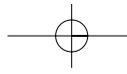


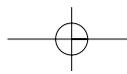
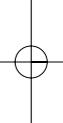
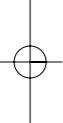
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1. Foreword

In July 2000 we published a first report on Alternatives to State Regulation. With this new report we want to extend our challenge to Government and other regulators. We want them to be more inspired and creative in the way they achieve their regulatory objectives.

We feel passionately that regulators should actively consider all the measures available, and choose the best one. Perhaps people don't need to be told what to do if they're given the right information to help them take their own decisions. Economic measures leave the decisions to businesses instead of setting them detailed rules. Being creative is the only way to ensure that policy objectives are achieved without creating additional and unnecessary regulatory burdens: burdens which stifle the economy; hold back entrepreneurs, and can cost jobs.

The five Principles of Good Regulation (see Annex D) remain a key part of our championing of better regulation. Applying our Principles to the various regulatory options may help flag up which will work best. The Principles of Good Regulation and Imaginative Thinking for Better Regulation are both needed to improve regulation in the UK, and they have to go hand in hand.

Arguably, the most important of all the options discussed in this report is the option not to intervene at all. The media constantly demand regulatory action after an accident or disaster.

They seem to forget that there are downsides to regulation. Regulatory failure can cost a lot of money without achieving anything. A rail safety system recommended by a public inquiry would have reduced the number of deaths on the railways. But the consequence could also have been fewer trains, with more people using their cars. This is a riskier form of travel, so there would in turn be more people killed on the roads.

Many Government Departments are already using a wide variety of regulatory measures. But we feel that more needs to be done. The culture of Whitehall needs to change to make sure that business and others are not unnecessarily burdened with prescriptive regulation where it is not necessary. This report is a contribution to that culture change. We want to inspire policy makers to use all the options they have at hand.

This report aims to help. Policy makers can use it when they start thinking about a policy. For example the section on information and education explains the type of policy problem which can be addressed by this measure and outlines some of its advantages and disadvantages. And other stakeholders are invited to consider the options before they call for regulation, and to keep up the pressure to choose the best solution.



David Arculus, Chair of the
Better Regulation Task Force



Penelope Rowlatt
Sub-group Chair

2. Introduction

Often, when faced with a new problem like a health risk or a perceived need to intervene in some market, Governments will introduce a new "rule" that requires people to behave in a particular way. Yet a more open-minded look at the options may find that the policy can be delivered more efficiently and effectively in a different way, one that does not leave people feeling hemmed in by rules and regulations. This report aims to inspire an imaginative approach to implementing policy. It gives examples of different approaches, offers good sense "regulatory tips", and makes recommendations to Government to promote their use.

Regulatory intervention can be necessary, but generally should be used only as a last resort, and then only if it can be shown that it is likely to be more effective than other means. Prescriptive state regulation, which we call classic regulation for the purpose of this report, can be welcome – it creates certainty, for example, setting out the bounds within which business can operate. Classic regulation can be the best way to regulate. But depending on the issue, and the desired outcome, there are other approaches which should be considered and which may be better.

The option of not intervening, of 'doing nothing', is always open. This should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of government regulation, with its imperfections and its unintended consequences, may be worse than the effects of the imperfect market.

A wide range of options is available. These range from classic regulation, where people are required to behave in certain ways, to information and education campaigns where people change their behaviour of their own accord. Other methods include using economic, tax and market mechanisms; self-regulation; and co-regulation.

Sometimes very different approaches have been taken in addressing apparently similar policy issues. In the case of "beef on the bone", the Government brought in a ban to protect consumers from the risk of BSE. Some consumers said they would have preferred to be given the information and then to make up their own minds. The Government uses the latter approach in providing information about the possible health risks of using mobile phones.

Existing help

This is the second report by the Better Regulation Task Force on alternative approaches to regulation. The first report was published in July 2000. The Government accepted the recommendation of that report that guidance on the use of a wide range of alternative approaches to implementing policy should be developed and published.¹ The resulting document, "Better Policy Making and Regulatory Impact Assessment", was published in August 2000 by the Cabinet Office and a new, revised version, "Better Policy Making: A Guide to Regulatory Impact Assessment", was published in January 2003.

Many Departments already consider approaches other than classic regulation. Some Departments such as

¹ The other two recommendations were, first, in relation to our case studies of self-regulation: on advertising, domestic builders and GPs; and second, about redress in the public sector. The Government response is on our website: <http://www.brtf.gov.uk/taskforce/responses%20new/alternativesresponse.htm>

Department of Trade and Industry (DTI) and Department for Environment, Food and Rural Affairs (Defra) have set up units whose role includes considering the range of alternative approaches to regulation and advising departmental colleagues. Despite these positive developments, there still seem to be cultural barriers to the consideration of the full range of alternative approaches. This report aims to help Government overcome these barriers and bring about this culture change.

Structure of this report

Recommendations

Chapter three sets out how we, the Government and other stakeholders can work together to achieve this culture change. It includes nine recommendations to Government for further steps which will help the process.

The rest of the report discusses the different types of regulation, giving concrete examples, and lists seventeen "regulatory tips": ideas which we think will help readers come up with the best solution to their regulatory problem.

Classic Regulation

Chapter four describes classic regulation and gives examples of areas where it is frequently used.

Alternatives to Classic Regulation

The remaining four chapters set out options which can be used instead of classic regulation:

- Chapter five highlights situations where intervention is not necessary or can in fact do more harm than good;
- the sixth chapter explains incentives, including economic instruments;
- chapter seven covers information and education by Government and companies; and
- chapter eight describes self-regulation and co-regulation.

All chapters describe advantages and disadvantages (*pros* and *cons*).

The examples we give are intended to help policymakers and other interested parties work out the pros and cons of following a particular approach. We are not endorsing any of these examples as good practice. For any example, there will be someone who thinks it illustrates bad practice. But they all show where the technique has been used, so that the interested reader can find out more.

Nor are we saying it is wrong to use classic regulation to tell people what to do. We just want to be sure that, when it is used in this way, it is because it really is the best way of solving a problem, and other ways have been properly considered.

3. Bringing about a culture change

This chapter outlines the measures we suggest are necessary to contribute to a culture change in departments. We make nine detailed recommendations to Government.

The need for culture change

Three years have passed since we last wrote on the subject of alternatives to state regulation. During that period the system of Regulatory Impact Assessments (RIAs) has been embedded in Departments. The Government is within sight of its target of full compliance: more than ninety percent of all significant proposals have a RIA. However, the quality of RIAs still leaves much to be desired, as our Annual Report, "Champions of Better Regulation" published in February 2003, demonstrated. For RIAs to be a tool of better policy-making, there needs to be fuller commitment by Departments to getting them right. This includes properly considering all the alternatives to classic regulation, and consulting on these alternatives. The three challenges set by the Task Force to Government are;²

- better RIAs
- better consultation; and
- more creativity in how to achieve policy goals.

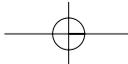
Who are the players?

Meeting these three challenges consistently, throughout Government, will require action at all levels in Whitehall, from:

- members of the Cabinet;
- Regulatory Reform Ministers;
- (other) junior Ministers;
- (other) MPs and Peers;
- Permanent Secretaries;
- Departmental Management Board members including non-executives;
- policy officials, economists, lawyers; and
- staff of Departmental Regulatory Impact Units; and from the centre:
 - the Treasury;
 - the Small Business Service;
 - the National Audit Office; and
 - the Regulatory Impact Unit in Cabinet Office.

And external stakeholders too have a part to play in maintaining pressure for ever-better standards of regulation.

² Champions of Better Regulation, Better Regulation Task Force, page 5



Making the change

We hope this report can raise the level of interest and expertise in Departments in the different ways of meeting policy objectives. We also hope it will help stakeholders monitor

the process of better regulation, and understand better what they can expect from policy-makers.

We recommend that the Cabinet Office take this forward:

Recommendation 1: We recommend that the Cabinet Office use this report to promote awareness of the alternatives to classic regulation. We would like to see an action plan by December 2003.

As focus shifts from doing RIAs to improving their quality, it is important that attention is given to whether officials are indeed considering a range of options. In assessing the quality of RIAs and deciding which to refer to the National Audit Office in 2004, the Task

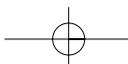
Force will be looking closely at whether this has been done³. We suggest other stakeholders should do the same. To reinforce the message, it is important that the Cabinet Office also incorporates this into its quality assessment of RIAs.

Recommendation 2: Cabinet Office guidance states that each RIA should include an analysis of alternatives and potential unintended consequences. When considering the quality of RIAs, the Cabinet Office should assess how far Departments have analysed alternatives to classic regulation, and have considered the potential for unintended consequences.

The Task Force was pleased that the Chancellor in his 2003 Budget committed Departments to reporting on their regulatory performance in their annual reports. We plan to publish a critique of these reports, and will be looking to highlight examples of good performance. We will want to see details of the quality as well as the quantity of their RIAs; their performance in meeting the

requirements of the consultation code; their use of alternatives; regulatory reviews they have undertaken; and what regulation they have removed or sunset. We see this as an excellent opportunity for them to set out their stalls to the public and give examples of regulatory good practice. For this to happen, Treasury guidance will have to inspire them to aim high.

³ The BRTF has taken up a new role by publishing a list of sub-standard RIAs in its annual report, which it recommends to the National Audit Office for further investigation. See *Champions of Better Regulation*, page 10



Recommendation 3: From 2003/04 Departments will be required to report on their regulatory performance in their annual reports. We recommend that HM Treasury should make clear in its guidance to Departments on annual reporting that they need to include information on the quality as well as the quantity of their RIAs; their performance in meeting the requirements of the consultation code; how they have used alternatives to classic regulation; regulatory reviews they have undertaken; and what regulation they have removed or sunset.

We welcome the revision of the Cabinet Office Code of Practice on Consultation which includes reference to the Task Force principles of good regulation, and also the publication of supportive guidance. The Code currently does not

emphasise the need to ask stakeholders directly about possible unintended consequences of Government intervention or alternative approaches to implementation, and we want this to be put right.

Recommendation 4: We recommend that the revised Code of Practice on consultation should also emphasise the need to encourage stakeholders to identify all possible alternative approaches to implementing policy and the unintended consequences of policy intervention. One way of achieving this is to ask consultees directly.

Unintended consequences

Whenever the Government attempts to influence business and individuals, unintended consequences can result. These can have significant negative effects on business, charities and individuals and can add to the costs of Government intervention. It is therefore important that policy-makers try to

anticipate the potential side effects of their proposals, and take this into account in deciding the best measure to take. But there is little help and guidance for those designing policy implementation on how to identify and assess any potential unintended consequences⁴.

Recommendation 5: We recommend that the Cabinet Office carries out research on better identifying and assessing the consequences of regulatory interventions, so that the unintended and indirect consequences can be picked up. This work should be completed by autumn 2004. One outcome of this research could be the production of additional guidance for policy makers on how to identify unintended consequences. Revised guidance on consultation can draw on this work (see recommendation 4).

⁴ Better Policy Making: A Guide to Regulatory Impact Assessment, Cabinet Office, 2003

Leadership, motivation and training

Culture change can be achieved only with: strong leadership from the top; positive incentives including public recognition of those who put change

into practice in their own workplace; and training for all involved in policy making. Members of Departmental Boards have a particularly important role to play.

Recommendation 6: We recommend that each Department should have an Executive Board member with a specific objective to promote better regulation and the consideration of alternatives to classic regulation within their Department. We also recommend that non-executives on Departmental boards should take an interest in the regulatory performance of the Department. Cabinet Office should invite non-executives to a meeting which the Task Force Chair would address by March 2004⁵.

If behaviour is to change, people who develop and adopt alternatives to classic regulation need to be recognised and rewarded. The culture of many Departments rewards those who bring forward classic regulation – working on a Bill Team is often a good career move. Persuading a Minister that there is no need to regulate may be much more difficult, and the official who does so successfully should also be recognised. Departments should consider how to redress the balance.

We aim to play a part in this, for example by praising good performance in our annual report and by writing to congratulate officials. We encourage stakeholders and Departments to draw good examples to our attention. And we encourage Ministers to follow our lead.

More radical measures would include

writing objectives into Permanent Secretaries' job descriptions; building on the link between better regulation performance and the next spending round; changing Departments' pay and performance appraisal schemes. If the Government is convinced of the need to change, these are some of the levers available to it.

Training is also an important tool for achieving culture change. The Cabinet Office delivers training for Departmental officials on how to do RIAs, but there is a wider role for the Government's Centre for Management and Policy Studies, a part of the Cabinet Office. It should ensure that all its courses on policy development and implementation, particularly those for new entrants to the civil service, address the principles of good regulation, including RIAs, consultation and alternatives to classic regulation.

Recommendation 7: We recommend that the Cabinet Office take steps to ensure that, by July 2004, CMPS courses on policy development include the BRTF principles of good regulation, and train participants in producing good quality RIAs, with proper consideration of alternatives to classic regulation, and appropriate consultation.

⁵See also recommendation 6 in the Small Business Council Report 2003: That the Cabinet Secretary requires each government department to appoint a person from the most senior board in that department to be accountable for bringing about substantial improvements in the policy making process. <http://www.sbs.gov.uk/content/sbc/sbcar2003.pdf>

There are also important levers in the hands of Members of Parliament and of the House of Lords. Some are finding that RIAs can be very useful in debate. They too could have a role in ensuring that alternatives to classic regulation have been thought through properly.

