

**Consultation on the concepts and approach
proposed in the Report of the Council of
Ministers on the established of an Isle of Man
Regulatory Authority**

May 2021

1. Introduction

The Programme for Government, developed in 2016, included an action for the Cabinet Office to “Produce a report on our regulatory framework which explores options for better regulation”.

In 2016, Government initiated the establishment of a Regulatory Hub, the first step along the road to a single regulatory authority and more effective regulation.

Effective regulation has an essential role to play in both economic and democratic life; businesses appreciate effective and proportionate regulation and the public expect regulators to be free from the influence of politicians as an integral feature of a mature democracy.

However, in a relatively small jurisdiction, the cost of establishing all regulators as independent bodies could be considerable, so it is often more cost effective to either leave them within the relevant Departments with efforts taken to minimise the scope for conflict of interest, or as the accompanying report (which can be found **Appendix A**) proposes, to bring a wide range of regulators together into a single regulatory body.

The purpose of this consultation is to seek the views of the public and relevant stakeholders regarding the degree of concern about actual (rather than perceived) conflict of interest and hence the options to address those concerns.

2. Areas for consultation

2.1 Degree of actual Conflicts of interest

There are two main areas where conflict of interest could occur and that the Report seeks to offer solutions for.

Regulators located within a Department

The first is the inherent scope for conflict of interest in a Departmental system of government where both policy-making and enforcement arms often sit within the same Department. In these situations, the Department is responsible for proposing the relevant Policy and Legislation which governs the regulatory approach, whilst they are also responsible for undertaking the regulation and any associated enforcement.

In the event of change in the sector, the Regulatory team will work with the rest of the Department to agree new Policy and seek necessary changes in Legislation, to allow the changes to be addressed. This means the Regulatory team are likely to be in direct discussion with the Minister of the Department in seeing to agree new Policy and there is a risk that the approach to an individual case is agreed uniquely. This risks variation and inconsistency of approach, though if Policies are agreed to address all cases and the individual cases are not discussed, this risk of inconsistency can be minimised.

An example of this would be the Environmental Health Team, which is located with the Department of Environment, Food and Agriculture.

Regulators Independent of Government

The second area specifically applies to scope for operational conflicts between existing independent regulatory bodies and their sponsoring Departments. In these situations, the Department is responsible for the Policy and Legislation, which the independent regulator then enforces.

In the event of change to regulatory requirements in the sector, the Regulator would need to seek the views of the sponsoring Department regarding how to regulate the new situation and the Department would need to set appropriate Policy to enable the Regulator to address the new situation. This could take longer to address the change, though prevents direct Political involvement in addressing individual cases which the Regulator is involved in.

An example of this situation would be the Road Traffic Licensing Committee, for whom the Department of Infrastructure is the sponsoring Department.

3. Consultation questions:

1) How concerned are you about Conflict of Interest in the Isle of Man's Regulatory activity:

- a) Within Departments? (1-5)
- b) Within an Independent Regulatory Body (1-5)
- c) Which approach do you think is more appropriate (within Departments /Independent Bodies /some other – please explain)
- d) Do you think an Independent Regulator would be appropriate for the Isle of Man with a population of 85,000. (yes/no)
- e) Do you have any comments or alternatives regarding these questions (text box)

2) If a combined regulator were to be established, do you have a view on the political accountability of the Independent Regulator, please could you rank these approaches:

- a) A new Independent Regulator should be over seen by the Minister for Policy & Reform, acknowledging the need for Policy to be in the purview of Government (1-3)
- b) A new Independent Regulator should be overseen by the Minister for Environment, Food and Agriculture, acknowledging the high level of involvement with most of the Regulators currently under consideration (1-3)
- c) An existing regulator, for example, the Communications & Utilities Regulator could be expanded to accommodate this extra regulation with Political oversight continuing for the combined body as currently. (1-3)
- d) Do you have any comments or alternatives regarding these questions (text box)

3) If the Independent Regulator is progressed, which of the following areas do you believe should be included:

- a) Health and Safety Inspectorate (yes/no)
- b) Road Traffic Licensing Committee (yes/no)
- c) Office of Fair Trading (yes/no)
- d) Planning Application Team (yes/no)
- e) Building Registration (yes/no)
- f) Building Regulation Team which are currently with DEFA (yes/no)
- g) Building Regulation Teams currently operated by Local Authorities (yes/no)
- h) Environmental Health (yes/no)
- i) Environmental Protection (yes/No)
- j) Animal Health (yes/no)
- k) Fire Safety Team of the Department of Home Affairs (yes/no)
- l) Education Regulation Teams of the Department of Education, Sport and Culture (yes/no)
- m) Tourist premises enforcement currently with Department for Enterprise (yes/no)
- n) Employment legislation enforcement currently with Department for Enterprise (yes/no)
- o) Do you have any comments or alternatives regarding these questions (text box)

4) What would you expect as advantages or disadvantages of a combined Independent Regulatory Body, such as the IOM Regulatory Authority:

- a) Improved consistency of approach (yes/no)
- b) Reduced political involvement in to individual cases (yes/no)
- c) A more professional regulatory culture (yes/no)
- d) Improved customer service and team resilience (yes/no)
- e) Improved operating costs through improved critical mass (yes/no)
- f) Do you have any comments or alternatives regarding these questions (text box)

5) If an Independent Regulator is established, how do you believe appeals to decisions made by the Officers within the Regulators should be considered?

- a) By a more senior officer to the one who made the decision
- b) By the Chief Officer of the Regulator
- c) By the Regulator's Board
- d) By the Minister of the most relevant Department
- e) Do you have any comments or alternatives regarding these questions (text box)

6) Do you have any further comments regarding this topic? (text box)

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Isle of Man
Government

Reilrys Ellan Vannin

Council of Ministers

The Establishment of an Isle of Man Regulatory Authority

May 2021

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2. Foreword

To The Hon Stephen Rodan OBE MLC, President of Tynwald and the Hon Council and Keys in Tynwald assembled:

The Programme for Government, developed in 2016, included an action for the Cabinet Office to "Produce a report on our regulatory framework which explores options for better regulation."

In 2016, Government initiated the establishment of a Regulatory Hub, the first step along the road to a single regulatory authority and more effective regulation. Effective regulation has an essential role to play in both economic and democratic life; businesses appreciate effective and proportionate regulation and the public expect regulators to be free from the influence of politicians regarding individual cases, as an integral feature of a mature democracy.

