

B

NATIONAL REGULATORS

B.1 This Annex lists all the regulators in the scope of the review, and some notable exceptions. It also examines the largest national regulators in detail.

Scope B.2 The review was asked to examine all business-regulator interactions, including licensing, inspection, form-filling and other forms of enforcement. This excluded from scope all regulators that did not have interactions with business, including bodies with no inspection or enforcement role such as employment tribunals.

B.3 HM Revenue and Customs was also excluded because of the recent work carried out by the O'Donnell Review.¹ The 'economic regulators' (Ofgem, Office of Rail Regulation, Ofwat, Civil Aviation Authority Economic Regulation Group, Postcomm, and Ofcom) were excluded because they concentrate on economic solutions to market failures covering a small group of businesses, and have been the subjects of a series of recent studies, including by the Better Regulation Task Force.²

B.4 The Adult Learning Inspectorate, Commission for Social Care Inspection, and Healthcare Commission were also excluded because of their inclusion in the work on inspection by the Office for Public Services Reform³ and the subsequent establishment of a Ministerial Sub-Committee on inspection (PSX(I)), which was established to take strategic oversight of the Government's policy on inspection and provide an external review of public services.

B.5 We have not examined regulators that are the responsibility of the devolved institutions in Scotland, Wales and Northern Ireland. We have, however, considered the operations of England-based regulators in those countries.

B.6 Although the review has not specifically addressed the excluded bodies, we have considered aspects of their current initiatives and activities to inform our view of other regulators. The review's recommendations, though specific to the regulators in our scope, may be of interest to those outside the remit of this review.

DIFFERENT TYPES OF REGULATORS

B.7 The review identified a total of 59 national regulators within its scope, in addition to the regulatory services of local authorities, which are discussed in more detail in Annex C. These national regulators range from very large bodies with a wide range of powers, like the Environment Agency, to small, highly specialised regulators, like the Adventure Activities Licensing Authority.

B.8 The national regulators in scope can be categorised into four main groups:

- Core Departmental functions;
- Non-Ministerial Departments;
- Non-Departmental Public Bodies (NDPBs); and
- Executive Agencies.

¹ *Financing Britain's future: Review of the Revenue Departments*, Gus O'Donnell, March 2004.

² *Economic regulators*, Better Regulation Task Force, July 2001.

³ *Inspecting for improvement: Developing a customer focused approach*, The Prime Minister's Office of Public Services Reform, July 2003.

B.9 The different types of bodies have different legal status, and there are therefore varying constraints on institutional reform.

B.10 Secretaries of State can change or move *core Departmental functions* administratively, because they are part of the normal Departmental structure. Examples include DTI Companies Investigations Branch and Defra Drinking Water Inspectorate (DWI).

B.11 Office-holders, boards or commissioners with specific statutory responsibilities head *non-Ministerial Departments*. Their staff are civil servants. The precise nature of their relationship with Ministers varies according to their individual policy and statutory framework. Their structure keeps the day-to-day administration of the particular activity separate from Government, but allows Government input in the wider policy context. Their establishing statutes set out how much their structure can be changed by administrative means. Examples of non-Ministerial Departments include the Food Standards Agency and the Forestry Commission.

B.12 A *Non-Departmental Public Body* is not part of a government department, and carries out its functions at arm's length from central government. Ministers are responsible to Parliament for the activities of NDPBs sponsored by their Department and, in almost all cases, Ministers make the appointments to their boards. Departments are responsible for funding and ensuring good governance of their NDPBs. NDPBs tend to be set up through statute, and most need primary legislation to alter their institutional framework. Examples include the Environment Agency and the Health and Safety Commission/Executive.

B.13 An *Executive Agency* is a body that has been set up to carry out a particular service or function within Government and has a clear focus on delivering specific outputs. As with NDPBs, Ministers are ultimately responsible for the work of Executive Agencies. Departments are responsible for funding and ensuring good governance of their NDPBs. Executive Agencies, unless explicitly created by statute, can be reformed without primary legislation. Examples include the Rural Payments Agency and the Meat Hygiene Service.

B.14 Two bodies we are considering do not fit into the categories above. The Civil Aviation Authority is a public corporation. The Financial Services Authority is a statutory industry body.

UK REGULATORS IN SCOPE

B.15 Core departmental functions considered within scope:

- Agriculture Wages Team (within Defra)
- Drinking Water Inspectorate (Defra)
- Egg Marketing Inspectorate (Defra)
- Fish Health Inspectorate (Defra)
- Global Wildlife Division – Wildlife Inspectorate, and Licensing and Bird Registration (Defra)
- Horticultural Marketing Inspectorate (Defra)
- Plant Health and Seeds Inspectorate (Defra)
- Plant Varieties and Seeds Division (Defra)

- Rural Development Service – Dairy Hygiene Inspectorate, and National Wildlife Management Team (Defra)
- Sea Fisheries Inspectorate (Defra)
- State Veterinary Service (Defra)
- Pharmaceutical Price Regulation Scheme (DH)
- Employment Agency Standards Inspectorate (DTI)
- Companies Investigation Branch (DTI)
- Animals (Scientific Procedures) Inspectorate (HO)

B.16 Non-Ministerial Departments considered within scope:

- Charity Commission for England and Wales
- Food Standards Agency
- Forestry Commission
- Office of Fair Trading

B.17 Non-Departmental Public Bodies considered within scope:

- British Hallmarking Council (sponsored by DTI)
- British Potato Council (Defra)
- Coal Authority (DTI)
- Competition Commission (DTI)
- Disability Rights Commission (DWP)
- English Heritage (DCMS)
- English Nature (Defra)
- Environment Agency (Defra)
- Equal Opportunities Commission (DTI)
- Financial Reporting Council (DTI)
- Football Licensing Authority (DCMS)
- Gaming Board for Great Britain (DCMS)
- Health and Safety Commission/Executive (DWP)
- Home Grown Cereals Authority (Defra)
- Housing Corporation (ODPM)
- Human Fertilisation and Embryology Authority (DH)
- Information Commissioner's Office (DCA)
- National Bee Unit of the Central Science Laboratory (Defra)

- Occupational Pensions Regulatory Authority (DWP)
- Sea Fish Industry Authority (Defra)
- Security Industry Authority (HO)
- UK Sport (DCMS)
- Wine Standards Board (Defra)

B.18 Executive Agencies considered within scope:

