

Open Government status: Open	HELA Paper Number: H11/05
	Meeting Date: 4 July 2011
Exempt material: None	Type of Paper: Below the line

The Government's Regulatory Reform Agenda

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Issue

1. This paper provides background for HELA discussions on how local authorities deliver (a) the HSE Strategy and (b) the Government's health and safety reforms.

Timing

2. Routine.

Recommendation

3. To note the implications of the Government's Regulatory Reform Agenda on how local authorities deliver (a) the HSE Strategy and (b) the Government's health and safety reforms.

Background

4. Reducing regulation is a key priority for the Coalition Government, Both the [Coalition Programme for Government](#) (May 2010) and the [Plan for Growth](#) (March 2011) highlight specific Government actions to reduce regulation (see **Annex A**).
5. The Government's regulatory reform agenda is set out in '[Reducing Regulation Made Simple](#)' published in December 2010 by the Better Regulation Executive (BRE). This publication explains:
 - the strategic context and the role of 'reducing regulation' in supporting the Government's overarching objective of achieving sustainable economic growth;
 - a new approach to regulation based on [The Coalition Government's Principles of Regulation](#) and [Guiding Principles for EU legislation](#);
 - a vision for how Government will operate; and
 - The New Regulatory Framework, which is made up of four main elements:
 - a different approach to thinking about regulation, including European legislation;

- a new decision-making structure to bring greater discipline and transparency to the way in which decisions on regulatory issues are taken;
- opening existing regulation up to tougher, more meaningful, scrutiny; and
- streamlining and improving the way regulation is enforced, departing from 'tick-box' systems of inspection and audit.

6. More detailed information on the Government's New Regulatory Framework is in **Annex B.**

Action

7. To note developments and the implications of the Government's regulatory reform agenda on how local authorities deliver (a) the HSE Strategy and (b) the Government's health and safety reforms.

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1. THE COALITION PROGRAMME FOR GOVERNMENT

Extracts

Foreword

“Similarly, there has been the assumption that central government can only change people’s behaviour through rules and regulations. Our government will be a much smarter one, shunning the bureaucratic levers of the past and finding intelligent ways to encourage, support and enable people to make better choices for themselves”.

2. Business

“We will cut red tape by introducing a ‘one-in, one-out’ rule whereby no new regulation is brought in without other regulation being cut by a greater amount. “

“We will end the culture of ‘tick-box’ regulation, and instead target inspections on high-risk organisations through co-regulation and improving professional standards.”

“We will impose ‘sunset clauses’ on regulations and regulators to ensure that the need for each regulation is regularly reviewed.”

“We will give the public the opportunity to challenge the worst regulations.”

“We will review employment and workplace laws, for employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive.”

“We will end the so-called ‘gold-plating’ of EU rules, so that British businesses are not disadvantaged relative to their European competitors.”

11. Environment, Food and Rural Affairs

“We will reduce the regulatory burden on farmers by moving to a risk-based system of regulation, and will develop a system of extra support for hill farmers”

2. PLAN FOR GROWTH

Extract – pages 26-27

“What the Government has already done

1.32 To encourage enterprise the Government has already stemmed the flow of new regulation by introducing the ‘One-in-One-out’ system and guidance on sun-setting clauses to ensure regulation is kept up to date;

What the Government will do now

1.33 To minimise regulatory burdens, the Government will:

- scrap proposals for specific regulations which would have cost business over £350 million a year. This includes not extending the right to request time to train to businesses with less than 250 employees and not bringing forward the dual discrimination rule;
- introduce an unprecedented moratorium on new domestic regulation for microbusinesses and start-ups for the next three years;
- launching a public thematic review to reduce the stock of regulation, with the presumption that all regulations identified as burdensome would be removed unless good reasons are given for them to stay;
- push the EU Commission to deliver a culture change that bears down on the overall impact of EU legislation, including urging the Commission to set a new ambitious target to cut EU regulatory burdens over the life of this Commission; and
- implement the proposals from Lord Young’s review of health and safety, including bringing in new risk assessment tools, the registration of health and safety consultants, combined inspection programmes and taking action to constrain ‘no-win, no-fee’ legal services.”

THE NEW REGULATORY FRAMEWORK

1. A DIFFERENT APPROACH TO THINKING ABOUT REGULATION, INCLUDING EUROPEAN LEGISLATION

The Coalition Government's Principles of Regulation

1.1 The Government will regulate to achieve its policy objectives only:

- having demonstrated that satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches;
- where analysis of the costs and benefits demonstrates that the regulatory approach is superior by a clear margin to alternative, self-regulatory or non-regulatory approaches;
- where the regulation and the enforcement framework can be implemented in a fashion which is demonstrably proportionate; accountable; consistent; transparent and targeted.

