



National Audit Office

**REPORT BY THE  
COMPTROLLER AND  
AUDITOR GENERAL**

**HC 758  
SESSION 2010–2011  
17 FEBRUARY 2011**

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**Department for Business, Innovation and Skills**

Delivering regulatory reform

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National Audit Office

**Department for Business, Innovation and Skills**

# Delivering regulatory reform

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Ordered by the House of Commons  
to be printed on 15 February 2011

**Report by the Comptroller and Auditor General**

HC 758 Session 2010–2011  
17 February 2011

London: The Stationery Office  
£15.50

This report has been  
prepared under Section 6  
of the National Audit Act  
1983 for presentation to  
the House of Commons  
in accordance with  
Section 9 of the Act.

Amyas Morse  
Comptroller and  
Auditor General

National Audit Office

10 February 2011

Regulation enables departments to advance important policy objectives and to deliver benefits in a wide range of areas for individuals, businesses and society. The Better Regulation Executive within the Department for Business, Innovation and Skills has identified a number of ways in which regulation has the potential to support positive outcomes.

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This report can be found on the National Audit Office website at [www.nao.org.uk/Regulatory-reform-2011](http://www.nao.org.uk/Regulatory-reform-2011)

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# Summary

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## **Figure 1** Background on regulatory reform

### **What is regulation?**

- Regulation is a key tool used by departments to achieve policy objectives, such as providing protections and benefits to, for example, workers, consumers and the environment.
- Regulation encompasses a wide range of measures with legal force governing the way in which individuals or organisations carry out activities.
- Complying with regulation can create costs, for example, for businesses. The cost of compliance can be a direct cost, such as licences or buying equipment to comply with regulation, often known as the policy cost. Regulated entities also face indirect costs, for example the time spent understanding legislative requirements, which are usually referred to as administrative burdens.

### **What is regulatory reform?**

- Regulatory reform seeks to achieve the right balance between the benefits of regulation and its costs. In various forms, it has been an aim of successive Governments since at least the 1980s.
- The previous government developed an agenda as part of its efforts to create the conditions for business success. Its focus was on ensuring 'better' regulation and placed emphasis on improving the regulatory and policy-making framework.
- The Coalition Government has clearly stated its belief that current levels of regulation are excessive, and reducing regulation for business is one of its key commitments. On 2 June 2010, the Department for Business, Innovation and Skills announced an action plan for reducing regulation with the aim of bringing an end to excessive regulation stifling business growth.

### **Who are the key players?**

- The Better Regulation Executive is part of the Department for Business, Innovation and Skills and leads the regulatory reform agenda across Government.
- Each department has a Better Regulation Unit, which coordinates the reduction of bureaucracy and regulation resulting from the department's policies.
- The Regulatory Policy Committee was established in 2009 to provide independent scrutiny of proposed regulatory measures.
- The Reducing Regulation Committee was established in May 2010 as a new Cabinet Committee to ensure there is a robust case for any new regulations.

*Source: The Department for Business, Innovation and Skills and the National Audit Office*

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**1** Regulation enables departments to advance important policy objectives and to deliver benefits in a wide range of areas for individuals, businesses and society. The Better Regulation Executive within the Department for Business, Innovation and Skills (the Department) has identified a number of ways in which regulation has the potential to support positive outcomes. For the economy, for example, regulation makes a difference by supporting common standards and fostering competitive markets. For the environment, both now and for future generations, there are many regulations that have improved the quality of the environment; and for citizens, especially the most vulnerable, regulation makes a difference in the workplace and in reducing inequalities.

**2** Regulation also creates costs through the obligations it places on businesses and others. Good management of the costs and benefits resulting from regulation is therefore an important element of achieving value for money in government.

**3** The Better Regulation Executive leads on reforming regulation, but responsibility for developing and controlling regulation is shared across departments. The direct cost of the Better Regulation Executive totalled some £6 million in 2009-10. We estimate that departments' better regulation units cost a further £2.2 million. Regulatory reform also affects the costs of departments' policy development activities, but departments do not monitor costs at a level that would distinguish these costs from other policy development costs. All such costs are small compared with both the benefits and costs created by regulations themselves. Good value for money therefore consists in achieving these benefits whilst bearing down on the costs of both regulations and their management.

**4** The National Audit Office has produced a number of reports since 2001 on aspects of regulatory reform, in particular the Impact Assessment process, the Administrative Burdens Reduction Programme, and business perceptions of regulation. Despite considerable efforts to improve the business experience of regulation, there has been little discernable progress in improving business perceptions of regulation. This report therefore examines the overall management of regulation across central government, focusing on the impact of regulation on business (Part One), how departments choose to regulate (Part Two), and the implementation of regulation (Part Three).

**5** Following the change of Government in May 2010, the Coalition Programme included several commitments to regulatory reform. The Coalition has established new principles to underpin its approach to regulation including a strong emphasis on regulating only where satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches. This report focuses both on the experience of the work done before May 2010, and on the intentions of the changes made since then and progress in implementing them.

## Key findings

### The impact on business

**6 Government understands which areas of regulation concern business most but does not know what the total impact of regulation is on business.** Research by the Better Regulation Executive in 2006 estimated that just the administrative cost of regulation to UK businesses was some £13 billion a year, but there is no comparable estimate of the total cost of the existing stock of regulation. Since 2009, the Better Regulation Executive has compiled, and published at intervals, a Forward Programme, which in March 2010 projected total costs across the whole economy of £9.9 billion a year from new regulation planned to be introduced by April 2011. Total benefits to society from this regulation were projected at £11.6 billion a year. Within these totals, the impacts and benefits for business were not separately identified. The new Government has said it will continue to publish a forward regulatory statement and this is expected to specifically identify costs and benefits to business; however, publication has not yet taken place.

**7 Businesses generally recognise the purpose of regulation, but believe it can be unnecessarily burdensome, particularly on the smallest businesses.**

The purpose of regulation is to provide protections and benefits to, for example, workers and consumers and 58 per cent of businesses surveyed by us in 2010 said that they were generally clear as to its purpose. Some areas of regulation, however, in particular employment legislation, were perceived to be more of a burden, as indicated by 13 of our 17 case study businesses. Smaller businesses also perceived they are more affected by regulation than larger businesses because regulatory provisions are often imposed irrespective of size.

**8 Businesses, in particular small and medium enterprises, often lack clarity about how to comply fully with regulation.** The totality of regulation faced by an individual business is complex and businesses that we interviewed typically have to consider as many as 60 regulations covering areas such as employment, planning, health and safety and sector specific regulation, and governed by multiple regulatory bodies. Many businesses interviewed could not identify all the regulations affecting them. As a result, some businesses fall into non-compliance, which can counteract the intention of the original legislation and lead to significant costs for the business.

**9 Businesses report that they find it difficult to keep up with the extent of new regulations and changes to existing legislation.** The Better Regulation Executive's March 2010 Forward Programme set out 265 new regulations that could be implemented by April 2011. Since October 2004 the Business Link website shows there have been 387 separate updates to existing regulations which have a direct impact on businesses. This equates to more than one a week.



**10 Departments are not communicating effectively with business.** Businesses show a low awareness of government attempts to reduce regulation, and the use of Businesslink.gov.uk, the central source for regulation information and guidance, is limited, with only 34 per cent of businesses surveyed by us in 2010 using it. To help them understand their requirements and ensure compliance with the law, businesses more often rely on business and trade organisations, or bought-in expertise. The Better Regulation Executive has undertaken work to improve guidance produced by departments, but our survey work shows this remains a concern for businesses. Direct contact between businesses and government is typically through the enforcement regime; businesses we interviewed reported that this is most effective when provided by a knowledgeable individual with an emphasis on working together towards compliance.

### Choosing how and when to regulate

**11 Our past work on Impact Assessments has highlighted recurrent weaknesses in departments' assessments of costs and benefits when designing regulation.** In addition, departments' Impact Assessments of proposals from the European Union have often not been prepared early enough to inform negotiations at this level. The Better Regulation Executive's compilation of a Forward Programme, has, however, provided a basis for managing the total flow of proposed regulation and it uses its influence with departments to challenge proposed policies to reduce the burden of regulation when appropriate.