We cannot issue recommendations to Parliament; but we can recommend that Cabinet Office work with its Officers, including Committee Clerks and staff of the Libraries, to alert them to the existence of RIAs, where to find them and how they might be used.

Recommendation 8: We recommend that the Cabinet Office work with Parliamentary officials to help MPs and Peers use and understand RIAs, so that they too can play a more active role in promoting good regulation.

Sources of regulation

Regulatory interventions in the UK have two main sources: domestic policy decisions; and EU regulations and directives.

The UK Government, with the devolved administrations, is the main domestic source of UK legislation. These cover every area of economic and social activity. Domestic legislation implements the Government's policy objectives⁶.

The European Commission is the source of about 40% of total UK legislation with significant impact on business. The share varies from one policy area to another and in relation to the scope of the European Treaty. There is more European-originated legislation in the areas of environment and employment than for example in education – in the latter area the EU has fewer powers. The UK can influence the drafting of EU legislation, which takes the form of **Regulations** and **Directives**⁷.

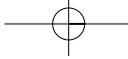
EC Regulations are directly applicable and so do not generally have to be transposed into UK law to apply although supplementary national legislation may be necessary for full implementation. Directives are addressed to Member States and are legally binding on them. Generally they must be implemented by UK legislation to have effect. Some Directives are very specific, and the European Commission can scrutinise the UK law very closely to make sure every detail has been incorporated. However, other Directives are much more goal setting in nature and give Member States freedom to decide how best they should be implemented in order to meet their objectives⁸.

Some Directives are called Framework Directives. They set broad regulatory principles. Sometimes the details are then filled in by means of "daughter directives" – for example, in the field of health and safety. In other more recent examples, the framework sets out the desired outcome and leaves it to individual member states to work out

⁶The United Kingdom Parliament,: Making New Law: <http://www.parliament.uk/works/newlaw.cfm>

⁷The legislative process: http://europa.eu.int/eur-lex/en/about/abc/abc_21.html

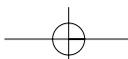
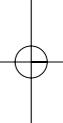
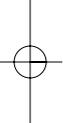
⁸For information about the transposition of EU directives see: Transposition Guide: How to implement European Directives effectively, Cabinet Office, RIU, March 2003.



how to get there. An example of this is the draft Directive on Unfair Commercial Practices, which introduces the duty not to trade unfairly. We commend the current draft as a good model of a modern Directive, which prescribes the objectives, but

not the means of getting there. Whilst we cannot make a recommendation to the European Commission we can urge the UK Government to use its influence better.

Recommendation 9: We recommend that all Government Departments put pressure on the European Commission to use alternatives to legislation, or more outcome orientated Framework Directives, where appropriate. This will enable Member States to implement EU policies in a manner consistent with their national regulatory framework.



4. Classic regulation

4.1. Introduction

Prescriptive state regulation, which we call "classic regulation" in this report, is where a law is passed to tell people what to do or what not to do. This may be primary legislation – where there is an Act of Parliament – or secondary legislation, often (confusingly) known as "regulations".

An Act can give a Secretary of State legal powers to make regulations, which spell out the detail not included in the Act. For example, the Health and Safety at Work etc Act 1974 sets out general health and safety rules, but specific requirements are contained in individual regulations, like the Construction (Design and Management) Regulations 1994⁹. The detailed regulations still have to go before Parliament, but this is less cumbersome than the lengthy procedures involved in taking a Bill through both Houses of Parliament. As a result, any rules which might need to be changed from time to time will usually be set out in regulations, rather than in an Act.

Classic regulation is the traditional way for the State to seek to change behaviour. If there seems to be a need to intervene in a market; a new health risk needs to be addressed; there has been an accident or disaster and "something must be done", the first thought is usually "we need to

regulate". We want to stop this from being the first thought. Too often this first thought becomes the only option. We want Departments to choose the best way of solving their problem. Classic regulation may prove to be the best way; but equally it may not.

There are advantages. Classic regulation can make it clear how people have to behave, and sometimes this can be easier for them than having to work out what to do each time. It applies to everyone within scope – not just those who choose to opt in – so it can deliver a level-playing field. This can have business benefits.

However, there are disadvantages too. Although a piece of legislation may apply to someone, they may not know they are within its scope; or know what to do. Legislation has to be promoted, explained and, importantly, enforced, if it is to have an impact. People may not comply through ignorance; or they may try to avoid or break the rules if they get in the way of what they want to do. As a result, compliance may be a problem, and costly policing may be necessary.

This in turn may mean more bureaucracy. Proving that you comply may mean form-filling and record-keeping. In order to close all the loopholes, classic regulation can become complex.

⁹The Construction (Design and Management) Regulations place duties on all those who can contribute to the health and safety of a construction project. Duties are placed upon clients, designers, contractors and the Regulations create a new duty holder - the planning supervisor, <http://www.hse.gov.uk/pubns/cis42.pdf>

All this leads to additional costs for business and others. Some of these are administrative costs (also called red tape), others are costs of new machinery or systems that may be necessary to keep up with new rules. These costs can be significant and in the extreme drive firms out of business.

This chapter discusses some examples of classic regulation and gives some regulatory tips.

- First, it contrasts two examples where classic regulation is frequently used: transport safety and the labour market;
- next, it discusses compliance and enforcement;
- third, it describes the types of 'unintended consequences' that tend to arise with classic regulation;
- finally there are examples of classic regulation used in a more flexible way.

4.2. Use of classic regulation

Two areas where classic regulation plays a significant role are transport safety provisions and employment law. In the area of transport safety, risks to others, especially vulnerable people such as children and the elderly, are perceived to be high. In employment law classic regulation is used to set minimum standards in all workplaces.

Transport safety

Classic regulation is often used to promote transport safety. It addresses the risks of an accident, which may be fairly probable (roads) or less likely, but leading to greater loss of life in a single incident (air or rail). Road safety is covered by a large number of classic regulations – not all referring directly to transport – including, for example, rules about bus and train drivers' working hours¹⁰. The "Highway Code" is another example. It sets out the rules of the road in detail. Many of these rules are legal requirements and an offence has been committed if they are not complied with. Other rules can be used in court to establish liability¹¹. In theory there could be alternative, less prescriptive approaches to some of the issues covered by the Highway Code. But these would increase the risks to road users beyond an acceptable level. For example, if car roadworthiness were left to car owners to judge there might be more accidents. Or if motor cycle helmets were not compulsory, there could be more injuries leading to substantial social and health care costs^{12 13}.

Employment law

Classic regulation is also frequently used to achieve the Government's objectives in the labour market.

Employment law sets standards for how employees are treated in the workplace: for example, that they must not be discriminated against on grounds of sex, race or disability, and must not be required to work excessive hours. Some of these requirements

¹⁰The Working Time Directive was amended by the Horizontal Amending Directive on 31 October 2002: http://www.dti.gov.uk/er/work_time_regs/hadgovresp.pdf page 2

¹¹<http://www.highwaycode.gov.uk/index.shtml> Some of the rules in the code are not legal requirements. Not obeying them is not a criminal offence, but may be used as evidence in a court.

¹²Rules about car maintenance are in the Annex to the Highway code, paragraph 6: <http://www.highwaycode.gov.uk/28.shtml#6>

¹³<http://www.highwaycode.gov.uk/index.shtml>, rule 67

come from the EU, and must be implemented in UK law. Classic regulation is used in this area to guarantee employees minimum rights, and satisfy the European Commission that the UK has met its legal requirements.

The 'Part-time Workers Regulations 2000' implement a European Directive and prohibit discrimination against part-time workers, 80% of whom are women¹⁴. A part-time worker must be treated in the same way as a full time worker who has similar skills, qualifications and experience, doing broadly similar work for the same employer. The regulations cover all aspects of the employment relationship, such as holidays, access to training, pay and pensions. Two thirds of women returning to work after childbirth do so on a part-time basis. To address this, the Regulations state that a worker returning part-time after a period of absence not longer than 12 months can compare her terms and conditions with her previous full-time contract¹⁵.

There are other ways of influencing the behaviour of employers and workers. Three theoretical alternatives, to illustrate options, are as follows:

- measures to make the labour market work more efficiently could involve job-seekers shopping around for a contract that suited them. Employers competing for workers would have a greater incentive to offer attractive employment conditions. This approach would have

disadvantages: the most vulnerable within society would require some protection. One example where this approach might be relevant could be the duty of employers to consider seriously the request of a parent to work flexibly. A responsible employer who wants to keep their employees is likely to be doing this already.

- another variant is the continental model in which binding national collective agreements between the two sides of industry determine acceptable terms and conditions of employment¹⁶. Whilst the collective agreement model could not be replicated in the UK industrial relations environment, there are areas where employers and employees have reached partnership agreements. Most recently guidance has been published on teleworking. The guidance was agreed between the Trades Union Congress, Confederation of British industry and the Employers' Organisation for local Government, CEEP UK.¹⁷ The guidance is clear and comprehensive, and all parties are more likely to want to see it work because they have agreed it between themselves.

- the third approach is as described in our Employment Regulation report¹⁸. The Swedish Government wanted to encourage mothers to return to work after childbirth. The lack of affordable childcare was identified as a barrier to work for these women. To enable them to go back to work the Government has subsidised good-quality childcare rather than changing employment legislation.

¹⁴Full title: The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

¹⁵For statutory instrument see: <http://www.legislation.hmsso.gov.uk/si/si2000/20001551.htm> .

For further information see: <http://www.dti.gov.uk/er/ptime.htm> and <http://www.dti.gov.uk/er/pt-info.htm> .

¹⁶See: Employment Regulation: striking a balance, BRTF , May 2002, <http://www.brtf.gov.uk/taskforce/reports/entry%20pages/emplawentry.htm>

¹⁷<http://www.dti.gov.uk/er/individual/telework.pdf>

¹⁸See: Employment Regulation: striking a balance, BRTF , May 2002, <http://www.brtf.gov.uk/taskforce/reports/entry%20pages/emplawentry.htm>

Regulatory tips:

Tip 1: When introducing classic regulation it is important to ensure that everything necessary for **compliance**, monitoring and enforcement is in place, that monitoring costs are minimised and enforcement is adequately resourced.

Tip 2: Classic regulation may require **enforcement**. It is important to identify the desired level of compliance with a regulation when doing the RIA and estimate the costs of enforcement needed to keep it at that level.

4.3 Compliance and enforcement

Classic regulation generally only makes sense if those regulated are able to comply with it. And compliance with a new piece of classic regulation can involve a big change in behaviour, which can be burdensome and costly. Indeed, if the technology and infrastructure are not available, it may be impossible to comply.

In the case of the EC regulations on Ozone Depleting Substances, compliance in the UK was initially impossible because the relevant infrastructure for treating refrigerators was not available¹⁹. Fridges had to be stockpiled or exported. As a result, dumping of end-of-life fridges became an environmental problem in some parts of the country²⁰.

Sometimes demonstrating compliance with regulations requires record-keeping and other administration. These take time, and can be disproportionately burdensome to small firms.

In introducing the National Minimum Wage, the Government initially proposed that employers should be required to demonstrate on each pay-slip that the NMW regulations were complied with. This led to an outcry (the Task Force was one of those to protest). Now, compliance is achieved through the provision of a web-site known as TIGER which gives guidance to employers and workers about how the minimum wage legislation works²¹.

When enforcing compliance that is very expensive or difficult or both, there is little incentive either to enforce or comply.

The Food Labelling (Amendment) Regulation 1999 and the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000 require food producers to indicate whether a food product contains more than 1% of GM material. The technology to measure this is not available to most food producers, and where it could be made available it is currently too expensive. According to the Food Standards Agency's (FSA) own report, results of analysing the same sample in different laboratories gave different results. There would also be unacceptably high costs for local authorities if they attempted to monitor compliance with the regulation by measuring the content of food samples²².

Enforcement can be expensive. The Government has to pay the people to do it, train them, and provide any equipment they may need.

The Health and Safety Executive employs about 1,600 inspectors²³.

¹⁹Source: Ozone Depleting Substances Regulation: Impact on disposal of refrigerators, Environment, Food and Rural Affairs Select Committee, June 2002.;

²⁰Fridge mountain could cost £40m, *The Guardian* Thursday June 20, 2002, Paul Brown, environment correspondent.

²¹www.tiger.gov.uk

²²http://www.vam.org.uk/news/news_item.asp?intNewsItemID=253

²³Health and Safety Commission, Business Plan, 2002 - 2003

<http://www.hse.gov.uk/aboutus/plans/hscplans/busplan0203.pdf>, page 55, table 6.3

4.4. Unintended consequences

The Government implements classic regulation because it wants people to behave in a particular way. Not surprisingly, not everyone will do so. This is one of the most obvious unintended consequence of classic regulation.

A large number of factors will influence the level of compliance. The higher the costs of compliance, the greater the likelihood that people will try to avoid complying. The level of enforcement will influence the chance of being caught and therefore the level of compliance. If the fine is low, non-compliance and avoidance will be more likely – it may be cheaper to pay the fine than to comply.

Newspapers have reported that convicted uninsured drivers may be fined, for a first offence, far less than the cost of the insurance²⁴.

Other factors will include the difficulty of proving a case, the likelihood of magistrates or judges awarding the maximum penalty; and whether it is possible to get away without paying the fine.

Existing regulations prohibit discrimination against women²⁵. Other regulations protect pregnant women and new mothers. These maternity rights can put additional costs on the employment of

women²⁶. As a result there may be employers who try to avoid recruiting women of childbearing age²⁷. It will not always be easy to identify the reason why an applicant was not hired and so prove discrimination in recruitment, so they may get away with it.

