

Regulatory quality: How regulators are implementing the Hampton vision

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Dear Chancellor,

In his 2006 Pre-Budget Report your predecessor as Chancellor of the Exchequer, the Rt Hon Gordon Brown MP, invited the National Audit Office to work with the Better Regulation Executive to develop a process of external review of regulatory performance, focusing on regulators' adherence to the Hampton principles and encouraging continuous improvement.

Since then we have worked with the Better Regulation Executive in a highly successful partnership to develop a review framework and, over Summer and Autumn 2007, to carry out reviews of the five largest regulators: the Environment Agency, Health and Safety Executive, Financial Services Authority, Food Standards Agency and Office of Fair Trading. Review teams' assessments of individual regulators were published in March 2008.

I am now pleased to enclose my report *Regulatory quality: How regulators are implementing the Hampton vision* which brings together findings from these five reviews.

Sir Philip Hampton's 2005 report: *Reducing administrative burdens: effective inspection and enforcement* set out an ambitious programme to reduce the burdens on business created by regulatory systems. His report set out principles to guide effective inspection and enforcement, putting risk assessment at the heart of regulatory activity, and intended to encourage a regulatory system which properly balances protection and prosperity.

My report draws out the key messages from review teams' individual assessments of regulators, showing how regulators are responding to the Hampton agenda, the challenges they face and the good practice they are engaged in. I understand the Better Regulation Executive will be following this work up with a series of reviews of other regulators later this year.

It is my hope that this report will provide a valuable resource for other regulators to benchmark their progress in delivering the Hampton vision and to inspire debate and encourage greater dialogue between regulators on common issues. I am therefore placing a copy of this report and this letter on our website www.nao.org.uk.

Yours sincerely
Tim Burr

TIM BURR



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SUMMARY AND CONCLUSIONS

1 In 2004, the Chancellor of the Exchequer asked Philip Hampton, a leading businessman, to lead a review of regulatory inspection and enforcement. The review's recommendations, known as the Hampton Report, published in March 2005, set out an ambitious programme to reduce the burdens on business created by regulatory systems. The report urged regulators to become more risk-based in their inspection and information requirements, focus greater effort on improving advice and guidance to help businesses which want to comply and to deal more effectively with persistent offenders. The Hampton Report set out a series of principles which it recommended all regulators adopt (**Figure 1**).

2 In 2006, the Chancellor of the Exchequer invited the National Audit Office (NAO) to work with the Better Regulation Executive to follow up progress against the principles set out in the Hampton Report. The reviews covered five of the biggest regulators – the Environment Agency, Financial Services Authority, Food Standards Agency, Health and Safety Executive and the Office of Fair Trading (OFT).¹ The reviews were carried out, over Summer and Autumn 2007, by four-person review teams comprising independent experts and officials drawn from a number of regulators, the Better Regulation Executive and the NAO. Review teams' reports were published in March 2008.

3 This Report summarises what has been learnt through the review process about how the regulators are seeking to respond to the Hampton agenda. The primary intended audience for the report is the wider regulatory community. The report aims to:

- provide an overall picture of the five regulators' progress in implementing the Hampton principles;
- identify some of the common challenges regulators face; and
- present good practice on which other regulators can draw.

¹ The OFT was reviewed in its capacity as a consumer authority only – its competition and market functions were not in scope.

On regulators' progress in implementing the Hampton principles

4 The foremost responsibility of all regulators is to deliver the objectives and outcomes set down in statute, whether this is protecting the environment, protecting consumers or protecting the health and safety of workers. In working towards these objectives, regulators routinely have to match their own finite resources against their assessment of the risks whilst also minimising the burdens and costs they place, for example on businesses. Many regulators have been conscious of the need to strike this balance for some years.

5 The reviews found no lack of commitment to the principles of better regulation amongst the regulators looked at. Indeed, the reviews concluded that the regulators were, on the whole, outcome-focused, risk-based, proportionate and seeking to engage effectively with business to promote compliance. The reviews identified issues for each regulator to address which are set out in the individual assessment reports (see Bibliography at Appendix 1). Overall, the reviews found:

Regulators accept the need for risk-based regulation and, in most instances have established mechanisms to assess risk and direct resources accordingly. Regulators use risk assessment at both the strategic level to set overall priorities and allocate resources and at the frontline to decide whom to inspect. As a result of the Hampton review, all five regulators had taken steps to improve their assessment of risk. Some businesses interviewed for the reviews nevertheless believed the regulatory attention they received was not sufficiently related to their actual performance. These businesses felt that the regulatory effort was targeted at dealing with the inherent risk of a business activity and ignored firms' own capabilities for managing the risk and history of compliance.

1 Key conclusions and principles from the 2005 Hampton Report

Weaknesses in the current system

- the use of risk assessments is patchy
- regulators do not give enough emphasis to providing advice in order to secure compliance
- there are too many, often overlapping forms and data requirements with no scheme to reduce their number
- regulators lack effective tools to punish persistent offenders and reward compliant behaviour by business
- the structure of regulators, particularly at local level is complex, prevents joining up, and discourages business-responsive behaviour; and
- there are too many interfaces between businesses and regulators

Principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Source: Hampton report, paragraph 7 and Box E2

National regulators need to place greater priority on working with local authorities to deliver joined up, consistent and outcome-focused regulation. Local authorities have significant regulatory responsibilities in relation to businesses in their areas. The Hampton Report envisaged a regulatory system which “as a whole” used comprehensive risk assessment to concentrate resources on the areas that need them most. The reviews found that whilst work was under way in tackling some of the issues arising out of the existing patchwork of responsibilities, there was a need for greater effort on the part of those national regulators taking a lead role to provide leadership to local authorities to improve co-ordination, consistency and risk-targeting.

Regulators have reduced the the amount of information they require businesses to provide but need to improve their use of intelligence to target risk effectively.

Good information is essential to effective risk assessment and targeting but can be costly to both business and the regulator. The reviews found that regulators are seeking to limit their data requests. The reviews found that regulators do not always make effective use of all potential sources of information and intelligence about businesses and their activities.

Some regulators rely more heavily on inspection as a regulatory tool than others but all are engaged in internal debate about the role of inspection and how it should be carried out. The Hampton Report criticised regulators' use of inspection as being insufficiently risk-based and creating unnecessary burdens on business. This report shows that regulators vary widely in the number of inspections they carry out but the reviews also found that businesses, in some instances, can welcome inspections as an opportunity to learn how to improve their compliance with regulatory requirements. We conclude that, in terms of promoting compliance with regulations and reducing burdens on business, the way inspections are carried out is probably as important as how many there are.

Regulators put a lot of effort into creating guidance and making it accessible. The Hampton Report recommended that regulators divert resources from inspection activity to providing advice to businesses to help them comply. But businesses of different scales and resources have different information needs and the demands on regulators for good quality, accessible, comprehensible and tailored advice are great. The reviews found that regulators tend to lack an overarching strategy for the provision of advice and guidance and need better information on the reach and influence of guidance to improve further.

Regulators are increasingly working with industry to influence business behaviour and some are using campaigning activity to inform consumer choice, thereby influencing business behaviour via the market. Campaigning activity plays a key role in risk-based systems of regulation in reaching low-risk businesses who might not otherwise come into contact with the regulator. Regulators are increasingly experimenting with new approaches to influencing business behaviour either targeted directly at business, or indirectly by informing consumer choice.

All regulators have processes to ensure transparent and consistent use of their sanctioning powers. They apply sanctions rationally but need better information on their effectiveness. The reviews found that all the regulators have systems to ensure that sanctions are applied on a fair and consistent basis and they all publish their enforcement policies. Regulators use of their powers is influenced by factors including historical practice, the perceived cost-effectiveness of different sanctioning routes, their approach to deterrence and public attitudes. Most of the regulators lacked evidence of the effectiveness of the different options for achieving compliance.

Regulators have established a range of mechanisms to challenge the need for, and design of, new regulations and are trying to ensure they engage effectively with the policy-making process. The Hampton Report recommended that new regulations should be designed to be easily understood, implemented and enforced. Amongst the five regulators reviewed, most new regulation had come from the European Union. The regulators were making significant efforts to engage effectively in the policy-making process to try to influence the design of new regulations.

On the common challenges faced by regulators

6 In drawing together the information gathered through the individual assessments we have been able to identify some of the common problems and challenges that regulators have to deal with to become fully risk-based, consistent, proportionate and effective organisations. These challenges can present a range of managerial, intellectual and resource issues which are not necessarily simple to solve. The practical challenges facing the regulators were:

- to understand the effectiveness of their activities better – to inform strategic thinking on striking the right balance between inspection and enforcement activity and other means of achieving compliance;
- to develop a coherent, business-friendly, evidence-based strategy for advice and guidance, and to improve the reach and effectiveness of guidance, particularly for small firms;
- to improve their engagement with local authorities, particularly where local authorities are an integral part of the regulatory structure, to deliver a coordinated and consistent system of regulation based on a shared understanding of risk and mutual respect;
- to use intelligence well, to improve risk assessment and the allocation of regulatory effort;
- to identify common ground and build trust with business organisations and trade associations: to draw on their experience, use their resources to target messages and find new ways of encouraging compliance;
- to allow for local discretion, the use of inspectors' judgement and innovation, but still deliver consistent, outcome-focused inspection and enforcement;
- to share knowledge better, both internally and with other regulators – to capture what works; and

- to develop a comprehensive risk assessment system which can deal with a wider range of risks both high level and firm-specific so as to inform judgements about the application of resources to different areas of risk.

On good practice identified during the reviews

- 7 The reviews found that regulators were tackling these challenges and dilemmas in different ways, suggesting that there is much to be gained from regulators sharing their knowledge and experience.
- 8 Part 2 of this report deals with the ways in which the five regulators have sought to address the Hampton recommendations to become more risk-based in their inspection and information requirements. The dilemma for regulators is that good information is integral to assessing risk accurately but if collected from business this data requirement can impose a burden on firms. Regulators therefore have to determine whether they can reduce their reliance on data requested direct from businesses whilst making more effective use of other sources of intelligence. The OFT and the Health and Safety Executive, for example, were both seeking to develop their intelligence capabilities to help improve their risk targeting.
- 9 Part 3 of the report looks at the role of inspection within regulatory systems. In developing their risk-based approaches, regulators are having to judge the extent to which they can rely on businesses' own systems for ensuring compliance against the value of first-hand evidence of compliance through inspection. The Environment Agency, for example, is moving to a more systems-based audit approach, supported by monitoring of emissions.
- 10 The Hampton Report recommended that regulators should focus greater effort on improving advice and guidance to help those who want to comply. As illustrated in Part 4, all the regulators had individual examples of excellent communication with business. The Food Standards Agency, for example, in its *Safer food, better business* initiative, had worked with industry, individual small businesses and local authorities to produce guidance packs for catering and retail food businesses. More generally, some regulators are trying to identify where to draw the line between their preferred stance of neutral guidance provider and educator of business and the more hands-on consultant-cum-management role some businesses seem to want. The Environment Agency, for example, is developing a policy on how it provides advice and guidance while ensuring that firms retain ownership of the responsibility to comply.
- 11 Businesses need to know how to comply with regulation and also, in some cases, to be motivated to wish to comply. Part 5 of the report is about how the five regulators influence business to recognise the benefits of compliance by identifying levers they can pull and adapting their approach to the business cultures of the sectors they regulate. Approaches include voluntary codes of conduct, persuading industry sectors to adopt outcome-based performance measures, and educating consumers to make informed choices.
- 12 The Hampton Report identified a need for regulators to deal more effectively with persistent offenders. Part 6 of this report looks at how regulators use their sanctioning powers to reduce harm, punish offenders and encourage compliance and shows the different approaches. The Financial Services Authority is currently undertaking further work on setting penalties to deter wrong-doing.
- 13 The Hampton Report suggested regulators should recognise that a key element of their activity is to allow economic progress and only to intervene when there is a clear case for protection. Part 7 of the report looks at regulators' regulatory design processes. Good practice found included various approaches to influencing the design of European Union regulation, the increased use of scrutiny committees to challenge the need for new regulation and more and earlier impact assessments to identify the costs and benefits of new regulation.

