



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

13 June 2007

Our ref: ICAEW Rep 53/07

Your ref:

Patrick Erwin
Climate Change Legislation Team
4/F5 Ashdown House
123 Victoria Street
London
SW1E 6DE

By email

Dear Mr Erwin

Climate Change Bill Consultation

The Institute of Chartered Accountants in England and Wales ('the ICAEW') is pleased to respond to your request for comments on the Draft Climate Change Bill.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

Richard Spencer
Manager, Corporate Responsibility
T +44 (0)20 7920 8505
F +44 (0)20 7628 1874
E richard.spencer@icaew.com>



ICAEW Representation

ICAEW REP 53/07

Department for Environment, Food and Rural Affairs

Memorandum of comment submitted in June 2007 by The Institute of Chartered Accountants in England and Wales, in response to the Consultation on the draft Climate Change Bill

Contents	Paragraph		
Introduction	1	-	1
Who we are	2	-	3
Major Points	4	-	8
Specific Points	9	-	31

INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the 'ICAEW') welcomes the opportunity to comment on the Consultation on the draft Climate Change Bill.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the ICAEW provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.

MAJOR POINTS

4. The regulatory impact assessment is an important element in the consultation and response process. Whilst we recognise fully that in this case the assessment is a partial one, it is so heavily qualified as to be of limited use. The document will no doubt be subject to further refinement no doubt in line with the Cabinet Office document *Impact Assessment Guide*. In the hope that it will be helpful, we attach at Appendix A the ICAEW's response to the Cabinet Office consultation ahead of that document - *The Tools to Deliver Better Regulation* - as a guide to our thinking on this subject.
5. The Bill defines very clearly the limits that will be set nationally for reducing carbon emissions. It does not detail how these limits will be achieved across the economy; although the working assumption must be that it will be through an extension to the existing framework for capping emissions. It is important, however, that business is not made to bear more than its fair share. This is not least because UK business must be allowed to maintain its competitiveness. We welcome comments that have been made in and through the media that all parts of the economy will be involved. However, we believe that the Bill would benefit from the articulation of an overall long-term strategy in this regard. This would enable business to plan appropriately for the future, especially those sectors that must plan over a very long cycle.
6. The Bill is unclear on how much detail will be included in the reporting process. Furthermore, there is no consideration of how the reporting will be assured. The generation of information, reporting and assuring and the procedures and processes and necessary skills that underpin them are central to the success of the regime envisaged by the Bill. These are areas in which the accounting profession has particular proficiency and we recommend that you should include accounting within the list of types of expertise in paragraph 5.57. This could be provided by a nomination from the Consultative Committee of Accountancy

Bodies, which represents the six chartered bodies of accountants in the United Kingdom and Ireland.

7. The Committee has both an advisory function and a duty to hold the government to account for its performance and this raises potential conflicts, not least because the government's performance will in part result from the advice taken. Can this be managed successfully in order that the credibility of the system can be preserved? One possible solution would be for membership of the Committee to be limited by number of terms that may be served. This is also considered in our answer to Question 13.
8. However, conflicts of interest are only one aspect of the risks associated with credibility. The Consultation document does not contain any alternative models to this one and we wonder if comparisons with other similar bodies were made and analyses of associated risks and strengths were undertaken. It would be helpful to see such work as it could strengthen the case for this particular arrangement.

SPECIFIC POINTS

Question 1 Is the Government right to set unilaterally a long-term legal target for reducing CO2 emissions through domestic and international action by 60% by 2050 and a further interim legal target for 2020 of 26-32%?

9. We recognise that the Government is seeking to build an international consensus on the reduction of CO2 emissions. Nevertheless, it will be challenging for the UK to meet the targets set out in the consultation documents unilaterally.
10. Other than building credibility it is not clear what the effect will be of putting the targets into legislation. The document raises the prospect of Judicial Review but it is not apparent what powers a court would have over governments not meeting their targets.

Question 2 Is the Government right to keep under review the question of moving to a broader system of greenhouse gas targets and budgets, and to maintain the focus at this stage on CO2?

11. With regard to other greenhouse gases discussed in this section, we believe that the cap-and-trade policy tool currently in place for CO2 has the substantial advantage of achieving reductions where they may be most efficiently gained. Applying this principle to other greenhouse gases seems to us wholly appropriate and we support the idea contained in paragraph 5.13 of maintaining the option to do this.

Question 3 Should the UK move to a system of carbon management based upon statutory five-year carbon budgets set in secondary legislation?

12. The idea of five-year budgets is a good one that, as the document notes, will allow for flexibility whilst driving towards the two targets. However, as in question 1 it is not obvious, other than to give credibility, what the effect of putting these into legislation is.

Question 4 **Do you agree that there should be at least three budget periods in statute at any one time?**

13. We think that it is necessary to have more than one budgetary period in place at any one time in order to give business the ability to plan beyond five years. We also accept that it is probably not realistic to have budgets beyond 15 years.

Question 5 **Do you agree that there should be a power to review targets through secondary legislation to ensure that there is sufficient flexibility in the system?**

14. We accept the case made for review of the targets and budgets and support the proposal provided that it is done in the manner envisaged in the consultation document. Specifically, we believe that it is done within the limited circumstances envisaged and with Parliamentary approval. We think that consideration should be given to whether the recommendation of the Committee on Climate Change should not also be secured for changes to the targets.

