

Vehicle Certification Agency

A Hampton Implementation Review Report

February 2010

Vehicle Certification Agency

This review is one of a series of reviews of regulatory bodies undertaken at the invitation of HM Treasury to assess regulatory performance against the Hampton principles and the Macrory characteristics of effective inspection and enforcement. The review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become Hampton-compliant.

Our methods included: interviews with VCA staff including senior managers; interviews with VCA stakeholders, including Government departments, business and equality representative groups; and document review, including the VCA's high level strategies and plans.

The review team is grateful to VCA for its support and commitment over the review period. Its leadership team and staff were extremely helpful and generous with their time. We are also grateful to VCA's stakeholders for their helpful insights into the wider context within which the VCA operates.

EXECUTIVE SUMMARY

<p>Key findings from the review:</p>	<p>Overall, we found that VCA had set a high standard of regulation that demonstrated a good level of compliance with the Hampton principles.</p> <p>The review team found that the VCA was a highly customer-focused organisation that has impressive relationships with its stakeholders, including its business representatives. It also demonstrated a good understanding of the way that the industries it regulates are structured, and a pragmatic approach to bring them into compliance with relevant legislation.</p>
<p>Issues for follow-up identified during the review:</p>	<p>A number of issues for follow-up were identified during the Review, including:</p> <ul style="list-style-type: none">• VCA should consider the case for publishing a single Enforcement Policy¹ that cuts across the whole range of its responsibilities.• VCA, its central Government sponsors and its partner agencies should consider the scope for more joined-up working to get the best outcomes from regulatory networks that extend beyond its specific enforcement remit. For instance, there could be more effective joint working and intelligence sharing with other bodies that effectively act as co-regulators alongside the VCA.• VCA and its Government sponsors should consider the case for an expanded range of civil sanctions to remove the current reliance on prosecutions, which can be disproportionate to specific cases.

¹ The statutory Regulators' Compliance Code recommends that regulators should publish an enforcement policy to give clarity to businesses as to the circumstances in which the regulator is likely to take enforcement action. The use of the phrase throughout this report should not be taken to imply that ultimate responsibility for policy development does not lie with the relevant central Department.

INTRODUCTION

<p>Introductory background information about the regulator such as the rationale for establishing it:</p>	<p>The Vehicle Certification Agency (VCA) is an Executive Agency of the Department for Transport (DfT), an integrated part of the Motoring and Freight Services Group (MFS).</p> <p>VCA undertakes three main activities:</p> <ul style="list-style-type: none"> • European Vehicle Type Approval for European Community (EC) and Economic Commission for Europe (ECE) – a Geneva-based United Nations organisation – requirements. Type approval is required before a new type of vehicle and/or component can be sold in the UK. VCA issues type approval for new on- and off-road vehicles, systems and components, indicating they have been designed and constructed to meet internationally agreed standards of safety and environmental protection. • Management System Certification (MSC) services to the automotive and related industries. Though a commercial activity, this supports the ongoing compliance with the Type Approval requirements and regulations. These allow the automotive industry to demonstrate that it has the systems in place to ensure the quality of its products and to minimise the impact on the environment from the manufacturing and design processes. • A range of enforcement activities on behalf of (at the time of the Review) the Department for Transport (DfT) and the Department for Business Innovation and Skills (BIS) in the areas of: <ul style="list-style-type: none"> - Vehicle safety and emissions - Non-road mobile machinery emissions - Outdoor noise - Waste Electrical and Electronic Equipment (WEEE) <p>Its main office is in Bristol, with an office and test facilities on the MIRA site at Nuneaton and an office at the Millbrook Proving Ground near Milton Keynes. It has offices in the US, Japan, Malaysia, China, India, Italy and Australia.</p>
<p>The legislation establishing the regulator:</p>	<p>The VCA is an Executive Agency of DfT. From a legal point of view, this means that it has no specific statutory foundation, and forms part of the Department. Its staff are civil servants.</p> <p>It applies a wide range of EU and UK regulations, which include aspects of the following:</p>

