



Chartered
Institute of
Environmental
Health

National Audit Office consultation for businesses and civil society organisations: Reducing regulation

Submission of the Chartered Institute of Environmental Health

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Introduction

Consideration of the most effective delivery of local authorities' regulatory functions is timely and welcome. The context changes over time, but predominant now are challenging national and international economic conditions. Businesses and central and local government alike have to respond to huge financial pressures. The impact of reduced government funding is having a significant impact on local authorities, with many facing reductions of 30% or more in their budgets in the last 10 years.

Increasingly fast-paced change intensifies both threats to existing service delivery and opportunities for considering new ways of delivering. Wealth-creators and legislators are equally focused on how to innovate and adapt in order to deliver more effective services at lower cost.

The Chartered Institute of Environmental Health (CIEH) takes the view that public policy, once it has reached a consensus or determined what the public needs protecting against, the degree of protection to be offered and how the costs are to be apportioned, has to respond by facilitating the bold, forward-thinking and collaborative solutions that are already being embraced by the innovators and early adopters.

Of course, environmental health practitioners are much more than regulators and regulators are much more than people who take legal action to stop something or to punish someone. Environmental health practitioners are accomplished problem-solvers, capable of working holistically to arrive at the best solutions and experienced at working in partnerships to achieve common goals.

Regulators provide a public protection service that contributes to both health and environmental protection. They use a range of tools and interventions in order to secure improvements and gain compliance. In so doing, they make judgements all the time about the most appropriate interventions – from education and encouragement through to the use of legal procedures including the service of enforcement notices and other legal proceedings - for its achievement.

In respect of current policy rules concerning reducing regulation and, in particular, the application of the recently announced "One in Three Out" (OITO) rule; it is the view of the CIEH that such blanket rules militate against regulation that is designed to protect and improve public health. We also take the view that such rules will deter Government departments from introducing regulations, even where it can be convincingly shown that the wider social and economic benefits are greater than the costs to business that regulation imposes. An effective deregulatory agenda needs, in our opinion, a more sophisticated approach than blanket application of the OITO rule.

To be fully effective, any single regulatory intervention ought to be part of a broader comprehensive approach, with all components necessary for success. Regulatory policies may impose burdens on business initially but, designed properly, the burden of regulation can be minimised and regulation limited to those that are necessary and proportionate to the policy objectives they are designed to achieve. A good example is smoke free legislation, which the Better Regulation Executive itself¹ has cited as a case study of effective regulation, and which

¹ Better Regulation Executive. Better Regulation, Better Benefits: Getting the Balance Right. DBIS May 2009

was considered by over 80% of business decision makers to be a 'good idea', led to significant improvements in air quality in pubs and bars, and achieved compliance rates over 95% from the outset.²

The "One In Three Out" principle

Future regulations to protect public health are threatened by the OITO policy, which requires Government departments to remove regulations worth twice the cost to business of any new regulation they introduce. We believe that, as it is currently stated, the OITO principle sets an unreasonable hurdle for new public health focused regulations.

For example, if tobacco control regulations lead to smokers buying less tobacco, this is counted as a "cost" to business, while the benefits to the wider society are not properly considered, itself implying that this is "bad" regulation. It is appropriate that costs to business of regulation should be considered in deciding whether a regulatory measure is effective, and cost-effective, but not that this should be the determining factor.

The burden of meeting the OITO standard therefore falls on individual Government departments with no account taken of the wider benefit to society of such regulations.

We feel that the rule should be reformed so that in assessing cost and benefits due consideration is given to costs *and* benefits to society overall and not just to business. Alternatively, there should be an exemption for public health measures, in the same way as regulations on civil emergencies and financial systemic risk are exempted. Furthermore, the OITO rule should be reformed so that any compensating deregulatory action, required when a new regulation is introduced, does not necessarily have to be taken by the Department introducing the new regulation. Finally, as a matter of urgency, the OITO rule should be reformed so that the distinction between "direct" and "indirect" costs to business does not operate in a way that effectively discriminates against public health protection.

What, in your experience, are the costs and benefits of regulations?

The CIEH believes that relationships between businesses and regulatory services should reflect shared goals of public protection, supporting enterprise and growth and helping to provide a sustainable future for people and planet. Law and practice needs to underpin and promote these goals.