Question 6 **Are there any factors in addition to, or instead of, those already set out that should enable a review of targets and budgets?**

15. We are not aware of any additional factors.

Question 7 **Do you agree that, in line with the analysis in the Stern Review and with the operation of the Kyoto Protocol and EU ETS, effort purchased by the UK from other countries should be eligible in contributing towards UK emissions reductions, within the limits set under international law?**

16. We agree that credits bought overseas should contribute towards UK emissions reductions. However, this is subject to the limitations implicit in the document: that these should adhere to the principle of “supplementarity”; that the credits should meet suitable criteria for inclusion – and we believe that these criteria should be put forward by the Committee on Climate Change in written and publicly available form; and that the Committee on Climate Change should advise the government on the balance between domestic and overseas credits, and that this advice should be made public.
17. There is room for a greater degree of sophistication in the consideration of overseas credits. The concern over using overseas credits stems from a desire that industrialised countries should be seen to be reducing their own emissions and should not exploit and exhaust poorer countries’ future ability to achieve cheap reductions of their own. Thus it seems to us that buying credits between industrialised countries, for example within the EU, which would be “overseas”, is less of a concern than between industrialised and developing nations. We believe this should be recognised.

Question 8 **Do you agree that it should be permissible to carry over any surplus in the budget? Are there any specific circumstances where you would consider this provision should be withdrawn?**

18. This seems to us to be an appropriate measure.

Question 9 Do you agree that limited borrowing between periods should be allowed?

19. The concept of “borrowing” credits that have not yet been realised is not one that is immediately appealing. As the consultation document tacitly acknowledges, the integrity of the system and confidence in the budgetary process and the budgets themselves is vital. If borrowing is to be permitted then we agree that it should be limited to very low amounts, over the short-term, and we believe that it should be according to criteria that the Committee on Climate Change should promulgate early on and should include the principle that borrowing is only permitted in exceptional circumstances and not just because of a general failure to meet budgets. We also agree that the government should seek the advice of the Committee on Climate Change first and we believe that this advice should be made public.

Question 10 Is it right that the Government should have a legal duty to stay within the limits of its carbon budgets?

20. It is important that the system has credibility and this, together with a transparent process for decision-making, is central to that. It is also appealing that the government is bound by a legal duty. However, the consultation document should make clear precisely what power the courts would have in the circumstances of a government failing to meet its targets.

Question 11 Do you agree that establishing an independent body will improve the institutional framework for managing carbon in the economy?

21. We agree that an independent body such as the one described in the consultation document will be an important addition to the process outlined for reducing the UK’s carbon emissions.

Question 12 Do you agree that the Committee on Climate Change should have an advisory function regarding the pathway to 2050?

22. We agree that the Committee on Climate Change should have an advisory role and we believe that all the Committee’s advice should be made public.

Question 13 Do you agree with the proposal that the Committee on Climate Change should have a strongly analytical role?

23. It seems appropriate to us that if the Committee is offering advice to the government then it should also undertake and be responsible for the analysis on which much of that advice will be based.
24. However, we are concerned about potential conflicts of interest for the Committee and question how that can be managed. This stems from the fact that the Committee will be giving the government advice, some arising from its own analysis, and will also be tasked with holding the government to account for actions that at least in part will be based on that advice and analysis. This could give rise to a risk of a perceived lack of objectivity and independence of the Committee. One possible solution to this would be for membership of the

Committee to be limited to a number of terms. For example members might be permitted to serve for two three-year periods.

Question 14 Are these the right factors for the Committee on Climate Change to take into account in assessing the emissions reduction pathway? Do you consider there are further factors that the Committee should take into account?

25. These seem to us to be the correct factors. However, we believe that a process of continuing engagement with stakeholders could reveal further factors as they become relevant. We also think that the Committee itself should be free to add factors in the light of its own experience and that of its members. Finally, we believe that there are two further factors to take into account. Firstly, experience of the process and lessons learned should be factored back into further decisions. Secondly, the government's success in meeting its targets and budgets and the underlying performance of those sectors of the economy that will feed into that should be considered.

Question 15 Do you agree the Committee on Climate Change should be comprised of technical experts rather than representatives of stakeholder groups?

26. We recognise the arguments in favour of restricting the Committee's membership to technical experts and in such circumstances members of the Committee will need to be clear that they are serving as experts rather than as representatives of industry segments. However, we are concerned that this means that no engagement with stakeholders is achieved. This means that budget and targets, which will ultimately impact on stakeholders, will be set with little or no input from them and the process is likely not be understood as inclusive or consensual. We believe that a formal process of stakeholder engagement and accountability needs to be in place.

Question 16 Are these the appropriate areas of expertise that should be considered? Do you consider there are further areas that should be considered or areas that are less important?

27. The generation of information, reporting and assuring and the procedures and processes that underpin them are central to the success of the regime envisaged by the Bill. They are key attributes of the accounting profession and we recommend that you should include accounting within the list of types of expertise. This could be provided by a nomination from the Consultative Committee of Accountancy Bodies, which represents the six chartered bodies of accountants in the United Kingdom and Ireland.

Question 17 Do you agree with the principle of taking enabling powers to introduce new trading schemes?

28. We agree with the principle.

Question 18 Do you consider that these powers are sufficient to introduce effective new policies via secondary legislation? If not, what changes would you make?

29. We are not aware of any additional powers that would be needed.

Question 19 Do you agree that the Committee on Climate Change should be responsible for an independent annual report on the UK's progress towards its targets, which would include reporting on a completed budget period every five years?

30. In our answer to question 13 we outlined the need to manage a potential conflict exists between advising the Government and then holding it to account. Would the production of a report on the UK's progress be better made by a body like the Sustainable Development Commission?

