

## Chapter 8

### The interface between subnational and national levels of government

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EU regulations. All of this requires a proactive consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EU regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

#### Assessment and recommendations

##### *Allocation of regulatory responsibilities*

*A large number of diverse players are engaged at the local level, generating a complexity that needs to be managed.* The local landscape is complex, both institutionally in terms of the number of actors and their relationships, and in terms of the range of regulations enforced at local level. The Hampton Report highlighted that the present complex approach to local authority regulation allowed wide variations and

inconsistencies and that the system as a whole was unco-ordinated. The Rogers Report also highlighted the complexity facing local authorities in terms of the range of legislation which they enforce, and the fact that this legislation is owned by a large number of central government departments as well as agencies of various kinds. At its meeting with the OECD team, the Local Better Regulation Office (LBRO) used a jigsaw puzzle image to convey the dense network, breadth and complexity of all the actors engaged at the local level. Although the number of performance indicators for local authorities and their partners has been reduced to 198, it is still very high.

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**Recommendation 8.1. Wherever possible, efforts should be made to rationalise complexity, for example by closer working between central government departments and between the latter and local authorities, to address complex regulatory and performance demands on local authorities.**

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### ***Better Regulation policies deployed at local level***

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

#### **Box 8.1. Comments from the 2002 OECD report: Local government and Better Regulation**

Different patterns of enforcement coexist, and there is no harmonisation. The strictness of enforcement will vary from one local authority to another or even between one policy area with the same local authority. This may have a strategic purpose: a local authority may want to influence business expansion and development through a more flexible enforcement of planning and licensing. The business community has complained about the inconsistency in enforcement strategies and interpretation.

In addition, concerns about the burden on local governments of enforcing an ever-increasing number of regulations have given way to broader concerns about the quality and capacity of local authorities to apply and enforce properly the whole regulatory framework.

To address this issue, United Kingdom governments have launched a number of initiatives.... Enforcement Concordat.... Local Business Partnerships... etc.

*Local level regulatory activities seek a balance between the needs of citizens and businesses, in the interests of strengthening the whole community.* Compared to the national Better Regulation agenda, the local level is more directly engaged in citizen-related work (for example protecting vulnerable people and consumers). Addressing business needs is vital for the economic health of local communities, but this is a good counterpoint to the national emphasis on business. As the LBRO put it to the OECD review team, effective regulation is about supporting local communities so that they can

flourish. A shop that loses its licence affects the whole community, and a balanced approach is needed to regulatory management.<sup>1</sup>

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**Recommendation 8.2. The BRE should consider using the local level Better Regulation work in support of communities to promote a more balanced communication of its own on the targets and benefits of Better Regulation, for citizens as well as businesses.**

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*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.*

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**Recommendation 8.3. The LBRO should seek to ensure that all relevant activities and initiatives at the local level are assessed from a Better Regulation perspective.**

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*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.*

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**Recommendation 8.4. The LBRO should consider how local authorities can be engaged in supporting relevant national initiatives such as the simplification programme.**

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

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**Recommendation 8.5 A review of e-Government deployment at the local level, perhaps orchestrated by the LBRO, might be considered.**

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### ***Co-ordination mechanisms***

*The LBRO is a very promising initiative, and needs now to prove its added value. The primary authority scheme looks particularly promising.*

## Background<sup>2</sup>

### *Structure, responsibilities and funding of local governments*

#### *Structure of local governments in England<sup>3</sup>*

There is either a single- or two-tier structure to local government in England. The structure is largely two tier in the counties (which are made up of a number of district areas), with a few exceptions of single-tier smaller counties (which are either shire unitary authorities or metropolitan authorities). Central government is encouraging local governments to move to a single-tier structure and a number are currently doing so. To do this they must put their case to central government for approval<sup>4</sup>