	<ul style="list-style-type: none"> • Road Vehicles (Approval) Regulations 2009 - SI 2009 717; addressing the road vehicle "Whole Vehicle" framework Directive 2007/46/EC • Motorcycle Etc (EC Type Approval) Regulations 1999 – SI 1999 2920 addressing the 2 and 3 wheeled vehicle framework Directive 2002/24/EC • Tractor Etc (EC Type Approval) Regulations 2005 SI 2005 390 addressing the agricultural and forestry tractor framework Directive 2003/37/EC • Waste Electrical and Electronic Equipment (Amendment) Regulations SI 2006/3289. Waste Electrical and Electronic Equipment Directive 2002/96/EC • Noise Emission in the Environment by Equipment for use outdoors Regulations (SI 2001/1701). EC Noise emission in the environment by equipment for use outdoors Directive 2000/14/EC • Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations SI 1999/1053) • End-of-Life Vehicles Regulations 2003 (SI 2003/2635) applies to passenger cars and small van type goods vehicles (as defined in Directive 2007/46/EC) and motor vehicles and their trailers, and three wheeled motor vehicles (as defined in Council Directive 2002/24/EC) • Passenger Car (Fuel Consumption and CO₂ Emissions Information) (Amendment) Regulations 2004 amending Passenger Car (Fuel Consumption and CO₂ Emissions Information) Regulations 2001. VCA monitors car advertisements in media publications (newspapers, magazines, flyers and printed campaign material) for compliance with the requirements for the display of Fuel Consumption and CO₂
<p>The regulator's statutory remit or objectives:</p>	<p>Historically, VCA's core business has been "type approval" in relation to road vehicles. Type approval is granted to a product that meets a minimum set of regulatory, technical and safety requirements. Generally, type approval is required before a product is allowed to be sold in a particular country, and the requirements vary around the world.</p> <p>Processes and certifications known as Type Approval in English are generally called Homologation, or a comparable expression, in other European languages.</p>

	<p>VCA undertakes “market surveillance and enforcement” activities, on behalf of DfT and other Government departments:</p> <ul style="list-style-type: none"> • Vehicle safety and emissions • Non-road mobile machinery emissions • Outdoor noise enforcement • Waste Electrical and Electronic Equipment (WEEE) enforcement <p>Given the limited time available, the Review focused on VCA’s enforcement role with respect to the UK WEEE regulations out of the above activities.</p> <p>These regulations potentially affect everyone who uses, sells, treats or disposes of Electrical and Electronic Equipment (EEE). Equipment of this sort constitutes one of the fastest growing waste streams in the UK and the EU. In 2003, the EU adopted the WEEE Directive to deal with this waste. This was transposed into UK law with the Waste Electrical and Electronic Equipment Regulations 2006 (as amended). VCA has a role enforces those aspects of the regulations which affect distributors of household EEE and obligations on producers to mark equipment with the “crossed out wheeled bin” symbol.</p>
<p>The regulator’s budget:</p>	<p>The VCA’s income in 2008-09 was £13.5 million and its expenditure was £13.07 million. It is required to cover its costs from income it receives; in practice, this means from fees charged for services that it provides.</p>
<p>Number of staff (including breakdown of policy and frontline staff):</p>	<p>In 2007/08, the average number of staff was 148 full-time equivalents. VCA has no full-time policy staff since DfT leads on policy in the main areas under its remit, but DfT ensures that VCA is closely involved with policy development in relevant areas.</p>

THE HAMPTON VISION

Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

<p>Any findings relevant to whether the regulator is risk-based:</p>	<p>VCA deals with a number of risks in its work as a regulator.</p> <p>In Vehicle/Type Approval, its primary focus is on ensuring that risks to safety and the environment from new vehicles and components are reduced. In its enforcement activities, it has a particular focus on reducing the environmental impact of machinery etc, including noise emissions.</p> <p>The VCA has a business risk framework, but no explicit statement of its policy in relation to specifically regulatory risk. Nevertheless, the review team found that VCA staff had a clear understanding of risk and allocated their time and enforcement resource appropriately. VCA had used routine inspection in the past (for instance in conformity of production inspections) but is now working to put these areas onto a more risk-based footing.</p>
<p>Any findings relevant to whether the regulator is transparent and accountable:</p>	<p>VCA is a relatively small regulator that has strong and open relationships with the businesses with which it interacts, particularly the car manufacturing industry.</p> <p>The Review Team felt that more could be done to provide a coherent overview of its role and responsibilities for some of its newer stakeholders, for instance, retailers. Nevertheless, stakeholders raised no issues with the team that reflected upon the VCA's own transparency and accountability from the perspective of their own specific needs.</p> <p>A number of stakeholders did however comment that they found some aspects of the international framework within which policy is made, and type approval enforcement is handled, opaque. We have some relevant comments under "Sanctions", below.</p>
<p>Any findings relevant to whether the regulator encourages economic progress:</p>	<p>VCA's customer focus is particularly impressive. It demonstrates a clear understanding of the business sectors that it regulates. For instance, its type approval work is critical to the work of the vehicle manufacturing sector, and it works flexibly with business to ensure that when issues arise, they are dealt with in a way which does not interfere with production schedules, which can be extremely demanding. Across the range of its responsibilities, VCA</p>

	<p>demonstrates a pragmatic approach to securing compliance in a way that minimises the economic harm that might result from an inflexible approach which did not balance enforcement considerations with an understanding of businesses' practical requirements.</p>
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DESIGN OF REGULATIONS

Hampton Principles

All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.

