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Regulatory Reform Committee

Themes and Trends in Regulatory Reform

Ninth Report of Session 2008–09

Report, together with formal minutes, oral and written evidence

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The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

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… whether the draft legislative reform order —
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(b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
(c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
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Committee staff

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Summary

The financial crisis has highlighted a number of lessons for the way in which regulation is conducted. Perhaps most important among these is that risk is inherent in human activity and neither regulation nor regulators can eliminate it. What they can do, however, is to seek better ways of understanding it, predicting the likelihood of events and cushioning potentially damaging consequences. That in turn requires better understanding of regulated organisations, the incentives that drive them, and the consequences of their behaviours. There must be willingness to enforce existing regulation proportionately—including through tough enforcement in areas of high risk, and to challenge prevailing notions of what is the right regulatory "touch". That does not require universally intrusive regulation, but it does demand a fearlessness about being intrusive where appropriate. There are also dangers in relying too much on regulatory ideologies and procedures. Regulators need to be agile and adaptive. Ultimately it is a truism—but one worth restating—that good regulation is not about any particular philosophical approach, but about what produces the right outcome.

The Better Regulation agenda sets out to achieve desirable regulatory outcomes with minimum adverse impact. It remains a valid project, but there is scope for using the lessons of the crisis to re-energise it with a greater diversity of input, including more accountability to citizens and end users. There remains also a need to shift perceptions of regulation by adapting it to the circumstances of business and consumers. We encourage regulators to be creative in helping business and consumers understand how to comply.

As in our previous inquiry, witnesses were concerned about the cumulative effects of legislation. We encourage the Government to respond to those concerns—including through further improvements to impact assessments, more post-legislative scrutiny and more external challenge. We have made specific recommendations in those areas.

Conclusions and recommendations

A more balanced approach to Better Regulation

1. We conclude that events in the financial sector do not require a wholesale revision of the fundamental approach to regulation in other sectors. However, there are lessons to be learned. Foremost among these are that regulators should:

(a) seek to understand risk more fully and develop the resources to do that, where appropriate looking at whole systems rather than individual problem areas

(b) focus more on assessing possible future risks

(c) identify areas of hidden risk

(d) identify possibilities of conflict of interest in taking decisions

(e) seek to anticipate unintended consequences of regulation

(f) develop mechanisms for challenging prevailing wisdom and political pressure

(g) involve representatives of consumers in such challenge

(h) be willing to use their powers more effectively

(i) seek to match the experience and weight of those they regulate.

The BRE should support regulators in implementing these lessons. We would encourage other Select Committees to use these criteria in assessing the performance of regulators in their own inquiries. (Paragraph 19)

2. In future, analysts and commentators must avoid confusing risk-based regulation and so-called "light-touch" approaches. Risk-based "right-touch" regulation remains a valid approach provided there is: (a) diligence in understanding risk; (b) a willingness to accept some degree of failure (albeit that in certain sectors there must be maximum effort to eliminate failure); (c) an awareness that risk assessments, with their tendency sometimes to lead to a false sense of security, should be subject to appropriate challenge; and (d) the willingness to be intrusive rather than light-touch when appropriate. At this stage in the debate, better balance is required in order to ensure an effective delivery of the regulatory reform agenda. The BRE should have a role in promoting to the business world an approach to better regulation that incorporates those principles. (Paragraph 25)

3. We recommend that the Government implement the Risk and Regulation Advisory Council's proposal for a body to challenge excessive regulatory responses to risk either by way of the RRAC's own proposal for a Public Risk Commission or through charging an appropriate existing body with that responsibility. (Paragraph 27)

4. We believe that principles-based models of regulation based on promoting right outcomes can have value in promoting simpler and stronger rules. There is no reason why clear fundamental principles cannot overlie well-designed and helpful

structures of supporting rules and guidance, with both being appropriately and proportionately enforced. The BRE and/or the Regulatory Policy Committee should have a role in determining the frameworks of regulation that are appropriate in individual instances. (Paragraph 34)

5. We therefore encourage regulators to seek more active consumer and/or end user involvement, including at board level, and we recommend that the Better Regulation Executive should arrange specific measures to allow for consumer and end user feedback. (Paragraph 38)

6. The Better Regulation agenda remains a valid project whose aim should be to improve regulatory outcomes for the whole of society. There remains a need to improve results in a way that profoundly shifts perceptions. It seems to us that the BRE needs to develop a stronger role in evaluating how a more sophisticated Better Regulation agenda might best be delivered. (Paragraph 42)

Going forward: design and compliance

7. We welcome the BRE's work on perceptions of guidance and the Government's acceptance of most of the recommendations in the Anderson Review. We urge the Government to push forward quickly with implementing those recommendations and with further means of promoting and sharing guidance best practice that address the problems we have outlined. Although we appreciate that there might be resource implications and legal constraints, we recommend that the Government encourage regulators and enforcement bodies to be more willing to answer questions from their regulated organisations and consider creative ways to permit without prejudice or off the record discussions on compliance. (Paragraph 47)

8. We welcome the "Trading Places" initiative and the Hampton implementation reviews published to date, and look forward to the further Hampton implementation reviews due for publication this year or early next year. We encourage regulators and the BRE to explore opportunities for joint working including—where appropriate and subject to legal advice—in reporting of infringements outside of their particular jurisdiction. (Paragraph 50)

9. We recommend that the BRE seek ways further to improve consistency and quality of IAs including through more thorough and proactive business validation. We welcome the Minister's statement that post-implementation review will be the norm. The BRE should monitor compliance with departmental commitments to conduct them. (Paragraph 53)

10. The Government should expedite the setting up and rapid entry into full operation of the new regulatory committees announced on 2 April 2009, together with publication of cumulative regulatory costs and benefits in accordance with its stated intention, and with terms of reference that will permit a full contribution to the regulatory evaluation process. In accordance with our recommendations on greater consumer involvement, the external Regulatory Policy Committee's membership should allow for a voice for sectors other than solely the business sector and for consumer and end user interests. (Paragraph 58)

11. The external Regulatory Policy Committee should take measures to validate impact assessments and cost-benefit analyses with input from affected parties and should be given means to provide such parties with incentives to offer properly quantified advice. The BRE should support it in that work. (Paragraph 59)

12. To assist in maximising objective but effective challenge to EU-sourced legislation, we recommend that the BRE: (a) revisit the recommendations in our previous report regarding a feasibility study on EU regulatory reform objectives and the need to increase BRE influence on EU regulatory reform (including by means of a permanent representation in Brussels) and as a matter of urgency (b) explore means of improving and bringing forward in time the UK's input into EU impact assessments. (Paragraph 64)

