

**TRANSFORMING REGULATORY
ENFORCEMENT: FREEING UP
BUSINESS GROWTH**

A discussion document
(Consultation)

JUNE 2011

Contents

Contents.....	2
Introduction	3
Our proposed approach	4
Principle 1: Greater accountability	4
Principle 2: Recognising and promoting best practice	5
Principle 3: Greater transparency	6
Discussion themes	7
Proposed principles of regulatory enforcement.....	7
Current experience of regulatory enforcement.....	8
Reviewing cumulative burdens and the scope to improve front line delivery.....	8
Providing local accountability to challenge delivery on the ground	9
Earned recognition for effective compliance measures	9
Increasing the scope for self-management through co-regulation	10
Increasing capability and industry ownership through professional standards	10
Setting clear requirements and supporting compliance through assured guidance.....	11
Setting clear standards of service for regulators and supporting capability	12
Improving regulation for businesses by extending the benefits of the Primary Authority scheme.....	12
How to respond.....	13

Introduction

1. The Coalition Government has already put in place radical measures to tackle regulatory burdens.
2. We are tackling the stock of regulation through the Red Tape Challenge which gives the public an opportunity to review the entire stock of regulations, identifying those that are burdensome and should be removed, as well as those that could be merged, simplified, or delivered in better ways.
3. We have also established the One-in One-out process and the Statement of New Regulation. These restrict the volume of new regulation. They force government departments who wish to add regulations that have a net cost to business to remove regulations with an equivalent net cost for business. We have reinforced this system by creating a powerful new Reducing Regulation Committee (RRC) of Cabinet to ensure that no regulation can proceed until the independent Regulatory Policy Committee (RPC) has validated the costs that it will impose on business and an offsetting deregulatory measure has been identified.
4. But these efforts to reduce the stock and flow of regulation are not enough. It is equally important to reform the way in which regulation is enforced on the front line.
5. We have already started to reform some of the most disproportionate enforcement systems and have commissioned a number of independent external reviews to examine specific areas in detail.
6. We are implementing Lord Young's proposals to reform the enforcement of health and safety law; we are reviewing the enforcement of employment law; and we have recently received the recommendations of the Farming Regulation Task Force on ways for government, regulators and business to reduce heavy-handed enforcement of regulation in the agriculture and food-processing sectors.
7. This short paper sets out the basic principles of our proposed approach to regulatory enforcement and outlines ways in which we plan to tackle the issues that businesses have already identified. It seeks your views on whether we have missed anything and whether there are other solutions we should consider.
8. Responses to this consultation process will inform Ministerial thinking and help shape the reform programme which we will set out in a White Paper in the autumn.

Our proposed approach

9. We propose an enforcement strategy built around three basic principles:
 - greater accountability;
 - recognising and promoting good practice; and
 - greater transparency.
10. We want to create a new relationship between regulators and businesses where the default setting is trust rather than distrust; where there is greater common sense; and where businesses have effective channels through which they can inform, hear and challenge regulators. We want businesses to get the recognition they deserve for the work they do to comply. Most importantly we want to free up business resources to support business growth, and to see regulators' resources targeted where they are most needed.

Principle 1: Greater accountability

11. Businesses need to be able to influence directly how enforcement operates and to use their knowledge and experience to help improve front line delivery. As a start, we want to use this consultation process to find new ways of allowing business to inform our thinking. We are particularly keen that businesses feel able to provide a frank account of their day-to-day experience of regulatory enforcement – what works well, and what needs fixing.
12. We envisage a number of routes for business to input into this process but we particularly want to work with trade associations and business organisations so that people feel free to express their views through trusted bodies, and so that common themes across particular sectors can be identified. We know that some businesses are wary of voicing their views directly to government, or of airing them with regulators and we want to be sure you can input anonymously in this way. In addition you can input views directly to the Government through the Better Regulation Executive, and all these responses will be treated confidentially. You can also have your say through the Red Tape Challenge website, where you will be able to engage in online debate as well as posting your own thoughts (see final page for full details). All the evidence gathered will inform our thinking on the enforcement White Paper to be published this autumn.
13. As part of our reform strategy we will also ensure there are mechanisms which give businesses the opportunity to challenge regulators and enforcement officers as a routine part of the system.
14. We are reforming the Local Better Regulation Office (LBRO) to provide a focused unit directed by Ministers, local government and business representatives to support improvements in the local delivery of regulation. We are consulting separately and in greater detail on the specific proposals relating to the Local Better Regulation Office

and would welcome your input into the consultation which can be found at:
<http://www.bis.gov.uk/consultations/regulatory-enforcement-strategy>

15. We would like Local Enterprise Partnerships to act as another route for providing accountability and driving improvements at the local level. A pilot is currently being undertaken in Leicestershire which we will assess and build on for the White Paper. Other options will include routine, non-bureaucratic feedback and complaints procedures.