Other types of unintended consequences extend well beyond those regulated. The regulations relating to maternity rights have a direct effect on mothers and their employers but these two groups do not operate in a vacuum. Those around them, such as other employees not covered by the regulations, may react to the changes made because of the regulations.

The following example indicates that classic regulation can have wider effects than might appear at first sight.

The Animal By-Products Regulations, which came into force on 1 May 2003, are designed to deal with the treatment of raw meat and blood²⁸. Problems have been identified for small corner shops that sell products containing meat²⁹. Some of these shops may

²⁴Financial Times, 22 August 2003, Government clampdown on uninsured motorists.

²⁵Sex Discrimination Act 1975: Guide to the Sex Discrimination Act 1975 (ISBN 0 85522 588 2)

²⁶More information about maternity rights: <http://www.dti.gov.uk/er/maternity.htm>

²⁷So far the data do not suggest that these rights had a negative impact on female employment. Source: Labour Force Survey: www.statistics.gov.uk

²⁸Source for information: <http://www.Defra.gov.uk/animalh/by-prods/default.htm>

²⁹Possible problems: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmenvfru/707/3051412.htm>

Response by industry: <http://www.adas.co.uk/env/environment/newsdetails.asp?item=208>

have to stop selling these products, increase their prices or even close because they cannot fulfil the new requirements. This could have negative implications for the owners and their families, and the communities in which they work.

It may be difficult to spot some unintended consequences. This is why we recommend that regulators ask about them when they consult on proposed regulations (see recommendation 4).

4.5. Variations on classic regulation

Exemptions

Government can exempt groups of businesses or individuals from a regulation. In a previous study we have discussed the circumstances under which exemptions may be helpful³⁰. Exemptions have advantages and disadvantages. Some regulations may need to be universal in scope, for example those relating to health and safety. Exemptions diminish the disproportionate effect of regulation on small business, reduce enforcement costs and allow those who are exempted to focus on the running of their business. On the other hand they can also create a barrier to company growth, and may confuse consumers, employees and other stakeholders. Our study stressed that exemptions were not to be used as a "get-out" option for poorly-designed regulations.

One example of a small firm exemption is contained in the VAT registration regulations. A small firm has to register for VAT only if the total "taxable supplies" in the past 12 months or less have exceeded the current VAT registration threshold of £56,000, or the value of the taxable supplies in the next 30 days alone is expected to exceed this threshold³¹.

Comply or explain

An approach sometimes used is 'comply or explain'. Companies can choose not to comply with a particular requirement, but must describe and explain in their annual reports how they are achieving the Government's objectives.

With the Combined Code on corporate governance for listed companies there is flexibility in choosing how to implement the Code's principles. The Code works on the 'comply or explain' principle³². Listed companies must either state in their annual reports how they have complied with the Code's provisions or explain why they have not. This approach allows companies the flexibility to use mechanisms other than those set out in the Code. Some companies have told us that both options – complying and explaining – lead to substantial costs.

Tip 3: Some regulations are hitting groups of individuals or small firms particularly hard without achieving much. If the regulation cannot be redesigned to avoid this problem, it may be helpful to consider **exemptions**.

Tip 4: The 'comply or explain' option allows more freedom of choice and efficiency and so should be considered wherever possible.

³⁰'Helping Small Firms Cope with Regulation - exemption and other approaches', Better Regulation Task Force, April 2000

³¹Source: <http://www.customs.gov.uk/business/vat/vatregist.htm> or <http://www.hmce.gov.uk/business/vat/vatregist.htm>

³²The combined code: Principles of good governance and code of best practice, http://www.ecgi.org/codes/country_documents/uk/combined_code.pdf

Another example of the ‘comply or explain’ approach which is used in the context of classic regulation is an HSE Approved Code of Practice.

The Health and Safety at Work etc. Act 1974 and its associated regulations are often not prescriptive; the overall approach is goal setting, specifying the objective but not how to achieve it. Approved Codes of Practice (ACoPs) help employers meet these goals. ACoPs have a special guidance status which can be used in court. If it is proved that the code was not followed, the defendant must show that they have complied with the law in some other way. Complying with the code is a safe way of being sure of complying with the law. But this approach gives them the option of finding a better way if they can prove it works just as well³³.

Tip 5: Where implementing domestic policy or where European Directives allow it, it may be helpful to consider permitting **opt-outs**.

Tip 6: Regulation can be overtaken by developments in markets and society. Where this is foreseeable, a **sunset** clause may be the best way of ensuring that Government and Parliament reconsider the regulation to ensure it is still effective and appropriate.

Voluntary opt-out

A voluntary opt-out, allowing an opt-out by either the regulated companies or the people the regulation is designed to protect, can be included in classic regulation. Voluntary opt-outs will not always be possible: European Directives and regulations do have to be implemented and with a voluntary opt-out there is a risk that the overall policy objective will not be achieved. But where voluntary opt-out is possible, it can introduce welcome flexibility.

The Working Time Regulations allow employees to opt out of the restriction to work only 48 hours per week³⁴. They have the option of signing the voluntary opt-out agreement. This increases flexibility, allowing businesses to adjust the working time to their needs and workers to ensure they get the pay they want.

Sunsetting

Where regulation addresses problems in fast moving markets such as the information and communication sector, areas of scientific uncertainty, or emergency measures such as terrorism, it should be regularly revisited and phased out if it no longer achieves its objectives. Sunsetting achieves this by adding a date into the regulation itself after which it no longer applies. If Parliament or Government wants to keep it in place, sunseting forces them to go through the legislative process again and reconsider the detail.

Sections 21 to 23 of the anti-terrorism legislation introduced after September 11 (certification of suspected international terrorists, deportation, removal and detention of suspects) will expire fifteen months after Royal Assent unless the Secretary of State renews them by order. Such an order, which has to be approved by both Houses of Parliament, may only extend the life of the sections by up to a year³⁵.

³³Examples of Approved codes of Practice are: Approved Code of Practice Surface Mining and Quarrying, http://www.minerals.co.nz/html/main_topics/minerals_industry_in_nz/code_of_practice_two/section_1_2_3_4_5.html and Work with Ionising Radiations: Approved Code of Practice and Guidance <http://www.srp-uk.org/consacop.html>

³⁴The opt out is currently being re-negotiated in the EU. More information: http://www.dti.gov.uk/er/work_time_regs/index.htm

³⁵Anti-terrorism, Crime and Security Act 2001 Chapter 24 and explanatory notes of sections 21 to 23.

5. No intervention

5.1. Introduction

In response to a disaster or when a new risk comes to light there is often pressure that "something must be done". This can come from lobbyists, pressure groups, the media, politicians or the public. But any action will have costs as well as benefits, so the first thing to think about is whether further action is required. Maybe there is regulation already in place; maybe more regulation would do more harm than good.

This chapter covers four situations in which it may not be sensible to introduce new regulation:

- first, when intervening in a market that is not operating perfectly seems likely to cause more problems than it solves;
- second, when the benefits, which are often difficult to quantify, look unlikely to justify the costs. In particular, when the costs of preventing a highly improbable event outweigh the estimated benefits;
- third, when any regulatory intervention would be difficult or impossible to enforce;
- fourth, when the common law already exists in an area.

5.2. Market failure versus regulatory failure

One reason often given to justify Government intervention is that a particular market could be improved because it is 'failing'. The implication is that the Government should step in to improve on the free working of the market. But the perfect market does

not exist and there are many reasons why Government intervention can make the situation worse.

For example, certain regulatory bodies who pass on their costs to those they regulate may have little incentive to minimise these costs (though the regulated will try to ensure they do so). Some may want to impose high standards in order to avoid blame if things go wrong. And there may be little pressure to withdraw from regulatory areas, unlike in a competitive market where rivals will constrain growth. Also, there are always incentives to do new things, so regulatory bodies often tend to expand. There is also the possibility of 'regulatory capture', where a regulator becomes sympathetic to the interests of those they regulate, and acts to protect their interests³⁶.

Furthermore, it is easy to underestimate the costs of regulation, which include effects on entrepreneurial behaviour and innovation, as well as the costs of the regulatory body and the compliance costs of the people being regulated. Regulation often makes it difficult or costly for companies to take account of technical innovations, and may crowd out market solutions to problems.

A classic case where government intervention damaged a market is that of the rent controls imposed in the housing market in the UK in the 1950s. Eventually the supply of private sector rentals fell from half of occupied property being rented in 1951 to only one in ten in 1981³⁷. The market only came to life again in the 1990s, after the Housing Act 1988³⁸.

Tip 7: Regulatory failure can be worse than market failure. Both need to be carefully considered before any intervention.

³⁶See 'Regulation Without The State ...', John Blundell, Colin Robinson and others, The Institute of Economic Affairs, 2000

³⁷Royal Institute of Chartered Surveyors, United Kingdom RICS European housing review 2003, page 116

³⁸http://www.hmso.gov.uk/acts/acts1988/Ukpga_19880050_en_1.htm

5.3. Justifying the costs

Regulation can be costly and Government is committed to using it only where the benefits justify the costs. But benefits can be difficult to identify, assess and quantify in terms that can be compared to the costs, and many of the costs may be hidden in the unintended consequences of the proposed regulation.

An example of a case where the costs associated with safety regulation are not immediately apparent is where safety-enhancing measures are considered after rail accidents. Rail industry and independent experts both reached the conclusion that the basic version of an improved rail safety system was not suitable for the UK because it was likely to reduce rail capacity. This could in turn lead to more deaths overall (rail customers might for example take to the roads). The Strategic Rail Authority and the Health and Safety Commission favoured an alternative that should increase rail capacity, and could enable more trains to be run, reduce rail and road fatalities, and which would have a stronger investment case³⁹.

In a recent case where the benefits did not justify the costs, the European Commissions had proposed an unjustifiable lowering of in-service emissions-testing limit values for cars. Following a critical analysis by the UK, the Commission proposal was dropped, and a Directive was subsequently adopted which contained new, properly-researched

and appropriate, values for vehicles with more modern, less-polluting, engines⁴⁰.

Sometimes people who feel strongly about some issue press the government to put in place some form of regulation when there is insufficient evidence of the benefits and likely costs to back up their claims. Scientific evidence is not always clear-cut and Government has to decide whether the evidence available is sufficient to justify intervention and whether some proposed intervention could in fact have a beneficial effect. The Government uses Scientific Advisory Committees to advise it.

Highly improbable or uncertain events

Whether there is a case for intervention, for example relating to health or safety, can depend on the nature of the risk resulting from an activity. Some accidents have dreadful consequences but are extremely unlikely to occur. These are the cases where, after such an event has actually happened, there tends to be a lot of pressure on the Government to do something. But often the costs of effective action outweigh the likely benefits, because the type of accident in question is so improbable. Investing in ever-greater rail safety measures beyond what is reasonably practicable under the Health and Safety at Work etc Act, for example, would be likely to put up rail fares, and have implications for both access charges paid by train operators and Government subsidy. It could also lead to greater use of the roads. This would in turn lead to more transport-related deaths.

³⁹<http://www.hse.gov.uk/railways/liveissues/tps.htm>

⁴⁰Source draft Regulatory Impact Assessment, Department for Transport, not published.

Government also has to take into account the public perception of risk. Some people take risks willingly and would be against Government interference. Another factor is that some risks are feared more than others. Young people are prepared to risk damage to their hearing by listening to (very) loud music. Where there is a lot of uncertainty about the risks, there may be a temptation to put off a decision until there is better information, or until the experts agree. But perfect knowledge may never be achieved, while in the meantime damage may be done. On the other hand, lobbyists may argue for extreme knee-jerk responses, which would be disproportionate to the harm even according to worst-case scenarios. The Precautionary Principle says that when an activity raises threats of harm to human health or the environment, and the current state of scientific evaluation doesn't allow the level of risk to be determined with sufficient confidence, then precautionary measures should be taken. But any such measures need to follow the five Principles of Good Regulation – this is not an alibi for excess regulation – and regulation introduced under this principle should be kept under review as knowledge develops.⁴¹ The principle has been summarised by The Economist as "a fancy way of saying 'it's better safe than sorry'".

Examples where the precautionary principle has been used in risk assessment include:

- the use of uncertainty factors in the assessment of the health risks from chemicals;

- 'over-engineering' of bridges and other major structures.⁴²

5.4. Enforceability

It is not generally a good idea to bring in regulatory intervention that cannot be enforced. A limited case for this can be made where Government wants to send a signal, to bring about a culture change, for example towards sustainable development or encouraging firms to innovate. But otherwise it clogs up the statute book. Regulatory intervention may be unenforceable for technical reasons (for example, it can be difficult to enforce regulation in remote locations, or if there is no agreed method of measuring exposure to a particular chemical) or because it is inconsistent with some other existing legislation. Further, the agency responsible for enforcing needs to have the necessary resources.

There is a limit to the degree to which Government is willing to allow its agents into people's homes. The HSE takes the view that they cannot and should not enforce in people's homes where no commercial activities are carried out. However, in 1986 the Government gave HSC/E responsibility for protecting members of the public from the hazards of using gas that entails enforcement activity in domestic premises.⁴³

Chip-pan fires are relatively common, but a ban on chip pans would be unpopular and unenforceable.⁴⁴

⁴¹Interdepartmental Liaison Group on Risk Assessment: The Precautionary Principle: Policy and Application, <http://www.hse.gov.uk/aboutus/hsc/meetings/2002/030902/misc26a.pdf>

⁴²As above page 7/8

⁴³Gas Safety and Use Act (amended 1998) regulates the use of gas from the meter onwards. The Gas Safety Management Regulations 1996 regulate the supply of gas from shore to the meter.