**12 Policymakers enter a formal consultation when designing new legislation, but this is late in the process.** We found evidence that many policymakers informally consult business, in particular through business and trade organisations, in advance of formal consultation and found this had benefited their approach; but it is hard for departments to engage with smaller businesses to the same extent.

**13 The Coalition Programme included commitments to reducing regulation, for example, through the introduction of a One-In, One-Out system where the cost of new regulations must be compensated for by a corresponding cut.** In December 2010 the Better Regulation Executive published *Reducing Regulation Made Simple*, setting out more fully the Coalition's approach to regulation. To bring greater oversight and challenge to new regulation across departments the Government has also created the new Reducing Regulation Committee at Cabinet level, and increased independent review of regulation by the Regulatory Policy Committee. The Better Regulation Executive has yet to set out detailed plans for delivering this new strategy.

## Effective implementation

**14 The Better Regulation Executive has made good progress in assessing individual regulators and commenting on their effectiveness.** A review by Sir Philip Hampton in 2005 set out principles for regulators on inspection and enforcement and the Better Regulation Executive conducted 36 implementation reviews of national regulators between 2007 and 2010. Our 2008 appraisal of the first five major reviews was largely positive about the approach and practices adopted by regulators, but highlighted some weaknesses in the regulators' interaction and communication with businesses.

**15 Departments do not routinely evaluate the realised impact on business of regulation once it has come into effect.** Our past work on Impact Assessments has highlighted that there is little post implementation review of regulation and in a further review of 25 Impact Assessments dating from 2008-09 and 2009-10 we found that only five provided for the collection of information to enable a detailed review. As a consequence, departments are poorly placed to measure the costs and benefits of regulation to business once regulation is implemented, or to make adjustments to improve the balance between costs and benefits in light of experience.

**16 The Coalition Programme included commitments to impose sunset clauses for new regulations and regulators and to end 'tick-box' regulation.** Implementation of sunset clauses for new regulations, so that they automatically expire after a set period unless departments take positive action to keep them in force, is intended to strengthen post-implementation review. The Better Regulation Executive is working up proposals for how to take these commitments forward.

**17 Departments are currently conducting reviews of the stock of regulation in a number of areas, but there is a lack of a systematic approach and no overall attempt to review the totality of stock which businesses face.** There are benefits to a more comprehensive approach. The Department for Environment, Food and Rural Affairs is using a rolling programme of reviews to inform its position for One-In, One-Out and understand its whole regulatory stock.

## Conclusion on value for money

**18** As with government spending, achieving sustainable reductions in regulatory costs whilst maintaining public value requires a structured and planned approach sustained over a period of years. Since the Better Regulation Executive's creation in 2005, it and departments have developed important elements of such an approach and have delivered significant benefits. However, they are not yet in a position to achieve value for money in their management of regulation as gaps remain in two important areas:

- a** **Understanding the impact on businesses.** The Better Regulation Executive and departments understand the issues of most concern to businesses, but do not have adequate sight of the totality of regulation faced by businesses. There have also been systematic weaknesses in estimating the costs and benefits of individual regulations and little priority to reviewing impacts once regulation is implemented.
- b** **Developing a coherent framework to manage regulatory reform.** The Coalition Programme has set the Better Regulation Executive and departments a number of objectives for regulatory reform. Experience of the past suggests that to implement these across government will require clear accountabilities and effective incentives for departments, for the Better Regulation Executive to develop a detailed plan for delivery and for longer term management of the flow of regulation, comparable with the arrangements for managing public expenditure.

## Recommendations

**19** We make the following recommendations:

- a** **Good information and coordination is essential for the effective management of the use of resources.** Past work to measure administrative costs and compilation of a Forward Programme of proposed new regulations have helped in managing these aspects of regulation and strengthening incentives for departments. Departments and the Better Regulation Executive know which areas of regulation continue to concern business most but do not have a clear picture either of the size of the policy costs and benefits resulting from the stock of existing regulation, or of the capacity of businesses and others to respond to new proposals. The Better Regulation Executive should identify cost-effective ways of strengthening its understanding of the costs and benefits of regulation as experienced by business and use their findings to guide future work on reviewing and reforming regulations.

- b Departments differ in the vigour with which they are seeking to identify opportunities to simplify regulations.** The Department for Environment, Food and Rural Affairs is reviewing all of its stock of regulation in order to identify opportunities to reduce regulatory costs in order to offset the cost of proposed new regulations. Other departments are not, however, and all departments should consider such a review.
- c Evaluation and feedback remains a weak element of regulatory management.** The Better Regulation Executive has recently implemented changes intended to improve in this area. It should also work with departments to strengthen incentives for departments to plan, and then carry out, evaluation of regulations after they have been implemented, and to use the findings to revise the regulations accordingly.
- d Businesses remain concerned that they are not consulted before new regulations are introduced.** Policy-makers should increasingly try to engage with businesses before formal consultation, using routes such as business organisations, the Small Firms Database and stakeholder groups. Details of this informal consultation should be included and published in Impact Assessments.
- e There is as yet no detailed implementation plan in place for delivering the Coalition Government's regulatory reform objectives.** To strengthen its programme management approach the Better Regulation Executive should develop and consult on an implementation plan covering the life of the new regulatory reform programme. The plan should define what success will look like and how it will be measured, and include a timetable for activity, as a baseline for the programme management of regulatory reform in the future.
- f Clarity over accountability and effective incentives on departments are important in achieving good quality regulation.** To improve the quality of regulation the Better Regulation Executive should work together with the Cabinet Office to develop a clearer statement of accountabilities for departments and the Better Regulation Executive.

# Part One

## The overall regulatory impact on businesses

**1.1** This part examines:

- the aggregate impact on UK businesses;
- the impact on individual businesses;
- business perceptions of complying with regulation; and
- understanding and interacting with government.

### Aggregate impact on UK businesses

**1.2** Along with taxation and direct expenditure, regulation is one of the three principal instruments available to governments to achieve their objectives. The purposes for which regulation is used are many and varied; examples include:

- To promote the efficient functions of markets, for example by enforcing a system of weights and measures on which consumers and businesses can rely.
- To protect public health and safety, for example in food hygiene and road safety.
- To protect and enhance the rights and liberty of citizens, for example by prohibiting discrimination against particular groups.

**1.3** Regulation also imposes costs, both as a necessary consequence of the regulation and as an unintended side effect. Both the costs and the benefits of regulations may be felt by many parts of the economy, but many are borne by business and may ultimately be passed on to consumers.

**1.4** The Better Regulation Executive has sought to establish the costs imposed by the body of regulation in a number of ways. The Administrative Burden Reduction Exercise looked at the costs generated by administrative tasks surrounding regulation, such as filling out forms. In 2006 it estimated that the costs from administrative burdens were £13 billion.<sup>1</sup> **Figure 2** overleaf shows the adjusted baseline for the five departments with the highest estimated burdens.

<sup>1</sup> £13.4 billion from 19 Departments excluding HM Revenue and Customs and financial regulation. Administrative Burdens Measurement Exercise (2006).

**Figure 2**

## Departments with largest estimated administrative burden

Department	Main Regulatory Areas	Administrative Burden (£m) <sup>1</sup>
Department for Business Innovation and Skills	Employment, Company Law	4,541
Department for Communities and Local Government	Planning	2,486
Health and Safety Executive	Health and Safety	2,023
Department of Health	Medicine control, Social Care	1,202
Department for Transport	Vehicle licensing and registration	585
	<b>Total</b>	<b>10,837</b>

**NOTE**

1 Original figures obtained in 2006 Administrative Burdens Measurement exercise and subsequently amended due to changes in departmental responsibilities and introduction of regulations.

Source: *Simplification Plans 2005-2010 Final Report, HM Government*

**1.5** The Better Regulation Executive also collates estimates made by departments of the costs of upcoming regulation. Impact assessments are required for all future legislation with an expected effect on business, and should quantify both the costs and benefits expected from the chosen policy option. In October 2009, the Better Regulation Executive published a Forward Programme showing for the first time combined list of upcoming regulatory actions. The Forward Programme detailed estimated costs and benefits of prospective regulatory measures which have been publicly announced to come into effect over the next 12 months, or further if significant in size. An update of the programme was published in March 2010. The new Government has said it will continue to publish a forward regulatory statement. This is expected to specifically identify costs and benefits to businesses, but publication has not yet taken place.