When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.

<p>Key findings on Design of Regulations:</p>	<p>While VCA does not design regulations, it influences their development and is effective in ensuring the industry can understand, and apply them.</p> <p>Our discussions with VCA stakeholders indicated they are consulted by VCA on the development of new policy by the relevant central Departments. They felt that both the style and content of VCA's consultation was appropriate to their specific needs.</p> <p>Vehicle/Type Approval</p> <p>When new policies are being developed, explicit consideration is given to how they can be enforced using existing systems and data to minimise the administrative burden imposed. VCA works effectively with DfT internationally to influence the development of regulations at an early stage.</p> <p>Enforcement Activities</p> <p>VCA has representatives who attend BIS update meetings, and are observers on BIS's WEEE advisory board. In developing its approach to enforcing WEEE, VCA has considered distributors' existing systems and data gathering to minimise the administrative burden.</p>
<p>Background information such as the regulator's role in developing regulations:</p>	<p>The statutory framework in which VCA operates largely derives from EU directives and UK regulations on type approval for motor vehicles. Many of its enforcement activities including WEEE have their origin in European legal frameworks.</p> <p>The VCA has a relatively restricted role in relation to drafting statutory instruments; its role is primarily one of implementation rather than design. It has a close and effective working relationship with DfT representatives however on type approval. VCA influences the policy-</p>

	<p>making process, contributing its expertise in type approval and its various enforcement roles.</p> <p>Vehicle/Type Approval</p> <p>On vehicle type approval, VCA does not design regulations, but takes its policy lead from DfT Motoring and Freight Services and International and Environment Groups in particular Transport Technology and Standards (TTS), and Cleaner Fuels and Vehicles (CFV). VCA works closely with colleagues in policy departments, contributing current industry knowledge and technical experience.</p> <p>Enforcement Activities</p> <p>VCA effectively works as a contractor for the enforcement responsibilities it carries out on behalf of Government departments. Its role is more remote from policy-making than in the case of those regulators who both implement and enforce regulation.</p> <p>VCA reports regularly to the relevant client departments on how it is proceeding with commissioned work.</p> <p>Its role on WEEE is relatively new and VCA's relationship with BIS on policy development is not as developed as its relationship with DfT. However, VCA representatives attend BIS update meetings, and are observers on BIS's WEEE advisory board. VCA is actively encouraged to make policy recommendations to BIS and is consulted on proposed new policy likely to impact on its enforcement activities. An example of this are the amending regulations which entered into force on 1 January 2010 which include changes recommended by VCA in light of their experience on enforcement of distributor obligations.</p>
<p>Examples of good regulatory practice:</p>	<p>Vehicle/Type Approval</p> <p>With VCA's work related to type approval and other aspects of vehicles, VCA and DfT colleagues work closely together. Each contributes its own areas of expertise on the development and interpretation of EC and ECE directives/regulations and corresponding UK regulations.</p> <p>Enforcement</p> <p>On WEEE, while stakeholders were initially surprised that the regulations on WEEE came within the scope of a vehicle-based agency, they welcomed VCA's approach to enforcement in practice – especially the focus on education</p>

	and encouraging compliance.
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principles:</p>	<p>VCA is keen to ensure the way it implements and applies the regulations is proportionate and easy to enforce.</p> <p>The industry members we spoke to on type approval and enforcement were complimentary about VCA's approach.</p> <p>While VCA has demonstrated strong compliance with this principle, we recommend that VCA, and its sponsoring and contracting departments, consider the following to enhance compliance with this principle.</p> <p>Vehicle/Type Approval</p> <ul style="list-style-type: none"> • A key part of VCA's work is interpreting EU directives and UK regulations. VCA representatives do not always attend the relevant meetings, especially EU meetings, which means that problems of interpretation can subsequently arise in determining the intention behind specific measures when they were negotiated. With this in mind, we consider that VCA and central Government colleagues should explore means of keeping a more thorough record of key decision-making to provide clarification in the event of subsequent queries. <p>Enforcement</p> <ul style="list-style-type: none"> • While undertaking compliance activity for BIS on the WEEE directive and regulations is still relatively new, it would be useful if BIS could continue to use the knowledge VCA has gained to make recommendations to the EU on changes to directives and in reviewing the UK regulations.

ADVICE AND GUIDANCE

Hampton Principle

Regulators should provide authoritative, accessible advice easily and cheaply.

