

# Implementing Hampton: from enforcement to compliance

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November 2006



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# EXECUTIVE SUMMARY

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**1** At the 2004 Budget the Government asked Philip Hampton to consider, “the scope for promoting more efficient approaches to regulatory inspection and enforcement while continuing to deliver excellent regulatory outcomes.”

**2** A year later Philip Hampton published his report, ‘Reducing administrative burdens’,<sup>1</sup> in which he set out his vision for a risk-based approach to regulation. He argued for the creation of a regulatory system, at both a national and local level, in which risk assessment was the basis for all regulators’ enforcement programmes. The Government accepted his recommendations in full.

**3** Globalisation increases competition and places a premium on a strong business environment. As markets become more competitive, it is important to do more to ensure the right conditions are in place to enable businesses and individuals to respond to new opportunities and incentives.

**4** A key pillar to achieving this is to remove the burden of unnecessary regulation and old style routine inspection and enforcement. Regulation has an important role to play in the economy to address market failures and achieve social objectives. However, regulations need to be fit for purpose and their enforcement risk-based, so that resources are focused on areas where the risks to society are greatest, and so that businesses are able to compete effectively in the global economy. A risk-based approach provides the most efficient use of resources and decreases the cost on the compliant businesses while also providing protection for the individual.

**5** It is also no longer true that most businesses, if unregulated, will act irresponsibly. Well-informed consumers, corporate social responsibility, organised labour, pressure and interest groups have all encouraged businesses to take measures to reduce risk to society. For example, the number of reported non-fatal injuries at work has fallen by 68 per cent between 1974 and 2006.

**6** In this context it is clear that regulatory regimes need to adapt to the changing world of the 21st century. The Hampton principles (see below) outline a risk-based approach to regulation which sits in line with a world where competition is fierce, consumers are better informed, and resources are scarce.

**7** This report shows that full implementation of the Hampton principles will result in fewer inspections, fewer forms, better advice for compliant businesses and quick, effective sanctions on those that do not comply. For example, since the Hampton report, the Environment Agency’s risk-based assessments have led to a 20 per cent reduction in the number of inspections and this is set to increase as their risk-based system is extended across their regulatory regime. Comprehensive risk-based inspections by all regulators will have a tangible effect on all businesses.

## Progress to date

**8** Progress has been taking place both in terms of the structure within which regulators operate and in how they carry out their functions.

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<sup>1</sup> *Reducing administrative burdens: effective inspection and enforcement*, Philip Hampton, March 2005.

**9** The Legislative and Regulatory Reform Act, which received Royal Assent on 8 November 2006, contains powers to enable the Hampton principles to be established in UK law through a statutory Regulators' Compliance Code. Regulators will be legally obliged to have regard to the Hampton principles in deciding their policies and principles, and in setting standards and in giving advice. A new draft of this Regulators' Compliance Code will be consulted on in the New Year and the Government intends that it should be enacted by the autumn and come into force on 1 April 2008. It will oblige all regulators (both national and local) to have regard to the following Hampton principles:

- regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- no inspection should take place without a reason;
- businesses should not have to give unnecessary information, nor give the same piece of information twice;
- the few businesses that persistently break regulations should be identified quickly;
- regulators should provide authoritative, accessible advice easily and cheaply; and
- regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

**10** Any business or third party that believes that a regulator is failing to have regard to the Regulators' Compliance Code will be able to seek redress by means of a complaints procedure provided by the regulator or by making a complaint to, for example, the Parliamentary Ombudsman. It may also be possible to apply for judicial review of the regulator's actions.

**11** Within their organisations, regulators have already started to make progress on implementing the Hampton recommendations on forms, inspections, advice, and mergers.

**Fewer, better forms** **12** Regulators are beginning to make progress implementing the Hampton recommendations on forms. Firms have to gather the required information for forms which take time to complete, making them a major business irritant. Six regulators<sup>2</sup> have either carried out, or are in the process of carrying out, full reviews of all their existing forms in consultation with business stakeholders. These reviews have resulted in significant cuts in the number of forms. Technological developments, including online forms and e-returns, have also decreased the time spent form filling. For example, Companies House has made a number of recent changes to allow businesses to submit annual returns and accounts online. They have calculated that electronic filing has reduced the burden on business by over £11.5 million in 2005-06. This measure and others have saved business £34 million with at least £150 million in the pipeline for next year.

**Risk-based inspections** **13** All of the regulators covered in this report have a risk element to their inspection functions. However, the risk-based approach is still being embedded in every aspect of a

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<sup>2</sup> Health and Safety Executive, Environment Agency, Civil Aviation Authority, Human Fertilisation and Embryology Authority, Patent Office, and Food Standards Agency.

regulators' enforcement strategy. Nonetheless, measures in place by the end of the financial year will save business £117 million. This comes mainly from new Department for Transport guidance that will enable road haulage operators to better target their safety inspections of goods and passenger vehicles. The report also highlights the work of the Retail Enforcement Pilot where local authority inspectors covering trading standards, environmental health, food safety, health and safety, fire, and licensing are co-ordinating their inspections. As a result the 40,000 businesses in two pilot areas have seen a reduction in routine inspections of up to 33 per cent. If rolled out nationally, it is estimated that the initiative could save business £10 million per annum from reduced inspections.

**Improving advice** **14** Good progress has been made in increasing the use of tailored and accessible advice for businesses. The Health and Safety Executive has, for example, created a major new advice service (Workplace Health Connect) which went live this spring covering 40 per cent of SMEs. By the end of 2008, Workplace Health Connect hope to have generated benefits to firms from avoided reportable injuries of £8.7 million. Regulators are also beginning to recognise their role in monitoring business' understanding and awareness of advice, but this is not as extensive as it could be. As businesses have access to an increasing number of advice sources, the Hampton recommendations on the effectiveness of advice are increasingly important.

**Preventing regulatory overlap** **15** Philip Hampton recommended the merger of 31 regulators into seven thematic bodies by 2009. 12 bodies have already been merged into the following bodies:

- Environment Agency;
- Health and Safety Executive;
- Natural England;
- Rural Payments Agency;
- State Veterinary Service;
- Food Standards Agency; and
- Levy Board UK.

**16** Agreement has been reached to merge a further 12 into the thematic bodies and departments are deliberating on the appropriate thematic bodies for 12 more regulators, some of which were outside the scope of the Hampton Review. In addition the merger of the Insolvency Service Agency and the DTI Company Investigations Branch took place on 3 April 2006.

## Moving Forward

**17** Businesses and their representatives have been involved in developing this report and have supported the measures outlined within. They have also acknowledged the benefits that business will accrue from Hampton's recommendations. However it is still early days and more rapid progress is needed.

**18** The Government is therefore introducing new measures to increase the transparency to businesses and encourage regulator compliance with the Hampton principles to:

- share best practice, eliminate unnecessary forms, and ensure that businesses do not give the same piece of information more than once;
- embed a risk based approach across their entire regulatory regime and to use risk assessments to target genuine risks to consumers, employees and the environment, rather than targeting minor breaches of rules; and

- as the quantity and quality of new advice increases, systematically evaluate this advice to assess whether it is benefitting the necessary businesses.

**Implementing Hampton nationally 19** The National Audit Office will work with regulators and the Better Regulation Executive to develop a process for assessing regulatory performance against the principles. The first of these assessments will take place in 2007. Guidance on the performance assessment will be published in spring 2007. This will clearly set out the best practice on the key Hampton and Macrory principles. To complement these changes, the Better Regulation Executive is also leading work within Government to unblock legal or technological constraints to Hampton compliance, particularly in the field of data sharing. These measures provide a series of incentives for regulators to speed up implementation of Hampton.

**Macrory Review 20** Fundamental to the risk-based approach is the certainty that the majority of businesses, which are compliant, will receive a lighter touch with fewer inspections and forms. Meanwhile rogue businesses, which repeatedly flout the law, will face quick, meaningful and proportionate penalties. The Macrory Review of Penalties<sup>3</sup>, which the Government has accepted in full, will create a level playing field for all and ensure that there is no financial incentive from non-compliance by introducing a new toolkit of penalties which will increase the flexibility and speed with which compliance breaches are resolved. Regulators will only get access to the new toolkit when they have demonstrated to the Panel on Regulatory Accountability that they are compliant with the Hampton and Macrory principles.

**Implementing Hampton locally 21** 80 per cent of inspections are carried out by local authorities. To encourage the implementation of a consistent risk-based approach at the local level, the Government will:

- move immediately to establish the Local Better Regulation Office (LBRO) which will be fully up and running by the end of 2007. The LBRO will have its own Board, including representatives from business and with experience of local authority regulatory services. It will be established by the Cabinet Office to maximise synergies with the Government's better regulation agenda. LBRO's key role will be to reduce burdens on business without compromising regulatory outcomes and working in partnership with local authorities, national regulators and departments to drive up the quality of local authority regulatory services;
- legislate to put LBRO on a statutory basis, as soon as Parliamentary time allows, and give it powers to issue guidance to local authorities in relation to implementing Hampton, to which local authorities will have to have regard;
- place the principle of home and lead authority on a statutory footing for multi-site businesses. LBRO will be asked to tackle inconsistencies in enforcement in different local authorities, including developing an effective arbitration role in disputes;
- ensure that local authority regulatory services, including trading standards, environmental health, and licensing are included within the scope of the Hampton Code of Practice. Like national regulators they will need to have regard to the Code when setting their enforcement policies;

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<sup>3</sup> Macrory Review of Penalties, Professor Richard Macrory, November 2006.

- in keeping with the new performance framework recently announced in the Local Government White Paper, develop with business a new measure which ensures compliance with Hampton;
- extend the Retail Enforcement Pilot across 70 more local authorities;
- ask a respected member of the Local Government community to examine the approximately 60 areas of legislation that local authorities enforce, and recommend, by spring 2007, around five specific high-risk national priorities so that they do not waste business' time on low risk areas of enforcement. Local authorities would, of course, be free to add their own local priorities; and
- continue to engage with the devolved administrations on how these proposals should apply across the UK.

### Summary

**22** This update shows that regulators have started to take action to implement Hampton. Over the next year, a series of milestones are in place to help regulators and local authorities fully comply with the Hampton principles ahead of the Regulators' Compliance Code coming into force. At a national level, performance assessments will give regulators a clear indication of their strengths and weaknesses and provide time to make appropriate changes. At a local level, the Local Better Regulation Office will work to drive up performance and spread best practice. These reforms will deliver real benefits to businesses on the ground.



# FEWER, BETTER FORMS

The Hampton review recommended that risk assessment should be used to reduce form-filling requirements with lower risk businesses submitting less paperwork than higher risk businesses. Regulators were also encouraged to ensure that the forms were fit for purpose and do not impose unnecessary burdens on business. To aid this, some specific recommendations were made encouraging regulators to:

- use business reference groups when designing new forms;
- investigate ways in which their data requirements could be met by transferring information from businesses' systems; and
- keep a tally of the forms they have issued and outline how long forms will take to complete and understand.

The Better Regulation Executive were also asked to play their part by producing guidance on forms for regulators, and by leading a process to investigate the possibility of data sharing between regulators.

These recommendations were encompassed in the Hampton principle: **Businesses should not have to give unnecessary information, nor give the same piece of information twice.**

## REDUCING THE BURDEN OF FORMS

**I.1** The Hampton review recognised that badly designed forms represent a cost to business. Firms have to gather the required information for forms which take time to complete, making them a major business irritant.

**I.2** Regulators are starting to make good progress in this area. Six regulators (Health & Safety Executive, Environment Agency, Civil Aviation Authority, the Human Fertilisation and Embryology Authority, the Patent Office and the Food Standards Agency) have either carried out, or are in the process of carrying out, full reviews of all their existing forms in consultation with business stakeholders. Most regulators are using business reference groups in the design or rationalisation of forms. The resulting improvements in the design of forms from measures already in place has led to more than £7 million in savings to business.

**I.3** Further impetus for reducing forms will come from guidance by the Better Regulation Executive on how government should lessen the administrative burden it imposes on business through forms. The key purpose of the document is to help government departments and regulators consider how they can reduce the amount of time that business spends on completing forms through:

- fewer forms;
- shorter forms;
- better forms and process design; and
- increased sharing of data between government organisations.

**I.4** Publication of the guidance document is planned for early 2007.

**Best Practice – Forms**

The Health and Safety Executive (HSE) has conducted a fundamental review of all its forms and identified 54 per cent to be removed by the end of 2006. 27 of the 79 targeted forms have already been removed. The savings to business from the removal of these forms are approximately £250,000 per year.

The Civil Aviation Authority's (CAA) Safety Regulation Group initiated a project to review all internal and external forms. The main objectives of the project were to minimise the number of forms used, to re-design and produce a set of forms that have a consistent and professional style, and to make forms available electronically. 25 per cent of forms (100 out of a total of 400) were found to be redundant and were withdrawn. Today, all 167 external forms are available via the CAA web site.

**Whole Farm Approach** **I.5** The Whole Farm Approach is designed to lighten the regulatory burden on farmers and growers in England. It offers a faster and more efficient way of doing business between government and the farming industry. (See 'Best Practice' under Joint Inspections in Chapter 2 for more information).

**I.6** Among a range of benefits, the Whole Farm Approach will reduce the number of requests for data made to the farming sector, as well as making data easier to access and maintain accurately. Farmers and growers will be able to use the system to confirm the accuracy of information as a basis for subsidy payment; use data to develop and submit plans for regulatory compliance; and access advice and guidance tailored to the farm's characteristics. Administrative burden reductions of £2.9 million per annum are expected from this measure by 2010.