- Assets Recovery Agency (sponsored by the Home Office)
- Companies House (DTI)
- Driving Standards Agency (DfT)
- Insolvency Service (DTI)
- Maritime and Coastguard Agency (DfT)
- Meat Hygiene Service (FSA)
- Medicines and Healthcare products Regulatory Agency (DH)
- National Weights and Measures Laboratory (DTI)
- Patent Office (DTI)
- Pesticides Safety Directorate (Defra)
- Rural Payments Agency (Defra)
- Vehicle and Operator Services Agency (DfT)
- Vehicle Certification Agency (DfT)
- Veterinary Medicines Directorate (Defra)

B.19 Other bodies considered within scope:

- Financial Services Authority
- Civil Aviation Authority Safety Regulation Group, Aviation Regulation Enforcement Department and Consumer Protection Group (sponsored by Department for Transport)
- Adventure Activities Licensing Authority (funded by DfES)

NOTABLE UK REGULATORS OUT OF SCOPE

B.20 The following notable Non-Ministerial Departments are considered out of scope:

- HM Revenue and Customs
- Office of Gas and Electricity Markets (Ofgem)
- Office of the Rail Regulator
- Office of the Water Regulator (Ofwat)
- Office for Standards in Education (Ofsted)

- Postal Services Commission (Postcomm)
- Serious Fraud Office

B.21 The following notable Non-Departmental Public Bodies were considered out of scope:

- Adult Learning Inspectorate (sponsored by DfES)
- Audit Commission (ODPM)
- Commission for Racial Equality (HO)
- Commission for Social Care Inspection (DH)
- Countryside Agency (Defra)
- Healthcare Commission (DH)
- Strategic Rail Authority (DfT)

B.22 The following notable Public corporations considered out of scope:

- Civil Aviation Authority Economic Regulation Group (sponsored by DfT)
- Office of Communications (Ofcom, sponsored by DTI)

B.23 Since the Review process began, there have been several new, or proposed, bodies that would be considered to be within our scope, had they existed at the start of the review. These are:

- the new pensions regulatory body;
- Gangmasters Licensing Authority;
- the independent regulator for Community Interest Companies;
- The Commission for Equality and Human Rights; and
- the post-Haskins Integrated Agency.

THE LARGEST NATIONAL REGULATORS

B.24 The inspection, advice-giving, and incentive regimes of each of the main national regulators are discussed below.

Environment Agency

B.25 The Environment Agency (EA) was formed in 1996. It covers England and Wales only, with the Scottish Environmental Protection Agency (SEPA) operating in Scotland. The Agency has an operating budget for 2004-05 of £870 million. This comprises £503 million from various Government grants (including £350 million for flood defence), £248 million from charging schemes, and £117 million from other sources. As of 31 March 2004, the EA had a staff of 11,714, of which 2,417 worked on inspection and enforcement, and a further 2,646 on other aspects of regulation such as permitting and monitoring. This number does not include local authority Environmental Health Officers working on environmental issues, who are covered in Annex C.

Inspections B.26 The EU sets out minimum criteria for environmental inspections in a Recommendation. The Council of Ministers has committed to implement this Recommendation in full in all Member States. In fulfilment of these requirements, the EA's inspection regime includes the following activities:

- site visits (planned and reactive, pre-arranged and unannounced);
- monitoring environmental quality standards;
- consideration of environmental audit reports and statements;
- consideration and verification of any self-monitoring carried out by or on behalf of operators;
- assessing the activities and operations carried out at controlled installations;
- checking premises, including any relevant equipment and the adequacy of environmental management at the site; and
- checking records kept by the operators of controlled installations.

B.27 The frequency and type of inspection activity is primarily based on consideration of environmental risk and operator performance, as discussed below, though full risk-based activity is constrained by the need to meet legislative or statutory requirements. Where an operator has a suitably robust management system, the EA are increasingly encouraging operators to self-monitor and self-report. This already happens in Integrated Pollution Control (IPC), Pollution Prevention and Control (PPC) and Radioactive Substances regimes.

B.28 As well as having some general responsibilities for environmental oversight, the EA issues precisely drafted permits and licences to business. There are 267,000 environmental permits (including 37,000 water abstraction licences), 7,000 consents for land drainage, and 8,000 consents for fish movements. In order to ensure that those licences are being complied with, a fairly intensive inspection regime has historically been judged to be necessary. In 2002-03 EA staff carried out over 200,000 inspections and 100 in-depth audits. These included:

- 194,000 site visits to assess compliance with environmental permits and abstraction licences;
- 5,500 pollution prevention visits; and
- 2,000 farm visits in Nitrate Vulnerable Zones.

Risk B.29 The EA uses tools, such as its Operator Performance and Risk Appraisal (OPRA) screening methodology, to profile businesses based on risk. The OPRA methodology takes into account the potential hazard (location, emissions and operational complexity) and an operator's management performance, to provide an environmental risk profile. The EA is developing OPRA further so that in the future all its regulatory regimes will use OPRA as a common framework. Box 2.1 covers OPRA in more detail.

B.30 The EA have also developed a technique to rank the riskiness of the main business sectors where Small and Medium Sized enterprises (SMEs) are significant players. This tool (SeLECT) uses existing performance data, and has been used to identify which business sectors should be the focus of the EA's work with SMEs to maximise environmental benefit.

B.31 The EA also carries out research and development to support the development of modern and risk based approaches to regulation. One current project considers “self-support and advice by non-nuclear users of radioactive substances”. This aims to identify potential ways of getting low-risk regulated businesses to increase their self regulation, so that the Agency can free up resources to be directed towards higher-risk premises. The EA’s risk-based approach to modernising its regulatory activities is set out in more detail in its discussion document *Delivering for the environment: A 21st Century approach to regulation*.⁴

Giving advice B.32 For businesses that are issued with EA permits or licences, the Agency provides advice and support through:

- regular liaison meetings with key trade bodies;
- formal consultations on regulatory procedures;
- joint discussions and consultations on the technical standards that will be applied by inspectors;
- sector- and regime-specific regulatory and best practice guidance;
- sector-based workshops, training and conference events;
- sector-based CDs containing all the key documents required by applicants to make a successful permit application; and
- pre-application discussions to ensure businesses are aware of requirements.

B.33 In addition, these and other businesses can draw on different sources:

- NetRegs – internet based plain language guidance for businesses on environmental legislation and how to comply with it, currently covering over 100 business sectors;
- targeted campaigns and programmes;
- sectoral and general best practice guidance;
- joint Voluntary Codes of Practice; and
- joint voluntary operating agreements with major multi-site operating companies.