PART ONE

Background

1.1 This Report looks at the way five of the largest regulatory authorities in the UK are working to minimise the administrative burden on business of their inspection and enforcement activity whilst improving regulatory outcomes. The five are: the Environment Agency; the Financial Services Authority²; the Food Standards Agency; the Health and Safety Executive and the OFT. The report collates the key findings from individual reviews (see paragraph 5), identifies some of the challenges faced by the regulators and identifies good practice which other regulators can draw on.

1.2 The purpose of regulation is to protect the public and the environment and provide a level playing field for business. The regulators that are the subject of this Report are working, for example, to deliver clean water and air, safe food, safe and healthy working conditions, and ensure we are treated fairly when we save or spend our money. Businesses also benefit from regulation, for example, through improved consumer confidence, greater public acceptance and a more productive workforce. Regulation, however, comes with a cost. The Government has estimated that the administrative cost to UK businesses in one year from complying with all regulation is around £20 billion³; and this does not include the capital and other costs of providing the equipment, staff training and supervision which may be necessary to achieve compliance.

1.3 The Government is concerned to minimise the burden of regulation on the business community without jeopardising regulatory policy objectives. In 1997, it introduced the 'better regulation agenda' aimed, initially, at simplifying regulation by designing new regulations better and simplifying or removing old ones. The better regulation agenda has more recently been extended

to include a cross-government initiative, being driven forward by the Better Regulation Executive (part of the Department for Business, Enterprise and Regulatory Reform), to reduce the administrative burden on business of regulation, that is, administrative activities businesses would not undertake in the absence of regulation. We have reported previously on both these aspects of the agenda (Figure 2).

1.4 The third arm of the better regulation agenda is to reduce the burden on business of inspection and enforcement activity. In the 2004 Budget, the Chancellor asked Sir Philip Hampton to lead a review of regulatory inspection and enforcement. The review's recommendations, published in March 2005, set out a programme to reduce the burdens on business and a number of principles which government and regulators at both central and local level should follow. It also recommended a further specific review of the effectiveness of the tools available to regulators to achieve compliance; Professor Richard Macrory's review of regulatory sanctions reported in 2006 and has led to a government initiative to strengthen the powers available to regulators.⁴

Reviews of progress against the Hampton principles

1.5 At the invitation of the Chancellor, the National Audit Office and the Better Regulation Executive developed a framework for the external review of regulatory performance against the principles set out in the Hampton Report. Each of these reviews culminated, in March 2008, in a published report on each of the five regulators. The scope and methods used for the individual assessments are described in Box 1.

² The Financial Services Authority is not audited by the National Audit Office and we are grateful to the Authority for agreeing to be included in this report.
³ Reducing the Cost of Complying with Regulations: The Delivery of the Administrative Burdens Reduction Programme, 2007 – National Audit Office, July 2007, HC 615 2006-07, page 16.
⁴ Regulatory Enforcement and Sanctions Bill 2007-08.

2 How this report relates to other National Audit Office reports on regulatory reform

The Regulatory Reform Agenda

Has four main components

Improve the design of new regulations and how they are communicated	Simplify and modernise existing regulation	Change attitudes and approaches to regulation to become more risk-based	Work across Europe to improve the quality of European regulation
All of which have been examined by the National Audit Office			
Since 2004 we have reported annually on the impact assessment process For example: <i>Evaluation of Regulatory Impact Assessments</i> (HC 606, 2006-07)	Examined in <i>Reducing the Cost of Complying with Regulations: The Delivery of the Administrative Burdens Reduction Programme</i> , 2008 and 2007 (HC 615, 2006-07)	Examined in this report and Reviews of the implementation of the Hampton Report published in March 2008	Examined in <i>Lost in Translation? Responding to the challenges of European law</i> (HC 26, 2005-06)

BOX 1

Joint National Audit Office and Better Regulation Executive reviews of regulators

Reviews were carried out by teams of four individuals selected to represent a range of organisations and viewpoints and to draw on a range of senior level experience. Team membership was drawn from the NAO, the Better Regulation Executive, a regulator and an external body.

Each review was carried out over a two week period between Summer and Autumn 2007, preceded by a longer period of intensive research and preparation by NAO and Better Regulation Executive staff.

Review teams used guidance prepared by the NAO and Better Regulation Executive, published in May 2007, which sets out the framework for the reviews, identifies the high level questions review teams should consider and the evidence sought. The focus of the assessment was on the extent to which each regulator was conforming to the principles set out in Sir Philip Hampton's report in the context of its particular field of regulation and powers. The assessments did not look at wider issues of effectiveness or efficiency.

The principal methods used were:

- interviews with regulatory staff and senior managers
- interviews with other stakeholders including individual businesses and trade associations
- focus groups of inspectors and businesses
- observational visits including inspections
- document review, particularly covering strategies and plans, risk methodology and data on effectiveness and outcomes.

Review teams formed their conclusions drawing on the evidence presented to them and their own judgement. The assessment reports, published on 20 March 2008, represent the agreed views of the individual team members. The reports and guidance are available at www.nao.org.uk/publications/other-publications.htm.

1.6 The five regulators covered by the reviews were all very different. They differed in the range of their activity, the sectors and types of business they covered, their history, their law and policy-making roles, how they carried out inspections and, critically, their powers (see Figure 3 overleaf). Appendix 2 sets out the statutory purpose and main objectives of each regulator. Despite these differences, the job of each regulator is broadly the same: to deliver compliance with regulations and the outcomes that regulations are designed to achieve.

1.7 The need for regulators to achieve their objectives with finite resources and without overburdening businesses puts the onus on regulators to develop a clear strategy for getting the most out of their limited resources, based on an assessment of where the biggest

risks to their objectives lie. Regulators employ a variety of means to influence business behaviour. In doing so, all regulators have to be mindful of the full spectrum of business attitudes and competencies, ranging from those that understand the law and seek to comply with it, through a large middle ground of businesses which do not understand all aspects of the law or are not always compliant, to businesses which deliberately flout the law.

1.8 Regulators routinely deploy an array of regulatory tools to achieve their intended outcomes (Figure 4 and Figure 5 on page 9) although the choice and application of tool may be constrained by legislation or, indeed, be influenced by the views of the public and other stakeholders. All of the tools will entail some form of cost to both the regulator and business.

3 Key facts about the five regulators

	Environment Agency	Financial Services Authority	Food Standards Agency	Health and Safety Executive	Office of Fair Trading
Purpose of regulations	Protect or enhance the environment including preventing pollution of air, land and water	Promote efficient and fair financial markets and help consumers achieve a fair deal	Protect public health and consumer interests in relation to food	Prevent work-related accidents and ill health	Make markets work fairly and protect consumers
Number of businesses regulated	750,000	28,000	580,000 ¹	850,000	120,000
2006-07 budget and staff numbers	£311m ² 3,500 ²	£303m 2,660	£168m 2,124	£255m 3,675	£28m ² 250 ²
Number of inspections in 2006-07	140,000	1,728 ³	533,000 ¹	47,000	N/A ⁴
Examples of high risk business	Nuclear power stations, oil refineries and chemical plants	Banks and securities firms	Meat cutters, food importer and supermarkets	Large scale industrial, nuclear, mining and construction	Debt collection agency
Examples of low risk business	Car breakers	Small general insurance intermediaries	Corner shop	Government office	Non-commercial debt advice
Inspection model	Own staff	Own staff	Local authority environmental health and trading standards officers	Own staff	No inspection ²
Role of local authorities	Complementary responsibility for some local environmental issues	None	To inspect in accordance with a Code of Practice issued by the Agency	Responsible for one million lower risk workplaces	Independent trading standards services complement OFT action

Source: National Audit Office

NOTES

1 Excludes Meat Hygiene Service, an Executive Agency of the Food Standards Agency.

2 Excludes functions outside the scope of the review (e.g. the Environment Agency's flood and water management work and the Office of Fair Trading's competition and market studies work).

3 In 2006-07 the Financial Services Authority carried out 504 risk assessments on firms. In addition the Authority carried out 1,224 visits to smaller firms and other supervisory visits.

4 The Office of Fair Trading is primarily a strategic body making targeted interventions in markets. Its direct regulatory functions are restricted to the Consumer Credit Licensing regime. In April 2008 it gained powers to inspect businesses under this regime, which it is likely to exercise mainly through local Trading Standards Services.

1.9 This Report brings together the key findings from the recent reviews. It does not provide a general assessment of the effectiveness of regulators in achieving their outcomes but focuses on the challenges regulators face in trying to address the Hampton principles and identifies good practice which other regulators can draw on. The report is structured around the key elements of a regulators' toolkit for achieving its outcomes:

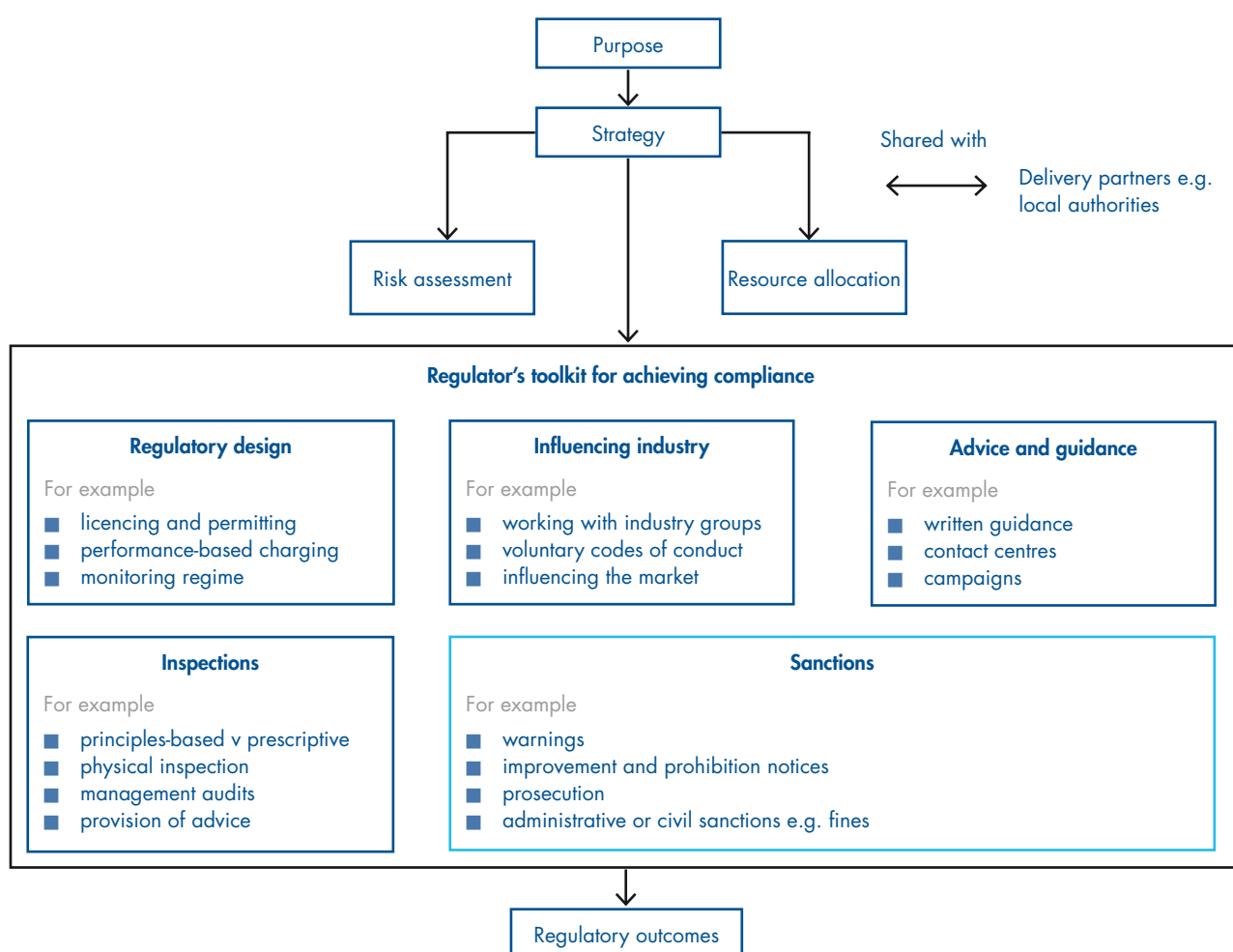
- Strategy and risk
- Inspections
- Advice and guidance
- Influencing industry
- Sanctions
- Design of regulations

