

# **Reducing administrative burdens: effective inspection and enforcement**

---

Philip Hampton

December 2004



HM TREASURY





HM TREASURY

---

# Reducing administrative burdens: effective inspection and enforcement

Philip Hampton

December 2004

© Crown copyright 2004

Published with the permission of HM Treasury on behalf of the  
Controller of Her Majesty's Stationery Office.

The text in this document (excluding the Royal Coat of Arms and  
departmental logos) may be reproduced free of charge in any format  
or medium providing that it is reproduced accurately and not used in  
a misleading context. The material must be acknowledged as Crown  
copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be  
sent to:

HMSO  
Licensing Division  
St Clements House  
2-16 Colegate  
Norwich  
NR3 1BQ

Fax: 01603 723000

E-mail: [hmsolicensing@cabinet-office.x.gsi.gov.uk](mailto:hmsolicensing@cabinet-office.x.gsi.gov.uk)

## **Contacts**

This document and supporting data can be accessed at:

**[www.hm-treasury.gov.uk/hampton](http://www.hm-treasury.gov.uk/hampton)**

For enquiries about this publication, contact:

Sowdamini Kadambari  
Hampton Review Team  
Floor 4 / E1  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 4674

E-mail: [hamptonreview@hm-treasury.gov.uk](mailto:hamptonreview@hm-treasury.gov.uk)

ISBN: 1-84532-062-X

Printed on material containing 75% post-consumer waste

# CONTENTS

---

	Page
Executive Summary	1
Chapter 1 Administrative Burdens	5
Chapter 2 The Regulatory Sector	9
Chapter 3 The Review's Findings	23
Chapter 4 Possible Solutions	39
Chapter 5 Next Steps	49
Annex A The Review's Work	51
Acknowledgements	53
Acronyms and abbreviations	61

\*Annexes with more detail on national regulators, local authorities, administrative costs, and a bibliography are available:

- in downloadable form from <http://www.hm-treasury.gov.uk/hampton>
- on CD-Rom from Sowdamini Kadambari, Hampton Review Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ
- by email from [hamptonreview@hm-treasury.gov.uk](mailto:hamptonreview@hm-treasury.gov.uk)



## EXECUTIVE SUMMARY

---

In Budget 2004, the Chancellor asked me to consider the scope for reducing administrative burdens on business by promoting more efficient approaches to regulatory inspection and enforcement, without reducing regulatory outcomes. This interim report contains my initial findings on the regulatory situation today, along with some early recommendations. I intend to publish my final report in spring 2005.

Enforcement – form-filling, inspection, advice, and penalties – is the public face of regulation. It affects businesses at least as much as the words of the regulation itself. Efficient enforcement can support compliance across the whole range of businesses, delivering targeted, effective interventions without unreasonable administrative cost to business. Poor enforcement increases administrative burdens needlessly, by taking up companies' time, and thereby reducing the benefits that regulations can bring.

Over the last few years, Government has introduced a series of reforms that have aimed to increase the efficiency of regulation. Regulators have been merged, and more systematic, risk-based approaches have been adopted. That work has had results. Strategies like the Environment Agency's *Delivering for the environment*, and the Health and Safety Commission's *A strategy for workplace health and safety in Great Britain to 2010 and beyond* have set out visions for the future that have been very influential in shaping the review's thinking.

The challenge this review sets out, for Government and regulators, is to build on these initial steps. This will mean building greater cohesion between regulators, and rebalancing the roles of advice and inspection. It will mean addressing areas where regulations overlap, or where regulators' advice and inspection activity is unbalanced. It will mean focusing on the information regulators require of businesses, ensuring that information is obtained as efficiently as possible, and that regulators do not make duplicated requests.

A better, more consistent enforcement system will benefit everyone. Regulators will be able to move resources to where they are most needed, businesses will experience more efficient and more joined-up regulation, complex and overlapping forms can be simplified, and better advice and support will encourage better compliance from all businesses.

The changes needed to bring this about will not happen overnight. Some will require legislation; others will require a shift of long-established culture and practice in regulators. I think, however, that Government and regulators have already taken great steps towards effective inspection and enforcement, and that in this approach they will find many echoes of their earlier work. I believe that the vision set out in this document is achievable, and in tune with the latest thinking on regulation in the UK and abroad.



**Philip Hampton**

## EXECUTIVE SUMMARY

---

1. The review has looked at administrative burdens in detail over the last eight months. The review has not found that the regulatory enforcement system, or any part of it, is irretrievably broken, or mistaken in its original conception. The solutions the review proposes are designed to modernise inspection and enforcement across the system, making a decisive break from the specialised, isolated inspectorates of the past.
2. It is important for Government to tackle the administrative costs of regulation – the costs imposed by the enforcement activities of regulators through form-filling, inspection or other action. In one recent survey of small businesses, more than half said that inspection and paperwork were the biggest difficulties regulation caused them.<sup>1</sup> Moreover, the burden of administrative costs falls most heavily on the smallest businesses. The recent *Enterprise survey* of the Institute of Chartered Accountants in England and Wales suggested that 69 per cent of the overall regulatory burden (not only administrative costs) fell on micro businesses – businesses with fewer than 10 employees.<sup>2</sup>
3. Many of the review's recommendations are a continuation of existing trends. The Health and Safety Executive and the Environment Agency have published strategy documents based around risk assessments. The Food Standards Agency recently reissued its statutory Code of Practice, to allow more flexible enforcement in lower-risk food premises. Work on tackling administrative burdens needs to build on these foundations.
4. On many measures of regulation and the impact of inspection regimes, the UK compares well with other OECD economies. However, the review believes the time is right for the Government to build on its leading position, and move towards treating regulatory enforcement as a system in itself – a system that needs managing separately from the differing policy concerns of, for example, health, food safety, or the environment.
5. The review has considered all aspects of administrative costs on business, and particularly those imposed by form-filling requirements, inspection regimes, and penalties. On form-filling, the review thinks that regulators need to put robust mechanisms in place to prevent excessive or duplicated information requests. At the same time, sharing of data and common databases should be used to reduce regulators' need for information. The review makes some specific recommendations, but will be working with regulators in the next stage of its study to identify where scope for greater collaboration exists.
6. The review thinks that the inspection resources of regulators should be directed at the places where they can do most good. The best way for this to happen is through a robust, open and tested system of risk assessment, which takes all relevant information into account. This enables inspection resources to be concentrated on the most risky businesses. At the same time, advice and support for smaller and less risky businesses needs to be enhanced, and regulatory guidance made simpler, to improve compliance outside the inspection programme.
7. On penalties, the review has heard both from regulators and businesses that the penalty regime is cumbersome and inefficient. In the second phase of our work, the review will be considering a number of options for strengthening the penalty regime, ensuring both that regulators are able to act swiftly to counter illegal activity, and that businesses are not put at a competitive disadvantage by the operations of rogue traders.

---

<sup>1</sup> SBRC/NatWest survey of small businesses, 2004.

<sup>2</sup> *Enterprise survey 2004*, Institute of Chartered Accountants in England and Wales, November 2004.



**8.** The proposed solutions, suggested by the review, are set out for consultation in Chapter 4. They include proposals to:

- ensure general use of robust risk assessment methodologies to programme inspections so that no inspection takes place without a reason;
- rebalance advice and inspection, because good advice leads to better regulatory outcomes, especially for small businesses;
- better tailor advice for businesses;
- simplify the forms that businesses have to fill in, using business reference groups and common reporting frameworks;
- reduce the number of forms that businesses have to fill in, by encouraging greater sharing of data, and eliminating duplicate information requests;
- make incentives for compliance more effective;
- strengthen the penalty regime, and make action against rogue businesses quicker and more effective;
- improve joint working including information sharing and cross-training between regulators; and
- continue the recent trend of consolidating regulatory functions into national regulators.

**9.** The solutions proposed are not designed to transform the regulatory system overnight, but to bring into it principles of management and structure that will drive the system towards efficiency and responsiveness delivering excellent results in co-operation with businesses.

**10.** The proposed solutions are not final recommendations. The review also identifies four areas for further work: form filling, structural reform of national regulators, local consistency, and the penalty regime. The review is keen to hear the views of businesses, the public and regulators on all the areas discussed in this report. The address to send consultation responses is in Chapter 5.

## The review's work

**11.** This review was commissioned by the Chancellor of the Exchequer in the Budget 2004, and its terms of reference set out in the *Financial Statement and Budget Report*.<sup>3</sup> Annex A contains more details.

**12.** In this report, references to 'the regulators' refers only to those regulators that are within scope. The review did not examine regulators that are the responsibility of the devolved institutions in Scotland, Wales and Northern Ireland, but did consider the operation of England-based regulators in those countries. The economic regulators, listed in Annex B,<sup>4</sup> were excluded because they concentrate on economic solutions to market failures covering a small group of businesses, and have been the subject of a series of recent studies, including by the Better Regulation Task Force.<sup>5</sup> The Adult Learning Inspectorate, Commission for Social

<sup>3</sup> *Financial Statement and Budget Report*, HM Treasury, March 2004.

<sup>4</sup> Instructions on obtaining Annexes B-D, and the bibliography, can be found on the contents page.

<sup>5</sup> *Economic regulators*, Better Regulation Task Force, July 2001.

Care Inspection, and Healthcare Commission were also excluded because of their inclusion in the work on inspection by the Office of Public Service Reform and the subsequent establishment of a Ministerial Sub-Committee on inspection (PSX(I)), which was established to take strategic oversight of the Government's policy on inspection and provide an external review of public services.<sup>6</sup> HM Revenue and Customs (HMRC) were excluded because of the work of the recent O'Donnell Review.<sup>7</sup> However, the thinking of HMRC has been influential in the work of this review. In particular, their long-term goal to enable their support and compliance staff to have a 'whole view' of any customer with whom they are dealing and to minimise the burden of paperwork and contact for small businesses. A full list of regulators within our remit can be found at the start of Annex B.

**13.** The review has concentrated on how effectively and efficiently the regulators are enforcing the regulations in place. The processes by which regulations are made, and the policy decisions within them, are not within the scope for recommendations, although they have been commented on in various places.

---

<sup>6</sup> *Inspecting for improvement: Developing a customer focused approach*, The Prime Minister's Office of Public Services Reform, July 2003.

<sup>7</sup> *Financing Britain's future: Review of the revenue departments*, Gus O'Donnell, March 2004.

# ADMINISTRATIVE COSTS

**I.1** This review was established to consider the administrative costs that regulation places on business. This chapter considers what administrative costs are, and how they are distinct from policy costs.

## WHAT ARE ADMINISTRATIVE COSTS?

**I.2** All regulation imposes some cost. Some of the cost is the *policy cost* – a necessary part of achieving the aim of the regulation, whether higher wages to meet a minimum wage requirement, or a filter on a factory chimney to reduce emissions. Other costs are *administrative costs* – the time taken comprehending the policy requirements, the cost of staff to complete information requests for regulators, or the charges a regulator imposes in the course of their activities. The aim of Government should be to keep these costs as low as possible, without reducing regulatory outcomes.

**I.3** In accordance with our terms of reference (set out in Annex A), the review has considered the administrative costs on business rather than the policy costs. Government has a continuing work programme, shared between HM Treasury, the Department of Trade and Industry (DTI) and the Regulatory Impact Unit (RIU), to address the policy costs of regulation.

## GOOD PRACTICE IN REDUCING ADMINISTRATIVE COSTS

**I.4** Whatever the reason for regulation, compliance must be achieved with the minimum possible administrative cost to business. This means ensuring that every aspect of regulatory administration is as efficient as possible:

- form-filling, through better use of data and elimination of unnecessary requirements;
- inspections, through thorough risk profiling, and joint working where possible; and
- compliance enforcement, through simpler, stronger powers for regulators to address the worst offenders.

**I.5** Good enforcement should be simple and consistent. It should be proportionate, based on risk assessment.<sup>1</sup> Bad enforcement can burden and confuse business to such an extent that it is not merely less effective than good enforcement, it reduces the outcomes that the regulation was designed to improve.

**Complexity I.6** Complex regulations, or poor explanation, raise the time and labour cost of comprehension. This can discourage small businesses from trying to understand the regulations they need to follow. This causes worry for the business owner and can make them give up on trying to understand the regulatory requirements at all, thus reducing compliance.

<sup>1</sup> The use of risk-based approaches was identified by the Royal Society for the Prevention of Accidents as one of “the health and safety system’s more obvious strengths” (*Revitalising health and safety at work*, RoSPA, June 2000).

**Inconsistency 1.7** Administrative costs can increase if regulation is applied inconsistently. Inconsistency of interpretation, either in different places or by different people, makes the administrative cost of compliance greater, reduces businesses' faith in the regulatory system, and leaves business uncertain about what (if any) action they need to take to meet regulations. Where enforcement is weak, rogue traders move in, and the administrative costs borne by compliant businesses become a competitive disadvantage. Similarly, where enforcement is too heavy-handed, administrative costs increase, and compliant businesses are put at a competitive disadvantage.

**1.8** Complex or inconsistent enforcement can also cause regulatory creep – the extension of regulations into unintended areas – either through inconsistent decisions by enforcers or over-compliance by nervous businesses. This adds unnecessary administrative costs. A recent report by the BRTF called regulatory creep “the hidden menace of the red tape burden”. It said “all the different sorts of regulatory creep have one factor in common – a lack of transparency. The original intention of the regulation may be unclear, and can become more so as it is embellished or interpreted by regulators, industry bodies and those being regulated”.<sup>5</sup>

**1.9** Regulation in the UK shows examples of each of these failings. The regulatory landscape, both in terms of the number of regulations and the number of bodies enforcing them, is complicated. There are inconsistencies in decision-making and inspection programmes at local and national level. There is duplication in the information requested of business. All of these contribute to increased administrative costs.

## TACKLING ADMINISTRATIVE COSTS

**1.10** The UK's regulatory reform regime is well respected internationally. The OECD has called the UK “one of the most experienced and innovative countries in terms of regulatory reforms”.<sup>2</sup> Earlier this year, a study of regulatory costs by KPMG ranked the UK as the most competitive country in Europe, and third in the world.<sup>3</sup> These findings are borne out by World Bank research<sup>4</sup> and one of the OECD's most recent surveys of the UK.<sup>5</sup> Box 1.1 outlines the UK's major regulatory reforms over the last ten years.

<sup>2</sup> *Government capacity to assure high quality regulation*, Organisation for Economic Co-operation and Development, 2002.

<sup>3</sup> *The CEO's guide to international business costs*, KPMG, February 2004.

<sup>4</sup> *Doing Business in 2005: Understanding regulation*, World Bank, September 2004.

<sup>5</sup> *Economic survey of the United Kingdom*, Organisation for Economic Co-operation and Development, January 2004.

**Box 1.1: Ten years of regulatory reform in the UK**

**1994:** Deregulation and Contracting Out Act, including powers to make orders amending primary legislation for deregulatory purposes.