**1.6** The Better Regulation Executive does not, however, seek to measure the total costs imposed by the existing stock of regulation, and of the 308 regulatory changes shown in the March 2010 Forward Programme for implementation before April 2011, only 91 and 83, respectively, had costs and benefits quantified by departments. We therefore undertook a review of the literature to establish what other information is available about the aggregate economic impact of regulation.

**1.7** We found that attempts to calculate the cost of regulation to UK businesses are inconsistent and often based on limited cross-country comparisons or incomplete governmental costing data. Despite these limitations, estimates of the cost of the administration burden from regulation are around 3-4 per cent of GDP, while the policy costs are 7-8 per cent of GDP (2005)<sup>2</sup>.

2 Administrative burden includes business as usual costs excluded from the 2006 burdens measurement exercise, Better Regulation Task Force (2005).

**1.8** However, the impacts of regulation can have benefits for businesses. These can include:

- imposing financial discipline upon business owners;
- providing guidance and formalised procedures for employment relationships;
- environmental regulations which might stimulate the search for new and innovative processes and products; and
- requirements for information provision improving record-keeping.

### Impact on individual businesses

**1.9** A survey by the Forum of Private Business in 2010 asked 6,000 members to identify the time spent dealing with regulation, and then applied a cost figure to this.<sup>3</sup> Businesses reported spending on average 37 hours on compliance issues per month, equating to average costs for a year at £1,853 for micro-businesses, £3,289 for small businesses, and £5,711 per medium business. The Forum estimated the total costs to small and medium businesses in the UK to be £11.9 billion per year, with the heaviest burden falling on businesses with fewer than ten employees.

**1.10** We conducted case study interviews with 17 small and medium sized businesses<sup>4</sup> to gain some detailed insights into the challenges posed by regulation. The Better Regulation Executive undertakes research to understand business concerns and direct their work at the most burdensome areas, but still faces the challenge of calculating and monitoring the costs of regulation to business. This was highlighted by our case study businesses, 14 of which struggled to identify costs, and could not distinguish between the ongoing cost of doing business and the additional burden from regulation. **Figure 3** overleaf shows examples reported by the three businesses which did attempt to identify the most time-consuming regulatory areas for their business and relevant estimated costs. The range of costs reported by these businesses is not a complete view of the total incurred and they are very different. It is striking that even businesses in the same sector (the two examples from the construction industry) had very different views on the most time-consuming areas and estimates of the costs they incur.

<sup>3</sup> *The cost of compliance on micro, small and medium-sized business employers: Forum of Private Business 2010.*

<sup>4</sup> The Department reported in 2009 that small and medium sized enterprises represent 99 per cent of businesses in the UK, see *Summary of Simplification Plans 2009*.

**Figure 3**

Examples of the most time-consuming areas of regulation and estimates of associated costs identified by three case study businesses

**Interior fittings company**

This company is in the Construction sector and specialises in fitting out interiors of buildings. Clients are typically corporate, industrial and private health and education businesses. It has 14 staff and started trading in 1976.

<b>Area</b>	<b>Description of Cost</b>	<b>Cost (£)</b>
Employment	All areas of employment. Cost represents a percentage of HR time and compliance consultant costs.	25,000
Tax	VAT paperwork costs.	10,000
Waste	Costs of the consultant meeting partners and doing background work and complying with ISO requirements.	9,500
Public liability insurance	Administrative cost to get annual quote and find cheapest supplier.	2,000
Fire safety	Purchase cost of fire test.	600

**Accreditation business in the construction industry**

This is a medium-sized company in the construction industry that is non-profit making and limited by guarantee. It was started in 1966 as a joint government/independent enterprise, and then went wholly private in the 1990s. Its business is testing, assessing and certifying innovative products and materials for the construction industry. There are 125 staff.

<b>Area</b>	<b>Description of Cost</b>	<b>Cost (£)</b>
Hiring overseas staff	Cost of staff time spent on UK Border Agency non-UK/EU resident worker application and migrant worker sponsorship application.	1,600
Pensions	Cost of staff time spent on annual return to the Pensions Regulator, keeping up with regulatory changes and guidance, trustee toolkit, filling out forms and management thinking time on pensions delivery for employees.	2,300
UKAS accreditation	The cost of purchasing this accreditation (£35,000) and staff time spent during the audit by UKAS of management systems and technical competence.	44,700



**Figure 3**

Examples of the most time-consuming areas of regulation and estimates of associated costs identified by three case study businesses *continued*

**Micro estate agency**

This business is an independent estate agency which was established ten years ago. It focuses on the lettings side of the business and there are four members of staff.

Area	Description of Cost	Cost (£)
Membership of trade association (NAEA)	Membership of National Association of Estate Agents.	525
Membership of FSB	Membership of the Federation of Small Businesses.	50
Accountants	Proportion of accountant's fees for time spent on regulatory issues.	600
Risk assessment	Cost of undertaking risk assessments.	200
Consumer Credit licence	Purchase of consumer credit licence (needed to be able to offer credit or lend money to consumers).	970
Public liability insurance	Purchase of public liability insurance (protects from lawsuits and other claims).	500

*Source: Data reported by three business case studies*

**1.11** In addition, some businesses interviewed identified opportunity costs where they perceived they had spent excessive amounts of time running their business and were reliant on help from friends and family, of which dealing with regulation was a significant part. This included:

- the owner of a micro-catering company estimated that most of the four to six weeks spent complying with legislation per year is at weekends and evenings rather than during working hours;
- the owners of a small nursery rely on friends and relatives to help with financial aspects of running a business, have still spent every weekend since January 2010 preparing the buyout of the nursery and getting up to speed with all areas of regulation; and
- the owner of a minibus company has his wife to “do the books”, she used to be paid for this work but the business now cannot afford it.

**1.12** Our annual survey on business perceptions has identified some wider effects which respondents perceived can hinder business development. Our 2010 business perceptions survey of 1,000 businesses<sup>5</sup> showed that 62 per cent of respondents believed the overall level of regulation in the UK was a burden to their business. In addition, two of our case study businesses suggested that future changes to legislation could force them out of business. Another example indicated the perceived effect on growth, illustrated in **Case Study Box 1**.

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### Case Study 1

A small independent estate agent employing four members of staff and established ten years ago reported that, in the past, when the sales part of the business was booming, it would have liked to employ an in-house financial adviser. This would have had potential to increase property sales by giving customers the ability to find out on the spot what they could afford. The extent and scope of financial services regulation, while clearly important to the Government and to consumers, however, meant that this was impracticable.

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**1.13** In November 2010 the Better Regulation Executive produced a report looking at the experience of the UK's smallest businesses in dealing with regulation.<sup>6</sup> A key view from these businesses was that policy-makers were not thinking about the impact on small businesses when designing and implementing regulations. For example, employing people was seen as a critical step prompting additional compliance with regulations which many businesses do not dare to take and as a result businesses reported they intentionally avoid employing staff. While we cannot say how common some impacts on business behaviour are, our interviews identified examples of the following:

- One business indicating that they thought twice before employing women of childbearing age.
- Employers recruiting more temporary staff to avoid the need to comply with legislation affecting permanent staff, such as compulsory pension schemes.
- Movement away from employing under 16s and work experience students due to changes to the minimum wage and legislation in this area.
- Being deterred from employing overseas workers by the regulations on right to work in the UK.

**1.14** Eight of the small businesses interviewed believed they are affected more by regulation than larger businesses, because regulatory provisions are often imposed irrespective of size. Our 2010 business perceptions survey showed that more than 70 per cent of businesses with over 50 employees have staff dedicated to dealing with compliance, compared to just 18 per cent of businesses with ten or fewer employees.

<sup>5</sup> *Business Perceptions Survey 2010*: National Audit Office.

<sup>6</sup> *Lightening the Load: The Regulatory Impact on UK's Smallest Businesses*, Better Regulation Executive, November 2010.

**1.15** This ability to dedicate functions can also increase understanding of regulation. Larger businesses are significantly more likely to feel well informed about the laws that affect their businesses, with 82 per cent of those employing more than 50 members of staff feeling well informed, compared to only 63 per cent of those employing fewer than 50 employees (and only 58 per cent of sole traders).<sup>7</sup>

**1.16** Despite the reported negative impacts, 15 of the businesses we interviewed could identify benefits from regulation, either to their business, or in the wider impact on society. The benefits of health and safety regulation were clearest to the businesses interviewed because the importance of the health and safety of staff and customers is easily apparent.