1.2 There will also be a general presumption that regulation should not impose costs and obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made.

Guiding Principles for EU legislation

1.3 The Government will:

- end the so-called 'gold-plating' of EU rules so that British businesses are not disadvantaged relative to their European competitors. "
- look at the cumulative impact of new EU measures;
- argue for alternatives to regulation at European level;
- engage with the European Commission before it has adopted proposals to increase UK influence; and
- build alliances with other Member States to increase the UK's effectiveness in negotiation e.g. [Smart Regulation](#).

1.4 Some of these actions are set out in the [Plan for Growth](#) - Growth Review measures section – Regulation Actions 7 and 9.

1.5 Officials must ensure that Ministers are:

- well sighted on all EU measures, from the initial Commission proposal through to transposition and implementation;
- assess from the outset the impact of the proposed legislation; and
- effectively project manage the process from negotiation to transposition.

Alternatives to Regulation

1.6 The Government wants a shift in culture and practice within Government so that alternatives to regulation are much more widely used. If an intervention is necessary, policy teams must identify the most effective approach to achieving a desired policy outcome. Traditional 'command and control' regulation must be seen as the last, not first, resort.

1.7 [Alternatives to regulation](#) means '*finding intelligent ways to encourage, support and enable people to make better choices for themselves*'. This means looking at behavioural theory, behavioural economics and nudge theory. [The BIS website](#) has produced guidance for policy makers on alternatives to regulation. The [Cabinet Office Behavioural Insight Team](#) also promotes the use of behavioural insights in policy making.

2. A NEW DECISION-MAKING STRUCTURE

Reducing Regulation Committee (RRC)

2.1 The [RRC](#) is a sub-committee of the Economic Affairs Cabinet Committee, and is leading the Government's drive to end unnecessary regulation. The RRC scrutinises, challenges and approves all regulatory proposals against the Coalition's Principles of Regulation. The RRC will consider a number of questions:

- is it necessary for the Government to act?
- are there other suitable non-regulatory or self-regulatory ways to achieve the same outcome;
- does the measure either reduce the burden of regulation or is it deregulatory.
- even if there is a clear case for regulation, is this a sufficiently high priority bearing in mind other new burdens being imposed by the Government?
- where the proposed regulation implements EU obligations, is the proposed regulation the least burdensome way in which to implement them?
- have the necessary burden reductions required by One-In, One-Out been identified and are they robust?
- What is the opinion of the Regulatory Policy Committee on the impact assessment?

The 'One-in One-out' rule (OIOO)

2.2. The One-in, One-out (OIOO) rule means that no new primary or secondary legislation which imposes costs on business or civil society organisations can be brought in without the identification of existing regulations with an equivalent value that can be removed. Guidance is available from BRE.

2.3 Policy makers must identify any necessary deregulatory measures in their Impact Assessments. Regulation in scope includes:

- Acts of Parliament;
- Statutory Instruments;
- Codes of practice and self-regulation which are backed by statutory force; and
- Guidance issued under statutory powers.

2.4 The following are out of scope for OIOO:

- European Union Regulations, Decisions and Directives;
- International agreements and obligations;
- Civil Emergencies;
- Spending decisions;
- Specific enforcement action;
- Fines and Penalties; and
- Fees and charges.

2.5 OUTs can be sourced from existing regulations which are removed completely or recast in order to reduce burdens. Savings to business that do not remove legislation can be OUTs, if backed by a published impact assessment.

2.6 EU Measures may be counted as an IN if they go beyond the requirements of the Directive, resulting in increased costs to business ('gold-plating'); or where a department introduces an EU regulation and fails to take advantage of available derogations, leading to increased costs to business. OUTs can also be sourced from any repeal or amendment of EU regulations that reduces the burden on business.

Regulatory Policy Committee (RPC)

2.7 The Government has established the [independent Regulatory Policy Committee \(RPC\)](#) to:

- provide a independent scrutiny throughout the policy making process;
- provide greater transparency to regulatory decision making;
- comment on whether the proposed policy is effective in minimising the costs of measures and maximising the benefits;
- comment on the impact assessment and whether the benefits justify the costs;
- help improve the quality of impact analysis;
- help influence behaviour and attitudes towards regulatory interventions; and
- ensure the rigorous application of the One-in, One-out rule.