Principle 2: Recognising and promoting best practice

16. Businesses have told us that they sometimes feel ‘over-inspected’ by regulators; and that regulators don’t always take account of the efforts they have made to comply. Many businesses invest considerable time and resource in making sure they do the right thing, developing internal systems, using external checks and achieving a good track record of compliance. They would like this effort to be acknowledged and reflected in the way that enforcement is carried out. There are specific examples, in areas like under-age sales, where businesses feel their efforts to improve compliance have not been recognised and where they feel enforcement is inconsistent. This is particularly problematic for businesses with large numbers of outlets, where individual premises can be treated like separate organisations, taking no account of corporate compliance systems.
17. In some areas we are already making major changes, for example by significantly refocusing health and safety enforcement to reduce burdens on lower-risk, compliant businesses. Evidence from industry assurance programmes like the Red Tractor Scheme has shown that good levels of compliance can be achieved without regular inspection by public regulators, and there are many examples of effective ‘co-regulation’ which show that industry can take on a variety of roles and functions to deliver compliance. To date, however, there have been limited mechanisms for recognising industry schemes, recognising how businesses manage their own compliance, or for ensuring that co-regulatory approaches are fully explored when designing enforcement regimes.
18. We want to give businesses the means to make a reality of ‘earned recognition’. We will do this by requiring regulators to take account of businesses’ efforts to comply with regulations and to adjust their enforcement plans accordingly. We want to create positive incentives to recognise and promote best practice; and we want to deter those who flout the rules to seek a competitive advantage or who pose a real material risk.
19. The Primary Authority scheme¹ offers one route to deliver this, with ‘earned recognition inspection plans’ for multi-site businesses already being piloted. Participating businesses will work with their primary authority to develop a co-ordinated, national inspection programme focused on high risk issues, on reducing inspection volumes where possible, and on improving the quality of the interaction between business and regulators. We estimate that extending the scheme could

¹ Created under the Regulatory Enforcement and Sanctions Act 2008. See <http://www.lbro.org.uk/lbro-projects-primary-authority.html>.

save businesses £15-25 million a year. It could also save enforcing authorities £11-18m a year, allowing scarce regulator resources to be focused on higher risk organisations that are not playing by the rules.

20. In the case of under-age sales (including items such as alcohol and knives), businesses can be subject to 19 separate pieces of legislation, spanning 6 different Government Departments, which are enforced in varied and inconsistent ways. We are consulting on extending the Primary Authority scheme to this area to provide a more consistent and co-ordinated approach to enforcement, and to ensure that businesses' own compliance measures are properly reflected.

Principle 3: Greater transparency

21. Although there have been some successes in improving the transparency of enforcement it remains patchy. Businesses tell us that they value clear advice and support from regulators, rather than fault-finding and criticism which lowers trust. Without transparent standards businesses do not know what is expected and see enforcement as inconsistent. We think that this can be improved by regulators working jointly with trade associations, accreditation and professional bodies to design common sets of standards that everyone can sign up to. This will enable businesses to better understand what regulators expect of them and to design internal systems that regulators can trust and are prepared to accept.
22. Transparency could also be improved by strengthening the Regulators' Compliance Code² which sets out performance standards for enforcement authorities. The Code requires regulators to publish their enforcement policies. Many regulators fail to do so and those that are published can be difficult to find on regulators' websites. This leaves businesses unclear about what is expected of them, how they can expect to be regulated, and therefore less able to challenge.
23. We want to raise the profile and impact of the Regulators' Compliance Code and to hold regulators to account if they are not following its principles. We would like to extend the scope of the Code, to require regulators to consider co-regulatory approaches and to work with business to find the most effective ways of managing compliance, including developing standards and embedding earned recognition.
24. Citizens and businesses should be given much greater clarity about how the enforcement system as a whole operates. This is particularly important in a complex landscape with many players, often with similar roles and the risk of overlapping enforcement activity. To deal with the risks of over-enforcement we propose to carry out a programme of reviews of specific regulatory sectors to ensure that enforcement arrangements are appropriate, proportionate, fit for purpose and appropriately risk-based.
25. Reviews will start from the business perspective and will establish a robust mechanism for identifying where regulators are underperforming, where enforcement

² A statutory Code of Practice for regulators created under the Legislative and Regulatory Reform Act 2006. See: <http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>

is not working effectively and where there is scope for reform. This will include asking whether specific regulators should still exist and perform the functions they do. The reviews will also check that regulators have fully embraced the principles of the Regulators' Compliance Code; adopted co-regulatory approaches where they can; recognised business efforts through earned recognition and co-designed approaches such as professional standards to improve compliance. For new regulators we intend to impose a sunset clause³.