**1995:** Environment Act creates Environment Agency from HM Inspectorate of Pollution, the National Rivers Authority, and waste regulation function of 83 local authorities.

**1997:** Creation of Financial Services Authority, which (over time) unified nine financial services regulatory bodies.

**1998:** Better Regulation Task Force's (BRTF) principles of good regulation published. Compliance Cost Assessments replaced by Regulatory Impact Assessments (RIAs).

**2000:** New RIA guidance published; Food Standards Agency established, merging some regulatory functions of the Department of Health and the Ministry of Agriculture, Fisheries and Food.

**2001:** Regulatory Reform Act passed, with powers to make Regulatory Reform Orders.

**2002:** First Regulatory Reform Action Plan, containing the Government's proposals for removing or simplifying regulations.

**2003:** Updated Regulatory Reform Action Plan; BRTF publish *Independent regulators*; Panel for Regulatory Accountability (PRA) created.

**2004:** Four Presidencies initiative; Revised code of practice on consultation; Hampton Review announced; PRA, chaired by the Prime Minister, to scrutinise regulations with a high cost to business.

**1.11** Although these results are good, there is no room for the UK to be complacent. UK business has to compete in a global economy, where there is intense pressure to reduce all unnecessary costs. Reducing administrative costs is an important contribution that Government can make to cost reduction. Most businesses that express concern about regulation identify inspection and paperwork as the worst problems.

## Understanding the cost

**1.12** The review has tried to understand the extent of the administrative burden on business, but has found that, although Regulatory Impact Assessments (RIAs) assess administrative costs for individual regulatory proposals, a credible quantitative measure for overall administrative cost is lacking. Several methodologies are used in an attempt to estimate costs, but many of these are incomplete or inadequate, and most do not make the important distinction between administrative costs and policy costs.

**1.13** A sign of the inconsistency in such approaches is the large spread between different estimates of the overall burden. The review has seen figures, based on various methodologies, suggesting that the total regulatory burden (policy and administrative costs) is £7 billion, £30 billion, or even higher. Most of these figures are estimates of the overall cost of regulation based on extrapolations from inconsistent samples. They do not consider the benefits that regulation can bring both to businesses and society as a whole, or the extent to which firms would want to self-regulate (on issues like worker or customer safety) even in the absence of regulation. The review believes that none of the current figures for regulatory burdens can be relied upon, or are meaningful for policy-making purposes, and that there is a need for a tested methodology for measuring the administrative cost in isolation.

**I.14** Without a methodology, it is difficult to measure the effect of the Government's policies on administrative burdens. This hinders the creation and implementation of effective policy on regulatory burdens. An agreed methodology would enable the Government to measure the effectiveness of its interventions and policy recommendations.

**EU I.15** At its October meeting, the EU's Economic and Financial Affairs Council (ECOFIN) **developments** endorsed the development of a common methodology for measuring the administrative burden associated with new and existing EU laws. It also invited the Commission to begin pilot projects to develop such a methodology for use in impact assessment and the simplification of EU law. The November European Council meeting of Heads of State and Government welcomed the Council's work on administrative burdens and invited the Commission to take account of the priority areas for regulatory simplification, due to be presented by the Competitiveness Council during the Dutch Presidency.

---

<sup>5</sup> *Avoiding regulatory creep*, Better Regulation Task Force, October 2004.

**2.1** The last chapter examined the nature of administrative costs on business. This chapter examines who enforces regulations and how they do it. More detail on the work of national regulators is given in Annex B, and more detail on local authorities in Annex C.

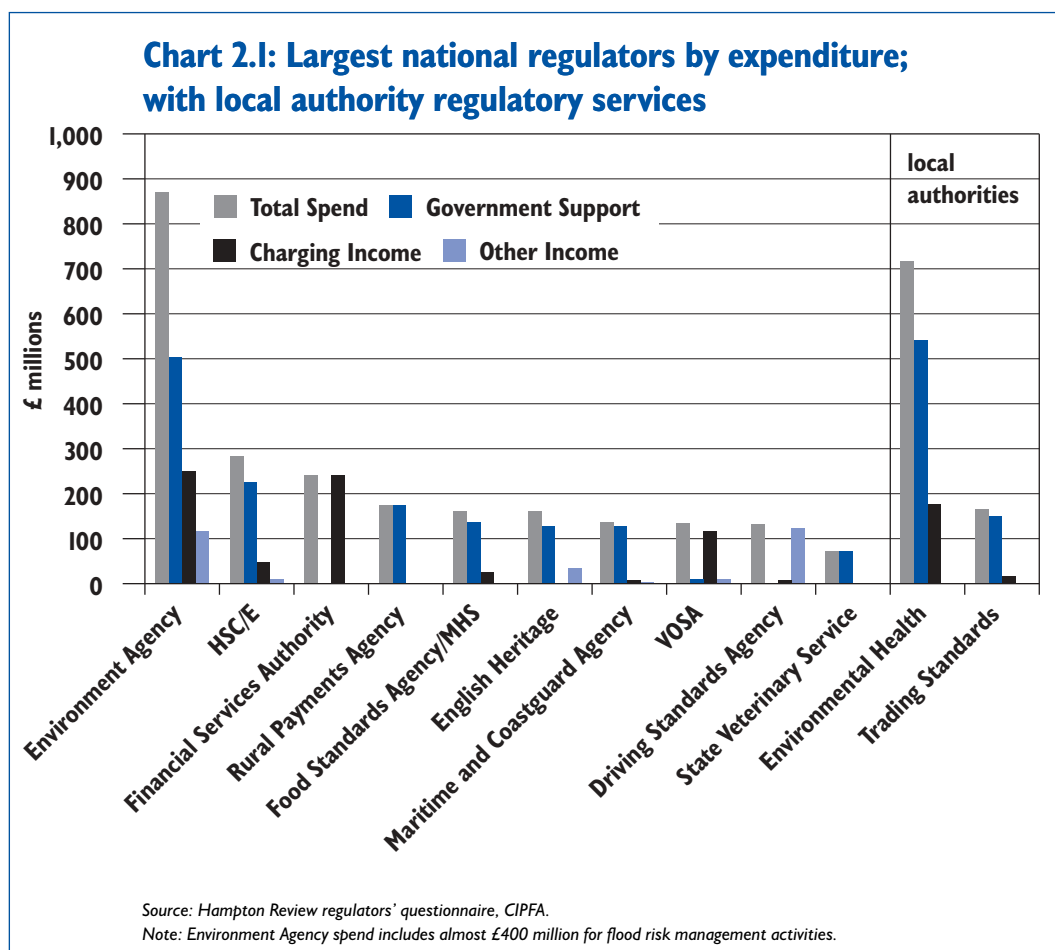
## WHO ENFORCES REGULATIONS?

**2.2** The earliest modern law dealing with working conditions was the Health and Morals of Apprentices Act 1802. Today's Health and Safety Executive (HSE) can trace a direct line of descent from the inspectorate created by the Factories Act 1833. The enforcement of regulation today is divided between national and local bodies. The review covers 59 national bodies, and 486 local authorities. Some regulations, such as health and safety, are enforced nationally for some firms, and locally for others. Many, such as water pollution and the filing of statutory accounts, are entirely nationally enforced. Trading standards, food standards and food safety are enforced solely at local level, although standards are set at a national level.

**Budget 2.3** The total budget of the regulators covered by this review is £4.3 billion per annum.<sup>1</sup> The ten largest national regulators spend the majority of that sum – £2.3 billion per annum. Most of this funding comes from Government but, as shown in Chart 2.1, some of the funding comes from charging regimes. Of their budgets, national regulators spend approximately £884 million, or 26 per cent, on inspection and enforcement activities. In local authority trading standards and environmental health offices the proportion spent on inspection and enforcement is naturally higher. Therefore, the approximate total spend on activities within the scope of this review is in the range £1.5 to £1.75 billion.

**2.4** Chart 2.1 shows the ten largest national regulators and the two main local authority services, ordered by budget. In addition, the 11 smaller regulatory bodies that are part of Defra spend £126.4 million. The £870 million spend for the Environment Agency includes almost £400 million for flood risk management activities, which is not a regulatory activity.

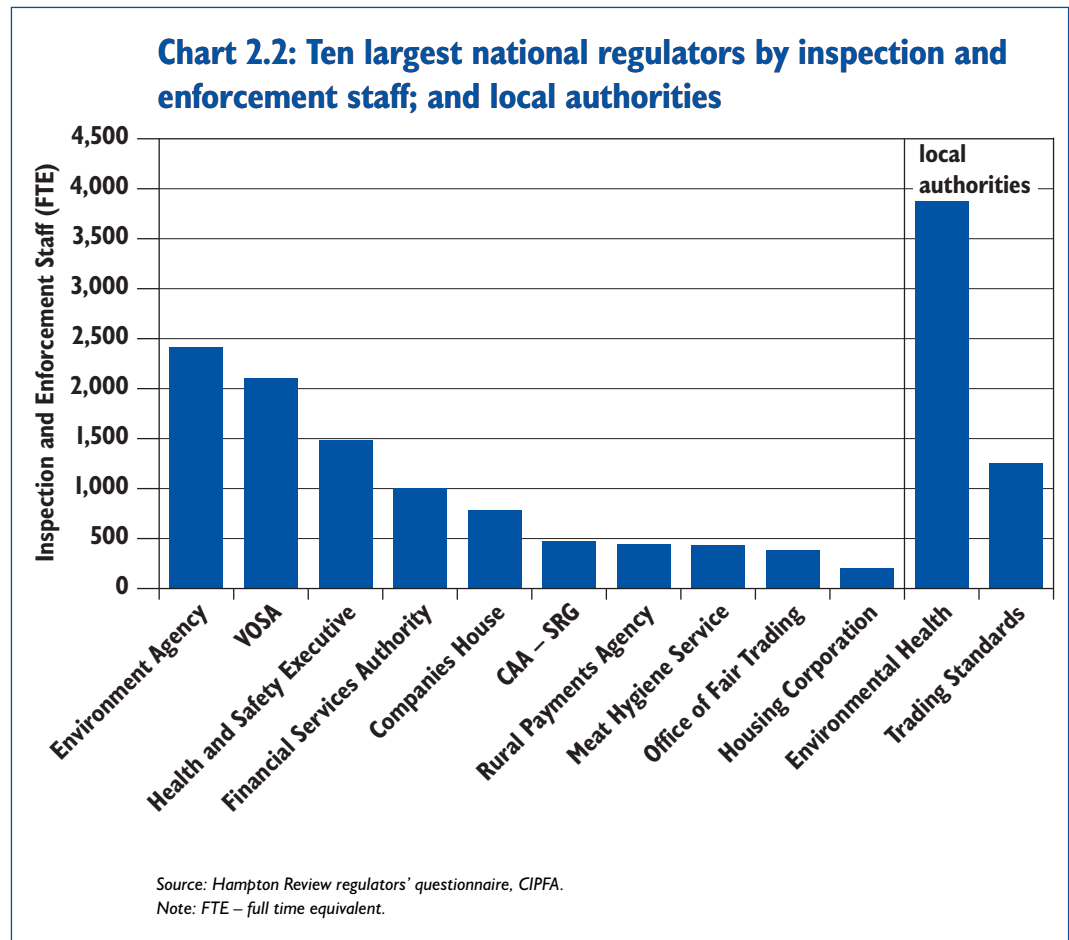
<sup>1</sup> This comprises all national regulators (£3.4 billion), local authority trading standards (£168 million) and environmental health (£718 million).



**Staffing 2.5** Approximately 19,000 business inspectors are currently deployed in those parts of the regulatory system which are within our scope. Twenty-eight per cent of those are in local authorities. In absolute numbers, local authority environmental health offices, the Environment Agency, and the Health and Safety Executive have the most inspection and enforcement staff, although the number and profile of their inspectable premises is different.



**2.6** Chart 2.2 shows the ten largest national regulators and the two largest local authority regulatory services by business inspection and enforcement staff.



**Activity 2.7** Each regulator has a unique mandate that determines the number of inspections it carries out.

**2.8** Local authorities carry out the largest absolute number of inspections, but also have a large number of businesses to inspect. Other bodies like the Environment Agency,<sup>2</sup> Vehicle and Operator Services Agency (VOSA), and the Rural Payments Agency have a smaller number of businesses within their remit, but inspect them more frequently.

## NATIONAL REGULATORS

**2.9** The Review identified 59 national regulators in its remit, in addition to the regulatory services operated by local authorities. These regulators range from very large bodies with a wide range of powers, like the Environment Agency, to small, highly specialised regulators, like the Adventure Activities Licensing Authority and the British Hallmarking Council. A full list of bodies is found in Annex B.

<sup>2</sup> More than two million businesses are covered by legislation for which the Environment Agency has responsibility but a much smaller number are covered by specific permitting regimes. The Environment Agency concentrate most of their inspection activity on permit holding businesses.

## The principal regulators

**2.10** The principal national regulators (within the scope of the Review) are:

- Environment Agency;
- Health & Safety Executive;
- Rural Payments Agency;
- Food Standards Agency (including the Meat Hygiene Service);
- Companies House;
- Civil Aviation Authority;
- various inspectorates within core Defra; and
- Financial Services Authority.

**2.11** The **Environment Agency (EA)** was set up under the Environment Act 1995 taking on the combined responsibilities of Her Majesty's Inspectorate of Pollution, the National Rivers Authority and waste regulation from 83 local authorities to enable an integrated approach to be taken to all of these functions. It started work in April 1996. It is the leading public body for protecting and improving the environment in England and Wales. Its job is "to make sure that air, land and water are looked after by everyone in today's society, so that tomorrow's generations inherit a cleaner, healthier world."<sup>3</sup> About half their resource is used for flood defence. As of 31 March 2004, the EA had a staff of 11,296 (full time equivalents). Of those, 2,417 work on inspection and enforcement, and a further 2,646 on other aspects of regulation such as permitting and monitoring. The Environment Agency's regulatory strategy was set out in *Delivering for the environment* in October 2003.<sup>4</sup>

**2.12** The **Health and Safety Commission (HSC)** and the **Health and Safety Executive (HSE)** were established by the Health and Safety at Work etc. Act 1974 (HSWA). The HSC is responsible for protecting all citizens against the risks to health or safety arising out of employment activities. The HSC/E covers the whole of the UK with the exception of Northern Ireland, although there are special arrangements in Scotland. Enforcement activity is carried out by both the HSE and local authorities. It also conducts and sponsors research, promotes training, provides an information and advisory service, and submits proposals for new or revised regulations and approved codes of practice. On 1 April 2004, the HSE had 4,019 staff in post.

**2.13** The **Rural Payments Agency (RPA)** was established in October 2001 as an Executive Agency of Defra. The RPA is responsible for the Common Agricultural Policy (CAP) payment functions formerly delivered by the Ministry of Agriculture, Fisheries and Food (now Defra) Paying Agency and the Intervention Board. A budget of some £2 billion a year is allocated to the Agency for the payment of CAP and other subsidies in England, the majority of which is reimbursed by the EU. On 1 June 2004, RPA had 3,545 full time equivalent staff. This figure includes 390 staff working in its inspectorate.

