Wildlife and Countryside Link response to the Joint Committee on the Draft Deregulation Bill Call for Written Evidence

1. Introduction

Wildlife and Countryside Link (Link) brings together 42 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over eight million people in the UK and manage over 690,000 hectares of land.

This response is supported by the following 10 organisations:

- Bat Conservation Trust
- The Mammal Society
- National Trust
- Plantlife
- Ramblers
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- Wildfowl and Wetlands Trust
- Woodland Trust
- WWF-UK

2. Executive summary

- Regulations are essential in meeting the UK's legal obligations to the natural environment and provide significant benefits for business, the environment and wider society.

- There is a growing body of evidence which suggests that environmental regulation is good for growth. Non-economic regulators make an important contribution to prosperity in terms of the protection of the natural world upon which the economy and well-being ultimately depend.

- Unfortunately, the current regulatory reform process is unduly focused on gross business costs, while ignoring the evidence of the net benefits of regulation for business, the environment and wider society.

- The proposed growth duty overlaps with a number of existing laws and policies that *already* gives the Government the ability to ensure that non-economic regulators give due consideration to economic issues where appropriate.

- The proposal to introduce a 'growth duty' **is not evidence-based**. In particular, no convincing evidence has been presented to demonstrate that regulators are failing to promote prosperity in carrying out their regulatory functions, or that existing regulations are an undue 'burden' on business or a major 'barrier to growth.' Relying predominantly on evidence obtained from businesses' perception surveys is misguided: such perceptions are not a reliable indicator of the true regulatory burden to business and to society more generally, and should thus not be used in isolation to inform government policy.

- **Due consideration has not been given to the risks** associated with introducing the duty, particularly the risks to the protection of the natural environment. As currently proposed, the duty could damage the regulatory integrity of non-economic regulators and fundamentally undermine their independence and their ability to fulfil their primary statutory duties or functions. Therefore, we oppose the blanket introduction of the proposed duty. **Clause 58 should be deleted from the bill.**

- At a minimum, any duty must reflect, and not contradict, the guidance of the Government's Natural Capital Committee. Given the importance of natural capital to future economic prosperity, a more appropriate goal for a 'growth' duty would be to focus on 'sustainable' or 'green growth' that is consistent with the protection and enhancement of the natural environment. A possible articulation of the duty could be, 'A person exercising a regulatory function to which this section applies must, in the exercise of the function, have regard to the desirability of promoting economic growth, *whilst considering the depreciation of natural and other forms of capital*.'

- If there is to be a new duty, regulators must be provided with maximum flexibility with regard to its implementation. It is vitally important that in being required to 'have regard to' any form of growth duty, regulators are not required to make decisions that threaten their primary statutory duties. Clear guidance on how it would work in practice is essential. The guidance should cover how the new duty should be interpreted alongside existing UK and EU legislation requirements. Compliant growth must be the objective against which performance is assessed. Regulatory standards must be maintained or enhanced at the same time as improving business performance.

- Clauses 12 to 18 and Schedule 6, which are designed to implement some of the key recommendations of the Natural England Stakeholder Working Group on unrecorded public rights of way, are very welcome. They will ensure that useful historical rights of way that can enhance the rights of way network are not to be lost in 2026, the cut-off date for the recording of such ways on definitive map.

3. General comments

a. Growth duty

We strongly support the need for more effective and efficient environmental regulations. Such regulations are an essential policy tool for achieving protection of the natural environment and meeting the UK's legal obligations under EU Directives and international conventions. Few, if any, major environmental improvements in the UK have been achieved in the absence of regulation. More broadly, regulation is essential for a well-functioning market economy. As the recent Natural Capital Committee (NCC) report notes, 'In order to promote sustainable growth, all forms of capital (natural, human, social and manufactured) need to be properly maintained and where appropriate, enhanced. Only in this way will future generations be able to enjoy the opportunities that we do now.'[1] According to the NCC, as long as growth is properly measured, 'there is no inherent incompatibility between preserving and enhancing natural capital and economic growth.'[2]