Charging B.34 The EA has a duty imposed by its Financial Memorandum to balance charges with costs. Of a total budget of £870 million in 2004/05, £248.4 million is derived from charging schemes to business entities as follows:

- IPC/IPPC applications and subsistence – £30.1 million.
- RSR authorisations and monitoring – £6.8 million.
- Waste licensing/management activities – £36.7 million.
- Water Quality discharge consents – £62.3 million.
- Water Resources abstraction charges – £112.5 million.

⁴ *Delivering for the environment: a 21st century approach to regulation*, Environment Agency, October 2003.

B.35 The EA have to adhere to the HM Treasury Fees and Charges Guide, and Section 41 of the Environment Act sets out the potential range, frequency and scope of their charging. Most charging schemes achieve cost recovery and are based on scales of fixed charges or a charging formula.

B.36 The Agency's current charging strategy is supported by a recent Agency/Defra review, which includes the following principles:

- charges should reflect the modern risk-based approach to regulation;
- they should provide for signals about operator performance and, as far as possible within the constraints of cost recovery and cost reflectivity, rewards and incentives for good performance;
- charges to licence holders should, on average, fairly reflect the costs of regulating them;
- charging schemes should continue to recover the cost of the regulatory regime as a whole and the charging base should be protected in order to fund the associated and agreed level of regulation; and
- the Agency should vigorously pursue continuous improvement in its efficiency and proportionately reflect the benefits in charges.

B.37 Time and materials charges are used in a minority of cases, for example, for Control of Major Accident Hazards (COMAH) and Radioactive Substances Regulation (RSR) at nuclear sites. The most modern charging scheme covers Pollution Prevention and Control (PPC) regulation. In order to ensure cost recovery and cost reflectivity, it uses:

- formula-based charges for applications for new permits, subsistence of permits, and substantial and standard variations to permits. A score derived from the OPRA risk screening system is multiplied by a financial factor known as the charge multiplier to arrive at the charge; and
- fixed charges for transfers and surrenders of permits which are subject to OPRA-based charges for other activities; standard permits for intensive livestock installations, 'local authority' activities, and low impact installations. The level of regulatory effort in these cases is common to the activity and does not vary with the features of the installation.

Penalty regimes B.38 Penalty regimes are set out in legislation, and vary from regulation to regulation. Average fines across all offences for 2003-04 in magistrates' courts were £3,861 per prosecution. There are no minimum fines and no guideline penalties for environmental offences.

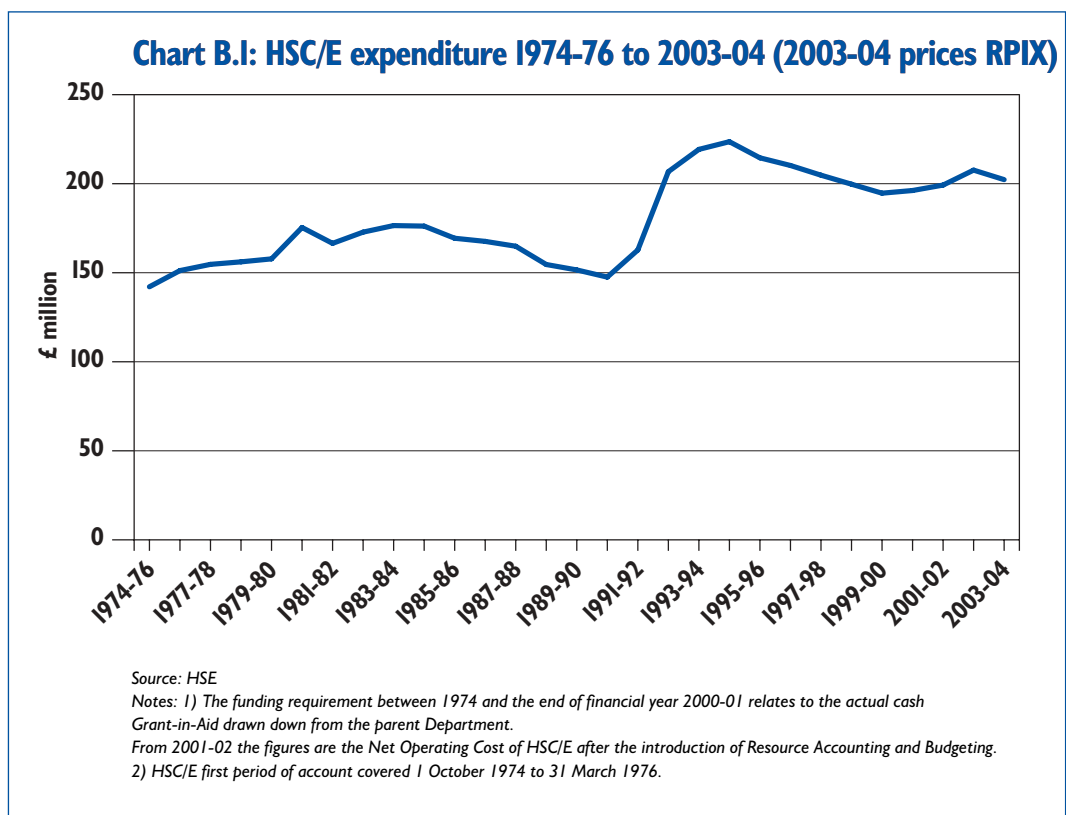
B.39 Once a year the EA publishes a booklet entitled *Spotlight on business – Environmental performance*.⁵ The report highlights both good and bad performers and has a short commentary on their classification. Records of fines, company OPRA scores, trends in chemicals and wastes released, and information from individual inspectors are all used. The latter is important as companies may be making significant investments in new plant or abatement that will not show results for some time. The report also includes a list of all the companies fined more than about £5,000.

⁵ *Greener business is good business: Spotlight on business – environmental performance in 2003*, Environment Agency, 2004.

Health and Safety Commission/Executive

B.40 The Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) were established by the Health and Safety at Work etc. Act 1974 (HSWA), and cover the whole of the UK except Northern Ireland. The HSC is responsible for protecting all citizens against risks to health or safety arising out of work activities. It also conducts and sponsors research, promotes training, provides an information and advisory service, and submits proposals for new or revised regulations and approved codes of practice. Enforcement is carried out by the HSE and by local authorities. On 1 April 2004, the HSE had 4,019 staff in post. This section discusses the work of HSC/E, while the work of local authorities is discussed in more detail in Annex C. The HSC's strategy is set out in *A strategy for workplace health and safety in Great Britain*.⁶

B.41 Gross expenditure by HSC/E in 2004-05 is projected to be £284 million. Of this £226.2 million is grant-in-aid from the Government, an estimated £47.3 million comes from charges on regulated businesses, £5.1 million from sales of publications, £3.6 million from prosecution costs, and £1.8 million from other sources. In 2003/04, 53 per cent of the HSC/E's budget was spent on compliance work. Chart B.1 below illustrates the HSC/E budget over time since 1974-76.



