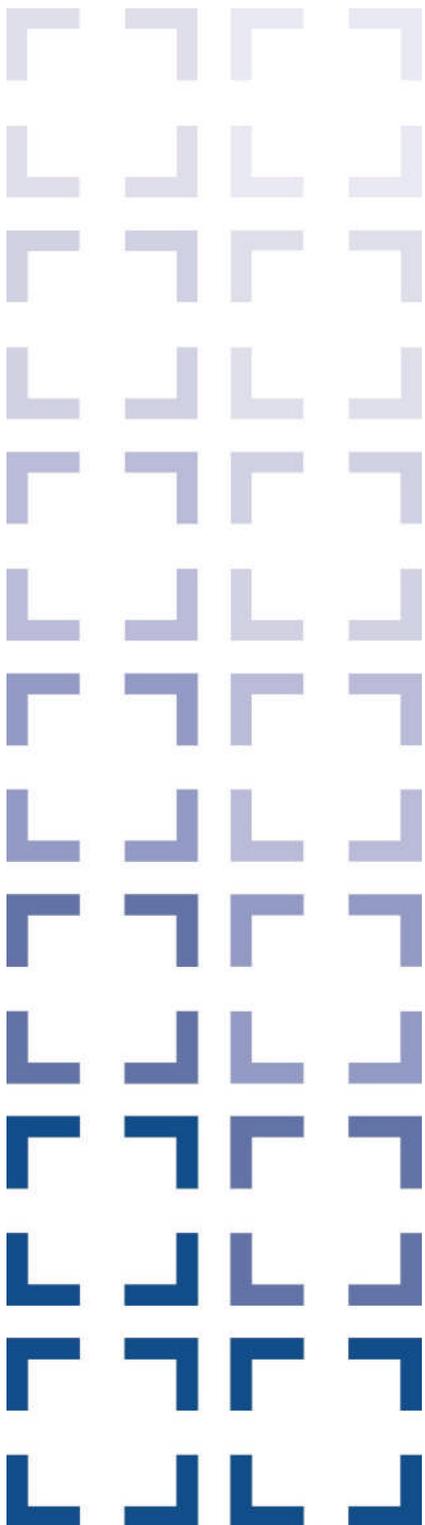


Public Risk – the Next Frontier for Better Regulation



Foreword by the Chair of The Better Regulation Commission

Last June, the Prime Minister gave the Better Regulation Commission (BRC) the following task:

“The Government believes that policy-making would benefit considerably from a fuller and more rounded consideration of public risk. I have asked the Better Regulation Commission, building on its report “Risk, Responsibility and Regulation” (the Risk Report), to devise a structure and approach that ensures that this ambition is embedded in real policy action, even when facing pressures to react to events. I have asked it to report back by the end of July.”

We welcomed this request in that it signals a willingness to tackle issues of risk, regulation and trust in government at a fundamental level. Any government that has the courage to tackle these root causes opens itself to an enormous prize – not only a step change in the effectiveness of its regulatory framework but also the promise of a more engaged and trusting relationship with the public around issues that have a significant day-to-day impact on lives and attitudes.

We presented our draft reply to the Prime Minister in late July and have since been clarifying the model in consultation with stakeholders both within and outside Whitehall. It involves establishing a Risk and Regulation Advisory Council to advise the Prime Minister and the Secretary of State for Business, Enterprise and Regulatory Reform on a programme of work to embed a fuller and more rounded consideration of public risk within policy-making.

Our recommendations take forward the thinking in the Risk Report and are in themselves a tribute to the work of the BRC in its far-sighted study of this important issue. The proposed Risk and Regulation Advisory Council (RRAC) would focus its efforts on the culture that lies at the heart of policy-making, particularly as it relates to the management of public risk. The style of the new RRAC would move away from the traditional recommendation-led reports of the BRC and its predecessors towards discursive, broadly participative workshop-based programmes, designed to explore how better, evidence-based policy-making conversations and processes could lead to improved outcomes – more effective policies, fewer unnecessary burdens and more pervasive protection of civil liberties. The RRAC would act as convenor and catalyst, ensuring that preparation, participation and dialogue are of the highest possible quality and effectiveness. Should Ministers feel persuaded as a result of the workshops to embark on a reprise of the policies under scrutiny then the RRAC can play a critical role in supporting success – our neutral voice could be used to good effect to act as a buttress against the pressures that so often threaten to drown out constructive conversations and overwhelm good process.