Recent debates around regulation in the UK have focussed almost exclusively on the costs it places on business, ignoring the evidence of the benefits of regulation for business, the environment and wider society. Environmental regulation actually has a benefit to cost ratio of at least 2.4:1, while for biodiversity-related regulations this ratio is almost 9:1.6. These findings are reinforced by the ground-breaking 2011 UK National Ecosystems Assessment, which clearly highlighted: the wide variety of significant benefits provided by the natural environment in terms of economic prosperity, human health and well-being; the risks that inadequate protection and management of the natural

[1] Natural Capital Committee (2013) *The State of Natural Capital: Towards a framework for measurement and valuation*, www.defra.gov.uk/naturalcapitalcommittee/files/State-of-Natural-Capital-Report-2013.pdf.
[2] Ibid.

environment pose to the delivery of these benefits; and, in particular, the importance of regulation in safeguarding and enhancing the delivery of key services.[3]

In 2010, the Coalition Government set out its approach to regulatory reform, or 'eliminating the avoidable burdens of regulation and bureaucracy.'[4] Under this approach, the Government has committed to removing existing regulation, reducing the volume of new regulation and introducing new regulation only as a last resort. While we strongly support the principle of identifying opportunities for more efficient and effective regulation, there is a real risk that an undue focus on deregulation – rather than on a sensible process of regulatory reform – will undermine existing regulations and stymie the introduction of new regulations that are in the public interest. It is against this deregulatory backdrop, where regulation is largely seen as a negative that must be removed, that the appropriateness of the current proposal to introduce a growth duty on non-economic regulators should be assessed.

The consultation on the growth duty, *Non-economic Regulators: Duty to Have Regard to Growth*, suggested that some non-economic regulators are failing to prioritise prosperity.[5] We would argue that, in fact, the work of many of these regulators represents an important contribution to prosperity of the most fundamental kind: the protection of the natural world upon which the economy and well-being ultimately depends. The proposed growth duty risks damaging the regulatory integrity of non-economic regulators, and fundamentally undermining their independence and their ability to fulfil their primary statutory duties or functions.

The available evidence suggests that environmental regulation is not a brake on economic growth, a burden on British business or a barrier to international competitiveness. In fact, environmental regulation can drive innovation, reduce risks, create jobs and growth, create new business opportunities and boost the UK's international competitiveness.[6] There is limited evidence to suggest that non-economic regulators are failing to promote growth, or that requiring such regulators to promote growth would be desirable or effective. Moreover, given the importance of natural capital to future economic prosperity, a more appropriate goal for a 'growth' duty would be to focus on 'sustainable' or 'green growth' that is consistent with the protection and enhancement of the natural environment or 'natural capital.' We do not believe that regulators should be required to promote economic growth over and above the other two pillars of sustainable development. **The growth duty should therefore either be amended or scrapped**.

b. Rights of way

We note that the purpose Clauses 12 to 18 and Schedule 6 is to implement some of the key recommendations of the Natural England Stakeholder Working Group on unrecorded public rights of way. The group brought together the key sectors (landowners, local authorities and user groups) with an interest in public rights of way and their management. An agreed package of reforms was presented to Government in March 2010, and subject to full public consultation in 2012. We believe that the implementation of the reform package, of which these clauses form a part, is vital if we are

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[3] UK National Ecosystem Assessment (2011) *The UK National Ecosystem Assessment: Synthesis of the Key Findings*, http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx.

[4] HM Government (2010) *Reducing regulation made simple: less regulation, better regulation and regulation as a last resort*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/31626/10-1155-reducing-regulation-made-simple.pdf.

[5] BIS and BRE (2013) *Consultation Paper: Non-economic Regulators: Duty to Have Regard to Growth*, www.bis.gov.uk/assets/brdo/docs/publications-2013/13-684-growth-consultation.pdf.