**Food Standards Agency** **I.7** Until November 2005, the over-thirty month (OTM) rule protected consumers from BSE by banning the sale for human consumption of meat from cattle aged over 30 months at slaughter. Farmers were compensated for cattle destroyed under the OTM slaughter scheme. Farmers had to complete a form for every head of cattle to claim compensation. In the past year of operation this amounted to over 272,000 forms. Following a review of the OTM rule it has been replaced with BSE testing. Therefore the administrative burden from applying for compensation as been removed and farmers have benefited from not having to fill out so many forms.

**Environment Agency** **I.8** The Environment Agency has carried out a review of all external forms and associated guidance. In the development of the new forms and guidance, the Environment Agency has consulted with the National Farmers Union. An example from the review is the agricultural waste management licensing exemption which was reviewed and a new form developed in consultation with farmers. This reduced the form in length by 93 per cent (75 pages to 5).

**I.9** The Environment Agency has also simplified paperwork procedures and introduced an electronic notification system for monitoring the movements of hazardous wastes, benefiting waste producers, the waste management industry and the Environment Agency by cutting administrative burdens by £2.1 million.

**The Patent Office** **I.10** The Patent Office has initiated a review of all its forms. The Forms Review Project was set up with the objectives of reducing administrative burdens, implementing one single form for the notification of changes where possible, and to make forms more efficient for e-filing and electronic case files. Following a public consultation which took place in November 2005, a list of actions has been compiled with a deadline for implementation by March 2007.

**Office of Fair Trading** I.11 The entire suite of forms for businesses applying for, renewing, varying or notifying changes to their consumer credit licences has been completely redesigned with a view to making them easier to complete and better targeted. The re-launch took place after consultation with the Better Regulation Executive and business reference groups. The forms were redesigned to give:

- increased guidance to traders on questions;
- clearer questions; and
- checklists to help traders ensure they provide all key information

I.12 Also in line with the Hampton recommendations, separate and simpler forms have been introduced and designed specifically for sole traders. A guide to the licensing regime for small businesses was also provided at the same time. Initial feedback in the year since the re-launch indicates that businesses are finding the new forms straightforward and not time-consuming to complete.

**Financial Services Authority** I.13 The Financial Services Authority has published a document entitled 'Principles of Good Data' which requires them to consider alternative sources of information for any proposed new data requirements. Its business reference groups are encouraged to challenge them as to whether it has met the principles set out in the guide.

I.14 In March 2006, a simplified application pack was introduced for small firms, reducing the average authorisation period for these firms by approximately 25 per cent. The FSA is now streamlining the application pack for the vast majority of applicants. Applicants can also now 'tailor' their application pack by answering questions which will remove unnecessary forms. This delivers an estimated annual saving of £3.7 million administrative burden.

**Housing Corporation** I.15 A Housing Corporation review into the regulatory and compliance burdens on Registered Social Landlords (RSLs) has been carried out, independently chaired by Sir Les Elton. This was initiated by the Housing Corporation at the request of Department for Communities and Local Government. The report of the review makes 84 recommendations across a number of areas such as data requirements and risk based regulation and compliance. The majority of the recommendations focus on the ways in which burdens placed on RSLs can be reduced. The Housing Corporation accepted all of the recommendations and has already begun to implement many of them. The changes will apply to RSLs in England only.

I.16 The recommendations being implemented are estimated to have an administrative burden saving of £1.7 million. The majority of this saving comes from a recommendation on data requirements which has increased the threshold needed (over 1000 dwellings) before an association has to fill out the full Regulatory and Statistical Return.

**Other Regulators** I.17 Other examples of good practice in this area include:

- the **Food Standards Agency (FSA)** intends to explore the potential costs and burdens introduced by guidance in the UK. The issue of FSA guidelines and how they can add to business costs was raised as one of businesses major irritants by businesses as part of the major project conducted in 2005-06 to measure administrative burdens. As part of its simplification programme, the FSA has initiated a review of all forms. Reference groups will be established to assist in the design of any new or replacement forms. Reference groups are already used to assist in writing guidance. For example, a group was set up to assist in the drafting and design of voluntary guidance on the provision of allergen information for foods that are not pre-packed;

- **Companies House** has 24 focus groups which work as business reference groups. In the introduction of several new electronic filing services, a wide range of customers and stakeholders were included in the process. In the case of the e-accounts system, they also discussed the service with members of the accountancy profession;
- **The Pensions Regulator (TPR)** has set up an advisory panel of representative stakeholders which it consults on a wide range of issues. An example of a recent consultation was the scheme return. In developing this TPR ran two stages of piloting with scheme trustees as well as using the TPR advisory panel as a general 'sounding board' for all developments. The initial scheme return document consisted of over 50 pages. This was reduced to 28 pages by sifting out some unnecessary information and obtaining other information [mainly employer related] via commercial information solutions. This is estimated to save £1.1 million per annum. TPR also now allows smaller defined contribution schemes to complete scheme returns every 3 years rather than annually;
- the **Retail Enforcement Pilot** is highlighted as best practice on risk based inspections in Chapter 2. In relation to forms, workshops including regulators, professional officers and retail businesses of all sizes have been run to establish pilot methodology. This has resulted in strong business support for the project and its outcomes. Form and process design has been carried out through working groups of stakeholders, tested in the field over a 3 month period to establish validity, and then transferred to an IT based solution to facilitate the sharing of information and collection of data in the field; and
- the **Human Fertilisation and Embryology Authority (HFEA)** carried out a fundamental review of the entire regulatory regime in 2005-06. As part of the review, the type and frequency of information request was examined. Following the review, better use is now made of data on the HFEA register to inform the pre-inspection analysis part of the inspection process. Centres are now only asked for information which has changed and are not asked to re-submit information already held on HFEA systems. Centres are no longer asked to submit copies of all protocols/procedures as part of the pre-inspection process which has made an administrative saving for them.

## Using technological developments

**I.18** Regulators were encouraged to pro-actively investigate ways in which their data requirements could be met by transferring information from businesses' systems. The implementation of this recommendation requires solving IT difficulties including methods of enabling different systems to be able to 'talk' to one another. Significant investment will be required by regulators in order to implement these recommendations, but this investment will save costs in the future by decreasing the cost of collecting and collating data. Some important developments nonetheless have taken place, most notably by Companies House, the Retail Enforcement Pilot and Department for Communities and Local Government.

**I.19** Far more progress has been made by regulators in setting up their systems to enable businesses to download and send forms electronically from regulators' websites. Reductions in the time needed to fill out forms from new technological developments represent a £27 million saving to industry, with more measures in the pipeline for next year.

**Best Practice – Coordination with Business Systems**

Companies House currently operates two types of electronic filing: web filing and software filing. Web filing operates through the Companies House website and is suitable for individual and low volume filings. Software filing operates via email and is suitable for both individual filings and bulk filings.

Companies House is currently the leading registry in the world for the use of XBRL (an IT standard to define and exchange business and financial performance information). Companies House has given it a key role in its development as a standard for financial information. The development of the taxonomy will facilitate the drive towards joint filing of information.

Companies House is working to expand the web filing service and work with business software providers to develop new products and services.

Companies House ran a review into electronic forms versus paper forms which concluded that electronic forms take approximately half the time to complete. Where forms also carry a statutory fee, electronic documents have a lower fee reflecting the lower costs of providing the service. Companies House has calculated that electronic filing has reduced the burden on business by over £11.5 million in 2005-06.

As a result, Companies House is working to increase the use and availability of its electronic filing. This drive to increase electronic filing is projected to reduce the burden on business by more than 30 per cent by 2010.

Companies House has used pre-populated annual return forms for many years. Companies only need to provide amendments ensuring information is supplied only once. Their latest electronic accounts services using XBRL will, in the future, enable them to pre populate the previous year's financial data. This will apply when companies file their accounts using this service for a second time. Costed savings are not currently available but this would reduce the amount of re-keying of data by 50 per cent.

**DLCG 1.20** As a result of the Planning and Compulsory Purchase Act 2004, the Department for Communities and Local Government are undertaking three reforms that will deliver a more efficient and consistent planning system. These measures are estimated to have as administrative burden saving of £125 million:

- introduce a standard planning application form on 6 April 2006 replacing the current system where each Local Authority has its own form;
- more consistent validity criteria for planning applications, thus increasing certainty for those interacting with the planning system; and
- enabling and encouraging developers to submit electronic planning applications, as well as increasing online access to information and guidance.

**Civil Aviation Authority 1.21** In June 2006 the Civil Aviation Authority (CAA) initiated a project to develop a forms solution that would enable PDF form data to be submitted electronically to the CAA, and a copy of the completed form to be sent directly to the applicant via e-mail. The project will initially trial the implementation of two forms. This is due for completion this month, following which the CAA will consider expanding the solution to all external forms.

**Office of Fair Trading 1.22** The Office of Fair Trading (OFT) has reduced the administrative burden on business by enabling businesses to download forms electronically from the dedicated credit licensing area on the OFT's website. Supporting information, including the guide for small businesses mentioned above, can also be downloaded. In the trial of drafts of the new forms there was an

18 per cent reduction in applicants calling OFT for help in completing the form. There was also a 35 per cent reduction in the number of errors made by businesses in completing forms. Online applications are continually expanding and the OFT plans to introduce a system in early 2007 so that it is possible to apply for a credit licence online.

**DVO Group 1.23** The e-enabling of many of the Driver, Vehicle and Operator Group's transactional services has allowed businesses to update centrally held information and file data returns online, resulting in a significant reduction in the number of multiple data requests and forms completed on paper. This trend looks set to continue as more services are offered to operators in an online format. E-enabled facilities already available through the dedicated Transport Office web portal include:

- Operator Licensing Self Service transactions;
- DVLA Personalised Registration purchases; and
- booking driving instructor theory tests.

**DVLA 1.24** Driver and Vehicle Licensing Agency is working on the introduction of electronic vehicle licensing. This allows vehicle owners to relicense their vehicles via the internet and telephone, saving time and effort. Initial estimates suggest savings in administrative burdens could be £15 million per annum and savings for private motorists are estimated at £20 million per annum. The service is now widely available and all vehicles will be included by April 2007.

**Environment Agency 1.25** The Environment Agency has introduced a number of systems whereby businesses can submit certain forms electronically. They have introduced a Pollution Inventory tool which collects information required under the European pollutant emission register and the large combustion plant directive. This system allows businesses to transfer files directly from their own systems. Other benefits of the new systems include on-line validation and quality assurance of data, and additional online guidance.

**1.26** The Environment Agency has also introduced a new online Waste Management Licensing Exceptions form which it is estimated takes about 10 minutes to complete, compared to an estimated 3 hours for the old form. Overall savings of the new system include a 60 per cent reduction in time spent processing simple waste exemption notifications and an 80 per cent reduction in time spent to process some of the other waste management licenses. This has led to a 10 per cent reduction in application charges. Savings for this online form are estimated at £0.5 million.

**Other Regulators 1.27** Other examples in this area include:

- the **Financial Services Authority** is currently designing a strategic information system solution that will enable firms to submit their regulatory data electronically. The new strategic platform will be utilising XML. They intend to publish publicly all the information required to allow firms to develop in-house software (or utilise third party software products). These applications can then be used to automate the submission of regulatory data;
- the **Health and Safety Executive (HSE)** has started a process looking to transfer all its remaining forms from paper to electronic format with the aim of having a full timetable for transfer in place by May 2007. This project is expected to considerably reduce the annual administrative cost of HSE forms which is currently estimated at £40 million;
- the **Rural Payments Agency** will pre-populate the Single Payment Scheme form for next year. This will reduce the burden to that of annual reporting of changes only. The projected administrative burden saving is £26.5 million;

- the **Security Industry Authority** has a licence integration policy which maximises sector inter-changeability. Licence integration allows individuals in one licensable sector to operate in another where there is a sufficient degree of overlap in the criteria; and
- the **Human Fertilisation and Embryology Authority** has implemented an electronic document interchange which will ensure electronic submission of all information, including billing.

## Data Sharing

**I.28** Another strand of recommendations focused on increased data-sharing between regulators, resulting in a reduction in form filling by businesses. Some regulators have looked into opportunities to share data, for example:

- **HSE** has begun to look at schemes whereby they could share data with other regulators and other government departments in order to make regulatory activity more effective. It is currently working with the Environment Agency on a pilot scheme to share data and working with the Department for Communities and Local Government (DCLG) on the possibility of better integrating the Construction (Design and Management) Regulations with the building and planning regimes;
- the **Whole Farm Approach** allows relevant inspectorates to share the information they gather, reducing the need for other inspectorates to gather the same information.; and
- the **Security Industry Authority** exchanges information with police partners for example police partners have disclosed over 500 separate pieces of intelligence and information to the SIA.
- The **Driver and Vehicle Licensing Agency (DVLA)** introduced in July 2005, and extended in April 2006, a system allowing it to electronically share records held by the Identity and Passport Service in order to confirm the identity of driving license applicants. This facilitates online license applications, reduces the number of sensitive documents sent through the post, and ensures accuracy of the information used. The estimated time saving for private individuals is £1 million per annum.
- **DVLA** also now shares electronic information with the **Department for Work and Pensions (DWP)** to allow the electronic relicensing of drivers with disabilities. This service was made available to DWP customers in March 2006 and will substantially reduce the number of paper forms completed by drivers eligible for vehicle excise duty exception – of whom there are around one million – and will increase the accuracy of the information returned. The estimated time saving for individuals is £1 million per annum.

**I.29** However, the Data Protection Act has often erroneously been seen as an obstacle. The Better Regulation Executive is working with the Information Commissioner to provide clarity on the extent to which the Data Protection Act is a barrier to Government agencies sharing data on business.

**I.30** The Better Regulation Executive are also working on the following work streams in this area:

- engaging with and encouraging further data-sharing projects between agencies that deal in similar sectors;

- working with cross-governmental partners who are looking at developing a 'unique Business Identifier' and a large data sharing system that could be used across government; and
- investigating the possibility of initiating a data-mapping study in order to understand where the real gains might be in terms of data-sharing.