This Report explores how the relationship between regulators and policy makers can be improved by the creation of a single regulatory authority and the necessary steps required to create it.

The need for consistent, transparent and predictable regulation and enforcement is widely viewed as an important aspect to allow commerce to confidently operate within known boundaries. This report proposes an approach of combining several of the existing Regulatory teams and bodies to create a single independent Regulatory Body, which would allow a single, professional Board, led by a remunerated and high caliber Chair under a time bound appointment, to oversee the delivery of consistent, politically independent regulatory services.

I commend the proposals in this important Report to this Honourable Court and to the wider Manx public.

Hon R Harmer MHK

Minister for Policy and Reform

3. Executive Summary

- 3.1 This report looks at the organisation of regulation within the public service and sets out a plan for politically independent regulatory enforcement and the principles that underpin independent regulation under government controlled policy.
- 3.2 There is wide global agreement that the most effective way in which to regulate is to segregate policy and enforcement, with Government and Parliament setting policy, risk appetite and legislation, whilst a separate arm's length body undertakes the enforcement of those criteria.
- 3.3 The concept of a regulatory hub is to bring together regulatory functions under one organisation with shared line management, professional development and administrative resources. DEFA initiated this in 2016 when the Office of Fair Trading and the Road Transport Licensing Committee transferred to The Slieu Whallian, the Department's headquarters in St. John's, joining other regulatory functions already there. This improves efficiency, resilience and consistency in approach; allowing improved customer confidence in how they will be regulated.
- 3.4 The next steps explored in this report aim to create a comprehensive Regulatory Authority with a shared culture and principles aligned to the respected existing enforcement policy of educate, advise, warn, and prosecute.
- 3.5 The Organisation for Economic Cooperation and Development ("OECD") 2012 Recommendation of the Council on Regulatory Policy and Governance, independent regulatory agencies should be considered in situations where:
 - there is a need for the regulator to be seen as independent, to maintain public confidence in the objectivity and impartiality of decisions;
 - both government and non-government entities are regulated under the same framework and competitive neutrality is therefore required; or
 - the decisions of the regulator can have a significant impact on particular interests and there is a need to protect its integrity.
- 3.6 An Isle of Man Regulatory Authority (IOMRA) will be established through the Statutory Boards Act 1987, with the Isle of Man Regulatory Authority Board to be constituted in order to balance independence (both actual and perceived) and accountability.
- 3.7 The IOMRA Board (The Board) will comprise a Chair, Vice Chair and members who are not Members of Tynwald but who are appointed by Tynwald on the recommendation of the Council of Ministers.

- 3.8 A Chief Executive will be appointed as the accounting officer for the IOMRA, this role will be accountable to the Board, who would be accountable to the Minister of Policy and Reform.
- 3.9 Board Members will be expected to oversee governance of the Regulatory Authority by ensuring the IOMRA and its' officers act within the provisions of relevant legislation.
- 3.10 Within this structure, decisions will be taken by officers under the authority of the Chief Officer of the IOMRA. There will be an appeals mechanism, whereby the Board will hear appeals of decisions made under the authority of the Chief Officer. The exception to this is the Planning Committee, where the Minister of Policy and Reform will hear appeals.
- 3.11 The Minister for Policy and Reform would provide political oversight. Noting that the organisation would be sitting under the "umbrella" of the Cabinet Office.
- 3.12 The creation of a single regulatory authority represents a fundamental change for the Isle of Man Government, and a phased approach is proposed with the effectiveness of each Phase thoroughly reviewed before development of the next phase begins.
- 3.13 Phase 1 will include the Road Transport Licensing Committee, Office of Fair Trading, Health and Safety at Work Inspectorate, Environmental Health and Planning and Building Control, subject to any necessary Transfer of Functions Orders and primary legislation changes.
- 3.14 Further research work must be undertaken to fully understand the costs, benefits and risks of each suggested regulatory area to be included during Phase 2. The feasibility work at phase 2 will conclude with a report on the implementation of Phase 2, which would require further approval before implementation.
- 3.15 There are further regulators within the structure of 'Isle of Man Government' that have international roles and could be considered in the future for potential development under Phase 3. However, international obligations may require them to be independent of each other, rendering them unsuitable for inclusion in the IOMRA.
- 3.16 In conclusion, it is recognised that the Government's current system of regulation and enforcement can be further improved with the establishment of a single arm's length regulatory authority.
- 3.17 This report provides the background which demonstrates how the first step towards a regulatory hub has already been taken, and how a logical progression to a single regulatory authority is the next step.

4. Introduction

- 4.1 This report looks at the organisation of regulation within the public service and sets out a plan for politically independent regulatory enforcement and the principles that underpin independent regulation under government controlled policy.
- 4.2 It also sets out the steps that the Council of Ministers will take to develop commitments to create a Regulatory Authority which will seek to regulate appropriately and provide a separation between Government Departments that set policy, risk appetite and legislation to guide the operations of an arm's length regulatory enforcement authority.
- 4.3 The concept of a regulatory hub was established in the Department of Environment, Food and Agriculture in 2016, and this Report builds on this, using a phased approach to the creation of a single regulatory authority to house many of Government's regulatory functions.

5. Regulation Defined

- 5.1 Regulation comes in many guises but can be defined by the following characteristics:

- **The setting and enforcement of the standards under which goods and services can be provided** either using legislation or a licensing regime with conditions.
- **A contractual framework under which a business can operate**, either through ownership or control of resources fundamental to the business, or through a negotiated contractual framework under which the business will operate, with the implicit threat that absent an agreement there will be more formal action.
- **Limiting supply** by requiring new entrants into the market to demonstrate unmet demand.
- **Directly or indirectly controlling prices**

- 5.2 Any particular regulatory framework will exhibit at least one of those characteristics and in many cases more than one.

- 5.3 In the context of the Isle of Man Government, it is recognised that there is a balance to be struck between giving regulators the necessary resources to regulate effectively and the burden that regulation places on regulated entities. The challenge and impact of funding is perhaps best summed up in a speech of 13th January 2021 by Sir James Bevan, Chief Executive of the UK Environment Agency, some excerpts of which are:

"Good regulation also needs to be funded properly...funding for regulation comes from both these sources: from the industries we regulate in the form of charges for the regulatory services we provide, and from the government in the form of grants. Neither of those sources

fully fund what we think we actually need to do to protect and enhance the environment. Ultimately we will get the environment we are prepared to pay for.