Inspections B.42 Inspection regimes form part of a wide range of interventions used in the HSE. There are two types of inspection regime – permissioning regimes, generally for higher-hazard industries (those with the potential for catastrophe), and the multi-industry inspection regime operated by the Field Operations Directorate (FOD). All are based on risk assessment, taking into account both inherent risk and businesses’ ability to manage it.

⁶ *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, Health and Safety Commission, February 2004.

B.43 All of the HSE's four operating Directorates use permissioning regimes. FOD does this in a limited way on issues such as asbestos licensing but the others (the Nuclear Safety Directorate, the Railway Inspectorate and the Hazardous Industries Directorate) have more substantial schemes. These require businesses with defined high-hazard activities to submit a 'safety case' or 'safety report' setting out how they will manage the risks. The inspection regimes are then based largely around the testing and verification of the safety cases, both proactively on the basis of risk assessments, and reactively following incidents. From 2006, the Railway Inspectorate will merge with the Office of Rail Regulation, but will continue to apply the Health and Safety at Work Act.

B.44 In FOD the balance of time between proactive and reactive work was around 50:50 in 2002-03. Given the large number and diverse nature of the businesses covered by FOD, targeting occurs in four main ways:

- a planned inspection programme, which focuses on those hazards and sectors where improvements are necessary to deliver the Revitalising Health and Safety targets;
- fixed criteria for selection of accidents and ill-health reports to investigate, based on severity of injury or relevance to key Strategic Programmes;
- a risk-based rating scheme for businesses, which sets the priorities for proactive inspection; and
- special programmes (blitzes) that target particular industries or types of company, based on incident rates or local intelligence.

B.45 The HSE's approach to regulation is subject to occasional audit by the Senior Labour Inspectors' Committee (SLIC) on behalf of the European Commission. SLIC is also a forum for discussing issues such as investigation and enforcement protocols. There are some regulatory expectations deriving from international conventions on the nuclear industry.

Risk B.46 Inspection programmes in all parts of the HSE are prioritised by risk although there are legislation-driven timetables for assessment of safety cases and reports in the permissioning regimes.

B.47 FOD covers by far the largest number of businesses. Its risk profiling uses risk ratings, incident history and local information on duty holders known to the HSE. Premises new to HSE are subject to a risk appraisal through the 'contact process' involving telephone enquiries and Health and Safety Awareness Officer visits, as well as visits by inspectors. Permissioning directorates prioritise their inspections based on an assessment of the information submitted in safety cases/reports and on other intelligence of the installation or business concerned. This means that good performers falling under the FOD inspections are, in effect, subject to lighter inspection. Similarly, interventions in high-hazard industries are tailored to areas of lower confidence in management and higher risks.

Giving advice B.48 HSE provides advice to business through a number of different channels:

- Health and Safety Awareness Officers – specially trained staff whose role is to support HSE's regulatory framework, promote health and safety awareness and provide information to employers, employees and others;
- field staff on inspection visits. Under the HSC Enforcement Policy Statement (EPS),⁷ and the proportionality principle in particular, inspectors address most breaches they find by giving information and advice;

⁷ <http://www.hse.gov.uk/pubns/hsc15.pdf>

- written guidance in the form of either priced or free publications and products which are available through HSEbooks.co.uk or can be viewed on HSE's website;
- the HSE website – recently reorganised around specific industries and health and safety topics. The site was popular among those who responded to the review's business consultation;
- an on-line information service, available through HSE Direct allowing people to download priced publications for a fee;
- HSE Infoline – a national telephone public enquiry service;
- drop-in information centres in Bootle, London and Sheffield; and
- visual and audio media, including videos, CD-ROMs and tapes available for sale.

B.49 A recent HSE report outlined the need for more efficient advice.⁸ It identified a need for the HSE to become more interactive, to make its advice more specific, and to include stakeholders more in the decision making process. These improvements will be measured against a baseline. The HSE are currently considering how to measure the impact of their strategy overall, and how to baseline attitudes and impact over time. A September 2004 Consultative Document,⁹ still open for responses, seeks views on how the HSE is attempting to influence behaviour through a much wider range of levers and how it will use the various intervention techniques at its disposal.

Charging B.50 The HSC's policy is that the executive should charge for those statutory services of a 'permissioning' nature since there is economic advantage to the business in question in gaining permission. Charges levied include testing, certification, approval, acceptance of notification, licensing and certain exemptions. As with the Environment Agency, the aim is to recover costs but not to generate a surplus. HSC/E does not have the power to set fees in its own right. It proposes charges for inclusion in regulations made by Ministers under section 43(2) of the Health and Safety at Work etc. Act 1974. Fees and charges are reviewed annually; if a new set of regulations introduces any changes, they apply from 1 April each year.

B.51 In all, HSE has 18 charging schemes in place. Of these, 15 schemes have their charges set in the Fees Regulations. The nuclear safety regime is dealt with under different legislation. In three cases – COMAH Regulations, Biocidal Products, and Pesticides – the fee charging provision is set in the regulations themselves. HSE uses both hourly rates and fixed fees in its charging schemes, and in some cases a mixture of the two.

B.52 Eleven of the charging schemes generated income of more than £100,000 in 2003-04. Other schemes have been in place for many years and generate little income. The largest charging scheme operated by HSE is for nuclear site licensing (£21.0 million in 2003-04) where HSE recovers all its costs. In some other schemes the costs of policy and other generic work cannot be clearly attributed to individual businesses, and these are borne centrally. In total HSE recovered about £60 million in 2003-04 (about 21 per cent of gross costs) and is projecting a similar recovery in 2004-05.

⁸ *Statement on providing accessible advice and support*, Health and Safety Executive, September 2004.

⁹ *Regulation and recognition*, Health and Safety Commission, September 2004.