**1.17** Regulation was cited by five businesses as being a positive thing due to the quality accreditations they are able to market as a result of compliance. They felt that this made a difference to consumers and, in some instances, helped differentiate them from the competition. An illustration of this is provided at **Case Study Box 2**.

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## Case Study 2

The Managing Director of a pig breeding business, which in 2007 diversified into supplying hog roasts for functions told us that by complying with environmental health legislation his business was less likely to harm anyone and more likely to be protected from a claim if anyone did become ill because it could demonstrate that it had met all requirements in this area. He also thought that demonstrating compliance was important to winning over potential customers, reporting *“It’s a good tool...to sway those people who may be undecided to go with A or B”*.

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**1.18** The Better Regulation Executive’s 2010 report on micro-businesses highlighted the frustration felt by businesses with the extent of regulation and the pace of the flow, and how the complexity of the range of regulations they faced led to misunderstanding. Although not considered as regulation, tax and its administration were also identified as being a particular issue for business. Overall the report concludes that policy-makers are still not “thinking small first” when designing and implementing regulation, and that the level of managerial capability in micro-businesses is a key constraint when dealing with regulation.<sup>8</sup>

## Businesses perceptions of complying with regulation

**1.19** Our business perceptions survey has regularly shown that businesses can be positive about regulation. In 2010 for 58 per cent of businesses it is generally clear what the purpose of regulation is. From our case studies we found overall sector specific compliance was viewed more positively than compliance with generic regulation. In general it was easier for the businesses to talk about and understand, and for many was seen as part of normal business operations. Our survey similarly showed that 58 per cent of businesses find sector specific regulation easy to comply with.

<sup>7</sup> *Business Perceptions Survey 2010*, National Audit Office.

<sup>8</sup> *Lightening the Load – Better Regulation Executive, 2010*.

**1.20** There are, however, some areas of regulation which are viewed as particularly burdensome. One area frequently highlighted by business and trade organisations is employment law. The Better Regulation Executive's recent report shows that employment law is seen as the greatest barrier to growth by micro-businesses due to its complexity, high cost and a lack of protection if "things go wrong"<sup>9</sup>. Thirteen of the 17 case study businesses also confirmed that, from the perspective of the employer, employment law is considered one of the most burdensome areas of regulation they deal with as it largely exists to protect the employee rather than the employer. This resulted in businesses citing examples of avoiding circumstances in which they would be required to comply with employment law. Some of the biggest concerns highlighted by our case study businesses included:

- Five businesses said the flexible working requirements were impractical for them as they operated fixed hours.
- Three businesses that had recent experience of dismissal processes found them very time-consuming, particularly regarding performance issues.
- Three businesses identified a future cost burden and potential inconvenience with the extension of paternity leave obligations.
- Four businesses had concerns over the future pension obligations in 2012 and had concerns as to how this would be funded.

**1.21** A concern highlighted by the business and trade organisations we interviewed is the high costs arising from employment legislation, even for a compliant business. The recourse to legal action and employment tribunals not only imposes legal fees but can take up considerable time. These costs are incurred even for businesses that have not breached any regulation. This is illustrated at **Case Study Box 3**. The concerns of business regarding employment law have been identified by the Department, who announced a review of employment law to report in spring 2011.

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### **Case Study 3**

The Managing Director of a small courier company told us that a previous employee had made a claim for constructive dismissal against the company when not awarded a requested pay-rise. Despite being acquitted of wrongdoing the court case took three years and cost the respondent £40,000, an amount that could have "*easily put a smaller size company out of business*". The company now pays £8,000 per annum to outsource Human Resources work to "cover their backs" due to this experience.

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**1.22** When discussing the burden imposed by regulation, businesses were often uncertain as to what they had to do to comply, and in many cases whether a particular regulation applied to their business. For many this is caused by the sheer amount of regulation they are expected to comply with. **Figure 4** overleaf shows just some of the regulations to be considered as identified during our case study interview by a small business employing 17 staff.

**1.23** Businesses that are unsure what regulations affect them can unintentionally become non-compliant. Our case study interviews suggest that employment law is an area where companies are often unaware that they may be contravening existing regulations, for example one business was unaware of regulations on lunch break hours, and two businesses commented that they didn't take account of disability regulations believing it unlikely they would employ someone with a disability. As a consequence specific regulations may be failing to address the problems for which they were designed.

**1.24** Being certain of compliance is important for many businesses. Our perceptions survey showed that 37 per cent of businesses viewed certainty as the most important aspect of regulation, above flexibility and ease of compliance. This figure rose to 60 per cent and over for medium and large businesses. The outcome of this need for certainty is that many businesses, especially small and medium enterprises, hire in expertise to help them comply. All of our case study businesses used external advisers to help them deal with compliance issues.

## **Understanding and interacting with the Government**

**1.25** The 2010 perceptions survey showed the proportion of businesses feeling that the overall level of regulation is an obstacle to their success remains at the same level as 2009, with 62 per cent believing so. There has also been little change in opinion on the overall ease of complying with regulation since 2009, with 29 per cent continuing to believe that it has become more difficult since the previous year, while the number claiming it has become easier has stayed at around 2 per cent every year.

**1.26** In addition, only two case study businesses could identify specific initiatives by government which had reduced their regulatory burden or their compliance requirements. Where businesses did identify specific changes this has often followed high media coverage and so was easy for the business to identify; for example, the estate agent we interviewed cited the recent removal of the requirement for Home Information Packs as a burden reduction.

**Figure 4**

## Regulatory areas for a small Garden centre business

**Employ staff****Hiring staff**

Ensure job advertisements are non-discriminatory  
 Ensure the worker has the right to work in the UK  
 Take out employers' liability insurance

**Employing staff**

Create a written statement on employment  
 Comply with working time regulations  
 Ensure you pay minimum wage and keep records  
 Ensure you comply with holiday entitlement  
 Comply with maternity/paternity regulations  
 Comply with statutory sick pay regulations  
 Make reasonable adjustments for disabled employees  
 Consider employee rights to request flexible working

**Firing staff**

Ensure a clear grievance and disciplinary procedure  
 Comply with dismissal codes of practice

**Operate from a premises****Health and Safety**

Comply with health and safety regulations  
 Undertake a risk assessment  
 Obtain Public Liability Insurance  
 Record accidents and incidents

**Trading**

Adhere to trading hour restrictions (Sundays and holidays)  
 Register with local authority and pay business rates  
 Provide disabled access for customers

**Fire Safety**

Conduct a fire safety assessment  
 Comply with fire safety regulations

**Expanding premises**

Obtain planning permission for any change of use  
 Comply with building regulations for new constructions  
 Re-undertake risk assessments for new premises

**Company status****Set-up**

Register with Companies House

**Ongoing**

Comply with Companies Act requirements and responsibilities  
 Submit annual return and accounts

**Tax****Corporation Tax**

Register with HMRC  
 File annual Company tax return

**VAT**

Register with HMRC for VAT  
 Calculate and record VAT for all sales  
 Submit quarterly VAT returns to HMRC

**Figure 4**Regulatory areas for a small Garden centre business *continued***Tax**

<b>Employee taxes</b>	Register with HMRC as an employer Set up payroll system to calculate NI and PAYE and other deductions
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**Selling products**

<b>Consumer rights</b>	Comply with trade descriptions regulations Produce clear and compliant terms and conditions of sale
<b>Plants and Plant products</b>	Ensure plants have appropriate health certificates and passports Comply with controls of storage of chemical products Comply with plant protection and pesticide sale regulations
<b>Food</b>	Register with Local Authority before trading Comply with food management procedures Keep records of cleaning and storage Train staff on their responsibilities
<b>Restricted sales</b>	Monitored and control for underage sales on knives, aerosols and solvents
<b>Batteries</b>	Have facility to collect and recycle batteries

**Waste management**

<b>General waste</b>	Obligation to reduce total waste Obtain authorisation to dispose of waste Keeping records of waste produced and disposal Only pass waste onto a registered waste carrier
<b>Food Waste</b>	Comply with additional regulations on food waste

**General operations**

<b>Customer data</b>	Register for data protection Comply with data protection regulations
<b>Playing music</b>	Pay a fee to copyright holders at Phonographic Performance Limited (PPL) Pay a fee to copyright holders at Performing Rights Society
<b>Running a forklift truck</b>	Obtain licences for operators to use Inspections of truck to ensure ongoing compliance Restrictions with vehicle exhaust emission regulations

*Source: Case study interview with business, based on map developed by the Department*

**1.27** Our analysis suggests that government may be failing to communicate with and disseminate information to business. Our business perceptions survey found less than one in three businesses (29 per cent) believe that the government understands business well enough to regulate, and less than one in four (23 per cent) feel the government consults well with business before any new regulation, or change to existing regulation is introduced. In addition, case study businesses most frequently cited sector specific or generic trade and business associations as their key sources of information on legislation rather than government sources.