Sunset and review clauses

2.8 [Sunsetting or statutory review](#) is now mandatory for new secondary regulation, where there is a net burden (or cost) on business or civil society organisations. For regulation enacted through primary legislation and for regulation that implements EU or international obligations, only a review clause should be used. Post-implementation and sunset reviews are one way to determine whether a set of regulations has been working as intended, whether it is still needed, and, if so, whether it can be improved. To assist policy makers, BRE has produced [guidance](#).

Transposing EU Directives

2.9. When transposing EU law, the Government will:

- seek the use of alternatives to regulation;
- endeavour to ensure that UK businesses are not put at a competitive disadvantage;
- always use copy out for transposition;
- ensure the necessary implementing measures come into force on the transposition deadline; and
- include a statutory duty for Ministerial review every five years.

[Guidance is available from BRE](#).

Statement of New Regulation

2.10 The Government has recently introduced a [Statement of New Regulation](#) (SNR) to replace the Forward Regulatory Programme. The SNR lists all domestic regulation due to come into force over a 6 month period (currently January 2011 to June 2011). It is intended to demonstrate progress towards the Government objective of reducing the volume and cost of regulation and will strengthen departmental ownership, responsibility and accountability. Every Department and its Secretary of State will be responsible for their preparation and publication of their own SNR. The RRC will be responsible for final clearance of SNRs prior to publication of the Government's SNR. The second SNR (June 2011 – December 2011) is expected to be published in September.

Microbusiness Exemption

2.11 There is now a moratorium in place to exempt microbusinesses with less than 10 people and genuine start ups from new domestic regulation (from 1 April 2011 to April 2014). All new domestic regulation, or amendments to existing regulation which impose new or increased costs or regulatory burdens on business or civil society organisations are in scope, Waivers from the moratorium will only be granted by RRC and the Economic Affairs Committee where there are compelling grounds to do so and on a case by case basis. BRE is currently developing guidance.

Ministry of Justice (MoJ) Criminal Offences Gateway

2.12 The MoJ has created a [gateway](#) to scrutinise and clear all new legislation containing criminal offences (including health and safety regulations) to ensure they are justified and proportionate.

3. OPENING EXISTING REGULATION UP TO TOUGHER, MORE MEANINGFUL, SCRUTINY

Reviews of existing regulations or 'thematic reviews'

3.1 Departments will be required to undertake reviews of their existing 'stock' of regulation to identify opportunities to remove or revise regulations. This process will be critical to the successful implementation of the One-in, One-out rule. Recent thematic reviews of specific areas include:

- A review of health and safety and the compensation culture - commissioned by the Prime Minister in 2010. This culminated in the publication of the report '[Common Sense, Common Safety](#)'; The Minister for Employment Chris Grayling is overseeing the delivery of the recommendations falling to HSE from this report.

- '[Good Health and Safety, Good for Everyone](#)'; - An independent review of Health and Safety legislation being led by Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London is underway. The review will consider the opportunities for reducing the burden of health and safety legislation on UK businesses while maintaining the progress made in improving health and safety outcomes. The review will report back to the Minister for Employment in October 2011. Terms of reference for the review can be found at <http://www.dwp.gov.uk/docs/lofstedt-tor.pdf>
 - [Employment Law Review](#);
 - [DCLG Cutting Red Tape](#);
 - '[Task Force on Farming Regulation](#)' ;
 - [The Taskforce on cutting red tape on 'civil society organisations'](#)
- These **and** other reviews will help improve and streamline existing regulation, ensuring it evolves as appropriate to meet changing circumstances.

Public Challenge to Regulations

3.2 As part of its strategy for creating a more open society, and putting more power in the hands of people and communities, the Government has introduced a range of measures to increase the involvement of the public and businesses to challenge regulation.

3.3. [The Spending Challenge](#) provided an opportunity for public sector employees and the public to identify ideas on how to reduce spending. The [Your Freedom](#) website, launched on 1 July 2010, provided a new way for the public to suggest regulations that they think should be removed or changed, for consideration by Government. Topics raised in relation to health and safety included:

- children's activities (playing conkers, scrumping apples, snowball fights etc);
- ladders;
- fetes/bonfires/cheese rolling etc;
- people clearing snow;
- topple testing and laying flat gravestones; and
- asking for signs to go everywhere.

3.4 Suggestions included:

- get rid of the requirement for people to wear high visibility clothing;
- get rid of Risk Assessments;
- get rid of Display Screen Equipment Regulations;
- disapply HSWA to police and other emergency services; and
- allow children to work in factories.

