7. Reducing regulation

The Deregulation Initiative

7.1 A key government policy throughout the BSE period was the Deregulation Initiative. This sought to reduce the burden of legislative and regulatory requirements on industry and commerce (especially on small firms). The Deregulation Initiative was a constant element in policy-making, with a particularly high profile:

i. between 1985 and 1988, when a succession of White Papers set out the Government’s objectives and detailed what was being done and how;

ii. after the General Election in April 1992, when it was given fresh impetus by the Prime Minister, Mr John Major, with the President of the Board of Trade, Mr Michael Heseltine, taking policy responsibility.

7.2 Deregulation had been a policy objective of the Government since 1979, and it took on a new urgency in 1983 with renewed scrutiny of the regulatory activities of central and local government. The result was a White Paper in 1985, promising that proposed new Regulations and their likely cost and impact on business would be scrutinised by the initiating Department or Agency, and that its conclusions would be checked by a ‘central task force’ of officials who would also take an overview of emerging regulatory proposals and the scope for rationalisation and simplification. Departments would have to prepare ‘compliance cost assessments’ (CCAs) of their regulatory proposals, and the task force would perform a regular audit function and conduct one-off reviews.274

7.3 This approach was developed over succeeding years. As the Deregulation Timeline (Annex 3) shows, it became more and more complex and time-consuming for Departments. Procedural guidelines appeared in 1986 from the task force, then known as the Enterprise and Deregulation Unit (EDU),275 together with a model CCA. The guidelines required Departments to set out the origin and purpose of proposed Regulations, the likely benefits, their impact on businesses of different kinds and sizes, whether there were alternative ways of achieving the desired end, how the Regulations would be enforced and what this would cost.276 Further detailed guidance on preparing CCAs was issued in 1990, 1992 and 1996. From 1992, CCAs were required for all statistical surveys, all advice to Ministers in respect of Private Members’ Bills affecting business, and all papers on regulatory proposals for the Cabinet, Cabinet Committees, and the Prime Minister’s office (‘No. 10’).277 Most CCAs were published.

7.4 Risk assessment became a mandatory stage in the process of considering whether and how to regulate, as the Department of Trade and Industry (DTI), which inherited the EDU from the Department of Employment, became concerned that

274 Lifting the Burden, London, HMSO, 1985
275 Later renamed the Deregulation Unit (DU)
regulators were placing burdens on industry that could not be objectively justified in terms of the risks to be avoided.\textsuperscript{278} Guidance on risk assessment in 1993 stressed ‘proportionality’ – i.e., Regulations should be in proportion to the problem and the likely benefits.\textsuperscript{279} By 1996, all such risk assessments had to be ‘personally certified by the responsible Minister’.\textsuperscript{280}

7.5 There were two other preoccupations. Firstly, it was reiterated that the impact of Regulations proposed by the European Union needed to be kept under review:

Just how much of the regulatory burden on British business stems from Brussels? And how far does Whitehall embellish these regulations and enforce them with excessive zeal?\textsuperscript{281}

This was the subject of an interdepartmental scrutiny in 1992–93. By 1996, a checklist had been formulated that ‘is now applied to ensure that EC requirements are not over-implemented’.\textsuperscript{282} Secondly, the need for consultation with business was stressed and became an intrinsic part of the evolving procedural guidance, with the later refinement of a ‘small business litmus test’ (i.e., a requirement that small businesses should be consulted separately ‘on the impact of a proposed regulation’).\textsuperscript{283}

7.6 Within Whitehall, the Deregulation Initiative was bound together by specified reporting and monitoring requirements. Departments were required to set up their own Deregulation Units, each reporting to a nominated Minister, which would oversee regular ‘forward looks’ (early warning of proposed Regulations) and reviews, and report regularly to the EDU, which in turn reported to its own Minister.