The single tier comprises 36 metropolitan authorities; 33 London boroughs (including City of London); and 47 shire unitary authorities (an additional 9 new unitary authorities will be created in 2009 – Bedford, Chester, Cornwall, County Durham, Exeter, Ipswich, Wiltshire, Northumberland and Shropshire. The two tier comprises 34 county councils and 238 district councils.<sup>5</sup>

#### *Responsibilities and powers*

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

Local authorities have only limited rule-making powers. They can issue regulations (bye-laws) with a very local reach, *e.g.* to address behaviour in public parks. They may table local acts before the parliament to extend their powers. The enforcement of national regulations is the most important responsibility of local authorities, shared to some extent with national regulatory agencies. Local authorities carry out four times as many inspections as the latter. Another important related responsibility of local authorities is the discretionary issue of licences based on national rules. They also have important discretionary responsibilities for land use planning and enforcing building control regulations. There is a national planning policy, but its interpretation is at the local level, via local development plans.

Better Regulation initiatives are mainly directed at the category of local authority activities called regulatory services.<sup>6</sup> A key function under this heading is trading standards (food standards and the implementation of regulations relating to weights and measures, the quality and fitness of merchandise, fair trading and consumer protection).

#### *Funding*

Local authorities are funded partly through the council tax (which is set and collected locally from citizens, based on house value) and partly through a grant from central government called the formula grant (which includes the revenue support grant, based on an assessment of council needs, and their share of the national non-domestic rate, a tax on local business). They may also collect fees and charges from certain services. The proportion of locally generated revenue (council tax) is relatively low, and it can be capped by central government if the latter considers it too burdensome for households.<sup>7</sup>

Some areas of funding from the government are “ring-fenced”, meaning that the council has little or no discretion as to the amount of money spent on the service in question. In other areas, councils can spend money according to their priorities. Budgets for regulatory services are not ring-fenced.

*Players engaged with or at the local level: an overview*

**Box 8.2. Players engaged with or at the local level**

They include:

- *A number of central government departments.* These include the Department of Communities and Local Government (DCLG), the Department of Culture, Media and Sport (DCMS), the Department of Environment, Food and Rural Affairs (DEFRA), the Department of Health, the Department for Business, Enterprise and Regulatory Reform (BERR), the Department for Transport (DfT), the Department for Work and Pensions (DWP), and the Home Office.
- *Government Offices for the Regions (GOs).* Offices representing central government (11 departments) based in each region, responsible for co-ordinating the delivery of government policy in the region, including the negotiation of Local Area Agreements with local authority partnerships on behalf of central government.
- *Regional Development Agencies for England (RDAs).* Eight were created in 1998, and the London Development Agency followed in 2000. The London Assembly is directly elected. The RDAs have the status of Non-Departmental Public Bodies (NDPBs), and are headed by boards made up of business leaders and regional stakeholders including representatives of local authorities. The RDAs operate alongside the GOs, lead on the development of their Regional Economic Strategy (RES) and fund projects in their region (now from a single source BERR), linked to the delivery of Public Service Agreement (PSA) objectives. Statutory strategic objectives are to promote economic development and regeneration, promote business efficiency, investment and competitiveness, promote employment, enhance the development of skills, and contribute to sustainable development.
- *A number of national regulatory agencies.* A non-exhaustive list includes the Food Standards Agency, the Health and Safety Executive, the Environment Agency, the Health Protection Agency, the National Weights and Measures Laboratory, the Office of Fair Trading, the State Veterinary Service, and the Gambling Commission.
- *Local bodies* representing business interests, consumers, the voluntary sector and others.
- *Professional bodies* such as the Trading Standards Institute, Chartered Institute of Environmental Health, Institute of Licensing.
- *Representative groups for local authorities.* The Local Government Association (LGA) is the national representative body for all councils. The Local Authorities Co-ordinators of Regulatory Services (LACORS) promotes good practice in local government regulatory and related services.
- *Audit Commission.* The main quality assurance body for local government. Public body responsible for ensuring that public money is spent economically, efficiently, and effectively in the areas of local government, housing, health, criminal justice and fire and rescue services.

