

Consultation: Reforming the framework for better regulation

A public consultation issued by Department for Business, Energy & Industrial Strategy
Comments from ACCA to The Department for Business, Energy & Industrial Strategy

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About ACCA:

ACCA (the Association of Chartered Certified Accountants) is the global professional body for professional accountants.

We're a thriving global community **of 233,000 members and 536,000 future members based in 178 countries** and regions, who work across a wide range of sectors and industries. We uphold the highest professional and ethical values.

We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business and digital expertise essential for the creation of sustainable organisations and flourishing societies.

Since 1904, being a force for public good has been embedded in our purpose. In December 2020, we made our commitments to [the UN Sustainable Development Goals](#) which we are measuring and will report on in our annual report. We believe that accountancy is a cornerstone profession of society and is vital helping economies, organisations and individuals to grow and prosper. It does this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities.

And through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at accaglobal.com

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ACCA RESPONSE

General comments

ACCA is required to work within its public interest remit, to pursue policy that will promote wider good rather than solely representing the interests of our members. We also set and maintain the standards of members operating within and advising private sector businesses on all issues, including those relating regulatory compliance.

ACCA believe that a common legal framework is central to economic activity and growth. The framework allows trade and business to flourish. Effective business law facilitates trade between friends and peers but also across long distances and national boundaries.

There are four key tenets or principles of business law that underpin a good environment for doing business¹ these are:

- Simplicity - the laws that govern businesses should be stringent but not complex.
- Openness and transparency - Lawmakers should be open and transparent with businesses when designing and implementing business law.
- Fairness - business law must be applied consistently and equally among business enterprises.
- Accountability - business law should facilitate the accountability of business, fostering trust in businesses.

A move towards a less codified, more common law-focused approach would be welcomed. This presents a range of benefits, such as increasing simplicity.

The required frameworks are further explained in our report '[Tenets of business law](#)' where we highlight:

The business law framework should establish a system that encourages entrepreneurship and business enterprise while ensuring accountability and transparency. Academic research has indicated that the most successful entrepreneurs are

¹ <https://www.accaglobal.com/gb/en/professional-insights/global-profession/Tenets-of-good-corporoate-reporting.html>

not simply those who take risks (indispensable though that may be), but rather those who are able to manage risk sensibly.

There should be a framework encouraging business to adopt the principles of corporate social responsibility, which benefit the environment in which the business operates.

Maintaining Stability and Confidence – The Government should aim to establish a stable environment for business to operate within. As part of this, it must also instil a degree of confidence in the market in which businesses operate. Government should project the notion that it is supportive of business. This includes acting when there is unfairness in the market, making business laws that are fair, being consistent in its implementation of such laws, and making sure there is regular dialogue between government and business. Government should facilitate an environment in which businesses have confidence when dealing with each other. Governments should facilitate a financial system that provides confidence and serves the needs of businesses when performing transactions.

Enabling business to be the driver of society's prosperity: Lawmakers should formulate a framework in which business success makes a net positive contribution to society's prosperity. Government should act to reduce bribery practices in business, for example by adopting and ratifying the OECD Anti-bribery convention. This can be achieved not only by addressing the issue head on, through education and sanctions, but also indirectly through the general format and structure of business law. Unnecessary discretion can offer opportunities for abuse, and simple, clear laws reduce the scope for ambiguity. Business should engage positively with the social environment in which it operates, which may well be by adopting corporate social responsibility practices. Governments may want to consider supporting small and medium-sized businesses, since they employ the majority of workers within most jurisdictions.

The common law approach to regulation

As noted in our Constant Forward Motion report² which explores the evolving phenomenon of cybersecurity regulation and the race to keep up; the regulation of business and the activities of those who undertake it is an integral part of modern global society. As technology becomes an ever more essential part of doing business, so the constraints of the regulatory framework applicable to that technological capacity will determine the characteristics of a business and its behaviours within society.

We encourage the government to seek to align future legislation with the most significant global markets as much as possible to make the UK an attractive place to do business. Recognising that not every business is a multinational corporation, proportionality is key to ensuring that SMEs and charity sector organisations adjust to regulatory changes and new regulatory requirements, with often limited resources.

