

JOINT COMMITTEE

23rd February 2012

Department for Business, Innovation & Skills on Transforming Regulatory Outcomes

Recommendation	That members note the report and recognise the changing agenda around Better Regulation
Contribution to Priorities/ Recommendations	This report highlights the Government's views on the "Better Regulation" agenda and has potential for direct impact particularly on the operation of some of the Trading Standards elements of service delivery. However, the general principles apply across all aspects of local authority regulation.
Introduction/Summary Background	<p>The Government has published its response to the Transforming Regulatory Outcomes consultation that took place earlier in the year. This emanated from the Government's focus on promoting economic growth. The consultation comprised both general "better regulation" issues and proposals to extend the primary authority scheme.</p> <p>Summarised below are the key issues in the Government's response and some of the actions that the service is already taking to address them.</p>
Report	The consultation was initiated by the Department for Business, Innovation and Skills, which is one of the Departments that leads on regulation enforced by the service, particularly the fair trading and product safety elements of Trading Standards. The Government's response states that there is evidence of good practice of regulators and business working together on compliance but there are too many areas where the enforcement of regulation is heavy-handed, inefficient, overly prescriptive and culturally risk-averse. On a positive note, they do say that none of this should be taken as overlooking the important role regulation plays, safeguarding public health, for example, or protecting consumers and the environment.

So whilst it recognises there are positive activities, Government regards the approach being taken by regulatory services as burdensome on businesses and the economy, and much of the report is taken up with this latter theme. There is very little focus on the positive contribution that regulatory services make to supporting businesses.

The Primary Authority principle, (a statutory system developed by the Local Better Regulation Office where a local authority acts with a business and provides support for its development, some of which can be charged for,) is quoted throughout the report as being a positive measure and the way to address many of the perceived issues of businesses and government. It is proposed that the scheme be widened to encompass a number of other regulatory areas beyond its current remit.

KEY ELEMENTS OF THE GOVERNMENT RESPONSE

1.Principles

93% of respondents to the consultation agreed that greater accountability; recognising and promoting good practice and greater transparency should form the basis of a Government enforcement strategy. The Government has accepted this and will look to build this into its review process. It has committed to a review of all regulators (albeit recognising that some, especially consumer regulators, are already being reviewed as part of the Consumer Landscape Review process).

The report did seem to recognise the point that poor and confusing legislation caused as many problems to enforcers as it does to businesses, accepting that better drafting is required. To support this process WRS will continue to comment through consultation on new legislation.

2.Co-regulation & Earned Recognition

Earned recognition for consistently good performance is a cornerstone of how Government sees developments. The report states that businesses should be rewarded for consistently good behaviour for example by reducing the burden of inspections and Government wants to see a sharp reduction in overall unnecessary inspections. They also want regulators to operate on the presumption that their primary role is to help businesses comply rather than to penalise them for not doing so. Government intend to look at this as part of its review of regulators to identify where enforcement is not working efficiently and where there is need for fundamental reform.

The Government also wants to promote the role of co-regulation (i.e. the formal sharing of responsibility for compliance between the state and third parties). This was

supported by many professional bodies for those areas where it was felt possible to make it work but it was also recognised that co-regulation is a misnomer in some areas such as rogue trading. The Primary Authority principle again is quoted as a key tool in delivering this vision of co-regulation.

With this in mind, following our Systems Thinking pilot work we have taken our own decision to prioritise those businesses not meeting purpose, and leave better businesses alone or limit our interventions with them, so we have adopted the earned recognition approach. This approach is also reflected in new national guidance and should therefore become the norm nationally. Following this a business should only have a one visit from WRS each time they become due for an intervention, reducing the overall inspection burden.

Hopefully this will also reduce the risk-averse approach commented on in the report as this is driven by the national regulators, their Codes of Practice and their audit processes. It is also linked to the reviews that have followed incidents like the Bridgend food poisoning outbreak where officers were blamed for a number of the issues involved rather than the full focus falling on the business that created the problem.

With this in mind we have training sessions planned for all WRS officers involved in this area of work to give officers the confidence and understanding around when a lighter touch is both applicable and acceptable. What we need to do is provide staff with the confidence that the organisation will protect them if something goes wrong where they have used their professional judgment in an appropriate manner.

3. Self improvement for business

The report suggests that better professional standards in businesses can provide mechanisms for securing regulatory compliance. In particular they can help build the capacity of businesses to self-comply. The Government expects businesses to make explicit how their systems or industry assurance schemes would affect the public regulator's risk assessment and that, once local authorities can incorporate these into their calculations, this should lead to a reduction in planned inspections. Local authorities would need simple guidance to ensure this process was workable.

Following these principles, guidance has been issued around the scoring of premises for the Food Hygiene Rating System to ensure that 'gold plating' does not occur. This means that there is no reason why the majority of premises cannot achieve 4 or 5 star rating. The potential effect will be a further reduction in the number of premises

not meeting purpose and greater potential for us to use earned recognition.