Teachers say that if you think education is expensive, try ignorance. And I say that if you think regulation is expensive, try not doing it."

6. Regulation and Enforcement Principles

- 6.1 Most bodies involved in regulation by means of enforcement have developed a pragmatic approach to their activities in order to provide effective outcomes within the available resources whilst minimising the burden on regulated entities.
- 6.2 Enforcement bodies, including the various enforcement arms of the Isle of Man Government, typically adopt the following hierarchical and sequential principles which increase in severity, with some variation due to the nature of non-compliance with legislation:
- Educate
 - Advise
 - Warn
 - Prosecute
- 6.3 Whilst this approach to enforcement is pragmatic, and entirely appropriate, it presents challenges for the regulator. The resulting effect is that most enforcement activity short of prosecution is visible only to those who are the targets of the action itself. Conversely, the public are generally unaware that a regulator even exists until a prosecution occurs. For example, it would be newsworthy if the RTLC had sought a prosecution of a public passenger vehicle (PPV) driver for multiple traffic offences, and the public would react accordingly, but the public are constantly protected by its enforcement action that regularly performs criminal background checks on PPV drivers. Without this action, the public would be at risk and would rightly be concerned if they knew that no such vetting was taking place.
- 6.4 Whilst it is only publicity from prosecutions that convinces the public that a regulator is necessary or effective, prosecution is a very expensive option and rightly regarded as a last resort. Education, advice and warnings provided to regulated entities are more cost-effective while still achieving the regulatory aims of compliance and public protection.
- 6.5 Achieving defined outcomes around sector compliance should be the aim of a regulatory body, not enforcement in itself.

7. Policy and Regulation

- 7.1 One of the challenges around technical regulation in a small economy is that in many government teams, staff members involved in regulation are the only local experts in a particular subject. As a result they also become involved in policy formulation.

- 7.2 Whilst this has advantages (for example cost and perspective) the lack of separation brings with it risks, not least that systems become focused on the ease of enforcement rather than the ease of doing business within the regulated sector.
- 7.3 In some areas where there is a substantial regulatory resource, the segregation of policy and enforcement is cost effectively achievable.
- 7.4 The concept of a regulatory hub is based on a straightforward division of roles. The determination of policy would sit with the relevant Government Department Minister and collectively the Council of Ministers. Responsibility for delivering and enforcing the regulation would sit with the regulatory authority. The authority itself would be detached from the policy determination although they would remain a key stakeholder and there would need to be collaboration on policy development. This collaboration is essential in developing legislation which is both enforceable and is capable of being easily understood and applied by regulators and their customers.
- 7.5 There is wide global agreement that the most effective way in which to regulate is to segregate policy and enforcement, with Government and Parliament setting policy and a separate arm's length body undertaking enforcement. Whilst in a large jurisdiction that approach is achievable, in a small jurisdiction such as the Isle of Man, it could bring challenges in terms of cost. Essentially there would need to be two sets of experts; one set on each side of the regulatory divide. To overcome this, a 'policy lab' approach could be adopted, which would allow increased policy specialism to be developed, with officers adept at seeking professional input, both locally and from other jurisdictions. This should improve the overall quality and coherence of policy.

8. Small Regulators

- 8.1 In the Isle of Man, as with other jurisdictions, there are a wide and diverse range of public bodies that perform regulatory functions. Some have a very limited role and might not even recognise themselves as regulators.
- 8.2 Over the last decade these small regulators have faced challenges with funding and have been unable to justify or fund the retention of staff with enforcement skills and experience. In these teams, education and advice can still be provided but enforcement through warnings and or prosecution has not been possible.
- 8.3 Generally these small regulators have, when faced with a requirement for enforcement action, sought assistance and guidance from larger regulators. For example, to ensure consistency and adherence to relevant investigative procedures, Environmental Health Officers employed by the Department of Environment, Food and Agriculture undertake enforcement action on behalf of some Local Authorities on some important topics such as housing standards or the structural safety of buildings.
- 8.4 The introduction of the Criminal Procedure and Investigations Act 2016 (CPIA) is a fundamental "game changer" in terms of regulation and enforcement. The introduction of this legislation has led to an increased risk of defence advocates becoming more adept at

challenging the process, rather than putting their whole effort into defending the offender. It is therefore essential that all staff involved in regulation employ all measures to ensure that enforcement action is taken in accordance with the CPIA, to ensure full compliance with process and ensure the trial is focused on considering guilt or otherwise of the defendants.

- 8.5 It is therefore now even more essential that the responsibility for enforcement must rest with qualified officers possessing specialist enforcement training and skills that are demonstrably separate from policy setters, so that the regulatory authority's processes are not compromised by a lack of political independence, professional expertise or training.

9. Regulatory Risks

- 9.1 One of the challenges for any regulator, large or small, is to avoid the risk of regulatory capture.
- 9.2 At the commencement of a regulatory relationship the respective roles are very clear. The regulator is there to enforce standards set by the policy arm of the organisation and the regulated entity is legally obligated to comply. Even at the outset, however, it is evident to both parties that regulation will be a much less arduous and painful experience for both parties if there is a degree of mutual co-operation and reduced conflict.
- 9.3 As the regulatory relationship evolves the regulator starts to understand the business model of the regulated entity and the regulated entity starts to understand how the regulator wishes the entity to behave. In terms of efficiency of regulation and avoiding conflict this is laudable, but there are risks to the robustness of regulation. These risks are increased by the inevitable development of inter personal relationships between the key players on both sides of the regulatory divide. The risk is that the regulator and the regulated entity start to behave like a single organisation and the regulator has been "captured".
- 9.4 This risk also increases in a small jurisdiction like the Isle of Man, where some areas of regulation only have one or two experts with the necessary technical knowledge.
- 9.5 Whilst awareness of the risk of regulatory capture is an important step in its prevention, there is more which a regulator can do to protect itself. Even if a regulator has a small number of specialist staff, key decisions can be exposed to others who, whilst lacking the specific specialism, work in other parallel regulatory environments. It is also important that the regulatory actions are subject to formal oversight.