Question 20 Is statutory reporting the best way to drive forward progress on adaptation while at the same time ensuring Government is able to develop flexible and appropriate measures reflecting developments in key policy areas?

31. We agree that government should report on its adaptation activities, or at least make publicly available information around them. However, we question the assumption that reporting will simply or necessarily drive performance. It is more likely that a set of commitments by government on adaptation that can be measured and reported on would be more likely to be successful. It may be that a report by a body such as the Sustainable Development Commission on the government's performance in this area would be helpful.

Email: richard.spencer@icaew.com

© Institute of Chartered Accountants in England and Wales 2007

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is reproduced accurately and not used in a misleading context;
- the source of the extract or document, and the copyright of the Institute of Chartered Accountants in England and Wales, is acknowledged; and
- the title of the document and the reference number (ICAEW Rep 53/07) are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

www.icaew.com

Appendix A

The Tools to Deliver Better Regulation

Revising the Regulatory Impact Assessment:
A Consultation

Submission of the Institute of Chartered Accountants in England and Wales

Contents	Page
1. Response Summary	2
2. The Approach of the ICAEW to Better Regulation	3
3. How the Proposals Contribute to Regulatory Culture Change	3
4. The ICAEW View of an Appropriate Impact Assessment Process	6
5. Answers to Consultation Questions	7
6. Further Contact Details	12
Appendix: Explanation of the Proposed Framework for Effective Impact Assessment	13

1. Response Summary

- i. The ICAEW welcomes the proposals in the consultation. We believe they are an important and practical contribution to improving the rigour, usefulness and practice of regulatory impact assessment.
- ii. For the proposals to realise their full potential to contribute to culture change, other parallel and supporting improvements are also needed, including improving stakeholder engagement, appreciation of responsibility for impacts and availability of expertise.
- iii. Improving the engagement with stakeholders throughout impact assessments should now be a Government priority, if quality and transparency are to be improved.
- iv. A framework for how the impact assessment process should proceed with the policy process is required. The ICAEW proposes here how this might be done.
- v. In order to achieve its objectives for these proposals, the BRE needs to set more aspirational tests of success.
- vi. Impact assessment should explicitly seek to maximise benefit and minimise cost.
- vii. The Ministerial Sign-off should be changed to compliment rather than sit at odds with the BRE's aspirations for impact assessment.
- viii. The impact on small business should be made explicitly visible on impact assessment cover sheets and made the clear responsibility of the Department proposing the change; thus, allowing the dropping of the separate Small Firms Impact Test.
- ix. Incorporation of environmental and social benefits and costs is a welcome objective but more thought is needed on the practicalities so that impact assessments are not overloaded. Consideration should be given to referring to parallel longer-term studies.
- x. Thought should be given to how critical non-quantitative considerations should be brought to attention in the impact assessment document.
- xi. Other impact assessment criteria, outside of cost-benefit analysis, should be brought to bear through the use of principles and guidance rather than complex parallel processes.
- xii. Guidance to Impact Assessment needs to include a simple overview of how the process should work.
- xiii. The signature of the Chief Economist will make a significant contribution to improving quality of impact assessments.
- xiv. Training and support needs significantly more thought before new Impact Assessment requirements are implemented.

2. The Approach of the ICAEW to Better Regulation

'if we are to make real progress then we need to change the culture of those responsible for designing and implementing regulations'

July 2006 - Minister for Cabinet Office and Social Exclusion, Rt Hon Hilary Armstrong MP, in her reply to the appointment letter of the Prime Minister

The Institute of Chartered Accountants in England and Wales fully supports the Minister's assessment of the key challenge and focus for better regulation. We also support her statements, in the same letter, that the Cabinet Office should tackle the regulations that are 'the biggest irritants for those on the ground alongside those which result in the biggest costs' and of the need 'to provide rigorous challenge and scrutiny on the regulatory costs of new policy proposals'. We believe she was also right to point out that this agenda is important to 'those in the front line of our public services'. In responding to this consultation the ICAEW has examined whether the proposals meet the objectives of the consultation and whether they do all they can to meet the Minister's stated aspirations.

On policy issues, the ICAEW seeks to work in the public interest to promote enterprise, innovation and sustainable growth in a socially responsible business environment. Our experience and knowledge is drawn from our members who work in every sector of the economy, size of business and public body, from global company boardrooms and government departments, to high street practitioners, small businesses and charities. As business owners, financiers, finance directors or advisors to businesses, accountants are often at the centre of a business's strategy to deal with regulation. Invariably, they know not only what regulations a business has to deal but also, as finance professionals, the impact of those regulations on the business's bottom line. The ICAEW is also a regulator itself, of its members and of the majority of auditors (delegated by the FRC). The ICAEW has also played an active role in regulatory processes and the development of associated guidance.

Our annual Enterprise Survey, of our members in business, estimates the cost of new regulations for business in each year. We find that the cost equates annually to around £7 billion. We also calculate that the proportion of that cost falling on micro-business to be around 70% and that proportion has been going up each year. Our latest Enterprise Report, released on 23 October 2006, will demonstrate a continuation of this trend. New regulation of small business is, we believe, the greatest 'irritant' and amounts to the 'greatest [disproportionate] cost'.