<sup>3</sup> <http://www.environment-agency.gov.uk/aboutus/>

<sup>4</sup> *Delivering for the environment: A 21st century approach to regulation*, Environment Agency, October 2003.

**2.14** The **Food Standards Agency (FSA)** has its origins in the James Report,<sup>5</sup> which was commissioned by the Prime Minister while Leader of the Opposition. It was established by the Food Standards Act 1999. With some minor exceptions, the Agency is not an inspection and enforcement body itself. It has an executive agency, the Meat Hygiene Service, which inspects abattoirs, slaughterhouses and meat cutting plants according to the requirements of EU law (and specific UK requirements in relation to certain BSE controls). Local authorities carry out the UK's food standards and safety inspections, with the Agency monitoring them and running an audit programme. The Agency is UK-wide, although food safety is a devolved matter. It has offices in Scotland, Wales and Northern Ireland that work closely with the devolved authorities there. Excluding those working with the devolved administrations, the Food Standards Agency currently has 610 employees. There are approximately 1,500 environmental health officers (EHOs) and 500 trading standards officers (TSOs) working on food law enforcement,<sup>6</sup> and over 1,600 staff working for the Meat Hygiene Service.

**2.15** **Companies House** is an Executive Agency of the Department of Trade and Industry. All limited companies – more than 1.8 million in Great Britain – are registered there, and more than 300,000 new companies are incorporated each year. All 1.8 million companies on the register have to file accounts and annual returns with the Registrar each year. Companies House has 1,281 employees, 782 of whom are involved in examining documents and ensuring compliance with companies legislation.

**2.16** The **Civil Aviation Authority (CAA)** was established as a public corporation in 1972. It is the UK's specialist aviation regulator with responsibility for air safety, economic regulation, airspace regulation, consumer protection, and environmental research and consultancy. Three parts of the organisation fall under the scope of the review: the Safety Regulation Group (SRG), the Consumer Protection Group (CPG), and the Aviation Regulation Enforcement (ARE) Department. A total of 719 people work for the three groups, 493 in inspection or enforcement.

**2.17** In addition to Defra-sponsored bodies such as the Environment Agency and English Nature, there are eleven bodies that form **part of Defra**, and which have inspection and enforcement duties. These are:

- Agricultural Wages Team;
- Drinking Water Inspectorate;
- Egg Marketing Inspectorate;
- Fish Health Inspectorate;
- Global Wildlife Division (including the Wildlife Inspectorate, and Licensing and Bird Registration);
- Horticultural Marketing Inspectorate;
- Plant Health and Seeds Inspectorate;
- Plant Varieties and Seeds Division;
- Rural Development Service – Dairy Hygiene Inspectorate, and National Wildlife Management Team;
- Sea Fisheries Inspectorate; and
- State Veterinary Service (SVS).

<sup>5</sup> *Food standards agency: an interim proposal*, Professor Philip James, April 1997.

<sup>6</sup> Full time equivalent.

**2.18** Defra's core bodies spend £126.4 million, although over half of this (£72.8 million) is SVS expenditure. The total staff complement for these bodies is around 3,000 (with the majority being in the Rural Development Service).<sup>7</sup>

**2.19** The **Financial Services Authority** was established by the Financial Services and Markets Act 2000 (FSMA). It regulates a very wide range of financial institutions, including banks, investment banks, building societies, insurance companies, investment firms, friendly societies and mortgage brokers. At the end of the year, it will also take responsibility for general insurance brokers. Structurally, it is a company limited by guarantee, but with statutory functions and a Board appointed by HM Treasury. Prior to 31 October 2004, when it took on responsibility for mortgage businesses, the Authority regulated around 11,000 firms. At 31 March 2004, the Authority had 2,312 staff with 808 in supervision and 197 in enforcement.

## LOCAL AUTHORITIES

---

**2.20** The UK is divided into 468 local authorities. All the authorities in Scotland (32), Wales (22) and Northern Ireland (26) are *unitary* (see definition below), but in England different types of authority cover different areas:

- **Counties** like Lancashire, East Sussex and Devon are made up of a number of districts. The smallest county is Shropshire, with a population of 285,700, and the largest is Kent, with a population of 1.3m.
- **Districts** are smaller areas within counties. Examples include Copeland (Cumbria), Mid Sussex, and Richmondshire (North Yorkshire). The smallest district is Purbeck (Dorset), with a population of 44,100. The largest is Northampton, with a population of 194,100.
- **Unitary authorities** can be London Boroughs, metropolitan boroughs (usually parts of former metropolitan counties), or new-style unitary authorities. Examples include Sefton (a metropolitan borough), Wandsworth (a London borough), Medway and Herefordshire (new-style unitary authorities). Unitary authorities vary considerably in size, from Rutland with only 34,900 people, to the city of Birmingham with 976,400.<sup>8</sup>

**2.21** The current mix of local authority services are the result of many years where functions have tended to move into central government. County and unitary authorities employ **Trading Standards Officers (TSOs)** who are professionally qualified local government officials. They implement the laws relating to:

- weights and measures;
- the quality and fitness for sale of merchandise;
- fair trading; and
- consumer protection.

---

<sup>7</sup> *Rural delivery review*, Christopher Haskin, October 2003.

<sup>8</sup> *Trading standards statistics 2003*, The Chartered Institute of Public Finance and Accountability, October 2003. The City of London, also unitary, has a smaller resident population (7,200), but a larger remit on account of the number of businesses based in its area.

**2.22** District and unitary authorities employ **Environmental Health Officers (EHOs)**. EHOs are professionally qualified local government officials who inspect premises for food safety, health and safety, animal welfare, housing standards, and pest control. They are also responsible for air quality, noise control, food imports (in port health authorities), infectious disease control, health improvement, and other areas outside the scope of the review. District and unitary authorities are also responsible for other forms of licensing, highways control, building control and planning.

**Shared services 2.23** Where counties have been split into separate unitary authorities, or where unitary authorities have split away from two-tier local authorities that still exist, the new unitary authorities have, in some cases, duplicated the county's services, such as laboratories or other research resources. In recent years, as the unitary authorities have started to consolidate their work, sharing of services has begun to occur. This is clearly a cost-effective and sensible move.

**Staff levels 2.24** There are 203 trading standards (TS) offices in England, Scotland and Wales, and 408 environmental health (EH) offices. Statistics from the Chartered Institute of Public Finance and Accountancy (CIPFA) for 2002-03 show that there were 4,466 full time equivalent staff in TS offices in Great Britain who use a combined budget of £186 million and carry out 465,514 inspections annually.<sup>9</sup> In the 376 EH offices in England and Wales, 15,301 staff are employed with a budget of £718 million. Approximately 3,900 of those staff are professionally qualified TSOs. They carried out almost two million inspections in 2002-03.

**2.25** Staffing levels in TS offices are on the decline. Fewer staff are being employed than in previous years, and the average age is high. 31 per cent of officers are aged over 50 and a further 27 per cent are aged 40 to 50. 5 per cent of positions are vacant, and authorities and the professional bodies have expressed concern over persistent low levels of recruitment and retention.

**2.26** A similar profile exists in environmental health. The *Environmental Health workforce survey 2002*<sup>10</sup> showed 52.4 per cent of local authorities reporting one or more unfilled posts, with an overall vacancy rate of 5.2 per cent, similar to trading standards. The main reasons authorities gave for retention and recruitment problems were general lack of suitably qualified applicants (74 per cent) followed by problems around pay (53.2 per cent).

**Home Authority Principle 2.27** The Home Authority Principle ensures that the local authority that houses the headquarters of a large business with multiple outlets takes the lead on all trading standards and food enforcement matters. This is meant to alleviate the problem of differing enforcement standards, but is contingent on the capabilities of the local authority in which the business's headquarters happens to sit. Staff complement, budget, and history of dealing with other businesses all have a bearing on the success of the Home Authority Principle in individual places. A similar scheme called the Lead Authority Principle operates for health and safety issues.

<sup>9</sup> *Trading standards statistics 2003*, The Chartered Institute of Public Finance and Accountability, October 2003.

<sup>10</sup> *Environmental Health workforce survey 2002*, Chartered Institute of Environmental Health, 2003.

### HOW REGULATORS WORK TODAY

---

**2.28** Regulators often require information about the firms that they regulate. This may take place through annual returns or form filling, which clearly results in an administrative cost for the business. To encourage compliance, regulators use a variety of tools:

- advice offered to those companies which fall within a regulator's remit;
- inspection carried out on a number of businesses, often on a routine or random basis but, increasingly, targeted at those which pose the greatest risk;
- incentives such as award schemes and reputational sanctions such as 'naming and shaming' to encourage compliance; and
- as a last resort, penalty regimes to punish those who are non-compliant.

**2.29** There is an administrative cost associated with each of these activities. Poor or inaccessible advice can increase the time spent by business comprehending regulations, while inspection takes up time which could be spent working on the core activity of the business. In addition to these administrative costs, most regulators charge for some elements of their work. Usually this is related to inspection activity, but some charge for some sorts of advice. The remainder of this chapter examines the present practice in each of these areas in turn.

### Form filling

**2.30** Regulators collect data and gather information both to understand the number and type of firms in their remit, and as one way of monitoring whether regulations are being complied with. Information is also collected for national statistics and comparative purposes.

**2.31** Each individual regulator has its own information requirements, the majority of which is collected through forms or similar reporting requirements. The review received a number of example forms from the regulators in our remit. On-line data submission is not yet a standard across government, but is being increasingly used by individual organisations. The Whole Farm Approach programme is an innovative way of bringing together data and inspection requirements in a particular sector and potentially reducing the inspection burden.<sup>11</sup>

**2.32** However, the majority of forms are still submitted on paper, including annual returns to Companies House and submissions to other national and local regulators. Some agencies require multiple copies of this information. Data requirements are usually more onerous in permitting systems, where data, plans and evidence have to be provided before a permit can be issued. Every additional form is an additional administrative cost for business.

### Advice and inspection

**Advice 2.33** Regulators offer advice to the regulated on how to ensure that they are compliant with regulations. This function is a central part of all regulators' activity. Given the technical nature of many regulations, the regulator has an essential role in ensuring that companies are aware of their obligations, and that the administrative cost associated with comprehending regulations is reduced.

---

<sup>11</sup> described in detail at <http://www.defra.gov.uk/farm/sustain/wfa/>

**2.34** Advice can come in many different forms. Regulators publish a great deal of information on paper and on the web. Large bodies, in particular, will frequently offer a wide array of comprehensive services including leaflets, websites, and telephone helplines. Most regulators who inspect businesses will provide informal advice during their inspections. Liaison meetings, drop-in information centres, road shows, and workshops have become increasingly popular and are another way of communicating best practice face-to-face.

**2.35** A good example of on-line advice is the Environment Agency's NetRegs,<sup>12</sup> an internet based plain language guidance system for businesses on how to comply with environmental legislation, covering over 100 business sectors. The HSE also have a well-regarded online guidance site.<sup>13</sup>

**Inspection 2.36** Most of the regulators in the review's remit carry out some level of inspection to ensure that the regulations they enforce are being complied with. Regulators have different inspection regimes. The Environment Agency issues permits allowing certain activities to be carried out, and then inspects the permitted businesses to ensure they are meeting the conditions set for the operation. On the other hand, in the Health and Safety Executive's Field Operations Directorate, roughly 50 per cent of inspections are reactive (in response to an accident or particular threat). Other regulators inspect all their regulated businesses, or a set proportion.

**2.37** Each regulator has autonomy in deciding its own inspection policy, although this is sometimes subject to statutory or other guidance. In planning their activities they will usually take account of the number of businesses they regulate, the risks they are trying to guard against, and their own operational requirements. There is no central co-ordination of inspection policy, and no Government position on how inspections should be planned, other than the broad principles of enforcement set out in the 1988 Enforcement Concordat.<sup>14</sup> Each inspection will impose an administrative cost on business.

**2.38** Although not within the review's remit, the Office of Public Sector Reform published a list of principles for public service inspections in their pamphlet, *The Government's Policy on Inspection of Public Services*.<sup>15</sup> Public sector inspections have a different focus from regulatory inspection of business, but several of their principles also apply in business regulation. Their principles are, in summary:

- explicit concern on the part of inspectors to contribute to the improvement of the service being inspected;
- a focus on outcomes;
- a user perspective;
- inspection proportionate to risk;
- rigorous self-assessment;
- inspection based on impartial evidence;
- inspectors should disclose the criteria on which they are forming judgements;
- inspectors should be open about their processes;

<sup>12</sup> <http://www.environment-agency.gov.uk/netregs/>

<sup>13</sup> <http://www.hse.gov.uk/>

<sup>14</sup> available at <http://www.cabinetoffice.gov.uk/regulation/docs/pst/pdf/concord.pdf>

<sup>15</sup> *The Government's Policy on Inspection of Public Services*, The Prime Minister's Office of Public Service Reform, July 2003.



- inspectors should have regard to value for money; and
- inspectors should continually learn from experience.

**Risk profiling 2.39** Many regulators use risk profiling to try and concentrate resources where they are of most use. Risk profiling will also ensure that the administrative cost of routine inspections is reduced. The Environment Agency has one of the most theoretically advanced systems, called the Operator Pollution Risk Appraisal (OPRA) system. It has been developed by the EA to determine the environmental hazards associated with a particular site and how well the risks are being managed.

### **Box 2.1: Best practice – Environment Agency OPRA risk screening methodology**

The Environmental Protection – Operator & Pollution Risk Appraisal scheme (EP OPRA) was introduced for installations regulated under the Pollution Prevention and Control Regulations in 2003. A wide range of activities fall under these regulations, including power stations, larger waste sites, cement works, intensive agriculture, chemical works, and paper and pulp manufacturers.

EP OPRA is used to assess the pollution risk posed by the activity being carried out, based on the nature of the activity, its location, the permitted level of discharges from the activity and the way in which operations are managed.

EP OPRA is currently being developed by the introduction of a new ‘attribute’ – compliance assessment rating – based on findings from recent compliance assessments, including site inspections. This will allow the Environment Agency to more accurately reflect changes in an operator’s performance through changes in the Agency’s regulatory oversight. These changes will have effect, subject to public consultation, from April 2005. At the same time, OPRA will be extended to apply to facilities falling within the Waste Management Licensing regime, replacing the current sector specific risk assessment methodology.

In both Pollution Prevention and Control and waste management regimes a reduced level of charges rewards good performance. Good operator performance also results in a reduced level of compliance assessment, including frequency of site visits. As a result, some firms use the OPRA score as a performance measure for their compliance managers and in public environment reports.