4 Range of approaches to achieving regulators' goals



Source: Food Standards Agency

5 Simplified regulatory compliance model



Source: National Audit Office

PART TWO

Strategy and risk

2.1 In his 2005 report, Sir Philip Hampton urged regulators to improve their assessment of risk and target their regulatory efforts accordingly. He found that risk assessment – though widely recognised as fundamental to the effectiveness of regulation – was not implemented as thoroughly and comprehensively as it should be. He concluded that proper analysis of risk should direct regulators' efforts at areas where it was most needed, and enable them to reduce the administrative burden of regulation, while maintaining or even improving regulatory outcomes.

Using risk assessment to direct resources

2.2 Regulators use risk assessment at both the strategic level to set overall priorities and allocate resources and at the frontline to decide who to inspect, how often and what to look at. The recent reviews concluded that all five of the regulators examined had accepted the principle of risk-based regulation. All five had taken steps to improve their assessment of risk and, to varying degrees, had used this to target their regulatory effort accordingly.

2.3 The regulators highlighted individual examples where their regulatory efforts had been refocused as a result:

- **removing low-risk businesses from inspection:** the Environment Agency had taken 500,000 waste producers and 23,000 water abstraction operators out of monitoring and inspection altogether because they were judged to pose a low risk to the environment; the Agency estimated this would save industry around £15 million a year;
- **using evidence to focus on the key risks affecting outcomes:** the Health and Safety Executive had analysed the evidence on the industries and activities that pose the greatest risk to health and safety outcomes and redesigned its inspection

regime to focus on the most frequent causes of injury, (e.g. falls from height and slips and trips) and ill health (e.g. stress and musculoskeletal disorders);

- **providing flexibility to do what works:** the Food Standards Agency has a risk-based system for determining the frequency of inspections carried out by local authorities but, within this framework, was seeking to introduce greater flexibility for local authorities to choose the appropriate approach for each food business; and
- **using intelligence to target activity:** the OFT is developing a system to help it prioritise its enforcement work and target higher risk activities by drawing on intelligence, for example, from complaints, Consumer Direct, and regional intelligence assessments.

2.4 At the level of the individual firm, it is the job of business owners and managers to identify and control hazards arising from their activities. It is the job of the regulator, however, to assess whether this control is adequate in the light of the risk posed, taking into account both the likelihood of an event and its potential consequences. The regulator's assessment of how these factors should be weighted in its risk assessment system is a matter of judgement.

2.5 The regulators had adopted a variety of models for assessing the regulatory risk associated with individual types of business. Typically, regulators' risk models assess:

- the potential danger or hazard;
- the firm's ability to manage the risk posed; and
- the firm's compliance history.

Regulators ascribe a risk score against a series of chosen criteria (see boxes below for examples) and use this score to direct regulatory activity, for example by adjusting the frequency and depth of inspection visits.

2.6 Some regulators were developing risk assessment arrangements to encompass a number of regulatory regimes. In some regulatory arenas, particularly in the area of environmental regulation, businesses may find themselves subject to a number of different legislative regimes, each with their own regulatory and risk assessment arrangements. The Environment Agency, for example, is engaged in a multi-phased initiative, the Environmental Permitting Programme, to bring together its regimes for preventing pollution and managing waste into one joined up risk-based system. The Agency's aim is to develop a common permitting regime for operators whilst simplifying supporting documentation and information systems. The Agency intends this project to provide a platform for the integration of future EU Directives, and the further integration of permitting regimes (see paragraph 7.7 and Box 11).

2.7 Irrespective of how sophisticated these risk assessment systems become, human error and misjudgement in assessing the range and potential for risk will always remain a possibility as demonstrated by the Northern Rock episode. The Financial Services Authority was the only regulator reviewed which had attempted to bring both strategic and firm-specific risks within a single risk assessment framework. The Authority categorises risk as arising from events, issues and firms. Its risk assessment system is used to target its inspections of firms – which it calls 'vertical supervision' and assesses the risk posed by new trends across the market, which it then tackles in a thematic way, called 'horizontal supervision'. The model does not, however, determine how the Authority should balance its resources between these two aspects of its work.

BOX 2

The Environment Agency's Operator and Pollution Risk Appraisal (OPRA)

Areas of assessment:	Factors assessed:	Band
Complexity	<ul style="list-style-type: none"> ■ Activities carried out ■ Potential for significant releases ■ Potential for accidents ■ Inventory of substances stored ■ Interconnected processes ■ Size ■ Public confidence 	A – E
Location	<ul style="list-style-type: none"> ■ Proximity to habitation ■ Proximity to sensitive sites ■ Groundwater zones ■ Sensitivity of receiving waters ■ Potential for direct releases to water ■ Flooding ■ Air quality management zones 	A – E
Emissions	<ul style="list-style-type: none"> ■ Type and quantity ■ Media (air, water or ground) ■ Impact 	A – E
Operator performance	<ul style="list-style-type: none"> ■ Presence/absence of management systems ■ Enforcement history 	A – E
Compliance rating	<ul style="list-style-type: none"> ■ Non-compliance with permit conditions ■ Potential impact of non-compliance ■ Additional effort to manage non-compliance 	A – E

The Agency uses businesses' banded profiles in its Pollution Prevention and Control and Waste Licensing regimes to determine its fees and charges, work planning and reporting.

2.8 Regulators differ in their freedom to adopt a regulatory approach of their own choice. For example, the reviews identified areas of regulation that were still not risk-based. The review team for the Food Standards Agency concluded that the regime overseen by the Meat Hygiene Service (an Executive Agency of the Food Standards Agency) was not risk-based and remained very prescriptive. Abattoirs, for example, must have a permanent inspection presence during their operations, regardless of the quality of their systems and past performance, with multiple layers of inspection in addition. The regime in place, however, is the result of European regulations and therefore not easy to change. In July 2007, the Agency commissioned its own examination of the practices of the Meat Hygiene Service and how it might be made more efficient and risk-based. The Agency was seeking to secure the necessary changes to the EU regulations.

2.9 On the other hand, the Financial Services and Markets Act 2000 which established the Financial Services Authority, gives the Authority considerable freedom in how it chooses to regulate under the Act. In tune with the Hampton agenda, the Authority is in the process of moving its regulatory approach to focus more on the principles for business to follow and less on rules-based regulation which, in its assessment, has constrained firms without necessarily improving the outcomes for customers.

Business views of regulators' risk models

2.10 Many businesses and business organisations interviewed for the reviews complained that the amount of regulatory attention received was not related to their actual performance. Instead, they reported that regulatory effort was almost entirely targeted at dealing with the inherent risk of a business's operations and ignored firms' own capabilities for managing the risk and history of compliance. For example, businesses operating complex sites and processes felt that the Environment Agency could safely place greater reliance on firms' own management of the operational risks, thereby reducing the Agency's inspection effort and its charges. This view was held even though the Agency's risk assessment system (OPRA) includes an element to take account of operator performance. Similarly, businesses also felt that the Health and Safety Executive takes insufficient account of their overall systems for managing health and safety risks in its decisions on whether to inspect.

2.11 In some cases, businesses also felt that insufficient resource is put into identifying and dealing with firms which operate outside the system altogether: the 'rogues'. Businesses said that regulators concentrate largely on the firms they know about rather than looking for those that fail to register with the regulatory authorities or, otherwise, ignore the rules.

BOX 3

The Food Standards Agency's Food Hygiene scoring system

Areas of assessment:	Factors assessed:	Maximum score
The potential hazard	<ul style="list-style-type: none"> ■ Type of food and method of handling ■ Method of processing ■ Number of consumers at risk ■ Vulnerable consumers 	97
Level of current compliance	<ul style="list-style-type: none"> ■ Food hygiene and safety procedures ■ Physical suitability of the establishment 	50
Confidence in management/control systems	<ul style="list-style-type: none"> ■ Track record, technical competence and attitudes ■ Risk of specific micro-organisms; e.g. Clostridium botulinum, E coli or Salmonella 	50
Total		197

Businesses are categorised from A to E on the basis of their scores. Category A businesses are inspected at least every six months, category D businesses are inspected at least every two years. Category E businesses (scoring 30 points or less) may either be inspected, or considered under an Alternative Enforcement Strategy, at least every three years.

Working with local authorities to deliver joined up, consistent and outcome-focused regulation

2.12 National regulators have a key role to play in providing leadership to local authorities and working with local authorities to improve coordination, consistency and risk targeting. Three of the regulators reviewed share responsibility for enforcing regulations with local authorities with differing degrees of control and influence:

- **the command model:** the Food Standards Agency sets out the policy framework for enforcement of food law in Codes of Practice which local authorities are obliged to follow, although local authorities are consulted in the preparation of the Code;
- **the partnership model:** the Health and Safety Executive has enforcement responsibility for industry, agriculture and the public sector, whilst local authorities have responsibility for shops, offices and leisure premises. The Health and Safety Executive has no formal powers to direct local authority activity but has the lead role in developing occupational health and safety policy in Great Britain; and
- **the leadership and advocacy model:** the OFT and local authorities have overlapping powers to enforce trading laws but, in the main, work independently of each other. In December 2005, however, the OFT took on the role of “championing” and providing regulatory leadership to local authority trading standards services. The OFT’s purpose is to make markets work well for consumers, so this involves a focus on outcomes. The OFT is working with local authorities to develop a partnership programme setting out a vision of how it can work with and support trading standards services.

A fourth regulator, the Environment Agency, shares some environmental outcomes with local authorities, for example good air quality, but regulates through different legal frameworks. The Agency’s approach is to develop partnerships where needed at local level to help deliver complementary goals.

2.13 In addition, local authorities have their own organisation, the Local Authorities Co ordinators of Regulatory Services (LACORS), to encourage clear, consistent and high quality regulation of businesses across the country. The Government has also created the Local Better Regulation Office (LBRO) whose main purpose is to help secure more effective and less burdensome approaches to the way in which regulations are enforced by local authorities. The Local Better Regulation Office is currently a company limited by guarantee but will, subject to the passage of the Regulatory Enforcement and Sanctions Bill, become a statutory body later this year.