<p>Key findings on Advice and Guidance:</p>	<p>VCA's stakeholders indicated that it provided authoritative, accessible advice easily and cheaply.</p>
<p>Background information such as the means by which the regulator provides advice and guidance:</p>	<p>Advice and guidance is available to VCA customers through a number of channels.</p> <p>General</p> <p>The VCA website has two main customer-facing areas, following the distinction in business between type approval and other enforcement activities</p> <p>Vehicle/Type Approval</p> <p>VCA provides copies of all automotive EC and UN ECE legislation. The information is available as 'one-off' individual Word or PDF formatted documents or as a subscription to:</p> <ul style="list-style-type: none">• VISTA, which is a collection of all of the automotive EC Directives and UN ECE Regulations required for Type Approval together with draft amendments and VCA technical interpretations.• LegStat, which is an online database containing key date information about each of the standards applicable to European Whole Vehicle Type Approval. <p>These databases have been developed and are maintained by VCA employees for use in assessing new vehicles for type approval. They are made available to stakeholders to assist them to understand, and comply with, the regulations, and to contribute to the development of the regulations. The price for access is a competitive price (in comparison to other providers of similar data), which covers VCA's direct additional costs.</p> <p>The regulations (which relate to vehicle mechanical and electrical engineering) are highly technical in character. However, motor vehicle manufacturers consider the content and format of the information VCA provides, useful and fit for purpose.</p>

	<p>VCA chairs the Vehicle Technology Forum on behalf of Motoring and Freight Services Group (MFS), working with DfT policy leads, other DfT agencies and the DfT Chief Scientific Advisors Unit. This group shares knowledge, understanding and experience of emerging Vehicle Technologies for best effect and value.</p> <p>Enforcement</p> <p>VCA's focus on WEEE is to establish whether distributors would offer free in store take back, in line with the regulatory requirements. BIS, working with other partners, is also assessing the extent to which householders have heard of the WEEE directive.</p> <p>The guidance material in relation to enforcement work has a higher standard of readability and accessibility than VCA's other areas of work. It is however aimed at a different, less technically demanding, audience – householders who consume WEEE and distributors of WEEE who are mostly retailers (ranging from supermarkets and national chains to small retailers that are not specialist suppliers of electrical equipment). In addition, it is an area where VCA was responsible for raising awareness of a new area of regulation amongst distributors.</p> <p>VCA provides samples of the WEEE notices and information that distributors are required to have available.</p> <p>VCA reports regularly to BIS on its work, carrying out market testing of compliance. The VCA estimates that this has risen to 60% in the first two years, based on those distributors that VCA has visited, and made follow-up visits to, to check compliance with WEEE regulations.</p> <p>The level of distributors' compliance with, and awareness of, WEEE regulations is likely to improve with BIS's planned public awareness campaign (although the campaign is outside of VCA's remit).</p>
<p>Examples of good regulatory practice:</p>	<p>Vehicle/Type Approval</p> <p>VCA has run seminars for new motor vehicle manufacturers and has copies of the seminar materials and information on type approval available on its website, as well as a demonstration of the vehicle features involved in type approval. This is useful for new entrants.</p> <p>Stakeholders also commended VCA for the way it works:</p>

	<ul style="list-style-type: none"> • with new manufacturers, explaining the process and guiding them through it. • flexibly with manufacturers to enable them to meet their production schedules while ensuring they comply with the regulations. <p>Making the VISTA and LegStat databases available to stakeholders is an example of good practice. This helps stakeholders to understand, and comply with, the regulations, and to contribute to their development. This in turn aids compliance with the regime and helps to ensure the future development of directives and regulations are practical and fit for purpose.</p> <p>Enforcement</p> <p>WEEE stakeholders were impressed with VCA’s recognition that it was more practical to engage with the head office of large chains of retailers, rather than focusing on individual stores. They compared this to inspectors from some other contexts who target individual stores, an approach that has more limited impact on the way that compliance works in practice.</p> <p>VCA was also commended on providing samples of the information and notices distributors are required to make available on WEEE regulations.</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>VCA has demonstrated strong compliance with this principle. However, we recommend that VCA, and its sponsoring and contracting departments, consider the following to further enhance compliance with it:</p> <p>Vehicle/Type Approval</p> <ul style="list-style-type: none"> • There are a number of complexities in the processes required to import vehicles. These depend on aspects such as the vehicle type, whether the vehicle is new, the country of origin and the other agencies that are involved in the process (e.g. Driver and Vehicle Licensing Agency for vehicle registration). VCA currently provides individually tailored advice to those who import one or a few vehicles. While this is a small percentage of what VCA does, VCA could consider, in conjunction with other agencies, how best to target advice for novices/new SMEs on importing motor vehicles. Guidance does exist, but there are complexities arising from the number of agencies involved, and signposting could be clearer.