[6] For example, see HM Government Low Carbon Construction: Innovation & Growth Team (2010) *HM Government Review on Low Carbon Construction*; Cole, M. A. and R. J. R. Elliott (2007) "Do Environmental Regulations Cost Jobs? An Industry-Level Analysis of the UK." The B.E. Journal of Economic Analysis & Policy 7(1); Rayment, M., E. Pirgmaier, et al. (2009) *The economic benefits of environmental policy - Final Report*, Institute for Environmental Studies.

to ensure that useful historical rights of way that can enhance the rights of way network are not to be lost in 2026, the cut-off date for the recording of such ways on definitive maps. The reforms are fundamentally deregulatory in nature, since seeking to speed-up and simplify definitive map processes was a key aim of the Stakeholder Working Group.

c. Consultation

In relation to Schedule 15 of the Bill, we note that environmental regulations typically relate to hugely complex issues that require deep scientific understanding. The input of scientific expertise during the formulation of environmental regulations is therefore critical.

Natural England is the government's expert agency with regard to biodiversity, and the continued need for this expertise was recognised by the Government following the Triennial Review of Natural England and the Environment Agency. Indeed, many of the potentially affected regulations relate specifically to areas that fall within Natural England's remit and subsequent expertise. Assuming that Government wants environmental regulations to be as effective as possible, it would be entirely illogical for them not to consult their own experts when modifying or creating any such regulations.

We would strongly object to Government modifying or amending environmental regulations in the absence of Natural England's advice, particularly as there will often not be a requirement for public consultation and subsequent input from expert non-governmental organisations. Environmental regulations are fundamental to the protection of biodiversity and the expertise of Natural England is crucial to ensuring that any regulations are fit for purpose. As such, we strongly recommend the retention of requirements for the Government to consult Natural England when amending or modifying environmental regulations.

4. Questions

3. Are the changes proposed in the draft Bill evidence-based and have any risks associated with the changes been taken adequately into account?

We do not believe that the growth duty proposed in the legislation is evidence-based. We challenge the claim in the consultation on the growth duty that there is 'a strong body of evidence that suggests that non-economic regulators are not consistently achieving both protection and prosperity in the way they operate'; as well as the claim that 'there is evidence o the impact of regulatory delivery on business growth.'

a. Regulation and economic growth

The evidence that supports a negative relationship between regulation and economic growth is extremely weak, with only a limited number of sector-specific examples.

In relation to the environment, the scope of the literature review referenced in the growth duty consultation was relatively limited with respect to the relationship between environmental regulation and growth, and therefore is of limited relevance to non-economic regulators such as Natural England that deal primarily with environmental regulations.[7]

A 2010 Defra review concluded that, although there is some evidence of near-term trade-offs between environmental regulation and growth, 'these effects have typically been found to be small or even insignificant.' In particular, 'empirical analyses have found environmental regulation to have

[7] Frontier Economics (2012) *The impact of regulation on growth*: *A report prepared for BIS*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/32107/12-821-impact-of-regulation-on-growth.pdf.

a minor adverse impact, if any, on productivity...no survey has found large negative effects of environmental regulation on overall productivity, either in the short or in the long run.'[8] In fact, there is a growing body of evidence suggesting that, in the long-run, environmental regulation is good for business by opening up new market opportunities and driving cost-reducing innovation.[9]

Overall, very little, if any, convincing evidence has been presented to demonstrate that regulators are failing to promote growth in carrying out their regulatory functions. In contrast, there are plenty of examples of where an undue focus on business growth and reluctance to regulate has resulted in serious issues of non-compliance and regulatory failure. We are concerned that the growth duty will give further weight to the government's regulatory principle of favouring 'alternatives to regulation' and using regulation 'as a last resort.' The evidence to support the effectiveness of non-regulatory approaches is extremely limited.[10] The recent financial crisis has highlighted the risks associated with focusing on short-term business growth at the expense of long-run economic sustainability; lax regulatory controls and oversight of the industry were a key cause of the financial crisis that has resulted in the deepest economic slump in living memory.

