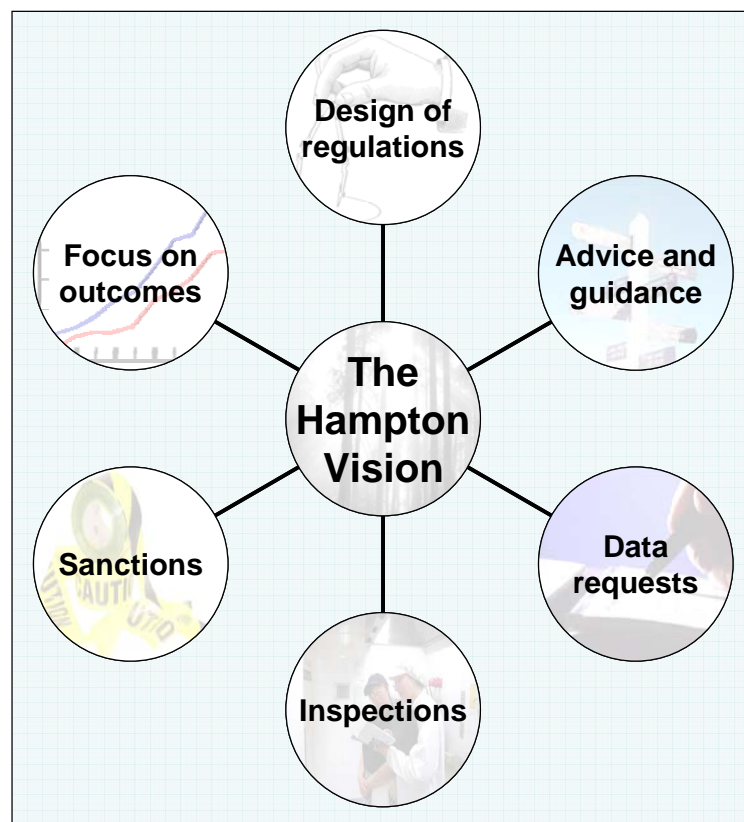


Hampton Implementation Reviews



Guidance for Review Teams
May 2007

Introduction

In the pre-Budget report of November 2006, the Chancellor announced that “the National Audit Office will work with the Better Regulation Executive, regulators and business¹ to develop a process of external review of regulatory performance”. The assessment process will focus on the extent to which regulators are performing in line with the Hampton² principles and Macrory³ characteristics, and will encourage continuous improvement. Five major national regulators will be assessed by the end of 2007 (Health and Safety Executive, Food Standards Agency, Financial Services Authority, Environment Agency and Office of Fair Trading).

The purpose of this programme of ‘Hampton Implementation Reviews’ is to provide regulators with a structured check on performance against the Hampton principles and the Macrory characteristics. The framework should provide regulators and stakeholders⁴ with a clear understanding of how compliance with the Hampton principles will be assessed and should also help each regulator:

- improve the perceptions of those it regulates, where it is performing well;
- increase openness and transparency;
- highlight areas for development; and
- spread good practice in the regulatory community (reviews will be conducted by peers from the community of regulators, working with the NAO and the Better Regulation Executive).

The evidence published in a regulator’s final review report should also help it to build its case for the award of Macrory powers⁵.

This document comprises the guidance for those undertaking the reviews, including the criteria for assessment, and examples of evidence that should be evaluated in reaching judgements. The review methodology is designed to be as flexible as possible, in recognition of the large variety of sizes, structures and functions of the regulators that may be assessed. The ‘principles-based approach’ set out in this guidance allows a large amount of flexibility in the evidence that may be used to demonstrate adherence to Hampton.

The guidance is exactly that: it is not intended to be comprehensive, and neither regulators nor reviewers are expected to identify and analyse compliance with every word in the following pages. The guidance seeks to provide clarity to those involved in the reviews, and other interested parties, about what to look for, and is intended to act as a stimulus to thinking and not as a detailed step-by-step manual.

¹ Throughout this document, the term business is used to cover businesses, charities and voluntary sector organisations, and is used interchangeably with the term regulated entities.

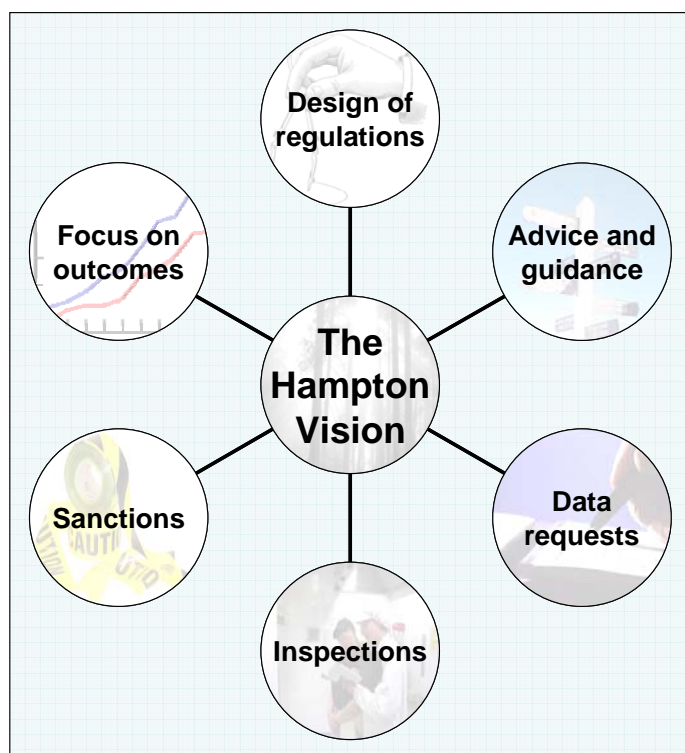
² *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005.

³ *Regulatory Justice: Making Sanctions Effective*, Professor Richard Macrory, November 2006.

⁴ Throughout this document, the term stakeholder is used to cover regulated entities (i.e. businesses, charities and voluntary sector organisations), as well as consumers and other interested parties.

⁵ Professor Macrory’s report recommended that an expanded toolkit of sanctions should only be available to those regulators that are acting in line with Hampton. The Hampton Implementation Reviews will provide only a part of the evidence base that will inform the Government’s decision on the award of Macrory powers, and the National Audit Office will not be involved in advising on, or contributing to, any decision made by Government on such powers.

Review structure



The Hampton Implementation Reviews will take the form of structured case studies of regulators rather than 'tick-box' exercises. This approach will allow review teams to recognise the differences between regulators and give credit for different forms of good practice.

