Better Regulation in Europe

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Better Regulation in Europe: United Kingdom 2010

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Foreword

The OECD Review of Better Regulation in the United Kingdom is one of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom). This includes reviewing trends in their development and identifying gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews) and to find out what has happened in respect of the recommendations made at the time. The multidisciplinary review of the United Kingdom was published in 2002 (OECD (2002), *OECD Reviews of Regulatory Reform: United Kingdom 2002: Challenges at the Cutting Edge*, OECD, Paris).

The United Kingdom was part of the first group to be reviewed – the other three were Denmark, the Netherlands and Portugal. A second group of countries – Belgium, Finland, France, Germany, Spain and Sweden are expected to be published in the first half of 2010 and the remaining countries will follow in the second half of 2010.

This report was discussed and approved for publication at a meeting of the OECD's Working Party on Regulatory Management and Reform on 11 May 2009.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.

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Abbreviations and Acronyms

BAU	Business As Usual
BERR	Department for Business Enterprise & Regulatory Reform
BRC	Better Regulation Commission
BRE	Better Regulation Executive
BROMI	Better Regulation of Over the Counter Medicines Initiative
BRTF	Better Regulation Task Force
CBI	Confederation of British Industry
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
DCSF	Department for Children, Schools and Families
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DIUS	Department for Innovation, Universities and Skills
DWP	Department for Work and Pensions
FCO	Foreign & Commonwealth Office
FSA	Food Standards Agency
GES	Government Economic Service
GLS	Government Legal Service
GO	Government Office for the Regions
HMRC	Her Majesty's Revenues and Customs
HSE	Health and Safety Executive
ICT	Information and Communication Technologies
LACORS	Local Authorities Co-ordinators of Regulatory Services
LBRO	Local Better Regulation Office
LGA	Local Government Association
LION	Legal Information On Line
MHRA	Medicine and Healthcare Products Regulatory Agency
NAO	National Audit Office

NDPB	Non-Departmental Public Body
NMD	Non-Ministerial Department
OPSI	Office of Public Sector Information
PMDU	Prime Minister's Delivery Unit
PRA	Panel for Regulatory Accountability
PSA	Public Service Agreement
RDA	Regional Development Agency
RES	Regional Economic Strategy
RIA	Regulatory Impact Analysis
RIU	Regulatory Impact Unit
RRAC	Risk and Regulation Advisory Council
SCM	Standard Cost Model
SME	Small and Medium Enterprise

Country Profile – United Kingdom

Source: CIA factbook *https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html.*

Country Profile – United Kingdom

The land		
Total area (1000km^2):	242	
Agricultural (1000km^2):	187	
Major regions/cities (thousand inhabitants):	Greater London	7 512
	Birmingham	1 007
	Leeds	750
	Glasgow (local government district) (2006)	464
The people		
Population (thousands):	61 346	
Number of inhabitants per sq km:	253	
Net increase (2006/2007):	0.6 %	
Total labour force (thousands):	31 220	
Unemployment rate (% of civilian labour force):	7.9 % (2009)	
The economy		
Gross domestic product in USD billion:	2 211	
Per capita (PPP in USD):	36 300	
Exports of goods and services (% of GDP):	28.9%	
Imports of goods and services (% of GDP):	32%	
Monetary unit:	Pound Sterling £	
The government		
System of executive power:	Parliamentary	
Type of legislature:	Bicameral	
Date of last general election:	5 May 2005	
Date of next general election:	on or before 3 June 2010	
State structure:	Unitary	
Date of entry into the EU:	1973	
Composition of the main chamber (Number of seats):	Labour	350
	Conservatives	193
	Liberal Democrats	63
	Other	40
	Total	**646**

Note: 2008 unless otherwise stated.

Sources: OECD Economic Survey of the United Kingdom 2009, OECD in Figures 2009, OECD Unemployment Outlook 2009, and OECD Government at a Glance 2009.

Executive Summary

Drivers of Better Regulation

Better Regulation is headlined as a central element of the government's economic policy, linked to an ongoing drive to further improve productivity, via the simplification of taxes and regulation, and policies to improve the regulatory environment for employers. Improving public services and bringing them closer to the needs of citizens and businesses also has a direct link with Better Regulation policies. Finally, regulatory reform is seen as a process that can help to meet the broader challenges faced by the United Kingdom and shared with other OECD countries, including climate change, the intensification of cross-border economic competition through globalisation, the need to improve prospects for deprived regions and communities and, not least, to promote economic recovery in the wake of the 2008 financial crisis.

The potential economic benefits of pursuing a Better Regulation agenda have been assessed as significant. The government for example estimates that further efforts to reduce administrative burdens could lead to direct savings for business and consumers of around GBP 4 billion (0.3% of GDP).

Public governance framework for Better Regulation

The United Kingdom's public governance framework is based on traditions of market openness, and a relatively low proportion of state ownership. Its common law driven judicial and regulatory framework, its well-functioning tradition of collective responsibility for decision making within government, and its political system which usually gives the ruling party a clear majority in the parliament, are other important features that condition the way in which Better Regulation is taken forward. There have been important recent developments in the institutional and decision making framework, with the establishment of elected assemblies and devolution of power for parts of the United Kingdom, as well as "work in progress" constitutional developments which are changing the way in which the different branches of government interact.

Developments in Better Regulation

There has been significant progress on a number of fronts since the 2002 OECD report on regulatory reform in the United Kingdom. The areas with major developments include *ex ante* impact assessment, policy on enforcement, engaging the local authority level, addressing issues in the management of EU origin regulations and more broadly, culture change. Regulatory reform continues to be underlined as a priority in the aftermath of the financial crisis. The government announced in April 2009 a number of actions designed to reinforce Better Regulation in light of the current economic situation. In particular, a new government committee for Better Regulation will be established, with responsibility for scrutinising planned regulation and proposals for new regulation that will impact on business and an external Regulatory Policy Committee will be established

to advise government on whether it is doing all it can to accurately assess the costs and benefits of regulation. In addition, the government plans to work closely with EU partners to embed the EU Better Regulation agenda, and to publish a forward regulatory programme of existing and possible regulatory proposals.

Main findings of this review

The vigour and breadth of the United Kingdom's Better Regulation policies are impressive, which makes it well placed to address complex regulatory challenges such as climate change and the regulatory management issues flowing from the financial crisis. An effective balance, rare in Europe, has been achieved between policies to address both the stock and the flow of regulations. Progress has been especially significant as regards *ex ante* impact assessment and enforcement which is increasingly risk based. The United Kingdom is also very active in promoting the development of EU level Better Regulation. Policy is business-oriented and initiatives for citizens and frontline public sector workers could usefully be reinforced. Transparency is generally strong, and the United Kingdom has a well-established culture of open consultations, supported by a code of good practice. The gap between principles of good consultation and processes as experienced by stakeholders in practice needs continuing attention. The development of a more integrated and strategic vision for the longer term would be helpful, not least to confirm priorities and target remaining challenges.

The Better Regulation Executive has spearheaded a revitalised drive for Better Regulation and is one of the best examples of an effective central unit for Better Regulation in the OECD, bringing the key elements of Better Regulation under a single roof. It represents a new institutional phase, operating at the centre of a radial network of relationships with other key actors. It continues to promote this, for example at the local level via the establishment of the Local Better Regulation Office. The United Kingdom's complex institutional architecture requires active management and also the need to promote rationalisation, where possible. Further development of the BRE's networks would reinforce the culture change that is already taking place, but which remains an issue, as in other OECD countries.

Recent developments to strengthen *ex ante* impact assessment signal clearly the energetic promotion of a new approach to the development of regulations, and the United Kingdom is one of the OECD leaders in this respect. Major efforts are being made to integrate impact assessment into the policy making process. Impressive institutional and methodological support is in place. Quality assurance, however, needs sustained attention, to tackle variability in current performance. Whilst the application of impact assessment to EU regulations is noteworthy relative to some other EU countries, this aspect could benefit from further attention. Within the framework of well-established institutional structures, capacities to manage EU processes may need reinforcement, notably as regards transposition of EU origin regulations into national law.

The simplification programme for the reduction of administrative burdens on business is well structured, has already delivered savings and promises more. The current target is a 25% net reduction of burdens by 2010 and the programme has a broad scope. Some aspects need further attention including the engagement of local levels of government, as some other countries are doing, and a continuation of the efforts started to ensure that the burdens which matter most to business are addressed.

Strategy and policies for Better Regulation

The vigour, breadth and ambition of the United Kingdom's Better Regulation policies are impressive. This makes the United Kingdom especially well placed among EU and other OECD countries to address complex future regulatory challenges, such as climate change and the regulatory management issues flowing from the financial crisis. The United Kingdom also provides a positive lesson for other countries: it is possible to strengthen Better Regulation policies over time in the absence of any crisis that forces the need for reform. The United Kingdom experience of regulatory reform goes back over 20 years, with a steady strengthening and broadening of Better Regulation policies, processes and institutions.

Progress over recent years has been especially significant and ground breaking, by international standards, in the areas of enforcement and *ex ante* impact assessment. The publication of the Hampton report in 2005 was a milestone in changing attitudes to enforcement, toward a risk-based approach. Processes for the *ex ante* impact assessment of new regulations have been steadily strengthened and brought closer to the policy making process itself, to maximise their influence at an early stage, and to encourage a change of attitude among policy makers. The simplification programme for the reduction of administrative burdens on business is well structured, setting a net 25% reduction target by 2010, spread among most departments. Other recent developments aim to spread Better Regulation across a wider range of players, including local authorities and regulatory agencies. Important efforts have also been made to tighten up the approach to negotiation and transposition of EU directives, and the United Kingdom is a major influence in the development of Better Regulation at the EU level.

An effective balance has been achieved between policies to address the stock and flow of regulations. Compared with many OECD countries the United Kingdom has been successful in moving forward simultaneously on two key fronts: simplification of existing regulations through the reduction of administrative burdens on business, and *ex ante* impact assessment of new regulations. The government announced an institutional reinforcement of this approach in April 2009, via the establishment of a new external Regulatory Policy Committee, whose role will be to advise government on whether it is doing all it can to accurately assess the costs and benefits of regulations.

There are nevertheless some challenges which need attention. Some of these were already identified by the 2002 OECD report. They include managing and restraining the complexity of the regulatory institutional environment, including the stock of regulations. Support for EU-related work is in place, but there are some issues which need to be addressed. Culture change in support of Better Regulation practices within the administration, as in most other countries, still has some way to go. There may also be a need for a more structured approach to the development of e-Government at local level in support of Better Regulation.

The rapid succession of initiatives reflects the importance of continuous improvement, but stability is also important for stakeholders. Better Regulation is not a "one shot" policy, and should be part of a continuous evolution. This has been well understood by the United Kingdom. At the same time, there is a need for stability, so as to allow enough time to learn effectively from past Better Regulation initiatives. The policies may not be fully appreciated as a result, which is likely to be a factor behind sometimes negative perceptions of progress and the government's achievements in the effective management of regulations.

Policy on Better Regulation is business-oriented; ensuring that a broader focus is sustained and developed would help to sustain long-term support for Better Regulation. The main focus at this stage is the business community, with Better Regulation firmly linked into government objectives to sustain the competitiveness of the economy and raise productivity. This is fully coherent with the EU's Lisbon agenda, and an essential anchor for any Better Regulation strategy. The initiatives aimed more directly at the needs and perspectives of citizens, employees, consumers and public sector workers are also important. They could be reinforced, and given greater prominence in government announcements on Better Regulation.

An integrated strategic vision of Better Regulation policy, its contribution to public policy goals, and where it is headed in the longer term needs to be more clearly laid out at this stage. There is no lack of material explaining the policies. United Kingdom leadership in many aspects of Better Regulation would, however, be reinforced if the overall picture could be conveyed more strategically. Strengthened regulatory management should be embedded in a vision which includes key aspects such as the benefit side of the equation and the multilevel dimension (EU and local levels). As well as explaining how the different policies reinforce each other, more effort should be made to demonstrate the link between Better Regulation and the achievement of public policy goals (and if necessary, develop the analysis that demonstrates the link). The publication in 2008 of the Better Regulation Executive (BRE)'s first annual review is an important step forward.

A complex institutional environment, combined with the rapid succession of initiatives, generates communication challenges. The United Kingdom has a complex institutional environment relative to some of its neighbours. The BRE needs to be encouraged in its wish to be more proactive and give a stronger lead to departments and agencies on how to communicate more effectively and consistently with external stakeholders in this environment, avoid unnecessary duplication of messages across documents, facilitate co-operation, and rationalise communication activities. The development of a more integrated vision will help with this.

The real challenges with the Better Regulation agenda need to be acknowledged more clearly. The business community and others are aware that there is unfinished work and an ongoing challenge to deliver Better Regulation. A key aim of communication is to highlight achievements, and to ensure that businesses have heard of the changes which are beneficial to them. It is also important to make sure that the agenda is honest about the challenges and what is left to be done. This should instill greater trust in government and help to manage expectations. The negative perceptions of achievements under the simplification programme are partly due to overoptimistic messages about the delivery of burden reductions.

Support for the long term will be sustained by engaging with a range of stakeholders more deeply, beyond the business community. Several groups, who already interact with the BRE, would welcome the opportunity for even greater interaction. These include the unions, consumers and the parliament. Reaching out to ordinary citizens, perhaps via the local level and the newly established Local Better Regulation Office (LBRO), should also be addressed.

Good initiatives have been taken to evaluate specific policies, but there is also a need for strategic evaluation of the big picture. The United Kingdom is ahead of many other OECD countries with its understanding of the importance of *ex post* evaluation of specific Better Regulation policies, in developing processes for this, and in using the

results to strengthen specific policies (such as *ex ante* impact assessment). Good use is also made of the evaluation work of the independent National Audit Office (NAO). The depth and number of individual policies which have been launched underlines the need for a strong and sustained *ex post* evaluation of their effectiveness. The missing link is an overall evaluation of the Better Regulation agenda, an issue which was already picked up in the 2002 OECD review.

Transparency is strong, but websites are not well joined up and the development of e-Government in support of Better Regulation may need attention. It was beyond the scope of this report to address the issue of e-Government in any depth. Transparency and the availability of material on line, including and not least for public consultation exercises, is impressive. Websites are not always well joined up and the links can be difficult to follow. Some confusion between the BRE and the Department for Business Enterprise & Regulatory Reform (BERR) on the web may be undermining the BRE's separate identity. Local level e-Government initiatives may need review.

Institutional capacities for Better Regulation

The United Kingdom presents a complex but well articulated institutional environment which requires active management. The United Kingdom's institutional framework is the product of a complex evolution over centuries. There are a large number of regulators of different sorts. The Hampton and Macrory reports underlined that a key challenge for Better Regulation in the United Kingdom was to work with very different legislative structures and institutional arrangements across the country, as well as noting that there are many common issues in the regulatory field that cut across geographical and sectoral boundaries. A very positive aspect is that the institutional architecture is, in many respects, well articulated and functions with a smoothness that is impressive relative to some other "simpler" jurisdictions. The development of institutional complexity has been matched by the development of a capacity to ensure that the machinery of government does not seize up, not least through the system of collective decision making orchestrated by the Cabinet Office. Likewise, the institutions supporting Better Regulation have evolved and developed since the 1990s to address the challenges.

Given this starting point, it will be important to avoid further complexity wherever possible. Some recent institutional developments (the growth in the number of agencies, devolution, and the growing influence of the EU) complicate the task of better regulatory management. Frequent changes in the institutional architecture and structures for promoting Better Regulation itself generate further potential difficulties. The Hampton report put it clearly: some of this complexity cannot be avoided, but wherever possible there should be streamlining. The 2002 OECD report had already picked up this important issue.

The Better Regulation Executive has spearheaded a revitalised drive for Better Regulation. The BRE is an influential, energetic, well-resourced and well-connected central unit, with well connected and high-level leadership. It is one of the best examples of an effective central regulatory unit across the OECD, both in terms of its influence and of its broad remit which brings the main aspects of Better Regulation under "one roof". Its establishment as a successor to the Regulatory Impact Unit with a broader mission, more staff, and improved tools and processes for the promotion of Better Regulation, has been a positive development.

The United Kingdom appears to have entered a new phase in the institutionalisation of Better Regulation. The BRE itself does not deliver Better

Regulation. It operates as the centre point of a radial network of relationships drawing in other important actors, not only within the central government executive but beyond (the parliament, the NAO, national regulatory agencies) as well as at the local level. At the end of the day it is a (relatively speaking) very small central entity seeking to influence a very large and disparate set of actors. Structures such as the identification of a minister responsible for Better Regulation in each department contribute to the strength of the system. The complexity of the institutional architecture suggests that this evolution is particularly necessary for the United Kingdom, but it does also offer a valuable model for spreading Better Regulation that might be of interest to other countries.

The engagement of local levels of government is progressing; this is essential to the success of Better Regulation. The responsibility of local authorities for the enforcement of national regulations, as well as their responsibilities for licensing and planning, puts them at a critical interface between central government and local stakeholders who stand to benefit from Better Regulation. Recent important initiatives to rationalise and co-ordinate the approach to local regulatory enforcement, such as the Rogers review and the establishment of the LBRO, represent an important extension of Better Regulation policy to this level of government, which needs to be developed in other areas too.

Reinforcement of the network of Better Regulation relationships across all branches of government is needed. Although the BRE has been successful in developing a range of contacts and relationships (including through secondments from other departments), the overall picture remains uneven. Its "horizon scanning" abilities to spot relevant policy developments around departments have improved but could be even better. There is scope to develop stronger relationships and spread best practice with certain key actors beyond those central government departments and agencies which have developed a special interest in the subject.

Significant progress has been made to progress culture change. A network of structures operating at different levels have been set up across central government, including Better Regulation ministers, board level champions (officials to support the ministers), impact assessment sign off by ministers, and Better Regulation Units to support and deliver Better Regulation processes and programmes. Training for the application of Better Regulation tools and processes is also well-developed, on line, through the support of specialists, and as part of general training programmes for civil servants which tackle issues such as impact assessment and consultation. A highly structured performance measurement system is in place, covering the main dimensions of Better Regulation.

There remains a culture /capacity gap, and the carrots and sticks for better performance may not be strong enough. Tools and processes are increasingly sophisticated, and they need commitment, as well as professionalism and expertise. The BRE does not dispose of any formal powers to call departments to account, and the real effectiveness of its role with departments during the policy development process is hard to judge from the outside, absent any clear sticks (such as budget cuts) if performance is inadequate. It is also not clear how good work by officials on Better Regulation is rewarded in the current performance appraisal system and career postings.

Independent regulatory agencies can help to define effective practical strategies, but fragmentation of their own Better Regulation efforts needs to be minimised. The capacity of regulatory agencies to assess what works best may be stronger than that of departments, because they are closer to the ground. At the same time, the wide variations

in their status and powers means that Better Regulation policies such as impact assessment may automatically apply to some regulators, but not to others. The issue of fragmentation (or simply the lack) of Better Regulation initiatives, for those regulators which are not constrained by central government policies, reduces transparency and increases complexity for stakeholders. One of the criticisms of the Macrory report was the significant differences in powers and practices among regulators, causing inconsistency and detriment to business. The agencies appear somewhat sensitive in this regard, wanting to ensure that their independence and statutory mission is not compromised by centralised Better Regulation management.

The parliament's interest in Better Regulation is helpful, especially as regards feedback on the quality of consultation and impact assessments. The parliament's role in scrutinising secondary legislation is important. Several parliamentary committees, in both houses, are active in this regard. In addition, there are parliamentary committees with specific responsibility for Better Regulation.

The National Audit Office is a valuable asset for Better Regulation. The NAO provides an external, professional, concrete, independent view on the quality of regulatory management. It has provided, over the last few years, valuable input to key Better Regulation programmes and processes such as impact assessment and the simplification programme. It has recently been engaged in joint review activities with the BRE. Its independence is an asset that needs to be preserved.

The interaction of the judiciary with regulatory developments is also important. The judiciary, especially in a legal system based on common law and precedent, should not be neglected in the pursuit of Better Regulation. They are at the frontline of important issues such as the trends in litigation and appeals, and what this reveals about the regulations that are being challenged. These insights could provide valuable feedback to the further development of Better Regulation policies.

Transparency through consultation and communication

The United Kingdom has a well established culture of open consultations aimed at maximising transparency in the process. The framework for promoting public consultation on regulations via the Code of Practice on Consultation is well established and promotes a very open approach. Government departments are expected to consult widely and carefully, and if they do not take this approach and apply the code's criteria, they are expected to explain why. The sample of recent consultations reviewed for this report suggests that consultation documents for major issues are clearly written and should be easily digested by stakeholders. The recent consultation with stakeholders on the code and its effectiveness is also very positive evidence of the United Kingdom's search for continuous improvements in its Better Regulation tools and processes. The latest version of the Code of Practice on Consultation is brief, clear and to the point.

There is, however, evidence of an important gap between the code of practice principles and stakeholder views on the process in practice. The recent review of the Code of Practice on Consultation showed that there was concern at the way consultations are carried out in practice. The OECD team picked up a general desire from stakeholders for improved consultation, and a certain fatigue linked to too many successive initiatives. Some stakeholders complained that the government sometimes appears to consult at a time and on issues of its choosing, that response times are sometimes inadequate and that consultations methods are not always well chosen. There was some concern that the voice of business might be too strong, business associations being effective and powerful

lobbyists with an ability to influence consultation processes to strengthen their case, and having the ready ear of the government.

Communication on aspects of the regulatory stock and flow is good, and would be even better with a consolidated database of regulations. There is as yet no consolidated government register of all primary and secondary regulations, which means that the regulatory stock is not easily identifiable. Work to develop such a database should be continued.

The development of new regulations

The production of explanatory guidance notes is receiving welcome attention. The recent Anderson review includes a number of practical measures to ensure that guidance is helpful and remains up to date, which the government is following up. The BRE's Code of Practice on Guidance of Regulations aims to improve the quality of guidance notes so that businesses spend less money on external advisers. The widespread use of guidance notes does raise some issues, as it seems that guidance is increasingly judiciable, meaning in effect that it becomes a form of "tertiary" regulation. Some other countries have sought to control the amount of guidance required.

Forward planning for important policies and legislation has recently been strengthened. Forward planning of secondary regulations has been much less developed than for primary laws. There is now a commitment by the government to publishing a forward regulatory programme that will include existing and future regulatory regulatory proposals.

Common commencement dates are a positive development. The United Kingdom was ahead of other European countries in the introduction of common commencement dates. These are fundamentally helpful to business. The presentation to the business community with a set of new regulations in "one shot" may need some management to ensure that that it does not (perversely) contribute to poor perceptions of the government's success in regulatory management. The EU's Small Business Act for Europe adopted in 2008 sets out that the European Commission will now introduce common commencement dates and it encourages member states to follow suit.

Recent developments to strengthen *ex ante* impact assessment signal clearly the energetic promotion of a new culture for rule making. There has been considerable progress on *ex ante* impact assessment since the 2002 OECD report. The United Kingdom is doing far more to promote this than many other OECD countries. Unlike many other countries, it also seeks to learn and apply lessons from the *ex post* evaluation of past approaches. The message is that Better Regulation does not just mean "producing good piece of regulation", but provides evidence-based support for the development of public policy (whether or not it results in a new regulation). Major efforts are being made to integrate impact assessment into policy making, so that the two processes are interwoven. With this approach, "Better Regulation" is a way of helping governments to frame a policy issue, to discuss it with interested parties, to measure costs and benefits of the different options for addressing the issue, and to secure effective implementation and enforcement of the process for doing this.

Impressive institutional, methodological and support arrangements are in place. The strengthened approach includes substantial efforts to allocate responsibilities appropriately, with economists to support the monetisation of costs and benefits, departments to take responsibility for doing impact assessments with the help of their

Better Regulation units, ministers to take political accountability, and for BRE to be the "helpful policeman". The introduction of a summary sheet has made the process clearer and more transparent, with a greater focus on the costs and benefits of intervention. A suite of comprehensive and accessible guidance has been developed for non-specialists. The guidance is detailed and comprehensive, covering every kind of situation. It would seem hard to "escape" from doing an impact assessment the correct way. There is some overlap in the guidance, which is extensive, and the need for a roadmap to signal the important links, and what should be tackled first.

Transparency is an important feature of the process. The Code of Practice on Consultation must be followed, the aim being to put the initial analysis out for public scrutiny and to gain new evidence. The BRE lists all final impact assessments produced by departments on its website. These arrangements take the United Kingdom some way beyond those of many other OECD countries.

Quality assurance is, however, a major issue that needs sustained attention. To secure progress and maintain its leadership in this area, the United Kingdom should increase quality control of impact assessments. There appears to be a variability in performance not just between departments but within departments, and linked to this, the supporting arrangements within departments. The amount of data and quantification provided is variable. Proportionality of effort based on a careful evaluation of the relative importance of proposed regulations also needs close monitoring, as carrying out an effective impact assessment is resource intensive work.

Measures of success for the strengthened approach should be developed. The test will be whether any (important) proposals are turned down or modified because of the process, and whether the process provides a real and enforceable challenge to the development of new regulation. Will policy proposals be developed in such a way that the most effective solutions are identified (regulatory or non-regulatory)? Trends in the production of secondary regulations still appear be upwards, suggesting that departments are still too enthusiastic about regulating in response to a policy issue.

The Better Regulation Executive pilots for dealing with interlocking policies look promising, and are an obvious extension of the impact assessment concept for complex policy areas. The proposals for a new approach to the impact assessment of proposed regulations that are linked but which cut across departmental boundaries is increasingly important for the effective management of complex policies such as climate change. This will be a test of institutional capacities to work together, and requires a significant commitment of co-ordinated effort by participating departments. The traditional Cabinet committee system is not geared to this challenge (it is not used to evaluating multiple initiatives, just one policy at a time).

The parliament plays an increasingly important role in the *ex ante* review of new regulations. A number of committees (the Joint Committee on Statutory Instruments, the House of Lords Merits of Statutory Instruments Committee, the House of Commons Regulatory Reform Committee and House of Lords Delegated Powers and Regulatory Reform Committee) have developed a substantive interest in regulatory quality, and there is evidence of considerable efforts to scrutinise secondary regulations.

The new impact assessment form does not give enough prominence to the option of alternatives to regulation. The new form does not directly draw attention to this aspect, asking why government intervention is necessary, and for analysis of the "zero

option" or other "regulatory options", which are not quite the same thing. It does not raise the possibility directly of applying alternatives to "command and control" regulation.

The work of the Risk and Regulation Advisory Council (RRAC) for the development of new risk-based approaches is potentially groundbreaking. The RRAC initiative is important, not just for the United Kingdom but also for other countries that are interested in this approach. The results of its work will need to be translated into the "practical" regulatory policy framework when they come through. The impact assessment process already includes a request to policy makers to consider and assess options from a risk based perspective.

The management and rationalisation of existing regulations

The simplification programme for the reduction of burdens on business is well-structured, has already delivered some savings and promises more. The programme has an overall net reduction target of 25% by 2010. A wide variety of burdens is addressed, with some proposals extending to cover full compliance costs. Although savings are "backloaded" so that a large part is expected to be delivered closer to the target deadline, some departments have already delivered significant savings and the plans of some others look promising.

Although measurement was apparently a challenge initially for departments, they now appear to be coping well. The BRE provides good support for departments in the development and adjustment of their simplification plans, as well as an incentive to meet the target through its performance assessment measurement of departmental Better Regulation achievements. The programme is transparent, open to public scrutiny, and there are significant efforts to reach out to stakeholders so as to better identify their needs.

Some aspects need further attention. There is a need to find ways of engaging local governments in administrative burden reduction, as some other countries are already doing with their programmes. Local governments are the main interface with the large majority of businesses. Developing an approach to take more effective account of the impact of major new EU-origin regulations is also important, as the roots of some burdens predate the start of the simplification programme.

Business is fundamentally supportive of the initiative, but perceptions of achievements appear relatively poor compared with the objective progress being made. This is a complex issue, not unique to the United Kingdom. The fact that a large part of the savings under the programme will only be delivered nearer to the end date of 2010 is not helpful when expectations appear to have been fuelled for quicker results. Part of the problem appears to be that business does not distinguish between different costs or policies and, for example, may react angrily if corporation tax goes up, linking this to a failure in Better Regulation. Also, benefits are quickly taken for granted, and attention turns to the next wave of irritants. It suits some businesses to keep regulation as a barrier to entry, and trade associations may want to keep their advisory work by exaggerating the difficulties that still exist. One challenge is to show a meaningful impact for individual businesses. Presenting total cost savings in government publicity is meaningless for individual businesses (especially SMEs) whose share will only be a small proportion of the whole. There is an inherent difficulty in the fact that part of the argument for the programme rests on a counterfactual: it could have been worse without the efforts. There are some United Kingdom-specific elements to the situation. The popular media may exaggerate difficulties compared with the reality, which is often more positive. There are some important underlying differences compared with other European countries, in terms

of the traditional relationship between the government and the business community, which is largely in private hands and does not consider itself to have any special ties of loyalty to the state.

Although there are a number of useful initiatives, there is no systematic effort to consolidate or simplify the regulatory stock. Parts of the simplification programme for reducing administrative burdens include important initiatives to simplify areas of the regulatory stock. Other initiatives such as the Legislative Reform Orders to remove unnecessary burdens in existing legislation, post-implementation reviews of regulation, and the use of sunset clauses are also helpful. But simplification is not the main aim of the simplification programme, and the overall approach is not systematic. The lack of any systematic effort to map and consolidate regulations in the United Kingdom's common law based structure, which also relies heavily on secondary regulations, may be of some consequence as there is a risk of significant regulation overload over time.

Negative business perceptions have roots in substance as well. It is important to focus on what business actually wants, and to distinguish between the needs of different types of business. The OECD team heard that businesses are worried about the flow of new regulations and their quality. The NAO's recent review of the programme found that when asked, businesses felt that burdens have increased. It has also highlighted the importance for departments to develop a thorough understanding of business concerns as the key to delivering real impacts on business, by working more directly with businesses. The programme has been adapting to the fact that the business community is not a homogeneous mass. This is helpful, as there is a gulf between the micro business offering a local service and the large multinational, as well as important differences between firms operating in different sectors.

Further development of initiatives aimed at citizens as well as frontline public sector workers, as some other OECD countries have done, would help to redress the balance of a business oriented agenda. It would also have the advantage of engaging local governments, a key interface for citizens, further into Better Regulation. The Service Transformation Agreement Action Plan to promote public services that are more personalised to the needs of citizens and businesses is a step in the direction of a more citizen-oriented Better Regulation agenda. Cutting bureaucracy for public services is another important and ambitious initiative which helps to redress the balance. It may also shed some light on the sources of unnecessary regulations emanating from a range of different regulatory agencies and central government departments. There is an ambitious commitment to reduce by a net 30% by 2010 the data that central departments and agencies request from frontline public sector workers.

Compliance, enforcement, appeals

The practical roll-out of the Hampton recommendations is a fundamental and comprehensive effort to embed risk-based regulatory management at ground level. There have been significant developments since the 2002 OECD report, and steady progress in taking forward the 2005 Hampton review recommendations, which proposed the adoption of common principles of regulatory enforcement based on risk assessment. The changes proposed by Hampton were innovative and have been a source of inspiration to other countries. Change was particularly necessary in the United Kingdom, given its complex and overlapping structures for enforcement. Consistent change across all regulatory agencies and local authorities will take time. The recent BRE/NAO reviews of progress note this issue in relation to the five non-economic regulators. The mix of

initiatives which has been put in place, including statutory requirements on regulators (the Regulators' Compliance Code) as well as softer approaches such as the Regulators Hampton Implementation Network Group to exchange views seems appropriate to the challenge. The new regulatory sanctions regime is another positive development. The new regime will give regulatory agencies new, more flexible civil administrative sanction powers as an alternative to criminal prosecution. It is too early to assess its effectiveness in practice.

Rebalancing enforcement resources away from inspections in order to put more effort into preventative advice on compliance is a major step forward. Rebalancing resources is one of the most important developments following the Hampton report, even if its application remains uneven. The new approach does not invalidate monitoring of compliance rates. Compliance is not monitored as such (some countries do this). A clear picture of compliance rates could help in evaluating the effectiveness of current enforcement initiatives, and guide next steps in enforcement policy.

The Hampton recommendations relating to regulatory structures and the need for agency rationalisation remain important. The United Kingdom's crowded regulatory structure would be made more manageable with further rationalisation wherever this is possible. The Hampton report spoke of the "right regulatory structure" and recognised that there was a limit to what could sensibly be done, but still drew attention to the problem. It advocated consolidation of national regulators, better co-ordination of local authority regulatory services, and clearer prioritisation of regulatory requirements. These comments remain valid.

Recent developments appear to be reinforcing the judiciary's engagement in regulatory issues. The Human Rights Act has extended the role of the courts in areas such as data protection and civil liberties, and the courts appear to be increasingly involved in rulings on guidance materials produced by the government, as well as experiencing a rise in litigation.

The interface between member states and the European Union

EU-origin regulations make up an important and growing share of the regulatory stock, and the EU dimension of Better Regulation is rightly emphasised. The effective management of EU-origin regulations is vital if the United Kingdom is to control its regulatory burdens. The EU is currently sometimes perceived as an "add on" to domestic work. The management of EU regulations has been picked up by the government's April 2009 statement which includes a commitment to "working closely with EU partners to further ember the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."

The institutional structures for handling EU regulations are well established and appear to work smoothly. The orchestrating role of the Cabinet Office, combined with support from the BRE's Europe team, and clear guidance, appear to be appreciated and provide the right balance in principle between central direction and departmental ownership of the process. The 2006 Davidson review picked up weaknesses in the process and this has now been turned into a clear guide for departments (covering both negotiation and transposition). Linking *ex post* transposition with *ex ante* negotiation of EU regulation is a good idea, perhaps especially important in the United Kingdom context of frequent staff changes, but also relevant for the consideration of other countries where the processes are disconnected.

Nevertheless, capacities to manage EU regulatory processes may need reinforcement. It is important that departments should own the process of managing EU regulations falling within their remit have the capacities and internal structures to do this well. It may be a reflection of this that the United Kingdom's record of transposition is mid ranking. The civil service tradition of short postings (for fast track and senior civil servants, often not more than three years in one place) raises a continuity challenge. The official responsible for negotiating a draft EU directive is unlikely to be the official carrying out the transposition. There is a need to secure continuity of information and understanding across the two processes when this happens. Legal resources for supporting policy officials in the negotiation phase may also need reinforcement. Lawyers' input is needed at this stage as well as for transposition, for example to ensure that non-controversial technical aspects such as transitional provisions are drafted so as to avoid problems at the implementation stage. Departments with a particularly heavy load of EU regulations, for example the Department for Environment, Food and Rural Affairs need the capacities and resources to do a consistently good job.

The United Kingdom is one of the few EU member states to require *ex ante* impact assessment of EU regulations, but the approach could be strengthened. The United Kingdom requires *ex ante* impact assessment of EU regulations to inform decision making throughout the process, from establishing the negotiating position in the European Council through to deciding on the best way to transpose and implement the directive in the United Kingdom. Its efforts in this regard need to be encouraged. It is not clear that the approach works well in practice.

Monitoring of transposition is fragmented and lacks formality. Monitoring is perhaps not strong or systematic enough to capture emerging issues. Transposition rates are monitored by the Cabinet Office and the BERR Europe team (responsible for Single Market policy), not the BRE. The Cabinet Office keeps in touch with departments and informs the European Commission when directives have been transposed. No single central record is kept of transposition rates. There is no dedicated page on departmental websites for EU regulations and how they are to be transposed.

The United Kingdom is commendably active at the EU level, but the approach could benefit from prioritisation. The issue of impact assessment, by the European Commission as well as at national level, should be a priority, alongside the current focus on reducing administrative burdens. Encouraging the European Parliament and the European Council to take a greater interest in Better Regulation is also important. The Council is of course made up of United Kingdom and other member state representatives, so more effort might be needed to ensure that important Better Regulation issues embedded in draft texts for Council approval are vigorously defended. A strong forward look mechanism to catch upcoming EU issues is important.

The interface between subnational and national levels of government

A large number of diverse players are engaged at the local level, generating a complexity that needs to be managed. The local landscape is complex, both institutionally in terms of the number of actors and their relationships, and in terms of the range of regulations enforced at local level. The Hampton report highlighted that the present complex approach to local authority regulation allowed wide variations and inconsistencies and that the system as a whole was unco-ordinated. The Rogers report also highlighted the complexity facing local authorities in terms of the range of legislation which they enforce, and the fact that this legislation is owned by a large number of central

government departments as well as agencies of various kinds. The LBRO used a jigsaw puzzle image to convey the dense network, breadth and complexity of all the actors engaged at the local level.