b. Business Perception Surveys

The growth duty consultation uses evidence from the Business Perceptions Survey 2012. However, it is well-known that businesses' subjective perceptions are not a reliable indicator of the true regulatory burden and thus should not be used in isolation to inform government policy. In 2009, a report by the Better Regulation Executive (BRE) concluded that that 'Perceptions [of regulation] appear to be often more grounded in emotion than rational thought.'[11] The BRE report highlighted the existence of a considerable 'perception-reality' gap in the UK. These findings are supported by the OECD in a 2012 report which suggested a considerable disparity between perceptions of regulatory quality and their actual measurable results. Overall, perception surveys invariably focus on costs and burdens, overlooking the benefits of regulation.[12]

We also question the disproportionate focus on business perceptions in light of the failure to consider the views of the intended beneficiaries of regulation i.e. consumers and citizens. Focusing on business views alone – a section of society with a short-term vested interest in looser regulations – is clearly not appropriate. Better regulation should be about maximizing the net benefit to society, not about minimising costs to business. Judging by the Government's own crowdsourcing website (the Red Tape Challenge), views about environmental regulation in the UK are strongly positive. Responses to the first phase of the Challenge were overwhelmingly in support of keeping existing environmental legislation as it currently stands, with the majority of respondents keen to ensure that existing environmental safeguards are maintained or even strengthened.

c. Post-implementation review of the Regulators' Compliance Code

[8] Defra (2010) *Economic Growth and the Environment*: *Defra Evidence and Analysis Series Paper 2*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/69195/pb13390-economic-growth-100305.pdf.

[9] Rayment, M., E. Pirgmaier, et al. (2009). The economic benefits of environmental policy - Final Report, Institute for Environmental Studies.

[10] For example, see OECD (2003) *Voluntary Approaches for Environmental Policy: Effectiveness, Efficiency, and Usage in Policy Mixes*. Paris, OECD; Defra (2013) *Review of Partnership Approaches for Farming and the Environment Policy Delivery,* www.gov.uk/government/uploads/system/uploads/attachment_data/file/221047/review-partnership-approaches-farming-environment-policy-delivery.pdf.

[11] BIS (2009) *Better regulation, better benefits: getting the balance right*, http://www.berr.gov.uk/files/file53252.pdf.

[12] OECD (2012) *Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys*. Paris, OECD.

An assessment of the relevant findings of the post-implementation review of the Regulators' Compliance Code suggests that the case for a new growth duty is weak. [13] [14]

The review found that 'the general view amongst regulators is that their primary role is to deliver protection for consumers, citizens and the environment, while supporting economic growth is a secondary function...where regulators are thinking about their role in regard to economic growth, their view often seems to be that this role is a subsidiary one that is at best contributory, rather than a direct stimulator to growth.' We believe that this is an entirely appropriate position for regulators to take, and that it therefore does not constitute evidence to support a growth duty. The primary duty of many regulators *is* the protection of consumers, citizens, and the environment. While we fully accept that regulators should consider the economic impacts of their actions, we do not accept that they should actively promote growth where this risks running counter to their core or primary remit to protect the public interest and/or the wider environment.

A second key finding was that 'Businesses are not seen as customers' by most regulators. It is utterly inappropriate for regulated entities to be treated as 'customers' by regulatory bodies. Regulatory implementation can be more efficient and business friendly, but we are deeply concerned that a requirement on regulators to treat the entities that they regulate as "customers" risks creating a clear conflict of interest between 'business needs' and the statutory purpose of regulatory bodies.

d. Focus on enforcement

The evidence base produced by the Focus on Enforcement (FOE) Initiative, a government website that allows anybody with an opinion on regulation to 'have their say' about how the enforcement of regulation affects them,[15] is relatively weak as it is qualitative, limited to just a handful of sector-based reviews, and again predominantly focussed on the business point of view.

17. To what extent do the Government's existing powers of direction over regulators already provide the ability to guide regulators towards the importance of promoting economic growth? Is this legislation necessary?

