation will, broadly speaking, be enforced of itself.

Recommendation 23: Every Regulatory Impact Assessment (RIA) should include, in addition to information on regulatory costs, an assessment of the practicality of enforcement, setting out:
• which regulator will enforce the regulation;
• the extent to which existing forms, systems, inspection regimes and penalty regimes can be used to secure the desired regulatory outcome;
• the outline of the risk assessment to be used in programming inspections; and
• the sources and nature of advice to be provided both at the introduction of the regulation, and while it is in force.

Recommendation 24: The Better Regulation Executive should be consulted if the establishment of a new regulator is being contemplated. The BRE should oppose the establishment of new regulators if any existing regulator is able to carry out the task effectively. The BRE is described more fully later in this chapter.

Recommendation 25: The administration of new policies and regulators should be based on the principles set out in Box 2.2 of this report, with no new regulators set up without the approval of the Better Regulation Executive.

Recommendation 26: As part of the enforcement assessment in Regulatory Impact Assessments, those proposing the collection of data should show that they have assessed all data available to the regulators, that none of the data available fits their needs, and that the benefits of gathering extra information outweigh the costs both to Government and to business. They should also provide an assessment of the extent to which existing forms or collection mechanisms can be used to gather the required data.
4.6 Consideration of these multiple factors sounds complicated, but the review would recommend the use of a process, developed in the Netherlands, called the Table of Eleven. The details of the Table of Eleven are in Box 4.1, below.

**Box 4.1 The Table of Eleven**
The Table of Eleven is a tool for thinking about compliance, and for increasing the likelihood that regulations will be complied with. It takes eleven aspects of a proposed regulation, each of which will increase or decrease the likelihood of compliance. In considering how exactly to phrase the regulation, and how to enforce and publicise it, the Table of Eleven is useful in highlighting areas that are likely to reduce compliance, so that regulations can be made as self-enforcing as possible.

The eleven factors are:

- **Aspects of spontaneous compliance:**
  1. Knowledge of the regulation
  2. Costs of compliance/benefits of non-compliance.
  3. Degree of business and popular acceptance of the regulation
  4. Loyalty and natural obedience of the regulated firm
  5. Extent of informal monitoring

- **Aspects of monitoring**
  6. Probability of report through informal channels
  7. Probability of inspection
  8. Probability of detection
  9. Selectivity of the inspector

- **Aspects of sanctions**
  10. Chance of sanctions
  11. Severity of sanctions

4.7 The Table of Eleven is a rough tool, but it structures thinking by regulators, and can direct them towards areas that need particular support, and areas where companies are unlikely to want to break rules.

**Recommendation 27:** The review recommends that, as part of the enforcement assessment in Regulatory Impact Assessments, regulators should publish an assessment of compliance probabilities and strategies, structured according to the Table of Eleven.

**THE REGULATORS**

4.8 The 63 national regulators in the scope of this review have been set up over time and in some circumstances on an ad hoc basis. They have different

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cultures, reflecting the circumstances of their creation, the business sector they regulate, or the issues they are intended to address.

Problems with the current regulatory structure

4.9 The review discusses in Chapter 1 the way in which regulators carry out their work. The problems identified in that chapter include inconsistency of decision-making, multiple inspections, lack of comprehensive risk assessments and complexity of regulation. The review believes that the current regulatory structure institutionalises some of these problems, leading to increased administrative burdens, and poorer regulatory outcomes. The structure both exacerbates the problems of regulatory enforcement, and makes efforts to correct it difficult or partial. The fundamental problem is one of complexity with 63 national regulators, 203 Trading Standards departments and 408 Environmental Health departments carrying out the regulation covered by this review.

4.10 The most striking feature of the current system is how the regulatory structure varies in different sectors. The Environment Agency was set up in 1996 to unify the regulation of air, land and water, and in consequence there is only one other regulator – the Drinking Water Inspectorate – whose work is directly related to air, land or water. By comparison, the regulation of food products on farms is divided between 21 bodies either part of or reporting to Defra. These fragmented regulators, which concentrate on specialist areas of regulation, are often understandably unable to see that although the administrative burden that they place on business may be small, it is only one part of a cumulative burden. On the other hand, larger regulators have a better view of the overall burden of regulation.

4.11 A highly fragmented system means that business is more likely to be on the receiving end of conflicting advice. For Government, it means duplication of effort and cost. Regulated businesses are subject to overlapping inspections from different bodies, and asked to provide similar information to different Government agencies, none of which has an overview of the effects of regulation on that business. Where joining up does occur, numerous stakeholders and complex data interactions make synergies hard to establish and harder to maintain. Confusion in the system makes it more difficult for businesses to comply with regulation, and more difficult for regulators to carry out proper risk assessment. Poor risk assessment or fragmentation of inspection resources could mean that riskier businesses are not inspected, while overlapping responsibility for discovering regulatory breaches makes it more likely that breaches will go undiscovered. All these factors lower regulatory outcomes.

4.12 The review believes that the principal problems caused by complexity in the regulatory system, covered in more detail below, are:

- businesses being subject to multiple inspections;
- overlapping areas of responsibility;
• regulators devoting scarce resources to activity being replicated in other regulators, especially in the collation of information;
• difficulties in joining up work because of the large number of bodies;
• small bodies limiting efficiency in the use of resources; and
• risk assessments are not comprehensive.

**Multiple inspections**
4.13 For regulators covered by this review, 3.1 million business inspections take place in the UK each year. National regulators require the completion of 2.6 million forms, and local authorities have their own form-filling requirements. Respondents to the review’s business questionnaire suggested the average business had dealings with at least seven regulators each year.

4.14 The review’s recommendations on risk assessment should move the focus of regulatory activity away from simple inspection, and towards a more effective interaction, based on advice. The structural consolidation of regulators should reduce the burden of inspection even further, while maintaining or improving regulatory outcomes.

**Overlapping areas of responsibility**
4.15 Regulators’ overlapping areas of responsibility exacerbate this complexity. For instance several agencies in the regulatory system are responsible for food standards and safety including the Food Standards Agency, the Wine Standards Board, the Egg Marketing Inspectorate, the Horticulture Marketing Inspectorate, the Dairy Hygiene Inspectorate, the Fish Health Inspectorate, and the Sea Fish Industry Authority.