The objectives are bold. Success can only be measured over time in terms of better policy outcomes and improved trust in policy-makers, both underpinned by a sustainable improvement in the culture of policy-making. This sounds like a long-term process but we have resisted the temptation to propose a protracted initiative. Its longevity must be a function of its success and need. We have recommended that the initiative last for only 18 months and then be subjected to review. We aim, over this period, to demonstrate that this new approach can be a very viable route to accelerating culture change within Whitehall. We

assert that, with real commitment from the Government, the longer-term potential of this approach will become very evident and increasingly self-sustaining.

There will, however, be no success at all unless the Government demonstrates its appetite for this bold initiative from the outset. We have made recommendations as to the minimum conditions for achieving success in a short period – sustained and demonstrated political backing from the Prime Minister, ministerial participation, clear positioning as a pan-governmental initiative and a small support team that is given the talent and space to be truly independent are *sine qua non*.

The BRC has developed this proposal collectively and recognises that this will also mark the end of the BRC. At the same time, one of the BRC's inherent strengths has been to use its wide experience to identify the strategic direction in which the agenda has needed to move. We believe the members of the BRC have continued to show the way forward and there has also been strong backing for this proposal from external stakeholders. We now await the response from Government, after which we would expect to implement the recommendations immediately – we would be reluctant to lose momentum.

Assuming that the Government is willing to make the necessary commitment to success and we move ahead, we would remain concerned that this change will result in a number of current BRC activities that are valued by both internal and external stakeholders being 'orphaned' and we have urged Government to ensure that new homes are found, notably for the BRC's EU-related work on administrative burdens and independent scrutiny of the Government's various Better Regulation programmes.



Rick Haythornthwaite

Chair, Better Regulation Commission

Public Risk

The Next Frontier for Better Regulation

Remit

The Prime Minister has given the Better Regulation Commission ('BRC') the following task:

"The Government believes that policy-making would benefit considerably from a fuller and more rounded consideration of public risk. I have asked the Better Regulation Commission, building on its report "Risk, Responsibility and Regulation", to devise a structure and approach that ensures that this ambition is embedded in real policy action, even when facing pressures to react to events."

Recommendation

Accordingly, this proposal to the Prime Minister champions **the vision of a policy-making environment in which a sustained commitment to evidence-based, high quality, flexible process leads to public risk being tackled in a systemic, targeted, and proportionate manner with good intentions leading routinely to good outcomes.**

The public expects the government to get the balance right – even in a crisis – between protecting citizens and maintaining freedom, resisting the clamour of the scaremongers and stiffening the resolve of the timid. This public trust is on the wane. We, the Better Regulation Commission, believe that, with determined action to take on weaknesses in the policy-making culture of Whitehall, this trust can be rebuilt.

The BRC proposes a Risk and Regulation Advisory Council to lead a new approach to key aspects of policy-making. It will convene a Forum for specific topics which will then form a community of decision-takers and stakeholders in respect of that topic, drawn from a wider network of people with expertise in risk and regulation. Each Forum will work through a process of exploration and learning, facilitated through high-level workshops and other methods of sharing a better understanding of interventions and their impact. The programme will consider ways to improve the conversations and use of evidence at the heart of policy-making as well as the channels via which due process may be protected against unhelpful pressures.

Success will be dependent on the emergence of clear evidence that this novel complement to existing internal initiatives can lead to an acceleration in the commitment to high quality policy making and better protection for evidence-based process throughout the legislative journey.