Monitoring and evaluation (M&E) plays an important role in the policy cycle and is crucial to understanding if original policy objectives have been met. It provides an evidence based assessment of whether a policy measure continues to be justified and whether objectives remain relevant in real world settings.

As outlined in the ACCA response to BEIS Restoring Trust in Audit Reform and Corporate Governance consultation³; We welcome the Government's proposals to provide the regulator with the necessary powers to investigate and sanction breaches of corporate reporting and audit-related responsibilities by PIE directors. However, as this will add a further complexity to the existing arrangements for the oversight of director conduct, and hence the effectiveness of the collaboration across the various agencies will be pivotal to establishing arrangements that work well in practice. We therefore suggest that a published Memorandum of Understanding between the regulator and the FCA will assist with transparency and hence support stakeholder understanding around respective roles, and planned co-operation when overlaps occur. The Government might also consider placing a duty upon the two regulators to report periodically to Parliament, as part of broader reporting arrangements, on the quality and effectiveness of their joint working.

² <https://www.accaglobal.com/an/en/technical-activities/technical-resources-search/2016/february/constant-forward-motion.html>

³ <https://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2021/july/BEIS-consultation-response-restoring-trust-in-audit-corporate-governance.html>

We also note that each professional accounting organisation based in the UK has well established monitoring and enforcement arrangements in place to deal with breaches of their Code of Ethics – ACCA’s Code of Ethics and Conduct (and those of other chartered bodies) is aligned to the IESBA Code of Ethics. We would suggest that, in considering whether it would be appropriate to introduce behavioural standards for directors of public interest entities, the Government should consider the model adopted both nationally and internationally by the accountancy profession as a potential starting point. As a result, the same behavioural standards will be applicable for directors of PIEs irrespective of whether they are members of professional accounting organisations or not.

The role of regulators

In order for high levels of regulatory engagement to be achieved, the public benefit remit of regulators must be held at the centre of framework conditions. Regulators should be forward-looking and relate to the United Nations Sustainable Development Goals⁴ to ensure alignment with legalisation across the largest global markets. Regulators must seek to act together, not in isolation, to ensure high levels of engagement and compliance across all organisations, particularly SMEs and charity sector organisations.

The government should seek to delegate greater flexibility to regulators to put the principles of agile regulation into practice. However, this cannot be used as a substitution for continual change. Business needs sufficient time to adjust to new regulation, which will vary based on the scale of the change. Ensuring that new regulation is not retrospective and not consistently changing in a short period of time is essential, as transitional costs associated with regulation changes are generally significantly greater than ongoing compliance costs.

The legitimacy of business law will depend on businesses adopting it and following it voluntarily and in the belief and expectation that it has been designed and is operated for the wider public good. A perception that regulation is designed exclusively for one group will dissuade others from engaging with it. Business law should be fair not just between businesses, but also between business and society and between discrete groups of stakeholders. Countries should cooperate with each other with the spirit of encouraging business enterprise, avoiding protectionism and unjustified international sanctions, where possible.

⁴ <https://sdgs.un.org/goals>

There is a challenge for tax administrations: the development and implementation of technological innovation in the private sector is in constant, fluid evolution, with multiple different strands of development running in parallel⁵. Consumers adopt the latest, or cheapest, technology at will. Tax authorities do not have the luxury of constant evolution. Tax legislation, and the enabling administrative tools, exist as unique fixed structures, with change inevitably undertaken as a wholesale restatement of the environment for all taxpayers, no matter what their current circumstances.

As businesses rely evermore closely on digital tools, tax authorities must recognise and manage the risk that in imposing upon business a particular technology that suits an authority's needs, they may be depriving business of the opportunity to exploit the most economically efficient technology, stifling competition and even growth. The decision on where the line should be drawn between government efficiencies and taxpayer inconvenience will have significant, wider, social and economic implications.