**I.31** The Varney Report on Service Transformation is looking into opportunities to improve services for citizens and businesses, including opportunities for increased cross government working through data-sharing and information management. The report should provide further impetus into the data-sharing agenda.

**I.32** Datasharing will also underpin elements of the implementation of the Services Directive, which was ratified by the European Parliament on 15 November. Measures outlined in the directive which would benefit from datasharing include: the promotion of mutual assistance between Member States for enforcement purposes; harmonisation measures with respect to consumer protection; and other measures to promote and up-hold the quality of services. The development of an internal market information system website through which regulators can contact counterparts in other Member State and share information will deliver these measures.

## RECORDING TIME REQUIREMENTS

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**I.33** The Hampton review recommended that regulators should record all forms they issue, the time spent taken on completing the forms and report on these within their annual reports.

**I.34** Regulators have made most progress in ensuring they keep a log of all forms. They now need to record the length of time a form will take to comprehend and complete, report on forms in their annual reports.

**I.35** Progress has been made by the following regulators:

- **The Pensions Regulator** produces extensive web based guidance on completion of the scheme return. This includes an estimate of the time it takes to complete the whole form;
- **Companies House** currently records and reports the number of forms and electronic transactions by type. Any major changes to forms need a statutory forms order, though the new Companies Bill will dispense with this requirement and therefore give it greater flexibility. As part of the work to implement the new Bill, Companies House will review all of its form types in order to simplify and minimise the number of forms required and incorporate best practice on form design;
- the **Health and Safety Executive** maintains annual statistics on the number of forms received and has an internal forms control unit which produces annual reports to Ministers on the number of forms removed and in issue;
- as part of the **Food Standards Agency** review of all forms, any new forms will be developed to include the factors recommended by Hampton. Data on the length of time it actually takes to fill in a form will be collated and investigated where appropriate; and

- the **Information Commissioner's Office**, the **Pensions Regulator**, the **Financial Services Authority**, the **Environment Agency** and the **Human Fertilization and Embryology Authority**, all keep a log of the forms they have issued.

## MOVING FORWARD

**I.36** Regulators are encouraged to continue their work in this area. It will be particularly important for them to ensure that they build the necessary IT investment into their longer term plans, as they work to reach their administrative burdens targets.

**I.37** The Services Directive, which aims to create a free market for the services sector within the EU, will further encourage the reduction in the burden of forms through technological development. Its purpose is to remove unjustified national legal and administrative barriers that can hinder businesses from offering their services in another member state, and to encourage cross-border competition. As part of the implementation of the directive, a measure that will reduce burdens for business in the UK as well as other Member States, is the introduction of electronic license application systems by regulatory regimes. This will enable a EU business based anywhere in Europe to apply online for licenses in any member state.

**I.38** Many regulators are using business stakeholder groups to improve forms. It would be particularly valuable for regulators to ensure their process for using these groups and the way their input is incorporated into the forms is open to scrutiny.

**I.39** It is important that when regulators report on their progress in reducing burdens they give the full context for any changes. Business stakeholders need to understand what the effects of the changes are. To ensure transparency is maintained and in the context of the administrative burdens reduction exercise, the Government expects regulators to quantify the cost savings associated with the form reductions that have been made, making it clear that forms have not simply been amalgamated. If regulators report on the number of forms they have removed, they must also report the quantified burden removed to allay concerns that some of the information required on the removed form has been added on to another existing form.

**I.40** The Better Regulation Executive will issue guidance on forms best practice and on how to reduce the amount of time that business spends on completing forms. This will be complemented by the guidance on performance assessments, which the Better Regulation Executive will publish in spring 2007.



# 2

## RISK ASSESSMENT AND INSPECTIONS

The Hampton review recommended that all regulatory activity should be on the basis of a clear, comprehensive risk assessment. This includes opening the process to scrutiny, considering past performance and future potential risk, using good quality data, and ensuring it is implemented uniformly and impartially.

The Hampton review also recommended that when publishing a risk assessment for a category of inspections, regulators should identify other institutions with which they could conduct joint inspections.

These recommendations were encompassed in the Hampton principle:

Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most and that there should be no inspection without a reason.

### CLEAR AND COMPREHENSIVE RISK ASSESSMENTS

**2.1** Progress has been made by regulators on implementing a risk-based approach to inspections. All regulators who have submitted information for this update have incorporated some element of risk assessment into their inspection process but only four have yet fully implemented risk systems. A number have introduced pilot schemes in key areas such as the Retail Enforcement Pilot (highlighted as best practice below) and OPRA - the Environment Agency's risk assessment scheme. Both have completed a successful pilot stage and plans are in place to roll them out further.

#### **Best Practice – Risk assessments**

As part of the Retail Enforcement Pilot, the DTI commissioned an independent expert study to examine how risk-based enforcement works in practice. The result has been the creation of a single, streamlined risk model which replaces the five existing risk models currently used to assess retail premises.

The Pilot method is being tested by two key local authority volunteers: the London Borough of Bexley and Warwickshire County Council along with three of its Districts – Warwick and Stratford-Upon-Avon District Councils and North Warwick Borough Council.

Unifying the risk model provides, for the first time, a mechanism for comparing relative hazard across different areas (Trading Standards, Environmental Health, Health and Safety, Fire and Licensing interventions). This gives local authorities a powerful tool for deciding where their efforts are best targeted and what visits are operationally necessary.

Hazard is still assessed separately by each discipline so there is no loss of integrity, but the basic business data (names, address and details of nature of business) is a common factor, as is “confidence in management”, effectively how well risk is controlled. Businesses are assessed on their ability to manage risk in their day to day operations and those that do well receive a lighter touch and fewer inspections. Feedback to business on its regulatory performance also helps businesses to improve their overall compliance standards through understanding how they are performing and how current performance relates to future intervention.

**Co-ordinating intervention programmes for Trading Standards, Environmental Health, Health and Safety, Fire and Licensing eliminates requirements for routine visits which are often driven by performance frameworks rather than operational imperatives. By eliminating visits which add little value to regulatory outcomes, well-run businesses will see an overall reduction in the number of routine inspections. Preliminary results show that the Pilot method has saved 32 per cent of routine planned inspections for good businesses. If replicated nationally estimates suggest this would cut around 200,000 routine inspections annually – giving a saving of some £10 million for business.**

**Gerry Murphy, Chief Executive, Kingfisher and the Pilot’s Retail Champion said, “The Pilot has demonstrated that it is possible to deliver better consumer protection by smarter, joined-up enforcement and it should now be extended to a larger trial across more local authorities. The cost of the next phase is very modest compared to the potential benefits and the prospect of demonstrating, in the real world, a great example of the Hampton review in action”.**

**Financial Services Authority 2.2** Over the last two years, the Financial Services Authority (FSA) has completely overhauled its risk management processes in order to identify and measure its main risks and then mitigate them. All of its assessments, and all on-site visits to firms as part of those assessments, are risk-based. The Financial Services Authority also uses technology tools in order to analyse returns based on risk more quickly. The automated risk indicator (ARI) checks electronic submissions for certain high risk areas (complaints returns, product sales data et cetera).

**2.3** The FSA has recently consulted on proposals to remove the statutory requirement for small firms authorised by it and its appointed representatives to have their annual accounts independently audited. The FSA is working with the Department of Trade and Industry (DTI) to amend the Companies Act and the Companies Bill. There would be an estimated total saving of £12.9 million each year for 3,200 small firms and 1,490 appointed representatives.

**Environment Agency 2.4** The Environment Agency has estimated that 70 per cent of their 130,000 inspections are currently carried out on the basis of a risk assessment. This is increasing year on year as it rolls out risk-based compliance assessments across all regulatory regimes. It has focused efforts on Waste Management Licensing as it accounts for 50 per cent of all inspections. Since Hampton, these inspections have been reduced from 80,000 to 60,000 (see below for more detail). There has been an additional reduction of 10,000 inspections across other areas.

**2.5** Operator and pollution risk appraisal (OPRA) has recently been introduced within the Environment Agency’s Pollution Prevention and Control (PPC) and Waste Management Licensing (WML) regimes. The Environment Agency will be introducing OPRA to all its other regimes over the next two years. The EP OPRA scheme has five attributes. Three reflect the environmental hazard of the operation (location, complexity and emissions); the fourth measures operator performance. For all of these attributes, the system provides either a look-up table or objective scoring systems so that an operator can calculate the EP OPRA Banded Profile when applying for a PPC Permit. The final output from each attribute is one or more bands (A-E), where A equates to the need for lower regulatory oversight and E the need for more regulatory oversight. These bands are then carried forward to generate the EP OPRA Banded Profile for the installation covered by the permit. The fifth attribute only comes into effect when the permit is issued and measures the compliance of the operator with the permit conditions. This score is combined with the EP OPRA Banded Profile to increase the overall score for poor performers and decrease it for good performers.

**2.6** A low risk waste panel has been set up to identify waste activities that pose little or no risk to the environment yet require a Waste Management License. To date, 30 categories have been identified as not justifying enforcement and an estimated £9.5 million administrative burden costs have been avoided.

**2.7** The Environmental Permitting Programme (EPP) has also been set up and is designed to streamline and integrate the permitting systems for waste and management licensing and major operations covered by Pollution Prevention and Control. A new risk-based approach will also be implemented. This is a joint initiative between the Department for Environment, Food and Rural Affairs (DEFRA), the Environment Agency and the Welsh Assembly Government. Its purpose is to reduce administrative costs, provide greater simplicity and lower charges for customers. The programme has been estimated to have administrative burden savings of £9 million per annum for business. A second consultation on the proposed regulations was published in September 2006, with a view to the regulations coming into force in April 2008.

**Department for Transport** **2.8** The Vehicle and Operator Services Agency (VOSA) has been working with the Driver, Vehicle and Operator (DVO) Group to provide guidance by the end of the financial year 2006-07 to road haulage operators to enable them to target better their safety inspections of goods vehicles and passenger vehicles. Newer and more modern vehicles will benefit by having less inspections (other than annual MoT tests). It is estimated that this could save operators up to £100 million per year. The proposal will be implemented by the end of the financial year 2006-07 if it is agreed by the Trade.

**2.9** In a Department for Transport internal survey of Risk Based Inspection and Enforcement (RBIE) across the department during 2006, it was found that 74 per cent of all inspection activities use a form of risk assessment.

**Health and Safety Executive** **2.10** The Health and Safety Executive (HSE) actively uses rating systems to ensure more frequent inspections of workplaces where risks have been judged to be poorly managed.

**2.11** As part of a programme to continue to improve their record and build upon Hampton recommendations, HSE have introduced, amongst other initiatives, the Large Organisation Partnership Pilot (LOPP). The pilot, offers a more coherent, customer-focused approach to large multisite organisations and provides greater consistency in proactive interventions to agreed health and safety priorities. Speaking about HSE's new pilot Deborah Allen, Director of Corporate Responsibility at BAE Systems emphasised that there is "lots of potential" in the approach, adding "we have formed a better partnership with the HSE; perceptions have changed on both sides and redrawing the ground rules has improved communication between HSE, the trade unions and the safety function at BAE."<sup>1</sup>

**Food Standards Agency** **2.12** The Food Standards Agency's (FSA) Food Code of Practice and Practice Guidelines use a risk-based approach to enforcement and both are being reviewed to ensure they are fully compliant with Hampton principles. This work will be completed by end of July 2007.

**2.13** The FSA has successfully introduced alternative enforcement strategies (AES) for the lowest risk-rated categories which has led to fewer inspections. As a result, the number of scheduled hygiene inspections made in this category fell from 24,674 in 2003-04 to 15,525 in 2005-06, representing a reduction of 37 per cent. For food standards, the number of scheduled inspections fell from 21,618 in 2003-04 to 17,192 in 2005-06, representing a reduction of 20 per cent.

<sup>1</sup>From HSE's Health and Safety Bulletin (June 2006), a monthly subscription-based periodical.

**2.14** The Food Standards Agency is currently consulting on using an evidence based enforcement approach for new EU food hygiene legislation. Part of this approach would be to use membership of Farm Assurance schemes as a means of reducing the frequency of inspection of farms. It has been estimated that this could save £3.2 million. To streamline this process, data transfer is being developed directly between the food hygiene enforcement bodies and the recognised farm assurance schemes.

**Other Regulators**

**2.15** Other examples of good practice in this area include:

- the **Security Industry Authority** has published its ‘Enforcement Code of Conduct’ which helps ensure its compliance activity is conducted in a transparent and open manner. Also, as a result of a reassessment of the risks involved, the Security Industry Authority has made a number of changes. These include:
  - allowing staff seeking licenses to be able to transfer prior training and qualifications which will mean that security firms will realise cost savings on training programmes. This was estimated to have had a saving of £3.08 million as of March 2006; and
  - introducing an exemption from licensing where equivalent arrangements are in place. As a result, security firms will be able to deploy previously trained staff and avoid unnecessary, dual regulation where a suitable alternative exists. This was estimated to have had a saving of £4.72 million as of March 2006;
- the **Civil Aviation Authority (CAA)** has an annual Safety Plan which is the product of the Safety Risk Group’s Safety Risk Framework, which is the process for identifying and prioritising risk. This starts with the Accident Analysis Group, which annually reviews fatal accidents and assigns causes of accidents wherever possible. The outputs of this work are then considered by multi-disciplinary teams, drawing upon information from the Mandatory Occurrence Reporting System where possible, and are assessed using a model to identify the relative importance of potential safety vulnerabilities. Possible actions are then developed and finally prioritised by considering the level of risk and likely effectiveness of mitigating actions;
- the CAA has introduced a number of changes based on a re-assessment of risks in the relevant areas including currently working with other European States on a proposal to reduce the frequency of medical examinations for pilots aged between 40 and 59 years undertaking multi-pilot commercial air transport operations. The changes required to bring this proposal to fruition are expected to take place in early 2007 and represent an annual saving to UK industry of approximately £1 million;
- **The Pensions Regulator (TPR)** has developed a high level risk model to allow it to target regulatory interventions in a risk-based and proportionate manner. In an Ipsos MORI stakeholder survey in 2005, 64 per cent of respondents agreed with the statement that TPR is focused on the most important risk to members’ benefits and 55 per cent agreed that TPR was proactive in reducing serious risks to members’ benefits;

- the **Information Commissioner's Office** regulatory activity is based on a clear and comprehensive risk assessment. Since implementation the number of complaints allocated for investigation has been reduced by 35 per cent, and the number of investigations forwarded for prosecution has increased by 12 per cent; and
- the **State Veterinary Service** has completed a pilot to introduce risk-based inspections for animal by-products. The pilot studies in two divisions led to a 40 per cent reduction in inspections. Instructions to roll out the risk-based approach were issued in September 2006.