Conclusion

13. The better regulation agenda is more important now than ever; in current economic conditions businesses are concerned with maximising productivity and minimising the administrative burdens on them. The evidence we collected tells us that the principles of the agenda still hold good; proportionate and risk-based regulation, if properly applied, can deliver the vital protection of regulation without creating unnecessary burdens on business. But the debate around better regulation is shifting in light of the financial crisis, there is increasing pressure against so called 'light-touch' regulation and concern that risk-based regulation has not been implemented or enforced effectively. Our inquiry has shown that there is scope for regulators better to understand both individual-level risk and systemic risk and to use their powers of enforcement more effectively. (Paragraph 65)

14. Now is therefore an important time for the BRE to establish and communicate publicly its principles and priorities for future better regulation and to set out clearly the direction of the agenda. The BRE's ongoing role must be to ensure that better regulation principles are embedded into Departments and regulators and that those principles deliver the intended outcomes both for businesses and consumers. (Paragraph 66)

1 Introduction

Scope of the inquiry

1. The place of regulation in the economy and in society as a whole has become a substantially more hotly debated topic since our July 2008 report[1] which looked at the work of the Better Regulation Executive (BRE) and the progress of the regulatory reform agenda. The financial crisis has provoked calls for greater regulatory intervention in markets, but has also created economic conditions in which there is further pressure to reduce unnecessarily burdensome regulation. In this inquiry we sought to establish whether the fundamentals of the regulatory reform agenda remain sound and to consider the lessons of the past year. Specifically, we did not look at what should change with regard to financial regulation as such, since that is the responsibility of others. However, circumstances in the financial sector have provoked the need for regulatory readjustment. These changes have broader implications, and conclusions can be drawn for the wider stage.

2. We started by asking whether the idiosyncrasies of the financial sector require a unique regulatory approach. We also asked whether better regulation could have avoided the financial crisis or whether the principal problem was a failure properly to implement existing regulations. Next we looked at the success of different regulatory models, how they need to adapt and the lessons to be drawn from the financial crisis for broader regulation. Finally, we considered some of the commonly recurring themes for the future that are not expressly connected with the financial crisis. Those are addressed in Section 3 of this Report. Our overall conclusions are summarised in the Conclusions section.

Acknowledgments

3. We received written evidence from 37 organisations and individuals. We also held five oral evidence sessions. We are grateful to all those who provided evidence to the Committee. A list of witnesses is set out on page 30 together with a list of those who submitted written evidence; the oral and written evidence is published in a separate volume.

4. As in our last inquiry, we were assisted greatly by the National Audit Office (NAO), particularly in their provision of a supporting briefing paper. We are grateful for their assistance.

1 'Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda'; 5th Report of session 2007-08, HC 474-I

2 The implications of the financial crisis for regulation

Introduction

5. The financial crisis has caused the whole regulatory landscape to come under scrutiny: levels of acceptable risk to the public, who should bear those risks, the adequacy of fundamental compliance requirements, how to mitigate incentives toward non-compliance, how to avoid moral hazard and unintended consequences of genuine attempts to comply with regulation, quality of enforcement; supervisory resources and co-operation between regulators at the national and international level. We wanted to establish the extent to which the issues raised by the financial crisis need to be addressed in other sectors. What lessons for wider regulation can be learned from the crisis, and is there a valid read-across to other areas? Is Better Regulation still a valid project? To help answer those questions we first asked our witnesses about the uniqueness or otherwise of the financial sector. We also considered the response to the financial crisis itself.

Is the financial sector unique?

6. The complexity of financial markets, the global nature of the sector, the nature of corporate and personal incentives, and the consequences of failure: arguably these are all characteristics that distinguish the financial sector from others. In evidence, Sir William Sargent, the then Executive Chair of the BRE, pointed to the greater global interconnectedness of the financial sector over others,[2] and the Financial Services Authority (FSA) agreed that the financial world had certain unique features.[3] Perhaps not surprisingly, representatives of business also wanted to reinforce the perception that the financial sector is in many ways unique, as their evidence had shown concern about the possible impact of regulatory overspill,[4] and this was reinforced in the oral evidence sessions.[5] However, it was noteworthy that Which?[6] the TUC, and the Risk and Regulation Advisory Council (RRAC)[7] also largely took the view that the read-across to other sectors should be cautious. Nevertheless, the RRAC observed that financial incentives could operate to frustrate regulatory aims in all business sectors, and problems of inadequate enforcement and implementation and of understanding risk are common to all regulatory areas, so that an examination of failings in those areas is valuable in a broader context.

7. Although there was a strong thread of evidence to suggest that the main failings were not of regulation but of regulators,[8] and our findings below to a large extent support the view

2 Q3

3 Q105

4 For example, see Ev 81ff

5 For example, Q72

6 Q43 [Mr Houghton]

7 Q61 [Mr Haythornthwaite]

8 For example, "We have had 450 pages from the FSA, but they do not add up to very much. What they fail to recognise is that we have not witnessed a failure of regulation but a failure of regulators." (Q61[Ambler])

that there were areas of underperformance, we do not suggest that there is no need for any change in substantive financial regulation, particularly as that is in any case a matter for others. PricewaterhouseCoopers said: "There is a danger that collectively, authorities in different jurisdictions will make the assumption that the current economic difficulties have arisen because of a failure of regulation rather than a failure in the supervision of existing regulation. Both need to be reviewed."[9] The Turner Review[10] includes recommendations for such substantive changes, including in the areas of capital adequacy and supervision of credit rating agencies, with further proposals emerging as this report goes to press. It would be remarkable if the response to a financial crisis of such magnitude did not include at least some shift in underlying regulation.

The response to the financial crisis

8. We were not looking expressly at how to improve financial regulation, but we were interested in perceptions of the regulatory response to the crisis so far. In written evidence the RRAC said: "there is currently a high degree of unhelpful institutional pressure and short-termism involved in regulation which makes it harder for reasoned, long-term judgement to take precedence over intuitive quick reactions."[11] Nevertheless, by the time of the evidence session their chairman Rick Haythornthwaite was able to say that there had been a "cold, hard look at a systemic, evidence-based level," although he warned that there remained a need for some collective deep breaths so as to avoid mistakes that might later be repented.[12] The danger of regulatory over-reaction was referred to by other bodies. The Association of Chartered Certified Accountants (ACCA) warned against it, commenting sagely that:

> "The financial crisis has not exposed a world where workplace injuries, employer misconduct or lapses in food standards are more frequent or damaging than previously thought."[13]

9. Both Sir William Sargent and Jitinder Kohli of the BRE believed that knee-jerk responses as warned against by the former Better Regulation Commission had been avoided.[14] We agree that the Government's response to the crisis to date has been measured and has avoided any temptation to over-regulate in other sectors. Later in this Report we point to some lessons of wider application, but subject to those we agree that it would be unwise to assume a wholesale need for more intrusive regulation in other sectors because of what has happened in global finance. There is, however, a case for better implementation, and for regulators generally being more willing to use the tools available to them.