Managing Public Risk

1. A key role of Government is to protect citizens from harm and disadvantage – to manage “public risk” on behalf of all. However, Ministers and officials must prosecute this undertaking with continuous pressure from an adversarial parliamentary system, sophisticated lobby groups, an aggressive media, short-term career considerations and so on. These pressures mount in the wake of tragic events such as Lyme Bay, Morecambe Bay and Hatfield. The temptation to move prematurely from problem to solution to intervention is understandable and ever present. The consequences of succumbing to such temptation are, all too often, ineffective policies, unnecessary regulatory burden and unwelcome curtailment of civil liberties. In other words, many symptoms that are broadly referred to as ‘red tape’ or poor regulation can be traced back to a root cause of poorly handled public risk and, more generally, the culture of policy-making. The BRC is pleased that the Government has committed resource and political backing to the reduction of administrative burden as recommended in its report, ‘Less is More’. It believes, as argued in its more recent report, ‘Risk, Regulation and Responsibility’ (‘The Risk Report’), that the key to delivering fully on the burden reduction targets and accelerating realisation of the broader Better Regulation agenda critically depends on tackling this root cause. It depends not only on tackling specific policy consequences but on effecting a fundamental, sustainable improvement in the culture of policy-making.

1.1 Intervention in matters of public risk, whether in Whitehall or Brussels, often involves systems with many, sometimes hidden, interdependencies and complex behavioural challenges e.g. climate change, obesity in children, security, shifting roles in healthcare, child safety. This complicates not only targeting and devising the counter-measures – the policy choices – but also managing the delivery of the intervention. Good risk assessment and management is vital in both the policy-making and the implementation. The policy-making process is often made all the more demanding by the need to seek views from and build consensus amongst a broad and diverse group of stakeholders and to understand fully options and trade-offs. Such interventions require a rigour and breadth of consultation and consideration that are rarely displayed in the face of such pressure.

1.2 And to what extent is the same pressure driving endemic risk aversion, inconsistent risk appetite across departments, and misunderstanding of public tolerance of and capacity to handle risk? How can we move away from an approach based on trying to control people to an approach that seeks more to influence behaviours when a quick reaction to a crisis wholly assumes that the answer is within the state’s power to compel?

1.3 Where public risk is not correctly understood and managed, citizens (in general, but especially those who are already disadvantaged) are not properly protected from high risks; they are not enabled to take appropriate decisions themselves about risk; they do not experience the benefits of a more entrepreneurial and resilient society; and they lack trust in regulatory decisions. Businesses and public services face greater constraints on their ability to innovate and focus on customer needs. Voluntary organisations can be crowded out by bureaucracy. Policy-makers do not achieve their objectives because they are insufficiently prioritised, do not focus on outcomes, waste scarce regulatory resources and reflect a lack of understanding of how service providers and customers really behave. Valuable process tools such as Impact Assessments and consultation become discredited and gradually fall into disuse.

The Change that is Needed

2. The key to good policy-making in matters of public risk is the time and support to give full consideration to the range of issues and options involved. Good outcomes depend on good evidence-based process. A tendency to conflate too many problems or overly narrow the field of consideration can lead to poor policy design. Likewise excessive focus on treating the symptoms rather than tackling underlying causal drivers can lead to misdirected effort. The complexity and elliptical nature of most issues faced by Ministers is such that the causes can sometimes be genuinely hard to pin down, never mind building a consensus around tackling the matter, so policy design should avoid rushing to pretend that all is settled and clear cut. Similarly, approaches to implementation should avoid the fiction that it is possible to get interventions right the first time – trial, adaptation and learning are central to successful interventions in complex behavioural systems.

2.1 A powerful route to fundamental change in the culture and expertise of policy making around public risk is the deployment of a high calibre team to act as a 'network catalyst' for high quality, evidence-based dialogues in which all key stakeholders, internal and external, revisit issues and explore how better outcomes can be achieved. Facilitated dialogues tend to be more effective in driving change than relying solely on set-piece reports and formal recommendations. In addition, such dialogues can generate the case-study material for training and the means for reshaping conversations with the media, parliament, lobby groups and other stakeholders.