***Better Regulation policies deployed at local level***

The OECD’s 2002 report recorded a number of initiatives to promote a more effective relationship between central and local government, and address enforcement burdens on local government. These initiatives only met with limited success. A large number of

initiatives have been taken recently to strengthen Better Regulation at the local level. These include the initiatives examined in the last section on enforcement, many of which are addressed to local authorities as well as national regulators. They also include local authorities' own initiatives, for example the "Scores on the Doors" initiative to rate local restaurants in terms of their compliance with food-safety rules.

#### *The Hampton Review and local authorities: defining the challenges*

The government, guided by the Hampton conclusions, has identified a number of challenges for effective enforcement by local authorities:

- *Balancing business competitiveness with the needs of local communities.* The main challenge is balancing business competitiveness (which implies a uniform approach to regulation and its enforcement at local level) with the differing legitimate needs of local communities (which implies variations in approach). The government aims to target and remove those inconsistencies of approach which do not reflect local needs or circumstances, but which arise purely from a different interpretation by local authorities of regulatory requirements. If business decisions are taken based on one view of regulatory requirements, which is subsequently disputed by other local authorities, competitiveness suffers.
- *Different levels of regulatory resources available to individual authorities.* This leads to over regulation in some areas, with additional burdens on business, and under regulation elsewhere, exposing compliant businesses to unfair competition while putting consumers, workers and the environment at risk.
- *Multiple and diverse requirements of a number of national departments and agencies.* Local authorities enforce regulations in line with the diverse requirements of a number of national departments and agencies. In response to the complaint from central government that they do not enforce consistently, local authorities have complained that central government gives inconsistent messages and there is a need to prioritise among often competing requirements set by national departments and agencies. Hampton argued that local regulatory services are often hindered by the diffuse and complex structure of local regulation, including difficulties arising from the lack of effective priority setting from the centre, and the lack of effective central and local co-ordination.

#### *The Rogers Review follow up: national enforcement priorities for local authorities*

The 2007 Rogers Review was part of the follow up to the Hampton Report to improve local authority enforcement, aimed at prioritising the demands on local authorities. Rogers recommended six national enforcement priorities for the local level.<sup>8</sup> The recommendations were accepted by the government.

The Rogers recommendations were taken up through a revision of the performance monitoring framework for local authorities. Local authorities are monitored by central government using performance indicators, and Rogers pointed to the complexity of these indicators and the lack of prioritisation. The Department for Communities and Local Government has put in place a new streamlined framework of indicators, as from April 2008. The LBRO is responsible for checking that the indicators are fit for their purpose.

### Box 8.3. The new performance framework for local authorities

- *National enforcement priorities.* The Rogers Review mapped the first stage by identifying six national enforcement priorities. The second stage was to reduce the number of local authority performance indicators against which they will be assessed, including a new Better Regulation indicator. The aim is to focus service delivery more clearly against a coherent set of priorities, measure outcomes, and show the impact of Better Regulation at local level.
- *Two hundred national indicators, reflecting the national enforcement priorities, each priority having an associated indicator.* There is an additional indicator measuring business satisfaction with local regulatory services. The new framework comprises 200 national indicators.
- *Local Area Agreements (LAA).* A requirement for local authorities to produce a LAA with partner agencies, setting out local priorities and incorporating targets for up to 35 of the national indicators.
- *Comprehensive Area Agreements (CAA),* replacing the former Comprehensive Performance Assessments. New assessment process for local authorities (led by the Audit Commission) which will assess them against achievement of local priorities.

#### *The Local Better Regulation Office: institutional support for change*

The Local Better Regulation Office (LBRO) was set up by the government as a lever of change for Better Regulation at the local level (based on the five principles of proportionality, accountability, consistency, transparency, and targeting). Its core objective is to support the improvement of local authority regulatory services, with particular emphasis on the quality and consistency of local enforcement. The LBRO was established on a statutory basis under the Regulatory Enforcement and Sanctions Act 2008, which gave it a number of powers, including the statutory power to make a local authority a lead (primary) authority.

