



National Audit Office

**BRIEFING FOR THE
REGULATORY REFORM
SELECT COMMITTEE
OCTOBER 2010**

The NAO's work on regulatory reform

Our vision is to help the nation spend wisely.

We apply the unique perspective of public audit to help Parliament and government drive lasting improvement in public services.

The National Audit Office scrutinises public spending on behalf of Parliament. The Comptroller and Auditor General, Amyas Morse, is an Officer of the House of Commons. He is the head of the National Audit Office which employs some 900 staff. He and the National Audit Office are totally independent of Government. He certifies the accounts of all Government departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources. Our work leads to savings and other efficiency gains worth many millions of pounds: £890 million in 2009-10.



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This briefing paper presents the Committee with an overview of regulatory reform, the background to the system and the recent work that the National Audit Office had conducted in the area.

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Introduction

1 This briefing paper presents the Committee with an overview of regulatory reform, the background to the system and the recent work that the National Audit Office had conducted in the area.

2 The role of the National Audit Office is to apply the unique perspective of public audit to help Parliament and government drive lasting improvement in public services. We have scrutinised and reported on government efforts to reform regulation over the last ten years.

3 This paper is not intended to provide an overall assessment of regulatory reform but simply to illustrate, with examples, the range of our work. It sets out:

- Current plans and developments in regulatory reform, in addition to a brief background.
- The National Audit Office's recent and ongoing work in the area.

4 We have supported the Regulatory Reform Committee several times in recent years. We have most recently provided assistance with the Committee's inquiry into *Themes and Trends in Regulatory Reform*, for which we also provided a formal briefing paper. Since the inquiry, we have provided a further paper on government efforts to reduce bureaucracy on public sector frontline workers. The National Audit Office will continue to support select committees in 2010-11, supporting specific inquiries where our expertise and perspective can add value.

5 To find out more, we encourage you to go to our website, www.nao.org.uk, where you can follow the links from this guide to all the reports mentioned. At Appendix One, we provide a full list of the National Audit Office publications, which give further detail on the particular issues we have examined.

Part One

About regulatory reform

Background

1.1 The purpose of regulation in the UK economy is to provide protections and benefits to, for example, workers, consumers and the environment. However, it can also create costs for businesses, the third sector and the public sector. Regulatory reform seeks to achieve the right balance between these costs and benefits.

1.2 The Coalition Government has stated its belief that the current level of regulation is “excessive” and reducing regulation is one of its key commitments. It has said it aims to both control and reduce the burden of regulation on business.

1.3 The previous Government developed a regulatory reform agenda as part of its efforts to create the conditions for business success. Its focus was on ‘better’ regulation, based on five principles: proportionality, accountability, consistency, transparency and targeted. It also placed emphasis on improving the regulatory and policy-making framework.

1.4 The previous Government put in place the following initiatives as part of its efforts to reform regulation:

- In 1999 it introduced a requirement for departments to prepare Impact Assessments when considering policies which imposed new regulatory burdens. Impact Assessments remain a key part of the regulatory process.
- The Administrative Burdens Reduction Programme was introduced in 2005. This five-year programme, delivered by 19 departments and regulators, was designed to reduce by 25 per cent the net administrative cost to business of complying with regulation.
- The Government conducted a number of reviews of individual regulators to assess them against their compliance with the principles of better regulation and characteristics of effective sanctions, as defined by the Hampton report and the Macrory review. The purpose was to encourage best practice and continuous improvement amongst regulators.
- Emphasising the use of these initiatives in improving regulatory policy making at EU level.

1.5 Part 2 of this report sets out the work the National Audit Office has undertaken to scrutinise these key initiatives. Further details on the previous Government's approach can be found in Appendix 2.

Coalition Government

1.6 The Coalition Government set out a commitment to reduce regulation when it published its programme for government in May 2010. The programme outlined plans to boost enterprise and to consider alternatives to rules and regulations. On 2 June 2010 the Department for Business, Innovation and Skills announced a more detailed "action plan for reducing regulation", with the aim of "bringing an end to excessive regulation stifling business growth".