2.14 The reviews identified some key factors which are important in delivering a consistent and coordinated approach to regulating businesses, namely:

- good communications between the national regulator and local authorities;
- consistently applied effort by national regulators to supply leadership and to identify, manage and meet local authorities’ needs; and
- targeted effort to overcome the barriers to consistency:
 - to tackle the complexity of existing regulatory structures and divisions of responsibility and the challenge of multi-site businesses; and
 - to share information, for example through projects to coordinate intelligence, share guidance and coordinate campaigning.

2.15 The Health and Safety Executive is the national regulator which is most actively trying to engage with local authorities to deliver better regulation. It is working with local authorities on a number of fronts to try to overcome some of the inherent difficulties caused by the patchwork of existing responsibilities ([see Box 4 overleaf](#)).

2.16 Other regulators are seeking to improve their relationship with local authorities to deliver a more consistent and outcome-focused approach:

- the Food Standards Agency has adopted more of a partnership approach to local authorities in recent years which has helped it overcome tensions arising from what some local authority staff described as its previous “heavy-handed” emphasis on securing prescribed inspection rates. It has set up regional teams as a way of helping to improve relations and improve coordination. It has also held regional seminars to discuss revisions to its Code of Practice. Feedback from local authorities during the review suggested that the creation of a regional presence was regarded as a positive development by Environmental Health teams and Trading Standards officers.
- the OFT’s early consultations with local authorities about its role as “champion” of trading standards outcomes raised their expectations about the degree of commitment and resource the OFT would bring to the role. The Office is now seeking to refocus its work with local authorities and move forward in a practical way. It is working with local authorities to develop a partnership framework that will enable OFT and trading standards services to agree priorities and to work together effectively where their remits overlap.

Using data and intelligence to target risk effectively

2.17 Whilst good information is essential to effective risk assessment and targeting, it can be costly to both business and the regulator. It is therefore important that regulators use information intelligently and do not create extra burdens on business simply to create perfect information.

2.18 Regulators have improved their data collection methods and reduced the burdens they place on business.⁵ **Box 5** shows how regulators are seeking to limit their data requests to ensure they ask only for information they really need. Despite progress, review teams identified room for improvement. The following example shows how regulators need to think through whether their data collection is really risk-based:

- The Financial Services Authority requires mortgage and general insurance firms to submit a Retail Mediation Activity Return, which takes an average 2 to 4 hours to complete, at six-monthly intervals. The Authority uses the information gathered to investigate risks posed by individual firms and build an overall picture of the market by identifying thematic issues for investigation. 16,000 (86 per cent) of the 18,500 firms required to complete the return, however, are small, accounting for only 2 per cent of the market. The Authority believes that monitoring all these small firms by means of a data return is proportionate but is intending to introduce a shortened form from 1 October 2008.

BOX 4

Health and Safety Executive partnership working with local authorities

The Health and Safety Executive (HSE) is responsible for enforcing health and safety legislation in construction, agriculture, manufacturing, engineering, food and drink, quarries, entertainment, local and central government, schools and health services, and domestic gas safety. Local authorities are the principal enforcing authority for retailing, wholesale distribution, warehousing, hotel and catering premises, offices and the consumer and leisure industries.

The Health and Safety Executive has put a lot of effort and senior-level commitment into working with local authorities in recent years. Key elements are:

- **Creating a shared vision** – the HSE has promulgated its strategic approach to risk to local authorities so that there is a shared understanding of the purpose of health and safety inspection and enforcement and the outcomes sought. This has resulted in the major part of local authorities’ inspection resources being applied to work on the HSE’s priority programmes;

- **Resourcing to risk** – the HSE is piloting an approach called flexible warranting which allows HSE and local authority inspectors to exercise their powers in each other’s spheres of activity. Currently, the HSE has responsibility for a large number of premises which are low risk by its own criteria and which it never inspects unless there is an accident but which would be judged high risk within a local authority context and would therefore receive regular inspections. The pilots have shown that flexible warrants facilitate joint planning and can bridge the rigid demarcation of enforcement responsibilities to improve the efficient use of resources. The HSE and local authorities are considering a wider roll out of the approach.

- **Practical steps to coordinate activity** – the HSE has established, jointly with local authorities, field partnership teams to promote and manage the coordination and planning of frontline activities. HSE has also established a “Large Organisation Partnership Pilot” to explore how better to deal with large and medium multi-site companies, including some regulated by local authorities. It also shares more of its operational guidance and information with local authorities, including through an “extranet”.

⁵ National Audit Office *Administrative Burdens* report, July 2007.

BOX 5

Action to reduce the burden of information requests on business

- Regulators have **reduced the number of forms** and the amount of information they ask for; the **Health and Safety Executive**, for example, has reduced the number of forms it uses for collecting information from business from 127 to 54, whilst the **Environment Agency** is part way through a project to reduce the number of its forms and has already reduced them from around 350 to 250. The Agency has also cut the length of forms so that 75 per cent are now eight pages or less and has given all forms a date for future review.
- **Forms have been redesigned** to make them easier to understand and complete; the **Office of Fair Trading**, for example, has redesigned its credit licensing forms: questions are clearer, forms are more tailored to type and size of business, guidance notes are incorporated within the form and there is more space for free text. A pilot exercise by the OFT showed that the new form reduced the error rates on applications and renewals by around a third. The **Environment Agency** aims to obtain Crystal Mark status for all its external forms and guidance.
- **New forms cannot be introduced without the approval of a 'gatekeeper'**; the **Food Standards Agency** has, for example, appointed an internal Data Collection Gatekeeper to challenge new data requests and to provide guidance to staff on form layout and other best practice. The **Financial Services Authority** has set up a programme to review all its reporting requirements, and prepares a cost benefit analysis before requesting new data from businesses.
- **E-enablement of forms** is well under way in most regulators; the **Health and Safety Executive**, for example, is part way through a programme to allow the online submission of its most frequently used forms. The **Environment Agency** is also bringing all its regulatory activities online developing a one-stop shop for all permit applications and variations.

2.19 Regulators whose regimes do not rely on firms to register or obtain a licence to operate need other means to gather information about the risks of non-compliance. Some regulators have a very wide field of potential operations. The OFT, for example, has powers under a range of consumer protection laws, such as The Unfair Terms in Consumer Contracts Regulations 1999, which apply to all businesses. Similarly, the Health and Safety at Work Act 1974 applies to all employers in the UK.

2.20 For the OFT and the Health and Safety Executive, gathering and making effective use of a range of sources of information on businesses is a key challenge which affects their ability to make choices based on risk:

- the Health and Safety Executive acknowledges that it does not currently use information gathered from visits, complaints or other agencies to target its activity effectively. There is a concentration of effort on the most visible firms so that large firms in certain sectors receive regular visits whilst smaller firms remain uninspected. The Executive is aware of the problem and has started a project to:
 - improve targeting and intelligence by developing a regional intelligence officer role;
 - make better use of information from sources such as complaints from the public and intelligence from local authorities;
- concentrate more clearly on identifying small and medium-sized enterprises and their risks; and
- capture data better.
- the OFT in developing its ability to target higher risk activities, such as mass-marketed scams, faces issues which it is trying to resolve with central and local government partners, including the funding of the regional intelligence network, its own role in leading the project with trading standards services and the lack of an integrated knowledge management system for sharing intelligence.

2.21 Other regulators also need intelligence to inform them of the scale of illegal activity and the risk posed to their objectives. The Environment Agency, for example, seeks to prevent the illegal dumping of waste by unlicensed operators, whilst the Food Standards Agency is facing an apparently increasing problem from the illegal trade in meat. It is always difficult to obtain sufficient reliable information on the scale of illegal activity to assess the risks with confidence against other priorities. Building on its existing enforcement activity, the Environment Agency is currently gathering information on illegal waste sites and is developing its strategy for dealing with them.

PART THREE

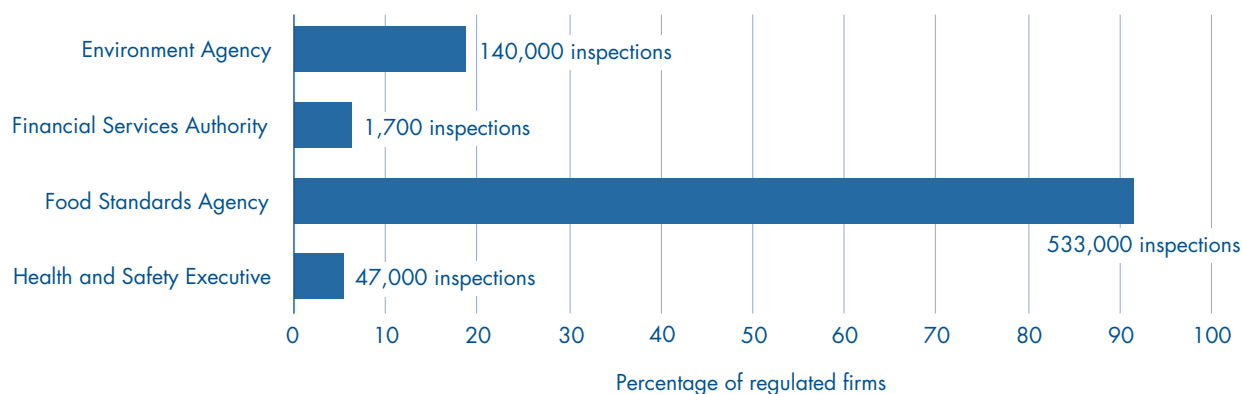
Inspections

3.1 Traditionally, regulators have placed reliance on inspections as their principal means of monitoring and enforcing compliance. The Hampton review, which looked at practice across 63 national regulators and 468 local authorities, found that local authority inspection resources in particular were not always used in a risk-based way. The review estimated that better use of risk assessment to target inspection resources could reduce the need for inspections by up to a third.⁶

The drivers behind the number of inspections carried out

3.2 Figure 6 shows the number of businesses inspected in 2006-07 and the percentage of businesses within each regulator's area of responsibility this represents. The Figure demonstrates big differences between regulators in the amount of inspections carried out; local authorities, working to a regime imposed by the Food Standards Agency, inspected 62 per cent of all food-related businesses (see Note 4) whilst the Health and Safety Executive inspected only 6 per cent of premises it has responsibility for.

6 Inspections as a percentage of regulated firms in 2006-07



Source: National Audit Office

NOTES

1 The above figures should be treated cautiously. Some regulators record pre-planned inspection visits to businesses only, so full data on the extent of other visits to premises, for example to investigate incidents, is not available for all. And whilst the number of inspections as a percentage of regulated firms provides a common basis for comparing inspection levels, it is not the same as the percentage of firms inspected, which will be lower if firms receive multiple inspections.

2 The Office of Fair Trading did not have inspection responsibilities in 2006-07.

3 The Financial Services Authority carried out 504 formal risk assessments on firms that are relationship-managed, which may involve one or more visits. In addition the Authority carried out 1,224 visits to smaller firms and other supervisory visits.

4 The number of inspections carried out by the Food Standards Agency includes all visits by an officer to food premises for any purpose. The Agency inspected 62 per cent of food businesses in 2006-07.

5 The number of inspections carried out by HSE excludes health and safety inspections carried out by local authorities as HSE does not direct local authority activity (see paragraph 2.12).

6 Hampton report, paragraph 27, page 8.

3.3 Each regulator assesses risk in relation to its own statutory responsibilities and designs its own regulatory approach. It is therefore not surprising that some regulators rely more on inspection as a regulatory tool than others. The Food Standards Agency, for example, has the resources of local authority environmental health and trading standards services to draw on with an inspection force estimated at 2,000 full-time equivalent officers. The Environment Agency has approximately 1,000 frontline inspection staff (fte) whilst the Health and Safety Executive has 1,440 regulatory staff. In addition, the size of business typically inspected differs between regulators and, therefore, regulators which typically inspect small or medium-sized businesses are able to carry out more inspections.