10. The ACCA summed things up in this way:

9 Ev 198

10 http://www.fsa.gov.uk/pages/Library/Corporate/turner/index.shtml

11 Ev 84, submitted Feb 2009

12 Q67 [Mr Haythornthwaite]

13 Ev 104

14 Q3 [Sir William Sargent] and Q5 [Mr Kohli]

> "The circumstances and regulation of financial services are unique in many ways, and thus any parallels drawn between financial regulation and the wider regulatory agenda must be treated with caution. ACCA's view is that the financial crisis was caused primarily by a failure of governance, and only facilitated by the inadequacy of regulation or oversight. Nevertheless, we agree that some of the lessons from the recent financial crisis could be adapted for the benefit of the wider regulatory agenda."[15]

Regulatory lessons of the financial crisis

11. A number of recurring themes emerged when we asked about the lessons of the crisis. Fundamental among these was a plea not to attempt to remove risk entirely from regulated systems. The Association of British Insurers' evidence observed, "Risk is inescapable and risk-taking is inherent to all life and economic activity."[16] Consumer Focus and the TUC agreed that it is not possible or desirable to eliminate risk.[17] As the RRAC's evidence put it, there is no such thing as a perfect regulatory system; every system will have human limitations and there needs to be room for sensible failure.[18]

12. Commentators have observed that risk especially in financial systems tends naturally to flow to where it can avoid regulatory control.[19] Accordingly, a further common theme that emerged during the inquiry was the need for regulators to stay a step ahead of the game, and there was a feeling that this had been one of the principal failings of the past. Stephen Haddrill of the Association of British Insurers (ABI) asked:

> "Are we really looking for the dynamics in the market, the potential unintended consequences in the way that firms will inevitably take changes in rules or change in regulation and try to find ways round it? I suspect too much of the analysis in the past has been a bit static: This is the market, we make this change, then people look like that, rather than trying to anticipate how the market itself will change."[20]

13. Verena Ross of the FSA described the liquid and potentially hidden nature of risk as "an ongoing challenge, certainly for financial regulation, but I suspect for regulation generally."[21] We agree with that comment and with its subtext, which is that as a difficult task it might not always meet with success. However, it is an important one so far as the regulatory objective of minimising future problems is concerned.

14. Rick Haythornthwaite of the RRAC agreed with this assessment.[22] In similar vein, the Council for Healthcare Regulatory Excellence argued for inclusion of a further objective of in the regulatory agenda, that of "agility"—a state of readiness to respond to change.[23] We

15 Ev 104

16 Ev 101

17 See Q36 to Q 38 [Mr Brooker and Ms Veale]

18 Ev 84: "Failures will sometimes occur and do not necessarily mean that the system is inappropriate."

19 For example, Avinash Persaud, Turner Review discussion day, 27 March 2009

20 Q109 [Mr Haddrill]

21 Q100

22 QQ65 and 67 [Mr Haythornthwaite]; see also Ev 182

23 Ev 182

agree that the financial crisis has demonstrated the need for regulators to be more adaptable and anticipating.

15. However, the fact that a major cause of the most recent crisis was an unperceived concentration of risk and that that was an underlying factor in earlier financial problems such as in the reinsurance market in the 1980s[24] suggests that a more anticipative assessment of risk should be combined with a more discerning perspective on recurring patterns—one lesson being the need constantly to be aware of the dangers of non-apparent concentrations of risk.

16. There was also insufficient consideration of whether risks were accruing at a dangerous level in the financial sector as a whole. As the ICFR (International Centre for Financial Regulation) said, "Even if risks did look manageable within each institution, no one was paying attention to the accumulation of these risks across all institutions."[25] A proper application of risk-based regulation, to which we return below, requires a grasp of systemic as well as individual corporate risk. As the Minister put it: "I think sometimes we address the wrong risks within regulation. One of the most difficult roles of any regulator is to focus on the correct risks because very often I think [they] may not be at the top of the political agenda…but they are the most important ones."[26]

17. A further theme was that failings in effective implementation of existing rules led to over-confidence in the ability of regulation to do its job. As Tim Ambler and Francis Chittenden put it, "Regulation gives only the illusion of control if intervention is not effective."[27] Mr. Steve Brooker of Consumer Focus suggested that regulators be more ready to use the tools that Parliament gave them.[28] We agree that regulation and its enforcement "should be designed to focus on assuring overall outcomes, rather than lower level outputs which will be more straightforward to measure."[29]

18. A prevailing criticism of the FSA approach has been that it involved too much "box ticking" and insufficient real understanding of underlying systems. Several underlying problems were identified, from a lack of inside knowledge of the workings of the regulated institutions (and hence the ability to spot danger),[30] to problems with turnover in high-grade staff.[31] Sending relatively junior regulatory staff into financial sector board rooms to try to persuade them to change approach was a tactic doomed to failure, not least because it led to substandard compliance discussions followed by the need to shift policies when different evaluations were given by other personnel at a later stage.[32] The FSA has

24 Specifically, the problems at Lloyd's arising from the Piper Alpha disaster

25 Ev 203; See also Q63 [Mr Haythornthwaite]

26 Q136 [Ian Lucas MP]

27 Ev 77

28 Q31 [Mr Brooker]

29 Ev 84; likewise Ev 104: "Compliance does not equal the absence of risk."

30 Q17

31 Q16

32 See our comments in paragraphs 46 and 47 on the need for useful guidance and for regulators to find ways to stick their necks out when consulted by the management of those they regulate.

acknowledged that it needs to up its supervisory game and have people with the knowledge and expertise to stand up to senior management in big firms.[33]

19. **We conclude that events in the financial sector do not require a wholesale revision of the fundamental approach to regulation in other sectors. However, there are lessons to be learned. Foremost among these are that regulators should:**

a) **seek to understand risk more fully and develop the resources to do that, where appropriate looking at whole systems rather than individual problem areas**

b) **focus more on assessing possible future risks**

c) **identify areas of hidden risk**

d) **identify possibilities of conflict of interest in taking decisions**

e) **seek to anticipate unintended consequences of regulation**

f) **develop mechanisms for challenging prevailing wisdom and political pressure**

g) **involve representatives of consumers in such challenge**

h) **be willing to use their powers more effectively**

i) **seek to match the experience and weight of those they regulate.**

The BRE should support regulators in implementing these lessons. We would encourage other Select Committees to use these criteria in assessing the performance of regulators in their own inquiries.