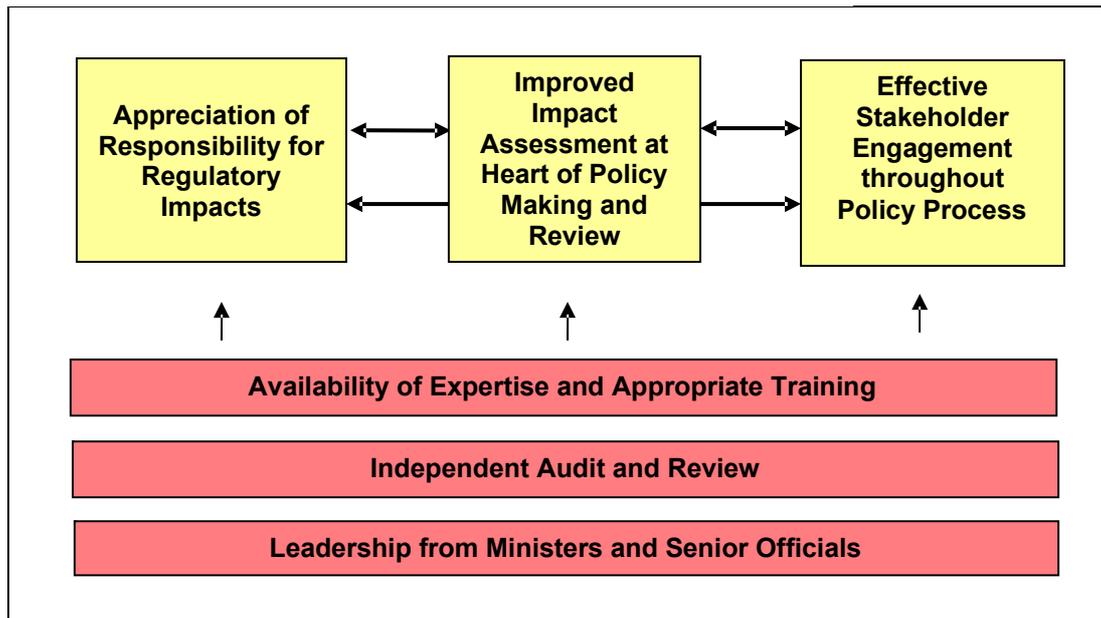
The ICAEW's approach to the better regulation agenda, and this consultation, is predicated on a number of beliefs based upon our member research and the expertise of our members and staff:

- Reducing the annual cost of new regulation impacting on business should be a priority of the better regulation agenda.
- Reducing the impact on the smallest businesses should be the primary focus within that priority in order to tackle the regressive impact of regulation.
- Better regulation for small business will also invariably lead to better regulation for other sizes of business.
- The flux of new regulation is often more troubling for a business than the stock of old regulation as they will already have coping strategies for old regulation.
- Efforts to examine the administration costs of the stock of regulation are necessary for both continued monitoring and evaluation and to encourage appreciation of responsibility for impact.

3. How the Proposals Contribute to Regulatory Culture Change

The diagram below demonstrates the elements the ICAEW believes are needed to improve the UK regulatory culture and how they interact. It demonstrates the need for improved appreciation of regulatory impact, assessment of that impact and engagement with stakeholders to inform such assessment. Expertise and training and independent audit and review are important underlying factors. Continued leadership from Ministers and Senior Officials is also required.

Diagram 1: Requirements for Improved UK Regulatory Culture



Improved Impact Assessment. The ICAEW's *How to Deliver Better Regulation Consultation* focuses on improving the rigour and performance of impact assessments (the middle top box) and so would, we believe, make a valuable and necessary contribution to a better regulatory culture. However, even with the improvements we suggest in this submission, the proposals alone will not be sufficient to maximise the potential for impact assessment to contribute to true culture change across Government.

Stakeholder Engagement. The ICAEW believes that the new impact assessment should go hand-in-hand with better engagement with stakeholders throughout policy making. Time and again, our technical experts find that impact assessment documents are published without the full range of options for how change can be achieved with lower costs to business or with greater benefit for those Government is seeking to benefit. At such points, stakeholders not only have to convince Government of the need to examine other options but also effectively have to convince Ministers that they should delay their aspirations. We are strongly of the opinion that, in most circumstances, civil servants working in a Department will not be able to appreciate the full options for change without engaging, at least informally, with those who will have to implement the change. It is also essential for consideration of self- or co-regulation and other light-touch options such as development of principles and guidance. Further detail of the case for our request is made clear throughout this response.

Appreciation of Responsibility. In the administrative burdens project, the Government has taken a major step towards increasing Departments' appreciation of the burden they place upon business. However, we also believe Government needs to examine the

incentives for civil servants who take the initiative to review old regulations, and for those who demonstrably work to maximise the benefits or minimise the costs of new regulations.

Expertise The ICAEW believes that the availability of expertise also needs explicit examination. Independent expertise may play a valuable future role in impact assessment but its usage needs to be integral into the policy process in order to have real impact, rather than constituting a separate post-decision analysis. Training of civil servants on their new responsibilities is also key.

Independent Audit and Review The NAO, together with the Better Regulation Commission, has already played an invaluable role in highlighting the deficiencies in RIA practice. The future potential for the role of the NAO and Commission, should be considered, to help ensure continual progress to culture change and continually improving impact assessment across Government.

Continued Leadership The leadership of the Prime Minister, the Chancellor and the current and previous Ministers for the Cabinet Office, and the Executive Chair of the BRE, has been essential to bringing the better regulation agenda to where we are now. Such leadership is needed not only for current reform but is essential the long term, in order to see culture change occur, be embedded and then to be maintained. How such leadership of Ministers and senior officials can be cemented for the long-term also needs such consideration.

