

Executive Summary – United Kingdom

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 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 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 to 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 embed 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

| <i>Strategy and policies for Better Regulation</i> | |
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| 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. |

| <i>Institutional capacities for Better Regulation</i> | |
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| 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. |

| <i>Transparency through public consultation and communication</i> | |
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| 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. |

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| 3.3 | The development by the Ministry of Justice of the statute law database to cover secondary regulations should be encouraged. |
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| <i>The development of new regulations</i> | |
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| 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. |

| <i>The management and rationalisation of existing regulations</i> | |
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| 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. |

| <i>Compliance, enforcement, appeals</i> | |
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| 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. |

| <i>The interface between member states and the European Union</i> | |
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| 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 |

| <i>The interface between subnational and national levels of government</i> | |
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| 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 embed 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 embed the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."