Risk-based and other models of regulation

20. We wanted to know whether and how the financial crisis had changed perceptions of different approaches to regulation such as risk-based regulation. (A table explaining the meaning of a number of terms used frequently in our inquiry is set out on page 15.) First we looked at some misconceptions regarding the meaning of risk-based regulation.

Risk-based versus light-touch regulation

21. Consumer Focus told us: "political commentary around the need for light-touch regulation has at times unhelpfully muddied communication about what the better regulation agenda is actually intended to achieve. It remains in the consumer and public interest to have the right amount and type of regulation but no more."[34]

22. Light-touch regulation has justifiably been criticised for exhibiting the failings outlined in the section of this Report on lessons from the financial crisis, but we do not believe that that should detract from a proper application of risk-based regulation, based on the right intelligence and on proportionate responses. In evidence, there was general agreement that

33 Q94

34 Ev 31

risk-based regulation was not of itself a cause of the financial crisis, although the application of a risk-based approach had been faulty.[35] Several witnesses agreed that risk-based approaches should not be confused with light-touch regulation.

23. Sarah Veale of the TUC told us: "I think the principle of risk-based regulation…was not what did for the financial sector."[36] Steve Brooker from Consumer Focus said:

> "risk-based" regulation remains a valid approach. Put at its simplest terms, all it means is that you allocate your scarce resources to where you think the harm is most likely to occur and if that is to be successful that depends on having the right intelligence in place. I do not think the FSA had the right intelligence in place and got its risk assessment wrong. What I would not do is equate risk-based regulation with light-touch regulation."[37]

He added:

> "Once you have identified your risk then you decide on the firmness of your touch. On some occasions a feather light touch is the order of the day but at other times a vicelike grip is what is needed. What we see at the FSA and other regulators is too much light touch and not enough firmness in their approach."[38]

Stephen Haddrill of the ABI similarly contrasted risk-based and light touch approaches, saying: "When we talk about risk-based, what it means is really understanding that risk in depth. That is not a light-touch option and it can be done very effectively."[39]

24. There will remain instances where a light touch to regulation is entirely right, but there is a need also to be intrusive—the vicelike grip—in the areas of greatest risk.

25. **In future, analysts and commentators must avoid confusing risk-based regulation and so-called "light-touch" approaches. Risk-based "right-touch" regulation remains a valid approach provided there is: (a) diligence in understanding risk; (b) a willingness to accept some degree of failure (albeit that in certain sectors there must be maximum effort to eliminate failure); (c) an awareness that risk assessments, with their tendency sometimes to lead to a false sense of security, should be subject to appropriate challenge; and (d) the willingness to be intrusive rather than light-touch when appropriate. At this stage in the debate, better balance is required in order to ensure an effective delivery of the regulatory reform agenda. The BRE should have a role in promoting to the business world an approach to better regulation that incorporates those principles.**

35 As well as the references cited below, see, for example: Ev 54 paragraph 8.2, Q1, Q112 [Mr Salomone]

36 Q38

37 Q34

38 Q35

39 Q114

Regulatory Models

Risk-based regulation attempts to focus regulatory effort at the place of maximum effect in avoiding the worst outcomes for the greatest numbers (or conversely, promoting the most desirable results for the greatest numbers), and allocates resources accordingly. If rigidly imposed, however, it can be criticised as requiring calculated decisions about what can be sacrificed.[40]

Principles-based regulation takes a high-level approach to making rules and has the virtue of brevity. European competition law is an example. Instead of regulating what can or cannot be said in a contract, it looks at the overall effects of contracts and makes them illegal if the *effect* would be to prevent or distort competition. Principles-based regulation is difficult to circumvent, but exceptions usually need to be allowed for, and if exceptions are not clear or are left unstated the principles themselves can be hard to interpret and apply, leading to uncertainty.

Rules-based regulation works on detailed rules. It has the advantage of clarity, but its disadvantage is its inability to adapt quickly to circumstances. In seeking to be a comprehensive about what is or is not allowed, it can provide a routemap to potential circumvention. By definition, it tends to be lengthy.

Outcomes-based regulation is what the FSA has indicated it intends to move to.[41] It is an adaptive and pragmatic approach that mixes different types of regulatory approach based on the aim of regulating in a way that works. It could be argued, however, that that is the aim of all regulation.

40 In its supplementary written evidence to us (see Ev 175), the OFT listed the following as factors in a risk-based assessment of whether to take regulatory action: "the likely effects…on consumer welfare,…strategic significance…, the likelihood of a successful outcome, and the OFT's resources."

41 Turner Review discussion paper, paragraph 1.64

26. The value of work done by the Risk and Regulation Advisory Council in contributing to a sensible discussion of regulatory issues has been recognised by, for instance, the Work and Pensions Committee[42] and—in our inquiry—by the ACCA[43] and the TUC.[44] The Council's final paper, 'Response with Responsibility' recommends establishing an independent Public Risk Commission inter alia to identify disproportionate regulatory responses to risk, stem regulatory creep, challenge risk-mongers and help Government manage responses to risk under pressure. Given the findings of in this section of our Report, we think that a body to review such issues could be valuable, provided of course that it was itself appropriately lean. The Minister indicated that the Government are actively considering the idea, although there was a question mark over whether such a function could instead be taken on by an existing organisation.[45] The Minister's letter of 13 July 2009 to the Committee Chairman attached terms of reference for the Regulatory Policy Committee[46] in which the latter is invited by the Government to comment on "the degree to which issues of public risk and the practicalities of ensuring compliance are taken into account."[47] This we duly note.