⁴⁴<http://www.firekills.gov.uk/>

http://www.london-fire.gov.uk/fire_safety/in_your_home/chip_pans.asp

Tip 8: Before considering a new measure it is worth checking whether the issue is already covered by existing legislation.

There may also be existing legislation that contradicts some proposed regulation and would make it unenforceable.

The Human Rights Act 1998 came into force in the UK in October 2000.⁴⁵ This led to a full review of existing law and procedure. For example, it was argued that the Stop and Search powers of the police would be under scrutiny, with police facing potential action under the right to privacy and prohibition of discrimination.⁴⁶

It is also worth noting that the ability and willingness of Government to enforce regulation will change over time, because of developments in public perceptions, values and technology.

Recent discussions about new regulations to address domestic violence show a movement of the boundary of what Government considers to be enforceable.⁴⁷ Whereas historically the police found it difficult to address a form of violence that was widely tolerated or overlooked, attitudes have changed and the police and Government are now expected to act.

Sometimes there are cases where the risk appears to be covered by existing regulations but these may not be properly enforced, or awareness of them may be low. The information & education chapter discusses the different options available when the Government wants to raise awareness. Adding another layer of regulation may be seen as unhelpful and may be seen by some as causing confusion.

In the case of the Lyme Bay disaster, where four sixthformers died on a canoeing exercise, there was a breach of the existing Health and Safety at Work etc. Act 1974 and this was used successfully to prosecute the company. However, the Government introduced the Activity Centres (Young Persons' Safety) Act 1995 followed by the Adventure Activity Licensing Regulations 1996. The Better Regulation Task Force has consistently argued that this Act added nothing to existing protection, and may in fact have had unintended consequences. Parents may believe their children are safer than they really are, because they could be taking part in unlicensed activities at a licensed centre. The Regulations are currently being reviewed by the Government.

⁴⁵Source: <http://www.hmso.gov.uk/acts/acts1998/19980042.htm>

⁴⁶BBC: Human rights in society, Police http://news.bbc.co.uk/1/hi/english/static/in_depth/uk/2000/human_rights/police.stm

⁴⁷Safety and Justice: the Government's proposals on domestic violence, June 2003 <http://www.homeoffice.gov.uk/docs2/domesticviolence.pdf>

5.5. Common law solution

Another possibility is to allow the common law to continue to apply and/or develop. The common law may already be established in a particular area, and even where it is not, individuals taking cases to court may result in the creation of legal precedent, by which the common law evolves. In some cases, Government may feel it should introduce regulation if more and more cases go to court, particularly if conflicting decisions arise; or it does not like the way case law is developing; or if cases are not coming before the courts so that the common law is not developing.

Sometimes employees sue their employers for damages for the suffering associated with excessive stress, although there is no specific health and safety regulation on stress, only general health and safety law and a common law duty of care.⁴⁸ When cases are considered, this could set new boundaries on how employers must behave or identify the need for specific standards. For example, a ruling by the Court of Appeal (*Sutherland v Hatton*, February 2002) states, "*the employer can only reasonably be expected to take steps which are likely to do some good. On [this] point the Court identified the need for expert advice*". Such action also has an effect on insurance premiums.

Common law sometimes reflects changes in society and developments in science before they have been debated in Parliament.

The recent cases brought against the Human Fertilisation and Embryology Authority about genetic screening of embryos have helped to clarify what clinics can and can't do. Screening which protects the unborn child has been allowed in the UK, while screening which is only aimed at helping an existing child without benefits for the unborn child is currently not allowed in the UK.⁴⁹ Some people fear that this has gone beyond Parliament's original intentions.⁵⁰

Pros and cons of common law

The existence of the common law means that even where there is no legislation, a person can bring a case to court. Usually a case will be based on existing principles laid down in the case law but cases can be brought that confine, extend or refine those existing principles, or set new principles, and so develop the common law.

But there are disadvantages. The body of common law is large and evolving. The system of precedent means that the law can change or be modified, sometimes unexpectedly, if a higher court overturns the decision of an inferior court, or if a court distinguishes an existing case or reaches a different decision because the existing case is not binding on it.

⁴⁸<http://www.hse.gov.uk/stress>

⁴⁹Court of Appeal allows tissue typing for human embryos under strict conditions, Human Fertilisation and Embryology Authority 8 April 2003, <http://www.hfea.gov.uk/PressOffice/Archive/23523234>

⁵⁰'Embryo critics warn of future dangers' Daily Telegraph 23.02.2002, by David Derbyshire.

This means there can be conflicting decisions, particularly from the inferior courts, which may only be resolved by the higher courts if one or other party appeals, a resolution which can take considerable time. This can lead to uncertainty as to the state of the law. Furthermore, regardless of how well established and clear the common law is; the sovereignty of Parliament means that legislation can be passed to change it at any stage.

In May 2003, the Court of Appeal decided in favour of the taxpayer against the Inland Revenue in the Eversden case. The court decided that the principle that gifts between spouses are exempt takes precedence over the principle that gifts where the donor retains an interest remains in the donor's estate for tax purposes. The court's decision approved an interpretation of the law which was the basis of an inheritance tax savings scheme which had been widely publicised. However one month later, the Inland Revenue published a press release announcing that, with effect from the date of the release, the legislation would be changed to make it clear that the interpretation argued by the Inland Revenue would prevail after all in certain circumstances. This change of law effectively rendered the Court of Appeal decision irrelevant and blocked the inheritance tax scheme in question.

6. Incentives: using sticks and carrots

6.1. Introduction

By using incentives the Government can encourage particular types of behaviour. Often the incentives are in the form of money but praise or blame ("reputational incentives") can also be effective.

There are many different ways of using incentives. This chapter describes some of these uses and notes some of the unintended consequences. We include regulatory tips.

- First, we discuss markets: the possibility of restructuring a sector to include a competitive market, or of creating a market in "the right to trade".
- Next, we consider price caps, which are designed to mimic the competitive pressures of a market where none exists.
- Then we describe targets, a regulatory instrument which has been used widely in the public sector in recent years.
- We explain the use of taxes as a regulatory device.
- And finally, we consider other measures such as tax credits, subsidies and awards which reward the desired behaviour.

6.2. Creating markets Creating a competitive market

Sometimes government can restructure a sector and set up a market where before there was none. Introducing competition can increase productivity. An example is the utility sector. Government has changed its structure

over the last 15 years. What used to be state-owned monopolies with little incentive to operate efficiently are now private companies which either compete with each other, are regulated by an independent regulator, or both. Government has created markets in which companies can compete to provide goods and services such as electricity and gas where before there was none.

When electricity sectors were privatised around the world, both the public sector generating company and the distribution network were typically split into a number of individual generating, distributing, and supply companies, each sold separately. The generators then competed for contracts to sell their output to the supply companies, and these then sold electricity directly to business and domestic customers. As a result thriving markets have developed.⁵¹

The new competitive structure has improved performance in terms of reliability and customer service as well as reducing costs.

Pros and cons of creating markets

Privatisation and contracting out can be very controversial, and involve a great deal of upheaval to the businesses and their workforce. Some privatisations have worked well and the companies are operating in a truly independent way. But others have not. Railtrack was placed into administration by the High Court because it did not have, or was unlikely to have, enough cash to pay its debts as they fell due.

⁵¹See http://www.hmso.gov.uk/acts/acts1989/Ukpga_19890029_en_1.htm for the Electricity Act 1989

Tip 9: When regulating the quantities of a product using **quotas or permits** it can be beneficial to make the quotas and permits tradable.

In many cases privatisation has led to a fall in prices for consumers. Electricity is one example.⁵² In other cases such as railway privatisation the evidence is less conclusive.

Creating a market in quotas and 'permits'

Where the objective is to restrict the total output of a product, or to control a type of pollution, a system of permits or quotas may be set up. The total permitted volume (of milk, for example) is fixed, and the right to produce it is shared out among the producers (in this case, dairy farmers). The initial allocation can be difficult to arrive at and participants who feel they have not had a fair share can feel hard done by. This can result in a significant volume of litigation (in the case of dairy farming some cases are still not settled nearly 20 years after the introduction of the milk quotas system).

This prescriptive type of regulation lacks flexibility, and can often be improved by allowing the market participants to trade the permits among themselves.

The EU Common Agricultural Policy subsidises farm incomes. In some sectors this is achieved through production-based subsidies, such as price support or "headage payments". Not surprisingly, this has led to surpluses, which have been dealt with in part by quotas limiting the production or marketing of goods or the amount of subsidy that can be claimed. Milk quotas, which were introduced in 1984, are one example.⁵³ The volume of milk

that may be marketed in each Member State was set by the EU Agriculture Council. Within the UK the total original allocation was distributed between farmers depending on the amount of milk they marketed in 1981. Member States have considerable discretion in implementing the rules. UK farmers who wish to enlarge their herds can purchase or lease quotas from others who want to produce less. As a result, quotas have acquired a market value. This "quota rent" adds to the costs of dairy production. The trading has led to intermediaries who will help facilitate a trade and websites where prices are listed. However, cutting support prices to remove the artificial incentive to overproduce, and supporting farm incomes through direct payments not linked to production, would have been an alternative way of dealing with the problem. The reforms of the dairy CAP agreed at Luxembourg are a significant step in this direction.

Environmental pollution can be addressed in a similar manner, by allowing organisations to buy and sell "permissions to pollute". In this case the Government decides the acceptable level of pollution and creates enough permits so that that level is not breached. It allocates these permits among the relevant companies (again, the initial allocation can be problematic). If a company reduces its level of pollution, perhaps by investing in less polluting technology, it can sell its permits to other companies who pollute more.

⁵²Steve Thomas, Senior Research Fellow, Public Service International Research Unit (PSIRU), School of Computing and Mathematics, University of Greenwich The Impact of Privatisation on Electricity Prices in Britain, 2002, <http://www.psiru.org/reports/2002-08-E-UKImpactPriv.doc>

⁵³More information on milk quotas: <http://www.defra.gov.uk/foodrin/milk/Quotas/faqs/index.htm#13>

Climate change caused by emissions of greenhouse gases is a global problem. The UK has committed itself to delivering its Kyoto target to cut its greenhouse gas emissions by 12.5% from 1990 levels; and to move towards its domestic goal of a 20% cut in carbon dioxide emissions by 2010.⁵⁴ The commitment will be partly fulfilled by using a UK emissions trading scheme, launched in April 2002.⁵⁵ Companies within the scheme are allocated the right to emit CO₂ up to a certain limit, and if they want to emit more, they can buy the right (permit) to do so from another company in the scheme. The EU also plans to introduce a greenhouse gas emissions trading scheme from 2005, before the international trading under Kyoto starts in 2008.

The UK emissions trading scheme fixes the maximum amount of carbon dioxide emissions. Instead of fixing the maximum amount of pollution, a tradable permit scheme can set a minimum level of environmentally friendly activity, for example recycling. In this case, each firm has to prove that it has recycled at least a set percentage of its waste.

One example is the Packaging Waste Recovery Notes (PRNs) and the Packaging Waste Export Recovery Notes (PERNs) which are used in the UK to comply with the Packaging and Packaging Waste Directive. This Directive sets targets for the amount of packaging to be recovered and recycled. PRNs and PERNs are issued by accredited reprocessors when they receive

packaging waste for reprocessing. Businesses purchase the PRNs or PERNs from the reprocessors and use them as evidence that they have complied with their recycling obligations. The PRN system means that businesses do not have to recycle their own packaging waste. Hence it offers producers flexibility in how they choose to comply with the Regulations.⁵⁶

Pros and cons of tradable permits

A tradable permits system ensures – usually at lower costs – that policy objectives can be met while firms have the freedom to address pollution in different ways, and to vary their output.

But tradable permit schemes can be complex, and some additional bureaucracy is necessary. The initial allocation can be contentious, and Government often has a continuing role in ensuring fair play. This can mean setting up a body to check that a company's pollution or output is in line with its permits. Businesses may need to collect additional data and may have to pay for the monitoring. A successful scheme of tradable permits needs sufficient participants in the market and should not be dominated by one large firm. Small businesses, and new entrants to the market, may need help to take part.

6.3. Price caps

Where there is a natural monopoly, such as with the National Grid for electricity and Transco for gas pipelines, there can be no effective competition. Without economic regulation there would be nothing to prevent a company operating in an

⁵⁴http://www.defra.gov.uk/corporate/strategyo3o6/defra_strategy_pt4.pdf

⁵⁵<http://www.defra.gov.uk/environment/climatechange/trading/index.htm>

⁵⁶For a more in depth analysis see: Environmental Regulation: Getting the Message Across. BRTF July 2003, Annex C

inefficient manner, with high costs, and there is little pressure to keep prices down. Imposing price caps on such a company can effectively mimic the pressures of competition, giving it an incentive to operate efficiently. The benefits of the lower costs are passed to its customers. Natural monopolies mainly arise in the privatised utilities such as electricity and water. The economic regulators such as Ofcom, Ofwat and Ofgem administer and review the price caps.