### Box 8.4. The Local Better Regulation Office (LBRO)

#### **Mission and powers**

The Local Better Regulation Office was set up by the government in May 2007, and given its definitive statutory footing in the July 2008 Regulatory Enforcement and Sanctions Act. The final impact assessment on the act put potential cost savings at up to GBP 80 million per year, much of the benefit through improved consistency, but also through more effective compliance. The act gives the LBRO six key functions:

1. *“Primary authority” power.* The LBRO will have the power to nominate and register “primary authorities”, that is to say, lead local authorities. These nominated local authorities will provide advice to, and agree inspection plans for businesses that operate across council boundaries. They will advise other local authorities in their interaction with the business, with a view to securing consistency of approach. The LBRO will arbitrate any disputes.
2. *Advice.* The LBRO will provide advice to central government on enforcement and regulatory issues associated with local government.
3. *Statutory guidance.* The LBRO will issue statutory guidance to local authorities in respect of regulatory services.

4. *National enforcement priorities.* It will review and revise the list of national enforcement priorities for the local level.
5. *Investment budget.* It will use this budget to achieve strategic outcomes, notably the dissemination of innovation and good practice.
6. *Partnerships.* It will develop formal partnerships (via memoranda of understanding) with national regulators.

The LBRO defines its objectives as:

- Support service improvement and change in local authority regulatory services.
- Deliver consistency, principally through the primary authority mechanism.
- Act to improve the local authority regulatory services system.

### **Structure and budget**

The LBRO has been established as a non-departmental public body (NDPB in the UK institutional system which is operationally independent but ultimately reports to and is funded by a sponsor department). The parent in this case is the BERR. It must seek approval for its budget via the presentation of a corporate plan to the BERR. It has 26 staff and a board of 8 with backgrounds in regulation, business and government. The chair is Clive Grace – a former local authority chief executive and chairman of a stock-exchange listed services company. The board sets the LBRO's strategic direction and acts as its ambassador. The senior management team is led by Chief Executive Graham Russell, former head of Trading Standards and Community Safety at Staffordshire County Council. The LBRO has a GBP 4.4 million operating budget for its first year.

The LBRO's "Primary Authority" power is perhaps the most interesting and potentially far reaching innovation, in terms of impact on business competitiveness, by tackling unnecessary inconsistencies in the interpretation, application and enforcement of national regulations head on.<sup>9</sup> This power means, in essence, that a "best practice" local authority will be formally nominated by the LBRO as the one whose interpretation of national regulations for enforcement and inspection practices will be followed by other councils. If there are differences or disagreements, the LBRO has the power to arbitrate. The LBRO is careful to underline the need for balance. There are circumstances when it is reasonable for business to accept local variations reflecting local circumstances, provided this is carried out transparently. Higher levels of enforcement may for example be needed against alcohol abuse in some areas. Voluntary home and lead authority scheme existed before, but results were disappointing.

### *The Retail Enforcement Pilot: a framework for collaboration between local authorities*<sup>10</sup>

The Retail Enforcement Pilot (REP) was set up in 2005 to test proposals for a new "joined up" approach to regulatory enforcement in the retail sector. The pilot was set up by the then Department of Trade and Industry in 2005 and transferred to the BRE in 2007. LBRO had supported the BRE in delivering the pilot for six months, but took on sole responsibility for the programme from September 2008. The overall objective is to improve the delivery of regulatory enforcement services and reduce administrative burdens on business. The basic principle is that different inspection agencies agree which of them will act as lead inspector for particular premises, based on a risk assessment. The

lead agency then carries out its normal routine inspection and at the same time collects key information on behalf of other relevant agencies, who agree not to visit that business unless the information collected indicates a genuine cause for concern.