**1.28** There is wide use of external advisers by business to understand what they need to do to comply. For example, the perceptions survey showed that 60 per cent of businesses did so when dealing with planning law, rising to 83 per cent when dealing with tax law. The most common source was an external accountant, which resonates with the findings from our case studies, where the smaller businesses contracted out much of the accounting and financial reporting function.

**1.29** The Business Link website is designed as a one-stop-shop for business. The site is intended to include guidance on almost all regulation that can affect business, has systems to help identify what regulation applies to a business, and has numerous links to further information. Our 2010 perceptions survey, however, showed that only 34 per cent of businesses used Businesslink.gov.uk, up only five percentage points from 2007. Our case study interviewees also showed low awareness and usage of the website, one respondent even suggesting the introduction of an almost identical system not realising this was already available. Recent work looking at micro-businesses undertaken by the Better Regulation Executive found that 28 per cent of businesses in this category are not online and so would not have access to web-based information.<sup>10</sup>

**1.30** The Better Regulation Executive has undertaken work to improve the guidance produced by departments. In October 2009 the Code of Practice on Guidance on Regulation, updated following the 2009 Anderson Review of government guidance, sets out eight rules which Government should follow when publishing guidance for businesses and third sector organisations on how to comply with the law. Pilot schemes were also initiated following the Anderson Review in 2009, which identified the desire for businesses to have insured advice, increasing their certainty of compliance.

**1.31** Where businesses interact with multiple bodies for similar regulations there are concerns over the inconsistency in advice given. For example, one construction firm in our case studies identified the problem that different local authorities have different planning regulations, which adds considerable time to his business. Work conducted by the Better Regulation Executive for their *Lightening the Load* report also found instances of local authority inspectors producing their own regulatory guidance separate from the guidance from the Health and Safety Executive.

<sup>10</sup> *Lightening the Load* – Better Regulation Executive, 2010.



# Part Two

## Choosing how and when to regulate

**2.1** This part examines:

- objectives and accountability;
- challenging individual regulatory proposals;
- European regulation;
- controlling the volume of regulation; and
- getting insight from business.

### **Objectives and accountability**

**2.2** Since the mid 1980s, successive governments have sought to manage the impact of regulation. They have done so through a variety of deregulatory and better regulation policies, and through institutional arrangements. Since 2005 the Better Regulation Executive has been the principal executive unit working in this area, initially within the Cabinet Office, and from 2007 within what is now the Department for Business Innovation and Skills.

**2.3** The Better Regulation Executive leads the regulatory reform agenda across government but individual public bodies are responsible for developing new legislation. In addition, some legislation originates from the European Union, which made up 35 per cent of new regulations (by number) in the Government's March 2010 Forward Programme.<sup>11</sup> Over the period 2005-2010, the Better Regulation Executive, working with departments, implemented a series of initiatives aimed at addressing the main issues which concerned businesses. Appendix Two sets out these actions.

**2.4** A 2009 review by the Organisation for Economic Co-operation and Development (OECD) praised the UK's vigour, breadth and ambition in relation to better regulation policy.<sup>12</sup> The Better Regulation Executive was noted as, "... one of the best examples of an effective central unit for Better Regulation in the OECD, bringing together key elements of Better Regulation under one roof".

<sup>11</sup> *The Government's Forward Regulatory Programme*, 26 March 2010.

<sup>12</sup> *Better Regulation in Europe: United Kingdom*, OECD, 2010.

**2.5** The Coalition Programme published in May 2010 included a number of commitments to reduce regulation (see Appendix Two). The new approach towards regulatory reform is based on the principles that the Government will:

- introduce new regulation only as a last resort;
- reduce the overall volume of new regulation;
- improve the quality of design of new regulation;
- reduce the regulatory cost to business and civil society groups; and
- remove existing regulation that unnecessarily impedes growth.

**2.6** To bring further oversight and challenge to new regulatory proposals, the Coalition Government has introduced a Cabinet sub-committee, the Reducing Regulation Committee, chaired by the Business Secretary. The intended role of the Committee includes ensuring a robust case for new regulations and sending burdensome regulations back to departments, potentially providing the Better Regulation Executive with a key lever for improving the quality of regulation.

**2.7** In December 2010 the Better Regulation Executive published *Reducing Regulation Made Simple*<sup>13</sup> setting out more fully the Coalition's approach to reducing regulation. The Better Regulation Executive has yet to set out detailed plans for delivering this new strategy.

### Challenging individual regulatory proposals

**2.8** Some form of assessment of the impacts of proposed regulation has been in place since 1985. Currently all government interventions which affect the private sector require an Impact Assessment, assessing the need for, and likely costs and benefits of, a proposed government policy. Impact Assessments are designed to bring proper scrutiny and discipline to the development of policy interventions, similar to that undertaken for government expenditure.

**2.9** The National Audit Office has reviewed the quality of impact assessments since 2001. Our most recent report, published in July 2010, concluded that some Impact Assessments are of a high standard but that there remains wide variation between the best and the worst.<sup>14</sup> In particular, we have consistently found that cost-benefit analysis is one of the weakest areas of Impact Assessment.

**2.10** We also found limited evidence of departments routinely considering alternatives to regulation. When the decision to regulate has been made there should be consideration of the most cost-effective solution, and we would expect to see consideration of a range of options for the level of both costs and benefits. However, we found that almost half of the Impact Assessments for our 2010 study had considered only one option, or one option plus 'do nothing' at any point during the policy development process.

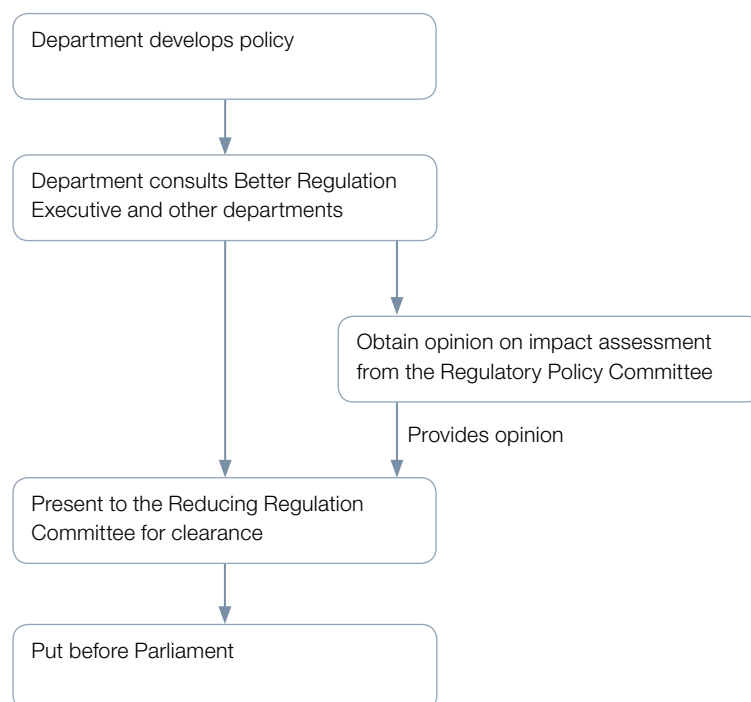
<sup>13</sup> *Reducing Regulation Made Simple*, HM Government, December 2010.

<sup>14</sup> *Assessing the impact of proposed new policies*, National Audit Office HC 185 2010-11, 1 July 2010.