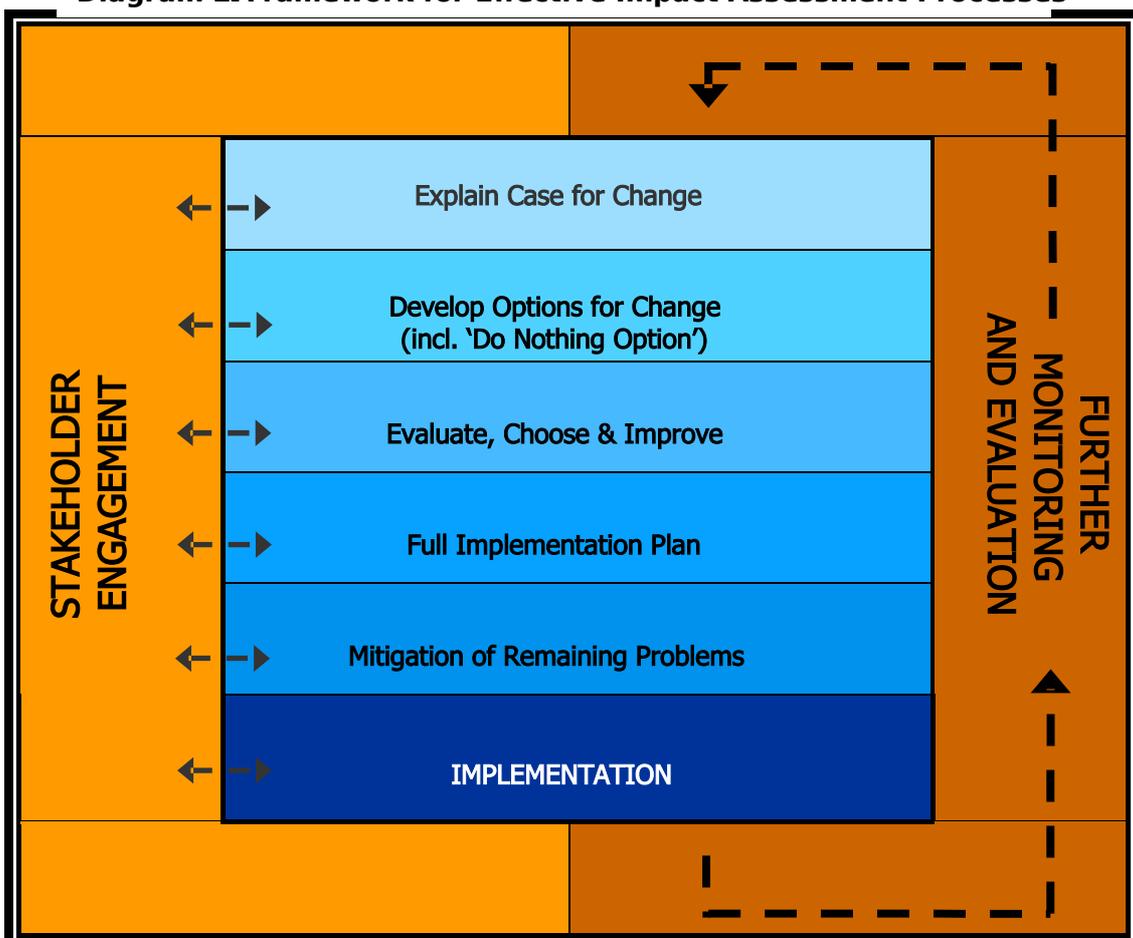
The challenges for achieving true regulatory culture change are numerous but tackling them all, in a comprehensive manner, is essential for ensuring the benefits of the current consultation are fully realised. As a priority, we believe the Cabinet Office should open discussions and then consultation on proposals to improve stakeholder engagement through the impact assessment process.

4. The ICAEW View of an Appropriate Impact Assessment Process

To inform our view of better regulation, ICAEW technical experts who work regularly with government, from tax to business law to finance and employment law, came together in the first half of 2006 to discuss our expectations of an appropriate regulatory process. They also drew upon the experience of the ICAEW as a regulator itself.

Based upon their experience, a model of effective impact assessment processes was developed and is shown below. This demonstrates the ICAEW's expectations of what the consultation should seek to achieve. It is, we hope, a useful example of a framework civil servants could use to systematically consider how to assess impacts and how stakeholder engagement can inform such assessment. It is a flexible framework because it is as relevant for implementing manifesto commitments as for newly developed ideas or continual monitoring and improvement of previous regulations. It can be followed over a matter of days, for simple issues, to weeks, months or years for highly complex issues with numerous stakeholders and effects. It is also as useful for public sector regulation as for private sector regulation.

