



11 April 2008

Our ref: ICAEW Rep 45/08

Consultation on Good Guidance
Bay 3140
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street, London SW1H 0ET

By email

Dear Mr Ratcliffe

A CODE OF PRACTICE ON GOOD GUIDANCE ON REGULATION

The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the consultation paper "A Code of Practice on Good Guidance on Regulation" published by the Department for Business, Enterprise and Regulatory Reform in January 2008.

The Institute 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 Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

Main Points

The Institute considers that the Code provides very valuable indicators of good practice, which will tend to improve the standards of guidance. We congratulate the Better Regulation Executive on the work done.

While we agree that the eight golden rules are appropriate, we would like to see one additional Rule, that the status of guidance should be made clear. Some guidance has legal effect, and the courts are obliged or expected to take it into account, while other guidance is advisory only, for example recommending one way in which compliance could be assured though alternative means are also available. In addition, if guidance includes some material that has statutory or legal interpretative status and other material which is not, then this fact should be pointed out at the outset, and the differing types of guidance be easily distinguishable.

We also suggest that further attention should be given to the ways in which government departments or agencies will be encouraged or required to comply. We give some suggestions on this under the appropriate heading below. We also suggest that departments or agencies should be required to comply, or explain the reasons they have not.

Detailed Comments

Golden Rule 4 – Easy to understand

The explanatory text under this Rule should be expanded to note that where guidance is updated or reissued, the extent of the changes should be made clear. Businesses should not be left to search through the alternate versions to identify the changes.

Golden Rules 4 & 5 – Easy to Understand and Reliable

There is a clear tension between these Rules, in that much regulation is very complex. In many cases, guidance cannot be both concise and a stand alone document while also giving business a good and comprehensive understanding of how to comply.

We suggest that the Code should give a clearer message that guidance could be given at more than one level, with a general introduction cross referred to more detailed and authoritative guidance. Even with substantial improvements in the quality of guidance, it is unlikely that there will not be circumstances where the most cost effective recourse of businesses will be to seek external advice on compliance. We suggest that the explanations given to the Rules should emphasise more the need to refer to additional sources of advice (including external advisers) where appropriate.

Golden Rule 6 – Issued in good time

We agree that, where possible, guidance should be issued at least twelve weeks before commencement of the regulations to which they refer. However, the inclusion of the words “where possible” in the explanatory text could provide an excuse for departments or agencies, where shorter timescales are the result of administrative convenience only. On the other hand, we would not like to see the inability to conform to a strict timetable result in departments or agencies from failing to provide guidance at all, where it would be valuable. This is one of the reasons why we recommend a “comply or explain” approach to the Code, to encourage compliance without making it unhelpfully restrictive.

The explanatory text under this Rules refers to the “common commencement dates” of 6th April and 1st October. While we are aware that government policy that these dates should be complied with are broadly followed in respect of certain types of regulation, including employment law and company law, they are less respected in other areas of regulation affecting business, including tax law and regulation and financial services regulation. We suggest that the explanatory text should either be expanded to refer readers to the source of the government policy prescriptions in this area and perhaps give an indicator of where they do or do not apply, or else that the text is removed in order to avoid giving businesses the erroneous impression that this policy is generally applied.

Compliance with Code – Encouragement or enforcement

We note that the Code itself will have the status of a non-statutory Code of Practice, and that government departments and their agencies should follow the Code, unless there are very good reasons not to do so. We suggest that departments and agencies should be required to state in their guidance whether the Code has been followed and if not the reasons for the departure.

The Better Regulation Executive should hold departments to account to ensure that the Code is followed and record and publish a table of departments and their agencies performance in following the Code.

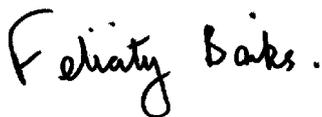
The National Audit Office should continue to monitor business opinion through the *Survey of Business' Perceptions of Regulation* to track whether the Code of Practice and other government Better Regulation initiatives are succeeding in improving businesses' perceptions of their effectiveness.

Drafting Point

The draft Code uses the terms “audience” and “user” in similar contexts and almost interchangeably. We would prefer the term “user” as being a more obvious term for the readers of guidance, as opposed to audiences of visual or auditory productions. If the less obvious term of “audience” is used, it should be explained or defined.

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

Yours sincerely

A handwritten signature in black ink that reads "Felicity Banks." The signature is written in a cursive, slightly slanted style.

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