## JOINT INSPECTIONS

**2.16** There have been some significant success stories in this area, notably the Retail Enforcement Pilot (which is discussed above) and the Whole Farm Approach. A significant proportion of regulators carry out some joint inspection and compliance work, however most of this is within a small, discrete part of their regulatory regime. A number of regulators have started pilots in particular areas of their regulatory regimes or instigated discussions with other regulators in order to embed a more joined up inspection approach. These include the Health and Safety Executive, the Vehicle and Operator Services Agency, the Highways Agency, the Financial Services Authority, the Office of Fair Trading, Companies House and HM Revenue and Excise.

### Best Practice – Joint inspections

The **Whole Farm Approach (WFA)** is designed to lighten the regulatory burden on farmers and growers in England. It offers a faster and more efficient way of doing business between government and the farming industry and should help reduce the number of duplicated requests farmers receive from Defra and its agencies for information.

The **WFA Inspections Project** aims to improve the effectiveness of on-farm inspections. This will occur through:

- farm data being applied to risk-based models used to better target inspections, e.g. a farmer who submits data via the WFA and whose answers show compliance may be less likely to receive an inspection than those deemed to be a higher risk. The data for each individual farmer could be used to pre-populate inspection forms so that inspections themselves are shorter and more focussed; and
- Improved co-ordination between the various on-farm inspection bodies. This will occur through better scheduled inspections, improved sharing of data between different inspectorates and sharing other aspects of good inspection practice (e.g. the approach to customer care)

As a result of better planned and executed inspections, the total benefit expected from these methods is a 15 per cent reduction in the time a farmer spends dealing with inspections.

The **Whole Farm Approach** is intended to be used to collect data for the following partners: **Environment Agency; Rural Payments Agency; Natural England; Surveys, Statistics and Food Economics; State Veterinary Service; Animal Health and Welfare; Local Authorities; Food Standards Agency; and English Heritage.**

The total benefit savings for business are estimated at £0.3 million in 2006-07 rising to

**£14.9 million in 2015-16 as take-up increases and greater efficiencies are realised.**

**WFA has support of stakeholders, particularly the National Farmers Union (NFU) whose presidents have gone on record with their support. Andrew Clark, NFU Head of Policy Services, said: “The Whole Farm Approach provides a great opportunity to simplify and streamline the submission of data to Defra. This is an opportunity for regulators to inspect the industry based around the level of perceived risk. The NFU are expecting farmers who use the system to see a reduction in the number of compliance visits if they are viewed as a low-risk after utilising the Whole Farm Approach.”**

**English Nature 2.17** English Nature avoided a duplication of inspections that would have arisen with the statutory requirements for inspections for the Single Payment Scheme. It recognised that in inspecting all Good Agricultural Environmental Conditions (GAEC), Rural Payments Agency (RPA) would be covering Sites of Special Scientific Interest (SSSI) (GAEC 6). It would then have been an unnecessary duplication of effort if English Nature undertook a parallel programme of inspecting compliance with the Statutory Management Requirements (SMR 1 & 5) on the same land. Instead English Nature worked with RPA to broaden the scope of its inspections, provided training for its inspectors, and developed a simple mathematical model (incorporating information on site condition and previous enforcement history) to inform RPAs risk-based site inspection regime. RPA now inspect both GAEC and the SMRs for SSSI in the same visits. English Nature provides the RPA inspectors with all necessary background information (consents issued, designation documents and maps, management agreements etc.) prior to their visits.

**Health and Safety Executive 2.18** The Health and Safety Executive (HSE) has set up the Moving Goods Safely (MGS1) project to carry out joint inspection and enforcement aimed at the activity of delivering and collecting goods. Local Authorities commented that the supply chain inspection process adopted in MGS1 offered an improved methodology for tackling retail chains and their logistics branches as whole organisations, rather than adopting fragmented approaches to individual stores. The partnership approach was also perceived to have helped to improve relationships between Local Authorities and HSE, and to promote continuity in enforcement.

**Office of Fair Trading 2.19** The Office of Fair Trading (OFT) Consumer Direct has set up an IT system whereby full case details of calls and emails to the Consumer Direct contact centres are gathered and held on the Consumer Direct central database. Access to the database is available to OFT staff and in March 2006 the OFT completed work begun by the Department of Trade and Industry to rollout a national training programme for local authority Trading Standards Services (TSS) staff on use of the database. Today, staff from the vast majority of TSS throughout England, Scotland and Wales have access to the database and TSS users run around 5,000 reports on the database each month.

**2.20** Over the past 12 months, more restricted access to data on the central database has been made available to other regulators, including Ofcom and Financial Services Authority, and to consumer organisations, including the National Consumer Council, the WCC and SCC, the Air Transport Users Council, Energywatch, Postwatch, and LACORS.

**Other 2.21  
Regulators**

Other examples in this area include:

- the **Financial Services Authority and Office of Fair Trading** jointly published a plan setting out how they believe they can better delivery their regulatory obligations by working more closely together. They will complete a series of feasibility studies over the next six months in order to further investigate a range of ways to reduce the administrative burden on businesses. By carrying out the actions, it is intended that:
  - firms are enabled to provide standard information to both organisations with as little duplication as possible;
  - their policy and rules in areas of overlap are consistent and complementary and consumers are given a clear, easy to understand message;
  - knowledge and expertise is shared more effectively; and
  - everything they do is cost effective for jointly regulated firms;
- the **Financial Services Authority** has a number of Memoranda of Understanding and Exchanges of Letters relating to information exchange, joint supervision and enforcement activities. Currently they have 152 with other country regulators, 13 with EU bodies, 11 with overseas territories and other dependent countries and two with domestic regulators (National Criminal Intelligence Service and Inland Revenue);
- the **Security Industry Authority (SIA)** has identified regional enforcement partners, such as the Police, and has provided them with training on SIA licensing. This enables joint operations and information exchanges as part of compliance activity;
- **Companies House** are at the initial stages of discussion with HM Revenue and Customs on the options and benefits of joint compliance work;
- the **National Weights and Measures Laboratory** have integrated inspections into the broader framework of other consumer protection regulations of local authorities. The Central England Trading Standards Authorities carried out a Joint Working Trial of the potential to extend and formalise existing informal joint working arrangements with the trade;
- the **Human Fertilisation and Embryology Authority** are piloting joint inspections with the **Health Care Commission** with the intention of reducing overlap. Four joint inspections are proposed during the 2006-07 business plan; and
- the **Vehicle and Operator Services Agency** and the **Highways Agency** began piloting enhanced joint working in the South East of England on enforcement of HGV drivers' hours and roadworthiness regulation under a partnership agreement.

**Moving Forward 2.22** While some excellent schemes have been implemented, some of which are highlighted above, there is more to be done before the risk-based approach used is fully embedded across all areas of enforcement activity. It will be important for inspection rates to show a balance of activity that reflects the different risk levels i.e. the rates of inspections of low risk premises should be much lower than the rates of inspections of premises with a high or medium risk level. The Hampton Report noted that in 2002-03 Trading Standards Officers chose to inspect 60 per cent of high-risk premises and 10 per cent of low-risk premises and suggested that the differential should be much bigger than six-to-one. The Better Regulation Executive will, as part of the guidance on performance assessments, issue guidance on risk-based approaches to inspection.

**2.23** There is scope for more significant progress in ensuring that regulators open their systems to scrutiny. This would have three effects. Firstly, it would enable business stakeholders to be able to challenge the appropriateness of the risk methodologies used and offer improvements. Secondly, it would enable the regulator to manage the public perception of changes that they may make to the regulatory regime. Regulators need to be able to justify any changes made on the basis of a thorough risk assessment otherwise they are open to accusations of either regulatory creep or cost cutting. Thirdly, it would help business stakeholders ensure they are compliant as transparent systems make it clearer where improvements could be made.

**2.24** Moreover, when publishing a risk assessment for a category of inspections, regulators should identify other institutions, with which they could conduct joint inspections. Currently, this is not standard practice in most regulators.

**2.25** Some of the constraint in this area revolves around the perceived ability of regulators to share data and corresponding data protection rules. The Better Regulation Executive has a number of work streams underway to help address this challenge. This is discussed in more detail in Chapter 1.

**2.26** Early delivery of the Hampton Review is being achieved through the Retail Enforcement Pilot. The Government will roll out the Pilot out across 70 more Local Authorities.

# 3

## SUPPORTING BUSINESS

An underlying theme in the Hampton review was the idea that businesses should be supported by regulators to comply with regulations. The review recommended that regulators ensured that all intervention was necessary and coupled any justified intervention with more effective advice.

The review argued that good advice could cut administrative burdens by reducing the amount of time taken to understand the regulations and could also increase the level of compliance. Advice could be improved in two ways:

- increasing the ease for businesses of getting advice through websites and newsletters with sector specific or personalised information and on-site visits; and
- making sure that any advice given was effective by monitoring business perceptions.

These recommendations were encompassed in the Hampton principles:

Regulators should provide authoritative, accessible advice easily and cheaply;

Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take; and

Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

### ACCESSIBLE ADVICE

**3.1** The Hampton Review recommended that regulators provide broad-reach advice through websites and newsletters, tailored to suit the needs of the different sectors, as well as tailored advice through on-site advice visits. Maintaining a breadth of advice sources is important to allow all businesses, whether web-enabled or not, access to advice.

**3.2** This is an area where there has been a significant amount of progress since 2005, although quantification of costs and savings is difficult. All the regulators have websites giving businesses easy access to information. Many regulators have recently reviewed their websites and relaunched them to provide more personalised information. Regulators have also worked on providing advice in 'plain English' as well as other languages through paper publications, e-newsletters, training seminars and on-site visits. An interesting indicator of the improvements in giving advice is the increase in the number of people who contact regulators for information and who see regulators as advice givers rather than law enforcers.

#### Best practice – Accessible advice

The Health and Safety Executive (HSE) has been working closely with its stakeholders to ensure that it is seen not only as an enforcer of law but also as a provider of information. A recent MORI poll shows a slight repositioning over the last two years, with an increase in the proportion of employers who see them as an advice giver and a reduction in the proportion who see HSE as a body that enforces regulations.

Since the Hampton review HSE has:

1. created a major new advice service (Workplace Health Connect) which went live this spring covering 40 per cent of SMEs. By end of 2008 the target for Workplace Health Connect is to have generated benefits to firms from avoided reportable injuries of £8.7 million, including a reduction in the administrative activities associated with reportable injuries;
2. reviewed advice channels, and is producing much simpler and more accessible information, for example on the new noise regulations; and
3. published a simple two page guide for business (especially SMEs) on why they might be visited by HSE and what they can expect.

HSE has put into place different types and styles of guidance to help promote awareness. Examples are:

- HSE's website design, which allows businesses to obtain information on their industry or key health and safety topics quickly and easily. Further development of the site is being planned;
- new proportionate, sector-specific, risk assessment guidance on the web helping businesses understand exactly what they need to do to help them comply with health and safety law;
- free leaflets to support new regulations and guidance;
- a project aiming to make all HSE's guidance information free on the web by 2008; and
- an existing telephone line – infoline – which provides access to health and safety information, expert advice and guidance.

HSE also undertakes onsite visits. Inspectors routinely give advice on practical means of sensible risk control when visiting a business and HSE has built on this by expanding the role of Health and Safety Awareness Officers (HSAOs). HSAOs now carry out visits to businesses and during the visit they assess risks and give advice where appropriate. HSE also promotes health and safety for specific industries with Health and Safety Awareness Days and breakfast meetings, the latter being held early in the morning to reduce the impact on business and to allow businesses further accessibility to the event.

**Food Standards Agency 3.3** The Food Standards Agency (FSA) has committed to providing comprehensive and accessible and, where possible, free guidance to its stakeholders. FSA's flagship initiative 'Safer Food Better Business' distributed over 150,000 packs free to caterers and 27,000 packs free to small retailers.

**3.4** The FSA's websites are regularly mentioned in the national and regional media as an authoritative source of food advice and information that aim to exemplify the FSA's core values of openness, independence and putting consumers first. A redesign of FSA's main corporate site: [www.food.gov.uk](http://www.food.gov.uk) is set to go live in the autumn and a functionality review will explore opportunities to personalise information.