1.7 The first action of the Coalition Government in this area was an immediate review of all regulations in the pipeline for implementation inherited from the previous Government. A Cabinet sub-committee, the Reducing Regulation sub-committee, is now in the process of reviewing the prior Government's forward programme of regulation, which contained 200 new regulations that departments planned to bring in between May 2010 and April 2011. The total cost of these measures was estimated at over £5 billion. This includes the administration costs of implementing these new regulations.

The first phase of the Coalition Government's action plan

Reducing Regulation sub-Committee

1.8 This new Cabinet sub-committee is chaired by the Business Secretary and its terms of reference are to "consider issues relating to reducing regulation". The objective of the Committee is to enforce a new approach to new laws and regulations, ensuring that their costs are being properly addressed across the entire UK economy. The Committee reviews regulatory proposals with the aim of allowing only those of suitably high quality (for example, meeting good regulation principles) and high priority proceed. The Committee has the power to send proposed policies back to departments and seeks to guarantee that all other options have been considered before new regulations are introduced. The Committee held its first meeting on 1 July 2010, where it discussed its approach to regulation and began its review of all new regulations in the pipeline inherited from the previous Government.

One in, one out

1.9 A "one-in, one-out" system was introduced on 1 September 2010 with the aim of controlling and reducing the burden of regulation on business. The "one-in, one-out" system requires any new regulatory cost to be compensated for by cuts to the costs of old regulations, such that the cut in regulatory cost must at least match the cost of the new regulation. This approach is designed to change the culture of government, and at least initially, the focus is on the "net cost to businesses". The new measures will apply initially to domestically generated legislation only, with some exceptions.

Regulatory Policy Committee

1.10 The Regulatory Policy Committee was established by the previous Government in October 2009. The Committee was put in place to scrutinise Impact Assessments at the stage when they were released publically for consultation. In August 2010, the Business Secretary announced an enhancement to the role of the Regulatory Policy Committee. The Committee will now provide independent scrutiny at an earlier stage before regulatory proposals, including those intended for consultation, are approved by government. The intention is for Ministers to receive an independent view on whether there is sufficient evidence and analysis to support a new regulation before they decide in favour of moving ahead with it or not.

Behavioural Insight Team

1.11 In June 2010, the Government announced plans to establish a “challenge group” to develop innovative approaches to achieve social and environmental goals in a non-regulatory way. The Behavioural Insight Team has been established in the Cabinet Office to provide this challenge function. The Team is part of the Prime Minister's Strategy Unit, which aims to work with No 10 and other government departments to develop and design policy solutions to strategic challenges facing the country.

Delivery structure

1.12 The Better Regulation Executive, which sits within the Department for Business, Innovation and Skills, leads on regulatory reform, whilst the actual delivery of the initiatives and actions is the responsibility of departments and regulators. The Better Regulation Executive seeks to work with these departments and regulators to help manage the cumulative impact of regulation and ensure appropriate prioritisation by:

- providing expert support and robust challenge to departments;
- developing methods and tools for the new regulatory framework;
- driving the strategy to remodel regulatory enforcement; and
- building support for better regulation practices across the EU.

Part Two

Work by the National Audit Office on regulatory reform

2.1 The National Audit Office views the quality of regulation and its implementation as a key value-for-money issue in public policy. We published our first report on Impact Assessments in 2001-02 and, following this, the National Audit Office was asked by the Cabinet Office to produce an annual report on the process. We have done so since 2004, with our most recent report published in July this year. **Figure 1** sets out the main work we have conducted across regulatory reform.

Figure 1 NAO work streams covering regulatory reform

Impact Assessments

We have published seven reports to date evaluating the quality and thoroughness of a sample of Impact Assessments.

Business perceptions

We have published three reports which consider the implementation, management and performance of the Administrative Burdens Reduction Programme. A key feature of these reports has been the results of our annual Business Perceptions Survey. Our third report focused on the results of this survey, and the fourth set of survey results was published separately in July 2010.

Review of regulators

We supported 12 reviews of regulators by the Better Regulation Executive to assess progress in implementing the Hampton Principles. We published a compendium report in July 2008, which drew out common themes of the first five reviews.

Source: National Audit Office

What we can say about performance

2.2 The following paragraphs set out a summary of our performance assessment to date on the key areas of regulatory reform.