**2.11** A recent development in regulatory reform is the establishment since 2009 of the Regulatory Policy Committee as an independent advisory body intended to increase the level of scrutiny of regulation at the Impact Assessment stage of development. The Committee is the first body to examine every new regulatory proposal. Prior to May 2010, the Committee scrutinised 107 Impact Assessments at the consultation stage and it published its first report in August 2010 making six recommendations based on the Impact Assessments scrutinised.<sup>15</sup> Recommendations include properly considering non-regulatory alternatives, consideration of all the options and ensuring reliable estimates of the costs and benefits.

**2.12** In 2010 the Coalition Government expanded the role of the Regulatory Policy Committee so that it now reviews Impact Assessments before proposals are considered by the Reducing Regulation Committee. Its opinions are provided to the Reducing Regulation Committee to inform their decision making. **Figure 5** below sets out the process.

**Figure 5**  
Policy Process and Scrutiny processes



Source: National Audit Office analysis

<sup>15</sup> *Reviewing Regulation: An independent report on the analysis supporting regulatory proposals, December 2009-May 2010*, Regulatory Policy Committee, August 2010.

**2.13** Since September 2010 the Committee reports that it has been handling between 30 and 40 Impact Assessments per month, and has issued over 150 opinions. The opinions are provided for the Reducing Regulation Committee and focus on whether costs, benefits, the impact on small firms and required burden reductions have been identified robustly. The opinions are not currently published, but the Committee is aiming to release a short report early in 2011 on the Impact Assessments reviewed to date. Most comments have related to the quality of the cost benefit analysis under review. The Better Regulation Executive and departments told us they perceived the new role of the Committee had increased the discipline surrounding the production of Impact Assessments.

**2.14** The new Government has also established a Behavioural Insights Team within the Cabinet Office, working alongside the Better Regulation Executive, to develop innovative approaches to achieve social and environmental goals in a non-regulatory way. The Cabinet Office told us that it has not been consulted by departments to date about possible alternatives to regulation at the assessment stage. The team perceived the key benefit to alternative interventions to regulation was the greater flexibility these could provide particularly for small and medium sized enterprises. The Cabinet Office is producing guidance on alternatives including behaviour change, self and co-regulation, and economic instruments. The Better Regulation Executive is also working with departments on supporting the use of alternatives and has published guidance on its website for use by policy officials.

## European Regulation

**2.15** For policies originating in the European Union, the European Commission is meant to publish an Impact Assessment with its proposals. The relevant UK department should produce an Impact Assessment to inform the UK's position during European Union negotiations. A second impact assessment should be produced by departments when the finalised decisions are to be transposed into UK legislation.

**2.16** We found that of 19 Impact Assessments reviewed for our report in July 2010 which related to European Union legislation, only five were produced early enough in the process to inform negotiations. This has therefore reduced the options when transposing many Impact Assessments.

**2.17** The Better Regulation Executive has worked alongside other member states to tackle regulation originating in the European Union. Resulting action has included the setting of a 25 per cent administrative burden reduction target, and a commitment to minimise impacts on small businesses.

**2.18** In December 2010 the Secretary of State for Business set out a series of new principles that the Government will use when introducing European measures into UK law. These include:

- Work with European partners to encourage smarter regulation by applying more rigorous use of Impact Assessments in the European Union.

- Ensure UK policy-makers are involved in the development of European directives at the earliest stage.
- Avoid gold-plating to ensure that European Union directives are transposed in such a way that does not disadvantage UK businesses against their European Union competitors, or impact unfairly on UK citizens.

## Controlling the volume of regulation

**2.19** Early initiatives focused on the individual regulations being developed and did not consider the overall picture. This is a concern to businesses which have consistently identified in our perceptions survey change to, or introduction of new regulation, to be the biggest burden. To obtain a measure of the rate of change to existing regulation that businesses face, we analysed data available through Businesslink.gov.uk which showed that since October 2004 there have been 387 separate updates, ranging from minor changes to the wording of regulation, to simultaneous introduction of multiple regulatory proposals affecting most businesses.

**2.20** In October 2009 the Forward Regulatory Programme was introduced to make transparent the totality of regulatory changes coming from departments and provide the basis for Ministers to take collective decisions on regulatory priorities. Publishing the information in one place allowed greater challenge and 26 new regulations were either delayed or dropped entirely. A second Forward Programme was published in March 2010, **Figure 6** overleaf shows further details. However, in both cases the quality of the information included was limited and the total amount of new regulation was substantial, totalling 430 and 308 regulatory changes respectively.

**2.21** In managing the overall burden of regulation, the Better Regulation Executive also has a role in challenging departments about proposed new policies in terms of influencing the design and improving the cost-effectiveness of regulations. It estimates that just over one-third of its resource is spent on this activity, for example through participation in policy steering groups and specific interventions on policies in development. The Better Regulation Executive believes that as a result of its influence departments have amended, delayed, and even reconsidered some proposed regulations before publication. Such interventions can be at the early stages of developing regulation but help avoid placing unnecessary costs on business. The Better Regulation Executive estimates this saves millions of pounds per year.

**2.22** The Coalition Programme also introduced a new 'One-In, One-Out' system, with the aim of controlling and reducing the burden of regulation on business. This system came into operation in September 2010. It requires the net cost to business of new regulatory measures to be compensated for by a corresponding cut in old regulations, such that the cut in cost at least matches the cost of the new regulation. This approach is designed to change the culture of government so that regulation is only introduced where it is absolutely necessary.

**Figure 6**  
March 2010 Forward Programme

	<b>March 2010</b>
<b>Total number of actions identified</b>	308
Made up of:	
Introduction of regulation	265
Simplification measures	43
<b>Source of regulation (by volume)</b>	
Domestic	188
European Union	108
International/Other	12
<b>Average cost annually (£m)</b>	<b>27,800<sup>1</sup></b>
<b>Average benefit annually (£m)</b>	<b>31,200<sup>1</sup></b>
<b>Largest department by contribution</b>	
Total number of regulations	DFT
Total cost	DWP
Total benefit	DWP
<b>Quality of data</b>	
Percentage quantified	31
Percentage quantified as zero	29
Percentage not quantified	40

**NOTE**

<sup>1</sup> Includes £12.7 billion in relation to the Pensions Act and includes regulatory measures coming into force before April 2011 comprising an average annual benefit of £11.6 billion and average annual cost of £9.9 billion (see paragraph 6) and those planned from May 2011 onwards.

Source: National Audit Office analysis of Forward Programme

**2.23** The One-In, One-Out system was welcomed in principle by the business organisations we spoke to. They were keen to see how it would work in practice particularly in the implementation of the system across government, in terms of finding regulations which could be cut and whether a broad brush approach would prevent proper equivalent deregulatory measures being found. There was also concern that the process of removing regulations while introducing new regulations would increase the speed at which the regulatory environment is changing. European Union legislation is currently outside the scope of One-In, One-Out.

## Getting insight from business

**2.24** Departments use formal written consultations in order to consult businesses and other stakeholders on proposed policies. Formal consultation should take place at a stage where there is scope to influence the policy outcome. However, departments and business organisations told us this is often too late in the process to have a significant impact on the final outcome. A review by the National Audit Office of 25 Impact Assessments in 2010 showed that the consultation had not changed the final chosen option in over 90 per cent of cases.

**2.25** Early engagement, even on an informal basis means that stakeholders have genuine opportunities to shape policy and find the most cost-effective solution to perceived problems. All policy staff in departments we interviewed understood the need for early and continuous engagement, but of the 25 policy areas covered by the Impact Assessments we reviewed, this was only done in 10 cases. Barriers to this included problems of obtaining representation from businesses, especially those classified as small and medium enterprises.

**2.26** When consulting, departments often only engage with trade associations and major businesses, or specific industry bodies relating to the area of legislation. Small businesses are difficult to contact and often lack the knowledge of how and when to get involved. More importantly the time required to get involved with a consultation can itself be an administrative burden for a business. In acknowledgement of this problem, the Department maintains a small firm consultation database, which includes the details of 4,000 small businesses who have agreed to be contacted for involvement in departmental consultations.

**2.27** In addition, the small firms impact test within the Impact Assessment template is specifically designed to consider the impact on small businesses. From our review of Impact Assessments, 21 indicated they had performed the test, but only five had documented their consideration in detail in the final version. Analysis of Impact Assessments since 2005 showed that only 6 per cent had specifically exempted small firms from the full regulatory requirement. Updated guidance for the impact test includes a map of regulations which can affect business to increase the understanding of the cumulative impact among policy staff.