**3.5** FSA board meetings are available as podcasts as well as live and archived video and audio versions.

**Environment Agency 3.6** The Environment Agency provides a web-based compliance self-assessment tool aimed at SMEs called NetRegs. It provides free environmental advice on how to comply with regulations by both environmental topic and by business sector. NetRegs is currently undergoing a programme of enhancements aimed at providing more personalised and tailored information (e.g. the “what do I do with my business waste?” tool). There are about 250,000 businesses using NetRegs a year and this is forecast to increase to 1 million businesses – 25 per cent of all UK businesses – by 2009 following the enhancements. It is estimated that NetRegs currently delivers annual administrative cost savings to business of about £1 million, compared to other methods and sources of advice on environmental regulation. This is projected to increase to £3-5 million as a result of the enhancements. Bill Stark, General Secretary, Scottish Print Employers Association said, “Many, many thanks for this wonderful web-site. I am sure that all of our companies will find it extremely useful and easy to understand.”<sup>1</sup>

**Financial Services Authority 3.7** The Financial Services Authority (FSA) has worked to improve the accessibility of its Handbook by using technology to develop the ‘Personal’, ‘Focus On’ and Tailored handbooks. For example the Personal handbook function enables firms to build their own customised Handbook by answering just 10 questions. Based on the answers given, only rules and guidance from the full Handbook which are relevant to their business, will be displayed in their Personal handbook.

**Office of Fair Trading 3.8** The Office of Fair Trading (OFT) has, under its founding statute, to make the public aware of the benefits of competition for consumers and the UK economy. On 1 September 2006, the OFT set up a new Business Communications Team aimed at ensuring that effective business communications are embedded into all aspects of the OFT’s work. It is increasing dialogue with both SMEs and big business, focussing on educating and supporting business and working with them, rather than simply telling them about their obligations.

**3.9** The OFT aims to use all appropriate means to communicate advice to business. It publishes a wide range of advisory documents targeted at businesses, and maintains an extensive website at [www.offt.gov.uk](http://www.offt.gov.uk). The latter is now structured so that businesses have an immediate “one click” gateway to the full range of OFT information relevant to them. A new credit licensing area of the OFT website went live in October 2005. In line with Hampton’s recommendation that businesses should be able to “personalise the information they see”, these website pages tailor information to business needs rather than merely presenting general factual detail about the Consumer Credit Act (CCA). The new credit licensing pages on the OFT website are among the most visited on the site, recently receiving an average of over 1500 visits a week.

**Companies House 3.10** Companies House provides a wide range of information and guidance through its website, in published written form, and through its contact centre:

- urgent information and guidance is placed on the home page of the website;
- Companies House produces a quarterly magazine, the Register, which includes a wide range of articles covering topics such as: company law, fraud, electronic filing, new services, statistics and targets;
- over 3,500,000 booklets have been downloaded from its website over the last 12 months and its contact centre has sent out over 50,000 hard copies;

<sup>1</sup> From DG Enterprise Best Report: “Streamlining and simplification of environment related regulatory requirements for companies” – [http://ec.europa.eu/enterprise/environment/index\\_home/best\\_project/best\\_2006\\_simplification\\_final\\_report.pdf](http://ec.europa.eu/enterprise/environment/index_home/best_project/best_2006_simplification_final_report.pdf).

- the website receives over 9.5 million hits every month. This figure excludes hits for filing and searching of the register; and
- individual companies can also speak directly to case officers dealing with filing or compliance queries.

**3.11** In feedback to DTI, the Institute of Directors members praised the measures taken by Companies House, particularly electronic filing service e.g. ‘This is a great service. Public money very well spent.’

**Retail Enforcement Pilot 3.12** The Retail Enforcement Pilot, covered in more detail in Chapter 2, has created a series of short video based guides covering the main regulatory areas retailers need to understand to bring them up to a common basic standard and ultimately reduce inspection times. The guides will be multilingual (voice and subtitles) to ensure inclusivity. It is envisaged that the guides will eventually form part of [www.businesslink.gov.uk](http://www.businesslink.gov.uk).

**3.13** Andrew Mooresmith, Director of the Bourne Road Mazda dealership in Crayford said, “As a car dealership we are expected by Mazda to operate to a very high standard, so I thought we were ahead of the game. But I was pleasantly surprised to find the Pilot information disc really valuable. It was easy to navigate and used crystal clear language. I was actually able to use the disc and its links to produce a checklist of regulations that were specific to my business. It helped me to identify and address one area where I had no idea we needed a licence!”<sup>2</sup>

**DEFRA 3.14** DEFRA is in the process of developing an Advice Co-ordination Project with regulation objectives to:

- better co-ordinate within the DEFRA family the process of developing and deploying funded advice to rural land managers in a joined up and effective way; and
- improve understanding of the effectiveness of advice as a policy tool, especially in relation to achieving positive behaviour change by land managers. DEFRA has commissioned research from the University of Gloucestershire to look at this. The study will seek to identify common factors for, and characteristics of, effective and not so effective advice schemes. The findings will be converted into good practice guidance for policy makers to inform the effective deployment of advice.

**Whole Farm Approach 3.15** The Whole Farm Approach (WFA), covered in more detail in Chapter 2, went live on 28 March 2006. There are currently over 3,800 participants already signed up to the WFA and it offers benefits in terms of easily accessible advice by:

- helping participants to understand how regulations affect their business; and
- providing access to relevant targeted advice and guidance.

**Other Regulators 3.16** Other examples of regulators who have made progress on providing accessible advice include:

- the **National Weights and Measures Laboratory** launched an improved website in October 2005, which offers a wealth of metrology related information, including the latest developments on the progress with the Measuring Instruments Directive, guidance notes on pieces of legislation and a comprehensive list of Facts and Questions;

<sup>2</sup>From press notice at Trading Standards Conference, June 2005, to announce launch of the Retail Enforcement Pilot.

- the **Information Commissioner's Office** launched an e-newsletter in May 2006, aimed at organisations (both private and public). They have received very positive feedback: "This is an excellent and most informative tool - a real step forward.";
- **Natural England** have launched two customised websites in plain English. The first ([www.openaccess.gov.uk](http://www.openaccess.gov.uk)) is land manager-facing, and contains all of the information about Countryside and Rights of Way Act (CROW) access and the associated systems. The second site ([www.countrysideaccess.gov.uk](http://www.countrysideaccess.gov.uk)) is public-facing, and enables walkers to access maps and relevant statutory restrictions in force over the land they are interested in;
- the **Countryside Agency**, which is now part of Natural England, have set up a national Open Access Contact Centre (OACC) in Belfast, using an 0845 single number that people can call and get their questions answered on a one-to-one basis. This is a contact centre with graduate-level staff who are able to answer queries intelligently using a constantly developing WIKI[1] system (A wiki is a type of website that allows visitors to easily add, remove, or otherwise edit and change some available content, sometimes without the need for registration). This ease of interaction and operation makes a wiki an effective tool for collaborative authoring;
- e-mail alerts on the **Medicines and Healthcare products Regulatory Agency** (MHRA) website allow stakeholders to sign up for over 30 various categories of information allowing them to tailor notifications about additions to the MHRA site, personalised for their specific needs;
- this month the **Civil Aviation Authority** launched a new "Really Simple Syndication" (RSS) service, a new popular method of information distribution; and
- **The Pensions Regulator** website offers content tailored to specific audiences (trustees, employers and members) with plans to increase the number of audiences catered for. Each of these audience groups has a specific 'homepage'.

## EFFECTIVENESS OF ADVICE

**3.17** The second part of the Hampton Review's recommendations on giving advice emphasised that all regulators must take responsibility for assessing the effectiveness of their advice by monitoring business understanding and awareness of regulations. There is a proliferation of advice available to businesses from various sources, and regulators need to ensure that the advice they are giving is reaching the right businesses.

**3.18** Regulators are increasingly recognising their role in monitoring and evaluating their work and making improvements based on feedback they get from stakeholders. Most of the regulators now have forums where stakeholders can air their views. Some actively monitor business understanding and awareness (e.g. through surveys) but this is not as extensive as it could be. This recommendation is especially important as improvements to the accessibility of advice continue.

### Best Practice – Evaluating Effectiveness of Advice

The Financial Services Authority (FSA) undertakes a variety of different processes through which it judges the effectiveness of its advice. It conducts targeted thematic work, assesses its Small Firms approach, and undertakes customer satisfaction research:

**Thematic work (i.e. Quality of Advice):** The FSA has reviewed the process for giving investment advice in both large and small financial advice firms, basing its research on typical customer requirements. The work found many examples of good practice but, in an unacceptable number of firms, the work identified substantial failings in the process by which advice on mainstream products is given. To help firms improve and understand how they can meet the principle of Treating Customers Fairly, the FSA has produced a report for advisors; a toolkit for firms to help identify areas to focus on; and case studies which contain further examples of good practice.

**Small Firms approach:** A communication survey to over 800 small firms in November 2005 showed that small firms were receiving FSA messages, but the messages need to be less frequent and more targeted. The FSA communication strategy in 2006 has, therefore been to provide messages that are more relevant, easy to understand and less frequent.

**Customer Satisfaction Surveys:** The FSA has also commissioned a programme of customer satisfaction research to seek regular feedback from firms on 8 of their key regulatory processes. The research, conducted by an independent market research company, invites firms to comment on how the FSA has performed, which aspects of the processes they would like to see enhanced and to offer suggestions for improvement. The FSA has used the results to create a baseline measure of customer satisfaction, which has allowed it to track changes in customer satisfaction over time and to identify key areas for improvement. As a result, the FSA has made improvements to its processes and practices that has led to an increase in satisfaction levels across all 8 processes. It published the results of its customer satisfaction research for the first time in April 2006 and will continue to do so every six months.

**Health and Safety Executive 3.19** The Health and Safety Executive (HSE) has established a three-year rolling programme of review for all guidance documents and is encouraging more stakeholder-led guidance. For example the Institute of Directors is preparing guidance on directors' duties and a Construction Industry Advisory Committee (CONIAC) sub group is coordinating industry guidance on the new construction regulations, due to come into force in April 2007.

**3.20** HSE regularly assesses the effectiveness of their advice in order to make improvements. For example, when launching the new noise regulations, HSE tested its guidance to ensure that it was clear and concise. Chris Beach (then British Occupational Hygiene Society President) said: "HSE's noise web pages look very good and have a lot of useful features."

**Office of Fair Trading 3.21** The Office of Fair Trading (OFT) undertakes research to measure the effectiveness of its communications, including with business, particularly assessing its success in raising the awareness among businesses and consumers of key competition and consumer laws and their understanding of their rights and responsibilities.

**3.22** Research designed to measure the success of OFT's efforts to communicate with businesses during 2005-06 established that, for the first time, more than half (51 per cent) of business of all sizes are now aware of the Competition Act 1998 – an increase of 7 per cent on the level of awareness found in 2005. More businesses are also now aware of the Enterprise Act 2002.

**Companies House 3.23** Companies House carries out a range of activities to obtain feedback from customers including:

- focus groups;
- quarterly customer satisfaction surveys;
- website feedback service;
- complaints analysis; and
- an independent complaints adjudicator who reviews cases in detail.

**3.24** Companies House also holds 24 focus groups twice a year covering all regions. These are attended by over 500 business representatives and are used to obtain feedback, provide news and guidance, and test out new ideas and services. Satisfaction surveys are sent to over 5,000 customers every quarter. The average customer satisfaction rate is 87 per cent.

**Retail Enforcement Pilot 3.25** The Retail Enforcement Pilot uses business feedback surveys to monitor effectiveness of advice and has had high level of satisfaction from business on information provision: 75 per cent of them said the information or advice given to them was “very easy to understand” and 89 per cent were “very satisfied” with the overall level of service.

**Other Regulators 3.26** Other regulators have also started to evaluate the effectiveness of their advice:

- the **Information Commissioner’s Office** runs an ‘Annual Track’ market research survey which tracks, among other things, awareness of the rights given to the public by the Data Protection and Freedom of Information Acts, which it regulates. Awareness of the key rights were above 90 per cent;
- the **Driver Vehicle Operator (DVO)** group regularly polls the opinions of its stakeholders on a number of issues, through ‘Operator Workshops’ and the ‘Customer Insight Programme’;
- **Natural England** has started to monitor the effectiveness of advice through the introduction in 2006 of customer feedback forms with licences;
- a website survey was carried out on the **Human Fertilisation and Embryology Authority** website to find out who the users are. Designs for the site were tested on users to ensure that the information was accessible and easy to find, and to ensure the designs supported the content; and
- **The Pensions Regulator** has set up an online e-learning programme, called trustee toolkit.com, for trustees to assist them in meeting the trustee knowledge and understanding requirements imposed by legislation. Over 12,000 trustees have registered for the e-learning programme and six learning modules were published by 10 August with a further five scheduled. The views of the users of the Trustees Homepage have also been sought: 86 per cent ranked the website as “being easy to understand”, 72 per cent as “being easy to find”.

## SUPPORTING ECONOMIC PROGRESS

**3.27** Underpinning the review's recommendations on advice was the principle that regulators should also support economic progress by only intervening where there was a clear case for protection, as well as taking action to encourage economic growth where possible. Therefore it is important that regulators take responsibility for any costs that they bring to businesses and work to minimise them. Regulators should also be held accountable for their effectiveness.

### Accountability

**3.28** Regulators are increasingly open and accountable, offering greater transparency to stakeholders through annual or quarterly reports, citizens' charters, challenge panels and open board meetings. They remain accountable to Parliament through Parliamentary scrutiny both in Westminster and the devolved administrations.

#### Best practice – Accountability

Legislation setting up the new Levy Board UK (a regulator created around the theme of horticultural and agricultural levies) will include provisions that make the levy board more accountable to levy payers than the current system.

Under the new proposals, levy payers will be able to demand a ballot to decide whether a particular levy should continue. The new board will be legally required to hold a ballot on whether to wind up the levy provided that a certain percentage of levy payers request one (although as a safeguard there will be a limit on how frequently this can take place). Ministers will be obliged to be satisfied before abolishing a levy or imposing a new one that the change is desired by the industry – powers for this are included in the Natural Environment and Rural Communities Act 2006, Sch 10(8). Although changes would be subject to Parliamentary approval, Ministers would have a clear signal of any groundswell of opinion from levy payers expressed in this way.