3.5. [The Red Tape Challenge \(RTC\)](#) is a public challenge to reduce the stock of regulation [launched by the Prime Minister on 7 April 2011](#). Legislation is grouped into themes on a [dedicated website](#). Businesses can tell the Government what they think of the regulations and how to improve the system. Burdensome or unnecessary regulations will be removed unless Departments are able to justify them.

3.6 'Health and safety' is 'cross cutting' across the themes, which means all workplace health and safety regulations will be available for comment on the site continuously for the next two years but they will also be highlighted as the main topic on the site for three weeks starting on 30 June to the 20 July. The general public will also be encouraged to comment on enforcement which will be in the spotlight for one week starting 23 June.

3.7 HSE will call on employers and all organisations and individuals with an interest in health and safety to submit comments to the Red Tape Challenge website. During the two weeks health and safety is being showcased, HSE or a contractor will moderate all submissions and comments posted. In addition, HSE will facilitate discussions on the health and safety theme on the site. Comments made so far include references to:

- risk assessment;
- employee responsibility;
- construction;
- personal protective equipment;
- RIDDOR; and
- COSHH.

3.8. BRE is also exploring additional ways of giving SMEs an opportunity to identify and address regulations that are of particular burden to them. In November 2010, the BRE report "[Lightening the Load - The Regulatory Impact on UK's smallest businesses](#)" focused on the experience of the UK's smallest businesses and summarised the experiences they reported in dealing with the overall regulatory burden. In 2010, BRE facilitated 11 regional dialogues with SMEs to further explore the Top 10 regulations identified by business groups as most worthy of challenge from the Your Freedom exercise.

4. STREAMLINING AND IMPROVING THE WAY REGULATION IS ENFORCED

4.1 Departments will need to continue to implement the Hampton Report's principles for effective inspection and enforcement. These principles remain valid. They emphasise good practice including prioritisation of enforcement according to risk, and the provision of support in the form that is most useful for business.

Ending 'Tick-Box' Inspection

4.2 The Government aims to move away from a culture of rigid 'tick-box' regulation to one founded on professional competence, pragmatism and trust.

Developing Co-regulatory Approaches

4.3 One of the more challenging aspects of implementing truly risk-based enforcement of regulation is to give appropriate recognition of a business's own efforts to comply with regulations. More needs to be done to ensure that, where businesses have a good track record of compliance, this is taken into account by regulators, who will then reduce the inspection burden for them.

4.4 A large number of businesses use independent certification and audit and the scope of these audits often overlaps with government-instigated regulation and inspection. The Government will aim to reduce the scale of state-led inspection and monitoring where such recognised systems of independent audit and assurance exist. However, this work is still at an early stage of development.

Regulators Compliance Code

4.5 The [Regulators' Compliance Code](#) is a statutory code of practice that aims to embed a risk-based, proportionate, targeted and flexible approach in regulators' policies and principles - thereby ensuring they are efficient and effective in their work, and achieve their regulatory objectives without imposing unnecessary burdens on those they regulate. BRE intends to consult on the Code in the proposed White Paper on reforming the regulatory landscape.

Working with local and intermediary regulators

4.6. Local Authorities/intermediary regulators have a prominent part to play in enforcing regulation in the UK in areas such as enforcing trading standards, environmental health, licensing, public health, planning and building control. The Government is committed to devolving power and responsibility to Local Authorities.

4.7 BRE will work with central government departments, HSE, the Local Better Regulation Office (LBRO) and Local Authorities to determine what more can be done to reduce regulation and the burdens of enforcement at local level as decentralisation takes effect. BRE has also explored how the Primary Authority scheme might be developed to provide further certainty for businesses that are subject to regulation in multiple local authority areas. Ministers announced [changes to the Local Better Regulation Office and the Primary Authority scheme](#) in February and a consultation paper is expected to be published in June.

Sunset reviews of regulators

4.8 If parliamentary time allows, the Government plans to legislate to impose sunset clauses on statutory regulators, requiring regular, cyclical reviews of their work, and allowing Parliament to vote on abolition, merger, reform or retention according to a set timetable.

White Paper on reforming the regulatory landscape

4.9 As part of the Government's [Plan for Growth](#) – first launched in November 2010 as the [Growth Review](#), there was a commitment in the BIS Structural Reform Plan to produce [a White Paper on reforming the regulatory landscape](#) – for publication by the end of May. The White Paper is intended to include proposals on:

- ending the culture of "tick-box" regulation;
- targeting inspections on high-risk organisations through co-regulation/improved professional standards; and
- enabling 'sunsetting' of regulators.