Diagram 2: Framework for Effective Impact Assessment Processes



5. Answers to Consultation Questions

A. Do you agree that these would be good tests of success ~~Assessing Regulatory Impact~~?

Meeting the tests included in the consultation document would signal significant improvement in impact assessment. The emphasis on time frame, need for ownership by decision makers and value for stakeholders is welcome. However, the ICAEW believes that if the tests were passed, the BRE's stated objectives for the proposals would still not be achieved. The BRE should set tests which are more aspirational in a number of respects:

- a. **To embed RIAs at the heart of policy making** Decision makers [wanting] to have impact assessments' we believe that decision makers should want to utilise impact assessment as an integral part of their policy process. In the best case scenario, the impact assessment document would become a report on how impacts have already been assessed throughout the policy process, up to that point, with the upfront summary purely extracting information pertinent to impacts that have already been well assessed and dealt with.
- b. **To improve quality of analysis (but also usability)** This could necessarily involve decision makers demonstrating that they have maximised benefits and minimised costs throughout their impact assessments, utilising their judgement, evidence and discussion with stakeholders. This more dynamic aspiration is actually included within the box entitled 'UNITED STATES - a comparison' contained within the consultation document.
- c. **To improve quality and improve transparency** This could not only be signalled by stakeholders wanting to access impact assessments but that decision makers and their offices have utilised the assessment process as a framework for appropriate dialogue with stakeholders throughout the policy making process. This is necessary for quality for a number of reasons but most critically because stakeholders are likely to have valuable expert insight into the options available for achieving the policy change. For transparency, Government should aspire to greater stakeholder dialogue, throughout the process, because clearer access to and improved usefulness of RIAs would not necessarily aid understanding of how the policy making and impact assessment process has worked up until that point.

B. Is the revised Impact Assessment at Annex A easier to read, more transparent and more scrutiny and external challenge? How do you think it could be improved?

C. Does the proposed Summary Sheet capture the key information required to minimise regulatory burdens on the private, public and third sectors?

The ICAEW believes that the proposed Impact Assessment format would constitute a major improvement in the impact assessment process. By concentrating on rigorous economic analysis up-front and having a single summary sheet, the changes will make more key information, more accessible to readers and therefore aid better scrutiny and challenge. However, we do believe there are improvements that can be made to the new format which would make it more workable for Government departments, better achieve the stated objectives in the consultation and go further to achieving the wider aspiration of regulatory culture change.

Cover Sheet

Economist's Sign-off:

Comments on this are included in the answer to Consultation Question F.

Ministerial Sign-off:

The ICAEW strongly supports a Ministerial Sign-off on the RIA but believes the phrasing of the statement from the Minister that 'the benefits justify the costs' is at odds with the BRE's aspirations for impact assessment in a number of ways.

- i. **Useful process vs. barrier to be overcome:** The statement strongly infers that the decision has already been made that benefits are greater than costs and therefore, the option with the greatest net benefit can go-ahead as is. It could also compound the misunderstanding that impact assessment is about producing a document to justify a decision already made, rather than being a process essential to good policy making. The statement is, we believe, at odds with aspiration that impact assessment occurs throughout the policy process and is a process itself. It may be appropriate to publish the summary sheet early to inform consultation and debate. The decision of which option to take might still be highly uncertain. Issues of practical implementation may also still have to be explored.
- ii. **Dichotomous decision of benefits greater than costs:** Impact assessment should be an iterative process that is useful to departments in their efforts to maximise benefits, minimise costs and take account of other critical issues. The statement infers a single critical condition that benefits need to be greater than costs. We believe this circumvents both the need for high level consideration of where those benefits and costs fall, including potential disproportionate costs to small business, and the need to ensure that benefits are maximised and costs are minimised as far as is practicable.
- iii. **Other critical issues:** The incorporation of impact assessment objectives beyond regulation, there will be issues, which vary by the particular type of policy, which are critical to the practicality and appropriateness of different options but which are not easily dealt with through cost-benefit analysis. Examples include how a potential option fits with EU legislation, or issues such as equality, impact on competition, compliance or practicality of enforcement. On occasions, these more qualitative issues will be far more critical than quantitative assessment.

The ICAEW therefore proposes that the Ministerial sign-off be changed to a statement along the lines of the following:

"At this stage, I am satisfied that the Impact Assessment has gone as far as practicable towards ensuring greatest benefit from least cost. I am also satisfied that other factors have been properly appreciated."

The ICAEW appreciates that this is a more challenging and comprehensive statement. But believe this sets a bar for the quality of policy making and impact assessment which we believe that UK Government should aspire to and is more than capable of achieving.

Summary Sheet

The approach of having quantified benefits and costs taking up just over half the sheet, then a number of check boxes for other considerations or critical information is highly appropriate.

Indeed, the ICAEW cannot envisage how any other approach would bring the right level of critical information to the fore.

We do have a number of suggestions for improvement which are listed below. These include additional information to ensure that the full steps have been taken to minimise burdens:

- i. **Impact on small business:** the impact of costs on small business is proportionate should be made more explicitly clear on the front sheet. As already mentioned, the ICAEW has found for a number of years that around 70% of the cost of new regulation is realised by firms with less than 10 employees. A metric such as cost per employee, by size of business, using standard assumptions or an equivalently transparent alternative is needed. The ICAEW's own estimation of impact of regulation on small business might provide a metric to work from.

We believe this requirement is essential for ensuring the RIA process focuses on the greatest problem - the impact of new regulation on small business. Ensuring policy makers are transparently appreciative of the impact on small business/Government's objectives for enterprise would also allow the phasing out of the Small Firms impact Test (see later note).

- ii. **Stakeholder dialogue:** the belief of the ICAEW that Government needs to have dialogue with stakeholders on policy options, before any evaluation, we believe there should be a check box on the summary sheet that appropriate stakeholder dialogue has taken place. It is appreciated that the BRE will be looking into consultation and dialogue in the near future. However, we believe this check should be included in the summary sheet now, as an essential contribution to both the quality and transparency of the assessment.