Penalty regime B.53 The HSC EPS sets out the principles that enforcing authorities must apply when making decisions on enforcement. Enforcing authorities have a range of tools at their disposal to secure compliance with the law. Applying the proportionality principle in particular, inspectors address most breaches they find by giving information and advice. Improvement and Prohibition Notices offer an effective statutory means of securing necessary improvements in the face of more serious risks. There are rights of appeal to the Employment Tribunal against issue of notices. Prosecution is reserved for the most serious breaches. In 2002-03, 933 prosecution cases followed HSE investigations' with 86 per cent resulting in a conviction.

B.54 The maximum fines that the magistrates may impose are set out in section 33 of HSWA but tend to be in line with those of the Environment Agency (fines not more than £20,000 for breach of the general duties under HSWA and not more than £5,000 for breaches of regulations). In 2003-04 the average fine for a breach of health and safety law was £4,036. Cases tried in the Crown Court may be punished by an unlimited fine. Imprisonment is available for certain offences (e.g. failure to comply with a Prohibition Notice).

B.55 In any year HSE prosecutes only about 30 individuals (as opposed to companies) for health and safety offences. It is rare for the courts to imprison: only five people have ever been jailed, all between January 1996 and October 1999. For a health and safety offence the maximum fine ever levied was £2 million against Thames Trains following the Ladbroke Grove train crash. The average fine for convictions of individuals following HSE investigations (all courts) in 2002-03 (provisional) was £8,828 per case (i.e. per defendant).

B.56 The Government plans to extend the exceptional statutory maximum £20,000 lower court fine to most other health and safety offences, including breach of regulations (currently £5,000 lower court maximum), but this requires primary legislation. The planned legislation would also make imprisonment available for most health and safety offences.

Other incentives B.57 The European Health and Safety Week awards publicise good practice. HSE also names, on its website, those who have been convicted of health and safety offences, and those who have received Improvement and Prohibition Notices. This is in line with the HSC strategy of naming offenders in order to inform everyone with an interest in an organisation's health and safety performance. The Health and Safety/Local Authority Liaison Committee (HELA) also produces an annual list of health and safety offenders convicted following local authority prosecutions. It is published on the HSE website.

Rural Payments Agency

B.58 The Rural Payments Agency (RPA) was established in October 2001 as an Executive Agency of Defra. RPA is responsible for the Common Agricultural Policy (CAP) payment functions formerly delivered by the Defra Paying Agency and the Intervention Board. Its total running costs from the Treasury for 2004-05 are approximately £140 million of which about £20 million is for the British Cattle Movement Service (BCMS). RPA have a further budget this year of £55 million for their Change Programme (which includes an e-business system that will schedule and allocate inspections at the optimum time). A budget of nearly £2 billion a year is allocated to the Agency for payment of subsidies (CAP and other), the majority of which is reimbursed by the EU.

B.59 RPA's responsibility under the CAP covers all of England for farm-based schemes under the Integrated Administration Control System (IACS) and the English Rural Development Programme. It is also responsible for 'trader'-based schemes (non-land based schemes) and export refunds across the UK. The BCMS and RPA's Technical Inspectorates (of livestock and meat, dairy and crops) also cover all of the UK. On 1 June 2004, the RPA as a whole had 3,545 full time equivalent staff. This included 447 working on inspection and enforcement.

Inspections B.60 RPA currently inspect in relation to over 60 different schemes funded by the EU. The percentage of inspection visits involved, and the timing of these inspections, varies from scheme to scheme. Their timetable is almost entirely driven by statutory requirement and/or European regulatory requirements and subsequent Management or Service Level Agreements. Defra's work on the 'Whole Farm Approach', the Haskins Review and CAP Reform are investigating possibilities for joint inspections.

Risk B.61 In the farm schemes, the EC regulations prescribe an annual regime of inspections of land (area and use) and livestock based on a selection model which combines a random and risk element. The random element is required to make an impartial examination of the effectiveness of the overall inspection regime, while the risk-based element is intended to identify cases of irregularity as a priority.

B.62 The majority of trader-based schemes do not, as a rule, run inspection regimes based on a risk selection. Instead, inspection checks are run on all traders in a scheme with a reconciliation of claims against records of the previous inspection visit. A risk-based inspection regime is applied to export refunds, where HM Customs & Excise undertake identification checks of eligible goods leaving the UK, on behalf of RPA. Milk Quota (direct seller) inspections are also selected by risk profile.

B.63 Where inspections are selected by risk, businesses which have undergone satisfactory inspections are less likely to be selected in subsequent years. Moreover, in the case of some of the 'big value' bovine and land schemes, inspectors are instructed to increase or decrease the number and type of checks carried out in the course of an inspection depending on the number and type of anomalies found in the initial stages. A sampling approach is used to make these determinations.

Giving advice B.64 The RPA issues scheme booklets to all participants. These explain the rules of schemes in full and the administrative conditions that participants must meet. The RPA does not provide individual advice on how a participant should organise its business in order to claim under CAP schemes, but it does answer queries from participants on its scheme literature, how and when to complete scheme forms, and where to obtain further information or guidance. RPA Inspectors provide producers with copies of approved-format Herd and Flock Registers and application forms for changing land-parcel identification. Subsequent decisions on courses of action are the responsibility of the scheme participant.

Charging B.65 The only current income from charging derives from a small amount of commercial work carried out on behalf of the London International Financial Futures Exchange (LIFFE), and the Grain and Feed Trade Association.

Penalties B.66 As CAP scheme rules are generally stringent, participants may face a reduction in their aid payment for any ineligible elements of land area or livestock numbers found at inspection. In addition, there may be a fine or prosecution in cases of fraud.

Food Standards Agency

B.67 The Food Standards Agency (FSA) has its origins in the James Report,¹⁰ which was commissioned by the Prime Minister when Leader of the Opposition. The report made recommendations on the structure and function of a Food Safety and Standards Agency, and was followed by a White Paper confirming the Government's commitment to establishing an "independent Food Standards Agency...powerful, open and dedicated to the interests of consumers."¹¹ The FSA, a non-Ministerial Department, was established by the Food Standards Act 1999.

B.68 The FSA's only executive agency is the Meat Hygiene Service (MHS). The MHS's main functions are to ensure maintenance of the highest standards required by the law for the hygienic production of meat and for the welfare of animals at slaughter, and to provide a meat inspection service to all licensed meat plants, which include abattoirs, slaughterhouses and meat cutting plants. The MHS operates throughout Great Britain; the Department of Agriculture and Rural Development provides a similar service in Northern Ireland. EU law largely provides the legal base for the work of the MHS with specific domestic requirements in relation to certain BSE controls.