The new Board will span all the levy board sectors as outlined above, and so provide improved accountability to DEFRA/Ministers, through a common reporting framework across all sectors (milk, pigs, beef and lamb, cereals and oilseeds, horticulture and potatoes).

**Financial Services Authority** **3.29** Under the Financial Services and Markets Act (FSMA), the Financial Services Authority is required to keep under review the question of whether it is using its resources in the most efficient and economic way. The Non-executive Committee (NedCo) considers regular reports from Audit and Risk committees as well as quarterly Management Information to assess the operation of the organisation. Members of NedCo are able to challenge this information and discuss performance with the executive directors.

**Companies House** **3.30** As a trading fund, Companies House has a wide range of performance targets which monitor both efficiency and effectiveness of operation. Public targets include: compliance rates, quality, electronic service performance, and unit cost reduction.

**Health and Safety Executive** **3.31** To ensure accountability to the public, the Health and Safety Commission and Executive:

- hold open Health and Safety Commission meetings in different parts of the country;
- are committed to delivering Public Service Agreement (PSA) targets and report back on progress through an annual report and annual statistics; and
- have a website where their regulatory approach and the standards that can be expected of them is set out.

**HFEA** **3.32** The Human Fertilisation and Embryology Authority (HFEA) has developed a costing model that reflects the “true costs” of new projects/initiatives and provides a vehicle to ensure value for money issues are considered.

### Support of Economic Progress

**3.33** The Stern Report,<sup>3</sup> published on 30 October 2006, sets out one of the clearest arguments yet for why regulations can, if they are efficient and well formulated, support economic progress. Some regulators have, in their statutes, a commitment to working to support economic growth and these regulators have generally done the most to promote economic activity.

#### Best practice – Economic progress

The Financial Services and Markets Act requires the Financial Services Authority (FSA) to have regard to:

- the desirability of facilitating innovation;
- the desirability of facilitating competition; and
- the need to minimise the adverse effects of regulation on competition.

FSA has proposed changing the Listing Rules for investment entities to introduce greater flexibility and a more principles-based approach. This would enable those employing a wider range of investment strategies to list in the UK for the first time, including some strategies currently pursued by hedge funds. These proposals also include simplifying other ongoing disclosure obligations that apply to an entity once it is listed.

London’s hedge fund community viewed the proposal as a positive measure. “This marks a further liberalising of the regime for investment entities – we should all be in favour of abolishing rules that do not have any purpose,” said Richard Perry, who heads the financial-services group at Simmons & Simmons, which advises much of the industry.<sup>3</sup>

<sup>3</sup>Quoted in Financial Times 31/03/2006.

**Office of Fair Trading** **3.34** The Office of Fair Trading has under its founding statute the function of making the public aware of the benefits of competition for consumers and the UK economy.

<sup>3</sup>Stern Report on the Economics of Climate Change ( [http://www.hm-treasury.gov.uk/independent\\_reviews/stern\\_review\\_economics\\_climate\\_change/stern\\_review\\_report.cfm](http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm)).

**Gambling Commission 3.35** New legislation in 2005 incorporated the Hampton principle of allowing economic progress. Gambling operators are licensed by the Gambling Commission on the basis of compliance with the three licensing objectives:

- protecting children and other vulnerable persons from being harmed or exploited by gambling;
- preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime; and
- ensuring that gambling is conducted in a fair and open way.

**Health and Safety Executive 3.36** The Health and Safety Executive (HSE) is keen to demonstrate that better managed health and safety can lead to financial saving and increased productivity for businesses. HSE has launched campaigns to help businesses understand that effective health and safety precautions do not have to be costly, time consuming, or complicated. To carry this forward, HSE has created a 'Business Benefits' campaign for both SMEs and big organisations which include case studies showing how businesses have benefited from improving their management of health and safety.

**3.37** HSE's campaign is supported by evidence from the Spend Now, Save Now (2005) research conducted by Business in the Community, *vielfe* and HR Magazine, which found that measured against a control group, employees participating in workplace health programmes experience, on average, a 5.9 hour reduction in short-term disability per employee and self reported performance improvement of 2 per cent. These improvements represent a gain of over two days a year in productive time.

**Security Industry Authority 3.38** The Security Industry Authority does not intend to regulate those parts of the private security industry where suitable alternative arrangements already exist and the Act allows exemptions for those who can demonstrate alternative arrangements. It has published an exemption strategy which allows for a government department or existing regulatory body to apply to the SIA to exempt certain persons from licensing. This facility has already been used to grant and refuse exemptions from the Act.

## MOVING FORWARD

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**3.39** The Retail Enforcement Pilot analysis shows that there are over 100 websites providing advice for business on regulatory requirements. It is too difficult to find which regulations apply so firms do not pursue this advice, meaning up to 80 per cent of inspection time can be spent educating businesses. This is especially true at a local authority level where often each local authority has a site giving advice about issues which could be provided by a central source or from joint working of different authorities.

**3.40** There is a significant opportunity for regulators to consider how best to consolidate their existing information so that businesses have single entry, definitive source of advice. This would reduce inspection time and increase compliance rates by reducing the barrier to entry of understanding what regulations apply.

**3.41** The Services Directive, which will be implemented by the start of 2010, will require each Member State to establish electronic Points of Single Contact. This portal will provide a single location through which all information needed to establish or provide services in that Member State can be obtained, and all necessary and relevant authorisations and licenses that remain in place can be applied. The development of this portal will require regulators that have regulations impacting on service sector business to ensure that all guidance is made available electronically and will provide a motor for the co-ordination and consolidation of regulations and advice. Any new regulations introduced subsequently must comply with the principles set out in the services directive.

**3.42** The process of evaluating effectiveness of advice, feeds back into making advice accessible. There is now an increasing amount of advice available to businesses from a variety of different sources. This means that businesses do not know where to look to find the required advice or advice that is not conflicting. By monitoring the effectiveness of advice, regulators can obtain valuable information with which they can improve this situation and respond to requests by businesses more effectively. They also need to make sure that they clearly distinguish between minimum legal standards and best practice guidance, to prevent regulatory creep. The Better Regulation Executive and the National Audit Office will be looking for evidence that the evaluation of the effectiveness of advice is informing the way new advice is presented and formulated in their assessment of regulators before the end of 2007.

**3.43** Regulators need to work harder to ensure businesses and the public can easily find out how they can hold regulators accountable.

**3.44** Few regulators see supporting economic progress as one of their key activities, and although there is some progress made on this as a result of better regulation measures, this is not systematic. The introduction of the Regulators' Compliance Code should encourage regulators to review what they are doing to comply with this principle.



# 4

## SANCTIONS AND INCENTIVES

This Chapter looks at the progress made on encouraging compliance by businesses. The review recommended that regulators use a mixture of sanctions and positive incentives schemes to do so.

Hampton also recognised that the penalty regimes should be strengthened and recommended that the Better Regulation Executive undertake a comprehensive review the existing regimes, with the aim of making them more consistent.

These recommendations are encompassed in the Hampton principle: The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.

### POSITIVE INCENTIVE SCHEMES

**4.1** The Hampton Review supported positive incentives. These are an unbureaucratic way to increase incentives for compliance and can help improve standards above legal minima. While positive incentives alongside a risk-based approach to enforcement should encourage compliance from good businesses, it is important that rogue businesses gain no financial incentive from non-compliance.

**4.2** The Hampton Review argued that regulators should make greater use of positive incentives, like food and hygiene award schemes, to encourage compliance among businesses. Positive incentives were identified as being most useful for businesses with a direct consumer presence because good reputation has commercial benefits.

**4.3** As can be seen by the examples below, positive incentive schemes have been developed by regulators who deal with businesses with a consumer presence, with positive effects to both businesses and consumers. Similar schemes should be encouraged in other regulatory fields.

#### **Best practice – Positive incentives**

The 'Buy with confidence' scheme was introduced by local authority Trading Standards Services in nine local authorities to establish high standards of trading by businesses. The scheme is intended to demonstrate a commitment by the business to fair and honest trade, and a commitment by Trading Standards to support business.

Approved traders are vetted before they join and agree to ensure that staff are properly trained for their work and respond promptly and correctly to customer complaints. In addition, Trading Standards will provide a mediation service if there is a dispute which cannot be resolved between the parties concerned.

In return businesses get:

- independent recognition of business standards;
- proof of membership by certificate for display on premises and use of logo;
- pre-entry vetting to ensure the credibility of the scheme and that high standards are maintained;
- the company's name on a list held by the county council to recommend to consumers;

- a place on the 'Buy With Confidence' website with a 'hot link' to site for potential customers;
- increased consumer confidence and reduced complaints;
- a better relationship with regulators based on co-operation rather than enforcement;
- a named contact for business with the Trading Standards Service; and
- information on new legislation, trade scams.

Businesses have been supportive of this scheme. For example Bob Chilton, Adversys Ltd, said, "Membership of this scheme gives our customers an added level of consumer confidence and has provided us with a significant increase of new business. The quality of the business from the scheme is also very good as we usually find people who use the site are commercially aware, require a high standard of service and are realistic about pricing. BWC does not mean cheap but value for money. The code of conduct is also an important issue for both parties."<sup>a</sup>

<sup>a</sup> <http://www.buywithconfidence.info/business/quotes.html>.

**Office of Fair Trading** 4.4 The Office of Fair Trading (OFT) supports self-regulation by business, particularly through its Consumer Codes Approval Scheme. When a 'code sponsor' (such as a trade association) has first obtained approval of its draft code and has satisfied the OFT that its code is operating effectively, the code is approved. The sponsor and its members are then licensed to use the OFT Approved Code' logo for marketing purposes.

4.5 In the year following publication of the Hampton Review, the OFT handled 28 applications to the Code Scheme and worked with 25 code sponsors in the preliminary stages of obtaining code approval. The Office also undertook an 8 week campaign to publicise the OFT Approved Code logo. The OFT's campaign reached a total television audience of 3.5 million, and a radio audience of 12 million, helping to bring about a 12 per cent increase in applications from code sponsors to the Approval Scheme.

**Food Standards Agency 4.6** As mentioned in Chapter 2, the Food Standards Agency (FSA) are currently consulting on using membership of Farm Assurance schemes as a measure of demonstrating compliance with food hygiene regulations and help reduce the number of inspections. The FSA has already set up a number of positive incentive schemes: FSA Wales Food Hygiene Award Scheme, Eat Safe scheme in Northern Ireland (June 2003), and Eat Safe scheme in Scotland (January 2005).

**Health and Safety Executive 4.7** The Health and Safety Commission and Executive uses award schemes to demonstrate the benefits of good health and safety practices. Current schemes include:

- support for British Safety Council awards which recognise and reward companies who achieve success in reducing incidents in the workplace;
- the health and safety category at the National Business Awards where businesses are invited to demonstrate that Health and Safety is an integral part of its management process, and that its leaders, managers and employees are fully engaged; and
- the European Good Practice Awards where the UK, along with all Member States, nominate organisations to this award which aims to demonstrate the benefits of following good safety and health practices to all European employers and workers.

**Security Industry Authority 4.8** The Security Industry Authority provides a “List of Revoked and Suspended Licences” and the “Register of licence holders”. Both provide important safeguards and information for stakeholders and encourage compliance with licensing.

## REGULATORY SANCTIONS

**4.9** The Hampton Review identified many problems with the existing penalty regimes including limited powers of regulators, ineffective fines and infrequent use of positive incentives. It proposed that the penalty regime should be based on managing the risk of re-offending, and the impact of the offence, with a sliding scale of penalties that are quicker and easier to apply for most breaches with tougher penalties for rogue businesses which persistently break the rules.

**4.10** The Macrory Review<sup>1</sup> has taken the Hampton recommendation as its base and sets out recommendations for an appropriate sanction regime with a view to ensuring that a level playing field is created for all businesses because there is no financial gain from failing to comply. Most breaches will face penalties that are quicker and easier to apply while there will be tougher penalties for rogue businesses which persistently break the rules. The flexibility introduced into the current penalties system by Macrory should provide regulators with better deterrence options and therefore encourage compliance from business.

**4.11** The Macrory Review of Penalties is also instrumental in embedding the Hampton principles at the heart of regulatory activity by only entitling regulators to use of the toolkit once they are compliant with Hampton.

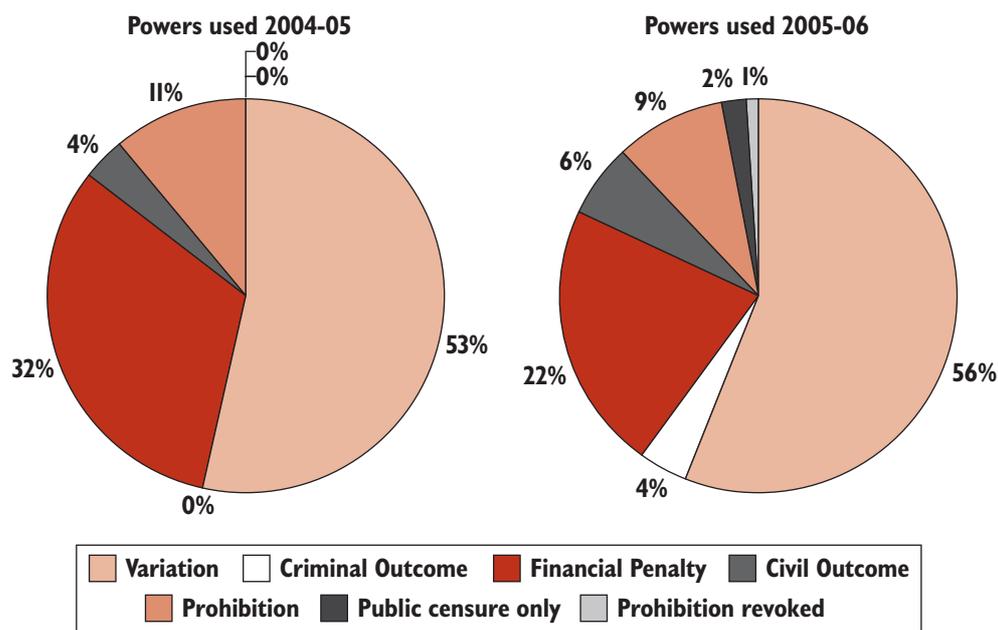
**4.12** While the Macrory Review has been an important element of the Government response to the Hampton, regulators were also encouraged to ensure that regular offenders are identified quickly and that they face proportionate penalties. Regulators have contributed effectively to the Macrory Review but most have also worked to increase the flexibility and effectiveness of penalties regimes within their current structures.