27. **We recommend that the Government implement the Risk and Regulation Advisory Council's proposal for a body to challenge excessive regulatory responses to risk either by way of the RRAC's own proposal for a Public Risk Commission or through charging an appropriate existing body with that responsibility.**

Principles versus rules-based approaches

28. There was a much wider spectrum of views on principles-based regulation than in other areas of our inquiry. The FSB was not convinced of the merits of a principles-based approach, saying "it is clear regulation that we are looking for."[48] The IoD (Institute of Directors) commented that small businesses value clarity over esoteric principles.[49] (There is, of course, no intrinsic reason why a principle should be esoteric; however, the point is taken that even carefully designed principles can require interpretation. The Ten Commandments are a case in point!) Citizens' Advice (CAB) articulated the consumer case against principles-based regulation—that if applied in a light-touch manner it allows firms to decide what the principles mean and causes disagreements of interpretation between advisers and businesses.[50] In a helpful supplementary paper Which? also expressed reservations based on concerns around ambiguity and the need for judicial interpretation.[51]

42 Third Report of 2007-08

43 Ev 105

44 Ev 57

45 Q156

46 See paragraph 56

47 Ev 250

48 Q69 [Mr Davenport]

49 Q69 [Mr Ehmann]

50 Q32 [Ms Edwards]

51 Ev 72

29. On the other hand, EEF told us that principles-based approaches are more adaptable than detailed rules, and the Local Better Regulation Office (LBRO)[52] likewise commented on the value of principles in "future proofing".[53] Andrew Tyrtania, an ex-practitioner in financial services, was firmly in favour of principles-based regulation.[54] His view was that the crisis is "the first real test of principles-based regulation and a wake-up call to the senior management of financial services firms that they have not properly understood and acted on their obligations under the Principles."[55] Consumer Focus's view was that the principles-based approach adopted in the FSA's "Treating Customers Fairly" programme[56] had not been given a fair chance to get started.[57] It said: "we remain of the view that a principles-based regime has a better change than writing detailed rulebooks of changing the behaviour of financial firms as it seeks to tackle the underlying problems"[58]

30. Steve Brooker of Consumer Focus said:

> "lack of certainty is certainly a danger of principles-based regulation but what happens when everything is certain is that compliance departments within banks and other financial institutions regulate in an unthinking way through the tick box mentality. What attracts me about principles-based regulation is that it gets senior executives within financial firms to actually think about what they need to do to deliver compliance…". [59]

He was also clear that it was not the cause of the financial crisis.[60] We did not hear any contrary view.

31. Which? was much more ambivalent about the success and likely future success of "Treating Customers Fairly".[61] Its view was that "principles-based regulation will only be effective if companies who fail to live up to regulatory standards suffer damage to their reputation and bottom line including naming and shaming and tough enforcement action towards transgressors."[62] Furthermore, Rick Haythornthwaite questioned whether board-level management gives sufficient attention to compliance, arguing that that often leads to delegation to lawyers and compliance officers whose tendency is to turn a principles-based regime into a rules based one "which decreases the potential for that system to be able to sense the…shifts in culture and tone that we [are talking] about." We take the point, but it seems to us that boards will take responsibility for internal compliance when the right enforcement regime exists as an incentive for them to do so, as has been the case with competition law.

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52 Ev 245

53 A term actually used by Which? See Ev 72

54 Ev 142

55 Ev 141

56 http://www.fsa.gov.uk/Pages/Doing/Regulated/tcf/index.shtml

57 Ev 32

58 *Ibid*

59 Q33 [Mr Brooker]

60 Q32 [Mr Brooker]

61 Ev 73

62 *Ibid*

32. A number of witnesses sought to resolve the tension between different regulatory approaches in favour of considering outcomes, as currently favoured by the FSA.[63] For example, the ABI said: "making sure that the mixture of principles and rules, backed by sanction, delivers high quality consumer outcomes remains the role of the regulator."[64] CAB said that "…regulators should be more focused on the outcomes of their regulatory frameworks."[65] The TUC said: "We do not see that outcomes-focused regulation is an alternative to principles-based regulation; ideally the two should work together. If the principles are understood and proper guidance and support is available the outcomes should generally be good."[66] The Trading Standards Institute ("Trading Standards") advocated a "proportionate matrix between principles-based legislation and prescriptive law."

33. Which? summed things up well. It said, "it is not sensible, or indeed safe, to take an overly ideological approach to regulation"[67] and "regulation should be about what works and…what is fit for purpose and what adequately deals with the risks that are in front of us."[68] The BRE articulated an equally sensible and pragmatic view of how the balance between models should work:

> "Principles-based regulation focuses both regulators and the regulated on delivering against regulatory objectives. This avoids regulation becoming an exercise in purely 'going through the motions' or 'box-ticking'. Current principles-based regimes combine specific rules and general principles. The BRE believes that creating this balance is the correct approach and will continue to help ensure that this is the case. It is essential that clear guidance is provided, where appropriate, to assist those regulated in understanding what is required in order to comply with regulation."[69]

34. **We believe that principles-based models of regulation based on promoting right outcomes can have value in promoting simpler and stronger rules. There is no reason why clear fundamental principles cannot overlie well-designed and helpful structures of supporting rules and guidance, with both being appropriately and proportionately enforced. The BRE and/or the Regulatory Policy Committee[70] should have a role in determining the frameworks of regulation that are appropriate in individual instances.**

Consumers and representation

35. The conclusion of our last report mentioned our doubts about the extent to which the citizen in general is considered in relation to better regulation.[71] This month, the

63 Turner Review discussion paper, paragraph 1.64

64 Ev 102

65 Ev 39 paragraphs 5.1/2

66 Ev 75

67 Ev 47

68 Q31

69 For the full description see Ev 121, response 2

70 See paragraph 56

71 'Getting Results' paragraph 102

Government published its White Paper, 'A Better Deal for Consumers',[72] but we believe there is an opportunity to go further. There is need and scope for involving consumer and end user in regulatory mechanisms, not only as a means of protecting the interests of such groups but to provide independent challenge and feedback on the quality of regulation. For instance, it seems to us that warnings intended to protect consumers against financial exposure have not worked, and that one reason for that is an excess of "one size fits all" advice with a lack of targeted assessment. Greater consumer involvement would be a way to avoid that pitfall.

36. The CAB's written paper supported that broad position when it said: "regulation to date, whether principles-based or rules-based, has not understood and protected consumers and employees sufficiently."[73] CAB argued for a clear strategy to gather evidence of consumer experience, with the experience then being employed to review the effectiveness of regulatory frameworks.[74] It pointed in particular to the need for regulators to encourage consumers to give feedback, communicate the outcome of that feedback, and provide consumers with sufficient and timely information about their investigations.[75] The same theme was taken up by Consumer Focus, whose witness in oral evidence commented on the lack of consumer representation on the FSA board following the resignation of its Consumer Panel Chair, and on the lack of consumer research at the FSA according to Consumer Focus's 'Rating Regulators' study.[76]

37. Consumer Focus told us: "Perhaps one explanation for why the FSA failed is the absence of external perspective to challenge the received wisdom. Our perception is that both industry and the FSA framed the issues in the same way—they might have disagreed on points of detail, but the way they thought about things was the same, with catastrophic results." Steve Brooker of Consumer Focus said, "I think if there had been more balanced perspective at the FSA we might have seen a slightly different story." The FSB expressed a similar view, saying "there is always a danger of the regulators being too close to the market that they are dealing with."[77] That also suggests that alignment between regulators and those regulated, while it has value,[78] should always be tempered with caution against the risks of excessive proximity and insufficient outside challenge.