3.4 Regulators also take account of their perception of public attitudes to risk in determining the resources they give to inspection activity. The Food Standards Agency believes that safe food is a key public issue and that it would be heavily criticised if it cuts back on inspection activity. The Environment Agency and the Health and Safety Executive, on the other hand, both believe that, after their work to prevent major accidents and hazards, the main public expectation is that they investigate and prosecute companies for breaches following accidents or pollution incidents. The Health and Safety Executive, for example, finds that investigating accidents and complaints absorbs around half its available frontline regulatory resource.

3.5 A further factor determining the resources regulators apply to inspection activity is their view of the usefulness of inspections in delivering their overall outcomes. Most regulators believe that some direct inspection of businesses is essential. But all have found it difficult to 'prove' that inspection works. Research commissioned by the Health and Safety Executive, for example, has found that although rates of workplace injury have declined, it is not clear how much of this is due to the regulatory regime and how much is due to structural changes in the workplace.⁷ The Environment Agency and the Financial Services Authority are in a similar position; because of the influence of external factors, such as technological change, neither is able to demonstrate a direct link between the achievement of their desired outcomes and the day-to-day activity of their inspection staff. So, for regulators, it is largely a matter of judgement to decide what the right level of inspections should be.

The trend towards outcome-focused inspection systems

3.6 Regulators carry out inspections to achieve a number of purposes:

- to meet the requirements of EU law;
- to identify breaches of regulations and apply sanctions;
- to monitor overall compliance levels and target problem areas;
- to help businesses comply with regulations and avoid causing harm;
- to prevent major incidents; and
- to maintain the confidence of stakeholders (the public, local, regional and national government bodies and non-governmental organisations).

3.7 Modern risk-based regulation emphasises the importance of achieving the overall policy goals of regulation as well as technical compliance with regulations. The regulators reviewed are all engaged in ongoing internal debate about the role of inspection and how it should be carried out. Current issues include:

- how to ensure consistency and a level competitive 'playing field' without giving up flexibility to respond to the circumstances of individual businesses;
- how to balance being outcome-focused with ensuring compliance with the law; and
- how to train, retain and motivate staff in the new ways of working.

3.8 The following examples show how these issues can manifest themselves in practice and how regulators' approach to inspection is changing:

- The Health and Safety Executive has moved recently to an overtly outcome-focused approach to inspection. In 2002, it introduced topic-based inspections to ensure that its inspectors focus on addressing the commonest causes of injury and ill health. Inspectors now carry out visits using a topic pack as a framework for what to look for; these cover the risks of falls from height, slips and trips, workplace transport, musculoskeletal disorders and stress. The Executive is currently 'fine-tuning' its approach to deal with problems that have arisen, namely:

⁷ *Trends and context to rates of workplace injury* – Warwick Institute of Employment Research, 2005.

- inspectors have been unclear about the extent of their discretion to vary from the topic pack, for example to deal with matters of concern they come across during the inspection;
 - some inspectors have felt undermined and devalued by the approach which, they feel, does not make best use of their expertise;
 - the approach targets generic risks within business sectors whilst firm-specific information is underutilised. This has resulted in more frequent inspections for some businesses which fall into high risk sectors for more than one type of risk.
- The Environment Agency is increasing its reliance on planned audits of businesses' systems and controls as opposed to physical walk through inspections and is rolling out a Technical Development Framework for its field staff to accompany this. The new approach will also place greater emphasis on communication and other personal skills.
 - The Financial Services Authority's decision to move to a more principles-based and outcome-focused approach to regulation will require its supervisors to be capable of making fine judgements, based on a detailed understanding of a firm's business. Supervisors must gain the in-depth knowledge they need without becoming overly involved in the management of the firms they regulate. The Authority has put in place processes to challenge staff to think about what are and what are not regulatory issues.
 - The OFT recently assumed responsibility for carrying out assessments of the fitness and competence of applicants for consumer credit licences. The OFT is developing a risk-based system of assessment and inspection visits, which, from Summer 2008, will be carried out on its behalf by Trading Standards officers. Consultation on the new approach with business stakeholders has provided opportunity for external input into the risk model.

- The Food Standards Agency has faced criticism from local authorities over its rigid approach to inspections. The Agency has been working with local authorities to develop a new system (the Changes to Local Authority Enforcement (CLAE) Initiative) to place greater emphasis on working with businesses to achieve compliance and give enforcement officers more choice over the appropriate intervention for each premises. It expects to issue an amended Code of Practice later in 2008. As part of its monitoring of local authorities, the Agency has also, in April 2008, introduced a new outcome-focused measure of performance – the 'proportion of businesses that are broadly compliant' – to replace the previous measure based on the number of inspections carried out.

Business views on inspections

3.9 As part of the individual assessments of regulators, review teams spoke to over 150 business representatives and owners and managers. A frequent message from these interviews was that businesses can welcome inspections as an opportunity to obtain reassurance that they are doing things the right way and to get tailored advice and guidance. Small businesses, in particular, can be keen to draw on inspectors' knowledge to help them comply (see paragraph 4.5).

PART FOUR

Advice and guidance

4.1 All businesses need information on how regulations apply to them and what they can and should do to comply. The Hampton Report recommended that regulators divert resources from inspection activity into providing advice to reduce the burden of regulation on business. The benefits advanced by the Report were that better and more accessible advice could reduce the time taken by business to understand regulations (and any data requirements involved) and increase the probability of compliance, and hence regulatory outcomes. The Report identified that small businesses, in particular, found it difficult to find the advice and guidance intended for them and to identify and understand what was required of them.⁸

Regulators' changing role in the provision of advice and guidance

4.2 The five regulators all accept that effective provision of advice and guidance is critical to delivering compliance with regulations but we found that there are some significant challenges in doing so. The demands on regulators for good quality, accessible, comprehensible and tailored advice⁹ are great. Changes to regulations and new regulations come at businesses from across the regulatory spectrum and businesses find it difficult to keep up. Many small businesses in particular need help in translating regulations into plain, commonsense actions they can understand quickly.

4.3 Regulators have to decide where to put their limited resources to meet their obligations and make the most difference. We found all five regulators are seeking ways to achieve this but tend to lack an overall strategic approach. Instead, regulators are more commonly responding to short-term imperatives in relation to new regulation and in developing their existing approaches in what appear to them sensible but essentially piecemeal and ad hoc ways.

The Financial Services Authority had, however, evaluated the effectiveness of its different communication tools to small business and others were planning to do so.

4.4 Regulators with more arm's-length relationships with individual businesses, such as the Food Standards Agency and the OFT, are in the process of trying to define their roles and coordinate their provision of advice and guidance with that of local authorities. Most food businesses, for example, seek advice locally in the absence of a responsive and authoritative source nationally.

4.5 Regulators with direct inspection responsibilities face a different challenge, that of determining where to draw the line between their preferred stance of neutral guidance provider and educator of business and the more hands on consultant-cum-management role many businesses seem to want. Some regulators regard the latter role as inappropriate and potentially in conflict with their enforcement responsibilities. As noted above, however, (paragraph 3.9) inspections can provide a much valued means by which businesses can receive specific tailored advice and it often falls to the inspectors to pick their way carefully through the potential minefield of advice provision versus enforcement activity or both.

4.6 Thus the review of the Environment Agency found that front line officers were sometimes unclear on where the boundary lies between advice and consultancy and some were worried about the consequences of getting it wrong. Businesses, on the other hand, would like the Agency to be more proactive in advising on compliance and reported that written and verbal guidance can be ambiguous in terms of the actions needed to ensure compliance. This problem is possibly more acute at the Agency because the advice sought could involve commenting on technological solutions which are beyond the competency of individual

⁸ Hampton report, paragraph 12, page 5.

⁹ National Audit Office *Administrative Burdens* report 2007 – survey; http://www.nao.org.uk/publications/nao_reports/06-07/0607615_technical_summary.pdf.

inspectors and need to be referred to a national technical lead. The Agency is developing a policy on how it provides advice and guidance while ensuring that firms retain ownership of the responsibility to comply.

Good practice in providing advice and guidance

4.7 The five regulators all employ a variety of means of providing advice and guidance to business. All provide guidance on their website and, to help businesses access guidance, most also provide a free telephone and email contact centre. The following paragraphs and examples pick out the best of what we have seen.

4.8 The Hampton Implementation Reviews did not rate regulators' websites for accessibility or comprehensiveness, but website design will clearly be an important factor determining the accessibility of advice and guidance and regulators have to devote considerable resources to organising, reorganising and updating their websites. Businesses cited the Environment Agency sponsored NetRegs website as accessible and useful (see Box 6) although more needs to be done to raise awareness of the site amongst its target audience of small businesses. The features which make the website successful include:

- information is well set out, comprehensive and easy to understand;
- information is collated by business type and topic; and
- there are useful links.

4.9 Three of the five regulators operate free contact centres which aim to provide advice to businesses on a wide range of regulatory areas:

- The Environment Agency established a National Customer Contact Centre in 2004 to provide a single point of contact and advice for the Agency's broad range of business and public enquiries. In addition, businesses can receive one-to-one assistance in the completion of simple permit applications which speeds up the processing and issuing of permits. The Agency is in the process of developing systems for surveying customer satisfaction but reports that 81 per cent of calls are now resolved at the first point of contact.
- The Health and Safety Executive's Infoline service provides advice, on an anonymous basis if required, by text, telephone, email and post and also provides a web-based and phone service for incident reporting. The Executive reports high user satisfaction levels with the service but some businesses our reviewers spoke to still expressed

disappointment that Infoline operators could not necessarily advise them how to interpret the law in their specific circumstances.

- The Health and Safety Executive has piloted a free advisory service, Workplace Health Connect, providing advice on health issues to small businesses. The service is funded by but not delivered by the HSE in an attempt to encourage businesses to access advice without fear of enforcement action. It intends to publish the results of its evaluation of this trial in January 2009.
- The Financial Services Authority's Firm Contact Centre handles telephone and written communications from businesses and was intended primarily to signpost callers to relevant published information. At the time of the review team's visit 40 per cent of the calls received were related to regulatory returns. The review team found that contact centre advisors were able to resolve a wide range of issues and queries in an efficient and effective manner but were assisting callers on how to complete the Authority's regulatory returns (see paragraph 2.18). The Authority has plans to move the Firm Contact Centre service from a purely reactive service to a proactive service in which new financial services firms will be contacted directly and offered assistance. It is also gearing up to help firms understand the Authority's requirements under a more principles-based regime (see paragraph 4.12).

BOX 6

The Environment Agency's NetRegs website

NetRegs¹ is a web-based single source of free environmental guidance for UK businesses, operated as a partnership between the UK environmental regulators (the Environment Agency in England and Wales, SEPA in Scotland and the Environment and Heritage Service in Northern Ireland), and in collaboration with Business Link and Envirowise.

It was developed to target 'difficult-to-reach' businesses, particularly small and medium-sized enterprises (SMEs), and aims to make advice and guidance available in a range of different ways; for example aimed at specific business sectors and categorised by environmental topics. NetRegs also provides e-alerts to subscribers, with free guidance by email informing businesses of the latest changes to environmental regulations and what they need to know in order to comply. Subscribers can choose to receive updates that are relevant to their business as well as more general environmental guidance and legislation updates.

NetRegs is linked to and from other websites, including those run by local authorities, trade associations, Business Link and Envirowise.

NOTE

¹ www.netregs.gov.uk.