2.2 Good process is too often the exception rather than the rule. Change the process and the nature of the conversations that are central to such process, then 'culture' will follow. Success in this endeavour will depend on three factors:

- Committed leadership from the centre of government, establishing a change of policy-making culture as a priority.
- Internal resource that can support officials and Ministers in the reprise of the policy issues, identifying more effective solutions and more targeted and proportionate responses than currently prevail.
- Sympathetic external challenge that can focus on specific issues within the stock and flow of regulation, raising questions and forcing targeted reprise of policy process. Such challenge would be aimed at accelerating the delivery of the Better Regulation agenda, both domestically and in the EU, and turning the theory of culture change into hard-edged practice.

2.3 Committed leadership is fundamental to the culture change sought. Civil Servants take their lead from Ministers. They will respond quickly to rhetoric but will not change their own attitudes or behaviours until they see actions that underwrite the rhetoric. Similarly, actions that undermine the rhetoric tend to confirm for Civil Servants that nothing substantive actually needs to change. The new approach to public risk has to be modelled – and modelled consistently - by Ministers and political capital has to be expended if real change is to be brought about.

2.4 The new Prime Minister has already given a good lead. The resolute calm of his first week in office in the face of domestic terrorist attacks was remarked on by the media. There was no rush to regulate. The businesslike handling of the three outbreaks of animal disease - Foot and Mouth, Bluetongue and Avian 'Flu - has, to date, been a case study in how to manage public risk. The regulation has been severe but proportionate, targeted, well planned and as temporary as possible. Stakeholders were fully involved and lent support to

the government's actions, bolstering the public's acknowledgement that government was getting this one right. Certain elements in it underline the thesis of this report:

- Leadership from Ministers set the tone. There was no Ministerial grandstanding and the prominence given to the Chief Vet and her Deputy gave the public the confidence that they were being fully informed.
- Preparation had been thorough. This was not a reaction to a crisis but the handling of a foreseeable event in accordance with a plan. It was good, basic process done faster rather than improvisation.
- Engagement of the key stakeholders was essential and turned them from informed potential opponents to very credible supporters. The only voice constantly looking for drama and intrigue had been a minority in the Press and that quickly became transparent to the public.
- The underlying background to it all was learning from the experience of the past. The FMD epidemic in 2001 had only one source, the same as in 2007, but there was nothing to stop it spreading. The 2007 event has, to date, appeared to be a more measured, effective approach. More fundamentally, however, a major lesson was to shift the balance of public risk. There is a serious, ongoing conversation between government and the farming industry about re-balancing who should bear the risks of animal disease, including the potentially far more damaging bluetongue disease.

Internal / external action

3. Delivering change will require action both internally within government and from external challenge and direction.

3.1 The wider arena that surrounds Regulatory Reform is a natural home for an initiative to promote better understanding of issues and options surrounding public risk. The prevalent mechanism for addressing public risk is policy-making, which is the upstream precursor to any regulations subsequently developed to manage public risk. In addition, the Better Regulation 'brand' is, arguably, being underleveraged. It has been successful to date both domestically and in the EU but is still widely perceived as having only a narrow focus, that of reducing burdens on business. Creating a complementary initiative that focuses on the wider issue of how policy-making addresses public risk has the power to embrace a sizeable and important community of stakeholders that currently feel themselves alienated by the restricted agenda, notably in the public and voluntary sectors.

3.2 The essential internal ingredients are the capability to review afresh, and in detail, policies that warrant attention as well as to ensure that good practice is shared and understood. These elements should come from the Better Regulation Executive and the Departments, both of which have the necessary infrastructure and resource. However, by virtue of their status as government bodies, neither the Better Regulation Executive nor Departments can reasonably be expected to deliver a number of other key ingredients to the recipe for cultural change, namely:

- independent, external challenge drawn from a broad expertise base; and
- impartial facilitation of the key dialogues that underpin the systemic analysis of the public risk issues, the selection, evaluation and final choice of policy making options.