10. Regulatory Hub

- 10.1 The concept of a regulatory hub is to bring together regulatory functions under one organisation with shared line management, professional development and administrative resources. DEFA initiated this in 2016 when the Office of Fair Trading and the Road Transport Licensing Committee transferred to The Slieau Whallian, the Department's headquarters in St. John's, joining other regulatory functions already there. The next steps explored in this report aim to create a comprehensive Regulatory Authority with a

shared culture and principles aligned to the respected existing enforcement policy of educate, advise, warn, and prosecute.

10.2 The concept of a Regulatory Hub is working in practice with the oversight and accountability of the functions legally attributable to the Office of Fair Trading and the Road Transport Licensing Committee continuing to be provided by the respective legal bodies. The DEFA Minister is accountable for standards of conduct, operating efficiency and adherence to agreed national policies for DEFA enforcement functions within the regulatory hub.

10.3 The longer term advantages of establishing a Regulatory Authority should include:-

- Creation of a consistent regulatory and enforcement culture.
- Development of increased resilience within regulatory functions, reducing reliance on key individuals and enabling more effective prioritisation.
- Increased awareness of the need to balance regulation with risk in a way that encourages sustainable economic development.
- Enhanced clarity between policy and delivery/enforcement.
- Increased emphasis on outcome based regulation rather than simple rule setting.
- Enhanced customer service through the creation of a single on line regulatory interface - a "one stop shop."
- Critical mass of enforcement to facilitate a shared function around evidence management and disclosure under the Criminal Procedure and Investigations Act 2016.
- Cross specialism learning and development for staff, improving professionalism, career opportunity and staff engagement.
- Co-located officers from different regulatory functions allowing for more efficient integrated working.
- Enhanced policy integration and more professional liaison with the regulators. This will; (a) reduce the potential for developing legislation in isolation, and (b) reduce the possibility of creating legislation which might have a conflicting effect on the work of other regulators.
- Increased generation and sharing of intelligence to enable better targeted enforcement.
- Cost savings through shared resources.

10.4 In order to develop a more formal Regulatory Authority, consideration will need to be given to the structure of the Authority itself. There are some services which sit within the hub currently but which are overseen by a legally independent body. It is important that these

services remain at arm's length from Government and the system established by the Government Departments Act 1987.

10.5 While there are strong arguments for these areas remaining at arm's length there is little argument in support of the proposition that they need to be independent of each other.

11. International Best Practice in Regulation Governance

11.1 In its 2014 report on the Governance of Regulators¹ which provides guidance on the institutional arrangements for regulators, the Organisation for Economic Cooperation and Development ("OECD") sets out seven 'Best Practice Principles for the Governance of Regulation', namely:

- role clarity;
- preventing undue influence and maintaining trust;
- decision making and governing body structure for independent regulators;
- accountability and transparency;
- engagement;
- funding; and,
- performance evaluation.

11.2 Of particular relevance is the second Principle of '*preventing undue influence and maintaining trust*'. With regard to when an independent regulator is most appropriate, the OECD report sets out:

"A threshold issue is the question of whether particular regulatory decisions are best made by an independent regulator or by the minister or an officer of the ministry."

According to the OECD's 2012 Recommendation of the Council on Regulatory Policy and Governance, independent regulatory agencies should be considered in situations where:

- there is a need for the regulator to be seen as independent, to maintain public confidence in the objectivity and impartiality of decisions;
- both government and non-government entities are regulated under the same framework and competitive neutrality is therefore required; or
- the decisions of the regulator can have a significant impact on particular interests and there is a need to protect its integrity.

11.3 In these cases, regulatory integrity is vital therefore, a substantial degree of independent and distance from executive government and Politicians is generally warranted.

11.4 An independent regulator is important to enhance regulatory certainty and stability. This is more prevalent where the regulator is a market regulator as in such cases the government

^{7 1} https://read.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en#page1

itself may be a stakeholder e.g. as a shareholder or market player, and therefore there is greater need for an independent regulator.

12. Political Structures and Accountability in Regulation

- 12.1 A new regulatory authority should be constituted to balance independence (both actual and perceived) and accountability.
- 12.2 It is proposed that the Board would be made up of members who are not Members of Tynwald but who are appointed by Tynwald on the recommendation of the Council of Ministers.
- 12.3 The structure of the Board will deliberately set out to be politically independent and separate politicians from regulators. The Council of Ministers will continue to be responsible for approving policy and legislation made by Ministers/Departments and that policy and legislation will be enforced by the IOMRA.
- 12.4 In establishing this structure, the Isle of Man Government is emulating or expanding on the structure of several neighbouring jurisdictions.
- 12.5 In the United Kingdom, the Health and Safety Executive (HSE), the Office of the Traffic Commissioner (OTC) and the Competition and Markets Authority (CMA) are all arm's length non-ministerial bodies wholly independent from policy making and sponsored by government departments. They are the equivalent of the HSWI, RTLC^{2*} and OFT respectively, and they have long been established through specific legislation. Resources available to the United Kingdom allow for this structure to be easily achievable. By contrast, the Isle of Man and the Channel Islands are much smaller and therefore have to formulate bespoke solutions.
- 12.6 Jersey has a partially arm's length framework regarding its Health and Safety Inspectorate (HSI); the Inspectorate itself sits within the Justice and Home Affairs Department (JHA), which has political responsibility, with the Director reporting directly to the JHA Director General. However, to maintain the HSI's regulatory independence, the Director also has a reporting line to Jersey's Attorney General.
- 12.7 Guernsey also has an arm's length framework regarding its Health and Safety Executive (HSE); the Committee for Employment and Social Security has the political mandate and the HSE itself is an independent government body, as per the HSE in the United Kingdom.

² The OTC regulates goods vehicles. Public passenger vehicles are regulated by local authorities, again through specific legislation

13. The Isle of Man Regulatory Authority (IOMRA)

- 13.1 This Report provides detail as to how the IOMRA will be created and what its structure will be.
- 13.2 The complexity of the work outlined in the Report mean that a phased approach is the most realistic and manageable way of achieving the goal of a single regulatory authority, and it is clear that the scale of the work involved means that implementation is a long-term goal.
- 13.3 When considering which regulatory services were suitable for transfer to the IOMRA, three criteria were established:
- **Political independence** – where international obligations or public expectations make a compelling case for the regulatory body to be free from political influence.
 - **Stability of regulation** – where regulation is established through Acts of Tynwald that rarely change or is analogous to legislation in other jurisdictions.
 - **Policy implementation v regulatory enforcement** – where the regulatory body can reasonably be divided between policy and enforcement wings.
- 13.4 It has always been intended that the creation of an independent regulatory authority would be relatively cost neutral.