The material that follows will be used by review teams to guide their thinking when conducting reviews. There are six sections on specific subject areas, such as data requests and inspections, as shown at the ends of the 'spokes' in the diagram to the left. Following these sections of guidance is a description of the overarching 'Hampton Vision', and how the review teams should approach this. It includes the cross-cutting themes that run

throughout the Hampton Report: risk-based regulation; transparency and accountability; and economic progress.

The first part of each regulator's published report will comprise narrative and conclusions about the extent to which the regulator is 'living the Hampton Vision'. This material will be based on consideration of the cross-cutting themes, but will also be informed by the performance in the six specific subject areas, the conclusions on which will comprise the second part of the final report. More information on the final report structure can be found at Annex C.

Local authorities carry out inspections and regulation in a number of areas. The reviews will look at regulators' interfaces with local authorities, where relevant. The reviews will also examine how effectively regulators interact with local authorities in relation to issuing guidance, carrying out inspections and taking into account local authorities' local priorities.

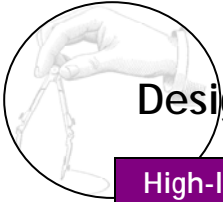
As well as looking at regulators' current performance, the reviews will consider their future plans in relation to the Hampton agenda and look for evidence of systems in place to deliver these plans. The review teams should look at work in progress and not focus solely on completed projects and programmes.

How to use this guidance

The guidance for each of the six specific subject areas (e.g. data requests, inspections) comprises the following sections:

- **High-level questions to guide thinking** - these questions are designed to summarise the area of enquiry and set out the territory that the review teams will be exploring. It is not intended that the review teams provide specific answers to these questions - in practice, each review team will follow its own lines of enquiry that it feels are most appropriate for the regulator under review. The reviews will not be a means of generating answers to specific questions, but rather a means of providing narrative around the approach of the regulator. Annex C provides further information;
- **Explanatory note** - this provides a brief explanation of the subject area, and type of regulatory activity that was encouraged by the Hampton and Macrory reports;
- **Hampton principles / Macrory characteristics from which the subject is derived** - the principles / characteristics that form the foundation of the Government's desired approach to regulatory enforcement and sanctions;
- **Hampton-like symptoms and non-Hampton-like symptoms** - the Hampton-like symptoms are indicators / signs of good performance for which the review teams may choose to search. It is not expected that each organisation should display every symptom. Indeed, some symptoms may not be relevant, or significant, for a particular organisation, and the review team may find other symptoms that are not on the lists.
- **Evidence that the review team may wish to consider** - this section sets out the pieces of evidence, or evidence gathering processes, that may be used to search for the symptoms of Hampton-like regulatory activity. Again, it is not expected that review teams will use all of the listed items / processes, and teams may also find and use valuable evidence sources that are not on the list. More detail on the review methodologies for evidence gathering, and review team activities, can be found at Annex B.

The Hampton Vision section of the guidance, which follows the descriptions of the six specific subject areas, comprises descriptions of the broad themes that run throughout the Hampton and Macrory reports: risk-based regulation; transparency and accountability; and economic progress. Each review team should consider the overall performance of the regulator in the six specific subject areas, and comment on these in the context of these cross-cutting themes. The team should consider how their judgements in the six sections combine to give an overarching impression of the organisation's approach to its regulatory activity - i.e. to what extent the regulator is compliant with the Hampton Vision. The review team's judgements should take into account the nature of the regulator's statutory duties, regulatory activities and strategic role, and be informed by discussion with senior officials in the regulator. The judgements should also take into account the regulator's 'direction of travel', including future plans for further implementation of schemes in line with the Hampton principles and Macrory characteristics.



Design of regulations

High-level questions to guide thinking

- Are regulations necessary, easily enforceable and proportionate?
- Does the regulator review and monitor the effectiveness of regulations, in terms of achieving regulatory outcomes, and amend regulations in response to this feedback?
- Are the regulator's design processes transparent, allowing for adequate consultation and feedback from stakeholders, including consumers and those regulated?
- Does the regulator tend to consider a range of regulatory approaches?

Explanatory note

While much regulation derives from legislation, many regulators have powers to make rules and regulations themselves. Having well-designed and effective regulations to enforce is key to delivering regulatory outcomes, and helps to reduce unnecessary burdens on business, the third sector and other regulated entities.

A regulator should use cost-benefit analysis to calculate the benefits of regulatory intervention (derived from improved regulatory outcomes) and determine whether these justify the costs (enforcement costs, burdens on regulated entities, etc.).

Regulators should ensure that regulations are as appropriate, effective, clear, easy to understand, and easy to enforce as possible. In order to ensure this, inspectors, regulatory staff and those who are affected by regulations should be consulted. The way in which regulations are created should be transparent and open to scrutiny.

Regulators should consider at the design stage how regulations will be enforced. In general:

- they should design regulations that can be monitored and enforced using existing forms, systems, inspections or penalty regimes, subject to data protection considerations, and should therefore ensure they consult with any other relevant regulators;
- they should consider whether goal-based regulation is preferable to prescriptive regulation in the situation under review; and
- timetables for implementing new regulations should take account of when the regulator will be able to provide guidance to business on how to comply with them.

When designing regulations, regulators should seek to understand resource implications for local authorities, if appropriate.

Where regulations are designed by a sponsor department, the regulator should, where possible, be involved in the design at the earliest stage. Where regulations are driven by EU directives, the regulator should engage in any consultation process and help to ensure that it is adequately publicised in the UK so that other interested parties have the opportunity to comment. The regulator should only make additional requirements at national level where justified by the regulator's statutory objectives. Regulators should minimise any overlap between existing legislation in force in the UK and any new EU-sourced regulation.

Regulators should constantly review the efficiency and effectiveness of their regulations, in order to determine whether the desired improvements in regulatory outcomes are being realised and if these benefits still justify the costs of intervention.