The Local Better Regulation Office is a very promising initiative in this regard. The LBRO was set up in 2008 by the government as a lever of change for Better Regulation at the local level. Its core objective is to support the improvement of local authority regulatory services, especially as regards enforcement. It has the powers, among others, to nominate a "best practice" local authority as the one whose interpretation of national regulations will be followed by other local authorities.

The United Kingdom has engaged in a vigorous effort to strengthen both the national-local and local-local interfaces in Better Regulation. Previous initiatives seem to have failed to deliver effective results, and co-ordination between local authorities themselves is not a strong feature. The initiatives which are now being taken forward (establishment of the LBRO and its power to designate a lead authority, streamlining enforcement priorities, the Retail Enforcement Pilot) look promising, and well-designed to take account of the underlying complexity. Many local authorities have already been encouraged to move towards risk based enforcement. Culture change among local authorities seems to have taken off, though this report is not able to judge how far it has spread. Culture change among the central departments and agencies which set the framework for local authority activity is also evident.

Local level regulatory activities seek a balance between the needs of citizens and businesses, in the interests of strengthening the whole community. The local level is necessarily more directly engaged in citizen related work (for example protecting vulnerable people and consumers). This provides a good counterpoint to the work undertaken to address business needs in order to secure the economic health of local communities.

Better Regulation policies are aimed at local authority regulatory services, a definition that may not capture all of the relevant initiatives and activities at this level. As well as the BRE's own initiatives, there are other developments that affect local authorities which are being carried forward by other central government departments, such as the Department for Communities and Local Government update of the local authority performance framework and indicators. Licensing and planning – a vital interface with government for local businesses – are not directly targeted by the current Better Regulation agenda, and may require specific initiatives for improvement.

Some national Better Regulation initiatives such as the simplification programme for businesses are also relevant for local authorities. Some national initiatives which might be expected to be relevant to the local level such as the reduction of administrative burdens on business are not yet linked up with the local level.

Use of e-Government to support simplification may need further development. Use of e-Government to support simplification is not highlighted in Better Regulation programmes and project literature. This contrasts with some other OECD countries which have given this issue greater prominence, via initiatives such as data sharing, online applications for licences, and interactive administrative procedures. The efforts of some individual local authorities to streamline licence applications and address other burdens may need encouragement and a more structured framework for effective development.

Key recommendations

Strategy and policies for Better Regulation	
1.1	Steps should be taken to address gaps and weak areas. In some cases this may simply mean building on existing initiatives such as the Local Better Regulation Office.
1.2	Ensure that significant new Better Regulation policies and developments do not succeed each other too rapidly, by bearing in mind the perspective of external stakeholders and their need to keep up. This also implies a strategic prioritisation of initiatives over time.
1.3	Aim to reinforce and develop initiatives that reach out to the non-business community. The project on burdens for frontline public sector workers and on the third sector (voluntary and community sector) is a valuable starting point. Citizen and community focused initiatives are also evident across other parts of government and at the local level, and could be given greater support.
1.4	Consider how to consolidate the United Kingdom's strategic vision of Better Regulation in a way that conveys the synergies and interdependence of its different components, and underlines the contribution which it can bring to major public policy goals (economic competitiveness, but also effective public services, and cross-cutting challenges such as climate change).
1.5	Communication strategy should be reviewed to ensure that external stakeholders (not just the business community) are clear about the government's Better Regulation policies, their interaction, and are not overwhelmed with overlapping material. A significant step in this direction was the production of the first annual report on Better Regulation in 2008 (BRE, 2008).
1.6	Communication should be on facts and ongoing developments, as much as on successes, and successes should not be overstated. Communication campaigns need to be based on substantive analysis and explanation of Better Regulation policies and what they can deliver. The use of plain language to explain Better Regulation, dissociated from political messages (overt or implicit) is also important.
1.7	Further efforts should be made to reach out to the non-business community.
1.8	The BRE should review the way in which it is presented and positioned in key documents and on the Internet, with a view to ensuring that stakeholders (internal as well as external) are clear about its distinct role.
1.9	Consideration should be given to reintroducing an independent advisory or scrutiny body (including representatives from outside the business community) or expanding the role of the current Risk and Regulation Advisory Council.[1]
1.10	There should be regular monitoring of the Better Regulation agenda overall for balance, strengths, weaknesses and gaps, alongside the evaluation of specific tools and processes. This would also help to bring the strategic picture into focus, and improve coherence.
1.11	Consideration should be given to reviewing the structures in place for e-Government in support of Better Regulation processes, with a view to addressing weaknesses and strengthening the whole.

Institutional capacities for Better Regulation	
2.1	Consideration should be given, wherever possible, to minimising the complexity of the institutional architecture, for example by continuing to rationalise the number and types of regulatory agencies.
2.2	Ensure that the Better Regulation Executive continues to have the support and resources that it currently enjoys, and are necessary for the accomplishment of its missions. Monitor the staff structure and postings, to ensure that this produces an effective mix of experience and new ideas.
2.3	The Better Regulation Executive and ministers for Better Regulation should take opportunities to explain the institutional approach taken by the United Kingdom and its benefits, which combines a Better Regulation unit at the centre of a radial structure of relationships allowing it to project its reach and influence.
2.4	Among other possible initiatives, the new better regulation subcommittee of the National Economic Council should be confirmed in its role in the review of significant new regulations, and in assessing and arbitrating impact assessments relating to the same set of policies across departments (such as climate change). Further work to consolidate links with the regulatory agencies should also be considered.
2.5	Consider whether the sanctions for poor regulatory performance are strong enough, and conversely, whether good work is adequately rewarded.
2.6	Consider the development of a more integrated framework for the deployment of Better Regulation practices by regulatory agencies.
2.7	The BRE should continue to put efforts into strengthening its relationships with the parliament, via the various committees that take an interest in Better Regulation.
2.8	Care should be taken to ensure that any joint BRE/NAO activities do not undermine the real or perceived independence of the NAO.
2.9	Efforts should be reinforced to associate the local levels with all aspects of Better Regulation.
2.10	Consideration should be given to the best way of engaging the judiciary in a dialogue over their experience of developments, perhaps via the Ministry of Justice, which should be encouraged as a partner in Better Regulation policy.

Transparency through public consultation and communication	
3.1	Given the feedback from stakeholders, there is a need for effective quality assurance of the Code of Practice on Consultation. The BRE should ensure that the practical application of the new Code of Practice on Consultation is carefully monitored, based on the issues raised by stakeholders with regards to poor practice in the past. Experience suggests that departments left to themselves do not always meet the highest standards. The Code is mandatory for all central government departments and this makes it all the more important to have an effective quality assurance mechanism in place, which goes beyond data collection on use of the Code and injunctions to report on its application in departmental annual reports.
3.2	The media could be encouraged to make a positive feature of common commencement dates by publicising lists of the new regulations alongside other positive aspects of Better Regulation.

3.3	The development by the Ministry of Justice of the statute law database to cover secondary regulations should be encouraged.

The development of new regulations	
4.1	The development by the Ministry of Justice of a statute law database, as well as clarifying the law, should be encouraged because it will allow mapping of trends in the production of regulations over time.
4.2	Consideration should be given to carrying out an assessment of guidance notes. Is the flow of guidance increasing? If so why? Should the flow of guidance notes be controlled? Which entities are most likely to be issuing guidance, in relation to which type of regulations? Is there a need to encourage plain language for regulations?2
4.3	Consider putting in place procedures for the forward planning of secondary regulations.3
4.4	The finishing touch to the comprehensive arrangements that are already in place would be to review the online guidance to eliminate duplication, signal the important links, and ensure that the template is easily accessible from all parts of the system.
4.5	Steps should be taken to strengthen quality assurance in the production of impact assessments, including how senior managers can be encouraged to take a more active role in this (perhaps via their performance evaluation).
4.6	Establish measures of success for the strengthened approach, and a date for evaluation.
4.7	Consideration should be given to whether the role of the new better regulation subcommittee of the National Economic Council which is taking over the role of the Panel for Regulatory Accountability, and will therefore deal with regulatory proposals that will have a significant impact, should be further enhanced.
4.8	Consider whether the impact assessment form should be adjusted to highlight that alternatives to "command and control" regulation could be considered, and link this to guidance on alternatives.
4.9	The BRE should share and discuss the emerging results of its work on risk with other OECD countries that are also interested in taking this approach.

The management and rationalisation of existing regulations	
5.1	An approach tailored to the English legal system might start with the mapping exercise that has been initiated by the Ministry of Justice, followed by an appraisal of what could usefully be done, after taking full account of the work already underway in the simplification programme, and through the other initiatives.
5.2	Consideration should be given to how local authorities can be encouraged into contributing to the burden reduction effort. Efforts should be stepped up to encourage the stronger control of new EU regulations to avoid new burdens from this level.
5.3	Further efforts should be made to structure communication on the programme around business types, rather than departmental plans. This approach would also help in the dissemination of information to the right businesses. Communication should also take account of the potential confusion and irritation caused by changing baselines and departmental structures.
5.4	Departmental efforts to address the burdens that really matter to different kinds of business should be sustained. Broader policies to address the flow of new regulations (ex ante impact assessment, and possibly regulatory budgets) are also relevant.
5.5	A review of licensing should be considered. Action might also include specific initiatives to review and simplify regulations requiring interventions from multiple authorities, as well as non-regulatory measures aimed at reengineering back-office procedures, making greater use of ICT and e-Government processes.
5.6	Consider whether there is a need to reinforce and further develop initiatives aimed at making life easier for citizens.
5.7	Take steps to ensure that the programme can be effectively evaluated, and that departments are well-supported and encouraged to help meet the target, given the absence of a measured baseline and a looser requirement on departments to deliver than is the case for the programme to reduce burdens on business.

Compliance, enforcement, appeals	
6.1	The BRE needs to keep up the pressure in the roll-out of reforms.
6.2	It would be useful to collect data, using the records already compiled by agencies and local authorities, in order to have a strategic picture of underlying trends and difficulties.
6.3	Consideration should be given to how the current regulatory structure could be further streamlined, and the creation of any new agencies or other regulatory structures should wherever possible continue to be avoided.
6.4	Consideration should be given to reviewing the changes in the role of the judiciary which may be usefully addressed by Better Regulation processes. The deployment of certain Better Regulation policies could help to address any emerging issues. Setting policy in open sessions for example, makes subsequent challenge more difficult.

The interface between member states and the European Union	
7.1	The management of EU regulations should be a priority for Better Regulation policy.4
7.2	An evaluation of the application of the Davidson Review's recommendations in practice would be helpful at this stage.
7.3	Consideration should be given to how departments, especially those with a heavy EU workload, can be better supported in the management of EU regulations.
7.4	The BRE should consider monitoring the application of impact assessment to EU regulations, in order to identify the issues that need attention.
7.5	The United Kingdom should consider whether a more formal approach to monitoring transposition could help in improving transposition rates.
7.6	Actions to help the development of Better Regulation at EU level should be prioritised.5

The interface between subnational and national levels of government	
8.1	Wherever possible, efforts should be made to rationalise complexity, for example by closer working between central government departments and between the latter and local authorities, to address complex regulatory and performance demands on local authorities.
8.2	The BRE should consider using the local level Better Regulation work in support of communities to promote a more balanced communication of its own on the targets and benefits of Better Regulation, for citizens as well as businesses.
8.3	The LBRO should seek to ensure that all relevant activities and initiatives at the local level are assessed from a Better Regulation perspective.
8.4	The LBRO should consider how local authorities can be engaged in supporting relevant national initiatives such as the simplification programme.
8.5	A review of e-Government deployment at the local level, perhaps orchestrated by the LBRO, might be considered.

Notes

1. It should be noted that this recommendation has been given effect, with the announcement by the Secretary of State for Business, Enterprise and Regulatory Reform on 2 April 2009 that the government will set up a new external Regulatory Policy Committee, whose role will be to advise

government on whether it is doing all it can to accurately assess the costs and benefits of regulations.

2. It should be noted that a large part of this recommendation has been addressed with the Anderson Review and the government's response to it, which includes a number of practical measures to ensure that guidance is helpful and remains up-to-date.

3. It should be noted that this recommendation is being given effect, with the commitment by the government to publishing a forward regulatory programme, including possible regulatory proposals emanating from primary legislation.

4. It should be noted that this recommendation is being given effect. The government's April 2009 statement includes, among the key actions to reinforce better regulation in support of economic recovery, a commitment to "working closely with EU partners to further ember the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."

5. It should be noted that this recommendation is being given effect. The government's April 2009 statement includes, among the key actions to reinforce better regulation in support of economic recovery, a commitment to "working closely with EU partners to further ember the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."

Introduction: Conduct of the review

Peer review and country contributions

The review of the United Kingdom was conducted by a team consisting of members of the OECD Secretariat, and peer reviewers drawn from the administrations of other European countries with expertise in Better Regulation. The review team for the United Kingdom was:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Luigi Carbone, Deputy Secretary General of the Office of the Prime Minister in Italy, and member of its Better Regulation unit. Judge at the Italian Supreme Administrative Court. Member of the EU High-Level Group of National Regulatory Experts.
- Christina Fors, Project manager and co-ordinator, Better Regulation Division, Swedish Agency for Economic and Regional Growth (NUTEK).
- Markus Maurer, Deputy Director General, German Federal Ministry of Economics and Technology. Member of the EU High-Level Group of National Regulatory Experts.

The review team held discussions in London and Birmingham with United Kingdom officials and external stakeholders on 11 March 2008 and 14-18 April 2008. Major initiatives and developments between these missions and clearance of the report for publication in May 2009 are referenced, but have not been evaluated.

The team interviewed representatives of the following organisations:

London
Better Regulation Executive (BRE)
Cabinet Office
Confederation of British Industry (CBI)
Department of the Environment, Food and Rural Affairs
Department of Health
Food Standards Agency
Government Legal Service
Government Economic Service
Medicines and Healthcare Products Regulatory Agency
HM Treasury
House of Lords, Merits of Statutory Instruments Committee
Institute of Directors (IoD)
Manufacturers Organisation (EEF)
Minister for Business, Competitiveness and Better Regulation
Ministry of Justice

National Audit Office (NAO)
National Consumer Council (NCC)
Trades Union Congress

Birmingham
Cambridgeshire County Council
Coventry City Council
Staffordshire County Council
Local Better Regulation Office (LBRO)

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- *Strategy and policies for Better Regulation.* This chapter first considers the drivers of Better Regulation policies and the country's public governance framework, and seeks to provide a "helicopter view" of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.
- *Institutional capacities for Better Regulation.* This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.
- *Transparency through consultation and communication.* This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule- making and public communication on regulatory requirements.
- *The development of new regulations.* This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.
- *The management and rationalisation of existing regulations.* This chapter looks at regulatory policies focused on the management of the "stock" of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiat*ives to* reduce burdens which administrative requirements impose on businesses, citizens and the admi*nis*tration itself.

- *Compliance, enforcement, appeals.* This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- *The interface between members states and the EU.* This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- *The interface between subnational and national levels of government.* This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

Each chapter begins with an assessment and recommendations, which is followed by background material.

Project baseline

The starting point for the reviews is a "project baseline" which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD's 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD's multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.
- The OECD/SIGMA regulatory management reviews in the 12 "new" EU member states, carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission's 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially SMEs, drawing attention to the need for a reduction in administrative burdens.
- The European Commission's follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission's development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.

- The OECD's recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by the United Kingdom.

The report is also based on material provided by the United Kingdom in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Regulation: What the term means for this project

The term "regulation" in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powersThe term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).

Chapter 1

Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent "whole-of-government" policy to pursue high-quality regulation. A key part of the OECD's 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of "good regulation", as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders' perceptions of regulatory achievements, and how progress can be effectively communicated (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance, *i.e.* "measuring the gap" between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this project and would be inappropriate, the report makes a few comments that may prove helpful for a more in depth analysis.

Assessment and recommendations

Development of Better Regulation strategy and policies

The vigour, breadth and ambition of the United Kingdom's Better Regulation policies are impressive. This makes the United Kingdom especially well placed among EU and other OECD countries to address complex future regulatory challenges, such as climate change. The United Kingdom also provides a positive lesson for other countries: it is possible to strengthen Better Regulation policies over time in the absence of any crisis that forces the need for reform. The United Kingdom's experience of regulatory reform goes back over twenty years, with a steady strengthening and broadening of Better

Regulation policies, processes and institutions. Today's agenda reflects the fact that the United Kingdom has reached a certain level of sustainability and maturity.

Progress over recent years has covered a number of fronts, and has been especially significant and ground breaking, by international standards, in the areas of enforcement and ex ante impact assessment. The publication of the Hampton Report in 2005 was a milestone in changing attitudes to enforcement, toward a risk-based approach. Processes for the *ex ante* impact assessment of new regulations have been steadily strengthened and brought closer to the policy-making process itself, to maximise their influence at an early stage, and to encourage a change of attitude among policy makers, including a sophisticated departmental performance measurement system linked to broader departmental objectives and the budget planning cycle. The simplification programme for the reduction of administrative burdens on business is well-structured, setting a net 25% reduction target by 2010, spread among most departments. Other recent developments aim to spread Better Regulation across a wider range of players, including local authorities and regulatory agencies. Important efforts have also been made to tighten up the approach to negotiation and transposition of EU directives, and the United Kingdom is a major influence in the development of Better Regulation at the EU level.

An effective balance has been achieved between policies to address the stock and flow of regulations. Compared with many OECD countries the United Kingdom has been successful in moving forward simultaneously on two key fronts – simplification of existing regulations through the reduction of administrative burdens on business, and *ex ante* impact assessment of new regulations.

There are nevertheless some important challenges which need attention. Challenges, some of which were already identified by the OECD's 2002 report, remain. These include managing and restraining the complexity of the regulatory institutional environment, including the stock of regulations. Support for EU related work is in place, but there are some issues which need to be addressed, as this is such an important source of new regulation. Culture change in support of Better Regulation practices within the administration, as in most other countries, still has some way to go. There may also be a need for a more structured approach to the development of e-Government at local level in support of Better Regulation.

Recommendation 1.1. Steps should be taken to address gaps and weak areas. In some cases this may simply mean building on existing initiatives such as the Local Better Regulation Office.

The rapid succession of developments and initiatives reflect the importance of continuous improvement, but stability is also important for stakeholders. Better Regulation is not a "one shot" policy, and should be part of a continuous evolution. This has been well understood by the United Kingdom. At the same time, there is a need for stability. The last two years have been a period of particularly intense activity, with a rapid succession of initiatives. This may not allow enough time to learn effectively from past Better Regulation initiatives. The policies may not be fully appreciated as a result, which is likely to be a factor behind the current issue of communication and sometimes negative perceptions of progress and the government's achievements in the effective management of regulations.[1]

Recommendation 1.2. Ensure that significant new Better Regulation policies and developments do not succeed each other too rapidly, by bearing in mind the perspective of external stakeholders and their need to keep up. This also implies a strategic prioritisation of initiatives over time.

Policy on Better Regulation is strongly business-oriented; ensuring that a broader focus is sustained and developed would help to sustain long-term support for Better Regulation. The main focus at this stage is the business community, with Better Regulation firmly linked into government objectives to sustain the competitiveness of the economy and raise productivity. This is fully coherent with the EU's Lisbon agenda, and an essential anchor for any Better Regulation strategy. The initiatives aimed more directly at the needs and perspectives of citizens, employees, consumers and public sector workers are also important.[2] They could be reinforced, and given greater prominence in government announcements on Better Regulation. The Better Regulation Executive (BRE)'s move from the Cabinet Office to the Department for Business, Enterprises and Regulatory Reform (BERR, which is known as the "voice of business" in government) has reinforced the perception of a strong link between Better Regulation and the business community, even if the BRE work extends beyond this.

Recommendation 1.3. Aim to reinforce and develop initiatives that reach out to the non-business community. The project on burdens for frontline public sector workers and on the third sector (voluntary and community sector) is a valuable starting point. Citizen and community focused initiatives are also evident across other parts of government and at the local level, and could be given greater support.

The United Kingdom has made considerable and regular efforts to explain and publicise the different elements that make up its Better Regulation agenda. From the 2005 Better Regulation Task Force Report onwards, the current Better Regulation agenda has been set out in successive reports and policy statements over the past three years. Nevertheless, an integrated strategic vision of Better Regulation policy, its contribution to public policy goals, and where it is headed in the longer term needs to be more clearly laid out at this stage. There is no lack of material explaining the policies but taken together they do not easily convey a broad and integrated picture, at least for outsiders to inner Better Regulation circles. It seems necessary to review numerous documents (and websites) in order to arrive at the big picture. United Kingdom leadership in many aspects of Better Regulation would be reinforced if the overall picture could be conveyed more strategically. Strengthened regulatory management should be embedded in a vision which includes key aspects such as the benefit side of the equation and the multilevel dimension (EU and local levels). As well as explaining how the different policies reinforce each other, more effort should be made to demonstrate the link between Better Regulation and the achievement of public policy goals (and if necessary, develop the analysis that demonstrates the link).[3]

Recommendation 1.4. Consider how to consolidate the United Kingdom's strategic vision of Better Regulation in a way that conveys the synergies and interdependence of its different components, and underlines the contribution which it can bring to major public policy goals (economic competitiveness, but also effective public services, and cross-cutting challenges such as climate change).

Communication on Better Regulation strategy and policies

A complex institutional environment, combined with the rapid succession of initiatives, generates communication challenges. The United Kingdom (see Chapter 2) has a complex institutional environment relative to some of its neighbours. The BRE needs to be encouraged in its wish to be more proactive and give a stronger lead to departments and agencies (which also struggle with communication) on how to communicate more effectively and consistently with external stakeholders in this environment, avoid unnecessary duplication of messages across documents, facilitate co-operation, and rationalise communication activities. The development of a more integrated vision (as suggested above) will help with this.

Recommendation 1.5. Communication strategy should be reviewed to ensure that external stakeholders (not just the business community) are clear about the government's Better Regulation policies, their interaction, and are not overwhelmed with overlapping material. A significant step in this direction was the production of the first annual report on Better Regulation in 2008 (BRE, 2008).

The real challenges with the Better Regulation agenda need to be acknowledged more clearly. The business community and others are aware that there is unfinished work and an ongoing challenge to deliver Better Regulation. A key aim of communication is to highlight achievements, and to ensure that businesses have heard of the changes which are beneficial to them. It is also important to be honest about the challenges and what is left to be done. This should instil greater trust in government and help to manage expectations. The negative perceptions of achievements under the simplification programme are partly due to overoptimistic messages about the delivery of burden reductions.

Recommendation 1.6. Communication should be on facts and ongoing developments, as much as on successes, and successes should not be overstated. Communication campaigns need to be based on substantive analysis and explanation of Better Regulation policies and what they can deliver. The use of plain language to explain Better Regulation, dissociated from political messages (overt or implicit) is also important.

Support for the long term will be sustained by engaging with a range of stakeholders more deeply, beyond the business community. The OECD peer review team heard that several groups, who already interact with the BRE, would welcome the opportunity for even greater interaction. These include the unions, consumers and the parliament. Reaching out to ordinary citizens, perhaps via the local level and the newly established Local Better Regulation Office, should also be addressed.

Recommendation 1.7. Further efforts should be made to reach out to the non-business community.

The BRE's own "brand" needs strengthening. To avoid possible confusion with the business – and not always specifically Better Regulation – agenda that the BERR stands for, the BRE needs to reinforce and communicate (including on websites) its positioning as the spearhead for Better Regulation across government.

Recommendation 1.8. The BRE should review the way in which it is presented and positioned in key documents and on the Internet, with a view to ensuring that stakeholders (internal as well as external) are clear about its distinct role.

The current lack of an independent external advisory body is surprising and could be helpful to communication (among other activities). The United Kingdom's public governance tradition does not, as in many other European countries, include formal arrangements for the ongoing engagement of social partners in discussion of government policies. It leaves a gap, which is best filled by a broadly based and independent advisory body.

Recommendation 1.9. Consideration should be given to reintroducing an independent advisory or scrutiny body (including representatives from outside the business community) or expanding the role of the current Risk and Regulation Advisory Council.

It should be noted that this recommendation has been given effect, with the announcement by the Secretary of State for Business, Enterprise and Regulatory Reform on 2 April 2009 that the government will set up a new external Regulatory Policy Committee, whose role will be to advise government on whether it is doing all it can to accurately assess the costs and benefits of regulations.

Ex post evaluation of Better Regulation strategy and policies

Good initiatives have been taken for specific policies, but there is also a need for strategic evaluation of the big picture. The United Kingdom is ahead of many other OECD countries with its understanding of the importance of *ex post* evaluation of specific Better Regulation policies, in developing processes for this, and in using the results to strengthen specific policies (such as *ex ante* impact assessment). Good use is also made of the evaluation work of the independent National Audit Office. The depth and number of individual policies which have been launched underlines the need for a strong and sustained *ex post* evaluation of their effectiveness. The missing link is an overall evaluation of the Better Regulation agenda, an issue which was already picked up in the last OECD review.

Recommendation 1.10. There should be regular monitoring of the Better Regulation agenda overall for balance, strengths, weaknesses and gaps, alongside the evaluation of specific tools and processes. This would also help to bring the strategic picture into focus, and improve coherence.

Box 1.1. Comments from the 2002 OECD report: *Ex post* evaluation

The United Kingdom government has not conducted any overall evaluation or review of regulatory reform across government. Although the same could be said of most other OECD countries, it is perhaps more noticeable in the case of the United Kingdom, which has more than two decades of experience in carrying out extensive regulatory reforms. Nevertheless, many departments, regulators and oversight bodies such as the National Audit Office and Better Regulation Task Force have undertaken such reviews in particular areas. Filling out the gap could be seen as an important prerequisite for guiding and obtaining broad support for continued reforms.

Source: OECD (2002).

E-Government in support of Better Regulation

Transparency is strong, but websites are not well joined up. It was beyond the scope of this report to address the issue of e-Government in any depth. Some specific issues were apparent:

- Transparency and the availability of material on line, including and not least for public consultation exercises, is impressive.
- Websites are not always well joined up and the links can be difficult to follow. A certain confusion between the BRE and the BERR on the web may be undermining the BRE's separate identity.
- Local level e-Government initiatives may need review.

Recommendation 1.11. Consideration should be given to reviewing the structures in place for e-Government in support of Better Regulation processes, with a view to addressing weaknesses and strengthening the whole.

Background

Economic context and drivers of Better Regulation

Better Regulation is headlined as a central element of the UK government's economic policy, linked to an ongoing drive to further improve productivity.[4] Productivity performance, which has been the subject of sustained attention for a number of years, has improved but a challenge remains. The rate of productivity growth has increased and the productivity gap with other comparable countries has narrowed.[5] The government believes that while a number of factors are likely to have contributed to this, including a policy of openness to trade and investment and a stable economy, the improvements are linked to reforms structured around the government's five drivers of productivity.[6] One of these is regulatory reform (simplifying taxes and regulation, via the launch of a significant programme of tax simplification, risk-based approach to regulation, and the reduction of administrative burdens).[7]

Better Regulation is also relevant to the other productivity drivers. Policies for investing in the workforce and skills are linked to current Better Regulation efforts to improve the regulatory environment for employers. Improving public sector efficiency has a direct link with Better Regulation policies to improve the regulatory environment

for frontline public sector workers. There are also important links to the broader challenges faced by the United Kingdom and shared with other OECD countries, including the challenges of an ageing population, climate change, the intensification of cross-border economic competition through globalisation, the need to improve prospects for deprived regions and communities and, not least, to promote economic recovery in the wake of the 2008 financial crisis.

Improving public services is a longstanding goal of UK public policy. It aims to bring these services closer to the needs of citizens and businesses and also has a direct link with Better Regulation policies. The effective delivery of public services is at the centre of renewed strategic objectives for central government with a programme of action, the Service Transformation Agreement. The importance of public service delivery is reflected in other initiatives such as the revised local government performance framework following the 2006 Local Government White Paper.

The potential economic benefits of pursuing a Better Regulation agenda have been assessed as significant:

- The 2005 report by the then Better Regulation Task Force estimated that the implementation of its recommendations could lead to an increase in GDP of up to GBP 16 billion, for an investment of GBP 35 million.
- The 2006 baseline measurement of administrative burdens suggested that these amounted to around GBP 20 billion per year for business and third (voluntary) sector, or 1.6% of GDP.[8] The government estimates that further efforts to reduce administrative burdens could lead to direct savings for business and consumers of around GBP 4 billion (0.3% of GDP). The government estimates that further efforts to reduce administrative burdens could lead to direct savings for business and consumers of around GBP 4 billion (0.3% of GDP).
- The government also cites research showing that a 25% reduction in administrative burdens would lead to a 0.9% increase in GDP by 2025.[9]
- The 2005 Hampton Report on risk-based enforcement noted that regulatory agencies (at both national and local level) employed 41 000 staff with a budget of GBP 4.2 billion.
- Public sector workers say they spend about 12.5% of their time on what they consider unnecessary bureaucracy (38% of time overall on bureaucracy).

Main developments in the United Kingdom Better Regulation agenda

The United Kingdom's experience with regulatory reform goes back over 20 years, and Better Regulation policies have been steadily strengthened and broadened over this period. First steps were taken in 1985 with a White Paper "Lifting the Burdens", which addressed the potential negative effects on business of over-regulating. The first attempts to address compliance costs of new regulations systematically were also made around this time. By the late 1990s the emphasis had started to shift to Better Regulation. The Better Regulation Task Force published its first principles for Better Regulation in 1998, and *ex ante* impact assessment of new regulations was strengthened. This was followed by the Regulatory Reform Act 2001, which established a fast-track procedure for the amendment of burdensome regulations.

The next major milestone was the publication of the Hampton Report in 2005, which addressed the issues of enforcement and adopting a risk-based approach. Together with the "Less Is More" Report of the same year this set the agenda for the coming years. Recent developments address a range of linked issues including the management of EU regulation, the need to develop Better Regulation at the local level and further strengthening of impact assessment. Major efforts have also been made to promote culture change via the establishment of Better Regulation structures for co-ordination across and within departments and measures of performance.

There has been significant progress on a number of fronts since the 2002 OECD report.[10] The areas with major developments include *ex ante* impact assessment, policy on enforcement, engaging the local authority level, addressing issues in the management of EU origin regulations and more broadly, culture change.

Table 1.1. Milestones in the development of Better Regulation policies in the United Kingdom

1985	White Paper "Lifting The Burden" addresses the negative effect of over-regulation on business. Following the report's recommendations all government departments are required to provide compliance cost assessments for regulatory measures.
1986	White Paper "Building Business – Not Barriers" re-addresses business compliance costs.
1994	Enactment of the Deregulation and Contracting Out Act establishing fast-track procedures to reduce regulatory burdens caused by primary and secondary legislation.
1997	Change of emphasis from deregulation to Better Regulation and a greater emphasis on small firms.
1998	Better Regulation Task Force publishes a set of basic principles of Better Regulation (transparency, accountability, targeting, consistency, proportionality), which are later endorsed by the government. The compliance cost assessment is replaced by a regulatory impact assessment, expanded to incorporate benefits and impacts on charities and the voluntary sector in addition to businesses. Bills presented to the parliament must have an explanatory memorandum (a short form of impact assessment) attached.
1999	White Paper "Modernising Government" sets out requirements on departments preparing policies which impose new regulatory burdens, to produce regulatory impact assessments. The White Paper also establishes broad government priorities on regulatory reform, stressing a new drive to remove unnecessary regulation. Policy makers' checklist is set up as an integrated electronic tool to support regulatory impact assessments.
2000	The government publishes new guidance on regulatory impact assessments. It also publishes a guide to better European regulation.
2001	The Regulatory Reform Act is enacted. The act provides ministers with a streamlined "fast-track" approach to putting proposals to the parliament for the amendment of burdensome primary legislation.
2002	Regulatory impact assessments must include competition impact assessments
2005	Report "Less is More: Reducing Burdens, Improving Outcomes" is published by the Better Regulation Task Force. The idea of regulatory budgets was first floated here. It recommends the establishment of a programme for the reduction of administrative burdens, and review of the Regulatory Reform Act 2001. Hampton Report "Reducing Administrative Burdens: Effective Inspection and Enforcement" is published by the government.[11] Davidson Report on transposition of EU regulations (it also covers negotiations at the EU level) is published by the government.[12]

2006	The five Better Regulation principles developed by the Better Regulation Task Force are enacted under the Legislative and Regulatory Reform Act 2006 (regulators must have regard to the principles when exercising a regulatory function, including enforcement). The act also updates the fast-track procedures for simplifying legislation. Davidson Review on implementation of EU law in the United Kingdom.
2007	Rogers Review "National enforcement priorities for local authority regulatory services" is published by the government. "Transposition Guide: How to Implement European Directives Effectively" (BERR) is published by the government. Government publishes "Next Steps on Regulatory Reform", which includes proposals for the review of consumer and employment law, improving the guidance that accompanies regulation, and improving the accountability of regulators. Macrory Review is published in November 2006. Revised impact assessment tools and guidance.
2008	Better Regulation Commission Report "Public Risk – The Next Frontier for Better Regulation" is published in January. BERR published the White Paper "Enterprise: Unlocking the United Kingdom's Talent" in March. This set out the government's agenda for developing enterprise, including the development of an appropriate regulatory framework and managing the cumulative impact of regulation. It states that one of the five "enablers of enterprise" is the regulatory framework. Regulatory Enforcement and Sanctions Bill is enacted in July, with measures building on the Hampton Report. House of Commons Regulatory Reform Committee publishes a report on the effectiveness of the BRE and Better Regulation agenda in July. The BRE issues a consultation paper on the introduction of regulatory budgets in August. New Code of Practice on Consultation. Establishment of the Local Better Regulation Office. Hampton implementation reviews on economic regulators are published. Killian-Pretty Review is published. Health and Safety Review. House of Lords report on economic regulators

Guiding principles for Better Regulation

The current agenda and guiding principles for Better Regulation in the United Kingdom have been set out in successive reports and policy statements over the last three years. These reports have set new directions for the agenda, notably the introduction of simplification plans to address burdensome regulations, and a new risk-based approach to enforcement which is being carried down to the local level. Existing processes have not been neglected, with the strengthening of *ex ante* impact assessment to address the issue of new regulations, and reinforced guidance for the management of EU-origin regulations. Policies are now balanced between those addressed at the management of existing regulations and those which target the development of new regulations. Recent developments also aim to spread Better Regulation across a wider range of players including, not least, local authorities and regulatory agencies.

The main focus of attention at this stage is the business community, with Better Regulation firmly linked into government objectives to sustain the competitiveness of the economy and raise productivity.[13] That said, the agenda extends across to other stakeholders and non-business sectors including citizens and frontline public sector workers.

Box. 1.2. Key reports on United Kingdom Better Regulation Strategy 2005-08

2005 Better Regulation Task Force Report

The 2005 report by the then Better Regulation Task Force (the former, independent advisory body to the government), "Less is More: Reducing Burdens, Improving Outcomes", confirmed the five principles of good regulation developed by the Better Regulation Task Force: proportionality; accountability; consistency; transparency; and necessity. It also recommended the establishment of a programme for the reduction of administrative burdens on the lines of the initiative first adopted in the Netherlands. This led to the start of the government's administrative simplification programme.

2005 Hampton Report

The Hampton Report of the same year, "Reducing Administrative Burdens: effective inspection and enforcement", highlighted the importance of assessing risk before enforcing regulation. Its main recommendations, all of which were accepted by the government, were the adoption of common principles of regulatory enforcement for all regulators based on risk assessment. The report has led to a number of initiatives including the establishment in 2008 of the Local Better Regulation Office to spread good practice at local level.

2007 Next Steps on Regulatory Reform Report

A 2007 report by the government "Next Steps on Regulatory Reform" reaffirmed the principles set out in the reports and initiatives of the previous two years, as well as announcing a series of new initiatives.

It proposed "levers of change" to focus on the following areas:

- Simplifying existing regulations, with a target to reduce the administrative burdens of complying with regulations by 25% by 2010.
- Working with regulators (including local authorities) to change their behaviour as enforcers, and with central government departments to change their culture as producers of regulation.
- Working with departments to ensure that new regulations are justified and burdens minimised.
- Working with the European Commission, the European Parliament and other member states to address the quality of the stock and flow of EC legislation.
- New measures to ensure that the impact of regulation on small and medium-sized enterprises is proportionate.
- Refreshing the strategy to reduce bureaucracy in the public sector (regulation inside government).

2008 White Paper on Enterprise

The latest government statement on Better Regulation is contained in the White Paper "Enterprise: Unlocking the United Kingdom's Talent", published by the BERR in March 2008. This (re) confirmed the regulatory framework as a key government policy – one of the five "enablers of enterprise". It announced that the government would renew its focus on reducing regulatory burdens, consult on the introduction of regulatory budgets, introduce a new approach to regulating small firms in line with its "think small first" policy, and ensure that the Hampton principles are embedded through simplified inspection and enforcement.