### Best practice – Sanctions

The Financial Services Authority (FSA) uses a variety of sanctions to encourage compliance. From October 2005 to March 2006, 12 cases were concluded by executive settlement. This was one of the recommendations of the Enforcement Process Review published in July 2005 where the FSA is able to conclude settled cases on the basis of agreement by two members of the FSA executive of at least director of division level.

The graphs below show the range of power used in 2004-05 and 2005-06.

**Box Chart 4.3: Powers used by the FSA**



The FSA is developing a methodology for measuring the cleanliness of the UK financial market, by looking at the extent to which share prices move ahead of the regulatory announcements that companies are required to make to the market.

Initial analysis covers a period before the Financial Services and Markets Act came into effect and a later period when FSMA was in force but the FSA had yet to complete any enforcement action against market abuse.

Hector Sants, Managing Director, Wholesale & Institutional Markets, FSA said, “The analysis shows that there was no improvement in market cleanliness in the period after the introduction of the FSA’s new power, and before any high-profile enforcement cases were concluded. This suggests that visible enforcement action may be the key tool in our work to reduce market abuse.”<sup>a</sup>

<sup>a</sup> FSA Press Notice, 17 March 2006: <http://www.fsa.gov.uk/pages/Library/Communication/PR/2006/020.shtml>.

### Department for Environment, Food and Rural Affairs

**4.13** The DEFRA-led Review of Enforcement in Environmental Regulation set out to find ways to make environmental enforcement more effective in support of better regulation. The Review’s October 2006 report concludes that variable administrative penalties subject to a regulatory tribunal would have the potential to create a new and fairer balance with the use of criminal prosecution. The report also sets out ideas for environmental penalties which would level the playing field for responsible business. Penalties would be related explicitly to

the purposes of enforcement: removing economic gain from non-compliance; making environmental damage good; making restitution to adversely affected communities; and exposing culpability where it exists. This transparent framework would help to promote consistency in enforcement. DEFRA is planning to explore these ideas further with interested people and organisations.

**Office of Fair Trading** 4.14 The Office of Fair Trading (OFT) has been helping and encouraging Trading Standards Services (TSS) to make greater use of the new civil injunction remedies. Civil remedies are a largely new area of operation for TSS, but offer them an alternative to relying exclusively on criminal sanctions, which are more punitive, less flexible and retrospective rather than forward looking.

4.15 After publication of the Hampton Report, the OFT further extended its programme of training enforcement partners. Between August 2005 and the end of the financial year in 2006, 16 advanced courses were run for 500 TSS personnel and lawyers from 140 local authorities, and 12 basic training sessions were delivered to a further 200 TSS personnel. Ad hoc advice was provided on more than 500 Enterprise Act cases dealt with by local authorities. With OFT's support, TSS were able approximately to triple the level of their use of civil Enterprise Act enforcement powers, compared with the previous year.

**Environment Agency** 4.16 Business Resource Efficiency and Waste programme (BREW) funding is being used to combat waste crime through high profile collaborate enforcement campaigns. BREW funded work is also being used to improve surveillance and enforcement capability by pioneering new methods such as the use of forensic science and intelligence-led enforcement.

**Companies House** 4.17 The compliance and prosecution activities of Companies House focus, where appropriate, on directors and companies that persistently and seriously break the rules. The principle is to help companies comply with their obligations and only prosecute when compliance action has been unsuccessful.

4.18 Companies House's proposed changes to the late filing penalty regime are aimed at tackling companies who deliberately avoid their statutory responsibilities. 200,000 companies file their accounts late each year. Late filing penalties are automatically levied by law and rise from £100 to £1000 depending on how late the accounts are filed. The penalty regime is defined within the Companies Act.

**Health and Safety Executive** 4.19 The Health and Safety Executive (HSE) Enforcement Programme has considered the extent to which HSE and Local Authorities should target their enforcement activity at rogue businesses. This work continues and HSE intends to host a workshop, to which the Environment Agency and local authority representatives will be invited, to discuss experiences and explore the scope for further joint working on this issue.

**Other Regulators** 4.20 Other good examples of regulators who have worked to improve their sanctioning regime include:

- the **Gambling Commission** has agreed new plans to improve the speed at which businesses who persistently break regulations are identified and sanctioned. The Gambling Act 2005 not only allows the Commission to conduct a review when an operator breaches licensing conditions and the social responsibility code, but also to review where there has been a breach of the objectives. One of its enforcement referral criteria will be persistency;

- the **Security Industry Authority** focuses on encouraging compliance with regulation rather than enforcement. It operates a sanctioning process which is proportionate to the degree of non compliance. The enforcement strategy has the support of stakeholders. Chris Burnell, Operations Director, Northern Region, Reliance Security, 2006 said “They [the SIA] are putting some teeth into their enforcement, which is good, because we need that”; and
- the **Plant Health and Seeds Inspectorate (PHSI)** take action by statutory notice, for example movement restrictions, re-export, treatment, destruction, scheduling of land, etc. PHSI can initiate forced action in cases of non co-operation, with the costs charged to the grower. There is a very occasional recommendation for prosecution, as the primary focus is increasingly on preventative measures.

## MOVING FORWARD

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**4.21** More progress could be made by regulators in using positive incentives. While positive incentives are in some cases unworkable, like in the case of regulations concerning medicines where compliance is essential, they can often be an effective, and less expensive way of encouraging compliance than enforcement. Positive incentives, in the form of rewards for businesses who improve their standards above the legal minimum, add value to the businesses that receive them as well as encouraging excellent regulatory outcomes.

**4.22** Implementation of Macrory’s recommendations will improve the effectiveness of sanctions in encouraging compliance of businesses. It will also create a level playing field by ensuring that meaningful sanctions are targeted at rogue businesses while good firms are given a light touch.

# 5

## PREVENTING REGULATORY OVERLAP

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In order to rationalise the complex regulatory structure, the Hampton review recommended that 31 regulators should be brought together, forming seven thematic regulators. This would take place by 2009. The review also made a specific recommendation regarding the merger of the Companies Investigations Branch of the DTI and the Insolvency Service Agency.

With reference to the establishment of new bodies, the review recommended that the Better Regulation Executive be consulted if the establishment of a new regulator is being contemplated.

These recommendations are encompassed in the Hampton principle: Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.

**5.1** Good progress has been made in preventing regulatory overlap. Most of the mergers recommended in the review have already been agreed and some have taken effect. The logic of the mergers has been applied more widely than to the original 31 bodies. Consequently, additional thematic consolidation has taken place.

**5.2** As Hampton specified, Government departments are consulting the Better Regulation Executive on proposed new bodies. The Better Regulation Executive challenges them to consider adding new functions to an existing body rather than create a new one.

### MERGERS RECOMMENDED IN THE HAMPTON REVIEW

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**5.3** The Hampton Review identified six principle problems caused by the existing complex regulatory structure including: businesses being subject to multiple inspections; overlapping areas of responsibility; duplication of activities between different regulators; difficulties in joining up work because of large number of bodies; small bodies limiting efficiency in the use of resources and risk assessments not being comprehensive.

**5.4** Following the Hampton Review, there is now agreement that 19 national regulators will be consolidated into the Health and Safety Executive, Food Standards Agency, Rural Payments Agency, Natural England, Environment Agency and State Veterinary Service. DTI Companies Investigation Branch has merged with the Insolvency Service Agency and five previous agricultural and horticultural levy bodies (including two identified by Hampton) will come together in the Levy Board UK. This represents a significant simplification in the central regulatory structure.

**5.5** The mergers should lead to savings for both regulators and businesses through:

- fewer multiple inspections;
- consolidation of forms and data;
- more robust risk management process and methodology;
- simplified volume of business and regulator interfaces;
- easier identification of duplication; and
- efficiency and economies of scale.

**5.6** An indication of the potential benefits to business from the mergers comes from the lessons learned from the successful creation of Office of Communications (Ofcom),<sup>1</sup> which saw the merger of five regulatory bodies into one. A recent report by the National Audit Office on the mergers stated that “the merger is delivering many of the benefits expected”.

#### **Ofcom’s performance to date**

**Ofcom was formally established from the mergers of 5 bodies by the Office of Communications Act 2002 and took over its powers at the end of 2003. The National Audit Office undertook a review of the Ofcom mergers which was published in 2006.<sup>a</sup>**

**The report concluded that the merger had achieved its strategic objectives:**

- **Benefits to markets: the UK received the highest overall rating in the European Communications and Technology Association (ECTA) survey for both 2004 and 2005. This compares the rating of regulation of the communications industry across Europe.**
- **Benefits to consumers: current data indicated that the downward trend for UK prices has continued under Ofcom.**
- **Business satisfaction: stakeholders perceive Ofcom more positively than its predecessors on 5 out of 8 features.**
- **Delivering overall efficiency savings: Ofcom’s operating costs are lower than the sum of the previous regulators’ adjusted costs.**
- **Stakeholders had very positive views on the joined up approach to regulation: “Ofcom are doing “what it says on the tin” i.e. they are dealing with the sort of issues that under the old regulatory regime used to fall through the gaps.”**

<sup>a</sup> National Audit Office: The creation of Ofcom: Wider lessons for public sector mergers of regulatory agencies, June 2006.

**5.7** Regulators have noticed that some rationalisation of resources has occurred as a result of the completed Hampton mergers but as yet, most of the mergers are at too early a stage for benefits and savings to be quantified.

**5.8** DEFRA has developed a merger and organisational change toolkit on their intranet site to help ensure that the transition periods of the upcoming DEFRA mergers are as smooth as possible.

<sup>1</sup> As an economic regulator, Ofcom was not within scope of the Hampton Review but its creation can shed light on other regulatory mergers.

**Table 5.1: Completed Mergers**

Current	Post-reform	Comments	Date
Defra Investigations Service (DIS) Horticultural Marketing Inspectorate (HMI) Rural Payments Agency (RPA)	Rural Payments Agency		DIS and RPA in January 2006 HMI and RPA on 3 April 2006
Insolvency Service Agency DTI Company Investigations Branch	Insolvency Service Agency		3 April 2006
Wine Standards Board Food Standards Agency	Food Standards Agency	Merger completed two years ahead of schedule, saving business an additional £100,000	1 July 2006
Natural England Countryside Agency English Nature Rural Development Service	Natural England	Regulatory activities will be reviewed following Better Regulation guidelines	1 October 2006
Dairy Hygiene Inspectorate State Veterinary Service	State Veterinary Service		1 October 2006
Environment Agency	Environment Agency		

## Agreed Mergers

**5.9** A new body, the Levy Board UK, has been created around the theme of horticultural and agricultural levies. It merges 5 levy bodies, including 2 which were identified by Hampton. This, and other agreed mergers, are set out in the table below.

**Table 5.2: Agreed Mergers**

Current	Post-reform	Comments	Date
Engineering Inspectorate Adventure Activities Licensing Authority (AALA) Health and Safety Executive	Health and Safety Executive	Nick Goodall, Chief Executive of the Energy Networks Association, July 2005: "On balance, we support the recommendation [of merging the Engineering Inspectorate with HSE] as reducing administrative burdens and improving the effectiveness of inspection and enforcement. To have different bodies enforcing safety legislation in respect of the same electricity networks is confusing and results in inconsistencies."	Engineering Inspectorate by end of 2006 AALA in early 2007
Gangmasters Licensing Authority		Defra will undertake a public consultation exercise to agree the approach of the merger	April 09
Egg Marketing Inspectorate Global Wildlife Division: Convention on International Trade in Endangered Species (CITIES) Licensing Unit Wildlife Inspectorate State Veterinary Service	State Veterinary Service		April 07
British Potato Council Homegrown Cereals Authority Horticultural Development Council Meat and Livestock Commission Milk Development Council	Levy Board UK	Whilst the changes proposed do not arise from the Hampton Report, the proposed merger of the five boards into one board (and a number of sectoral subsidiary companies) is consistent with the recommendations of the Hampton Report on merger of regulatory bodies.	1 April 08

## Moving Forward

**5.10** Reviews are being undertaken to inform the decisions around mergers for the following bodies:

- Agricultural Wages Inspectorate;
- British Hallmarking Council;
- Coal Authority;
- Drinking Water Inspectorate;
- Fish Health Inspectorate;
- Hearing Aid Council;
- National Bee Unit;
- National Weights and Measures Laboratory;
- Pesticides Safety Directorate;
- Plant Health and Seeds Inspectorate;
- Plant Varieties and Seeds; and
- Veterinary Medicines Directorate;

## ADDITIONAL CONSOLIDATION AND JOINT WORKING

**5.11** The table below shows other bodies that are also being consolidated or working jointly.

**Table 5.3: Additional Consolidation and Joint Working**

Current	Post-reform	Comments	Date
Disability Rights Commission (DRC) Equal Opportunities Commission (EOC) Commission for Racial Equality (CRE)	Commission for Equality and Human Rights		DRC and EOC to merge in October 2007. CRE will join in 2009.
The Human Fertilisation and Embryology Authority (HFEA) The Human Tissue Authority (HTA)	Regulatory Authority for Tissues and Embryos (RATE)		In 2008
Rail safety regulation with Health and Safety Executive	Moved to Office of Rail Regulation	Department of Transport has separately taken action to simplify the transport regulatory structure by transferring rail safety regulation from the Health and Safety Executive to the Office of Rail Regulation.	1 April 06
Office of Fair Trading Financial Services Authority		Hampton review noted the overlap between the OFT's consumer credit licensing function and the FSA's regulatory duties, and recommended consideration of steps that would have the effect of reducing reduce the risk of regulatory duplication and lack of co-ordination. The decision was taken to address Hampton's concerns by closer working together rather than by structural reforms.	28 April 2006 the OFT and the FSA published "Delivering better regulatory outcomes: A joint FSA and OFT Action Plan".