38. At the least, there is an opportunity to provide more intelligible advice for consumers—especially when purchasing financial products—by involving them in the decision-making process about guidance and warnings. But there is scope to go further. As Consumer Focus pointed out, greater consumer involvement could also provide an opportunity to re-energise the better regulation agenda by providing greater diversity of perspective.[79] It could provide a means to inject greater opportunity for external challenge to established

72 http://www.berr.gov.uk/whatwedo/consumers/consumer-white-paper/index.html; Cm 7669

73 Ev 34, paragraph 1.5

74 Ev 39, paragraph 6.1

75 Ev 39, paragraph 6.2

76 'Rating Regulators' Executive Summary, page 27; http://www.consumerfocus.org.uk/en/content/cms/Publications___Repor/Publications___Repor.aspx

77 Q64

78 QQ131 and 146

79 Ev 31, paragraph .14

patterns of thinking. The Minister agreed that regulators should involve consumers in policy formation.[80] **We therefore encourage regulators to seek more active consumer and/or end user involvement, including at board level, and we recommend that the Better Regulation Executive should arrange specific measures to allow for consumer and end user feedback.**

Governance and accountability

39. Amid all the analysis of how to improve the performance of regulators, the need for better governance within those being regulated should not be forgotten. Sir William Sargent told us that responsibility starts with governance structures and boards, and that "a regulator cannot possibly be everywhere at all times…no matter which part of the economy you are in."[81] There is a responsibility to monitor risk at the level of governance and audit and apply the brakes where necessary despite the pressure of financial incentives. As the ACCA told us, "those who take ownership of risk need to be both able and inclined to override income generators." The ICFR notably and succinctly said: "Some reason for the regulated to comply must exist,"[82] which is as much a matter of internal governance and challenge as about external regulatory control. We agree that there should be more effective mechanisms for internal and shareholder scrutiny within organisations particularly, and we urge the current Walker review of governance to consider that in light of its more extensive researches.

40. Clive Davenport of the Federation of Small Business commented on the need for accountability to an independent tier as a solution to regulators becoming too close to the market they are dealing with[83] and Tim Ambler of the London Business School called for greater accountability of bodies such as the FSA to Parliament and more independence from Government.[84] In fact, given that the FSA is funded by the financial sector it might be argued that greater independence from that sector is needed before greater independence from Government. However, at a general level these comments reinforce the value of strategic-level outside scrutiny by bodies such as the National Audit Office[85] and the Treasury Committee.

Implications for the Better Regulation agenda

41. There are misgivings about extent of progress and about perceptions with Better Regulation, which we address in Section 3. Despite that, we believe that the aims of the Better Regulation agenda remain valid notwithstanding the fallout from the financial crisis and can accommodate the interests of business and the citizen. Sir William Sargent summed it up: "Better regulation principles are particularly critical at this time, so I would be very worried if people felt that this is all about being good to business and not looking

80 Q130 [Ian Lucas MP]

81 Question 16

82 Ev 204

83 Q64

84 Q65 [Mr Ambler]

85 The NAO does not normally have powers of audit over the FSA because the FSA is not a Government-funded body

after citizens. They are completely compatible principles are far as I am concerned."[86] As he put it, the challenge is to carry on being good and better at regulation.[87]

42. **The Better Regulation agenda remains a valid project whose aim should be to improve regulatory outcomes for the whole of society. There remains a need to improve results in a way that profoundly shifts perceptions. It seems to us that the BRE needs to develop a stronger role in evaluating how a more sophisticated Better Regulation agenda might best be delivered.**

3 Going forward: design and compliance

Improving the design of regulation and guidance

43. As well as evaluating the lessons of the financial crisis, our inquiry sought opinion on the design of new regulation and on whether Government Departments as a whole understand business sufficiently to design effective regulation. To assist us we requested a briefing paper from the NAO. The paper reviewed available research, including the NAO's own business survey, and focused on approaches to employment and health and safety law by the Department for Business, Innovation and Skills (DBIS) and the Health and Safety Executive (HSE). There were a number of key findings:

i. Businesses are likely to incur additional costs if they misunderstand or misinterpret regulations;

ii. Addressing regulatory myths and improving businesses' understanding would deliver tangible benefits for business;

iii. There are many sources of 'regulatory myths' and not all are within Government control; as a result, businesses are often uncertain as to which regulations apply to them or that they are fully compliant; [88]

iv. DBIS and HSE have undertaken research to improve their understanding of businesses' interpretation of regulations;

v. DBIS and HSE have implemented projects to expose regulatory myths and improve businesses' understanding of regulations;

vi. Departmental research shows that the initiatives have been well received by businesses that are aware of the changes but there is a continuing need to raise awareness more broadly;

vii. The BRE has begun to disseminate the lessons from the various pieces of research;

86 Q7

87 Q28 [Sir William Sargent]

88 Such uncertainty can lead to over-compliance or under-compliance—over-compliance being the "regulatory creep" spoken of by Rick Haythornthwaite (Q61 and also the RRAC paper; 'Response with Responsibility')

viii. While there are initiatives to improve businesses' understanding of existing regulations, there is also a need to give fuller consideration to these issues in the design of new regulations.

44. The paper revealed that some 40% of businesses did not understand the purpose of regulation, and only just over one third of businesses felt that complying with regulations was straightforward or easy.[89] DBIS research suggests that low-risk businesses could save up to £140 million per year if, instead of paying third parties for basic health and safety support, one in five of them turned to the HSE, local government, or other government sources for advice.[90] In the NAO survey, two thirds of businesses agreed that finding guidance and advice on how to comply was burdensome.[91]

45. The Anderson Review[92] on improving guidance to small and medium-sized enterprises, which has received broad welcome,[93] reached similar conclusions to the NAO report on the complexity and difficulty of understanding guidance and the consequences, as well as on the desirability of limiting Government disclaimers in guidance. In the areas of health and safety and employment focused on by the NAO, it recommended an insured helpline on employment and health and safety regulations with free access for one year from the point of first contact.[94] The Minister told us that the pilot helpline had been started up in June 2009 and will run to early 2011.[95] We shall be interested to hear how well it works. Lack of sufficient guidance is not the only problem, however. One of our witnesses commented that the HSE has been good at targeting risk industries but not so good at succinctness in guidance, with too much that is too long.[96] He summed up the problem with a hearsay story from a farmer: "89 pages is all very well, but I've got cows to milk!".