The Environment Agency plan to use EP OPRA as the basis of the majority of its regulatory systems in the future to ensure that business sees, and understands, a consistent approach to the regulation of its environmental impacts. EP OPRA is currently being developed further to ensure that the results of compliance assessment activities, including a site’s emissions, location, complexity and the business’s recent performance, are better reflected in the OPRA rating for a site.



**2.40** The Financial Services Authority has a similar risk based approach called Arrow. It has a firm specific component and a component for industry wide risks. The firm specific component – the Risk Assessment Framework (RAF)<sup>16</sup> – determines the level of supervisory intensity by making assessments of both the impact and probability of the firm posing a threat to the FSA meeting its statutory objectives. To make its assessment of risk, the Authority uses a combination of on-site visits to firms (as well as off-site analysis of information) to review their business activities, operating framework and control environment. This assessment will normally result in a requirement for risk mitigation and this will be proportionate to the issues identified, therefore, firms with systems and controls that are trusted by supervisors will be asked to provide less detailed work.

**2.41** The HSE's permissioning directorates prioritise their inspections based on an assessment of the information submitted in safety cases and reports, and on other intelligence of the installation or business concerned. Inspections carried out in the Food Standards Agency's remit are based on a risk profile undertaken by Environmental Health Officers and Trading Standards Officers in local authorities. The profiling used is discussed in the section on local authorities below. All other local authority inspections, unless reactive, now take place on some form of risk profiling.

**2.42** Local authorities also use risk profiling to devise their inspection programmes. Until very recently, the food safety code of practice required all businesses to be inspected at least every five years. The new code of practice, issued in October 2004, now allows 'alternative enforcement strategies' to be used with the lowest-risk premises. From January 2006, all food premises will be required to implement HACCP (Hazard Analysis Critical Control Points) – a set of procedures designed to reduce the risk of food contamination. The universal adoption of HACCP will move the focus of food safety inspections from prescriptive rules to an auditing of HACCP procedures.

**2.43** The Local Authorities Coordinators of Regulatory Services (LACORS) issue a risk assessment scheme for trading standards. This is based on an individual score for each business within a local authority. This score directs enforcement actions including inspection, surveys, and test purchases. The scheme comprises a national element that deals with the potential risk according to the business type, and a local element that is particular to the individual business and determined by local authorities.<sup>17</sup>

**Charging regimes** **2.44** Many regulators rely solely on central government for their funding. Others, such as the Financial Services Authority, operate on a full cost recovery basis. Most rely on a combination of Government grant and charging income for advice and inspection. Charging schemes are subject to public consultation, and then to approval by the relevant Secretary of State. Regulators have to adhere to the HM Treasury Fees and Charges Guide.<sup>18</sup> The charging schemes of the individual national regulators are set out in Annex B.

<sup>16</sup> *The firm risk assessment framework*, Financial Services Authority, February 2003.

<sup>17</sup> *Trading standards risk assessment scheme*, LACORS, February 2004.

<sup>18</sup> available online at <http://www.hm-treasury.gov.uk/media/98A/13/dao1992.pdf>

### Compliance incentives

**2.45** Some regulators use incentives to encourage compliance. Good performance can be rewarded, most obviously through lighter inspection where risk profiling has taken place. Regulatory accreditation schemes are increasingly popular. For example, some local authorities issue displayable Food Hygiene Awards to local caterers and restaurants. Reputational sanctions are also used. The Environment Agency has a policy of ‘faming, naming and shaming’ with the publication of its annual *Spotlight on business*,<sup>19</sup> while HSE names, on its website, those who have been convicted of health and safety offences, and those who have received Improvement and Prohibition Notices.

### Penalties

**2.46** Effective penalties are an essential last resort in the regulatory system. They deter businesses from breaching regulations, and provide assurance to law-abiding businesses that those who do try to gain competitive advantage by breaking the law are properly punished.

**2.47** Regulators have a number of powers to try and bring non-compliant businesses back into compliance. They can issue notices (such as enforcement/improvement or prohibition notices), which require businesses to take particular remedial actions, or to stop a certain activity. Non-compliance with notices is usually a criminal offence. Regulators can also prosecute offenders in the magistrates’ courts.

**2.48** Magistrates’ courts can sentence offenders to fines of up to £20,000, or can refer cases for sentencing to higher courts where fines are potentially unlimited. The actual fines imposed, however, tend to fall within magistrates’ limits. The average fine for a breach of health and safety law was £4,036 in 2003-04, while the average fine in magistrates’ courts for breaches of environmental law in the same year was £3,861. Imprisonment can be used in some cases, but is rare – the Health and Safety Executive have only secured five jail sentences since 1974, although there were six jail sentences for environmental offences in 2002-04.

**2.49** Some regulators can use additional tools to bring companies back into line. The Financial Services Authority has the power to impose unlimited financial penalties on firms and individuals for breaches of FSMA requirements or Authority rules. The RPA can reduce aid payments to recipients who break regulations.

### GOVERNMENT INITIATIVES IN THE REGULATORY SECTOR

---

**2.50** The Government’s Regulatory Impact Assessment (RIA) process provides a framework for assessing policy options in terms of costs, benefits and risks. The process includes estimations of both administrative and policy costs. Since 1998, an RIA has had to be completed before Ministers consider any regulatory proposal. Departments work with their departmental Regulatory Impact Units and with the RIU in the Cabinet Office to develop the RIA in stages – initial, partial and final.

**2.51** In some cases, RIAs are reviewed a few years after the regulation has come into force. These ‘post-implementation reviews’, also called *ex post* reviews, are a useful check on the calculations made at the planning stage. The review believes that there is a strong case for post-implementation reviews to be undertaken more systematically, not only to review the effectiveness of the regulation, but also to test and strengthen the cost estimations made when regulations are proposed. OECD officials, in conversations with the review team, shared this view.

---

<sup>19</sup> *Greener business is good business: Spotlight on business environmental performance in 2003*, Environment Agency, 2004.

**Better Regulation Task Force 2.52** The Better Regulation Task Force (BRTF) have been asked by the Prime Minister to work with this review to investigate the Dutch model, as well as ‘one in, one out’. The Dutch model is an approach currently in use in the Netherlands which sets a target to reduce administrative burdens. In the ‘one in, one out’ study the BRTF will be considering how the Government might bring forward deregulatory and simplification measures to offset new regulatory proposals.

**2.53** This review will be liaising closely with the BRTF on their work in these areas. The BRTF expect their reports to be published at about the same time as the final report of this review in spring 2005.

## CONCLUSION

**2.54** Chapter 1 outlined the distinction between the administrative and policy costs of regulation and explained that this review is concerned with reducing the administrative cost to a level consistent with the maintenance of excellent regulatory outcomes. This chapter has examined the regulatory sector and the functions which are the source of the administrative cost. This has shown that:

- regulators request information from business through form filling, the majority of which are still submitted on paper;
- many regulators request similar information from business, resulting in duplication;
- advice is a major function of all regulators and, if well tailored, can contribute to a reduction in the administrative cost of compliance comprehension;
- there is no central coordination of policy;
- large regulators, as well as local authorities, have moved towards risk profiling their inspections in recent years;
- charging regimes are used by regulators to recover some, or all, of their costs;
- incentives are used to encourage compliance and are increasingly popular; and
- penalties are used as a last resort to ensure compliance.

**2.55** The next chapter examines each of these areas in more detail.



## THE REVIEW'S FINDINGS

---

**3.1** Chapter 2 described local and national regulatory bodies, and their functions. This chapter explores some of the issues raised in our examination of the regulatory system. It includes the concerns raised with the review by businesses and regulators.

**3.2** Because this chapter identifies the areas for improvement in the regulatory enforcement system, it contains more criticism than praise. The review would not want the specific criticisms identified here to be seen as a general criticism of the regulatory system. Much of the UK's regulatory work is very effective, although some areas are under strain from the pressure of new and existing legislation. The regulatory outcomes that the UK achieves are excellent – particularly in health and safety, where the UK is among the best performers in Europe. The review's aim is to improve the regulatory system even further, by making regulation easier to understand, and implementation as efficient as possible.

**3.3** The ideas we propose here are not all new. Many of them are continuations of existing trends. In particular, the Health and Safety Executive and the Environment Agency have already published strategy documents based around risk assessments. The Food Standards Agency recently reissued its statutory Code of Practice, to allow alternative (non-inspection-based) approaches to lower-risk food premises.

**3.4** There has also been work on consolidation of regulators, and 'virtual mergers' through data sharing and joint working. The Financial Services Authority has merged the activities of nine separate regulatory bodies, while outside our remit the Commission for Social Care Inspection has brought together staff from over 200 organisations. In Defra, the Whole Farm Approach, where inspections and data will be managed jointly between a number of regulators, has pioneered 'virtual merger' and data sharing, while keeping actual regulatory structures the same.

**3.5** The particular issues covered in this chapter are that:

- businesses, particularly small businesses, find it difficult to access the information they need on regulation;
- activity in the regulatory system is skewed towards inspection rather than advice and compliance;
- application of regulations can be inconsistent both between different regulators and between different individual inspectors;
- the cumulative burden of paperwork is disproportionately burdensome on small businesses;
- different regulators find it hard to join their systems or operations. This can result in missed opportunities for data sharing and joint enforcement; and
- the penalty system is cumbersome, and there are few positive incentives to encourage compliance.

### ADVICE AND INSPECTION

**3.6** Businesses need advice in order to:

- know what regulations apply to them;
- know what those regulations require; and
- improve compliance beyond minimum standards.

**3.7** Giving advice is an essential part of regulatory enforcement, and more effective than inspection alone in improving regulatory compliance (see paragraph 3.21 below). Eighty-three per cent of businesses responding to our consultation thought regulators were a good source of advice. Businesses that the review spoke to thought that the information currently available was useful, but were concerned that there was too much information for small firms to digest and understand.

**3.8** Advice is particularly important for small and medium size enterprises (SMEs), which do not usually have the people or time available to monitor changing legal requirements, interpret them, and implement necessary controls. The complex regulatory environment can cause business owners to give up on regulations and 'just do their best'. They are often reluctant to ask enforcement bodies for advice because they are afraid of admitting that they do not know how to comply with the law. The cross-cutting review of Government services for small businesses found that many small businesses are not clear about what is expected of them.<sup>1</sup>

**3.9** The review believes that advice and support to businesses needs to be:

- actively promoted, as well as easily available;
- reliable;
- tailored to specific needs; and
- available through a range of channels, from broad-based general advice to specific advice given during site visits.

**Promoting advice 3.10** Many SMEs have a reactive approach to compliance and rely on regulators, enforcers, trade bodies, and consultants to provide them with the necessary information. Even when businesses proactively seek information, many are unsuccessful in locating it. A Small Business Research Trust survey found that only half of those businesses that have looked for advice on regulations were successful in finding it.<sup>2</sup> The review believes that regulators should:

- actively promote their regulatory requirements to reach the smallest businesses;
- send clear messages telling businesses what they need to do, how they can access help and advice, and what the consequences of failure could be; and
- make a clear distinction between advice that describes their legal obligations and advice designed to help businesses improve their performance above minimum standards.

<sup>1</sup> *Cross cutting review of Government services for small businesses*, Department of Trade and Industry, October 2002.

<sup>2</sup> *Government and regulations: Quarterly small business management report*, Small Business Research Trust, 2001.

**Reliable advice** 3.11 Support is more valuable, and regulation made less complex, if businesses know that they can rely on simple guidance. The Food Standards Agency has an explicit policy not to prosecute firms who have followed the most recent simple guidance. Other regulators have enforcement statements that are close to that position.

**Tailoring advice** 3.12 Regulators need to tailor the advice and support they give to business, to ensure that the right messages are delivered in the right way. Seventy-one per cent of respondents to a recent survey found Health and Safety Executive (HSE) information easy to understand, but half of those surveyed thought that the information was insufficiently focused on their needs.<sup>3</sup>

3.13 Large, complex or businesses dealing with hazardous materials will need different sorts of advice, and will want to get definitive decisions from a credible source. Smaller businesses will need closer support, often face-to-face in the context of their own business situation. A comparison could be with the Inland Revenue, whose Large Business Offices, are responsible for businesses with the most complex tax affairs, and give such businesses named contacts and easy access to expert advice that a smaller organisation would not need.

**Making advice available** 3.14 In a recent survey of food business advice, businesses said that leaflets, guidance and basic training courses were ineffective in helping them relate regulatory requirements to their individual businesses.<sup>4</sup> Advice on site, related to a business's specific risk, works well, though it is expensive.

3.15 Regulators should ensure that the same advice is available through as many channels as possible. In particular, they should ensure that there are easy alternatives to the Internet – a 2004 Federation of Small Businesses (FSB) biennial membership survey<sup>5</sup> found that 18 per cent of their membership had no connection to the Internet, and the figure is likely to be higher among small businesses as a whole, since the FSB's membership is likely to comprise more active and aware businesses.

## Programming inspections

3.16 In recent years, regulators have begun to recognise that inspections can be an inefficient tool, particularly for lower risk or high performing businesses, and that many of the objectives of inspection can be achieved through means other than inspection, particularly through giving advice. Recent documents such as the Environment Agency's *Delivering for the environment*<sup>6</sup> and the Health and Safety Commission's (HSC) *A strategy for workplace health and safety to 2010 and beyond*<sup>7</sup> make the case for a more risk-based approach to inspection. Local authorities use risk profiling for some of the functions carried out by environmental health and trading standards. The Royal Society for the Prevention of Accidents has endorsed a risk-based approach, saying (in the context of the HSC's strategy document):

“over the last two decades HSE has played a key role in establishing a risk/evidence based approach to health and safety which it has been able to champion with others right across Government. This now needs to be developed further and made much more accessible to everyone.”<sup>8</sup>

<sup>3</sup> *Attitudes towards health and safety: A quantitative survey of stakeholder opinion*, MORI Social Research Institute, 2004.

<sup>4</sup> *The evaluation of effective enforcement approaches for food safety in SMEs*, Charlotte Yapp and Robyn Fairman, May 2004.

<sup>5</sup> *Lifting the barriers to growth in UK small businesses: The FSB biennial membership survey*, Federation of Small Businesses, 2004.

<sup>6</sup> *Delivering for the environment: A 21st century approach to regulation*, Environment Agency, October 2003.

<sup>7</sup> *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, Health and Safety Commission, February 2004.

<sup>8</sup> *RoSPA response to the Health and Safety Commission consultations on 'A strategy for workplace health and safety in Great Britain to 2010 and beyond'*, Royal Society for the Prevention of Accidents, December 2003.

**3.17** The form of some regulations and practices focus activity on the premises handling the most hazardous materials. The Control of Major Accident Hazards (COMAH) regulations only apply to high hazard premises. The Environment Agency generally issues permits in areas where unregulated activity could harm the environment. The division of health and safety work between HSE and local authorities tends to give the HSE the premises with the most perceived danger, while leaving less risky ones with local authorities.