Working with industry to develop effective communications

4.10 It is difficult for regulators to produce guidance that meets the needs of all potential users. Guidance is an interpretation of the law and, therefore, regulators feel that comprehensive and detailed explanation is needed to avoid misleading businesses about the complexity of the law. In recent years, however, regulators have worked hard to improve the range of their written publications to produce guidance which communicates effectively with businesses, large and small. Some regulators have also engaged very effectively with trade bodies to produce the tailored industry-specific approach businesses like. For example:

- the Environment Agency worked with the agricultural waste industry to determine farmers' needs for advice and guidance on new agricultural waste requirements. As a result, guidance was greatly simplified, forms were made more user-friendly, greater emphasis was put on providing hard copy rather than web-based information and awareness within the sector was raised.
- the Health and Safety Executive worked with the Construction Industry Advisory Committee (CONIAC) to prepare guidance on the new Construction, Design and Management regulations. Input from CONIAC helped ensure that the guidance was written in a business-friendly way and that industry was prepared for implementation of the new regulations.

4.11 The Food Standards Agency has taken the approach of working with industry a step further by involving industry groups, individual small businesses and local authority enforcement staff to produce complete guidance packs for catering and retail food businesses (see Box 7).

4.12 In support of its move to more principles-based regulation, the Financial Services Authority is intending to work with industry associations as the latter prepare more sector-specific guidance. Principles-based regulation provides flexibility but also uncertainty and the Authority recognises that it will have to go further than it currently does in offering advice and guidance to smaller firms.

4.13 Working effectively with industry, however, requires trust and a sense of a "common cause" which may take some time and effort to create. The OFT's engagement with some consumer credit trade bodies highlights the difficulties that can arise when the regulator and

the regulated industry (or parts of it) disagree on how a particular regulation should be interpreted and lack a history of good relationships to help them deal with differences of view on complex issues. In this instance, the review team found that some trade bodies doubted whether the OFT really took their views seriously and expressed a desire to engage with the OFT earlier in the drafting process in a more meaningful way. The OFT, however, reported that some trade bodies had been reluctant to engage when asked. The OFT is committed to further dialogue with all stakeholders to establish its position on the key issues at stake.

The need for better information on the reach and influence of guidance

4.14 Regulators provide advice and guidance through a wide variety of channels and products. Whilst they do evaluate some aspects of their provision, particularly the more expensive such as contact centres and educational campaigns, in general they lack a good understanding of how their target audiences access information, the effectiveness of their guidance in relation to achieving outcomes and the relative cost-effectiveness of different approaches to providing advice and guidance. This could be an area where regulators could work together to support research on the effectiveness of different communication methods and develop better means of monitoring the take up of guidance.

BOX 7

Safer food, better business

The Food Standards Agency produced a guidance pack called *Safer food, better business* to help food businesses comply with EU legislation on Hazard Analysis and Critical Control Points. It has developed two main versions of the pack, one for catering businesses and one for retail. The packs explain the requirements of the legislation and provide a range of materials which can be tailored by the business to produce the required procedures for food safety management. Record keeping is kept simple by the use of a diary system for recording, by exception, things that go wrong in the business and the corrective actions taken. The Agency launched an interactive DVD with voiceovers in 16 languages to complement the programme in February 2008 and a supplement for residential care homes in May 2008. It has also launched editions tailored to Chinese and Indian cuisines. The review team found support for the project from a wide range of stakeholders across the business and enforcement communities.

PART FIVE

Influencing business

5.1 The provision of specific information (advice and guidance) about how to comply with regulations is just one part of the regulator's armoury. Regulators must also persuade business that it is in their interest to comply with regulations, if possible, even, to reward compliant behaviour. This Part of the Report deals with the informal means by which regulators seek to influence business whilst the next part, on sanctions, deals with the formal, legal means by which regulators persuade businesses to comply.

5.2 Campaigning activity plays a key role in risk-based systems of regulation. If regulators are to concentrate their inspection resources on the areas of highest risk, they need other means of ensuring that low risk businesses are aware of the law and are persuaded to comply. Regulators, such as the Health and Safety Executive and the Environment Agency, with very large numbers of businesses to influence in relation to their inspection capacities arguably have the most to gain from campaigning activity of one kind or another.

Working with industry and other stakeholders to influence business behaviour

5.3 Regulators employ a range of different routes to influence the business community, for example working through national bodies such as trade associations and advisory groups, through partner organisations such as local authorities and other intermediaries and through direct campaigning activity. The following examples illustrate the different approaches available to regulators.

5.4 The Health and Safety Executive has a long-established system of industry advisory groups which it consults as it develops policy. In recent years, however, the Health and Safety Executive has taken its relationships with business and trade sector groups further and into new areas as part of a wider strategy to identify and influence key stakeholders. It has, for example:

- persuaded trade organisations in some of the most dangerous sectors, such as quarrying, paper and ceramics, to set their own injury and ill health reduction targets;
- worked with industry sectors to develop educational and campaigning materials; and
- set up a Small Business Trade Association Forum (SBTAF), in which representatives from around 50 trade associations meet quarterly under the chairmanship of the Non-Executive Board member for Small Business to comment on Health and Safety Executive initiatives and guidance. The SBTAF provides a conduit through which the Executive can reach 900,000 businesses. To make the most of the forum, the Executive has also set up a web-based discussion and information exchange for the trade associations through which they can network with each other on health and safety issues.

5.5 The Environment Agency is working with trade associations representing different sectors of industry to agree sector-wide objectives for reducing emissions, increasing transparency and improving the delivery of regulation. This involves extended discussion to establish buy-in and the benefits to industry. So far, five sector plans have been published and a further six are under discussion.

5.6 The OFT is seeking to influence business through sponsoring voluntary codes of conduct which trade associations sign up to on behalf of their members and which set out standards for dealings with consumers. The OFT is targeting the scheme at sectors with known elements of bad practice such as direct selling and car repair services, thereby hoping to improve practice in those areas by providing commercial benefit to compliant businesses. An initial review of the scheme in 2006 found that member businesses were optimistic about the likely future benefits but it was too early to prove positive benefits for consumers. However, perhaps because the codes approach is purely voluntary and goes beyond the statutory legal requirements offered to consumers, take up has been slow.

5.7 Regulators also seek to influence business through working in partnership with other organisations, usually local authorities:

- in the North West region, the Health and Safety Executive has developed a protocol in partnership with two local authorities and local scaffolding firms for erecting and dismantling scaffolding in urban areas, bringing together health and safety guidance and highways permit procedures;
- the Health and Safety Executive recently set up a scheme with a national tool hire company in which firms are offered a discount on new ladders if they bring in their old, unsafe ladders. According to the Health and Safety Executive, the initiative has so far resulted in over 4,000 unsafe ladders being removed from the workplace.
- the OFT is working with local authorities to create a national framework for local authority assured trader schemes. The aim is to bring consistency to local schemes which recommend traders offering high standards of customer service.
- the OFT also undertook a two year project, in conjunction with trading standards, involving sweeps of newspapers and consultation with newspaper editors as a means of dealing with credit card advertising problems. The project saw major reductions in the incidence of advertising that broke rules laid down in consumer credit legislation, at both a local and national level.

5.8 Most regulators campaign directly to business on specific issues from time to time. Campaigns range from national high profile campaigns with significant marketing budgets to local or regional initiatives undertaken through direct contact between regulatory staff and individual business people. The Health and Safety Executive, for reasons discussed above, undertakes more direct campaigning activity than the other regulators reviewed. In 2005 it introduced Health and Safety Awareness Officers to identify local safety issues and raise awareness by, for example seminars, awareness days and making contact with new businesses. Campaigns have included:

- the Better Backs campaign, in 2005, which targeted industry by direct mailshot, posters and radio advertisements to raise the profile of work-related musculoskeletal disorders and promote the introduction of simple cost-effective ways of reducing the risk of back injury;
- the 'Bad Hand Day?' campaign, in 2006, in which the Executive, in partnership with local authorities, raised awareness amongst hairdressers about the risk of dermatitis from handling the chemicals in dyes. HSE opened a campaign website, produced publicity materials and published advertisements in the specialist press whilst local authority Environmental Health Officers visited salons with information and advice.

Influencing business behaviour through influencing the market or the local community

5.9 Those organisations regulating on behalf of consumers, such as the OFT and the Food Standards Agency, are sometimes able to influence business behaviour through influencing consumers, either individually or collectively. The OFT, for example, provides funding for the national helpline Consumer Direct which provides information to individual consumers on their legal rights and means of redress. The OFT hopes that informed consumers will be better able to demand fair treatment from businesses. Similarly, the Financial Services Authority's Moneymade clear web pages provide information to consumers about financial matters and promote public understanding of the financial system.

5.10 Regulators have also sought to influence consumers through national and local media. In some cases, such as the OFT's scams campaigns, the aim is simply to protect consumers from unscrupulous or criminal behaviour. However, regulators may also be in a position to influence consumers' collective spending decisions, but need to ensure they can use their power to influence the market fairly. For example:

- the Financial Services Authority is considering whether to publish further information from some of its investigative work, for example its mystery shopping exercises, but is concerned about how to do this in a way which is fair to firms and does not open the Authority to legal challenge.
- the Food Standards Agency has adopted a deliberate strategy of influencing consumer behaviour in order to influence the food market, believing that this creates the right incentives for business to comply with food regulation and work in a way which is aligned with the Agency's objectives including healthy eating. It has, for example campaigned on raising awareness around the intake of salt and has worked closely with industry to develop a traffic light system to inform consumers to promote healthy eating. Whilst major food business operators have been supportive, some businesses have criticised the Agency for causing commercial detriment through these initiatives.

5.11 Regulators are also increasingly making information available to the public about the performance of businesses in their area. The Environment Agency, for example, provides information on pollution incidents and firms with pollution permits on its website which is searchable by postcode. It also highlights good and poor environmental performers in its annual *Spotlight on business* publication.

PART SIX

Sanctions

6.1 One of the conclusions of the Hampton report was that some regulators lack effective tools to punish persistent offenders and reward compliant behaviour by business.¹⁰ In response to this finding, the government asked Professor Richard Macrory to review the sanctions currently available to regulators and propose new ones. Professor Macrory's recommendations included introducing monetary penalties, both fixed and variable, strengthening and expanding the system of Statutory Notices (compliance notices, restorations notices, stop notices) and introducing enforcement undertakings. This is now being taken forward in the Regulatory Enforcement and Sanctions Bill.¹¹ The expanded toolkit of sanctions, however, will be available only to regulators capable of exercising the powers in accordance with the principles of good regulation.

6.2 This Part of the Report deals with how the regulators we reviewed use the powers currently available to them, it does not seek to measure the effectiveness of those powers or assess whether they should be awarded the new powers contained in the Regulatory Enforcement and Sanctions Bill.

The range and purpose of regulators' sanctioning powers

6.3 Regulators have been given different powers at different times for different purposes. Those regulators whose role is mainly to regulate individual businesses and premises tend to have sanctions based in the criminal court system whilst those that also have a role in regulating markets may also have civil injunctive powers and even the ability to impose fines directly on businesses.

Figure 7 shows the key sanctions available to the five regulators we looked at. All had powers to:

- promote improvement to an aspect of business activity, through written warnings, statutory improvement notices, or changes to licence or permit conditions;
- prevent businesses from carrying on activities which are causing harm or in imminent danger of doing so; for example through statutory prohibition notices or civil injunction; and
- punish business owners and operators for failing to comply with the law and encourage their future compliance; for example through criminal prosecution or administrative financial penalties.

How regulators use their sanctioning powers

6.4 All the regulators subject to review have systems in place designed to ensure that sanctions are applied on a fair and consistent basis. In addition, information gathered for the reviews provided some evidence that these systems do work; business stakeholders, for example, said that regulators' enforcement was fair and proportionate.

