

**POLICY BRIEFING PAPER
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Better Regulation: what it really means

The looming recession has rightly prompted calls for supporting small and medium-sized enterprises (SMEs); these in turn have been a prominent influence on November's Pre Budget Report (PBR). Even among billion-pound fiscal initiatives, it is important not to lose sight of the role of regulatory reform, which has the potential to stimulate both new business creation¹ and employment.² Credible signals of long-term, meaningful support and assistance to SMEs from regulators will be important to enabling economic recovery. Nonetheless the better regulation agenda is still poorly understood by SMEs and imperfectly implemented by government. To play its part in the coming years, better regulation will need a new narrative, new methodologies and an elevated status among policymakers.

BETTER OUTCOMES, NOT MORE OUTPUTS

Despite £1.9 billion of net savings announced to date³, the Administrative Burdens Reduction (ABR) programme has yet to make a serious impact on perceptions of regulation.⁴ This raises questions about the quality of reported savings, the consistency of departmental methodologies, the relevance of action targeted at administrative burdens alone, and the programme's reliance on big-ticket items such as the Employment Law Guidance Programme.⁵ But it also exposes the inadequacy of existing methods of measuring the impact of regulation and regulatory reform. Target-driven regulatory reform runs a double risk by focusing on weak measures of potential outputs rather than real changes to the business environment – i.e. outcomes.⁶ What is needed is not just improved impact assessments or a wider suite of performance indicators, but also a

¹ Perceptions of administrative burdens hinder the progression from 'thinking about' starting a new business to higher level engagement, as documented by Grilo, I. & Thurik, R. 'Determinants of entrepreneurial engagement levels in Europe and the US.' *Industrial and Corporate Change*. 17:6, October 2008.

² Conservative estimates of jobs lost to employment regulation range from 160,000 to 190,000. FSB, 'The FSB Five-Point Plan for job creation and retention' January 2009 and "Don't give up on regulatory reform" says ACCA to the new Minister for Communications, Technology and Broadcasting' ACCA Press Release, October 2008. 'The Good Guidance Guide: Taking the uncertainty out of regulation.' January 2008.

³ Better Regulation Executive, 'Making your life simpler' December 2008

⁴ NAO, 'The Administrative Burdens Reduction Programme 2008' October 2008. and 'Better Regulation – Getting worse say IoD members' IoD Press Release, 11 December 2008.

⁵ This accounts for more than a fifth of the savings announced by all departments, based on ORC International, 'Employment law admin burdens survey 2008' BERR, December 2008. By failing to account for reductions in business-as-usual compliance costs, the exercise may have attributed to the Programme savings achieved by employers.

⁶ NAO, op.cit., Public Accounts Committee, 'Managing financial resources to deliver better public services' June 2008 and Regulatory Reform Committee 'Getting Results: The Better Regulation Executive and the impact of the regulatory reform agenda.' July 2008

better appreciation of the multiple factors that determine the impact of regulation, not least SMEs' own compliance behaviour and capabilities.⁷

Finally, outcomes cannot be attributed to individual regulators in the same way as outputs. Credit for an increase in the birth or survival rate of new businesses, for instance, might be claimed by any number of government departments regardless of their respective contributions. Outcomes-based reform will therefore rely on careful alignment of the incentives of regulators, to ensure ownership of simplification initiatives despite the resulting cross-subsidies.

BETTER REGULATORS

Over three quarters of the savings reported by departments up to December 2007 were attributable to initiatives that predated the ABR programme.⁸ At best, this suggests that departments are running out of ideas – or the capacity for reform. We share the Regulatory Reform Committee's concern that regulatory reform is not as embedded or valued a part of the civil service career path as it ought to be.⁹ The lack of regulatory reform capabilities is likely exacerbated by the dearth of public sector financial expertise recently highlighted by the Public Accounts Committee.¹⁰

As the reform agenda becomes more ambitious, these skills gaps will become increasingly problematic and the resulting reliance on a small number of reform 'champions' may be close to exhausting its usefulness.¹¹ The Government's complementary use of private sector expertise, for instance in auditing regulatory savings through the BRE External Validation Panel¹², is laudable. But ultimately better regulation must come from better regulators, equipped with the right skills and a much better appreciation of the realities of business life.

BETTER GUIDANCE AND ENFORCEMENT

Because much of the impact of regulation is determined by compliance behaviour and enforcement, poor government guidance can heighten demand for compliance advice.¹³ The independent review of guidance led by Sarah Anderson has confirmed the need for guidance that is clear, accessible and consistent, and that offers certainty of compliance.¹⁴ Furthermore,

⁷ Hart, M., Kitching, J., Blackburn R., Smallbone, D., Wilson, N., and Athayde R. 'The impact of regulation on small business performance', BERR, April 2008.

⁸ NAO, 'The Administrative Burdens Reduction Programme 2008' October 2008.

⁹ Commons Regulatory Reform Committee, op. cit.

¹⁰ Commons Public Accounts Committee, op. cit.

¹¹ See for instance, NAO, op. cit. on the adequacy of BRE resources in this area.