The Principles of a Regulatory Authority

- 13.5 The Isle of Man Regulatory Authority is created using the following principles:
1. Government should only regulate where there are clear objectives and outcomes that cannot be achieved in a more cost effective manner and the extent of that regulation should be kept to the minimum necessary to achieve the desired outcome.
 2. As far as practicable within resource constraints and the provision of value for money services in a small scale economy, there should be clear segregation of regulatory policy from regulatory enforcement and delivery. Whilst the regulatory enforcement and delivery function may sit within the hub, the relevant Department should retain responsibility for setting policy.
 3. Close liaison will be required between policy and enforcement functions to ensure that new policies are complimentary to the objectives of existing legislation whilst also being supportive of industry, enforceable and proportionate. Equally understanding the principles of the policy and desired outcomes will be important for those responsible for enforcing regulation.
 4. Government should maintain its level of awareness of legislation which is in place in neighboring jurisdictions to enable ease of movement across boundaries.
 5. There should be a preference for outcome based regulation rather than simple rule setting.
 6. Technical and economic regulation should be balanced with risk in a way that

encourages rather than inhibits economic development

7. A culture of **advise, educate, warn and enforce** should be consistent across all areas of regulation.
8. In developing regulation there should be a clear focus on minimising unnecessary impact on the regulated entity. Whilst ease of enforcement cannot be ignored it should not be the sole focus.
9. Where a business or activity is subject to regulation by multiple agencies every effort should be made to minimise the impact by a multi-agency approach.
10. Government should continue the development within a Department of an integrated, customer focused facility for regulation to enable easier access to regulatory services and advice on how to achieve compliance. This should include the further development of an on-line facility.

Establishing the Isle of Man Regulatory Authority – A Statutory Board

- 13.6 The Isle of Man Regulatory Authority will be established as a Statutory Board under an order made by the Council of Ministers under Schedule 2 to the Government Departments Act 1987 (a Transfer of Functions Order³), in order to balance independence (both actual and perceived) and accountability.
- 13.7 The IOMRA Board (The Board) will comprise a Chair, Vice Chair and members, all of whom are not Members of Tynwald but who are appointed by Tynwald on the recommendation of the Council of Ministers.
- 13.8 A Chief Officer will be appointed as the accounting officer for the IOMRA, this role will be accountable to the Minister of Policy and Reform.
- 13.9 Board Members will be expected to provide governance by ensuring the IOMRA and its officers act within the provisions of relevant legislation.
- 13.10 Board Members will be expected to oversee governance of the Regulatory Authority by ensuring the IOMRA and its officer's act within the provisions of relevant legislation.
- 13.11 The primary role of the Board will be to:
 - Ensure the Officers within the IOMRA act within their delegated powers and within the provisions of relevant legislation
 - Enable and ensure the IOMRA performs to a high standard and provide strong governance and oversight
 - Set the strategic direction for the IOMRA
 - Hear any appeals against IOMRA Officers' decisions
- 13.12 The Board will delegate its power to the Chief Officer of the IOMRA, who in turn will

³ See section 5 of the Statutory Boards Act 1987, for the application to statutory boards of the transfer of functions provisions in the Government Departments Act 1987

delegate relevant statutory powers to the lead officer in each of the function areas.

- 13.13 Within this structure, decisions will be taken by officers under the authority of the Chief Officer of the IOMRA. There will be an appeals mechanism, whereby the Board will hear appeals against decisions made under the authority of the Chief Officer.
- 13.14 The exception to this is the Planning Committee, where the Minister of Policy and Reform will consider appeals, following consideration of the report of appointed independent person.
- 13.15 The Minister for Policy and Reform would provide political oversight. Despite this, the organisation would be sitting under the “umbrella” of the Cabinet Office.
- 13.16 In the event of a material difference of opinion regarding interpretation of policy between the Council of Ministers and the Independent Regulator, it is envisaged that the Council would have powers of Direction, however this would be a transparent and public process which reflects the expectation that government sets Policy.

UK Comparisons

- 13.17 The Agency Management Board (AMB) of the Rural Payments Agency (RPA) is a non-Departmental body sponsored by the Department for Environment, Food and Rural affairs (DEFRA) in the UK. It is governed by 12 Board members, including one Chair each for the AMB and ARAC (Audit and Risk Assurance Committee). The Chief Executive Officer of the RPA is also on the Board.
- 13.18 The Agency Management Board (AMB) has responsibility for advising whether the strategic aims and objectives of the RPA are consistent with its overall strategic direction and are within the policy and resources framework determined by the Secretary of State. The board is made up of non-executive directors, a DEFRA director and RPA members. AMB is supported by the Audit and Risk Assurance Committee that has responsibility for risk assessment, auditing and accounting.
- 13.19 The Environment Agency (EA) is a non-Departmental UK government body governed by 12 Board members, including a Chair and a Vice Chair. All are appointed by the Secretary for Environment, Food and Rural Affairs. The board meets 4 times a year. It delegates day-to-day management to the Chief Executive and staff.
- 13.20 The Environment Agency is a non-departmental public body. The board is directly responsible to government ministers for all aspects of the organisation and performance and it is accountable to Parliament through Ministers.

Adopting a Phased approach

- 13.21 The creation of a single regulatory authority represents a fundamental change for the Isle of Man Government. The number of areas of regulation involved and the legal processes required to transfer them to the IOMRA means that a phased approach is the best way to realise a single regulatory authority as a long-term goal, and those Phases are detailed below.

- 13.22 The effectiveness of each Phase should be thoroughly reviewed before development of the next Phase begins, to ensure that regulatory functions remain relevant and proportionate in accordance with the above Regulatory Principles.
- 13.23 While Phase 1 includes the regulatory functions currently operating within DEFA, and their transfer to the IOMRA is relatively straightforward, much more research and careful consideration will be needed in Phases 2 and 3 to ensure that regulatory functions from other regulatory bodies are transferred legally, with any unintended consequences being brought to light.