Recommendation

4. This review recommends that a Risk and Regulation Advisory Council (RRAC) should be established with a remit to advise the Prime Minister and the Secretary of State for Business, Enterprise and Regulatory Reform on how to drive a change in the policy-making culture in respect of managing public risk.

4.1 The RRAC would comprise no more than ten (10) full members, with a spread of experience at a high level in the Better Regulation agenda, policy-making, risk management, industry, the Third Sector and consumer affairs. The membership should have sufficient collective standing to provide:

- the balanced, neutral, evidence-based challenge that is drawn from a broad expertise base and based on truly open, unencumbered dialogue;
- the 'breathing space' that can be created through judicious use of an external, neutral public voice;
- legitimacy and credibility with external stakeholders primarily but also (and consequently) with Ministers;
- privileged access to both the Whitehall community but also the wide range of stakeholder communities; and
- the political judgement to craft challenges that are stretching but not naïve.

4.2 The RRAC will:

- focus on the better management of public risk, building on the BRC report "Risk, Responsibility and Regulation";
- convene and support a Forum for each of up to 4 topics in order to start to embed a fundamental change in the culture of policy-making towards managing public risk, through experiential learning; and
- devise a work programme for the development and subsequent support of these communities.

Success at the end of that period would comprise a step change in the culture of policy-making with demonstrable flow through to the regulatory environment and an increase of public trust in policy making processes. Future programmes would be contingent on this success and a continuing need.

The New Structure and Approach

5. The Risk and Regulation Advisory Council would lead the programme outlined below, fostering relevant networks and communities of practice. It would broker conversations between key stakeholders, acting as a buttress against unhelpful reductionism and political determinism. It would act as a catalyst and champion of good process when pressures build for a hasty reaction to events, as well as driving thought leadership on how to manage public risk better as a matter of course, rather than as a matter of crisis. It would maintain impartiality as regards policy itself, concentrating on the policy process and the policy-making culture. A Forum would be convened as appropriate for each topic, comprising the relevant participants brought together in tailored groups, virtually and in workshops, as part of a designed programme.

5.1 There are two precursors to the work programme:

- starting to identify and foster a broad network of people with expertise and interest in risk and regulation, from which to draw members of each Forum;
- targeting four topics to be the subject of the work programme, in liaison with Ministers.

5.2 A large part of the work of a Forum as a catalyst would be through workshops, with high level participation, that offer the possibility of not only constructive reprise of policy areas that warrant attention but also experiential learning for internal and external stakeholders, with a focus of that nature on conversations that help rather than hinder the cause of good policy-making. Such learning, supported by case study material that can be used for more formal training, will help internalise the principles of better policy-making and lead to a diffusion of culture change throughout key organisations. It is essential that a Forum includes, at key stages, Ministers as well as senior officials and relevant stakeholders.

5.3 This change in approach will be a necessary but insufficient step towards sustainable change – the reinforcing support of Parliament, the media, lobby groups, civil service leaders etc will also be vital. Each Forum can play an important role in aligning the support of these key bodies and will so do once it is convinced that the internal commitment to change is real and in action.

5.4 Given that a key success criterion is rebuilding public trust, it would also focus on the condition of that trust and the appetite of the public – as opposed to the more voluble media – for risk when presented with the evidence and policy trade-offs. It would challenge the assumptions that the public are wholly risk-averse and that personal responsibility is outdated.

5.5 It would assume an “honest broker” role involving both rapid, independent counsel to Ministers upon request and the essential public profile as a body whose independence, information and integrity can be trusted.

The Work Programme

6. The RRAC’s first work programme is designed to establish the “experiential learning” approach of a Forum as a way of bringing about fundamental change in the policy-making culture. The other work packages supplement this either through developing the context in which the chosen topics are set or furthering the impact of what is done in these groups.