6.5 The five regulators also publish their enforcement policies on their websites including information on how they assess the severity of a breach of regulations and the action they will take; for example:

- the Health and Safety Executive publishes its Enforcement Management Model which sets out the decision-making framework health and safety inspectors (including local authority inspectors) should follow when considering formal enforcement action (**see Box 8 overleaf**);
- the Environment Agency publishes its Enforcement and Prosecution Policy;

¹⁰ Hampton report, paragraph 7, page 4.

¹¹ The Bill has now completed its passage through Parliament and is awaiting Royal Assent.

7 Sanctions available to regulators

Regulator	Type of powers	Main sanctions available ¹
Environment Agency	Criminal and civil	Suspension or revocation of licences Enforcement and prohibition notices Civil injunction Remedial works Prosecution
Health and Safety Executive	Criminal	Improvement and prohibition notices Prosecution Withdraw approvals and vary licence conditions or exemptions
Financial Services Authority	Civil, criminal and regulatory	Withdrawing or varying permission to carry on business Financial penalties Injunctions and restitution orders Prosecution
Food Standards Agency	Criminal	Improvement and prohibition notices Prosecution Withdrawal of food from sale Withdrawal of permission to supply (high risk foods only, for example meat)
Office of Fair Trading	Civil Criminal since 26/5/2008	Refusal or revocation of licences Civil injunction Prosecution (new – under Consumer Protection Regulations 2008)

Source: National Audit Office

NOTE

¹ Some of the sanctions shown apply only within specific regulatory regimes.

- the Financial Services Authority publishes the risk-based criteria it uses to decide which cases to pursue and details of its approach to enforcement in its Decision Procedure and Penalties Manual and Enforcement Guide (part of the Authority's Handbook);
- the Food Standards Agency publishes the codes of practice and associated guidance that it expects local authorities to follow in their enforcement of food standards and hygiene; and
- in November 2007 the OFT published for the first time a statement of its consumer protection enforcement principles.

6.6 All regulators apply a graduated response to breaches of regulation in accordance with their published policies which set out the types of factors they consider in escalating their response from written warning to civil injunction or prosecution, such as nature of the breach, the harm caused and previous history. **Figure 8** shows the number and types of sanctions applied by the five regulators we looked at in 2006-07.

BOX 8

The Health and Safety Executive's Enforcement Management Model

The Health and Safety Executive developed its Enforcement Management Model to help health and safety enforcement officers make decisions in line with its enforcement policy.

The Model guides the inspector to:

- assess proportionality – to determine the 'risk' gap between set standards and the actual risk at premises;
- take into account information about the duty holder – for example previous compliance history; and
- take account of strategic and public interest considerations.

Independent research commissioned by the Health and Safety Executive found that the Model improved the consistency, proportionality and transparency of decision-making, particularly amongst local authorities.

8 Number of different types of enforcement action taken by regulators

	Written warnings	Statutory notices	Prosecutions, fines, licence revocations and civil injunctions	All formal actions
Environment Agency	24,651	546	1,475 ¹	26,672
Financial Services Authority	109	78	32 ²	219
Food Standards Agency	159,523	5,034	804	165,361
Health and Safety Executive	Not recorded	8,071	1,012	9,083
Office of Fair Trading	406	107	63	576

Source: National Audit Office

NOTES

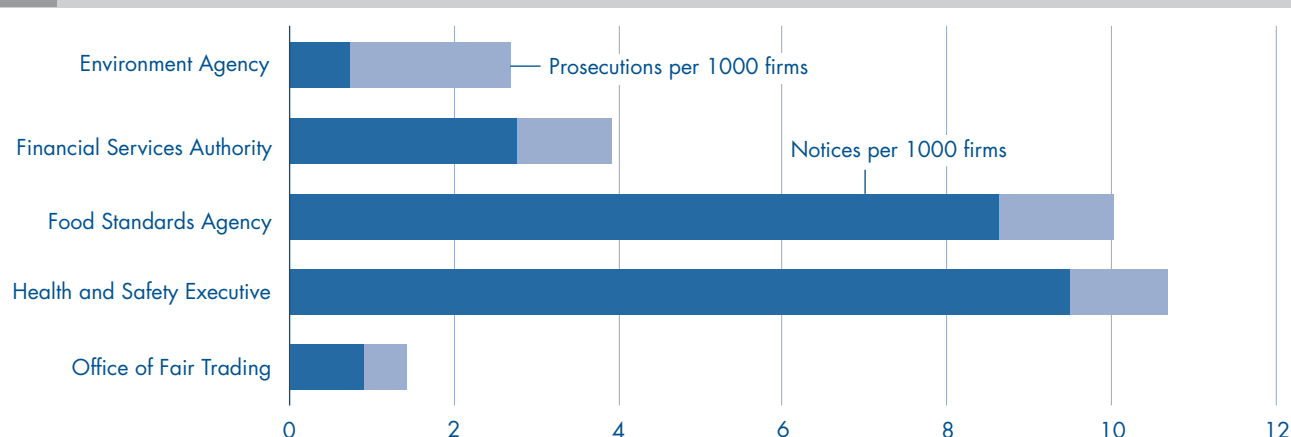
- 1 The Environment Agency figure for prosecutions includes 731 formal cautions in lieu of prosecution.
- 2 The Food Standards Agency figure for prosecutions includes 361 formal cautions.
- 3 The Health and Safety Executive uses a range of tools to secure compliance with the law and to ensure a proportionate response to any breaches. These include written information, advice and warnings, in addition to formal action. The Health and Safety Executive records the action it takes against dutyholders but does not collate statistics on the numbers of such letters or warnings issued.

6.7 Regulators are pragmatic and wish to apply sanctions in ways that are cost-effective. The reviews found that the regulators' approach to sanctioning is influenced by a number of factors in addition to the number and type of offences detected. These include:

- a familiarity with their powers** – for example: the OFT has been promoting the use of civil injunctive powers to trading standards services in cases where prosecution has not proved an effective deterrent because the fines that can be imposed are too low. Despite providing training and advice, OFT has found that the actual frequency of using the powers varies considerably by local authority and by individual and Trading Standards officers have differing perceptions of the purpose and effectiveness of these unfamiliar sanctions.
- b historical practice and expectations** – for example: when enforcement action by the Health and Safety Executive's inspectors fell, in part because they were spending more time providing advice and guidance, the Executive sought reassurance that staff were following its enforcement policy. Enforcement levels have risen as a result.
- c the ease of proving offences and the resources involved in different sanctioning options** – for example: within the Financial Services Authority, the enforcement route can be lengthy and uncertain and other more appropriate means of fixing problems with firms' behaviour are often considered where they meet the Authority's regulatory outcomes. In addition, some offences are inherently more difficult to prove than others, for example, generally the Environment Agency can more easily detect and source pollution released to rivers than pollution released to the air; whilst the Health and Safety Executive finds it easier to prove a breach of regulations in safety cases than in health cases.
- d their approach to deterrence** – for example: the Financial Services Authority's preference for supervisory solutions to change firms' behaviour means that it only takes formal enforcement action when it believes the breach is serious and/or the deterrent effect of doing so will be high. The OFT also targets formal proceedings at high impact cases using impact assessment to select cases, such as its current action in relation to bank overdraft charges. Other regulators, however, have sought to exploit more frequently the "naming and shaming" opportunities which arise from successful prosecutions as a tactic to counteract the low level of actual penalties awarded by the courts.
- e public attitudes** – for example: the Food Standards Agency believes that the public regards food safety as a priority which, in turn, is reflected in its inspection and enforcement policies.

As a result, the likelihood of a firm receiving a formal sanction varies between regulators (see Figures 9 and 10 overleaf).

9 Enforcement action in 2006-07 compared to the number of businesses regulated (expressed per 1,000 businesses)



Source: National Audit Office

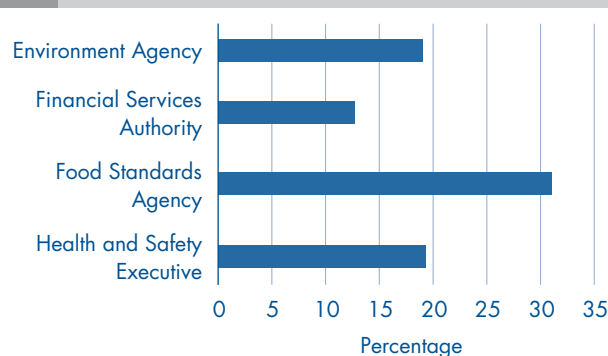
NOTE

Environment Agency and Food Standards Agency prosecutions include formal cautions.

6.8 There is nothing inherently wrong in being influenced by the factors above. Regulators must try to make the best use of their own resources and do what their experience dictates will lead to better compliance. However, most lack an evidence-based model of the effectiveness of the different options for achieving compliance and the inter-relationship between them. The Health and Safety Executive is aware that there are gaps in its knowledge about the effectiveness of its various interventions. It is aware also that there is significant underreporting by business of workplace accidents and health issues, such that it finds it difficult to evaluate whether it is putting its resources into the right areas. As a first step, it is seeking to improve the accessibility and usefulness of the research material it already holds on the success of different approaches (including sanctioning approaches) to improving health and safety management.

6.9 The Financial Services Authority is intending to increase both the number of criminal prosecutions that it takes, for example for insider dealing, and the levels of penalties it levies. It is undertaking further work on setting penalties to deter wrongdoing and encourage appropriate behaviour by firms.

10 Enforcement action in 2006-07, including written warnings, enforcement notices and prosecution, as a percentage of inspections



Source: National Audit Office

NOTES

- 1 Enforcement action can arise from both inspection activity and investigative work, so the Figure does not show directly the proportion of inspections which result in enforcement action.
- 2 The Office of Fair Trading did not have inspection responsibilities in 2006-07.

PART SEVEN

Design of regulations

7.1 There are two Hampton principles (see Figure 1, page 3) relating to the design of regulations:

- that regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection; and
- that regulations should be written so that they are easily understood and enforced and all interested parties should be consulted when they are drafted.

This Part looks at the steps regulators have taken to meet these principles.

7.2 Most new regulation is made in Europe and the formal arrangements for UK regulatory authorities to influence the European agenda differ from one regulator to another, with Government departments typically taking the lead responsibility. The Health and Safety Executive was the only regulator we reviewed which has sole responsibility for negotiating at the European level on behalf of Great Britain. All regulators, however, seek to influence EU policy within their field of regulation either directly or through their parent department and the review teams were impressed with the effort and expertise that regulators applied to influencing Europe.

7.3 Government departments usually have the task of designing regulations transposing EU directives into domestic law and, in consultation with the regulatory authorities, designing the regulatory regimes, although EU food law is different, consisting of directly applicable regulations.

Reducing the burden of new regulation

7.4 Most of the regulators reviewed employ a combination of different mechanisms to challenge the need for (in the case of non-EU regulation) and design of new regulations. In response to the Hampton report, and the better regulation agenda more generally, most regulators have established a cross-functional committee of senior officials to scrutinise new regulations and regulatory policies (see Box 9). Regulatory scrutiny committees' discussions, in turn, are usually informed by the results of analytical techniques such as Impact Assessment or Cost Benefit Analysis and by stakeholder consultation which, if done well, can lead to improved design of regulations.

BOX 9

Regulatory scrutiny committees

The **Environment Agency's Regulatory Scrutiny Panel**, set up in 2006, operates as a challenge panel at key milestones during the formulation and implementation of new regulations. Chaired by the Director of Environmental Protection, its remit is to ensure that the Agency's regulatory activities are outcome-focused, risk-based, clearly communicated and delivered in a consistent manner.