46. There is a further problem with guidance and advice from regulators—that regulators are perceived as being reluctant to stick their necks out to help businesses with advice on how to comply and unwilling to have "without prejudice" discussions that help a business seek advice without fearing enforcement action.[97] Andrew Tyrtania said:

> "The regulator asks firms to adopt 'open and honest dialogue'…Unfortunately the obligation is not mutual. When firms seek guidance on the interpretation of application of rules they are too often told 'I'm sorry, that's for you to

89 Ev 2, paragraph 3.

90 Ev 4, paragraph 9(i) and Better Regulation Executive, 'Improving Outcomes from Health and Safety, August 2008'

91 See Ev 2

92 http://www.berr.gov.uk/whatwedo/bre/reviewing-regulation/The%20Anderson%20Review/page45278.html

93 See, for example, Ev 106, Ev 138, Ev 80

94 Anderson Review, Recommendation 2; It also proposed that enforcement bodies refrain from punishment or sanction in cases where organisations have reasonably followed their advice

95 Q143

96 12 May informal session

97 The North East Chamber of Commerce added that regulators should not be allowed to change advice retrospectively. See Ev 200

> determine.'…A mature approach when faced with a question you cannot answer is to admit that you do not know the answer. But the obligation doesn't end there."[98]

Clive Davenport of the FSB put it this way:

> "The problem we have is that, when a regulator comes into a business, it is perceived, sometimes correctly, sometimes incorrectly, that he is there to penalise you…and therefore you do everything you can not to tell him anything in case it could result in a penalty."[99]

The Minister was sympathetic to this difficulty, although understandably he indicated that blanket immunity would be a problem.[100] Nevertheless, we believe that there could be greater scope for regulators to give helpful guidance on whether in broad terms activities constitute a compliance problem.

47. **We welcome the BRE's work on perceptions of guidance and the Government's acceptance of most of the recommendations in the Anderson Review. We urge the Government to push forward quickly with implementing those recommendations and with further means of promoting and sharing guidance best practice that address the problems we have outlined. Although we appreciate that there might be resource implications and legal constraints, we recommend that the Government encourage regulators and enforcement bodies to be more willing to answer questions from their regulated organisations and consider creative ways to permit without prejudice or off the record discussions on compliance.**

Collaborative working and sharing best practice

48. Our recommendations on improvements to guidance include the need for more sharing of best practice. Our previous report also mentioned the need for improvements in such activity and recommended that the BRE be more actively involved in it.[101] Since then, the Hampton implementation reviews[102] have demonstrated further means for regulators to learn from each other and we are pleased that further Hampton implementation reviews are being worked on. Consumer Focus stressed the importance of such projects in its 'Rating Regulators' report.[103] In a different though related area, we commend the LBRO's "Trading Places" initiative on which both the ACCA and ABI expressed positive views in the informal part of our oral evidence session with them.

49. There is more scope for joint working between regulators. CAB gave positive feedback on current DBIS initiatives,[104] but recommended further collaboration.[105] The TUC

98 Ev 142, paragraph 3.2

99 Q69 [Mr Davenport]

100 Q146

101 'Getting Results' paragraph 43 and Recommendation 9

102 See http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/reviewing-regulators/page44054.html/inspection-enforcement/implementing-principles/reviewing-regulators/page44054.html

103 http://www.consumerfocus.org.uk/en/content/cms/Publications___Repor/Publications___Repor.aspx

104 Ev 40, paragraph 8.2

105 Ev 40, paragraph 8.1

observed that there remain blocks to enforcement officers reporting on breaches of the law in areas outside of their own jurisdiction.[106]

50. **We welcome the "Trading Places" initiative and the Hampton implementation reviews published to date, and look forward to the further Hampton implementation reviews due for publication this year or early next year. We encourage regulators and the BRE to explore opportunities for joint working including—where appropriate and subject to legal advice—in reporting of infringements outside of their particular jurisdiction.**

Impact assessments and post-implementation review

51. Criticisms of impact assessments (IAs) remain, and Jitinder Kohli accepted that while progress had been made, "we are on a journey."[107] The small firms impact test part of impact assessments has been revised,[108] but problems persist with:

- Reliability of figures, particularly in EU IAs[109]
- Validation by affected businesses and the need for incentives for business to involve themselves thoroughly in such validation[110]
- Assessment of competition impacts[111]
- Variations in quality[112]
- Insufficient evidential and cost/benefit analysis[113]
- Lack of implementation plans.[114]

As PricewaterhouseCoopers said:

> "Impact assessments…are not conducted in a consistent or comparable way, nor are they necessarily validated by businesses themselves. Engagement with business is essential to produce an accurate and consistent assessment of the costs of regulation."[115]

The Minister told us that introducing publication of impact assessments allowed for greater transparency and therefore greater challenge to the costings that they contain.[116]

106 Q57 [Ms Veale]

107 Q20 [Mr Kohli]

108 See Ev 14, paragraph 2.11

109 See Ev 131 to 132, paragraphs 12 to 18,

110 Ev 198, paragraph 28, Ev 108 and Ev 209

111 Ev 154, paragraph 18

112 http://www.nao.org.uk/publications/0809/high_quality_impact_assessment.aspx

113 *Ibid*

114 *Ibid*

115 Ev 198, paragraph 28

116 Q147

However, experience suggests that there will remain a need for earlier and better engagement with business in the initial cost assessment process.

52. Lack of post-implementation review is a related problem referred to by parliamentary committees[117] and by our witnesses in the inquiry.[118] In its 2009 IA report, the NAO found that the proportion of IAs that included an implementation plan dropped from 74% to 20% between 2006 and 2008.[119] We are pleased, therefore, that the new impact assessment template incorporates a requirement to indicate when post-implementation review will take place and that the Minister indicated he believed in greater scrutiny of this type.[120] Jitinder Kohli of the BRE indicated that it would be the default position from now on[121] and subject to there being a proportionate and properly timed approach to reviews we welcome that.