Hampton principles from which subject is derived

- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Hampton-like symptoms

- Regulations / regulatory regimes are proportionate and not unnecessarily burdensome (they are justified by robust cost-benefit analysis)
- Regulation has a clearly-defined purpose, in terms of achieving regulatory outcomes
- The regulator considers possible unintended consequences of a proposed regulation
- The regulator engages and co-ordinates with other regulators operating in the same sector
- Where regulations are not designed by the regulator, the regulator uses all means available to shape the regulation
- Where appropriate, regulations build on existing standards and standard-setting mechanisms
- The regulator considers any possible disproportionate impacts (e.g. on SMEs) of the regulation
- The regulator considers the cost burdens of implementation and enforcement when developing new regulations across all sizes of business
- The time allowed for consultation is proportionate to the complexity of the regulations
- The regulator makes efforts to reach those who find it difficult to participate in consultation exercises
- Consultation has a demonstrable impact on the design of the regulation
- The regulator provides feedback on the outcome of consultation exercises, to those who took part
- The regulator reviews the effectiveness of regulations
- Non-traditional approaches to enforcement are considered and adopted where appropriate
- Regulatory impact assessments are carried out to design regulations that are easier to enforce and easier to understand

Non-Hampton-like symptoms

- Uncertainty is created by lack of clarity about the objectives or status of regulations
- Stakeholders' views are unknown or largely ignored
- Stakeholders are not given adequate time to respond to consultation
- Enforcement staff, including local authorities, are not consulted
- Businesses are not informed of changes to implementation dates
- Regulations are not clearly worded and/or use jargon
- Implementation is not accompanied by on-going advice
- Licensing regimes are unnecessarily complicated or burdensome

Evidence that the review team may wish to consider

- Review of a selection of recently developed regulations and, where appropriate, initiatives currently in development
- Review of cost-benefit analyses undertaken by the regulator in developing regulations, including regulatory impact assessments
- Examination of a selection of consultation documents
- Examination of a selection of consultation responses, and how they were dealt with by the regulator
- Evaluation studies and surveys already undertaken by the regulator
- Internal guidance for staff and guidance for local authorities
- Review of quality control in policy / regulation development processes
- Interviews and focus groups with representatives of regulated entities to understand:
 - the extent to which they felt involved in the development of regulation;
 - the views of businesses regarding the effectiveness of publicity and clarity of drafting; and
 - whether businesses consider regulation is proportionate
- Interviews and focus groups with policy officials to understand:
 - the process of developing policy and regulation within the organisation; and
 - the extent and quality of consultation with stakeholders
- Interviews and focus groups with enforcement staff, including inspectors, to understand:
 - the extent and quality of consultation with enforcement staff; and
 - views of local authority enforcers, where appropriate



Advice and guidance to business on regulations

High-level questions to guide thinking

- Does the regulator put enough emphasis on providing advice and guidance in order to secure compliance?
- Is advice and guidance clear, concise and accessible in appropriate formats?
- Does the regulator judge the effectiveness of its advice and guidance by monitoring business awareness and understanding of regulations?
- Do the businesses who make use of advice and guidance find it easy to understand?
- Is advice and guidance given in time when new regulations are introduced?

Explanatory note

Effective advice and guidance reduce the risk of non-compliance. The easier the advice and guidance are to access, and the more specific the advice is to the business, the more the risk of non-compliance is reduced. Poor or inaccessible advice and guidance may increase the time spent by businesses understanding regulations. Effective advice and guidance can therefore reduce the administrative burden on business whilst increasing levels of compliance.

Businesses may be reluctant to ask regulators for advice because they do not want to admit that they do not know how to comply and/or may not be compliant. Therefore, within reason, businesses should be able to access advice without fear of enforcement action.

Regulators should ensure information is easily available to businesses on their obligations, to enable them to find out quickly which regulations apply to them and what those regulations require them to do. This guidance should be:

- accurate;
- easy to understand;
- comprehensive;
- timely; and
- regularly reviewed and updated in light of feedback.

Where regulators make a charge for more detailed advice, they should ensure that this does not prevent businesses gaining free or low-cost access to the basic guidance on what their obligations are.

In addition, those who draft advice and guidance should seek input from inspectors and interested parties such as trade bodies who deal with businesses face to face, and from businesses that have to use the advice. In addition, feedback should be sought from local authorities, where appropriate.

Regulators should provide clarity about the status and objectives of advice and guidance, i.e. whether it is statutory or non-statutory.

Hampton principle from which subject is derived

- Regulators should provide authoritative, accessible advice easily and cheaply

Hampton-like symptoms

- Advice and guidance are available in a range of formats, as appropriate - e.g. the regulator's website (as well as a local authority website if appropriate), leaflets, helplines
- Advice and guidance are accessible and accessed - high-levels of market penetration are achieved
- The majority of businesses benefit from advice and guidance
- The regulator is aware of businesses' preferred information sources (e.g. direct from each regulator, from trade associations, from the Small Business Service) and a strategy for disseminating / marketing guidance which takes into account these preferences is in place
- The marketing strategy is regularly reviewed and updated in light of feedback from business and take-up of advice provision
- Regulators consult with business, inspection teams and others (for example trade associations) on existing guidance and when developing new guidance, to ensure that it is easy to understand and comprehensive (The level of consultation is proportionate to the importance of the regulation / the scale of the change)
- There is clarity about the status of guidance, i.e. whether it is statutory or non-statutory
- Advice and guidance materials are written in plain English
- Guidance includes illustrative examples
- Advice services address the full range of business requirements; where appropriate, advice is tailored to the needs of SMEs, large business, particular sectors etc
- The regulator provides firm-specific advice (advice tailored to the needs and capabilities of a particular firm), where appropriate and cost-effective
- Where the regulator makes a charge for advice, it has taken into account the cost of providing this service, the savings to business in compliance costs, and the ability of business to pay (either up front or in instalments)
- With new regulation, guidance is issued at least 3 months⁶ prior to implementation, except where statutory or other mandatory external requirements (e.g. European law) prevent this approach
- Feedback is regularly sought from industry (where possible) and the information is used to determine the impact of advice / guidance and to update materials
- Inspections include appropriate levels of advice
- Appropriate resources are focused on the provision of advice and guidance

⁶ This time period is drawn from guidance issued by the Small Business Service (*GUIDANCE ON IMPLEMENTATION PERIODS - Timing of the Issue of Guidance to Business on Compliance with New Legislation*, November 2000) in response to a recommendation made by the Better Regulation Task Force.

Non-Hampton-like symptoms

- The regulator does not consult when writing advice and guidance
- Guidance is inaccurate / out of date
- Guidance is not updated regularly
- Advice and guidance are not comprehensive
- Advice and guidance are unnecessarily prescriptive
- Guidance is produced as regulations are implemented or not at all (i.e. too late for the needs of businesses and others)
- Advice and guidance are not written in plain English or available in an accessible format
- There is no or little access to informal advice for businesses
- Too much information is available without structure
- Advice and guidance are only available through one medium
- There is no dialogue between the regulator and businesses

Evidence that the review team may wish to consider

- Review of written guidance to assess quality and clarity (examples already in the public domain and those under development)
- Review of the regulator's website to consider the accessibility of advice and guidance
- Strategy documents which allocate resources to the development and maintenance of high-quality advice and guidance
- Evaluation studies / surveys on the impact, quality and accessibility of advice and guidance, already undertaken by the regulator
- Review of quality control in advice / guidance development processes
- Interviews and focus groups with business representatives to understand:
 - the extent to which they felt involved in the development of guidance;
 - the views of businesses regarding the effectiveness of publicity and clarity of guidance; and
 - whether businesses understand the purpose of regulation
- Interviews and focus groups with policy officials to understand:
 - the process of developing guidance within the organisation; and
 - the extent and quality of consultation with stakeholders
- Interviews and focus groups with enforcement staff to understand:
 - views of enforcement staff on advice and guidance;
 - the extent and quality of consultation with enforcement staff;
 - views of local authority enforcers, where appropriate; and
 - whether advice is given as part of inspection



Data requests

High-level questions to guide thinking

- Is there a clear purpose for information that is collected?
- Are processes in place to make it as easy as possible for businesses to complete forms?
- Has data-sharing with other organisations been explored?
- Has the organisation made use of IT to streamline data-submission processes?