7.7 This increasingly detailed approach, explicitly involving Ministers, was indicative of the importance attached to deregulation by the Government, particularly from 1992, when the Prime Minister told Mr Gummer that ‘as I said in my Party Conference speech I am absolutely determined to reduce the burden of regulation on business’, and that ‘I am determined that we should have made major progress by the next Party Conference’.\textsuperscript{284} Two years later, the Government enacted legislation (the Deregulation and Contracting Out Act 1994) which provided it with an unusual and controversial ‘fast track’ power:

These sections [of the 1994 Act] provide a mechanism to change primary legislation for the purpose of removing or reducing burdens on business or others, provided that necessary protection is not removed. They allow a Minister to make an order to amend or repeal legislation passed before or in the same session as the Act which imposes a burden and in doing so to set up a new regulatory system which is less burdensome than the existing regime.\textsuperscript{285}

\textsuperscript{278} Note of the first meeting of the DTI Inter-Departmental Working Group on Risk Assessment (YB91/05.01/13.3)
\textsuperscript{279} Regulation in the Balance: a Guide to Risk Assessment, November 1993 – Foreword by the Prime Minister
\textsuperscript{281} Personal Minute from the Prime Minister (Mr Major) to the Secretary of State for Agriculture (YB92/11.30/2.2)
\textsuperscript{283} Deregulation: Cutting Red Tape, DTI, 1994, p. 3
\textsuperscript{284} YB92/11.30/2.1–2.3
The impact of deregulation on officials

7.8 Officials were therefore mindful that they were expected to take deregulation very seriously. The Permanent Secretary of MAFF told his colleagues in 1993 that their Minister’s view was that ‘deregulation must be a top priority in the Department’s work’ and that the Prime Minister’s instructions meant looking at policy options in a certain way:

. . . we must question the justification for the burdens already imposed by MAFF regulations, and accept new disciplines on future regulatory activities. We must also report our plans and achievements to Ministers more fully than in the past.  

Mr Richard Carden (Head of MAFF’s Food Safety Directorate) told the Inquiry that:

When I came back to MAFF from the Cabinet Office in 1994, I found that Ministers there were very concerned to carry forward the Central Government initiative on deregulation . . . I knew the importance that the Government generally was putting into deregulation by that time.

7.9 There was constant pressure to revisit existing Regulations and to identify possibilities for simplifying them or doing away with them altogether. Mr Kevin Taylor, from 1991 an Assistant Chief Veterinary Officer in MAFF, expressed the view to the Inquiry that the Deregulation Initiative:

. . . required busy staff to spend time either identifying legislation which could be revoked or simplified, or to defend the need to retain regulations which others had suggested were no longer necessary. The initiative also made it more difficult to introduce new regulations, even when this was essential as a result of epidemiological investigations or research findings.  

Alternative views

7.10 The Government took the view that the benefits of deregulation were not restricted to business. Apart from encouraging the setting up of small firms and hence creating jobs, consumers would benefit because ‘opening up regulated markets to competition and eliminating restrictive practices, means more choice, more products and competitive prices’.  

7.11 Organisations representing consumers did not wholly agree. They argued that:

i. the Government was placing too much emphasis on the costs to businesses rather than on the benefits of ‘essential consumer protection and safety requirements’ and fair competitive and trading practices; and

References:

286 YB93/4.30/1.1 para. 2
287 S92G Taylor K p. 5 para. 13
289 The Deregulation Initiative: Comments by the Consumers in the European Community Group, September 1993 (M53 tab 10), para. 3.1
290 The Deregulation Initiative: The Consumer Interest, National Consumer Council, December 1993 (M53 tab 16), paras 3.1–3.2
ii. if the Deregulation Unit (formerly the EDU) wanted an effective input from consumer interests, these should be involved at the beginning of any discussions not half-way through.\textsuperscript{291}

The Consumers’ Association told the Inquiry that in their view:

…while they [the Deregulation Unit] were very concerned about doing cost-benefit analysis to see what the detriment to industry would be of deregulation, they had no such balancing view of the cost-benefit analysis to the consumer; and that was a flaw . . . We saw the Deregulation Unit as very much an industry-influenced body that did not take . . . the protection of the consumer into account.\textsuperscript{292}

Deregulation and BSE

7.12 The Deregulation Initiative was an important factor in policy-making during this period. The evidence received by the Inquiry does not suggest that it had any significant impact on the Government’s approach to BSE or on the nature or timing of the measures it took to control the disease. However, it may have coloured perceptions of how such measures ought to be enforced.