The last two years have been a period of particularly intense activity which shows no sign of waning. The government has refined, or is developing, a range of Better Regulation policies. A new body, the Risk and Regulation Advisory Council (RRAC) was set up in January 2008 to advise the government on risk management approaches to the development of new regulations. In July 2008 alone, several initiatives and consultations were launched or concluded (among other issues) on regulatory budgets, the EU, and public consultation. The public consultation document on the introduction of regulatory budgets proposes the creation of an annual limit on the costs of new regulation that could be introduced for each government department.

Main Better Regulation policies

Ex ante impact assessment of new regulations

The government has recently updated its policy on *ex ante* impact assessment. The new process is designed to promote greater transparency and sharpen the approach via enhanced quantification and a process to promote "early stage" consideration of costs and benefits before a policy is too advanced, the overall objective being to ensure that the benefits of new regulations justify the burdens.

Key features are:

- Impact assessments should be developed for all policy proposals with potential policy or regulatory impacts, including formal legislation, codes of practice or information campaigns.

- Monetisation of costs and benefits is central to the process. Economists are increasingly involved, from the earliest stages of policy making. Departmental chief economists should sign-off impact assessments that go to ministers, as validation that quantification has been effectively conducted. A new standard form summarises essential information on one page and draws attention to the monetised results.

- Promotion of strengthened political engagement and accountability via a ministerial declaration both for "consultation" and final impact assessments (sign off on the front page of the new form).

- Increased emphasis on post implementation review of proposals. Departments must set a date for when the policy will be reviewed, to assess whether it has been effective in delivering the expected policy goals.

The government is also testing a new approach for policy issues which cut across departmental boundaries. The essence of the approach is to combine into a single impact assessment the data and information from several separate but linked policy proposals, and then to assess and weigh this up as a single policy.

Risk-based approaches to new regulations

The government has launched an important new initiative to examine how a risk-based approach can be developed for new regulations. The initiative is based on the 2007 report of the Better Regulation Commission (BRC), "Public Risk: The Next Frontier for Better Regulation". Anecdotal evidence suggests problems with an increasingly risk

averse and litigious society. When should the state manage a risk on behalf of everyone through regulation, and when should another body or individuals themselves be allowed to manage the risk? The aim is to map a pathway that tackles risk issues at the start of the policy and rule-making process. The work will also consider how best to manage more effective responses to crises such as food scares, where political and media pressures are often to tighten regulation, which is not necessarily the best option. The work is at an early and formative stage and it is too soon for it to have any direct effect on current regulatory management practices. The United Kingdom is one of very few countries, however, which is seeking to address the issues so directly.

Reduction of administrative burdens on businesses

The government has set up a simplification programme based on the Standard Cost Model (SCM) methodology developed by the Netherlands. It has set an overall net reduction target of 25% by 2010 to be achieved across most central government departments and some agencies. Reduction targets vary across departments but are, with a couple of exceptions, at least 25%. Departments are free to set up their own approach to meeting their target, based on annual rolling simplification plans. This means that they continue to measure the administrative burdens of regulations introduced since 2005. There is a wide variety in the type of burdens addressed. The specific targets range from larger measures affecting many businesses across sectors (for example abolishing the need for private companies to hold an annual general meeting), to smaller measures which are sector specific (for example enabling sales of timber to be negotiated electronically). The means of delivery also vary from reducing burdens by making forms simpler; creating exemptions from regulatory requirements; smarter use of ICT and e-Government; or consolidating law by bringing different regulations into a more manageable form.

Cutting bureaucracy for public services

This "regulation inside government" programme is part of wider reforms to improve the delivery of public services. The main element of the strategy is a new commitment to reduce by a net 30% by 2010 the data and information that central departments and agencies request from frontline public sector workers. There is no quantification or baseline measurement underlying the target. The aim is to eliminate or simplify data requests, and promote more efficient data collection through the increased use of ICT.

Enforcement

A cornerstone of the agenda is to take forward the principles of the 2005 Hampton Review for effective inspection and enforcement based on risk assessment.

The recommendations of the Hampton Report were all accepted by the government:

- Comprehensive risk assessment should be the foundation of all regulators' enforcement programmes.
- There should be no inspections without a reason, and data requirements for less risky businesses should be lower than for riskier businesses.
- Resources released from unnecessary inspections should be redirected toward advice to improve compliance.

- There should be fewer, simpler forms.
- Data requirements, including the design of forms, should be co-ordinated across regulators.
- When new regulations are being devised, departments should plan to ensure enforcement can be as efficient as possible, and follows the principles of the report.
- Thirty-one national regulators should be reduced to seven more thematic bodies.

Since 2005, the government has developed a number of initiatives to spread the Hampton principles among national regulatory agencies (as well as local governments which have the largest role in enforcement). The Regulators Compliance Code of 2008 is a statutory code of practice to ensure that inspection and enforcement is efficient, both for the regulators and those they regulate. The code gives the seven Hampton principles relating to regulatory inspection and enforcement a statutory basis. Reviews have been carried out on the five major regulators to assess whether they have adopted the principles of good regulatory practice set out by Hampton. Further reviews are planned to cover all national regulators over a two-year period. The Regulatory Enforcement and Sanctions Act 2008 (among other issues) gives regulators new civil sanction powers, as an alternative to criminal prosecution when this is not a proportionate response. It also imposes a statutory duty on regulators not to impose unnecessary burdens.

Initiatives aimed at local government

Many of the enforcement initiatives flowing from the Hampton review also apply to local authorities. Other initiatives have been specifically addressed to this level of government. The 2007 Rogers Review was part of the follow up to the Hampton Report to improve local authority enforcement. Hampton argued that local regulatory services are often hindered by the diffuse and complex structure of local regulation, including difficulties arising from the lack of effective priority setting from the centre, and the lack of effective central and local co-ordination. Rogers recommended six national enforcement priorities for the local level. The recommendations were accepted by the government and have been taken forward in a new performance framework for local authorities.

The Local Better Regulation Office (LBRO) was formally established in July 2008, with the coming into force of the Regulatory Enforcement and Sanctions Act 2008. The act gave LBRO a range of powers including the "primary authority" scheme. The LBRO will have the power to nominate and register "primary authorities". These nominated local authorities will provide advice to, and agree inspection plans for businesses that operate across council boundaries. They will advise other local authorities in their interaction with the business, with a view to securing consistency of approach. The LBRO will arbitrate any disputes. It will also issue statutory guidance to local authorities in respect of regulatory services; review and revise the list of national enforcement priorities for the local level; and develop formal partnerships with national regulators.

Management of EU regulations

The 2006 Davidson Review recommended a number of areas for improvement in the negotiation and transposition of EU-origin regulations. Its recommendations for specific

simplification proposals are now being addressed in departmental simplification plans. Its general recommendations to promote best practice in transposition have been taken forward via a new transposition guide (which also covers negotiation).

The United Kingdom also has an active policy to work with the European Commission, the European Parliament and other member states to address the quality of stock and flow of EU regulation, including the EU's own policies for Better Regulation such as impact assessment.

Communication on the Better Regulation agenda

Currently, the BRE lists a number of approaches which it is deploying to communicate the government's Better Regulation agenda and strategy:

- *Website*. The Better Regulation website[14] contains examples of how improved and simplified regulation has benefited business, the public and third sectors and consumers. It asks for ideas on improving regulation. The BRE is keen to set up a two-way dialogue with stakeholders ("tell us what is not working"). The site also provides access to recent BRE reports. The aim is to make this a single comprehensive portal for access to Better Regulation issues.

- *Media relations*. Generating coverage in the media, including ministerial interviews, issuing news stories for the broadcast and print media and building relationships with key journalists to encourage interest and coverage in the subject of Better Regulation. An ongoing programme, this will be developed to target business media and business associations.

- *Visits.* All BRE staff are required to make at least 12 visits to businesses and/or public and third sector organisations during the course of a year. The BRE underlines that this provides an opportunity for face-to-face discussion, building relationships, and highlighting developments and successes in Better Regulation. The BRE's Executive Chair and Chief Executive also undertake joint visits to private and public sector organisations.

- *Exhibitions and events.* The BRE attends business exhibitions and events, using exhibition stands, facilitating a workshop or providing a guest speaker. These are additional opportunities to communicate recent developments to the business community and professional bodies, as well as building relationships. The BRE expects such events to play an increasing part in its future communications strategy.

- *Literature.* The BRE produces a number of documents, including plans, progress reviews, reports and recommendations to communicate developments, changes and progress on the Better Regulation agenda. Some focus on specific sectors, for example health and safety, while others are wider in their scope. They are available in print versions and can also be downloaded either from the Better Regulation website or the BERR website.

The BRE has recently recruited a director of strategic communications who is reviewing its communications strategy. The director explained the communications objectives as follows:

- Help our business stakeholders understand the benefits and value of Better Regulation and the difference it makes to them.
- Reinforce that this is about proportionate and simplified regulation, not about no regulation.
- Engage and educate stakeholders so that they are brought in and work with the BRE to achieve required outcomes.
- Equip our staff with the information to help them engage with our business stakeholders to explain what we have done.

One key objective is to convey messages and hear back about concerns through other stakeholders, via contact programmes, visits, lunches, business panels, etc. Another is to target the work, for example the top three media, key trade bodies. The BRE is conscious of the difficulty of reaching out to those businesses which do not want to get involved, perhaps because they are too busy. It is also aware of the need to counter bad press coverage with good stories and to correct misunderstandings. The press in the United Kingdom includes a number of widely read daily newspapers which have a notoriously fickle attitude (changing sides from day to day).

Digital Dialogues

Digital Dialogues is a fund to support the innovative use of technology (fora, webchats, blogs) in order to promote direct democratic engagement between the government and citizens. It is managed by the Ministry of Justice.[15] The site includes a web chat link to the Prime Minister's Office. Based on six case studies, it has evaluated government communication initiatives and made recommendations on what the government should do to achieve its objectives more efficiently and effectively. For example it has recommended that the government should innovate (in the way it engages with the public), be scalable (carrying out pilots to see if there is demand), train staff (to use the new interfaces efficiently), be interactive, and evaluate (itself, its activities and results).

Ex post evaluation of Better Regulation strategy and policies

The United Kingdom makes use of several structures and processes for the evaluation of specific Better Regulation policies, as well as *ad hoc* evaluation initiatives.

National Audit Office

The National Audit Office (NAO) has, over the last few years, carried out successive audits of Better Regulation policies and processes. For the last four years it has made an annual assessment of the quality and effectiveness of impact assessments.[16]

The NAO also reports to the parliament annually on the achievements of the Administrative Burdens Reductions Programme. The 2008 annual review will focus on the delivery of the four departments that are responsible for the five policy areas with the largest administrative burden. As part of its reviews, the NAO conducts an annual survey to track around 2000 businesses' perceptions of the burden of regulation and the impact of departmental initiatives to reduce burdens. The BRE uses the evidence and conclusions

from NAO reports to refine the approach in these areas. For example, NAO views were instrumental in shaping the new format impact assessment arrangements.

Ex post evaluation linked to ex ante impact assessment

The BRE (and its predecessor the Regulatory Impact Unit) carried out compliance tests to check that regulatory proposals are accompanied by an impact assessment between 2002 and 2005. This was done by analysing the consultations undertaken by departments and the legislation that was then added to the statute book. Compliance levels varied between from 92% and 100% between 2002 and 2005. Since that time compliance has been consistently at 100%. The development of the impact assessment library has in essence made the checks redundant.

The final version of impact assessments includes a requirement to set a date (usually three years after the enactment of the new regulation) for review of what actually happened relative to predictions.

Reviewing the regulators

Hampton implementation reviews assess how well regulators are following the Hampton principles of Better Regulation and effective sanctions defined by the Macrory Review. They encourage best practice and continuous improvement among regulators. The purpose of the reviews is to promote more effective and efficient regulatory activity, and to help increase openness and transparency, highlight areas for development and spread good practice to other regulators. In July 2008 the NAO and BRE reported on the performance of the five largest economic regulators in implementing the Hampton principles. The general conclusion was that these regulators had accepted the need for risk-based regulation and in most cases had established mechanisms to assess risk and direct resources accordingly. The reviews also picked up some challenges. These included the development of a comprehensive risk assessment system to deal with a wider range of risks, including those applying to the regulated sector in general and at the level of individual companies, so that resources could be applied effectively. The reviews concluded that there was considerable value in regulators sharing their knowledge and experience.

Consultation on Better Regulation policies

The BRE launches *ad hoc* public consultations on specific Better Regulation policies, which draw responses from business organisations, academics, trade unions, citizens and the parliamentary committees, as well as input from the government offices for the English regions on local views. In 2006, the BRE launched a specific public consultation on reforms to the impact assessment process, which (alongside the views of the NAO) helped to shape the new approach. It has also consulted on the Code of Practice on Consultation, receiving over 100 written submissions, holding 20 meetings around the United Kingdom and also receiving evidence via an online discussion forum and market research.

E-Government in support of Better Regulation

The most evident use of ICT is in the broad range of well-stocked websites covering all aspects of Better Regulation including:

- BRE has a dedicated section on the BERR website, which explains the BRE's function and provides regular updates on developments, mainly aimed at other departments.[17]

- The Better Regulation website contains examples of how improved and simplified regulation has benefited business, the public and third sectors and consumers.[18] It asks for ideas on improving regulation, and posts the government's responses to all the ideas that come in. The site also provides access to recent BRE reports.

- There is a government portal for business information and services (aimed mainly at SMEs).[19] It gives practical advice on starting and developing a business. The "do it online" section is where the bulk of online services for businesses can be found. The site is easy to navigate, clearly explained, providing information and help in setting up and running a business. It will be the single point of contact for the United Kingdom's implementation of the Services Directive.

- Material (including interactive material and guidance) on important processes such as impact assessment, simplification plans and consultation exercises are also on the web and easily accessible.

Notes

1. As one interlocutor put it to the OECD team: "If you want to avoid cynicism, be consistent, and do not change the initiatives/messages too often".
2. The OECD peer review team received a number of comments to this effect.
3. The National Audit Office noted in its 2007 annual review of simplification that the BRE should encourage cross government work to explore the link between the level of regulation and productivity.
4. These high-level objectives have remained steady over time. They were already cited in the OECD's 2002 report. This notes that regulatory reform in the United Kingdom has since the early 1980s been a key part of successive governments' economic programmes of structural reform intended to strengthen competition and private sector vitality. It further noted that the United Kingdom emphasised public sector reforms to assure the quality, effectiveness and homogeneity of public sector delivery.
5. Since 1997 it has narrowed the output per hour gap with Germany by almost half, with France by more than a third, and has made progress in narrowing the gap with the U.S. (ibid).
6. The OECD's 2007 Economic Survey of the United Kingdom also noted the openness of its economy.

7. The others are: Investing in the workforce and in skills ; investing in infrastructure (including legislation for a new planning regime for major infrastructure projects); Strengthening competition and market frameworks (including further strengthening of the competition regime, simplifying the range of business support); Improving public sector efficiency (2007 Comprehensive spending review to promote value for money and improve procurement).

8. The direct cost of businesses filling in forms, dealing with inspections and providing statutory information, and did not take account of potential indirect effects on productivity through reduced competition, innovation etc.

9. Gelauff and Lejour (2006), cited in the 2007 Treasury productivity paper.

10. Published in 2002, but mainly based on research carried out in 2001.

11. *www.hm-treasury.gov.uk/hampton.*

12. *www.hm-treasury.gov.uk./media/E/F/davidson_review281106.pdf.*

13. This was made very explicit in an interview with the BERR Minister for Better Regulation, who emphasised that the driver is support for business in order to sustain the United Kingdom's competitiveness and enhance productivity.

14. *www.betterregulation.gov.uk.*

15. *www.digitaldialogues.org.uk.*

16. *www.nao.org.uk/ria/ria_our_work.htm.*

17. *www.berr.gov.uk/bre/index.html.*

18. *www.betterregulation.gov.uk.*

19. *www.businesslink.gov.uk.*

Chapter 2

Institutional capacities for Better Regulation

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may be the prime proposer of new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by the parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Assessment and recommendations

The United Kingdom presents a complex but well articulated institutional environment which requires active management. The United Kingdom's institutional framework is the product of an evolution over centuries, which has not been disturbed by revolution.[1] It presents, as result, a rich, varied and complex landscape which requires careful mapping to identify all the relevant actors and their relationship with each other. There are a large number of regulators of different sorts. Adding to the challenge is the

fact that significant reforms which devolve powers and affect the roles and relationships of the executive, legislature and judiciary have been made over the last ten years, and there is more to come. The Hampton and Macrory reports underlined that a key challenge for Better Regulation in the United Kingdom was to work with very different legislative structures and institutional arrangements across the country, as well as noting that there are many common issues and challenges in the regulatory field that cut across geographical and sectoral boundaries. A very positive aspect is that the institutional architecture is, in many respects, well articulated and functions with a smoothness that is impressive relative to some other "simpler" jurisdictions. The development of institutional complexity has been matched by the development of a capacity to ensure that the machinery of government does not seize up, not least through the system of collective decision-making orchestrated by the Cabinet Office. Likewise, the institutions supporting Better Regulation have evolved and developed since the 1990s to address the challenges.

Given this starting point, it will be important to avoid further complexity wherever possible. Some recent institutional developments (the growth in the number of agencies, devolution, and the growing influence of the EU) complicate the task of better regulatory management. Frequent changes in the institutional architecture such as machinery of government changes[2] and changes to the structures for promoting Better Regulation itself generate further potential difficulties. The Hampton Report put it clearly – some of this complexity cannot be avoided, but wherever possible there should be streamlining. The 2002 OECD report had already picked up this important issue (Box 2.1). Strengthening the central unit is only part of the answer.

Recommendation 2.1. Consideration should be given, wherever possible, to minimising the complexity of the institutional architecture, for example by continuing to rationalise the number and types of regulatory agencies.

Box 2.1. Recommendation from the 2002 OECD report: Complexity

Clarify the overall institutional set-up of the regulatory system and strengthen the role of the centre of government. A large number of institutional players in the regulatory framework of the United Kingdom can blur the transparency and accountability of regulations, slow co-ordination and increase transaction and compliance costs. Clarifying and simplifying relations within the regulatory framework would be an important step to address this challenge. Strengthening the role of the centre of government from advisory and consultative toward a more structured, formalised and challenging role should increase its possibilities and obligations to create systematic incentives to assure high-quality regulations.

The Better Regulation Executive (BRE) has spearheaded a revitalised drive for Better Regulation. The BRE is an influential, energetic, well-resourced and well-connected central unit, with high-level leadership in the shape of a permanent secretary. It is one of the best examples of an effective central regulatory unit across the OECD, both in terms of its influence and of its broad remit which brings the main aspects of Better Regulation under "one roof". Its establishment as a successor to the Regulatory Impact Unit with a broader mission, more staff, and improved tools and processes for the promotion of Better Regulation, has been a positive development. Nearly all of those interviewed for this report said that the BRE has played a positive role in driving regulatory reform across government. The business community seems to approve of the BRE's semi-detached and semi-private status and structure. Whilst staff turnover and short postings at the BRE

promote a broad mix of competences and experiences, this needs to be monitored, as the BRE is an organisation that needs to work for the long haul of Better Regulation.

Recommendation 2.2. Ensure that the Better Regulation Executive continues to have the support and resources that it currently enjoys, and are necessary for the accomplishment of its missions. Monitor the staff structure and postings, to ensure that this produces an effective mix of experience and new ideas.

The United Kingdom appears to have entered a new phase in the institutionalisation of Better Regulation. The United Kingdom appears to have been successful in starting up a new phase in the "institutionalisation" of Better Regulation across most of the actors that need to be part of the process. The BRE itself does not deliver Better Regulation, as it is careful to underline. It operates as the centre point of a radial network of relationships drawing in other important actors, not only within the central government executive but beyond (the parliament, the National Audit Office, national regulatory agencies) as well as at the local level. At the end of the day it is a (relatively speaking) very small central entity seeking to influence a very large and disparate set of actors. Structures such as the identification of a minister responsible for Better Regulation in each department contribute to the strength of the system. There is a significant "political" dimension, to persuade ministers of the value and necessity of following Better Regulation principles which has also been enthusiastically embraced.[3] The complexity of its institutional architecture suggests that this evolution is particularly necessary for the United Kingdom, but it does also offer a valuable model for spreading Better Regulation that might be of interest to other countries.

Recommendation 2.3. The Better Regulation Executive and ministers for Better Regulation should take opportunities to explain the institutional approach taken by the United Kingdom and its benefits, which combines a Better Regulation unit at the centre of a radial structure of relationships allowing it to project its reach and influence.

Nevertheless, reinforcement of the network of Better Regulation relationships beyond the inner circle and across all branches of government is needed. Although the BRE has been successful in developing a range of contacts and relationships (including through secondments from other departments), the overall picture remains uneven. Its "horizon scanning" abilities to spot relevant policy developments around departments has improved but the OECD peer review team were told it could be even better. There is also scope to develop stronger relationships and spread best practice with certain key actors beyond those central government departments and agencies which have developed a special interest in the subject.

Recommendation 2.4. Among other possible initiatives, the new better regulation subcommittee of the National Economic Council[4] should be confirmed in its role in the review of significant new regulations, and in assessing and arbitrating impact assessments relating to the same set of policies across departments (such as climate change). Further work to consolidate links with the regulatory agencies should also be considered.

Significant progress has been made to progress culture change. A network of structures operating at different levels have been set up across central government, including Better Regulation ministers, board level champions (officials to support the ministers), impact assessment sign off by ministers, and Better Regulation units to support and deliver Better Regulation processes and programmes. Training for the application of Better Regulation tools and processes is also well-developed, on line, through the support of specialists, and as part of general training programmes for civil servants which tackle issues such as impact assessment and consultation. A highly structured performance measurement system is in place, covering the main dimensions of Better Regulation.

There remains a culture and/capacity gap, and the carrots and sticks for better performance may not be strong enough. Tools and processes are increasingly sophisticated, and they need commitment, as well as professionalism and expertise. It is relatively straightforward to set out principles of Better Regulation, and to invent tools and processes for its delivery. It is much harder to move from abstraction to actions that are embedded in the daily activity of officials on the frontline of regulatory management. The BRE does not dispose of any formal powers to call departments to account, and the real effectiveness of its supporting and challenging departments during the policy development process and its assessments of departments' performance is hard to judge from the outside, absent any clear sticks (such as budget cuts) if performance is inadequate. It is also not clear how good work by officials on Better Regulation is rewarded in the current performance appraisal system and career postings.

Recommendation 2.5. Consider whether the sanctions for poor regulatory performance are strong enough, and conversely, whether good work is adequately rewarded.

Box 2.2. Recommendation and comments from the 2002 OECD report: Culture change

Encourage — especially by training — the continued development among senior policy-makers of an administrative culture supporting regulatory quality management. A continued effort is needed to embed good regulatory practices not only in procedural guidelines but also into the culture of the public administration. The strong understanding at the highest political level and at the centre of government of prioritising early and sincere integration of regulatory impact assessments in the policy-making process needs to be extended to other departments and regulatory authorities in order to support a broad and continuous development of high-quality regulation. The development of such a culture could be encouraged by making regulatory quality management an integral part of the training not only of junior civil servants engaged in the regulatory process, but, as importantly, also to senior civil servants.

Although the principles and potential for regulatory quality management are permeating to the policy-making process, indications are that further efforts are required to truly embed such awareness in the administrative culture of senior policy-makers. To install such a culture may be the most important and difficult long-term challenge to fully exploit the already strong capacities for high-quality regulatory management in the United Kingdom. BRE recognises and is working towards this goal.

Regulatory agencies[5] *can help to define effective practical strategies, but fragmentation of their own Better Regulation efforts needs to be minimised.* The capacity of regulatory agencies to assess what works best may be stronger than that of departments, because they are closer to the ground. At the same time, the wide variations in their status and powers means that Better Regulation policies such as impact

assessment may automatically apply to some regulators, but not to others. The issue of fragmentation (or simply the lack of) Better Regulation initiatives, for those regulators which are not constrained by central government policies, reduces transparency and increases complexity for stakeholders. One of the criticisms of the Macrory Report was the significant differences in powers and practices among regulators, causing inconsistency and detriment to business. The agencies appear somewhat sensitive in this regard, wanting to ensure that their independence and statutory mission is not compromised by centralised Better Regulation management (though it is hard to see what problems this could cause).

Recommendation 2.6. Consider the development of a more integrated framework for the deployment of Better Regulation practices by regulatory agencies.

Box 2.3. Recommendations and comments from the 2002 OECD report: Regulatory agencies

Develop a general policy framework for the role and functioning of independent regulators. The United Kingdom's system of regulators, which have been developed *ad hoc* and explicitly for the sectors and the market characteristics in which they operate, has many advantages which should not be lost. However the United Kingdom government should consider developing a single policy framework for the role and functioning of independent regulators including a consistent approach to the use of impact assessment, consultation and other quality assurance measures. Such policy framework should define clear objectives for the independent regulators and by doing so providing clear distinctions between its objectives and those of other regulatory authorities.

… (In parallel) the government should extend RIA disciplines to devolved administrations, independent regulators and non-governmental bodies currently not bound by the guidelines.

As the United Kingdom moves toward more sophisticated regulatory systems with an increasing number of independent regulators and other regulatory bodies with inter-linked and shared responsibilities, the question of a clear delineation of responsibilities, accountability and reporting should become an important priority.

Despite progress in setting up a general policy for regulators, which culminated in the 2000 Utility Act, room for improvement persists in organising the network. Policies and instruments to limit duplications and overlaps between authorities covering converging sectors (*e.g.* telecom and broadcast) as well as thematic areas (*e.g.* competition policy, regulatory quality tools) need to be appraised, or even invented.

The parliament's interest in Better Regulation is helpful, especially as regards feedback on the quality of consultation and impact assessments. The parliament's role in scrutinising secondary legislation is important and appears to add value to the efforts of the executive.[6] Several parliamentary committees, in both houses, are active in this regard.

Recommendation 2.7. The BRE should continue to put efforts into strengthening its relationships with the parliament, via the various committees that take an interest in Better Regulation.

The National Audit Office (NAO) is a valuable asset for Better Regulation. The NAO provides an external, professional, concrete, independent view on the quality of

regulatory management. It has provided, over the last few years, valuable input to key Better Regulation programmes and processes such as impact assessment and the simplification programme. It has recently been engaged in joint review activities with the BRE. Its independence is an asset that needs to be preserved.

Recommendation 2.8. Care should be taken to ensure that any joint BRE/NAO activities do not undermine the real or perceived independence of the NAO.

The engagement of local levels of government is progressing; this is essential to the success of Better Regulation. The responsibility of local authorities for the enforcement of national regulations, as well as their responsibilities for licensing and planning, puts them at a critical interface between central government and local stakeholders who stand to benefit from Better Regulation. Recent important initiatives to rationalise and co-ordinate the approach to local regulatory enforcement, such as the Rogers Review and the establishment of the Local Better Regulation Office, represent an important extension of Better Regulation policy to this level of government, which needs to be developed in other areas too, such as the administrative burden reduction programmes.

Recommendation 2.9. Efforts should be reinforced to associate the local levels with all aspects of Better Regulation.

The interaction of the judiciary with regulatory developments is also important. The judiciary, especially in a legal system based on common law and precedent, should not be neglected in the pursuit of Better Regulation. They are at the frontline of important issues such as the trends in litigation and appeals, and what this reveals about the regulations that are being challenged. These insights could provide valuable feedback to the further development of Better Regulation policies.

Recommendation 2.10. Consideration should be given to the best way of engaging the judiciary in a dialogue over their experience of developments, perhaps via the Ministry of Justice, which should be encouraged as a partner in Better Regulation policy.

Background

General institutional context

The United Kingdom's public governance framework is based on traditions of market openness, and a relatively low proportion of state ownership. Its common law driven judicial and regulatory framework, its well-functioning tradition of collective responsibility for decision making within government, and its political system which usually gives the ruling party a clear majority in the parliament, are other important features that condition the way in which Better Regulation is taken forward.

There have been significant recent developments in the institutional and decision-making framework, with the establishment of elected assemblies and devolution of power for parts of the United Kingdom, as well as "work in progress" constitutional developments which are changing the way in which the different branches of government interact.[7] The Better Regulation agenda has to keep up with this changing framework.

Box 2.4. Institutional framework for the United Kingdom's policy, law making and law execution process

General context

The United Kingdom is made up of four parts: England, Wales, Scotland and Northern Ireland.[8] The different parts of the United Kingdom have distinct legal systems. The English and Welsh system is the same, whereas Northern Ireland and Scotland are different.

It is a constitutional hereditary monarchy and representative democracy. The monarch is head of state and his/her role is essentially one of influence. Effective authority lies with the elected lower chamber of the parliament (the House of Commons) and the central executive headed by the Prime Minister (elected by his/her party), who presides over a cabinet formed by the leading party and representing the main government departments.[1] Cabinet and other ministers are also members of the parliament. Elections must be held at least every five years; the precise timing is the decision of the Prime Minister.

Britain's constitution has been described as "partly written and wholly uncodified". Instead of being written down in a single document (as in many other OECD countries), it is contained in different sources, notably constitutional statutes, the common law (based on judicial decision and precedent), and conventions.

In recent times EU law and the European Convention on Human Rights (which was incorporated into United Kingdom law with the Human Rights Act 1998) have added new dimensions. The judiciary is responsible for checking that the European Convention on Human Rights is properly observed.

The most important constitutional principle is the parliamentary sovereignty, meaning that the parliament, representing the people, is the supreme law-making body, and its acts are the highest source of British law. The second most important pillar is the rule of law, meaning that all are equal before the law and that it must be applied consistently.

The "first past the post" parliamentary electoral system (under which electors only vote once, for a single constituency representative) generally gives a large majority to the leading party. Coalition governments are extremely rare. The conduct of the parliamentary business is also characterised by strong party discipline, aimed at ensuring there is no "breaking of the ranks" within a party in votes on draft laws.

The incoming government policy manifesto sets out the main lines of its proposed policy and legislative programme during its period of office. The annual Queen's speech on the opening of the parliament sets out the main lines for the coming year.

The civil service is politically neutral. Civil servants, up to and including heads of department (permanent secretaries), do not automatically leave their posts when a new government is elected. Ministers usually appoint "special" advisers (including members of the parliament) to provide them with political advice.

There are 19 central government departments. Generally speaking, what is called a department in the United Kingdom system is equivalent to a ministry in most other OECD countries. The political head of a department is generally known as a secretary of state, equivalent to the senior minister in most other OECD countries. A minister in the United Kingdom system is not therefore usually the top ranking politician at the head of a department. The hierarchy below a secretary of state consists of ministers and parliamentary under-secretaries of state.

The policy-making process

The United Kingdom policy-making process rests on the doctrine of collective government responsibility for major policies. This is a longstanding and central element of United Kingdom public governance. Policies requiring primary legislation must be approved by the Cabinet, before the bill is drafted and presented to the parliament. Underneath the Cabinet sits an extensive structure of cabinet

committees (and subcommittees) for different policy areas, made up of those ministers whose portfolio gives them the strongest interest in those policy areas. These are "shadowed" by committees of officials. A central government department, the Cabinet Office, orchestrates the process. The aim is to relieve the burden on the Cabinet; to support the principle of collective responsibility by ensuring that major policies are fully considered from all angles; and to secure a final decision that is sufficiently authoritative to carry the support of all ministers. Extensive consultation takes place within government as proposals are developed, and with external stakeholders once a proposal has started to take concrete shape.

Nearly all primary legislation originates in the executive, as do most secondary regulations. Only the parliament, however, can enact primary legislation. Bills are usually scrutinised by parliamentary committees prior to debate on the floor of the house. The government's majority ensures that most government bills are enacted (become law), albeit with amendments reflecting the parliamentary concerns. The parliament also has an important role in the scrutiny of secondary regulations.

Regulatory agencies

Regulatory agencies range from very large bodies with a wide range of powers to small, highly specialised regulators. The economic regulators (those responsible for the network and infrastructure sectors, as well as the regulators responsible for competition policy) and some others are quite independent and have significant powers to make secondary regulations affecting their sector or area of interest.

The legislature

The parliament is made up of two chambers: the lower chamber (the House of Commons), and the upper chamber (the House of Lords). The House of Commons consists of 645 members (one for each constituency), elected by universal suffrage under a "first past the post" system (there is only one round of voting by citizens). The unelected House of Lords (741 members) is currently undergoing a process of reform, with the abolition of hereditary peers and other changes underway including the removal of its traditional function as a form of supreme court.

The parliament has a central role in the formal processes of approving regulations, as well as in the scrutiny of the policies and expenditure of government departments. A network of parliamentary committees covers the different areas of government policy.

The Public Accounts Committee scrutinises the effectiveness and efficiency of government spending. It has powers to demand information and personal appearances from Ministers and senior civil servants, using (among other sources) information supplied by the National Audit Office, which reports to it.

Standing or select committees scrutinise the activities ("expenditure, administration and policy") of specific departments, as well as their "associated public bodies" (including regulatory agencies). Some of this work bears directly on Better Regulation. The work of these committees may also address Better Regulation issues. For example, the House of Lords Select Committee on the Constitution published a report in 2004 on "The Regulatory State: Ensuring its Accountability". Key current committees for Better Regulation include the House of Commons Committee on Regulatory Reform and the House of Lords Delegated Powers and Regulatory Reform Committee, as well as the House of Lords Merits of Statutory Instruments Committee.

Scrutiny of EU-origin regulations is another important function. The parliament cannot directly amend proposals from the EU. However, the co-ordination/agreement of UK government positions for the negotiation of EU regulations is a joint responsibility of government and the parliament. Scrutiny committees of both houses must clear the government's position on proposals before the government can vote on them in the EU Council of Ministers. The parliament can therefore exert influence on the government's position by refusing to clear scrutiny (imposing a scrutiny reserve).

The judiciary

The common law, on which much of the English legal system rests,[9] is based on decisions and

precedents handed down by the courts. The judiciary in England therefore traditionally exerts an important influence on the development and practical application of regulations, relative to the judiciaries of countries with a system based on civil law.

The absence of a single written constitutional source also means that there is no single supreme judicial guardian of constitutional principles.[10] That said, although this formal role is absent from the judicial structure, the judiciary are responsible for interpreting and enforcing the law, and for ensuring that the executive acts within its proper authority.

The role of the judiciary is framed around two sets of principles:

Judicial independence and neutrality (freedom from political interference and control). The bulk of the judiciary is separate from the other two branches of government, the executive and the legislature. However, pending implementation of reforms to the House of Lords, there is some overlap at the highest levels, as senior members of the judiciary sit in the House of Lords, and the head of the judiciary (the Lord Chancellor) is a member of the Cabinet.

Strict application of the law (judges must consider whether the law has been correctly applied, not whether it is a "good" or a "bad" law). Again, this principle has to be seen in its practical context. The courts cannot strike down acts of the parliament and have a limited role in striking down secondary regulations. In practice, the role of the courts is not limited to the strict application of the law, as evidenced in the fact that judicial decisions over statute law have contributed to creating the significant body of common law that exists today.

The court system comprises two structures, one for the civil law and one for the criminal law. For cases involving civil law the first level is the County Court (218 across England and Wales). Above this level is the High Court, divided into three departments: the Family Division (cases relating to matrimonial affairs, child welfare, child custody and adoption), the Chancery Division (cases involving land, companies, bankruptcy and probate) and the Queen's Bench Division (most other cases, including cases that go to the Administrative Court, which exercises judicial review in relation to the decisions of local governments). The Queen's Bench Division is thus the most relevant for regulatory policy.

The EU dimension

The EU has added a fundamental new dimension to UK law and policy as well as to its constitution. It is a (relatively) new source of constitutional authority. The European Communities Act 1972 commits the United Kingdom to accepting that European law takes precedence over British law, when there is a conflict (either directly through EU regulations, or indirectly through the transposition of EU directives). The European Court of Justice in its decisions has made it clear that it is for the national judiciaries to apply European law and ensure its primacy over national law in cases of conflict.

Local government

There is either a single or two tier structure to local government in England. The structure is largely two tier in the counties (which are made up of a number of district areas), with a few exceptions of single tier smaller counties.

Local authorities have responsibilities covering a wide range of issues (and related regulations) relevant to local communities, similar to the picture found in many other OECD countries. These include housing, waste management and collection, education and lifelong learning, community safety and crime reduction, tourism, sport and culture, social services, health and the environment, transport, consumer protection, community safety, planning and licensing.

The main regulatory responsibility of local authorities is the enforcement of regulations. Local authorities have only limited rule- making powers. They can issue regulations (bye-laws) with a very local reach *e.g.* to address behaviour in public parks. They may table local acts before the parliament to extend their powers. The enforcement of national regulations is the most important responsibility of local authorities, shared to some extent with national regulatory agencies.