Ofgem applies price controls to the electricity Distribution Network Operators who charge for the use of their networks and who each have a monopoly within their region. The price caps are linked to the annual change in the Retail Prices Index and are reviewed by Ofgem every five years. The objectives of the price cap are "to provide sufficient incentives to the network operators to manage and operate their networks in an economic, efficient and co-ordinated manner while at the same time protecting customers from excessive prices."⁵⁷

Profit caps (rate of return regulation) can be used to fix the rate of return a company can make on its assets. On its own, rate of return regulation is rarely used in the UK because it doesn't produce incentives for improving productivity, as do price controls. Instead it encourages 'gold-plating' the assets (e.g. buying unnecessarily expensive machinery or expensive office equipment which increases the value of the assets. With a given rate of return, this means that companies are permitted to earn more profit). However, rate of return

⁵⁷For more information:

<http://www.ofgem.gov.uk/ofgem/microsites/microtemplate1.jsp?tolevel=distribution&assortment=pricecontrol>

⁵⁸<http://www.doh.gov.uk/pub/docs/doh/pprs.pdf> and www.doh.gov.uk/pprs/index.htm

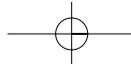
regulation is currently part of the bundle of regulation known as the Pharmaceutical Price Regulation Scheme (PPRS).

The PPRS does two things. It determines the maximum return on capital that a pharmaceutical company may earn on its sales of branded prescription medicines to the NHS in the UK, and it restricts the ability of the pharmaceutical companies to increase the prices of medicines supplied to the NHS. However, importantly, it allows the prices of major new products to be set at a level determined freely by the pharmaceutical company as long as they do not result in profits exceeding the permitted target. The scheme is operated by the Department of Health and is a voluntary agreement under Section 33 of the Health Act 1999.⁵⁸

Price caps – pros and cons

Price caps mimic competition in that they give the company, normally natural monopoly that would otherwise be run from within the public sector, an incentive to increase the efficiency of its operation. Given timely price reviews, this passes through into a reduction in the price charged to the final buyer.

Price caps have the disadvantage that the regulator needs a lot of information from the industry. This may be costly to collect. Regulators need to know what the costs of production are in order to assess the price a company needs to charge to cover their costs and earn reasonable profits. If price caps are set too low, the companies will have difficulty raising funds for new



investments, and the entry of new companies into the market will be prevented.

Another disadvantage of price caps is that industry may spend time and resources 'managing the regulator' where it might otherwise have been improving the performance of the business.

And a further disadvantage is that the regulator may need a range of firms in the market in order to form a view about best practice. This can lead to a prohibition of mergers, which can restrict the development of the structure of the market.

Tip 10: Targets can have a range of unintended consequences. They need to be designed in a way that does not distort behaviour. The motivation to achieve them should not be so strong that it leads to "fiddling" the books. There should not be too many targets imposed in any sector. And the monitoring and compliance costs should be kept to a minimum.

6.4. Targets

Targets are a relatively new addition to the range of regulatory devices. They are now being used extensively in the public sector to provide the pressures for efficiency and productivity that in the private sector arise from the existence of markets. We include targets in this chapter because they work using either money or praise and blame as incentives.

The Department for Education and Skills has set a series of national targets that set ambitious aims for the attainment of pupils at ages 11, 14 and 16. For example, at age 11, the national target is for 85% of pupils to achieve "Level 4 or above" in English and mathematics. Schools and local education authorities are required to set their own challenging targets

for achievement, based on an assessment of their own pupils. Progress against the national targets is reported annually, and information about the results of individual schools is published in the school performance tables.⁵⁹

Pros and cons of targets

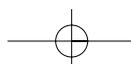
Targets can be very powerful motivators. Setting a small number of well-designed targets, and introducing sanctions where they are not met, can have a strong and beneficial influence on people's behaviour if the disadvantages can be avoided. Targets allow the Government to monitor the achievements of the public sector. They are useful in discovering problems, which may need additional action.

The Environment Agency reported that the UK achieved its target number of clean beaches well ahead of time. The Government target is for 97 per cent of the bathing beaches in England and Wales to meet the mandatory standard by 2005. By summer 2003 almost 99% of beaches had met the standard.⁶⁰

But the use of targets can have a number of unintended consequences.

⁵⁹Source: "Delivering Results - A Strategy to 2006" at the link below: www.dfes.gov.uk/delivering-results/ The targets for 11 year olds were revised in May 2003 in the publication "Excellence and Enjoyment." This said that the Government would aim to achieve the 85% target as soon as possible. The document is available: www.teachernet.gov.uk/educationoverview/briefing/currentstrategy/primarydocument

⁶⁰Environment Agency: Protecting bathing water quality, 2002: <http://www.environment-agency.gov.uk/regions/northeast/412081/154158/154197/155336> and Environment Agency: Beaches are good, clean fun, <http://www.environment-agency.gov.uk/yourenv/environmentactionissues/436213/436219/436396>



First, targets often produce bias in service delivery. The need to meet the target comes to dominate activity, at the expense of other, possibly more worthwhile tasks which have no targets. Volume targets encourage quantity but this can be at the expense of quality.

Second, targets can lead to perverse behaviour – as press reports of hospitals and schools "fiddling" their results have shown. For example, where the Government has targeted waiting times for new outpatient appointments, follow-up appointments of greater clinical importance may get cancelled, causing unnecessary suffering. Press articles in July 2003 reported that some glaucoma patients had lost some sight as a result of delay in follow-up because of the diversion of resources to meet the target for initial appointments.⁶¹

Third, as we highlighted in our 2002 studies of Local Delivery of Central Policy, and of Higher Education, too many targets, and the monitoring and reporting that goes along with them, may waste resources and cause the organisation to lose focus.⁶² The Audit Commission pointed out in July 2003 that too many targets might obscure the real priorities.⁶³

In July 2003 newspapers reported that the target that every patient

should see their GP within 48 hours had led to some GP surgeries across the country scrapping advance appointments.⁶⁴

6.5. Taxes as a regulatory device

Taxes are sometimes used as a regulatory instrument and not just to raise revenue. There can be two reasons. One is to make people pay for additional costs they impose on others (as with road taxes or energy taxes) and the other is that a tax can increase the price associated with undesirable behaviour (such as consuming alcohol, which can be bad for people's health). If the tax on a raw material is raised, companies may change the production process so less of the taxed material is used. Similarly consumers will switch away from a product when it becomes more expensive.

One example of a tax used for regulatory purposes is the landfill tax, charged at a fixed rate per tonne.⁶⁵ The objective is to reduce the amount of waste disposed of in landfill sites and encourage the use of alternative forms of disposal such as recycling.⁶⁶ The tax also has unintended consequences in that while there has been a reduction in polluted soil now dumped in landfill sites, more is diverted to unregulated sites such as golf courses.

⁶¹The Daily Telegraph, 25 July 2003

⁶²Local Delivery of Central Policy, BRTF, July 2002. This report points out a number of other specific problems with targets such as unrealistic targets, targets which are not aligned and conflicting targets. (page 41).

<http://www.brtf.gov.uk/taskforce/reports/entry%20pages/Localdeleentry.htm>

⁶³Targets are damaging services - watchdog The Guardian Anne Perkins, Friday January 10, 2003, <http://www.guardian.co.uk/guardianpolitics/story/0,3605,871889,00.html>

⁶⁴"Appointment with Disaster" by Jennie Ball in Newham recorder, March 26 2003,

<http://www.newhamrecorder.co.uk/archived/2003/wk15/Newham/Newhamw15/letter2.asp> The

⁶⁵Budget gives the amount of tax payable: "...the standard rate of the landfill tax rises to £14 per tonne in 2003-04 and to £15 per tonne in 2004-05. The rate will subsequently be increased by £3 to £18 per tonne in 2005-06 and by at least £3 per tonne each year thereafter, on the way to a medium- to long-term rate of £35 per tonne;" http://www.hm-treasury.gov.uk/budget/bud_bud03/press_notices/bud_bud03_press04.cfm

⁶⁶<http://www.defra.gov.uk/environment/consult/landfill/01.htm>

Tip 11: A regulatory tax can be more acceptable if some of the money raised is spent on measures that makes it easier for people to comply. One example is spending part of the money raised by the landfill tax on environmental improvements.^{71 72}

Another example is the Climate Change Levy (CCL).⁶⁷ This consists of a tax on the business use of energy combined with a number of other measures including the possibility of negotiating discounts of up to 80% for industries who commit to a programme of improving energy efficiency. The effect of the Climate Change Levy is controversial. Environmental campaigners argue that it has been effective, while many businesses, especially small ones, claim that it is unfair.⁶⁸ An unintended consequence may be a disincentive to employ part-time workers because the cost of the introduction of CCL was offset by a reduction in business National Insurance Contributions. Many part-time workers earn less than the NIC threshold so their employer cannot benefit.

The duty on cigarettes provides a financial incentive that discourages smoking. It increases the cost of smoking without prohibiting the use of tobacco.⁶⁹

Pros and cons of taxes as regulatory measures

One advantage of imposing a tax as a regulatory device is that it leaves the decision of whether to pay the additional costs or whether to change behaviour to the people affected.

Using a tax as a regulatory device has disadvantages. Some people or companies will try to avoid paying them by legal or illegal means. And some objectives cannot be achieved by applying a tax to increase the price, because people may be prepared to pay the price increase and may make no change in their behaviour. A tax may exclude poorer people from enjoying taxed products, and so can discriminate against them.

Making incentives work

Sometimes regulation can only be made to work if there is a carrot as well as a stick somewhere in the system. The carrot can soften the blow and encourage the right sort of behaviour. A tax that aims at reducing waste, such as the landfill tax, can be combined with measures supporting environmentally friendly activities.

Landfill tax credit is an example of such a scheme. It encourages and enables landfill operators to support a wide range of environmental projects by giving them a 90 per cent tax credit against their donations to Environmental Bodies.⁷⁰

Other possible measures would be to make recycling easier – such as giving each household a recycling bin. This helps consumers to recycle, and in turn reduces the need for landfill – and thus the need to pay the landfill tax.

⁶⁷<http://www.hmce.gov.uk/forms/notices/ccl1.htm>

⁶⁸Friends of the Earth, http://www.foe.co.uk/resource/press_releases/20021101000156.html

⁶⁹Tobacco tax is also a measure to raise revenue for the Exchequer.

⁷⁰<http://www.ltcs.org.uk/howitworks/default.asp>

⁷¹Earmarking tax revenue to a particular expenditure is called hypothecation. This can cause problems when for example priorities change, the revenue is higher than possible expenditure etc. It can also make provision of a service dependent on the ups and downs of the tax. See also: Budget Report 2003: Chapter 6

⁷²http://www.hm-treasury.gov.uk/budget/bud_bud03/budget_report/bud_bud03_repchap7.cfm

6.6. Rewarding desirable behaviour

There are various ways of rewarding desirable behaviour. Examples are: tax credits, subsidies and awards. These can all be alternatives to classic regulation in cases where Government wants to encourage a particular sort of behaviour.

Tax credits change the relative costs of different activities and send a powerful signal about what behaviour government wishes companies or individuals to adopt.⁷³

The Government uses tax incentives to boost research and development (R&D) spending by companies by allowing some spending on R&D to be deducted from the tax the company has to pay.⁷⁴ This encourages companies to spend more than they would otherwise have done. But for some companies there will be no change in their investments in R&D.

Another example of tax incentives is the enhanced capital allowance to encourage business to invest in environmentally friendly technology.⁷⁵

A **subsidy** is a direct payment to encourage a certain type of behaviour. Every business or individual that behaves in the prescribed way can receive the payment just as taxes have to be paid by all covered.⁷⁶ A manager whose company gets paid for a change in the production process can take this into consideration when deciding what and how much to produce.

One example of a subsidy is the payment made under CAP to farmers for placing land in 'set-aside' as a condition of receiving area payments for growing eligible crops. The objective of set-aside is to reduce cereal production in the EU, but there may also be environmental benefits.⁷⁷

Subsidies to businesses are tightly regulated by EU state aid regulation.

Financial payments are not the only reward that can be used to encourage desirable behaviour. The Government can use awards or other publicity measures to **praise** individuals, companies and parts of the public sector for applying best practice.

In 1999 the Health and Safety Commission's Construction Industry Advisory Committee initiated the Working Well Together Campaign, encouraging the cultural change of health and safety attitudes and practices in the construction industry. In 2002, the Working Well Together Campaign introduced several new awards including a cash prize for the small construction firm that went the 'extra mile' for health and safety and the "No1 Worker" award. Prizes are given out towards the end of the year at a prestigious Awards Dinner.⁷⁸

Some award schemes use a combination of money and praise.

⁷³Tax credits are subject to state aid rules and are not always permitted.

⁷⁴See Chapter 3: Meeting the productivity challenge, 2003 Budget

⁷⁵Budget 2003: Chapter 7: Protecting the environment, source: http://www.hm-treasury.gov.uk/budget/bud_bud03/budget_report/bud_bud03_repchap7.cfm

⁷⁶Subsidies are subject to state aid rules and not always permissible.

⁷⁷CAP is underpinned by extensive EU legislation which gives detailed rules in respect of 'set-aside'. See: http://europa.eu.int/comm/agriculture/eval/reports/gel/sum_en.pdf

⁷⁸For more information: <http://www.hse.gov.uk/press/2002/c02031.htm>
<http://www.hse.gov.uk/press/e01081.htm>

The Partnership at Work Fund in the DTI combines a financial incentive with a positive advertising campaign.⁷⁹ Companies can receive grants of up to 50% funding (to a maximum of £50,000) of the costs of setting up and running partnership projects between employers and employees. Partnership projects can cover a range of best practice co-operation between workers and employer, including consultation exercises or quality groups. Grants are awarded publicly, improving the reputation of a firm as a good employer.

