

**EXPLANATORY MEMORANDUM TO**  
**THE ECONOMIC GROWTH (REGULATORY FUNCTIONS) ORDER 2017**  
**2017 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 Under section 108 of the Deregulation Act 2015 (the Act), a person exercising a regulatory function must have regard to the desirability of promoting economic growth in carrying out that function. This is known as the Growth Duty.
- 2.2 This Order specifies the regulatory functions to which the Growth Duty applies.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

**4. Legislative Context**

- 4.1 Under section 109 of the Act, a UK Minister has the power to specify the regulatory functions to which the Growth Duty will apply. The requirements of the Growth Duty are set out in section 108 and include a requirement for persons exercising specified regulatory functions to have regard to the desirability of promoting economic growth.
- 4.2 Under section 110(1) of the Act, a UK Minister may issue guidance in respect of the Growth Duty. The Act requires the persons specified in this Order to have regard to that statutory guidance, which will provide additional detail on compliance.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

**6. European Convention on Human Rights**

- 6.1 The Parliamentary Under Secretary of State for Small Business Margot James MP has made the following statement regarding Human Rights:

“In my view the provisions of the Economic Growth (Regulatory Functions) Order 2017 are compatible with the Convention rights.”

## **7. Policy background**

- 7.1 Government is committed to creating a positive business environment across the UK, unlocking productivity by enabling businesses to invest and grow. The way in which regulation is enforced can have significant effects on businesses' ability and willingness to do this, and there is evidence to suggest that some regulators fail to take sufficient account of the economic consequences of their actions and place unnecessary burdens on business in the exercise of their regulatory functions.
- 7.2 To address this, the Chancellor announced in the 2012 Autumn Statement several measures – now known as the Better Enforcement Programme – designed to create a healthier business environment by making regulation more proportionate, transparent, and accountable. Although many regulators consider the impact of their actions on economic growth, there are those that do not; indeed some regulators think they are unable to take account of growth as they do not have a statutory requirement to do so or their statutory objectives do not refer to growth.
- 7.3 Requiring regulators to have regard to economic growth will address this uncertainty and will put the obligation to have regard to growth on a statutory footing, complementing regulators' other legal obligations. The duty will help regulators to carry out their functions in a way that is conducive to economic growth, will ensure that regulatory action is taken only when it is needed, and that any action that is taken is proportionate.
- 7.4 Under section 110A of the Act (inserted by section 16 of the Enterprise Act 2016) regulators within scope of the Growth Duty will be required to report on the effect it has on the way that they exercise their regulatory functions and the impact of this on business. This transparency will allow Government to measure the extent to which its objectives are being achieved. Government intends to bring this duty to report on the effect of the Growth Duty into force in due course.
- 7.5 This policy is one of two measures being taken forward by Government to deliver its better regulation agenda. In addition to the Growth Duty, under section 22 of the Small Business, Enterprise and Employment Act 2015, Government will specify regulators whose regulatory provisions will be within scope of the business impact target.

## **8. Consultation outcome**

- 8.1 In order to comply with the statutory requirement in section 109(2) of the Act to hold a consultation on the regulators and regulatory functions to be brought within the scope of this Order, public consultations on the Growth Duty were held in 2014 and 2015. A final consultation was held for five weeks between 11 February 2016 and 17 March 2016. This final consultation also sought views on the statutory guidance for regulators on discharging their obligations under the Growth Duty pursuant to section 110(5) of the Act.
- 8.2 Of the 49 respondents to the consultation as a whole, some 38 responses were received on the question of scope from a broad cross-section of stakeholders including regulators, businesses and representative bodies. The majority of respondents were supportive of the proposition that regulators should be accountable for whether they have properly considered business growth in their decision-making.
- 8.3 There were five objections to the inclusion of particular regulators in scope; where such objections were raised, these were in the main based on arguments related to the

amount of regulatory activity undertaken, or that the organisation did not have any regulatory functions.

- 8.4 Having considered the responses to the consultation, Government is satisfied that it is appropriate to bring the regulators listed in this instrument within scope of the Growth Duty.
- 8.5 A copy of the consultation, full impact assessment and the Government's response is available on the Department's website at:  
<https://www.gov.uk/government/consultations/business-impact-target-growth-duty-and-small-business-appeals-champion> .

## **9. Guidance**

- 9.1 Statutory guidance for regulators to assist them with discharging their Growth Duty obligations has been laid alongside this instrument and requires approval by resolution from each House of Parliament. A separate explanatory memorandum has been prepared for the statutory guidance. Once it has been approved, the guidance will be brought into force by statutory instrument. The statutory guidance includes guidance for regulators on: understanding the business environment; minimising burdens on business productivity; proportionate decision-making; and demonstrating regard for the growth duty.

## **10. Impact**

- 10.1 The direct impact on business and civil society organisations is estimated to be £0.223M during the first year of implementation with a subsequent annual cost to business of £0.159M. Although it is difficult to estimate the annual indirect benefit to business best estimates show a potential benefit of £28.1M. These benefits will arise through ensuring that regulation is delivered in a way that best supports growth. As a result of regulators considering economic growth, businesses should experience more proportionate decisions and see a reduction in administrative burdens, for example inspection costs, duplication of information and inspections and reliance on external contractors. It will also contribute to businesses' feeling that regulators are approachable and supportive of their overall success.
- 10.2 The impact on the public sector (regulators) is expected to be an annual cost of £0.167M. While the duty is expected to impose one-off implementation costs of £0.219M, regulators could see some reduction in the resource required to deal with administrative processes. There may also be some reduction in enforcement costs where regulators respond to the duty by amending their enforcement policies in favour of a more proportionate approach, for example where action is taken only when it is needed.
- 10.3 The impact assessment is submitted with this explanatory memorandum and published alongside it on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses insofar as they are subject to the regulatory functions listed. By ensuring that regulation is delivered in a way that best supports economic growth small business are expected to benefit from more proportionate decisions and see a reduction in administrative

burdens, for example inspection costs, duplication of information and inspections and reliance on external contractors.

**12. Monitoring & review**

- 12.1 The Department for Business, Energy and Industrial Strategy will undertake a review of this instrument within 5 years of implementation.

**13. Contact**

- 13.1 Paul Edens at the Department for Business, Energy and Industrial Strategy, telephone: 020 7215 0289 or email: [paul.edens@beis.gov.uk](mailto:paul.edens@beis.gov.uk), can answer any queries regarding the instrument.