Impact Assessments

2.3 We have reported on Impact Assessments since 2002 and made recommendations in the following key areas:

- **The requirement for an Impact Assessment.** In our early reports, we found that departments had difficulties determining when an impact assessment was required. There have been significant improvements in recent years due to greater levels of experience and better quality guidance.
- **Effectiveness of the consultation process.** Our recommendations focused around how well small businesses, charities and voluntary organisations were consulted, the provision of sufficient time for the consultation process and the supply of adequate information on the proposed regulation and its enforcement. Our recommendations in this area had largely been addressed by our 2004-05 report.
- **The quality of cost-benefit analysis and option appraisal.** Cost-benefit analysis is one of the weakest areas of Impact Assessments. In 2010 we found the majority of Impact Assessments still did not quantify all the costs of alternative options.
- **The use of post implementation review.** In 2007 we reported that there continued to be an unstructured and ad hoc approach to post implementation review across all departments. Since then, we have found greater numbers of Impact Assessments include a statement of when a review should be conducted, although relatively few have been carried out to date.

2.4 In our most recent report, published in July 2010, we found that the use of quantification in analysis for Impact Assessments was improving, and that departments had increased the resources and analytical expertise they allocated to preparing Impact Assessments. However, we still found that the quality of Impact Assessments varied, and concluded that they were not being used consistently across departments to contribute to policy development, implementation and evaluation.

Business perceptions

2.5 Despite significant claimed savings made through the Administrative Burdens Reduction Programme, our reports found that business perceptions have not substantially improved since 2007. Over half of businesses still believe there is too much regulation, and some 60 per cent think that the level of regulation is an obstacle to their success. The majority of businesses do, however, clearly understand the purpose of regulation and in 2010 we reported some improvement in the perceived burden of complying with individual aspects of regulation.

2.6 Our business perceptions survey results in 2009 clearly showed that businesses' high-level perceptions of regulations are influenced by concerns over the introduction of new regulations or continuing changes to existing regulations. We concluded that the fact that there was only a limited improvement in overall business perceptions of regulation may in part be due to the effect of a continuing flow of new regulations.

Review of regulators

2.7 In our compendium report, published in 2008, we found that regulators that had been reviewed were on the whole, outcome focused, risk-based, proportionate and seeking to engage effectively with business to promote compliance. However, we identified a number of common challenges faced by regulators in implementing the Hampton principles, including the need to engage more with local authorities and the need to better understand the effectiveness of their actions.

Support to Parliament

2.8 We have assisted the Regulatory Reform Committee with the following two inquiries to date:

- In 2008 we provided a briefing paper on the regulatory reform landscape which contributed to the Committee's inquiry on *'Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda'*.
- In 2009 we assisted the Committee with its inquiry on *Themes and Trends in Regulatory Reform* and provided a further briefing paper.

2.9 In December 2009, we briefed the Regulatory Reform Committee on efforts by the Government to reduce bureaucracy on public sector frontline workers. We found that the Government had identified scope to improve efficiency in this area, but that the public sector administrative burdens programme had received less attention than the corresponding programme for business.

2.10 In 2009, at the request of the Lords Merits of Statutory Instruments Committee, we published a review of post implementation review of secondary legislation, for which we conducted a quantitative survey. We surveyed departments to establish what post implementation review had been carried out for 2005 Statutory Instruments that were subject to Impact Assessment. Post implementation review was not mandatory for the statutory instruments sampled, and our review found that by mid-2009, departments reported that only 29 per cent had been subject to post implementation review. The Committee made a number of recommendations to strengthen the post implementation review process within government.

Current National Audit Office work

2.11 We currently have the following two pieces of work under way:

- A performance improvement review of the drivers of high quality appraisal in regulatory decision making. The outcome of this will be to highlight how departments and the Better Regulation Executive could improve the quality of appraisal generated by Impact Assessments.
- A value for money report on the system of regulatory reform. The study will consider the impact of regulation from the perspective of business, and assess the system in place within government for managing regulation.

Part Three

Where to find out more

The National Audit Office website is www.nao.org.uk.