Explanatory note

Forms are an integral part of a risk-based compliance regime. However, data collection imposes administrative burdens on regulated entities, and these burdens may be felt particularly heavily by small businesses.

Cost-benefit analysis can be used to balance the benefits of information collection with the burdens imposed on businesses. Regulators should minimise costs to businesses through:

- varying data requests according to risk, so that lower-risk firms and industries should not have to submit as much information on their work as higher-risk firms and industries;
- minimising the frequency of data collection;
- obtaining data from other sources, such as other government organisations, subject to data protection considerations;
- encouraging electronic submission where appropriate; and
- requesting only information that is necessary for securing regulatory outcomes.

Regulators should not request information from businesses unless there is a legitimate need for it in relation to:

- monitoring compliance;
- measuring outcomes; or
- updating the risk model.

If two or more regulators require the same information from the same businesses, they should seek to share data to avoid duplication of collection, taking into consideration data protection laws.

Regulators should consult businesses on data requirements and form design, and should act on business feedback after a form has been introduced.

Hampton principle from which subject is derived

- Businesses should not have to give unnecessary information, nor give the same piece of information twice

Hampton-like symptoms

- Businesses are aware of the purpose(s) for which the regulator collects data
- The regulator seeks to address any legislative constraints regarding the sharing of information between regulators, e.g. data protection laws
- The regulator shows optimum levels of data-sharing with other organisations through established gateways, with processes in place to determine whether data are held elsewhere
- Forms are a last resort used when information is not available from existing sources
- The process for design of forms and data collection is based on cost-benefit analysis, internal challenge (e.g. a gatekeeper) and consultation with businesses
- Forms / data requests are clear and targeted and risk-assessment is used to determine the level of information required
- Businesses are asked to update information as infrequently as possible
- Forms include a short feedback section with suggestions for improvement
- There is high take-up of e-enabled submission systems (user-friendly, pre-populated, intelligent e-forms)
- The regulator provides alternative methods for businesses to provide data, including contact centres, etc
- Forms include clear information / guidance notes on completion where appropriate, and give contact details should further advice be needed
- Timetables for completing forms take into account all requests for information that a regulated body is dealing with, including requests from other regulators
- Forms and data requests are regularly reviewed, with feedback sought from businesses

Non-Hampton-like symptoms

- The relevance of the data requested to improving compliance is not clear
- Forms are complicated, long and difficult to navigate
- There is duplication of data requests in the regulator's forms
- There are no central processes for design and approval of data requests
- Data requests are not targeted using risk-assessment
- The regulator does not consider data-sharing in many cases or has not explored ways to facilitate data-sharing
- Non-essential information is requested from businesses
- The regulator makes limited use of IT solutions in data-collection and provides few alternatives to paper forms

Evidence that the review team may wish to consider

- Review of a selection of forms (examples already in the public domain and, where appropriate, those under development)
- Review of the regulator's website to consider the extent to which businesses can interact online
- Analysis of forms against criteria set out in the NAO's *Difficult Forms* guidance
- Data quality checks, completion error rates, complaints register, and other existing forms statistics
- Consideration of recent reviews (post-implementation) and form-filling initiatives
- Any published principles or guidance for data collection
- Register of forms and document control processes, including central gatekeeper role
- Review of quality control in forms development processes
- Examples of data-sharing initiatives and legal frameworks in place (e.g. memoranda of understanding)
- Ratio of e-enabled data collection to manual completion / paper-based forms
- Interviews and focus groups with business representatives to understand:
 - the views of businesses regarding forms; and
 - how burdensome / intrusive businesses find forms
- Interviews and focus groups with policy officials to understand:
 - how forms and data requests are developed; and
 - whether and how an assessment of risk features in how data collection is applied
- Interviews and focus groups with enforcement staff to understand their views regarding the quality of forms



Inspections

High-level questions to guide thinking

- Do regulators have a good knowledge of which areas are high risk, and do they use this knowledge to inform their inspection targeting?
- Are the risk-assessment process and inspection methodologies transparent?
- Are inspections carried out in a manner that minimises the impact on business (including joint inspections with or on behalf of other regulators where appropriate)?
- Do regulators notify businesses in advance of an inspection, where appropriate, and provide information to help businesses to meet their obligations?
- Do inspections lead to effective identification / eradication of compliance problems?

Explanatory note

Inspections are an important element of the regulatory enforcement toolkit, and sometimes the best means of ensuring regulatory compliance. However, regular inspections can be burdensome for regulated entities. Inspections should therefore be focused on identifying and addressing persistent breaches of regulation and aimed at improving compliance. They should be justified and targeted on the basis of an assessment of risk. Planned inspection programmes should include a small element of random inspection in order to test the risk-assessment model.

Risk assessment is an essential means of directing resources appropriately towards where they can have maximum beneficial impact. In undertaking risk assessment, regulators should give explicit consideration to the potential impact and likelihood of non-compliance with regulation.

As such, regulators may choose to take into account:

- the nature of a business;
- systems for managing risk; and
- past performance

amongst other factors.

The regulator should consider the extent to which they should encourage the use of self-policing by the industry to alert them to possible breaches.

Where two or more regulators undertake planned inspections of the same businesses, they should seek to minimise the burdens, e.g. through joint or co-ordinated inspections.