B.69 The Agency is a UK-wide body although food safety is a devolved matter. The Agency is accountable to the Westminster Parliament through the Secretary of State for Health, and to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland administration through their Health Ministers or equivalents. It has offices in Scotland, Wales and Northern Ireland that work closely with the devolved authorities. In Northern Ireland, the Agency also works with the north-south Food Safety Promotion Board and the Food Safety Authority of Ireland on food issues that have an all-Ireland dimension, such as food-borne illness. Excluding those working with the devolved administrators, the Food Standards Agency currently has 610 employees. There are approximately 1,500 environmental health officers (EHOs) and 500 trading standards officers (TSOs) working on food law enforcement (full time equivalents), and over 1,600 staff working for the Meat Hygiene Service.

Inspections B.70 The MHS and local authorities primarily carry out the inspection and enforcement functions, which derive from food law. Their performance is monitored and audited by the FSA. Local authorities are required by the EU to draw up programmes for inspections of food premises and ensure that inspections are carried out regularly. Codes of Practice made under the Food Safety Act 1990 provide guidance to food authorities on the frequency and nature of inspections, based on risk, to be carried out to assess the food hygiene and food standards controls of food premises.

B.71 Each year the EU Food and Veterinary Office (FVO) develops an inspection programme, identifying priority areas and countries where inspections will take place. The findings of each inspection are published in a report, together with conclusions and recommendations. The national authorities, which could be local authorities or government Departments, have to put in place an action plan to remedy any shortcomings the FVO may find.

Risk B.72 Local food authorities must carry out a risk assessment of food premises. Trading Standards Officers carry out food standards inspections. Environmental Health Officers carry out food hygiene inspections. Annex C covers their work in more detail.

¹⁰ *Food standards agency: An interim proposal*, Professor Philip James, April 1997.

¹¹ *The Food Standards Agency: A force for change*, Minister of Agriculture, Fisheries and Food, January 1998 (Cm 3830).

B.73 The Code of Practice gives guidance to food authorities on the frequency and nature of inspections carried out to assess the hygiene of premises and the public health protection aspects of food law. Each food authority must produce a scheme to determine the minimum frequency of inspection based on the evaluation of potential risk. For premises approved under product specific hygiene regulations inspection frequencies are determined centrally. Other food premises must be inspected for hygiene purposes at intervals between six months and two years, based on risk ratings. Local authorities have the flexibility, however, to develop alternative enforcement strategies for lower-risk premises, which may include no physical inspection.

Box B.1 Best practice: from inspection to audit

New EU hygiene regulations will apply from 1 January 2006. These introduce a requirement for food businesses, other than those in primary production and closely associated activities, to operate risk management procedures based on Hazard Analysis Critical Control Points (HACCP) principles. Some businesses operate such procedures already. For the others, application of the new regulations should result in a change of focus for hygiene inspections, with the new emphasis being on auditing the procedures rather than checking that individual prescriptive provisions are complied with. Businesses operating effective HACCP-based procedures should gain the greater confidence of inspectors.

Giving advice B.74 The FSA provides a large amount of information and advice to business, and has a policy of engaging stakeholders so they will be involved in producing guidance. Types of support to business are:

- guidance when regulations are introduced;
- assisting industry to produce Codes of Practice;
- workshops on specific topics;
- working with training bodies to ensure appropriate training is available; and
- coaching for individual business sectors.

Charging B.75 Around £3 million is recovered by the FSA through charges. Of this, £2.3 million is for radiological work assessing the potential impact of proposed discharges on the safety of the food chain and for a monitoring programme. Milk and dairies sampling work of untreated green-top milk in farmhouses generates around £50,000 for tests carried out by contractors.

Penalty regime B.76 The main criminal regime is set out in the Food Safety Act 1990. As with the EA and HSE, the maximum fines in the magistrates' court for offences such as rendering food injurious to health, selling food not meeting food safety requirements, and selling food not of the nature, substance or quality demanded is £20,000 per offence. Such offences also carry a possible penalty of up to six months' imprisonment. For food hygiene offences the maximum fine is £5,000 per count. The maximum fines are unlimited for offences heard in the Crown Court. Imprisonment (of up to two years) is possible in theory, but is not commonly used. Prosecutions of food businesses do not arise very often, so magistrates may not be familiar with food issues. There are approximately 650-700 cases a year emanating from local authorities. The FSA has used the magistrates' publications to inform magistrates of the implications of food businesses failing to adhere to current legislation.

Other incentives B.77 The FSA publishes information about products and brands. This information is obtained from surveys monitoring food safety and standards. A number of local authorities publicise good performance through, for example, hygiene award schemes. The operation of award schemes in Scotland, Wales and Northern Ireland is being reviewed this year with a view to developing a national award scheme for England. Some local authorities also publicise businesses that have been successfully prosecuted.

Companies House

B.78 All limited companies in the UK are registered at Companies House, an Executive Agency of the Department of Trade and Industry. There are more than 1.8 million limited companies registered in Great Britain, and more than 300,000 new companies are incorporated each year. In 2003-04 Companies House had an income of £52.9 million. £37.6 million came from regulated fees with the remainder from database searches and rental income. As a trading fund, which generates sufficient income to cover all costs, the Government does not provide any funding.

B.79 There are 1,281 employees, 782 of whom are involved in examining documents and ensuring compliance with companies legislation. All 1.8 million companies on the register have to file accounts and annual returns with the Registrar each year. Companies House supplies the latter as a pre-printed document populated with the currently held data. The document is available electronically and the companies need only to confirm the data or enter amendments.

B.80 Companies House does not carry out inspection or give advice aside from guidance on the legal responsibilities of company directors. It does this through its website, a series of guidance note booklets, and seminars. Companies House charges for all its services on a cost recovery basis. Each service is treated independently and there is no cross-subsidy.

B.81 Civil penalties are collected by the Registrar from companies that file their accounts late. These are determined by statute and known as Late Filing Penalties. They vary with type of company and lateness of filing.

Civil Aviation Authority

B.82 The Civil Aviation Authority (CAA) is the UK's specialist aviation regulator with responsibility for air safety, economic regulation, airspace regulation, consumer protection, and environmental research and consultancy. It was established by Parliament in 1972 as a public corporation. Three parts of the organisation fall under the scope of the review: the Safety Regulation Group (SRG), the Consumer Protection Group (CPG), and the Aviation Regulation Enforcement (ARE) Department. The combined budget of these groups is just under £75 million. A total of 719 people work for the three groups, with 493 working in inspection or enforcement.