If you would like to know more about the National Audit Office's work on regulatory reform, please contact:

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Appendix One

National Audit Office reports covering regulatory reform

Reports by the National Audit Office on regulatory reform

Impact Assessment

- Assessing the impact of proposed new policies HC 185 2010-11 01-07-10
- Delivering High Quality Impact Assessments HC 128 2008-09 30-01-09
- Evaluation of Regulatory Impact Assessments 2006-07 HC 606 2006-07 11-07-07
- Evaluation of Regulatory Impact Assessments 2005-06 HC 1305 2005-06 28-06-06
- Evaluation of Regulatory Impact Assessments Compendium Report 2004-05 HC 341 2004-05 17-03-05
- Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 HC 358 2003-04 04-03-04
- Better Regulation – Making Good Use of Regulatory Impact Assessments 2001-02 HC 329 15-11-01

Hampton Review

- Regulatory quality: How regulators are implementing the Hampton vision 18-07-08

Administrative Burden Reports

- Business Perceptions Survey 2010 Report by FDS International 15-07-10
- Complying with regulation: Business perceptions survey 2009 HC 1028 2008-2009 22-10-09
- The Administrative Burdens Reduction Programme, 2008 HC 944 2007-08 07-10-08
- Reducing the Cost of Complying with Regulations: The Delivery of the Administrative Burdens Reduction Programme, 2007 HC 615, 2006-07 25-07-07

Joint reports with the Better Regulation Executive on Hampton implementation by the following bodies:

- Maritime and Coastguard Agency (January 2010)
- The Pensions Regulator (January 2010)
- Gangmasters Licensing Authority (September 2009)
- Security Industry Authority (September 2009)
- Medicines and Healthcare products Regulatory Agency (April 2009)
- Animal Health (April 2009)
- Gambling Commission (April 2009)
- Office of Fair Trading (March 2008)
- Environment Agency (March 2008)
- Financial Services Authority (March 2008)
- Food Standards Agency (March 2008)
- Health and Safety Executive (March 2008)

Other sources of information

Reports by the Regulatory Policy Committee

- Reviewing Regulation: An independent report on the analysis supporting regulatory proposals, December 2009 to May 2010

Reports from the Committee of Public Accounts

- Reducing the cost of complying with regulations: the delivery of the Administrative Burdens Reduction programme 2007, Thirty Second Report 2007-08 HC 363
- Better Regulation – Making Good Use of Regulatory Impact Assessments Committee of Public Accounts – Twenty Sixth Report 2001-02 HC 682

Reports commissioned by government on aspects of regulatory reform

- National enforcement priorities for local authority regulatory services, Peter Rogers March 2007
- Regulatory Justice: Making Sanctions Effective, Professor Richard B. Macrory November 2006
- Davison Review: Implementation of EU legislation, Lord Davison QC November 2006
- Reducing administrative burdens: effective inspection and enforcement, Philip Hampton March 2005

Reports from central government

- Department for Business, Innovation and Skills Resource Accounts 2009-10
- Striking the right balance, BRE Annual Review 2009
- Autumn performance report 2009, Department for Business, Innovation and Skills
- Annual Report and Accounts 2008-09, Department for Business, Innovation and Skills

Appendix Two

Previous approach to regulatory reform

In order to deliver its aims, the previous Government introduced a number of initiatives. The table below sets out the key aspects of its approach to regulatory reform and summarises the main initiatives for each.

Summary of key regulatory reform Initiatives

Improve the design of new regulations and how they are communicated

Impact Assessments have been in use for over 10 years to assess the costs and benefits of new regulatory proposals. The Better Regulation Executive developed a toolkit and standards to be applied by all departments when planning a policy intervention.

Simplifying and modernising existing regulation

The **Administrative Burdens Reduction Programme** was introduced in May 2005 with a target of reducing the cost of annual administrative compliance on business by 25 per cent by May 2010. In addition, a target of 30 per cent reduction in data streams for public sector frontline workers was established in 2007.

Changing attitudes and approaches to regulation to become more risk based

Sir Philip Hampton's report set out a number of principles for good regulation and recognised the value of a risk based approach to enforcement. The National Audit Office and Better Regulation Executive have made a number of assessments of regulators' progress in implementing the **Hampton principles**. This has been aligned with the increased role of Impact Assessments. Introduction of the **Regulators' Compliance Code** aimed at reducing the burden to business.

Work across Europe to improve quality of European regulation

The Better Regulation Executive and departments provided input into **European policy development** to ensure that it was as consistent as possible with principles of good regulation. The Better Regulation Executive sought to work with departments and regulators to drive forward the better regulation agenda in Europe.

Source: National Audit Office

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