Developments in the general institutional context

Significant reforms which devolve powers and affect the roles and relationships of the executive, legislature and judiciary have been made over the last ten years. The Constitutional Reform Act 2005, which will come into force in October 2009, will take the reforms a stage further. Key developments:

- Devolved assemblies for Scotland, Wales and Northern Ireland. A new Scottish parliament and new assemblies for Wales and Northern Ireland have been established with powers to make laws in certain devolved areas, and some tax related powers.[11] Proposals for elected assemblies for the English regions have been debated, but not so far taken forward, with the exception of an elected mayor, accountable to the London Assembly, and the London Development Agency.

- Incorporation of the European Court of Human Rights into the British legal system. The courts can put pressure on the parliament to amend primary legislation that conflicts with the European Court of Human Rights. The United Kingdom courts must respect the rulings of the European Court in Strasbourg in relation to the European Court of Human Rights. If an act is contrary to the European Court of Human Rights, they can declare it incompatible but not override it. The parliament usually changes the act as a result.

- Ministry of Justice. This relatively new ministry regroups a range of issues including constitutional reform, electoral reform and human rights, the civil, family and criminal justice systems, and prisons.[12]

- The new Supreme Court. This will be established in 2009 with the entry into force of the Constitutional Reform Act. Its main role will be to hear appeals from United Kingdom courts (with the exception of Scotland). As such it will take over the judicial functions of the House of Lords (currently exercised by the Law Lords). It will function as the court of last resort for all matters under English, Welsh and Northern Irish law. The Supreme Court's focus will essentially be on cases which raise points of law of general public importance such as human rights, judicial review claims against public authorities, and devolution issues.

The United Kingdom has long been considered as an essentially unitary state because of the centralising political power exercised by the London-based executive and the parliament. The devolution of powers to the Scottish, Welsh and Northern Ireland assemblies, however, mark an important change and have led some commentators to suggest that the United Kingdom is now a "quasi-federal" state – "quasi" because unlike the other components of the United Kingdom, England has no legislature of its own (it is directly ruled from London).

Developments in Better Regulation institutions

Much of the structure has been in place for up to a decade, albeit under different names. The United Kingdom experience illustrates that it takes time to develop a well anchored institutional structure to support Better Regulation. But it should be encouraging for other countries to note that a form of Better Regulation unit has not only survived but also developed in various forms over more than a decade and in different government settings.

Table 2.1. Milestones in the development of Better Regulation institutions in the United Kingdom

1986	Establishment of a central task force, the "Enterprise and Deregulation Unit" set up in the Department of Employment. It is given power to oversee and co-ordinate the "anti-red tape" efforts of individual departments. Deregulation units are set up and a Departmental Deregulation Minister is appointed in each department. Creation of the Deregulation Task Force, an independent advisory panel to the government.
1987	The Enterprise and Deregulation Unit, now named "Deregulation Unit" is moved to the Department of Trade and Industry.
1989	Creation of a Cabinet committee on regulation (with ministerial membership).
1995	Creation of an advisory panel (made up of business people). Deregulation Unit is moved to the Cabinet Office. Seven business taskforces are set up to look at sector specific regulations.
1997	Deregulation Unit is renamed the Better Regulation Unit. Deregulation Task Force is renamed the Better Regulation Task Force (BRTF), and new members appointed by the Prime Minister.
1999	Regulatory reform ministers are appointed in each department. Better Regulation Unit is renamed the Better Regulation Executive (BRE). A public sector team is set up in the BRE to give "hands on" advice to public sector service deliverers to facilitate compliance with reporting and paperwork requirements. Panel for regulatory accountability (ministerial committee chaired by the Prime Minister) is established to "take an overall view of the regulatory implications of the government's regulatory plans" and to "ensure necessary improvements in the regulatory system and the performance of individual departments".
2000	The Small Business Service is set up to provide a single organisation dedicated to helping small firms and representing them within the government.
2004	House of Lords Merits of Statutory Instruments Committee is set up to strengthen the scrutiny of secondary regulations (statutory instruments).
2007	Better Regulation Executive is relocated to Department for Business, Enterprise and Regulatory Reform (BERR). Small Business Service is folded into the BERR, as the BERR Enterprise Directorate.
2008	Local Better Regulation Office (LBRO) is established.

Key institutional players for Better Regulation policy

The executive centre of government

Key ministries

Key central government departments for Better Regulation include the Department for Business, Enterprise and Regulatory Reform (BERR), the Cabinet Office and the Treasury.[13] Some other departments have responsibilities which draw them deeply into the Better Regulation agenda, for example the Department for Environment, Food and Rural Affairs (DEFRA) in relation to climate change and EU-origin regulations. The Better Regulation Executive (BRE), which is part of the BERR but has a semi-detached status via its management structure, is the main driver and co-ordinator for the government's Better Regulation agenda.

The BERR is, in broad terms, the successor to the Department of Trade and Industry. It is a key actor in the government's objective to deliver improved productivity, through policies on enterprise and competition, and also by promoting Better Regulation across government. It shares responsibility with the Treasury for meeting productivity related objectives to raise the performance of the economy.[14] One of these objectives is directly related to Better Regulation: to deliver the conditions for business success in the United Kingdom via competition and corporate governance regimes, labour market flexibility,

energy price competitiveness, Better Regulation and the reduction of administrative burdens. Important directorates for Better Regulation within the department include the Consumer Affairs Directorate and the Enterprise directorate, which is responsible for SME policy. This directorate replaced the Small Business Service in 2007.[15]

The Cabinet Office is a central government department headed by a minister and the civil servant head of the civil service. It orchestrates the process of collective decision-making.[16] The Cabinet Office is also the home of the European Affairs Secretariat which orchestrates United Kingdom policy on EU issues.[17]

The Treasury's central role in setting policy targets for departments, linked to funding, draws it into the Better Regulation objectives that have started to be embedded in the targets. One of its own objectives, shared with the BERR gives it a direct responsibility for Better Regulation. A Senior Treasury Minister chairs the Panel for Regulatory Accountability (PRA) which vets costly or controversial proposals for new regulations, and departmental simplification plans. The Treasury was behind the launch of the 2005 Hampton Report, which promoted the new approach to enforcement that is being rolled out today.

The Better Regulation Executive

The BRE, established since 2006, has the main responsibility for the government's Better Regulation agenda. It is the latest in a line of central units with regulatory management functions going back to 1986 – albeit under different names, responsibilities, and departmental attachment. It was set up after the Hampton Report as a successor to the Regulatory Impact Unit (RIU), and has been part of the BERR since 2007, when it was moved from the Cabinet Office. With the move came a new institutional framework which makes it semi-independent of the BERR. Its leadership structure comprises a chief executive, Jitinder Kohli (a "regular" civil servant), and a part-time executive chair (Sir William Sargent), who splits his time between his business activities and this role, and who has the rank of permanent secretary (head of department, which puts him on the same level as the BERR permanent secretary), and direct access to the Prime Minister.

The BRE explains that its move from the Cabinet Office to the BERR was decided on the basis that the former has no direct practical links with business and other stakeholders, nor does it have direct responsibilities with policy areas that need to be better regulated, and was therefore increasingly perceived as too distant from the "real world". It considers that the move has not, however, detracted from a close relationship with the Prime Minister and other influential individuals. It continues to work closely with the Cabinet Office at the centre of Whitehall. Its permanent secretary head gives it direct access to the heads of government departments. There are also close contacts between the BRE and Treasury which monitors departmental policy targets and spending.

A fundamental principle emphasised by the BRE is that it does not itself deliver the government's Better Regulation agenda. This is the responsibility of the departments and regulatory agencies, especially those that have an impact on the UK economy. There is also work with local government as much of the inspection and enforcement of regulations takes place at the local level. The BRE emphasises that all departments which have an impact on the economy are now shared "owners" of Better Regulation objectives.[18]

Box 2.5. The Better Regulation Executive

Structure and resources

The BRE is made up of a strategic support team and three directorates:

- The Regulatory Reform Directorate. "On the ground" management and promotion of key Better Regulation tools and processes such as impact assessment and departmental simplification plans. Responsibility for the EU dimension.
- The Regulatory Innovation Directorate. Think tank.
- The Regulatory Services Directorate. Service delivery, described as the part that aims to win over "hearts and minds", responsible for enforcement and application of the Hampton Report principles.
- A communications director has also been recently appointed.

The BRE is staffed by civil servants, most of whom are on secondment from departments including BERR for typically two years, as well as business people and professionals seconded from the private sector. It has a staff of around 80, a slightly higher figure than the Regulatory Impact Unit (RIU) which it replaced.

Functions and powers

The BRE is the central authority for advocacy and co-ordination of Better Regulation policy across government. Its mission is both broader and in some respects different from that of the RIU.* Specifically, it has the following functions:

- *Monitoring and challenge*. It monitors the Better Regulation policies and progress of departments and key national agencies, through a network of account managers on a day-to-day basis, and through the Executive Chair briefing the Prime Minister on progress around government. It scrutinises new policy/regulatory proposals and advises whether they should be examined by the Panel for Regulatory Accountability. It is not however a formal gatekeeper: it does not have any powers to block proposals for regulation.
- *Advocacy and communication*. It encourages the development of Better Regulation principles across government, and manages external communication of the government's policy on Better Regulation.
- *Institutional co-ordination and culture change*. It has developed – and continues to develop – a broad range of relationships within central government as well as outside, including with the National Audit Office (with which it has shared a recent evaluation of regulators), consumer representatives (the National Consumer Council is a policy adviser to the BRE), parliamentary committees, local authorities, and EU colleagues.
- *Support and guidance*. The BRE is a facilitator – its staff offer departments guidance in the development of impact assessment and simplification plans, among other issues. It has produced a wide range of guidance material and training tools.
- *Policy and project development and management*. It has been the main driver for all the recent Better Regulation initiatives, taking forward projects such as the establishment of the Local Better Regulation Office and regulatory budgets.

- *EU Better Regulation policy (shared with the Cabinet Office)*. It liaises at home, with colleagues across the EU, and with the European Commission to help drive forward the Better Regulation agenda in Europe.

* For example, the RIU used to examine all impact assessments, whereas the BRE only looks at those it judges difficult or important. However the RIU did not have the range of other responsibilities carried by the BRE, such as project development or scrutiny of departmental simplification plans (which did not exist then).

Monitoring Better Regulation performance[19]

The Executive Chair of the BRE, briefed by BRE staff, keeps the Prime Minister informed on progress made by different government departments on the key elements of the Better Regulation agenda. Departments are very much aware that this happens and want to be seen as doing well.

The sticks include the burden reduction targets, the need to clear new regulations via an impact assessment process which is evidence-based and requires quantification of costs and benefits, and the link to departmental funding, which might be at risk (at least in principle – it does not appear to have happened in practice) if departments perform poorly. The proposals to introduce regulatory budgets would take this "stick" approach a significant stage further. The carrots are the BRE's support and advice, and the fact that Better Regulation means more effective policies that will win the support of stakeholders and the electorate.

Co-ordination across central government

A network of structures operating at different levels has been set up across central government departments to promote Better Regulation.

Box 2.6. Departmental structures for Better Regulation

Better Regulation ministers

Departments have a Better Regulation minister (s/he usually combines this with other responsibilities) who is accountable for Better Regulation within his/her department. Better Regulation ministers meet periodically to discuss strategic issues and challenges and report to the Panel for Regulatory Accountability. They also, together with their officials, report on their regulatory performance and progress to the Better Regulation Executive (BRE).

Impact assessment sign-off by ministers

The updated impact assessment process requires that the responsible minister (who may or may not be the Better Regulation minister in the relevant department) formally signs off impact assessments.

Better Regulation Board Level Champions

Better Regulation Ministers are supported by Better Regulation Board Level Champions, whose role is to ensure that departmental board members (the group of senior officials who head the department's main work areas, reporting to the permanent secretary who heads the department) are committed to Better Regulation, provide adequate resources within their departments for it, and liaise with BRE senior management.

Better Regulation units

Day-to-day promotion of Better Regulation is carried out by departmental Better Regulation units (BRUs), who advise and support policy officials in their departments, especially as regards impact assessment (completion, quality assurance and publication), but also in the delivery of departmental simplification plans. Involvement of the BRUs in the preparation of impact assessments varies, depending on the expertise of others in the department. Staffing (between one and four) and the expertise of BRUs vary across departments depending on the level and nature of regulatory work. Funding also varies (the Department for Work and Pensions BRU has its own research budget). Departments determine how their BRUs interact with other key units (the DWP BRU for example has close links with their Benefit Simplification Unit, and their new Employer's Strategy Unit). BRUs work closely with the BRE (which has an account manager for each department), meeting formally with the BRE on a quarterly basis.

Better Regulation EU units

Some departments with considerable EU exposure (such as DEFRA) have parallel EU units.

The Panel for Regulatory Accountability, which was started in 1999, was a Cabinet subcommittee specifically responsible for Better Regulation issues. It was originally chaired by the Prime Minister. Its terms of reference were "to ensure that the burden of regulation on business, the public sector and the third (voluntary) sector is kept to the minimum necessary; and report as necessary to the Committee on Economic Development". Ministers appear before the PRA to report on their department's Better Regulation programmes. It had a specific challenge and clearance function: in relation to departmental simplification programmes and in relation to particularly costly or controversial proposals for new regulations as part of the impact assessment process. The government announced in April 2009 that a new subcommittee of the National Economic Council will take over the PRA's responsibilities. It will "scrutinise planned regulation and proposals for new regulation that will impact on business. It will take account of the views of business in coming to its conclusions."

Regulatory agencies

The United Kingdom has a large number of national regulatory agencies. These vary widely in their legal status, structure, powers and lines of accountability. Some, by no means all, national regulators have direct rule-making powers. Some lead on negotiating EU directives, whereas for others the parent department takes the lead. Regulatory responsibilities and the way in which these are exercised vary according to the sector. Some regulatory agencies have joint enforcement responsibilities with local authorities.

Their numbers have grown over the last decade. The 2006 Macrory Report identified 56 national regulators concerned with regulatory services (40 were identified in the 2002 OECD review). One of the recommendations of the 2005 Hampton Review was the need for rationalisation, and some mergers have since taken place. There are currently some 40 national regulatory bodies, and 10 economic regulators.

There are five major national regulatory bodies, referred to as the "large, economic regulators"– the Health and Safety Executive (HSE), the Environment Agency, the Food Standards Agency, the Office of Fair Trading and Financial Services Authority – responsible for regulating areas such as health and safety at work, financial services, the environment, competition and consumer protection, and food hygiene and safety.

The widely differing status of the United Kingdom's agencies – they vary from being an integral part of a central government department, to highly independent quasi-business entities – means that some have considerable if not total autonomy in matters of regulatory management, whilst others follow the lead of their parent department. For example, those closely linked to a parent department are required to contribute to the department's simplification plans for the reduction of administrative burdens. Others have set up their own targets and processes for simplification, impact assessment and public consultation.[20] The statutes setting up some regulators include Better Regulation requirements, for example as regards consultation. The overall picture and quality of regulatory management by agencies is unclear, and has not been mapped.

The legislature

The parliament has a growing role in UK Better Regulation policy. It has traditionally held a central role in the formal processes of enacting primary legislation and scrutinising secondary regulations, but the last decade has seen a progressive and growing implication in the quality of regulation. Its scrutiny of secondary regulations covers not only technical issues of legal drafting quality and the proper use of ministerial powers, but also policy aspects. Key committees are the Joint Committee on Statutory Instruments, the House of Lords Merits of Statutory Instruments Committee, the House of Commons Regulatory Reform Committee and House of Lords Delegated Powers and Regulatory Reform Committee.

For primary legislation, the parliament's influence is exerted not only through the process of debating, amending and enacting individual bills, but also through an influential network of parliamentary committees covering the different areas of government policy. These committees have taken a growing interest in the government's Better Regulation agenda as part of their scrutiny of government policies, paying increasing attention to the quality of impact assessments and consultation results attached to bills.

As regards secondary regulations, the parliament cannot amend these but it can reject them. It has stepped up its scrutiny of these regulations through a developing network of committees which have made it their business to cover not only technical issues of legal drafting quality and the proper use of ministerial powers, but also the policy aspects. Again, it has become increasingly demanding as regards quality of impact assessments and consultation processes in support of a proposed policy.

The House of Commons Regulatory Reform Committee published a report in July 2008 on the BRE and the government's Better Regulation policies (House of Commons, 2008). Other relevant reports have been made, including the 2007 House of Lords Select Committee report on regulators.

The judiciary

The English common law system, based on decisions and precedents handed down by the courts, means that the judiciary plays a relatively strong role in the practical application and development of regulations.

Local levels of government

The responsibility of local authorities for the enforcement of national regulations, including their responsibilities for licensing and planning, puts them at a critical interface

between central government and local stakeholders – notably citizens and SMEs – who stand to benefit from Better Regulation. Local authorities have traditionally had considerable discretion over the interpretation and enforcement of centrally generated regulations.

Other important players

The Risk and Regulation Advisory Council

The Risk and Regulation Advisory Council (RRAC) is a short-term independent advisory body (established in January 2008 for 16 months). It has a particular mission to consider the issue of public risk and regulation. It has been charged by the Prime Minister to:

- Work with ministers and senior civil servants to develop a better understanding of public risk, and how best to respond to it, through a series of workshops which consider both good and poor practice.

- Work with external stakeholders to help foster a more considered approach to public risk and policy making.

The RRAC is a form of successor to the Better Regulation Commission (BRC), another independent advisory body which had a more broadly-based mission to advise the government on Better Regulation. The RRAC chair is the former chair of the BRC (Rick Haythornthwaite), and it has six other members, several drawn from the BRC. The RRAC is supported by the Risk and Regulation Team, reporting to the BERR chief economist. The RRAC itself reports ultimately to the Prime Minister. The RRAC will be wound up in April 2009 on current plans.

The government's April 2009 announcement included the establishment of a new external Regulatory Policy Committee whose role will be to "advise government on whether it is doing all it can to accurately assess the costs and benefits of regulation. Building on the work of Philip Hampton, this body will also advise government on whether regulators are appropriately risk-based in their work; however it does not have the power to require changes in the behaviour of independent regulators."

The Business Council for Britain

The Business Council for Britain is another body to assist the government in the development of a strategy to promote the long-term health of the economy. It comprises senior business leaders of UK-based businesses, and advises the Prime Minister on issues that affect enterprise, business and the long term productivity and competitiveness of the economy. It reports to the parliament as well as the government.[21]

The National Audit Office

The National Audit Office (NAO) audits the accounts of all central government departments and agencies, as well as a wide range of other public bodies. It is independent of the executive, and reports to the parliament on the economy, efficiency and effectiveness with which they have used public money. It does not audit local government spending (the role of the Audit Commission). The head of the NAO – the the Comptroller and Auditor General – is an officer of the House of Commons. The NAO

produces a corporate plan which sets out its work programme for a three-year rolling period, and its budget is approved by the parliament. About a fifth of its income is externally generated, including audit fees paid by international clients.

The NAO carries out three types of work:

- *Financial audits.* It audits the accounts of government departments and agencies.
- *Value-for-money audits.* "Value-for-money" audits scrutinise the economy, efficiency and effectiveness of government spending. Such reports cover a broad range of issues and organisations (for example, recent reports on the criminal justice system and DEFRA).
- *Good governance audits.* This type of audit lies somewhere between financial and value-for-money audits. It is a smaller but growing area of work. It includes briefing documents and papers for select committees, as well as scrutiny of tax collection procedures.

The NAO's role in Better Regulation has grown steadily over time. It has contributed to setting the regulatory reform agenda by pointing to important regulatory challenges that need attention, not least as regards impact assessment, and more recently administrative simplification. It carries out an annual survey of business perceptions of regulation, and conducts annual reviews of the impact assessment process.

Resources and training

Around 200 officials are directly engaged full-time on Better Regulation in central government, including the staff of the BRE (around 80) and staff in the Better Regulation units of each department. In addition, the main five regulators have Better Regulation teams (around five staff each). The recently established Local Better Regulation Office has around 30 staff. Many more officials devote part of their time explicitly to Better Regulation, including government lawyers and government economists in an advisory role to policy officials.

The National School of Government provides training to civil servants and across the wider public service. Skills taught include those related to Better Regulation: cost-benefit analysis, making impact assessments, policy development and design, risk assessment, and stakeholder consultation. Technical training on Better Regulation is also provided within departments and by the BRE, for example on impact assessments, the Standard Cost Model for administrative burden reduction, and Legislative Reform Orders (a fast track legal and parliamentary process to simplify burdensome regulations). There is also specialised training for government lawyers and economists (which form distinct groups within the body of the civil service).

Notes

1. The last major institutional upheavals on a level with the revolutions and unifications experienced more recently in other parts of Europe, were the civil war of the 17th century which led to the execution of the monarch in 1649 and a short period of republican rule, and the Act of Union with Scotland in 1707.

2. Adjustments to the responsibilities of departments.

3. As the OECD peer review team were told by the BRE, "getting ministers to realise that they can't always do what they want to do".

4. The Prime Minister announced the formation of the National Economic Council (NEC) on 3 October 2008. The purpose of the council is to provide a new approach to co-ordinating economic policies across government. The NEC will work to help people and businesses deal with the current economic uncertainties.

5. The term "agency" for this report denotes a wide range of entities linked, to a greater or lesser extent, to a parent ministry and charged with different kinds of regulatory functions. They include among others inspectorates and enforcement agencies, as well as the economic agencies charged to oversee specific sectors such as the energy sector. See Annex 1 for the type of agencies that exist in the United Kingdom. The term does not include local authorities.

6. The House of Lords Merits of Statutory Instruments Committee, for example, which puts serious effort into scanning secondary regulations, referred to itself as a "critical friend".

7. This report will be largely concerned with England, and does not seek to cover the broader picture in any detail.

8. The United Kingdom designates the political whole. Great Britain is a geographical term, referring to the parts that make up the main island, *i.e.* excluding Northern Ireland. Britain is often used as shorthand for the United Kingdom.

9. Scotland is different as it operates under a form of Roman law.

10. An example of such a judicial guardian is the French *Conseil d'Etat* (Council of State). This body is France's supreme jurisidictional authority for public law, and part of its role is to ensure that laws enacted by the French parliament are consistent with the French constitution (OECD, 2003).

11. Devolved powers for Scotland: health, education and training, local government, social work, housing, planning, tourism, economic development and financial assistance to industry, some aspects of transport, including the Scottish road

network, bus policy, and ports and harbours, law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts, the police and fire services, the environment, natural and built heritage, agriculture, forestry and fishing, sport and the arts, statistics, public registers and records.

Devolved powers for Wales: agriculture and fisheries, culture, economic development, education and Training, environment, health, highways, housing, industry, local government, social services, sport, tourism, town and country planning, transport, water, the Welsh language.

Devolved powers for Northern Ireland: criminal law, policing, prisons, civil aviation, navigation, the Post Office, disqualification from membership of the Assembly, emergency powers, civil defence, consumer protection, telecommunications.

12. Some of these functions used to be with the Home Office – Interior Ministry.

13. There are 19 central departments in total: Cabinet Office; Department for Business, Enterprise and Regulatory Reform (BERR); Department for Children, Schools and Families; Department for Communities and Local government (DCLG); Department for Culture, Media and Sport (DCMS); Department for Environment, Food and Rural Affairs (DEFRA); Department of Health, Department for Innovation, Universities and Skills; Department for Transport; Department for Work and Pensions (DWP); HM Treasury (Ministry of Finance); Home Office (Ministry of the Interior); and the recently established Ministry of Justice.

14. These are to raise the productivity of the United Kingdom economy, to deliver the conditions for business success, and to improve regional economic performance.

15. The SBS was established in April 2000 to provide a single organisation dedicated to helping small firms and representing them within government. The 2002 OECD report noted that the SBS had a strong institutionalised position in the regulatory process, for example the right to have its views recorded in impact assessments in a wording of its own choice.

16. In many other OECD countries this role is carried out by the Prime Minister's Office.

17. Again, this differs from many other EU countries, where this role is held by the Ministry of Foreign Affairs.

18. As it was put to us: "Each Department is now in the mainstream. It has direct responsibility for Better Regulation, with BRE support".

19. See also Annex 2.

20. The Food Standards Agency, for example, has a relatively autonomous status as a non-ministerial department, and Better Regulation is largely a voluntary choice, which it has decided to embrace enthusiastically. The image of the agency matters, largely because of food crises before it was set up (in 2000) and it told us that it wants to be ranked world class, for which it is developing assessment criteria. It seeks to maximise the transparency of its work, by publishing or providing access to most of its research evidence, and its board meetings are posted on its website.

21. *www.berr.gov.uk/aboutus/corporate/bcb/index.html.*

Chapter 3

Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations. Other aspects are considered elsewhere in the text (for example appeals are considered in Chapter 6).[1]

Assessment and recommendations

Public consultation on regulations

The United Kingdom has a well established culture of open consultations aimed at maximising transparency in the process. The framework for promoting public consultation on regulations via the Code of Practice on Consultation (which has been in place for eight years) is well-established, and promotes a very open approach. Government departments are expected to consult widely and carefully, and if they do not take this approach and apply the Code's criteria, they are expected to explain why. The sample of recent consultations reviewed for this report (including the consultation on the Code of Practice, and the consultation on regulatory budgets) suggests that consultation documents for major issues are clearly written and should be easily digested by stakeholders. The 2008 consultation with stakeholders on the Code and its effectiveness is also very positive evidence of the United Kingdom's search for continuous improvements in its Better Regulation tools and processes. The latest version of the Code of Practice on Consultation is brief, clear and to the point.

There is, however, evidence of an important gap between the principles of the Code of Practice on Consultation and stakeholders' views on the process in practice. The recent

review of the Code showed that there was concern at the way consultations are carried out in practice. The OECD team picked up a general desire from stakeholders for improved consultation, and a certain fatigue linked to too many successive initiatives. Some stakeholders complained that the government sometimes appears to consult at a time and on issues of its choosing. There were a number of comments to the effect that the 12-week response time was not always respected by departments, that consultations were of uneven quality and that there was sometimes inadequate consideration of the best method for consultation (for example workshops might have been more effective than bulky written documents, and easier to handle especially for SMEs). Stakeholders also said that they would welcome a single website for consultations. Some stakeholders expressed concern that it might be difficult to uncover the true views of consultees, if responses came from trade associations rather than directly. There was also some concern that the voice of business might be too strong, business associations being effective and powerful lobbyists with an ability to influence consultation processes to strengthen their case, and having the ready ear of government.

Recommendation 3.1. Given the feedback from stakeholders, there is a need for effective quality assurance of the Code of Practice on Consultation. The BRE should ensure that the practical application of the new Code of Practice on Consultation is carefully monitored, based on the issues raised by stakeholders with regards to poor practice in the past. Experience suggests that departments left to themselves do not always meet the highest standards. The Code is mandatory for all central government departments and this makes it all the more important to have an effective quality assurance mechanism in place, which goes beyond data collection on use of the Code and injunctions to report on its application in departmental annual reports.

The use of independent ad hoc reviews adds an important further dimension to consultation in the United Kingdom. Ad hoc reviews to investigate particular issues (such as the recent Anderson Review on explanatory guidance) seem to have played a major and positive role in the further development of Better Regulation over the last few years. Each review has consulted extensively in drawing up its report. This approach appears to have worked well so far, without the need for guidelines on the way they approach consultation, as exists in some other European countries.[2]

Common commencement dates are a positive development. The United Kingdom was ahead of other European countries in the introduction of common commencement dates.[3] These are fundamentally helpful to business. The presentation to the business community with a set of new regulations in "one shot" may need some management to ensure that that it does not (perversely) contribute to poor perceptions of the government's success in regulatory management. The EU's Small Business Act for Europe adopted in 2008 sets out that the European Commission will now introduce common commencement dates and it encourages member states to follow suit.

Recommendation 3.2. The media could be encouraged to make a positive feature of common commencement dates by publicising lists of the new regulations alongside other positive aspects of Better Regulation.

Public communication on regulations

Communication on aspects of the regulatory stock and flow is good, and would be even better with a consolidated database of regulations. There is no consolidated government (or other) register of all primary and secondary regulations, which means that the regulatory stock is not easily identifiable.

Recommendation 3.3. The development by the Ministry of Justice of the statute law database to cover secondary regulations should be encouraged.

Background

Public consultation on regulations

The Code of Practice on Consultation

The United Kingdom has a deeply rooted tradition of general public consultation, based on a flexible framework that sets guidelines for government without going so far as to impose requirements. This can be contrasted with a very different approach in many other European countries, which have more closely structured traditions of consultation that particularly engage the social partners (business and the unions).

The framework is given expression in the Code of Practice on Consultation, which has been in place for eight years. It was first published in 2000, revised in 2004, and has just been revised again in 2008. The Code applies to all central government departments and those agencies which have a close relationship with a parent department. It does not apply to the regulators which have been set up on a more independent footing, although they are encouraged to apply it. Many such regulators have consultation requirements written into their parent law. The Code is adopted by the Cabinet Committee and through this process all departments have committed themselves to follow it. With a few exceptions, such as emergency legislation or tax, consultation takes place in all policy areas and must follow the Code. “Policy area” is not precisely defined: a “case-by-case” approach is adopted, but public justification must be provided if the Code is not applied when it might be expected to apply.

Recent review of the Code of Practice on Consultation

The Code of Practice on Consultation was reviewed in 2008 and a revised version issued as a result. The review generated a number of criticisms which the new Code seeks to address.

Box 3.1. Review of the Code of Practice on Consultation

In 2006 the government launched a review (a consultation exercise in fact) on the Code of Practice on Consultation. The review included a programme of 20 stakeholder events around the United Kingdom to hear views on how the government consults and where improvements could be made. The findings were somewhat negative:

- *Cynicism.* While the introduction of the Code had generally been welcomed and was considered to have led to improvements, some stakeholders considered that when the government consults it has often already made up its mind.

- *Lack of transparency and responsiveness.* It is not always clear from the documentation provided how the government arrived at the stage of publishing a consultation document, nor is it always clear what the government does with the responses and how they are taken into account.

- *Poor accessibility.* Stakeholders usually found out about government consultations through intermediary organisations. Many people asked for one government website where all consultations could be found.

- *Monitoring and capacity.* Monitoring the number of consultations lasting at least 12 weeks in accordance with the Code was seen to be deficient. There were calls for a system of independent, qualitative monitoring of government consultations. Moreover, several respondents thought that government did not currently have the capacity to run high-quality consultation exercises designed around the needs of their audiences.

The new Code of Practice on Consultation

The new Code is based on seven updated criteria (which should be reproduced in consultation documents), supported by more detailed guidance:

- *When to consult.* Formal consultation should take place at a stage when there is scope to influence the policy outcome.

- *Duration of the consultation exercise.* Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. The BRE estimates that between 75 and 80% of consultations last for at least 12 weeks, and nearly 100% either last for at least 12 weeks or have a ministerial sign-off for a shorter duration[4].

- *Clarity of scope and impact.* Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

- *Accessibility of consultation exercises.* Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

- The burden of consultation. Keeping the burden of consultation to a minimum is essential of consultations are to be effective and if consultees' buy-in to the process is to be obtained.

- *Responsiveness of consultation exercises.* Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

- *Capacity to consult.* Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The Code notes that a formal, written public consultation will not always be the most effective or proportionate way of seeking input from interested parties *e.g.* when engaging with stakeholders very early in policy development (preceding formal consultation) or when the scope of an exercise is very narrow and the level of interest highly specialised. It explains that there are a variety of other ways to seek input and a website provides information on alternative approaches.[5] It also underlines that it is not intended to create a commitment to consult on everything, and that deviations will on occasion be unavoidable, provided that departments are open about this when it happens.

Other public consultation tools and processes

These include:

- BERR's Enterprise Directorate maintains a Small Firms Consultation Database of nearly 4 000 small businesses, willing to work with officials on Better Regulation (including EU) matters. A range of methods is deployed to reach out to SMEs. They can be invited to take part in informal discussions in person or on the phone; attend a focus group or test panel; or respond to targeted consultations about proposed new regulations.
- Impact assessment guidance also sets ground rules for government consultation in the context of applying the process.
- The "Compact" (an agreement between the government and the third [voluntary] sector) promotes good consultation practices in this area.
- The Code draws attention to related initiatives which link up with local government, including the « Central-Local Government Concordat », which sets out how central and local government should co-operate and consult with each other.
- The extensive use of independent *ad hoc* reviews, especially in recent years, to address large policy areas that require attention (for example the Hampton review on enforcement, or the Davidson review on management of EU-origin regulations, and the recent Anderson review on explanatory guidance).

Parliamentary consultations

The parliament has also become engaged in important consultation exercises on Better Regulation, via the work of its Committees specialised in regulatory issues (for example the recent report of the House of Commons Regulatory Reform Committee on the BRE and Better Regulation policies). These reviews collect oral and written evidence from a wide range of stakeholders, including from other countries.[6]

Use of e-Government for public consultation

All departments put their consultation exercises on a departmental web page and can receive responses electronically. Some consultations allow people to respond directly on line.[7] There is an Internet link[8] to the vast majority of government consultations and work is underway to develop a comprehensive online tool providing access to all central government consultations.

Public communication on regulations

Accessibility of regulations

A number of databases of information on regulations are available, and much of the data is free. Search facilities vary with the database. Reflecting the complexity of UK regulations, none of the databases are comprehensive. The Ministry of Justice is extending the statute law database which will (when complete) cover regulations (both primary and secondary) in current form *i.e.* including subsequent amendments.[9] In many areas of the law guidance is produced on how to comply and this aids accessibility (Chapter 6).

Box 3.2. Availability of regulations

The Office of Public Sector Information (OPSI) provides free Internet-based access to all primary laws and important secondary regulations dating back to 1987 and in the form it was first published. Much of this is free. The documents are placed on the Internet within 24 hours of their publication in printed form. There are bound volumes of the acts and statutory instruments for each year, published chronologically. *www.opsi.gov.uk/stat.htm*.

A number of departments and non-governmental organisations issue guides to sections of the legislative stock.

The BRE produces a summary of new or updated regulations, including links to more detailed information. In October 2007, guidance was produced with the help of business to support the changes taking effect on common commencement dates. This was distributed to business with the help of business and professional organisations. For April 2008, this information reached around 1m businesses. BRE will be publishing a code of practice to improve the quality and timeliness of the guidance (see: *www.berr.gov.uk/files/file46951.pdf).* The guidance is produced twice a year, when departments outline any changes to their regulations on the Business Link website (see: *www.berr.gov.uk/files/file46951.pdf).*

The House of Commons sessional statistics keep a record of the legislation that they have considered (*www.publications.parliament.uk/pa/cm200708/csession/1/108.htm#a30).* This only includes legislation subject to parliamentary scrutiny (*i.e.* it excludes about two-thirds of all statutory instruments). Public and private bills are also available on the parliament website.

Databases (publications, on line and CD ROM based) are also available on subscription from a number of commercial entities (Butterworth, LexisNexis).

Clarity of regulations

There is no specific policy requiring "plain language" drafting of regulation. The BRE's impact assessment guidance requires that "guidance [to regulations] should be as short, simply expressed, and jargon-free as possible".

Common commencement dates

Common commencement dates are two dates each year (6 April and 1 October) on which new domestic legislation is introduced into the United Kingdom.[10] The aim is to provide business and stakeholders with greater clarity and awareness about forthcoming regulatory changes, helping them to plan and budget for new measures and to reduce costs. Common commencement dates only apply to departmental regulations and they do not apply to EU-origin regulations.

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. Sweden, for example, makes extensive use of standing as well as *ad hoc* committees to consult. These committees are subject to a government ordinance which sets out standards for consultation.
3. They have now been followed by the Netherlands.
4. Over the lifetime of the consultation codes the BRE (and its predecessor the RIU) have asked departments to submit data annually on consultations. Departmental annual reports are also required to include a section on their consultations, and compliance with the Code of Practice on Consultation.
5. *www.peopleandparticipation.net.*
6. The Regulatory Reform Committee collected 23 written memoranda, as well as oral evidence, and made visits to three European countries, for its report.
7. An example of good practice is the e-consultation page of the Department for Children, Schools and Families at *www.dcsf.gov.uk/consultations/*. The site is complete and easy to navigate. Open consultations are on the front page, and closed ones in the archives and results section. The Code of Practice is up to show that the Department is following this. The FAQ page is updated according to the questions that are asked. It is also possible to register to receive information and to be warned of new consultations issued by the department. The process itself is well guided. There are also fields which allow the consultee to address an issue not raised by officials. When applicable, consultation issues have the corresponding (first draft) impact assessments. Other relevant documents may be posted, depending on how far the proposal has travelled in the legislative process. An example is the School Admissions Consultation, where draft codes have been produced for consultees.
8. *www.info4local.gov.uk.*
9. *www.statutelaw.gov.uk.*

10. Common commencement dates do not apply to all new regulations. Exempted are regulations connected to new EU regulations; regulations implementing new EU directives; air navigation orders; road closure orders; changes to welfare benefit; any other regulations that have no impact on business. They do not have to be observed by departments in certain circumstances: emergencies (for example involving public or animal safety or health); anti-avoidance measures necessitating urgent closure of loopholes; measures which remove significant risk or detriment from business; instances where the costs of timing a measure to meet a common commencement date would be wholly disproportionate to public funds and /or business; and orders which commence other regulation on a common commencement date.

Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the "no regulation" option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true- impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However, experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule-making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional "command and control" regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use "soft" approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

Assessment and recommendations

Trends in the production of new regulations

Trends in the production of new regulations are unclear. It is difficult to get a clear picture of trends, as there is no consolidated database and the databases that do exist, produced by different organisations both within and outside the government, are not constructed on the same basis. Having a clearer overall picture of trends could be helpful in assessing the effectiveness of measures to control new regulation and simplify the existing stock. The Ministry of Justice database initiative to map statute law should be supported.

Recommendation 4.1. The development by the Ministry of Justice of a statute law database, as well as clarifying the law, should also be encouraged because it will allow mapping of trends in the production of regulations over time.

The production of explanatory guidance notes implies that there are issues with the underlying regulations which may need attention. The Code of Practice on Guidance of the Better Regulation Executive (BRE) aims to improve the quality of government guidance notes so that businesses spend less money on external advisers. This is a useful and clearly necessary initiative. It does, however, raise some issues, especially as it seems that guidance is increasingly judiciable, meaning in effect that it becomes a form of "tertiary" regulation. Although SMEs in particular cannot be expected to work out which regulations are relevant for their businesses, and simply need to know what is relevant to them, it may also raise the question of the clarity of the underlying regulations, and why they should be so hard to understand. Some other countries have sought to control the amount of guidance required, as well as developing initiatives to address the quality of language used in drafting regulations.

Recommendation 4.2. Consideration should be given to carrying out an assessment of guidance notes. Is the flow of guidance increasing? If so why? Should the flow of guidance notes be controlled? Which entities are most likely to be issuing guidance, in relation to which type of regulations? Is there a need to encourage plain language for regulations?

It should be noted that a large part of this recommendation has been addressed with the Anderson Review and the government's response to it, which includes a number of practical measures to ensure that guidance is helpful and remains up-to-date.

Box 4.1. Recommendations and comments from the 2002 OECD report: Soft law

The government should focus on a stricter oversight of soft law and quasi regulations, starting by listing them. A general registry of such 'regulations' would also increase transparency and reduce duplicative 'advice'. A second step should be adapting the current RIA mechanisms to such instruments.

The extensive informality of the British regulatory system may make it more difficult to trace its connection to principles of good regulation. A particular concern is the increased use of "soft law" or "quasi-regulation". Soft law can be defined as official guidelines, instructive letters, resolutions, recommendations etc. that (1) call for particular behaviour or steps to be taken, but (2) are not covered by procedural safeguards and requirements applicable for formal regulation. Soft law is useful in the

sense that it can be more proactive, dynamic and persuasive than formal command approaches. But the lack of consistent procedural safeguards could reduce transparency and the quality of the regulation, and create uncertainty about the rights of the regulated entity in terms of complaints and redress. Additionally, although a continued or stronger reliance on soft law can decrease transaction costs, in those cases where requirements may not be easy for new entrants to identify, the costs of entry may rise. So, although these strong traditions of informality and the "systemic ease" with establishing new regulatory regimes and institutions have provided the United Kingdom with a flexible and responsive regulatory system, the downside of these features merit attention.

Procedures for making new regulations

The most important policies and legislation are well-covered, but there is a weakness in the forward planning of secondary regulations. Forward planning of secondary regulations appears much less developed than for primary laws, and there is no systematic co-ordination of these.

Recommendation 4.3. Consider putting in place procedures for the forward planning of secondary regulations.

It should be noted that this recommendation is being given effect, with the commitment by the government to publishing a forward regulatory programme, including possible regulatory proposals emanating from primary legislation.

Ex ante impact assessment of new regulations

The new developments signal clearly the energetic promotion of a new culture for rule-making. The United Kingdom is doing far more to promote effective *ex ante* impact assessment than many other OECD countries. Unlike many other countries, it also seeks to learn and apply lessons from the *ex post* evaluation of past approaches. The message is that Better Regulation does not just mean "producing good piece of regulation", but provides evidence-based support for the development of public policy (whether or not it results in a new regulation). Major efforts are being made to integrate impact assessment into policy-making, so that the two processes are interwoven. With this approach, "Better Regulation" is a way of helping governments to frame a policy issue, to discuss it with interested parties, to measure costs and benefits of the different options for addressing the issue, and to secure effective implementation and enforcement of the process for doing this. In sum, there has been considerable progress since the 2002 OECD report.

Impressive institutional, methodological and support arrangements are in place. The strengthened approach includes substantial efforts to allocate responsibilities appropriately, with economists to support the monetisation of costs and benefits, departments to take responsibility for doing impact assessments with the help of their Better Regulation units, ministers to take political accountability, and for BRE to be the "helpful policeman". The introduction of a summary sheet has made the process clearer and more transparent, with a greater focus on the costs and benefits of intervention. A suite of comprehensive and accessible guidance has been developed for non-specialists. The guidance is detailed and comprehensive, covering every kind of situation. It would seem hard to "escape" from doing an impact assessment the correct way. There is some overlap in the guidance, which is extensive (hundreds of web pages), and the need for a roadmap to signal the important links, and what should be tackled first. The template

model impact assessment is particularly helpful and should be more easily accessible from all parts of the guidance.

Recommendation 4.4. The finishing touch to the comprehensive arrangements that are already in place would be to review the online guidance to eliminate duplication, signal the important links, and ensure that the template is easily accessible from all parts of the system.

Transparency is an important feature of the process. The Code of Practice on Consultation must be followed, the aim being to put the initial analysis out for public scrutiny and to gain new evidence. The BRE lists all final impact assessments produced by departments on its website. These arrangements take the United Kingdom some way beyond those of many other OECD countries.

Box 4.2. Recommendations from the 2002 OECD report: Impact assessment

Extend the scope of RIA disciplines. The government should focus on a stricter oversight of soft law and quasi regulations, starting by listing them. A general registry of such 'regulations' would also increase transparency and reduce duplicative 'advice'. A second step should be adapting the current RIA mechanisms to such instruments. In parallel, the government should extend RIA disciplines to devolved administrations, independent regulators and non-governmental bodies currently not bound by the guidelines. Lastly, the United Kingdom should continue with its pioneering programme to apply impact assessments to government's internal regulations with substantial impacts.

Improve the efficiency of RIA. Two improvements could increase the efficiency of the current RIA. First, the quantitative assessments should play a major role in RIA in order to sharpen the political appraisal by top decision makers. For this, stricter standards in the quantification of benefits and costs should be adopted and further training to RIA drafters should be organised, expanding and encouraging expertise not only on how but also when to do cost-benefit analysis. Second, in improving guiding principles for regulatory quality beyond general OECD recommendations, the government should consider to streamline the number of essential principles for impact assessment in the regulatory appraisal process and to provide a set of explicit standards for each principle with a specific guidance on the tests to be applied to each of them. A further possible elaboration would be to develop a weighting system permitting to clarify the trade-offs between competing principles in impact assessment.

Raise the expertise skills available for RIA quality assurance at the central level. In order to maintain its capacity of overseeing the RIA process effectively the RIU should introduce more specialists to enhance further their multi-disciplinary team, similar to the experts working in the competition authority or sectoral regulators. This adjustment in the staffing policy would be even more important if the RIU were to assume a stronger challenge function as compared to its current emphasis on advising departments and promoting impact assessments across government.

Move toward more formal standards for regulatory decision-making. An extension of regulatory impact assessment disciplines to devolved administrations, independent regulators and non-governmental bodies would provide a more homogeneous and transparent regulatory decision-making process, and higher quality regulations. A move toward formalising such requirements in law would improve transparency further, and it would provide citizens with even stronger safeguards and more accountable and predictable results. Formalisation of procedure requirements are already in place for assessments of the stock of legislation (with the Regulatory Reform Act), but not for the flow of new regulations.

Quality assurance is, however, a major issue that needs sustained attention. To secure progress and maintain its leadership in this area, the United Kingdom should

increase quality control of impact assessments. How are departments coping with a more demanding system? There appears to be a variability in performance not just between departments but within departments, and linked to this, the supporting arrangements within departments. A random sample review of impact assessments carried out by the OECD after the changes suggests that the guidelines are not always followed by departments, and that not all impact assessments follow the required format. Some are not clear as to the issue to be addressed, which makes it difficult to evaluate the options. Occasionally there is no proper minister sign off (the name is printed). The amount of data and quantification provided is variable. The OECD peer review team also heard that departmental senior managers are not always paying enough attention to the development of draft impact assessments. Proportionality of effort based on a careful evaluation of the relative importance of proposed regulations also needs close monitoring, as carrying out an effective impact assessment is resource intensive work.

Recommendation 4.5. Steps should be taken to strengthen quality assurance in the production of impact assessments, including how senior managers can be encouraged to take a more active role in this (perhaps via their performance evaluation).

Measures of success for the strengthened approach should be developed. It is too soon to evaluate the practical effect of the new approach, which was only fully deployed in late 2007. Stakeholders seem generally to approve, and consider that the system has been strengthened. The tests will be whether any (important) proposals are turned down or modified because of the process, and whether the process provides a real and enforceable challenge to the development of new regulation. Will policy proposals be developed in such a way that the most effective solutions are identified (regulatory or non-regulatory)? Trends in the production of secondary regulations still appear be upwards, suggesting that departments are still too enthusiastic about regulating in response to a policy issue. A related test of success will be if alternatives to command and control regulation are increasingly deployed.

Recommendation 4.6. Establish measures of success for the strengthened approach, and a date for evaluation.

The BRE pilots for dealing with interlocking policies look promising, and are an obvious extension of the impact assessment concept for complex policy areas. The proposals for a new approach to the impact assessment of proposed regulations that are linked but which cut across departmental boundaries is increasingly important for the effective management of complex policies such as climate change. This will be a test of institutional capacities to work together, and requires a significant commitment of co-ordinated effort by participating departments. The traditional Cabinet committee system is not geared to this challenge (it is not used to evaluating multiple initiatives, just one policy at a time).

Recommendation 4.7. Consideration should be given to whether the role of the new better regulation subcommittee of the National Economic Council which is taking over the role of the Panel for Regulatory Accountability, and will therefore deal with regulatory proposals that will have a significant impact, should be further enhanced.

The parliament plays an increasingly important role in the ex ante review of new regulations. A number of committees (the Joint Committee on Statutory Instruments, the House of Lords Merits of Statutory Instruments Committee, the House of Commons Regulatory Reform Committee and House of Lords Delegated Powers and Regulatory Reform Committee) have developed a substantive interest in regulatory quality, and there is evidence of considerable efforts to scrutinise secondary regulations.

Alternatives to regulation

The new impact assessment form does not give enough prominence to the option of alternatives to regulation. The new form does not directly draw attention to this aspect, asking why government intervention is necessary, and for analysis of the "zero option" or other "regulatory options", which are not quite the same thing. It does not raise the possibility directly of applying alternatives to "command and control" regulation.

Recommendation 4.8. Consider whether the impact assessment form should be adjusted to highlight that alternatives to "command and control" regulation could be considered, and link this to guidance on alternatives.

Risk-based approaches

The work of the Risk and Regulation Advisory Council (RRAC) for the development of new risk-based approaches is potentially groundbreaking. The RRAC initiative is important, not just for the United Kingdom but also for other countries that are interested in this approach. The results of its work will need to be translated into the "practical" regulatory policy framework when they come through. The impact assessment process already includes a request to policy makers to consider and assess options from a risk-based perspective.

Recommendation 4.9. The BRE should share and discuss the emerging results of its work on risk with other OECD countries that are also interested in taking this approach.

Regulatory budgets

Regulatory budgets are an ambitious idea for the management of regulatory costs and more broadly, as a core aspect of an integrated vision for the future of Better Regulation in the United Kingdom. If they can be made to work, the United Kingdom proposals for regulatory budgets would deliver several advantages. They will encourage – indeed require – more transparent and systematic forward planning by departments of proposals that might result in regulation. They will deliver a powerful message to business and other stakeholders that the government intends to get a grip on both the stock and flow of regulations.

Proposals have been the subject of careful analysis and development. The consultation paper shows that the government has made a very careful study of all the possible issues involved, including not least methodology and scope. The paper is a model of transparent consultation. It is comprehensive and frank about the issues. It will be important to give effective feedback and explanations to consultees when a decision on the way forward is made.

If regulatory budgets were to be implemented at some point in the future, attention would be needed to the following issues:

- *Giving full weight to the benefits of regulations.* In the United Kingdom's cost driven impact assessment system – which the introduction of regulatory budgets would reinforce – the implied message is that regulations are essentially a bad thing, or at best a necessary evil. This is not only untrue, but will alienate certain stakeholders. The consultation document acknowledges the technical difficulty of giving benefits their due weight, but this is more than a technical issue. A linked issue is how the system will be able to give effective headroom for unanticipated future regulatory needs.

- *The critical importance of a robust impact assessment process.* Regulatory budgets are dependent on robust estimates of the future impact of regulation. The consultation document acknowledges this, as the costs recorded in impact assessments would be used for the budgets. This underlines the importance of effective quality assurance for the production of impact assessments. The current quality of impact assessments remains uncomfortably uneven.

- *The critical importance of an authoritative and independent oversight body.* The institutional framework for monitoring regulatory budgets needs to be clear and independent. Validating the budgets, checking that the budgets are followed, preventing gaming by departments are among the responsibilities that will need to be covered. Reports to the parliament (as envisaged) would add a further oversight and accountability dimension, as well drawing the parliament itself into a heightened awareness of the need to control regulations.

- *The need to take account of EU regulations.* Securing an effective forward look for EU regulations requires a robust forward planning mechanism at EU level, as well as the effective and timely engagement by departments in Brussels to identify upcoming issues.

Background

General context

The structure of United Kingdom regulations

The United Kingdom does not have a written constitution as such. The constitution exists as a body of statutes, common law based on judicial decision and precedent, and convention.[1] There is no definitive statement of the types of UK law and regulations, which cover a wide range of instruments. Secondary regulations flowing from primary legislation constitute the most important category.

Box 4.3. The structure of regulations in the United Kingdom

Constitutional law. The United Kingdom does not have a written constitution. The parliament is the supreme legislative authority and major legislation requires its approval.

Primary legislation. Most important legislation is contained in acts of the parliament. Before these can become law parliamentary procedure requires them to be considered three times by each chamber. Acts of the parliament can, however, delegate the making of legislation to others. There are specific acts doing so in relation to EU law, and the making of laws that apply in Scotland, Wales and Northern Ireland.

European legislation. Under the European Communities Act 1972, EU law, including legislative instruments made under the EU treaties such as directives and regulations, and decisions of the European Court of Justice, are given full effect in UK law and supremacy over other UK laws. Legislation to implement EU obligations in the United Kingdom is generally made either through acts of the parliament, or through secondary legislation made by ministers under this act.

Delegated (or "secondary") legislation. For practical purposes and so as not to overload the legislature, primary legislation often confers powers on the executive to make legislation. Legislation under these powers is usually made by way of "statutory instruments" which are either notified to, or approved by, the parliament. Many UK laws contain such provisions. The extent of parliamentary scrutiny depends on their significance and importance. Particular scrutiny is given where the powers enable the delegated authority to amend primary legislation in special areas, such as implementation of EU obligations. Most delegated powers do not enable amendment of primary legislation, and are granted to enable detailed implementation of legislation to be carried out efficiently. An example is legislation regulating social benefits, where the basic rules for eligibility would be in primary legislation, but delegated powers would allow the executive to uprate benefits against inflation. In addition, many acts give the executive powers to flesh out the detail of legislation. The Legislative and Regulatory Reform Act is a special case: it sets up a fast-track procedure for the executive to amend regulations which impose unnecessary burdens or to codify existing law.

Other measures having significant legal effects ("soft law"). In many areas of the law, there are a range of materials issued by the executive (the government, or other regulators) that have a significant practical effect in regulating behaviour, for example, codes of practice, or official guidance. In addition, regulators with specific responsibility in certain areas may issue licences to permit activities which, although not laws, effectively regulate behaviour, for example in the case of electricity transmission or generation. These measures are increasingly judiciable.

Devolved legislation. The assemblies in Scotland, Wales and Northern Ireland can make laws in their own areas of competence, or delegate authority to make legislation to executive bodies that report to these assemblies.

Local by-laws. There is a minor class of local legislation made by local authorities, for example enabling them to regulate behaviour in local parks, markets, etc.

Trends in the production of new regulations

Table 4.1 suggests a small but clear upward trend in the number of new statutory instruments – the most common form of regulation – over the past decade. The data, however, needs to be interpreted with caution, as the table covers the period in which the Scottish, Welsh and Northern Ireland assemblies were established with certain regulatory powers, which would have led to an increase. Another factor in the trend may be the overuse of "skeleton bills" (bills that outline the government's intentions but leave the detail to statutory instruments), which would have given rise to more statutory instruments and less primary legislation. The table may also integrate a growth of EU regulatory activity, which implies that the proportion of domestic-origin regulation is decreasing.[2] Some of the regulations are

amending regulations. All in all, the picture is not clear and difficult to interpret. The government has not traditionally been concerned at this lack of clarity, but the Ministry of Justice initiative to develop the database on statute law suggests that this may be changing.

Table 4.1. Trends in the number of new statutory instruments

Year	Number of statutory instruments
1995	3 098
1996	3 035
1997	2 917
1998	2 975
1999	3 221
2000	3 195
2001	3 815
2002	2 957
2003	3 033
2004	3 155
2005	3 326
2006	3 196
2007	3 364

Source: *www.opsi.gov.uk/si-statistics/sis-registered.htm*. Covers statutory instruments made by UK government departments and other UK authorities.

Guidance on regulations and the Code of Practice

In many areas of the law, a range of materials is issued by the executive (central government departments, national regulatory agencies, and local authorities), for example codes of practice, or official guidance. In addition, regulators with specific responsibility in certain areas may issue licences for activities which, although not laws, regulate behaviour. Business sometimes applies pressure for clarification which leads to the production of more guidance.[3] These measures have a significant practical effect in regulating behaviour and are increasingly judiciable *i.e.* they can be cited in court.

There is no specific tracking of this material (for example, to assess whether the amount of guidance is growing). The BRE Code of Practice on Guidance, which was published in May 2008, has the aim of improving government guidance, so that businesses have less need of advisers and intermediaries to understand regulations.[4] More recently the Anderson Review carried out a comprehensive review on guidance,[5] in order to make it clearer, more accessible and consistent across government, and more likely to yield effective outcomes, and to encourage a culture change in the relationship between regulatory authorities and businesses. In response, the government has committed to piloting a telephone advice service (for tailored and "insured" advice to help businesses comply with employment and health and safety law; removing the disclaimers which bring the accuracy of guidance into question; and encouraging inspectors to avoid prosecution of "reasonable" businesses; and setting out when it will update the most frequently used guidance to comply with the BRE Code of Practice on Guidance.

Box 4.4. The BRE Code of Practice on Guidance

This Code was published in May 2008. Its aim is to improve government guidance. Many businesses seek external advice about how to follow regulations, via accountants, lawyers and consultants, as well as from government directly. The BRE estimates that businesses spend at least GBP 1.4 billion per year on external advice. The root causes of the need for advice are the volume and complexity of regulations; low awareness of government guidance; regulatory changes; the poor quality of government guidance; and uncertainty, risk aversiveness and lack of confidence.

The Code seeks to address these issues in order to minimise the need for businesses to pay for advice. Its recommendations are for government departments to:

- *Improve the regulatory process*. Plan guidance at an early stage in the regulatory process, and issue it quickly
- *Improve communication on regulation*. Raise awareness of the website *businesslink.gov.uk*. Communicate directly with businesses using high-quality, simple guidance. Communicate with businesses through intermediaries.
- *Improve the quality of government advice on regulation*. Improve feedback mechanisms on guidance. Consider joint badging or outsourcing the design of guidance.
- *Improve the environment for business advice on regulation*. Help businesses become informed consumers of advice services by increasing understanding of regulatory requirements. Take advantage of online forums for businesses to share information on regulations. Provide dedicated guidance for advisers where appropriate.

Processes for making new regulations

The law making process

Box 4.5. The UK law making process

Development of regulations

Nearly all primary legislation originates in the executive, as do most secondary regulations. Only the parliament, however, can enact primary legislation. Bills are usually scrutinised by parliamentary committees prior to debate on the floor of the house. The government's majority ensures that most government bills are enacted (become law), albeit with amendments reflecting parliamentary concerns.

Enactment of primary legislation

To become law, generally speaking, bills must be passed by both houses, and receive royal assent (a formality). Bills may be amended both in the Commons and the Lords, and in some cases are rejected. The Lords, however, can ultimately only delay the passage of bills, and it does not amend bills concerning taxation.

Scrutiny of secondary regulations

The parliament also has an important role as regards secondary regulations, essentially regulations made under powers conferred in primary laws, most of which are known as statutory instruments. Statutory instruments cannot be amended by the parliament, but (with a few exceptions) are subject to parliamentary approval. A network of parliamentary committees scrutinises these regulations:

Joint Committee on Statutory Instruments. This is a committee of both houses which has been

established for over thirty years. It scrutinises all statutory instruments, assessing regulations from a technical perspective (legal basis and drafting defects). It also has a role in scrutinising the transposition of EU directives into UK secondary regulation (see below).

House of Lords Merits of Statutory Instruments Committee. This was set up very recently in 2004, to strengthen and broaden the scrutiny of statutory instruments. It too considers all statutory instruments, but from a policy merit (hence the committee's name) perspective that is whether the legislation seems likely to implement its stated policy objective in the most efficient way. It also has a role in the scrutiny of the way EU-origin regulations are transposed (see below). In each case, evidence from the department, the impact assessment and the response to the public consultation exercise are used to evaluate this, but the committee may seek further information or evidence from departmental officials or interested organisations.

House of Commons Regulatory Reform Committee and House of Lords Delegated Powers and Regulatory Reform Committee. These committees focus on the proper use of powers conferred on ministers under the Legislative and Regulatory Reform Act to use a fast-track procedure for the amendment or repeal of burdensome or inconsistent regulations (which was put in place as an aid to Better Regulation policy). The Lords Committee has the wider remit to consider the use of all delegated powers, whether or not linked to the act. Both committees take their scrutiny beyond technical matters. Notably, the Regulatory Reform Committee has just published a report on the effectiveness of the BRE and the government's Better Regulation Strategy.

Forward planning

For the most important policies and major legislation there are a number of mechanisms. The incoming government policy manifesto sets out the main lines of its proposed policy and legislative programme during its period of office. The annual Queen's speech on the opening of the parliament sets out the main lines for the coming year. The government routinely publishes consultations in Command Papers (Green Papers and White Papers) when preparing major reforms. Within government, a Cabinet committee (Legislation Committee or L-Committee) challenges, prioritises and consolidates the legislative programme. On 11 July 2007, for the first time, the Prime Minister made a statement setting out a draft version of the legislative programme, several months ahead of the Queen's speech on the annual opening of the parliament, which is traditionally the first opportunity to hear about the programme.

Command papers are all published on line.[6] These only cover a proportion of total consultations. Departmental consultations and impact assessments are another source of information for those who wish to follow developments.

Forward planning procedures for secondary regulations are much less developed and there is no systematic co-ordination. Departments pursue their own agendas for the making of secondary regulations, including EU-origin regulations. However this is now changing. In April 2009, the government committed itself to publishing a forward regulatory programme. The aim is to support business planning, as the programme will include existing and possible future regulatory proposals, including those emanating from secondary legislation.

Administrative procedures

The United Kingdom does not have a general administrative procedure law of the kind that exists in some other OECD countries, setting out formal criteria and obligations for the development of regulations.[7] It relies instead on a range of codes and guidance covering different policy fields and issued by different government entities. For central

government departments, the *ex ante* impact assessment guide sets out the steps that departments should follow when developing regulations and policy proposals, and the Consultation Code of Practice sets standards for consultation documents. Regulations made by independent regulators are not constrained by these guides, and these authorities have developed their own standards and practices, albeit often similar to government guidance. Finally, the judicial review process can be seen, in the absence of a general administrative law, as a means of promoting good administrative practice.

Legal quality

The Legislation Committee (L-Committee) is a Cabinet committee chaired by the leader of the House of Commons. It examines legislation and decides which bills may be introduced in the parliament. All legislative proposals require clearance by L-Committee as well as the relevant policy committee. L-Committee has also developed a role in relation to Better Regulation. It monitors policy proposals across government at an early stage, and looks for solutions that might avoid the need for new legislation.

Primary laws (bills) are drafted by specialist government lawyers at the Parliamentary Counsel Office (PCO). The PCO employs around 40 lawyers, who work in teams per bill. Departments instruct these lawyers on the policy which the legislation is to implement.

Secondary regulations are drafted by a specialist legal unit staffed by government lawyers within departments. These units have increasingly been drawn into policy issues that goes beyond their primary remit of drafting and legal quality. They provide advice on policy development to ensure that desired changes are legally effective and to minimise the number of new laws. For example the BERR unit is providing advice on the development of company law.

The number of government lawyers has increased significantly over the last ten years, but so has the workload. The BERR lawyers tentatively suggest that a number of factors are at work: as well as a greater role in policy development, increased demand for judicial reviews, more regulations being made at different levels (EU, national, devolved), an increased scope for citizens and business to challenge administrative action based on the Human Rights Act, greater transparency from the Freedom of Information Act 2000, and finally, environmental information regulations. Other factors may be changes in the structure of the Government Legal Service (GLS), including more part-time working (Box 4.6).

Box 4.6. The Government Legal Service (GLS)

All central government lawyers are members of the Government Legal Service (GLS). The GLS establishes close links between lawyers across departments, sets the standard, and provides comprehensive training. At the start of their career in the GLS, lawyers attend a week-long training course with specific sessions on legal powers and bases, clarity in drafting and Better Regulation. Other training sessions are available which cover aspects of these topics in more detail. This training is supported by a dedicated website – Legal Information On Line (LION) – which has guidance and training materials on a range of topics including constitutional powers, secondary legislation and Better Regulation. Additionally departments have their own in-house training covering these topics. There is an annual conference on administrative law.

Ex ante assessment of the impact of new regulations

Policy on impact assessment

Early developments

Assessment of the costs and benefits of proposed regulation has a long history in the United Kingdom. Cost Compliance Assessments were used from the early 1980s. The system was amended and renamed Regulatory Impact Assessments (RIAs) in the 1990s. Important changes were introduced by the government in 2007 following consultation and in response to the National Audit Office (NAO)'s annual reports on RIAs, to address shortcomings in the system.

RIAs were the subject of considerable criticism. The most important weakness, picked up by the NAO, was the lack of integration of RIAs into the policy-making process, meaning that they were rarely used to challenge the need for regulation and influence policy decisions. In effect, senior officials and ministers tended to ignore RIAs or use them as an *ex post* justification for decisions that had already been made. RIAs often did not come early enough in the policy-making process, and did not set out the case for regulation clearly enough (the reason for government intervention, the exact nature of the problem, data on costs and benefits). The old system was also complex, and departments could to a large extent choose how they set out their assessments. Finally, there were concerns that new policies are developed in an increasingly pressured environment, with growing social and environmental worries which may encourage the adoption of new regulations.

In July 2006, the government launched a public consultation and subsequently introduced a revised impact assessment process.[8] The revised system was phased in from May 2007, and was fully operational from November 2007. The government's objectives for the revised system are to embed impact assessments at the centre of policy making, and at its earliest stages, improve the quality of the economic and other analysis that underpins policy making, increase the transparency of the analysis underpinning policy options, and hold departments accountable for the regulation they introduce.

Current policy

The current policy is not a radical departure from the previous system. It builds on previous developments but seeks to sharpen the approach:

- Impact assessments should be developed for all policy proposals with potential regulatory impacts, including formal legislation, codes of practice or information campaigns.[9]
- Monetisation of costs and benefits is emphasised and central to the process.
- Economists are increasingly involved, from the earliest stages of policy making. Departmental chief economists must sign impact assessments that go to ministers, as validation that the cost-benefit analysis has been effectively conducted.
- New standard form (designed by the economists) summarises essential information on one page and draws attention to the monetised results.

- Enhanced guidance and training is available.
- Strengthened political engagement and accountability via a ministerial declaration both for "consultation" and final impact assessments (sign-off on the front page of the new form).
- New website where summaries of published impact assessments will be available, together with links to departmental websites.
- Increased emphasis on post-implementation review of proposals. Departments must set a date for when the policy will be reviewed, to assess whether it has been effective in delivering the expected policy goals.

To underline the integral relationship between impact assessment policy development rather than regulation as such, the word "regulatory" has been dropped, and the process is now called impact assessment (impact assessment). The new form further emphasises the policy link, by asking departments "what policy options have been considered".

The scope of impact assessment in terms of institutional coverage includes central government departments and some regulatory agencies, depending on their status. Agencies which have a more independent status may have set up their own arrangements for impact assessment (alongside other Better Regulation processes such as consultation).

Link to administrative burden reduction

The new form records changes in administrative burdens. Departments are required to include information on additions to the administrative burden placed on business arising from new regulation; decreases to the administrative burden arising from simplification of regulation or deregulation; and the net impact of these changes. A "light touch" impact assessment should also be produced for non-legislative simplification measures. The administrative burden calculator, which is accessible to all, provides the necessary figures to calculate the burdens of new proposals.[10]

Institutional framework

The Better Regulation Executive

The BRE's role is best defined as the "helpful policeman". It oversees and frames the process of developing impact assessments (including the production of guidance) but does not have any formal powers to block impact assessments. It is the responsibility of departments to produce impact assessments. Some – not all – of these are scrutinised by the BRE, taking a proportionate approach, and focusing on policies with the highest costs or stakeholder concerns.[11] It also seeks to focus its efforts on the earlier stages of policy development. The BRE account managers for each department aim to keep in close touch over the policy developments in that department which may give rise to proposals for regulation. It participates in officials' groups, and correspondence, to prepare issues. The BRE can propose the review of impact assessments by the Panel for Regulatory Accountability if it considers that the analysis and evidence presented is inadequate.

Government economists

Reflecting the strong emphasis on cost-benefit analysis and monetisation, the new approach emphasises support from the network of government economists embedded in each department. Departments are encouraged to involve their economists at an early stage, not least for help in preparing the analysis. The submission of a proposal to the minister for political sign-off first requires sign-off by the department's chief economist. The BRE considers that economists' involvement helps to take the process outside the political arena. Perhaps for the same reason, we were told that it was initially disliked by departments, who resented the loss of "policy" autonomy, and the need to take a more rigorous approach.

Box 4.7. The Government Economic Service

The Government Economic Service (GES) is the equivalent of the Government Legal Service for lawyers working in central government. It sets the standard for the 600 economists spread around central government departments (excluding those economists who work in the Treasury in non-specialist policy posts). The BERR chief economist is joint-head of the GES. Relations with academia, internal courses, to teach new skills, aim to develop master level degree course for economists. Courses address how economists support and enhance policy making. Strategic Policy Analysis Group in BERR. Part of the team advises on impact assessment. GES Chief Economists Group. The GES also provides training to economists in the analytical skills needed to undertake cost benefit analysis in support of impact assessment.

Departmental Better Regulation Units and peer review groups

Departmental Better Regulation Units (BRUs) play an important role in the co-ordination and provision of advice and guidance to officials within departments, alongside the BRE. They are free to develop their own approach to this, for example when and how to intervene in the development of an impact assessment. Peer review groups have also been established within and between departments, co-ordinated by the BRUs and departmental economists.

Box 4.8. Examples of departmental support arrangements for impact assessment

BERR has introduced an Impact Assessment Peer Review Group for impact assessments. The group engages as early as possible in the policy making process, providing a quality control and challenge function. It focuses on impact assessments which are likely to represent a costly regulatory burden on business or are politically sensitive. Members of the group include the BERR Performance and Evaluation Team, BRE, the BERR Better Regulation Champion and economists from across the Department. A cross-departmental structure has also been set up between DCLG and BERR economists, to review impact assessments produced by the other department.

DEFRA has introduced a different mechanism, based around a threshold of costs, and various layers of scrutiny within the department. High-value or politically sensitive impact assessments are subject to scrutiny by economists who were not involved in the policy development, with the departmental chief economist acting as the final arbiter.

The Panel for Regulatory Accountability

All proposals which are likely to impose a significant burden on the private, public or third (voluntary) sectors – defined as one that is likely to impose a cost of over GBP 20

million per year or disproportionately impact a particular sector – require clearance from the Panel for Regulatory Accountability (PRA). These include proposals stemming from the EU. Clearance can be sought by correspondence or in a meeting if particularly significant or controversial. The PRA can ask the responsible minister to change their approach if it considers that the benefits of a proposal do not justify the costs. In 2007, over 40 impact assessments and 22 simplification plans were cleared through the panel. As well, 10 meetings of the officials' shadow committee were held. The BRE explains that the PRA itself does not meet often because many issues are cleared at official level or by correspondence, and also because it believes that Better Regulation is now more firmly embedded in policy-making. It also notes, however, that there can be tensions, for example as regards employment law and the burdens on business.

All policy proposals with implications for other departments go through the Cabinet clearance process and may go through PRA in addition. These committees may also consider the issue of administrative burdens and other Better Regulation matters.

The role of the parliament

The parliament's formal role in the scrutiny and approval of regulation, described above, has evolved over the last few years to encompass policy as well as legal aspects. It takes an increasing interest in the existence and quality of impact assessment and other material such as the results of consultation which is attached to draft legislation. The final full-impact assessment is attached to draft laws laid before the parliament. Committees with a specific remit to check not only legal quality but also underlying policy coherence have been set up and are increasingly demanding in this regard.

Guidance and training

A range of new materials, mostly on line, and some of it interactive, has been developed by the BRE and government economists.[12] Transitional training was also arranged when the new system was introduced to explain the changes. Training in impact assessment and cost-benefit analysis has been incorporated into the general training courses provided by the National School for Government.

Box 4.9. Guidance and training to support impact assessment

Impact Assessment Guidance.[1] The guidance explains the nature and content of an impact assessment, when it should be completed and when it should be published. It is accessible to non-economists. It is aimed mainly at the Better Regulation Units.

Impact Assessment Toolkit.[2] This provides more detailed information on how to complete an impact assessment and where to find the information needed for it. It includes a very helpful flowchart and the template for presenting results. The online toolkit is wordy and repetitive, and could usefully be edited. It is not that accessible (on the BERR website), and there is other competing information.

Cost-Benefit Analysis. This is based on the guidance provided by the Treasury Green Book,[3] a long-established central guidance for departments on the economic assessment of spending and investment, and related guidance including the preparation of business cases for the public sector.

Impact Assessment Online Training.[4.] This provides an overview of the process and explains its key components to those new to impact assessments or those who want to know how it has changed. The BRE estimates that it should take approximately one hour to complete, which includes a case study where the process is applied to a fictional policy proposal. The training is broken down into various modules, so that users can return to them at any time to refresh their memory.

1. *www.berr.gov.uk/files/file44544.pdf*
2. *www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44199.html*
3. *www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm*
4. *www.iatraining.berr.gov.uk/*

Process and methodology

The quantification of costs and benefits is now the core part of the process. Options appraisal is the main analytical component. This involves establishing robust evidence to support a number of policy options and undertaking cost benefit analysis to identify most effective option.

The new form (Annex C) has a front page summary with figures, which is the most important innovation.[13] It requires departments to summarise the problem under consideration, why government intervention is necessary, policy objectives and the intended effects, what policy options have been considered, justification of the preferred option, a date for review of the policy and a monetised summary of the results of the cost-benefit analysis (including net impact on administrative burdens). There is provision for annexes to provide supporting data and details of specific impact tests, but also for departments to add a qualitative analysis (the BRE seeks to discourage the overuse of annexes for this purpose).

There is provision for specific impact assessments. Most of these tests are optional. However if regulation is particularly relevant to one of these tests, they become compulsory (for example environmental impact test for the law on carbon emissions). There are threshold tests used to assess whether a full test should be carried out. Some tests are required by law (for example assessing impacts on race, disability and equality).

Box 4.10. Stages in the development of an impact assessment

- *Development stage impact assessment*. A benchmark case is identified and options built up against this baseline. The broad implications (costs, benefits) for main affected groups are identified.
- *Options stage impact assessment.* Informal consultation with stakeholders. If costs exceed GBP 5 million or the issue is especially sensitive, develop a complete impact assessment.
- *Draft of consultation stage impact assessment.* Clearance if necessary through the PRA, collective ministerial agreement.
- *Agreed consultation stage impact assessment.* Sent out for public consultation, after sign-off by the minister.
- *Final proposal stage impact assessment.* Takes account of consultation, leading policy option is identified.
- *Clearance through Panel* for Regulatory Accountability and collective ministerial agreement.
- *Implementation stage* (final impact assessment). Ministerial sign-off.
- *Review stage impact assessment.* Review to establish what the regulation is achieving.