Inspection B.83 UK aviation organisations are subject to audits and inspections from SRG personnel, but these form only part of how the CAA ensures compliance. Safety is regarded as a co-operative effort between the operator and regulator. The primary responsibility for managing risk rests with the management of the organisations involved. Of the 3,490 businesses within the remit of the CAA SRG, roughly 2,660 are inspected annually. CPG examines compliance with licensing criteria including finances, relevant sales documentation and disclosure for every licence holder at least annually. ARE does not have an inspection regime. SRG cooperates with HSE in areas of overlap, while CPG liaise with Trading Standards and the Office of Fair Trading.

Risk B.84 Some areas of SRG use risk profiling, such as categorising aerodromes as to size/operational activity. CPG sets requirements and applies resources to businesses based on their risk. However, in other areas, rather than applying risk profiling, businesses are required to achieve set standards that control risks. The frequency of inspections may be reduced as auditors become more familiar with businesses and gain confidence in the people and the organisations.

Charging B.85 Under the Civil Aviation Act 1982, the CAA is required to recover its costs from those it regulates and to achieve a return on capital employed. Cost recovery is achieved through a series of statutory schemes of charges which come into force after consultation with the industry and with the Secretary of State for Transport.

Penalty regime B.86 Breaches of aviation safety legislation are criminal offences punishable in the magistrates' court with fines of between £400 and £5,000. Average fines are in the region of £1,000. A small number of serious offences can be tried in the Crown Court with an unlimited fine and/or imprisonment of up to two years. There are no civil penalties. There are approximately 40 prosecution cases each year, the great majority of which result in a conviction and fine. A similar regime is in place for offences that fall under the CPG's responsibilities. Fines tend to be between £1,000 and £3,000.

Defra regulators

B.87 In addition to Defra-sponsored bodies such as the Environment Agency and English Nature, there are twelve bodies that form part of the core Department with inspection and enforcement duties. These are:

- Agricultural Wages Team;
- Drinking Water Inspectorate;
- Egg Marketing Inspectorate;
- Fish Health Inspectorate;
- Global Wildlife Division – Wildlife Inspectorate, and Licensing and Bird Registration;
- Horticultural Marketing Inspectorate;
- Plant Health and Seeds Inspectorate;
- Plant Varieties and Seeds Division;
- Rural Development Service – Dairy Hygiene Inspectorate, and National Wildlife Management Team;
- Sea Fisheries Inspectorate; and
- State Veterinary Service (SVS).

B.88 According to returns to the Review questionnaire, Defra's core bodies spend £126.4 million, of which £72.8 million is SVS expenditure. The total staff complement for these bodies is just over 2,000, although three-quarters are at the SVS, which is likely to be reorganised following the Haskins report.

Inspections B.89 A total of £39.4 million is spent on inspection and enforcement activities, with approximately 860 staff carrying out this work. The inspection regimes vary but most bodies inspect the majority of the firms that they cover. Some of this inspection is based on risk profiling. The SVS have an informal system in which local knowledge and the history of a business have a bearing on the inspection regime. The Dairy Hygiene Inspectorate, Plant Health & Seeds Inspectorate, and Horticultural Marketing Inspectorate have the most developed risk assessment systems. The Agricultural Wages Inspectorate have an entirely reactive regime, while other bodies inspect as part of their license or permitting regime.

Giving advice B.90 All the bodies aside from the Global Wildlife Division, which only gives advice during inspections, have reasonably comprehensive advice giving services. These include an Agricultural Wages Helpline operated by core Defra staff; efishbusiness.com developed by the Fish Health Inspectorate to streamline advice on fish movement controls, legislation and recent trends in disease matters; and other industry specific websites.

Charging B.91 Only the Plants and Varieties & Seeds Division, Plant Health & Seeds Inspectorate, National Wildlife Management Team and Global Wildlife Division have charging schemes. The former recover all £1.48 million of their costs from charging the businesses they regulate. The others recover approximately £840,000 on a full cost recovery basis. The Egg Marketing Inspectorate, Fish Health Inspectorate, Horticultural Marketing Inspectorate, the National Wildlife Management Team, and SVS charge other parts of Government for work done on their behalf, while the DWI are planning to introduce a charging regime for the 26 water companies they regulate.

Penalties B.92 The Plant Health & Seeds Inspectorate and the Dairy Hygiene Inspectorate do not have penalty regimes, while SVS enforcement is carried out by local authorities, and Global Wildlife Division enforcement is carried out by HM Revenue and Customs. Agricultural wages enforcement relies on Employment Tribunals to deal with arrears of pay owed to workers and the criminal courts to deal with other offences. Like many larger national regulators, most of the other bodies rely on the magistrates' courts to apply penalties. Maximum fines tend to be around £5,000 with averages around half that number. The Sea Fisheries Inspectorate and the Wildlife Inspectorate of the Global Wildlife Division have been considering the use of civil penalties. Penalty notices are available to the Agriculture Wages Inspectorate.

Other incentives B.93 The most common positive incentive is linked to risk-based inspection and lighter subsequent inspection for the most compliant firms. The Drinking Water Inspectorate and Dairy Hygiene Inspectorate, and National Wildlife Management Team explicitly adopt this approach. Plant Health and Seeds Inspectorate are introducing 'reduced checks' for good performers, while the Plant Varieties & Seeds Division is considering moving in a similar direction. The Horticultural Marketing Inspectorate uses an imaginative solution (originally from the European Commission) and is able to give an official 'approved' status to the best performers. On the negative incentive side, the Fish Health Inspectorate, and Egg Marketing Inspectorate publish a list of their prosecutions. In the latter's case this includes unsuccessful prosecutions.

Financial Services Authority

B.94 The Financial Services Authority was established by the Financial Services and Markets Act 2000 (FSMA) and has four statutory objectives: market confidence, public awareness, consumer protection, and reducing financial crime. It regulates a very wide range of financial institutions, including banks, investment banks, building societies, insurance companies, investment firms, friendly societies, mortgage brokers and, from January 2005, general insurance brokers. As a pre-existing company (limited by guarantee) given statutory functions, with a Board appointed by HM Treasury, it is different from the other bodies considered by the Review. Nonetheless, many aspects of the Review's work cover activities undertaken by the Financial Services Authority.

B.95 The Financial Services Authority has a budget for 2004/05 of £240.6 million. All but £10 million of this comes from charging the regulated business entities, with the remainder from information and training services, application fees and other sundry income. Prior to 31 October 2004, when they took on responsibility for mortgage businesses, the Authority regulated around 11,000 firms. This number was set to rise with the new responsibility for mortgage businesses and for general insurance business from 15 January 2005. At 31 March 2004, the Authority had 2,312 staff with 808 in supervision and 197 in enforcement.