We do not believe that additional legislation is required. Existing laws and policies already give the Government the ability to ensure that non-economic regulators give due consideration to economic issues. As outlined below, these negate the need for a statutory growth duty. In fact, the growth duty consultation paper itself acknowledged that many regulators are already subject to existing economic-related legal duties. For example, 'Existing duties do not *always* include the requirement to have regard to the economic consequences' (emphasis added).[16]

a. Existing sustainable development duties

In carrying out their regulatory function(s), many non-economic regulators are already subject to duties which require them to consider the economic impacts of their actions, particularly as part of common sustainable development duties.

[13] BIS (2013) *Consultation paper: Amending the Regulators' Compliance Code*, www.bis.gov.uk/assets/brdo/docs/publications-2013/13-685-rcc-consultation.pdf.

[14] It is difficult to fully evaluate the evidence provided via the post-implementation review as the summary of the findings presented is rather vague as to the methods and data sources used (primarily based on stakeholder views) and the results are primarily qualitative in nature.

[15] See http://discuss.bis.gov.uk/focusonenforcement/.

[16] BIS and BRE (2013) *Consultation Paper: Non-economic Regulators: Duty to Have Regard to Growth*, www.bis.gov.uk/assets/brdo/docs/publications-2013/13-684-growth-consultation.pdf, paragraph 1.9.

For example, Section 4(1) of the Environment Act 1995 makes it the Environment Agency's 'principal aim....in discharging its functions so as to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development.'[17] The Agency is required to take into account any likely costs in achieving its principal aim, and to take account of the likely costs and benefits in exercising its powers.[18] As has been made clear by the Government's National Planning Policy Framework (paragraph 7) there are three dimensions to sustainable development: economic, social and environmental. Unless the Government is proposing a duty which puts economic issues ahead of environmental or social considerations, a new duty is therefore not necessary.

Similarly, Natural England's statutory purpose, as set out in the Natural Environment & Rural Communities Act 2006, Section 2(1), is 'to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.'[19] This makes it clear that Natural England is already obliged to consider (or have regard to) economic factors in carrying out its statutory duties.

b. 2007 Regulators' Compliance Code

Most non-economic regulators already have a statutory duty 'to have regard to' the 2007 Regulators' Compliance Code when determining policies and principles and/or exercising regulatory functions.[20] This includes the provision that regulators 'should consider the impact that their regulatory interventions may have on economic progress... they should only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving their objectives.' This Code provides the Government with sufficient powers of direction over regulators, rendering a growth duty unnecessary. This code is likely to be replaced by a new Regulators' Code in Spring 2014 which will also require regulators to 'carry out their activities in a way that supports those they regulate to comply and grow.'[21]

18. Will the introduction of a duty to have regard to "promoting economic growth" compromise the independence of regulators? What additional safeguards are required to ensure that the introduction of such a duty will not compromise the independence of a regulator?

See response to question 19 below.

19. How is a duty to have regard to the desirability of economic growth likely to affect those regulators to which it is applied?

We believe that the introduction of a growth duty risks damaging the regulatory integrity of non-economic regulators and fundamentally undermining their independence and their ability to fulfil their primary statutory duties or functions.[22]

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[17] http://www.legislation.gov.uk/ukpga/1995/25/section/4
[18] http://www.legislation.gov.uk/ukpga/1995/25/section/4
[19] http://www.legislation.gov.uk/ukpga/2006/16/contents
[20] BERR (2007) *Regulators' Compliance Code: Statutory Code of Practice for Regulators*, www.berr.gov.uk/files/file45019.pdf.
[21] This new code places greater emphasis on the proactive promotion of *business* growth than the existing code. The Government is yet to explain why they consider business costs to be on a par with wider economic benefits to society.
[22] OECD (2013) Principles for the Governance of Regulators: Public **Error! Main Document Only.Error! Main Document Only.**Consultation draft, www.oecd.org/gov/regulatory-policy/Governance%20of%20Regulators%20FN%202.docx.