Discussion themes

Proposed principles of regulatory enforcement

26. We believe that all regulatory enforcement activity should be governed by simple principles that ensure it operates fairly and proportionately. Our proposed principles are:

- greater accountability;
- recognising and promoting best practice; and
- greater transparency.

Greater accountability: will ensure that businesses have the opportunity to inform and help shape how enforcement is managed.

Recognising and promoting best practice: will mean that businesses' own efforts to comply with regulations are taken into account properly by regulators, and positive incentives for good practice are put in place.

Greater transparency: will ensure that businesses know what their regulatory duties are, what compliance support they can expect, and how they can expect the enforcement system as a whole to be reviewed and reformed.

Questions

Are these the right principles to underpin the front line delivery of regulation?

Are there other principles you would like to see included?

³ The only exemptions we anticipate will be the 'economic regulators' (regulating national infrastructure networks such as gas, electricity, water, rail, aviation and postal services) and the new regulatory bodies in the financial services sector.

Current experience of regulatory enforcement

27. Many aspects of enforcement are delivered professionally and to a high standard, but we know this is not always the case. We want to be clear what it is that does and doesn't work, and to understand the true scale of any problems.

Questions
What aspects of regulatory enforcement are most problematic for you?
Do you have examples of when you feel you have been treated unreasonably?
How frequently have these problems occurred?
Do you feel there are effective mechanisms in place for you to appeal or complain about the way regulations are enforced?
What aspects of regulatory enforcement work best for you?
What are the best examples of when you've been dealt with well?

Reviewing cumulative burdens and the scope to improve front line delivery

28. The regulatory landscape is complex. In some sectors multiple regulators enforce a broad spread of regulations. These can overlap and lead to duplication, contradictory advice, confusion and excessive burdens.
29. In many areas the world has moved on since existing regulators were set up: new regulators or regulations have come into being that overlap with those already in place; business practices have changed making some regulation unnecessary or irrelevant; and alternative methods of supporting compliance have developed.
30. We intend to impose sunset clauses on new regulators³. But we also want to simplify and improve the existing landscape and to give business an opportunity to inform changes. We plan to review whether regulatory functions are still relevant sector by sector, whether they could be delivered in more effective ways, and whether all existing regulators are still needed.

Questions
How would you want to be involved in this sort of sector-based review of enforcement and the regulatory landscape?
How can reviews be used to strike a better balance between 'self-managed compliance' and intervention by state regulators?

Questions

What are the key things you would like to see reviews cover?

How can such reviews be made effective at delivering improvements in the way that regulation is enforced?

Providing local accountability to challenge delivery on the ground

31. In addition to any periodic national reviews it is important that businesses have the opportunity to challenge and inform the day-to-day delivery of regulation, including the high proportion of delivery that is managed by local authorities.
32. We would like to see Local Enterprise Partnerships play a key role in bringing local businesses and government agencies together to look for smarter ways to deliver compliance and to free businesses (and regulators) from unnecessary regulatory burden.

Questions

What are the key issues faced by business in the day-to-day experience of locally managed enforcement services?

What role do you think Local Enterprise Partnerships could play in driving improvements?

What else could help deliver improvements in locally managed regulatory services?

Earned recognition for effective compliance measures

33. One of the strongest messages conveyed by businesses is their desire to be given due recognition for the steps they take to comply with regulations.
34. We recognise that some robust industry-managed schemes are in operation and that many businesses use significant internal and external auditing systems to manage their own compliance.
35. Our aim is to align this private activity with the functions of public regulators to find the most cost-effective routes to delivering compliance, removing unnecessary duplication, and targeting state enforcement as effectively as possible. We want to give good businesses proper recognition for activities that support compliance.

Questions

Do you have compliance measures in place that you feel are being over-looked?

How could we ensure that existing compliance measures are given proper consideration?

Increasing the scope for self-management through co-regulation

36. Co-regulation involves the formal sharing of regulatory responsibility between business and government. The approach offers the scope to delegate regulatory functions beyond the public regulator, including through certification, independent audit bodies, accreditation, and in some cases industry-led bodies to set professional and operational standards.
37. Existing examples include:
- the regulation of medical devices, where private bodies carry out pre-market checks on products;
 - financial audit, where professional bodies manage the compliance regime and the requirements of the profession; and
 - the safety of drinking water, where in-company labs are accredited to carry out regulatory inspections audited by the regulator.
38. We expect the options for co-regulation to be explored in the development of all new regulatory regimes, and we also expect the scope for it to be introduced into existing systems to be tested as well.

Questions

Are there areas where you think co-regulation could be applied to enable more formal sharing of regulatory responsibility, including delegating functions to business or third party providers?