** See summary sheet in Annex C and flowchart in Annex D.*

Public consultation and communication

The Code of Practice on Consultation must be followed. It states how impact assessments should be used in consultation exercises. The impact assessment guidance also underlines this. Consultation normally takes place when policies are at a stage where the problem has been identified, options for tackling the issue have been partly worked up and, through informal consultation and desk research, and initial figures have been put into the impact assessment. The purpose of the consultation is therefore to put the initial analysis out for public scrutiny and to gain new evidence to inform policy development. Consultation impact assessments and final impact assessments are published on departmental websites.

The BRE lists all final impact assessment produced by departments on its website.[14] From April 2008, an online impact assessment library contains summary information from all final impact assessments, as well as copies of the impact assessments themselves.[15]

Dealing with complex policies

The BRE is currently testing a new approach for policy issues which cut across departmental boundaries. The essence of the approach is to combine into a single impact assessment the data and information from several separate but linked policy proposals, and then to assess and weigh this up as a single policy. The practical objective is to produce not a series of separate impact assessments, but one headline impact assessment. The combined impact assessment form under development puts the aggregate costs and benefits on the front page, including annual costs and one-off costs to business, as well as benefits.

One of the tests is on climate change policies, because of concern that intense policy pressure on departments to do something will result in multiple overlapping initiatives, regulatory complexity, double counting of benefits, and lack of clarity for business as to potential implications for investment decisions.[16] The BRE has therefore initiated a process to develop a Better Regulation impact assessment approach to the growing set of initiatives aimed at tackling climate change. It has set up a joint working group with the Department for Environment Food and Rural Affairs (DEFRA), the Department for Transport (DfT), the BERR and the Department for Communities and Local government (DCLG) among others, encouraging departments to come together and map a shared a strategic approach. It gets involved in "live" specific issues, such as smart meters roll out which make up the bigger picture, and tries to catch proposals in the pipeline. The aim is to move away from piecemeal analysis and carry out an integrated analysis of these policies using impact assessment principles, not least quantification of costs and benefits. The BRE chair put it this way: "give departments and stakeholders simple messages with scary numbers".

The approach raises a number of challenges. There are so many potentially relevant measures that the BRE was forced to make choices. Considerable effort is needed for the co-ordination. This is because specific policies are at different stages of development. Departments sometimes have an understandably positive view of the value of "their" initiative, which is "lost" in the overall assessment (what makes sense in a specific policy setting is not necessarily positive for the overall picture). There are also methodological issues such as the difficulty of quantifying benefits over the longer term. The BRE is, however, hopeful that it can develop an approach which can be rolled out to other complex areas in due course.

Alternatives to regulation[17]

The United Kingdom's approach to alternatives includes the following (non-exhaustive) aspects:

- Impact assessment guidance underlines that alternatives to regulations should always be considered before regulating. Before this, the Better Regulation Task Force report "Alternatives to State Regulation" outlines a number of options where alternatives should be considered, as well as providing guidance on when they should be considered.[18] The new form, however, does not highlight the need to consider alternatives, only the option of "no regulation".

- Information is an alternative to regulation, but only if it is used correctly. The "Scores on the Doors" scheme promoted by the Food Standards Agency and rolled out by local authorities to rate restaurants for food safety is one good example. A BRE project with the National Consumer Council on the effectiveness of disclosure requirements suggests, however, that product information may not be especially helpful if it is too dense, and is not costless if it raises the price of a product.

- Perhaps most promising for the long run is the new approach to risk and regulation, which seeks to put at the centre of the policy making debate the question of whether regulation is actually needed, and whether certain risks should be carried by the state (via regulation) or by individuals.

Risk-based approaches[19]

New RRAC led initiative

The government has launched an important new initiative, led by the Risk and Regulation Advisory Council (RRAC), to examine how public risk can best be addressed in developing new policy and regulation.[20] The initiative is based on the 2008 BRC report "Public Risk: The Next Frontier for Better Regulation". Anecdotal evidence suggests problems with an increasingly risk averse and litigious society. When should the state manage a risk on behalf of everyone through regulation, and when should another body or individuals themselves be allowed to manage the risk? Failure to get the balance right can lead to burdensome and resented restrictions on freedoms, an uncomfortable expansion of the "nanny state". The government has identified the need for a more mature dialogue with the public on what really needs to be done, when "something must be done". The aim is to map a pathway that tackles risk issues at the start of the policy and rule-making process. The work will also consider how best to manage more effective responses to crises such as food scares, where political/media pressures often suggest tightening regulation, which is not necessarily the best option.

The work is experimental and has yet to be adopted across UK policy-making, though some departments and parts of others already make good use of some techniques recommended by the RRAC. Instead of the usual approach of setting up a committee and publishing a report with recommendations on the subject, the process begins with the identification of a network of people from the widest possible range of relevant backgrounds to engage in a facilitated workshop and continuing debate, including those who are often deliberately avoided in "traditional" consultations. Topics selected for in-depth case studies include: risk aversion in the police; implementing appropriate health and safety measures in small organisations; promoting community resilience. Each topic

has a forum facilitated by coaches. Apart from the main Risk Forum and follow-up engagement on each topic, further academic research and reviews of the literature are being carried out, and workshops examining the roles of different "risk actors" (such as media, insurers, standards-setters, parliamentarians, the judiciary) are being developed to improve understanding of the complex interactions of the public risk landscape.

Risk assessment as part of impact analysis

Impact assessment guidance asks policy makers to:

- consider risks and how likely they are to occur and their likely impact on meeting the objective of the policy;
- calculate an expected value of all risks for each option, and consider how exposed each option is to future uncertainty; and
- consider risk management for the delivery and implementation of each option.

The front page of the new impact assessment form requires departments to highlight any key assumptions, sensitivities or risks underpinning the cost and benefit calculations, and asks that risks or uncertainties associated with the policy options or proposal under consideration should be further addressed in the background pages.

The guidance also refers policy makers to the Treasury's advice on managing risks to the public,[21] and appraisal and evaluation in central government.[22]

Controlling the flow of new regulation

The idea of regulatory budgets was first floated in the 2005 BRC "Less is More" report as a way of controlling the flow and therefore the cumulative effect of new regulation. Plans to consider the introduction of regulatory budgets were announced in the March 2008 BERR White Paper "Enterprise: Unlocking the United Kingdom's Talent". The BRE followed with the launch of a public consultation in August 2008 on the potential introduction of regulatory budgets to limit the cost of new regulation.[23] The groundwork was laid with the new impact assessment process and its emphasis on quantification, the annual publication of regulatory costs, and most recently the launch of an online library of impact assessments. The consultation paper proposed that if introduced the regulatory budgets system would start with the new financial year in April 2009. (For more on the project of regulatory budgets, see Annex E)

The underlying rationale, as set out by the BRE, is that regulatory costs need to be managed because there is a limit to the costs from regulation that the economy and individual businesses can absorb, and that current incentives for policy makers make regulation an easy option compared to government spending. Regulation is not a cost-free good. The consultation document put regulatory budgets in the context that the government has two main levers for achieving its objectives, fiscal (spending or taxation) and regulatory. Both impose a real cost on the economy, diverting resources from productive activities if they are not used proportionately. But they are subject to different degrees of scrutiny and control. Public spending and taxation are subject to strict controls by the Treasury and the parliament. But the cost of regulation is less precisely known and subject to less overall scrutiny. There is a risk that, especially in a tight fiscal environment, regulation is used even if it is not the best option, simply because the controls on other levers are so strong. The government also believes there is scope to

improve the way it prioritises new regulatory proposals. Regulatory budgets would allow departments to make better informed decisions about the detail, prioritisation and timing of new policies, including assessing potential conflicts and exploiting synergies.

The government has decided not to implement regulatory budgets at this stage, given the economic situation. Rather, it will undertake a programme of Better Regulation measures tailored to the "present exceptional economic circumstances". The details of these measures are set out in a statement by the BERR Secretary of State on 2 April 2009. They include the establishment of a new Better Regulation subcommittee of the National Economic Council; a new external Regulatory Policy Committee; and to publish a forward regulatory programme.[24]

Notes

1. Some 13th century statutes still apply.

2. According to government lawyers EU-origin regulations account for a large share of new regulations.

3. The recently established Local Better Regulation Office draws attention to the difficulties of interpretation, citing the example of soft toys, which may used for other purposes. When is a toy not a toy? It may not be clear which regulation needs to be applied.

4. *www.berr.gov.uk/bre/code/page46954.html.*

5. *www.berr.gov.uk/whatwedo/bre/reviewing-regulation/The%20Anderson%20Review/page45278.html.*

6. *www.official-documents.gov.uk/menu/cmd2007.htm.*

7. One exception is the Legislative and Regulatory Reform Act, which gives ministers power to amend burdensome legislation. The act has built-in procedural requirements on consultation, communication, impact assessments etc.

8. The Tools to Deliver Better Regulation – Revising the Regulatory impact assessment: A Consultation.

9. The new guidance says "impact assessments are generally applicable to all government interventions affecting the private sector, the third sector (voluntary sector), and public services, regardless of source: domestic or international". See also the flow chart at *www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44201.html*. Impact assessments are routinely carried out on Better Regulation policies as well as other policies, most recently on the proposals for Regulatory

Budgets. Scope does not uniformly extend to regulatory agencies. It depends on their status in relation to departments. Some are free to make their own arrangements, and do so.

10. *www.abcalculator.berr.gov.uk.*

11. Its predecessor the RIU examined all impact assessments, and ended up rewriting many of them.

12. *www.iatraining.berr.gov.uk.*

13. *www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/page44077.html.*

14. *www.berr.gov.uk/bre/policy/scrutinising-new-regulations/Regulatory%20Reporting/page44948.html.*

15. *www.ialibrary.berr.gov.uk.*

16. A number of big policy initiatives are relevant. The 2007 Energy White paper, Climate Change Bill, Energy Bill expected further measures to set and implement carbon budgets, plus a series of specific measures. Annual cost to business estimated at GBP 5 billion by 2020.

17. This is not covered in the same depth as the 2002 report.

18. *www.archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/stateregulation.pdf.*

19. This section covers the issue of risk management in relation to the development of new regulations. The issue of risk-based enforcement of existing regulations is addressed in a later section.

20. The United Kingdom's first efforts at addressing risk began in 2000, linked to national security.

21. *www.hm-treasury.gov.uk./media/0/B/Managing_risks_to_the_public.pdf.*

22. *www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm..*

23. *www.berr.gov.uk/bre/policy/scrutinising-new-regulations/consultation/page47006.html.*

24. *www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90402-wms0001.htm#09040245000010.*

Chapter 5

The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to weed out obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sunset mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area has gained considerable momentum over the last few years and concerns the reduction of administrative burdens. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the Standard Cost Model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden. [1]

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

Assessment and recommendations

Simplification of regulations

Although there are a number of useful initiatives, there is no systematic effort to consolidate or simplify the regulatory stock. Parts of the simplification programme for reducing administrative burdens include important initiatives to simplify areas of the regulatory stock. Other initiatives such as the Legislative Reform Orders to remove unnecessary burdens in existing legislation, post-implementation reviews of regulation, and the use of sunset clauses are also helpful. The 2002 OECD report's comments have

been taken forward in part via the revised impact assessment process and post legislative scrutiny. But simplification is not the main aim of the simplification programme, and the overall approach is not systematic. The lack of any systematic effort to map and consolidate regulations in the United Kingdom's common law based structure, which also relies heavily on secondary regulations, may be of some consequence as there is a risk of significant regulation overload over time.

Recommendation 5.1. An approach tailored to the English legal system might start with the mapping exercise that has been initiated by the Ministry of Justice, followed by an appraisal of what could usefully be done, after taking full account of the work already underway in the simplification programme, and through the other initiatives.

Box 5.1. Recommendation from the 2002 OECD report: Simplification

Assess and monitor cumulative impacts of the regulatory system. Concurrent to improving impact assessment, the government should start to monitor the cumulative impact of the laws and regulations. Annual and departmentalised aggregates of estimates of costs and benefits could be one of the initial steps. This monitoring would create important guidelines for continued reforms and it would also provide a feedback to regulators, the parliament and citizens on the efforts of the administration to reduce overall burdens and raise the benefits of regulations. Some work has already been done in monitoring the effects of particular measures and regimes, particularly tax measures and public utility regulation, and the government is now committed to reviewing the impact of major pieces of regulation within three years. This latter is already a major commitment, but the government should consider expanding the scope of the review to include evaluations of entire regulatory regimes. The considerable resource costs of such review would be likely to be justified by the benefits in terms of feed back to regulators, the parliament and citizens.

Administrative burden reduction for businesses

The simplification programme is well-structured, has already delivered some savings and promises more. The programme has an overall net reduction target of 25% by 2010. A wide variety of burdens is addressed, with some proposals extending to cover full compliance costs. Although savings are "backloaded" so that a large part is expected to be delivered closer to the target deadline, some departments have already delivered significant savings and the plans of some others look promising. [2]

Although measurement was apparently a challenge initially for departments they now appear to be coping well. The BRE provides good support for departments in the development and adjustment of their simplification plans, as well as an incentive to meet the target through its performance assessment measurement of departmental Better Regulation achievements. The programme is transparent, open to public scrutiny, and there are significant efforts to reach out to stakeholders so as to better identify their needs.

Some aspects need further attention. There is a need to find ways of engaging local governments in administrative burden reduction, as some other countries are already doing with their programmes. Local governments are the main interface with the large majority of businesses. Developing an approach to take more effective account of the impact of major new EU-origin regulations is also important, as the roots of some burdens predate the start of the simplification programme.

Recommendation 5.2. Consideration should be given to how local authorities can be encouraged into contributing to the burden reduction effort. Efforts should be stepped up to encourage the stronger control of new EU regulations to avoid new burdens from this level.

Business is fundamentally supportive of the initiative, but finds it hard to put up with delays in the delivery of promised savings. The OECD peer review team heard that business is supportive but in a hurry, and needs encouragement to sustain its support via results that will be delivered within a relatively short timescale. There is, however, often an important time lag between the plans and their delivery, including some important initiatives which might be expected to make a big impact, such as company law rationalisation. The fact that a large part of the savings under the programme will only be delivered nearer to the end date of 2010 is not helpful when expectations appear to have been fuelled for quicker results.[3] Machinery of government changes (adjusting responsibilities across departments) also needs careful handling. To complicate matters further, the 2007 departmental plans now include policy costs and irritants. This is for the best of reasons but makes it a challenge to track real achievements, and may in fact understate achievements if new elements are included.

Business perceptions of achievements appear relatively poor compared with the objective progress being made. Business appears to be unfair on the government. This is a complex issue, not unique to the United Kingdom. Part of the problem appears to be that business does not distinguish between different costs or policies and, for example, may react angrily if corporation tax or the road congestion charge goes up, linking this to a failure in Better Regulation. Also, the benefits that flow through are quickly taken for granted, and attention turns to the next wave of regulations or irritants. It suits some (larger and more established) businesses to keep regulation as a barrier to entry, and trade associations (as well as business advisers) may want to keep their advisory work by exaggerating the difficulties that still exist. One challenge is to show a meaningful impact for individual businesses. Presenting total cost savings in government publicity (which can run into millions of pounds) is meaningless for individual businesses, especially SMEs, whose share will by definition be only a small proportion of the whole. There is an inherent difficulty in the fact that part of the argument for the programme rests on a counterfactual – it could have been worse without the efforts. There are some UK-specific elements to the situation. The popular media may exaggerate difficulties compared with the reality, which is often more positive. There are some important underlying differences compared with other European countries, in terms of the traditional relationship between the government and the business community, which is largely in private hands and does not consider itself to have any special ties of loyalty to the state.

Recommendation 5.3. Further efforts should be made to structure communication on the programme around business types, rather than departmental plans. This approach would also help in the dissemination of information to the right businesses. Communication should also take account of the potential confusion and irritation caused by changing baselines and departmental structures.

Negative business perceptions have roots in substance as well. It is important to focus on what business actually wants, and to distinguish between the needs of different types

of business. The OECD peer review team heard that businesses are worried about the flow of new regulations and their quality. The National Audit Office (NAO)'s recent review of the programme found that burdens appear to have increased. It has also highlighted the importance for departments to develop a thorough understanding of business concerns as the key to delivering real impacts on business, by working more directly with businesses. The programme has been adapting to the fact that the business community is not a homogeneous mass. This is helpful, as there is a gulf between the micro business offering a local service and the large multinational, as well as important differences between firms operating in different sectors.

Recommendation 5.4. Departmental efforts to address the burdens that really matter to different kinds of business should be sustained. Broader policies to address the flow of new regulations (*ex ante* impact assessment, and possibly regulatory budgets) are also relevant.

The licensing system appears complex and in need of attention. Despite individual initiatives on the part of some agencies and local authorities (for example, the initiative launched by the Medicine and Healthcare Products Regulatory Agency (MHRA) which seeks to streamline burdens and reduce waiting times for licence approvals) this is an issue that requires a more coherent and structured approach. The OECD's 2007 economic survey considered that restrictive planning regulations hindered productivity growth by limiting new firm entry (OECD, 2007).[4] The public actors can be different, with different public interests to be protected, but the firm which wants to start up a business, or the citizen wishing to complete an administrative procedure, sees it as just one issue and is not interested in the number of authorities or public interests involved behind this.

Recommendation 5.5. A review of licensing should be considered. Action might also include specific initiatives to review and simplify regulations requiring interventions from multiple authorities, as well as non-regulatory measures aimed at reengineering back-office procedures, making greater use of ICT and e-Government processes.

Administrative burden reduction for citizens

The Service Transformation Agreement Action Plan to promote public services that are more personalised to the needs of citizens and businesses is a step in the direction of a more citizen-oriented Better Regulation agenda. Developing specific initiatives aimed at citizens, as some other OECD countries have done, would help to redress the balance of a business oriented agenda. It would also have the advantage of engaging local governments – a key interface for citizens – further into Better Regulation.

Recommendation 5.6. Consider whether there is a need to reinforce and further develop initiatives aimed at making life easier for citizens.

Administrative burden reduction inside the administration

Cutting bureaucracy for public services is an important and ambitious initiative which ensures that Better Regulation has one foot planted in the non-business camp. This project, which has survived the BRE's move from the Cabinet Office to the BERR, helps to redress an otherwise highly business-oriented Better Regulation agenda. It may also shed some light on the sources of unnecessary regulations emanating from a range of

different regulatory agencies and central government departments. There is an ambitious commitment to reduce by a net 30% by 2010 the data that central departments and agencies request from frontline public sector workers.

Recommendation 5.7. Take steps to ensure that the programme can be effectively evaluated, and that departments are well-supported and encouraged to help meet the target, given the absence of a measured baseline and a looser requirement on departments to deliver than is the case for the programme to reduce burdens on business.

Box 5.2. Comments from the 2002 OECD report: Public sector reforms

A central feature of the recent United Kingdom experience has been public sector reforms to assure the quality, effectiveness and homogeneity of public service delivery. These reforms include a comprehensive "agencification" of public service delivery organisations with the purpose of focusing and specialising services and to improve efficiency and accountability. The creation of an array of new agencies was accompanied by a number of complementary quality assurance initiatives such as the "Citizens Charter", "Charter Mark" and "Service First" and the introduction of Public Service Agreements.

The establishment of arms-length agencies subject to agreements setting quantitative targets and agency responsibilities for the improvement of their services has been matched by the establishment of mechanisms to police, guide and monitor the provision of these services. Consequently, the United Kingdom has experienced a marked growth of "regulation inside government" over the last two decades.

Background

Simplification of regulations

There is no centralised or systematic process underway to consolidate and codify the stock of regulations. A few formal consolidations have been carried out by departments on an *ad hoc* basis, including some linked to the administrative simplification programme (see below). A number of departments have also carried out informal consolidations.[5]

Legislative and Regulatory Reform Act

The lack of legislative capacity in the parliament was identified some time ago as a barrier to reviewing existing regulations which raise problems. The issue was first addressed under the 1994 Deregulation and Contracting-Out Act, which proved inadequate and was followed by the 2001 Regulatory Reform Act. This act gave ministers a considerably more effective tool to remove unnecessary burdens in primary legislation by amending or repealing secondary regulations.[6] The Regulatory Reform Act was in turn replaced by the 2006 Legislative and Regulatory Reform Act. The current act strengthens the powers of the previous act, as well as extending the safeguards against its misuse. It confirms the main objective of supporting the government's Better Regulation policy. At the same time it gives the parliament the power to oppose a draft order.

Box 5.3. Legislative reform orders

Amendments under the act are known as legislative reform orders. These orders can be used to:

- make and re-enact statutory provision;
- impose additional burdens provided they are proportionate;
- remove inconsistencies and anomalies in legislation;
- deal with burdensome situations caused by a lack of statutory provision to do something;
- apply to all legislation that has not been amended in substance during the last two years;
- relieve burdens from anyone, except government departments where only they would benefit; and
- allow administrative and minor detail to be further amended by subordinate provisions orders.

Post implementation reviews and sunset clauses

The new impact assessment form requires officials to commit to a date when they will review the actual costs and benefits of any new proposal, and establish whether the policy has achieved the desired effects. This post implementation review should typically occur within three years of implementation, depending on the nature of the policy. The review should establish a baseline and include the success criteria against which the effectiveness of the policy will be judged. Departments are also asked to consider the scope for simplification, including revisiting EU directives as part of the EU programme of simplification where relevant.

The impact assessment guidance also recommends that opportunities to use sunset clauses should be explored where appropriate.[7]

Administrative burden reduction for businesses

Policy on administrative burden reduction for businesses

The government has set up a simplification programme to reduce burdens on business, based on the Standard Cost Model (SCM) methodology developed by the Netherlands. This was used to establish a May 2005 baseline of GBP 13.2 billion of annual administrative burdens on the private and third (voluntary and community) sectors. The government announced in autumn 2006 an overall net reduction target of 25% by 2010, to be achieved across most central government departments and some agencies (35% for the Cabinet Office).[8] There are separate targets for Her Majesty's Revenues and Customs (HMRC), which has a tax simplification programme, and the Financial Services Authority, which conducted their own exercises. Reduction targets vary across departments but are, with a couple of exceptions, at least 25%.[9]

Institutional framework, guidance and support

Departments are supported and challenged by the BRE, which seeks to ensure credible and deliverable plans. The BRE has established a range of tools, guidance and training for departments (Box 5.4).

Box 5.4. Tools, guidance and training support for departmental simplification plans

Tools

Administrative burdens calculator. A web-based tool to model the administrative burden of new regulations, or the impact of simplification measures. This also acts as the "public face" of the programme.

Administrative burdens database. Provides access to the information gathered during the administrative burdens exercise. Will also be used as an audit trail of changes as a result of the programme.

Administrative burdens spreadsheet. Provides officials with an alternative method for presenting data on new regulations, which can then be imported into the database.

Training

Standard Cost Model (SCM) online training. Provides an overview of the SCM and explains its key components. Includes two case studies, for a new regulation, and for simplification of an existing regulation. Modular so that the user can come back to it at any time.

Guidance

Standard Cost Manual. Explanation of the SCM.

How to simplify regulations. Short report that highlights key areas for simplification, including some real life examples already implemented.

Simplification guidance. Guidance to help departments update their simplification plans.

PwC Technical Summary. A technical summary by the consultants who measured the baseline burdens on how they applied the SCM to do this.

Methodology and process

Within the framework of the UK SCM Manual and a programme of annual rolling simplification plans, departments are free to set up their own approach to meeting their target. This means that they continue to measure the administrative burdens of regulations introduced since 2005, and each year's plan therefore reflects the administrative burdens of any regulations introduced since the last plan. If the burdens go up they have to work harder to meet their target. As the United Kingdom has a net reduction target, departments are required to report any new burdens that are introduced. These are reported in the annual simplification plans, and have also been integrated into the impact assessment process. Administrative burdens stemming from new regulations are estimated and reported on the front page of the new impact assessment template. The measurement of new burdens is consistent with the SCM methodology and the BRE has developed the Admin Burdens Calculator, a web-based tool used to model the administrative burden of new regulations or the impact of simplification measures. This also acts as the public face of the United Kingdom's administrative burden data.

There is a wide variety in the type of burdens addressed. The specific targets range from larger measures affecting many businesses across sectors (for example abolishing the need for private companies to hold an annual general meeting), to smaller measures which are sector specific (for example enabling sales of timber to be negotiated electronically). The means of delivery also vary from reducing burdens by making forms

simpler; creating exemptions from regulatory requirements; or consolidating law by bringing different regulations into a more manageable form.

Box 5.5. Calculation of administrative burden reductions[1]

Administrative costs are defined as the annual recurring costs of administrative activities that businesses (and the third sector) are required to perform in order to comply with central government obligations.

The SCM methodology was used. This is a systematic approach to measurement that provides indicative data on the administrative costs of regulation. Administrative burdens were then calculated by making a Business As Usual (BAU) adjustment (BAU is activities that businesses would do anyway). Regulations are broken down into manageable components in order to calculate the baseline.

Measurement was a very significant exercise. It cost approximately GBP 10 million excluding government internal costs, and involved over 8 500 interviews, and over 200 expert panels and focus groups, who helped determine what business would do in the absence of regulation. These engaged individual businesses, charities and voluntary sector organisations. For BAU, the estimate was via an independent panel (representatives from the Better Regulation Commission, Confederation of British Industry (CBI), Forum of Private Business, Federation of Small Businesses, Small Business Council, British Property Federation, House Builders Federation, Royal Institute of Chartered Engineers, National Farmers Union and others.

All central government regulations were mapped. The responsible department and the origin of the regulation were then identified, the obligations defined, and the costs measured.

The plans published in December 2007 go further than administrative burdens. They set out proposals for the reduction of the policy costs of existing regulations, defined as "the costs inherent in meeting the aims of a regulation, for example the direct cash cost of installing a filter on a factory chimney as prescribed by the regulation, or indirect cost such as necessary changes in working practices". They also address regulatory irritants (factors which are burdensome to business but not necessarily costly).

Public consultation and communication

The 19 participating departments publish their annual simplification plans on line.[10] BRE also publishes summary documentation.[11] The first annual departmental simplification plans were published in December 2006.

The government has established a website which encourages stakeholders and their representatives to submit ideas for simplifying regulation or reducing administrative burdens. Departments must respond to these ideas within 90 days. Those ideas that are adopted feed into departmental simplification plans. The government considers that the website has been successful. Out of 375 ideas received and considered by government, 74 ideas have been taken forward.

Achievements so far

The plans published in December 2008 showed more than 500 initiatives, with GBP 3.4 billion identified for delivery by 2010 (26% of the 2005 baseline), of which over GBP 1.9 billion had already been delivered.

The 2008 BRE report on the programme (BRE, 2008b) shows that the net burden reduction will accelerate up to 2010. Net annual savings delivered to date as a percentage

of the baseline range from 0% for 4 of the 19 departments, to 1% - 45% for the rest. Her Majesty's Revenue and Customs (HMRC) had delivered net annual reductions of GBP 174 million, as well as a net reduction in the wider administrative burdens of the tax system of GBP 1 134 million.

Table 5.1. Simplification programmes: Net burden reductions

	2005-06	2006-07	2007-08	2008-09	2009-10
Net reduction (GBP million)	321	633	1 485	2 635	3 353

Source: Better Regulation Executive, United Kingdom government.

When asked about the BERR's relative slowness of achieving results, the BRE explained that several of BERR's planned changes that are expected to have a big impact require changes in legislation and then time for implementation.[12]

The NAO has published a report on the programme.[13] Their findings are that there is a perception that burdens have increased (regulatory creep). It is hard for departments to deliver. The government would do better to focus on outcomes and the programme should not just address administrative burdens. There is a cost to the government of the programme, even if it is hard to disentangle and quantify that a particular amount of resource has been used to take the programme forward within departments. Simplification plans have evolved in response to this to address more than administrative burdens, and the BRE has introduced an external validation panel to validate the savings that departments claim.

Business perceptions of the United Kingdom's regulatory management agenda and achievements are an issue. The NAO carry out an annual survey of business perceptions of the programme (based on a random sample of 2 000 firms). Part of the perception problem seems to be that the impact of the programme on individual businesses is very small, but the "population" benefits. The 2007 survey also showed that although the majority of respondents understand the purpose of regulation, 60% agreed that the overall level of regulation is an obstacle to their success, and nearly half rated a reduction in costs as very important. Business concerns focused on the complexity of regulations and 67% did not believe that the government understands business well enough to regulate. The NAO found that general perceptions had improved since 2006, but business reported no change in the amount of time spent on administration. This suggest that efforts to engage more directly with businesses since the programme started, rather than to take a civil servant's view of what matters, has borne some fruit, even if there is further progress to be made. The OECD team were told that business likes to feel that it has been heard (even if their view is not taken up).

Other simplification measures for businesses

Small firms

The government committed itself in its 2007 budget to consider flexibilities in the approach to regulating SMEs, given that they are disproportionately affected by regulations. The policy consists of examining whether SMEs can be exempted from new regulatory requirements or be the subject of simplified enforcement. Departments are now required to undertake a more rigorous assessment of whether SMEs need to be covered by new regulations or could benefit from simpler enforcement procedures or guidance, where this can be done without affecting essential protections. Where this is not

possible departments are asked to work with small firms to design specific approaches for them. When laying legislation (both primary and secondary) before the parliament, the aim is to include in the accompanying memorandum an explanation of the approach adopted towards small firms. The approach has already been effective in areas like company law and the transposition of the Information and Consultation Directive. The BERR has made a proposal to the European Commission that it too should consider flexibilities (exemptions being one of several options).

Licensing and planning

The interpretation of national planning policy (land-use, building, etc.) is with local authorities, via local development plans. Planning applications must be consistent with the local development plan. Types of planning application vary from listed building and conservation area consents, to permissions to display advertisements. Local authorities have some discretion over whether to allocate a licence, so long as they stay within the rules. The decision is taken by elected officers.

The OECD's 2007 economic survey of the United Kingdom (OECD, 2007) considered that restrictive planning regulations hindered productivity growth by limiting new firm entry, and that they should be simplified. An effective planning system is part of the reforms envisaged by the government to increase productivity. Following the Barker Review of Land Use Planning, and subsequent Planning White Paper, a planning bill is currently before the parliament. It includes reforms to increase the efficiency of the planning process to reduce the burden on business (and individuals), by reducing the number of minor applications to planning authorities, streamlining information requirements for all applications, and improving the speed and efficiency of the appeals process.

Licensing is also an activity largely carried out at local level, based on national regulations. There is no general project aimed at the licensing regime. Some departments, regulatory agencies and local authorities have launched their own initiatives to simplify licensing for businesses.[14]

Box 5.6. The Better Regulation of Over the Counter Medicines Initiative (BROMI)

This initiative, launched by the Medicine and Healthcare products Regulatory Agency (MHRA), seeks to streamline burdens and reduce waiting times for licence approvals. The agency notes that regulations in this area have grown incrementally over the last four decades, and now constitute a veritable "regulatory mountain". Every year brings 2 500 new licences, and 25 000 licence updates. The BROMI initiative is part of the Department of Health's simplification plan. The agency received a National Business Award for Better Regulation for its initiative.

The aim is to encourage regulation in this area toward a more risk-based and proportional approach. The range of regulatory options runs from full assessment, to third party approval, to self certification (the least onerous). The initiative among other issues has led to changes in the licensing regime, based on risk assessment. A pilot is underway to assess the feasibility of licence holders working together to produce a common safety update report for the same medicine.

The institutional aspects are a useful example of co-operation between the different parties involved. There is good co-operation between the relevant trade association, the agency and the parent department's Better Regulation Unit.

The EU and international aspects are important. There is the need to work within the context of strict EU guidelines on updating safety warnings. Simplification models are also being explored in US/EU co-operation discussions.

Administrative burden reduction for citizens

"Service transformation" and "transformational government" are the terms used to denote e-Government and ICT initiatives in support of citizens. The aim is to ensure that ICT is used both in the back-office and in service delivery, and becomes an integral part of the way that government works. Departments each have a "service transformation agreement" which together form a programme of action to promote public services that are more personalised to the needs of citizens and businesses,[15] and an integral part of government plans for public service delivery. The plans include:

- *Information service for citizens.* Piloting a "Tell Us Once" service that enables citizens to inform public services just once about changes of circumstances, about birth, bereavement and change of address.

- *Website rationalisation.* Rationalising government websites by closing down the majority and moving their citizen and business content to the government's two single access websites,[16] aimed at streamlining access to information and services.

- *Accreditation of public call centres.* Requiring all publicly funded call-centres to undergo formal published accreditation to promote more efficient services for citizens and businesses.

- *Streamlining contacts with officials.* Reducing avoidable or duplicated contacts with call centres and local offices.

- *Giving a voice to individuals.* Empowering individuals to influence their services, with greater opportunities and direct involvement to influence the way they are designed and delivered.

- *Information management.* Improving management of information and identity across the government's delivery systems to reduce wasted time and inconvenience for citizens, businesses and frontline workers.

- *An interactive internet portal* that gathers up all citizen-facing government services in one place has been established.[17]

Administrative burden reduction for the administration

The cutting bureaucracy for public services initiative, which is also being carried forward with the support of the BRE, is part of public sector reforms aimed at improving public services, against a background of tighter public sector budgets which demand efforts to work in more efficient and productive ways, and a concern about rising burdens on frontline public sector workers.[18] The BRE note that there are some synergies with business programmes. For example, more efficient management of paperwork for immigrants helps businesses which may want to recruit them. Inspections, targets and performance management systems aimed at better public services have been in place for several years.[19] The initiative is aimed, as its name implies, specifically at removing unnecessary bureaucracy and empowering frontline public sector workers (such as teachers, police and health professionals who are in direct contact with citizens for the provision of public services) to better respond to the public. The strategy was published in June 2007 by the BRE. The centrepiece is a commitment to reduce by a net 30% by 2010

the data and information that central departments and agencies request from frontline workers.

Institutional framework

Departments are required to produce action plans under the guidance of BRE, which will form part of their simplification plans. There is a link to public service agreements (PSAs) and departments' work on meeting value for money targets, as well as to local authority performance indicators. In several instances the reduction of burdens on public sector front-line staff forms part of departments' over-arching objectives, agreed with the Treasury in their PSAs.

Methodology and process

The approach is to eliminate or simplify data requests, and promote more efficient data collection in some instances through the increased use of ICT. However, unlike the programme to reduce administrative burdens on business, there has been no single, systematic attempt to establish a quantified baseline. The BRE explain that there are methodological difficulties in making a precise calculation, and it is best to leave some leeway for a tailored approach, so that departments can judge what is necessary and unnecessary bureaucracy (justice and accountability, for example, require that the police keep some forms). Instead, the BRE has agreed approaches with each relevant department for reducing the data burdens. It has produced a paper, shared with departments, which outlined approaches that could be taken to measure and implement the data reduction exercise (the paper was not formally published).Departments have committed to reduce data stream requests on the public sector front line by 30% by 2010. Progress is covered in departments' 2008 simplification plans. Each department has established a measurement system. Some departments are calculating their burden reduction in numeric terms, whereas others are assessing their reductions on the basis of burden (*i.e.* cost or time saved rather than numbers of data-streams).

There is no single definition of the frontline, but government papers on the strategy explain that those falling within the scope are likely to have some or all of the following characteristics: providing a service direct to the public through a staff to customer transaction; subject to independent inspection by bodies other than the NAO; recognised as an arms-length public body, executive agency or local public sector body. This means that the strategy reaches down to local levels, and affects inspection and enforcement activities. Departments make the final judgment on coverage, aided by the BRE to ensure consistency.

The approach emphasises the need to work closely and directly with frontline workers ("giving a voice to the frontline"), in efforts to address irritants, that is issues that particularly bother frontline workers and stand in the way of doing their job more effectively, not necessarily the most costly requirements or those that are hardest to comply with. Departments have established groups for this purpose, or are making use of existing ones to highlight the issue of bureaucracy in the workplace.[20] Frontline staff has told the BRE that they spend some 12.5% of their time on bureaucracy they consider unnecessary. They are encouraged to send BRE their suggestions for reducing bureaucracy.[21] "Insight" or "gateway" groups were formed with the participation of frontline workers to discuss workplace bureaucracy and how to tackle it. BRE will also be organising regular research on the views of bureaucracy by frontline workers. The BRE

will also be working with bodies in the public service delivery chain who play a key role in managing the delivery of local services.[22]

Departments have published lists of the data that they request of the public sector frontline; many were published in the 2007 simplification plans. Departments will also publish details of frontline irritants in their simplification plans, together with ideas on how the issues should be addressed.