**3.18** The review believes that any inspection of a business should be justifiable by a risk profile, but also that the programme of inspections carried out as a result should be proportionate to the risk involved.

## Balancing inspection and advice

**3.19** A risk profile tells regulators where the greater risks are, but does not tell them how to balance their finite enforcement resources between inspection and advice. The riskiest businesses need regular inspections, but the review believes regulators should not assume that all, or even most, businesses need random, or routine, inspections.

**3.20** The view that broad inspection programmes are the best way of securing compliance is not persuasive, as many regulators have identified, but still exists in some places. Local authority trading standards offices inspected 10 per cent of businesses classified as low-risk in 2002-03 (61,651 inspections), but only 60 per cent of those classified as high risk (26,521 inspections). By contrast legislation concerning the Single Payment Scheme, which is administered by the Rural Payments Agency, stipulates that the random sample needed to test the risk assessment methodology should be 1 to 5 per cent. The low value of box-ticking inspection was characterised by one small business owner as “like the police knocking on your door every six months to see whether you’re a criminal or not.”<sup>9</sup>

**3.21** Good advice is important, because inspections cannot reach every business. Even though the Environment Agency use an advanced risk assessment methodology and has an intensive inspection programme for businesses that hold its permits, 80 per cent of pollution incidents and about 60 per cent of the commercial waste produced in England and Wales come from sites not routinely inspected by the Environment Agency. Seventy-five per cent of SMEs believed their business did not have a negative impact on the environment,<sup>10</sup> and the majority of these businesses were also not aware of the environmental legislation that applied to them. To the review, this is clear evidence that good advice for all businesses is an essential complement to an inspection regime. In food safety, 62 per cent of proprietors in food SMEs demonstrated a lack of knowledge throughout the compliance decision process. There was a general lack of understanding of both the legislation and of basic food safety principles. In addition, around 42 per cent of proprietors did not understand what hazard analysis meant.<sup>11</sup>

**3.22** Some businesses, such as nuclear plants or major chemicals works, will always need to be inspected regularly. However, the review believes that inspections should be targeted towards higher risk firms and that a range of alternative compliance measures, including advice-focused site visits, are more appropriate for lower-risk businesses.

<sup>9</sup> Participant in Hampton Review Focus Group, Sheffield, October 2004.

<sup>10</sup> *SME-environment 2003: A survey to assess the environmental behaviours of smaller UK businesses*, WS Atkins on behalf of NetRegs, 2003.

<sup>11</sup> *Factors affecting food safety compliance within small and medium-sized enterprises: Implications for regulatory and enforcement practices*, Charlotte Yapp and Robyn Fairman, 2004.



## When inspections do happen

**3.23** Where inspections do happen, they need to be focused on improving compliance. In the review's consultation, many businesses made a distinction between 'good' and 'bad' inspections that they had experienced. 'Good' inspections were characterised by friendly, open inspectors, willing to provide business-specific advice and overlook minor flaws, as long as they were corrected quickly. 'Bad' inspections were characterised by inexperienced inspectors, who were concerned more with strict application of the rules, than improving the business' compliance.

**3.24** The importance of advice being the focus of a site visit comes from a recent study of food SMEs.<sup>12</sup> The study found that inspection rating scores were significantly lower (less risky), and became even lower over time, within local authorities undertaking high levels of education. In addition, case studies showed that significantly more SMEs complied with food safety requirements in areas of high education activity compared with those in areas of low education activity. SMEs exceeding minimum requirements were generally found within areas of high education activity.

**3.25** Advice given during inspections needs to be appropriate and complete, explaining in simple terms the background to the legislation, what is expected of a business, the reasons for all changes and the necessary steps the business needs to take in order to be compliant. Advice that is seen as pointless or irrelevant can make businesses less willing to comply. Nearly two-thirds of food SMEs interviewed as part of a recent survey disagreed with requirements laid down during an inspection, because they thought they were irrelevant to food hygiene.<sup>13</sup>

**3.26** Support and advice are particularly important where inspectors are auditing processes, such as risk analysis in health and safety,<sup>14</sup> or hazard analysis in food safety.<sup>15</sup> Both of these are risk assessment approaches involving the identification and control of hazards within the business, and some businesses will need intensive support to meet the requirements.

**3.27** Box 3.1 describes the Office of Standards in Education's recent change in inspection policy, and the reasons behind it.

<sup>12</sup> *The evaluation of effective enforcement approaches for food safety in SMEs*, Charlotte Yapp and Robyn Fairman, May 2004.

<sup>13</sup> *Factors affecting food safety compliance within small and medium-sized enterprises: Implications for regulatory and enforcement practices*, Charlotte Yapp and Robyn Fairman, 2004.

<sup>14</sup> *Factors motivating proactive health and safety management*, Health and Safety Executive, 1998.

<sup>15</sup> *HACCP in small companies: benefit or burden?* Taylor E, *Journal of Food Safety*, 2001.

### Box 3.1: Ofsted's new inspection system

The Office of Standards in Education (Ofsted) recently published a report, *Improvement through inspection*,<sup>a</sup> in which they made two observations which echo recent moves in business regulation. First, it is well-managed schools and those that cause concern which are most likely to benefit from inspections. For well-managed schools, it is an encouragement to do even better; for badly performing schools, it is a necessary intervention. Many other schools show some improvement following an inspection, but, in the absence of external follow-up, tend to make incomplete use of inspection findings. Second, the report uncovers evidence that advance notice of inspection often contributes indirectly to the stress on those inspected, but may result in heightened performance by providers during, and often beyond, the inspection visit. There are also indications that the perceived benefits to schools of inspection may be starting to wane. This may be due to schools' greater proficiency in self-evaluation, which the inspection system has itself promoted.

To ensure that schools gain the most from inspection, Ofsted is proposing a different model, legislation permitting, from September 2005. Detailed inspections, which cover every aspect of a school's work, will be replaced by inspections that look at the 'central nervous system' of the school. Short notice and shorter reports with a three-week turnaround will become the norm for all schools, thus significantly reducing the regulatory burden. However, in the case of failure, the current system of 'special measures' will apply, with schools receiving a termly visit to monitor progress. In addition, schools that are not failing, but require significant improvement, will be served with a one year 'notice to improve', after which another inspection will follow. This is based on Ofsted's evidence that nothing is more likely to drive improvement in the worst performers than the certainty of reinspection.

<sup>a</sup> *Improvement through inspection: An evaluation of the impact of Ofsted's work*, Peter Matthews & Pam Sammons, July 2004.

## Charging

**3.28** A more direct cost of regulation to business comes from the charging regimes of regulators. Thirty-six of the 59 national regulators in our scope charge for some or all of their services, usually related to inspection. The rationale for charging regimes is that companies gain benefits as a result of being allowed to carry out certain activities (disposing of waste, or abstracting water from a river), and the general taxpayer should not have to pay for the processes designed to regulate such activities.

**3.29** The specifics of each charging regime are usually set out in legislation, and vary between different types of regulation. A recent review of the Environment Agency charging regime set out some broad principles, with which the review agrees:

- charges should reflect a modern risk-based approach to regulation;
- charges should provide signals about operator performance and, as far as possible within the constraints of cost recovery and cost reflectivity, reward and incentivise good performance;
- charges to licence holders should, on average, fairly reflect the costs of regulating them;

- charging schemes should continue to recover the cost of the regulatory regime as a whole and the charging base should be protected in order to fund the associated and agreed level of regulation; and
- regulators should vigorously pursue continuous improvement in its efficiency and proportionality, the benefits of which should be reflected in its charges.

**3.30** In addition, the way charges are calculated, and the distinction between chargeable and non-chargeable activity, needs to be more transparent and easier for businesses to understand.

**3.31** The review found evidence of inconsistency among the different regulators and enforcers regarding charging for information and advice. The HSE's current portfolio consists of 1,700 priced and 600 free products. The Environment Agency offers free information, including the popular NetRegs service, which provides online plain language guidance for business on a sectoral basis.

## INCONSISTENT REGULATION

**3.32** Both businesses and regulators have expressed concern to the review about inconsistency within the regulatory system. This inconsistency can be:

- fragmentation of regulatory enforcement between national policy setting bodies and numerous local delivery bodies;
- inconsistent activity between different local authorities;
- inconsistent application of the same regulations between different individuals; and
- sets of regulations that are not consistent, so that different regulators are applying mutually exclusive regulatory standards.

**3.33** The first two problems relate mainly to local authorities, which are the only area where multiple organisations enforce national regulations. Because local authorities are independent entities, and have control over their own regulatory services budget, they are able to take their own decisions on the appropriate levels of funding for regulatory activity.

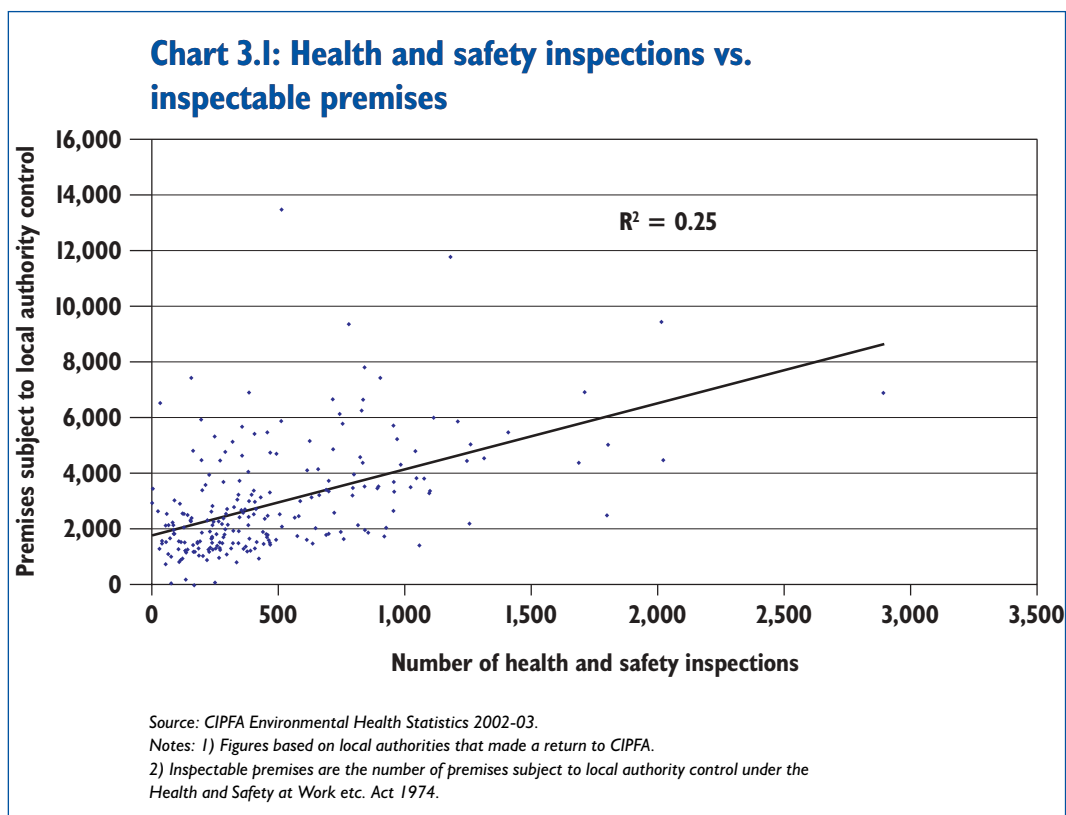
**Inconsistency between regulators 3.34** There are ten different central government departments directing and scrutinising the performance of the 203 trading standards offices and the 408 environmental health offices in England, Scotland and Wales. The central bodies are:

- DTI and Office of Fair Trading on trading standards;
- Food Standards Agency on food standards and food safety;
- Health and Safety Commission, and Department of Work and Pensions on health and safety;
- Defra on animal welfare, air pollution and private water supplies;
- Office of the Deputy Prime Minister on building control and private sector housing;
- Cabinet Office on enforcement standards;

- Department for Culture, Media and Sport on alcohol and entertainment licensing;
- Department of Health on infectious diseases and health protection;
- Department for Transport on taxi licensing; and
- Home Office on motor vehicle salvage, sex establishments, event safety and charity collections.

**3.35** While relevant departments should lead on services where they have expertise, local authorities have complained to the review that the lack of clear priority setting makes allocation of staff time and resources difficult at the local level. Government as a whole is reluctant to set priorities on behalf of local government. The inevitable corollary of that, however, is that activity and enforcement at local level can be driven by the pressure to pursue measurable outcomes, rather than what is objectively the best use of resources.

**Inconsistency at local level 3.36** The effects of the diffuse structure outlined above are exacerbated by wide differences in activity rates at the local level. Chart 3.1 below shows, for each local authority, the number of inspections against the number of inspectable premises for health and safety.



**3.37** The variation in inspection rates is clear from the spread of points around the graph. Closer examination of the data shows no geographical or demographic reasons for the large differences in activity. The review believes that many of the differences are because of individual policy decisions within local authorities.

**3.38** Since local authorities are independent of central government, this difference is perhaps to be expected, or even to be welcomed. In general, it is right that locally delivered services should be responsive to local situations, and regulation to some extent relies on local knowledge and expertise. The ODPM's ten-year vision for local authorities said "clarity is needed about those services which require nationally determined standards and priorities and those which should be locally determined with the minimum of direction from central Government".<sup>16</sup> Some local authority regulatory services, particularly trading standards, potentially affect a wider area through mail order or cross-border sales. Consumers can easily buy products across local authority boundaries or by mail order anywhere in the country. Rogue traders can also operate in many different areas or over the Internet.