4.16 Overlaps and inconsistencies are not the responsibility of any individual regulator, but are systemic in a complex overall regulatory framework. An individual regulator may be maintaining an excellent compliance regime, but because coordination with other regulators is poor, the system as a whole can impose undue burdens on individual businesses. This overlap may result in conflicting advice, with no formal procedures for resolving these conflicts.

4.17 Some overlaps in authority are natural; for example, there are both health and safety and environmental issues relating to the storage of hazardous chemicals, and these need to be worked through. In principle, the overlap can be addressed by merging organisations or by joint working programmes. Overlaps are exacerbated, however, if the lack of a clearly responsible agency in certain areas of the regulatory landscape results in the creation of small agencies with very specialised remits. This has happened in the past, with bodies such as the Adventure Activities Licensing Authority. Although new creations seem logical at the time, they can increase or perpetuate complexity and compound the burden on business.
4.18 The Better Regulation Task Force’s report, *Avoiding Regulatory Creep*, makes a similar point: “Regulatory regimes that involve several bodies can become confused and lack clear direction. This can lead to regulatory creep as each body pursues different objectives and takes a different focus. Those being regulated find themselves responding to competing or confusing demands.”

**Duplicated efforts**

4.19 The separate operation of the different national and local regulators means that no one knows of any others’ paperwork requests or whether the information they need is held elsewhere within Government. Duplication of information requests is a serious inconvenience for business in itself. It is much worse, however, when the same data is asked for in different formats, or with different cut-off dates. The Health and Safety Executive for instance requires data in a slightly different format from that required under the Controls Assurance Standard (an internal NHS management mechanism). This lack of coordination has led to NHS organisations being required to maintain two different sets of data.

4.20 Reducing duplicated information requests is an important benefit of structural consolidation. Small changes in information collection burdens, as noted earlier, can have a large aggregate effect – in both directions. In 2002, the US Health and Human Services Department made one change to one data collection (on health insurance regulation), and saved 37 million hours of paperwork.

4.21 Another problem is duplication of leaflets – often written from slightly different viewpoints. Local authorities the review spoke to complained of the lack of centrally produced generic information for business, especially on trading standards, leading to a multiplicity of locally generated data.

**Difficulties joining up**

4.22 Many regulators have made attempts to join up their work to address some of the problems discussed. The review has been impressed with a number of new initiatives – the Whole Farm Appraisal is described earlier in the report, but other examples include the Department of Culture, Media and Sport’s *Fitness for Purpose* toolkit for local authorities and the Department of Trade and Industry’s Retail Enforcement Pilot.

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2 *Avoiding regulatory creep*, Better Regulation Task Force, October 2004
4 *Paperwork Reduction Act: Record increase in agencies’ burden estimates*, United States General Accounting Office, April 2003
5 *Creating wealth from knowledge*, Department of Trade and Industry five year programme, November 2004.
4.23 However, joining up is a difficult process in a complex regulatory system. A large number of regulators must be brought into most schemes. Often initiatives are created and run by enthusiastic individuals, making the long-term sustainability of such initiatives questionable. Joined-up working is difficult to cement between regulators with differing statutory obligations, or different incentive structures and working methods.

4.24 The local authority leading on the development of PARSOL – an initiative intended to provide electronic platforms for the delivery of planning and regulatory services – told the review it had had difficulty promoting products to cover regulatory services, because no single body existed to coordinate different regulators’ requirements.

4.25 Even where joined-up initiatives exist, businesses can be sceptical of the benefits. The COMAH Memorandum of Understanding was held up to the review (by regulators) as an example of joint working in practice, but (by businesses) as a worthy initiative, with, as yet, limited impact.6

Organisational problems of small bodies
4.26 While smaller regulators can create small centres of expertise, they do not benefit from the sharing of experience and expertise that larger organisations can more readily embrace. The complexity of structure at a national level can be seen in the proliferation of small regulators – 31 regulators within the review’s remit have fewer than 100 staff, and twelve have fewer than 20. Regulators of that size are unlikely to be able to allocate resources efficiently, and lack political and institutional prominence. Within themselves, they cannot carry out broad risk assessments, or easily understand the cumulative burden of the regulations they are imposing. More broadly, it is difficult for Government to allocate resources to areas of importance if funding for regulation is balkanised among so many different bodies.

4.27 Further, the existence of a large number of national regulators, with their different cultures, approaches and focus on specific market segments or business activities, significantly inhibits the prospect of introducing a collectively agreed approach to risk assessment of inspection programmes and form filling requirements. A more consolidated regulatory landscape would allow not only the introduction of a more uniform approach to risk, but also simplify the process of ensuring that the national regulations adopt and mainstream Hampton principles.

4.28 A similar problem of fragmentation exists at local authority level. Many authorities, particularly districts, have small regulatory services departments, and cannot give their staff either a varied career path or an opportunity to specialise. The average staffed environmental health office has 75 staff if in a London Borough, 57 if in an English unitary authority outside London, and 27 if in a non-

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6 An agreement on joint working by the Environment Agency and the Health and Safety Executive, covering premises under the Control of Major Accident Hazard (COMAH) regulations.
metropolitan district council. Trading Standards offices are still smaller, with an average 51 staff in counties, 17 staff in London and metropolitan boroughs, and 14 staff in unitary authorities.\(^7\)

4.29 Smaller organisations are also more expensive to run than large ones. Regulators with fewer than 200 staff were, on average, £8,000 per staff member more expensive than regulators with more than 200. Regulators who inspected between 2,000 and 10,000 businesses per year had an inspection budget of £7,600 per inspection. Those who inspected more than 25,000 businesses per year had an inspection budget of £1,000 per inspection.\(^8\)

**CONSOLIDATION OF NATIONAL REGULATORS**

4.30 In the interim report, the review asked whether consolidation of national regulators was desirable, if benefits could be obtained. The review has considered several options for structural change across the spectrum, from a single, super-regulator focussed on all business interfaces at the radical end, to maintaining the status quo at the other.

**A single regulator**

4.31 Some businesses the review spoke to made the case for a single regulator or inspectorate for businesses. This could be a single regulator, with responsibility for every regulation, or – more plausibly – a single inspectorate.\(^9\)

4.32 The review has considered whether this is reasonably possible, and has decided that it is not. The wide range of areas for inspection in any but the smallest business means that a compliance officer or advisor could never understand the full range of regulations and criteria he or she was meant to enforce. The desire of business, expressed in the consultation, for fewer regulators needs to be balanced with the desire of business, expressed in a recent survey and elsewhere, for expert knowledge from those to whom they talk.\(^10\) The most important aspect of Government to business interaction, according to the survey, is ‘knowledgeable, competent staff’. This answer came far ahead of the nearest alternative answer – ‘a successful outcome’.