- VCA is considering updating the guidance on its website on the process for new SMEs to follow to get type approval.

Enforcement

- BIS has appointed WRAP (who work with local authorities, business and households to prevent waste, increase recycling and develop markets for recycled and sustainable products) to develop and implement a WEEE public awareness campaign. As part of this, it would be useful to encourage WRAP to talk to VCA. WRAP could use VCA's knowledge of the WEEE sector and the challenges VCA has faced in encouraging compliance with, and raising awareness of, WEEE regulations, in developing the campaign. We note that VCA and WRAP have taken some relevant steps here since the time of the Review, and welcome this.
- In encouraging compliance with WEEE regulations, VCA has reviewed and amended distributors' material for making customers and employees aware of the regulations and what to do with WEEE. While this may be useful in encouraging compliance with the regulations, a balance needs to be struck between regulating and providing advice. This balance is needed because VCA could be constrained in taking enforcement action if it effectively endorsed the material the distributor had used e.g. if VCA approves a distributor's material (which would include how a distributor trains its staff, monitors compliance and takes action where it finds compliance could be improved) then it may find it difficult for VCA to take enforcement action against a distributor if implementation of the WEEE Compliance Policy or Process is not as good as it needs to be to comply with WEEE regulations. Instead of reviewing/amending distributors' material, one option that VCA might explore would be to make checklists available of the items to include in distributors' policies and materials.

DATA REQUESTS

Hampton principle

Businesses should not have to give unnecessary information or give the same piece of information twice.

<p>Key findings on Data Requests:</p>	<p>VCA stakeholders agreed that data requests were proportionate to the type of applications they were making. This issue was not raised as a problem and has clearly been effectively managed by VCA.</p>
<p>Background information such as the data required by the regulator; the means by which business can return data etc:</p>	<p><u>Vehicle /Type approval</u></p> <p>Applicants are required to provide a considerable amount of technical data when applying for type approval and there is overlap between information required for different safety directives. VCA has attempted to simplify this process by encouraging electronic applications and implementing a web-based File Management System (FMS) to facilitate secure information transfer.</p> <p><u>Other Enforcement Activities</u></p> <p>Distributors subject to the WEEE regulations are not required to submit reporting data to VCA. Distributors are however required to maintain certain records and make these available to VCA Enforcement Officers on request, as figures on amounts recovered were collected through the Environment Agency for retailers in the Distributor Takeback Scheme (DTS).</p>
<p>Example of good regulatory practice:</p>	<p>VCA is developing a web-enabled tool to allow manufacturers to apply for type approval online and to allow VCA and the customer to manage their approval documentation in a secure environment. The tool will manage the approval process to ensure that required information and tasks are delivered on time from both VCA and the manufacturer and will create efficiencies for both.</p>

INSPECTIONS

Hampton principle

No inspection should take place without a reason.

<p>Key findings on Inspections:</p>	<p>Risk assessment is used where appropriate to ensure officers are directing resources where there is greatest risk of non-compliance. There may be opportunities to work with other regulators and to develop a wider knowledge of better regulation best practice to maximise the use of existing inspection resources.</p> <p>Overall, inspections do clearly take place for a reason.</p>
<p>Background information such as the number of inspections and the number of businesses inspected; the regulator's risk model etc</p>	<p>Vehicle /Type approval</p> <p>VCA is in the unusual position that inspections are organised and funded by vehicle manufacturers. As this inspection is critical to safety approval and therefore production of new vehicles, there is a strong incentive for the applicant for these meetings to take place and for all information to be available and verifiable. Although technically complex, the process seemed well understood between VCA staff and applicants and stakeholders said they were helpful.</p> <p>Conformity of Production</p> <p>The other main area of inspection/audit on the type approval side of the business are Conformity of Production audits where applicants need to demonstrate that manufacture of vehicles is sufficiently controlled to ensure all vehicles conformed to the standard set in the type approval. This is achieved through inspection of the production process and ISO systems which the VCA inspectors verify.</p> <p>Inspections had previously been carried out at a set interval every two years irrespective of circumstances, but more recently the VCA has introduced a more risk-based system, with elements of the inspection weighted according to risk.</p> <p>Test purchasing, alongside formal inspection, is also used as a means of checking for compliance in the type approval context. This is done as part of a managed programme sponsored and funded by DfT policy leads.</p> <p>Other Enforcement Activities</p> <p>The WEEE regulations are another area where VCA staff</p>