6.1 Work Package 1: Establishing a small but influential community, referred to as a Forum, for each of four topics, primarily through facilitated workshops. Acting as a catalyst for change by addressing in these workshops specific public risk issues with the objective of establishing broadly supported programmes of remedial action in areas where there is or may be a gap between desired policy intent and outcome:

- Success of the workshops will be critically dependent on:
 - the establishment and maintenance of a committed and energetic network of external stakeholders for whom the RRAC and its research, analysis and support team acts as a node and pathway for concerted involvement in specific issues;

- involvement of all key internal and external stakeholders including ministers, policy-makers, the Better Regulation Executive, departmental experts, parliamentarians, risk theory and management experts, topical experts, media representatives, behavioural theorists, and representatives of those affected by the policies in question – the specific mix tailored to topic;
- high quality, evidence-rich preparatory information supplied by a broadly experienced, capable research, analysis and support team that sets the scene for a balanced, systemic exploration of the issues in hand;
- process facilitation that ensures a consistently excellent dialogue and an approach to the workshops that reflects the core characteristics carried over from the BRC, namely, being independent, balanced and evidence-based;
- a focus on re-examining the dilemmas and trade offs posed by the policy issues under scrutiny as well as the quality of the process that should be pursued in any reconsideration of intent, choice of instrument and/or implementation approach. The workshops would seek to make recommendations for action where appropriate except in respect of choice of policy intent where they should not and will not seek to usurp the ultimate authority and accountability of ministers;
- a commitment to ensuring that both good and bad practice are addressed;
- over time, a track record of making a real difference. The facilitated, inclusive workshop approach offers the possibility of better understanding amongst, consensus within and, thus, committed action from the key stakeholders for any given topic. Over time, the cumulative effect of repeatedly revisiting and reshaping the policy-making process offers the possibility of a radical shift in the nature and quality of conversations taking place throughout the policy-making environment – in other words, demonstrable culture change both within Whitehall and amongst the entire stakeholder community; and
- the unwavering and strong political support from the Prime Minister and all key Ministers for the process, in parallel with strong support from the Cabinet Secretary and all key civil servants. This support would encompass commitment to ensure that the right people attend the workshops, agreed actions are delivered and strong relationships are built between the RRAC and Ministers/senior officials through regular meetings and briefings.
- the space, time and reinforcing support of Parliament, the media, lobby groups, etc, as addressed in Work Package 3.
- a growing skills and experience base amongst civil servants in the approach which will be built through practice and more formal channels using material prepared in Work Package 4.
- As and when appropriate, the published outputs of the workshops will be:
 - summary reports of agreed statements of key points, actions, accountabilities and deadlines;
 - occasional thematic synoptic reports that address trends, topical and process insights worthy of comment, either drawn from the workshops and/or the experience of the RRAC and its broader network; and

- an annual summary of progress and future direction in terms of specific issues and cultural change in general.
- The programme would envisage at least 4 workshops along with 2 thematic reports and 1 final report to the Prime Minister, with recommendations, regarding the embedding of a better management of public risk in the culture of policy-making.

6.2 Work Package 2: Independent assessment of public risk perceptions:

- A variety of approaches will be taken, including:
 - specific **topical** surveys;
 - surveys of the **risk landscape** in general, seeking an objective view of the concerns and priorities of the public; and
 - an assessment of the **awareness** of the public of the nature of certain public risks and policy trade offs.
- It is expected that the output would be helpful in a number of respects:
 - It will help to prioritise the work of a Forum;
 - It will offer Ministers and policy makers an independent view of the nature of the public's concerns and priorities; and
 - It will help to shape implementation and communication responses.
- The programme would envisage:
 - 3 topical surveys;
 - 2 risk landscape surveys; and
 - 1 awareness survey.