### *“Regulation inside government” initiative*

A local authority group sponsored by the Department for Communities and Local government, “Lifting the Burdens” taskforce, has been set up. The taskforce's remit is to identify which requirements cause the most difficulty on the ground and which add the least value, and to agree packages of burden reduction with central government. The taskforce has conducted reviews on the nature of the relationships between government departments and local government. Reports have been published covering the work of several departments.<sup>11</sup>

## ***Co-ordination mechanisms***

### *Co-ordination between local governments*

The Local Government Association (LGA) is the national representative body for all councils, funded from their subscriptions. It was set up in 1997 for local governments to have a bigger say at the national level, and to secure greater responsibilities and resources for councils. The Local Authorities Co-ordinators of Regulatory Services (LACORS) was originally established in 1978 as LACOTS, supporting and attempting to ensure uniform enforcement by the local authority based trading standards departments. Since 1991 it has also expanded to cover food safety, gambling, civil registration and a number of other enforcement functions. It promotes good practice in local government regulatory and related services, to provide specialist advice and guidance, to partner local initiatives, and to promote the local voice in national policy. It is funded by a combination of central and local government money, and is accountable to a board of directors nominated and elected by the LGA and other local authority representative organisations.

### *Co-ordination between central and local governments*

The LBRO, as explained above, is the current centrepiece of the government's current strategy to promote joined up Better Regulation between the different actors engaged at the local level.

The concordat was signed between central government and the LGA in December 2007. It is an agreement between central government (the Department for Communities and Local Government is the lead) and the LGA (which represents councils in England and Wales). It gives effect to a commitment in the July 2007 “Governance of Britain” Green Paper, and also reflects the 2007 “Strong and Prosperous Communities Local Government” White Paper. It establishes a framework of principles on how central and local government should work together. The concordat underlines that it is the responsibility of central government to act in accordance with the national interest, and of councils to be responsible for service performance, prosperity and the well-being of citizens in their area. To give effect to this principle, and to secure a clear understanding of the reciprocal rights and responsibilities of local authorities and their partners, and central government, it promotes the negotiation of Local Area Agreements, as a key means of agreeing, delivering and monitoring outcomes for each area which are the responsibility of local government and its partners.<sup>12</sup>

## Notes

1. The Local Authority Association has made the same point. It has stated that: “It is the responsibility of central government to think of the national interest and cross authority working, but the responsibility of local government to increase prosperity in their communities and decide on local priorities”.
2. Unless otherwise stated this section covers England. There are different structures for Scotland, Wales and Northern Ireland.
3. The structure is different in other parts of the United Kingdom.
4. Some other countries such as Denmark have in recent years carried out a comprehensive simplification and scaling down of their subnational structures.
5. [www.direct.gov.uk/en/governmentcitizensandrights/UKgovernment/Localgovernment/DG\\_073310](http://www.direct.gov.uk/en/governmentcitizensandrights/UKgovernment/Localgovernment/DG_073310).
6. Formally defined as alcohol and public entertainment licensing; animal health and welfare; civil registration, including births, deaths, marriages etc; environmental protection of air, land, water and noise; food safety and standards, including labelling, sampling and analysis; food imports and exports; gambling reform; health and safety enforcement at work; and trading standards).
7. An average council budget is split 75:25 between the formula grant and the council tax.
8. Air quality, alcohol licensing, fair trading, hygiene of food businesses, improving health at work and animal and public health.
9. An example cited by the LBRO to make this point is the so-called “Italian collection” of a major clothing retail store, which was considered by some authorities to be misleading because it implies the clothes are from Italy when they are not, whereas the label was accepted by other local authorities. This generated confusion and extra costs for the firm, which has a national network of retail shops.
10. [www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/retail-enforcement-pilot/page44050.html](http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/retail-enforcement-pilot/page44050.html). The description of the project is taken from the House of Commons Committee on Regulatory Reform’s report “Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda, July 2008”.
11. [www.communities.gov.uk/liftingburdens/publications/responses](http://www.communities.gov.uk/liftingburdens/publications/responses).
12. It also takes account of the European Charter of Local Self government, Council of Europe 1988, which promotes the autonomy of local authorities which are democratically elected.