

## 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.

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**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.**

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*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.<sup>1</sup>

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**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.**

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*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.<sup>2</sup> 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.

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**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.**

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*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).<sup>3</sup>

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**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).

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### ***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.

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**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).

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*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.

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**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.

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*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.

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

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*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.

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**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.**

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*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.

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**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.**

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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.

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**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.**

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### 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.

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**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.**

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## 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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).<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>
- 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.<sup>10</sup> 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. <sup>11</sup> Davidson Report on transposition of EU regulations (it also covers negotiations at the EU level) is published by the government. <sup>12</sup>

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.<sup>13</sup> 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<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>
- The Better Regulation website contains examples of how improved and simplified regulation has benefited business, the public and third sectors and consumers.<sup>18</sup> 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).<sup>19</sup> 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](http://www.hm-treasury.gov.uk/hampton).
12. [www.hm-treasury.gov.uk/media/E/F/davidson\\_review281106.pdf](http://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](http://www.betterregulation.gov.uk).
15. [www.digitaldialogues.org.uk](http://www.digitaldialogues.org.uk).
16. [www.nao.org.uk/ria/ria\\_our\\_work.htm](http://www.nao.org.uk/ria/ria_our_work.htm).
17. [www.berr.gov.uk/bre/index.html](http://www.berr.gov.uk/bre/index.html).
18. [www.betterregulation.gov.uk](http://www.betterregulation.gov.uk).
19. [www.businesslink.gov.uk](http://www.businesslink.gov.uk).