Phase 1

- 13.24 Phase 1 will include the following, subject to any necessary Transfer of Functions Orders and primary legislation changes:

- **Road Transport Licensing Committee**
A review of functions that enable operational decisions to be made by officers is to be undertaken in advance of the transfer of the Committee. It should be noted that Tynwald approval for some of the elements of reform may be required.
- **Office of Fair Trading**
This should exclude the Debt Counselling Service, which is not a regulatory function. Whilst not for this report to determine it may be possible for this service to be outsourced and delivered by the third sector, for example citizens' advice.
- **Health and Safety at Work Inspectorate**
Responsibility for the Health and Safety at Work Inspectorate should transfer from the DEFA to the IOMRA in order to provide greater independence of oversight.
- **Environmental Health**
Responsibility for the Environmental Health Unit should transfer from DEFA to the IOMRA.
- **Planning and Building Control**
The existing DEFA Planning team, plus initially only the DEFA Building Control enforcement staff should transfer to the IOMRA. Collaborative working with local authorities to form a single building control authority could be considered in Phase 2.

Phase 2

- 13.25 The following functions will require further consideration for inclusion in Phase 2 of the IOMRA. The number of staff that would be affected during the implementation of Phase 2 is greater than in Phase 1, and therefore so is the potential for considerable disruption.
- 13.26 Further research must be undertaken to fully understand the costs, benefits and risks of each suggested regulatory area being included. The feasibility work at phase 2 will conclude with a report on the implementation of Phase 2, which would require further approval

before implementation. In each case, policy would remain with Government.

13.27 The following areas seem likely to be appropriate for consideration:

- Enforcement regarding registered tourist premises including exemptions, a function currently vested in the Department for Enterprise.
- Enforcement of employment legislation, including minimum wage, employment agency licensing, employment contracts and the work permit system, currently vested in the Department for Enterprise.
- The Fire Safety functions of the Department of Home Affairs
- The Environmental Protection Unit of DEFA. Responsibility for the development of policy will remain within the Department.
- The management of education related regulation from the Department of Education, Sport and Culture.
- That consideration is given, through collaborative working with the local authorities concerned (Douglas Corporation and Onchan Commissioners) to all building control delivery and enforcement being vested in a single authority supported within the IOMRA, alongside other co-operative working between local authorities and national government.
- There are other areas of regulation which may be identified through further review.
- Powers for the enforcement of the regulatory functions set out in the Gas Regulation Act 1995 are transferred to the trading standards officer, as appropriate.

Phase 3

13.28 Regulatory bodies with international roles should be considered in the future for potential development under Phase 3, and there may be other, more minor regulatory activities which have yet to be identified. However, international obligations may require them to be independent of each other, rendering them unsuitable for inclusion in the IOMRA.

Implementation

13.29 The implementation of the recommendations in the Report represent a significant degree of change to the regulatory landscape of the Isle of Man and it is important that they are implemented in a manner which minimises the disruption of day to day service delivery.

13.30 Given the scale of change in both human resource and legislative terms it will be important to develop a comprehensive implementation plan supported by risk management. As part of the implementation plan there will need to be a comprehensive communications strategy covering the public and especially affected staff members.

13.31 The implementation will require careful consideration of staff location arrangements. There would be significant benefits, and savings in co-locating all the teams involved in the

IOMRA. Thie Slieau Whallian in St. John's could be used as the main location for the IOMRA, with the relevant Planning and Building Control staff moving there from their current base at Murray House in Douglas. Alternately, customers may value the entire team being located in Douglas.

14. Financial and Other Benefits

- 14.1 The implementation of the proposals in this Report is assessed as being broadly revenue neutral, although some small savings may result from the amalgamation of the Office of Fair Trading Board and the Road Transport Licensing Committee by way of reduced membership.

There will be further savings to Government through colocation and office rationalisation, for example through reduced duplication of administration teams, meeting and interview rooms and equipment.

- 14.2 The creation of an all-Island Building Control service has the potential to make savings in the public sector although those savings could be in Government, local authorities or both.
- 14.3 The experience of the current Regulatory Hub indicates there may be tangible opportunities to improve efficiency and effectiveness. In time, there will be further opportunities for the development of cross-warranting of professional staff. Even where cross-warranting isn't possible, there are still opportunities to target the more efficient use of other resources by providing intelligence to colleagues.
- 14.4 The real financial benefits from the creation of the IOMRA will, as in the initial creation of the regulatory hub, flow from the evolution of a common regulatory culture which strikes an appropriate balance between being business friendly and protecting the public and consumers, with effective proportionate enforcement against those who would break the law. In addition the smaller regulatory functions moving into the Regulatory Hub may benefit from enhanced training, professional enforcement support and mentoring.
- 14.5 Over the first two years of the establishment of the IOMRA there will be a review of management structures and this will identify opportunities for rationalisation leading to savings through non-replacement.
- 14.6 The creation of the Regulatory Hub involving the Department of Environment, Food and Agriculture, the Office of Fair Trading and the Road Transport Licensing Committee has represented a valuable first step to improving both the quality and cost effectiveness of the delivery of regulation by the Isle of Man Government. This Report, and its implementation, represents a major second step on that journey.

15. Conclusion

- 15.1 In conclusion, it is recognised that the Government's current system of regulation and enforcement can be significantly improved with the establishment of a single arm's length regulatory authority.
- 15.2 This report provides the background which demonstrates how the first step towards a regulatory hub has already been taken, and how a logical progression to a single regulatory authority is the next step.

- 15.3 It recognises that such a fundamental shift in Government structure will involve the transfer of many different regulatory functions and their staff, so sounds a cautionary note in establishing that a phased approach will break those transfers into manageable stages, and allow for thorough research and consideration to be completed before future phases are approved.
- 15.4 This work has been completed for phase one and the following Appendices provide the following specific details:

Appendix 1:

- The actions necessary to create the IOMRA and transfer to it the regulatory functions that currently reside at DEFA's headquarters at The Slieau Whallian in St. John's.
- The composition of the IOMRA Board and its associated costs and structure
- Dissolution of the existing Road Transport Licensing Committee and Office of Fair Trading Board
- Phased approach to transferring regulatory functions into the IOMRA, thus separating regulation from policy making

Appendix 2:

- A tabular representation of the phased approach to creating a singular regulatory authority

Appendix 3

- Candidates for potential removal from the IOMRA and opportunities for deregulation

Appendix 1 – Detailed Proposals

Phase 1

Action 1.1: Establishing the Isle of Man Regulatory Authority (IOMRA)

Once the proposal has been approved by Tynwald, the Isle of Man Regulatory Authority will be established and will supersede the RTLC and OFT bodies. Action 1.2 below provides more detail on how this will be achieved.