4.33 The review believes that, while a single, adequately skilled inspector or single regulator is an understandable aspiration, it is unattainable. Nevertheless, there is significant scope for consolidation of the existing set of regulators and for broadening skills in some areas. It has been a trend in recent years to consolidate regulators around particular themes. The review supports this thematic approach and believes it should be pursued further.

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\(^7\) CIPFA, 2003.
\(^8\) Regulators’ expenditure on inspection and enforcement activities, divided into the number of inspections. Data: regulators’ returns to the Hampton Review.
\(^9\) See also *The rising spectre of intrusive regulation*, Financial Times, 18 February 2005.
\(^10\) *Business Barometer 74*, University of Nottingham, July 2004.
Experience of consolidation

4.34 Thematic consolidations have occurred on several occasions in recent years. The most recent are the creation of Ofcom from five former regulators, and the imminent merger of HM Customs and Excise and the Inland Revenue.\(^\text{11}\) Of the regulators within the review’s scope, six are the product of comparatively recent mergers – the Environment Agency, the Food Standards Agency, the Meat Hygiene Service, the Rural Payments Agency, the Financial Services Authority, and the Vehicle and Operator Services Agency (VOSA). In addition, following the recommendations of the Haskins Report, Defra announced in November 2003 that it would merge parts of English Nature, the Rural Development Service and the Countryside Agency to create an as yet unnamed Integrated Agency.\(^\text{12}\) Other regulators have a longer history – the Health and Safety Commission and Executive (themselves a consolidation) were established in 1974.

4.35 Consolidation of regulatory bodies that cover the public sector has also taken place. The Commission for Social Care Inspection was created in 2004 from three other bodies. The Department of Health also announced last year that it would reduce the number of its arm’s length bodies from 38 to 20.

Box 4.2: Case study in consolidation – Financial Services Authority (FSA)

The Financial Services Authority became the single regulator for the UK’s financial services industry in December 2001, finally integrating the responsibilities of nine bodies into one thematic regulator. The first stage of the reform took place in October 1997 when the Securities and Investment Board became the FSA. Banking supervision was transferred to the FSA from the Bank of England in 1998. The FSA became the UK Listing Authority in 2000 and in December 2001, through the enactment of the Financial Services and Markets Act 2000 (FSMA), the FSA formally assumed the responsibilities of the:

- Building Societies Commission;
- Friendly Societies Commission;
- Investment Management Regulatory Organisation;
- Personal Investment Authority;
- Register of Friendly Societies; and
- Securities and Futures Authority.

At the same time the FSA formally assumed responsibility from the Government for the prudential supervision of insurance, and a single Ombudsman service and compensation scheme were established in place of the multiple organisations which existed beforehand. FSMA provided the FSA with new powers, subject to robust accountability arrangements, replacing the mix of statutory regulation and self-regulation which existed beforehand. This merger and creation of a one-stop

\(^{11}\) The Broadcasting Standards Commission, the Independent Television Commission, Oftel, the Radio Authority and the Radiocommunications Agency

shop for both consumers and the industry has allowed synergies and efficiencies to be exploited. The new regulator also more closely matched the shape of the regulated industry. The single regulator model has since been adopted by a number of other countries including Germany, Ireland and South Korea. The 2003 IMF and World Bank Financial System Stability Assessment endorsed the UK’s new regulatory framework, especially the new world-leading arrangements for safeguarding financial stability. The review has been impressed with the FSA’s risk profiling system, which has a firm-specific component and a component for industry wide risks. The application of such a risk assessment protocol across the whole financial sector makes resources more flexible, and regulation better targeted, than if the regulation had been delivered by nine separate bodies.

**Structural reform**

4.36 The case study above demonstrates some of the benefits of reducing the number of regulators. The review believes that, if carried out correctly, the benefits of structural consolidation could be considerable, and could come through:

- fewer business-regulator and regulator-regulator interfaces;
- more complete risk assessment;
- consolidation of forms and data;
- fewer inspecting agencies, and hence fewer multiple inspections;
- internalising conflicting regulations;
- more strategic regulation; and
- more flexible regulation.

**Fewer business regulator interfaces**

4.37 By collapsing the total number of regulators into a smaller number of thematic areas, business would have fewer regulators to deal with. The current volume of business and regulator interfaces would be simplified, resulting in less administration.

4.38 At the same time, the number of interfaces between regulators would also reduce, making joint working and data sharing simpler. Had the Environment Agency not been created, the Health and Safety Executive would have had to establish joint monitoring of COMAH sites with two other regulators, and all local authorities. It is doubtful that, with such a large number of stakeholders, joint working would ever have been established.

**Better risk assessment**

4.39 A larger, thematic regulator could design and implement a more robust risk management process and methodology. It would have access to complete information and be able to factor this into risk assessment frameworks. A high

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14 Control of Major Accident Hazards regulations, governing the most risky premises.
quality risk assessment methodology and process would enable the regulator to prioritise areas of work and use resources more effectively.

4.40 Larger, thematic agencies could also take clearer strategic decisions. Of the regulators within the review’s scope, it is the large thematic regulators that have the best risk assessment methods, and the most advanced thinking on the theory of regulation.

Eliminate multiple inspections
4.41 The creation of larger, thematic agencies would also result in a reduction in multiple inspections for business. Several regulators (with similar work streams) would not visit businesses. Instead, a business would only have to interact with one regulator per thematic area. This would reduce the absolute number of inspections, while maintaining good regulatory outcomes and targeting inspection to areas of high risk through a robust risk assessment process.

4.42 Consolidated organisations would save money on administrative functions that could be redirected to business-facing work. Their integrated structure would advance the consolidation of regulatory databases described in the previous chapter.

Internalise conflicts and reduce duplication
4.43 Thematic regulators could also internalise conflicts and identify areas of duplication more readily than in a fragmented system. These actions would also lower administrative burdens on business, by reducing the number of forms that would need to be completed. Integrating agencies into thematic areas allows common reporting and regulatory frameworks to be established, making compliance much less burdensome.