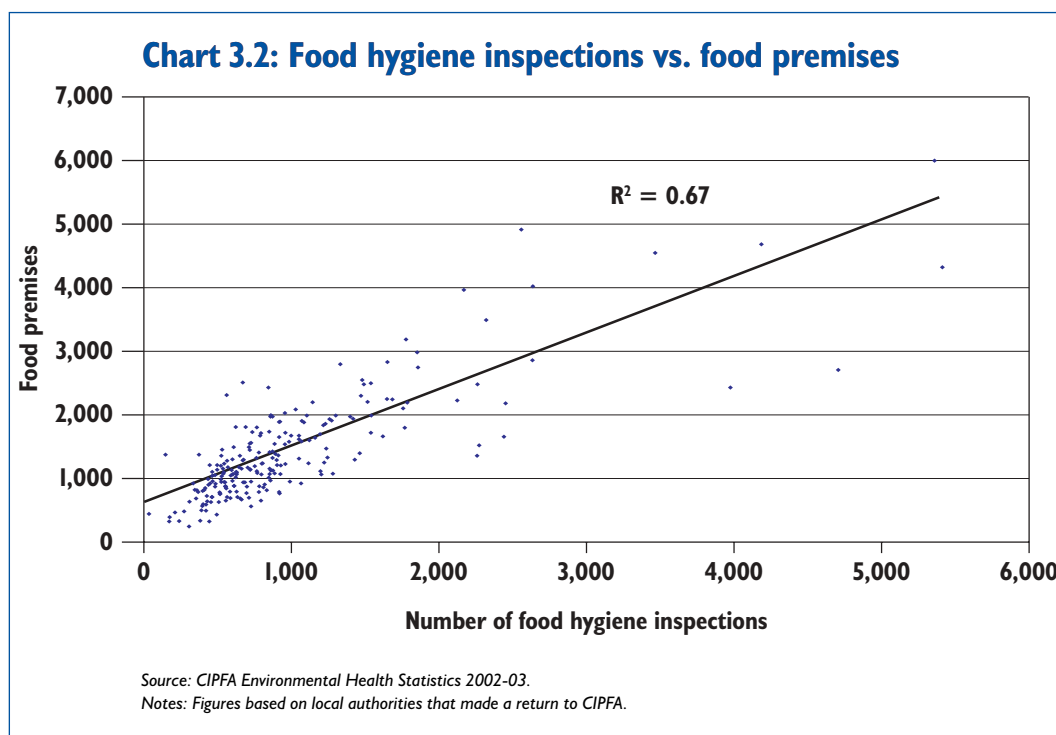
**3.39** There is some evidence that one governmental factor – differential reporting regimes – is skewing local authority activity. The Food Standards Agency has the strongest powers of any central government department over local authority regulatory services. Under the Food Standards Act 1999 it can, among other things:

- require information from local authorities relating to food law enforcement and inspect any records;
- enter local authority premises, to inspect records and take samples;
- publish information on the performance of enforcement authorities;
- make reports to individual authorities, including guidance on improving performance with the requirement to publish and respond; and
- ask another local authority to take over responsibility for a failing food authority.

**3.40** The Health and Safety Commission has less specific powers – it can advise both HSE and local authorities on inspection activity, can request annual reports from each local authority, and take over failing authorities. In practice, however, the HSC's powers to intervene are conditional on approval by the Secretary of State. The process can be slow and the HSC have, perhaps for this reason, generally been less activist than the Food Standards Agency. The DTI has weaker powers and only sets policy on trading standards, although it has powers to require information, inspect individual offices, and approve Trading Standards Officer (TSO) qualifications in respect of weights and measures.

**3.41** These different powers create incentives on local authorities to perform better in areas where national bodies' powers are stronger, skewing activity away from other environmental health issues towards food safety. In 2002-03, food safety was the second largest spending item in environmental health departments, behind housing standards. Health and safety came fifth, behind public health risks and pollution control. Chart 3.2 below is similar to Chart 3.1, but depicts food safety rather than health and safety.

<sup>16</sup> *The future of local government: Developing a 10 year vision*, Office of the Deputy Prime Minister, 2004.



**3.42** It is easy to see that food safety inspection rates are more consistent than health and safety inspections. The review believes this result is because of the close central control exercised by the Food Standards Agency, and the prescriptive nature of their inspection programme.

**3.43** Strong central leadership, and detailed risk assessment protocols, make inspection rates consistent across authorities, but do not allow for either local conditions or local policy to be taken into account. More local autonomy enables regulators to respond flexibly to local needs and decisions, but can also cause large variations in activity between seemingly similar local authorities. Neither of these situations is ideal. The review believes that the ideal solution is consistency in national standards and requirements with scope for local decision-making and delivery. Chapter 4 discusses the ways in which this outcome could be reached.

### Inconsistency between individuals

**3.44** National regulators have an advantage over local authorities in being able to secure consistency through management action and central information. This is reflected in the business views heard by the review – national regulators were generally given higher marks for consistency than local authorities. They were not immune from criticism, however. Businesses complained of inconsistency between different inspectors, and of frequent changes in personnel. They said that they often needed to follow up a phone call with written letters, in order to have a record of communication in case a different inspector took a different view in the future.

**3.45** In Yapp and Fairman's study, cited earlier, SMEs said that they thought it unlikely that the same inspector would visit in future.<sup>17</sup> This can lead to an unsatisfactory scenario where different problems are raised on different visits and the business may feel that there is little point in complying with the advice received. This problem is made worse where face-to-face intervention does not take place, for example, with advice on a phone line where business will

<sup>17</sup> *Factors affecting food safety compliance within small and medium-sized enterprises: Implications for regulatory and enforcement strategies*, Charlotte Yapp and Robyn Fairman, 2004.

rarely engage with the same person twice. These problems are reduced when businesses have the name of a single regulatory employee as a first port of call. Parts of the HSE designate a lead contact or inspector, paragraph 2.27 describes the Home Authority Principle that operates in local authorities.

**3.46** The problems identified in these complaints are matters of internal management for the regulators, and the review found that 70 per cent of respondents to our questionnaire had experienced conflicting advice from regulators. Consistency in the message given to businesses is clearly important, both for the regulators' credibility, and also to reduce uncertainty and cost in business. Chapter 4 suggests some ways in which the clarity and consistency of messages given to business can be improved.

**Inconsistency between regulations** **3.47** Inconsistent regulations are commonly cited as an area of concern for businesses of all sizes. The review has identified some areas where regulations themselves overlap, but have heard many more complaints about conflicting advice being given by different regulators.

**3.48** Since regulations are written by different organisations, it is not surprising that some conflict between regulations can exist, or be created. At present, there is no easy mechanism whereby such conflicts can be identified and corrected. By definition, conflict of regulation can be best identified by the businesses that experience the consequences. The review would, therefore, want to see some new capability, perhaps through a central organisation given the task of receiving complaints from businesses on conflicting regulations, and then bringing the regulators together to identify what can be done to solve the problem.

**3.49** Another way of ensuring that there is not confusion between regulations on a similar area is to agree a 'common regulatory platform'. This is a framework of standard definitions, so that words like 'fuel', 'waste' and 'wage' are used with the same meanings across all regulations and advice. The importance of EU legislation in regulatory matters may mean that this effort needs to be carried out at least in part at the European level.

## PAPERWORK BURDEN

**3.50** The paperwork burden on companies is imposed in a variety of ways. Regulators can require a form to be filled in, and information to be sent to them, or regulators can require the company to write a handbook, a hazard analysis, or to keep particular papers on file.

**3.51** The requirement to maintain safety handbooks or lists of chemicals in use depends on policy decisions about which key facts or material employees need on hand. The review would encourage regulators to ensure such paperwork retention or manual writing requirements are kept under review in the light of changing technology, and that such requirements should, as far as possible, go with the grain of existing practices and structures within a company.

**3.52** Businesses complain about the amount of paperwork they have to fill in. Businesses raised the issue at all seven of the review's discussion groups. In addition, 60 per cent of the businesses that responded to our consultation said that the forms they received contained overlapping requests for information. Box 3.2 describes the paperwork burden on a typical farm.

### Box 3.2: Paperwork burden on a typical farm

One farmer sent the review the forms he had to fill in on a regular basis, some of which are for quality assurance schemes not related to Government. He reported that the IACS form<sup>a</sup> was the most burdensome to fill in, taking about 45 working hours. The forms he sent in were:

- Estate Health and Safety book (48 pages);
- IACS material for the Rural Payments Agency (a 16 page form, 18 pages of supporting documents and a 60-page guidance document);
- 2004 Arable Area Payments Scheme guidance document (28 pages);
- Assured Combinable Crops Scheme manual (40 pages);
- Crop Protection Management Plan (21 page form and five pages of guidance);
- National Register of Sprayer Operators form (nine pages of forms and guidance);
- Defra Agriculture Survey (two pages, duplicating information on the IACS form);
- Farm Saved Seed Remuneration form (10 pages); and
- Rural Land Register data capture form (four pages and eleven supporting maps).

<sup>a</sup> IACS (Integrated Administration and Control System) forms are required by the Rural Payments Agency. They were introduced in the arable and livestock sectors as part of the 1992 Common Agricultural Policy reforms.

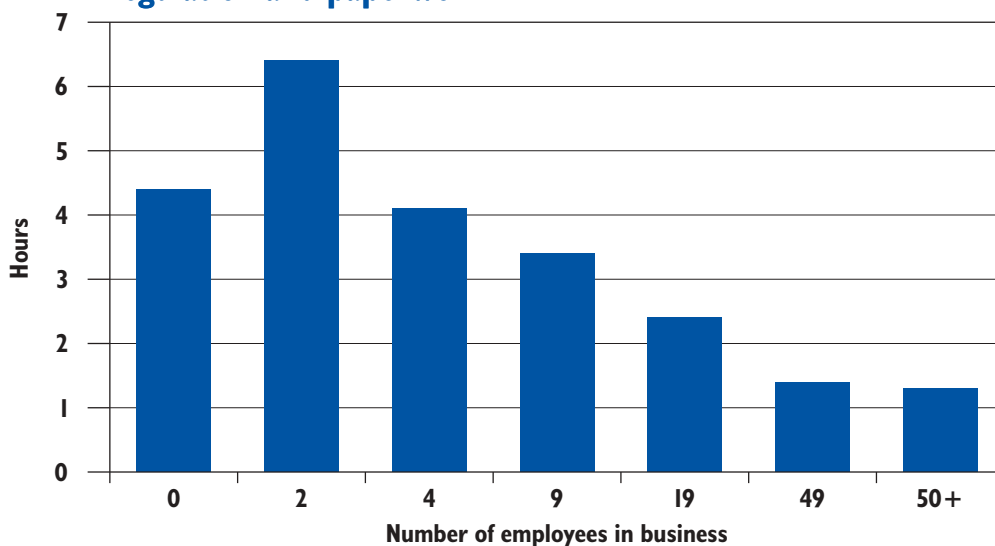
**3.53** To try and understand the burden on business, the review examined a sample of 80 forms issued by regulators – by no means a complete set. Some of the data required (name, address, company number) was the same from form to form. Other data was common between forms in particular sectors (agricultural, environmental etc). The review identified a degree of overlapping data between the forms, which increased if the forms were considered sector by sector.

**3.54** This area is important because research shows that the burden of paperwork falls most heavily on the smallest businesses. Nearly half of small businesses with employees say that regulation is “an obstacle to the success of their business”, and the majority of those say that the time taken up by regulation (filling in forms and inspection) is the main concern.<sup>18</sup> Chart 3.3 below, showing how many hours per person month are spent on Government regulation and paperwork, makes the size of the burden on the smallest businesses clear.

<sup>18</sup> SBRC/NatWest survey of small businesses, 2004.



**Chart 3.3: Hours per person month spent on Government regulation and paperwork**



Source: SBRC/NatWest survey of small businesses, 2003.

**3.55** Businesses expressed particular concern over the paperwork burden relating to permitting regimes, where a good deal of information is required 'up front'. Since permitting regimes, by their nature, usually involve the most hazardous activities, there may be limited scope for reductions in the information required without materially increasing risk. Both businesses and regulators could benefit, however, from improvements in the means of transmission – electronic forms were strongly preferred to paper forms among businesses, outside the agricultural sector, that spoke to the review.

**3.56** The review found no systematic process for assessing forms, or for understanding whether the data required was available from other sources. Chapter 4 identifies a number of ways in which forms can be reduced in number, simplified, and made quicker to complete.

## JOINING UP OPERATIONS

**3.57** Regulators can reduce their impact on businesses by co-ordinating their activities. This could mean sharing information on a business to improve the quality of its risk assessment, sharing data so that businesses do not need to fill in forms twice, or undertaking joint inspection activity. Regulators are keen on joint working in principle, but the practical difficulties of working across boundaries, whether geographical or structural barriers, has made joint working the exception rather than the rule. Of businesses who responded to our consultation, only 26 per cent said that they experienced any co-ordination of inspection between regulators.

**3.58** Information sharing on businesses already happens to some extent, but is more common in local authorities, where the relevant inspectors often work in the same physical location, and concerns can easily be shared without a bureaucratic process. However, the corollary of good informal activity is that there is sometimes no formal process for sharing information or working jointly across authority boundaries. Some counties provide central co-ordinating functions for district-level issues, and there are regional forums for trading standards. In the most serious cases, however, the impediments of cross-border working

make it hard for regulators to take effective action against rogue traders who often operate across boundaries and on the edge of the law. Chapter 4 discusses the role of local authorities in regulatory services.

**3.59** At national level, there are some arrangements for joint working, both informally and through memoranda of understanding. The HSE and Environment Agency have a memorandum of understanding on the inspection of premises regulated under the COMAH regulations.<sup>19</sup> It sets out in detail the different responsibilities of the two regulators, and how they will be implemented. On paper, it is an excellent system. Businesses, however, told us they believed it was not being used effectively in practice.

**3.60** The review is keen to promote joint working where it helps to reduce the burden on business, or where it can improve the information available to make a more comprehensive risk assessment on a business. Chapter 4 contains some ways in which barriers to closer joint working could be reduced or removed.

### ENSURING COMPLIANCE

**3.61** As well as good advice and support, and an efficient inspection regime, the right incentives need to be in place to encourage compliance. At present, these incentives are usually negative, often focused on warnings backed up by the threat of financial penalties in the magistrates' courts. Box 3.3 describes how the new HM Revenue and Customs department (which is outside the scope of the review) proposes to tackle compliant and non-compliant taxpayers.

#### **Box 3.3: Improving tax compliance in HM Revenue and Customs**

The vast majority of taxpayers pay the right tax or claim the right tax credits with minimal intervention. The best way of improving compliance is for the Government to encourage customers to comply voluntarily. The management of the new HM Revenue and Customs (announced in Budget 2004) has said it will make reducing costs faced by compliant taxpayers a priority, but will also take vigorous action against those who choose not to comply. Such non-compliance reflects a wide variety of behaviours. In many cases it results from errors by those who do not understand the rules. There is, however, activity that constitutes avoidance and deliberate evasion. The department has said that it will distinguish between types of behaviour and customer groups to determine its response to non-compliance with interventions ranging from encouragement, education, support and assistance through to persuasion and finally enforcement.

The Bill to create HM Revenue and Customs will be considered during the current Parliamentary session. The new department has pledged to work to eliminate unnecessary contact with taxpayers, provide excellent Internet services and ensure that customer initiated contact is handled effectively and comprehensively. A number of initiatives to improve delivery for small businesses are underway. New large business, investigation and anti-avoidance services will be created. The underlying aim is to minimise burdens on the majority of compliant taxpayers while appropriately targeting the non-compliant.

<sup>19</sup> available online at <http://www.hse.gov.uk/aboutus/framework/mou/f-mou-seveso.pdf>

**Penalty regime 3.62** The current penalty regime is fragmented and complicated. Prosecution is a slow and expensive process, and very few health and safety or environmental cases proceed to magistrates' courts. Magistrates' courts can levy fines of up to £20,000, and can refer serious cases to Crown Courts, where fines are only limited by the relevant legislation. Local authorities have told the review that the cost of prosecution deters them from taking the strongest action against some traders.