Well-written law, proportionately and consistently applied, forms the foundation for public protection and is good for enterprise and growth and good for sustainability. The law needs to be clear about the duties of care applying to individuals, the state and businesses. The starting point for regulatory services is that citizens and businesses in the main intend to be in compliance with the law.

In every community, regulatory services should seek to contribute to public protection and improvements in health outcomes through the wide range of interventions they undertake in a number of settings including workplaces, food outlets and rented housing.

² "Smoke Free England one year on". DH. 2008

Research has indicated that a positive regulatory environment can contribute significantly to economic development and sustainable growth, improve the openness of international markets and create a less constricted business environment for innovation and entrepreneurship. It can protect compliant businesses by enabling fair competition and provide business with the confidence to invest, grow and create new jobs.³ A further study from 2014 has shown that businesses can benefit from positive experiences of regulation.⁴

Effective and holistic regulatory delivery, allied to openness and transparency, will support public health objectives, including improving health and well-being of both people and the environment.

The CIEH therefore supports a regulatory system that is founded on research, risk-led and evidence-driven. Its effectiveness will be defined less by a set number of inspections and more by the quality of the relationships established between those involved in ensuring compliance. Collaboration leads to focus on interventions that are founded on sound evidence with resources targeted where they are most needed.

When businesses are able to demonstrate that they have in place and use appropriate systems for ensuring compliance, they are able to earn recognition of this and regulatory oversight can be adjusted accordingly. Businesses needing support to achieve compliance can rely on regulatory services to support them to become compliant but, those unable or deliberately intending not to comply will rightly be targeted for appropriate enforcement interventions as the public and other businesses should not have to bear the cost of incompetence, negligence or wilful non-compliance. Different settings call for a range of differentiated interventions but, in their delivery, regulatory services must always seek to be fair, consistent and transparent with the degree of intervention required being determined, in part, by the degree of interaction between the business and the regulator so that the latter can properly evaluate the level of confidence held in the business.

We believe that the CIEH and other professional bodies, working alongside businesses, government bodies and other agencies have an ongoing role in supporting business compliance and effective regulatory service delivery.

How does regulation impact on your organisation?

For the purposes of this consultation, our comments on this question relate to the experience of our members, many of whom work in regulatory roles, in both the public and private sector.

Environmental Health Practitioners tackle the physical, chemical, biological, social and psychosocial causes of adverse effects on human health and the wider environment. By identification and engagement with the root cause of a problem and by utilizing auditing, risk assessment, advocacy, evaluation and research skills, Environmental Health Practitioners deliver interventions involving the provision of advice and training, education, social engineering or other legally focused solutions designed to lead to health protection or environmental improvement. "Regulation", as discussed in this consultation, includes

³ Regulation and Growth, LBRO March 2012

⁴ Business Perceptions Survey (IFF), National Audit Office and LBRO May 2014

inspection and enforcement, but these are just some of the tools at the disposal of environmental health practitioners.

The knowledge, skills and competencies of EHPs are increasingly being recognized and used in a variety of different employment settings and roles. It is, however, mainly local government where the profession was founded and evolved and where the focus remains on protecting people from adverse environmental conditions. The work EHPs do in addressing unsafe food, dangerous housing and harmful work or leisure activities and in addressing the underlying causes of a lack of well-being resulting in social, mental and chronic ill-health, is vital in today's world. Of course in carrying out this role, EHPs take a proportionate approach to seeking regulatory compliance, having mind to the needs of business and their contribution to economic growth.

Do departments and regulators consult your organisation when measuring and evaluating the actual impact of regulation?

The Chartered Institute is a knowledge centre providing information evidence and policy advice to local and national government, environmental and public health practitioners industry and other stakeholders. As such, we are regularly consulted by government departments on developments in national law, policy and practice across the whole range of environmental health disciplines. We also work with other stakeholders, such as the Food Standards Agency, to evaluate the impact of regulation and to understand ways in which it can be further developed and refined. We pride ourselves in our work as an advocacy organisation working to increase understanding of what environmental health is about and how its practitioners contribute to environmental health and public health policy; contributing to national debate on these issues is integral to our mission.