6.3 Work Package 3: Public enrolment and engagement in the programme of public risk policy reprise and culture change via appropriate channels, including media, parliamentary engagement and academia:

- Constructive interventions can be envisaged in a number of areas:
 - To provide Ministers with the space and time to re-examine policy areas where a commitment to action has emerged from Work Package 1. This would include non-partisan support of the initiatives being taken as well as a robust defence of the virtues of policy rethinks and the values of adaptive learning. The aim would be to put an end, over time, to the fiction that a Minister can always 'get it right first time' – building a broad-based recognition that it is better to respect the complexity of the issues faced and tailor approaches to ensure ultimate success rather than to respond to a short-term hankering amongst the media for simplicity and instant solutions;
 - To offer an independent voice in contentious issues where it is important that fact is separated from emotion as far as possible before embarking on the policy response. Often the perceived risk is dominated by the sense of outrage surrounding a relatively insignificant hazard. The RRAC, through

the activities of each Forum alongside its other work streams, will develop and disseminate a specific expertise in turning that outrage into a more dispassionate assessment of the facts. It will be ideally placed to support government from its independent and neutral position;

- To support the concept of 'risk-based regulation' in matters of implementation and enforcement. Sustainable success of 'risk-based regulation' will require a consistent definition of 'tolerability' amongst the fragmented regulatory community and the acceptance of the possibility of failure without a need to attribute blame – this may require the intervention and support of a respected, independent voice from time to time.
- To highlight examples of good practice, both current and past, in order to show what success can look like, how it can be achieved and the fact that it is achievable.
- The programme would envisage interventions as required, with the expectation of at least one per quarter

6.4 Work Package 4: Training material provision for Ministers and civil servants drawing on the case studies and network established in the delivery of Work Package 1:

- The intention is that materials will be prepared in collaboration with and for the benefit of the National School for Government to ensure that training in approaches to policy making and implementation is interwoven into the existing educational framework;
- The network of external stakeholders should act as a valuable training resource that a Forum can assist in mobilising; and
- The programme would be driven by the workshop timetable.

6.5 Work Package 5: Provision of rapid, independent counsel to ministers and policy-makers in high pressure situations upon request:

- The network and facilitated network approach to re-examining policy issues in the stock of legislation will lend itself to rapid consideration of issues that emerge under pressure and require a rapid response.
- It is envisaged that Ministers will come to value and trust this process over time such that they would wish to use the resource of the RRAC and its broader network at short notice.
- The programme will depend on Ministerial demand.

6.6 Work Package 6: Understanding and influence of the EU risk management agenda:

- The focus of EU involvement would be, in co-operation with other Member States' national independent better regulation bodies, on building awareness around the importance of more rigorous early process and pressure in issues of public risk and responsibility, whilst ensuring that the current progress being made in the realm of administrative burdens is not derailed. The aim will be to lay the groundwork for evolution of the better regulation agenda in Brussels.

- This work would be complementary to the normal management of UK / EU relations and would not involve direct negotiations with the EU Institutions.
- In parallel, a Forum would ensure that the EU context is fully understood in any consideration of UK issues of risk, responsibility and regulation.
- The programme envisages at least one EU-related meeting per quarter.

Support for the RRAC

7. A key ingredient for success will be process design assistance from a small team (up to 5) within Government that is in tune with the Government's internal policy-making cultural reform activities; pan-governmental in its outlook; well versed in evidence-based systemic thinking; and can support the RRAC in enrolling and engaging participants. In addition, a small administrative resource (2 people) will be required to arrange workshops and other events; maintain the network of key stakeholders and manage evidence gathering. A budget of £600,000 per annum would be required to cover the team costs and limited research, external advice and events management.

The critical resource, however, is political will. The impact of the new approach and the willing, energetic engagement of its networks will depend upon the RRAC having direct and sustained links to the Prime Minister and the Cabinet Secretary. A change in Whitehall's ways of working as significant as is proposed will be heavily reliant on their high profile and on-going endorsement. It will need to be widely known and understood that they are committed to seeing the change that the new approach is helping to drive. Equally, the relevance of this work to both the Better Regulation agenda and the Public Service Reform agenda will need to be overtly acknowledged and emphasised.

The Better Regulation Commission

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