The RTLC was established as an independent body by the Road Transport Act 2001 and therefore any change to its existence will require an amendment to that piece of primary legislation, even if this occurs after a parallel regulatory authority has been established in its place.

The Chair, Vice Chair and members of the IOMRA will be appointed by Tynwald on the recommendation of the Council of Ministers.

IOMRA Board membership will be open to application via a recruitment process similar to that of other Statutory Boards, with appointments being approved by the Council of Ministers. All Members will serve a five-year term on the Board, as per section 3(2) of the Statutory Boards Act 1987. While particular expertise on the Board will always be valuable, professional expertise should properly sit at officer level and the role of the Board will be primarily one of governance.

Structure:

A Chief Officer post will be created at Executive Director level.

The Chief Officer of the IOMRA will report to the Chief Secretary with the Cabinet Office as the IOMRA's sponsoring Department.

The structure for the IOMRA will be determined by the new Chief Officer, incorporating:

- Fair Trading, Competition and Consumer Affairs Team
- Road Transport Licensing Team
- Planning Team and Building Registrations Team
- Building Control Team and Health and Safety Team

Under Schedule 2 to the Government Departments Act 1987⁴, a Transfer of Functions Order may provide for the transfer of functions to the IOMRA in accordance with paragraph 3(1) of Schedule 2 to the Statutory Boards Act 1987. Once transferred, all regulatory functions will reside collectively with the IOMRA Board, who can then delegate certain tasks to the Chief Officer. In order for these functions to reside with the Chief Officer, an amendment to the Statutory Boards Act 1987 would be required.

The current Head of OFT, Director of Planning and Building control and RTLC Secretary will transfer to the IOMRA, along with other appropriate resources, and report to the Chief

⁴ See section 5 of the Statutory Boards Act 1987, for the application to statutory boards of Schedule 2 to the Government Departments Act 1987

Officer.

The Cabinet Office will be the sponsoring Department for the IOMRA and will assume the policy/legislation function for all its incorporated regulatory functions. It then follows that IOMRA officers would be appropriately delegated through the Minister for Policy and Reform.

Action 1.2: Reform and transfer functions of the RTLC to the Regulatory Authority

The Department of Infrastructure and the Department of Environment, Food and Agriculture will review the functions performed by the Road Transport Licensing Committee, alongside officers and board members, resulting in increased operational decisions performed by officers.

As a qualifying body under section 5(1)(b) of the Statutory Boards Act 1987, the RTLC is eligible for its functions to be transferred to a body such as the proposed IOMRA (via a Transfer of Functions Order) under Schedule 2 to the Government Departments Act 1987. This is largely because section 5(2) of the Statutory Boards Act 1987 stipulates that "references in the said Schedule 2 to a Department shall be read as including a reference to a Statutory Board."

These steps should be preceded by stakeholder liaison and Tynwald approval.

In forming the new Board, policy responsibilities that currently sit with the RTLC, should be transferred to the Cabinet Office.

The DoI is currently the sponsoring Department for the RTLC, and is responsible for making legislation that the RTLC enforces. Tynwald has previously recognised the conflict of interest that is inherent in a single body holding responsibility for making legislation by which its own services are regulated, and the regulatory review provides an opportunity for this anomaly to be rectified.

Action 1.3: Transferring remaining Phase 1 functions to IOMRA

Dissolve the Office of Fair Trading board and transfer responsibility and operational functions to the IOMRA.

As the OFT is a Statutory Board, its functions can be transferred by way of a Transfer of Functions Order made under the provisions of Schedule 2 of the Government Departments Act 1987. This too is attributable to the stipulation in section 5(2) of the Statutory Boards Act 1987 that "references in the said Schedule 2 to a Department shall be read as including a reference to a Statutory Board."

Responsibility for the Health and Safety at Work Inspectorate to be transferred from the Department of Environment, Food and Agriculture to the IOMRA.

As the HSWI is currently part of DEFA, its functions can be transferred to the IOMRA under a Transfer of Functions Order made under the provisions of Schedule 2 of the Government Departments Act 1987.

The regulatory functions of the Planning Section should be transferred to the IOMRA.

As the Planning and Building Control Directorate is part of DEFA, the relevant regulatory

functions can be transferred to the IOMRA using a Transfer of Functions Order made under the provisions of Schedule 2 of the Government Departments Act 1987.

The Town and Country Planning Act 1999 is the main piece of legislation under which the Planning and Building Control Directorate takes enforcement action when it is suspected that breach of planning control has occurred in the following areas:

- Material changes of use (e.g. use of land for unauthorised storage or use of land as unauthorised extension to residential curtilage)
- Building without planning approval (e.g. residential development – unauthorised extensions/fences etc.)
- Non-compliance with planning conditions (e.g. hours of operations or implementation of planting schemes)
- Enforcement of the Control of Advertisement Regulations
- Unauthorised works to Registered buildings and buildings within Conservation Areas
- Development not built in accordance with approved plans

All of the above breaches are offences, clarifying that Planning has regulatory and enforcement functions and therefore it is appropriate for the enforcement area (at least) to be transferred to the IOMRA. When considering the criteria set out in Section 13 of this Report, the regulatory functions of Planning fall in each one.

- **Political independence** – where international obligations or public expectations make a compelling case for the regulatory body to be free from political influence.
- **Stability of regulation** – where regulation is established through Acts of Tynwald that rarely change or is analogous to legislation in other jurisdictions.
- **Policy implementation v regulatory enforcement** – where the regulatory body can reasonably be divided between policy and enforcement wings.

The Head of Office of Fair Trading, the Health and Safety Work Inspectorate area and Director of Planning and Building Control will report to the Chief Officer of the newly-created IOMRA. Planning Appeals will be heard by the Policy and Reform Minister.

The transfer must be preceded by stakeholder liaison and Tynwald approval.

Phase 2:

Phase 2 will include the following actions, and will be subject to the necessary Transfer of Functions Orders, primary legislation changes and the successful implementation of Phase 1. As with Phase 1, the requirements for consideration of transfer of regulatory functions should be based on the three criteria

- **Political independence** – where international obligations or public expectations make a compelling case for the regulatory body to be free from political influence.
- **Stability of regulation** – where regulation is established through Acts of Tynwald that rarely change or is analogous to legislation in other jurisdictions.
- **Policy implementation v regulatory enforcement** – where the regulatory body can reasonably be divided between policy and enforcement wings.