Pros and cons of reward schemes

Tax credits and subsidies have disadvantages. One is that there may be loss because some of those receiving a tax credit or subsidy would have acted in the same way without it. There are also unintended consequences. Tax credits and subsidies can distort the behaviour of companies and individuals because they distort the market itself. If for example the subsidy remains in place for a long time it can result in a change in the economic structure, keeping inefficient companies and sectors in place; which is what is generally thought to have happened with the CAP.

Compared to a tax credit, subsidies may sometimes be more expensive to administer.

The advantage of using **tax credits** and **subsidies** is that Government achieves its objectives while leaving people free to take decisions in the usual way. For example, the final decision on whether to spend money on research and development is left with the company. That is, managers are left to manage.

The media does not tend to report good news, so the publicity value of **awards** can be small. But within the peer group receiving an award can have quite a powerful effect on reputation and standing. There are some disadvantages. Awards can be resource-intensive to operate fairly, and require publicity, an application process and a judging system. Entrants may feel it is too complicated or time-consuming to apply. A further downside is that there are many different award schemes, and a new one may fail to enthuse potential candidates.

⁷⁹For more information: <http://www.dti.gov.uk/partnershipfund>

7. Information and education

7.1. Introduction

Another way to influence people's behaviour is by giving them information, or running a publicity campaign. These too can be useful alternatives to classic regulation. These techniques may be most useful where it is not essential to cover everyone immediately. The impact can be gradual and it will be hard to get to everyone. 'Hearts and minds' campaigns can be used where other forms of regulation would be socially unacceptable or unenforceable.

Information and education can be delivered directly by Government; or the Government can require or advise companies or individuals to provide it.

Consumers need information to make good choices. An important form of consumer protection law requires information to be provided to consumers. In order for them to be able to compare similar products, such as mortgages or credit cards, the regulator may require companies to present information in a particular way.

There are situations where people would prefer to know the risks and be left to make up their minds on how to react to them rather than be subjected to regulations.

The risk of catching BSE from eating beef on the bone turned out to be very small and the ban was lifted in 1999. When it was introduced in 1997, the ban was criticised as an over-reaction, and there were deliberate breaches of the law by people who wanted to continue supplying or eating beef on the bone. Subsequently, over

the question of whether lamb or mutton might too be infected with BSE, the Food Standards Agency chose to publicise what was a theoretical risk and then – while making it clear it was not advising against the consumption of mutton or lamb – left it to the public to make their own decisions.⁸⁰

This chapter explores two different ways of providing information and education: first, where Government provides it; and second, where Government requires it to be provided or regulates the form of its provision.

7.2. Government provides information

There are many different ways in which Government can provide information and education. These include web sites, brochures and helplines; seminars, exhibitions and roadshows. The Government can also back accreditation bodies and quality marks giving information about firms that have achieved certain standards.

Information for individuals and companies

Information and education is often used in the areas of health and lifestyle, where regulation would intrude too much on individuals' freedom. The following is an example of consumer education, delivered by Government in partnership with business.

⁸⁰Agency consults on BSE and Sheep report, <http://www.foodstandards.gov.uk/news/newsarchive/66452>. May 2002

The Government promotes healthy eating including the recommendation to eat at least five portions of fruit and vegetables a day.⁸¹ The Food Standards Agency provides information on healthy eating in general.⁸² The Department of Health promotes the "5 A DAY" message.

Government education can also be aimed at businesses, for example to improve productivity and efficiency. One example of Government supporting the knowledge transfer between businesses is from Defra.

Demonstration farms are intended to allow farmers to share ideas and experiences to help them to learn from good examples of business and environmental best practice. Defra is sponsoring a pilot study to look at how effective demonstration farms are as a method of Knowledge Transfer.⁸³

The campaign against drink-driving is an example of how information can be combined with classic regulation to make a powerful package.

Since 1967 when the breathalyser was introduced, it has been a serious offence to drive with more than 80 milligrams of alcohol in 100 millilitres of blood.⁸⁴ Over the following 30 years such enforcement techniques combined with hard-hitting advertising campaigns and the imposition of severe penalties have led to a change in attitude and behaviour.⁸⁵

The "hearts and minds" campaign in combination with the other measures have made drinking and driving socially unacceptable leading to a substantial improvement in compliance with the drink-driving laws, and increased road safety.

Giving information can also be used in combination with other approaches to regulation, for example taxes or incentives.

As well as a duty on cigarettes there is a requirement for a health warning on each pack, to warn people about the risk to their health from smoking and this message is reinforced by a comprehensive health education programme. Classic regulation such as a ban on smoking tobacco would have been unacceptable. Legislation has been introduced banning tobacco advertising.⁸⁶

Government can also set up independent bodies to provide information to consumers.

Energywatch is an independent electricity and gas consumer watchdog set up by the Utilities Act (2000), funded by a grant from the DTI.⁸⁷ It has the objective of making the market for energy more efficient. It provides a "One Stop Service" where consumers can raise complaints or obtain information that will enable them to make informed choices about the services available to them.

⁸¹<http://www.doh.gov.uk/fiveaday/index.htm>

⁸²<http://www.food.gov.uk/healthiereating/dailydiet/fruitandveg>

⁸³<http://www.defra.gov.uk/farm/sustain/forwardfarming.htm>

⁸⁴Road Traffic Act 1988 http://www.hmso.gov.uk/acts/acts1988/Ukpga_19880052_en_1.htm
BBC story and picture <http://news.bbc.co.uk/1/hi/uk/1691515.stm>

⁸⁵<http://www.thinkroadsafety.gov.uk/drinkdrive>

⁸⁶EU Directive on the manufacture and sale of tobacco products, EU Directive 2002/37/EC,;
<http://www.doh.gov.uk/regulatoryimpact/ria10dec.PDF>

⁸⁷www.energywatch.org.uk

Tip 12: Where there is pressure for new legislation, it may be that a **publicity campaign** promoting the existing law would meet the need.⁹³

Energywatch provides a wide range of information including comparative prices between different suppliers, and advice on issues such as how to use gas and electricity safely; and how to change suppliers. It also provides details of the number of complaints each energy company receives.

Government can also back industry accreditation bodies and quality marks, adding weight to these initiatives.

The British Standards Institution (BSI) is an independent body established under Royal Charter. It receives 8% of its funding from the DTI.⁸⁸ British Standards bring together Government, business and consumer interests to develop standards to suit their mutual needs. British Standards developed through BSI can be used as a means to provide information to companies and consumers. For example: labelling to BS EN 153 is used as a vehicle to enable consumers to make an informed choice of the energy consumption of domestic refrigerators. An independent study of this approach concluded that *"The Energy Label is used by consumers and they understand its message..... Manufacturers believe that the Label is an important policy tool and they positively support the principle of energy efficiency; they admit this is a change in perspective."*⁸⁹

Information about regulation

It is important for people to know about their rights and how to get what they are entitled to. It is also important that they know about their duties. This can be very difficult for small firms, who need to know about a very wide range of rules. Government needs to provide information to help people comply.

The DTI provides information to employees and employers. For example, there is a website which can help employees to find out what to do if they feel their employment rights are breached.⁹⁰ This includes information about the steps necessary for an application to an Employment Tribunal. Small businesses have found the information provided by DTI useful.⁹¹

Sometimes, where new regulation is called for, there may be an existing law that people are not aware of, and an information campaign would be more appropriate.

A specific regulation for the use of mobile phones while driving in cars should not be necessary. The Task Force wrote to the Department of Transport pointing out that regulations already existed about driving⁹² with due care and attention, and that these could deal with using a mobile phone while driving. An education campaign would be needed to point out that driving while using a mobile would be considered to be driving without due care.

⁸⁸"The public policy interest in the U.K. in standardisation", October 2000, <http://www.dti.gov.uk/strd/funding.htm>

⁸⁹<http://www.eci.ox.ac.uk/pdfdownload/coollabels.pdf>

⁹⁰<http://www.tiger.gov.uk/cgi-bin/timework.cgi>

⁹¹Small Business Council Report 2003, page 29, <http://www.sbs.gov.uk/content/sbc/sbcar2003.pdf>

⁹²Government has now proposed legislation.: Drivers face mobile phone ban, BBC, 25 June 2003

⁹³For information how to run an advertising campaigns Government Departments can contact: <http://www.coi.gov.uk/>

Information about companies and products

Government can also provide information about companies and products. A good **reputation** is often important for companies, and they would rather change their behaviour than lose it.

Management systems standards can also be used by companies as a means to show their customers the effectiveness of their management systems. There are approximately 60,000 companies in the UK registered to ISO 9000⁹⁴ (Quality Management Systems). There are a growing number of companies in the UK who are registered to ISO 14000⁹⁵ (Environmental Management Systems).

Naming and shaming can therefore be used to influence behaviour.

The Environment Agency publishes in their annual report 'Spotlight on business environmental performance' the names of companies with both good and bad environmental performance and highlights positive action as well as failings.⁹⁶

Naming and shaming has to be used with care. It may be disproportionate to name and shame a company with a normally good track record, for a one-off mistake. And there may be unintended consequences if this happens.

The Federation of Small Business publishes once a year a league table of private sector payment performance which names and shames companies who are bad at paying their bills.⁹⁷

Naming and shaming can be a very powerful tool. It can however lead to unintended consequences. For example, it may lead to a risk-averse, over-cautious approach. Alternatively, if the organisation or individual being "shamed" does not share the values of those doing the shaming, being on the "bad" list may not be shameful at all, and may even be welcomed.

It has been suggested that naming and shaming could also be used in other areas, such as employment, where classic regulation tends to be used.

⁹⁴The use of the ISO 9000 management system should ensure consistency and improvement of working practices, which in turn should provide products and services that meet customer's requirements. ISO 9000 is the most commonly used international standard that provides a framework for an effective quality management system. <http://emea.bsi-global.com/Quality/Overview/WhatisaQMS.xalter>

⁹⁵ISO 14001 is the internationally recognised standard for Environmental Management Systems (EMS) which enables:

- Demonstration of high environmental standards
- Demonstration of compliance with legislation
- Reduced costs
- Improved efficiency

⁹⁶http://www.environment-agency.gov.uk/commondata/105385/spt_2002full_523404.pdf

⁹⁷The Private Sector Payment Performance League Tables 2002 are available online at www.cmrc.co.uk/leaguetales and www.payontime.co.uk, the website of the Better Payment Practice Group.

For example one could argue that the new duty for employers to consider seriously an employee's request to work flexibly could have been implemented using employers' wish to be seen as good employers.⁹⁸ Instead of regulation, companies who want to attract the best staff might make clear in their job adverts that they use flexible working. Job Centres could point this out to potential applicants.

Standards

Standards can be used to define the acceptable characteristics of a product, process or service. British Standards prepared by BSI are developed by consensus among Government, business and stakeholder groups. They may be developed purely for UK use or, through association with the European or International Standardization infrastructure, for wider geographical use.

Most standards are voluntary, with business able to decide freely whether to take up the standard. Businesses may publicise the fact that they have adopted a standard or may choose to pay for independent assessment under the Kitemark scheme to demonstrate compliance to their customers that their product or service conforms to a standard.

The Investor in People (IiP) scheme is a Government supported standard with a kitemark to improve training and workforce development.⁹⁹ The Standard provides a framework for improving business performance through a planned approach to setting and communicating organisational objectives. Instead of paying a training levy, or being forced by regulation to train and develop their staff, organisations can use the IiP emblem to signal to possible recruits and customers that they are an employer who develops their staff. About 32,000 organisations are currently recognised. They are regularly reassessed to ensure that they keep up their efforts in developing staff.

Most BSI standards are voluntary but some are mandatory.¹⁰⁰

For example: BS 7927, introduced in 1998, aims to prevent carbon monoxide poisoning. It applies to equipment used by maintenance technicians in servicing gas boilers in the home.¹⁰¹ Standards for car windscreens are mandatory so there should be no windscreens on the market which do not fulfil the BSI standard.¹⁰²

⁹⁸<http://www.dti.gov.uk/er/flexible.htm>

⁹⁹The Standard was developed during 1990 by the National Training Task Force in partnership with leading national, business, personnel, professional and employee organisations. Investors in People UK founded in 1993, is a non departmental public body (NDPB). It reports to, and receives funds from the Department for Education and Skills
<http://www.iipuk.co.uk/IIP/Internet/InvestorsinPeople/Default.htm>

¹⁰⁰For more information see: <http://www.bsi-global.com/index.xalter>

¹⁰¹New British Standard helps beat deaths from carbon monoxide in the home, 15 October 1998, <http://www.bsi-global.com/Corporate/News+Room/co.xalter>

¹⁰²Standards for car windscreens see: http://www.dft.gov.uk/stellent/groups/dft_roads/documents/page/dft_roads_506860-04.hcsp

Tip 13: The provision of information can be burdensome for business. These burdens should be kept to a minimum. To ensure this, close co-operation with the industry is important.

There may be a disadvantage in that these sorts of schemes can become over-bureaucratic. Companies have to prove that they still fulfil the standards. For example, they may have to keep records of their training activities.

Often businesses have to pay for the assessment. Standards may also be used as a form of cartel, keeping other firms out of the market.

7.3. Government regulates for information provision

Where Government feels that the benefits justify the costs it can require industry to provide information, or can regulate it in other ways. This is actually a case of classic regulation, but companies are required to provide information rather than being told exactly how they should behave, so it tends to be less onerous than other forms of classic regulation.

There are three ways of going about this.

The first requires producers to provide information. This is appropriate when, for example, there is a risk to health and safety if the information is not provided or is incorrect.