**2.28** The Better Regulation Executive introduced an online portal in 2006 for businesses to submit simplification ideas available through the Business Link website. In addition to ongoing activity in this area, in July 2010 the Government launched the “Your Freedom” exercise inviting citizens and businesses to suggest via a website ideas to reduce pointless regulation and unnecessary bureaucracy. The Better Regulation Executive worked with business and trade organisations to identify the top ten concerns for business from these and is now working on its response to this.

# Part Three

## Effective implementation of regulation

**3.1** This part examines:

- evaluating individual regulations;
- evaluating the stock of regulation;
- effectiveness of inspection and enforcement; and
- the costs of regulatory reform for departments.

### Evaluating individual regulations

**3.2** Ongoing monitoring of costs and benefits is essential to manage any business or project. The Better Regulation Executive guidance on Impact Assessments states that a post implementation review, examining the actual impact of policies, should normally be conducted three to five years after a regulation is implemented.

**3.3** Work by the National Audit Office in 2009 for the House of Lords Merits of Statutory Instruments Committee showed that for a sample year (2005) only 45 per cent of Impact Assessments (relating to Statutory Instruments) included a commitment to conduct a post implementation review, and by that time less than half of these reviews had actually been carried out.<sup>16</sup> In response to the Committee's report of January 2010 the Better Regulation Executive strengthened its guidance regarding post implementation evaluation and monitoring. Our 2010 work on Impact Assessments found that only five out of 25 of those we assessed are actively collecting information to conduct a future review.

**3.4** The Coalition Programme included a commitment to introduce 'sunset' clauses on regulations and regulators to try to ensure that the need for each regulation is regularly reviewed. The Better Regulation Executive is developing guidance for other government bodies to take this commitment forward. It is expected to apply to all new legislation from April 2011. The Better Regulation Executive hopes that the introduction of sunseting will lead to behaviour change within departments making those involved consider the ongoing need for intervention.

<sup>16</sup> *Post Implementation Review of Statutory Instruments: Analysis of the extent of review by Government departments: Briefing for the House of Lords Merits of Statutory Instruments Committee*, National Audit Office, December 2009.



## Evaluating the stock of regulation

**3.5** While sunseting is intended to allow for review of new regulations produced, it will not tackle the existing stock of regulation. Sunseting, as with post implementation reviews, will also only focus on the individual measures they are related to and will not provide challenge to whole areas of regulation often needed to make specific changes.

**3.6** Assessment of broad areas of regulation is conducted through stock reviews on specific topics. Reviews provide the opportunity to evaluate the impact of multiple regulations and make wholesale changes to the regulatory regime in certain areas. An important aspect to a successful review of regulation is the involvement of business to provide feedback and identify plausible alternatives and amendments to the current regime.

**3.7** Stock reviews can provide good opportunities to rationalise and simplify the regulatory landscape for business, and help to introduce the most cost-effective solutions. The Administrative Burdens Reduction Programme focused on the administrative burdens arising from existing regulation. The programme also encouraged departments to identify areas where policy costs could be reduced, but outside of this there has been no formal programme of reviews. Instead it is up to departments to identify areas for review from the policy areas they cover.

**3.8** It would, however, be possible to assess the totality of regulation. The Australian Government recently undertook a systematic review of all subordinate legislative instruments in place prior to 2008. The review covered 11,444 instruments and identified 499 that were redundant and a further 3,705 instruments which were potentially redundant. From this eight broad areas for regulatory reform were identified. In the UK this sort of review has been limited to specific areas. For example, the Department for Environment, Food and Rural Affairs has taken the introduction of One-In, One-Out as an opportunity to review its whole regulatory stock. It is based on a rolling programme of reviews, starting with reviews into farm regulation and waste policy. **Figure 7** overleaf shows the current work undertaken by departments on stock.

**3.9** Departmental staff highlighted that stock reviews are often conducted as part of wider policy reviews. There is no formal requirement to engage the Better Regulation Executive, but it is often invited to work on and participate in reviews. Currently there is variability in the quality of the reviews and the outcomes from them and would benefit from a more coordinated approach. As part of implementing One-In, One-Out, the Better Regulation Executive is working closely with departments to help identify existing regulations to be reviewed, and with the support of Better Regulation Ministers, is also working to establish a departmental-led peer review process for existing regulation.

**Figure 7**  
Stock reviews announced by departments

<b>Department</b>	<b>Reviews currently under way</b>
Department for Business Innovation and Skills	<p><b>Employment review</b> Report due spring 2011</p> <p>Started but wider scope is still being developed</p> <p><b>Review of Intellectual Property</b> Announced by the PM</p> <p><b>Civil Society Task Force</b> Jointly with Cabinet Office</p> <p>Report to be confirmed</p>
Cabinet Office	<p><b>Lord Hodgson's Civil Society Task Force</b> Will recommend ways to reduce red tape for small organisations</p> <p>Key interest in commissioning and attitudes to risk</p>
Department of Energy and Climate Change	<p><b>Lord Marland</b> Wrote to 250 of the department's stakeholders for suggestion for repeals and simplification</p> <p>Identified 27 repeals to date</p> <p>Published a summary review of stakeholder responses on 12 November 2010</p> <p>Additional work currently in place to identify additional regulatory areas for simplification</p>
Department for Environment Food and Rural Affairs	<p><b>Task Force on Farm Regulation</b> Industry-led. Chaired by Richard Macdonald</p> <p>Report due Spring 2011</p> <p><b>Waste Policy Review</b> Review of all aspects of waste policy and service delivery in England</p> <p>Findings to be published in May 2011</p>
Health and Safety Executive	<p><b>Lord Young Review of Health and Safety</b> Published October 2010</p> <p>All recommendations endorsed by the PM</p> <p>Implementation plan has been set out</p>

**Figure 7**Stock reviews announced by departments *continued*

Department	Reviews currently under way
Department for Work and Pensions	<p><b>Pensions review</b></p> <p>Review of auto-enrolment resulted in annual savings to business of around £150 million</p> <p>Lord Hutton reviewing public sector pensions</p>
Department for Communities and Local Government	<p><b>Building Regulations</b></p> <p>Review of planning regulation</p>
HM Treasury	<p><b>Office for tax simplification</b></p> <p>Carrying out review of tax issues, focusing on SMEs</p>
Home Office	<p><b>Review of Vetting and Barring scheme and Criminal records checks</b></p>
Department for Education	<p><b>Independent review of the early years foundation stage</b></p> <p>Led by Dame Clare Tickell, Chief Executive of Action for Children</p> <p><b>November 2010 Schools White Paper and the Education Bill 2011</b></p> <p>Review of possible de-regulatory measures for inclusion in the Bill</p> <p><b>Bureaucracy reference group of Head Teachers created</b></p> <p><b>Mailbox created to gather feedback from schools</b></p>

Source: National Audit Office analysis

**3.10** In October 2010 the new Government launched a rolling programme of Growth Reviews that will consider what departments are doing to provide the conditions for private sector success and tackle the barriers faced by industry. In addition to reviewing cross-cutting areas, for example the planning system, competition policy, regulation, trade and inward investment, access to finance and corporate governance, regulation at a sector level will be considered through a focus on the barriers faced by specific business sectors.

### Effectiveness of inspection and enforcement

**3.11** Recent work in this area has taken place in a framework developed in a 2005 review led by Sir Philip Hampton. The review set out a number of principles for regulators on implementing effective inspection and enforcement, in particular putting risk assessment at the core of regulatory activity.<sup>17</sup> In 2007-08 the Better Regulation Executive conducted Hampton Implementation reviews of five national regulators, with some review teams including National Audit Office officials. A further 31 reviews were carried out in 2009-10.

<sup>17</sup> *Reducing administrative burdens: Effective inspection and enforcement*, Philip Hampton, March 2005.