Hampton principle from which subject is derived

- No inspection should take place without a reason

Hampton-like symptoms

- The regulator focuses its greatest inspection effort on businesses where risk assessment shows that both:
 - there is a likelihood of non-compliance by businesses; and
 - the potential impact of non-compliance is high
- Inspections are targeted on high-risk areas of operation
- Low-risk (low-impact / low-likelihood) businesses are not typically inspected
- Compliance records / good performance are taken into account, with good performers visited less frequently
- Inspectors are adequately trained in order to undertake inspection effectively
- Training and guidance for inspectors encourages a proportionate approach to inspection
- The regulator provides feedback to inspected businesses
- The principles of risk-assessment models are published, where appropriate
- Inspectors provide advice to businesses
- Opportunities for joint or co-ordinated inspections with other regulators are explored
- The regulator shares information on businesses with other regulators, where appropriate and subject to data protection considerations
- Where appropriate the regulator makes use of information from other regulators on a business's past performance, to inform risk assessment
- There is good communication between inspectors and the people organising the inspection timetable to inform risk assessment and inspection policy

Non-Hampton-like symptoms

- There is no explicit consideration of risk - no risk assessment methodology is in place to determine who is inspected
- Guidance to local authority enforcers encourages a non-risk-based approach
- A significant proportion of inspections are undertaken on a random or routine basis
- Inspections duplicate or overlap with those of other regulators
- Businesses do not know what inspectors require of them
- Business do not understand why they are inspected
- Significant numbers of low-risk businesses are inspected
- Inspections are unnecessarily long, burdensome or 'heavy-handed'
- Businesses tend to feel resentful or unfairly treated as a result of inspections

Evidence that the review team may wish to consider

- Review of the regulator's website to consider any published enforcement strategies or policies and risk assessment models
- Inspection strategies / policies for future implementation
- Analysis of internal inspections guidance and training documents
- Evaluation studies and surveys already undertaken by the regulator
- Analysis of any existing inspection / enforcement statistics, for example prevalence of particular types of non-compliance
- Interviews and focus groups with business representatives to understand:
 - the views of businesses regarding inspection (including those recently inspected);
 - how helpful businesses find inspections; and
 - how burdensome / intrusive business find inspections
- Interviews and focus groups with policy officials to understand:
 - how relevant risk-assessment models are created, validated and updated, and how they operate in practice; and
 - the rationale underpinning the distribution of inspections
- Interviews and focus groups with enforcement staff to understand:
 - views of enforcement staff towards the risk model, and their involvement in its development;
 - views of enforcement staff towards inspection;
 - the use made of advice during inspection;
 - the overall approach taken by inspectors, including consideration of the impact inspections have on the business; and
 - views of local authority enforcers, where appropriate



Sanctions

High-level questions to guide thinking

- Are the regulator's sanctioning options flexible enough to handle different levels of non-compliance?
- Does the regulator make use of a range of alternatives, including advice to businesses to encourage compliance, before resorting to sanctions?
- Does the regulator make effective use of tools to punish persistent offenders?
- Is the regulator's enforcement approach linked to its priorities and objectives?
- Do businesses face an effective deterrent to illegal activity?
- Are data on the application and outcome of sanctioning actions used to identify persistent offenders and fed into the risk-assessment process?

Explanatory note

Sanctioning policies should aim to increase levels of compliance.

Where possible, the regulator should offer positive incentives, such as increased freedom from inspection, to businesses in order to encourage compliance. Where appropriate, it should take action that allows time for businesses to become compliant.

However the penalty regime should act as an effective deterrent to those contemplating illegal activity. Penalties should, as far as possible, be proportionate to both the seriousness of the breach and the commercial gain resulting from it.

Regulators should identify repeat offenders and take appropriate action against them.

Information from penalty actions should inform risk-assessment.

Hampton principle and Macrory characteristics from which subject is derived

- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should be transparent in the way in which they apply and determine administrative penalties
- Regulators should avoid perverse incentives that might influence the choice of sanctioning response
- Regulators should follow-up enforcement actions where appropriate

Hampton- / Macrory-like symptoms

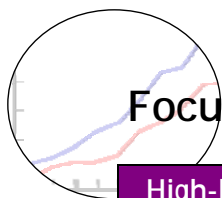
- Where appropriate, businesses are given the time to comply
- Where appropriate, businesses are given the opportunity to respond to and suggest alternatives to proposed enforcement action (other than in urgent cases)
- The regulator's enforcement policy is easily available, easy to understand (in plain English) and well signposted / disseminated
- Enforcement actions are proportionate to the seriousness or persistence of, and potential commercial gain from, the compliance breach
- Alternatives to formal sanctions are considered on a risk basis
- Enforcement actions are followed up to ensure business knows what is expected of it and to establish the desired change in behaviour
- Procedures are in place to monitor the effectiveness of the enforcement regime
- Regular offenders are identified quickly
- Sanctions are able to effectively discriminate between the organisation and the individual that has caused the transgression
- Businesses understand why enforcement actions occur
- Regular evaluation of the outcomes of the sanctioning process provides assurance that enforcement policies are being applied consistently and that changes are being achieved in the behaviour of the regulated
- The regulator shares sanctions intelligence and best practice with peers
- The regulator seeks feedback (including post-prosecution feedback) from stakeholders on its sanctioning regime
- Appropriate training is provided to front-line staff to ensure that the enforcement policy is delivered consistently 'on the ground'
- There is transparency in the disciplinary decision-making process
- Where appropriate, compensation is obtained for those who have suffered loss
- Appropriate information about completed enforcement actions is shared with relevant stakeholders, including consumers, fellow enforcers and businesses

Non-Hampton- / Macrory-like symptoms

- Sanctioning policies are not published / not transparent
- Businesses do not understand the purposes of sanctions
- Enforcement actions are not followed up
- Penalties are not proportionate to the seriousness or persistence of the compliance breach
- Businesses typically choose to 'take the hit' and continue not complying
- The regulator has little evidence of the effectiveness of its sanctioning regime (outcomes are not measured)
- Little evidence exists of sanctions changing behaviour
- Regulatory actions of front-line staff are often not in line with the stated enforcement policy (there are frequent inconsistent approaches in handling similar types of regulatory breaches)
- Sanctioning regimes create unintended consequences

Evidence that the review team may wish to consider

- Review of the regulator's website to consider any published enforcement / sanctioning strategies or policies and risk-assessment models. This could include:
 - any code(s) of practice;
 - enforcement policy;
 - framework agreements; and
 - operational guidance for inspector staff
- Sanctioning strategies / policies for future implementation
- Consideration of information and statistics on the number of breaches / enforcement actions and whether such information is published
- Consideration of the number of sanctions subjected to legal challenge, and the success rate of such challenges
- Evaluation studies and surveys already undertaken by the regulator
- Interviews and focus groups with business representatives to understand their views regarding the regulator's approach to sanctioning
- Interviews and focus groups with policy officials to understand:
 - policies and strategies on enforcement; and
 - the powers that the regulator currently has
- Interviews and focus groups with enforcement staff to understand:
 - inspectors' approach to sanctioning, including the extent to which alternatives, such as advice, are used and encouraged; and
 - inspectors' attitudes to sanctioning, including whether enforcers feel they are able to take the right approach
- Interviews with consumer groups / customers (of regulated businesses) / other stakeholders



Focus on outcomes

High-level questions to guide thinking

- Does the regulator have a clear sense of purpose, in terms of why it exists and the outcomes it is trying to achieve?
- Does the organisation articulate its desired outcomes publicly?
- Are targets and performance measures focused on achieving measurable outcomes?
- Is the organisation's performance transparent? Can stakeholders easily access information on performance against outcomes?
- Does performance measurement feed back into other areas of the regulator's work?

