

Reducing administrative burdens: effective inspection and enforcement

Philip Hampton

March 2005



HM TREASURY



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EXECUTIVE SUMMARY

Dear Chancellor,

In Budget 2004, you asked me to consider the scope for reducing administrative burdens by promoting more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes. You received my interim report in December 2004.

The world in which regulators operate continues to change, both with the pressure on business of a more competitive world, and the changing regulations that need to be enforced. As a society, we have increased expectations that regulations can and will protect consumers, businesses, workers and the environment, coupled with an increasing need to keep our businesses efficient and flexible to face new competitive challenges. Our regulatory system has the pivotal role in resolving the regular conflict between prosperity and protection.

The enforcement of regulations affects businesses at least as much as the policy of the regulation itself. Efficient enforcement can support compliance across the whole range of businesses, delivering targeted, effective interventions without unreasonable administrative cost to business. Inflexible or inefficient enforcement increases administrative burdens needlessly, and thereby reduces the benefits that regulations can bring.

Administrative burdens are the costs that come from enforcement activities. If regulators operate effectively, and use the best evidence to programme their work, administrative burdens on compliant businesses can be reduced while maintaining or even improving regulatory outcomes.

In investigating the regulatory system over the last twelve months, I have found much that is good, and some excellent, innovative practice. However, the system as a whole is uncoordinated and good practice is not uniform. There are overlaps in regulators' responsibilities and enforcement activities. There are too many forms, and too many duplicated information requests.

Risk assessment – though widely recognised as fundamental to effectiveness – is not implemented as thoroughly and comprehensively as it should be. Risk assessment should be comprehensive, and should be the basis for all regulators' enforcement programmes. Proper analysis of risk directs regulators' efforts at areas where it is most needed, and should enable them to reduce the administrative burden of regulation, while maintaining or even improving regulatory outcomes.

I am therefore recommending that:

- comprehensive risk assessment should be the foundation of all regulators' enforcement programmes;
- there should be no inspections without a reason, and data requirements for less risky businesses should be lower than for riskier businesses;
- resources released from unnecessary inspections should be redirected towards advice to improve compliance;
- there should be fewer, simpler forms;
- data requirements, including the design of forms, should be coordinated across regulators;

- when new regulations are being devised, Departments should plan to ensure enforcement can be as efficient as possible, and follows the principles of this report; and
- thirty-one national regulators should be reduced to seven more thematic bodies.

Many of these recommendations build on earlier work or established trends. The Health and Safety Executive and the Environment Agency have both published strategy documents focused on risk assessment. Consolidation of regulators around single themes has been common in recent years, with the creation of Ofcom and the Financial Services Authority. This report recommends a step change in applying risk assessment to all regulators.

The recommendations are designed to streamline and modernise the regulatory system in order to, to deliver reduced administrative burdens. I am pleased that the Better Regulation Task Force's report, *Less is More*, has addressed the area of measuring administrative costs, raised in my interim report. The recommendations in this report are an essential part of how the burdens reduction target set out in the BRTF report could be achieved in practice.

Many will require legislative change, and a continuing commitment to reform. I believe this will require new executive impetus within Government to drive the necessary changes. I hope that the recommendations in this report could be implemented over a two to four year period. This would represent a significant change in the UK's regulatory system.

Acknowledgements

The breadth of organisations and issues covered by the review has made it an extremely interesting challenge. The consultation process, both formal and informal, has been very extensive in time and scope and I am especially grateful for the contributions from Government Departments, regulators, businesses and their representative bodies, including trade associations.

I am particularly indebted to Anthony Zacharzewski, who led the team, for his remarkable ability to absorb large amounts of information and resolve conflicting arguments. I am also grateful for the tremendous efforts of the team: Paul Connolly (Hedra), Odette Fioroni, Alex Hodbod, Sowdamini Kadambari, David Leam, Shainila Pradhan and Will Straw.



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EXECUTIVE SUMMARY

1. The review's aim has been to identify ways in which the administrative burden of regulation on businesses can be reduced, while maintaining or improving regulatory outcomes. It has considered the work of 63 national regulators and 468 local authorities, set out in more detail in chapter 1.
2. The administrative burden of regulation is the cost in time or money of regulators' inspection and enforcement activities. The review has considered the burden imposed by licensing, form filling, inspections, and enforcement activity including prosecutions. It has also looked at how the structure of the UK's regulatory system affects the ability of regulators to minimise administrative burdens when interacting with, and encouraging compliance from businesses.
3. The regulators within the scope of the review (see paragraph 1.10) carry out more than 3 million inspections each year. The national regulators covered send out 2.6 million forms for businesses to complete every year; reliable figures are not at present compiled for local authorities. This burden is felt most heavily in smaller businesses. A recent NatWest survey claimed that a business with two employees spends over six hours per month per employee on Government regulation and paperwork, while a business with over 50 employees spends only two hours per employee.¹ Research by the OECD suggests that the same is true internationally, with businesses with fewer than 20 staff bearing a burden five times greater than businesses with more than 50 staff.²
4. The review's report is published alongside the Better Regulation Task Force's (BRTF) report *Less is More*.³ The BRTF's report discusses issues raised in this review's interim report, regarding the establishment of a methodology for measuring administrative burdens in the UK and recommends the setting of targets to reduce administrative burdens. The recommendations set out here show how burden reductions to realise targets could be achieved.

Problems with the regulatory system

5. Survey data shows that businesses are very concerned about the cumulative burden of regulation. The level of concern has decreased slightly in recent years, but the burden of regulation remains one of the principal challenges of business.
6. The review's conversations with business confirmed the extent of these concerns. Businesses spoke of multiple inspections and overlapping data requirements, and of inconsistent practice and decision-making between regulators. They also highlighted the cumulative burden of forms, particularly for small businesses. The review believes that all of these problems are present, to some degree, and that the costs of these and other problems in the regulatory system are higher than those an effective system would impose.

¹ SBRC/NatWest survey of small business, 2003.

² *From Red Tape to Smart Tape*, OECD, 2003.

³ *Less is more*, Better Regulation Task Force, March 2005.

7. The current regulatory system contains much that is good, and many examples of excellent, innovative practice. However, the review believes that:

- the use of risk assessment is patchy;
- regulators do not give enough emphasis to providing advice in order to secure compliance;
- there are too many, often overlapping, forms and data requirements with no scheme to reduce their number;
- regulators lack effective tools to punish persistent offenders and reward compliant behaviour by business;
- the structure of regulators, particularly at local level, is complex, prevents joining up, and discourages business-responsive behaviour; and
- there are too many interfaces between businesses and regulators.

Risk assessments 8. Risk assessment is an essential means of directing regulatory resources where they can have the maximum impact on outcomes. Undertaking risk assessment makes regulators take proper account of the nature of businesses, and all external factors affecting the risk the business poses to regulatory outcomes. On the basis of this information, regulators can direct their resources where they can do most good. They can end unnecessary inspections or data requirements on less risky businesses, identify businesses who need more inspection, and release resources to improve broader advice services.

9. The use of risk assessment has been the subject of a number of policy studies from, among others, the HSE, an interdepartmental group and the Prime Minister's Strategy Unit. Several recent strategy documents from the largest regulators are focused on risk assessment, and 36 of the 63 national regulators in the review's scope use some sort of risk assessment. Only 25 of them, however, include an explicit element of earned autonomy, where good performers are visited less often, or have less onerous reporting requirements.

10. This failure to use risk assessment comprehensively and consistently means that resources are not always targeted at the riskiest areas. An example of the benefit of risk assessment is provided by the Environment Agency. In 2002, the Environment Agency was criticised by the NAO for over-inspection at waste sites. The NAO said:

"The Agency planned to carry out an average of 15 visits to each licensed [waste] site in 2001/02. This is more than [equivalent regulators in] a number of other countries, including France, Ireland and the United States. ... The Agency is required to visit all licensed waste sites at least quarterly, and some low risk sites are inspected even more often; for example a pet cemetery we visited is inspected eight times a year."⁴

Following the NAO's report, the Environment Agency introduced a risk assessment framework for inspections on waste management sites, the use of which has reduced inspections by a third, from 125,000 in the year the NAO reported, to 84,000 today.

11. The lack of comprehensive risk assessment also creates over-inspection at local level. During 2002-03, local authority trading standards officers only inspected 60 per cent of high-risk premises in Great Britain, in 35,000 inspections, yet still inspected 10 per cent of businesses classified as low-risk, in over 72,000 inspections.⁵ The practical consequence of this is not only that unnecessary inspections are carried out, but also that necessary

⁴ *Environment Agency: protecting the public from waste*, National Audit Office, December 2002

⁵ Premises classified as high risk and inspectable, although the rating system then used has since been abolished.

inspections may not be carried out. For example, in 2002-03 trading standards officers inspected 22 per cent of alcohol measures, with two per cent found to be erroneous. In the same year, only 10 per cent of traders' weights were inspected, even though six per cent were discovered to be inaccurate.⁶ Had activity been focussed on the area of greater concern, and 20 per cent of traders' weights inspected and five per cent of alcohol measures – a ratio of inspections more in line with the error rate – they would have undertaken a quarter of a million fewer inspections. However, given the low error rate and the low level of risk in error (most alcohol measures are designed to fail in the customer's favour) even five per cent is a very high inspection rate.

Advice 12. The review believes that, by eliminating unnecessary inspection, more resources could be directed to advice. This can reduce administrative burdens by reducing the time taken to comprehend regulations, and any data requirements under them. It can increase the probability of compliance, and hence regulatory outcomes. More broadly, better advice eases businesses' concerns about the requirements of regulation, and helps them to comply. The review's work and recent surveys suggest a large unmet need for advice. A DTI report in 2002 said that small businesses were not clear what regulators expected of them, and an academic study in 2003 suggested that 62 per cent of small food business proprietors do not understand which food safety regulations are relevant to them, and 42 per cent do not understand hazard analysis – a fundamental part of current food safety requirements.^{7,8}

13. These figures show that regulators are often failing to communicate their requirements simply and effectively to business. According to the Small Business Research Trust, 50 per cent of small businesses which try to find advice on regulation are unsuccessful in locating it.⁹ This is supported by surveys of business opinion. Of those surveyed by the Environment Agency for a recent report, 40 per cent said they wanted more guidance from regulators on their duties.¹⁰ Businesses the review spoke to often complained that they could not understand what was required of them, and 92 per cent of those responding to the review's consultation said they wanted more advice from regulators.¹¹

14. The common complaint of advice being complex is supported by studying the list of past recipients of the Plain English Campaign's Plain English award. This award is given to several bodies each year for particularly well-written information. The last time any national regulator covered by the review won an award was 1992 (by the organisation now called Companies House). By comparison, since 1993, the Inland Revenue has won two awards, NHS institutions have won seven awards, and local authorities have won eight awards.

Form filling 15. Reducing the time businesses spend filling forms is an important element of any administrative burden reduction – national regulators distribute 2.6 million forms each year, yet carry out about 600,000 physical inspections. The wide variety of forms makes small reductions in data requirements, or improvements in design important. In 2002, the US Health and Human Services Department made one change to one data collection (on health insurance regulation), and saved 37 million hours of paperwork.¹² Currently there are no standard design guidelines for forms, or any unified way of filing them electronically. Risk assessment, better form design and IT solutions can all be used to reduce the burden.

⁶ *Trading Standards Services in England, Scotland & Wales*, CIPFA, December 2004.

⁷ *Cross cutting review of government services for small businesses*, DTI, October 2002.

⁸ *Factors affecting food safety compliance within small and medium-sized enterprises: Implications for regulatory and enforcement strategies*, Charlotte Yapp, and Robyn Fairman, 2004.

⁹ *Quarterly Survey of Small Business in Britain*, Small Business Research Trust Survey, 2001-2003.

¹⁰ *SME-nvironment 2003*, Environment Agency, 2003.

¹¹ Here and elsewhere, these figures exclude those who did not comment on the issue in question.

¹² *Paperwork Reduction Act: Record increase in agencies' burden estimates*, United States General Accounting Office, April 2003.

Penalty regimes **16.** Businesses and regulators have an interest in proper sanctions against illegal activity in order to prevent businesses operating outside the law from gaining a competitive advantage. At present, regulatory penalties do not take the economic value of a breach into consideration and it is quite often in a business's interest to pay the fine rather than comply. This is especially true where a business feels able to shrug off the reputational risk of prosecution. If businesses face no effective deterrent for illegal activity, some will be tempted to break the law, and regulators will need to inspect more businesses.

17. The review encountered numerous examples where penalties fell far short of the commercial value of the regulatory breach. One man prosecuted by the Environment Agency, for example, had been paid £60,000 to dump toxic waste that, when recovered, cost £167,000 to incinerate, yet he was only fined £30,000. In another example, a company had evaded waste licensing requirements for two years, thus saving over £250,000, but was only fined £25,000.¹³ In neither case were the fines imposed sufficient to recoup the gain that the offenders had made by operating illegally. In magistrates' courts, where the overwhelming majority of cases are heard, the average fine in environmental cases in 2003-04 was £3,861.¹⁴ For health and safety offences prosecuted in 2003-04 by the HSE, it was £4,306. One company, which dumped thousands of tons of illegal waste over a ten-year period, was fined just £840 on conviction. If penalties do not reflect the advantage gained by a company in breaking the law, dishonest businesses are given further incentive to breach regulations, and undercut honest companies.

Regulatory structures **18.** The review believes that some of the problems identified above are rooted in, or exacerbated by, the complicated structure of regulation in the UK. Regulatory inspection and enforcement is divided between 63 national regulators, 203 trading standards offices and 408 environmental health offices in 468 local authorities. When the Department of Trade and Industry coordinated a Government-wide list of priority areas for trading standards departments, it resulted in a list of 59 issues, all of which were identified as top priorities.

19. Different regulatory areas are structured in very different ways. The Environment Agency unifies almost all regulation of land, air and water, yet regulation on farms is the responsibility of over 20 different inspectorates. Some responsibilities are split between local and national regulators. One small local authority visited by the review was responsible for monitoring health and safety performance at one of the largest industrial installations in southern England, because it was classified as a warehouse rather than a factory. The HSE's involvement was limited to the railway platform at which supplies were unloaded. This anomaly reflects structures and divisions established when the UK's economy was dominated by manufacturing, and the existence of huge mechanised warehouses was unimaginable.¹⁵

20. There are many small regulators at national level – of the 63 regulators covered by the review, 31 have fewer than 100 staff, and twelve have fewer than twenty. Small regulators' although focussed, are less able to join up their work, and are less aware of the cumulative burdens on businesses. It is more difficult and more expensive to have a comprehensive risk assessment system if data is split across several regulators with similar areas of responsibility. In such circumstances, a holistic view of business risk becomes difficult, if not impossible. Small regulators are also more expensive. Regulators with fewer than 200 staff are on average more than £8,000 per staff member more expensive than regulators with more than 200 staff

¹³ Environment Agency.

¹⁴ Environment Agency. Fines handed down to individuals and companies, some covering more than one offence.

¹⁵ Under the Railways Bill, currently before Parliament, regulation of health and safety on railways will become the responsibility of the Office of Rail Regulation.

members. Smaller regulators which undertake fewer inspections also appear to have higher inspection costs. For example, regulators that inspected between 2,000 and 10,000 businesses per year had an inspection budget of £7,600 per inspection while those that inspected more than 25,000 businesses per year had an inspection budget of £1,000 per inspection.¹⁶

21. At local authority level, there is wide variation in standards of service to businesses and the public, as set out in a recent DTI report.¹⁷ The number of inspectable premises per trading standards officer in greater London varies from 381 (in Sutton) to 3,487 (in Lambeth).¹⁸ Nationally, the number of inspectable premises per environmental health officer varies from 38 (in Wokingham, Berkshire) to over 1,500 (in Lambeth).

22. Even those measures designed to provide national consistency have had unintended consequences. The Home Authority Principle is designed to route any major trading standards and environmental health issues with large businesses through the local authority where the headquarters is situated. This has improved consistency, but at the price of burdening authorities in areas where head offices are concentrated.

Principles

23. In considering how to tackle the problems found in the UK's regulatory system, the review has set out a number of principles for regulatory enforcement, which appear in the box below. The regulatory system should move towards these goals.

Box E2: Principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;
- No inspection should take place without a reason;
- Businesses should not have to give unnecessary information, nor give the same piece of information twice;
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions;
- Regulators should provide authoritative, accessible advice easily and cheaply;
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed;
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

¹⁶ Data from regulator submissions to review questionnaire.

¹⁷ *Extending Competitive Markets: Empowered Consumers, Successful Businesses* Department of Trade and Industry, July 2004.

¹⁸ *Trading Standards Statistics 2003*, CIPFA, 2004.

The review's recommendations

24. The review's central objective is to raise both the quality and the effectiveness of our regulatory system. If anything, the review believes it should be possible to achieve greater excellence in regulatory outcomes – but to do so substantially more efficiently, by:

- entrenching the principle of risk assessment throughout the regulatory system, so that the burden of enforcement falls most on highest-risk businesses, and least on those with the best records of compliance;
- in particular, ensuring that inspection activity is better focused, reduced where possible but, if necessary, enhanced where there is good cause; at present, not only are unnecessary inspections carried out but necessary inspections are not carried out;
- making much more use of advice, again applying the principle of risk assessment;
- substantially reducing the need for form filling – in practice, most businesses' most frequent and direct experience of regulatory enforcement – and other regulatory information requirements; and
- applying tougher and more consistent penalties where these are deserved.

25. The review seeks to build on the strengths of our present regulatory system, especially regulatory independence – a principle the review strongly supports.

26. It does so by:

- setting out a number of core principles of effective regulation – the standard against which all regulators' performance should be judged;
- substantially reducing the number of regulatory bodies with which businesses has to deal;
- making proposals to strengthen regulators' accountability for implementing the approach recommended in this report, suggesting a more prominent role both for the independent National Audit Office and for Parliament;
- ensuring that regulators are more business-focused in the way they operate, and that they take more account of businesses' views and needs;
- for the first time, coordinating local authority regulatory functions and holding them more effectively to account; and
- significantly enhancing the capacity of Government to promote better regulation, with a new Better Regulation Executive, led by a senior business person in the Cabinet Office.

27. The review estimates, based on regulators' past experience, that its proposals could:

- reduce the need for inspections by up to a third, which means around one million fewer inspections; and
- reduce the number of forms regulators send out by perhaps twenty five per cent.

28. Its proposals also have the potential, in time, significantly to reduce the direct cost of regulation to Government and regulated sectors, substantially offsetting any one-off costs of change.

29. To deliver this, the review's principal recommendations are that:

- regulators should follow the principles of regulatory enforcement set out in Box E2 above;
- risk assessment should be used comprehensively by every regulator; information requests, and penalties should also be based on risk assessment;
- regulators should use the resources released through full implementation of risk-based assessment to provide improved advice, because better advice leads to better regulatory outcomes, particularly in small businesses. Regulators should judge the effectiveness of their advice by monitoring business awareness and understanding of regulations; regulators should make on-site advice visits and tailored advice available to businesses;
- regulators should reduce the number of duplicated data requests and reduce the overall burden of forms by: involving business at all stages when introducing a new form, and business groups should vet the design of forms; when designing new forms, all regulators should include a statement detailing how long they will take to complete; and all regulators should keep a tally of how many forms they issue and set targets to reduce them;
- over the longer-term regulators should look to improve cooperation and data sharing to reduce the need for businesses to submit the same data more than once; no proposal for significant upgrades or enhancements to existing regulators' IT systems should go ahead without prior scrutiny by the proposed Better Regulation Executive;
- every Regulatory Impact Assessment should include, in addition to implementation on regulatory costs, an assessment of the practicality of enforcement;
- the penalty regime should be based on managing the risk of re-offending, and the impact of the offence, with a sliding scale of penalties that are quicker and easier to apply for most breaches with tougher penalties for rogue businesses which persistently break the rules;
- early warning before enforcement action should allow companies to correct problems before going to court, and therefore cut the administrative burden;
- regulators should be structured around simple, thematic areas, in order to create fewer interfaces for businesses, to improve risk assessment and to reduce the amount of conflicting advice and information that businesses receive;
- thirty one national regulatory bodies should be consolidated into seven, with individual regulators covering the entire scope of environment, health and safety, food standards, consumer and trading standards, animal health, agricultural inspections, and rural and countryside issues;

- a new consumer and trading standards agency, incorporating the work of four existing regulators, should help coordinate local authority services to improve the use of risk-based inspection and consistency for businesses whilst maintaining national standards for consumers;
- all regulators should ensure they have a performance management framework and systems in place to deliver fully risk based inspection, improved advice services and to monitor the impact of these changes on those they regulate;
- the administration of all new policies and regulations should be based on the principles set out in this report, so new regulations are, where possible, implemented through existing inspection services and data collection channels; no new regulator should be set up if an existing regulator is able to carry out the task effectively;
- the accountability of regulators for implementing the approach recommended in this report should be increased through for example suggesting enhanced Parliamentary scrutiny. This should not affect regulators' independence on individual regulatory decisions;
- in place of the existing Regulatory Impact Unit, a new Better Regulation Executive, led by a senior business person, should be created in the Cabinet Office to drive through this reform programme.

30. The review's detailed recommendations are in Annex D. The review believes that if the recommendations in the report were to be carried through into practice, businesses would see a more open, more comprehensible regulatory system, while regulators would be able to direct their resources as efficiently as possible. Better focus from regulators, and easier routes to compliance for business should mean that regulatory outcomes would certainly not reduce, and could well improve.

31. The next chapter outlines the regulatory system as it operates today. Chapter 2 considers how regulatory practice can embed risk assessment to reduce administrative burdens. Chapter 3 makes recommendations on how the burden of form filling can be eased, and Chapter 4 sets out the review's proposals for changes to the regulatory structure.

THE REGULATORY SECTOR

I.1 The review was established to consider ways of reducing the administrative costs that regulations impose on business. This chapter gives some background on the regulatory regime in the UK.

I.2 Regulation in the review's scope is delivered through 63 national regulators, and 468 local authorities. Regulators at national level employ about 41,000 individuals, of whom about 12,000 work primarily on inspection and enforcement. There are just under 20,000 people working in local authority regulatory services of whom 5,500 work primarily on inspection and enforcement. National regulators in the review's remit carry out at least 600,000 inspections each year, and local authorities carry out approximately 2½ million. National regulators send out 2.6 million forms a year.¹ Statistics are not collated for the number of forms sent out by local authorities.²

I.3 The area covered by the review is therefore immensely complex. That complexity is not new, and is not the result of any individual political institution or movement.

I.4 Business regulation is a long-established function of government. In about 350 BCE, Aristotle described a set of regulators in ancient Athens:

“Formerly there were ten Corn Commissioners, five for Piraeus, and five for the city; but now there are twenty for the city and fifteen for Piraeus. Their duties are to see that the unprepared corn in the market is offered for sale at reasonable prices, and that the bakers sell their loaves at a price proportionate to that of wheat, and that the loaves are of the proper weight; for the law requires the Commissioners to fix the standard weight.”³

I.5 In the UK, the earliest identifiable inspectorate was established under the Health and Morals of Apprentices Act in 1804. The Health and Safety Executive can trace its origins back to 1833, and the regulation of trade, markets and hallmarks stretches even farther back, into the earliest years of the English state.

WHAT ARE ADMINISTRATIVE COSTS?

I.6 The costs of regulation can be split into two types:

- *Policy cost* is the cost inherent in meeting the aims of a regulation. This could be a direct cash cost, such as installing a new waste incinerator prescribed by legislation, or it could come indirectly, for instance through changes to a factory in order to meet new health and safety regulations.
- *Administrative costs* are those costs that are incurred in gathering information about a business, or checking on a business's compliance. So, for instance, filling in a form is an administrative cost, as is showing an inspector around a site.

¹ Figures available from national regulators show the number of businesses the regulator visited at least once. Some, of course, are visited more than once.

² Data in this chapter relating to national regulators is from a regulator questionnaire commissioned by the review from all regulators within scope. It relates to 2003-04.

³ *The Constitution of the Athenians* Chapter 51, Aristotle, trans. F. G. Kenyon.

1.7 The decision on the acceptable level of policy costs for a particular outcome reflects the political decision on the regulatory goal to be achieved. The administrative cost, however, is overhead, and should be reduced to the minimum level required to ensure the effective enforcement of the regulation. Environmentalists and industrialists could differ, for instance, on the extent to which factories should be required to install pollution filters in their chimneys, but both should agree that the cost of paperwork involved in monitoring should not be higher than a proper risk assessment would require.

1.8 The review looks specifically at the administrative costs of the regulations in its remit. It has not considered whether a particular area should or should not be regulated, or to whether businesses should be held to a different standard. It has considered all aspects of the enforcement of regulations, from data gathering and license or permit applications, through inspection to enforcement and prosecution. This report sets out its recommendations on streamlining these processes, whilst maintaining regulatory outcomes and standards.

1.9 The review's interim report said: "without a methodology [for determining administrative burdens], it is difficult to measure the effect of the Government's policies on administrative burdens".⁴ The Better Regulation Task Force (BRTF) is publishing a report today, which discusses a possible methodology for calculating the overall administrative cost of regulation, and then setting a target for reducing that cost.⁵

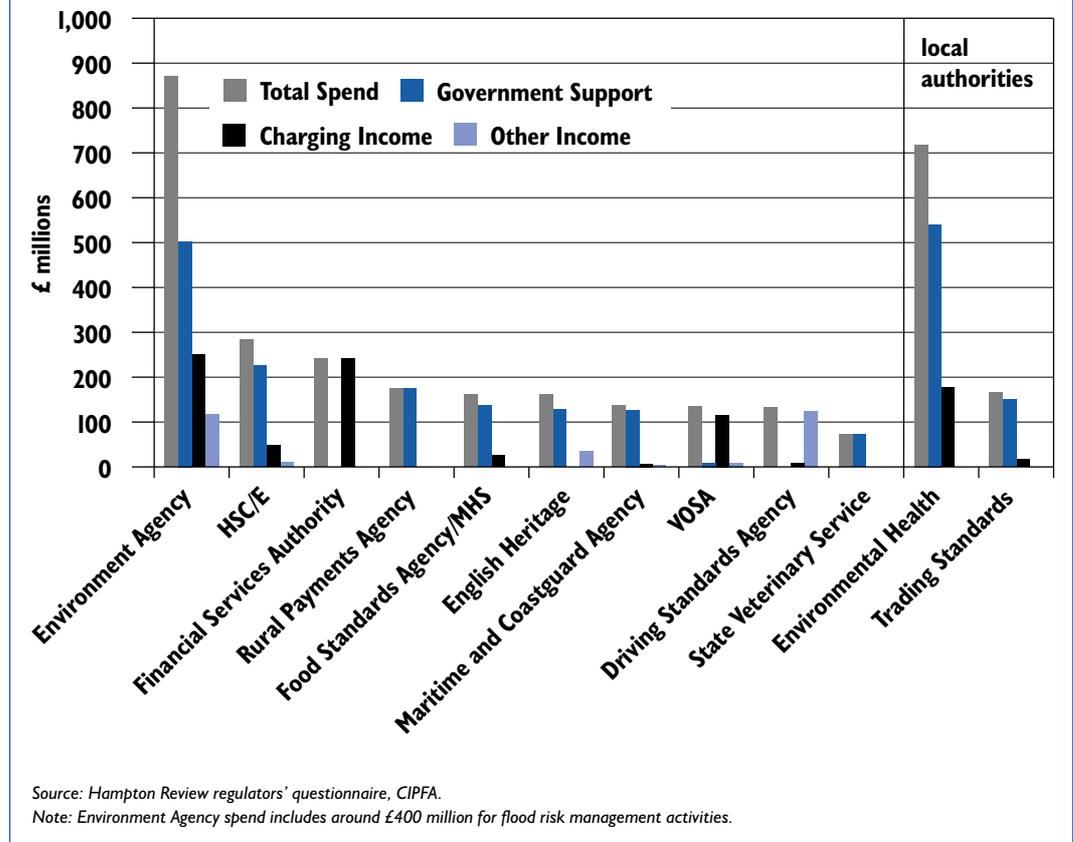
REGULATORS

1.10 Regulatory bodies at national and local level enforce regulations in the UK. As discussed above, including both levels there are 61,000 people working for 674 regulatory bodies within the scope of the review. They have a combined budget of around £4 billion. Chart 1.1 shows the 10 largest regulators and local authority regulatory services by budget.

⁴ *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, December 2004.

⁵ *Less is more*, Better Regulation Task Force, March 2005

Chart I.I: Largest national regulators by expenditure; with local authority regulatory services



I.II The division of responsibility between national and local bodies varies. In certain areas, such as some environmental regimes, responsibilities are split between national and local regulators, with national regulators having responsibility for higher-risk activities. In other areas, principally health and safety, local authorities enforce the regulations on some businesses, and national regulators enforce the regulations on others. Finally, for issues such as food standards, national regulators set standards and local authorities enforce them.

NATIONAL REGULATORS

I.I2 The 63 national regulators within the scope of the review have a total budget of £3.2bn. Of this, about £400m is related to the Environment Agency's flood defence work, making the total expenditure of national regulators on regulation about £2.8 billion. National regulators employ almost 41,000 staff, of whom just over 12,000 are inspection or enforcement staff.

I.I3 These large figures conceal a wide variation in size. The Environment Agency is the largest national regulatory body, with 11,296 staff (FTE) including 2,417 inspectors. Its budget, including flood defence, is £870m. The smallest regulator the review has identified is the British Hallmarking Council, which is responsible, alongside local authority trading standards officers, for enforcing the provisions of the Hallmarking Act 1973. It has one member of staff, and a budget of £40,000.

I.14 This section outlines the work of the principal national regulators and explains the different legal statuses of the national bodies.

Principal National regulators

I.15 The principal national regulators (within the scope of the review) are:

- The Environment Agency;
- The Health & Safety Commission and Executive;
- The Rural Payments Agency;
- The Food Standards Agency (including the Meat Hygiene Service);
- Companies House;
- The Civil Aviation Authority; and
- The Financial Services Authority.

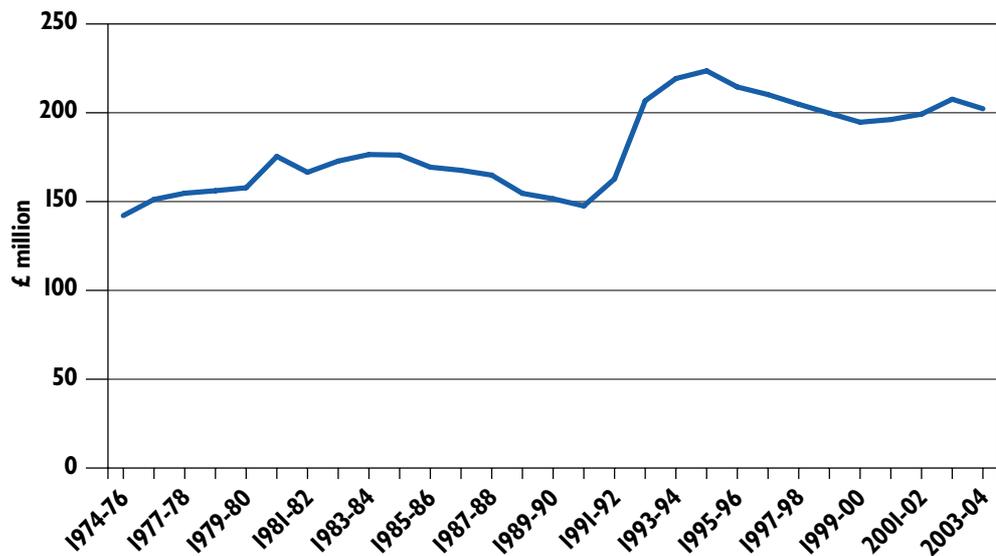
I.16 The **Environment Agency (EA)** was set up under the Environment Act 1995, taking on the combined responsibilities of HM Inspectorate of Pollution, the National Rivers Authority and waste regulation from 83 local authorities to enable an integrated approach to be taken to all of these functions.⁶ It started work in April 1996. It is the leading public body for protecting and improving the environment in England and Wales. Its objective is “to make sure that air, land and water are looked after by everyone in today’s society, so that tomorrow’s generations inherit a cleaner, healthier world.” About half its resource is used for flood defence. As of 31 March 2004, the EA had a staff of 11,296 (full time equivalents). Of those, 2,417 work on inspection and enforcement, and a further 2,646 on other aspects of regulation such as permitting and monitoring. The Environment Agency’s regulatory strategy was set out in *Delivering for the environment: a 21st century approach to regulation*, reissued in February 2005, following extensive consultation. It said, “Modern regulation aims to find the right balance – a proportionate, risk-based response, that will drive environmental improvements, reward good performance, but still provide the ultimate reassurance that tough action will be taken on those who fail to meet acceptable standards”.⁷

I.17 The **Health and Safety Commission (HSC) and the Health and Safety Executive (HSE)** were established by the Health and Safety at Work etc. Act 1974. The HSC/E is responsible for protecting all citizens against the risks to health or safety arising out of work-related activities. The HSC/E covers the whole of the UK with the exception of Northern Ireland. Both the HSE and local authorities carry out enforcement activity, under the supervision of the Health and Safety Commission. The HSE also conducts and sponsors research, promotes training, and provides an information and advisory service. The Health and Safety Commission submits proposals for new or revised regulations and approved codes of practice. On 1 April 2004, the HSE had 4,019 staff in post. The Health and Safety Commission’s regulatory strategy was set out in February 2004. The HSC’s vision is to see health and safety as a cornerstone of a civilised society, and to achieve a record of workplace health and safety that leads the world.⁸

⁶ <http://www.environment-agency.gov.uk/aboutus/>

⁷ *Delivering for the environment: a 21st century approach to regulation*, Environment Agency, February 2005.

⁸ *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, Health and Safety Commission, February 2004.

Chart I.2: HSC/E expenditure 1974 to 2004 (2003-04 prices RPIX)

Source: HSE

Notes: 1) The funding requirement between 1974 and the end of financial year 2000-01 relates to the actual cash Grant-in-Aid drawn down from the parent Department.

2) From 2001-02 the figures are the Net Operating Cost of HSC/E after the introduction of Resource Accounting and Budgeting.

3) HSC/E first period of account covered 1 October 1974 to 31 March 1976.

1.18 The Rural Payments Agency (RPA) was established in October 2001 as an Executive Agency of Defra. The RPA is responsible for the Common Agricultural Policy (CAP) payment functions formerly delivered by the Ministry of Agriculture, Fisheries and Food (now Defra) Paying Agency and the Intervention Board. A budget of some £2 billion a year is allocated to the Agency for the payment of CAP and other subsidies in England, the majority of which is reimbursed by the EU. On 1 June 2004, RPA had 3,545 full time equivalent staff. This figure includes 390 staff working in its inspectorate.

