

GLA28/8.3 Macrory approach (Regulatory Enforcement Sanctions)

13 January 2011

BOARD PAPER REFERENCE – GLA28/8.3 – Macrory approach

Issue

1. To provide regular updates on progress to secure the new civil sanctions.

Recommendations

2. To invite Board members to provide their views to the Defra review team on the GLA's readiness, and need, for the new sanctions.
3. To invite Board members to give informal views (i.e. in advance of the public consultation) on how they might like to see the sanctions applied

Background

4. The GLA underwent a successful Hampton Inspection Review (HIR). This was the first hurdle on the path to securing the "Macrory" sanctions.
5. The GLA's progress since then, to address the recommendations from the HIR, and how it may be adapting its approach, are key factors in the approvals process. As a regulator to which the statutory Compliance Code applies, evidence of how the GLA is meeting the 7 areas of the Code, will also form a part of the evidence required.
6. The 7 areas of the Compliance Code are:
 - Economic progress
 - Risk assessment
 - Advice and guidance
 - Inspections and other visits
 - Information requirements
 - Compliance and enforcement actions
 - Accountability
7. The GLA is currently preparing to implement a new website. The website will assist stakeholders in locating information on how the GLA is delivering the expected regulator's principles in a proportionate manner. That will include a specific document setting out how the GLA meets the 7 areas. This approach is best practice in the regulatory community.
8. The GLA's intended Forestry pilot also forms part of the evidence of the GLA's approach and intention to test lighter touch approaches whilst having regard to risk.
9. The original approvals process required a further review by the Better Regulation Executive. Current discussions across Government will lead to a delegated process wherein the decision on whether a regulator is ready to apply for the sanctions will be taken by the regulators sponsor Department.

10. The GLA is working with the Improving Compliance and Enforcement team within Defra's Better Regulation Programme to progress to the successful award of the sanctions. The draft timetable, identifying key activities, is at Appendix 1.
11. The GLA is currently running an internal consultation process, raising awareness of staff of the process, of the sanctions, and to invite views on how the sanctions may be used. Whilst the process to secure the new sanctions requires a public consultation exercise the GLA invites Board members to suggest ideas on how the sanctions might be used.
12. The sanctions available are:
 - Fixed Monetary Penalties #
 - Discretionary Requirements
 - Variable Monetary Penalty* #
 - Compliance Requirement* ◇
 - Restoration Requirement* ◇
 - Stop Notice ◇
 - Enforcement Undertaking (proposal from LP) ◇
 - Enforcement Cost Recovery Notice

(*can be combined; # civil recovery; ◇ prosecution for non compliance with penalty, unless combined with VMP; appealable)
13. Further information on the sanctions is provided in the guidance produced when the new sanctions were introduced (copy attached).
14. An update on progress will feature as a standing item in future Board agendas.

Appendix 1 Draft timetable

Year One												Year Two					
Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 1	Month 2	Month 3	Month 4		
Assessing Suitability of Regulator																	
Review of HIR Action F Evidence gathering				Draft report													
Impact Assessment																	
Prepare IA						Seek RPC Opinion		Finalise and clear IA									
Confirm if required		Circulate for comments		Internal Clearance													
Legislation												Passage through Parliament					
Discuss with Defra Legal		Draft instruction s		Initial MoJ Gateway		Circulate for comments		Internal Clearance		MoJ Gateway Internal Clearance		EM to JCSI		Introduce to Parliament		Commons and Lords Debates	Legislation comes into effect
Legislation drafted												Merits committee		Prepare briefing pack			
Appeals																	
Identify appropriate appeals body		Agree appeal numbers and costs		Finalise arrangem													
Guidance																	
Discuss content				Prepare guidance in consultation with ICE and relevant Defra policy teams				Circulate for comments		Revise guidance in light of respondents comments							
Consultation																	
Discuss content				Draft consultation document with input from ICE and relevant Defra policy teams		Circulate for comments		First Submission		Public Consultation 8 to 12 w Government Response		Second Submission		Parallel consultation on HIR progress and legislative		Consider responses and draft Government for RRC and Whitehall	