Revising the process and requirements of better regulation

There are a number of issues surrounding Statutory Instruments, so alternative measures are a good idea. Statutory Instruments do not have the same level of scrutiny and therefore should not be used for significant changes. However, we have seen the use of SI's increase increasing since 2016⁶. A system that relies on the number of Statutory Instruments to make significant changes may indicate that there is too much legislative interaction. Additionally, the changes are not balanced with ongoing consultation or subject to the appropriate level of parliamentary scrutiny. However, any new process that is adopted will require adequate consideration and debate. In order for a new approach to be effective, it must be clear, transparent and enforceable once in place. Equally, to attract business engagement, any new arrangement must be clear of purpose and present evident benefit to all.

⁵ <https://www.accaglobal.com/gb/en/professional-insights/global-profession/technology-tools.html>

⁶ <https://www.legislation.gov.uk/uksi>

Scrutiny of regulatory proposals

An independent body could provide a scrutiny function which would operate independently from the government, however, ensuring there is sufficient sustainable funding and that the body is independent and effectively coordinated will be key to effective operation.

ACCA believe that as part of the regulatory approach, a decision should be made about when the regulation should be open to scrutiny. The time period would vary depending on the context and impact of the legislation; in some cases, it could be a period after five years, while in others, it may be considerably sooner.

For example, digital payment regulations will evolve at a far quicker pace, and with impacts measurable and changing far more quickly, than tendering rules for large scale infrastructure projects. Ultimately, a smaller range of better targeted regulation would support this more transparent process of scrutiny.

As outlined in our Tenets of Business Law research⁷; Countries may want to consider adopting sunset clauses in their business laws, whereby a law automatically expires at a certain date if not renewed. It is notable that in many cases socially undesirable business outcomes can be traced back to outdated and inappropriate business forms being used. Revision of the regulations can help to ensure that they remain up to date and appropriate for society's current needs. Heed should be taken, not just of the business laws themselves, but also of the surrounding social and political environment, to ensure that interactions do not drive unnecessary or undesirable behaviours.

Measuring the impact of regulation

As highlighted in our Tenets of Business Law report⁸, care should be taken to ensure that the application of uniform codes of law does not disadvantage particular groups. It may well be that elements designed to deal with the affairs of large or complex businesses should be specifically disapplied for smaller businesses for which they have no direct relevance,

⁷ <https://www.accaglobal.com/hk/en/technical-activities/technical-resources-search/2017/april/tenets-of-business-law.html>

⁸ <https://www.accaglobal.com/hk/en/technical-activities/technical-resources-search/2017/april/tenets-of-business-law.html>

especially where smaller business may not have the resources to deal with such burdens and society would derive no benefit from them.

Research has shown that the smallest companies incur five times the administrative burden per employee than larger firms⁹ and so every effort must be made to increase efficiency of the system.

ACCA supports a proportionate 'polluter pays' principle. As an example of this in action explained in our restoring trust in audit and corporate governance response to BEIS is that "For ACCA, the UK audit population (approximately 1,600 firms) typically comprises one or two partner firms, which predominantly service small and medium entities (SMEs). Therefore, any future funding model should guard against the burden falling on smaller audit firms and the SMEs (i.e., non-public interest entities) they serve."

Regulatory offsetting: One-in, X-out

Ensuring the regulatory system is smart, future proofed, proportionate and considers the needs of business is critical to economic growth. Regulation can also profoundly impact innovation, as noted in the 2019 white paper 'Regulation for the Fourth Industrial Revolution'¹⁰. The ACCA has long supported a One-in, X-out approach, requiring a department that is creating additional regulatory costs to business to identify matching savings elsewhere. However, to ensure transparency and consistency across the system, we encourage the use of a banding process that benchmarks both the value and impact of legislative changes. The implementation of new regulations often presents an upfront cost to business in addition to ongoing compliance costs. The impact of regulatory changes and adjustment costs must be extensively considered, and the removal of unused regulation cannot offset the cost of new regulation.

⁹ Businesses' Views on Red Tape, OECD, 2001

¹⁰ <https://www.gov.uk/government/publications/regulation-for-the-fourth-industrial-revolution/regulation-for-the-fourth-industrial-revolution>