1.19 The Food Standards Agency (FSA) has its origins in the James Report, which was commissioned by the Prime Minister while Leader of the Opposition. It was established by the Food Standards Act 1999. With some minor exceptions, the Agency is not an inspection and enforcement body itself. It has an executive agency, the Meat Hygiene Service (MHS), which inspects abattoirs, slaughterhouses and meat cutting plants according to the requirements of EU law (and specific UK requirements in relation to certain BSE controls). Local authorities carry out most of the UK's food standards and safety inspections, with the Agency monitoring them and running an audit programme. The Agency is UK-wide, although food safety is a devolved matter. It has offices in Scotland, Wales and Northern Ireland that work closely with the devolved authorities there. The FSA and its executive agency the Meat hygiene Service (MHS) currently have some 2,400 employees, of whom 1,600 work for the MHS. There are approximately 1,500 environmental health officers (EHOs) and 500 trading standards officers (TSOs) working on food law enforcement, and over 430 staff working for the Meat Hygiene Service.

1.20 Companies House is an Executive Agency of the Department of Trade and Industry. All limited companies – more than 1.8 million in Great Britain – are registered there, and more than 300,000 new companies are incorporated each year. All 1.8 million companies on the register have to file accounts and annual returns with the Registrar each year. Companies House has 1,281 employees, 782 of whom are involved in examining documents and ensuring compliance with companies legislation.

1.21 The **Civil Aviation Authority (CAA)** was established as a public corporation in 1972. It is the UK's specialist aviation regulator with responsibility for air safety, economic regulation, airspace regulation, consumer protection, and environmental research and consultancy. Three parts of the organisation fall under the scope of the review: the Safety Regulation Group (SRG), the Consumer Protection Group (CPG), and the Aviation Regulation Enforcement (ARE) Department. A total of 719 people work for the three groups, 493 in inspection or enforcement.

1.22 The **Financial Services Authority** was established by the Financial Services and Markets Act 2000 (FSMA). It regulates a very wide range of financial institutions, including banks, investment banks, building societies, insurance companies, investment firms, friendly societies and mortgage brokers. In addition, in January 2005, it took responsibility for general insurance brokers. Structurally, it is a company limited by guarantee, but with statutory functions and a Board appointed by HM Treasury. The Authority regulates around 25,000 firms. At 31 March 2004, the Authority had 2,312 staff with 808 in supervision and 197 in enforcement.

Legal status of national regulators

1.23 Different regulators have a different legal status. The legal status of a regulator affects both its institutional closeness to its parent Department, and the ease with which institutional reforms can take place. Regulators can be either:

- Non-Departmental Public Bodies (NDPBs) like the Health and Safety Commission and Executive, which carry out their functions at arm's length from Government;
- core departmental functions like the Drinking Water Inspectorate, which are part of the normal departmental structure and staffed by civil servants;
- Executive Agencies like the Rural Payments Agency, which are closer to Departments than NDPBs, but not part of the Departmental structure; or
- non-Ministerial Departments (NMDs) like the Food Standards Agency, which are staffed by civil servants but do not have a Minister.

1.24 The legal status and composition of these bodies varies widely and inflexibility in the regulatory structure has hampered reform and joint working in the past. The very limited time available to Parliament means that a Bill to make specific reforms to regulatory bodies could find it hard to secure a Parliamentary slot, except as part of a larger reform.

LOCAL REGULATORS

1.25 All regulatory functions not carried out at national level are carried out by local authorities with one exception – fire safety – considered separately below. Local authorities have a budget of just under £1 billion for regulatory services. They employ just under 20,000 staff of whom 5,500 work primarily on inspection and enforcement.

I.26 Local authorities carry out four times as many inspections as national regulators. In general, they follow guidance from a national regulator or a Government Department. So, for example, the Food Standards Agency works with local authorities on their food safety and food standards work. In some areas, such as trading standards and fire safety, there is no central regulatory body, but laws and regulations are nevertheless set by Parliament. This section outlines regulatory work done at a local level by local authorities and on fire safety. More detail on the work of local authorities can be found in Annex C.

Local authority regulatory services

I.27 County and unitary authorities employ Trading Standards Officers who are professionally qualified local government officials. There are 203 Trading Standards offices in England, Scotland and Wales. They implement the main laws relating to:

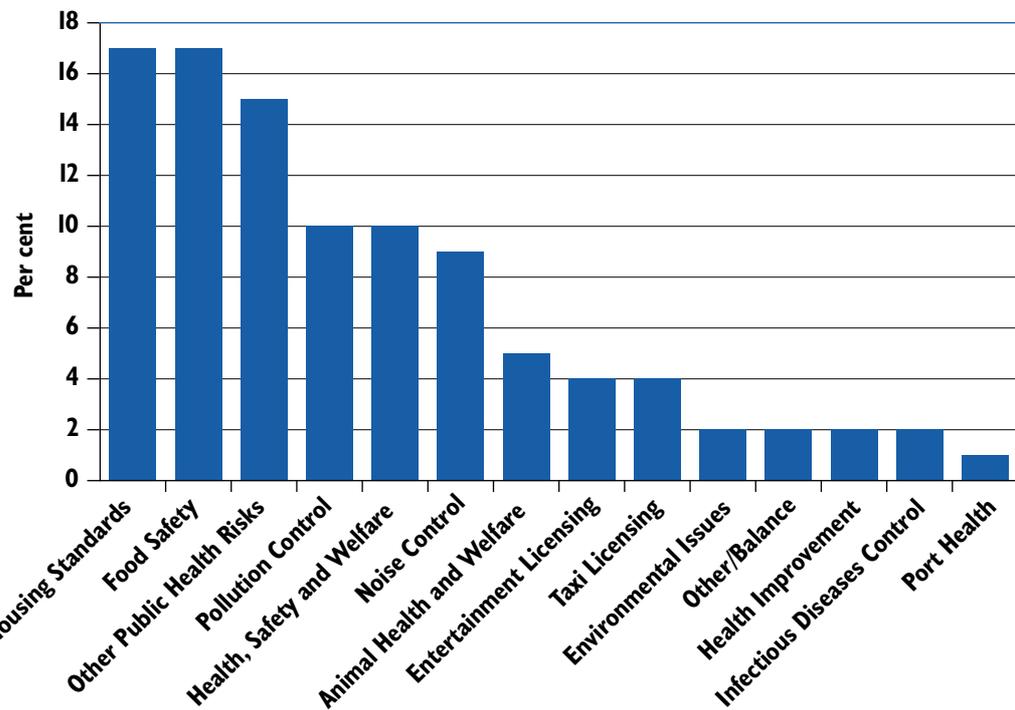
- weights and measures;
- the quality and fitness for sale of merchandise;
- food standards;
- animal welfare;
- fair trading; and
- consumer protection.

I.28 District and unitary authorities employ Environmental Health Officers. There are 408 Environmental Health offices in England, Scotland and Wales. EHOs are professionally qualified local government officials who inspect premises for food safety, health and safety, animal welfare, housing standards, and pest control. They are also responsible for air quality, noise control, food imports (in port health authorities), infectious disease control, health improvement, and other areas outside the scope of the review. District and unitary authorities are also responsible for licensing, highways control, building control and planning.

I.29 This review only covers part of the work of EHOs. Areas within scope are food safety, health and safety and air quality work. Areas outside the review's remit are licensing of premises for the sale of alcohol, other planning and licensing work, and housing standards. In 2002-03, EHOs spent about 40 per cent of their time on work related to regulatory inspection, and the rest on work outside the review's remit. The biggest demands on their time came from food safety and housing standards (each taking 17 per cent of their time), followed by other public health concerns, including drainage and pest control (15 per cent), pollution control (10 per cent) and health and safety (10 per cent).⁹

⁹ Chartered Institute of Public Finance and Accountancy (CIPFA), 2002–03; comprises the gross expenditure figure in GB, and the environmental health gross expenditure for England and Wales.

Chart I.3: Breakdown of EHO time between functions



Source: CIPFA Environmental Health Statistics 2002-03.
 Notes: 1) England and Wales only.
 2) Figures based on local authorities that made a return to CIPFA.

I.30 Environmental Health Officers operate in a number of different areas including Food Safety, Health and Safety, Housing and Pollution Control. Their training qualifies them in these areas, as well as management and IT skills. In order to become an EHO two things are required: a degree in Environmental Health accredited by the Chartered Institute of Environmental Health (CIEH) and registration and membership with the CIEH.

I.31 Trading Standards Officers can qualify through two routes. Most take degrees in consumer protection. The degree course takes three years, followed by eighteen months during which the candidate has to complete the practical and oral elements of the Diploma in Trading Standards. At the end of this period they become a fully qualified TSO holding both the Degree in Consumer Protection and the Diploma in Trading Standards.

I.32 The second route is to study only for the Diploma in Trading Standards. This requires appointment as a trainee TSO by a local authority, and at least three years' attendance on a block release course, to learn the legal and technical elements of the trading standards profession.

I.33 Data is not currently available on the breakdown of TSO time between functions. However, at local level, TSOs carry out inspections under over 80 different Acts of Parliament, and hundreds of associated regulations. There are 1.2 million UK premises inspectable under trading standards law, of which 526,000 are in English counties, 168,000 in English unitary authorities, 183,000 in metropolitan districts, 158,000 outside London in Greater London authorities, and 163,000 in Scotland and Wales. TSOs carried out 465,500 inspections in 2002-03, while EHOs carried out almost 2 million inspections in 2002-03.^{10, 11}

¹⁰ Trading Standards Statistics 2003, CIPFA, 2003. Trading Standards data is for all of Great Britain.

¹¹ Environmental Health Statistics 2002-03, CIPFA, 2003. Environmental Health is for England & Wales.

Composition of local authorities

I.34 As outlined above, the UK is divided into 468 local authorities. All authorities in Scotland, Wales and Northern Ireland are unitary – defined below – but authorities in England can be one of three types for regulatory matters:

- **Counties** are large authorities, made up of a number of district areas. Examples are Lancashire, Cornwall or Derbyshire. The smallest county is Shropshire, with a population of 285,700. The largest is Kent, with a population of 1.3 million. Counties employ Trading Standards Officers but no Environmental Health Officers.
- **Districts** are smaller authorities, always within counties. Examples are Three Rivers (Hertfordshire), Craven (North Yorkshire) and Torrington (Devon). The smallest district is Purbeck (Dorset) with 44,100 inhabitants. The largest is Northampton, with 194,100. Districts employ Environmental Health Officers but no Trading Standards Officers.
- **Unitary authorities, metropolitan authorities and London boroughs** carry out both county and district functions, and employ both TSOs and EHOs. Some of them are the descendants of former metropolitan counties like West Yorkshire and Greater London. Others were created out of former counties, or around particular areas within counties, such as Brighton and Hove, Plymouth or Leicester. Unitary authorities vary considerably in size. The smallest, aside from the City of London, is Rutland (34,900 population), and the largest the City of Birmingham (976,400 population).

I.35 Where counties have been split into separate unitary authorities, or where unitary authorities have split away from two-tier local authorities that still exist, the new unitary authorities have, in some cases, duplicated the county's services, such as laboratories or other research resources. In recent years, as the unitary authorities have started to consolidate their work, sharing of services has begun to occur. This is clearly a cost-effective and sensible move.

Fire safety

I.36 The other area of locally-run regulation covered by the review is fire safety. Fire safety and fire safety inspections are the responsibility of fire authorities, under the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997. In 2002-3, Fire and Rescue Services in the United Kingdom paid 7,168 visits to business premises.¹²

I.37 Under the 1971 Act, certain types of premises require a fire certificate to operate.¹³ The certificate, issued by the local fire brigade, is based on an inspection that checks:

- that there is means of escape in the event of a fire;
- that the routes of escape in the building are available at all times;
- that reasonable provision is made for fighting fires; and
- that reasonable provision is made for giving warning in the event of a fire.

¹² *Fire and Rescue Service Operational Statistics Bulletin for England and Wales, 2002/03*, Office of the Deputy Prime Minister, April 2004.

¹³ Hotels and boarding houses with more than six beds (not counting beds on the ground floor); any workplace with more than 20 people at work at any one time (or 10 people if above ground floor level); and certain smaller workplaces if highly flammable materials are present.

I.38 In addition, the Workplace Fire Precautions regulations require employers to carry out fire risk assessments, and train staff in the fire precautions available on site.

I.39 Fire safety regulations and their implementation are currently under review. The Office of the Deputy Prime Minister – the Government Department responsible for fire and rescue services – published a draft regulatory reform order in April 2004.

I.40 The reform order proposed changes to a number of different regulations:

“To reduce burdens on business caused by the existence of multiple, overlapping general fire safety regimes, and consequently overlap of the responsibilities of enforcing authorities. The reform order would ... reduce the number of enforcing authorities dealing with general fire safety matters.”¹⁴

I.41 The proposals for change set out in the Regulatory Reform Order are in line with the principles set out elsewhere in this report. The review particularly supports the reform’s aims of ‘creating one simple fire safety regime applying to all workplaces and other non-domestic premises’; and of fire authorities’ ‘[basing] their inspection programmes on their assessment of the premises they considered to present the highest risk’.

HOW REGULATORS DO THEIR WORK

I.42 Regulators are meant to ensure the compliance of business within an area of the law. To encourage compliance, and to undertake their other roles, regulators use a variety of tools:

- inspection carried out on a number of businesses, either on a routine or random basis or targeted at those which pose the greatest risk;
- advice offered to those companies which fall within a regulator’s remit;
- data requests through annual returns or form filling;
- incentives such as award schemes or reputational sanctions such as ‘naming and shaming’ to encourage compliance; and
- as a last resort, penalty regimes to punish those who are non-compliant.

I.43 In the practical allocation of resources, there is a limited use of risk assessment. Some inspection activities are based on risk assessments, but most other regulatory activities are carried out on a universal or random basis, or to the extent that resources allow.

I.44 There is an administrative cost associated with each of these activities. Poor or inaccessible advice can increase the time spent by business comprehending regulations, while inspection takes up time that could be spent working on the core activity of the business. In addition to these administrative costs, some regulators charge for some elements of their work. Usually this is related to inspection activity, but can also include advice. The next section examines each of these functions in turn.

I.45 The review believes that the current system, described in this chapter, is focussed on process rather than on outcomes. A shift to a more outcome oriented system is discussed in more detail in the follow Chapter. Many regulators within scope are already making this transition and this report sets out some further strategies to deliver a more outcome oriented approach to regulation.

¹⁴ *Regulatory Reform (Fire Safety) Order – statement by the Office of the Deputy Prime Minister, April 2004*

Inspection and advice

I.46 Most of the regulators in the review's remit carry out some level of inspection to ensure that the regulations they enforce are being complied with. They have different inspection regimes often due to the different issues and regulatory structures they enforce. Much environmental legislation is based on permits that allow certain activities to be carried out. The Environment Agency issues these permits and then inspects the permitted businesses to ensure they are meeting the conditions set for the operation. The bulk of the Agency's inspections are therefore preventative rather than reactive.

I.47 On the other hand, in the Health and Safety Executive's Field Operations Directorate, roughly 50 per cent of inspections are reactive (in response to an accident or particular threat). Other regulators inspect all regulated businesses covered, or a set percentage. Companies House, for example, carry out no inspections at all. Of the total budget of £2.8 billion, national regulators spent nearly one-third – £918 million – on inspection and enforcement activities. Of a total budget of £1 billion, local authority regulatory services spend nearly £500 million on inspection and enforcement activities.¹⁵

I.48 Thirty regulators in the scope of the review carried out all their inspection and enforcement work in-house, while three carried out their work entirely through local authorities. The other regulators used a mix of in-house, external and local authority resource. There are 2.4 million business premises which are inspectable by national regulators. In total national regulators inspect at least 600,000 premises every year.

I.49 Regulators offer advice to the regulated on how to ensure that they are compliant with regulations. Businesses commented that in some cases regulators were hesitant to provide advice in areas of unclear or uncertain interpretation. Providing advice is a central part of regulators' activity. Given the technical nature of many regulations, the regulator has an essential role in ensuring that companies are aware of their obligations, and that the administrative cost associated with comprehending regulations is reduced.

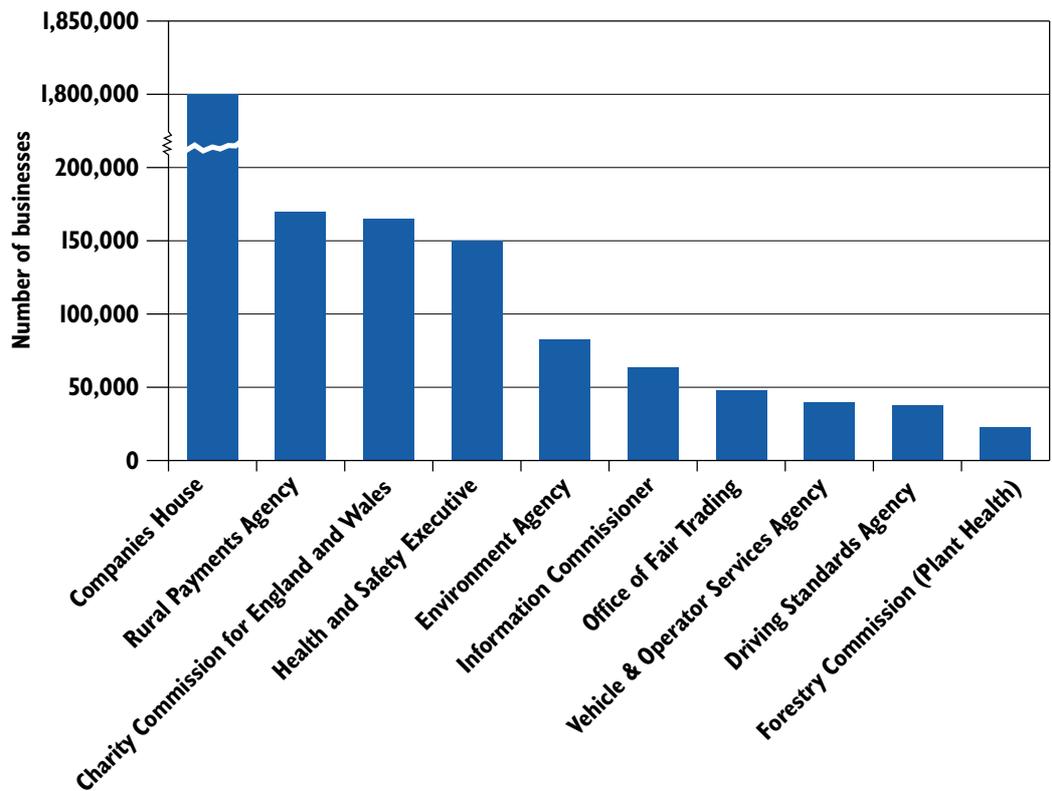
Form filling

I.50 Forms and information requests are a major part of regulation. They are also a frequent subject of complaints from business, which – along with forms sent by bodies within the scope of the review, also have form burdens from the tax authorities and the Office for National Statistics. The review believes that forms are a significant part of the regulatory burden.

I.51 Of the 63 regulators in the review's scope, 47 require businesses to fill out forms, with 14 requiring every business within their remit to fill in a form. Nine of the 14 regulators which require an annual form cover more than 1,000 businesses. The most active is Companies House, which requires 1,800,000 businesses to fill in forms each year. Local authorities devise and send their own forms. There are no national standards for the forms they use, nor statistics for the number of businesses to which they are sent. In total, national regulators sent out 2.6 million forms in 2003-04.

¹⁵ Estimates HM Treasury.

Chart I.4: Form-filling requests



Source: Hampton regulators' questionnaire.
 Note: Ten largest national regulators by number of businesses required to fill in forms.

I.52 A number of national regulators offer electronic filing services for forms. In a recent survey of e-government, the UK came sixth out of 18 European economies in the number of its services available online.¹⁶

I.53 The Better Regulation Task Force report, *Less is More*, includes recommendations on the setting of targets for administrative burdens reduction. Burdens reduction in the Netherlands – where a target has been in place since 2000 – has focused on the burden of forms and audited financial information.

Penalties and compliance incentives

I.54 As a last resort, some regulators are able to use either civil or criminal penalties to punish businesses which fail to comply. The existence of a penalty regime may act as an incentive to comply, although some regulators have developed other tools to encourage compliance.

¹⁶ *Online availability of Europe's services, report of the fourth measurement*, European Communities, January 2004

I.55 Forty-three regulators had criminal penalties available to them in cases of non-compliance. Twenty-six were able to seek prison sentences for some offences. Fifteen were able to impose administrative penalties. None of the national regulators in scope set targets for penalties issued or enforcement notices issued. In 2003-04, they issued 357,000 warnings or enforcement notices, and prosecuted or fined almost 11,000 businesses. These fines and prosecutions generated £62.3 million in revenues.¹⁷ These seem not to take account of proportionality or the benefits of evading the law.

I.56 Trading standards authorities in Great Britain took 3,905 cases to court in 2002-3, and issued 9,000 written warnings. EHOs undertook 10,800 prosecutions or formal cautions in 2002-3, with over half of these being in areas covered by the review. The area where most action was taken with 3,390 prosecutions or formal cautions was animal welfare, followed by Private Hire Vehicles and Hackney Carriages (1,923), food safety (1,603) and health and safety (1,150).^{18, 19}

I.57 Some regulators use incentives to encourage compliance. Good performance can be rewarded, most obviously through lighter inspection where risk profiling has taken place. Regulatory accreditation schemes are increasingly popular. For example, some local authorities issue displayable Food Hygiene Awards to local caterers and restaurants. Reputational sanctions are also used. The Environment Agency has a policy of ‘faming, naming and shaming’ with the publication of its annual *Spotlight on Business Environmental Performance*. It also varies the annual change made to reflect their environmental performance under its OPRA (Operator and Pollution Risk Appraisal). HSE names, on its website, those who have been convicted of health and safety offences, and those who have received Improvement and Prohibition Notices.²⁰ Eleven regulators publicised good performance by regulated businesses, either through a press event, ‘approved’ status or some similar means. Twenty-six publicised bad performance or prosecutions.

Staffing problems

I.58 National regulators employed 41,000 staff in 2003-04, and 12,000 of them were involved in inspection and enforcement work. 4,466 full time equivalent staff are employed in trading standards offices in Great Britain, and 15,301 staff are employed in environmental health offices. Approximately 3,900 of those staff are professionally qualified EHOs and 1,500 TSOs. Thirty-four regulators had regional structures, with the others operating through a national office.

I.59 However, 20 regulators reported problems in recruiting enough qualified staff to fill vacancies, and many of these specifically mentioned problems recruiting in London and the South-East.

¹⁷ Data from regulator questionnaires submissions.

¹⁸ CIPFA, 2003.

¹⁹ Trading Standards Statistics 2003, CIPFA 2003.

²⁰ *Greener business is good business: spotlight on business environmental performance 2003*, Environment Agency 2004.

1.60 Staffing levels in trading standards offices are in decline. Fewer staff are being employed than in previous years, and the average age is high. Thirty-one per cent of officers are aged over 50 and a further 27 per cent are aged 40 to 50. Authorities and the professional bodies have expressed concern over persistent low levels of recruitment and retention. A similar profile exists in environmental health. The Environmental Health workforce survey 2002 showed 52.4 per cent of local authorities reporting one or more unfilled posts. The main reasons authorities gave for retention and recruitment problems were general lack of suitably qualified applicants (74 per cent) followed by problems around pay (53 per cent).²¹

CONCLUSION

1.61 This Chapter has given an overview of the regulatory landscape in the UK at both national and local level. It sets out a picture of a large, varied sector with considerable resources, and a range of tools at its disposal. The next Chapter sets out some of the issues that the review has identified through its consultation process.

²¹ *Environmental Health Workforce Survey 2002*, Employees organisation for local government.

2

ASSESSING RISK

2.1 This chapter considers the importance of reducing administrative burdens, the role of risk assessment, the importance of good advice, and the need for an effective penalty regime.

WHY REGULATORY BURDENS MATTER

2.2 Overall, the UK's regulatory reform regime is well respected internationally. A 2004 survey of regulatory costs by KPMG ranked the UK as the most competitive country in Europe, and third in the world.¹ World Bank research and the OECD's recent UK survey confirm this assessment.^{2,3}

2.3 Despite these good results internationally, businesses are rightly concerned about the effect of regulation's administrative burdens. Even though the UK's regulatory regime is good compared to others, there is still a large body of regulation for businesses to try and assimilate. Smaller businesses, in particular, face heavier burdens compared to larger organisations.

2.4 The review carried out an extensive consultation with businesses, through 11 focus groups, a seminar for business representative groups, numerous meetings and two consultation exercises. The predominant mood, particularly among small businesses, was one of concern that they did not know what inspectors would require of them, and the cumulative burden of regulation.

2.5 Many surveys and much academic research confirm that this is the general consensus. The issue has been more prominent in recent years, although the number of small businesses identifying regulation and paperwork as their biggest problem has in fact declined from its peak of 19 per cent in 2000 to 15 per cent by 2003.⁴ A survey by the Institute of Directors found over 50 per cent of businesses described health and safety regulation as a 'significant' or a 'major' concern.⁵

2.6 The most worrying aspect of research on the burden of regulation is the extent to which burdens are felt disproportionately in smaller businesses. This is a key concern for Government, as the creation and continuance of smaller businesses is an essential part of productivity growth. Particularly worrying is regulation's impact on business owners' desire to start and grow their businesses. Small firms are keen to grow – two-thirds want to expand in the next five years – but half see regulation as 'a serious barrier to growth'.^{6,7} Four in ten companies questioned by SAP in 2004 believed that red tape was 'stifling their growth', while Small Business Service research suggests that around a third of adults who think about starting a business view the complexity of regulation as a barrier to entrepreneurship.⁸

¹ *The CEO's guide to international business costs*, KPMG February 2004.

² *Doing Business in 2005*, World Bank, September 2004.

³ *Economic Survey's of the United Kingdom*, OECD 2004.

⁴ *Small Business Research Trust survey series, 2000-2003*.

⁵ *Real real impact of red tape*: Institute of Directors, February 2004.

⁶ *Lifting the barriers to growth in UK small businesses*, Federation of Small Businesses, 2002.

⁷ SBRC/Natwest survey of small businesses, 2003.

⁸ Quoted in *Better regulation, is it better for business*, Robert Baldwin/Federation of Small Businesses, 2004.

REGULATORY PRACTICE TODAY

2.7 As set out in Chapter 1, regulators secure compliance with regulations in different ways. Most regulators in the review's remit give advice to businesses, and in some cases to consumers. Three-quarters have an inspection regime, with slightly more than half using some element of risk assessment. Regulators also impose penalties to punish offenders, or issue notices requiring businesses to bring themselves back into compliance with regulation.

2.8 The review believes that there are problems and inefficiencies in each of these areas of work, as highlighted in the previous chapter. It also believes that the balance between them is rooted more in historic practice than in consideration of the evidence of risk. Fewer than half the regulators in the review's scope use risk assessment to reduce enforcement activity on high-performing businesses, and even where risk assessment is used, patterns of activity often do not follow it.

2.9 Overall, the level of inspections in parts of the regulatory system seems higher than is necessary to achieve regulatory outcomes. Inspection is a high-cost activity, and inflexible inspection programmes, in inspecting businesses unnecessarily, take resources away from advice services, where there are serious unmet needs.

2.10 Penalty regimes are also slow and comparatively weak. Illegal operators have incentives to undercut honest businesses, partly because penalties are low absolutely, but more worryingly because penalties imposed often do not reflect the commercial advantage a business has gained from non-compliance. Weak penalties, by creating a limited deterrent effect, also lead to unnecessary levels of inspection of compliant businesses.

2.11 The New Zealand Government in its *Workplace Health and Safety Strategy to 2015* sets out the requirements of a regulatory system:

"We need to ensure that:

- standards are relevant, effective, clear and understood by all;
- support and guidance information is easily accessible and specific to hazards and industries;
- enforcement is targeted at the worst offenders, including those responsible for the greatest number and severity of work-related illnesses and injuries;
- regulators deal with offenders effectively, fairly and visibly, raising the expectation of appropriate but inevitable enforcement, and
- regulators use a flexible approach to intervention, depending on the motivations and responses of individual employers.

2.12 The review believes that these are the right requirements of a regulatory system. The rest of this chapter considers the problems in the regulatory structure at present, and makes recommendations for change.

RISK ASSESSMENT

2.13 In the academic world, there has been a general agreement that risk assessment should form the basis for regulatory intervention since the early 1990s, although the earliest work on regulation and risk dates back to the 1980s. The fundamental principle of risk assessment is that scarce resources should not be used to inspect or require data from businesses that are low-risk, either because the work they do is inherently safe, or because their systems for managing the regulatory risk are good.

2.14 The 1992 book *Responsive Regulation*, by Ian Ayres and John Braithwaite, was influential in defining an ‘enforcement pyramid’, up which regulators would progress depending on the seriousness of the regulatory risk, and the non-compliance of the regulated business.⁹ Ayres and Braithwaite believed that regulatory compliance was best secured by persuasion in the first instance, with inspection, enforcement notices and penalties being used for more risky businesses further up the pyramid.

2.15 This approach has been adopted by many regulators, and has resulted in the large-scale random inspections of the past being replaced by more targeted intervention. The tax authorities have also taken a lead on risk assessment work, and the review is pleased to note that David Varney is today announcing that no HMRC inspection or visit will happen without a proper assessment of the risks of non-compliance.

2.16 From these developments has come a general acceptance among business and regulators that inspections are an inefficient enforcement mechanism in lower-risk or high-performing businesses, and that risk assessments should inform the work programmes of inspectorates. Recent documents such as the Environment Agency’s *Delivering for the environment*, and the Health and Safety Commission’s *A strategy for workplace health and safety to 2010 and beyond* make a powerful case for a more risk-based approach to inspection.^{10,11}

2.17 Risk assessment is most frequently used to set inspection programmes, although the tax authorities (outside our scope) often send lower-risk businesses shorter forms. The review believes, as detailed below, that the use of risk assessment should be embedded throughout the regulatory system, and should inform all aspects of regulators’ work such as mandatory data requirements, penalties, as well as inspections.

2.18 The use of risk assessment is widely supported by external organisations, nationally and internationally. The European Union uses risk assessment to direct inspections in several important directives, including those relating to payments under the Common Agricultural Policy, and food safety. Risk assessment in Government, both at the regulatory and policy level, has been the subject of several studies, most notably from the review’s perspective, the Health and Safety Commission’s *Reducing Risk, Protecting People*, and the Strategy Unit’s 2002 report on risk assessment practice across Government.¹²

⁹ *Responsive regulation*, Ian Ayres. and John Braithwaite, 1992.

¹⁰ *Delivering for the environment*, Environment Agency, February 2005.

¹¹ *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, Health and Safety Commission, February 2004.

¹² *Risk: improving government’s capability to handle risk and uncertainty*, Prime Minister’s Strategy Unit, November 2002.

2.19 Much of the development of risk assessment has been driven by specific concerns, particularly global warming and Bovine Spongiform Encephalopathy. Many international bodies have pursued risk assessment research, including the Codex Alimentarius (a UN food standards body), NORA (a research arm of the US Centers for Disease Control), the World Health Organisation, and the UN's Food and Agriculture Organisation. A good overview of recent thinking can be found in *Smart Regulation and Risk Management*, a paper by William Leiss for the Canadian Privy Council Office.

2.20 Bodies whose remit is in public protection are also supportive of risk assessment. The Royal Society for the Prevention of Accidents has said (in the context of the HSC's strategy document):

“over the last two decades HSE has played a key role in establishing a risk/evidence based approach to health and safety which it has been able to champion with others right across Government. This now needs to be developed further and made much more accessible to everyone.”¹³

2.21 However, the review believes that no country at present has a fully comprehensive approach to regulation, as is proposed in this report. While most countries use some elements of risk assessment in their regulatory work, the review believes that the UK can take a lead internationally by making comprehensive risk assessment the core element of its regulatory system.

Risk assessment in practice

2.22 Unless risk assessment is carried through into resource allocations and regulatory practice, it is wasted effort. Risk assessment needs to be comprehensive, and inform all aspects of the regulatory lifecycle from the selection and development of appropriate regulatory and policy instruments through to the regulators work including data collection, inspection and prosecution. Regulators are still a long way from this comprehensive approach, though some are closer than others.

2.23 In the review's first consultation, 36 regulators, which carry out over 600,000 inspections, described themselves as basing inspection and enforcement regimes at least in part on risk assessment. Although this suggests that the majority of inspections, at least at national level, are carried out on the basis of a risk assessment, the review believes that disciplined risk assessment methods are used far less often than these numbers suggest.

2.24 Only 25 of those 36 regulators, for example, said that they included some element of 'earned autonomy', where good performers were visited less often, or had less onerous reporting requirements.

2.25 In addition, the forms sent to businesses were not differentiated according to risk. Most regulated businesses required all businesses to fill in the same forms, imposing an administrative burden across all regulated businesses regardless of risk. If data requirements were varied according to risk assessments, lower-risk firms might well need to provide less information. Moreover, good practice such as pre-population, eliminating duplicated requests, good form design and sharing of information (between regulators discussed more in Chapter 3) would also contribute to a reduction in burdens.