What specific functions do you think could be delegated from particular public regulators?

Increasing capability and industry ownership through professional standards

39. In some areas professional standards are a key part of regulatory compliance, they give businesses confidence that they have the capability to operate in a compliant way, and they can reassure the public and regulators that functions are being carried out to required standards.

40. Examples include financial audit, medical professions and the Gas Safe scheme where gas engineers need to be trained and certified to operate in a safe and competent way.
41. We would like to see professional standards used more widely to drive up levels of compliance and to provide a greater degree of industry management of compliance.

Questions

Are there existing frameworks of professional standards that you feel could be given greater consideration in managing regulatory compliance?

Are there areas where you feel new professional standards schemes could be usefully developed?

What barriers do you think might stop this approach from being used more widely?

Setting clear requirements and supporting compliance through assured guidance

42. One of the most valuable services that a regulator can provide, especially to smaller businesses, is clear and simple guidance on what steps a business needs to take to comply with regulations. It is also a service that can be provided by business support organisations or private providers.
43. Ideally we would like to see such advice take the form of assured guidance. This would mean that a regulator would not sanction a business that had followed the guidance, but had in some way fallen short of compliance. In these cases the regulator would work with the business to correct any shortcomings.
44. This can be a complex area with specific legal complications, in particular around the scope for private prosecutions – rather than ones driven by the regulator. Nevertheless we would like to see more regulators providing this type of support.

Questions

Would you welcome assured guidance?

What would be required to make it work?

How best could this be achieved?

Setting clear standards of service for regulators and supporting capability

45. Much of the day-to-day experience of regulatory enforcement comes down to the way in which a regulator carries out its functions and manages its engagement with business. The skills of individual enforcement officers are an important factor in this, and we are keen to support their development to deliver improvements in regulatory services.
46. We also believe it would be helpful if both regulators and businesses were clear about the standards of service which we expect regulators to achieve – which may lead us to update the Regulators' Compliance Code and to place greater emphasis on it.

Questions

Are there particular areas of skills and expertise that you feel could be helpfully developed for enforcement officers?

What are your worst experiences of interactions with regulators, and how could these be improved through professional development?

Have you ever referred to the Regulators' Compliance Code when seeking to address an issue with a regulator?

Are there ways in which you think the Regulators' Compliance Code could be enhanced to help improve regulatory services?

Improving regulation for businesses by extending the benefits of the Primary Authority scheme

47. Multi-site businesses operating across local authority boundaries can find themselves subject to varying and at times contradictory advice or judgements. The Primary Authority scheme is already delivering benefits to businesses by allowing them to partner with a single local authority that will operate as their sole point of advice and assured guidance.
48. Not all relevant regulations currently fall within the scheme, and more can be done through the scheme to manage the inspection burden, which can be significant for those businesses with large numbers of premises across the UK.
49. We plan to extend the scheme to enable more businesses to access assured regulatory advice to support compliance. We are considering how it can be used to deliver earned recognition – ensuring that corporate compliance is reflected and that enforcement action is managed in a co-ordinated way between all of a business's premises. We also intend to extend the benefits to smaller businesses through a new type of Primary Authority for Trade Associations and to extend the scope of the scheme to include additional areas of enforcement.

50. We are consulting separately and in greater detail on the specific proposals relating to Primary Authority. We would welcome your input into that consultation which can be found at: <http://www.bis.gov.uk/consultations/regulatory-enforcement-strategy>

How to respond

51. This is a discussion paper. We are seeking your views by **Friday 16 September 2011**.

A copy of the Consultation Response form is available from:
<http://www.bis.gov.uk/consultations/transforming-regulatory-enforcement-discussion>

You can input to the consultation in the following ways:

- (a) Send written responses to this discussion document direct to the Better Regulation Executive, to:

Ian Clayton
Better Regulation Executive
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

- (b) Send responses direct to the Better Regulation Executive via email, to:

treconresponse@bis.gsi.gov.uk

- (c) Take part in the online consultation and discussion forum through the Red Tape Challenge website which will be running a dedicated theme on 'Regulatory Enforcement' over July and August, available at:

<http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/enforcement/>

- (d) Speak to your trade body, or other business membership organisations to see if they are participating in the exercise and whether they are collating views on behalf of their members.

52. How regulation is enforced matters. If we are to get it right then understanding how enforcement impacts on business is important. We have already taken some steps in this area, but believe there is more that we can do. This is your opportunity to shape our thinking – please give us your full and frank reflections.

Technical note on geographical coverage:

We will work closely on these issues with the Devolved Administrations in Northern Ireland, Scotland and Wales, taking account of the fact that some aspects of regulation are UK wide and others are devolved matters.

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