7.13 In his oral evidence, Mr Carden commented:

The MAFF Ministers certainly saw the food area as one where regulation was quite thick on the ground and they felt there should be some possibilities for lightening the burden . . .

But he added:

. . . strictly in relation to BSE, that was not the line of thinking. I found Mrs Browning, the Food Minister . . . very ready to recognise that in those areas where there was an acute need to protect public safety . . . the answer was regulation tightly drawn and strictly enforced . . . the attitude I remember is some sort of ruefulness that here in this area the line to be followed was the antithesis of deregulation.\textsuperscript{293}

7.14 The issue of deregulation arose in 1993 in connection with the proposed national Meat Hygiene Service (MHS), when the Secretary of State for Wales, Mr John Redwood, questioned whether ‘establishing another body’ was the best way of achieving what he acknowledged were necessary improvements to cost-effectiveness, accountability and consistency in carrying out meat hygiene functions.\textsuperscript{294} This intervention engendered some debate and, on the face of it, could have been part of the reason why the MHS did not start work until April 1995. As the account in vol. 6: \textit{Human Health, 1989–96} shows, this was not in fact the case.
7.15 However, several witnesses told the Inquiry that the enforcement of the BSE control measures by local authorities may have been affected by two factors related to deregulation. Firstly, there was considerable media criticism of what was perceived as ‘overzealous application’ of the rules:

It was a ball that I cannot remember who ... started rolling but once it had started rolling it became pretty difficult to stop and local authorities were being portrayed in national newspapers in regular features as being the bureaucrats from hell.

... a series of articles around this time [which] very much portrayed local authority enforcement officials as ‘little Hitlers’.

Secondly, the Government was putting out ‘signals’ that Regulations should be enforced with ‘a pretty light touch’. These witnesses made the point that ‘following many of the food scares of the late 1980s ... a quite robust’ Food Safety Act had been put in place in 1990, which had:

... tried to, in a sense, push the pendulum towards regulation, but a couple of years later the Government was clearly signalling in various ways that a pretty light touch in applying this and many other regulations ought to be used. And frankly it did contribute to a considerable level of confusion and concern in the regulatory enforcement community generally about what they were supposed to do.

7.16 Other witnesses identified:

... a constant conflict which existed throughout that period between seeking deregulation, but at the same time seeking the highest possible standards.

7.17 The report in 1993 of a review of hygiene and structural requirements in certain slaughterhouses concluded that State Veterinary Service (SVS) officers were not always consistent in their advice to plant owners and operators. MAFF veterinarians responsible for meat hygiene issues told the Inquiry that the relevant Regulations implemented a European Directive aimed at improving standards, but that they did not always specify the standards required, relying instead on the interpretation of terms such as ‘adequate’ and ‘sufficient’. Mr Peter Hewson, an SVS Superintending Hygiene Adviser, noted that:

... there was a wide understanding, Europe-wide, of the standards which were required of the slaughterhouses.

However:

Ministers were insistent that [there] was no gold-plating, and slaughterhouses should not be required to do more than was the legal requirement ... I think there was some confusion amongst staff, because it
was very difficult with legislation, which on the one hand could be very prescriptive and on the other hand had to be very general, to actually advise . . . as to what each sentence of the Regulations actually meant.300

To this Mr Simmons and Mr David Taylor added:

It is worth pointing out that we were also working in a culture in which Ministers had made public announcements where they said that veterinary officers will be sensible, pragmatic and flexible in their interpretation of the legislation when it comes to licensed slaughterhouses. That message could not be ignored.301

In 1992, we were given a very definite political steer by the then Minister . . . to the effect that the public was more concerned with over-zealous implementation than with – and I think it was public health issues, or something of that sort.302