**3.63** Considering that prosecution is a last resort, the fines resulting from prosecution are generally low. The average fine for a breach of health and safety law was £4,036 in 2003-04, while the average magistrates' court fine for breaches of environmental law in the same year was £3,861. For large firms, these fines are trivial, while for small firms, they are much more serious. It is noticeable that some regulators (Office of Fair Trading and local authority food safety officers) have far more extensive powers, such as Stop Now orders and closure of food premises, which can be activated immediately, with the option of later appeal to a magistrates' court. The HSE and local authorities can issue immediate Prohibition Notices on health and safety matters. The review believes that fines and other penalties need to be made internally consistent, and the amount of fines tailored more closely both to the seriousness of the offences, and the ability of the company to pay, in order to better incentivise businesses towards compliance.

**Reputational sanctions 3.64** Some regulators use reputational sanctions as described in Chapter 2. These work well in some cases, particularly in areas such as consumer protection. For organisations that have limited interaction with the general public, however, these may be less effective. The review expects to be making particular study of the penalty regime in the second phase of the review, and Chapter 4 contains some ideas for improving the effectiveness of penalties, as well as more radical solutions, such as restitutive justice.

**Positive incentives 3.65** The review also believes that there is scope for positive incentives, through awards, 'green ticks', and other measures. It is right in principle that the best performers should be recognised and rewarded for their efforts. Smiley faces have been issued to all restaurants in Denmark following inspection to depict the level of compliance, and closer to home, several trading standards departments participate in a scheme that approves second-hand car dealers. Chapter 4 lists some possible solutions in this area.

## WIDER ISSUES

**3.66** The remit of our review covers the way in which regulations are enforced once they are made. During our work, however, many stakeholders raised concerns about the way that regulations were prepared, and the nature of the requirements contained in them. For this reason, the following section makes some general comments on the way that regulations are made.

**Quality of regulation 3.67** Businesses and regulators have complained to the review about individual pieces of regulation that they consider ineffective or poorly drafted, or which raise administrative costs because they are difficult to implement and enforce. It is not in the review's remit to make recommendations on what is regulated, or how the regulations are drafted, but it is best practise that regulations should be drafted in consultation with regulators as well as business, to ensure that the law can be properly and simply implemented and enforced.

**3.68** The same principle applies to negotiation in Europe. Some regulators (such as the Food Standards Agency) take an active role in policy development and European negotiation. Others, particularly those with no policy function, are less closely involved. Different circumstances will need different solutions, but those negotiating in Brussels must fully understand the regulators' perspective to ensure that regulations can be implemented as efficiently as possible.

**3.69** Another observation made to the review is that regulatory requirements change frequently, making compliance difficult. The perception of frequent changes may be partially attributable to differing interpretations of individual inspectors, considered earlier in this chapter. At the risk of stating the obvious, regulations should not change without a justifiable cause, and such changes should, as far as possible, go with the grain of previous requirements.

**4.1** Chapter 3 detailed the problems identified by the review in the regulatory system. This chapter sets out some possible solutions, and invites comments from all stakeholders on the options proposed.

**4.2** It should be made clear that the ideas presented in this chapter are possible recommendations, rather than the review's final recommendations. The ideas set out here have the potential to make a difference and the review will be further investigating these ideas in the second stage of the review process.

**4.3** The review is keen to hear the views of regulators, businesses and other stakeholders on the proposals set out in this chapter, and a list of questions is outlined underneath each solution area. The list is reproduced in Chapter 5 with the postal and email addresses to which consultation responses should be sent.

## MEASURING ADMINISTRATIVE COSTS

**4.4** In paragraph 1.12, the lack of a single credible measure for administrative costs on business was discussed. The review favours a standard methodology for calculating these costs. Such a methodology would be useful for evaluating the success of Government schemes to reduce administrative costs.

### The review would like to hear from you:

1. Is a standard methodology for calculating administrative costs of regulation possible?
2. Is it desirable to have, and use, such a single methodology?

## RESPONSIVE REGULATION

**4.5** In paragraph 3.19, the balance between inspection and advice, and the need for proper risk assessment to form the basis of all inspection programmes, was discussed.

### Better advice

#### Guidance on regulations

**4.6** The review discussed the use of advice and guidance in paragraph 3.7. Common regulatory platforms can make the use of language in regulations more consistent. The use of 'see at a glance' guidance on all new regulations – compulsory from the start of 2005<sup>1</sup> – should make guidance easier to understand. The review believes that the major regulators should make a public commitment that, except in the most serious cases, they will not prosecute businesses that have honestly attempted to follow current simple guidance. This will increase the value and readership of the guidance, and – by removing a layer of complexity and uncertainty from regulation – will increase business understanding and compliance.

<sup>1</sup> A government action plan for small business: Making the UK the best place in the world to start and grow a business, Small Business Service, January 2004.

**Giving advice 4.7** Different businesses require different forms of advice. Large, complex, or dangerous businesses will often need highly specialised advice, while small businesses need more basic support. The review believes that regulators need to ensure that they clearly differentiate the way they treat small businesses and the way they treat large, complex or dangerous organisations.

**4.8** Regulators should give greater emphasis to advice services. These should be tailored to business needs, and be easy to use. The Environment Agency's (EA's) NetRegs<sup>2</sup> is an excellent example of the user-centred, simple services that the review would like to see. Regulators should also consider best practice on engaging business, including:

- seminars organised through small business groups, chambers of commerce, or independently;
- one-stop shops or advice centres for small business; and
- more flexible use of new media, such as email newsletters, and online discussion groups.

**Evaluating advice services 4.9** Regulators and enforcers should undertake more outcome-focused evaluation of their guidance, advice and support activities. The measures of success need to be based on what is achieved (raising levels of awareness and understanding of regulations, impacts on management, business attitudes etc.) rather than what activity is carried out.

**Charging 4.10** Charging was discussed in paragraph 3.28. The review believes that the charging regime, as currently set out, is complex and hard to navigate. Regulators should consider ways in which the charging system can be made simple and transparent for businesses.

**The review would like to hear from you:**

- 3. Should regulators make a commitment not to prosecute businesses who have followed simple guidance, except in the most serious cases?**
- 4. Should regulators give greater emphasis to their advice services?**
- 5. Should regulators evaluate their advice services on the basis of outcomes?**

## INSPECTIONS AND RISK

**4.11** Risk profiling is discussed in detail in paragraph 3.19. Face-to-face interaction between businesses and regulators should be more focused on providing advice and guidance to improve compliance. Inspection should be directed at the riskiest premises, and there should not be an assumption that all, or even most, businesses need a regular inspection visit. The use of comprehensive risk profiling would also ensure that inspections are justified. The review would therefore propose that:

- all inspections should be based on a risk profile, or as part of a small random sample to test risk profiling methodologies;
- businesses should be inspected according to their risk assessment, or as part of a small random sample to test the validity of the risk assessment; and

<sup>2</sup> <http://www.environment-agency.gov.uk/netregs/>

- if existing legislation imposes a heavier inspection programme than risk assessment would require, regulators should continue to follow it. Government, however, should review such legislation when it is drawn to its attention. It should also make efforts here, and in the EU, to see that enforcement activity is based on risk profiling.

**Robust risk assessment 4.12** It is important that risk assessments are conducted in an open and transparent manner and include all relevant information about a business. Management systems, performance in other regulated areas, and external accreditations can reveal a real difference in companies' performance. Risk assessment methodologies also need to be open and challengeable, to ensure that consumers and businesses can see that judgements are being reached fairly. The review would therefore propose that:

- regulators should take account in their risk assessment of all factors that can be demonstrated to have an effect on businesses' performance in the regulated area;
- risk assessment methodologies should be objective and open, as much as is consistent with preventing their being manipulated by individual businesses;
- regulators should consult business and consumer groups on the factors that are included in risk assessments, as well as the weight attached to different factors; and
- there should be an appeals mechanism in order to settle disputes on risk ratings.

**The review would like to hear from you:**

**6. How should inspection be targeted?**

**7. Should regulators eliminate routine inspection for lower risk premises?**

**8. Should businesses with a good compliance record have inspection holidays?**

**9. Should risk assessment calculations include external factors such as accreditation or performance in other regulated areas?**

**10. Should regulators consult on their risk assessment methodologies?**

## MORE EFFECTIVE INCENTIVES

**Penalty regimes 4.13** The current problems with the penalty regime were discussed in paragraph 3.62. The review believes that penalties must become more meaningful, and more easily applied. At the same time, new positive incentives for good practice need to be created to balance the positive and negative outcomes of regulation. This will form a major area of investigation in the second phase of the review. The areas the review expects to cover are:

- penalties set as a proportion of a company's annual turnover, rather than an absolute amount;
- administrative penalties (as used by, for example, the Financial Services Authority) to replace some offences that are currently prosecuted in a magistrates' court;
- training offered to magistrates' clerks so that they can better appreciate the relative severity of different regulatory offences;

- making corporate leadership personally responsible for serious regulatory breaches within their organisations;
- greater use of reputational sanctions; and
- restitutive penalties, such as remediation for damage caused, or payment into a grant-making fund with an appropriate remit.

**Compliance incentives** 4.14 As discussed in paragraph 3.65, there is limited use of positive incentives in the regulatory system. Many companies that continue to meet or exceed regulatory requirements are not formally recognised for their efforts.

4.15 Good compliance records should be acknowledged as part of risk assessment through less frequent inspections. There is also scope for ‘quality marks’, showing excellent regulatory outcomes and a commitment to improvement. Some local authorities already have food hygiene award schemes, and the Chartered Institute of Environmental Health (CIEH) has suggested requiring the owners of food premises to post the results of food inspections in their premises, to inform potential customers of the standards of food hygiene and safety.<sup>3</sup> The second phase of the review will consider all of these options, alongside action on penalties.

**The review would like to hear from you:**

11. Should the penalty regime be reformed to make penalties quicker and tougher?
12. Should businesses get prior notice of an enforcement action?
13. Should regulators discuss with business the potential application of a penalty before it is applied and allow the business the chance to correct the infraction?
14. Should regulators be held accountable for enforcement actions that are later reversed?
15. Should a business’ past performance affect the level of a penalty?
16. Should there be more administrative penalties?
17. Should personal criminal sanctions be used more often?
18. Should company directors be held liable for serious infractions from which they are currently exempt?
19. Should penalties be set as a proportion of a company’s turnover?
20. Should there be greater use of reputational sanctions?
21. Should there be restitutive penalties, where companies are required to remediate damage caused, or to fund improvements elsewhere?
22. Should there be more positive incentives for businesses to comply with regulation?

## DEALING FAIRLY WITH BUSINESS

**Appeal mechanisms** 4.16 Most interactions between regulators and business occur without any problems, but on some occasions businesses have legitimate concerns that a regulator has acted inappropriately or treated the business unfairly. In these circumstances, credible appeals procedures need to be available, so that businesses can challenge the decision of an inspector or regulatory body.

<sup>3</sup> CIEH press release online at <http://www.qualityfoodonline.co.uk/features.asp?id=10>



**4.17** Most of the regulators within our remit have appeal procedures. The review believes that those procedures should:

- be transparent and easy to understand;
- be easy to access;
- resolve issues quickly; and
- be, and be seen to be, fair.

**4.18** Appeal mechanisms must avoid giving the impression that regulators are ‘closing ranks’ on difficult issues. For this reason, a final right of appeal should be to a body outside the regulator, either an independent tribunal or the sponsoring department. Regulators’ annual reports should include details of the number of cases appealed, with the time taken to resolve them and the number resolved for and against the regulator.

#### Handling conflicting regulations

**4.19** The issue of conflicting regulation was discussed in paragraph 3.47. The review believes that there is a need for some identified person or office to act as a central reporting point for such conflicts. Their function would be to bring the relevant regulators together and ensure that a timely solution can be reached that satisfies all stakeholders.

#### The review would like to hear from you:

**23. Are the above criteria for appeal mechanisms the right ones?**

**24. Should there be a central reporting point for conflicting regulations?**

## SIMPLIFYING REGULATORY STRUCTURES

**4.20** The complexity of regulatory structures at national and local levels causes problems of communication across the whole regulatory system. The review believes that there is scope for much greater joint working between regulators, and also for some consolidation of smaller regulators into existing larger bodies. We will be looking more closely at local authority enforcement in the second phase of the review.

### Joint working between regulators

**4.21** In areas where multiple regulators work, there is scope for information sharing and joint activity to simplify the business experience of regulation. For some heavily regulated sectors, a ‘virtual merger’, like Defra’s Whole Farm Approach, detailed in paragraph 3.7, could be appropriate.

#### Information sharing

**4.22** Exchanging information can help regulators target their inspections more closely. The review believes that inspectors who have concerns about the operations of a business in another regulator’s area should, as a matter of course, report their findings to the relevant body. The review is considering whether this arrangement should be formalised into cross-reporting arrangements, either of enforcement notices or of all (inspection) outcomes.

#### Cross-training

**4.23** Local authorities, because of the scope of their operations, have the potential to cross-train their staff in environmental health and other areas. In unitary authorities, staff could be cross-trained in environmental health and trading standards. This would provide more flexibility in staff allocation, and allow one site visit to cover multiple regulations.

**Single sectoral systems** **4.24** The Whole Farm Approach programme brings together data and inspection requirements in the farming sector to reduce the inspection and form-filling burden. Although the agricultural sector presents some unusual features (in terms of the intensity of reporting requirements, large number of businesses, and the small average business size), the review believes that a similar unified inspection regime could be worthwhile in some other heavily inspected sectors, such as chemicals or food manufacturing. The HSE, EA and Food Standards Agency will be consulted on the scope for such initiatives in the next phase of the review.

**Single Business Identifier** **4.25** Joined up regulation would be easier if there were a single way of referring to a business. Businesses have a number of different possible identifiers, ranging from personal National Insurance numbers for single operators, to company numbers for limited companies and PLCs. The review believes that a single business identifier could simplify data exchange, and facilitate data sharing and form reduction. Implementation of a single identifier would need to be rolled out gradually through the different business databases in use, but this would form part of the goal of achieving a single business data set, as described below.

### The review would like to hear from you:

- 25. Should regulators share information to improve their risk profiling?**
- 26. Should regulators establish common reporting frameworks to minimise duplication of the data that businesses have to submit?**
- 27. Should local authorities cross-train their staff, so they can advise and inspect on a wider range of regulations?**
- 28. Should there be a single number or code to identify businesses?**

## Consolidation of regulators

**4.26** Consolidation of regulators with similar remits has happened in earlier rounds of reform and continues today. The *Rural delivery review*<sup>4</sup> made the case for a series of mergers in bodies concerned with rural regulation such as the joining up of English Nature, Defra's Rural Development Service and some functions of the Countryside Agency. A number of Department of Health reports have also resulted in the creation of merged regulators like the Commission for Social Care Inspection which was launched in April 2004 and incorporates the work previously done by the Social Services Inspectorate (SSI), the SSI/Audit Commission Joint Review Team and the National Care Standards Commission. The Healthcare Commission and the Medical and Healthcare products Regulatory Agency are also the result of a consolidation exercise. In addition, a White Paper was recently published announcing plans to merge the Commission for Racial Equality, Disability Rights Commission, and Equal Opportunity Commission into a new Commission for Equality and Human Rights.<sup>5</sup>

**4.27** Consolidation, where appropriate, could potentially create economies of scale, reduce duplication of paperwork and inspections, internalise and hence reduce conflicting regulation or inspection policies, and improve accountability. It could also be disruptive and costly, importing external divisions into a new body. Creating a single 'super-regulator', as some have suggested, risks increasing bureaucracy and the potential creation of paralysing

<sup>4</sup> *Rural delivery review: A report on the delivery of government policies in rural England*, Christopher Haskins, October 2003.