4.44 Thematic regulators could harness specialist knowledge, while retaining the resource to provide good general advice. Larger regulators could also create specialist groups to deal with small businesses, or businesses with particularly complex regulatory issues – as is seen at present in the Inland Revenue.

A streamlined central regulatory structure
4.45 The review believes that consolidation should take place around key regulatory themes. As outlined above, the review expects integrated agencies to be more effective and efficient in delivering regulation and interacting with business. The principal themes around which regulators should be grouped are:

- Consumer protection and trading standards;
- Health and safety;
- Food standards;
- Environmental protection;
- Rural and countryside issues;
- Agricultural inspection; and
- Animal health.
The review believes that, of the 63 regulators in its scope, 31 could be consolidated into seven. The following section sets out the review’s opinion on the natural components of the new thematic regulators. The Government may, of course, want to add other bodies outside the scope of the review, or put certain agencies into different thematic regulators. The Government may also wish to consider whether the creation of a more thematic regulatory structure allows an opportunity for ensuring a clearer separation of policy and strategic responsibility from operational activity in the regulatory sector.

**Consumer and trading standards**

In the area of consumer protection and trading standards, there is a multiplicity of local providers, and some major national interests, but no clear coordinating body. The lack of strategic focus on trading standards, outlined in the analysis of local authority performance, is partly attributable to this, as is the lack of joining up on issues such as the provision of generic advice to businesses and the general public. While there have been considerable advances in coordination in this area, led by the DTI and the Local Authorities Coordinators of Regulatory Services (LACORS), the review believes that coordination can go much further.

Accordingly, the review recommends that a new body should be created at the centre of Government, to coordinate work on consumer protection and trading standards. This body would have lead policy responsibility for trading standards nationally. It would have the responsibility of overseeing the work of local authorities on trading standards issues, as the Food Standards Agency does in respect of food.

The Office of Fair Trading has some consumer enforcement powers which should be included within the new body. It also has some liaison functions in relation to trading standards, and has worked in partnership with other enforcement bodies to coordinate activities. All of these functions sit within wider responsibilities to ensure markets are working well for consumers and alongside specific duties to enforce competition legislation.

The new body would need to dedicate significant resource to deliver a more coherent enforcement network and to improve performance in local authorities around the country. Institutionally, there are two possible structures for the new body: either a wholly new body could be created; or it could be based within the existing Office of Fair Trading. Both options have pros and cons. The review considers that, of the two, the balance of argument points clearly in favour of a new body, and that there would be significant managerial and organisational advantages in creating a body which was wholly focused on this major task. Equally, however, it will be essential to ensure that any new structure retains strong linkages between consumer and competition policy, and that any new consumer structure retains a strong market-based approach. The review therefore recommends that, before taking a final decision on this structural
question, the Government considers the issues further and consults with stakeholders including consumer groups, the Office of Fair Trading and others.\footnote{A further sub-question, which the Government may want to consider, is whether the consumer credit functions of the OFT should pass to the Financial Services Authority.}

4.51 In addition the new body should incorporate:
- the National Weights and Measures Laboratory;
- the British Hallmarking Council; and
- the Hearing Aid Council.

**Health and Safety**

4.52 The review believes that the Health and Safety Executive, whose remit extends to the safety of workers and the public in workplaces, should expand to cover other bodies with a similar remit, including aspects of public safety.

4.53 The review believes that the Health and Safety Executive should expand to take in:
- The Adventure Activities Licensing Authority (currently funded by the Department for Education and Skills, but with policy direction already from the HSE);
- the soon to be established Gangmasters Licensing Authority;
- The Engineering Inspectorate, part of the DTI, whose remit is the safety of overhead power lines; and
- the inspection functions of the Coal Authority, six staff from the organisation whose remit is competence in mining operations.

4.54 The Security Industry Authority (SIA) currently regulates door supervisors and mobile vehicle clammers and will soon regulate private security guards. Although the review believes there is a case for the SIA transferring into the HSE, the SIA is in the process of developing an appropriate regulatory regime, and it would not be right to merge it into another body at this stage: a final decision on the SIA should therefore be made in two years’ time.

**Food standards**

4.55 Building on the success of the Food Standards Agency, the review believes that the agency should be expanded to incorporate the work of the Wine Standards Board in respect of the quality, labelling and standards of wine sold in the UK. The policy functions on industry support will remain with Defra.

**Agriculture, countryside and animal welfare**

4.56 The review believes that the many bodies currently responsible for the agricultural, rural and animal health fields should be consolidated. The field is complex, and currently being reorganised as a consequence of the Haskins Review of the delivery of the rural policy and Defra’s internal Delivery Strategy.
4.57 In the light of these continuing changes within the Defra regulatory structure, the review has thought it best not to make specific recommendations for mergers. It does believe, however, that the proper end-point of consolidation, at least for those bodies with regulatory functions, is a division between five thematic regulators. The review therefore recommends that, within the four-year timescale for other mergers, almost all the inspection functions within the review's remit currently exercised by Defra or its agencies should be unified within one or more of the thematic regulators, particularly:

- The Environment Agency;
- The Food Standards Agency;
- a new Agricultural Inspectorate.
- the new integrated agency being established following the Haskins Review; and
- a new Animal Health Agency;

Other synergies
4.58 In addition, outside the main thematic regulators, the review proposes that the Companies Investigation Branch of the DTI, which investigates fraud, malpractice or other forms of abuse by companies, should be merged with the Insolvency Service Agency (ISA). The ISA, which ensures that financial failure is dealt with fairly and effectively and that fraud and financial misconduct are detected and deterred, has a staff of 1,885 and a gross operating budget of £110 million. The CIB has a staff of 74 and an operating budget of £8 million. This new merged body should take responsibility for promoting better training, and better targeting of investigations and enforcement.

4.59 The review also believes, on its initial assessment, that there may be merit in the exploiting synergies between Companies House and the new HM Customs and Revenue. Companies House is one of the most important form-issuing bodies at national level, sending out 1.8 million forms a year. The data required has similarities with filings required under corporation tax law, suggesting that there may be potential for significant simplification. This possibility was raised by the O'Donnell review in 2004. The Government may want to examine this further.