**Local Better Regulation Office 5.12** At the Pre-Budget Report 2005, the Government announced that it would create a Local Better Regulation Office as the route for delivering the Hampton agenda among local authority regulatory services. LBRO's remit is to:

- get local authorities to adopt risk-based enforcement and reduce the number of business inspections and information requests;
- manage up the quality of local enforcement services;
- give local authorities a smaller and agreed list of priority areas for enforcement, instead of the long and unprioritised list they get at present; and
- better co-ordinate local enforcers so that (i) business receives consistent advice on compliance and (ii) multi-size business gets a clear home or lead authority, instead of regulation by multiple authorities.

**5.13** Progress has been made over the last year and the Government is now committed to rolling out the Local Better Regulation Office, as set out in Chapter 6.

# 6

## CORE BETTER REGULATION EXECUTIVE ACTIVITIES

This section looks at the progress made on a number of recommendations on which the Better Regulation Executive is leading. An update is given below on the following themes:

- The creation and work of the Better Regulation Executive
- The creation and work of the Better Regulation Commission
- Legislative and Regulatory Reform Act
- Regulators' Compliance Code of Practice
- Impact Assessments

### THE BETTER REGULATION EXECUTIVE

**6.1** Hampton recommended that the Government establish a Better Regulation Executive at the centre of Government. The Better Regulation Executive has been established within the Cabinet Office and its role is to drive forward the better regulation agenda.

**6.2** The Better Regulation Executive has been tasked by the Prime Minister to minimise bureaucracy for businesses and front-line staff in the public sector and to help charities and the voluntary sector to make a greater contribution to society. A dynamic force at the centre of government, the Better Regulation Executive sits within the Cabinet Office and works across government to support and challenge departments and regulators as they reduce and remove regulation across the private, public and voluntary sectors. The Better Regulation Executive also plays an active role in promoting the better regulation agenda in Europe.

**6.3** The Better Regulation Executive has overall responsibility for the Government's commitments to:

- regulate only when necessary;
- set exacting targets for reducing the cost of administering regulations; and
- rationalise the inspection and enforcement arrangements for both business and the public sector.

**6.4** This will involve:

- scrutinising new policy proposals from departments and regulators;
- speeding up the legislative process to make it easier for Departments to take through deregulatory measures;
- working with departments and regulators to reduce existing regulatory burdens affecting business and the voluntary sector, and frontline staff in the public sector; and
- driving forward the better regulation agenda in Europe.

**6.5** William Sargent was appointed Executive Chair of the Better Regulation Executive in August 2005. This post was formed to lead the Better Regulation Executive in delivering the Government's radical programme for regulatory reform, including reducing administrative burdens on business and the public sector, and rationalising the number of regulators and inspectorates. The Executive Chair works with senior Ministers, including the Prime Minister and the Chancellor, and with senior business people and key stakeholders across the UK.

**6.6** The Better Regulation Executive is working with government departments and regulators to deliver the Hampton agenda. It is also working with departments and regulators to deliver the recommendations of the Better Regulation Task Force's 'Less is More' report which the government accepted, alongside the Hampton report, in March 2005. The key recommendations of 'Less is More' were that the government should follow the experience of the Netherlands in measuring the administrative burdens placed on business and the voluntary sector by regulation, in setting targets for the reduction of these burdens, and in publishing simplification plans for each department as the basis for public accountability on reducing regulation. The Health and Safety Executive published its simplification plan and announced a 25 per cent administrative burdens reduction target in October. Other departments will follow by the end of 2006.

## THE BETTER REGULATION COMMISSION

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**6.7** The Better Regulation Commission replaced the Better Regulation Task Force in January 2006. It provides independent advice to the Government, from businesses and other external stakeholders, about new regulatory proposals and about the Government's overall regulatory performance. Rick Haythornthwaite was appointed Chair of the Better Regulation Commission on 1 January 2006. In addition to challenging the Government and regulators (continuing the role of the Better Regulation Task Force), he also leads the Commission in vetting departmental plans for simplification and reducing administrative burdens.

## LEGISLATIVE AND REGULATORY REFORM ACT

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**6.8** The Legislative and Regulatory Reform Act received Royal Assent on 8 November 2006 and will come into force on 8 January 2007. The Act replaces the Regulatory Reform Act 2001 and will help deliver a number of the wide-scale reforms, including the Hampton recommendations on risk based enforcement.

**6.9** The Act forms a key part of the Government's ambitious better regulation agenda and its powers will drive forward this agenda by:

- providing an order-making power to tackle, where necessary, the existing stock of regulation;
- promoting the Better Regulation Commission's five principles of good regulation;
- promoting a risk-based approach in the exercise of regulatory functions through the Code of Practice; and
- increasing transparency and reducing bureaucracy with respect to the implementation of European Community law in domestic UK law.

**6.10** Part 1 of the Act provides Ministers with an order-making power to remove or reduce burdens resulting from legislation. These powers will allow Government departments to deliver their ambitious plans for removing unnecessary burdens on the public, private and voluntary sectors. Part 1 of the Act also includes an order-making power to ensure that regulatory functions comply with the Better Regulation Commission's five principles of good regulation (transparency, accountability, proportionality, consistency) and targeted only at cases in which action is needed.

**6.11** Part 2 of the Act aims to change the behaviour of regulators, ensuring that they adopt a risk-based approach when conducting their regulatory activities. It does this by placing the Better Regulation Commission's five principles of good regulation on a statutory footing and includes a power to issue a statutory code of best practice for regulators (see below). This code will be based on the seven Hampton principles that relate to regulatory inspection and enforcement. The Government is confident that Part 2 of the Act will deliver a risk-based approach to the exercise of regulatory activities. This will in turn mean that high performing businesses bear less of a burden and regulators can concentrate their efforts on rogue businesses. Improving standards should lead to greater consumer confidence and thus economic growth.

**6.12** Part 3 of the Act will increase transparency and reduce bureaucracy with respect to the implementation of European Community (EC) law into domestic law. It will also make it easier for those who are regulated to understand and apply UK legislation that implements EC law.

## REGULATORS' COMPLIANCE CODE

**6.13** As mentioned above, Part 2 of the Legislative and Regulatory Reform Act 2006 contains the power to issue a statutory code of practice for regulators. This code will be based on seven Hampton principles relating to regulatory enforcement:

- regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- no inspection should take place without a reason;
- business should not have to give unnecessary information, nor give the same piece of information twice;
- the few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions;
- regulators should provide authoritative, accessible advice easily and cheaply; and
- regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

**6.14** The five principles of good regulation (regulation should be transparent, accountable, proportionate, consistent and targeted) provide a baseline standard for regulators, while the code of practice provides a more detailed set of principles for regulators to have regard to. This two-pronged approach provides the Government with the levers to achieve the culture change that Hampton recommended, and ensures regulators are making the necessary behavioural changes in order to be Hampton compliant before the Code comes into effect.

**6.15** The Better Regulation Executive has informally consulted with national regulators, local authority regulatory services and business representative groups on the content of the Code and on the draft explanatory guidance. A formal consultation will take place now that the Legislative and Regulatory Reform Act has received Royal Assent.

**6.16** The Government intends that the Regulators' Compliance Code should be enacted by the autumn of 2007 and come into force on 1 April 2008. It will be applied to listed regulatory functions, including local authority trading standards and environmental health offices. This allows time to ensure the Code is consistent with the Macrory Review of Penalties, take into account outputs from the Cabinet Committee on Data Sharing, carry out a 12 week statutory consultation and allow Parliamentary scrutiny of the Code text and the listing order that will bind regulatory functions.

**6.17** Awareness raising courses are being developed for key regulatory services in local authorities) to highlight the Hampton principles. These courses will be designed to increase the awareness among inspectors of the impact that regulatory actions can have on business and will press home the importance of the Better Regulation agenda.

### IMPACT ASSESSMENTS

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**6.18** The Hampton recommendations sought to improve the Government's Regulatory Impact Assessment methodology, and regulators' use of the Regulatory Impact Assessments.

**6.19** In July, the Better Regulation Executive launched a public consultation on changes to the Impact Assessment template and guidance. The consultation ended on 16 October and the Better Regulation Executive is collating and considering the contributions, prior to a formal Government response.

**6.20** The proposals aim to embed regulatory impact assessments at the heart of policy-making; improve the quality of the economic and other analysis that underpins policy-making; and increase the transparency of the analysis underlying policy options.

**6.21** Among the proposals on which the Better Regulation Executive has consulted, is a specific requirement that in future policy-makers should explain the extent to which their proposals comply with Hampton principles. Policy-makers will need to marshal and set out clearly their underlying evidence for this overall compliance assessment.

**6.22** Other proposed changes on which the Better Regulation Executive has consulted include:

- a new template to promote greater accountability and transparency, which will set out monetised costs and benefits on one page;
- much shorter guidance on how to undertake impact assessments;
- removing the requirements to show three policy options (requiring instead a scaleable impact assessment for each policy option considered);
- Impact Assessments to be signed off by both the responsible Minister and the Department's Chief Economist;
- removing mandatory requirements to include certain elements relating to business, societal and environmental impacts, except where they relate to the costs and benefits of the policy; and
- changing the name from Regulatory Impact Assessment to Impact Assessment.

## MOVING FORWARD

**6.23** The Better Regulation Executive Culture and Performance Team are leading on ensuring that the culture of regulators at the local level is consistent with the Hampton Enforcement principles.

**6.24** The team will be driving culture change, for example through the use of award schemes to incentivise behavioural change and to raise the profile of the Better Regulation agenda. The team will also promote partnership working between central government, local government and the business community through the spreading of regulatory good practice.

**6.25** To encourage the implementation of a consistent risk-based approach at the local level, the Government will:

- move immediately to establish the Local Better Regulation Office (LBRO) which will be fully up and running by the end of 2007. The LBRO will have its own Board, including representatives from business and with experience of local authority regulatory services. It will be established by the Cabinet Office to maximise synergies with the Government's better regulation agenda. LBRO's key role will be to reduce burdens on business without compromising regulatory outcomes and working in partnership with local authorities, national regulators and departments to drive up the quality of local authority regulatory services;
- legislate to put LBRO on a statutory basis, as soon as Parliamentary time allows, and give it powers to issue guidance to local authorities in relation to implementing Hampton, to which local authorities will have to have regard;
- place the principle of home and lead authority on a statutory footing for multi-site businesses. LBRO will be asked to tackle inconsistencies in enforcement in different local authorities, including developing an effective arbitration role in disputes;
- ensure that local authority regulatory services, including trading standards, environmental health, and licensing are included within the scope of the Hampton Code of Practice. Like national regulators they will need to have regard to the Code when setting their enforcement policies;
- in keeping with the new performance framework recently announced in the Local Government White Paper, develop with business a new measure which ensures compliance with Hampton;
- extend the Retail Enforcement Pilot across 70 more local authorities;
- ask a respected member of the Local Government community to examine the approximately 60 areas of legislation that local authorities enforce, and recommend, by spring 2007, around five specific high-risk national priorities so that they do not waste business' time on routine, low risk areas of enforcement. Local authorities would, of course, be free to add their own local priorities; and
- continue to engage with the devolved administrations on how these proposals should apply across the UK.



# A

## ANNEX A

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### **REGULATORS WHO HAVE CONTRIBUTED TO THE REPORT:**

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Adventure Activities Licensing Authority

Agriculture Wages Inspectorate

British Potato Council

Civil Aviation Authority

Coal Authority

Companies House

Competition Commission

Dairy Hygiene Inspectorate

Drinking Water Inspectorate

Driving Standards Agency

Egg Marketing Inspectorate

Employment Standards Agency Inspectorate

Engineering Inspectorate

Environment Agency

Equal Opportunities Commission

Financial Reporting Council

Financial Services Authority

Fish Health Inspectorate

Food Standards Agency (including Wine Standards Board, Meat Hygiene Service)

Football Licensing Authority

Forestry Commission

Gambling Commission

Gangmasters Licensing Authority

Health and Safety Executive

Hearing Aid Council

Home Grown Cereals Authority

Housing Corporation

Human Fertilization and Embryology Authority

Information Commissioner's Office

Insolvency Service (including Companies Investigation Branch)

Maritime and Coastguard Agency

Medicines and Healthcare Products Regulatory Agency

National Bee Unit

National Weights and Measures Laboratory

Natural England (including English Nature, Rural Development Service, Countryside Agency)

Office of Fair Trading

Pesticides Safety Directorate

Pharmaceutical Price Regulation Scheme

Plant Health Seeds Directorate

Plant Varieties and Seeds Division

Rural Payments Agency (including Horticultural Marketing Inspectorate)

Sea Fish Industry Authority

Sea Fisheries Inspectorate

Security Industry Authority

State Veterinary Service

The Pensions Regulator (including Occupational Pensions Regulatory Authority)

The UK Patent Office

UK Sport

Vehicle and Operator Services Agency

Vehicle Certification Agency

Veterinary Medicines Directorate

Wildlife Licensing and Registration Service

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