¹² Better Regulation Executive, 'Making your life simpler' December 2008

¹³ Better Regulation Executive, 'Regulation and business advice' July 2007.

¹⁴ 'The Good Guidance Guide: Taking the uncertainty out of regulation.' January 2008.

enforcement needs to be co-ordinated at the local level where possible to reduce the number of inspections and ensure consistency among regulators¹⁵, and this should be a priority in the work of the Local Better Regulation Office (LBRO). The increasing regionalisation of government activity could in theory improve co-ordination, provided it does not duplicate existing central government divides.

Across the public sector there is a need to foster an account-management mentality, whereby regulated parties are treated as customers and authorities can keep track of their dealings with individual businesses – reducing duplication where possible. Examples of good practice, including Companies House and HMRC, should be emulated as widely as possible.¹⁶

BETTER VALUE FOR MONEY

The flow of new regulation presents more problems for SMEs than do existing rules¹⁷, and is clearly threatening the success of the ABR programme.¹⁸ Furthermore, compliance costs involve much more than simply administration, and the BRE's decision to also report on reductions to the policy costs of regulation is a welcome acknowledgement of this.¹⁹ Regulatory reform cannot be primarily about 'cutting red tape.' Regulatory budgets could provide a system of incentives for regulators to stem the flow of new regulation and consider its cumulative impact on regulated parties.²⁰ But capping the volume of new regulation could prove insufficient unless the quality of regulation that is enacted also improves. Responses from civil servants and regulators to the consultation on regulatory budgets suggest that many see the proposals as presenting them with a choice between inferior regulation and a poor business environment.²¹ This false dilemma is symptomatic of a lack of understanding of better regulation and it could severely weaken the effect of regulatory budgets. It can only be overcome if regulatory reform focuses on the ability of regulation to target risk and deliver better value for the private sector resources it consumes.

¹⁵ LBRO, 'Business perceptions of local authority regulatory services' September 2008. The LBRO found that 62% of SMEs are subject to multiple types of regulation. Fire Safety, Health and Safety and Food Safety were the leading areas, and in all three areas more than 50% of businesses said that routine inspections were the reason for their most recent contact with regulators. About 3 in 10 businesses deal with more than one council with regard to regulatory matters, and 33% of businesses dealing with multiple councils have received inconsistent advice.

¹⁶ See for instance HMRC 'HM Revenue and Customers and the taxpayer' June 2008 and Companies House, 'Strategic Direction for 2010'. Commons Business and Enterprise Committee, 'Companies House' November 2008.

¹⁷ BERR 'Impact assessment of regulatory budgets consultation' August 2008

¹⁸ NAO, *op. cit.*.

¹⁹ Better Regulation Executive, 'Making your life simpler' December 2008 and BCC Burdens Barometer 2008.

²⁰ ACCA 'Regulatory Budgets: A consultation document. Comments from the Association of Chartered Certified Accountants'. November 2008.

²¹ BERR 'Regulatory Budgets Consultation Event – 7 October 2008: Executive Summary' December 2008.

BETTER CO-ORDINATION WITH EUROPE

The ultimate origins of new regulation are irrelevant to the perceptions and bottom lines of regulated parties²². Therefore, UK policymakers cannot afford to consider the burden of EU regulation, which accounts for the majority of compliance costs imposed on business²³, as lying outside their remit. Impact Assessments (IAs) are prescribed by both the UK and EU regulatory regimes, and yet there is little integration between the two processes at the domestic and European level.²⁴ In the UK, guidance on both Impact Assessment and the transposition of EU Directives treats the UK and EC impact assessments as entirely separate documents.²⁵ With more than half of all regulatory burdens originating from Brussels, better integration of UK and European practice in regulation design and impact assessment is a promising, but largely unexplored, option for regulatory reform.

BETTER COMMUNICATION

Perceptions can be as important as facts in shaping the business environment²⁶, and so communicating progress in regulatory reform is crucial if businesses are to reap its benefits. But communication must focus not on 'celebrating success', as the government seems intent on doing²⁷, but on informing businesses, especially at the grassroots level, of the work undertaken and seeking their views. This could in turn not only generate useful insights for policymakers but also help change one of the most frustrating perceptions of all, namely that the government does not understand business well enough to regulate.²⁸

²² Commons Regulatory Reform Committee, op. cit. Survey respondents rarely mentioned EU regulation as a concern, despite accounting for the majority of regulatory costs imposed on UK businesses.

²³ BCC Burdens Barometer, 2008

²⁴ Evaluation Partnership, 'Evaluation of the Commission's Impact Assessment System'. EC, April 2007

²⁵ BERR Impact Assessment Guidance v3.0, 2008 and BERR, 'Transposition guide: how to implement European Directives effectively' September 2007.

²⁶ See for instance Arenius, P. and M. Minniti, 2005, Perceptual variables and nascent entrepreneurship, *Small Business Economics* 24(3), 233-247

²⁷ Commons Regulatory Reform Committee, 'Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda: Government Response to the Committee's Fifth Report of Session 2007-08' November 2008

²⁸ This view was expressed by 63% of respondents to a NAO survey in February 2008. NAO, 'The Administrative Burdens Reduction Programme 2008' October 2008.

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