Implementing change
4.60 The review understands that the mergers outlined above are a major undertaking. They affect most of the staff within the national regulatory sector and, through the creation of the Consumer and Trading Standards Agency (CTSA), a significant number of local authority staff. The review believes that reorganisation on this scale should take place over a number of years, following full discussion and consultation on the timing and nature of the moves, and any other consequential changes.

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16 Inspection functions of all Defra bodies listed in Annex B except the Forestry Commission and the Agricultural Wages Inspectorate.
4.61 The review believes that the merger process should be led by the Better Regulation Executive, which should co-ordinate the work of merger teams in the core regulator, or the relevant policy Department.

4.62 The review believes that detailed plans for mergers should be in place by September 2006, and that the mergers themselves should be completed in all aspects by the start of April 2009.

4.63 The Government should consider whether additional bodies, outside the scope of this review, should be added to the new regulators on their creation. It should reach a conclusion on this issue by September 2005, to allow the planning process to take these additional bodies into account.

**Consequences of consolidation**

4.64 The review believes that the benefits of regulation in streamlining the activities of the regulators are likely to be considerable. It also believes that a more strategic central role on trading standards will improve the quality of regulation and of risk assessment at local level.

4.65 Businesses will benefit from consolidation through the creation of larger, more coherent regulators. Larger regulators will be able to:

- carry out more comprehensive risk assessments;
- unify existing inspection regimes or data requirements;
- implement electronic databases more effectively; and
- provide a simpler gateway to more comprehensive advice.

4.66 Businesses will also have to deal with fewer regulators. At present, some businesses have dealings with ten or more Government agencies over the course of a year. Under the consolidation programme set out above, most businesses will have dealings with only one or two regulators within the scope of the review.

4.67 Estimating the extent of such benefits is inevitably a challenging exercise. The review has, however, seen several examples of major benefits that have arisen from the modernisation of regulatory practices in the past:

- better risk assessment in waste management sites allowed the Environment Agency to reduce inspections of those sites by 33 per cent over three years. A similar reduction in trading standards inspections would eliminate over 150,000 inspections;
- the creation of VOSA’s electronic form for updating vehicle movement records is eliminating around 200 form filling transactions per annum for major national haulage operators, with the new process taking minutes as opposed to 14 days per form;
- the merger of the Rural Payments Agency and the British Cattle Movement Service allowed the creation of a single information gateway for the 2 million cattle movements each year. The Change Programme, of
which this move is a part, was introduced after the creation of the RPA from nine former organisations. It is planned to deliver annual savings of £52 million through streamlined IT and management systems; and

- the forthcoming unification of the administration of magistrates’ courts into HM Courts Service aims to deliver savings of 5 per cent through process changes. If a similar 5 per cent saving could be achieved from the bodies listed for consolidation in this report, administration costs to Government could reduce by up to £79 million.

4.68 The BRTF’s report, *Less is More*, recommends that the Government should set a target for reduction in administrative burdens caused by inspections and form-filling. Judging from the evidence we have seen, there is considerable scope for reduction. If the experience of the Environment Agency in introducing risk assessment were to be replicated across other regulators, which the review believes is possible, a 33 per cent cut in inspections could be achieved without affecting desired regulatory outcomes.

4.69 The review has been surprised by how little data is collated on the sending of forms, particularly at local level. The review believes that all regulators should put in place procedures to monitor the form filling burden that they impose. This problem should be addressed if the Government accepts the BRTF’s recommendations on calculating the cost of administrative burdens. The review believes that all regulators should set targets for reductions in the number of forms they send out. More work would need to be done to assess what a reasonable target would be, but, given the experience of VOSA and the Rural Payments Agency, the review believes a target of 25 per cent could be credible for the next few years, with large potential benefits later as consolidation of data sets increases.

4.70 There are also costs associated with any structural reform. In the case of the mergers described here, assessing the exact cost of merger at this stage is very difficult.

4.71 The review believes that the merged bodies should certainly not be larger, and should ideally be smaller than the combination of their predecessor bodies, and that the same constraint should apply to their budgets.

4.72 The composition of three new consolidated bodies is set out in this review. In two of these cases – the HSE and the Food Standards Agency – the changes in head count and physical location are very small in the context of the organisations they will be joining. The proposed CTSA could be a new organisation, so its establishment could be more costly.

4.73 The two simpler cases are the Food Standards Agency and the Health and Safety Executive. The FSA is taking on the twelve staff of the Wine Standards Board, which is also based in London. This is an addition of 2 per cent
of headcount, and the review believes that the cost of this merger will be negligible.

4.74 The new Health and Safety Executive is taking on up to 167 staff, and a budget of up to £32 million, adding four per cent to its headcount and one per cent to their total budget. Again, with the small percentage increase in headcount, the review assumes that IT and HR systems can be extended to new staff within their former organisation’s existing IT and HR budgets. The bodies that are merging into the new agency are located outside London, and the review sees no need for them to be relocated into London and the south east.

4.75 More complicated is the proposed new consumer and trading standards agency. There are two scenarios for its creation.

4.76 If the body is a new creation, it will merge 348 staff on an equal footing, rather than into an existing body with IT and HR systems already established. For an indication of costs, therefore, the review has considered the creation of the Financial Services Authority and Ofcom. Both bodies are thematic regulators created by a merger of similar-sized bodies. The merger of the Financial Services Authority cost £37 million, of which £132 million was current expenditure, and £15 million capital. The resulting organisation had 2,156 staff at the end of the main establishment process. Ofcom, on the other hand, cost £52.3 million, of which £26.2 million was capital, liabilities and redundancy costs, and the rest current expenditure. The resulting body had 850 staff.

4.77 If one allocates non-capital costs on a per-head basis, the merger of the FSA cost £6,120, and the merger of Ofcom £30,700. Using these two figures as upper and lower bounds, the review estimates that the current cost of merging bodies into the CTSA may between £2 million and £10 million, although the review believes it should be possible to achieve for even less than the lower of the two figures. Capital costs will also need to be considered. The FSA incurred capital set up costs of £15 million. The cost of Ofcom’s new building is harder to separate out from available data, but a similar or slightly higher figure seems a reasonable estimate. The review believes that a reasonable allocation for capital costs, given the smaller size of the CTSA, and its location outside London, would be £4 million or less.

4.78 This leads the review to its indicative estimate, that the costs of creating the CTSA would be between £11 million and £7 million, and ideally less.