Explanatory note

The existence of effective performance measures is an important factor in delivering outcomes and is key to enhancing transparency and accountability.

Whilst it may be appropriate to measure some processes, activities and outputs, regulators' performance should be measured in terms of the achievement of regulatory outcomes (e.g. reduction in harm), as far as possible. Having outcome-focused measures and targets helps to ensure that:

- staff understand the organisation's goals and their individual contributions towards those goals, rather than being focused on outputs or processes;
- unintended effects and perverse incentives are minimised;
- external factors, often outside the direct control of the organisation, are taken into account;
- innovation is encouraged - unconstrained by process or output targets, front-line enforcement staff are provided with the flexibility to decide how best to achieve outcomes; and
- stakeholders understand why a regulator exists and what is ultimately being achieved.

Regulators should publish their performance against their desired outcomes and, where possible, information on the costs being imposed through regulatory enforcement and stakeholders' perceptions of the regulator.

Hampton principle and Macrory characteristic from which subject is derived

- Regulators should measure outcomes not just outputs
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take

Hampton- / Macrory-like symptoms

- The regulator has clear outcome-focused objectives and targets which are understood throughout the organisation and relate to its statutory objectives / overall aim
- The regulator publishes performance on its achievement of regulatory outcomes, the cost to regulated entities, and business / stakeholder perceptions of the efficiency and effectiveness of regulation
- Performance information is easily accessed and understood by stakeholders
- The purpose of regulatory activities is understood by staff and stakeholders
- Regulatory activity can be linked to the achievement of outcomes
- Staff have a clear understanding of the outcomes being sought
- Responsibility for the achievement of outcomes is clearly cascaded within the organisation
- Staff objectives reflect the desired outcomes of the organisation
- The regulator uses a mix of output and outcome measures, as appropriate
- The regulator publishes commentary on the robustness of its performance data
- The regulator sets itself an internal efficiency target and publishes performance against it annually
- Targets and objectives are 'SMART'
- The regulator uses an appropriate mix of short-term and long-term measures
- Performance indicators are integrated with planning and resource allocation systems
- Performance information is used to inform the regulatory approach
- The regulator monitors the potential for unintended consequences

Non-Hampton- / Macrory-like symptoms

- No or insufficient outcome-focused measures exist
- Performance measures drive inappropriate behaviour / unintended consequences - e.g. a focus on delivering inspections / other processes - or encourages 'gaming'
- There are too many targets - leading to a lack of focus on regulatory outcomes
- The regulator's targets and guidance incentivise local authorities to deliver unnecessary outputs and constrain local flexibility
- Outcome measures are not communicated throughout the organisation, including to front-line enforcers
- Performance is not prominently published
- Targets and measures do not give a sense of how the regulator is performing against desired outcomes
- Measurement is not robust and not caveated where appropriate
- Staff are not 'bought in' or consulted and do not agree with or relate to performance measures

Evidence that the review team may wish to consider

- Analysis of the annual report and the regulator's website in order to understand the extent to which the organisation's outcomes are understood and articulated
- Analysis of internal and external strategic plans and business plans to see how they feed into achievement of outcomes
- Analysis of high-level objectives, performance indicators and targets, to consider:
 - how prominently they are published;
 - how outcome-focused they are;
 - how relevant they are;
 - whether they cover regulatory outcomes, costs to stakeholders and perception;
 - whether indicators provide a reasonable picture of what is being achieved and how the regulator is performing; and
 - whether indicators and data are used to revise and improve regulatory approach (i.e. feedback loops in place)
- Analysis of future performance measurement strategies
- Review of quality control in performance measurement processes
- Interviews and focus groups with business representatives to understand whether businesses appreciate what the regulator is trying to achieve
- Interviews and focus groups with policy officials to understand:
 - officials' understanding of outcomes being sought;
 - the internal accountability mechanisms in existence;
 - how performance measures have been arrived at; and
 - any particular difficulties concerning performance measurement
- Interviews and focus groups with enforcement staff to understand:
 - inspectors' views of targets and performance measures;
 - inspectors' understanding of the outcomes being sought;
 - how performance measures drive behaviour 'on the ground'; and
 - views of local authority enforcers, where appropriate

The Hampton Vision

The review team should use the following descriptions of the cross-cutting themes and bring out relevant evidence from the assessments of the six subject areas in order to provide overall conclusions on the overarching approach of the organisation to its regulatory activity. The review team should use its assessments of the six subject areas to make judgements on the following three cross-cutting themes from the Hampton and Macrory reports: risk-based regulation; transparency and accountability; and economic progress. These conclusions should be supported by high-level narrative that takes into account the nature of the regulator's statutory duties, regulatory activities and strategic role.

In drawing together the overall narrative, the review team may wish to consider the direction of travel of the organisation, taking into account future plans as well as the situation at the time of the review.

In this way the review team should be able to assess the extent to which the regulator is carrying out its work in the "spirit" of Hampton.

Risk-based regulation

Hampton principle

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most

The review team should consider the extent to which the regulator is risk-based in its approach to regulatory activity and resource distribution.

The fundamental principle of risk assessment is that scarce resources should not be used to inspect or request data from businesses that are low-risk. As such, risk assessment is an essential means of directing regulatory resources where they can have maximum impact on outcomes. A risk-based approach provides the most efficient use of resources and provides protection for the consumer, whilst minimising burdens on compliant businesses.

Comprehensive risk assessment should inform all aspects of the regulatory lifecycle, from selection and development of appropriate regulatory and policy instruments, through to the regulator's work including data collection, inspection and prosecution.

Undertaking risk assessment makes regulators take account of the nature of businesses and the external factors affecting risk. On the basis of this information, regulators can direct resources where they are most effective. They can cease unnecessary inspections or data requests for low-risk businesses, identify businesses that need more inspection, and release resources to improve broader advice services.

Hampton states that risk assessment should:

- be open to scrutiny;
- be balanced in including past performance as well as potential future risk;
- use all available good quality data;
- be implemented uniformly and impartially;
- be expressed simply, preferably mathematically;
- be dynamic, not static;

- be carried through into funding decisions;
- incorporate deterrent effects; and
- always include a small element of random inspection.