Risk-based inspection B.96 The Authority's risk based approach is called Arrow. It has a firm-specific component and a component for industry wide risks. The firm-specific risk approach – the Risk Assessment Framework (RAF)¹² – determines the level of supervisory intensity by making assessments of both the impact and probability of the firm posing a threat to the FSA's meeting its statutory objectives. To make its assessment of risk, the Authority uses a combination of on-site visits to firms (as well as off-site analysis of information) to review their business activities, operating framework and control environment. This assessment will normally result in a requirement for risk mitigation and this will be proportionate to the issues identified. Firms with systems and controls that are trusted by supervisors will be asked to provide less detailed work.

B.97 FSMA's general principles, rather than any specific statute, underpin the supervision timetable. The current and expected risk profile of a firm determines the frequency of a firm's future assessments and subsequently the overall assessment timetable. The frequency of assessments can therefore vary from six months to three years, with the 'typical' period being two years. EU legislation or any change in factors such as the economic environment may alter a firm's risk profile, and therefore the risk assessment timetable.

B.98 In 2003, the Authority carried out 919 formal risk assessments. An individual assessment may include more than one firm, if dealing with larger financial groups containing multiple legal entities.

Giving advice B.99 General information on, for example, the Authority's regulatory approach, authorisation, supervision and enforcement is available on its website.¹³ Their firm contact centre provides assistance to firms who have specific queries about the rules or other issues. They also issue and publish 'Dear CEO letters' which provide generalised feedback on the findings from supervisory activities. There are many training events for industry, such as workshops, distance-learning packages, and conferences. A series of regional *Helping firms to help themselves* roadshows aimed at Independent Financial Advisors (IFA) and other small firms have been held to highlight key areas of non-compliance and related best practice, and to flag important issues that are coming up. To help the mortgage and general insurance sectors prepare for regulation, the FSA ran a substantial programme of events across the UK.

B.100 Recently, the Financial Services Authority embarked on an exercise to make their Handbook more accessible and user-friendly, particularly for smaller firms. Specifically for their forthcoming regulation of the mortgage and general insurance sector, they have set up a separate website to help firms navigate the authorisation process and provide responses to frequently asked questions.¹⁴ Finally, they consult the industry and other stakeholders on changes to their Handbook through discussion papers and consultation papers which are available on the website. For each paper the Financial Services Authority prepares a Newsletter highlighting the main points and making clear which sectors are directly affected by the proposals or the policy decision.

B.101 When firms in breach of regulations approach the Authority seeking advice there are instances where supervisors have decided not to refer the non-compliance to enforcement but to deal with it in some other way. In contrast, there may be cases where the misconduct is so serious that no amount of co-operation or other mitigating conduct can justify a decision not to bring an enforcement action. However, proactive co-operation is likely to result in reduced charges or lighter sanctions.

¹² *The firm risk assessment framework*, Financial Services Authority, February 2003.

¹³ <http://www.fsa.gov.uk/what>

¹⁴ <http://www.fsa.gov.uk/mgi>

Charging B.102 General powers to raise fees are set out in the FSMA. These powers enable the Financial Services Authority to raise the Annual Funding Requirement (AFR) needed to carry out their functions. The AFR is recovered through three fee types:

- periodic fees, making up 98 per cent of AFR, are the annual fees regulated firms have to pay;
- application fees, making up 2 per cent of AFR, are one off fees payable on application to become an authorised firm and graded according to the complexity of the application; and
- special project fees to recover part of the costs incurred in undertaking special projects at the request of fee-payers, if the majority of the benefit accrues to these fee-payers (e.g. fees raised from affected firms on the implementation of the Basel capital accord).

B.103 Fundamentally, three things determine the periodic fees that organisations have to pay:

- what kind of activities they undertake;
- the costs incurred by the Authority in regulating these activities; and
- the size of their organisation.

B.104 The key components of the fee-raising arrangements are the AFR, and fee-blocks. Firms' regulated activities dictate the fee blocks to which they contribute. Thus a large group such as HSBC pays fees across a range of fee blocks. The AFR is split among the fee-blocks on the basis of cost allocation principles, which are publicly consulted upon. Within a given fee-block, the fees paid by organisations vary as they are determined by their size (which is taken as a proxy for the potential impact that these organisations could have on the Authority's statutory objectives, were they to fail).

Penalty regime B.105 Unlike most other regulators, the Financial Services Authority has the power under FSMA to impose unlimited financial penalties on authorised persons (i.e. firms and individuals) for breaches of requirements imposed by FSMA or a Financial Services Authority rule. FSMA does not impose minimum levels for such fines. The Financial Services Authority has similar powers in relation to approved persons who are guilty of misconduct, issuers of listed securities, or applicants for listing, who breach the listing rules, and any person who engages in market abuse. There is no fixed penalty or tariff system in relation to penalties for different kinds of contraventions except late submission of reports. In determining penalty levels in individual cases the Financial Services Authority refers to precedent cases as appropriate. The Financial Services Authority has set out in detail in its Enforcement Manual the criteria it applies in deciding on the penalty to be imposed.

B.106 The average fine was £721,000 in 2002/03 and £661,000 in 2003/04. However, in August 2004 a fine of £17 million was imposed in a single enforcement case (on Shell) which will significantly distort the average figure for 2004/05. Fourteen enforcement fines were imposed in 2002/03 and 17 in 2003/04. Criminal proceedings can also be instituted for any offence under FSMA and specified offences in a number of other Acts and Regulations.

B.107 The Decision Making Manual (DEC) in the Financial Services Authority's Handbook explains the statutory procedure for issuing disciplinary notices. The person taking the decision to issue a disciplinary notice is required by FSMA not to be directly involved in establishing the evidence on which the decision is based. DEC provides that the decision to issue such notices rests with the Regulatory Decisions Committee (the RDC). In addition, those who are subject to decisions of the RDC have an automatic right to refer those decisions to the Financial Services and Markets Tribunal. The Tribunal will consider *de novo* whether there has been any misconduct and may consider any evidence relating to the subject matter of the case regardless of whether it was available at the time the Financial Services Authority took its decision. If the Tribunal finds there has been misconduct, it will also consider what level of penalty should be imposed (usually taking into account the penalty imposed by the RDC). On occasion, applicants have chosen to limit the scope of a reference to the level of the penalty.