4.79 If the CTSA were to be created by a merger of the other bodies with the Office of Fair Trading, the move is less significant. The OFT would absorb about 61 staff – an increase in size of less than 10 per cent. While this would be a fairly significant increase in headcount, the review believes that this could be done more cheaply. The review assumes that the costs of the new staff could be managed within the existing budgets of their former organisations; that a very
small team would be needed in the OFT to manage the change; and that a sum
should be allocated for the possible capital costs of relocation. Giving each of the
new staff the same per head capital allocation as in the FSA and Ofcom mergers,
this suggests a total additional cost of between £2.5 million and £7.5 million, and
ideally less.

**Recommendation 28:** The review recommends that, over the next two to four
years, 31 of the 63 national regulators should be consolidated into the following
seven bodies:
- an expanded Health and Safety Executive;
- an expanded Food Standards Agency;
- an expanded Environment Agency;
- a new consumer and trading standards agency;
- a new rural and countryside inspectorate (the new integrated agency);
- a new animal health inspectorate; and
- a new agricultural inspectorate.

**Recommendation 29:** The review recommends that the Companies
Investigations Branch of the DTI be merged with the Insolvency Service Agency.

**Recommendation 30:** The review recommends that the new consumer and
trading standards agency should be established, as described in Chapter 4, with
powers over trading standards work (excluding food and animal welfare)
analogous to those of the Food Standards Agency over food.

**Recommendation 31:** The review recommends that the Better Regulation
Executive lead the process of merger across Government, co-ordinating the work
of merger teams in either regulators or the relevant Department.

**COORDINATION OF LOCAL AUTHORITY REGULATORY SERVICES**

4.80 Local authorities have an important role in delivering advice and
inspection, either through TSOs (Trading Standards Officers) or EHOs
(Environmental Health Officers). The two different sorts of officers have different
responsibilities. The most important local authority functions covered by this
review are:
- fair trading (carried out in trading standards departments);
- product safety (trading standards);
- food labelling and standards (trading standards);
- food safety (environmental health);
- animal welfare (trading standards);
- air quality (environmental health); and
- advice services for consumers and businesses.

4.81 The detail of the current local authority system is set out in Chapter 1, but
in brief, there are 203 trading standards offices in England, Scotland and Wales,
and 408 environmental health offices. They are all independent entities, responsible to the local authority they belong to, although they take and enforce regulations from ten different central Government bodies.

4.82 In unitary local authorities, trading standards and environmental health functions are sometimes merged into single regulatory services units, though this is by no means universal. In counties, district councils carry out environmental health functions, while counties discharge trading standards ones.

4.83 As has been previously noted, local authorities’ regulatory services departments are small. While the national regulators divide around 41,000 staff between 63 national bodies, local authorities divide just under 20,000 staff between 611 environmental health and trading standards offices.

4.84 Local authorities’ presence in their communities makes them well positioned to understand and reflect local needs. Councils are involved in numerous business interfaces, partnerships and regeneration projects, and thus have extensive local intelligence. Good intelligence and good relationships are vital to effective regulation.

4.85 Local authority regulators, because of the types of business they see, tend to be effective at providing business advice. Local authority staff tend to see their role as securing business compliance in the most effective way possible – an approach the review endorses – and in most cases this means helping business rather than punishing non-compliance. All the local authorities that the review visited had effective advice services, and small businesses consulted over the course of the review often spoke of positive experiences with their local trading standards and environmental health services.

**Problems with local authority regulatory services**

4.86 Those benefits have to be set against the problems that the diffuse structure of local authority regulation brings. These are:

- difficulties arising from the lack of effective priority-setting from the centre;
- difficulties in central and local coordination;
- cross-boundary problems;
- inconsistency in local authorities’ application of national standards;
- variations in activity; and
- problems arising from the Home Authority Principle.

4.87 These problems increase uncertainty and administrative burdens for business. Uncoordinated action on the ground can mean businesses receiving unnecessary inspections, or even conflicting advice. The lack of a central communications function results in duplication of effort at local level.

**Priority setting**
4.88 Local regulators operate under regulations set by ten Government Departments. There is no collective agreement on priorities, terminology and processes by the central bodies – when the Department of Trade and Industry attempted to create a list of top priorities for trading standards services, the different Government Departments contributed 59 areas, all of which were identified as top priorities.

4.89 Where divisions of labour or standard practices are set in legislation, they have been slow to change as the economy has developed. The economy of 1974 is very different from the economy of 2004, but the division of health and safety between the HSE and local authorities dates from that time.17

4.90 There is no central forum for Government or local authorities to set priorities or resolve disputing regulation. No single Government body is responsible for information to local government. The local government representative bodies, and local authorities themselves, identified this to the review as a major problem. Regulatory activity on the ground does not take place as a result of a coordinated risk assessment across the local authority field.

4.91 There are other problems with the central/local relationship. One of the most important is around performance management. Although local authorities’ regulatory performance is managed in various ways, the only measure that attempts to integrate regulatory services’ standards is the performance indicator called BVPI 166.18 This indicator is really an amalgam of minimum standards from a number of professional bodies, and is focused on the measurement of inputs rather than outputs.

Powers of central bodies

4.92 In a similar way, the powers that central bodies have over local regulators vary considerably. The Food Standards Agency can:
   - require information from local authorities relating to food law enforcement and inspect any records;
   - enter local authority premises, to inspect records and take samples;
   - publish information on the performance of enforcement authorities; and
   - make reports to individual authorities, including guidance on improving performance with the requirement to publish and respond.

4.93 The Health and Safety Commission has less specific powers – it can advise both HSE and local authorities on inspection activity, can request annual reports from each local authority, and take over failing authorities. In practice, however, the HSC’s powers to intervene are conditional on approval by the Secretary of State, which can be a slow process. The DTI has weaker powers

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17 It has been amended since, but the fundamental split between ‘factories’ (HSE) and safer premises (local authorities) remains.
18 Full details available at http://www.bvpi.gov.uk a site run by the Office of the Deputy Prime Minister.
still and only sets policy on trading standards, although it has powers to require
information, inspect individual offices, and approve Trading Standards Officer
(TSO) qualifications in respect of weights and measures.

**Cross-boundary working**

4.94 Boundary problems between local authorities cause problems both in
inspection – where standards and activity vary widely – and in enforcement.
There is limited regional or national executive control over local authority
enforcement, which causes problems when issues such as spam or telephone
scams cross local authority boundaries.