	<p>carry out inspections, visiting distributors to check compliance with the regulations. There is some evidence of a risk-based approach but this is relatively new. In general, major retailers were selected for inspection by a small team of regional inspectors. Stakeholders seemed unclear why they were selected since no risk assessment was available from VCA.</p> <p>However, VCA managers had regular meetings with the major retailers which included discussions on performance and how inspections were organised and carried out. Stakeholders were generally very happy with the inspection regime in place and with the amount of information and contact they had with the VCA. In particular, inspectors communicated well with head offices, which can often be a problem with locally based inspections. Major retailers did express concern that smaller retailers may be able to avoid inspection. There was evidence of some inspections based on unitisation (visiting a number of retail outlets in the same retail park for example) but there could be a clearer statement about the way in which activities are targeted at the larger risks. In the early stages, a focus on larger outlets has been maintained given the scale of the impact of non-compliance: VCA will need to keep its risk assessment under review however, to take account of other factors. The main sources of intelligence available to the VCA are a complaints line, market testing, and submissions of inquiries by the public.</p> <p>The review team felt that a more active approach to intelligence gathering and intelligence sharing, particularly in cooperation with other regulators (especially trading standards officers who enforce comparable laws) may offer opportunities to inform risk assessments and coordinate inspection activity, particularly in difficult enforcement areas such as online sales.</p>
<p>Examples of good regulatory practice:</p>	<p>There is a programme of regular meetings with key stakeholders to discuss the impact of WEEE regulations. VCA attends update meetings with its departmental sponsors.</p> <p>The results of WEEE inspections are communicated to Head Office to help retailers improve compliance at a more strategic level.</p>
<p>Review findings: The extent to which the review team</p>	<p>In general, stakeholders are very happy with how inspections are carried out.</p> <p>VCA should consider further developing its risk-based</p>

<p>believes the regulator is acting in line with the Hampton principle:</p>	<p>inspections and consider publishing the framework that it uses for focusing its activity.</p> <p>One element lacking at both the policy level in BIS and the implementation level in VCA, was a more general awareness of how other regulators are attempting to work more closely on intelligence gathering and information sharing to feed into risk assessments. The Retail Enforcement Pilot is one example which is currently being reviewed by the Local Better Regulation Office. There are also other better regulation initiatives such as third party accreditation which might generate ideas to maximise use of what is inevitably a limited inspection resource.</p>
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SANCTIONS

Hampton Principles and Macrory characteristics

The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.

Regulators should be transparent in the way in which they apply and determine administrative penalties.

Regulators should avoid perverse incentives that might influence the choice of sanctioning response.

Regulators should follow up enforcement actions where appropriate.

Key findings on Sanctions:	The Review Team found that the VCA's overall approach to the use of its formal powers is largely in line with the Hampton principles and Macrory characteristics, but in some areas, the Agency could make a clearer and more coherent external statement of its fundamental approach and procedures.
Background information such as a summary of sanctions available to the regulator and any data on sanctions imposed by the regulator:	<p>The VCA's enforcement role in relation to type approval is distinctive. Insofar as the regulations make it an offence to take vehicles and components to market without the appropriate type approval, the police and trading standards officers lead on enforcement. VCA does have a role, however, where there is seen to be a problem with a type approval which has been granted by a foreign agency. To a large extent, remedial action in these cases involves informal discussions with the Agency's equivalents abroad.</p> <p>There are various pieces of legislation underpinning the VCA's more conventional enforcement work, and the VCA is empowered to enforce elements of the following regulations:</p> <ul style="list-style-type: none">• The Waste Electrical and Electronic Equipment (WEEE) Regulations 2006 Statutory Instruments 2006 No. 3289 (as amended)• Noise Emission in the Environment by Equipment for use outdoors Regulations 2001 No. 1701.• Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999 No. 1053.• The End-of-Life Vehicles Regulations 2003 No. 2635.• The Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001 No. 3523 <p>The VCA publishes a number of documents which perform functions akin to an enforcement policy. It has a general Prosecution Policy Document which sets out general considerations in terms of when it will bring a prosecution,</p>