Food producers have to provide information about the ingredients within a product. The Food Labelling Regulations 1996 require that the ingredients be listed in descending order of weight at the time of their use in the preparation of the food.¹⁰³ The list must include a heading consisting of, or including, the word "ingredients".

Suppliers of dangerous chemicals have to send out safety data sheets with the chemical. The data sheets explain the hazards and dangers associated with the chemicals in question.¹⁰⁴

The second approach leaves the decision as to whether to provide information to the producer. But if information is provided, it has to fulfil certain conditions.

Food manufacturers do not have to provide information about the nutritional content of their products, as long as they don't make any nutritional claims such as 'low in fat' or 'high in fibre'. If they choose to do so, the information needs to be presented in one of two specific formats laid down in the legislation. It has to give the amount of energy (expressed as kJ and kcal), protein, carbohydrate and fat (all expressed in grams) provided by 100g or 100ml of the food, plus the amount of any nutrient for which a claim has been made.¹⁰⁵

There are a number of disadvantages to prescribing the provision of information. The provision of the information can be costly. Companies have to change labels if the legal requirements change. Adding this information to the label also reduces the options a producer has to design the label.

The third approach is for Government to advise industry to provide information, or help them adopt best practice.

¹⁰³The Food Labelling Regulations, 1996, guidance notes, page 14 <http://www.foodstandards.gov.uk/multimedia/pdfs/Fguidnot1.pdf>

¹⁰⁴For more information see <http://www.hse.gov.uk/press/2002/c02030.htm>

¹⁰⁵The Food Labelling Regulations 1996: guidance notes , page 29 <http://www.foodstandards.gov.uk/multimedia/pdfs/Fguidnot1.pdf>

Tip 14: An information campaign should address different levels of knowledge as well as different needs to access the information, and may need to use a range of media.

The environmental reputation of companies has become an important issue for some consumer groups. The Government aims to improve standards by encouraging companies to provide information about their environmental records in their annual reports. Environmental reporting has traditionally been a voluntary method of communicating environmental performance to an organisation's stakeholders. It is becoming increasingly popular and is now being used by companies, universities and local authorities. The University of Sunderland provides a list of companies who produce an environmental report, naming and praising the companies.¹⁰⁶

Clearly, advice and guidance will only be taken up by those institutions who view it as being to their advantage to do so. It follows that compliance may be low.

7.4. Pros and cons of information and education

Providing information helps consumers to make decisions and allows managers to do what they are best at, managing a business. This is a big advantage compared to classic regulation.

But there are also disadvantages. Where the Government communicates, one size does not fit all. Guides for business should be drafted with small firms in mind. Guidance for individuals should be explained in simple language.

The provision of information and education can be costly. More is not always good. Where there is information overload, people may ignore the information provided.

A difficulty with providing information is that not everyone has the same access to it. For example, it can be difficult to reach people who cannot read English, and those who have no access to the Internet or who do not use it for this purpose. The Government needs to communicate information in ways which people find easy to access.

Also, different people will have different knowledge about issues. This may mean that more than one form of information is necessary and that the different media have to address a variety of needs. Research is essential, to target the message to its intended audience.

¹⁰⁶<http://cei.sund.ac.uk/envrep/reports.htm>

8. Self-regulation and co-regulation

8.1. Introduction

Companies in the private sector have an incentive to ensure safety and quality (they don't want to harm their customers). They also want to get the message across to consumers that their products and services are safe and of good quality. In these circumstances it is in the companies' own interest to regulate their activities and there is often no need for government to regulate.

Government can encourage self-regulation. For example, the OFT offers formal approval of consumer codes of practice.¹⁰⁷ It has published guidance on how a sponsor can meet its core criteria. Under the OFT's scheme the code sponsor is responsible for monitoring and enforcement of the code – the OFT monitors the code sponsor's performance.

The OFT has developed core criteria for code sponsors applying for approval of their consumer codes under its Consumer Codes Approval Scheme. The core criteria cover seven areas:

- Organisational criteria such as the need for adequate resources
- Preparation of the code
- Content of the code such as ensuring that consumers' concerns are dealt with
- Complaints handling, including the need for independence in redress mechanisms
- Monitoring, including performance indicators
- Enforcement using a range of sanctions
- Publicity to ensure that customers know about the code.¹⁰⁸

The following section discusses different forms of codes of practice.

Self-regulation is often brought in voluntarily rather than as an alternative to government action. The rules are developed and enforced by the people who will have to comply. A trade body or a group of influential companies may start off the process, offering membership to all the companies in a sector, who must agree to keep to the rules, as the members of a club might. There are usually sanctions for non-compliance. Coverage extends only to those who are members of the club. This is different from classic regulation where all those within scope are covered.

Joining the club means that the company can use its membership to promote itself. Being expelled for non-compliance may lead to bad publicity, which can be an effective sanction if customers get to hear of it.

Codes of practice are the most common form of self-regulation. Others include voluntary accreditation schemes, set up by industry, or the adoption of a voluntary standard.

Codes of practice that are negotiated and enforced within the industry are known as self-regulation, while those that have a statutory backing or other significant Government involvement are called co-regulation. This section gives examples of both types of codes and discusses their advantages and disadvantages.

¹⁰⁷Core criteria for consumer codes of practice: Guidance for those drawing up codes of practice OFT, May 2002: <http://www.of.gov.uk/Business/Codes/default.htm>

¹⁰⁸Core criteria for consumer codes of practice. - Guidance for those drawing up codes of practice OFT May 2002

8.2. Codes without Government backing

Codes may be drawn up by independent companies within an industry, by a number of stakeholders within a market – for example the Advertising Standards Code (see below) – or by a trade association for its members, like the Banking Code.¹⁰⁹

As companies or trade associations do this themselves, they will draw up something that is achievable. As they police it themselves, so the outcome may be cheaper, at least to Government. A code will define the rules within a particular market (the Banking Code sets rules about how banks should treat their customers).

The voluntary approach means that competitors could opt out, and undercut those adopting the higher standards. There are a large number of codes of practice currently in use in the UK. Some of them are working effectively, others apparently not.

The Code of the Portman Group is an example of a code which works well. The purpose of The Portman Group is to promote sensible drinking and to help to prevent alcohol misuse. Its members are the major drinks producing companies, together responsible for 95 per cent of the alcohol on the UK market. The Code came into being in 1996, in response to the fierce criticism of the marketing of alcopops. In addition to the member companies, some 150

other companies, manufacturers and retailers (including all of the major supermarket groups) are signatories to the Code.¹¹⁰ The Code includes a powerful sanction: the 'Retailer Alert', which requires signatories of the Code to remove the offending product from retailer's shelves.

The Code of Conduct by the Association of British Travel Agents (ABTA) is another example of an effective code. Companies who want to be members of ABTA have to obey the code. The Code aims to ensure that customers receive the best possible service from their ABTA Travel Agent and Tour Operator from before they book, through the whole booking process and the after-sales service to the way they handle any complaint.¹¹¹

All members of the Royal Institute of British Architects (RIBA) have to have signed up to their code of conduct. The objective of this Code of Professional Conduct is to promote the standard of professional conduct or self-discipline, required of Members of the RIBA in the interests of the public.¹¹² If a member is found to be non-compliant with the code, they will be excluded from the RIBA.¹¹³

¹⁰⁹For more information on classification of codes see: Models of Self-regulation, National Consumers Council 2000.

¹¹⁰<http://www.portman-group.org.uk/codeofpractice/152.asp>

¹¹¹For more information: <http://www.abta.com/benefits.html#code>

¹¹²For more information:

http://www.architecture.com/go/Architecture/Using/Conduct_344.html?q=code

¹¹³The Government has set-up the Architects Registration Board in 1997 as an independent regulator of the profession. Source: <http://www.arb.org.uk/frame.html>

Tip 15: Self-regulation
can have advantages over
classic regulation: it can
be better value for money
for the tax payer.

Self-regulation requires business to play by the rules. Some businesses have told us that this puts an additional burden on them which they feel is not always taken into consideration when a code is set up centrally by the trade body.

Some self-regulation may be inspired by the possibility or threat of classic regulation. Industry reacts to the possibility that Government may intervene. This implies that industry sees advantages in designing and enforcing a code of practice as compared to classic regulation.

The relationship between a bank and its customers is regulated by the Financial Services Authority. The Banking Code provides additional protection for customers. The code is regularly reviewed to keep up with changes in society and the banking industry.¹¹⁴ The FSA could introduce regulation at any time if there were sufficient evidence that consumer protection was not satisfactory.

Sometimes Codes are not very effective. Problems can arise if companies do not obey the code they have signed up to, and if the industry characteristics do not allow customers to find out easily who has been taken off the list.

The codes used in the past and present to deal with the problems of "cowboy builders" illustrate these enforcement problems. The Federation of Master Builders has used its own Kitemark to improve the reputation of the industry in the

past.¹¹⁵ This has not been successful.¹¹⁶ The DTI has backed a code of practice, but it is too soon to judge its success.¹¹⁷ The specific characteristics of the industry, which consists of a large number of small builders who are difficult to trace if things have gone wrong, are one reason for the failure. Another is the fact that most people do not use the services of builders repeatedly and builders are sometimes in short supply. A loss of reputation with a particular customer and their neighbours and acquaintances will therefore be less relevant than in a case where purchases are repeated regularly.

Another source of problems can be that large companies dominate their trade association and can sometimes get away with non-compliance.

Some critics of the British Bankers Association claim that though it is possible to enforce the commitment to provide a basic bank account to every citizen who asks for it, some banks are still not doing it, despite the fact that it is a commitment made in the Banking Code. The Consumer Panel of the Financial Services Authority has some evidence that this commitment is not followed by some of the High Street banks.¹¹⁸

The insurance industry has become aware of these problems and has set up a body independent of the trade association to monitor companies who sign up to the Raising Standards Initiative.

¹¹⁴www.bba.org.uk

¹¹⁵www.fmb.org.uk

¹¹⁶<http://www.which.net/media/pr/mar03/which/tradeassoc.html>

¹¹⁷<http://www.qualitymark.org.uk/>

¹¹⁸http://www.fs-cp.org.uk/press/ct_pr34.html

The Raising Standards initiative, set up by the Association of British Insurers for providers of individual pensions, life insurance and investments, uses an independent board, the Pensions Protection Investments Accreditation Board (PPIAB).¹¹⁹ The PPIAB uses a set of three consumer promises supported by eight demanding standards to assess providers. The standards include measures to improve customer service and to ensure that key documents provide customers with clear and comparable information. Members of the board have established a good, but independent, working relationship with the industry, but do not currently work in it. An important aim of the initiative was to demonstrate to the statutory regulator that it could rely on the industry to keep its own house in order at a detailed level.

media owners who will refuse space to further non-compliant advertisements.

Self-regulation can be used as an additional barrier to entry by raising the costs of setting up a new enterprise. This can lead to a distortion of competition. From Government's point of view, this is an unintended consequence of self-regulation.

The Law Society is often criticised for using its code of practice to control the number of solicitors.¹²¹

Competition can also suffer where a code of practice is used to regulate behaviour towards common suppliers. Some argue that this is the case with the code between the supermarkets and their suppliers. As in the case with barriers to entry it is very difficult to establish whether anti-competitive behaviour exists.

A code of practice has to have teeth to be effective.

The British Code of Advertising, Sales Promotion and Direct Marketing, administered by the Advertising Standards Authority (ASA), is the product of an agreement between advertisers, agencies and media to uphold standards that ensure 'legal, decent, honest and truthful' advertising.¹²⁰ If the ASA rules that an advertisement breaches the Code, all parties are committed to enforce the decision - including the

The supermarket-supplier code regulates the relationship between supermarkets and their suppliers (some of them farmers).¹²² The code emerged from a number of adverse findings by the Competition Commission in its enquiry into the multiple retail sector (October 2000).¹²³ The code was introduced to curb some practices used by the supermarkets which were found to be against the public interest. The National Farmers Union says that the Supermarket Code of Practice, introduced in 2001 to govern retailers' relationships with their suppliers, has proved ineffectual.¹²⁴

¹¹⁹Source: www.ppiab.org.uk and <http://www.raisingstandards.net>

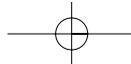
¹²⁰<http://www.asa.org.uk/index.asp>

¹²¹For the Law Society's guide: <http://www.guide-on-line.lawsociety.org.uk>

¹²²Undertakings given by [Asda, Safeway, Sainsbury and Tesco] to the Secretary of State for Trade and Industry under the section 88(2) of the Fair Trading Act 1973 Schedule 2

¹²³Source: Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom, Competition Commission, October 2000, http://www.competition-commission.org.uk/rep_pub/reports/2000/446super.htm

¹²⁴Source: New Shopping Basket Study backs up New NFU Research, http://www.nfu.org.uk/stellentdev/groups/public/documents/pressrelease/newshoppingbasket_ia3f33a301-1.hcsp, 08 August 2003



8.3. Co-regulation

If self-regulation is at one end of a spectrum and classic regulation is at the other, there are points in between. In some cases voluntary codes of practice have significant Government involvement. This is known as co-regulation.

Tip 16: Co-regulation can be an effective and cheaper substitute for classic regulation.

The range of sanctions applied by the Advertising Standards Authority against misleading advertising benefits from a statutory backstop in the Control of Misleading Advertisements Regulations, which recognise the ASA as an 'established means' for implementing their priorities.¹²⁵ In the last resort, referral to the Office of Fair Trading can be a very effective deterrent. The OFT can secure a High Court injunction to prevent a company from publishing the same or similar advertisements.¹²⁶

Statutory backing gives codes additional credibility.