Achievements so far

Departments identified over 800 data burdens in their 2007 simplification plans. Although the picture is not fully complete, steps are being taken to comply with this requirement; 9 departments identified 133 datastreams for removal in their 2008 simplification plans. Some departments are more active than others, with some viewing the target as an "aspirational" one.

Box 5.7. The Police Annual Data Requirement

The Annual Data Requirement (ADR) is a list of all the routine requests for data made to all police forces in England and Wales. The aim of ADR is to reduce bureaucracy on frontline officers and to ensure that the value of the data collected outweighs the cost. It brings all requests for police data across central government together, reducing unco-ordinated or duplicate requests for information in slightly different formats. The process has evolved to challenge existing data as well as consider proposals for new data.

Source: Cutting Bureaucracy from our Public Services, June 2007.

Use of e-Government

ICT will be used to streamline data collection and share it through a new reporting mechanism – the Data Interchange Hub – which has recently been developed by the Department for Communities and Local Government in partnership with other departments and the Audit Commission (the audit body for local authorities). The aim is to provide secure and centralised data collection, storage and interchange for the local authority national indicator set, making it easier for local authorities to report against indicators, and ensuring that data only needs to be collected once for multiple uses by interested parties. The BRE note that ICT/data sharing is more sensitive for citizens and the public sector than it is for business in the UK culture. The Data Interchange Hub has been introduced with two main aims: to reduce the burden on collecting data for local authorities, and to ensure that local authorities have the information that they need to gauge their own performance against the national indicators. It is funded by the Department for Communities and Local Government. The Ministry of Justice is responsible for the data sharing rules.[23]

Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification via consolidation etc. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, *i.e.* taking account of the impact of new regulations in meeting target reductions.

2. For example the Department of Culture Media and Sport has simplified multiple licensing regimes under one Act, removing need for regular reapplication for same licence. This has delivered net savings of GBP 99 million. The Competent Persons Scheme of the Department for Communities and Local Government allows self-certification of building work by qualified persons, cutting out the need for local authority or private sector inspectors (annual net saving of GBP 129 million).

3. The BRE notes that baselines need updating if the target errors were found in the original baseline such as double counting or missing issues. In any event, is a net one, to take account of new burdens.

4. The recommendations of an independent review on planning regulations are now being taken forward *www.berr.gov.uk/whatwedo/bre/reviewing-regulation/Planning%20Review/page45190.html.*

5. For example social security legislation, which is updated every three months, and immigration rules. A BERR company law initiative seeks to rationalise an important part for business.

6. It is a mechanism similar to the "*delegislazione"* mechanism used in Italy.

7. *www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44269.html.*

8. Having a net target means that the programme is not just about the stock of existing regulation. It also seeks to take account of the flow of new regulations. For convenience and because much of the effort in practice goes on the stock, the programme is reviewed under the "stock" section of this report.

9. For example, BERR: 25%; Cabinet Office: 32%; Department for Environment, Food and Rural Affairs: 29%; Department for Innovation, Universities and Skills: 32%; Government Equalities Office: 56%; HM Treasury: 72%.

10. Department for Business, Enterprise and Regulatory Reform (BERR); Cabinet Office; Charity Commission; Department for Children, Schools and Families (DCSF); Department for Communities and Local government (DCLG); Department for Culture, Media and Sport (DCMS); Department for Environment, Food and Rural Affairs (DEFRA); Department of Health; Department for Innovation, Universities and Skills (DIUS) ; Department for Transport (DfT) ; Department for Work and Pensions; Food Standards Agency (FSA) ; Forestry Commission; Government Equality Office; Health and Safety Executive (HSE);

HM Treasury; Home Office ; Ministry of Justice ; Office for National Statistics; Financial Services Authority; Foreign & Commonwealth Office (FCO).

11. *www.berr.gov.uk/bre/policy/simplifying-existing-regulation/simplification-plans/page44063.html.*

12. The bulk of BERR savings will come from five major initiatives: implementation of the Companies Act 2006; Implementation of the Unfair Commercial Practices Directive; the Employment Law Guidance Project; the Employment Bill which will implement recommendations of the Gibbons Review of the dispute resolution system and the Consumer Law Review. 2007 BERR Simplification Plan *www.berr.gov.uk/files/file42767.pdf.*

13. Reducing the cost of complying with regulation: the delivery of the administrative burden reduction programme, 2007.

14. As well as the BROMI initiative in the main box, Coventry City Council explained its efforts to streamline the paperwork involved in licensing to the OECD team.

15. *www.cio.gov.uk/transformational_government/strategy/index.asp.*

16. *Directgov* and *Businesslink.gov.uk.*

17. Directgov (*www.direct.gov.uk*).

18. Cutting Bureaucracy for our Public Services, June 2007.

19. For example, targets to reduce waiting times at doctors' surgeries, inspections to highlight better and worse performing schools.

20. For example, the National Policing Improvement Agency (an arms-length body funded by Home Office) has established a group of frontline officers that meets regularly to discuss bureaucracy in the workplace; an interim report was published in February 2009. BRE and HM Treasury held *ad hoc* focus groups with officials from leading public sector organisations in summer 2008 to discuss, amongst other matters, ways of delivering services more effectively.

21. *www.betterregulation.gov.uk* is the website.

22. For example, Strategic Health Authorities and Local Education Authorities.

23. There was a recent independent review. *www.justice.gov.uk/guidance/datasharing.htm.*

Chapter 6

Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An ex ante assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes1, and the adoption of rules to promote responsiveness, such as "silence is consent".2 Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

Assessment and recommendations

Compliance and enforcement

The practical roll-out of the Hampton recommendations is a fundamental and comprehensive effort to embed risk-based regulatory management at ground level. This is an area where there have been significant developments since the 2002 OECD report. There appears to be steady progress in taking forward the Hampton recommendations, energetically spearheaded by the BRE (Better Regulation Executive). The changes proposed by Hampton were innovative and have been a source of inspiration to other countries (everybody has heard of Hampton). Change was also particularly necessary in the United Kingdom, given its complex and overlapping structures for enforcement. Consistent change across all regulatory agencies and local authorities will take time. The

recent BRE and National Audit Office (NAO) reviews of progress note this issue in relation to the five major regulators. The mix of initiatives which has been put in place, including statutory requirements on regulators (the Regulators' Compliance Code) as well as softer approaches such as the Regulators Hampton Implementation Network Group to exchange views seems appropriate to the challenge.

Recommendation 6.1. The BRE needs to keep up the pressure in the roll-out of reforms

Box 6.1. Comments from the 2002 OECD report: Enforcement

Tendencies toward a regulatory policy based on performance instead of command-and-control based rights and obligations create new challenges for the appraisal of regulations. Some important regulatory areas such as occupational health and safety regulations have in recent years increasingly adopted general standards. This means that actors are given greater freedom to determine what action will best meet the regulatory goal. It also means that the concrete content of the standard is determined by enforcement and adjudication authorities *ex post* rather that by the regulator *ex ante*. Both these effects create challenges for the appraisal of regulatory proposals since they are faced with the uncertainties of the behavioural response of actors to the standard and how the authorities will interpret it. Thus, while this sort of performance-based regulation should, in principle be less restrictive, it does make it more challenging for the public authorities to appraise regulatory proposals in advance, since they will be faced both with uncertainty about how the regulated will respond and how interpretation of the standard will develop.

To reduce the variability in the quality of enforcement, in particular between local governments, the United Kingdom government - in close involvement with relevant stakeholders- have developed an Enforcement Concordat. The Concordat is a voluntary non-statutory code aimed at helping compliance, describing what business and others can expect form enforcement officers. The vast majority of local authorities and central agencies have adopted the concordat.

Rebalancing enforcement resources away from inspections in order to put more effort into preventative advice on compliance is a major step forward. Rebalancing resources is one of the most important developments following the Hampton Report, even if its application remains uneven.[3]

Monitoring compliance rates is also important. The new approach does not invalidate monitoring of compliance rates. Compliance is not monitored as such (some countries do this). A clear picture of compliance rates could help in evaluating the effectiveness of current enforcement initiatives, and guide next steps in enforcement policy.

Recommendation 6.2. It would be useful to collect data, using the records already compiled by agencies and local authorities, in order to have a strategic picture of underlying trends and difficulties.

The new regulatory sanctions regime is another positive development. The new regime gives regulatory agencies new, more flexible civil administrative sanction powers as an alternative to criminal prosecution. It is too early to assess its effectiveness in practice.

The Hampton recommendations relating to regulatory structures and the need for agency rationalisation remain important. The United Kingdom's crowded regulatory

structure would be made more manageable with further rationalisation wherever this is possible. The Hampton Report spoke of the "right regulatory structure", recognised that there was a limit to what could sensibly be done, but still drew attention to the problem. It advocated consolidation of national regulators, better co-ordination of local authority regulatory services, and clearer prioritisation of regulatory requirements. These comments remain valid.

Recommendation 6.3. Consideration should be given to how the current regulatory structure could be further streamlined, and the creation of any new agencies or other regulatory structures should wherever possible continue to be avoided.

Appeals

Recent developments appear to be reinforcing the judiciary's engagement in regulatory issues. The Human Rights Act has extended the role of the courts in areas such as data protection and civil liberties, and the courts appear to be increasingly involved in rulings on guidance materials produced by the government, as well as experiencing a rise in litigation.

Recommendation 6.4. Consideration should be given to reviewing the changes in the role of the judiciary which may be usefully addressed by Better Regulation processes. The deployment of certain Better Regulation policies could help to address any emerging issues. Setting policy in open sessions for example, makes subsequent challenge more difficult.

Box 6.2. Comments from the 2002 OECD report: Appeals

There is a growing tendency for judicial review to be sought of regulations of major economic or commercial significance, and even of constitutional questions. In 1999, out of 4 959 applications to the High-Court for permission to apply for judicial review, 1 373 were granted. Access to judicial review is constrained. Except in Scotland, an application to the High-Court takes place in two stages. First a single judge of the Court considers whether there is an arguable case. If there is, he grants permission to proceed to a full hearing before a panel of judges. The application must be made in any event within three months of the action or decision, which is complained of. In sum, judicial review is limited to issues of legal authority, fundamental procedural fairness, and gross proportionality to proper purposes, while it is nearly impossible to appeal the content of a regulation.

Background

Compliance and enforcement

Monitoring of, and policy on, compliance

Compliance is not monitored as such. National regulatory agencies and local authorities vary significantly in both how they monitor and record compliance, and the accuracy of these records. However many regulators, particularly local authorities, have developed systems configured around reporting requirements. The main quality assurance body for local government, the Audit Commission, requires that local authorities report on rates of non-compliance.

The UK policy approach to compliance since the Hampton review (see below) has been to rebalance enforcement resources so that inspectors spend more time advising on compliance, in order to minimise the risk that businesses will be in breach of regulations. This is a fundamental part of the risk-based approach to enforcement. The idea is that a more proportionate approach to inspections releases time to help businesses understand better what they need to do to comply with regulations.

Box 6.3. The Food Standards Agency: A new approach to compliance and enforcement

Starting with the slogan "Safer food, Better Business" the Food Standards Agency carried out a GBP 2 million research programme with SMEs (directly, not through representative organisations) on the issue of compliance. The research revealed that SMEs (especially the smallest firms) often did not know, let alone understand, the regulations they were supposed to comply with. A new approach was therefore launched by the agency in 2005. This included a campaign and materials aimed at SME management; DVDs to train staff in 16 languages (to counter large staff turnover and also the many different nationalities found in the restaurant trade); training programmes for inspectors emphasising a tailored approach to visits and coaching; and an emphasis on simplicity in the materials given the little time that SMEs can spend on this. The approach was appreciated. An agency survey found that 80% of SMEs considered it useful, and 45% said it improved profitability.

The BRE considers that the approach developed by the Food Standards Agency could be replicated, although it would be difficult to fit all areas.

The Macrory review on regulatory sanctions[4]

This review, carried out in 2006 in the wake of the Hampton Report (Box 6.4), made nine recommendations. In addition to the recommendations, the Macrory report set out six "Penalties Principles" and seven characteristics.[5] The report aimed at ensuring that regulatory agencies had a set of modern and flexible sanctions to use, that were proportionate and appropriate relative to the risks faced. The government accepted its recommendations in full, and these have been taken forward through the Regulatory Enforcement and Sanctions Act 2008. This gives regulators new civil administrative sanction powers, based on the report's recommendations, as an alternative to criminal prosecution when this is not a proportionate response. Monetary penalties have been made more flexible. There is also more flexibility with compliance notices (the time that can be given firms to get back into compliance after they have been found in breach of regulations). The report also raised some deeper issues, including a concern that regulators can act as judge and jury, and the need for a radical overhaul of the tribunal system.

A new policy on enforcement

Responsibilities for enforcement are divided between national regulatory agencies and local authorities, with the latter carrying out four times as many inspections as the former. There has been a succession of reviews over the last few years leading to a reappraisal of the approach to enforcement, which is now being taken forward on the ground, with statutory backing where needed. The statutory basis now includes the Regulatory Enforcement and Sanctions Act, enacted in July 2008, and the Regulators Compliance Code, a statutory code of practice for regulators which came into force in April 2008. The act imposes a statutory duty on five economic regulators,[6] and enables a

minister to impose a similar duty on any other regulator, not to impose or maintain unnecessary burdens.

The Hampton Review

The Hampton Review sought to embed a new policy approach to enforcement, based on proportionality and risk-based assessments to help target resources on "high-risk" businesses that are unlikely to comply with regulations, and reduce the administrative burden on those that do. The level of enforcement was not proportionate to risk, and this was affecting business competitiveness. The review built on initiatives and trends that are already started.[7]

Hampton found that risk assessment, though widely recognised as fundamental to effectiveness, was not comprehensively implemented by enforcers. It also found that the system as a whole was unco-ordinated, that there was inconsistency in the application of regulation, and that good practice was not uniform. There were too many forms, and too many duplicated information requests. Inspections must be streamlined. The review and its recommendations (which were all adopted by the government) mapped out the work needed to fully embed risk assessment in enforcement by regulators, including local authorities.

Hampton also underlined the importance of what it called the "right regulatory structure". This concept included better impact assessments for the creation of regulations that are easier to enforce and understand; consolidation within national regulators to create a "simpler more consistent structure"; fewer regulators; better co-ordination of local authority regulatory services; clearer prioritisation of regulatory requirements by central government departments and national regulators; and better accountability throughout the regulatory system.

Box 6.4. The Hampton Report recommendations

- Comprehensive risk assessment should be the foundation of all regulators' enforcement programmes.
- There should be no inspections without a reason, and data requirements for less risky businesses should be lower than for riskier businesses.
- Resources released from unnecessary inspections should be redirected toward advice to improve compliance.
- There should be fewer, simpler forms.
- Data requirements, including the design of forms, should be co-ordinated across regulators.
- When new regulations are being devised, departments should plan to ensure enforcement can be as efficient as possible, and follows the principles of the report.
- Thirty-one national regulators should be reduced to seven more thematic bodies.

An important Hampton recommendation was that the number of national regulatory agencies should be reduced. Specifically, Hampton recommended that 31 bodies should be merged into 7 thematic ones. This had already started to happen, with the consolidation of regulators that led to the establishment of OFCOM (communications) and the FSA (financial services), among others. The establishment of OFSTED

(education inspections) has reduced the number of education inspectorates from 11 to 4. Funding cuts have helped the process along, and not least, encouraged the take up of the new approach to enforcement.[8] More mergers are in the pipeline.

The Regulators Compliance Code

The Regulators Compliance Code is a statutory code of practice which came into force in April 2008.[9] The aim of the code is to ensure that inspection and enforcement is efficient, both for the regulators and those they regulate. The code gives the seven Hampton principles relating to regulatory inspection and enforcement a statutory basis:

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- No inspection should take place without reason.
- Businesses should not have to give unnecessary information or give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

Taking stock of progress: the Hampton implementation reviews

The BRE and NAO have jointly carried out reviews of the five major national regulators to assess whether they have adopted the principles of good regulatory practice set out by Hampton.[10] The reviews assessed performance against the principles of an effective regulatory regime. These principles were the design of regulations; sanctioning (based on the recommendations of the Macrory Report); advice and guidance; focus on outcomes; data requests; and inspections. Each review was carried out by a team of four made up of the BRE, the NAO, an external stakeholder (local authority enforcement representative, National Consumer Council, trading standard body), and another regulator to act as peer reviewer. There is no formal scoring or rating system as regulatory agencies are too different (for examples as regards their powers and independence). Also, the Hampton principles have to be given effect according to the context within which each regulator operates. Reports on the reviews of the five major regulators were published in March 2008. In addition a compendium report that draws out key messages from the individual assessments was published in July 2008 by the NAO. Further reviews of 31 national regulatory bodies that were in scope of the Hampton Report are being conducted from October 2008. As well as further reviews, the Regulators Hampton Implementation Network Group has been set up to exchange views and generate discussion.

The reviews concluded, broadly, that there is progress, but it is uneven and changing the culture takes time. There are some good examples. Some agencies have been risk-

based for some time. Advice and guidance from regulatory agencies could be improved. There is often a disconnect between the "top of the shop" (management) and on the ground. Regulators are not sharing best practice as much as they might.

Appeals

There are a number of avenues: administrative appeals; ombudsmen; the Human Rights Act 1998; and judicial review by the courts.

Administrative appeals

Administrative appeals – rather than appeals to the courts – are the first recourse for appeals in relation to regulatory decisions. All public bodies which have significant dealings with the public need to have well-publicised and easy-to-use complaints procedures. One central web site provides easily accessible information about complaint procedures with direct links to relevant departmental and agency web sites. Some public bodies have their own external adjudicator.

Ombudsmen

The second route for administrative complaints is to an ombudsman. Most United Kingdom public bodies are within the jurisdiction of an independent ombudsman. Accessibility to ombudsman services has been the subject of criticism in the past. The Cabinet Office, which is responsible for the system, implemented reforms in 2007, which will allow ombudsmen to work collaboratively on cases relevant to more than one of their jurisdictions, to carry out joint investigations and to produce joint reports.[11]

The Human Rights Act

The Human Rights Act 1998, which incorporates the European Court of Human Rights into the UK legal system, provides further safeguards and possibilities to appeal regulatory decisions. The UK courts must respect the rulings of the European Court in Strasbourg in relation to the European Convention of Human Rights. If an act is contrary to the European Convention on Human Rights, they can declare it incompatible but not override it. The parliament usually changes the act as a result.

Judicial review

Judicial review may be used where there is no right of appeal, or where all other avenues of appeal have been exhausted. The scope of judicial review is potentially very large. Judicial review allows judges (and through judges, citizens and other stakeholders) to review the lawfulness of an enactment or a decision, action or failure to act in relation to the exercise of a public function. The conduct of government authorities may be challenged on the grounds that their actions may be unlawful, irrational, or that they have followed improper procedure. These accusations must be based on set procedures or laws that have been enacted by the parliament.

Judicial review is relevant to many areas of regulatory policy, including licensing (whether licences have been applied properly), and supervision of the actions of regulatory agencies. Guidance notes and codes of practice drafted by government authorities to clarify laws and regulations (including Better Regulation procedures such as the Code of Consultation) may also be the subject of judicial review.

Developments

The introduction of the European Court of Human Rights into UK law has enlarged the role of the courts in areas such as data protection and civil liberties, and imposed new constraints on the executive. The courts also appear to be increasingly involved in rulings on "soft law", that is, materials issued by the executive such as codes of practice or guidance (including Better Regulation material such as the Code of Practice on Consultation), which are increasingly considered judiciable. Another development that is leading to an increase in the involvement of the judiciary in regulations is the rise of a more risk-averse society. Combined with a "no win, no fee" approach to legal challenges, this, according to anecdotal comments made to the OECD team, has led to a rise in litigation.

Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. One local authority interviewee put it this way: "Why inspect compliant businesses? This is what Hampton changed."
4. "Regulatory Justice: making sanctions more effective", 2006.
5. A sanction should: *i)* aim to change the behaviour of the offender; *ii)* aim to eliminate any financial gain or benefit from a non-compliance; *iii)* be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction; *iv)* be proportionate to the nature of the offence and the harm caused; *v)* aim to restore the harm caused by regulatory non-compliance, where appropriate; and *vi)* aim to deter future non-compliance.

   Seven characteristics. Regulators should: *i)* publish an enforcement policy; *ii)* measure outcomes not just outputs; *iii)* justify their choice of enforcement actions year on year to stakeholders, ministers and the parliament; *iv)* follow-up enforcement actions where appropriate; *v)* enforce in a transparent manner; *vi)* be transparent in the way in which they apply and determine administrative penalties; and *vii)* avoid perverse incentives that might influence the choice of sanctioning response.
6. OFT, OFGEM, ORR, OFWAT, POSTCOMM.
7. For example, the Department of Health Concordat led to the establishment of an advisory group of regulators, inspectors and users set up by statute in 2004 to debate regulation in the health sector. It provides an independent voice in the debate, and has been working on a bottom up approach to the regulation of health care issues, including a risk-based approach where appropriate.

8. For example OFSTED's budget was cut from GBP 240 million to GBP 180 million.

9. Under the Legislative and Regulatory Reform Act 2006.

10. The five regulators are: the Health and Safety Executive, the Environment Agency, the Office of Fair Trading, the Food Standards Agency, and the Financial Services Authority.

11. A Regulatory Reform Order was used to implement the reforms.

Chapter 7

The interface between member states and the European Union

Regulations emanating from the EU are of growing importance for member states, with an increasing proportion of national regulations originating at EU level. Whilst EU regulations[1] have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EC law are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market, avoid "gold plating" and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EC regulations. The view from "below" on the effectiveness of these policies may be a valuable input to improving them further.

Assessment and recommendations

EU-origin regulations make up an important and growing share of the regulatory stock. The effective management of EU-origin regulations is therefore vital if the United Kingdom is to control its regulatory burdens. The EU is currently sometimes perceived as an "add on" to domestic work.

Recommendation 7.1. The management of EU regulations should be a priority for Better Regulation policy.

It should be noted that this recommendation is being given effect. The government's April 2009 statement includes, among the key actions to reinforce better regulation in support of economic recovery, a commitment to "working closely with EU partners to further ember the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."

The institutional structures for handling EU regulations are well-established and appear to work smoothly. The orchestrating role of the Cabinet Office, combined with support from the BRE's Europe team, and clear guidance, appear to be appreciated and provide the right balance in principle between central direction and departmental

ownership of the process. The 2006 Davidson Review picked up weaknesses in the process and this has now been turned into a clear guide for departments (covering both negotiation and transposition). Linking *ex post* transposition with *ex ante* negotiation of EU regulation is a good idea, perhaps especially important in the United Kingdom context of frequent staff changes, but also relevant for the consideration of other countries where the processes are disconnected.

Recommendation 7.2. An evaluation of the application of the Davidson Review's recommendations in practice would be helpful at this stage.

Nevertheless, capacities to manage EU regulatory processes may need reinforcement. It is important that departments should own the process of managing EU regulations falling within their remit. This also means that they should have the capacities and internal structures to do this well. It may be a reflection of this that the United Kingdom's record of transposition is mid ranking. The United Kingdom appears to face a few issues. The civil service tradition of short postings (for fast track and senior civil servants, often not more than three years in one place) raises a continuity challenge – the official responsible for negotiating a draft EU directive is unlikely to be the official carrying out the transposition. There is a need to secure continuity of information and understanding across the two processes when this happens. Legal resources for supporting policy officials in the negotiation phase may also need reinforcement. Lawyers' input is needed at this stage as well as for transposition, for example to ensure that non-controversial technical aspects such as transitional provisions are drafted so as to avoid problems at the implementation stage. Departments with a particularly heavy load of EU regulations, for example DEFRA which is responsible for the environment as well as agriculture, need the capacities and resources to do a consistently good job.

Box 7.1. Comments from the 2002 OECD report: Transposition of EU-origin regulations

The common-law-based United Kingdom approach to detail and precision is sometimes at odds with the civil-law style of EU regulations. British implementation of EU directives is also often accused of 'gold-plating' EU directives. This critique is sometimes focussed on the sheer length of the directives when implemented into United Kingdom law. This "enlargement" of the directives, however, may also be due to British practice of writing penalties and sanctions into the law and of complementing directives with guidance to provide the regulated with as much certainty as possible (*e.g.* examples of the types of behaviour that would be considered in compliance or not with the regulation).

Recommendation 7.3. Consideration should be given to how departments, especially those with a heavy EU workload, can be better supported in the management of EU regulations.

The United Kingdom is one of the few EU member states to require ex ante impact assessment of EU regulations, but the approach could be strengthened. The United Kingdom requires *ex ante* impact assessment of EU regulations to inform decision making throughout the process, from establishing the negotiating position in the European Council through to deciding on the best way to transpose and implement the directive in the United Kingdom. Its efforts in this regard need to be encouraged. It is not clear that the approach works well in practice.

Recommendation 7.4. The BRE should consider monitoring the application of impact assessment to EU regulations, in order to identify the issues that need attention.

Monitoring of transposition by departments is fragmented and lacks formality. Monitoring is perhaps not strong or systematic enough to capture emerging issues. Transposition rates are monitored by the Cabinet Office and the BERR Europe team (responsible for Single Market policy) – not the BRE. The Cabinet Office keeps in touch with departments and informs the European Commission when directives have been transposed. No single central record is kept of transposition rates. There is no dedicated page on departmental websites for EU regulations and how they are to be transposed.

Recommendation 7.5. The United Kingdom should consider whether a more formal approach to monitoring transposition could help in improving transposition rates.

The United Kingdom is commendably active at the EU level, but it is such a large agenda that the approach could benefit from prioritisation. The issue of impact assessment, by the European Commission as well as at national level, should be a priority, alongside the current focus on reducing administrative burdens. Encouraging the European Parliament and the European Council to take a greater interest in Better Regulation is also important. The European Council is of course made up of United Kingdom and other member state representatives, so more effort might be needed to ensure that important Better Regulation issues embedded in draft texts for Council approval are vigorously defended. A strong forward look mechanism to catch upcoming EU issues is important.

Recommendation 7.6. Actions to help the development of Better Regulation at EU level should be prioritised.

It should be noted that this recommendation is being given effect. The government's April 2009 statement includes, among the key actions to reinforce better regulation in support of economic recovery, a commitment to "working closely with EU partners to further ember the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."

Background

General context

The United Kingdom estimated the proportion of EU-origin regulations to be around 40% in 2002 (OECD, 2002). It is now estimated at around 50%, based on calculations for the baseline to the simplification plans, more in some areas such as health. Government lawyers consider that their workload is increasing due partly to more EU-origin regulations. The perceived increasing weight of EU-origin regulations was a recurring comment to the OECD team. Available data does, however, need to be cautiously interpreted, for example taking account of how EU-origin regulations are transposed into national regulations.

Negotiating EU regulations

Institutional framework and processes

A longstanding institutional structure supports the process inside government. The European and Global Issues Secretariat of the Cabinet Office, supported as necessary by the Cabinet Office Legal Advisers (COLA) orchestrates the process and co-ordinates collective agreement among ministers when this proves necessary. The Cabinet Office works jointly with the BRE (Europe team) to deliver the government's policy for the management of EU origin regulations. Departments are also supported by their Better Regulation unit (large departments that have to deal with significant amounts of EU regulations such as DEFRA may have more specialist units in place as well). There is a Cabinet committee (the NSID[EU] Committee) to get collective agreement on EU issues, (*e.g.* negotiating positions, transposition).

The role of the parliament

The parliament cannot directly amend proposals from the EU. However, the co-ordination of UK government positions for the negotiation of EU regulations is a joint responsibility of the government and the parliament. Scrutiny committees of both houses must clear the government's position on proposals before the government can vote on them in the EU Council of Ministers. The parliament can therefore exert influence on the government's position by refusing to clear scrutiny (imposing a scrutiny reserve). Several parliamentary committees play a role in the process:

- The House of Commons Select Committee on European Legislation examines all draft European Commission proposals for their legal and political importance. Debate mostly takes place in one of the associated three European standing committees.

- The House of Lords Select Committee on the European Communities and its six subject-orientated subcommittees examine all draft European Commission proposals.

- The Joint Committee on Statutory Instruments comments on the legal accuracy of every piece of secondary legislation that transposes an EU directive.

- The House of Lords Merits of Statutory Instruments Committee is the only parliamentary committee to consider whether the transposition of EU-origin legislation has implemented it appropriately, for example in a way that is effective but creates the least burden on business or the enforcement agency.

Ex ante impact assessment (negotiation stage)

The government's policy is to treat EU regulations in the same way as national regulations. Impact assessments are therefore required for proposed EU regulations in order to fix the UK negotiating position (impact assessment guidance and the EU transposition guide underline this). Officials are encouraged to start work on an impact assessment of a proposed European Commission directive as soon as it is adopted. The impact assessment must be attached to the letter from the lead minister to the relevant Cabinet committee, when it seeks clearance for the government negotiating line in Brussels.

Transposing EU regulations

The Davidson Review: improving transposition policy

There has been criticism from business for many years that government handling of transposition puts it at a competitive disadvantage in Europe. This was picked up in the 2002 OECD review. Complaints have centred on "regulatory creep" (actions that add unnecessarily to the burden of regulation), such as gold plating (implementation that goes beyond the requirements of a directive), unnecessarily early implementation, and keeping higher ranking regulations in place. The government responded in 2005 by launching a review to examine the existing stock of EU origin regulations, and to identify measures where unnecessary burdens could be reduced or the system simplified.

The Davidson Review was published in November 2006. It found a number of areas for improvement although it also concluded that business was often complaining about the underlying policy, rather than the regulation giving effect to the policy, and that gold plating was not as widespread as claimed. The report made a number of recommendations which the government accepted, including:

- Specific simplification proposals in ten areas of legislation, including consumer sales, financial services, transport, food hygiene and waste legislation. Most of these recommendations are now being addressed in departmental simplification plans.
- General recommendations to promote best practice in transposition.

Institutional framework and processes

Responsibility lies with each department. The Davidson Review led to a comprehensive revision of the government's transposition guide for officials which incorporated most of the recommendations.[2] The guide is also intended to help external stakeholders including citizens "to understand government policy on implementation and hold departments to account".

Box 7.2. Transposition guide

The guide provides a transposition checklist and action tree. In fact, it covers both negotiation and transposition, and underlines the following points:

- Start considering implementation issues early on (when the European Commission is developing a proposal, or at the latest when it is being negotiated in the European Council). It is too late once a directive has been agreed in Council and must be transposed.
- Carry out an impact assessment for the final version of the UK negotiating position, showing risks, costs and benefits.
- Avoid going beyond the minimum necessary to comply with a directive unless there are exceptional circumstances, justified by a strong cost-benefit analysis and extensive consultation with stakeholders. Any gold-plating must be explained in the impact assessment and will need to be brought to the attention of the BRE and (if it imposes a significant burden) be cleared by the PRA).
- Identify those departments, agencies and external stakeholders which have an interest in the policy from the outset and co-ordinate their involvement in the negotiation and implementation phases.

- Do not pre-empt upcoming EU regulations by legislating in the same area.
- Encourage the European Commission to publicise its action plans and roadmaps so they reach a wide range of stakeholders. Encourage UK stakeholders to engage with EU institutions. Check whether the European Commission is producing an impact assessment that considers a range of policy options including alternatives to legislation, and that the risks of action versus inaction have been weighed up.
- Follow the principles of risk-based enforcement set out in the Hampton Report.

Legal provisions and the role of the parliament

Under the European Communities Act 1972, EU law, including legislative instruments made under the EU treaties such as directives and regulations, and decisions of the European Court of Justice, are given full effect in UK law and supremacy over other UK laws. Legislation to implement EU obligations in the United Kingdom is generally made either through acts of the parliament, or through secondary legislation made by ministers under this act. The parliament has a potentially important role, through relevant committees and other processes in the scrutiny of regulations used to transpose EU-origin regulations.

Ex ante impact assessment (transposition stage)

Once a directive has been adopted, the original impact assessment must be updated.

Monitoring transposition

Speed of transposition

The government underlines that its policy is to transpose on time. There is, however, no central monitoring of transposition, and no record is kept of transposition rates. The BRE will intervene if it considers that the lead department is not taking the most efficient approach. Other departments may intervene as part of the Cabinet Committee clearance process. BERR and the Cabinet Office co-ordinate work across government departments to deliver the EU internal market transposition targets. The Cabinet Office receives a list of EU directives for which the transposition deadline is approaching. The BRE contacts departments to ensure that they are on track to meet the Internal Market transposition delivery targets.

Box 7.3. United Kingdom performance in the transposition of EU directives

Overall transposition deficit

The latest EU Internal Market Scoreboard which considers internal market directices ranks the United Kingdom 6th (together with Finland and France) among the 15 original member states, with a transposition deficit of 0.9%. This is above the EU-15 average of 0.85%.

Performance in specific policy areas

The level of transposition in the United Kingdom in terms of adopted directives is particularly low in the policy field of competition, as well as energy, transport, employment and social affairs. For directives in force, competition no longer shows up as a problem, but environment appears as a weak spot.

* *www.berr.gov.uk/europeandtrade/europe/enforcing-singlemkt-rules/Transpositioneudirectives/page46228.html*

Table 7.1. The United Kingdom's performance in transposition of internal market directives over time

United Kingdom	Nov-97	May-98	Nov-98	May-99	Nov-99	May-00	Nov-00	May-01	Nov-01	May-02
Transposition deficit as % of internal market directives	4.6	3.8	3.8	3.3	2.8	3	2.7	3.3	2.8	1.5
	Nov-02	May-03	Jul-04	Jul-05	Dec-05	Jul-06	Nov-06	Jul-07	Nov-07	Jul-08
	1.4	1.5	1.2	1.4	1.4	1.3	0.7	1.2	1	0.9

Correlation with national regulations

Since November 2001, following a request from the parliament, UK regulations enacting EU regulations must be accompanied by a transposition note which explains how the government is transposing the main elements of the relevant EU directive into UK law. Where possible, officials are encouraged to make direct cross-references between the articles of the directive and the specific clauses of UK regulation, preferably listing the articles of the directive in one column and the UK regulation that transposes it in the corresponding row in the next column. This is similar in form to correlation tables requested by the European Commission. UK transposition notes are sometimes used as correlation tables and sent to the European Commission with the implementing legislation.

Transposition notes are published on departmental websites. Judging from a random sample review of departmental websites, transposition notes are fairly easy to find, but each department has its own approach and does not necessarily follow the general guidance.[3]

Double banking

The transposition guide advises officials to avoid "double-banking" *i.e.* when EU legislation covers the same ground as existing domestic legislation, though possibly in different ways and to a varying extent. Usually such parallel jurisprudence is dealt with by changing the relevant national legislation simultaneously with implementation of the new directive. In the United Kingdom however, the alternation or abolition of existing legislation is sometimes only possible by passing this as separate piece of legislation that has to go through the parliament. Government priorities for passing other bills through the parliament has led to the simultaneous existence of UK and EC laws, also called "double-banking". BRE account managers will discuss potential double banking issues with colleagues in departments working on transposition.

Goldplating

The transposition guide also explains what counts as goldplating and how to avoid it. In addition, it requires that impact assessments refer to any goldplating. "It is government policy not to go beyond the minimum requirements of European directives, unless there are exceptional circumstances, justified by a cost-benefit analysis and extensive consultation with stakeholders. Any goldplating must be explained in the impact assessment and needs to be brought to the attention of the Better Regulation Executive for specific clearance by the Panel for Regulatory Accountability".

Interface with Better Regulation policies at the EU level

The United Kingdom has an active policy to work with the European Commission, the European Parliament and other member states to address the quality of the stock and flow of EU regulation, and to support and shape the EU's own policies for Better Regulation such as impact assessment. The United Kingdom encouraged the European Commission to set a 25% EU burden reduction target by 2012, and helped to identify forty regulations for attention (from simplifying the payments system for the Common Agricultural Policy, to reforming social legislation for European road transport). Efforts have also been directed at implementation in the national context. The 2007 departmental simplification plans show how departments are seeking to reduce burdens of existing legislation originating from the EU. Most recently, the BRE has published 25 ideas to improve EU law to contribute to the development of an EU administrative burden reduction programme.[4]

The BRE seeks to draw generic issues together, as well as highlighting specific issues for the attention of the European Commission. Otherwise departments go their own way. Some departments with a large EU interface are very active.

Box 7.4. The contribution of one department (DEFRA) to Better Regulation at the EU level

DEFRA's administrative burdens

DEFRA estimates the total reduction in administrative burdens between 2005 and 2010 required to meet its net 25% domestic target is GBP 114.5 million, These include for example, UK implementation of recently adopted EU regulations such as REACH (regulation on chemicals and their safe use), as well as regulations under negotiation such as the draft Soil Framework Directive.