	<p>and the options available to it when considering what action to take in a specific case: for instance, formal cautions and written warnings.</p> <p>There are additional documents, however, including the VCA-WEEE Enforcement and Prosecution Policy which presents a more plain English statement of the:</p> <ul style="list-style-type: none"> • expectations that VCA will have of distributors, including records they will be required to keep etc; • expectations that producers can have of VCA in its work (e.g. guidance on what products need to be marked); • methods that VCA will use to monitor compliance, including mystery shopping and inspection. <p>The WEEE Enforcement Policy gives the following statement of VCA’s enforcement priorities</p> <p>“Our overall priority is to ensure that everyone affected by the change in the law is aware of his or her responsibilities under the new regulations and has the opportunity to meet them. We will focus our efforts on raising awareness. Whilst ignorance of the law is not a defence, we will normally only take formal enforcement action where we believe that the law has been broken deliberately. When we do take action, it will be in line with our published Enforcement and Prosecution Policy.</p> <p>As awareness of the law relating to WEEE increases, we expect compliance with the regulations to improve. We will use the results of our compliance monitoring to keep our approach under review and will maintain an up-to-date version of this document on our website.”</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principle and Macrory characteristics:</p>	<p>General</p> <p>The VCA takes a consistent “enabling” approach to compliance across the range of its activities. VCA staff spoke to us about the emphasis that they place on “enabling” businesses to achieve compliance, rather than pursuing compliance in a heavy-handed or coercive manner.</p> <p>VCA is proposing to develop an Enforcement Policy, and the Review Team welcomes this.</p> <p>During the Review, members of staff discussed proposals that they had in train for introducing a fuller statement of the Agency’s approach to enforcement, bringing together general statements about the sanctions available to the VCA and the circumstances in which they might be used, in the</p>

context of a specific enforcement section of the website.

This is welcome, and we would encourage VCA to continue to work on a Policy for publication. This will be helpful in giving clarity to the regulated community on a number of areas. For instance, the VCA's priority in the early stages of its work in relation to the WEEE directive has been to work cooperatively with major businesses, helping them to bring themselves to compliance through support and open discussions. Looking ahead, it is clear that there will be a need for more decisive enforcement action in some cases now that the regulations have become more thoroughly embedded.

A clear statement of policy will help create the right level of clarity for businesses as the VCA moves into this phase of its work.

Type Approval

In Type Approval cases, enforcement action entails negotiations with other international type approval agencies, which stakeholders may not recognise in practice.

The business stakeholders that we spoke to were appreciative of the Agency's approach, and felt able to approach its staff for advice and guidance in seeking to become compliant in an open and cooperative manner. A number of type approval stakeholders mentioned that they felt that the VCA could be more active in tackling cases where they felt that components or vehicles had entered the UK market with a type approval whose quality was not, they believed, as reliable as a domestic approval would provide.

We discussed the procedures involved in these cases with VCA, who cited the importance of negotiations at an international level in securing the right outcomes here. Where approval has been granted, this means that a national approvals body has approved a component or vehicle against the relevant safety or environmental standards. As the bodies involved are approved by foreign governments, there are inevitably sensitivities to any suggestion that approval processes have been in any way inadequate, which means that in practice there are limits to the extent to which VCA can be completely transparent about the informal action that it is taking. A final decision to pursue action more formally would rest with the Department for Transport.

There are inevitably limits to what the VCA can do in

releasing information about specific cases, but we recommend that VCA considers including some material on the limitations to the action it can take and its general approach. It could also explain its approach in cases where action in a more formal sense would be considered, within the context of an overall Enforcement Policy for the Agency. This may help address what appears to be largely a communications issue.

Enforcement Activities

With its central Government departmental sponsors and clients, VCA should look again at whether a larger range of sanctioning powers might be appropriate.

Prosecution is the main sanction available to VCA across the range of its regulatory responsibilities. There are some additional specific civil powers (for instance, of seizure) which are attached to specific regulatory frameworks.

We discussed the options with VCA staff, and there were concerns about some of the issues that might arise from using additional civil powers. However, we felt that some of the civil sanctions which were recommended under the Macrory Report (in particular, Fixed Monetary Penalties and Variable Monetary Penalties) might play an important role in securing more proportionate enforcement in practice. For instance, we discussed hypothetical cases where prosecution: (i) could be disproportionately costly to pursue in cases of persistent, but relatively minor, technical breaches; or (ii) might only result in a fine which did not in fact cover the financial advantages that a business might have derived from choosing not to comply with the law.

We believe that there is a case for reviewing the suite of sanctions available to VCA. Most of the relevant secondary legislation is made under the European Communities Act 1972, which means that it falls outside the scope of the Regulatory Enforcement and Sanctions Act and therefore the regulations cannot be amended under it. Nevertheless, it is open to those departments who are responsible for the relevant regulations to consider whether these might be amended in a comparable way, and the Review Team would encourage them to do so.

FOCUS ON OUTCOMES

Hampton Principle

Regulators should measure outcomes and not just outputs.

