



National Audit Office

**REPORT BY THE
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Department for Business, Innovation and Skills

Delivering regulatory reform

Summary

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

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.