Transparency and accountability

Hampton principle and Macrory characteristics

- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should publish an enforcement policy
- Regulators should justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament
- Regulators should enforce in a transparent manner

The review team should consider the extent to which the regulator is transparent and accountable in its enforcement activity.

The Hampton Report stated that the monitoring of regulatory performance against set standards, including the Hampton principles, would make regulators accountable for the way in which they carry out their work. The Report recommended that the National Audit Office and the Better Regulation Executive have a role in this monitoring work, leading to the initiation of Hampton Implementation Reviews.

Regulators can take several steps to help stakeholders scrutinise their ongoing regulatory activities and adherence to the Hampton principles and Macrory characteristics. Measuring outcomes enables regulators and the public to know what impact enforcement activities are having, and whether these have improved compliance, or remedied the harm caused by regulatory non-compliance. Reporting on these measures, through existing channels to stakeholders or Parliament, lets the regulated community and the public know what activities regulators are engaged in. It also provides an indication of the effectiveness of regulators in discharging their statutory duties, thereby holding them to account.

Each regulator should publish an enforcement policy. Published enforcement policies improve transparency and the accountability of regulators by signalling to business and society the kind of responses and standards they can expect from regulators in dealing with non-compliance. Published enforcement policies also show that regulators use their sanctioning powers in a proportionate and risk-based way. Regulators should justify their choice of sanctioning actions year on year to stakeholders, Ministers and Parliament. This does not just provide protection for legitimate businesses, but increases public and private sector confidence and understanding in the way regulatory non-compliance is dealt with. Regulators should also disclose to key stakeholders and the wider public when and against whom enforcement action has been taken.

Economic progress

Hampton principle

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection

The review team should consider the extent to which the regulator balances achievement of its desired regulatory outcomes with encouragement of economic progress, within the context of its statutory duties.

The Hampton principles are designed to promote efficient and effective approaches to regulatory activity that improve regulatory outcomes without imposing unnecessary burdens on business, the third sector and other regulated entities.

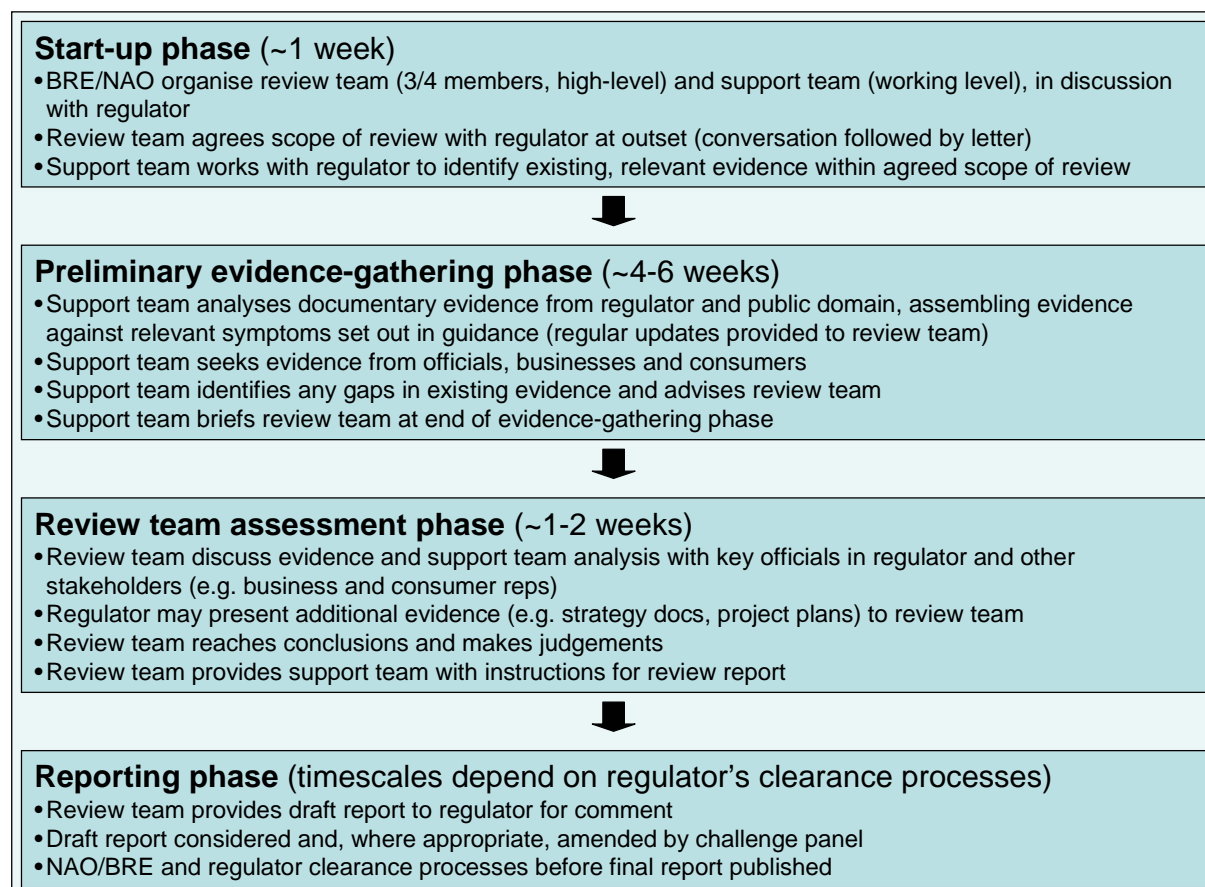
A regulator therefore needs to consider the impact that intervention to achieve regulatory outcomes may have on economic progress – regulation that imposes unnecessary burdens can stifle enterprise and undermine the economy. The benefits to society of any intervention should justify the costs imposed on businesses.

While a regulator should have regard to economic progress, it must do so within the context of its statutory duties, priorities, roles and powers, as defined by government. In some areas of its responsibility, a regulator may not have the flexibility to adopt a regulatory approach that is in line with Hampton due to legal requirements beyond its control, for example EU law or primary legislation. The role of a regulator's sponsor department is also crucial in setting the context within which the regulator operates.

Adherence to the Hampton principles does not detract from a regulator's responsibility to deliver the desired regulatory outcomes. Each regulator should, however, attempt to balance these responsibilities with an understanding of the burdens it imposes, as far as is possible.

Annex A – review process

The proposed timeline and overarching process for Hampton Implementation Reviews is set out below. The duration of each phase is indicative and, following the initial review of the Health and Safety Executive, may vary for subsequent reviews depending on the size and complexity of the regulator and review.