The ACAS code of practice on disciplinary and grievance procedures is a code with statutory backing which has almost reached the status of prescriptive regulation.¹²⁷ The law requires Employment Tribunals to consider it.

There are examples where a voluntary code can be used as evidence in court to illustrate a general rule or duty irrespective of trade association membership.

Tip 17: Wherever Government produces codes of practice it should also do an **RIA** to assess the costs and benefits from compliance with the code.

HSE Approved Codes of Practice (ACoPs) - (see section 4.5. page 18) are also an example of co-regulation. Business does not have to follow the code as long as it finds another way of fulfilling the spirit of the code. But ACoPs have special status in criminal proceedings where they are admissible as evidence.

Co-regulation does not only mean statutory Codes. But Government can get involved in other ways such as supporting the negotiations of Codes. This does not necessarily ensure that a code of practice is successful.

Government also produces codes of practice which industry can comply with, but does not have to. These codes are a form of information and set standards of good practice. They may therefore fall into more than one of the alternatives to classic regulation discussed in this report.

The Soil Code - the Government's Code of Good Agricultural Practice for the Protection of Soil gives advice to farmers on how to use pesticides, irrigation and other measures that influence the quality of the soil.¹²⁸ By complying with the soil code a farmer reduces the probability that they will be prosecuted for polluting land or rivers.

Codes of practice can lead to additional burden on business.

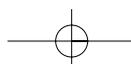
¹²⁵The code implements the Control of Misleading Advertisements Regulations 1988(c) and implementing Directive 97/55/EC on Comparative Advertising.

¹²⁶See also: Models of Self-Regulation, NCC, November 2000, page 34.

¹²⁷Code of Practice on Disciplinary and Grievance Procedures, September 2000

<http://www.acas.gov.uk/publications/pdf/CP01.pdf>

¹²⁸<http://www.defra.gov.uk/envirom/cogap/soilcode.pdf> (revised version 1998)



Standards as a form of co-regulation

The British Standards Institution publishes about 2,000 new standards every year (more about standards see sections 7.2 on page 38). Standards can be used either as a form of self-regulation or co-regulation if linked to regulation.

Self-regulation has some disadvantages. It may be less effective than classic regulation if it doesn't cover a whole industry, and may be subject to undue influence by large companies.

The British Standards Institution is contributing to the development of European standards in support of the European low voltage directive which is implemented in the UK by the Electrical Equipment (Safety) Regulations, 1994.¹²⁹ These regulations impose the obligation on the supplier of such goods to ensure that they are 'safe' so that there is no risk of injury or death to humans or pets, or risk of damage to property.¹³⁰ If equipment complies with an acceptable standard, e.g. a British/European Standard, then it will normally meet safety requirements.¹³¹

8.4. Pros and cons of self-regulation and co-regulation

Voluntary codes of practice and voluntary accreditation schemes can have the advantage of quick implementation because they do not need time-consuming parliamentary processes. The industry designs, implements and enforces the code without the additional costs to society that often arise when a code is set up and policed within the public sector. Enforcement of self-regulation does not require the courts to act. This suggests that where the policy objective is met, self-regulation may be better value for money than classic regulation.

¹²⁹http://www.hmso.gov.uk/si/si1994/Uksi_19943260_en_1.htm

¹³⁰<http://www.letlink.co.uk/Facts/Lfacts8.htm>

¹³¹<http://www.tradingstandards.gov.uk/wirral/ebap/ecommerce37.htm>

Annex A

Regulatory tips

Tip 1: When introducing classic regulation it is important to ensure that everything necessary for compliance, monitoring and enforcement is in place, that monitoring costs are minimised and enforcement is adequately resourced.

Tip 2: Classic regulation may require enforcement. It is important to identify the desired level of compliance with a regulation when doing the RIA and estimate the costs of enforcement needed to keep it at that level.

Tip 3: Some regulations are hitting groups of individuals or small firms particularly hard without achieving much. If the regulation cannot be redesigned to avoid this problem, it may be helpful to consider exemptions.

Tip 4: The 'comply or explain' option allows more freedom of choice and efficiency and so should be considered wherever possible.

Tip 5: Where implementing domestic policy or where European Directives allow it, it may be helpful to consider permitting opt-outs.

Tip 6: Regulation can be overtaken by developments in markets and society. Where this is foreseeable, a sunset clause may be the best way of ensuring that Government and Parliament reconsider the regulation to ensure it is still effective and appropriate.

Tip 7: Regulatory failure can be worse than market failure. Both need to be carefully considered before any intervention.

Tip 8: Before considering a new measure it is worth checking whether the issue is already covered by existing legislation.

Tip 9: When regulating the quantities of a product using quotas or permits it can be beneficial to make the quotas and permits tradable.

Tip 10: Targets can have a range of unintended consequences. They need to be designed in a way that does not distort behaviour. The motivation to achieve them should not be so strong that it leads to "fiddling" the books. There should not be too many targets imposed in any sector. And the monitoring and compliance costs should be kept to a minimum.

Tip 11: A regulatory tax can be more acceptable if some of the money raised is spent on measures that makes it easier for people to comply. One example is spending part of the money raised by the landfill tax on environmental improvements.^{1,2}

Tip 12: Where there is pressure for new legislation, it may be that a publicity campaign promoting the existing law would meet the need.³

Tip 13: The provision of information can be burdensome for business. These burdens should be kept to a minimum. To ensure this, close co-operation with the industry is important.

Tip 14: An information campaign should address different levels of knowledge as well as different needs to access the information, and may need to use a range of media.

Tip 15: Self-regulation can have advantages over classic regulation: it can be better value for money for the tax payer.

Tip 16: Co-regulation can be an effective and cheaper substitute for classic regulation.

Tip 17: Wherever Government produces codes of practice it should also do an RIA to assess the costs and benefits from compliance with the code.

¹Earmarking tax revenue to a particular expenditure is called hypothecation. This can cause problems when for example priorities change, the revenue is higher than possible expenditure etc. It can also make provision of a service dependent on the ups and downs of the tax. See also: Budget Report 2003: Chapter 6

²http://www.hm-treasury.gov.uk/budget/bud_bud03/budget_report/bud_bud03_repchap7.cfm

³For information how to run an advertising campaigns Government Departments can contact: <http://www.coi.gov.uk/>

Annex B

Better Regulation Task Force and its approach

The Better Regulation Task Force is an independent advisory group established in 1997. Members, appointed in the first instance for two years, are unpaid. They come from a variety of backgrounds - from large and small businesses, citizen and consumer groups, unions, and those responsible for enforcing regulations - and all have experience of regulatory issues. The Chair, appointed initially for three years in April 2002, is David Arculus. Officials of the Regulatory Impact Unit in the Cabinet Office provide support for the Task Force.

Terms of reference

The Task Force's terms of reference are:

"To advise the Government on action to ensure that regulation and its enforcement are transparent, accountable, proportionate, consistent and targeted."

Members of the Task Force

| | |
|-----------------------------|--|
| David Arculus, Chairman | Severn Trent plc |
| Teresa Graham, Deputy Chair | Baker Tilly |
| Matti Alderson | Fire Horses |
| Stephen Falder | HMG Paints |
| Michael Gibbons | Formerly Powergen plc |
| Kevin Hawkins | Safeway Stores plc |
| Deirdre Hutton | National Consumer Council |
| Simon Petch | CONNECT |
| Ian Peters | Engineering Employers' Federation |
| Penelope Rowlatt | Independent economist |
| Janet Russell | Kirklees Metropolitan Council |
| Sukhvinder Stubbs | Barrow Cadbury Trust |
| Tim Sweeney | Independent consultant: financial services |
| Rex Symons | Bournemouth Primary Care NHS Trust |
| Simon Ward | Consultant: hospitality industry |
| Victoria Younghusband | Lawrence Graham |

A Register of Members' Interests has been drawn up and is on our website: www.brtf.gov.uk or is available on request.

Annex C

Sub-group members

Penelope Rowlatt (Chair) is a freelance economist trading under the name of Alexander Economics. She was previously a director of Europe Economics, a director of National Economic Research Associates and senior economic adviser at the Department of Energy.

Ian Peters is Director of External Affairs and Marketing at the Engineering Employers' Federation. He was previously Deputy Director General of the British Chambers of Commerce and Deputy Director and Head of SME Policy at the CBI.

Simon Ward is a self-employed advisor to the hospitality sector. He is also a non-executive director of the Leisure and Lifestyle Division of the accountants Robson Rhodes. Simon is a Director of the Consumer Policy Institute and of Greater London Enterprise. Until recently, he was Group Strategic Affairs Director for Whitbread.

Task Force Secretariat

Ulrike Hotopp

Annex D

Principles of Good Regulation

| | |
|-----------------|--|
| Proportionality | <p>Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.</p> <ul style="list-style-type: none"> • Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed - don't use a sledgehammer to crack a nut. • If the options for achieving policy objectives must be considered - not just prescriptive regulation. Alternatives may be more effective and cheaper to apply. • "Think small first". Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses. • EC Directives should be transposed without gold plating. • Enforcement regimes should be proportionate to the risk posed. • Enforcers should consider an educational, rather than a punitive approach where possible. |
| Accountability | <p>Regulators must be able to justify decisions, and be subject to public scrutiny.</p> <ul style="list-style-type: none"> • Proposals should be published and all those affected consulted before decisions are taken. • Regulators should clearly explain how and why final decisions have been reached. • Regulators and enforcers should establish clear standards and criteria against which they can be judged. • There should be well-publicised, accessible, fair and effective complaints and appeals procedures. • Regulators and enforcers should have clear lines of accountability to Ministers; Parliaments and assemblies; and the public. |
| Consistency | <p>Government rules and standards must be joined up and implemented fairly.</p> <ul style="list-style-type: none"> • Regulators should be consistent with each other, and work together in a joined-up way. • New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin. • Regulation should be predictable in order to give stability and certainty to those being regulated. • Enforcement agencies should apply regulations consistently across the country. |

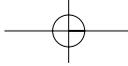
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|--------------|---|
| Transparency | <p>Regulators should be open, and keep regulations simple and user-friendly.</p> <ul style="list-style-type: none"> • Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties. • Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account. • Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents. • Regulations should be clear and simple, and guidance, in plain language, should be issued 12 weeks before the regulations take effect. • Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished. • Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance. • The consequences of non-compliance should be made clear. |
| Targeting | <p>Regulation should be focused on the problem, and minimise side effects.</p> <ul style="list-style-type: none"> • Regulations should focus on the problem, and avoid a scattergun approach. • Where appropriate, regulators should adopt a "goals-based" approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets. • Guidance and support should be adapted to the needs of different groups. • Enforcers should focus primarily on those whose activities give rise to the most serious risks. • Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated. |

A leaflet explaining our Principles of Good Regulation is on our website and available on request www.brtf.gov.uk

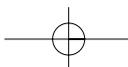
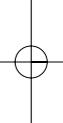
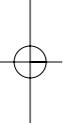
Annex E

Contributors to Review

Advertising Standards Authority
Association of British Insurers
British Management Data Foundation
British Standards Institution
Cabinet Office
Chemical Industry Association
Commission for Racial Equality
Confederation of British Industry
Consumer Association
DEMOS
Department for Culture, Media and Sport
Department for Education and Skills
Department for Environment, Food & Rural Affairs
Department for Trade and Industry
Department for Transport
Department for Work and Pensions
Department of Health
Department of Trade and Industry
Energyquest
Engineering Employers Federation
Environment Agency
Christopher Fildes
Financial Services Authority Consumer Panel
Frontier Economics
Food Standards Agency
Friends of the Earth
Health and Safety Executive
HM Customs & Excise
HM Treasury
Home Office
London School of Economics
Institute of Economic Affairs (IEA)
Inland Revenue
Institute of Directors
Institute of Economic Affairs
Institute of Public Policy Research (IPPR)
National Consumer Council
National Farmers Union
Norwich Union
Office of Fair Trading
Office of the Deputy Prime Minister
OfTel
Oxford Economic Research Associates (OXERA)
Oxford University, Regulatory Policy Institute
Pensions Protection Investments Accreditation Board



Professor Colin Robinson
Small Business Service
Small Business Council
TESCO
Trade Union Congress
Trading Standards Institute
Treasury Solicitor
Ralph Turvey- economist and statistician
University of Bath, Management School
VALPAK



Annex F

Task Force Publications

The Better Regulation Task Force has produced the following reports that are all available free on request by:

- writing to: Better Regulation Task Force Team, 5th Floor, 22 Whitehall, London SW1A 2WH
- telephoning: 020 7276 2142
- emailing: taskforce@cabinet-office.x.gsi.gov.uk
- visiting the [website at: www.brta.gov.uk](http://www.brta.gov.uk)

2002/03

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| Environmental Regulation: Getting the Message Across | July 03 |
| Government: Supporter and Customer? | May 03 |
| Scientific Research: Innovation with Controls | Jan 03 |
| Annual Report 01-02 | Feb 03 |

2001/02

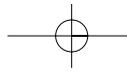
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| Higher Education | July 02 |
| Local Delivery of Central Policy | July 02 |
| Employment Regulation: striking a balance | May 02 |

2000/01

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| Annual Report 00-01 | Oct 01 |
| Housing Benefit: a case study of lone parents | Sept 01 |
| Economic Regulators | July 01 |
| Local Shops: a progress report on small firms regulation | July 01 |
| Regulating Cyberspace – Better Regulation for e-commerce | Dec 00 |
| Environmental Regulations and Farmers | Nov 00 |

1999/2000

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| Annual Report 99-00 | Oct 00 |
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