4.95 Chart 4.1 below shows the progress of a widespread scam recently
uncovered by the Department of Trade and Industry. A company, trading under
several different names, was taking part in a telephone scam. The chart shows
the number of complaints about the scam nationwide. Since they were spread
thinly across the country, no individual authority picked up on the problem.
Indeed, at the point marked X on the chart, a simple analysis of the data would
have suggested the problem was dying down. In fact, it was intensifying –
diversifying into different company names. Only at the point marked Y on the
chart – 9 weeks after the start of the scam – did a local authority realise that it
was a national problem.
4.96 The availability of the data shown above is due to the DTI’s new initiative Consumer Direct – a national advisory service coordinating information on consumer complaints, and run by regional groupings of trading standards departments.

Inconsistency

4.97 The review has already touched on the issue of inconsistency, in relation to national bodies. The large number of local authorities, and the way that their services are funded, means that at local level there is inconsistency in funding and activity levels, beyond what normal variation in business mix or population profile would suggest.

4.98 This inconsistency was noted by many of the businesses who spoke to the review, and has also been acknowledged in some recent reports. A report by Unison and the Centre for Corporate Accountability identified ‘huge variation between local authorities in levels of inspection, investigations, in enforcement notices and in the numbers of health and safety inspectors’. A recent DTI report identified ‘patchiness’ in trading standards services.

4.99 Inconsistency is a problem for businesses because they could be subject to unnecessary inspections, or – where service coverage is low – undercut by businesses who are operating outside the law. Similarly, consumers and businesses living in areas with weak trading standards cover could be more at risk of fraud, as dishonest businesses identify the weakness and move in.

Variations in activity

4.100 The local authority funding system is designed to allow authorities to set their own budgets across all local authority services, and variations are therefore an inevitable part of the system. In outer London trading standards departments, for example, the ratio of service staff to inspectable premises varied widely, averaging 400:1, but with a high of 748:1 (in Hillingdon), and a low of 219:1 (in Barking). The variations are not clearly attributable to mix of business, or to population types – it is notable that Hillingdon (highest) and Hounslow (fourth lowest at 279:1) are adjacent authorities. Similarly Brent and Harrow (256:1) is next to Barnet (687:1).

4.101 The story is similar in Environmental Health departments. Again, there is a broad similarity across types of authority and region, but major variations between authorities with similar characteristics. If one considers the ratio of

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19 Safety Lottery. How the level of enforcement of health and safety depends on where you work, Unison and Centre for Corporate Accountability, 2003.

inspectable premises to EHOs, those with the lowest ratios\textsuperscript{21} and those with the highest ratios\textsuperscript{22}, there is no clear pattern in geography, rurality, or size.

4.102 The review believes that the current funding system for local authorities is appropriate for services with a large degree of locality, such as planning, or which are politically salient at local level, such as alcohol licensing. It questions, however, the extent of variability in funding of regulatory services. The laws governing trading standards and environmental health responsibilities are designed at national level, to provide protection nationally. Their delivery through local authorities should not result in variations so wide that they affect the ability of services to operate reasonably uniformly across the country.

4.103 The importance of regulatory services within local authorities was often questioned by businesses and regulators. Several heads of regulatory services used the phrase ‘Cinderella service’ when talking to the review. The Centre for Corporate Accountability's report into variations in local authority health and safety called the system a ‘safety lottery’. Although there is no measure of how concerned local authorities are with their regulatory services, the existence of a wide spectrum of opinion can be inferred from the variation in budgets and service provision between different authorities.

**Home Authority Principle**

4.104 These inconsistencies also raise questions about the effectiveness of the Home Authority Principle. This principle is an informal agreement between local authorities that tries to correct the inevitable problems that arise from cross-boundary issues in trading standards and food. The principle requires local authorities to pay particular attention to goods and services originating in their area that are distributed or sold in different local authority areas. The home authority – the authority with the company’s head office or main production centre in its area – is meant to act to as a focus for communication and liaison between the company and other local authorities. The operation of the principle is voluntary and therefore depends on communication between all parties involved.

4.105 Work arising from the Home Authority Principle is resource-intensive, unfunded, and unevenly spread around the country. Many multiples are based in the City of London or the City of Westminster, and so these authorities have a disproportionately high home authority burden. Hertfordshire is another example of a heavily burdened home authority, with Tescos, Dixons, Kodak and Currys within its boundaries.

\textsuperscript{21} Torridge (Devon), Rushmoor (Hants), Test Valley (Hants), Bristol, North Warwickshire, Nottingham, Portsmouth, Doncaster, Middlesbrough and Kingston-upon-Hull.

\textsuperscript{22} West Berkshire, Brent, Westminster, Havering, Barking, Kennet (Wilts), Chiltern (Bucks), South Lakeland, Camden, and Basingstoke & Deane.
4.106 The review does not believe that the present approach to local authority regulation, in allowing such wide variations and inconsistencies in the application of national standards, is delivering what the regulations governing it require. Trading standards and environmental health laws are designed to provide a broadly similar level of protection to all citizens of the country. The review believes that action needs to be taken to make services more consistent across the country.

Better coordination in local authorities’ work

4.107 The review believes that consistency at local authority level requires better coordination of Departments and local authorities at national level. The review has already proposed the creation of a new Consumer and Trading Standards Agency, to bring greater coordination to the work of local authority trading standards departments. In addition, the review recommends the creation of a new central partnership across all areas of local authority regulation, called the National Regulatory Forum.

CTSA

4.108 The proposed consumer and trading standards agency (CTSA) would be the central body for local authority trading standards work. It would be responsible for coordinating all trading standards work not covered by the Food Standards Agency or the proposed Animal Health Agency. The Agency should have the same powers over this work that the Food Standards Agency has over food, including the power to define codes of practice for trading standards activity in its field. Any codes of practice should be jointly issued with the Food Standards Agency and the Animal Health Agency, once established, to ensure that trading standards departments receive consistent guidance on priority-setting. Performance management arrangements will need to be developed alongside wider plans for coordinating and rationalising inspections of local authorities.

4.109 The CTSA should also take responsibility for improving the consistency of regulation experienced by businesses that trade in several local authorities. This could include establishing a central operation to lead on the regulation of large multiple businesses.