Follow-up

Hampton Implementation Reviews are designed to be 'one-off' assessments of the degree to which regulators are adhering to the Hampton principles and Macrory characteristics. The NAO and the Better Regulation Executive do not currently anticipate repeating the process with regulators, although consideration may be given to the possible merits of repeating the exercise in some form at some point in the future.

Following completion of a review, there may be circumstances where a review team recommends some kind of follow-up after publication of the final report. In this situation the regulator would be given the opportunity to improve, and if more action is then required the following options may be considered:

- **monitoring and publication of specified metrics** - the review team may identify existing metrics / outcome measures that interested parties could check to monitor progress on further Hampton implementation by the organisation. The review team will only suggest creation of new metrics if a significant gap is found in the existing measures;

- **future self-assessment** - the review team may recommend that the organisation publish a self-assessment against the framework after further Hampton implementation work has been completed;
- **short update / refresher reviews** - the review team may recommend that the organisation be externally reviewed again at some point in the future. It is likely that any such update reviews would be short and focussed on specific areas of activity, for example, where the review team has particular concerns;
- **repeat full review** - the review team may recommend that the organisation undergo another full external Hampton Implementation Review at some point in the future; or
- **consideration of future value for money study by the NAO** - this is only likely where a review team has many serious concerns about progress in the organisation.

Annex B - review methodology

Support team activities

For a period of around eight to ten weeks, a support team will operate off-site. The team's main objectives will be to:

- provide the review team with preliminary evidence and analysis;
- suggest areas where the review team may wish to focus their efforts;
- ensure the review team's time is maximised; and
- support the review team in drafting the final report.

The preliminary evidence-gathering and analysis phase of the review will make up a substantial element of the support team's work. As part of this, the regulator will nominate a lead contact to work with support team members, in order that they may have access to relevant documents held by the regulator.

A key function of the team will be to access the regulator's website and provide the review team with an analysis of the following, where they exist:

- corporate plans;
- annual reports;
- performance reports;
- strategy documents;
- risk-assessment model; and
- enforcement policies, procedures, rules and guidance.

The support team will also provide the review team with contextual information regarding the scope of the regulator's activity, in order that the review team's efforts can be appropriately focussed. For example regulators will have different relationships with their sponsor departments, leading to variations in their powers and responsibilities; the strength of the interface between regulators and local authorities will also vary.

The regulator may wish to provide other relevant external documents that are not accessible through the organisation's website. The contact in the regulator should also provide relevant internal documents. These may include:

- internal performance reports;
- internal / directorate and team business plans;
- board meeting minutes;
- internal statistics and management information; and
- communications with local authorities.

The support team will also be in place to organise the schedule of meetings, focus groups, visits and interviews for the review team to attend. In so doing, the support team will work closely with the relevant contact in the regulator. However, the team will look to guard against selection bias by exercising its own judgement regarding who is visited and interviewed.

Part of the support team's role will include the facilitation of focus group meetings and attending interviews and front-line visits with review team members.

Review team activities

The review team will ultimately be responsible for the analysis and findings generated by the review. The review team's activities may include:

- undertaking interviews with key people in the organisation;
- undertaking interviews with stakeholders, including the regulated;
- attending and overseeing focus groups with stakeholders and officials, as appropriate;
- undertaking visits and witnessing the work of inspectors and enforcement staff; and
- liaising closely with the support team in the drafting of the report.

It is likely that the review team will attend key internal and external meetings, where appropriate. These may include:

- board meeting;
- other management or directorate meetings; and
- stakeholder group meetings.

In order to understand the nature of the organisation, its culture, objectives, processes and the overall context in which it operates, the review team will conduct interviews with key members of staff. These may include:

- Chief Executive;
- board member(s);
- other policy officials; and
- front-line enforcement staff.

Interviews will also take place between review team members and business stakeholders, including those who have had recent dealings with the regulator – for example, those recently inspected.

In order to gauge opinion on the extent to which the regulator is taking an approach in line with the Hampton Report, focus groups will take place with:

- policy officials;
- front-line enforcement staff;
- stakeholders, including the regulated and others; and
- local authorities, where relevant.

The focus of the review team's activities will, in part, be influenced by the preliminary evidence gathered by the support team. The team will aim to look at a variety of regulatory functions and at a cross-section of established and more recently-implemented regulations.

The team's judgements will be made by drawing on a range of evidence from different sources. Judgements will not be based on evidence from a single source – review teams will seek to triangulate evidence (e.g. feedback on an aspect of regulatory activity could be sought from regulated businesses, front-line staff and policy officials).

Annex C - reporting

The report

Following the review team's visit, a report will be drafted for each regulator. The report will be drafted by the support team in consultation with the review team. It will comprise an up-front section on the 'Hampton Vision', which will include narrative on the following:

- the purpose of the organisation and the context in which it operates;
- overall, where the organisation is now, in terms of the Hampton agenda;
- the direction in which the organisation is heading, and plans in place to increase adherence to the Hampton principles.

The section on the Hampton Vision will be followed by six chapters on the specific subject areas (design of regulations, advice and guidance, data requests, inspections, sanctions and focus on outcomes). Each chapter will begin with five or six short, high-level statements that summarise the judgements made by the review team. These statements will be followed by a more detailed narrative for each section, identifying any areas of good practice or areas for development.

Consistency / quality assurance

As they are prepared, the draft reports will be checked for consistency with regard to style, presentation of the issues and the judgements that are made in each section. The challenge panel will include several independent experts.

Responding to the report

Once the draft report has been produced and reviewed by the challenge panel described above, the review team will send it to the regulator for comment, and the regulator will then be required to review the report and respond. The response should set out specific comments and correct any factual errors. If there are areas where the regulator disagrees with the findings, the regulator will need to think about what new or additional evidence can be provided to the review team so that it may reconsider its judgement.

Once the review team has received the regulator's response, it will consider the comments and any additional evidence. It will then make any necessary amendments to the report.

Report publication

The reports will be published on the websites of the NAO and the Better Regulation Executive.

The process outlined above is based on assumptions made for the pilot review of the Health and Safety Executive. The process and timescales may vary for subsequent reviews.

Annex D - assessment code of conduct

The review team and the support team will work to the following principles:

- carry out their work with respect and courtesy;
- minimise the burden on those working in the organisation and on stakeholders, being aware of the time and resource constraints that the regulator and others are under;
- respect confidentiality, where appropriate;
- maintain purposeful, productive and positive dialogue with all they meet;
- listen effectively to staff and stakeholders;
- evaluate all information as objectively as possible and without bias;
- reach judgements that are underpinned by evidence;
- report honestly and fairly, in a way that reflects the work of the regulator.