The EU context for administrative burdens

DEFRA is contributing to ongoing EU discussions on the European Council commitment to reduce administrative burdens by 25% by 2012. For example, environment is one of the 13 priority areas measured by the European Commission. In this area, DEFRA estimates that a large part of the United Kingdom's environmental administrative burdens derives from five existing EU directives:

- Integrated pollution prevention control 1996 (96/61/EC – DEFRA lead).
- Waste electrical and electronic equipment 2002 (2002/96/EC – BERR lead).
- End of life vehicles 2000 (2000/53/EC – BERR lead).
- Environmental impact assessment 1997 (97/11/EC – DCLG lead).
- Control of major accident hazards 2003 (2003/105/EC – HSE lead).

The way forward

Existing as well as new EU regulations need to be tackled in the environmental and other fields. It is important to find smarter ways of "exploiting the relationship between Better Regulation policies and successful environmental outcomes". This must take account of the increasing complexity of relationships between different measures aimed at tackling climate change. The United Kingdom's Climate Change Simplification Project (now the responsibility of the recently created Department for Energy and Climate Change) is one approach, which addresses three key instruments – the EU emissions trading scheme, climate change agreements, and the proposed Carbon Reduction Commitment. The aim is to eliminate overlap, simplify existing legislation, and reduce burdens to a minimum.

Making progress on reducing the administrative burden from EU environmental legislation necessitates further co-operative work between member states and the Environment Directorate-General. Co-operation has started between the Environment Directorate-General (which has established some administrative support) and member states, to examine the stock of legislation in order to remove unnecessary burdens. It would be helpful if the Environment Directorate-General could draw up formal proposals to structure this co-operation, for example, through arrangements to share good practice. This could also help to develop a longer term view of the most effective approach to EU environmental legislation. The Network of European Environmental Agencies, in which the United Kingdom is represented by the Environment Agency, is also active in this regard. The United Kingdom experience underlines the need to bring together a broad group of experts to share best practice. The EU High-Level Group on Better Regulation should also be engaged. Last but not least, the European Parliament's engagement is also needed.

Notes

1. Not to be confused with the generic use of the term "regulation" for this project.
2. *www.berr.gov.uk/files/file44371.pdf.*
3. The DEFRA website puts its transposition notes with the relevant impact assessments. The two-column format is not generally respected. The Department of Health website also has transposition notes on the same webpage as the relevant impact assessments. The BERR website has its own transposition guide. Transposition notes can be found with the relevant impact assessments, but are sometimes hard to find. The transposition notes respect the column format.
4. *www.berr.gov.uk/files/file47148.pdf.*

Chapter 8

The interface between subnational and national levels of government

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD's 2005 Guiding Principles for Regulatory Quality and Performance "encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government". It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EU regulations. All of this requires a pro-active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EU regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Assessment and recommendations

Allocation of regulatory responsibilities

A large number of diverse players are engaged at the local level, generating a complexity that needs to be managed. The local landscape is complex, both institutionally in terms of the number of actors and their relationships, and in terms of the range of regulations enforced at local level. The Hampton Report highlighted that the present complex approach to local authority regulation allowed wide variations and

inconsistencies and that the system as a whole was unco-ordinated. The Rogers Report also highlighted the complexity facing local authorities in terms of the range of legislation which they enforce, and the fact that this legislation is owned by a large number of central government departments as well as agencies of various kinds. At its meeting with the OECD team, the Local Better Regulation Office (LBRO) used a jigsaw puzzle image to convey the dense network, breadth and complexity of all the actors engaged at the local level. Although the number of performance indicators for local authorities and their partners has been reduced to 198, it is still very high.

Recommendation 8.1. Wherever possible, efforts should be made to rationalise complexity, for example by closer working between central government departments and between the latter and local authorities, to address complex regulatory and performance demands on local authorities.

Better Regulation policies deployed at local level

The United Kingdom has engaged in a vigorous effort to strengthen both the national-local and local-local interfaces in Better Regulation. Previous initiatives seem to have failed to deliver effective results, and co-ordination between local authorities themselves is not a strong feature. The initiatives which are now being taken forward – establishment of the LBRO and its power to designate a lead authority, streamlining enforcement priorities, the retail enforcement pilot – look promising, and well designed to take account of the underlying complexity. Many local authorities have already been encouraged to move towards risk-based enforcement. Culture change among local authorities seems to have taken off, though this report is not able to judge how far it has spread. Culture change among the central departments and agencies which set the framework for local authority activity is also evident.

Box 8.1. Comments from the 2002 OECD report: Local government and Better Regulation

Different patterns of enforcement coexist, and there is no harmonisation. The strictness of enforcement will vary from one local authority to another or even between one policy area with the same local authority. This may have a strategic purpose: a local authority may want to influence business expansion and development through a more flexible enforcement of planning and licensing. The business community has complained about the inconsistency in enforcement strategies and interpretation.

In addition, concerns about the burden on local governments of enforcing an ever-increasing number of regulations have given way to broader concerns about the quality and capacity of local authorities to apply and enforce properly the whole regulatory framework.

To address this issue, United Kingdom governments have launched a number of initiatives…. Enforcement Concordat…. Local Business Partnerships… etc.

Local level regulatory activities seek a balance between the needs of citizens and businesses, in the interests of strengthening the whole community. Compared to the national Better Regulation agenda, the local level is more directly engaged in citizen-related work (for example protecting vulnerable people and consumers). Addressing business needs is vital for the economic health of local communities, but this is a good counterpoint to the national emphasis on business. As the LBRO put it to the OECD review team, effective regulation is about supporting local communities so that they can

flourish. A shop that loses its licence affects the whole community, and a balanced approach is needed to regulatory management.[1]

Recommendation 8.2. The BRE should consider using the local level Better Regulation work in support of communities to promote a more balanced communication of its own on the targets and benefits of Better Regulation, for citizens as well as businesses.

Better Regulation policies are aimed at local authority regulatory services, a definition that may not capture all of the relevant initiatives and activities at this level. As well as the BRE's own initiatives, there are other developments that affect local authorities which are being carried forward by other central government departments, such as the Department for Communities and Local government update of the local authority performance framework and indicators. Licensing and planning – a vital interface with government for local businesses – are not directly targeted by the current Better Regulation agenda, and may require specific initiatives for improvement.

Recommendation 8.3. The LBRO should seek to ensure that all relevant activities and initiatives at the local level are assessed from a Better Regulation perspective.

Some national Better Regulation initiatives such as the simplification programme for businesses are also relevant for local authorities. Some national initiatives which might be expected to be relevant to the local level such as the reduction of administrative burdens on business are not yet linked up with the local level.

Recommendation 8.4. The LBRO should consider how local authorities can be engaged in supporting relevant national initiatives such as the simplification programme.

Use of e-Government to support simplification seems undeveloped. Use of e-Government to support simplification seems undeveloped and is not highlighted in Better Regulation programmes and project literature. This contrasts with some other OECD countries which have given this issue greater prominence, via initiatives such as data sharing, online applications for licences, and interactive administrative procedures. The efforts of some individual local authorities to streamline licence applications and address other burdens need encouragement and more structured framework for effective development.

Recommendation 8.5 A review of e-Government deployment at the local level, perhaps orchestrated by the LBRO, might be considered.

Co-ordination mechanisms

The LBRO is a very promising initiative, and needs now to prove its added value. The primary authority scheme looks particularly promising.

Background[2]

Structure, responsibilities and funding of local governments

Structure of local governments in England[3]

There is either a single- or two-tier structure to local government in England. The structure is largely two tier in the counties (which are made up of a number of district areas), with a few exceptions of single-tier smaller counties (which are either shire unitary authorities or metropolitan authorities). Central government is encouraging local governments to move to a single-tier structure and a number are currently doing so. To do this they must put their case to central government for approval [4]

The single tier comprises 36 metropolitan authorities; 33 London boroughs (including City of London); and 47 shire unitary authorities (an additional 9 new unitary authorities will be created in 2009 –Bedford, Chester, Cornwall, County Durham, Exeter, Ipswich, Wiltshire, Northumberland and Shropshire. The two tier comprises 34 county councils and 238 district councils.[5]

Responsibilities and powers

Local authorities have responsibilities covering a wide range of issues (and related regulations) relevant to local communities, similar to the picture found in many other OECD countries. These include housing, waste management and collection, education and lifelong learning, community safety and crime reduction, tourism, sport and culture, social services, health and the environment, transport, consumer protection, community safety, planning and licensing.

Local authorities have only limited rule-making powers. They can issue regulations (bye-laws) with a very local reach, *e.g.* to address behaviour in public parks. They may table local acts before the parliament to extend their powers. The enforcement of national regulations is the most important responsibility of local authorities, shared to some extent with national regulatory agencies. Local authorities carry out four times as many inspections as the latter. Another important related responsibility of local authorities is the discretionary issue of licences based on national rules. They also have important discretionary responsibilities for land use planning and enforcing building control regulations. There is a national planning policy, but its interpretation is at the local level, via local development plans.

Better Regulation initiatives are mainly directed at the category of local authority activities called regulatory services.[6] A key function under this heading is trading standards (food standards and the implementation of regulations relating to weights and measures, the quality and fitness of merchandise, fair trading and consumer protection).

Funding

Local authorities are funded partly through the council tax (which is set and collected locally from citizens, based on house value) and partly through a grant from central government called the formula grant (which includes the revenue support grant, based on an assessment of council needs, and their share of the national non-domestic rate, a tax on local business). They may also collect fees and charges from certain services. The proportion of locally generated revenue (council tax) is relatively low, and it can be capped by central government if the latter considers it too burdensome for households.[7]

Some areas of funding from the government are "ring-fenced", meaning that the council has little or no discretion as to the amount of money spent on the service in question. In other areas, councils can spend money according to their priorities. Budgets for regulatory services are not ring-fenced.

Players engaged with or at the local level: an overview

Box 8.2. Players engaged with or at the local level

They include:

- *A number of central government departments.* These include the Department of Communities and Local government (DCLG), the Department of Culture, Media and Sport (DCMS), the Department of Environment, Food and Rural Affairs (DEFRA), the Department of Health, the Department for Business, Enterprise and Regulatory Reform (BERR), the Department for Transport (DfT), the Department for Work and Pensions (DWP), and the Home Office.
- *Government Offices for the Regions (GOs).* Offices representing central government (11 departments) based in each region, responsible for co-ordinating the delivery of government policy in the region, including the negotiation of Local Area Agreements with local authority partnerships on behalf of central government.
- *Regional Development Agencies for England (RDAs).* Eight were created in 1998, and the London Development Agency followed in 2000. The London Assembly is directly elected. The RDAs have the status of Non-Departmental Public Bodies (NDPBs, and are headed by boards made up of business leaders and regional stakeholders including representatives of local authorities. The RDAs operate alongside the GOs, lead on the development of their Regional Economic Strategy (RES) and fund projects in their region (now from a single source BERR), linked to the delivery of Public Service Agreement (PSA) objectives. Statutory strategic objectives are to promote economic development and regeneration, promote business efficiency, investment and competitiveness, promote employment, enhance the development of skills, and contribute to sustainable development.
- *A number of national regulatory agencies.* A non-exhaustive list includes the Food Standards Agency, the Health and Safety Executive, the Environment Agency, the Health Protection Agency, the National Weights and Measures Laboratory, the Office of Fair Trading, the State Veterinary Service, and the Gambling Commission.
- *Local bodies* representing business interests, consumers, the voluntary sector and others.
- *Professional bodies* such as the Trading Standards Institute, Chartered Institute of Environmental Health, Institute of Licensing.
- *Representative groups for local authorities.* The Local Government Association (LGA) is the national representative body for all councils. The Local Authorities Co-ordinators of Regulatory Services (LACORS) promotes good practice in local government regulatory and related services.
- *Audit Commission.* The main quality assurance body for local government. Public body responsible for ensuring that public money is spent economically, efficiently, and effectively in the areas of local government, housing, health, criminal justice and fire and rescue services.

Better Regulation policies deployed at local level

The OECD's 2002 report recorded a number of initiatives to promote a more effective relationship between central and local government, and address enforcement burdens on local government. These initiatives only met with limited success. A large number of

initiatives have been taken recently to strengthen Better Regulation at the local level. These include the initiatives examined in the last section on enforcement, many of which are addressed to local authorities as well as national regulators. They also include local authorities' own initiatives, for example the "Scores on the Doors" initiative to rate local restaurants in terms of their compliance with food-safety rules.

The Hampton Review and local authorities: defining the challenges

The government, guided by the Hampton conclusions, has identified a number of challenges for effective enforcement by local authorities:

- *Balancing business competitiveness with the needs of local communities.* The main challenge is balancing business competitiveness (which implies a uniform approach to regulation and its enforcement at local level) with the differing legitimate needs of local communities (which implies variations in approach). The government aims to target and remove those inconsistencies of approach which do not reflect local needs or circumstances, but which arise purely from a different interpretation by local authorities of regulatory requirements. If business decisions are taken based on one view of regulatory requirements, which is subsequently disputed by other local authorities, competitiveness suffers.

- *Different levels of regulatory resources available to individual authorities.* This leads to over regulation in some areas, with additional burdens on business, and under regulation elsewhere, exposing compliant businesses to unfair competition while putting consumers, workers and the environment at risk.

- *Multiple and diverse requirements of a number of national departments and agencies.* Local authorities enforce regulations in line with the diverse requirements of a number of national departments and agencies. In response to the complaint from central government that they do not enforce consistently, local authorities have complained that central government gives inconsistent messages and there is a need to prioritise among often competing requirements set by national departments and agencies. Hampton argued that local regulatory services are often hindered by the diffuse and complex structure of local regulation, including difficulties arising from the lack of effective priority setting from the centre, and the lack of effective central and local co-ordination.

The Rogers Review follow up: national enforcement priorities for local authorities

The 2007 Rogers Review was part of the follow up to the Hampton Report to improve local authority enforcement, aimed at prioritising the demands on local authorities. Rogers recommended six national enforcement priorities for the local level.[8] The recommendations were accepted by the government.

The Rogers recommendations were taken up through a revision of the performance monitoring framework for local authorities. Local authorities are monitored by central government using performance indicators, and Rogers pointed to the complexity of these indicators and the lack of prioritisation. The Department for Communities and Local government has put in place a new streamlined framework of indicators, as from April 2008. The LBRO is responsible for checking that the indicators are fit for their purpose.

Box 8.3. The new performance framework for local authorities

- *National enforcement priorities.* The Rogers Review mapped the first stage by identifying six national enforcement priorities. The second stage was to reduce the number of local authority performance indicators against which they will be assessed, including a new Better Regulation indicator. The aim is to focus service delivery more clearly against a coherent set of priorities, measure outcomes, and show the impact of Better Regulation at local level.
- *Two hundred national indicators, reflecting the national enforcement priorities, each priority having an associated indicator.* There is an additional indicator measuring business satisfaction with local regulatory services. The new framework comprises 200 national indicators.
- *Local Area Agreements (LAA).* A requirement for local authorities to produce a LAA with partner agencies, setting out local priorities and incorporating targets for up to 35 of the national indicators.
- *Comprehensive Area Agreements (CAA),* replacing the former Comprehensive Performance Assessments. New assessment process for local authorities (led by the Audit Commission) which will assess them against achievement of local priorities.

The Local Better Regulation Office: institutional support for change

The Local Better Regulation Office (LBRO) was set up by the government as a lever of change for Better Regulation at the local level (based on the five principles of proportionality, accountability, consistency, transparency, and targeting). Its core objective is to support the improvement of local authority regulatory services, with particular emphasis on the quality and consistency of local enforcement. The LBRO was established on a statutory basis under the Regulatory Enforcement and Sanctions Act 2008, which gave it a number of powers, including the statutory power to make a local authority a lead (primary) authority.

Box 8.4. The Local Better Regulation Office (LBRO)

Mission and powers

The Local Better Regulation Office was set up by the government in May 2007, and given its definitive statutory footing in the July 2008 Regulatory Enforcement and Sanctions Act. The final impact assessment on the act put potential cost savings at up to GBP 80 million per year, much of the benefit through improved consistency, but also through more effective compliance. The act gives the LBRO six key functions:

1. *"Primary authority" power*. The LBRO will have the power to nominate and register "primary authorities", that is to say, lead local authorities. These nominated local authorities will provide advice to, and agree inspection plans for businesses that operate across council boundaries. They will advise other local authorities in their interaction with the business, with a view to securing consistency of approach. The LBRO will arbitrate any disputes.

2. *Advice*. The LBRO will provide advice to central government on enforcement and regulatory issues associated with local government.

3. *Statutory guidance*. The LBRO will issue statutory guidance to local authorities in respect of regulatory services.

4. *National enforcement priorities*. It will review and revise the list of national enforcement priorities for the local level.

5. *Investment budget*. It will use this budget to achieve strategic outcomes, notably the dissemination of innovation and good practice.

6. *Partnerships*. It will develop formal partnerships (via memoranda of understanding) with national regulators.

The LBRO defines its objectives as:

- Support service improvement and change in local authority regulatory services.
- Deliver consistency, principally through the primary authority mechanism.
- Act to improve the local authority regulatory services system.

Structure and budget

The LBRO has been established as a non-departmental public body (NDPB in the UK institutional system which is operationally independent but ultimately reports to and is funded by a sponsor department). The parent in this case is the BERR. It must seek approval for its budget via the presentation of a corporate plan to the BERR. It has 26 staff and a board of 8 with backgrounds in regulation, business and government. The chair is Clive Grace – a former local authority chief executive and chairman of a stock-exchange listed services company. The board sets the LBRO's strategic direction and acts as its ambassador. The senior management team is led by Chief Executive Graham Russell, former head of Trading Standards and Community Safety at Staffordshire County Council. The LBRO has a GBP 4.4 million operating budget for its first year.

The LBRO's "Primary Authority" power is perhaps the most interesting and potentially far reaching innovation, in terms of impact on business competitiveness, by tackling unnecessary inconsistencies in the interpretation, application and enforcement of national regulations head on.[9] This power means, in essence, that a "best practice" local authority will be formally nominated by the LBRO as the one whose interpretation of national regulations for enforcement and inspection practices will be followed by other councils. If there are differences or disagreements, the LBRO has the power to arbitrate. The LBRO is careful to underline the need for balance. There are circumstances when it is reasonable for business to accept local variations reflecting local circumstances, provided this is carried out transparently. Higher levels of enforcement may for example be needed against alcohol abuse in some areas. Voluntary home and lead authority scheme existed before, but results were disappointing.

The Retail Enforcement Pilot: a framework for collaboration between local authorities[10]

The Retail Enforcement Pilot (REP) was set up in 2005 to test proposals for a new "joined up" approach to regulatory enforcement in the retail sector. The pilot was set up by the then Department of Trade and Industry in 2005 and transferred to the BRE in 2007. LBRO had supported the BRE in delivering the pilot for six months, but took on sole responsibility for the programme from September 2008. The overall objective is to improve the delivery of regulatory enforcement services and reduce administrative burdens on business. The basic principle is that different inspection agencies agree which of them will act as lead inspector for particular premises, based on a risk assessment. The

lead agency then carries out its normal routine inspection and at the same time collects key information on behalf of other relevant agencies, who agree not to visit that business unless the information collected indicates a genuine cause for concern.

"Regulation inside government" initiative

A local authority group sponsored by the Department for Communities and Local government, "Lifting the Burdens" taskforce, has been set up. The taskforce's remit is to identify which requirements cause the most difficulty on the ground and which add the least value, and to agree packages of burden reduction with central government. The taskforce has conducted reviews on the nature of the relationships between government departments and local government. Reports have been published covering the work of several departments.[11]

Co-ordination mechanisms

Co-ordination between local governments

The Local Government Association (LGA) is the national representative body for all councils, funded from their subscriptions. It was set up in 1997 for local governments to have a bigger say at the national level, and to secure greater responsibilities and resources for councils. The Local Authorities Co-ordinators of Regulatory Services (LACORS) was originally established in 1978 as LACOTS, supporting and attempting to ensure uniform enforcement by the local authority based trading standards departments. Since 1991 it has also expanded to cover food safety, gambling, civil registration and a number of other enforcement functions. It promotes good practice in local government regulatory and related services, to provide specialist advice and guidance, to partner local initiatives, and to promote the local voice in national policy. It is funded by a combination of central and local government money, and is accountable to a board of directors nominated and elected by the LGA and other local authority representative organisations.

Co-ordination between central and local governments

The LBRO, as explained above, is the current centrepiece of the government's current strategy to promote joined up Better Regulation between the different actors engaged at the local level.

The concordat was signed between central government and the LGA in December 2007. It is an agreement between central government (the Department for Communities and Local Government is the lead) and the LGA (which represents councils in England and Wales). It gives effect to a commitment in the July 2007 "Governance of Britain" Green Paper, and also reflects the 2007 "Strong and Prosperous Communities Local Government" White Paper. It establishes a framework of principles on how central and local government should work together. The concordat underlines that it is the responsibility of central government to act in accordance with the national interest, and of councils to be responsible for service performance, prosperity and the well-being of citizens in their area. To give effect to this principle, and to secure a clear understanding of the reciprocal rights and responsibilities of local authorities and their partners, and central government, it promotes the negotiation of Local Area Agreements, as a key means of agreeing, delivering and monitoring outcomes for each area which are the responsibility of local government and its partners.[12]

Notes

1. The Local Authority Association has made the same point. It has stated that: "It is the responsibility of central government to think of the national interest and cross authority working, but the responsibility of local government to increase prosperity in their communities and decide on local priorities".

2. Unless otherwise stated this section covers England. There are different structures for Scotland, Wales and Northern Ireland.

3. The structure is different in other parts of the United Kingdom.

4. Some other countries such as Denmark have in recent years carried out a comprehensive simplification and scaling down of their subnational structures.

5. *www.direct.gov.uk/en/governmentcitizensandrights/UKgovernment/ Localgovernment/DG_073310.*

6. Formally defined as alcohol and public entertainment licensing; animal health and welfare; civil registration, including births, deaths, marriages etc; environmental protection of air, land, water and noise; food safety and standards, including labelling, sampling and analysis; food imports and exports; gambling reform; health and safety enforcement at work; and trading standards).

7. An average council budget is split 75:25 between the formula grant and the council tax.

8. Air quality, alcohol licensing, fair trading, hygiene of food businesses, improving health at work and animal and public health.

9. An example cited by the LBRO to make this point is the so-called "Italian collection" of a major clothing retail store, which was considered by some authorities to be misleading because it implies the clothes are from Italy when they are not, whereas the label was accepted by other local authorities. This generated confusion and extra costs for the firm, which has a national network of retail shops.

10. *www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/retail-enforcement-pilot/page44050.html*. The description of the project is taken from the House of Commons Committee on Regulatory Reform's report "Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda, July 2008".

11. *www.communities.gov.uk/liftingburdens/publications/responses.*

12. It also takes account of the European Charter of Local Self government, Council of Europe 1988, which promotes the autonomy of local authorities which are democratically elected.

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* The Department for Enterprise and Regulatory Reform (BERR) has taken over the functions of the former Department of Trade and Industry. For simplicity, references are throughout to BERR.

Annex A: Regulatory agencies

Types of regulatory agency

National regulatory agencies in the United Kingdom vary widely in their legal status, structure, powers and lines of accountability.[1] They 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. They can be broken down into the following categories:

- *Core departmental functions.* These are an integral part of a department, headed by a Minister and staffed by civil servants. The BERR's Companies Investigation Branch is an example.

- *Non-Ministerial Departments (NMDs).* They are headed by boards or commissions with specific statutory responsibilities. Their staff are civil servants. They do not have a minister and the precise nature of their relationship with ministers varies according to their policy and statutory framework. Their structure keeps the day-to-day administration of their activity separate from government, but allows government input into the wider policy context. The Food Standards Agency is an example. Some of the economic regulators (OFGEM which regulates the gas and electricity sectors, and OFWAT, which regulates water services) are NMDs.

- *Non-Departmental Public Bodies (NDPBs).* These are not part of a department, and carry out their functions at arms length from government. Ministers, however, are responsible to the parliament for the activities of NDPBs sponsored by their department, and in nearly all cases, make the appointments to their boards. The parent department is responsible for funding and ensuring good governance. NDPBs tend to be set up through statute, and most need primary legislation to alter their institutional framework. The Environment Agency and the Health and Safety Executive are examples.

- *Executive Agencies.* These are not part of a department. They are set up to carry out a particular service or function within government and have a clear focus on delivering specific outputs. As with NDPBs, they do have a parent department and ministers are ultimately responsible for their work. The parent department is responsible for funding and ensuring good governance. Unless explicitly created by statute, they can be reformed without primary legislation. An example is the Meat Hygiene Service.

Five major national regulatory bodies – the Health and Safety Executive (HSE), Environment Agency, Food Standards Agency, Office of Fair Trading and Financial Services Authority – are responsible for regulating areas such as health and safety at

work, financial services, environment regulation, competition and consumer protection, food hygiene and safety.[2]

Accountability and transparency

Accountability and transparency are promoted in a number of ways. National regulatory agencies may (depending on their type):

- Report regularly to the parliament and the public on their activities
- Undergo regular scrutiny by parliamentary committees
- Be subject to audit arrangements supervised by the National Audit Office
- Be subject to the supervision of the courts through judicial review
- Be subject to the provisions of the Freedom of Information Act
- Be subject to the code of the Office of the Commission for Public Appointments in relation to their own appointments.[3]

Regulatory agency powers

These vary according to the agency. Some national regulators have direct rule-making powers, whereas others do not. For example, some regulators lead on negotiating EU directives, whereas for others the parent department takes the lead. They also regulate differing sectors and will in many cases regulate in ways that are appropriate to that sector. They may have joint enforcement responsibilities with local authorities in some of these regulatory areas.

Notes

1. The BRE's reply to the OECD questionnaire was that they were "too lengthy to list".
2. An overview of the activity of the five major national regulators in the United Kingdom can be found in the recent reports of the Hampton Implementation Reviews *www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/reviewing-regulators/page44054.html.*
3. The Office of the Commissioner for Public Appointments sets out how public appointments should be made. See *www.publicappointmentscommissioner.org/Code_of_Practice.*

Annex B: Link between Better Regulation performance and funding

Since 1998, the budgetary framework for central government departments revolves around three-year plans for discretionary expenditure, subject to Departmental Expenditure Limits (DELs). The Treasury is committed to this funding, and in exchange, departments are held accountable for achieving policy targets specified in Public Service Agreements (PSAs).[1] Each PSA is underpinned by a Delivery Agreement which sets out the performance indicators that are used to measure progress. Their achievement is the responsibility of departmental boards, which are in turn accountable to the Prime Minister, supported by the PMDU (Prime Minister's Delivery Unit). PSAs are shared across departments, and also engage "delivery partners" beyond the department, including regulatory agencies, local authorities and other public bodies.

A new PSA framework has recently been put in place, based on the Service Transformation Agreement which sets out a vision for building citizen centred services, and five strategic objectives: sustainable prosperity and growth; fairness and opportunity for all; stronger communities and a better quality of life; and a more secure, fair and environmentally sustainable world.

Better Regulation objectives, sometimes shared across departments, are finding their way into PSAs. BERR shares the delivery of three productivity linked PSAs with the Treasury.

One of these PSAs is "Delivering the conditions for business success in the United Kingdom", for which Better Regulation objectives are a key element. The Department for Work and Pensions has a PSA for raising employment, for which reducing burdens on business (a Better Regulation goal) is seen as a major contributor. In addition, departments are now required to collate and report on benefits and costs of new regulations in the new PSA indicators.

Note

1. *www.hm-treasury.gov.uk/pbr_csr/psa/pbr_csr07_psaindex.cfm.*

Annex C: Impact assessment summary sheet

Summary: Intervention & Options		
Department /Agency:	Title: Impact Assessment of	
Stage:	Version:	Date:
Related Publications:		

Available to view or download at:
http://www.

Contact for enquiries: Telephone:

What is the problem under consideration? Why is government intervention necessary?

What are the policy objectives and the intended effects?

What policy options have been considered? Please justify any preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

1

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
One-off (Transition)	Yrs	
£		
Average Annual Cost (excluding one-off)		
£		Total Cost (PV) £

Other key non-monetised costs by 'main affected groups'

BENEFITS

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
One-off	Yrs	
£		
Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV) £

Other key non-monetised benefits by 'main affected groups'

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £

What is the geographic coverage of the policy/option?				
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?				
What is the total annual cost of enforcement for these organisations?				£
Does enforcement comply with Hampton principles?				Yes/No
Will implementation go beyond minimum EU requirements?				Yes/No
What is the value of the proposed offsetting measure per year?				£
What is the value of changes in greenhouse gas emissions?				£
Will the proposal have a significant impact on competition?				Yes/No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

2

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

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3

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

4

Annexes

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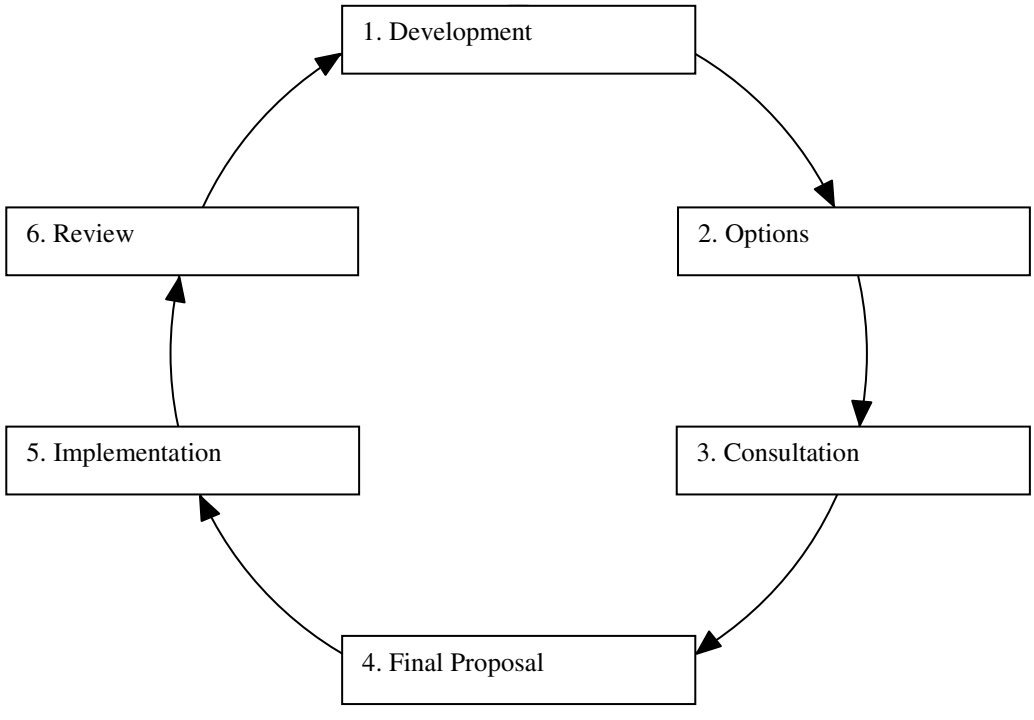
5

Annex D: Impact assessment flow chart



Annex E: United Kingdom's proposals for the introduction of regulatory budgets

The consultation document is structured along the following lines, and seeks input under each heading.

General principles

The proposals include:

- Creating a rolling limit on the costs of new regulation that could be introduced for each department.
- Setting initial budgets, to be introduced in 2009.
- Allowing departments to offset the cost of new regulation with savings made by reducing the existing regulatory burden and trading with other departments.
- Mechanism for managing the total cost of new regulations could be introduced within a budget period of three to five years.
- Flexibility for contingencies and over time and between departments. Departmental regulatory budgets would be set, limiting the regulatory costs they can impose.
- Reporting process that would hold departments to account if they exceed their budgets, which could include provision for the parliamentary scrutiny (model similar to financial budget processes).
- Budgets set at departmental level, covering all the costs of all new regulation with an impact on business. Incentive for departments to re-examine their regulatory stock as simplification/removal of a regulation would be treated as "income" and provide additional headroom to "spend" on new regulation.
- The system will not include the regulatory costs of climate change measures, which are spread across many departments.

Processes and institutions

The stated aim is to prevent unintended consequences and perverse incentives, ensure that benefits of regulation are taken into account, and minimise additional bureaucracy. The consultation seeks input on the following issues:

- *Length of budgetary period.* Flow of regulations over time is uneven, longer period helps and supports tradeoffs. But data hard to develop over longer periods. Three years right?

- *Setting the budgets.* Departments to produce forward estimates of costs and benefits. Aim to maximise external input. government would then use the estimates to set budgets, reflecting regulatory priorities. Like financial budgets. Need to take benefits into account. Likely that regulations with a high-benefit to cost ratio would have priority. Savings from new simplification measures would be taken into account, budgets would be net of these savings. Budgets would be announced to the parliament and made public.

- *Allowing flexibility.* To allow for unforeseen events or unanticipated changes in regulatory costs outside the budget holder's control. As with financial budgeting systems, end of period flexibility, cross departmental flexibility through trading, and a centrally managed exceptional provision.

- *Accountability and reporting.* Regular reporting from departments and regulators, via annual reports or a central report. Accountability *e.g.* the parliamentary committee could ask a minister why budget exceeded.

- *Shadow running.* Start with a shadow roll out to all departments and relevant regulators for a year from April 2009, in which arrangements will be trialled.

- From 2010 subsume administrative burdens target into regulatory budgets.

Legislative boundaries

National level only. Not local authority regulations.

Regulations within the scope. Starting point is Standard Cost Model. Page 26 sets out a proposed definition of regulation that is included. Includes directly applicable EU Regulations, directly applicable acts of the parliament, statutory instruments, rules, orders, schemes, regulations, etc made under statutory powers, licences and permits issued under central government authority, codes of practice with statutory force, codes of practice/self regulation/ industry agreements with government backing, bye laws of central government. Excludes codes, agreements etc without government backing, local authority regulations. BRE will arbitrate where it is not clear.

EU-origin regulations (including comitology). As far as possible this should be "treated consistently with other forms of regulation".

Cost elements. Enforcement, self funding, contractual obligations, legal proceedings. Should they be measured and captured? Exclude enforcement, contractual costs, legal proceedings, include some self funding.

Organisational boundaries

As many as possible, but need to protect the independence of some regulators. Proposed baseline is to include if it created relevant legislation/rules with the force of law, or enforces with considerable discretion over the regulatory costs this imposes. Local government is excluded, the five national Hampton regulators are included in principle,

though some economic regulator functions including competition issues excluded. Tax measures outside the scope. No effect on budget processes.

Budgeted costs

Budgets at departmental and regulator level covering all policy areas. Departments would score the cost of a specific regulation against their budget. Avoids double counting. But room is needed for policy priorities, how to do this needs to be explored. All costs that have an impact on business or third sector. Some of the impacts on the public sector also covered.

Assessment methodology

The consultation document notes that a robust measurement and comparison of likely costs and benefits of different policy options is needed, and that this raises "serious methodological challenges".

A key challenge which is carefully addressed in the consultation document from all angles is how to quantify correctly costs and benefits, achieve a correct balance between costs and benefits, and how to capture the benefits of regulation. The document notes the need to take account of direct as well as indirect costs and benefits, across the whole economy. "However it is acknowledged that the monetary valuation of some costs and benefits… can be difficult". Budgets should cover gross costs, *i.e.* estimated benefits will not be netted off. This may create an incentive to underestimate costs. In addition, some measures will not be pursued in order to keep costs within the budget, or create a bias toward low cost options at the expense of solutions that may be more costly but deliver greater benefits. It is therefore important to consider benefits. The proposal is that budgets would be announced alongside anticipated benefits and consistent with the new Public Service Agreement indicators, where departments already have to collate and report on benefits and costs of new regulations. The alternative of including monetised benefits in the calculations would amount to setting a minimum benefit-cost ratio requirement for new regulations. This does not provide an incentive to seek out least cost options, nor constrain the total costs over time as a department could continue to introduce regulations with significant costs so long as they show more in benefits. Transitional costs are also addressed. Should there be separate budgets to cover transitional and annually recurring costs, or a single budget for both?

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Better Regulation in Europe

UNITED KINGDOM

The importance of effective regulation has never been so clear as it is today, in the wake of the worst economic downturn since the Great Depression. But how exactly can Better Regulation policy improve countries' economic and social welfare prospects, underpin sustained growth and strengthen their resilience? What, in fact, is effective regulation? What should be the shape and direction of Better Regulation policy over the next decade? To respond to these questions, the OECD has launched, in partnership with the European Commission, a major project examining Better Regulation developments in 15 OECD countries in the EU, including the United Kingdom.

Each report maps and analyses the core issues which together make up effective regulatory management, laying down a framework of what should be driving regulatory policy and reform in the future. Issues examined include:

- Strategy and policies for improving regulatory management.
- Institutional capacities for effective regulation and the broader policy making context.
- Transparency and processes for effective public consultation and communication.
- Processes for the development of new regulations, including impact assessment, and for the management of the regulatory stock, including administrative burdens.
- Compliance rates, enforcement policy and appeal processes.
- The multilevel dimension: interface between different levels of government and interface between national processes and those of the EU.

The participating countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

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