<sup>5</sup> *Fairness for all: A new Commission for Equality and Human Rights*, Department of Trade and Industry, May 2004.

internal conflicts. Any suggested consolidation would need to be based on a thorough analysis including the potential for cultural overlap and synergies as well as the informed view of the relevant expert stakeholders.

**4.28** Consolidation is not an end in itself, but should be justified by real benefits for operations and increased consistency for businesses. There have been some specific suggestions for consolidation made to the review, including:

- a new Veterinary and Marine Agency made up of the State Veterinary Service, the National Bee Unit of the Central Science Laboratory, the Sea Fisheries Inspectorate, the Veterinary Medicines Directorate, the Wildlife Inspectorate, and the Fish Health Inspectorate;
- expanding the remit of the Food Standards Agency by giving it responsibility for drinking water quality (from the Drinking Water Inspectorate) and the quality of medicines (leaving only licensing with the Medical and Healthcare products Regulatory Authority); and
- creating a Food and Medicines Agency by adding into the previous suggestion the Dairy Hygiene Inspectorate, the Egg Marketing Inspectorate, the Home Grown Cereals Authority, the Sea Fish Industry Authority, and the Wine Standards Board. This body could also include the Pesticides Safety Directorate, the Horticultural Marketing Inspectorate, the Plant Health and Seeds Inspectorate, and the Plant Varieties and Seeds Division of Defra.

**4.29** Some consolidation is already under way. Defra's *Delivery strategy*<sup>6</sup> involves moving operational and delivery functions out of the core department into external bodies. This provides an opportunity to refocus Defra's inspection and enforcement regimes through joint working protocols and structural reform.

**4.30** The next phase of the review will examine the scope for consolidation in the current regulatory structure.

**The review would like to hear from you:**

**29. Should there be a structural consolidation of regulators where appropriate synergies could be realised?**

**30. If so, what changes should be made?**

## Local authority enforcement

**4.31** Local authority enforcement was discussed in paragraph 3.36. Their regulatory services will be a major focus of the second phase of this review. The ultimate aim is to deliver consistency across the country, while maintaining local presence and local knowledge.

**4.32** In the context of other work on local government, including the Local Government Vision<sup>7</sup> and the wider regulatory role of local authorities, our future work will look at the following areas, although this is not an exhaustive list:

- formalising and/or extending existing informal joint working between local authorities;

<sup>6</sup> <http://www.defra.gov.uk/corporate/delivery/index.htm>

<sup>7</sup> [http://www.odpm.gov.uk/stellent/groups/odpm\\_localgov/documents/divisionhomepage/029981.hcsp](http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/divisionhomepage/029981.hcsp)

- clustering of local authorities to share environmental health and trading standards functions;
- co-ordinating budgets and inspection programmes for environmental health and/or trading standards at a regional level; and
- centralising or partly centralising standards and operational responsibility for environmental health and/or trading standards, with delivery through a network of local offices, or the existing local authority structure.

**The review would like to hear from you:**

**31. What is the right level for inspection and policy setting in trading standards and environmental health?**

**32. How should local regulators join up their activities across boundaries?**

## REDUCING THE PAPERWORK BURDEN

**4.33** The burden of paperwork falls most heavily on smaller businesses, as discussed in paragraph 3.50. This has to be tackled both by reducing the number of information gathering exercises that businesses have to undertake, and by simplifying the forms required by regulators.

### Reducing the numbers of forms

**4.34** The first way to reduce the number of forms is to ensure that unnecessary forms are not introduced. The review believes that regulators should, as a matter of course, make a specific assessment of every form to determine whether there is a need for the data at all, and second, whether the data is available elsewhere. The review is considering recommending that regulators undertake regular ‘use-of-data’ reviews to ensure that they are not collecting data that is then not used. Regulators should also test forms with a reference group of affected businesses, before bringing them into use. Regulators could be required (as they are in the USA) to assess the time taken to understand and complete a form. This data could then be printed on the form and used to set targets for reductions.

**4.35** A more complex way of reducing the number of forms would be, over time, to collapse the different forms that regulators require into a single form. This could be done on paper, by creating a standard form with additional sheets (like the Inland Revenue’s Self-Assessment Tax Return), or electronically through an IT-based system. A single form could be created on a sectoral basis, or for business in general.

**4.36** A single electronic form is a worthwhile long-term goal, and the review believes that this is inevitable. It is probably some years off, however, since it would require a significant amount of investment in order to unify the different databases currently in use by regulators. The Environment Agency, for example, still uses a number of separate databases, a heritage both of the earlier organisations that merged to form it, and the different sorts of regulatory regimes it manages. The review sees a single database as a long-term aspiration, which could be undertaken gradually, through sensible and steady amalgamation of existing databases.

### Simpler forms

**4.37** The review saw a great divergence of style and layout in the different forms examined. The review believes that Government should put together a set of usability guidelines to promote excellent form design. This should help to reduce the learning curve for business when faced with new forms, and make data entry simpler.

**4.38** In cases where a regulator holds data that it is unlikely to have changed from year to year, data should be pre-printed on forms when they are sent out. This pre-printed form is known as a ‘check and sign’ form. It allows businesses just to check the pre-printed data, rather than needing to fill it in again unnecessarily. They will still need to fill in data that is likely to have changed (such as turnover). The review is considering setting a target in our final report for all forms to be ‘check and sign’.

**4.39** A further suggestion is a call for the collection and examination of the forms regulators require in order for Government to identify the areas of information duplication and where similar information is requested by multiple regulators. Once identified, the forms could be amended. Regulators could then identify where there is opportunity for information sharing and common reporting frameworks, and initiate measures to implement these changes. This would result in the overall reduction of administrative costs.

**Sharing data 4.40** Data sharing can reduce the form-filling burden, and regulators should, as part of their assessment of data requirements, try to obtain data from other regulators who are likely to have it. An inter-regulator group on data sharing would be a useful forum for such interaction, and could also lead the drive towards a single electronic form. Regulators could also ensure that those agencies that are requesting similar information agree upon a common reporting platform, which will simplify the company’s data submissions.

**4.41** Regulators should also give business the opportunity to use their own existing databases to populate an electronic or paper form. Regulators should publish data exchange requirements, so that developers marketing software to business can incorporate an ‘export to form’ feature. This would enable businesses to print out the right forms in the correct format at the press of a button, using their internal management systems. This would greatly reduce the form-filling burden, while improving data quality.

**The review would like to hear from you:**

- 33. Should regulators be required to gain approval from a relevant business reference group before introducing a new form?**
- 34. Should regulators merge forms, with the aim of creating a single form for each business or in each sector?**
- 35. Should the review set out a long-term ambition of a single electronic form?**
- 36. Should the review set out the ambition to collect and examine all of the current forms to identify areas of duplicate information?**
- 37. Should regulators share information on businesses to reduce the form-filling burden?**
- 38. Should regulators provide businesses with pre-populated ‘check and sign’ forms?**

## BETTER CENTRAL BENCHMARKING OF REGULATORS

**4.42** The review was struck by an accountability gap that exists in relation to the operation of national and local regulators. Regulators are accountable to Parliament through their parent departments for the funding they receive, and local authority regulatory departments are accountable to their elected members. It is also right that the individual judgements of regulators are made independent of Government control. There is a gap, however, in

accountability for the way in which regulators carry out their work. The review thinks that there is a case for a stronger lead from the centre on issues such as risk profiling, conflicting regulation, and reducing administrative costs.

**4.43** The same point was made by the House of Lords Select Committee on the Constitution, which, in their Sixth Report of Session 2003-04, said:

“though created by statute and appointed by Ministers, [regulators] exist essentially as independent agents. Given this, the question arises as to how the performance of regulators is monitored to ensure that the public interest is properly served”.<sup>8</sup>

**4.44** The review believes that there is a case, as part of building a more robust regulatory management system, for strengthening the current arrangements for monitoring and reporting on the inspection and enforcement activities of regulators. This would include:

- receiving reports of conflicting regulations and commission solutions from the relevant regulators;
- having a contact point and co-ordinator on issues such as risk assessment, data sharing, and joint working;
- holding public hearings on, or publishing assessments of, regulators’ annual reports;
- holding regular inter-regulator groups on form design, data sharing and joint working; and
- setting appropriate service performance indicators and, if required, publishing a league table of regulators based on them.

**4.45** As follow up, the review will assess whether, and how, these new functions could be carried out by existing bodies or whether new arrangements are required.

**The review would like to hear from you:**

**39. Are the functions listed above the right ones to secure an improvement in the inspection and enforcement activities of regulation?**

**40. How could these new functions best be delivered without creating duplication and overlap?**

<sup>8</sup> *The regulatory state: Ensuring its accountability*, House of Lords Select Committee on the Constitution, 6th Report of Session 2003-04, May 2004.

**5.1** Chapter 4 set out the potential solutions that the review will be considering in its second phase. The review would welcome views from all stakeholders on any of the issues raised in this report. A list of questions for consultation was set out in chapter 4, and is reproduced in full below. Respondents should not feel bound by the list of questions – any response on any issue would be welcomed.

**5.2** Consultation responses should be sent, by Friday 4 February 2005, to:

Sowdamini Kadambari  
Hampton Review  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ  
or to  
[hamptonreview@hm-treasury.x.gsi.gov.uk](mailto:hamptonreview@hm-treasury.x.gsi.gov.uk)

**5.3** The final report is expected to be published in spring 2005. Consultation responses received after the February 4th deadline, may not be considered.

**5.4** Contributions made to the review will be anonymised if they are quoted, but stakeholders should clearly state in their response if they do not want to be included in a list of those who have responded.

**5.5** The full list of questions for consultation is:

1. Is a standard methodology for calculating the administrative costs of regulation possible?
2. Is it desirable to have, and use, such a single methodology?
3. Should regulators make a commitment not to prosecute businesses who have followed simple guidance, except in the most serious cases?
4. Should regulators give greater emphasis to their advice services?
5. Should regulators evaluate their advice services on the basis of outcomes?
6. How should inspection be targeted?
7. Should regulators eliminate routine inspection for lower-risk premises?
8. Should businesses with a good compliance record have inspection holidays?
9. Should risk assessment calculations include external factors such as accreditation or performance in other regulated areas?
10. Should regulators consult on their risk assessment methodologies?
11. Should the penalty regime be reformed to make penalties quicker and tougher?
12. Should businesses get prior notice of an enforcement action?
13. Should regulators discuss with business the potential application of a penalty before it is applied to allow the business to correct the infraction?
14. Should regulators be held accountable for enforcement actions that are later reversed?



15. Should a business' past performance affect the level of a penalty?
16. Should there be more administrative penalties?
17. Should personal criminal sanctions be used more often?
18. Should company directors be held liable for serious infractions for which they are currently exempt?
19. Should penalties be set as a proportion of a company's turnover?
20. Should there be greater use of reputational sanctions?
21. Should there be restitutive penalties, where companies are required to remediate damage caused, or to fund improvements elsewhere?
22. Should there be more positive incentives for businesses to comply with regulation?
23. Are the criteria for appeal mechanisms set out in Chapter 4 the right ones?
24. Should there be a central reporting point for conflicting regulations?
25. Should regulators share information to improve their risk profiling?
26. Should regulators establish common reporting frameworks to minimise duplication of the data that businesses have to submit?
27. Should local authorities cross-train their staff, so they can advise and inspect on a wider range of regulations?
28. Should there be a single number or code to identify businesses?
29. Should there be a structural consolidation of regulators where appropriate synergies could be realised?
30. If so, what changes should be made?
31. What is the right level for inspection and policy setting in trading standards and environmental health?
32. How should local regulators join up their activities across boundaries?
33. Should regulators be required to gain approval from a relevant business reference group before introducing a new form?
34. Should regulators merge forms, with the aim of creating a single form for each business or in each sector?
35. Should the review set out a long-term ambition of a single electronic form?
36. Should the review set out the ambition to collect and examine all of the current forms to identify areas of duplicate information?
37. Should regulators share information on businesses to reduce the form-filling burden?
38. Should regulators provide businesses with pre-populated 'check and sign' forms?
39. Are the functions listed in paragraph 4.44 the right ones to secure an improvement in the inspection and enforcement activities of regulators?
40. How could these new functions best be delivered without creating duplication and overlap?



**The Review****A.1**

The terms of reference for the review were set out in Budget 2004:

“to consider, with business, regulators, and in consultation with the BRTF, the scope for promoting more efficient approaches to regulatory inspection and enforcement while continuing to deliver excellent regulatory outcomes.”

**A.2**

As part of this process, the review examined the majority of interactions between business and regulators. The review concentrated on those regulatory activities that imposed a significant administrative cost on business such as inspection, enforcement and form-filling.

**A.3**

To understand how administrative costs arise, the review also examined the structure of the regulatory system including local authority regulatory services and national regulators, both inside and outside government departments.

**A.4**

The review considered various regulators and analogous bodies to be outside the scope of the review. Annex B contains more details.<sup>1</sup>

**A.5**

The review covered regulatory authorities in England and activity in Scotland, Wales and Northern Ireland where this was carried out by bodies also covering England.

**The Reviewer****A.6**

Philip Hampton graduated from Lincoln College, Oxford, where he gained an MA in English in 1975. He qualified as a chartered accountant in 1978 and is an Associate of the Institute of Chartered Accountants. He attended INSEAD in Fontainebleau, France, in 1980-81, gaining an MBA.

**A.7**

Philip Hampton joined the auditors Coopers & Lybrand, London, in 1975 and worked in London and West Africa. In 1981 he joined Lazard Brothers, working on mergers and acquisitions, business restructurings and capital markets. In 1986 he was seconded to Lazard Freres, New York, and also worked extensively with Lazard Freres in Paris. From 1990, he worked for British Steel plc as Group Finance Director. He became Group Finance Director of British Gas in July 1996 and BT's Group Finance Director in October 2000. From June 2002 until March 2004 he worked as Finance Director for LloydsTSB. In July 2004 he was appointed Chairman of J Sainsbury plc.

---

<sup>1</sup> Instructions on obtaining Annexes B-D, and the bibliography can be found on the contents page.



ISBN 1-84532-062-X



9 781845 320621 >