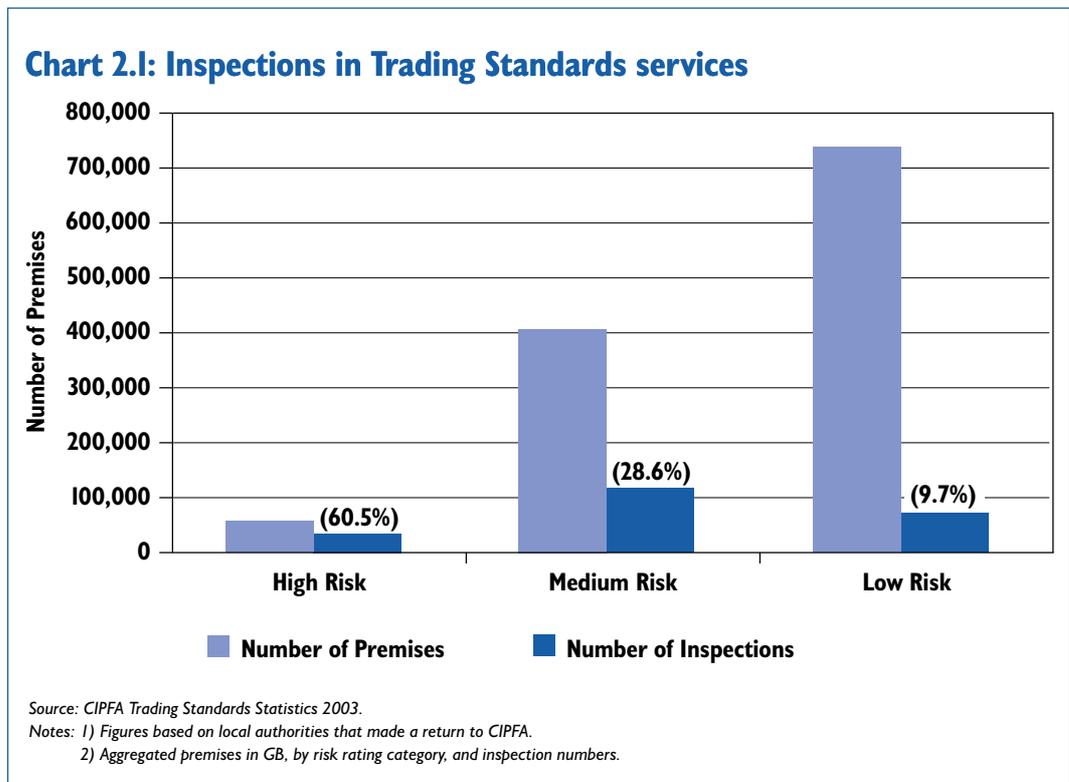
¹³ RoSPA response to the Health and Safety Commission consultations on 'A strategy for workplace health and safety in Great Britain to 2010 and beyond', Royal Society for the Prevention of Accidents, December 2003.

2.26 Local authority weights and measures inspections are a good example of how risk assessment is not currently carried over into practice. Local authorities have a risk assessment methodology for trading standards, issued by the Local Authority Coordinators of Regulatory Services (LACORS), and including both national and local scoring elements. Cabinet Office guidance to local authorities has emphasised the importance of risk assessment, saying, in relation to enforcement:

“The targeting of resources where they are most effective and at areas of highest risk is essential in providing the public with an effective service.”¹⁴

2.27 Despite this, CIPFA statistics show that, at least in some areas, risk is not the basis of local authorities’ work. During 2002-03, local authority trading standards officers inspected 10 per cent of all traders’ weights (18,600 inspections), and identified inaccuracies in six per cent of cases. In the same year, they inspected 22 per cent of all alcohol measures (370,000 inspections) even though only two per cent were found to be inaccurate.¹⁵ Had they inspected 20 per cent of traders’ weights and five per cent of alcohol measures – a ratio of inspections more in line with the error rate – they would have undertaken a quarter of a million fewer inspections. It should be said that, given the prevailing low error rate and the low level of risk in error (most alcohol measures are designed to fail in the customer’s favour) even five per cent appears to be a very high inspection rate.

2.28 More broadly, inspection rates on trading standards overall show a balance of activity that does not seem to be informed by risk. In 2002-03, trading standards officers only inspected 60 per cent of high-risk premises, in 35,000 inspections, while still inspecting ten per cent of businesses classified as low-risk, in over 71,000 inspections.¹⁶ These figures, and the variation between different types of authority, are shown in the charts below.

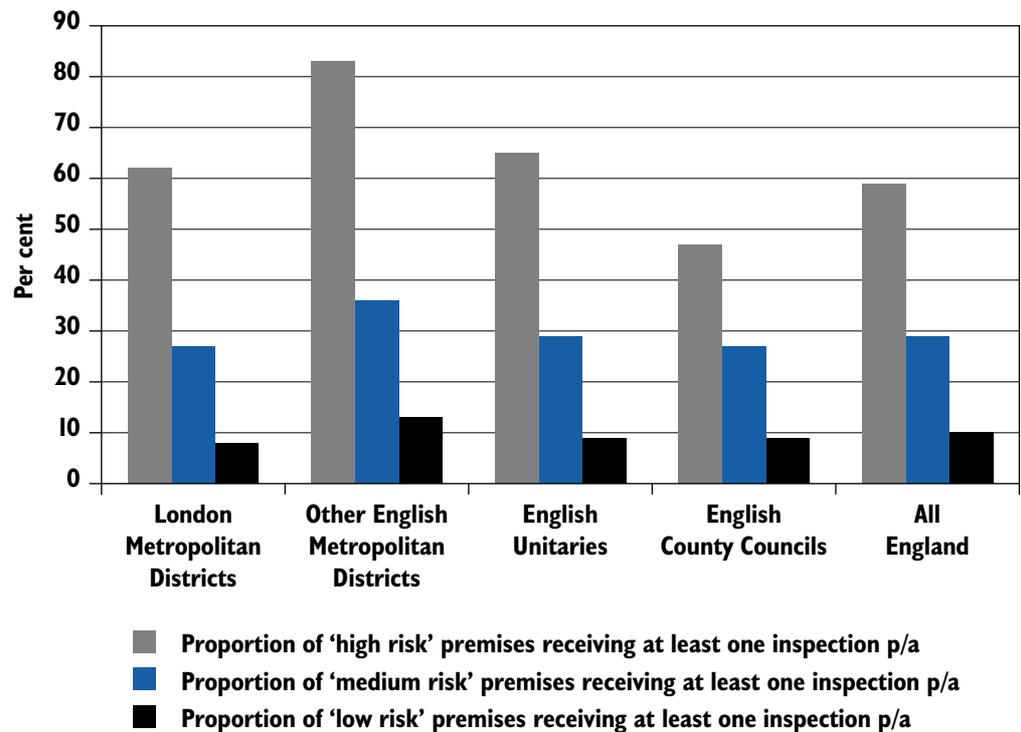


¹⁴ *An introductory guide to performance management in local authority trading standards and environmental health enforcement services*, Cabinet Office, 1999.

¹⁵ *Trading Standards Services in England, Scotland and Wales, Analysis of Performance 2003-2004*, CIPFA, December 2004.

¹⁶ Premises classified as high risk and inspectable, although the rating system then used has since been abolished.

Chart 2.2: Trading Standards inspections in English local authorities



Source: CIPFA Trading Standards Statistics, 2003.
 Note: Figures based on local authorities that made a return to CIPFA.

2.29 Departures from expected patterns exist, even in some high-performing national regulators. A National Audit Office report, in 2002, expressed concern about the Environment Agency’s levels of activity on low-risk waste sites. It said:

“The Agency planned to carry out an average of 15 visits to each licensed [waste] site in 2001/02. This is more than [equivalent regulators in] a number of other countries, including France, Ireland and the United States. ... The Agency is required to visit all licensed waste sites at least quarterly, and some low risk sites are inspected even more often; for example a pet cemetery we visited is inspected eight times a year.”¹⁷

2.30 Since the report was published, the Environment Agency has implemented a risk assessment system for waste sites’ reducing the number of inspections at waste management sites from 125,000 in the year of the NAO report to 84,000 for 2004-05.

¹⁷ Protecting the public from waste, National Audit Office, December 2002.

Improving risk assessment

2.31 The best risk assessment takes in all relevant information, and can be used to set priorities across a large scale – even to allocate resources between different regulatory functions at national level. Risk assessment should:

- be open to scrutiny;
- be balanced in including past performance as well as potential future risk;
- use all available good quality data;
- be implemented uniformly and impartially;
- be expressed simply, preferably mathematically;
- be dynamic, not static;
- be carried through into funding decisions; and
- incorporate deterrent effects;
- always include a small element of random inspection.

2.32 The way in which methodologies are created, and the way in which different elements are used, should be open to scrutiny. The Interdepartmental Group on Risk Assessment recommended, in 1998, that all risk assessment frameworks should be made public.¹⁸ There are practical and policy reasons for this. Practically, a debate about the relative weighting of different parts of the methodology improves the data available to regulators, who would still have the final say. From a policy perspective, businesses would see clear incentives to gain accreditations or standards that were taken into account in the assessment, and would see the rationale for the regulator's position laid out in simple terms.

2.33 Regulators should use all available good quality data in their risk assessments. This means looking beyond the data available from previous inspection activity, and considering accreditations such as those from the British Standards Institute, performance in different regulatory regimes, and the existence of management systems. In the review's first business consultation, 78 per cent of businesses that responded said they had some form of external accreditation, but only 19 per cent said that their external accreditation was taken into account by regulators. Over a third said that past performance was not taken into account when they had been risk assessed.

2.34 Data should not be included in the risk assessment unless there is evidence that the presence of the accreditation or certification has a material effect on the regulatory outcome being examined. The judgement on whether a piece of information is material or not should be based on the objective reliability of the information, rather than a subjective assessment of its accuracy in particular cases.

2.35 The methodology, once devised, should be implemented uniformly and impartially. There will always need to be scope for some subjective judgement in the assessment – on the quality of management systems, for example – but subjective judgements should inform, not dominate the risk assessment.

¹⁸ *Risk Assessment and Risk Management*, ILGRA, December 1998.

2.36 The methodology should be expressed simply, preferably mathematically. This gives additional clarity to the outcome of the assessment, and allows other parties, like company managers or insurance companies, to use the risk assessment results to set performance bonuses or insurance premia. The Environment Agency's Operator Risk Assessment (OPRA) already works in this way and, although some businesses complained that a mathematical approach risked unfair outcomes in borderline or unusual cases, most businesses the review consulted said that they preferred the certainty of a mathematical approach to systems that introduced greater subjectivity.

Box 2.1: Best practice – Environment Agency OPRA risk screening methodology

The Environmental Protection – Operator & Pollution Risk Appraisal scheme (EP OPRA) was introduced for installations regulated under the Pollution Prevention and Control Regulations in 2003. A wide range of activities fall under these regulations, including power stations, larger waste sites, cement works, intensive agriculture, chemical works, and paper and pulp manufacturers.

EP OPRA is used to assess the pollution risk posed by the activity being carried out, based on the nature of the activity, its location, the permitted level of discharges from the activity and the way in which operations are managed.

EP OPRA is currently being developed by the introduction of a new 'attribute' – compliance assessment rating – based on findings from recent compliance assessments, including site inspections. This will allow the Environment Agency to more accurately reflect changes in an operator's performance through changes in the Agency's regulatory oversight. These changes will have effect, subject to public consultation, from April 2005. At the same time, OPRA will be extended to apply to facilities falling within the Waste Management Licensing regime, replacing the current sector specific risk assessment methodology.

In both Pollution Prevention and Control and waste management regimes a reduced level of charges rewards good performance. Good operator performance also results in a reduced level of compliance assessment, including frequency of site visits. As a result, some firms use the OPRA score as a performance measure for their compliance managers and in public environment reports.

The Environment Agency plan to use EP OPRA as the basis of the majority of its regulatory systems in the future to ensure that business sees, and understands, a consistent approach to the regulation of its environmental impacts. EP OPRA is currently being developed further to ensure that the results of compliance assessment activities, including a site's emissions, location, complexity and the business's recent performance, are better reflected in the OPRA rating for a site.

2.37 The results of broad risk assessments should be used to set funding. Where risk assessment suggests that a particular regulatory activity is unlikely to have a high impact on safety, resources should be shifted to where they can do more good.

2.38 Risk assessment, it should be said, should always include a small element of random inspection. This is important both to test the validity of the risk assessment, and to ensure that businesses that are tempted to break the law always know they could be inspected.

Recommendation 1: The review recommends that all regulatory activity should be on the basis of a clear, comprehensive risk assessment. The risk assessment should:

- be open to scrutiny;
- be balanced in including past performance and potential future risk;
- use all available good quality data;
- be implemented uniformly and impartially;
- be expressed simply, preferably mathematically;
- be dynamic not static;
- be carried through into funding decisions;
- incorporate deterrent effects; and
- always include a small element of random inspection.

Recommendation 2: When publishing a risk assessment for a category of inspections, regulators should identify other institutions with which they propose to conduct joint inspections, and the proportion of inspections that will be carried out jointly.

INSPECTIONS

2.39 The regulators within the review's scope carry out more than 3 million inspections each year, of which about one-third are undertaken by national regulators, and about two-thirds by local authorities.¹⁹ By comparison, there are 3.8 million total businesses in the UK, of which 2.4 million have premises.

2.40 Each regulator has autonomy in deciding its own inspection policy, although this is sometimes subject to statutory or other guidance – food safety inspections, for example, are carried out to a set timetable, with only the lowest-risk premises exempt from some sort of inspection. There is no central coordination of inspection policy, and no Government position on how inspections should be planned, other than the broad principles of enforcement set out in the Enforcement Concordat.

2.41 Most of the regulators in the review's remit carry out some inspection, although regimes differ from regulator to regulator. Most of the Environment Agency's inspections are based on permits although it also carries out inspections at sites that may be operating without a permit and responds to incidents or information from the public. It issues permits allowing certain activities to be carried out, and then inspects the permitted activity to ensure conditions set for the operation are being met. The EA is responsible for regulating every business on environmental issues, but the majority of its inspection programme covers only those which are required in legislation to obtain permits.

¹⁹ The data provided to the review by national regulators showed how many individual businesses received at least one inspection each year. Some, of course, will have received more than one.

2.42 Some regulators are more reactive in nature – responding to specific incidents or notifications by members of the public. In the Health and Safety Executive’s Field Operations Directorate roughly 50 per cent of inspections are reactive (in response to an accident or particular threat).

2.43 The work of many regulators is founded on the principle that every business should be inspected. The Gaming Board for Great Britain, for example, had a policy of inspecting every casino 12 times a year, every bingo club three times a year, and every gaming machine supplier once every other year.²⁰ In 1998-99, inspections happened much more frequently, with casinos being inspected between 14 and 42 times a year, the average being 21.

2.44 The Gaming Board also provides an example of how regulators focused on inspection can find it hard to change the direction of their activity. In the 1980’s, the Gaming Board introduced a policy of additional, more detailed, inspections for riskier premises (called ‘major reviews’). Yet, by 1997, the National Audit Office could write, “hardly any major reviews had taken place, largely because very few casinos had been subject to seriously adverse reports by inspectors.” However, the Board’s response to the lack of major reviews – even though this reflected an apparent lack of the need for them – was to increase the frequency of inspections in London casinos, and pilot a scheme where every casino had a major review at least every five years.²¹

When inspections happen

2.45 The review believes that all inspection programmes should be based on comprehensive risk assessment, as defined above. If risk assessment has been properly used, businesses being inspected will generally be the riskiest, and as such those with the most complicated problems. For this reason, it is particularly important that experienced, expert staff should be assigned to carry out inspections. The Health and Safety Executive has a policy of keeping inspectors in post for a fixed period, so they can build good relations with the businesses they are inspecting. While too much familiarity can cloud objectivity, the review sees value in having such continuity within regulators.

Focus on improvement **2.46** The review discusses tailored advice visits in the next section of this chapter. Where inspections happen, they should be focused on improvement and improving compliance. Where major flaws appear on an inspection, inspectors should follow the principles of inspection and enforcement, as set out in Box 2.2.

Joint inspection **2.47** Where multiple agencies are inspecting a particular company and inspections can be joined up for the mutual benefit of the business, this should happen. The ways in which joined-up inspections can be scheduled will vary from regulator to regulator.

2.48 The review believes that, if risk assessment is thoroughly internalised in the regulatory system, the number of inspections overall will reduce, and regulatory outcomes will improve. Good risk assessment means that resources will be allocated as effectively as possible, and the inspection system – currently a major area of regulator activity – will become more efficient, releasing resources to be used to improve and tailor advice services.

²⁰ The Gaming Board is proposed for merger in to the new Gambling Commission under the Gambling Bill, currently before Parliament.

²¹ *The Gaming Board: Better Regulation*, National Audit Office, 2000.

ADVICE

2.49 In 2001, the Mandelkern Report, a report to the European Commission on better regulation, said:

“The proliferation of pieces of regulation has made it impossible both for ordinary citizens and the legal profession to gain an understanding of or, in practical terms, even to get a general overview of all the rules of law which affect them.”

2.50 Businesses should be able to find out quickly:

- what regulations apply to them;
- what those regulations require; and
- how they can improve compliance beyond minimum standards.

2.51 All of the regulators in the scope of the review offer some sort of advice, even if only a web site or some leaflets. Some perform better than others – local authorities tend to have fairly good face-to-face advice services, while the Health and Safety Executive and Small Business Service run particularly helpful advice web sites.

2.52 Business knowledge of regulations, even well-established regulations, is low. The cross-cutting review of Government services for small businesses found that many small businesses are not clear about what is expected of them.²² The review believes that this reflects a large unmet need for advice.

The unmet need for advice

2.53 Numerous surveys have found small businesses unaware of particular regulations – only 18 per cent of businesses in an Environment Agency survey could name any environmental legislation that applied to them.²³ Twenty per cent of businesses do not know that they are required to buy TV licences.²⁴ The review believes that this lack of knowledge is less a mark of failure by business, and more a failure by regulators to communicate their message. Advice reduces the risk of non-compliance, and the easier the advice is to access, and the more specific the advice is to the business, the more the risk of non-compliance is reduced.

2.54 Advice is needed because the regulatory environment is so complex, but the very complexity of the regulatory environment can cause business owners to give up on regulations and ‘just do their best’. This is particularly true in respect of small businesses, many of whom, through pressure of time, take a conscious decision to avoid finding out about regulation. One survey of regulation in small businesses described the views of the small businesses studied:

“The consensus was that the enforcer would advise them of any legislative requirements during [an] inspection visit, or would even ‘drop by’ to the business to notify them of changes in the legislation.”²⁵

²² *Cross cutting review of Government services for small businesses*, Department of Trade and Industry, October 2002.

²³ *How green is small business*, Environment Agency, 2002.

²⁴ *Master Builder*, Journal of the Federation of Master Builders, December 2004.

²⁵ *Compliance with food safety legislation in small and micro-businesses: enforcement as an external motivator*, Charlotte Yapp and Robyn Fairman, May 2004.

2.55 SMEs do not have the people or time available to monitor changing legal requirements, or actively to seek out regulatory advice. When they find advice, they need to be able to assimilate it quickly and easily. In a recent survey of food business advice, businesses said that leaflets, guidance and basic training courses were ineffective in helping them relate regulatory requirements to their individual businesses.²⁶

2.56 A survey by the Environment Agency, *How Green is Small Business*, confirmed that there is a large unmet need for advice.²⁷ Forty per cent of businesses that responded said they wanted more guidance from regulators, although only 46 per cent said that they would approach national environmental regulators themselves.

2.57 Statistics show that, at least in some regulators, pure advice interactions are much less common than inspections. In 2003-04, local authority trading standards officers carried out over 510,000 enforcement actions, but answered only 115,000 requests for advice from business.²⁸ Those businesses who were inspected that year may have received some advice in the course of the inspection, but the number of pure advice interactions is still far below the number of inspection interactions.

2.58 This shortfall may not only be because regulators give more weight to inspections. Businesses are often reluctant to ask enforcement bodies for advice because they are afraid of admitting that they do not know how to comply with the law and may not be compliant.

2.59 The review has some concerns that regulators prioritise inspection over advice. Many of the regulators that spoke to the review saw advice as important, but not as a priority area for funding. Several said that budgetary constraints were preventing the creation of dedicated advice services. Two were even contemplating closing existing advice services because of the cost of maintaining them. The Environment Agency, responding to the review's initial request for information, described the funding of advice services as 'a significant challenge', and pointed out that without a Capital Modernisation Fund grant, NetRegs, the EA's online advice resource for small businesses, would have taken 25 years to reach its current state.

2.60 Improvements to regulators' advice services were strongly supported by those responding to the review's consultation, both businesses and regulators.

2.61 The review believes that advice is a central part of the regulators' function. The recommendations on risk assessment in the previous section should enable some regulators to release resources from unnecessary inspections to improve advice services. Where this is not possible, the review believes that there is a case for greater central funding for advice services, as has happened (in consumer advice) with the DTI's Consumer Direct programme.

Types of advice

2.62 Regulators' advice services need to address the full range of business requirements. Some businesses will want general information on the minimum requirements they have to meet. Larger businesses may want specialist advice on detailed issues. Companies for which regulatory issues are particularly important will want to be kept up to date with every change to the rules. There are several mediums through which to deliver advice discussed below.

²⁶ *The evaluation of effective enforcement approaches for food safety in SMEs*, Charlotte Yapp and Robyn Fairman, May 2004.

²⁷ *How green is small business*, Environment Agency, 2002.

²⁸ Trading Standards Statistics 2004, CIPFA 2005. Some advice could have been given during inspections of course.

Broad-reach advice 2.63 The aim of ‘broad-reach’ advice should be to reach every relevant business. This can be done through ‘pull’ media, such as web sites and leaflets available on request. Trade associations are also a good medium for the dissemination of sector-specific information. In a recent survey, trade associations were the second most popular source of regulatory advice for small businesses, following ‘specialists’ – lawyers and accountants – thirty per cent of small businesses said they went to their trade association first for advice on regulatory matters.²⁹

2.64 For specific issues of concern, or where an issue has high prominence, providing information quickly on web sites is extremely important. In the week 18-24 February 2005, during the recent ‘Sudan I’ food recall, the Food Standards Agency’s web site received 67 million hits – more than ten times the normal traffic.³⁰

2.65 One particularly useful feature of some web sites, such as those run by Business Link and the Environment Agency, is the ability for firms to find regulatory information specifically tailored to their needs. This ability to personalise information is essential in helping companies understand where to find the most appropriate advice.

2.66 The review believes that regular newsletters on regulation would also be a useful way for business and regulators to keep in touch. These newsletters could be organised on a sectoral basis, perhaps with a more general newsletter for small businesses. A good example of the style of newsletter is the Department for Culture, Media and Sport’s *Licensing Countdown*, produced in the run-up to the implementation of the Licensing Act 2003.³¹ Although newsletters should be available online, it is important that paper subscriptions are also available.

Recommendation 3: All regulators should provide broad-reach advice to businesses through:

- web sites, which should give businesses an opportunity to personalise the information they see; and
- news letters online and on paper, devised for particular sectors, and including the latest information on regulation, and contact details for the regulator.

Recommendation 4: All regulators should judge the effectiveness of their advice by monitoring business awareness and understanding of regulations.

Firm-specific advice 2.67 The other aspect of advice services is firm-specific advice – advice given to particular firms, either as a general overview or as part of a site visit. This advice needs to be tailored to the needs and capabilities of the firm, and should be as specific as possible. Advice on improvements above minimum standards should be distinguished from advice that must be followed to meet minimum standards.

2.68 The review believes that a more open and productive relationship between business and regulators can be achieved if regulators frame their interactions with lower-risk businesses around advice. Advice here means tailored, firm-specific advice to improve compliance. This could, in some cases, be more resource-intensive than a box-ticking inspection, but will bring benefits to the company, and by extension to the regulator’s aim of achieving the goals of the regulation.

²⁹ *Business Barometer 74*, University of Nottingham, July 2004.

³⁰ ‘Hits’ as returns of page components. Data from the Food Standards Agency.

³¹ Copies of all the *Licensing Countdown* newsletters are available online at http://www.culture.gov.uk/alcohol_and_entertainment/licensing_newsletter.htm

2.69 Advice should also be available when businesses want to access it. It will not always be possible to meet businesses' exact requirements as to time and nature of advice, but the broad principle should be that advice, or advice visits, are always available.

Problems on advice visits 2.70 The review does not think that regulatory staff on site visits should be constrained in terms of the action they can take if they discover serious infractions. Even if the main purpose of a visit is advice, the review believes that if some sufficiently serious problem is found, regulators should be able to issue notices or take other enforcement action, in accordance with the principles of regulatory inspection and enforcement set out in Box 2.2.

Recommendation 5: Regulators should make on-site advice visits and tailored advice available to businesses.

PENALTIES

2.71 A common complaint of business, during the review's consultation process, was that honest businesses were being undercut by businesses that operated outside the regulatory rules. These 'rogue businesses' were characterised as operating beneath the vision of regulators and tax authorities.

2.72 Effective control of this illegal activity is important for regulators and businesses alike. It is important for regulators, as a way of improving the outcomes of the regulations they enforce. It is important for businesses because illegal operators can undercut legitimate businesses, often by quite considerable sums.

2.73 The penalty regime should aim to have an effective deterrent effect on those contemplating illegal activity. Lower penalties result in weak deterrents, and can even leave businesses with a commercial benefit from illegal activity. Lower penalties also require regulators to carry out more inspection, because there are greater incentives for companies to break the law if they think they can escape the regulator's attention. Higher penalties can, to some extent, improve compliance and reduce the number of inspections required.

2.74 The review believes that the penalty regime at present does not provide effective deterrence. This is because:

- the penalties handed down by courts often do not reflect either the severity of offences, or the economic benefit a business has gained from its non-compliance;
- regulators' penalty powers are sometimes slow, and can be ineffective in targeting persistent offenders; and
- the structure of some regulators, particularly local authorities, makes effective action on persistent offenders difficult.

2.75 The structural issue is considered in more detail in Chapter 4. The remainder are considered below.

Current powers of regulators

2.76 Regulators have several different tools available when businesses are non-compliant. Individual powers vary from regulator to regulator, but most regulators can:

- issue warning letters;
- issue enforcement notices, which require businesses to do or not do particular things. Non-compliance with such notices is usually a criminal offence; or
- prosecute businesses.

2.77 In addition, some regulators can:

- order businesses to cease trading immediately, or close premises; or
- issue administrative penalties.

Effective fines

2.78 Although nearly 25,000 fines, formal cautions and prosecutions were brought against business in 2003-04, the resulting fines were very low. In 2004, there were 283 prosecutions by the Environment Agency; 272 cases resulted in conviction. The average fine handed down for companies in a magistrates' court was £6,680, and for the 17 cases in a crown court, £35,594. In 2003-04, the Health and Safety Executive prosecuted 1,756 cases, with an average fine on conviction of £4,036 in magistrates' courts, and £33,036 in Crown Courts. The deterrent effect of such fines is likely to be low. For any company other than the smallest, a £5,000 fine is likely to be an insignificant sum.

2.79 The infrequency of prosecutions means that magistrates rarely see regulatory offences. A magistrate will typically see a health and safety offence every 14 years, and an environmental case every 7 years.³² Infrequency of contact with regulatory cases, and the complex nature of the legislation and offences, can lead to inconsistent judgements, or fines that do not reflect the gain a business has taken from its illegal activity.

2.80 Regulators only prosecute the most serious cases, reflected in the small number of prosecutions, yet the average fines set out above are comparatively low, compared to the economic benefit companies can gain from illegal operation. The review has encountered several examples of fines that do not reflect economic benefit gained. For instance:

- a man was paid almost £60,000 to dump drums of toxic waste illegally. The waste cost the local authority £167,000 to incinerate, yet the offender was fined only half the sum he had been paid;
- a waste company failed to register for a waste disposal licence for two years, saving £250,000. It was fined £25,000; and
- a company in the land management sector illegally dumped several thousand tonnes of spoil and garden waste over a ten-year period. On prosecution, it was fined £830.

³² Source: Department for Constitutional Affairs.

2.81 Fines set at such low levels are no deterrent – indeed, a rational company in any of the cases highlighted would have been acting to its economic advantage by breaking the law. The elimination of gain from law-breaking is essential if businesses are to be allowed to operate on a level playing-field, but neither regulators nor businesses believe that appropriate fines will result from most prosecutions. The Food Standards Agency has even prosecuted some serious food offences as conspiracy to defraud, because they consider the penalties handed down under food safety legislation are ineffective.

Recommendation 6: The Government has made proposals to increase fine maxima in magistrates' courts, and to give magistrates more power to set fines that are an effective deterrent. The review recommends that these proposals should be extended to all regulators.

Recommendation 7: The review recommends that the Sentencing Guidelines Council should consider new guidance to courts on regulatory offences, including guidance on fine levels and setting fines that take full account of economic benefit gained.

Administrative penalties

2.82 Administrative penalties, which are quicker and simpler than court proceedings, could reduce the burden of time and worry placed on businesses under threat of prosecution, while allowing regulators to restrict prosecution to the most serious cases, where the stigma of a criminal prosecution is required. Administrative penalties are used widely in other countries, and can also allow regulators to eliminate the economic benefit of illegal activity more easily. Some regulators in the UK already use them.

2.83 Administrative penalties are penalties imposed by a regulator without the intervention of a court, although usually with appeal to a court or similar tribunal. In Germany, for example, most regulatory offences are punished as *Ordnungswidrigkeiten* – 'administrative offences'. Fines can be set up to €500,000, and businesses can appeal to a special tribunal if they feel the penalty is undeserved or disproportionate. The system has been described as "the most coherent and comprehensive system of regulatory enforcement".³³

2.84 Fifteen UK regulators already use administrative penalties. The Office of Fair Trading and the Financial Services Authority can each impose fines on non-compliant businesses. The business then has the option either to accept the penalty to have the case heard afresh by a specialist tribunal.³⁴

2.85 The penalty regimes of these regulators allow for higher penalties, and higher average penalties, which are far more likely to remove economic benefits from offenders, and act as a deterrent. The Financial Services Authority, for example, fined Shell £17 million in a single enforcement case in August 2004.³⁵ The Government is proposing to extend the system by giving OFT powers to issue penalty notices of up to £50,000 for certain offences such as failure to update the regulator on material changes to a licence-holder's business.³⁶

³³ *Enforcing Regulation: Do we need the criminal law?* Anthony Ogus, 2004.

³⁴ The Competition Appeal Tribunal for the OFT and the Competition Commission, and the Financial Services and Markets Tribunal for the Financial Services Authority.

³⁵ Financial Services Authority, details at <http://www.fsa.gov.uk/pages/Library/Communication/PR/2004/074.shtml>

³⁶ OFT.

2.86 The review believes that administrative penalties, with provisions to appeal to magistrates' courts, could make it easier for regulators to deter potential offenders, by showing they will not be able to keep any economic benefits of illegal activity. Reducing the expected benefit of non-compliance is one of the eleven measures that improve compliance set out in the "Table of Eleven".

Recommendation 8: The review recommends that the Better Regulation Executive (see Chapter 4) should undertake a comprehensive review of regulators' penalty regimes, with the aim of making them more consistent. Administrative penalties should be introduced as an extra tool for all regulators, with the right of appeal to magistrates' courts unless appeals mechanisms to tribunals or similar bodies already exist. As part of that review penalty powers should be established in such a way that offenders can be deprived of all the economic benefit of long-term illegal activity.

Recommendation 9: The review recommends that, two to three years after the introduction of administrative penalties, the Better Regulation Executive should review whether appeals to magistrates' courts are being dealt with effectively, and whether a Regulatory Tribunal Service, using specialist judges, should be established to hear appeals.

Other issues on penalties

2.87 A number of suggestions on alternative, less bureaucratic penalties have been made to the review. The review has not had the time, or the legal expertise, to make a detailed examination of them. However, the review believes that two suggestions were particularly worthy of more detailed examination. These are:

- restitutive justice orders, where offenders are ordered to clean up the consequences of their actions, or to contribute in some other way to the restoration of damage; and
- restorative justice orders, where offenders and injured parties agree a mandatory scheme of action for the offender to take, to prevent future offences, or to ameliorate the condition of others affected.

2.88 Restorative justice has been discussed in the past by the Health and Safety Executive.³⁷ The concept of restitutive justice is common in the United States, where remedial orders are frequently used for environmental offences.³⁸

Recommendation 10: As part of its work, the Better Regulation Executive's review of penalties should consider the possible benefits of introducing restitutive justice and/or restorative justice orders.

³⁷ See Health and Safety Commission HSC/04/74, available at <http://www.hse.gov.uk/aboutus/hsc/meetings/2004/080604/c74.pdf>

³⁸ For a description of these powers, see Chapter 8 of *Federal Sentencing Guidelines Manual 2004*, United States Sentencing Commission, 2004.

Positive incentives for good performers

2.89 Another unbureaucratic way to increase incentives for compliance is to give rewards through positive incentives for business to improve their standards above legal minima. The Food Standards Agency is piloting food award schemes for catering premises in Wales and Northern Ireland. An initial evaluation of the scheme in Wales – which has led to over 1,700 awards to caterers, restaurants and other businesses – suggests the awards are held in high regard by the catering industry, which believes the awards add value to the businesses that receive them. Similarly, many trading standards offices operate a fair trade award for second-hand car dealers.

2.90 The Food Standards Agency has committed in its strategic plan for 2005-2010 to review these schemes, with a view to promote them more widely if results are positive. In Denmark and some US states, food businesses are required to display their most recent inspection grade. Research from the University of Maryland has suggested that the use of this scheme in Los Angeles County since 1998 has reduced food-borne illness visits to local hospitals by 20 per cent.³⁹

2.91 The review views these schemes very favourably and believes that the potential for similar schemes in other regulatory fields should be explored. They are most useful for businesses with a consumer presence, and on particular issues, such as the value of second-hand cars, or the safety of food. The review believes that such schemes should be used more widely and – where the schemes are run by local authorities – coordinated under a set of national standards.

Recommendation II: The review recommends that the Better Regulation Executive should encourage regulators to adopt positive incentive schemes. Local authority schemes should be coordinated through the National Regulatory Forum, with national standards and national branding.

³⁹ *The effect of information on product quality: evidence from restaurant hygiene grade cards.* Ginger Zhe Jin and Philip Leslie in *Quarterly Journal of Economics*, May 2003.

Principles of regulatory enforcement

2.92 In considering how to tackle these problems found in the UK's regulatory system, the review has set out a number of principles for regulatory enforcement, which appear in the box below.

Box 2.2 Principles of regulatory enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;
- No inspection should take place without a reason;
- Businesses should not have to give unnecessary information, nor give the same piece of information twice;
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions;
- Regulators should provide authoritative, accessible advice easily and cheaply;
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed;
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Recommendation 12: The review recommends that, to make regulations more accountable for the way in which they do their work, the principles and recommendations in this report should apply to all regulators within the scope of the review. They should be a basis for all regulators' assessments and self-assessments, and the Better Regulation Executive should be responsible for monitoring regulators' compliance with them. The BRE should also consider the scope for incorporating the principles into all regulators' legal duties.

Recommendation 13: The review recommends that the Better Regulation Executive should consider whether the principles and practices set out here should be extended to regulators outside the scope of the review.

3

FEWER, BETTER FORMS

3.1 The previous chapter considered regulatory practice. This chapter considers how data requests from regulators can be streamlined so that regulators can have a good picture of the businesses they regulate without requiring duplicated or unnecessary information from business. This will ensure that administrative burdens remain low as the form filling burden imposed is kept to a minimum.

3.2 The review believes that forms are a neglected element of regulators' interactions with business. All the regulators that the review spoke to were keen to describe their inspection regimes and risk protocols, which they clearly saw as the important side of their work. Yet, for most of the regulators in the review's scope, forms are a much more common interaction with business than inspections. The review has also been surprised by how little data is collected on the number of forms sent, particularly at local level.

3.3 In most regulators within the scope of the review, risk assessment, where it exists, is restricted to inspection activity. Its wider use – for example, to reduce the amount of information required from less risky businesses – is uncommon. The review believes that risk assessment has a valuable role to play in the creation of data requirements. Lower-risk firms and industries should not have to submit as much information on their work as higher-risk firms. Some bodies outside our scope, particularly the tax authorities, already do this.

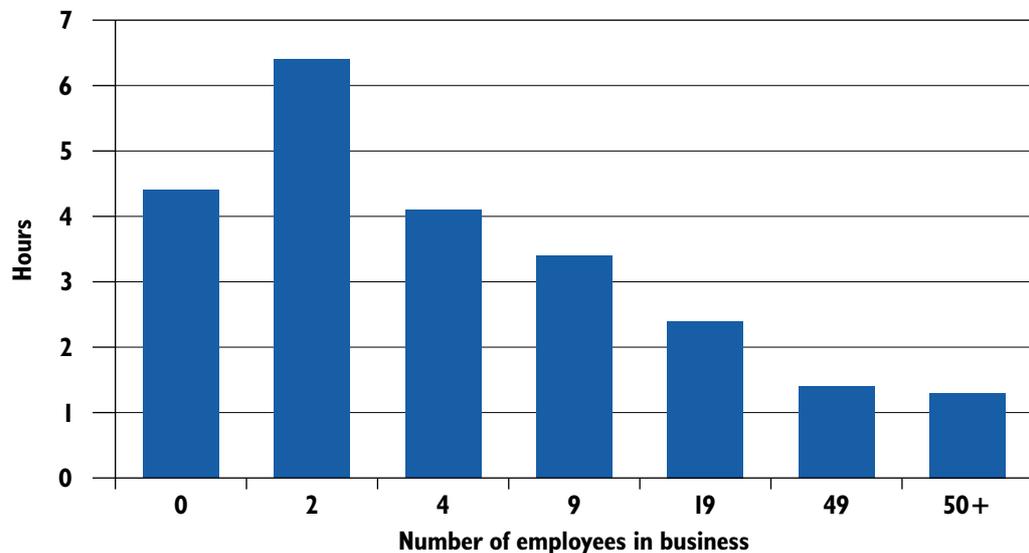
3.4 Research evidence supports the suggestion that the administrative burden of form filling is felt particularly heavily on small businesses. The Institute of Chartered Accountants in England and Wales has estimated that 69 per cent of the burden of regulation falls on small businesses.¹ NatWest's quarterly Small Business Survey claimed, in September 2003, that:

“Where a business proprietor works on their own, they spend on average 8.9 hours per month dealing with government regulations and paperwork, whereas a firm with 50-250 employees, staff and advisors spend an average 79.7 person hours per month on compliance. This clearly indicates that the burden of red tape falls disproportionately on the smallest businesses, as they spend 8.9 hours per person compared with only 1.2 hours in the largest dealing with paperwork.”²

¹ *Enterprise Survey 2004*, Institute of Chartered Accountants in England and Wales, November 2004.

² SBRC/Natwest survey of small businesses, 2004.

Chart 3.1: Hours per person month spent on Government regulation and paperwork



Source: SBRC/NatWest survey of small businesses, 2003.

3.5 The rest of this chapter will examine the initiatives set out below, which should reduce the administrative burden of form filling. In summary, the review believes that:

- risk assessment can allow regulators to require less information from less risky businesses;
- existing forms can be improved through the use of good design, and the involvement of businesses in the creation of forms;
- electronic form filling can make forms quicker to complete, and even link them with existing corporate data – a practice which is popular with businesses but seldom used in practice;
- a public acknowledgement of the time taken to fill in a form can lead to simplification and the avoidance of data duplication; and
- early moves towards the creation of a single regulatory database should be encouraged, to eliminate duplicated information definitively; and
- data sharing should be encouraged, with clear guidance provided by the Information Commission on any data protection issues.

SIMPLER FORMS

3.6 All national regulators within the scope of the review were asked to provide copies of the forms that they send to business. Their ease of use varied markedly, and there were significant overlaps in the information requested by different regulators. Replication of information already held by regulators inevitably increases the administrative burden on business.

3.7 The review believes that there is scope for a reduction in form-filling requirements through the use of risk assessments. Less risky businesses should be able to provide less information to regulators than more risky ones.

3.8 There are no easy measures of how simple forms are to fill in, but the common complaint of complexity is to some extent supported by studying the list of past recipients of the Plain English Campaign's Plain English award. This award is given to several bodies each year for particularly well-written information. The last time any national regulator covered by the review won an award was 1992 (by the organisation now called Companies House). By comparison, since 1993, the Inland Revenue has won two awards, NHS institutions have won seven awards, and local authorities have won eight awards.

3.9 The review believes that forms' ease of use can be significantly improved. Such an improvement would reduce the administrative burden of forms, but also remove businesses' concerns that they have not filled in a form correctly. Small gains in this area can produce big benefits for business.

3.10 The National Audit Office has also outlined the potential benefit to the Government of better designed forms. In a 2003 report it said, "improving forms' ease-of-use can have important implications for the smooth operation of sizeable administrative operations."³ The NAO cite the conflicting examples of the six million driving licences issued annually by the Driver Vehicle Licensing Agency at an average unit cost of just under £8 with the £40 cost to the Department of Work and Pensions for each of the 400,000 Attendance Allowances issued every year.

3.11 To ensure that all forms are as short and simple as possible, regulators should:

- design forms with simple standardised designs, that are easy to use;
- use plain language;
- only collect the data they need; and
- understand how the forms will affect businesses.

3.12 To ensure that forms are as simple as possible to use, Government should define a set of **design guidelines** for forms, which all regulators should then use. The benefits of standardisation are described in the design guidance of one computer company as follows:⁴

- users learn faster if the interface looks and behaves like interfaces they are already familiar with;
- users can accomplish their tasks quickly, because well-designed interfaces do not get in the user's way;
- users with special needs will find the interface more accessible;
- the interface will be easier to describe, because an intuitive interface and standard behaviours do not require as much explanation; and
- customer support calls will be reduced.

3.13 Forms should also be written in **plain language**, with guidance and, if necessary, forms should be available in languages other than English.

³ *Difficult forms*, National Audit Office, October 2003.

⁴ *Human interface guidelines*, Apple Computer, 2004.

3.14 Forms should be designed **only to collect the data that regulators need**. Any data request should be checked to establish whether:

- the data is available from any other source;
- the data requirements can be varied according to the riskiness of businesses; and
- the data is necessary, on the basis of a cost-benefit assessment.

3.15 The consolidation of regulators that the review proposes in Chapter 4 should assist regulators' attempts to check other sources of data. The Rural Payments Agency, which has unified data collection on a number of Common Agricultural Policy schemes, has been able to reduce the number of separate data submissions that farmers need to make by using the same herd data for both cattle movement records and subsidy payments.

3.16 The final test of the quality of a form's design, however, rests with the businesses to which it is sent. Regulators can never have a complete understanding of the way in which businesses operate, nor the way in which normal business processes will help or hinder the collection of data for the form. The review therefore proposes the **establishment of Business Reference Groups**, to check that forms and the information required fit with the needs and processes of business. The reference groups should have flexible membership, to reflect the businesses affected by each form.

Recommendation 14: The review recommends that the Better Regulation Executive commissions a set of Form Design Guidelines, and that all regulators should adhere to them.

Recommendation 15: The review recommends that all regulators set up business reference groups on a sectoral basis and involve them at all stages when introducing a new form, including form design. The reference group should vet the design of forms.

Recommendation 16: The review recommends that paperwork and form filling become a greater part of the Regulatory Impact Assessment process. When proposing a form to the business reference groups, all regulators should be expected to show:

- that the data required is not available from other sources;
- whether data requests can be varied according to a company's risk;
- that the data required can be collected in a way that fits with the requirements of business, and other regulators who collect similar data; and
- a cost-benefit analysis of the data request.

ELECTRONIC FORMS

3.17 Some of the regulators in the review's scope have introduced electronic filing of forms as a way of reducing burdens on business. On-line filing is popular with businesses – 90 per cent of respondents to the review's first business consultation supported it.

3.18 That said, building use of on-line services takes time. Electronic submission of the Inland Revenue's P14 part of the employer's end of year return has been available since April 2000. Take-up in 2004-05 was 18 per cent which, although a sharp increase (up from 11.6 per cent in 2003-04), still means that P14s for over 45 million employees were not submitted on-line.⁵

⁵ *Autumn Performance Report 2004*, Inland Revenue, 2004 (Cm 6437).

3.19 Across Europe, revenue-raising authorities do better at electronic filing than regulators. In one recent survey, revenue-raising authorities across Europe (tax, customs and other payment services) had 87 per cent of their forms available online, with a service sophistication rating (a measure of how much can be done online, and how flexibly) of 92 per cent. Data return services (such as vehicle declarations) had 37 per cent online availability and 61 per cent sophistication, while permitting and licensing services (environmental permits, etc.) had only 15 per cent online availability and 49 per cent sophistication.⁶

3.20 The review believes that well-designed online data submission, though initially expensive, brings benefits to both regulators and regulated businesses. A recent demonstration of these benefits comes from the Vehicle and Operator Services Agency, which launched a new electronic filing system in June 2004. Details of the scheme are in box 3.1, below.

Box 3.1 VOSA's Operator Licence system

The Vehicle and Operator Service Agency (VOSA) licences 130,000 businesses, which together operate 450,000 heavy goods vehicles and public service vehicles. In 2004, a new electronic service was introduced for the maintenance of vehicle licences, replacing a paper-intensive system operated through VOSA's six regional offices. The system enables holders of Goods Vehicle and Public Service Vehicle Operator Licences to check all of their licence details held on VOSA's Operator Licence system, to add and remove vehicles from their licence or to move vehicles between licences in different traffic areas and to track progress of ongoing applications.

The new online system was designed in consultation with the licensed operators, and has eliminated the involvement of civil servants in the principal transactions of the system. One operator said it had reduced the time delay in fleet moves from 14 days to a couple of minutes.

The system links to related systems in local authorities and police forces, and access is permitted to staff in HM Customs and Excise, and the Environment Agency.

Six months into the scheme's operation, 46 per cent of transactions now take place through the electronic system. Businesses are themselves responsible for their use of the system, and for the maintenance of their records in compliance with the regulations.

3.21 In order to reap the maximum benefits, a successful electronic system should:

- be designed in partnership with the bodies who would use it;
- remove unproductive paper processes;
- link to other regulators' data; and
- fit in with existing corporate software, if possible.

3.22 **Designing electronic systems in partnership** – like designing forms through a business reference group (see 3.16) – ensures that the best data is collected in the most efficient way. Databases designed without business needs and practices in mind are far more difficult to use, and take-up will accordingly be lower.

⁶ *Online availability of Europe's services, report of the fourth measurement*, Commission of the European Communities, January 2004

3.23 Taking out unproductive paper processes produces speed benefits for the regulated business, and increases the regulator’s flexibility in resourcing. The Rural Payments Agency, created in 2001, amalgamated the processing functions of the former Intervention Board, and the eight Regional Service Centres of the then Ministry for Agriculture, Fisheries and Food. Since its inception it has begun unifying and streamlining the administration of the Common Agricultural Policy scheme payments in the UK, and – as a result of the move away from large regional paper centres – is operating in a far more flexible and responsive way, with staff spread out across regions, and a greater emphasis on home working.

3.24 Finally, **linking through to other organisations’ databases** improves regulators’ performance, and helps them target rogue traders. There is further discussion of data sharing elsewhere in this chapter (see 3.35-3.37).

3.25 Some electronic filing schemes have the ability to **file from corporate databases and software**. For example, the Inland Revenue allows companies to file PAYE returns direct from their accounting or payroll software. The software has to meet a published standard, called the Inland Revenue Payroll Standard (or, for some software, the Inland Revenue Quality Standard). The use of this published standard then tells both company and regulator that the data provided will be in the right format, and properly audited. The flexibility and simplicity of this system, and the low additional burden it places on firms, are much to be commended. Such flexibility and commitment to open standards in other regulators could provide large benefits to businesses that have to fill in similarly data-intensive forms.⁷

Recommendation 17: The review recommends that regulators pro-actively investigate ways in which their data requirements could be met by transferring information from businesses’ systems. When these are used, they should be:

- designed in partnership with the bodies who will use them;
- enable open standards for data sharing with other regulators and, where appropriate, corporate software; and
- be integrated with other regulatory databases.

TIME DATA ON FORMS

3.26 As noted above, the Netherlands, among other countries, calculates the administrative cost of regulation including form filling. In the Netherlands the administrative burden is measured using the Standard Cost Model. The burden associated with form filling – as with other obligations – is calculated by multiplying the number of businesses affected, the opportunity cost of those involved in meeting the completing the form (in hourly rates), and the number of hours taken each year to complete the form. In the Netherlands, the administrative burden of form filling is roughly one quarter of the total administrative burden. The Dutch approach is discussed in more detail in the BRTF report *Less is More*.

⁷ More details can be found on the Inland Revenue’s web site, at http://www.inlandrevenue.gov.uk/employers/onlineguide_smallemp.htm

3.27 A similar approach is taken at federal level in the United States, through the Paperwork Reduction Act, discussed in Box 3.2.

Box 3.2 The Paperwork Reduction Act (US)

In 1980 the US Federal Government enacted a Paperwork Reduction Act to make Federal Agencies more responsible and publicly accountable for reducing the burden of Federal paperwork on the public – many individual States have since passed similar legislation. The Paperwork Reduction Act requires Federal Agencies to:

- estimate the burdens that their individual collections impose on the public in terms of time and financial resources, and publish these estimates in the federal register on the forms themselves; and
- obtain approval from the Office of Management and Budget (OMB) before requesting most types of information from the businesses and the public.

The Act was amended in 1995, to set burden-reduction goals. These goals were for 10 per cent reductions in the aggregate number of burden hours in 1996 and 1997 followed by a five per cent reduction annually from 1998 to 2002.

The Act has had mixed results. Although the Act and amendment concentrated minds on reducing the paperwork burden, the failure of the relevant arm of Government to build the strategic plan envisaged in the Act meant that follow-up action was weak and poorly directed. Figures for the aggregate ‘burden hours’ have actually increased year-on-year from 7 billion in 1995 to 8.2 billion in 2002. The lesson the review draws from this is that proper planning and strong strategic leadership are vital if a reduction in paperwork burden is to be achieved.⁸

3.28 The Better Regulation Task Force today publishes a report on whether the UK should adopt the Standard Cost Model for measuring administrative burdens and set a target for its reduction. This review believes that with or without a target for burden reduction, a public acknowledgment of the time taken on each form would concentrate regulators’ minds on simplification and avoidance of data duplication.

Recommendation 18: When designing new forms, all regulators should include a statement detailing how long they will take to complete and separating out:

- the time taken to comprehend the form;
- the time taken to gather the data; and
- the time taken to fill and return the form.

The forms should also include a field where those filling in the forms can say whether the time estimates were right, too long, or too short. In this way the data set will improve over time. This information should also be absorbed into existing forms as soon as feasible.

Recommendation 19: All regulators should keep a tally of how many forms they issue, and publish an assessment in their annual reports, setting out the amount of time that businesses spent filling in their forms, and progress in reducing burdens.

⁸ *Paperwork Reduction Act: Record increase in agencies’ burden estimates*, United States General Accounting Office, April 2003.

SINGLE REGULATORY DATABASE

3.29 Of businesses responding to the review's first consultation, 60 per cent said there was significant overlap in the information requested by different regulators. All the forms that regulators sent to the review included some common information, even if this was only the name, address, company number, and contact details.

3.30 The review believes that there is scope for a single regulatory database, which would incorporate all the information that regulatory bodies require. The review believes that setting up a single database immediately would be expensive and disruptive. For this reason, its recommendation is that such a database should be established by a more gradual process of consolidation.

3.31 This would reduce the administrative burden on businesses, by requiring them to enter data only once. Aside from the obvious benefit of issuing fewer forms, a single regulatory system could also reduce the cost to Government by improving the quality of data. If all participants instantly knew when a business had recorded a change to its data then they would not need, for example, to send advice leaflets to a business that had closed. With the appropriate safeguards, the system could also be used to detect patterns of unlawful behaviour – as already happens with DTI's Consumer Direct scheme.

3.32 A potential model for such a database is provided by the database system used for the Whole Farm Approach (WFA). The Whole Farm Approach is an IT framework linking together existing work programmes in Defra and other regulators, to provide a single access method for farmers to Defra and to other participating national and local bodies. The eventual goal is to give both farmers and regulators access to Government information currently held in different databases, including general customer data, animal records, and land based data Integrated Administration and Control System (IACS) information, habitat maps, water catchment area data, land designations, and archaeological sites.

3.33 The Whole Farm Appraisal (part of the electronic self assessment in the Whole Farm Approach) is currently being piloted, and will be introduced nationwide in the autumn. It has had development costs of £4 million and has so far involved the input of four regulators and key industry stakeholders. It has taken two years to develop to full readiness. The Appraisal provides a way in which farmers can, among other things, provide evidence of good agricultural and environmental condition that will assist with cross compliance and single farm payment. The National Farmers Union are supportive and *Farmers Weekly* said that, "a new official scheme to help farmers rid themselves of some of the red tape surrounding them has [had] a tentative thumbs-up on Farmers Weekly barometer farms."⁹

3.34 Farms are all operating in the same sector of the economy, even if there are major differences between them, so the experience shows that the creation of a single regulatory database is no small task. The move to a single database for businesses should not be precipitate. It should rather be a gradual consolidation of existing databases, as opportunities arise through the decommissioning of old databases or other changes in regulation or structures.

⁹ *Farmers Weekly*, 9-15 July 2004.

Recommendation 20: The review recommends that the Better Regulation Executive convene a working group of regulators, comprising those responsible for data handling and storage. That working group should:

- undertake or commission an assessment of how long consolidation will take, and broad cost estimates, on the assumption that no currently working database will be closed down solely for the purpose of incorporation;
- present a paper to the Prime Minister’s Panel on Regulatory Accountability setting out different possible timescales for consolidation of databases, indicative costs, and benefits in terms of reductions to the administrative burden on business; and
- lead the process of consolidation, to the timetable set by the Prime Minister’s Panel on Regulatory Accountability.

The database should be organised in such a way that regulators are only able to see the information that applies to their sphere of activity, plus publicly available information.

Recommendation 21: The review recommends that – in pursuit of the goal of a single data set – no new database or significant change to IT systems should go ahead unless the Better Regulation Executive has agreed its implementation.

DATA SHARING

3.35 The experience of the Whole Farm Appraisal pilots confirms the experience of others, that sharing data on regulated businesses can improve regulators’ performance, and reduce the burden of form filling. Businesses that the review spoke to were very supportive of sharing data to improve regulators’ performance. In the review’s second consultation following the publication of the interim report, 91 per cent of respondents supported the sharing of data to improve risk profiling, 96 per cent supported the establishment of common reporting frameworks, and 94 per cent supported the sharing of data to reduce form-filling burdens.

3.36 Regulators were also keen to share data more widely. They saw it as a contribution to tackling rogue businesses, and to improving their own risk ratings. For example, some trading standards offices had negotiated access to the National Criminal Intelligence Service’s database. Others, however, expressed concern that the Data Protection Act would be an obstacle to using their data for these purposes. The review has looked into the legal position on data sharing, both in the Data Protection Act and elsewhere. Although specific advice would need to be taken when a new sharing protocol or database was being devised, the review does not believe that the data protection rules themselves are an obstacle to effective data sharing, as long as regulators behave reasonably.

3.37 The Information Commission can give advice, or answer requests, on the rules of data sharing. In 2003 it ruled that the sharing of data with the Inland Revenue under the Taxes Management Act 1970 – which allows the Inland Revenue to obtain information that it thinks may be material in tax evasion cases – is permissible under data protection laws. The review believes that the Government should seek a similar ruling on the sharing of data between the regulators covered by this review.¹⁰

¹⁰ *Disclosures of personal data required by the Inland Revenue under the Taxes Management Act*, Information Commissioner’s Office, 2003.

Recommendation 22: The review recommends that, for avoidance of doubt on data sharing rules, the Better Regulation Executive should seek formal guidance from the Information Commission on the data protection issues surrounding the sharing of regulatory data.

4

THE RIGHT REGULATORY STRUCTURE

4.1 The earlier chapters of this report set out the case for change in regulatory inspection and enforcement, and made specific recommendations concerning regulatory practice and data collection. This chapter considers the structure of regulators in the UK, and makes recommendations for rationalisation, to create a regulatory system that delivers the same or better outcomes more efficiently, and to simplify cross-boundary working leading to reduced administrative burdens. This will reduce the number of regulators businesses have to interact with. It will ensure the same or better outcomes, and a more comprehensive approach to risk assessment.

4.2 The review believes that there are six areas where reform would be useful, to streamline the regulatory system and reduce the burden of administration on business, without reducing regulatory outcomes. These areas are:

- better Regulatory Impact Assessments to create regulations that are easier to enforce, and easier to understand;
- consolidation in national regulators to create a simpler, more consistent structure;
- fewer regulators for individual businesses to deal with, leading to better risk assessment;
- better coordination of local authority regulatory services;
- clearer prioritisation of regulatory requirements by Government Departments and national regulators; and
- better accountability throughout the regulatory system.

THE RIGHT REGULATIONS

4.3 One of the most important aspects of good inspection and enforcement is having good regulations to enforce. It is not within the review's remit or competence to examine existing regulations and make judgements on whether they are good or bad. It is, however, appropriate for the review to make recommendations on the way in which inspection and enforcement of regulations should be considered when future regulations are being drafted.

4.4 The review argues that inspectors and regulatory staff should have input into the discussions in which regulations are created. There is a broader point, however: that policy makers should have a decision-making structure that requires them to consider the ways in which regulations are going to be implemented. In general:

- those considering new regulations should be required to follow the principles of enforcement set out earlier in this report;
- new tasks should be given to existing regulators unless there is a compelling reason to create a new body;
- where regulators can use existing data sources, those data sources should always be used;

- where existing forms, systems, inspections or penalty regimes can be used to secure a new regulatory requirement, they should be used;
- goal-based regulation should be preferred to prescriptive regulation; and
- regulations should, where possible, be ‘self-enforcing’.

Recommendation 23: Every Regulatory Impact Assessment (RIA) should include, in addition to information on regulatory costs, an assessment of the practicality of enforcement, setting out:

- which regulator will enforce the regulation;
- the extent to which existing forms, systems, inspection regimes and penalty regimes can be used to secure the desired regulatory outcome;
- the outline of the risk assessment to be used in programming inspections; and
- the sources and nature of advice to be provided both at the introduction of the regulation, and while it is in force.

Recommendation 24: The Better Regulation Executive should be consulted if the establishment of a new regulator is being contemplated. The BRE should oppose the establishment of new regulators if any existing regulator is able to carry out the task effectively. The BRE is described more fully later in this chapter.

Recommendation 25: The administration of new policies and regulators should be based on the principles set out in Box 2.2 of this report, with no new regulators set up without the approval of the Better Regulation Executive.

Recommendation 26: As part of the enforcement assessment in Regulatory Impact Assessments, those proposing the collection of data should show that they have assessed all data available to the regulators, that none of the data available fits their needs, and that the benefits of gathering extra information outweigh the costs both to Government and to business. They should also provide an assessment of the extent to which existing forms or collection mechanisms can be used to gather the required data.

Self-enforcement and the ‘Table of Eleven’

4.5 In designing regulation, and contemplating the inspection and penalty regimes that will need to be set up, regulators or policy staff in Departments should aim to devise regulations which, through their incentive structures, point towards self-enforcement. For example, if a regulation is hard to understand, poorly publicised, and the penalty for non-compliance is trivial, only the most determined business – assuming they know about it – will ever comply with it. If a regulation is clearly drafted and well publicised, with self-monitoring routines that fit with day-to-day business practice, and if checks on enforcement are known to happen from time to time, with condign punishments for non-compliance, then the regulation will, broadly speaking, be enforced of itself.

4.6 Consideration of these multiple factors sounds complicated, but the review would recommend the use of a process, developed in the Netherlands, called the Table of Eleven.¹ The details of the Table of Eleven are in Box 4.1, below.

Box 4.1 The Table of Eleven

The Table of Eleven is a tool for thinking about compliance, and for increasing the likelihood that regulations will be complied with. It takes eleven aspects of a proposed regulation, each of which will increase or decrease the likelihood of compliance. In considering how exactly to phrase the regulation, and how to enforce and publicise it, the Table of Eleven is useful in highlighting areas that are likely to reduce compliance, so that regulations can be made as self-enforcing as possible.

The eleven factors are:

- Aspects of spontaneous compliance:
 1. Knowledge of the regulation
 2. Costs of compliance/benefits of non-compliance.
 3. Degree of business and popular acceptance of the regulation
 4. Loyalty and natural obedience of the regulated firm
 5. Extent of informal monitoring
- Aspects of monitoring
 6. Probability of report through informal channels
 7. Probability of inspection
 8. Probability of detection
 9. Selectivity of the inspector
- Aspects of sanctions
 10. Chance of sanctions
 11. Severity of sanctions

4.7 The Table of Eleven is a rough tool, but it structures thinking by regulators, and can direct them towards areas that need particular support, and areas where companies are unlikely to want to break rules.

Recommendation 27: The review recommends that, as part of the enforcement assessment in Regulatory Impact Assessments, regulators should publish an assessment of compliance probabilities and strategies, structured according to the Table of Eleven.

THE REGULATORS

4.8 The 63 national regulators in the scope of this review have been set up over time and in some circumstances on an ad hoc basis. They have different cultures, reflecting the circumstances of their creation, the business sector they regulate, or the issues they are intended to address.

¹ De 'Tafel van elf': Beknopte toets voor de handhaafbaarheid van regels, Ministerie van Justitie (Expertisecentrum Rechtshandhaving), November 2004. In English at http://www.handhavenopniveau.nl/Images/T11.Engels_tcm9-20432.pdf

Problems with the current regulatory structure

4.9 The review discusses in Chapter 1 the way in which regulators carry out their work. The problems identified in that chapter include inconsistency of decision-making, multiple inspections, lack of comprehensive risk assessments and complexity of regulation. The review believes that the current regulatory structure institutionalises some of these problems, leading to increased administrative burdens, and poorer regulatory outcomes. The structure both exacerbates the problems of regulatory enforcement, and makes efforts to correct it difficult or partial. The fundamental problem is one of complexity with 63 national regulators, 203 Trading Standards departments and 408 Environmental Health departments carrying out the regulation covered by this review.

4.10 The most striking feature of the current system is how the regulatory structure varies in different sectors. The Environment Agency was set up in 1996 to unify the regulation of air, land and water, and in consequence there is only one other regulator – the Drinking Water Inspectorate – whose work is directly related to air, land or water. By comparison, the regulation of food products on farms is divided between 21 bodies either part of or reporting to Defra. These fragmented regulators, which concentrate on specialist areas of regulation, are often understandably unable to see that although the administrative burden that they place on business may be small, it is only one part of a cumulative burden. On the other hand, larger regulators have a better view of the overall burden of regulation.

4.11 A highly fragmented system means that business is more likely to be on the receiving end of conflicting advice. For Government, it means duplication of effort and cost. Regulated businesses are subject to overlapping inspections from different bodies, and asked to provide similar information to different Government agencies, none of which has an overview of the effects of regulation on that business. Where joining up does occur, numerous stakeholders and complex data interactions make synergies hard to establish and harder to maintain. Confusion in the system makes it more difficult for businesses to comply with regulation, and more difficult for regulators to carry out proper risk assessment. Poor risk assessment or fragmentation of inspection resources could mean that riskier businesses are not inspected, while overlapping responsibility for discovering regulatory breaches makes it more likely that breaches will go undiscovered. All these factors lower regulatory outcomes.

4.12 The review believes that the principal problems caused by complexity in the regulatory system, covered in more detail below, are:

- businesses being subject to multiple inspections;
- overlapping areas of responsibility;
- regulators devoting scarce resources to activity being replicated in other regulators, especially in the collation of information;
- difficulties in joining up work because of the large number of bodies;
- small bodies limiting efficiency in the use of resources; and
- risk assessments are not comprehensive.

Multiple inspections **4.13** For regulators covered by this review, 3.1 million business inspections take place in the UK each year. National regulators require the completion of 2.6 million forms, and local authorities have their own form-filling requirements. Respondents to the review’s business questionnaire suggested the average business had dealings with at least seven regulators each year.

4.14 The review’s recommendations on risk assessment should move the focus of regulatory activity away from simple inspection, and towards a more effective interaction, based on advice. The structural consolidation of regulators should reduce the burden of inspection even further, while maintaining or improving regulatory outcomes.

Overlapping areas of responsibility **4.15** Regulators’ overlapping areas of responsibility exacerbate this complexity. For instance several agencies in the regulatory system are responsible for food standards and safety including the Food Standards Agency, the Wine Standards Board, the Egg Marketing Inspectorate, the Horticulture Marketing Inspectorate, the Dairy Hygiene Inspectorate, the Fish Health Inspectorate, and the Sea Fish Industry Authority.

4.16 Overlaps and inconsistencies are not the responsibility of any individual regulator, but are systemic in a complex overall regulatory framework. An individual regulator may be maintaining an excellent compliance regime, but because coordination with other regulators is poor, the system as a whole can impose undue burdens on individual businesses. This overlap may result in conflicting advice, with no formal procedures for resolving these conflicts.

4.17 Some overlaps in authority are natural; for example, there are both health and safety and environmental issues relating to the storage of hazardous chemicals, and these need to be worked through. In principle, the overlap can be addressed by merging organisations or by joint working programmes. Overlaps are exacerbated, however, if the lack of a clearly responsible agency in certain areas of the regulatory landscape results in the creation of small agencies with very specialised remits. This has happened in the past, with bodies such as the Adventure Activities Licensing Authority. Although new creations seem logical at the time, they can increase or perpetuate complexity and compound the burden on business.

4.18 The Better Regulation Task Force’s report, *Avoiding Regulatory Creep*, makes a similar point:

“Regulatory regimes that involve several bodies can become confused and lack clear direction. This can lead to regulatory creep as each body pursues different objectives and takes a different focus. Those being regulated find themselves responding to competing or confusing demands.”²

Duplicated efforts **4.19** The separate operation of the different national and local regulators means that no one knows of any others’ paperwork requests or whether the information they need is held elsewhere within Government. Duplication of information requests is a serious inconvenience for business in itself. It is much worse, however, when the same data is asked for in different formats, or with different cut-off dates. The Health and Safety Executive for instance requires data in a slightly different format from that required under the Controls Assurance Standard (an internal NHS management mechanism). This lack of coordination has led to NHS organisations being required to maintain two different sets of data.³

² *Avoiding regulatory creep*, Better Regulation Task Force, October 2004.

³ *Making a difference: Review of controls assurance*, Department of Health, 2004.

4.20 Reducing duplicated information requests is an important benefit of structural consolidation. Small changes in information collection burdens, as noted earlier, can have a large aggregate effect – in both directions. In 2002, the US Health and Human Services Department made one change to one data collection (on health insurance regulation), and saved 37 million hours of paperwork.⁴

4.21 Another problem is duplication of leaflets – often written from slightly different standpoints. Local authorities the review spoke to complained of the lack of centrally produced generic information for business, especially on trading standards, leading to a multiplicity of locally generated data.

Difficulties joining up

4.22 Many regulators have made attempts to join up their work to address some of the problems discussed. The review has been impressed with a number of new initiatives – the Whole Farm Appraisal is described earlier in the report, but other examples include the Department of Culture, Media and Sport’s *Fitness for Purpose* toolkit for local authorities and the Department of Trade and Industry’s Retail Enforcement Pilot.⁵

4.23 However, joining up is a difficult process in a complex regulatory system. A large number of regulators must be brought into most schemes. Often initiatives are created and run by enthusiastic individuals, making the long-term sustainability of such initiatives questionable. Joined-up working is difficult to cement between regulators with differing statutory obligations, or different incentive structures and working methods.

4.24 The local authority leading on the development of PARSOL – an initiative intended to provide electronic platforms for the delivery of planning and regulatory services – told the review it had had difficulty promoting products to cover regulatory services, because no single body existed to coordinate different regulators’ requirements.

4.25 Even where joined-up initiatives exist, businesses can be sceptical of the benefits. The COMAH Memorandum of Understanding was held up to the review (by regulators) as an example of joint working in practice, but (by businesses) as a worthy initiative, with, as yet, limited impact.⁶

Organisational problems of small bodies

4.26 While smaller regulators can create small centres of expertise, they do not benefit from the sharing of experience and expertise that larger organisations can more readily embrace. The complexity of structure at a national level can be seen in the proliferation of small regulators – 31 regulators within the review’s remit have fewer than 100 staff, and twelve have fewer than 20. Regulators of that size are unlikely to be able to allocate resources efficiently, and lack political and institutional prominence. Within themselves, they cannot carry out broad risk assessments, or easily understand the cumulative burden of the regulations they are imposing. More broadly, it is difficult for Government to allocate resources to areas of importance if funding for regulation is balkanised among so many different bodies.

4.27 Further, the existence of a large number of national regulators, with their different cultures, approaches and focus on specific market segments or business activities, significantly inhibits the prospect of introducing a collectively agreed approach to risk assessment of inspection programmes and form filling requirements. A more consolidated regulatory landscape would allow not only the introduction of a more uniform approach to risk, but also simplify the process of ensuring that the national regulations adopt and mainstream Hampton principles.

⁴ *Paperwork Reduction Act: Record increase in agencies’ burden estimates*, United States General Accounting Office, April 2003.

⁵ *Creating wealth from knowledge*, Department of Trade and Industry five year programme, November 2004.

⁶ An agreement on joint working by the Environment Agency and the Health and Safety Executive, covering premises under the Control of Major Accident Hazard (COMAH) regulations.

4.28 A similar problem of fragmentation exists at local authority level. Many authorities, particularly districts, have small regulatory services departments, and cannot give their staff either a varied career path or an opportunity to specialise. The average staffed environmental health office has 75 staff if in a London Borough, 57 if in an English unitary authority outside London, and 27 if in a non-metropolitan district council. Trading Standards offices are still smaller, with an average 51 staff in counties, 17 staff in London and metropolitan boroughs, and 14 staff in unitary authorities.⁷

4.29 Smaller organisations are also more expensive to run than large ones. Regulators with fewer than 200 staff were, on average, £8,000 per staff member more expensive than regulators with more than 200. Regulators who inspected between 2,000 and 10,000 businesses per year had an inspection budget of £7,600 per inspection. Those who inspected more than 25,000 businesses per year had an inspection budget of £1,000 per inspection.⁸

CONSOLIDATION OF NATIONAL REGULATORS

4.30 In the interim report, the review asked whether consolidation of national regulators was desirable, if benefits could be obtained. The review has considered several options for structural change across the spectrum, from a single, super-regulator focussed on all business interfaces at the radical end, to maintaining the status quo at the other.

A single regulator 4.31 Some businesses the review spoke to made the case for a single regulator or inspectorate for businesses. This could be a single regulator, with responsibility for every regulation, or – more plausibly – a single inspectorate.⁹

4.32 The review has considered whether this is reasonably possible, and has decided that it is not. The wide range of areas for inspection in any but the smallest business means that a compliance officer or advisor could never understand the full range of regulations and criteria he or she was meant to enforce. The desire of business, expressed in the consultation, for fewer regulators needs to be balanced with the desire of business, expressed in a recent survey and elsewhere, for expert knowledge from those to whom they talk.¹⁰ The most important aspect of Government to business interaction, according to the survey, is ‘knowledgeable, competent staff’. This answer came far ahead of the nearest alternative answer – ‘a successful outcome’.

4.33 The review believes that, while a single, adequately skilled inspector or single regulator is an understandable aspiration, it is unattainable. Nevertheless, there is significant scope for consolidation of the existing set of regulators and for broadening skills in some areas. It has been a trend in recent years to consolidate regulators around particular themes. The review supports this thematic approach and believes it should be pursued further.

Experience of consolidation 4.34 Thematic consolidations have occurred on several occasions in recent years. The most recent are the creation of Ofcom from five former regulators, and the imminent merger of HM Customs and Excise and the Inland Revenue.¹¹ Of the regulators within the review’s scope, six are the product of comparatively recent mergers – the Environment Agency, the Food Standards Agency, the Meat Hygiene Service, the Rural Payments Agency, the Financial Services Authority, and the Vehicle and Operator Services Agency (VOSA). In addition,

⁷ CIPFA, 2003.

⁸ Regulators’ expenditure on inspection and enforcement activities, divided into the number of inspections. Data: regulators’ returns to the Hampton Review.

⁹ See also *The rising spectre of intrusive regulation*, Financial Times, 18 February 2005.

¹⁰ *Business Barometer 74*, University of Nottingham, July 2004.

¹¹ The Broadcasting Standards Commission, the Independent Television Commission, Ofcom, the Radio Authority and the Radiocommunications Agency.

following the recommendations of the Haskins Report, Defra announced in November 2003 that it would merge parts of English Nature, the Rural Development Service and the Countryside Agency to create an as yet unnamed Integrated Agency.¹² Other regulators have a longer history – the Health and Safety Commission and Executive (themselves a consolidation) were established in 1974.

4.35 Consolidation of regulatory bodies that cover the public sector has also taken place. The Commission for Social Care Inspection was created in 2004 from three other bodies. The Department of Health also announced last year that it would reduce the number of its arm's length bodies from 38 to 20.

Box 4.2: Case study in consolidation – Financial Services Authority (FSA)

The Financial Services Authority became the single regulator for the UK's financial services industry in December 2001, finally integrating the responsibilities of nine bodies into one thematic regulator. The first stage of the reform took place in October 1997 when the Securities and Investment Board became the FSA. Banking supervision was transferred to the FSA from the Bank of England in 1998. The FSA became the UK Listing Authority in 2000 and in December 2001, through the enactment of the Financial Services and Markets Act 2000 (FSMA), the FSA formally assumed the responsibilities of the:

- Building Societies Commission;
- Friendly Societies Commission;
- Investment Management Regulatory Organisation;
- Personal Investment Authority;
- Register of Friendly Societies; and
- Securities and Futures Authority.

At the same time the FSA formally assumed responsibility from the Government for the prudential supervision of insurance, and a single Ombudsman service and compensation scheme were established in place of the multiple organisations which existed beforehand. FSMA provided the FSA with new powers, subject to robust accountability arrangements, replacing the mix of statutory regulation and self-regulation which existed beforehand.

This merger and creation of a one-stop shop for both consumers and the industry has allowed synergies and efficiencies to be exploited. The new regulator also more closely matched the shape of the regulated industry. The single regulator model has since been adopted by a number of other countries including Germany, Ireland and South Korea. The 2003 IMF and World Bank Financial System Stability Assessment endorsed the UK's new regulatory framework, especially the new world-leading arrangements for safeguarding financial stability.¹³

The review has been impressed with the FSA's risk profiling system, which has a firm-specific component and a component for industry wide risks. The application of such a risk assessment protocol across the whole financial sector makes resources more flexible, and regulation better targeted, than if the regulation had been delivered by nine separate bodies.

¹² Statement available on the Defra web site: <http://www.defra.gov.uk/corporate/ministers/statements/mb031111.htm>

¹³ *United Kingdom: Financial system stability assessment*, International Monetary Fund, February 2003.

Structural reform

4.36 The case study above demonstrates some of the benefits of reducing the number of regulators. The review believes that, if carried out correctly, the benefits of structural consolidation could be considerable, and could come through:

- fewer business-regulator and regulator-regulator interfaces;
- more complete risk assessment;
- consolidation of forms and data;
- fewer inspecting agencies, and hence fewer multiple inspections;
- internalising conflicting regulations;
- more strategic regulation; and
- more flexible regulation.

Fewer business-regulator interfaces **4.37** By collapsing the total number of regulators into a smaller number of thematic areas, business would have fewer regulators to deal with. The current volume of business and regulator interfaces would be simplified, resulting in less administration.

4.38 At the same time, the number of interfaces between regulators would also reduce, making joint working and data sharing simpler. Had the Environment Agency not been created, the Health and Safety Executive would have had to establish joint monitoring of COMAH sites with two other regulators, and all local authorities.¹⁴ It is doubtful that, with such a large number of stakeholders, joint working would ever have been established.

Better risk assessment **4.39** A larger, thematic regulator could design and implement a more robust risk management process and methodology. It would have access to complete information and be able to factor this into risk assessment frameworks. A high quality risk assessment methodology and process would enable the regulator to prioritise areas of work and use resources more effectively.

4.40 Larger, thematic agencies could also take clearer strategic decisions. Of the regulators within the review's scope, it is the large thematic regulators that have the best risk assessment methods, and the most advanced thinking on the theory of regulation.

Eliminate multiple inspections **4.41** The creation of larger, thematic agencies would also result in a reduction in multiple inspections for business. Several regulators (with similar work streams) would not visit businesses. Instead, a business would only have to interact with one regulator per thematic area. This would reduce the absolute number of inspections, while maintaining good regulatory outcomes and targeting inspection to areas of high risk through a robust risk assessment process.

4.42 Consolidated organisations would save money on administrative functions that could be redirected to business-facing work. Their integrated structure would advance the consolidation of regulatory databases described in the previous chapter.

¹⁴ Control of Major Accident Hazards regulations, governing the most risky premises.

Internalise conflicts and reduce duplication **4.43** Thematic regulators could also internalise conflicts and identify areas of duplication more readily than in a fragmented system. These actions would also lower administrative burdens on business, by reducing the number of forms that would need to be completed. Integrating agencies into thematic areas allows common reporting and regulatory frameworks to be established, making compliance much less burdensome.

4.44 Thematic regulators could harness specialist knowledge, while retaining the resource to provide good general advice. Larger regulators could also create specialist groups to deal with small businesses, or businesses with particularly complex regulatory issues – as is seen at present in the Inland Revenue.

A streamlined central regulatory structure

4.45 The review believes that consolidation should take place around key regulatory themes. As outlined above, the review expects integrated agencies to be more effective and efficient in delivering regulation and interacting with business. The principal themes around which regulators should be grouped are:

- Consumer protection and trading standards;
- Health and safety;
- Food standards;
- Environmental protection;
- Rural and countryside issues;
- Agricultural inspection; and
- Animal health.

4.46 The review believes that, of the 63 regulators in its scope, 31 could be consolidated into seven. The following section sets out the review’s opinion on the natural components of the new thematic regulators. The Government may, of course, want to add other bodies outside the scope of the review, or put certain agencies into different thematic regulators. The Government may also wish to consider whether the creation of a more thematic regulatory structure allows an opportunity for ensuring a clearer separation of policy and strategic responsibility from operational activity in the regulatory sector.

Consumer and trading standards **4.47** In the area of consumer protection and trading standards, there is a multiplicity of local providers, and some major national interests, but no clear co-ordinating body. The lack of strategic focus on trading standards, outlined in the analysis of local authority performance, is partly attributable to this, as is the lack of joining up on issues such as the provision of generic advice to businesses and the general public. While there have been considerable advances in coordination in this area, led by the DTI and the Local Authorities Coordinators of Regulatory Services (LACORS), the review believes that coordination can go much further.

4.48 Accordingly, the review recommends that a new body should be created at the centre of Government, to coordinate work on consumer protection and trading standards. This body would have lead policy responsibility for trading standards nationally. It would have the responsibility of overseeing the work of local authorities on trading standards issues, as the Food Standards Agency does in respect of food.

4.49 The Office of Fair Trading has some consumer enforcement powers which should be included within the new body. It also has some liaison functions in relation to trading standards, and has worked in partnership with other enforcement bodies to coordinate activities. All of these functions sit within wider responsibilities to ensure markets are working well for consumers and alongside specific duties to enforce competition legislation.

4.50 The new body would need to dedicate significant resource to deliver a more coherent enforcement network and to improve performance in local authorities around the country. Institutionally, there are two possible structures for the new body: either a wholly new body could be created; or it could be based within the existing Office of Fair Trading. Both options have pros and cons. The review considers that, of the two, the balance of argument points clearly in favour of a new body, and that there would be significant managerial and organisational advantages in creating a body which was wholly focused on this major task. Equally, however, it will be essential to ensure that any new structure retains strong linkages between consumer and competition policy, and that any new consumer structure retains a strong market-based approach. The review therefore recommends that, before taking a final decision on this structural question, the Government considers the issues further and consults with stakeholders including consumer groups, the Office of Fair Trading and others.¹⁵

4.51 In addition the new body should incorporate:

- the National Weights and Measures Laboratory;
- the British Hallmarking Council; and
- the Hearing Aid Council.

Health and Safety **4.52** The review believes that the Health and Safety Executive, whose remit extends to the safety of workers and the public in workplaces, should expand to cover other bodies with a similar remit, including aspects of public safety.

4.53 The review believes that the Health and Safety Executive should expand to take in:

- The Adventure Activities Licensing Authority (currently funded by the Department for Education and Skills, but with policy direction already from the HSE);
- the soon to be established Gangmasters Licensing Authority;
- The Engineering Inspectorate, part of the DTI, whose remit is the safety of overhead power lines; and
- the inspection functions of the Coal Authority, six staff from the organisation whose remit is competence in mining operations.

4.54 The Security Industry Authority (SIA) currently regulates door supervisors and mobile vehicle clampers and will soon regulate private security guards. Although the review believes there is a case for the SIA transferring into the HSE, the SIA is in the process of developing an appropriate regulatory regime, and it would not be right to merge it into another body at this stage: a final decision on the SIA should therefore be made in two years' time.

¹⁵ A further sub-question, which the Government may want to consider, is whether the consumer credit functions of the OFT should pass to the Financial Services Authority.

Food standards **4.55** Building on the success of the Food Standards Agency, the review believes that the agency should be expanded to incorporate the work of the Wine Standards Board in respect of the quality, labelling and standards of wine sold in the UK. The policy functions on industry support will remain with Defra.

Agriculture, countryside and animal welfare **4.56** The review believes that the many bodies currently responsible for the agricultural, rural and animal health fields should be consolidated. The field is complex, and currently being reorganised as a consequence of the Haskins Review of the delivery of the rural policy and Defra's internal Delivery Strategy.

4.57 In the light of these continuing changes within the Defra regulatory structure, the review has thought it best not to make specific recommendations for mergers. It does believe, however, that the proper end-point of consolidation, at least for those bodies with regulatory functions, is a division between five thematic regulators. The review therefore recommends that, within the four-year timescale for other mergers, almost all the inspection functions within the review's remit currently exercised by Defra or its agencies should be unified within one or more of the thematic regulators, particularly:¹⁶

- The Environment Agency;
- The Food Standards Agency;
- a new Agricultural Inspectorate.
- the new integrated agency being established following the Haskins Review; and
- a new Animal Health Agency;

Other synergies **4.58** In addition, outside the main thematic regulators, the review proposes that the Companies Investigation Branch of the DTI, which investigates fraud, malpractice or other forms of abuse by companies, should be merged with the Insolvency Service Agency (ISA). The ISA, which ensures that financial failure is dealt with fairly and effectively and that fraud and financial misconduct are detected and deterred, has a staff of 1,885 and a gross operating budget of £110 million. The CIB has a staff of 74 and an operating budget of £8 million. This new merged body should take responsibility for promoting better training, and better targeting of investigations and enforcement.

4.59 The review also believes, on its initial assessment, that there may be merit in the exploiting synergies between Companies House and the new HM Customs and Revenue. Companies House is one of the most important form-issuing bodies at national level, sending out 1.8 million forms a year. The data required has similarities with filings required under corporation tax law, suggesting that there may be potential for significant simplification. This possibility was raised by the O'Donnell review in 2004. The Government may want to examine this further.

Implementing change **4.60** The review understands that the mergers outlined above are a major undertaking. They affect most of the staff within the national regulatory sector and, through the creation of the Consumer and Trading Standards Agency (CTSA), a significant number of local authority staff. The review believes that reorganisation on this scale should take place over a number of years, following full discussion and consultation on the timing and nature of the moves, and any other consequential changes.

¹⁶ Inspection functions of all Defra bodies listed in Annex B except the Forestry Commission and the Agricultural Wages Inspectorate.

4.61 The review believes that the merger process should be led by the Better Regulation Executive, which should co-ordinate the work of merger teams in the core regulator, or the relevant policy Department.

4.62 The review believes that detailed plans for mergers should be in place by September 2006, and that the mergers themselves should be completed in all aspects by the start of April 2009.

4.63 The Government should consider whether additional bodies, outside the scope of this review, should be added to the new regulators on their creation. It should reach a conclusion on this issue by September 2005, to allow the planning process to take these additional bodies into account.

Consequences of consolidation

4.64 The review believes that the benefits of regulation in streamlining the activities of the regulators are likely to be considerable. It also believes that a more strategic central role on trading standards will improve the quality of regulation and of risk assessment at local level.

4.65 Businesses will benefit from consolidation through the creation of larger, more coherent regulators. Larger regulators will be able to:

- carry out more comprehensive risk assessments;
- unify existing inspection regimes or data requirements;
- implement electronic databases more effectively; and
- provide a simpler gateway to more comprehensive advice.

4.66 Businesses will also have to deal with fewer regulators. At present, some businesses have dealings with ten or more Government agencies over the course of a year. Under the consolidation programme set out above, most businesses will have dealings with only one or two regulators within the scope of the review.

4.67 Estimating the extent of such benefits is inevitably a challenging exercise. The review has, however, seen several examples of major benefits that have arisen from the modernisation of regulatory practices in the past:

- better risk assessment in waste management sites allowed the Environment Agency to reduce inspections of those sites by 33 per cent over three years. A similar reduction in trading standards inspections would eliminate over 150,000 inspections;
- the creation of VOSA's electronic form for updating vehicle movement records is eliminating around 200 form filling transactions per annum for major national haulage operators, with the new process taking minutes as opposed to 14 days per form;
- the merger of the Rural Payments Agency and the British Cattle Movement Service allowed the creation of a single information gateway for the 2 million cattle movements each year. The Change Programme, of which this move is a part, was introduced after the creation of the RPA from nine former organisations. It is planned to deliver annual savings of £52 million through streamlined IT and management systems; and

- the forthcoming unification of the administration of magistrates' courts into HM Courts Service aims to deliver savings of 5 per cent through process changes. If a similar 5 per cent saving could be achieved from the bodies listed for consolidation in this report, administration costs to Government could reduce by up to £79 million.

4.68 The BRTF's report, *Less is More*, recommends that the Government should set a target for reduction in administrative burdens caused by inspections and form-filling. Judging from the evidence we have seen, there is considerable scope for reduction. If the experience of the Environment Agency in introducing risk assessment were to be replicated across other regulators, which the review believes is possible, a 33 per cent cut in inspections could be achieved without affecting desired regulatory outcomes.

4.69 The review has been surprised by how little data is collated on the sending of forms, particularly at local level. The review believes that all regulators should put in place procedures to monitor the form filling burden that they impose. This problem should be addressed if the Government accepts the BRTF's recommendations on calculating the cost of administrative burdens. The review believes that all regulators should set targets for reductions in the number of forms they send out. More work would need to be done to assess what a reasonable target would be, but, given the experience of VOSA and the Rural Payments Agency, the review believes a target of 25 per cent could be credible for the next few years, with large potential benefits later as consolidation of data sets increases.

4.70 There are also costs associated with any structural reform. In the case of the mergers described here, assessing the exact cost of merger at this stage is very difficult.

4.71 The review believes that the merged bodies should certainly not be larger, and should ideally be smaller than the combination of their predecessor bodies, and that the same constraint should apply to their budgets.

4.72 The composition of three new consolidated bodies is set out in this review. In two of these cases – the HSE and the Food Standards Agency – the changes in head count and physical location are very small in the context of the organisations they will be joining. The proposed CTSA could be a new organisation, so its establishment could be more costly.

4.73 The two simpler cases are the Food Standards Agency and the Health and Safety Executive. The FSA is taking on the twelve staff of the Wine Standards Board, which is also based in London. This is an addition of 2 per cent of headcount, and the review believes that the cost of this merger will be negligible.

4.74 The new Health and Safety Executive is taking on up to 167 staff, and a budget of up to £32 million, adding four per cent to its headcount and one per cent to their total budget. Again, with the small percentage increase in headcount, the review assumes that IT and HR systems can be extended to new staff within their former organisation's existing IT and HR budgets. The bodies that are merging into the new agency are located outside London, and the review sees no need for them to be relocated into London and the south east.

4.75 More complicated is the proposed new consumer and trading standards agency. There are two scenarios for its creation.

4.76 If the body is a new creation, it will merge 348 staff on an equal footing, rather than into an existing body with IT and HR systems already established. For an indication of costs, therefore, the review has considered the creation of the Financial Services Authority and Ofcom. Both bodies are thematic regulators created by a merger of similar-sized bodies. The merger of the Financial Services Authority cost £37 million, of which £132 million was current expenditure, and £15 million capital. The resulting organisation had 2,156 staff at the end of the main establishment process. Ofcom, on the other hand, cost £52.3 million, of which £26.2 million was capital, liabilities and redundancy costs, and the rest current expenditure. The resulting body had 850 staff.

4.77 If one allocates non-capital costs on a per-head basis, the merger of the FSA cost £6,120, and the merger of Ofcom £30,700. Using these two figures as upper and lower bounds, the review estimates that the current cost of merging bodies into the CTSA may be between £2 million and £10 million, although the review believes it should be possible to achieve for even less than the lower of the two figures. Capital costs will also need to be considered. The FSA incurred capital set up costs of £15 million. The cost of Ofcom's new building is harder to separate out from available data, but a similar or slightly higher figure seems a reasonable estimate. The review believes that a reasonable allocation for capital costs, given the smaller size of the CTSA, and its location outside London, would be £4 million or less.

4.78 This leads the review to its indicative estimate, that the costs of creating the CTSA would be between £11 million and £7 million, and ideally less.

4.79 If the CTSA were to be created by a merger of the other bodies with the Office of Fair Trading, the move is less significant. The OFT would absorb about 61 staff – an increase in size of less than 10 per cent. While this would be a fairly significant increase in headcount, the review believes that this could be done more cheaply. The review assumes that the costs of the new staff could be managed within the existing budgets of their former organisations; that a very small team would be needed in the OFT to manage the change; and that a sum should be allocated for the possible capital costs of relocation. Giving each of the new staff the same per head capital allocation as in the FSA and Ofcom mergers, this suggests a total additional cost of between £2.5 million and £7.5 million, and ideally less.

Recommendation 28: The review recommends that, over the next two to four years, 31 of the 63 national regulators should be consolidated into the following seven bodies:

- an expanded Health and Safety Executive;
- an expanded Food Standards Agency;
- an expanded Environment Agency;
- a new consumer and trading standards agency;
- a new rural and countryside inspectorate (the new integrated agency);
- a new animal health inspectorate; and
- a new agricultural inspectorate.

Recommendation 29: The review recommends that the Companies Investigations Branch of the DTI be merged with the Insolvency Service Agency.

Recommendation 30: The review recommends that the new consumer and trading standards agency should be established, as described in Chapter 4, with powers over trading standards work (excluding food and animal welfare) analogous to those of the Food Standards Agency over food.

Recommendation 31: The review recommends that the Better Regulation Executive lead the process of merger across Government, co-ordinating the work of merger teams in either regulators or the relevant Department.

COORDINATION OF LOCAL AUTHORITY REGULATORY SERVICES

4.80 Local authorities have an important role in delivering advice and inspection, either through TSOs (Trading Standards Officers) or EHOs (Environmental Health Officers). The two different sorts of officers have different responsibilities. The most important local authority functions covered by this review are:

- fair trading (carried out in trading standards departments);
- product safety (trading standards);
- food labelling and standards (trading standards);
- food safety (environmental health);
- animal welfare (trading standards);
- air quality (environmental health); and
- advice services for consumers and businesses.

4.81 The detail of the current local authority system is set out in Chapter 1, but in brief, there are 203 trading standards offices in England, Scotland and Wales, and 408 environmental health offices. They are all independent entities, responsible to the local authority they belong to, although they take and enforce regulations from ten different central Government bodies.

4.82 In unitary local authorities, trading standards and environmental health functions are sometimes merged into single regulatory services units, though this is by no means universal. In counties, district councils carry out environmental health functions, while counties discharge trading standards ones.

4.83 As has been previously noted, local authorities' regulatory services departments are small. While the national regulators divide around 41,000 staff between 63 national bodies, local authorities divide just under 20,000 staff between 611 environmental health and trading standards offices.

4.84 Local authorities' presence in their communities makes them well positioned to understand and reflect local needs. Councils are involved in numerous business interfaces, partnerships and regeneration projects, and thus have extensive local intelligence. Good intelligence and good relationships are vital to effective regulation.

4.85 Local authority regulators, because of the types of business they see, tend to be effective at providing business advice. Local authority staff tend to see their role as securing business compliance in the most effective way possible – an approach the review endorses – and in most cases this means helping business rather than punishing non-compliance. All the local authorities that the review visited had effective advice services, and small businesses consulted over the course of the review often spoke of positive experiences with their local trading standards and environmental health services.

Problems with local authority regulatory services

4.86 Those benefits have to be set against the problems that the diffuse structure of local authority regulation brings. These are:

- difficulties arising from the lack of effective priority-setting from the centre;
- difficulties in central and local coordination;
- cross-boundary problems;
- inconsistency in local authorities' application of national standards;
- variations in activity; and
- problems arising from the Home Authority Principle.

4.87 These problems increase uncertainty and administrative burdens for business. Uncoordinated action on the ground can mean businesses receiving unnecessary inspections, or even conflicting advice. The lack of a central communications function results in duplication of effort at local level.

Priority-setting 4.88 Local regulators operate under regulations set by ten Government Departments. There is no collective agreement on priorities, terminology and processes by the central bodies – when the Department of Trade and Industry attempted to create a list of top priorities for trading standards services, the different Government Departments contributed 59 areas, all of which were identified as top priorities.

4.89 Where divisions of labour or standard practices are set in legislation, they have been slow to change as the economy has developed. The economy of 1974 is very different from the economy of 2004, but the division of health and safety between the HSE and local authorities dates from that time.¹⁷

4.90 There is no central forum for Government or local authorities to set priorities or resolve disputing regulation. No single Government body is responsible for information to local government. The local government representative bodies, and local authorities themselves, identified this to the review as a major problem. Regulatory activity on the ground does not take place as a result of a coordinated risk assessment across the local authority field.

4.91 There are other problems with the central/local relationship. One of the most important is around performance management. Although local authorities' regulatory performance is managed in various ways, the only measure that attempts to integrate regulatory services' standards is the performance indicator called BVPI 166.¹⁸ This indicator is really an amalgam of minimum standards from a number of professional bodies, and is focused on the measurement of inputs rather than outputs.

¹⁷ It has been amended since, but the fundamental split between 'factories' (HSE) and safer premises (local authorities) remains.

¹⁸ Full details available at <http://www.bvpi.gov.uk> a site run by the Office of the Deputy Prime Minister.

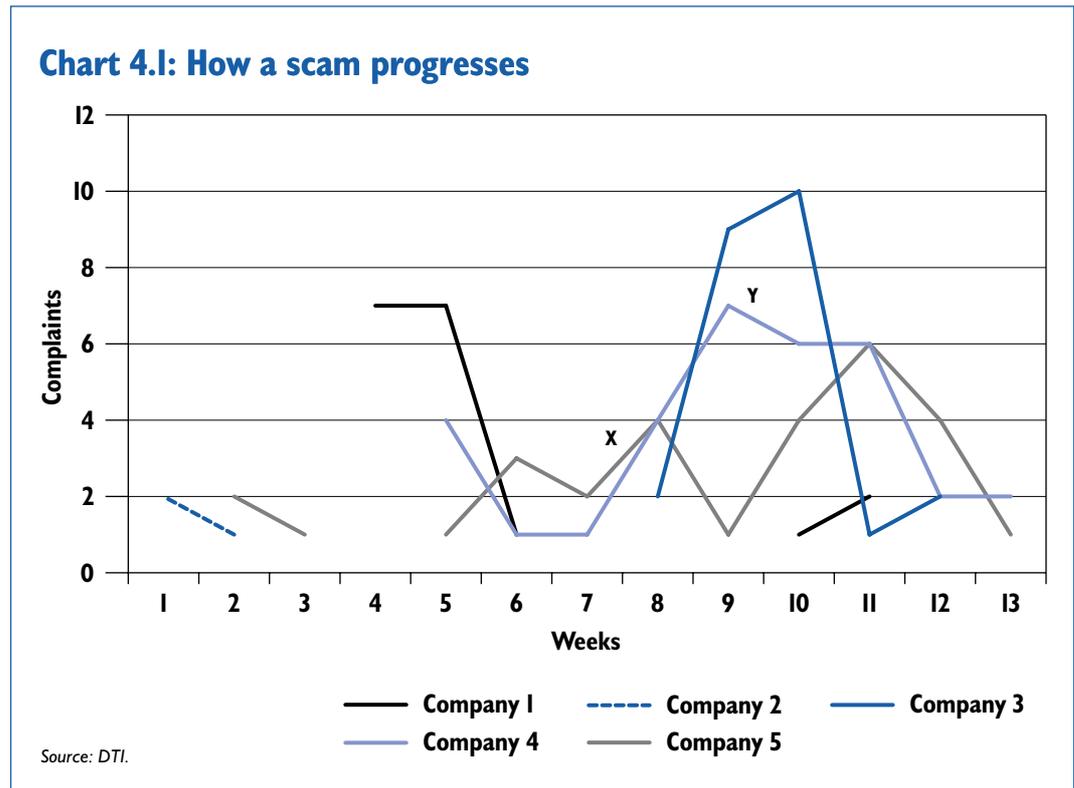
Powers of central bodies 4.92 In a similar way, the powers that central bodies have over local regulators vary considerably. The Food Standards Agency can:

- require information from local authorities relating to food law enforcement and inspect any records;
- enter local authority premises, to inspect records and take samples;
- publish information on the performance of enforcement authorities; and
- make reports to individual authorities, including guidance on improving performance with the requirement to publish and respond.

4.93 The Health and Safety Commission has less specific powers – it can advise both HSE and local authorities on inspection activity, can request annual reports from each local authority, and take over failing authorities. In practice, however, the HSC's powers to intervene are conditional on approval by the Secretary of State, which can be a slow process. The DTI has weaker powers still and only sets policy on trading standards, although it has powers to require information, inspect individual offices, and approve Trading Standards Officer (TSO) qualifications in respect of weights and measures.

Cross-boundary working 4.94 Boundary problems between local authorities cause problems both in inspection – where standards and activity vary widely – and in enforcement. There is limited regional or national executive control over local authority enforcement, which causes problems when issues such as spam or telephone scams cross local authority boundaries.

4.95 Chart 4.1 below shows the progress of a widespread scam recently uncovered by the Department of Trade and Industry. A company, trading under several different names, was taking part in a telephone scam. The chart shows the number of complaints about the scam nationwide. Since they were spread thinly across the country, no individual authority picked up on the problem. Indeed, at the point marked X on the chart, a simple analysis of the data would have suggested the problem was dying down. In fact, it was intensifying – diversifying into different company names. Only at the point marked Y on the chart – 9 weeks after the start of the scam – did a local authority realise that it was a national problem.



4.96 The availability of the data shown above is due to the DTI's new initiative *Consumer Direct* – a national advisory service coordinating information on consumer complaints, and run by regional groupings of trading standards departments.

Inconsistency 4.97 The review has already touched on the issue of inconsistency, in relation to national bodies. The large number of local authorities, and the way that their services are funded, means that at local level there is inconsistency in funding and activity levels, beyond what normal variation in business mix or population profile would suggest.

4.98 This inconsistency was noted by many of the businesses who spoke to the review, and has also been acknowledged in some recent reports. A report by Unison and the Centre for Corporate Accountability identified 'huge variation between local authorities in levels of inspection, investigations, in enforcement notices and in the numbers of health and safety inspectors'.¹⁹ A recent DTI report identified 'patchiness' in trading standards services.²⁰

4.99 Inconsistency is a problem for businesses because they could be subject to unnecessary inspections, or – where service coverage is low – undercut by businesses who are operating outside the law. Similarly, consumers and businesses living in areas with weak trading standards cover could be more at risk of fraud, as dishonest businesses identify the weakness and move in.

¹⁹ *Safety Lottery. How the level of enforcement of health and safety depends on where you work*, Unison and Centre for Corporate Accountability, 2003.

²⁰ *Extending Competitive Markets: Empowered consumers, successful businesses*, Department of Trade and Industry, July 2004.

Variations in activity 4.100 The local authority funding system is designed to allow authorities to set their own budgets across all local authority services, and variations are therefore an inevitable part of the system. In outer London trading standards departments, for example, the ratio of service staff to inspectable premises varied widely, averaging 400:1, but with a high of 748:1 (in Hillingdon), and a low of 219:1 (in Barking). The variations are not clearly attributable to mix of business, or to population types – it is notable that Hillingdon (highest) and Hounslow (fourth lowest at 279:1) are adjacent authorities. Similarly Brent and Harrow (256:1) is next to Barnet (687:1).

4.101 The story is similar in Environmental Health departments. Again, there is a broad similarity across types of authority and region, but major variations between authorities with similar characteristics. If one considers the ratio of inspectable premises to EHOs, those with the lowest ratios²¹ and those with the highest ratios,²² there is no clear pattern in geography, rurality, or size.

4.102 The review believes that the current funding system for local authorities is appropriate for services with a large degree of locality, such as planning, or which are politically salient at local level, such as alcohol licensing. It questions, however, the extent of variability in funding of regulatory services. The laws governing trading standards and environmental health responsibilities are designed at national level, to provide protection nationally. Their delivery through local authorities should not result in variations so wide that they affect the ability of services to operate reasonably uniformly across the country.

4.103 The importance of regulatory services within local authorities was often questioned by businesses and regulators. Several heads of regulatory services used the phrase ‘Cinderella service’ when talking to the review. The Centre for Corporate Accountability’s report into variations in local authority health and safety called the system a ‘safety lottery’. Although there is no measure of how concerned local authorities are with their regulatory services, the existence of a wide spectrum of opinion can be inferred from the variation in budgets and service provision between different authorities.

Home Authority Principle 4.104 These inconsistencies also raise questions about the effectiveness of the Home Authority Principle. This principle is an informal agreement between local authorities that tries to correct the inevitable problems that arise from cross-boundary issues in trading standards and food. The principle requires local authorities to pay particular attention to goods and services originating in their area that are distributed or sold in different local authority areas. The home authority – the authority with the company’s head office or main production centre in its area – is meant to act to as a focus for communication and liaison between the company and other local authorities. The operation of the principle is voluntary and therefore depends on communication between all parties involved.

4.105 Work arising from the Home Authority Principle is resource-intensive, unfunded, and unevenly spread around the country. Many multiples are based in the City of London or the City of Westminster, and so these authorities have a disproportionately high home authority burden. Hertfordshire is another example of a heavily burdened home authority, with Tesco’s, Dixons, Kodak and Currys within its boundaries.

²¹ Torridge (Devon), Rushmoor (Hants), Test Valley (Hants), Bristol, North Warwickshire, Nottingham, Portsmouth, Doncaster, Middlesbrough and Kingston-upon-Hull.

²² West Berkshire, Brent, Westminster, Havering, Barking, Kennet (Wilts), Chiltern (Bucks), South Lakeland, Camden, and Basingstoke & Deane.

4.106 The review does not believe that the present approach to local authority regulation, in allowing such wide variations and inconsistencies in the application of national standards, is delivering what the regulations governing it require. Trading standards and environmental health laws are designed to provide a broadly similar level of protection to all citizens of the country. The review believes that action needs to be taken to make services more consistent across the country.

Better coordination in local authorities' work

4.107 The review believes that consistency at local authority level requires better coordination of Departments and local authorities at national level. The review has already proposed the creation of a new Consumer and Trading Standards Agency, to bring greater coordination to the work of local authority trading standards departments. In addition, the review recommends the creation of a new central partnership across all areas of local authority regulation, called the National Regulatory Forum.

CTSA 4.108 The proposed consumer and trading standards agency (CTSA) would be the central body for local authority trading standards work. It would be responsible for coordinating all trading standards work not covered by the Food Standards Agency or the proposed Animal Health Agency. The Agency should have the same powers over this work that the Food Standards Agency has over food, including the power to define codes of practice for trading standards activity in its field. Any codes of practice should be jointly issued with the Food Standards Agency and the Animal Health Agency, once established, to ensure that trading standards departments receive consistent guidance on priority-setting. Performance management arrangements will need to be developed alongside wider plans for coordinating and rationalising inspections of local authorities.

4.109 The CTSA should also take responsibility for improving the consistency of regulation experienced by businesses that trade in several local authorities. This could include establishing a central operation to lead on the regulation of large multiple businesses.

National Regulatory Forum 4.110 The review has already said that local authorities find it hard to join up their work across boundaries. This has been raised as a matter of concern both by local authorities and businesses.

4.111 The Local Government Association, in the course of the review, suggested that the convening of a national group, made up of national and local bodies, could share burdens and coordinate work on local regulation. The review supports this suggestion.

4.112 The proposed National Regulatory Forum (NRF) would be a partnership arrangement between Government Departments, national regulators, and local authorities. It should be coordinated by the Better Regulation Executive (see below), and should include consumer and business representatives, the National Audit Office and the Audit Commission.

4.113 The NRF should improve consistency and the spreading of best practice by:

- giving individual members bodies lead responsibility for particular shared issues;
- keeping under review the boundaries between local and national operations;
- setting indicative priorities for local authority regulatory work;
- sharing information on new initiatives; and
- commissioning shared information resources and nationally branded programmes.

Recommendation 32: The review recommends that the Better Regulation Executive should establish and chair a National Regulatory Forum comprising local authority, national regulator and policy Department representation.

Recommendation 33: The review recommends that the National Regulatory Forum should lead a programme of work, through its member organisations, to:

- improve the coordination of local and national regulatory services;
- secure agreement on common services, or central communication strategies, to be provided centrally or regionally; and
- agree risk assessment arrangements, and monitor the extent to which local authority regulators apply them.

MAKING THE WHOLE SYSTEM WORK

4.114 A regulatory landscape which adopts the approaches to regulatory impact the review suggests, which is consolidated, coordinated and prioritised, will still need strategic leadership to improve regulators' performance and consistency. The regulatory system would benefit enormously from common performance assessment standards across the central regulators. Further, while a reduced number of regulators, working with other relevant interests, could set priorities for local inspections, determining the relative importance of the regulatory regimes themselves – and what weight the regulatory system should attach to food, as opposed to health and safety – requires the involvement of Government at the centre. There are strong public accountability and efficiency cases for better oversight of working practices, and greater central coordination of inspection.

4.115 There are four sorts of accountability – financial, policy, judgement and procedural. Regulators are already accountable for their financial performance, to Parliament, through the National Audit Office or the Audit Commission; they are accountable for policy to sponsor Departments. They are accountable for the judgements they make through appeals procedures. However, they are currently not accountable for the way in which they carry out their work. This reduces incentives for regulators to join up work, and promotes inconsistency.

4.116 Greater consistency needs uniform standards for regulatory practice. These should then be monitored, and regulators publicly held to account for their performance against them, in the same way that the National Audit Office's reports – several of which have been quoted in this report – hold bodies to account for their use of public money.

4.117 Greater transparency and consistent procedural standards would benefit all parties, and increase faith in the decision-making process. The OECD, in its most recent thinking on regulatory matters, recommends that Governments develop a strategic centre for thinking and performance management of regulations.²³ The review's proposed central body (described below) could fulfil that role alongside its work in monitoring regulators' performance.

4.118 Monitoring of regulators' performance should be against set standards, including the goals set out in the principles of inspection and enforcement in Box 2.2. The National Audit Office, whose work on regulation has been cited at several points through this report, would be the ideal body to carry out this task.

²³ *Government Capacity to Assure High Quality Regulation*, OECD, 2002.

4.119 As part of the greater accountability proposed in this report, the review believes that there is a role for Parliament in scrutinising the work and performance of regulators. The House of Lords Constitution Committee recommended in its report *the Accountability of Regulators*, that a Joint Committee of both houses should be established to monitor the work of regulators. The review would welcome such a move.

Better Regulation Executive

4.120 The review recommends that a new regulatory oversight body, the Better Regulation Executive (BRE), be created. This body would be responsible for introducing the reforms contained in this report, and for holding regulators to account against the principles of regulatory inspection and enforcement set out above.

4.121 This new organisation should be strong, independent-minded, but within the structures of Government, overseen by a management board comprising relevant interests, particularly those of business. It should have access to thinking at the higher levels of Government. The review believes that an organisational culture and staff mix similar to that of the Prime Minister's Delivery Unit would be appropriate for the BRE.

4.122 The BRE could take on the duties of the Cabinet Office Regulatory Impact Unit. Although it is beyond the scope of the review to recommend this, it would seem a sensible move to prevent a duplication of roles.

4.123 The BRE would be responsible for monitoring the implementation of the review's recommendations by the consolidated central regulator base, and would have scrutiny and oversight responsibility for the whole regulatory system. It would report its findings to a Cabinet Committee. The Better Regulation Executive should be responsible for:

- Holding regulators to account for their performance against the principles of regulatory enforcement, set out in Box 2.2;
- Implementing any parts of this report that the Government chooses to accept;
- Ensuring that regulators have mechanisms in place to resolve conflicts in regulation or practice;
- Focusing the attention of regulators and others in ensuring that regulatory regimes are minimally burdensome to business, and that regulators work together to ensure that business compliance is achieved proportionately and fairly;
- Providing advice to the Prime Minister's Panel on Regulatory Accountability on:
 - the extent to which regulators are adopting those of this report's principles and practices that Government has accepted;
 - any regulatory proposal that involves the creation of a new regulatory body; and
 - risk assessment, both in theory and in practice.

- Providing advice to the Prime Minister's Panel on Regulatory Accountability, on any regulatory proposal that involves the creation of new regulatory bodies, applying rigorous criteria to prevent bodies coming into being unnecessarily;
- Leading on regulatory coordination work, such as database merger, form design guidelines, and the National Regulatory Forum;
- Implementing a target for the reduction of administrative burdens, as recommended by the BRTF report, *Less is More*; and
- Any parts of the Regulatory Impact Unit's work the Government chooses to transfer to it.

4.124 The work should be complemented by a continuation of the independent challenge function of the BRTF, who should play a role in vetting Departmental plans on reducing administrative burdens.

Recommendation 34: The review recommends that the Government establish a Better Regulation Executive (BRE) at the centre of Government, to hold regulators to account for their performance against the principles of regulatory enforcement, set out in Box 2.2. The BRE's role should be as described earlier in this chapter.

Recommendation 35: The review recommends that the Government consider whether the functions currently exercised by the Regulatory Impact Unit should transfer to the Better Regulation Executive.

A.1 This review was commissioned by the Chancellor of the Exchequer in the Budget 2004, and its terms of reference set out in the *Financial Statement and Budget Report*.¹ The review was asked to examine all business-regulator interactions, including licensing, inspection, form-filling and other forms of enforcement, in any regulator that has an inspection or enforcement function. The review has therefore not made recommendations on the work of regulators that did not have interactions with business or that have no inspection or enforcement role.² Three other sorts of body have been excluded:

- The ‘economic regulators’ (Ofgem, Office of Rail Regulation, Ofwat, Civil Aviation Authority Economic Regulation Group, Postcomm, and Ofcom) were excluded because they concentrate on economic solutions to market failures covering a small group of businesses, and have been the subjects of a series of recent studies, including by the Better Regulation Task Force.³
- The Adult Learning Inspectorate, Commission for Social Care Inspection, and Healthcare Commission were excluded because they are part of work on public sector inspectorates by the Office for Public Services Reform.⁴

A.2 The review has not examined regulators such as the Scottish Environmental Protection Agency, which are the responsibility of the devolved institutions in Scotland, Wales and Northern Ireland. However, many regulators within the scope of the review, including the Health and Safety Executive, the Food Standards Agency, and the Office of Fair Trading, operate UK- or GB-wide. The review's recommendations on these bodies will need to be implemented following discussions between the UK Government and the devolved administrations.

A.3 Although the review has not specifically addressed the excluded bodies, it has considered aspects of their current initiatives and activities to inform our view of other regulators. In the same way, the review's recommendations, though specific to the regulators in our scope, may be of interest to those outside the remit of this review.

A.4 The review has been assisted in its work by numerous businesses, business organisations, regulators, voluntary organisations and individuals. The names of all those who have contributed to the review, both in its first phase and since the publication of the interim report, are listed in the Acknowledgements. The review's thanks go to them all.

The Reviewer **A.5** Philip Hampton graduated from Lincoln College, Oxford, where he gained an MA in English in 1975. He qualified as a chartered accountant in 1978 and is an Associate of the Institute of Chartered Accountants. He attended INSEAD in Fontainebleau, France, in 1980-81, gaining an MBA.

¹ *Financial Statement and Budget Report*, HM Treasury, March 2004.

² Regulators in this category include employment tribunals and the licensing functions of local authorities in respect of private hire vehicles, alcohol sales and public entertainments.

³ *Economic regulators*, Better Regulation Task Force, July 2001.

⁴ *Inspecting for improvement*, The Prime Minister's Office of Public Services Reform, July 2003

A.6 Philip Hampton joined the auditors Coopers & Lybrand, London, in 1975 and worked in London and West Africa. In 1981 he joined Lazard Brothers, working on mergers and acquisitions, business restructurings and capital markets. In 1986 he was seconded to Lazard Freres, New York, and also worked extensively with Lazard Freres in Paris. From 1990, he worked for British Steel plc as Group Finance Director. He became Group Finance Director of British Gas in July 1996 and BT's Group Finance Director in October 2000. From June 2002 until March 2004 he worked as Finance Director for LloydsTSB. In July 2004 he was appointed Chairman of J. Sainsbury plc.

B

NATIONAL REGULATORS

B.1 This Annex lists all the regulators in the scope of the review, and some notable exceptions. It also sets out more detail on the work of the largest national regulators.

DIFFERENT TYPES OF REGULATORS

B.2 The review identified a total of 62 national regulators within its scope, in addition to the regulatory services of local authorities, which are discussed in more detail in Annex D. These national regulators range from very large bodies with a wide range of powers, like the Environment Agency, to small, highly specialised regulators, like the Adventure Activities Licensing Authority.

B.3 The national regulators in scope can be categorised into four main groups:

- Core Departmental functions;
- Non-Ministerial Departments;
- Non-Departmental Public Bodies (NDPBs); and
- Executive Agencies.

B.4 The different types of bodies have different legal status, and there are therefore varying constraints on institutional reform.

B.5 Secretaries of State can change or move *core Departmental functions* administratively, because they are part of the normal Departmental structure. Examples include the DTI's Companies Investigations Branch.

B.6 Office-holders, boards or commissioners with specific statutory responsibilities head *non-Ministerial Departments*. Their staff are civil servants. The precise nature of their relationship with Ministers varies according to their individual policy and statutory framework. Their structure keeps the day-to-day administration of the particular activity separate from Government, but allows Government input in the wider policy context. Their establishing statutes set out how much their structure can be changed by administrative means. Examples of non-Ministerial Departments include the Food Standards Agency and the Forestry Commission.

B.7 A *Non-Departmental Public Body* is not part of a government department, and carries out its functions at arm's length from central government. Ministers are responsible to Parliament for the activities of NDPBs sponsored by their Department and, in almost all cases, Ministers make the appointments to their boards. Departments are responsible for funding and ensuring good governance of their NDPBs. NDPBs tend to be set up through statute, and most need primary legislation to alter their institutional framework. Examples include the Environment Agency and the Health and Safety Commission/Executive.

B.8 An *Executive Agency* is a body that has been set up to carry out a particular service or function within Government and has a clear focus on delivering specific outputs. As with NDPBs, Ministers are ultimately responsible for the work of Executive Agencies. Departments are responsible for funding and ensuring good governance of their NDPBs. Executive Agencies, unless explicitly created by statute, can be reformed without primary legislation. Examples include the Rural Payments Agency and the Meat Hygiene Service.

B.9 Two bodies we are considering do not fit into the categories above. The Civil Aviation Authority is a public corporation. The Financial Services Authority is a statutory industry body.

UK REGULATORS IN SCOPE

B.10 Core departmental functions considered within scope:

- Agriculture Wages Inspectorate (within Defra)
- Drinking Water Inspectorate (Defra)
- Egg Marketing Inspectorate (Defra)
- Fish Health Inspectorate (Defra)
- Global Wildlife Division – Wildlife Inspectorate, and Licensing and Bird Registration (Defra)
- Horticultural Marketing Inspectorate (Defra)
- Plant Health and Seeds Inspectorate (Defra)
- Plant Varieties and Seeds Division (Defra)
- Rural Development Service – Dairy Hygiene Inspectorate, and National Wildlife Management Team (Defra)
- Sea Fisheries Inspectorate (Defra)
- State Veterinary Service (Defra)
- Pharmaceutical Price Regulation Scheme (DH)
- Companies Investigation Branch (DTI)
- Employment Agency Standards Inspectorate (DTI)
- Engineering Inspectorate (DTI)
- Animals (Scientific Procedures) Inspectorate (HO)

B.11 Non-Ministerial Departments considered within scope:

- Assets Recovery Agency
- Charity Commission for England and Wales
- Food Standards Agency
- Forestry Commission
- Office of Fair Trading

B.12 Non-Departmental Public Bodies considered within scope:

- British Hallmarking Council (sponsored by DTI)
- British Potato Council (Defra)
- Coal Authority (DTI)

- Competition Commission (DTI)
- Disability Rights Commission (DWP)
- English Heritage (DCMS)
- English Nature (Defra)
- Environment Agency (Defra)
- Equal Opportunities Commission (DTI)
- Financial Reporting Council (DTI)
- Football Licensing Authority (DCMS)
- Gaming Board for Great Britain (DCMS)
- Gangmasters Licensing Authority
- Health and Safety Commission/Executive (DWP)
- Hearing Aid Council (DTI)
- Home Grown Cereals Authority (Defra)
- Housing Corporation (ODPM)
- Human Fertilisation and Embryology Authority (DH)
- Information Commissioner's Office (DCA)
- National Bee Unit of the Central Science Laboratory (Defra)
- Occupational Pensions Regulatory Authority (DWP)
- Sea Fish Industry Authority (Defra)
- Security Industry Authority (HO)
- UK Sport (DCMS)
- Wine Standards Board (Defra)

B.13 Executive Agencies considered within scope:

- Companies House (DTI)
- Driving Standards Agency (DfT)
- Insolvency Service (DTI)
- Maritime and Coastguard Agency (DfT)
- Meat Hygiene Service (FSA)
- Medicines and Healthcare products Regulatory Agency (DH)
- National Weights and Measures Laboratory (DTI)
- Patent Office (DTI)
- Pesticides Safety Directorate (Defra)

- Rural Payments Agency (Defra)
- Vehicle and Operator Services Agency (DfT)
- Vehicle Certification Agency (DfT)
- Veterinary Medicines Directorate (Defra)

B.14 Other bodies considered within scope:

- Financial Services Authority
- Civil Aviation Authority Safety Regulation Group, Aviation Regulation Enforcement Department and Consumer Protection Group (sponsored by Department for Transport)
- Adventure Activities Licensing Authority (funded by DfES)

NOTABLE UK REGULATORS OUT OF SCOPE

B.15 The following notable Non-Ministerial Departments are considered out of scope:

- the future HM Revenue and Customs
- Office of Gas and Electricity Markets (Ofgem)
- Office of the Rail Regulator
- Office of the Water Regulator (Ofwat)
- Office for Standards in Education (Ofsted)
- Postal Services Commission (Postcomm)
- Serious Fraud Office

B.16 The following notable Non-Departmental Public Bodies were considered out of scope:

- Adult Learning Inspectorate (sponsored by DfES)
- Audit Commission (ODPM)
- Commission for Racial Equality (HO)
- Commission for Social Care Inspection (DH)
- Countryside Agency (Defra)
- Healthcare Commission (DH)
- Strategic Rail Authority (DfT)

B.17 The following notable Public corporations considered out of scope:

- Civil Aviation Authority Economic Regulation Group (sponsored by DfT)
- Office of Communications (Ofcom, sponsored by DTI)

B.18 Since the Review process began, there have been several new, or proposed, bodies that would be considered to be within our scope, had they existed at the start of the review. These are:

- the new pensions regulatory body;
- the independent regulator for Community Interest Companies;
- The Commission for Equality and Human Rights; and
- the post-Haskins Integrated Agency.

THE LARGEST NATIONAL REGULATORS

B.19 The inspection, advice-giving, and incentive regimes of each of the main national regulators are discussed below.

Environment Agency

B.20 The Environment Agency (EA) was formed in 1996. It covers England and Wales only, with the Scottish Environmental Protection Agency (SEPA) operating in Scotland. The Agency has an operating budget for 2004-05 of £870 million. This comprises £503 million from various Government grants (including £350 million for flood defence), £248 million from charging schemes, and £117 million from other sources. As of 31 March 2004, the EA had a staff of 11,714, of which 2,417 worked on inspection and enforcement, and a further 2,646 on other aspects of regulation such as permitting and monitoring. This number does not include local authority Environmental Health Officers working on environmental issues, who are covered in Annex C.

Inspections B.21 The EU sets out minimum criteria for environmental inspections in a Recommendation. The Council of Ministers has committed to implement this Recommendation in full in all Member States. In fulfilment of these requirements, the EA's inspection regime includes the following activities:

- site visits (planned and reactive, pre-arranged and unannounced);
- monitoring environmental quality standards;
- consideration of environmental audit reports and statements;
- consideration and verification of any self-monitoring carried out by or on behalf of operators;
- assessing the activities and operations carried out at controlled installations;
- checking premises, including any relevant equipment and the adequacy of environmental management at the site; and
- checking records kept by the operators of controlled installations.

B.22 The frequency and type of inspection activity is primarily based on consideration of environmental risk and operator performance, as discussed below, though full risk-based activity is constrained by the need to meet legislative or statutory requirements. Where an operator has a suitably robust management system, the EA are increasingly encouraging operators to self-monitor and self-report. This already happens in Integrated Pollution Control (IPC), Pollution Prevention and Control (PPC) and Radioactive Substances regimes.

B.23 As well as having some general responsibilities for environmental oversight, the EA issues precisely drafted permits and licences to business. There are 267,000 environmental permits (including 37,000 water abstraction licences), 7,000 consents for land drainage, and 8,000 consents for fish movements. In order to ensure that those licences are being complied

with, a fairly intensive inspection regime has historically been judged to be necessary. In 2002-03 EA staff carried out over 200,000 inspections and 100 in-depth audits. These included:

- 194,000 site visits to assess compliance with environmental permits and abstraction licences;
- 5,500 pollution prevention visits; and
- 2,000 farm visits in Nitrate Vulnerable Zones.

Risk B.24 The EA uses tools, such as its Operator Performance and Risk Appraisal (OPRA) screening methodology, to profile businesses based on risk. The OPRA methodology takes into account the potential hazard (location, emissions and operational complexity) and an operator's management performance, to provide an environmental risk profile. The EA is developing OPRA further so that in the future all its regulatory regimes will use OPRA as a common framework.

B.25 The EA have also developed a technique to rank the riskiness of the main business sectors where Small and Medium Sized enterprises (SMEs) are significant players. This tool (SeLECT) uses existing performance data, and has been used to identify which business sectors should be the focus of the EA's work with SMEs to maximise environmental benefit.

B.26 The EA also carries out research and development to support the development of modern and risk based approaches to regulation. One current project considers "self-support and advice by non-nuclear users of radioactive substances". This aims to identify potential ways of getting low-risk regulated businesses to increase their self regulation, so that the Agency can free up resources to be directed towards higher-risk premises. The EA's risk-based approach to modernising its regulatory activities is set out in more detail in its discussion document *Delivering for the environment: A 21st Century approach to regulation*.¹

Giving advice B.27 For businesses that are issued with EA permits or licences, the Agency provides advice and support through:

- regular liaison meetings with key trade bodies;
- formal consultations on regulatory procedures;
- joint discussions and consultations on the technical standards that will be applied by inspectors;
- sector- and regime-specific regulatory and best practice guidance;
- sector-based workshops, training and conference events;
- sector-based CDs containing all the key documents required by applicants to make a successful permit application; and
- pre-application discussions to ensure businesses are aware of requirements.

B.28 In addition, these and other businesses can draw on different sources:

- NetRegs – internet based plain language guidance for businesses on environmental legislation and how to comply with it, currently covering over 100 business sectors;

¹ *Delivering for the environment: a 21st century approach to regulation*, Environment Agency, February 2005.

- targeted campaigns and programmes;
- sectoral and general best practice guidance;
- joint Voluntary Codes of Practice; and
- joint voluntary operating agreements with major multi-site operating companies.

Charging B.29 The EA has a duty imposed by its Financial Memorandum to balance charges with costs. Of a total budget of £870 million in 2004/05, £248.4 million is derived from charging schemes to business entities as follows:

- IPC/IPPC applications and subsistence – £30.1 million.
- Authorisations and monitoring under the Radioactive Substances Regulations – £6.8 million.
- Waste licensing/management activities – £36.7 million.
- Water Quality discharge consents – £62.3 million.
- Water Resources abstraction charges – £112.5 million.

B.30 The EA have to adhere to the HM Treasury Fees and Charges Guide, and Section 41 of the Environment Act sets out the potential range, frequency and scope of their charging. Most charging schemes achieve cost recovery and are based on scales of fixed charges or a charging formula.

B.31 The Agency's current charging strategy is supported by a recent Agency/Defra review, which includes the following principles:

- charges should reflect the modern risk-based approach to regulation;
- they should provide for signals about operator performance and, as far as possible within the constraints of cost recovery and cost reflectivity, rewards and incentives for good performance;
- charges to licence holders should, on average, fairly reflect the costs of regulating them;
- charging schemes should continue to recover the cost of the regulatory regime as a whole and the charging base should be protected in order to fund the associated and agreed level of regulation; and
- the Agency should vigorously pursue continuous improvement in its efficiency and proportionately reflect the benefits in charges.

B.32 Time and materials charges are used in a minority of cases, for example, for Control of Major Accident Hazards (COMAH) and Radioactive Substances Regulation (RSR) at nuclear sites. The most modern charging scheme covers Pollution Prevention and Control (PPC) regulation. In order to ensure cost recovery and cost reflectivity, it uses:

- formula-based charges for applications for new permits, subsistence of permits, and substantial and standard variations to permits. A score derived from the OPRA risk screening system is multiplied by a financial factor known as the charge multiplier to arrive at the charge; and

- fixed charges for transfers and surrenders of permits which are subject to OPRA-based charges for other activities; standard permits for intensive livestock installations, ‘local authority’ activities, and low impact installations. The level of regulatory effort in these cases is common to the activity and does not vary with the features of the installation.

Penalty regimes B.33 Penalty regimes are set out in legislation, and vary from regulation to regulation. Average fines across all offences for 2003-04 in magistrates’ courts were £3,861 per prosecution. There are no minimum fines and no guideline penalties for environmental offences.

B.34 Once a year the EA publishes a booklet entitled *Spotlight on business – Environmental performance*.² The report highlights both good and bad performers and has a short commentary on their classification. Records of fines, company OPRA scores, trends in chemicals and wastes released, and information from individual inspectors are all used. The latter is important as companies may be making significant investments in new plant or abatement that will not show results for some time. The report also includes a list of all the companies fined more than about £5,000.

Health and Safety Commission/Executive

B.35 The Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) were established by the Health and Safety at Work etc. Act 1974 (HSWA), and cover the whole of the UK except Northern Ireland. The HSC is responsible for protecting all citizens against risks to health or safety arising out of work activities. It also conducts and sponsors research, promotes training, provides an information and advisory service, and submits proposals for new or revised regulations and approved codes of practice. Enforcement is carried out by the HSE and by local authorities. On 1 April 2004, the HSE had 4,019 staff in post. This section discusses the work of HSC/E, while the work of local authorities is discussed in more detail in Annex C. The HSC’s strategy is set out in *A strategy for workplace health and safety in Great Britain*.³

B.36 Gross expenditure by HSC/E in 2004-05 is projected to be £284 million. Of this £226.2 million is grant-in-aid from the Government, an estimated £47.3 million comes from charges on regulated businesses, £5.1 million from sales of publications, £3.6 million from prosecution costs, and £1.8 million from other sources. In 2003/04, 53 per cent of the HSC/E’s budget was spent on compliance work.

Inspections B.37 Inspection regimes form part of a wide range of interventions used in the HSE. There are two types of inspection regime – permissioning regimes, generally for higher-hazard industries (those with the potential for catastrophe), and the multi-industry inspection regime operated by the Field Operations Directorate (FOD). All are based on risk assessment, taking into account both inherent risk and businesses’ ability to manage it.

B.38 All of the HSE’s four operating Directorates use permissioning regimes. FOD does this in a limited way on issues such as asbestos licensing but the others (the Nuclear Safety Directorate, the Railway Inspectorate and the Hazardous Industries Directorate) have more substantial schemes. These require businesses with defined high-hazard activities to submit a ‘safety case’ or ‘safety report’ setting out how they will manage the risks. The inspection regimes are then based largely around the testing and verification of the safety cases, both

² *Greener business is good business: Spotlight on business – environmental performance in 2003*, Environment Agency, 2004.

³ *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, Health and Safety Commission, February 2004.

proactively on the basis of risk assessments, and reactively following incidents. From 2006, the Railway Inspectorate will merge with the Office of Rail Regulation, but will continue to apply the Health and Safety at Work Act.

B.39 In FOD the balance of time between proactive and reactive work was around 50:50 in 2002-03. Given the large number and diverse nature of the businesses covered by FOD, targeting occurs in four main ways:

- a planned inspection programme, which focuses on those hazards and sectors where improvements are necessary to deliver the Revitalising Health and Safety targets;
- fixed criteria for selection of accidents and ill-health reports to investigate, based on severity of injury or relevance to key Strategic Programmes;
- a risk-based rating scheme for businesses, which sets the priorities for proactive inspection; and
- special programmes (blitzes) that target particular industries or types of company, based on incident rates or local intelligence.

B.40 The HSE's approach to regulation is subject to occasional audit by the Senior Labour Inspectors' Committee (SLIC) on behalf of the European Commission. SLIC is also a forum for discussing issues such as investigation and enforcement protocols. There are some regulatory expectations deriving from international conventions on the nuclear industry.

Risk B.41 Inspection programmes in all parts of the HSE are prioritised by risk although there are legislation-driven timetables for assessment of safety cases and reports in the permissioning regimes.

B.42 FOD covers by far the largest number of businesses. Its risk profiling uses risk ratings, incident history and local information on duty holders known to the HSE. Premises new to HSE are subject to a risk appraisal through the 'contact process' involving telephone enquiries and Health and Safety Awareness Officer visits, as well as visits by inspectors. Permissioning directorates prioritise their inspections based on an assessment of the information submitted in safety cases/reports and on other intelligence of the installation or business concerned. This means that good performers falling under the FOD inspections are, in effect, subject to lighter inspection. Similarly, interventions in high-hazard industries are tailored to areas of lower confidence in management and higher risks.

Giving advice B.43 HSE provides advice to business through a number of different channels:

- Health and Safety Awareness Officers – specially trained staff whose role is to support HSE's regulatory framework, promote health and safety awareness and provide information to employers, employees and others;
- field staff on inspection visits. Under the HSC Enforcement Policy Statement (EPS), and the proportionality principle in particular, inspectors address most breaches they find by giving information and advice;
- written guidance in the form of either priced or free publications and products which are available through HSEbooks.co.uk or can be viewed on HSE's website;
- the HSE website – recently reorganised around specific industries and health and safety topics. The site was popular among those who responded to the review's business consultation;

- an on-line information service, available through HSE Direct allowing people to download priced publications for a fee;
- HSE Infoline – a national telephone public enquiry service;
- drop-in information centres in Bootle, London and Sheffield; and
- visual and audio media, including videos, CD-ROMs and tapes available for sale.

B.44 A recent HSE report outlined the need for more efficient advice.⁴ It identified a need for the HSE to become more interactive, to make its advice more specific, and to include stakeholders more in the decision making process. These improvements will be measured against a baseline. The HSE are currently considering how to measure the impact of their strategy overall, and how to baseline attitudes and impact over time. A September 2004 Consultative Document,⁵ sought views on how the HSE is attempting to influence behaviour through a much wider range of levers and how it will use the various intervention techniques at its disposal.

Charging B.45 The HSC's policy is that the executive should charge for those statutory services of a 'permissioning' nature since there is economic advantage to the business in question in gaining permission. Charges levied include testing, certification, approval, acceptance of notification, licensing and certain exemptions. As with the Environment Agency, the aim is to recover costs but not to generate a surplus. HSC/E does not have the power to set fees in its own right. It proposes charges for inclusion in regulations made by Ministers under section 43(2) of the Health and Safety at Work etc. Act 1974. Fees and charges are reviewed annually; if a new set of regulations introduces any changes, they apply from 1 April each year.

B.46 In all, HSE has 18 charging schemes in place. Of these, 15 schemes have their charges set in the Fees Regulations. The nuclear safety regime is dealt with under different legislation. In three cases – COMAH Regulations, Biocidal Products, and Pesticides – the fee charging provision is set in the regulations themselves. HSE uses both hourly rates and fixed fees in its charging schemes, and in some cases a mixture of the two.

B.47 Eleven of the charging schemes generated income of more than £100,000 in 2003-04. Other schemes have been in place for many years and generate little income. The largest charging scheme operated by HSE is for nuclear site licensing (£21.0 million in 2003-04) where HSE recovers all its costs. In some other schemes the costs of policy and other generic work cannot be clearly attributed to individual businesses, and these are borne centrally. In total HSE recovered about £60 million in 2003-04 (about 21 per cent of gross costs) and is projecting a similar recovery in 2004-05.

Penalty regime B.48 The HSC EPS sets out the principles that enforcing authorities must apply when making decisions on enforcement. Enforcing authorities have a range of tools at their disposal to secure compliance with the law. Applying the proportionality principle in particular, inspectors address most breaches they find by giving information and advice. Improvement and Prohibition Notices offer an effective statutory means of securing necessary improvements in the face of more serious risks. There are rights of appeal to the Employment Tribunal against issue of notices. Prosecution is reserved for the most serious breaches. In 2002-03, 933 prosecution cases followed HSE investigations with 86 per cent resulting in a conviction.

⁴ *Statement on providing accessible advice and support*, Health and Safety Executive, September 2004.

⁵ *Regulation and recognition*, Health and Safety Commission, September 2004.

B.49 The maximum fines that the magistrates may impose are set out in section 33 of HSWA but tend to be in line with those of the Environment Agency (fines not more than £20,000 for breach of the general duties under HSWA and not more than £5,000 for breaches of regulations). In 2003-04 the average fine for a breach of health and safety law was £4,036. Cases tried in the Crown Court may be punished by an unlimited fine. Imprisonment is available for certain offences (e.g. failure to comply with a Prohibition Notice).

B.50 In any year HSE prosecutes only about 30 individuals (as opposed to companies) for health and safety offences. It is rare for the courts to imprison: only five people have ever been jailed, all between January 1996 and October 1999. For a health and safety offence the maximum fine ever levied was £2 million against Thames Trains following the Ladbroke Grove train crash. The average fine for convictions of individuals following HSE investigations (all courts) in 2002-03 (provisional) was £8,828 per case (i.e. per defendant).

B.51 The Government plans to extend the exceptional statutory maximum £20,000 lower court fine to most other health and safety offences, including breach of regulations (currently £5,000 lower court maximum), but this requires primary legislation. The planned legislation would also make imprisonment available for most health and safety offences.

Other incentives **B.52** The European Health and Safety Week awards publicise good practice. HSE also names, on its website, those who have been convicted of health and safety offences, and those who have received Improvement and Prohibition Notices. This is in line with the HSC strategy of naming offenders in order to inform everyone with an interest in an organisation's health and safety performance. The Health and Safety/Local Authority Liaison Committee (HELA) also produces an annual list of health and safety offenders convicted following local authority prosecutions. It is published on the HSE website.

Rural Payments Agency

B.53 The Rural Payments Agency (RPA) was established in October 2001 as an Executive Agency of Defra. RPA is responsible for the Common Agricultural Policy (CAP) payment functions formerly delivered by the Defra Paying Agency and the Intervention Board. Its total running costs from the Treasury for 2004-05 are approximately £140 million of which about £20 million is for the British Cattle Movement Service (BCMS). RPA have a further budget this year of £55 million for their Change Programme (which includes an e-business system that will schedule and allocate inspections at the optimum time). A budget of nearly £2 billion a year is allocated to the Agency for payment of subsidies (CAP and other), the majority of which is reimbursed by the EU.

B.54 RPA's responsibility under the CAP covers all of England for farm-based schemes under the Integrated Administration Control System (IACS) and the English Rural Development Programme. It is also responsible for 'trader'-based schemes (non-land based schemes) and export refunds across the UK. The BCMS and RPA's Technical Inspectorates (of livestock and meat, dairy and crops) also cover all of the UK. On 1 June 2004, the RPA as a whole had 3,545 full time equivalent staff. This included 447 working on inspection and enforcement.

Inspections **B.55** RPA currently inspect in relation to over 60 different schemes funded by the EU. The percentage of inspection visits involved, and the timing of these inspections, varies from scheme to scheme. Their timetable is almost entirely driven by statutory requirement and/or European regulatory requirements and subsequent Management or Service Level Agreements. Defra's work on the 'Whole Farm Approach', the Haskins Review and CAP Reform are investigating possibilities for joint inspections.

Risk B.56 In the farm schemes, the EC regulations prescribe an annual regime of inspections of land (area and use) and livestock based on a selection model which combines a random and risk element. The random element is required to make an impartial examination of the effectiveness of the overall inspection regime, while the risk-based element is intended to identify cases of irregularity as a priority.

B.57 The majority of trader-based schemes do not, as a rule, run inspection regimes based on a risk selection. Instead, inspection checks are run on all traders in a scheme with a reconciliation of claims against records of the previous inspection visit. A risk-based inspection regime is applied to export refunds, where HM Customs & Excise undertake identification checks of eligible goods leaving the UK, on behalf of RPA. Milk Quota (direct seller) inspections are also selected by risk profile.

B.58 Where inspections are selected by risk, businesses which have undergone satisfactory inspections are less likely to be selected in subsequent years. Moreover, in the case of some of the 'big value' bovine and land schemes, inspectors are instructed to increase or decrease the number and type of checks carried out in the course of an inspection depending on the number and type of anomalies found in the initial stages. A sampling approach is used to make these determinations.

Giving advice B.59 The RPA issues scheme booklets to all participants. These explain the rules of schemes in full and the administrative conditions that participants must meet. The RPA does not provide individual advice on how a participant should organise its business in order to claim under CAP schemes, but it does answer queries from participants on its scheme literature, how and when to complete scheme forms, and where to obtain further information or guidance. RPA Inspectors provide producers with copies of approved-format Herd and Flock Registers and application forms for changing land-parcel identification. Subsequent decisions on courses of action are the responsibility of the scheme participant.

Charging B.60 The only current income from charging derives from a small amount of commercial work carried out on behalf of the London International Financial Futures Exchange (LIFFE), and the Grain and Feed Trade Association.

Penalties B.61 As CAP scheme rules are generally stringent, participants may face a reduction in their aid payment for any ineligible elements of land area or livestock numbers found at inspection. In addition, there may be a fine or prosecution in cases of fraud.

Food Standards Agency

B.62 The Food Standards Agency (FSA) has its origins in the James Report,⁶ which was commissioned by the Prime Minister when Leader of the Opposition. The report made recommendations on the structure and function of a Food Safety and Standards Agency, and was followed by a White Paper confirming the Government's commitment to establishing an "independent Food Standards Agency...powerful, open and dedicated to the interests of consumers."⁷ The FSA, a non-Ministerial Department, was established by the Food Standards Act 1999.

B.63 The FSA's only executive agency is the Meat Hygiene Service (MHS). The MHS's main functions are to ensure maintenance of the highest standards required by the law for the hygienic production of meat and for the welfare of animals at slaughter, and to provide a meat inspection service to all licensed meat plants, which include abattoirs, slaughterhouses and meat cutting plants. The MHS operates throughout Great Britain; the Department of

⁶ *Food standards agency: An interim proposal*, Professor Philip James, April 1997.

⁷ *The Food Standards Agency: A force for change*, Minister of Agriculture, Fisheries and Food, January 1998 (Cm 3830).

Agriculture and Rural Development provides a similar service in Northern Ireland. EU law largely provides the legal base for the work of the MHS with specific domestic requirements in relation to certain BSE controls.

B.64 The Agency is a UK-wide body although food safety is a devolved matter. The Agency is accountable to the Westminster Parliament through the Secretary of State for Health, and to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland administration through their Health Ministers or equivalents. It has offices in Scotland, Wales and Northern Ireland that work closely with the devolved authorities. In Northern Ireland, the Agency also works with the north-south Food Safety Promotion Board and the Food Safety Authority of Ireland on food issues that have an all-Ireland dimension, such as food-borne illness. Excluding those working with the devolved administrators, the Food Standards Agency currently has 610 employees. There are approximately 1,500 environmental health officers (EHOs) and 500 trading standards officers (TSOs) working on food law enforcement (full time equivalents), and 430 staff working for the Meat Hygiene Service.

Inspections B.65 The FSA carries out no inspections itself. Instead, the regulation for which it is responsible is delivered by the MHS and local authorities. Their performance is monitored and audited by the FSA. Local authorities are required by the EU to draw up programmes for inspections of food premises and ensure that inspections are carried out regularly. Codes of Practice made under the Food Safety Act 1990 provide guidance to food authorities on the frequency and nature of inspections, based on risk, to be carried out to assess the food hygiene and food standards controls of food premises.

B.66 Each year the EU Food and Veterinary Office (FVO) develops an inspection programme, identifying priority areas and countries where inspections will take place. The findings of each inspection are published in a report, together with conclusions and recommendations. The national authorities, which could be local authorities or Government Departments, have to put in place an action plan to remedy any shortcomings the FVO may find.

Risk B.67 Local food authorities must carry out a risk assessment of food premises. Trading Standards Officers carry out food standards inspections. Environmental Health Officers carry out food hygiene inspections.

B.68 The Code of Practice gives guidance to food authorities on the frequency and nature of inspections carried out to assess the hygiene of premises and the public health protection aspects of food law. Each food authority must produce a scheme to determine the minimum frequency of inspection based on the evaluation of potential risk. For premises approved under product specific hygiene regulations inspection frequencies are determined centrally. Other food premises must be inspected for hygiene purposes at intervals between six months and two years, based on risk ratings. Local authorities have the flexibility, however, to develop alternative enforcement strategies for lower-risk premises, which may include no physical inspection.

Box B.1 Best practice: from inspection to audit

New EU hygiene regulations will apply from 1 January 2006. These introduce a requirement for food businesses, other than those in primary production and closely associated activities, to operate risk management procedures based on Hazard Analysis Critical Control Points (HACCP) principles. Some businesses operate such procedures already. For the others, application of the new regulations should result in a change of focus for hygiene inspections, with the new emphasis being on auditing the procedures rather than checking that individual prescriptive provisions are complied with. Businesses operating effective HACCP-based procedures should gain the greater confidence of inspectors.

Giving advice B.69 The FSA provides a large amount of information and advice to business, and has a policy of engaging stakeholders so they will be involved in producing guidance. Types of support to business are:

- guidance when regulations are introduced;
- assisting industry to produce Codes of Practice;
- workshops on specific topics;
- working with training bodies to ensure appropriate training is available; and
- coaching for individual business sectors.

Charging B.70 Around £3 million is recovered by the FSA through charges. Of this, £2.3 million is for radiological work assessing the potential impact of proposed discharges on the safety of the food chain and for a monitoring programme. Milk and dairies sampling work of untreated green-top milk in farmhouses generates around £50,000 for tests carried out by contractors.

Penalty regime B.71 The main criminal regime is set out in the Food Safety Act 1990. As with the EA and HSE, the maximum fines in the magistrates' court for offences such as rendering food injurious to health, selling food not meeting food safety requirements, and selling food not of the nature, substance or quality demanded is £20,000 per offence. Such offences also carry a possible penalty of up to six months' imprisonment. For food hygiene offences the maximum fine is £5,000 per count. The maximum fines are unlimited for offences heard in the Crown Court. Imprisonment (of up to two years) is possible in theory, but is not commonly used. Prosecutions of food businesses do not arise very often, so magistrates may not be familiar with food issues. There are approximately 650-700 cases a year emanating from local authorities. The FSA has used the magistrates' publications to inform magistrates of the implications of food businesses failing to adhere to current legislation.

Other incentives B.72 The FSA publishes information about products and brands. This information is obtained from surveys monitoring food safety and standards. A number of local authorities publicise good performance through, for example, hygiene award schemes. The operation of award schemes in Scotland, Wales and Northern Ireland was being reviewed last year with a view to developing a national award scheme for England. Some local authorities also publicise businesses that have been successfully prosecuted.

Companies House

B.73 All limited companies in the UK are registered at Companies House, an Executive Agency of the Department of Trade and Industry. There are more than 1.8 million limited companies registered in Great Britain, and more than 300,000 new companies are incorporated each year. In 2003-04 Companies House had an income of £52.9 million. £37.6 million came from regulated fees with the remainder from database searches and rental income. As a trading fund, which generates sufficient income to cover all costs, the Government does not provide any funding.

B.74 There are 1,281 employees, 782 of whom are involved in examining documents and ensuring compliance with companies legislation. All 1.8 million companies on the register have to file accounts and annual returns with the Registrar each year. Companies House supplies the latter as a pre-printed document populated with the currently held data. The document is available electronically and the companies need only to confirm the data or enter amendments.

B.75 Companies House does not carry out inspection or give advice aside from guidance on the legal responsibilities of company directors. It does this through its website, a series of guidance note booklets, and seminars. Companies House charges for all its services on a cost recovery basis. Each service is treated independently and there is no cross-subsidy.

B.76 Civil penalties are collected by the Registrar from companies that file their accounts late. These are determined by statute and known as Late Filing Penalties. They vary with type of company and lateness of filing.

Civil Aviation Authority

B.77 The Civil Aviation Authority (CAA) is the UK's specialist aviation regulator with responsibility for air safety, economic regulation, airspace regulation, consumer protection, and environmental research and consultancy. It was established by Parliament in 1972 as a public corporation. Three parts of the organisation fall under the scope of the review: the Safety Regulation Group (SRG), the Consumer Protection Group (CPG), and the Aviation Regulation Enforcement (ARE) Department. The combined budget of these groups is just under £75 million. A total of 719 people work for the three groups, with 493 working in inspection or enforcement.

Inspection B.78 UK aviation organisations are subject to audits and inspections from SRG personnel, but these form only part of how the CAA ensures compliance. Safety is regarded as a co-operative effort between the operator and regulator. The primary responsibility for managing risk rests with the management of the organisations involved. Of the 3,490 businesses within the remit of the CAA SRG, roughly 2,660 are inspected annually. CPG examines compliance with licensing criteria including finances, relevant sales documentation and disclosure for every licence holder at least annually. ARE does not have an inspection regime. SRG cooperates with HSE in areas of overlap, while CPG liaise with Trading Standards and the Office of Fair Trading.

Risk B.79 Some areas of SRG use risk profiling, such as categorising aerodromes as to size/operational activity. CPG sets requirements and applies resources to businesses based on their risk. However, in other areas, rather than applying risk profiling, businesses are required to achieve set standards that control risks. The frequency of inspections may be reduced as auditors become more familiar with businesses and gain confidence in the people and the organisations.

Charging B.80 Under the Civil Aviation Act 1982, the CAA is required to recover its costs from those it regulates and to achieve a return on capital employed. Cost recovery is achieved through a series of statutory schemes of charges which come into force after consultation with the industry and with the Secretary of State for Transport.

Penalty regime B.81 Breaches of aviation safety legislation are criminal offences punishable in the magistrates' court with fines of between £400 and £5,000. Average fines are in the region of £1,000. A small number of serious offences can be tried in the Crown Court with an unlimited fine and/or imprisonment of up to two years. There are no civil penalties. There are approximately 40 prosecution cases each year, the great majority of which result in a conviction and fine. A similar regime is in place for offences that fall under the CPG's responsibilities. Fines tend to be between £1,000 and £3,000.

Defra regulators

B.82 In addition to Defra-sponsored bodies such as the Environment Agency and English Nature, there are twelve bodies that form part of the core Department with inspection and enforcement duties. These are:

- Agricultural Wages Team;
- Drinking Water Inspectorate;
- Egg Marketing Inspectorate;
- Fish Health Inspectorate;
- Global Wildlife Division – Wildlife Inspectorate, and Licensing and Bird Registration;
- Horticultural Marketing Inspectorate;
- Plant Health and Seeds Inspectorate;
- Plant Varieties and Seeds Division;
- Rural Development Service – Dairy Hygiene Inspectorate, and National Wildlife Management Team;
- Sea Fisheries Inspectorate; and
- State Veterinary Service (SVS).

B.83 According to returns to the Review questionnaire, Defra's core bodies spend £126.4 million, of which £72.8 million is SVS expenditure. The total staff complement for these bodies is just over 2,000, although three-quarters are at the SVS, which is likely to be reorganised following the Haskins report.

Inspections B.84 A total of £39.4 million is spent on inspection and enforcement activities, with approximately 860 staff carrying out this work. The inspection regimes vary but most bodies inspect the majority of the firms that they cover. Some of this inspection is based on risk profiling. The SVS have an informal system in which local knowledge and the history of a business have a bearing on the inspection regime. The Dairy Hygiene Inspectorate, Plant Health & Seeds Inspectorate, and Horticultural Marketing Inspectorate has the most developed risk assessment systems. The Agricultural Wages Inspectorate has an entirely reactive regime, while other bodies inspect as part of their license or permitting regime.

Giving advice B.85 All the bodies aside from the Global Wildlife Division, which only gives advice during inspections, have reasonably comprehensive advice giving services. These include an Agricultural Wages Helpline operated by core Defra staff; *efishbusiness.com* developed by the Fish Health Inspectorate to streamline advice on fish movement controls, legislation and recent trends in disease matters; and other industry specific websites.

Charging B.86 Only the Plants and Varieties & Seeds Division, Plant Health & Seeds Inspectorate, National Wildlife Management Team and Global Wildlife Division have charging schemes. The former recover all £1.48 million of their costs from charging the businesses they regulate. The others recover approximately £840,000 on a full cost recovery basis. The Egg Marketing Inspectorate, Fish Health Inspectorate, Horticultural Marketing Inspectorate, the National Wildlife Management Team, and SVS charge other parts of Government for work done on their behalf, while the DWI is considering a charging regime for the 26 water companies they regulate.

Penalties B.87 The Plant Health & Seeds Inspectorate and the Dairy Hygiene Inspectorate do not have penalty regimes, while SVS enforcement is carried out by local authorities, and Global Wildlife Division enforcement is carried out by HM Revenue and Customs and the police. Agricultural wages enforcement relies on Employment Tribunals to deal with arrears of pay owed to workers and the criminal courts to deal with other offences. Like many national regulators, most of the other bodies rely on the magistrates' courts to apply penalties. Maximum fines tend to be around £5,000 with averages around half that number. The Sea Fisheries Inspectorate and the Wildlife Inspectorate of the Global Wildlife Division have been considering the use of civil penalties. Penalty notices are available to the Agriculture Wages Inspectorate.

Other incentives B.88 The most common positive incentive is linked to risk-based inspection and lighter subsequent inspection for the most compliant firms. The Drinking Water Inspectorate and Dairy Hygiene Inspectorate, and National Wildlife Management Team explicitly adopt this approach. Plant Health and Seeds Inspectorate are introducing 'reduced checks' for good performers, while the Plant Varieties & Seeds Division is considering moving in a similar direction. The Horticultural Marketing Inspectorate uses an imaginative solution (originally from the European Commission) and is able to give an official 'approved' status to the best performers. On the negative incentive side, the Fish Health Inspectorate, and Egg Marketing Inspectorate publish a list of their prosecutions. In the latter's case this includes unsuccessful prosecutions.

Financial Services Authority

B.89 The Financial Services Authority was established by the Financial Services and Markets Act 2000 (FSMA) and has four statutory objectives: market confidence, public awareness, consumer protection, and reducing financial crime. It regulates a very wide range of financial institutions, including banks, investment banks, building societies, insurance companies, investment firms, friendly societies, mortgage brokers and, from January 2005, general insurance brokers. As a pre-existing company (limited by guarantee) given statutory functions, with a Board appointed by HM Treasury, it is different from the other bodies considered by the Review. Nonetheless, many aspects of the Review's work cover activities undertaken by the Financial Services Authority.

B.90 The Financial Services Authority has a budget for 2004/05 of £240.6 million. All but £10 million of this comes from charging the regulated business entities, with the remainder from information and training services, application fees and other sundry income. Prior to 31 October 2004, when they took on responsibility for mortgage businesses, the Authority regulated around 11,000 firms. This number was set to rise with the new responsibility for mortgage businesses and for general insurance business from 15 January 2005. At 31 March 2004, the Authority had 2,312 staff with 808 in supervision and 197 in enforcement.

Risk-based inspection B.91 The Authority's risk based approach is called Arrow. It has a firm-specific component and a component for industry wide risks. The firm-specific risk approach – the Risk Assessment Framework (RAF)⁸ – determines the level of supervisory intensity by making assessments of both the impact and probability of the firm posing a threat to the FSA's meeting its statutory objectives. To make its assessment of risk, the Authority uses a combination of on-site visits to firms (as well as off-site analysis of information) to review their business activities, operating framework and control environment. This assessment will normally result in a requirement for risk mitigation and this will be proportionate to the issues identified. Firms with systems and controls that are trusted by supervisors will be asked to provide less detailed work.

⁸ *The firm risk assessment framework*, Financial Services Authority, February 2003.

B.92 FSMA's general principles, rather than any specific statute, underpin the supervision timetable. The current and expected risk profile of a firm determines the frequency of a firm's future assessments and subsequently the overall assessment timetable. The frequency of assessments can therefore vary from six months to three years, with the 'typical' period being two years. EU legislation or any change in factors such as the economic environment may alter a firm's risk profile, and therefore the risk assessment timetable.

B.93 In 2003, the Authority carried out 919 formal risk assessments. An individual assessment may include more than one firm, if dealing with larger financial groups containing multiple legal entities.

Giving advice B.94 General information on, for example, the Authority's regulatory approach, authorisation, supervision and enforcement is available on its website.⁹ Their firm contact centre provides assistance to firms who have specific queries about the rules or other issues. They also issue and publish 'Dear CEO letters' which provide generalised feedback on the findings from supervisory activities. There are many training events for industry, such as workshops, distance-learning packages, and conferences. A series of regional *Helping firms to help themselves* roadshows aimed at Independent Financial Advisors (IFA) and other small firms have been held to highlight key areas of non-compliance and related best practice, and to flag important issues that are coming up. To help the mortgage and general insurance sectors prepare for regulation, the FSA ran a substantial programme of events across the UK.

B.95 Recently, the Financial Services Authority embarked on an exercise to make their Handbook more accessible and user-friendly, particularly for smaller firms. Specifically for their forthcoming regulation of the mortgage and general insurance sector, they have set up a separate website to help firms navigate the authorisation process and provide responses to frequently asked questions.¹⁰ Finally, they consult the industry and other stakeholders on changes to their Handbook through discussion papers and consultation papers which are available on the website. For each paper the Financial Services Authority prepares a Newsletter highlighting the main points and making clear which sectors are directly affected by the proposals or the policy decision.

B.96 When firms in breach of regulations approach the Authority seeking advice there are instances where supervisors have decided not to refer the non-compliance to enforcement but to deal with it in some other way. In contrast, there may be cases where the misconduct is so serious that no amount of co-operation or other mitigating conduct can justify a decision not to bring an enforcement action. However, proactive co-operation is likely to result in reduced charges or lighter sanctions.

⁹ <http://www.fsa.gov.uk/what>

¹⁰ <http://www.fsa.gov.uk/mgi>

Charging B.97 General powers to raise fees are set out in the FSMA. These powers enable the Financial Services Authority to raise the Annual Funding Requirement (AFR) needed to carry out its functions. The AFR is recovered through three fee types:

- periodic fees, making up 98 per cent of AFR, are the annual fees regulated firms have to pay;
- application fees, making up 2 per cent of AFR, are one off fees payable on application to become an authorised firm and graded according to the complexity of the application; and
- special project fees to recover part of the costs incurred in undertaking special projects at the request of fee-payers, if the majority of the benefit accrues to these fee-payers (e.g. fees raised from affected firms on the implementation of the Basel capital accord).

B.98 Fundamentally, three things determine the periodic fees that organisations have to pay:

- what kind of activities they undertake;
- the costs incurred by the Authority in regulating these activities; and
- the size of their organisation.

B.99 The key components of the fee-raising arrangements are the AFR, and fee-blocks. Firms' regulated activities dictate the fee blocks to which they contribute. Thus a large group such as HSBC pays fees across a range of fee blocks. The AFR is split among the fee-blocks on the basis of cost allocation principles, which are publicly consulted upon. Within a given fee-block, the fees paid by organisations vary as they are determined by their size (which is taken as a proxy for the potential impact that these organisations could have on the Authority's statutory objectives, were they to fail).

Penalty regime B.100 Unlike most other regulators, the Financial Services Authority has the power under FSMA to impose unlimited financial penalties on authorised persons (i.e. firms and individuals) for breaches of requirements imposed by FSMA or a Financial Services Authority rule. FSMA does not impose minimum levels for such fines. The Financial Services Authority has similar powers in relation to approved persons who are guilty of misconduct, issuers of listed securities, or applicants for listing, who breach the listing rules, and any person who engages in market abuse. There is no fixed penalty or tariff system in relation to penalties for different kinds of contraventions except late submission of reports. In determining penalty levels in individual cases the Financial Services Authority refers to precedent cases as appropriate. The Financial Services Authority has set out in detail in its Enforcement Manual the criteria it applies in deciding on the penalty to be imposed.

B.101 The average fine was £721,000 in 2002/03 and £661,000 in 2003/04. However, in August 2004 a fine of £17 million was imposed in a single enforcement case (on Shell) which will significantly distort the average figure for 2004/05. Fourteen enforcement fines were imposed in 2002/03 and 17 in 2003/04. Criminal proceedings can also be instituted for any offence under FSMA and specified offences in a number of other Acts and Regulations. Of ever more importance, arguably, is the requirement imposed on financial services businesses to compensate consumers for losses where, for example, cases of misselling have been established. These compensation schemes total many billions of pounds in recent years.

B.102 The Decision Making Manual (DEC) in the Financial Services Authority's Handbook explains the statutory procedure for issuing disciplinary notices. The person taking the decision to issue a disciplinary notice is required by FSMA not to be directly involved in establishing the evidence on which the decision is based. DEC provides that the decision to issue such notices rests with the Regulatory Decisions Committee (the RDC). In addition, those who are subject to decisions of the RDC have an automatic right to refer those decisions to the Financial Services and Markets Tribunal. The Tribunal will consider *de novo* whether there has been any misconduct and may consider any evidence relating to the subject matter of the case regardless of whether it was available at the time the Financial Services Authority took its decision. If the Tribunal finds there has been misconduct, it will also consider what level of penalty should be imposed (usually taking into account the penalty imposed by the RDC). On occasion, applicants have chosen to limit the scope of a reference to the level of the penalty.

C.1 Local authorities have historically carried out inspection and regulation in a number of areas. Over the last twenty to thirty years, some of their powers have been centralised, but local authorities remain the sole inspecting authority for trading standards, food standards and food safety.¹ They also have joint responsibility (with the HSE) for health and safety issues in their areas. The powers of districts, counties and unitary authorities are different, and are described in more detail below.

LOCAL AUTHORITY ORGANISATION

England C.2 Outside cities, local government in England has traditionally been a two-tier structure, with counties made up of a number of district areas. In most of Great Britain, this continues to be the case, but since the local government changes that followed the Local Government Act 1992, some areas have broken away from the county/district structure to form unitary authorities. Some former counties, such as Hereford & Worcester and Berkshire, have ceased to exist and ceded all their functions to unitary authorities.

C.3 For the purposes of regulatory services, English local government bodies can be divided into three types:

- **Counties** – like Lancashire, East Sussex and Devon. Counties are made up of a number of district areas. The smallest county is Shropshire, with a population of 285,700, and the largest is Kent, with a population of 1.3 million.
- **Districts** – smaller areas within counties. Examples include Copeland (Cumbria), Mid Sussex, and Richmondshire (North Yorkshire). The smallest district is Purbeck (Dorset), with a population of 44,100. The largest is Northampton, with a population of 194,100.
- **Unitary authorities** – these can be London boroughs, metropolitan boroughs (usually parts of former metropolitan counties), or new-style unitary authorities. Examples include Sefton (a metropolitan borough), Wandsworth (a London borough), Medway and Herefordshire (new-style unitary authorities). Unitary authorities vary considerably in size, from Rutland with only 34,900 people² to the city of Birmingham, with 976,400.

Scotland, Wales & Northern Ireland C.4 In Scotland, Wales and Northern Ireland, all local government is unitary. In Scotland, Orkney is the smallest authority, with a population of 19,200, and Glasgow is the largest, with a population of 577,400. Wales' smallest authority is Merthyr Tydfil (55,000), and its largest is Cardiff (305,300).

C.5 Local government is funded partly through the council tax, which is set and collected locally, and partly through a grant from central Government called the Formula Grant. The Formula Grant includes the Revenue Support Grant, which is based on an assessment of the council's needs, and their share of the National Non-Domestic Rate, which is a tax on local business. An average council's budget is split 25:75 between council tax and Formula Grant.

¹ except in slaughterhouses, which are the responsibility of the Meat Hygiene Service.

² the City of London – also unitary – has a smaller resident population (7,200), but a larger remit on account of the number of businesses based in its area.

C.6 Some areas of funding from Government are ‘ring-fenced’ meaning the council have little or no discretion as to the amount of money spent on the service in question. In other areas, councils can spend money according to their own priorities. Budgets for regulatory services are not ring-fenced.

LOCAL AUTHORITY OFFICERS

C.7 The areas of regulation covered by the review are mostly carried out at local level by Environmental Health Officers (EHOs) and Trading Standards Officers (TSOs). Districts and unitary authorities employ EHOs, who in most areas are responsible for food safety, health and safety, animal welfare, housing standards, pest control, pollution control, noise control, port health, infectious disease control, health improvement, entertainment licensing, hackney carriage and private hire licensing, and other environmental issues. In London and Scotland EHOs also cover food standards. Counties and unitary authorities employ TSOs, who are responsible for food standards and implement the laws relating to weights and measures, the quality and fitness for sale of merchandise, fair trading, and consumer protection.

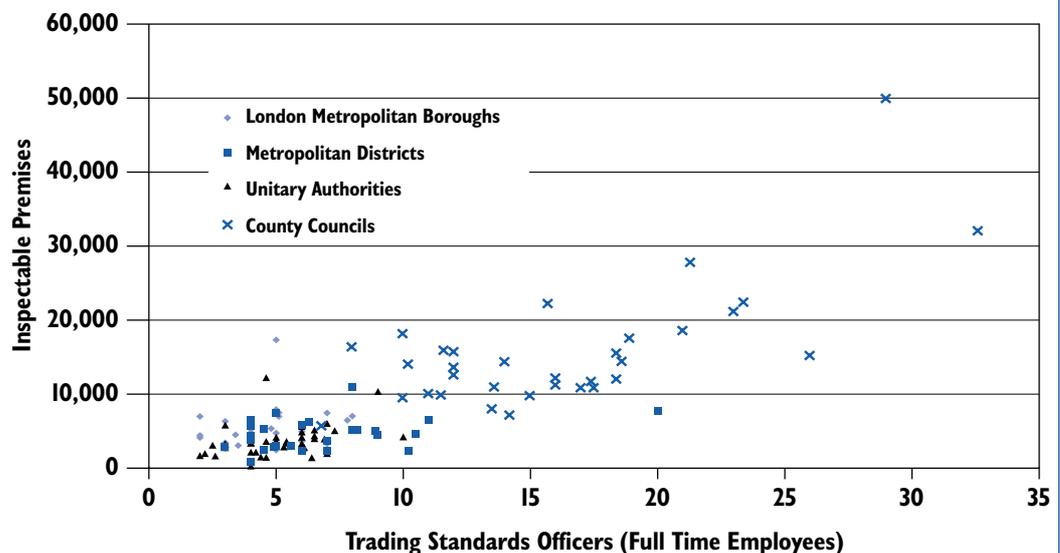
Trading Standards Officers

C.8 According to Chartered Institute of Public Finance and Accountability (CIPFA) statistics, in 2002-03 there were 4,287 local authority staff involved in trading standards work in Great Britain. Of those, 3,451 were directly involved in service provision. Chart C.1 below shows the number of TSOs per inspectable premises for England. The largest local authority by inspectable premises is Kent and the smallest is Wokingham. The budget for all trading standards services in Great Britain was £186 million, of which £121.6 million was staff costs. This has risen in real terms every year for the last five years.³ There were 533 trading standards staff in Scotland, including 409 directly involved in service provision. The budget for trading standards activity in Scotland was £19.5 million, with £13.1 million spent on staff costs.⁴

³ *Trading standards statistics 2003*, Chartered Institute of Public Finance and Accountancy, October 2003.

⁴ Trading Standards statistics are now available for 2003-04, however, we have continued to use 2002-03 data for consistency in comparison to Environmental Health.

Chart C.I: Trading Standards Officers vs. inspectable premises for English local authorities



Source: CIPFA Trading Standards Statistics 2003.

Note: 1) Figures based on local authorities that made a return to CIPFA.

2) Inspectable Premises means high, medium or low risk premises, as opposed to 'no risk' premises.

C.9 TSOs were distributed unevenly between the different unitary authorities and counties in England and Wales. The authority with the highest staff/business ratio was the unitary authority of Wokingham (Berkshire), with 38 inspectable businesses per officer, while the authority with the lowest staffing per business was Lambeth, a London borough, with 2,790 inspectable businesses per officer.⁵

Who they are **C.10** TSOs are professionally qualified local government officials. They are usually supported by Enforcement Officers, officers who do not have the professional trading standards qualification, but who often have some other relevant qualification.

C.11 Trading Standards Officers can qualify through two routes. Most take degrees in consumer protection. The degree course takes three years, followed by eighteen months during which the candidate has to complete the practical and oral elements of the Diploma in Trading Standards. At the end of this period they become a fully qualified TSO holding both the Degree in Consumer Protection and the Diploma in Trading Standards.

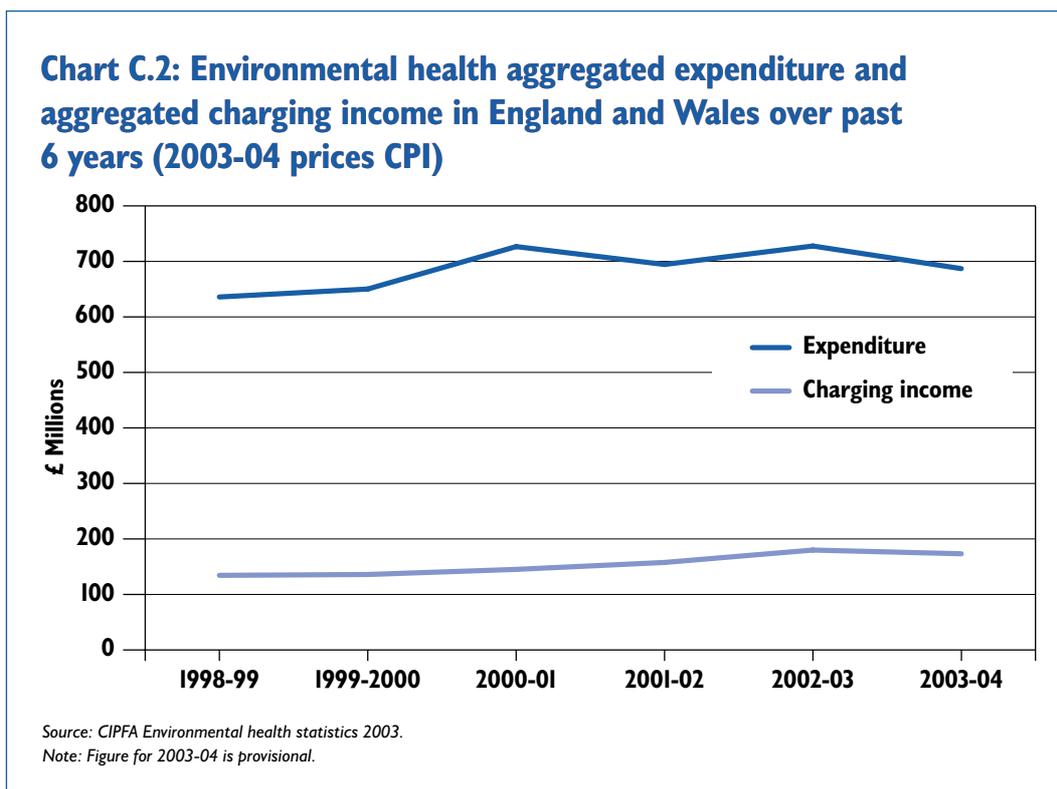
C.12 The second route is to study only for the Diploma in Trading Standards. This requires appointment as a trainee TSO by a local authority, and at least three years' attendance on a block release course, to learn the legal and technical elements of the trading standards profession.

What they do **C.13** Trading standards work is divided between advice provision (to consumers and businesses) and field work. Field work includes both regular programmed inspections, sampling programmes, special projects, and proactive investigation.

⁵ the data here use a risk assessment scheme that, since April 2004, has been replaced by a new framework intended to improve consistency in business classification.

Environmental Health Officers

C.14 According to CIPFA statistics, in 2002-2003 there were 15,301 local authority staff involved in environmental health work in England and Wales. Of those, 12,192 were directly involved in service provision. The budget for all environmental health services in England and Wales was £718.1 million, of which £378.6 million was staff costs. Data for environmental health in Scotland is not currently collected by CIPFA. Chart C.2 below illustrates how aggregated environmental health expenditure and charging income in England and Wales has increased in real terms over the last six years.



C.15 The local authority with the highest staff/population ratio was Westminster, with 0.24 environmental health officers per 1,000 citizens, whereas Hounslow, Brent and Barking and Dagenham all had only 0.03 environmental health officers per 1,000 citizens. Stockton-on-Tees, Christchurch, and Lichfield had the lowest environmental health offices ratio of 0.021 per 1,000 citizens.

Who they are C.16 EHOs are professionally qualified local government officials. Environmental health is a graduate profession and all EHOs have to pass a degree course accredited by the Chartered Institute of Environmental Health, either at undergraduate or postgraduate level. BSc and MSc degrees in environmental health are available at a number of universities around the country. All courses involve both theoretical and practical skills, and many will include a work placement element.

Other local authority officers

C.17 Local authorities employ other staff who carry out some smaller regulatory functions. The responsibilities they cover are listed in the next section.

LOCAL AUTHORITY RESPONSIBILITIES

C.18 The main regulatory functions of local authorities are:

- trading standards (carried out at county level in two-tier authorities);
- food standards (part of trading standards⁶);
- food safety (at district level in two-tier authorities);
- health and safety in non-HSE premises (at district level in two-tier authorities); and
- air and environmental pollution (at district level in two-tier authorities).

C.19 They have interfaces with many central government Departments and agencies:

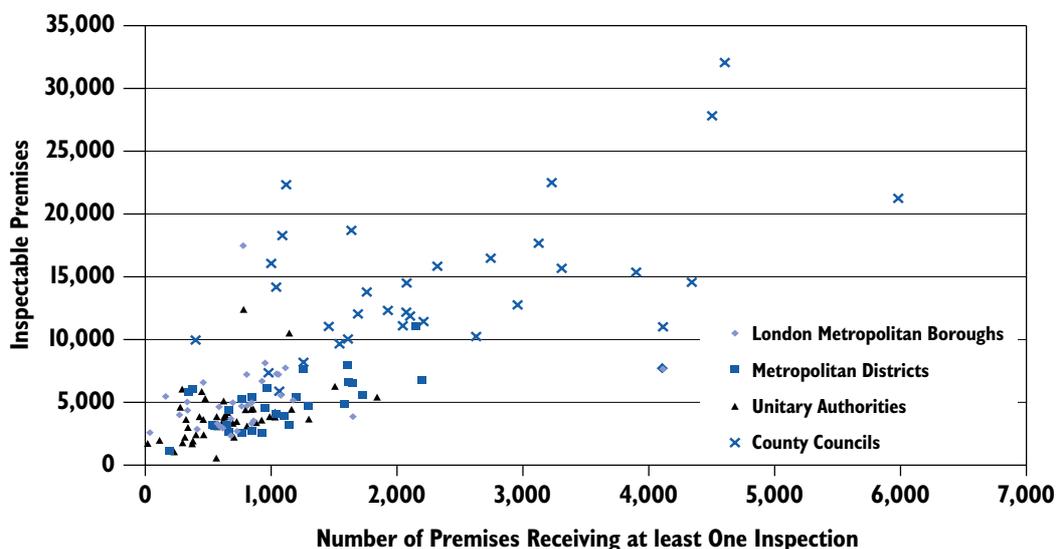
- with the Department of Trade and Industry (DTI), Office of Fair Trading (OFT), Department of Health, Home Office, National Weights and Measures Laboratory, Health and Safety Executive, Department of Constitutional Affairs, and the Office of the Deputy Prime Minister on trading standards;
- Food Standards Agency on food standards and food safety;
- Health and Safety Commission (HSC) and Department for Work and Pensions on health and safety;
- Defra and the Environment Agency on animal welfare, air pollution and the DWI on public and private water supplies;
- Office of the Deputy Prime Minister (ODPM) on building control and private sector housing;
- Cabinet Office on enforcement standards;
- Department for Culture, Media and Sport on alcohol and entertainment licensing;
- Department of Health on infectious diseases and health protection;
- Department for Transport on taxi licensing; and
- Home Office on motor vehicle salvage, sex establishments, event safety and charity collections.

Trading standards and food standards

C.20 TSOs carry out inspections under over 80 different Acts of Parliament, and hundreds of associated regulations. Chart C.3 below shows the number of premises inspected per inspectable premises for English local authorities. All trading standards departments carry out inspections and provide advice to local businesses or consumers, but the quantity varies. Some provide civil law advice on issues such as faulty goods, although it is up to each local authority to decide if they should provide this service.

⁶ Part of environmental health in London and Scotland.

Chart C.3: Total number of premises receiving at least one inspection per annum from Trading Standards Officers vs. inspectable premises



Source: CIPFA Trading Standards Statistics 2003.

Note: 1) Figures based on local authorities that made a return to CIPFA.

2) Inspectable premises means high, medium or low risk premises, as opposed to 'no risk' premises.

Food safety

C.21 Food safety is monitored by EHOs, who are in turn monitored by the Food Standards Agency. Their work is carried out under the Food Safety Act 1990, and the statutory Codes of Practice issued under it. Food safety is distinct from food standards, which are part of trading standards except in London and Scotland.

C.22 Food law is also made under the Animal Health Act 1981, the European Communities Act 1972, the Consumer Protection Act 1987, the Trade Descriptions Act 1968, and directly under EC Regulations.

C.23 The recently revised Code of Practice sets out the policies and practices which food authorities must follow.

Health and Safety

C.24 The Health and Safety at Work etc. Act 1974 (HSWA) gives local authorities joint responsibility, with the Health and Safety Executive (HSE), for health and safety in their area. Premises are divided between the HSE and local authorities, with the HSE generally taking the more dangerous premises, and the local authority the safer ones.

C.25 The HSC requires local authorities to have:

- a clear published statement of enforcement policy and practice;
- a system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the Health and Safety Local Authority Liaison Committee (HELTA);

- a service plan detailing the local authority's priorities and its aims and objectives for the enforcement of health and safety;
- the capacity to investigate workplace accidents and to respond to complaints by employees and others against allegations of health and safety failures;
- arrangements for benchmarking performance with peer local authorities;
- provision of a trained and competent inspectorate; and
- arrangements for liaison and co-operation in respect of the Lead Authority Partnership Scheme.

C.26 If a local authority fails to meet its legal obligations under section 18 of HSWA, the Secretary of State can order an inquiry. If the Secretary of State is satisfied that a local authority has failed to perform any of its enforcement functions, he may make an order declaring the authority to be in default. The order may direct the authority to perform their enforcement functions in a specified manner within a specified period of time.

C.27 If the defaulting authority fails to comply with such an order under section 45 of HSWA, the Secretary of State may enforce the order, or make an order transferring the enforcement functions of the defaulting authority to the HSE. In such a case, the defaulting authority pays HSE's expenses.

Fire

C.28 Fire safety and fire safety inspections are the responsibility of fire authorities, under the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997. Most are arranged on a county basis, but there are metropolitan fire authorities in London, South Yorkshire, West Yorkshire, Merseyside, the West Midlands, Tyne & Wear and Cleveland. The largest authority by far is London. Fire authorities are made up of elected officials from the counties or unitary authorities in their remit.

C.29 In most areas, fire brigades deliver fire safety regulation. The nature and scope of regulation is about to change as a consequence of a regulatory reform order (RRO), currently under discussion. The RRO is designed to simplify and consolidate the existing fire safety legislation. It would move the multiple existing fire safety regimes into a single scheme, based on risk assessments. The statement that the Deputy Prime Minister made at the time, and the draft order, can be found on the ODPM's website.⁷

C.30 Fire safety regulators have a large number of interfaces with other local bodies. Their role in approving plans brings them into contact with local planning and building control officers, while their ongoing inspection and certification role has to be co-ordinated with local environmental health offices and the HSE. The licensing justices (soon to be the licensing departments of local authorities) also consult fire authorities on the requirements for entertainment and on-licensed premises. Trading standards offices work with fire authorities on the fire safety of products.

C.31 This multiple interface makes it particularly important for fire authorities to develop good co-ordination with other local bodies. There has, in recent years, been a move to regional co-ordination of fire services through Regional Management Boards.

⁷ http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=4641&l=3

Animal welfare

C.32 Local authorities are responsible for enforcement of some of the laws relating to animal welfare. Animal welfare is currently governed by a number of different Acts of Parliament, including:

- The Protection of Animals Acts 1911-2000
- The Performing Animals (Regulation) Act 1925
- The Pet Animals Act 1951
- The Cock Fighting Act 1952
- The Animal Boarding Establishments Act 1963
- The Riding Establishments Acts of 1964 and 1970
- The Protection against Cruel Tethering Act 1988
- The Breeding and Sale of Dogs (Welfare) Act 1999

C.33 The Department for Environment, Food and Rural Affairs has recognised that the law in this area is complex, and has published a draft Animal Welfare Bill to consolidate and modernise existing legislation. Local authorities have expressed their support for this new approach. The draft Bill can be found at their website.⁸

C.34 The secondary legislation proposed under a new Act preserves a role for local authorities in the inspection and licensing of premises related to animals. This may involve an extension of local authority activity into pet fairs, livery stables, animal sanctuaries, greyhound tracks and circus animal quarters. The provisional details are available on the website referenced above.

Licensing

C.35 The current licensing regime for alcohol sales, public entertainment, theatres, cinemas, late night cafes, and registered members' clubs is changing as a result of the Licensing Act 2003. Over the next year or so, the changes will be gradually introduced. When the new rules are fully operational, licences will be of unlimited duration rather than fixed for one or three years, as at present.

Other responsibilities

C.36 Local authorities are also responsible for inspections and regulation of:

- private drinking water supplies, such as springs on private land; and
- highways control.

⁸ <http://www.defra.gov.uk/animalh/welfare/bill/index.htm>

Related areas of work outside the scope of the review

C.37 There are some areas of local authority work that are related to the activities of regulatory services, but which are not within the scope of this review. These areas of work have been excluded from the review because they do not relate to regular business inspections, or to ongoing business requirements, but are requirements for permission to do something new, which, once granted, is irrevocable. The main areas outside our remit are:

- building control; and
- planning.

HOW LOCAL AUTHORITIES DO THEIR WORK

C.38 Local authorities are not directly controlled by central Government, although some departments place audit and monitoring requirements on local authority regulatory services. An elected body of councillors agrees policies and priorities for the authorities, and the officials of the authority are responsible to them. The control of general policy and operations rests with the elected members, and for this reason the sketch of local authority practice below is a general picture, which will vary in its details from authority to authority.

The role of central Government

C.39 There are ten different central government departments with responsibility for providing local authorities with direction and scrutinising their performance.

C.40 The Food Standards Agency has the widest powers of any central government department over local authority regulatory services. Under the Food Standards Act 1999 it can, among other things:

- require information from local authorities relating to food law enforcement and inspect any records;
- enter local authority premises, to inspect records and take samples;
- publish information on the performance of enforcement authorities;
- make reports to individual authorities, including guidance on improving performance with the requirement to publish and respond; and
- ask another local authority to take over responsibility for a failing food authority (though this has never happened).

C.41 The HSC has less specific powers – it can advise both HSE and local authorities on inspection activity, can request annual reports from each local authority, and take over failing authorities. In practice, however, the HSC's power to intervene are conditional on approval by the Secretary of State. The process can also be drawn out and so the HSC have, in general, taken a less activist stance than the Food Standards Agency. The DTI has weaker powers and only sets policy for trading standards, although it has powers to require information, inspect individual offices, and approve TSO qualifications in respect of weights and measures.

Assessing risk

C.42 HSE, the Food Standards Agency, and Local Authorities Coordinators of Regulatory Services (LACORS) give guidance to local authorities in shaping their risk assessment programmes. The Cabinet Office has issued guidance to local authorities on risk rating.⁹ It says:

“[L]ocal authority enforcers use various approaches to enforcement work depending on the prevailing circumstances, level of risk, political and stakeholder will and other external influences. We expect local authority enforcers to adopt a balance of techniques and approaches in order to ensure the safety and well-being of the public and of the environment and not to rely on any one method. We believe that assisting compliance is every bit as important as detecting non-compliance. The targeting of resources where they are most effective and at areas of highest risk is essential in providing the public with an effective service.”

Food safety C.43 The risk assessment programme for food safety and standards is set out in considerable detail in the Food Safety code of practice,¹⁰ which derives from European legislation. The risk assessment criteria, set out in Annex 5 of the Code of Practice, provide that all food premises should be subject to some sort of surveillance, although a recent revision of the code has allowed alternative enforcement methods to be used with the lowest-risk premises. The Food Standards Agency assesses risk on the basis of scores awarded for:

- the type of food and method of handling (5, 10, 30 or 40 points);
- the method of processing (0 or 20 points);
- the number of consumers who could be at risk (0, 5, 10, or 15);
- whether the consumers are in a vulnerable group (0 or 22 points);
- the level of current compliance on hygiene (0, 5, 10, 15, 20, or 25 points);
- the level of current compliance on structural requirements (0, 5, 10, 15, 20, or 25 points);
- the confidence in management and control systems (0, 5, 10, 20, or 30 points); and
- whether the food is at risk from *Clostridium botulinum* or (for ready-to-eat foods), *E. Coli* O157 or another VTEC (0 or 20 points).

C.44 Businesses in the lowest risk category (31 points or less) need not be inspected (although the code makes clear that they can be if local authorities decide to). However, they have to be subject to ‘alternative enforcement methods’ at least once every three years. The most risky premises (scoring above 92 points) must be inspected at least every six months.

Trading standards C.45 LACORS issue a risk assessment scheme for trading standards. This is based on an individual score for each business within a local authority. This score will direct enforcement actions including inspection, surveys, and test purchases. The scheme comprises a national element that deals with the potential risk according to the business type, and a local element that is particular to the individual business and determined by local authorities.¹¹

⁹ *An introductory guide to performance management in local authority trading standards and environmental health enforcement services*, Cabinet Office, 1999.

¹⁰ *Food Safety Act 1990 Code of Practice*, Food Standards Agency, October 2004. Available at <http://www.food.gov.uk/multimedia/pdfs/codeofpractice.pdf>

¹¹ *Trading standards risk assessment scheme*, LACORS, February 2004.

The Home Authority Principle

C.46 The main way in which authorities join up their work is through the Home Authority Principle. The principle requires that local authorities should pay particular attention to goods and services originating in their area that are distributed or sold in different local authority areas. The operation of the principle depends on communication between all parties involved. The home authority principle only applies to TS and EH offices, although a similar arrangement (the Local Authority Partnership Scheme) is used in relation to health and safety.

C.47 An authority with a company head office or production centre in their area should act as a focus for communication and liaison between the company and other local authorities. An authority performing this role is called the 'home authority'. A home authority should establish contacts with the decision-making base of the company so that company-wide issues and procedures can be discussed and influenced.

C.48 A home authority should be able to provide information or advice on centrally managed company procedures when contacted by other authorities dealing with local outlets of the same company and/or the products/services provided. From the home authority's point of view, this sort of liaison may highlight issues concerning the effectiveness of the business's central procedures, which can then be discussed with the appropriate contacts at the company head office.

C.49 Communication between a home authority and other authorities should therefore encourage a better overall understanding of the company and hence a more uniform and coordinated approach to enforcement and any advice given to that company. For these reasons authorities should wherever possible seek advice from the home authority and keep them informed if they have concerns regarding company wide policies and procedures. In this respect liaison with the home authority is particularly important before taking a decision to pursue formal action.

C.50 Although the principle does not have any strict legal status, the need to follow it is clearly highlighted by LACORS and various Government codes of practice to which authorities should have regard.

Encouraging compliance

Compliance incentives **C.51** Some local authorities use positive incentives to encourage businesses to comply with regulations. A number use award or recognition schemes, where businesses that show they perform well in a certain area can show a sticker or other mark in their window. These schemes exist for food safety and environmental health, but are particularly common in the second-hand car business, with a number of local authorities running motor trade registration schemes to improve consumer confidence in second-hand car sales.

Penalties **C.52** Like the HSE and Environment Agency at national level, environmental health offices can issue enforcement or improvement notices to businesses, requiring them to make some improvement or to refrain from doing something contrary to the regulations. Businesses who break these notices can be prosecuted in a magistrates' court.

C.53 TSOs can prosecute businesses and individuals for breaches of trading standards legislation. In some cases, they can also use 'Stop Now' orders, which order a business to stop an illegal or unfair trading activity.

C.54 In respect of food, EHOs and TSOs have power to prohibit the use of premises, equipment, or particular procedures if they think that health is being put at risk. They can also seize and detain food that is not fit for human consumption.

C.55 The charts below show local authority enforcement activity. Chart C.4 shows the aggregated number of Crown Court cases, magistrates' court cases and injunctions obtained by the different trading standards offices. Charts C.5 and C.6 show the number of improvement and prohibition notices issued on food safety and health and safety respectively, indexed against the number of premises subject to local control.

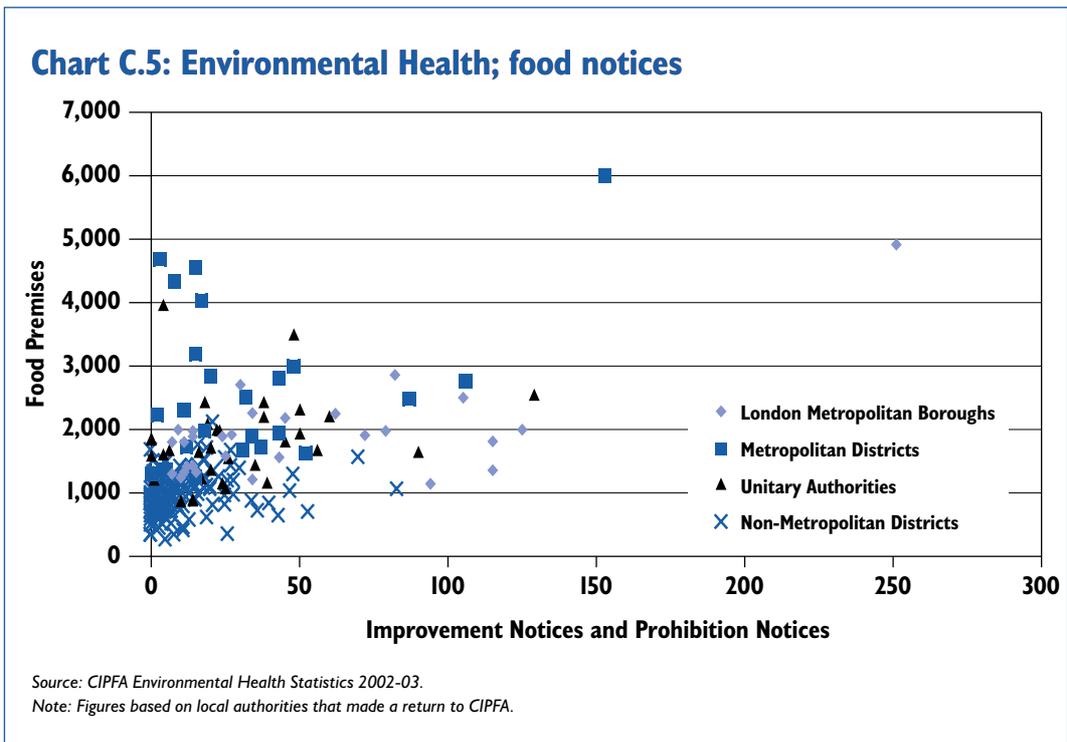
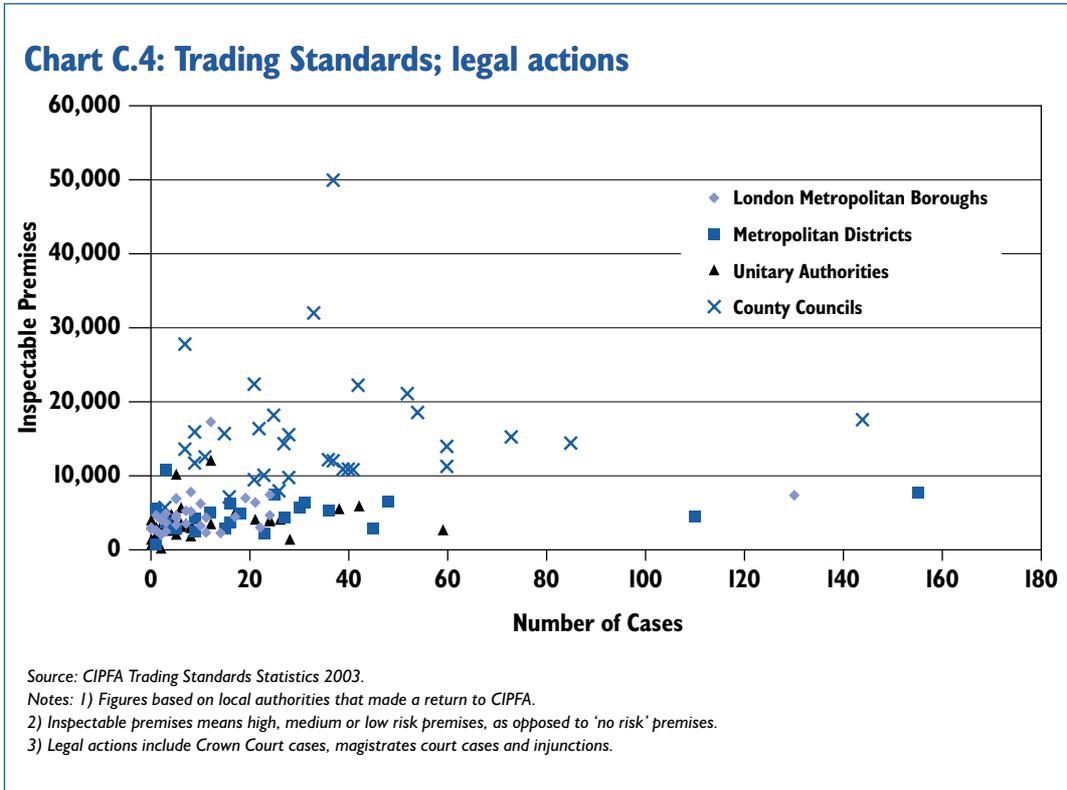
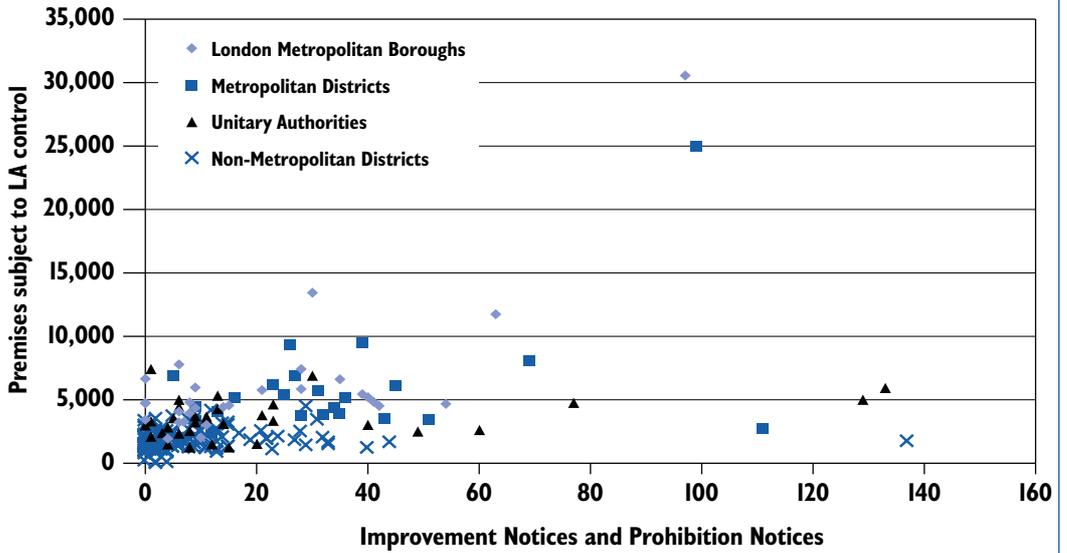


Chart C.6: Environmental Health; health and safety notices



Source: CIPFA Environmental Health Statistics 2002-03.
 Note: 1) Figures based on local authorities that made a return to CIPFA.
 2) Premises subject to LA control means the number of premises subject to local authority control under the Health and Safety at Work etc. Act 1974.

Appeals C.56 Appeals from local authority enforcement decisions are usually made to the Chief Executive of the authority concerned, although there are appeals from some seizure and prohibition powers to the magistrates’ courts. If a business is still unhappy with its treatment, it can appeal to the Local Government Ombudsmen.

C.57 The Local Government Ombudsmen’s jurisdiction covers all local authorities (excluding town and parish councils). They may investigate complaints by members of the public who consider that they have been caused injustice by maladministration in connection with action taken by, or on behalf of, local authorities in the exercise of their administrative functions. However, the Ombudsmen may not investigate the commencement or conduct of civil or criminal proceedings. In 2002-03, 3 per cent of the ombudsmen’s 17,600 cases were related to environmental health. The number related to trading standards was smaller, and is not available.

D

RECOMMENDATIONS

Recommendation 1:

The review recommends that all regulatory activity should be on the basis of a clear, comprehensive risk assessment. The risk assessment should:

- be open to scrutiny;
- be balanced in including past performance and potential future risk;
- use all available good quality data;
- be implemented uniformly and impartially;
- be expressed simply, preferably mathematically;
- be dynamic not static;
- be carried through into funding decisions;
- incorporate deterrent effects; and
- always include a small element of random inspection.

Recommendation 2:

When publishing a risk assessment for a category of inspections, regulators should identify other institutions with which they propose to conduct joint inspections, and the proportion of inspections that will be carried out jointly.

Recommendation 3:

All regulators should provide broad-reach advice to businesses through:

- web sites, which should give businesses an opportunity to personalise the information they see; and
- news letters online and on paper, devised for particular sectors, and including the latest information on regulation, and contact details for the regulator.

Recommendation 4:

All regulators should judge the effectiveness of their advice by monitoring business awareness and understanding of regulations.

Recommendation 5:

Regulators should make on-site advice visits and tailored advice available to businesses.

Recommendation 6:

The Government has made proposals to increase fine maxima in magistrates' courts, and to give magistrates more power to set fines that are an effective deterrent. The review recommends that these proposals should be extended to all regulators.

Recommendation 7:

The review recommends that the Sentencing Guidelines Council should consider new guidance to courts on regulatory offences, including guidance on fine levels and setting fines that take full account of economic benefit gained.

Recommendation 8:

The review recommends that the Better Regulation Executive (see Chapter 4) should undertake a comprehensive review of regulators' penalty regimes, with the aim of making them more consistent. Administrative penalties should be introduced as an extra tool for all regulators, with the right of appeal to magistrates' courts unless appeals mechanisms to tribunals or similar bodies already exist. As part of that review penalty powers should be established in such a way that offenders can be deprived of all the economic benefit of long-term illegal activity.

Recommendation 9:

The review recommends that, two to three years after the introduction of administrative penalties, the Better Regulation Executive should review whether appeals to magistrates' courts are being dealt with effectively, and whether a Regulatory Tribunal Service, using specialist judges, should be established to hear appeals.

Recommendation 10:

As part of its work, the Better Regulation Executive's review of penalties should consider the possible benefits of introducing restitutive justice and/or restorative justice orders.

Recommendation 11:

The review recommends that the Better Regulation Executive should encourage regulators to adopt positive incentive schemes. Local authority schemes should be coordinated through the National Regulatory Forum, with national standards and national branding.

Recommendation 12:

The review recommends that, to make regulators more accountable for the way in which they do their work, the principles and recommendations in this report should apply to all regulators within the scope of the review. They should be a basis for all regulators' assessments and self-assessments, and the Better Regulation Executive should be responsible for monitoring regulators' compliance with them. The BRE should also consider the scope for incorporating the principles into all regulators' legal duties.

Recommendation 13:

The review recommends that the Better Regulation Executive should consider whether the principles and practices set out here should be extended to regulators outside the scope of the review.

Recommendation 14:

The review recommends that the Better Regulation Executive commissions a set of Form Design Guidelines, and that all regulators should adhere to them.

Recommendation 15:

The review recommends that all regulators set up business reference groups on a sectoral basis and involve them at all stages when introducing a new form, including form design. The reference group should vet the design of forms.

Recommendation 16:

The review recommends that paperwork and form filling become a greater part of the Regulatory Impact Assessment process. When proposing a form to the business reference groups, all regulators should be expected to show:

- that the data required is not available from other sources;
- whether data requests can be varied according to a company's risk;
- that the data required can be collected in a way that fits with the requirements of business, and other regulators who collect similar data; and
- a cost-benefit analysis of the data request.

Recommendation 17:

The review recommends that regulators pro-actively investigate ways in which their data requirements could be met by transferring information from businesses' systems. When these are used, they should be:

- designed in partnership with the bodies who will use them;
- enable open standards for data sharing with other regulators and, where appropriate, corporate software; and
- be integrated with other regulatory databases.

Recommendation 18:

When designing new forms, all regulators should include a statement detailing how long they will take to complete and separating out:

- the time taken to comprehend the form;
- the time taken to gather the data; and
- the time taken to fill and return the form.

The forms should also include a field where those filling in the forms can say whether the time estimates were right, too long, or too short. In this way the data set will improve over time. This information should also be absorbed into existing forms as soon as feasible.

Recommendation 19:

All regulators should keep a tally of how many forms they issue, and publish an assessment in their annual reports, setting out the amount of time that businesses spent filling in their forms, and progress in reducing burdens.

Recommendation 20:

The review recommends that the Better Regulation Executive convene a working group of regulators, comprising those responsible for data handling and storage. That working group should:

- undertake or commission an assessment of how long consolidation will take, and broad cost estimates, on the assumption that no currently working database will be closed down solely for the purpose of incorporation;
- present a paper to the Prime Minister's Panel on Regulatory Accountability setting out different possible timescales for consolidation of databases, indicative costs, and benefits in terms of reductions to the administrative burden on business; and
- lead the process of consolidation, to the timetable set by the Prime Minister's Panel on Regulatory Accountability.

The database should be organised in such a way that regulators are only able to see the information that applies to their sphere of activity, plus publicly available information.

Recommendation 21:

The review recommends that – in pursuit of the goal of a single data set – no new database or significant change to IT systems should go ahead unless the Better Regulation Executive has agreed its implementation.

Recommendation 22:

The review recommends that, for avoidance of doubt on data sharing rules, the Better Regulation Executive should seek formal guidance from the Information Commission on the data protection issues surrounding the sharing of regulatory data.

Recommendation 23:

Every Regulatory Impact Assessment (RIA) should include, in addition to information on regulatory costs, an assessment of the practicality of enforcement, setting out:

- which regulator will enforce the regulation;
- the extent to which existing forms, systems, inspection regimes and penalty regimes can be used to secure the desired regulatory outcome;
- the outline of the risk assessment to be used in programming inspections; and
- the sources and nature of advice to be provided both at the introduction of the regulation, and while it is in force.

Recommendation 24:

The Better Regulation Executive should be consulted if the establishment of a new regulator is being contemplated. The BRE should oppose the establishment of new regulators if any existing regulator is able to carry out the task effectively.

Recommendation 25:

The administration of new policies and regulations should be based on the principles set out in Box 2.2 of this report, with no new regulators set up without the approval of the Better Regulation Executive.

Recommendation 26:

As part of the enforcement assessment in Regulatory Impact Assessments, those proposing the collection of data should show that they have assessed all data available to the regulators, that none of the data available fits their needs, and that the benefits of gathering extra information outweigh the costs both to Government and to business. They should also provide an assessment of the extent to which existing forms or collection mechanisms can be used to gather the required data.

Recommendation 27:

The review recommends that, as part of the enforcement assessment in Regulatory Impact Assessments, regulators should publish an assessment of compliance probabilities and strategies, structured according to the Table of Eleven.

Recommendation 28:

The review recommends that, over the next two to four years, 31 of the 63 national regulators should be consolidated into the following seven bodies:

- an expanded Health and Safety Executive;
- an expanded Food Standards Agency;
- an expanded Environment Agency;
- a new consumer and trading standards agency;
- a new rural and countryside inspectorate (the new integrated agency);
- a new animal health inspectorate; and
- a new agricultural inspectorate.

Recommendation 29:

The review recommends that the Companies Investigations Branch of the DTI be merged with the Insolvency Service Agency.

Recommendation 30:

The review recommends that the new consumer and trading standards agency should be established, as described in Chapter 4, with powers over trading standards work (excluding food and animal welfare) analogous to those of the Food Standards Agency over food.

Recommendation 31:

The review recommends that the Better Regulation Executive lead the process of merger across Government, co-ordinating the work of merger teams in either regulators or the relevant Department.

Recommendation 32:

The review recommends that the Better Regulation Executive should establish and chair a National Regulatory Forum comprising local authority, national regulator and policy Department representation.

Recommendation 33:

The review recommends that the National Regulatory Forum should lead a programme of work, through its member organisations, to:

- improve the coordination of local and national regulatory services;
- secure agreement on common services, or central communication strategies, to be provided centrally or regionally; and
- agree risk assessment arrangements, and monitor the extent to which local authority regulators apply them.

Recommendation 34:

The review recommends that the Government establish a Better Regulation Executive at the centre of Government, to hold regulators to account for their performance against the principles of regulatory enforcement, set out in Box 2.2. The BRE's role should be as described in Chapter 4.

Recommendation 35:

The review recommends that the Government consider whether the functions currently exercised by the Regulatory Impact Unit should transfer to the Better Regulation Executive.

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- Civil Aviation Authority
- Coal Authority
- Colchester Borough Council
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- Commission for Social Care Inspection
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- Durham City Council
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- Employment Tribunal Service
- Engineers Employers Association
- Engineering and Machinery Alliance
- Engineering Employers Federation
- English Heritage
- English Nature
- Environment Agency
- Environmental Association
- Environmental Defense, New York
- Environmental Industries Commission
- Equal Opportunities Commission
- Federation of Small Business
- Financial Reporting Council
- Financial Services Authority
- Fish Health Inspectorate, Defra
- Folkestone and Dover Water Services
- Food and Consumer Product Safety Authority
- Food and Drink Federation
- Food Standards Agency
- Football Licensing Authority
- Foreign and Commonwealth Office
- Forestry Commission

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- Highways Agency
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- Housing Corporation
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- Human Fertilisation and Embryology Authority
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- IFA Compliance
- Impact Plus
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- Institute of Chartered Accountants
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- Kilco Group of Companies
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- King's College, London
- Kirklees Metropolitan Council
- Law Society
- Learning and Skills Council
- Legal & General Group PLC
- Legal Services Business
- Legal Services Commission
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- Lloyds Pharmacy
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- Local Government Association
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- London Borough of Brent
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- Ministry of Justice, Netherlands
- Ministry of Economic Affairs, Netherlands
- Ministry of Finance, Netherlands
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- National Institute for Biological Standards and Control
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- Northgate Information Solutions
- Nazeing Glass
- Network Rail
- Non-Ferrous Alliance
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- Onyx UK
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- Patent Office
- Perth and Kinross Council
- Pesticides Safety Directorate

- Petcare Trust
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- Ronseal
- Royal Mail
- Royal Society for the Prevention of Accidents
- Rural Development Service
- Rural Payments Agency
- RWE npower
- Sandwell Metropolitan Borough Council
- Scientific Instrument Manufacturer
- Scotch Whisky Association
- Scottish Environmental Protection Agency
- Scottish Executive
- Scottish Trade Union Congress
- Sea Fisheries Inspectorate, Defra
- Sea Fish Industry Authority
- Security Industry Authority

- Serious Fraud Office
- Severn Trent
- Shanks Waste Solutions
- Sheffield Chamber of Commerce and Industry
- Sherrifs of Kingsbridge
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- SICPA UK Ltd.
- Small Business Council
- Small Business Service
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ACRONYMS AND ABBREVIATIONS

AFR	Annual Funding Requirement
ARE	Aviation Regulation Enforcement
BCC	British Chamber of Commerce
BCE	Before Common Era
BCMS	British Cattle Movement Service
BRTF	Better Regulation Taskforce
BSE	Bovine Spongiform Encephalopathy' known as 'Mad Cow Disease'
CAA	Civil Aviation Authority
CAASRG	Civil Aviation Authority Safety Regulation Group
CAP	Common Agriculture Policy
CCA	Compliance Cost Assessment
COMAH	Control of Major Accident Hazards
CPG	Consumer Protection Group (of the Civil Aviation Authority)
DCA	Department for Constitutional Affairs
DEC	Decision Making Manual (of the Financial Services Authority)
DCMS	Department for Culture Media and Sport
DEFRA	Department for Environment Food and Rural Affairs
DFT	Department for Transport
DH	Department for Health
DTI	Department for Trade and Industry
DTS	Diploma of Trading Standards
DWP	Department for Work and Pensions
EA	Environment Agency
EC	European Commission
EHOs	Environmental Health Officers
EPA	Environmental Protection Agency (US)
EU	European Union
FOD	Field Operations Directorate
FVO	Food and Veterinary Office
FSA	Financial Services Authority
FSA	Food Standards Agency
FSMA	Financial Services and Markets Act
FSB	Federation of Small Businesses
HACCP	Hazard Analysis Critical Control Points
HELA	Health and Safety/Local Authority Liaison Committee

HMT	HM Treasury
HO	Home Office
HSC	Health and Safety Commission
HSE	Health and Safety Executive
HSWA	Health and Safety and Work etc Act 1974
ICAEW	The Institute of Chartered Accountants in England and Wales
IACS	Integrated Administration Control System
IPC	Integrated Pollution Control
LARS	Local Authority Regulatory Services
LAs	Local Authorities
LIFFE	London International Finance and Futures Exchange
NDPBs	Non Departmental Public Bodies
 OCD	Official Control Directive
ODPM	Office of the Deputy Prime Minister
OECD	Organisation for Economic Co-Operation and Development
OFCOM	Office of Communications
 OFGEM	Office of Gas and Electricity Markets
OFSTED	Office for Standards in Education
OFWAT	Office of the Water Regulator
OPRA	Operator Pollution Risk Appraisal
PPC	Pollution Prevention and Control
PRA	Panel for Regulatory Accountability
RAF	Risk Assessment Framework
R&D	Research & Development
RIA	Regulatory Impact Assessment
RIU	Regulatory Impact Unit
RPA	Rural Payments Agency
RSR	Radioactive Substances Regulation
SLIC	Senior Labour Inspectors' Committee
SMEs	Small and Medium Sized Enterprises
SRG	Safety Regulation Group
TSOs	Trading Standards Officers
VAT	Value Added Tax
WFA	Whole Farm Approach

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