- iii. **Qualitative and other critical factor analysis:** ICAEW understands and appreciates the requirements on policy makers to pay due regard to such issues as diversity, sustainability, environmental, social impacts etc, as well as competition and enforceability. Due to the varying applicability of these factors, we believe these are best addressed by developing guidance and principles outside of the impact assessment process. However, these factors will need to be considered alongside costs/benefits on a number of occasions, both by Government and during stakeholder engagement.

The ICAEW believes the best way to deal with this is through a check-box on the summary sheet that ' All appropriate considerations and guidance have been taken into account for this policy option.' More information for readers, or references to other parallel documents, can then be included in the evidence base.

D. Do you have any comments on the proposed Impact Assessment guidance at Annex B?

The ICAEW believes there is an initial fundamental gap in the Impact Assessment guidance - the setting out of a simple framework for how the impact assessment should proceed and result in post-implementation review. We think this is not only helpful for officials and Ministers understanding of the process but also for the increased transparency to outside stakeholders of how far Government is down an impact assessment process. Furthermore without a simple overview of how impact assessment should work, it will be continually difficult to convince decision makers to integrate impact assessment into their policy making from the earliest point.

The ICAEW in Section B of this submission proposes one kind of framework we think Government could use to communicate its expectations both internally and externally.

- i. **Transparency** The guidance needs to better address the need for greater transparency. So “The points at which RIA versions must be made public” should start at an earlier stage when policy options are being considered. To support greater transparency the guidance needs to specify that all Impact Assessments will be included on a publicly accessible website, including an indication of what stage the Impact Assessment is at (best indicated again in relation to a simple framework). Guidance to publish impact assessment material as early as possible should also be included.
- ii. **Costs for Other Departments** Support the inclusion of “costs falling on other Government Departments” in the guidance. In changes to employment law the effects on Employment Tribunals have been underestimated. We believe that the guidance should include reference to what consultation has taken place with those other government departments affected by proposed legislation or regulation.
- iii. **Costs and benefits** We believe that there should be a clear statement that the impact assessment should seek to maximise benefits and minimise costs as far as is practicable. Furthermore, for costs and benefits to be realistically evaluated, government departments might need assistance with the evaluation from the private sector or academics, or policy think tanks. The guidance should include reference to when and how this assistance can be procured. We also believe the impact on businesses should be calculated by business size (Micro, Small Medium and Large) so that the cost to UK businesses can be calculated and specifically the impact on micro businesses (less than 10 employees) is clearly apparent.
- iv. **Post-Implementation Review** We believe that the fact that there is to be a post-implementation review is an important part of the cycle of good regulatory practice leading to improved policy development. Given that the average time a civil servant spends in post is less than two years the likelihood is that the review will not be carried out by those introducing the legislation/ regulation. It is therefore important that the guidance spells out that the post implementation review is intended to be guidance to successor civil servants and policy development. Factors which might influence the timing of the post-implementation review include issues such as whether the costs to UK business are expected to significantly reduce once the new legislation has been absorbed and acted upon.

E. Do you agree the requirement to use the Competition Assessment and the Small Firms Impact Test on a case by case basis is sufficient to ensure these impacts will be adequately assessed where relevant?

Competition Assessment

We agree that the competition assessment should be done on a case by case basis. Though again, this would work most effectively if stakeholders are able to highlight competitive concerns before the RIA is published and options are developed.

Small Firms Impact Assessment

Given that 99.3% of businesses have less than 50 employees and the UK Government puts enterprise at the heart of its economic policy, the ICAEW now does not believe it appropriate to assess impacts on small firms through a separate process, conducted by the SBS, and separate to the mainstream policy considerations. A 'Large Firms Impact Test' would actually have more logical validity. The NAO has also reported on how the SBS is often asked to conduct this test at a point that is too late to allow appropriate consideration or have real influence on decision-making. Furthermore, with significant evidence from ICAEW and Government's own surveys that small businesses are disproportionately hit by regulation, we believe that wherever there is a regulatory cost on business, the relative impact on small business should be identified.

The ICAEW therefore proposes that the Small Firms Impact Test be dropped in favour of a distinct and transparent breakdown of the impact of cost by business size on the Impact Assessment Summary Sheet.

The ICAEW has conducted further analysis of the future of small business in Government and will forward this through to the BRE Consultation team separately.

F. Do you agree that including a signed declaration by the Departmental Chief Economist and/or other senior members of the Government's analytical community will improve the quality of the analysis?

Yes. The ICAEW strongly supports the sign-off by the Departmental Chief Economist. This will not only help ensure the appropriate rigour within the impact assessment but will, just as critically, encourage decision makers to utilise the skills and judgement of departmental economists throughout the impact assessment process. This could potentially also improve the quality of dialogue with private sector stakeholders.

G. The Government intends on increased emphasis on quantification of social and environmental costs and benefits as part of the proposed new Impact Assessment, including the coupling of Race Equality Assessments and assessments of environmental impacts.

Quantified Social and Environmental Costs and Benefits

The ICAEW believes that considering quantifiable social and environmental benefits and costs alongside other benefits and costs is appropriate. The practicality of this move and the quality of the estimation of these figures are, though, key factors that have to be considered.

The costs on business will often be identifiable through direct estimation, by survey or research into actual businesses. Social and environmental costs and benefits might conversely require use of complex methods of indirect estimation with relatively high levels of uncertainty in the figures. When the methodology of estimation of environmental/social costs and benefits is highly indirect with high confidence intervals, it may also be appropriate to present this information separately to other data.

Such estimations might be highly expensive to conduct. In these circumstances, the value to the assessment of achieving an accurate and full quantification should be considered. When the key choice is around maximising benefit and minimising cost, getting more 'bang for the buck' could be most appropriately demonstrated through utilising proxy measures for environmental/social cost or benefit.