Phase 2 proposes to include all other Government regulatory functions, except those with an international context. This represents potentially a significant movement of functions and staff from Government Departments to the IOMRA and the potential

impacts on the IOMRA, Departments and Government as a whole need to be considered very carefully before progressing. Given the scale of change proposed, it is very likely that such a transfer of functions would have unintended consequences which would affect the interdependencies by which Departments operate under their current structures.

If Phase 2 is successful, the changes to Government will be profound and will create a separation between policy and regulation. Phase 2 would mark a logical point to consider a policy hub to formalise that separation and the Cabinet Office, as the driver of policy reform, as previously identified as the logical place in which to centralise policy development.

If all regulatory and policy functions are to be vested in a single regulatory authority and single Government Department, Phase 2 considerations should extend to what the future structure of Government service provision will be.

Action 2.1

Further research and consultation are undertaken to understand the feasibility of the following services being migrated into the IOMRA:

- Enforcement regarding registered tourist premises including exemptions, a function currently vested in the Department for Enterprise.

Responsibility for actual registration and policy, including the setting of standards should remain with the Department for Enterprise.

- Enforcement of employment legislation, including minimum wage, employment agency licensing, employment contracts and the work permit system, currently vested in the Department for Enterprise.

Responsibility for work permit and employment policy, guidance and legislation, including the setting of standards, and the issue of work permits, should remain with the Department for Enterprise.

- The Fire Safety functions of the Department of Home Affairs are integrated into the IOMRA as part of the next phase of this project.
- The quality regulation and inspection of health care is currently under review, through the Health Transformation Programme, noting its intention to establish a new delivery organisation for health and care further consideration to this function should be considered as part of phase 2.
- That once a review of Quality Assurance and Inspection of schools and the University College has been completed within the Department of Education, Sport and Culture, consideration may be given to transferring the management of education related regulation into the IOMRA.
- Powers for the enforcement of the regulatory functions set out in the Gas Regulation Act 1995, are transferred to the trading standards officer, as appropriate.

The scale of change proposed demands that stakeholder liaison should be undertaken and Tynwald approval should be sought before Phase 2 is progressed.

Action 2.2: Local Authority Regulatory Functions

That consideration is given, through collaborative working with the local authorities concerned (Douglas Corporation and Onchan Commissioners) to all building control delivery and enforcement being vested in a single authority supported within the IOMRA, alongside other co-operative working between local authorities and national government.

The relevant regulatory functions can be transferred to the IOMRA using Transfer of Functions Order made under the provisions of Schedule 2 of the Government Departments Act 1987.

The Director of Planning and Building Control will report to the Chief Officer of the newly-created IOMRA.

The transfer should be preceded by stakeholder liaison and Tynwald approval.

Phase 3:

Phase 3 will include the following recommendations, subject to any necessary Transfer of Functions Orders and primary legislation changes and the successful implementation of Phases 1 and 2. As with Phases 1 and 2, the requirements for consideration of transfer of regulatory functions should be based on the three criteria

- **Political independence** – where international obligations or public expectations make a compelling case for the regulatory body to be free from political influence.
- **Stability of regulation** – where regulation is established through Acts of Tynwald that rarely change or is analogous to legislation in other jurisdictions.
- **Policy implementation v regulatory enforcement** – where the regulatory body can reasonably be divided between policy and enforcement wings.

Regulatory bodies with international roles should be considered in the future for potential development under Phase 3, and there may be other, more minor regulatory activities which have yet to be identified. However, international obligations may require them to be independent of each other, rendering them unsuitable for inclusion in the IOMRA.

Appendix 2 – Proposed areas for consideration in each Phase

Isle of Man Regulatory Authority (IOMRA)

Phase 1	
OFT	
RTL	
HSWI	DEFA
Environmental Health	DEFA
Planning and Building Control	DEFA
Phase 2	
Registered Tourism Properties Employment Legislation	DfE
Environmental Protection Unit Animal Health	DEFA
Waste	DOI
Education Regulation	DESC
Building Control Enforcement	LAs
Gas Regulation powers	DOI
Any other Department areas which are identified	
Phase 3	
To consider other areas of regulation which are currently operating separately, though could be suitable for inclusion in the IOMRA	

Appendix 3 – Candidates for potential removal and opportunities for Deregulation

Candidates for potential removal from the IOMRA

The role of the Office of Fair Trading as the registration authority under the Moneylenders Act 1991 is largely an internationally facing regulatory activity with potential Anti Money Laundering and Combatting the Funding of Terrorism implications and should transfer to the Financial Services Authority. Responsibility for registration of moneylenders under the Designated Businesses (Registration and Oversight) Act 2015¹⁰ is already vested in the Financial Services Authority so this change would remove duplication for both regulator and customer alike.

Whilst the Financial Services Ombudsman Scheme and the mediation role under the Equality Act 2015 (and until repealed the Disability Discrimination Act 2006) can continue to be operated by the Office of Fair Trading (and move to the IOMRA), consideration should be given to creating an Isle of Man Ombudsman to incorporate those services alongside the Tynwald Commissioner for Administration and the Isle of Man Pension Ombudsman. The scope of such an Office could include other elements of alternative dispute resolution such as mediation and arbitration.

Opportunities for Deregulation

The Office of Fair Trading is the regulator under the Video Recordings Act 1995. Part 2 of this Act requires the registration of all video suppliers and there are approximately 45 shops registered (often charity shops). The original aim was to ensure that young people do not have access to age inappropriate material but the advent of the internet has undermined the original purpose. This registration requirement adds no value and should be removed.

The Department of Environment, Food and Agriculture is responsible for the issue of licences to fell trees. Although there is a need to retain licensing for significant trees there is an opportunity to provide increased exemptions.

The Department of Environment, Food and Agriculture is responsible for the issue of game licences and has identified opportunities for deregulation.

Although opportunities for deregulation have been identified, each will need careful cost-benefit analysis. This is particularly an issue where deregulation would require legislative change, and careful prioritisation will be required.

¹⁰ https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0009/DesignatedBusinessesRegistrationandOversightAct2015_7.pdf