Natural England is an expert statutory agency, tasked with providing clear advice to decision-makers on the environmental implications of developments or other proposals. It is the role of the decision-making body to weigh up this advice alongside the other advice it receives on socio-economic issues. In this way, growth-related issues are fully taken into account. It is vital that, where disparity arises between Natural England's general purpose and the Government's short-term aims and priorities, Natural England is able to retain its independence and carry out its regulatory functions as prescribed under the relevant legislation. **There is a serious risk that the introduction of a duty to have regard to promoting economic growth will compromise the independence of regulators such as Natural England.**

We strongly believe that while Natural England should be expected to have regard to economic and social objectives, these should not be its primary objectives. As we made clear in our response to the "Triennial Review of Natural England and the Environment Agency", we believe that Natural England and the Environment Agency *must* have a clear focus on conserving and enhancing the natural environment, thereby contributing to sustainable development.[23] Indeed, it is by focussing its expertise on these environmental objectives that Natural England can make its most meaningful contribution to sustainable development. This is crucial, since there will be many instances when the necessary action for the natural environment (often legally required) will not yield maximum economic benefits. Conflicts of this kind could mean that a growth duty would make it harder for non-economic regulators such as Natural England to refuse environmentally-damaging development, including those that threaten nationally important wildlife sites – even if the overall societal benefits of such a refusal are greater than the development.

An example of the potential conflict that could arise is illustrated by the case of the Isle of Lewis in the Outer Hebrides, where proposals for the development of a large wind farm in 2004 and 2006, which were supported by the local council and businesses, and which were estimated to bring significant economic benefits to the local area, were rejected on environmental grounds. It was judged that the primary purpose of the scheme was not to bring local economic development to the Western Isles; rather, it was considered first and foremost to be a proposal designed to supply electricity to the grid. On that basis, it was concluded that it was appropriate to consider alternative solutions available across Scotland as a whole that would not have such significant adverse environmental impacts.

In situations where the need to protect may conflict with promoting growth, the primary duty of non-economic regulators should continue to be the protection of the wider interests of society and the environment to ensure future prosperity and sustainable development. In their own response to the consultation, Natural England stated that: 'If this new duty were introduced, it could conflict with our duty to promote sustainable development.' **We believe that introducing a growth duty risks undermining Natural England's primary objective and the vital work they do that underpins our long-term economic prosperity.**

Although we have been unable to consider all the existing duties/purposes of the various regulators that are likely to be subject to the proposed duty, we expect that the duty will compromise the independence of many of these regulators and their ability to fulfil their primary statutory functions.

Overall, we do not believe that it is the role of the regulator to support the 'growth aspirations' of individual businesses or sectors. There is a real risk that such an approach will lead to regulatory capture – 'the process by which vested interests bias the incentives of regulators to act in their interests rather than the broader public interest.' A lack of independence, combined with the

[23] Link (2013) *Consultation response to the Triennial Review of Natural England and the Environment Agency*, www.wcl.org.uk/docs/link_response_to_triennial_review_feb13.pdf.

imposition of multiple general duties, could result in considerable regulatory risk.[24] Given the strong financial incentives facing profit-maximizing firms to convince regulators of their need to grow, it seems prudent to be especially cautious in this area regarding the role and independence of regulators. The OECD has highlighted the importance of regulatory agencies being independent from government and from those it regulates, particularly in situations where the potential for regulatory capture is high.[25]

Although we are opposed to the introduction of a growth duty on non-economic regulators, should such a duty be imposed, the risk of potential adverse consequences could be partly reduced through the provision of clear guidance on implementation, which would need to be subject to further consultation. Such guidance would need to make it clear that the primary statutory duties of non-economic regulators must take precedence over the proposed growth duty, and that growth must be environmentally and socially sustainable and compatible with the achievement of regulatory outcomes at least cost. If a duty is imposed, we believe that regulators should be given considerable flexibility in meeting its requirements. This is would reflect the broad range of regulators to which it may apply, and avoid undermining the existing primary legislative duties to which said regulators are subject.