The approach during inspection or intervention is also to focus on helping businesses to meet purpose, not to 'nit pick', so it is possible that some areas will not receive as much attention as before. Since we are focusing on meeting purpose we will not be compromising public safety or putting the public at risk of economic loss, so public protection is maintained even where the burden is reduced. This should also help mitigate against accusations of heavy handedness.

We will, however, still prosecute/take other enforcement action where the circumstances are appropriate and in line with the WRS Enforcement Policy, which mirrors the Regulators Compliance Code.

4. Data gathering

Government intends to gather and publish data listing all regulators, size, budget, level of activity including numbers of inspections and prosecutions and business views on their behaviour and performance. There is no clarity as to how this will apply to local authorities nor the rules applied by Dept for Communities and Local Govt to reduce data returns. Government have also said they will introduce a web based tool to collect information and views on regulators and enforcement (including local authorities) on an ongoing basis.

5. Support for small businesses and the Regulators Compliance Code

The report does recognise the key role of local authorities in being responsible for securing compliance with a large and diverse range of regulations and for providing support and high quality tailored advice of the kind which is particularly important to smaller businesses. The report states that local regulatory professionals can provide low cost authoritative advice that can make a real difference to the way that local businesses operate.

The Government want to reinforce the use of the Regulators Compliance Code and in their review of regulators they intend to check on how far they have applied the Code. Regulators will be asked to give more prominence to the Code in publications and websites. The Government will also carry out a review of the code as it is now 3 years old.

Within WRS the examples of good practice in this area are:

- coaching sessions (free of charge) offered to new food businesses on their SFBB responsibilities, including being able to offer this in Bengali, Sylheti
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and Punjabi/Urdu.

- We have just published a new guidance / reference book introducing health and safety for business that is clear and simple.
- Our website will provide self-service information and link to the “ERWIN (Everything Regulatory in One Place)” business advice site.
- When giving advice to business, staff will not merely tell the business where they have gone wrong but provide them with tailored guidance on what they need to do to meet a higher standard, should that be their aspiration.
- WRS offers paid for training in food hygiene but is considering expanding this to include recognised H&S and other courses.

6. Primary Authority and Local Enterprise Partnerships

The Government clearly sees the role of primary authority and Local Enterprise Partnerships as being critical going forward. In particular they quote LEPS as having a lead role in transforming the way that regulation works at a local level.

In consulting on the possible extension of Primary Authority (PA,) the report noted the concerns about the effect on local discretion, especially in regards to licensing and gambling functions. It also noted the broad objection by the Police to any extension to include the Licensing Act.

The Government plans to extend PA to age-related sales of gambling and knives. In the case of fire safety they intend to introduce pilots to see how PA would work alongside existing enforcement. Due to the concerns raised about extension to the Licensing Act there is no commitment to change this but the report states *"we will continue to consider this issue carefully in consultation with local authorities and the police, including the consideration of a pilot within existing legislation"*.

The report noted the concerns raised by some about the appropriateness of extending the scheme to trade associations and franchises. However the Government has signalled its intent to *"extend the scheme to allow businesses - including Small/Medium Enterprises - operating within the framework of company groups, franchises and trade associations to access assured advice"*.

However it does also recognise some concerns raised by stating

"we need to be sure these extensions can be properly put

	<p><i>into effect without any unintended consequences."</i></p> <p>For the Health and Safety function, the Government states that it intends to <i>"legislate to extend the (Primary Authority) scheme to address Lord Young's recommendation and to ensure the inspection plan elements deliver for all parties"</i>.</p> <p>The public health work WRS are doing with partners on devising and rolling out the Worcester Works Well (WWW) initiative supports our forward looking approach. The WWW board reports directly in to the Worcestershire LEP. The initiative is to support better performing companies in providing the right environment to support the health and welfare of their staff and thus reduce sickness absence, improve reputation, improve motivation and thus improve productivity. Achievement is recognised by accreditation and use of a WWW logo of their marketing documentation.</p> <p>This, as with all our public health projects, is aimed at those businesses that have already got a good grasp of their fundamental legal responsibilities. We can then support business growth by building on the good relationship we already have with them to experiment in a low risk environment towards meeting unmet demand in providing healthy choices for their staff or customers - whether this be life style or specifically healthy eating.</p> <p>The learning from both the WWW project and the Truckers Tucker project will be rolled out further within our Worcestershire businesses and it is our intention to introduce the public health concepts / skills to become more mainstream within the within the WRS workforce to ensure delivery is maximised. This will have to be phased in however due to the current volume of 'interventions' required with businesses not meeting purpose.</p>
Financial Implications	None
Sustainability	NA
Contact Points	Simon Wilkes Chris Phillips Anita Fletcher
Background Papers	<ol style="list-style-type: none"> The full report can be found at http://www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-1408-transforming-regulatory-enforcement-government-response.pdf.