**3.12** In 2008 we published a compendium report on the results of the first five reviews. We concluded that regulators were on the whole outcome focused, risk based, proportionate and seeking to engage effectively with business to promote compliance.<sup>18</sup> It is notable, however, that a number of areas of challenge for regulators focused on their interaction and communication with businesses. This is supported by comments from businesses we interviewed, as set out in part one of this report. The compendium report highlighted that:

- Regulators lacked an overarching strategy for provision of advice and guidance and needed to improve the reach and effectiveness of guidance, particularly for small firms.
- Regulators needed to identify common ground and build trust with business organisations and trade associations, to draw on their experience and use their resources.
- Regulators did not always make effective use of all potential sources of information and intelligence about businesses and their activities in order to target risk effectively.

**3.13** The Coalition Programme also outlined commitments to end the culture of ‘tick-box’ regulation and getting better targeted inspections, and to introduce ‘sunsetting’ of regulators. The Better Regulation Executive are currently looking into ‘sunsetting’ reviews as a next step to the Hampton Implementation reviews, standardising reviews of regulators and their function after a set period. The Government intends to publish a White Paper providing details on these subjects later in 2011.

### **The cost of regulatory reform for departments**

**3.14** Departments incur costs through designing and developing new regulations, implementing, enforcing and monitoring regulation and through regulatory reform. The cost of running the Better Regulation Executive was £5,970,000 in 2009-10, the cost for the new Regulatory Policy Committee for the six months from April to September 2010 was £240,000. The cost of running the Better Regulation Executive, including the costs of the Regulatory Policy Committee, is expected to be £5,400,000 for 2010-11. The collective cost of running Better Regulation Units in departments is not calculated separately, so we asked the key regulatory departments to provide details of their staffing levels and mix and we estimated the resulting total some £2.2 million.

**Figure 8** shows our analysis.

**3.15** At a policy-making level departments do not monitor costs at a level that would distinguish the costs of taking into account regulatory reform from other policy development costs.

<sup>18</sup> *Regulatory quality: How regulators are implementing the Hampton vision*, National Audit Office, July 2008.

**Figure 8**Better Regulation unit estimated costs<sup>1</sup>

<b>Department</b>	<b>Staffing FTE</b>	<b>Estimated Costs (£)<sup>2</sup></b>
Department for Business, Innovation and Skills	6.7	287,000
Department For Transport	6.3	268,000
Department for Environment, Food and Rural Affairs	6.8	257,000
Department of Health	4.1	211,000
Food Standards Agency	4.8	198,000
Department for Communities and Local Government	3.0	130,000
Health and Safety Executive	3.0	124,000
Department of Energy and Climate Change	2.5	115,000
Department for Education	2.6	104,000
Department for Work and Pensions	2.0	91,000
HM Treasury	1.6	73,000
Ministry of Justice	1.0	51,000
Home Office	1.0	51,000
Government Equalities Office	1.0	51,000
Cabinet Office	0.8	45,000
Ministry of Defence	0.5	44,000
Department for Culture Media and Sport	0.7	24,000
Office of National Statistics	0.5	21,000
Charity Commission	0.3	12,000
<b>Total</b>		<b>2,157,000</b>

**NOTES**

1 Better regulation units vary in staffing and roles across departments, and costs identified may include elements of additional staff who assist in their work.

2 An average salary per grade was obtained from two departments and applied to all.

Source: National Audit Office analysis of Better Regulation Executive data collected from departments

# Appendix One

## Methodology

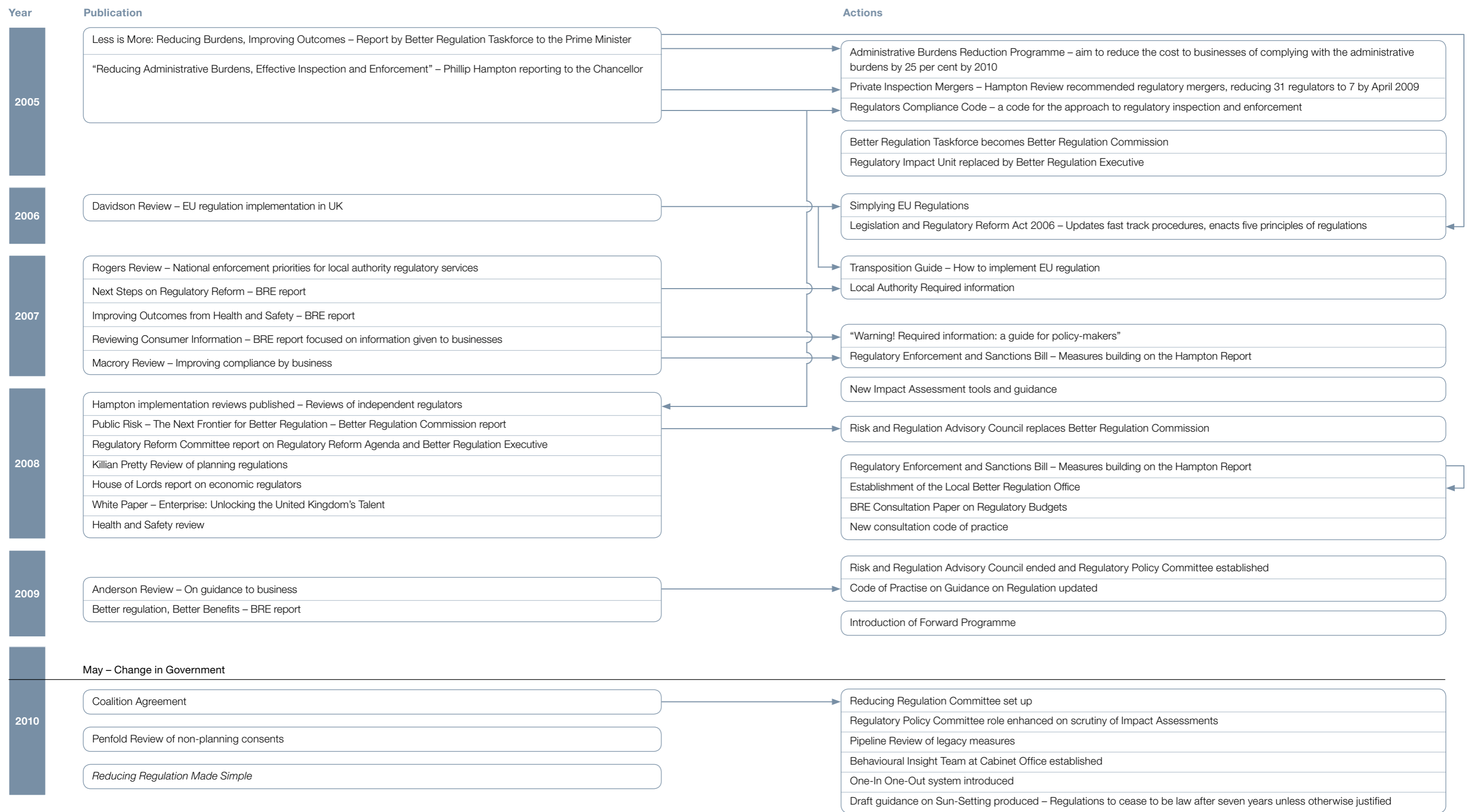
Below is a brief overview of the methods used in this report. A more detailed explanation can be found on our website.

Method	Purpose
Synthesis of existing NAO work	To bring together and analyse quantitative and qualitative evidence from previous NAO reports and our annual business perceptions survey.
File review of the Better Regulation Executive's documentation	To gather evidence on how the Better Regulation Executive have managed the system of regulation.
Structured workshops: <ul style="list-style-type: none"> <li>● Better Regulation Units in Departments</li> <li>● Business representative organisations</li> </ul>	To gather evidence on the perceptions of these groups on what businesses find burdensome and whether the system of regulation is set up to address the concerns of business.
Semi structured interviews	To gather evidence from Better Regulation Executive officials, departmental officials and third parties on the management of the regulatory system.
Business case studies with 17 SMEs	To gather evidence on the common views of SMEs about burdens on businesses imposed by regulation, benefits of regulation, compliance issues and business engagement with government.
Economic analysis of regulation	To gather quantitative and qualitative evidence from academic sources about the cost of regulation to the UK economy, the total impact on business, where the burden of regulation really lies and who generates the burden on business.

# Appendix Two

## Regulation Timeline 2005-2010

Regulation Timeline 2005-2010



Source: National Audit Office analysis





Design and Production by  
NAO Communications  
DP Ref: 009534-001

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