20. Where is the introduction of such a duty likely to have beneficial effect? Where might there be adverse consequences?

The consultation document provided no satisfactory evidence that a growth duty would reduce costs to business or remove/address barriers to growth. Therefore, we conclude that the introduction of such a duty is unlikely to have beneficial effects.

As recommended by the Hampton Review, we agree that there *is* scope for regulatory reform aimed at reducing the administrative cost to business of regulatory compliance through the avoidance of duplication and unnecessary regulatory complexity, and through exploiting smarter means of data capture and transfer, at the same time as ‘maintaining or improving regulatory outcomes.’ [26] However, we do not believe that a growth duty is the appropriate mechanism for dealing with these types of costs.

In relation to the broader relationship between regulation and growth, the available evidence suggests that regulation is not a brake on economic growth, a burden on British business or a barrier to international competitiveness. The UK is widely regarded as having one of the most favourable regulatory environments for doing business in the world.[27] In fact, the costs of environmental regulations are typically a small fraction of industry turnover. For example, the direct cost of Defra’s regulations account for just 0.2% of annual manufacturing industry turnover, and 0.1% of annual construction industry turnover.[28]

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[24] Helm, D. (2006) *Regulatory reform, capture, and the regulatory burden*. Oxford Review of Economic Policy, 22(2), 169-185, www.dieterhelm.co.uk/sites/default/files/OXREP_RegReform_Sept06.pdf.

[25] OECD (2012) *Recommendation of the Council on Regulatory Policy and Governance*. OECD, Paris. www.oecd.org/gov/regulatory-policy/49990817.pdf.

[26] Hampton, P. (2005) *Reducing administrative burdens: effective inspection and enforcement*, http://www.bis.gov.uk/files/file22988.pdf.

[27] World Bank/ IFC (2012) *Doing Business 2012: Comparing Regulation for Domestic Firms in 183 Economies*, www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB12-FullReport.pdf.

[28] Defra (2011) *The Costs and Benefits of Defra’s Regulatory Stock: Emerging Findings From Defra’s Regulation Assessment*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/69226/pb13623-costs-benefits-defra-regulatory-stock110816.pdf.

In relation to potential adverse effects, assigning non-economic regulators a duty to promote growth to alongside their existing regulatory duties is likely to reduce their overall effectiveness. As noted above, the proposed growth duty risks fundamentally undermining the independence and key statutory function(s) of a number of non-economic regulators by placing undue weight on the importance of promoting economic growth. We, alongside others, noted in our response to the initial consultation that such a statutory duty could detract from regulators' core statutory obligations. These risks have not been adequately addressed by the Government in their response to the growth duty consultation.

In addition, a duty based on an ill-defined notion of growth runs the risk of actually undermining future economic prosperity if it undermines the fundamental rationale for which regulation was introduced. Since the positive impacts of regulations (e.g. in terms of health and safety, environmental quality etc.) are not always captured in/by existing/conventional measures of economic growth. [29] Short-term decisions based solely on what can be measured in economic terms may prove costly in the long run.[30]

21. How might the extent to which a regulator has fulfilled, or breached, the duty be ascertained?

Assessing compliance with the duty should not be ascertained via the use of subjective business perception surveys; such surveys are not an acceptable source of information upon which to base an assessment of regulators' compliance with the duty. Regulators' compliance with the duty should be assessed via overall regulatory outcomes: compliant growth must be the objective against which performance is assessed. Regulatory standards must be maintained or enhanced at the same time as improving business performance.

22. How can the likely financial and economic impact of the proposed duty be assessed?

Any reduction in costs to business must be weighed against the impact that this has on the environment and society more generally.

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[29] Frontier Economics (2012); NCC (2013) *The State of Natural Capital: Towards a framework for measurement and valuation*, www.defra.gov.uk/naturalcapitalcommittee/files/State-of-Natural-Capital-Report-2013.pdf.
[30] UK NEA (2011) *The UK National Ecosystem Assessment. Synthesis of the Key Findings*. UNEP-WCMC, Cambridge. http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx.