Smarter Regulation and the Regulatory Landscape

CIEH Position Statement on Smarter Regulation to Grow the Economy Consultation

5th January 2024

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Any enquiries about this response should be directed to:

Ciaran Donaghy
Policy and Campaigns Manager
Chartered Institute of Environmental Health
Email: c.donaghy@cieh.org

Key points:

- Economic growth and environmental health are not mutually exclusive. Effective regulation should enable business innovation while safeguarding public health and the environment.

- The notion that regulatory measures are a burden to economic growth overlooks the economic value of a healthy population.

- The role of local authorities is to discharge their statutory duties and to ensure compliance with regulatory standards. Inconsistencies in interpreting and applying environmental health legislation may lead to unequal enforcement and compliance challenges. Therefore, rather than deregulation, greater clarity may benefit both businesses and local authorities to ensure compliance with regulation.

- Local authorities play a crucial role in enforcing environmental health regulations, but often face resource limitations.

- There may be real or perceived regulatory 'grey areas' between regulators. Clear delineation of responsibilities between regulators, including local authorities, the Environment Agency, and the Health and Safety Executive, is essential.

- 'Smarter regulation' should not become a mask for reducing necessary environmental health protections.

- While regulation should be smart and efficient, it must not compromise the fundamental standards necessary for safeguarding public and environmental health.

Introduction

The UK Government's "Smarter Regulation to Grow the Economy" policy paper outlines a vision for regulation post-Brexit. It aims to reduce red tape, promote economic growth, and overhaul the regulatory framework to make it more business friendly. The focus is on easing burdens on businesses, fostering innovation, and enhancing competition. The paper proposes reforming existing regulations, including employment laws, to cut costs for businesses and protect workers' rights. It also emphasises using non-regulatory approaches, improving regulator focus on economic growth, and reforming regulatory scrutiny and evaluation processes.

Rather than respond to the UK Government's prescriptive consultation questions on 'Smarter Regulation, the Regulatory Landscape', CIEH have sought to produce a response that addresses our broader concerns regarding the government's 'Smarter Regulation to Grow the Economy' proposals which aims to streamline regulations to foster economic growth. While recognising the importance of economic development, the Chartered Institute of Environmental Health (CIEH) underscores the need to maintain robust environmental health standards. This position statement reflects our assessment and recommendations concerning these regulatory reforms.

Regulatory Balance for Economic Growth and Public Health

The economic impact of ill health in the UK is substantial, emphasising the interplay between health and economic productivity. Research by Oxera estimates the annual cost of lost output due to ill health among the working-age population at approximately £150 billion, nearly 7% of the UK's GDP. This includes government costs including lost tax income, benefits payments, and NHS expenses, totalling around £70 billion, or £1,000 per person. These costs have escalated by about 60% since 2016, underscoring the growing economic burden of ill health. [1]

In the context of air pollution – a critical area regulated by many CIEH members in local authorities – the health impacts and economic costs are particularly striking. Public Health England (now UKHSA) identifies air pollution as the UK's most significant environmental health threat, contributing to major conditions like coronary heart disease, stroke, respiratory diseases, and lung cancer. It exacerbates asthma and is associated with 28,000 to 36,000 deaths annually due to long-term exposure.[2]

The economic burden on the NHS and social care system in England from air pollution is also considerable. Between 2017 and 2025, the estimated cost of air pollutants, notably fine particulate matter ($PM_{2.5}$) and NO^2, stands at around £1.69 billion. This encompasses healthcare costs and productivity losses due to air quality-related health issues. Additionally, the Department for Environment, Food & Rural Affairs estimated that in 2012, poor air quality cost the UK economy £2.7 billion in lost productivity.

Environmental Health Officers (EHOs) are pivotal in enforcing regulations impacting local air quality, such as domestic burning and environmental permitting. Therefore, addressing air pollution is not

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[1] The economic cost of ill health among the working-age population, Oxera, 2023
[2] Public Health England publishes air pollution evidence review - GOV.UK (www.gov.uk)

just a public health imperative but also an economic one, offering potential savings in healthcare and gains in workforce productivity.

CIEH advocates for a balanced approach where regulatory reforms support economic growth without compromising environmental health standards. This approach necessitates:

1. **Highlighting Long-Term Economic Benefits:** Investing in health and environmental protection yields long-term economic advantages, including healthcare savings, increased productivity, and a more efficient workforce.
2. **Emphasising Prevention**: Preventive measures in environmental health are cost-effective and should be prioritised over dealing with consequences.
3. **Integrating Environmental Health into Economic Policies**: Environmental health considerations must be woven into economic policies and planning to ensure sustainable growth that does not undermine public health.
4. **Advocating for Collaborative Efforts:** A multi-sectoral approach, involving government, industry, and community stakeholders, is essential for creating policies that balance economic growth with health needs.
5. **Dispensing with 'Health vs Wealth' dichotomy**: Explicitly urging the government to transcend the health vs wealth dichotomy and adopt a holistic view recognising the interdependence of economic growth and environmental health.
6. **Emphasising Public Awareness and Education:** Highlighting the need for public awareness about the link between environmental health and economic well-being to drive demand for healthier environments and supportive policies.

Furthermore, in the context of food safety, a critical component of environmental health, the role of Environmental Health Officers (EHOs) is paramount, both at our ports and inland. Amidst legal complexities with imported and novelty foods and an increase in international food fraud, it's essential to uphold rigorous standards. The dismantling of core principles like the precautionary approach in food regulation could have grave implications for public health, leading to increased NHS burdens, public health emergencies, and biosecurity incidents. EHOs, often working with constrained resources, are vital in maintaining these standards, ensuring food safety throughout the supply chain. Their diligent efforts in inspection and regulation at ports prevent the entry of unsafe foods, while inland, they continue to enforce compliance, safeguarding the nation's food quality and public health.

In summary, CIEH urge the government to move beyond the "health vs wealth" dichotomy that we feel is being pursued by these proposals. A more nuanced, interconnected approach can lead to sustainable economic growth while ensuring public health and environmental standards are maintained.

Consistency in Legislation Application

CIEH acknowledges the significant impact of inconsistencies in interpreting and applying environmental health legislation across the UK, particularly on public health and business operations.

Smaller or less-resourced local authorities often face challenges such as limited staff and specialised training, contributing to enforcement disparities. This underlines the need for a comprehensive approach that extends beyond funding and resources. CIEH advocates for clear, standardised guidance to reduce ambiguity and ensure consistent application of regulations.

For businesses, consistent enforcement of environmental health regulations is crucial. It provides clearer expectations, a level playing field, and improved compliance. Businesses benefit from predictability and fairness in regulatory practices, which can foster a more conducive environment for sustainable growth and innovation. Poor or inconsistent enforcement of minimum regulatory standards may actively favour businesses that do not comply to the detriment of compliant and otherwise sustainable businesses. Having greater clarity and consistency in respect of regulation can foster more collaborative relationships between local authority officers and local businesses to ensure effective compliance without the need for formal enforcement action.

CIEH also recognises that the role of technology and innovation is also pivotal in achieving consistent application of regulations. CIEH suggests leveraging digital platforms for information sharing, online training modules, and data analytics for monitoring and evaluation. These tools can enhance the efficiency and effectiveness of regulation, enabling better compliance tracking and more informed decision-making. This should be accompanied with clear guidance for both local authorities and businesses to ensure that there is clear guidance on how technology can be used to support compliance efforts.

CIEH multifaceted strategy that includes training, support, technological innovation, and collaborative efforts to uphold environmental health standards effectively and consistently across the UK.

CIEH is clear that reducing the amount of regulation is not the solution. Instead, we propose a multifaceted strategy that includes training, support, technological innovation, and collaborative efforts to uphold environmental health standards effectively and consistently across the UK. Furthermore, it is paramount that local environmental health teams are adequately funded and resourced. Such an approach not only ensures public health and safety but also supports businesses in their compliance efforts, contributing to safer, cleaner, and healthier environments for all.

Importance of local intelligence for adequate enforcement

The significance of local authority intelligence gathering cannot be understated. This approach is vital for effective regulatory enforcement. The role of Environmental Health Officers (EHOs) is crucial in this process. EHOs, with their on-the-ground presence and expertise, are instrumental in collecting local intelligence. This local insight enables a more tailored and responsive approach to environmental health challenges, ensuring regulations are applied effectively and sensitively to the unique needs of each community. CIEH promotes the strengthening of this local intelligence framework, emphasising the need for adequately resourcing local authority environmental health teams to ensure they have sufficiently resourced teams to conduct this essential work.

Without on-the-ground EHOs with local intelligence, it may be difficult to identify specific environmental health risks that are unique to the local community. This lack of specificity can result in a one-size-fits-all approach that may not address the actual issues effectively, leading either to

overburdensome regulation, or inadequate regulation. Additionally, without local insights, there is a risk of misallocating resources, or focusing on less pressing issues. Consequently, this may result in reduced compliance and risks to public health protections.

Local Authority Resource Constraints

As stated, local authorities play a crucial role in enforcing environmental health regulations, but often face resource limitations.

The impact of funding cuts on local authorities in the UK, especially on environmental health and regulatory services, has been significant. Since the introduction of austerity measures in 2010, local authorities have faced almost a 50% reduction in funding. This drastic decrease in resources has directly affected the delivery of vital public services, including those related to food safety and infectious disease control, typically managed by environmental health officers (EHOs).[3]

A report by the National Audit Office revealed that between 2012/13 and 2017/18, there was a 19% reduction in spending on food hygiene controls. This reduction in funding led to some local authorities not meeting statutory food hygiene objectives, including decreased environmental sampling due to reduced food hygiene staffing levels, which dropped by an estimated 13% during this period. The decrease in EHO numbers and the substantial reductions in sampling, prosecutions, and other enforcement actions have raised concerns about the effectiveness of local authorities in managing food safety.

Furthermore, a study published in The Lancet Public Health linked annual local government funding data with life expectancy and mortality data, showing that the cuts to local government funding adversely impacted life expectancy in some areas of England. From 2013 to 2017, central funding to local governments decreased by 33% or £168 per person in total. This funding reduction was associated with decreases in life expectancy and was more pronounced in more deprived areas, exacerbating health inequalities.[4]

These findings illustrate how the lack of funding and resources can lead to inefficient enforcement and application of regulations. They underscore the need for adequate funding and support for local authorities, especially for environmental health services, to ensure the consistent and effective application of regulations and to safeguard public health.

CIEH suggest that one solution may be a greater use of self-funded enforcement approaches, that are ringfenced for local authority environmental health departments, providing consistent and predictable funding for enforcement bodies. Most local authority environmental health departments have been subject to years of budget restrictions, and this is unlikely to change substantially in the future. Such self-funded approaches could alleviate the impact of years of budget restrictions. Importantly, sustainable funding will enable strategic workforce planning, ensuring that regulatory bodies are staffed with well-trained, qualified, and experienced teams. This financial model would not only allow for long-term planning, training, and recruitment but also ensure a more stable, structured, and higher standard of service delivery by these crucial enforcement bodies.

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[3] [Understanding the impact of local funding cuts… | NIHR Open Research](#)
[4] [Cuts to local government funding in recent years cost lives, study finds - Articles - Research - University of Liverpool](#)

Scope and Remit of Regulators

CIEH recognises the intricacies in the regulatory landscape of the UK, especially in sectors like environmental health which are primarily managed by local authorities.

In the regulatory landscape of the UK, where central bodies like the Environment Agency and the Health and Safety Executive (HSE) play pivotal roles, alongside local authorities, a strategic approach to delineate responsibilities and enhance coordination is crucial. This approach is not only necessary to avoid overlaps and ensure efficient resource utilisation but also to address the regulatory grey areas that exist between local and national regulators.

Areas for Joint Enforcement Responsibility:

Below is a non-exhaustive list of areas where there are joint enforcement responsibilities between central and local regulators across the fields of environmental health:

1. **Waste Management and Environmental Protection:** The Environment Agency, responsible for environmental protection, and local authorities can collaborate in areas like waste management, particularly in the regulation of waste disposal and recycling facilities. This joint effort could involve sharing information on compliance, waste tracking, and coordinated enforcement actions against illegal waste activities.

2. **Industrial Emissions and Air Quality:** Air quality, a concern at both the local and national levels, can be a key area of joint enforcement. Local authorities and the Environment Agency can work together to monitor and regulate emissions from industrial activities, ensuring compliance with national standards and local air quality management plans.

3. **Water Quality and Pollution Control**: Collaboration between the Environment Agency and local authorities is essential in managing water quality, particularly in urban areas. Joint responsibilities could include monitoring and controlling pollution sources, enforcing regulations around water treatment, and responding to incidents of water pollution.

4. **Health and Safety in Public Spaces and Workplaces:** The HSE and local authorities can collaborate in ensuring health and safety compliance in public spaces and workplaces. This could involve coordinated inspections, joint training initiatives for inspectors, and sharing best practices in risk assessment and mitigation.

5. **Construction and Building Safety:** In the construction sector, joint responsibilities can encompass ensuring building safety standards, particularly in areas related to environmental impact assessments and adherence to health and safety regulations during construction activities.

6. **Chemical and Hazardous Substance Regulation:** The handling and disposal of hazardous substances can be an area of joint responsibility, with both the HSE and local authorities or the Environment Agency working together to enforce regulations, conduct inspections, and respond to incidents involving hazardous materials.

Strategies for Enhanced Coordination:

There are examples of good practice in respect to collaboration between local and central regulation. There exist various working groups that are either local, regional or national in nature that focus on specific issues, such as contaminated land, air quality etc., which include local and national regulators sharing best practice and engaging in information exchange. However, this is not standard practice across the board, nor does it occur in all areas of joint regulatory responsibility within the various disciplines of environmental health.

CIEH recommends that a horizon-scanning exercise be done by all central regulators on areas of shared competence and ensure the requisite engagement with their local authority counterparts is established.

CIEH wish to put forward the following recommendations to ensure better communication and joined-up working between central regulators that engage most with local authority environmental health teams, namely the Environment Agency, Food Standards Agency (FSA) and the HSE:

- **Establishing Clear Communication Channels:** Regular meetings, shared databases, and joint training sessions can help maintain clear lines of communication.
- **Developing Joint Enforcement Protocols:** Creating standardised protocols for areas of overlapping jurisdiction can ensure a unified approach to enforcement.
- **Cross-Training and Shared Resources:** Implementing cross-training programs for staff and pooling resources for joint initiatives can increase efficiency and knowledge sharing.
- **Public Education and Community Engagement:** Collaborating on public education campaigns about environmental and health and safety regulations can enhance community awareness and compliance.

By addressing these areas of joint responsibility and adopting coordinated strategies, the Environment Agency, FSA and HSE, and local authorities can effectively manage regulatory challenges, ensuring safer, cleaner, and healthier environments for all.

However, in housing, the absence of a national regulator presents unique challenges. This leads to a lack of uniform, centralised guidance, thereby creating inconsistencies and inefficiencies across different regions. Each local authority independently interprets and implements legislative changes in housing, often resulting in duplicated efforts and potentially varied enforcement standards The situation underscores the need for national-level guidance or frameworks that can provide a consistent approach across local authorities, streamlining policy implementation, and ensuring uniformity in housing standards.

To address these challenges, CIEH advocates for a dual approach:

1. **Enhanced Coordination in Regulated Sectors:** In areas with established regulatory bodies, there is a need for improved coordination and communication to define and manage overlapping responsibilities effectively.
2. **Development of National Guidelines for Housing:** For sectors like housing, where a central regulatory body is absent, CIEH supports the development of national guidelines. These

guidelines would provide a consistent framework for local authorities, enhancing the uniformity and effectiveness of regulation across different regions.

This approach will not only streamline regulatory efforts but also ensure that housing standards are consistently maintained, reflecting the commitment to safeguarding public health and environmental quality across the UK.

Concerns about Deregulation

CIEH has consistently emphasised the importance of maintaining robust regulatory standards and do so again in response to the 'Smarter Regulation' program proposed by the UK Government. CIEH has expressed concerns that these proposals, under the guise of making regulation more efficient, could lead to deregulation that undermines essential public and environmental health protections.

In a series of press releases and statements, CIEH has highlighted that effective regulation is vital to public health and safety. It ensures minimum standards in various aspects of environmental health, from food safety to air quality, and is key to protecting communities. For example, in a press release dated October 18, 2023, CIEH welcomed the opportunity to contribute to the Department for Business and Trade's call for evidence on smarter regulation, emphasising the need for evidence-based, balanced regulation that supports public health and safety without unnecessarily burdening businesses.

Furthermore, in a statement made on September 15, 2023, CIEH expressed serious concerns about the government's persistent push towards deregulation, cautioning that the 'Smarter Regulation' proposals might be "deregulation via the back door". This stance was reiterated in another statement on June 26, 2023, where CIEH called out the 'Smarter Regulation' proposals as a form of covert deregulation.

CIEH has been actively involved in advocating against wholesale deregulation, as seen in their response to the Retained EU Law (Revocation and Reform) (REUL) Bill. Through collaborative efforts with coalition partners, CIEH has worked to ensure that essential regulations protecting public health are not undermined.

Lastly, in a letter to the new Secretary of State for Environment, Food and Rural Affairs on November 13, 2023, CIEH emphasised the critical role of environmental health practitioners and the importance of strong public health protections as a foundation for a resilient economy and societal well-being.

Overall, CIEH's position is that while regulation should be smart and efficient, it must not compromise the fundamental standards necessary for safeguarding public and environmental health. The idea of 'Smarter Regulation' should foster enhancements and improvements in regulatory practices, not lead to a reduction in necessary protections.

Conclusion

CIEH wish to emphasise the vital role played by environmental health professionals in the regulatory landscape. Their unwavering commitment to ensuring safe living and working environments is

invaluable, not only for maintaining public health but also as a significant contributor to the strength and stability of the economy. As we engage with these regulatory reforms, it is crucial to advocate for a balanced approach that prioritises effective and sensible regulations. These regulations must protect public health and the environment while fostering economic growth and innovation. Emphasising the expertise and dedication of our members is essential in this process, as their contributions are key to achieving a regulatory framework that is both protective and progressive. In moving forward, CIEH is committed to a collaborative and evidence-based approach, working with government and stakeholders to ensure that regulatory changes enhance public health and environmental safeguards, thereby underpinning a thriving and sustainable economy.