<p>Key findings on Focus on Outcomes:</p>	<p>The Review Team found a strong focus on outcomes across the range of VCA's work.</p> <p>The fact that VCA enforces specific regulations on behalf of different Government clients can however limit its ability to focus on wider outcomes rather than meeting more narrowly defined contractual targets.</p> <p>This is however, a reflection of the framework within which it works rather than on VCA itself.</p>
<p>Background information such as the regulator's key objectives:</p>	<p>While there is no single overall statement of the VCA's outcomes, there are a number of key documents which set out the key objectives that staff seek to secure in practice. For example, the VCA Business Plan sets out the outcomes and objectives for VCA for the year.</p> <p>Most importantly, in relation to type approval, VCA has a number of "Secretary of State" targets imposed by its sponsoring Department. Customer service targets feature highly amongst these. The suite of targets reported against in the VCA Annual Report for 2007-08 included, for instance:</p> <ul style="list-style-type: none"> • To provide a class-leading service in type approval and certification (measures included a target of achieving 90% turnaround of systems and component type approval within 9 working days); and • To maintain or improve customer satisfaction levels. <p>Specific targets in relation to enforcement workstreams are set in Service Level Agreements with the relevant Government departments: DfT, BIS, and Defra.</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>General</p> <p>The VCA's customer focus is strong, and widely recognised as such by stakeholders.</p> <p>To a greater extent than many other regulators, the VCA is under competitive pressures, which means that in practice it has an impressive understanding of conditions within the sector it regulates and the requirements that businesses have in coming to it as a regulator.</p>

Despite the diversity of VCA's work, staff have a clear idea of its overall mission.

The VCA's regulatory work is diverse, and it has acquired a range of enforcement responsibilities which take it beyond its core work on type approvals. Approaching the Review, the team was interested in exploring how far the Agency worked as a consistent whole. It is clear that staff felt that the current range of responsibilities made sense in practice, and were proud of the VCA "brand" (though more could be done through the website and other publications to explain its mission to those outside the Agency). Despite the variety of its work, however, the review team found no evidence of silos within VCA and saw VCA as having a common purpose which employees expressed as a focus on safety and a mission 'to protect the public'.

Type approval

As one of a large number of national type approval agencies, no component or vehicle manufacturer seeking to take goods to an international market is obliged to go to VCA specifically in order to acquire a type approval. In fact, it is common for major international manufacturers to work with several national agencies.

The Agency seeks to maintain a high international profile in this essentially competitive context. This has a number of benefits: for instance, VCA works with DfT central policy units to help ensure that the UK motor manufacturing sector has a strong voice in international negotiations on emerging regulation through the VCA.

The VCA is proud of its track record in quality type approval and has actively expanded into the international market, with full-time representatives in a number of established and emerging markets. The stakeholders that we spoke to during the Review were consistently complimentary about their dealings with the regulator. This extends to those areas where type approval is national in character: for instance, with vehicles with small volume production runs, where these are intended for a purely domestic market.

Enforcement Activities

As far as its enforcement work is concerned, VCA has won contracts from central Government departments to carry out enforcement work through a competitive tendering process. Although competitive pressures do not apply in the same way to its direct relationship with businesses in this and

related areas, we found that stakeholders also felt that VCA's grasp of businesses' practical operating requirements was strong here. In the case of WEEE enforcement in particular, representatives of the retail sector were impressed with the way in which VCA had worked together with the relevant people within the retail industry to promote compliance with the regulations and in a way that suited the distinctive requirements of their multi-site business model.

The way that VCA's work is structured around contracts with different departments can work against a focus on outcomes.

We found that there were aspects of the contract-based character of its work that work against joined-up delivery in practice. For instance, the current Service Level Agreement for the enforcement of the WEEE regulations sets a target level for visits to retail outlets which, we felt, could work against the Hampton principle of "no inspection without a reason". We discussed this point with WEEE enforcement staff, who felt that the relevant level of visits was proportionate to the risks involved. Such output measures can limit VCA's ability to explore alternative and collaborative means of working with other regulators, including for instance trading standards inspectors, who are enforcing regulations of a similar character. There are arguments for adopting this approach in the early stages of enforcing a regulatory regime, but we would encourage this issue to be kept under review.

We would encourage the departments that sponsor and commission VCA's work to bear in mind the possibilities for collaborative cross-government working, and ensure that VCA is in a position where it can work flexibly with partners across central government and other regulators to serve wider cross-cutting outcomes.

Appendix 1: review team membership

Beryl Brown was the Director of Policy and Communications at the Gambling Commission to the end of October 2008. She has previously been the Head of Competition Policy at Ofwat and a Principal Economic Consultant with Ernst & Young in New Zealand.

Alan Pitt is Assistant Director within the Improving Regulatory Delivery team in the Better Regulation Executive. Most recently, he has been responsible for implementing the Hampton Implementation Review programme.

Paula Waldron has worked in both local and central government regulation. She was previously Head of the Food Incidents Unit at the Food Standards Agency.

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