The **Health and Safety Executive's Better Regulation Challenge Panel**, set up in 2005, seeks to ensure that Impact Assessments are carried out effectively, that small business interests are considered and that policy is designed in a clear and transparent manner. Panel membership consists of a small number of senior HSE officials and the Non-Executive Board member for Small Business.

Since it was established, the Panel has improved its scrutiny of new regulation through better horizon scanning and earlier involvement.

The **Financial Services Authority's Regulatory Policy Committee** allows senior management to review policy proposals at an early stage. Chaired by the Authority's Chief Executive it reviews all high-profile/controversial consultations and major policy decisions affecting a large number of consumers or significant financial sectors. For each proposal, a summary of the policy idea is presented along with a market failure analysis and an outline Cost Benefit Analysis.

7.5 Some regulators said that the sheer volume of new regulation coming from Europe can make it difficult to engage effectively in the policy-making process. Getting in early is one of the keys to success and some regulators have given their regulatory scrutiny committee this horizon-scanning role. There are, of course, other factors, beyond the scope of this report, including wider policy goals and negotiations, affecting how influential regulators are in shaping regulation.

7.6 Regulators also find it difficult to identify the best time to carry out an Impact Assessment: too early and the policy is not sufficiently well-developed to assess its impact with any accuracy; too late and the new policy has too much momentum to turn it around. The Financial Services Authority gets around this problem by preparing a market failure analysis and an outline cost benefit analysis at an early stage (**Box 10**). In the Food Standards Agency, the Better Regulation team has been influential in getting policy teams to involve impact assessment experts early enough to influence policy.

7.7 The Environment Agency has sought to tackle the issue of dealing with the flow of legislation imposing new environmental requirements in a different way, by creating a framework in which new European Directives can be integrated with existing ones within a single regulatory regime (**Box 11**). This approach has huge scope to reduce the burden on business and has been widely welcomed.

7.8 All the regulators we reviewed consult widely and publicly on new regulations. However, we found that engagement with stakeholders through other fora and before the formal consultation process could have significant benefits. Many regulators have set up advisory committees and panels (**see Box 12**) to help them do this.

Dealing with out of date regulations

7.9 Over time, regulations can become out of date, for example where they fail to match current business practice or technology. In addition, some regulations simply do not work very well or impose a disproportionate burden on business for their benefits. Some regulators carry out post-implementation reviews of new regulations after a few years of operation. The Health and Safety Executive, for example, reviews legislation between three and five years after it is implemented. The Financial Services Authority also carries out some post-implementation review on an ad hoc basis. In general, however, regulators appear to lack the resources to deal effectively with their back catalogue of existing regulations, assuming perhaps that regulations are useful or, at least, not harmful unless there is lobbying from business or other stakeholders for change.

BOX 10

Impact Assessment/Cost Benefit Analysis

The Health and Safety Executive undertakes Impact Assessments, with input from its own economists, to quantify the implications of new regulations and policies. The aim is to carry out the Impact Assessment early in the policy-making process to enable the Executive to develop and inform its approach to negotiation in Europe.

The Financial Services Authority determines whether new regulation is necessary by employing an analytical tool called Market Failure Analysis. The market failure analysis and outline cost benefit analysis are carried out early in the policy-making process to help the Authority decide whether to begin work on a project that may lead to regulatory intervention. Once it has been established that there is an economic case for the Authority's intervention, it produces further detailed Cost Benefit Analysis (CBA) for proposals to determine whether the benefits of regulation outweigh the costs which are published in its consultation papers. The outline cost benefit analysis looks at the economic impact of the proposals in terms of the following:

- firms and their behaviour;
- consumers and their behaviour; and
- the nature of the transactions carried out in the market.

BOX 11

Bringing coherence to existing regulations

The **Environment Agency**, jointly with the Department of the Environment, Food and Rural Affairs, designed and implemented the Environmental Permitting Regulations (England and Wales) 2007 which established the basis for a single permitting regime for the environmental obligations at a site. Currently the new permitting regime covers industry and waste regulation and there are proposals to extend it to other regimes, such as discharges to water and radioactive substances regulation. It implements 11 European Directives and provides a means of easily implementing new ones by adding Appendices. The Regulations also facilitate transferring regulation between local authority and the Agency, to give a single regulator for a site. In implementing them, the Environment Agency has taken 400 documents out of use.

BOX 12

Stakeholder engagement

The formal approach – Prior to engaging in a formal public consultation, the Financial Services Authority consults the Financial Services Practitioner Panel, the Consumer Panel and the Smaller Business Practitioner Panel.¹ The Panels have the opportunity to question the Authority and to examine the cost benefit analysis underpinning the case for new regulation. Following public consultation, responses are analysed and set out, along with the Authority's response in a Policy Statement. The Authority feeds back to the Panels on the consultation process and on how it plans to respond; the Panels' views must be reported to the Board.

The informal approach – The Health and Safety Executive has a strong and effective network of advisory committees involving business and trades union representatives covering a range of sectors and health and safety issues, for example the Small Business Trade Association Forum, the Textiles Industry Advisory Committee and the Motor Vehicle Repair Safety Forum.

In revising the Construction, Design and Management (CDM) regulations 2007, the Executive worked very closely with the construction industry, through the Construction Industry Advisory Committee. An industry working group was established to advise on the revision of the regulations. As a result, there is a good deal of industry 'ownership' of the regulations.

NOTE

1 The Financial Services Practitioner Panel and the Consumer Panel are statutory committees whilst the Smaller Business Practitioner Panel is a non-statutory committee.

APPENDIX ONE

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APPENDIX TWO

The five regulators

Environment Agency

Status

The Environment Agency was established by the Environment Act 1995 becoming fully operational on 1 April 1996. It is a non-Departmental Public Body of the Department of the Environment, Food and Rural Affairs (Defra) and an Assembly Sponsored Public Body of the National Assembly for Wales.

Aims and objectives

The Environment Act 1995 set out the principal aim of the Agency:

“...to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development...”

Functions

The Agency carries out regulation and inspections in a wide number of areas through a complex range of regulatory regimes. Aspects of the Agency's activities which have most impact on businesses include the Environmental Permitting, water abstraction and water discharge regimes. Areas that have no or relatively low regulatory impact on business include: management of flood risk; recreation; boat and rod licensing/fishing permits; and reservoir safety.

Funding

The Environment Agency is funded mainly by grant-in-aid from government (60 per cent) and through statutory charging schemes and flood defence levies (35 per cent).

The Agency's charging schemes are operated on a cost-recovery basis with income from charges, and the deployment of the resource that is funded, ring-fenced within a particular regulatory regime. Charges are levied for issuing a permit, and there is generally an annual subsistence fee which reflects the Agency resource required to ensure compliance with the terms of the permits.

Financial Services Authority

Status

The Financial Services Authority is the principal statutory regulator of financial services in the UK. Between 1997 and 2005 it took over the role of 11 other regulators, assuming full powers in 2001.

The FSA is a private company (limited by guarantee). Although it exercises statutory powers its employees are not civil servants and it is operationally independent of government. The FSA is accountable to Treasury Ministers and through them to Parliament. It is subject to Value for Money audits as specified by the Treasury, the most recent of which, conducted by the NAO, was published in April 2007. HM Treasury decides upon the scope of activities that should be regulated, but it is for the FSA to decide what shape the regulatory regime should take in relation to any particular activities.

Aims and objectives

Its regulatory base is the Financial Services and Markets Act 2000 (FSMA) which gives it four statutory objectives:

- maintaining confidence in the financial system;
- promoting public understanding of the financial system;
- securing the appropriate degree of protection for consumers; and
- reducing the extent to which regulated businesses can be used for financial crime.

Functions

The Financial Services Authority authorises and regulates banks, insurance, mortgage lending and advice (including independent financial advisors) and investment business and registered investment exchanges.

In addition, the statutory objectives are supported by a set of principles of good regulation which the FSA must have regard to when discharging its functions. These include principles of good regulation such as: the burdens imposed by regulation should be proportionate to the benefits and using resources in an efficient and economic way.

Funding

The Authority is financed entirely by the financial services industry via an annual levy.

Food Standards Agency

Status

The Food Standards Agency is the UK's food safety and quality authority. It is a non-ministerial government department, established by the Food Standards Act 1999.

Aims and objectives

The Food Standards Agency's objective, defined in law, is to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food. Its vision is 'safe food and healthy eating for all'.

Functions

The Food Standards Agency's statutory duty is to provide advice and information to the public, business and Government on food safety throughout the food chain on nutrition and diet. It also protects consumers through effective food enforcement and monitoring.

Aside from the work carried out by its Agency, the Meat Hygiene Service, and the Wine Standards Enforcement Team; the Food Standards Agency does not directly undertake enforcement and inspections relating to food law. Most food law is enforced on the Agency's behalf by local authorities and port health authorities.

Food Safety – covering issues such as hygiene – is usually enforced by Environmental Health Officers in local authorities;

Food Standards – covering issues such as information and labelling – is enforced by local Trading Standards Officers.

The Meat Hygiene Service enforces food law in about 2,000 slaughterhouses, cutting plants and related premises.

Funding

The Food Standards Agency is grant funded directly by HM Treasury.

Health and Safety Executive

Status

The Health and Safety at Work Act 1974 established a Health and Safety Commission (HSC) and Health and Safety Executive (HSE) as statutory non-departmental public bodies. From 1 April 2008, however, the Executive took over the responsibilities of the Commission to become the single national regulatory body responsible for promoting the cause of better health and safety at work.

Aims and objectives

The primary purpose of the Executive is to protect the health, safety and welfare of employees and safeguard others who may be exposed to risks from work activities. This includes proposing new laws and standards, conducting and sponsoring research, promoting training and providing information and advice.

Functions

The Health and Safety Executive provides strategic direction for Great Britain's health and safety system and is the enforcing authority along with local authorities. HSE looks after health and safety in nuclear installations and mines, factories, farms, hospitals and schools, offshore gas and oil installations, onshore chemical plants, the gas grid, and many other aspects of the protection both of workers and the public. Local authorities are responsible to the Executive for enforcement in offices, shops and other parts of the services sector.

Funding

The Health and Safety Executive is funded mainly by direct grant-in-aid from its sponsoring department, the Department for Work and Pensions.

Office of Fair Trading

Status

The OFT is the UK's competition and consumer protection authority. It is a non-ministerial government department established by statute in 1973. The Enterprise Act also established the OFT as a statutory corporation on 1 April 2003.

Aims and objectives

The OFT's mission is to make markets work well for consumers by encouraging open, fair and vigorous competition. It also addresses consumer welfare through direct consumer protection and enforcement activity.

Functions

The OFT's main role is to address and remedy market failure which it does by investigating specific markets and taking action to prevent cartel behaviour and price fixing. However it also has enforcement powers under a range of consumer protection laws and has statutory responsibility for the administration of the consumer credit licensing regime.

The OFT is a strategic body, making targeted interventions in markets, rather than a front-line regulator carrying out inspections and other routine interventions to ensure that particular businesses or sectors comply with particular sets of rules and standards. It does not make rules or regulations, nor does it have a direct field force of inspectors under its control or influence. The majority of direct regulatory and enforcement work in the consumer area is undertaken at a local level by Trading Standards services.

With the introduction of the Enterprise Act, the OFT was given responsibility for coordinating enforcement activity across a wide range of legislation enforced by both the OFT and Trading Standards services.

Funding

The OFT is funded directly by HM Treasury for most of its work however, since 1 April 2008, its credit licensing function has been self-financing.