On many major socioeconomic issues, such as policy to reduce deprivation or poverty, or even the minimum wage, the full benefits will be wide ranging and include a large number of

knock-on impacts. In these circumstances, it may be more practical to conduct full-scale economic studies of the issues and refer to how far the policy goes in addressing the problem.

Decoupling Race Equality Assessments and Assessments of environmental impact

As already noted, the ICAEW believes that there will always be a number of various other impacts which should be assessed and considered at the appropriate time in the policy making process. These should be dealt with through separate guidance and principles. Including the suggest check box that 'all appropriate considerations and guidance have been taken into account' on the summary sheet, with further explanation in the Evidence Base would aid proper coordination between this assessment process and the large number of other potential considerations relevant to the economy and society. Decision makers and those advising them will have to use evidence based judgement as to the relative consideration that will need to be given to the quantitative and qualitative factors.

Other Issues Within the Consultation

Name Change to 'Impact Assessment'

The ICAEW supports this move as it will help better integrate impact assessment into the policy making process. However, the importance of impact assessment within the wider agenda of regulatory culture change must not be lost.

On-Line Database of Impact Assessments

This is a useful proposal. However, the ICAEW does not believe it will be fully effective without first a simple framework of the impact assessment process and then the ability for stakeholders to see how far along the process policy makers have progressed.

Training and Support

The ICAEW believes these should be considered alongside implementation issues for the new impact assessment process, the results of forthcoming consideration of stakeholder dialogue and consultation, and issues of business expertise and the incentives for conducting good impact assessment. Our preference is for a full and comprehensive strategy for the launch of the new impact assessment process including the inter-related changes needed for it to be fully effective.

6. Further Contact Details

For further information or explanation of the contents of this response, please contact in the first instance:

Clive Lewis
ICAEW Head of SME issues
clive.lewis@icaew.co.uk
020 7920 8667

Luke Herbert
ICAEW Public Affairs manager
luke.herbert@icaew.co.uk
020 7920 8695

Appendix I:

Explanation of the Proposed Framework for Effective Impact Assessment

Explain Case for Change Government would benefit from explaining, to representative key stakeholders, the case for a particular policy or regulation change or piece of legislation that will have a regulatory impact. This helps stakeholders to play a constructive role in the impact assessment process. Dialogue will also help Government to identify early those that will be affected.

Develop Options for Change It should be the norm for 3 different options for change to be considered, on-top of the 'do nothing' option to be considered. Stakeholders should be able to input different options for change, for future impartial evaluation. When only the 'do nothing option' is also considered, the choice is then between achieving the change or not, rather than how do you maximise the benefits of a change and minimise the costs. Stakeholder engagement is essential if self-regulation or principles based regulations are to be properly considered.

Evaluate, Choose & Improve The current requirements for cost-benefit assessment, impact on competition, taking account of impact on small business, analysis of compliance all effectively come at this stage. New commitments to measure the administrative costs of change, the time to fill-in forms and the potential for existing data to be used before asking for information also logically comes at this stage. The impact assessment process will have to at some stage focus on any clear first-best option. But as understanding is gained, further improvements can be made by varying a policy to maximise benefits and minimise costs.

Research undertaken by the ICAEW (the Information for Better Markets and Society programme) has highlighted that how changes will practically work within the business environment is often not considered early enough. Therefore, appropriate evaluation may also have to involve the partial development of implementation plans.

Develop Implementation Plan How a regulation is to be implemented and compliance assured can sometimes have as much bearing on impact as the initial choice of policy. Where the impact of the implementation is likely to be high, different methods of implementing also need to be identified and evaluated early. The level of necessary implementation planning should vary with the complexity of the regulation and the industries or stakeholders effected. Again, dialogue with stakeholders is essential to practical understanding.

Mitigation of Remaining Problems There will often be remaining problems, risks or concerns even after regulations have been fully considered, evaluated and planned for. A mitigation plan to tackle remaining problems, is therefore a step that should often be considered. Acknowledgement by Government of stakeholders' remaining issues and demonstration of a remaining will to tackle them if possible is often beneficial.

Implementation Implementation necessarily involves the participation of stakeholders, particularly those being regulated. So dialogue with appropriate representatives is key to ensuring Implementation adheres to any plans and that Government and stakeholders can deal early with unexpected circumstances.

Monitoring and Further Evaluation Decision makers should look to monitor whether the expected benefits and costs of a regulatory change are realised. This is not only important for that regulation but for lesson-learning for future changes. Furthermore, business, markets and

society changes over time. Further monitoring and evaluation and ability for stakeholders to propose further improvements demonstrates high level policy management. With the Legislative and Regulatory Reform Bill, Government believes it should be significantly easier to make post-Implementation improvements.

Stakeholder Engagement is essential throughout the regulatory process to ensure the transparency of regulation, to ensure that decision makers are appropriately informed and to ensure the expertise and experience of stakeholders is fully appreciated. Stakeholders need to include other Government departments as well as business, others who are impacted and those who benefit from the change. The nature and breadth of engagement will necessarily change throughout the impact assessment. It includes but is not limited to formal consultation. Early on in the process, informal dialogue with key stakeholders will help inform options development. Full consultation with all stakeholders will inform the evaluation, choice and improvement of options. Continued dialogue with a smaller number of representatives will then be essential for implementation and further monitoring and evaluation.

A Framework for Effective Impact Assessment Processes