National Regulatory Forum

4.110 The review has already said that local authorities find it hard to join up their work across boundaries. This has been raised as a matter of concern both by local authorities and businesses.

4.111 The Local Government Association, in the course of the review, suggested that the convening of a national group, made up of national and local bodies, could share burdens and coordinate work on local regulation. The review supports this suggestion.
4.112 The proposed National Regulatory Forum (NRF) would be a partnership arrangement between Government Departments, national regulators, and local authorities. It should be coordinated by the Better Regulation Executive (see below), and should include consumer and business representatives, the National Audit Office and the Audit Commission.

4.113 The NRF should improve consistency and the spreading of best practice by:

- giving individual members bodies lead responsibility for particular shared issues;
- keeping under review the boundaries between local and national operations;
- setting indicative priorities for local authority regulatory work;
- sharing information on new initiatives; and
- commissioning shared information resources and nationally branded programmes.

MAKING THE WHOLE SYSTEM WORK

4.114 A regulatory landscape which adopts the approaches to regulatory impact the review suggests, which is consolidated, coordinated and prioritised, will still need strategic leadership to improve regulators’ performance and consistency. The regulatory system would benefit enormously from common performance assessment standards across the central regulators. Further, while a reduced number of regulators, working with other relevant interests, could set priorities for local inspections, determining the relative importance of the regulatory regimes themselves – and what weight the regulatory system should attach to food, as opposed to health and safety – requires the involvement of Government at the centre. There are strong public accountability and efficiency cases for better oversight of working practices, and greater central coordination of inspection.

4.115 There are four sorts of accountability – financial, policy, judgement and procedural. Regulators are already accountable for their financial performance, to Parliament, through the National Audit Office or the Audit Commission; they are accountable for policy to sponsor Departments. They are accountable for the judgements they make through appeals procedures. However, they are currently not accountable for the way in which they carry out their work. This reduces incentives for regulators to join up work, and promotes inconsistency.

4.116 Greater consistency needs uniform standards for regulatory practice. These should then be monitored, and regulators publicly held to account for their performance against them, in the same way that the National Audit Office’s reports – several of which have been quoted in this report – hold bodies to account for their use of public money.

4.117 Greater transparency and consistent procedural standards would benefit all parties, and increase faith in the decision-making process. The OECD, in its
most recent thinking on regulatory matters, recommends that Governments develop a strategic centre for thinking and performance management of regulations.\textsuperscript{23} The review’s proposed central body (described below) could fulfil that role alongside its work in monitoring regulators’ performance.

4.118 Monitoring of regulators’ performance should be against set standards, including the goals set out in the principles of inspection and enforcement in Box 2.2. The National Audit Office, whose work on regulation has been cited at several points through this report, would be the ideal body to carry out this task.

**Recommendation 32:** The review recommends that the Better Regulation Executive should establish and chair a National Regulatory Forum comprising local authority, national regulator and policy Department representation.

**Recommendation 33:** The review recommends that the National Regulatory Forum should lead a programme of work, through its member organisations, to:

- improve the coordination of local and national regulatory services;
- secure agreement on common services, or central communication strategies, to be provided centrally or regionally; and
- agree risk assessment arrangements, and monitor the extent to which local authority regulators apply them.

4.119 As part of the greater accountability proposed in this report, the review believes that there is a role for Parliament in scrutinising the work and performance of regulators. The House of Lords Constitution Committee recommended in its report *the Accountability of Regulators*, that a Joint Committee of both houses should be established to monitor the work of regulators. The review would welcome such a move.

**Better Regulation Executive**

4.120 The review recommends that a new regulatory oversight body, the Better Regulation Executive (BRE), be created. This body would be responsible for introducing the reforms contained in this report, and for holding regulators to account against the principles of regulatory inspection and enforcement set out above.

4.121 This new organisation should be strong, independent-minded, but within the structures of Government, overseen by a management board comprising relevant interests, particularly those of business. It should have access to thinking at the higher levels of Government. The review believes that an organisational culture and staff mix similar to that of the Prime Minister’s Delivery Unit would be appropriate for the BRE.

\textsuperscript{23} *Government Capacity to Assure High Quality Regulation*, OECD, 2002.
4.122 The BRE could take on the duties of the Cabinet Office Regulatory Impact Unit. Although it is beyond the scope of the review to recommend this, it would seem a sensible move to prevent a duplication of roles.

4.123 The BRE would be responsible for monitoring the implementation of the review’s recommendations by the consolidated central regulator base, and would have scrutiny and oversight responsibility for the whole regulatory system. It would report its findings to a Cabinet Committee. The Better Regulation Executive should be responsible for:

- Holding regulators to account for their performance against the principles of regulatory enforcement, set out in Box 2.2;
- Implementing any parts of this report that the Government chooses to accept;
- Ensuring that regulators have mechanisms in place to resolve conflicts in regulation or practice;
- Focusing the attention of regulators and others in ensuring that regulatory regimes are minimally burdensome to business, and that regulators work together to ensure that business compliance is achieved proportionately and fairly;
- Providing advice to the Prime Minister’s Panel on Regulatory Accountability on:
  - the extent to which regulators are adopting those of this report’s principles and practices that Government has accepted;
  - any regulatory proposal that involves the creation of a new regulatory body; and
  - risk assessment, both in theory and in practice.
- Providing advice to the Prime Minister’s Panel on Regulatory Accountability, on any regulatory proposal that involves the creation of new regulatory bodies, applying rigorous criteria to prevent bodies coming into being unnecessarily;
- Leading on regulatory coordination work, such as database merger, form design guidelines, and the National Regulatory Forum;
- Implementing a target for the reduction of administrative burdens, as recommended by the BRTF report, Less is More; and
- Any parts of the Regulatory Impact Unit’s work the Government chooses to transfer to it.

4.124 The work should be complemented by a continuation of the independent challenge function of the BRTF, who should play a role in vetting Departmental plans on reducing administrative burdens.

**Recommendation 34:** The review recommends that the Government establish a Better Regulation Executive (BRE) at the centre of Government, to hold regulators to account for their performance against the principles of regulatory enforcement, set out in Box 2.2. The BRE’s role should be as described earlier in this chapter.
**Recommendation 35:** The review recommends that the Government consider whether the functions currently exercised by the Regulatory Impact Unit should transfer to the Better Regulation Executive.