53. **We recommend that the BRE seek ways further to improve consistency and quality of IAs including through more thorough and proactive business validation. We welcome the Minister's statement that post-implementation review will be the norm. The BRE should monitor compliance with departmental commitments to conduct them.**

Legislative flow

54. Despite a small improvement in perception of regulation as observed in the NAO survey,[122] there is concern that the regulatory reform agenda and the administrative burdens reduction programme in particular are not delivering results sufficiently quickly. The ACCA said: "At the strategic level the UK's regulatory reform programme is world-class. In practice, however, there is much room for improvement."[123]

55. A major source of complaint was the cumulative impact of legislation,[124] which was recognised by Sir William Sargent as a challenge.[125] PricewaterhouseCoopers said: "UK businesses are not of the view that regulation per se is a bad thing…However, what many businesses do contend is that the aggregate cost of complying with all regulation is too high and increasingly, putting UK firms at a competitive disadvantage." It added that: "One of the difficulties surrounding the debate on regulation is that there is no agreed measure or authoritative benchmark of the aggregate cost of regulation on business…" It observed also

117 Including the House of Lords Committee on Economic Regulators (see http://www.publications.parliament.uk/pa/ld200607/ldselect/ldrgltrs/189/189i.pdf) and the Public Administration Committee in its recent report, 'Good Government'

118 Q83 [Mr Ehmann and Mr Ambler] and Ev 52 paragraph 6.15

119 'Delivering High Quality Impact Assessments', 2009; http://www.nao.org.uk/publications/0809/high_quality_impact_assessment.aspx

120 Q151 [Mr Kohli]

121 Q154 (Ian Lucas MP)

122 Ev 2

123 Ev 105, paragraph 2.3

124 Cited as a key issue by the Federation of Small Business; Ev 78, paragraph 5

125 Q28 [Sir William Sargent]

that, "…the business community, through a body such as the CBI, should be incentivised to produce accurate costing information."[126]

56. In a written statement to the House of Commons on 2 April 2009 the Government announced that it would not be implementing a system of regulatory budgets as previously consulted on.[127] In our evidence session with the Minister, he explained the Government's reasoning, which was that whilst a compelling case can be made for introducing regulatory budgets the timing is not right at present.[128] The tasks of monitoring cumulative burdens and assessing cost-benefit analyses at the overall Government level will therefore fall to its plan for strengthening regulatory management as embodied in the external Regulatory Policy Committee and the National Economic Council's Better Regulation sub-committee announced on the same date. At the time of going to press, the NEC sub-committee should have had its first meeting but the Regulatory Policy Committee was yet to meet. The Minister told us that it was scheduled to meet over the summer.[129] He also indicated that the Government will for the first time publish cumulative figures for the costs and benefits of regulation in the autumn.[130]

57. We asked the Minister about the planned membership and manner of working of the Regulatory Policy Committee. He said:

> "We see it as a relatively small committee because I think it is important that its advice is tightly brought together and presented to the Sub-Committee of the National Economic Council, but we do believe that it should represent the broad range of business experience. It will certainly be tuned into consumer interests because this is a very important agenda for consumers too, and although it will be a small committee it will be informed by the whole regulatory reform agenda, informed by the work of the Better Regulation Executive and it will be conducting its work in the open."[131]

The Minister indicated that the Regulatory Policy Committee will be publishing its opinions on proposed regulatory measures as a means of holding Departments to account. As he put it, "if the Government chooses not to follow its advice then clearly the politicians will have to justify those decisions."[132] We welcome the Minister's statement of that position and we note the proposed terms of reference for the Regulatory Policy Committee set out in his letter to the Committee Chairman of 13 July 2009.

58. **The Government should expedite the setting up and rapid entry into full operation of the new regulatory committees announced on 2 April 2009, together with publication of cumulative regulatory costs and benefits in accordance with its stated**

126 Ev 197 to 198, paragraphs 16, 18 and 29

127 See Hansard written statements Col 74; We heard arguments on both sides of the case for and against regulatory budgets. See, for instance: For: Ev 108 paragraphs 6 and 7, Ev 207 ; Against: Q59 [Ms Veale], Q85 [Mr Haythornthwaite]; Qualified: Ev 51, paragraphs 6.3 to 6.5

128 QQ124 and 125 [Ian Lucas MP]

129 Q121

130 Q147

131 Q115

132 Q116

intention, and with terms of reference that will permit a full contribution to the regulatory evaluation process. In accordance with our recommendations on greater consumer involvement, the external Regulatory Policy Committee's membership should allow for a voice for sectors other than solely the business sector and for consumer and end user interests.

59. **The external Regulatory Policy Committee should take measures to validate impact assessments and cost-benefit analyses with input from affected parties and should be given means to provide such parties with incentives to offer properly quantified advice. The BRE should support it in that work.**

European Legislation

60. In our previous report we recommended that the BRE prioritise how to increase its influence in achieving regulatory reform at EU level and that it undertake a feasibility study of where it would like such reform to be from the UK perspective and how to get there.[133] The Government's response referred only to existing policy but did not accept the specific recommendations.

61. There was overwhelming evidence in the present inquiry that there remains substantial need for improvement in relation to matters of European regulatory reform, especially in the area of EU impact assessments and their integration with UK implementation IAs.[134] Sir William Sargent agreed in evidence to us that the EU is not as advanced as the UK on impact assessments.[135] The Environment Agency said there is a need for: "A more strategic and ambitious approach to improving the effectiveness of regulation at source, mainly in Europe" and argued for "a change in approach particularly at a European level and [ensuring] that transposition of EU laws effectively communicates the outcomes being sought."[136] (We heard from the Agency last year how last-minute legislative revisions by the European Parliament can create difficulties.)[137]

62. We were encouraged that Tim Ambler of the London Business School described UK gold-plating[138] of EU legislation as something of a myth,[139] although he remains of the view that there is over-elaboration (meaning counterproductively long explanation) of EU directives—a view that ties in with the quotation cited earlier that 89 pages do not milk cows.[140] In his paper to us he and Francis Chittenden argued that "the importance of Brussels as main regulator should be recognised and UK systems designed to deal with that...".[141] And in their joint British Chambers of Commerce publication, 'Worlds Apart:

133 'Getting Results' Recommendation 25

134 See, for example, Ev 76, Ev 106 and Ev 140 to 141, paragraphs 51 to 54

135 Q29 [Sir William Sargent]

136 Ev 180 paragraph 2.7 and Ev 181 paragraph 3.1

137 'Getting Results' Q239 [Ms Young]

138 For an explanation of gold plating see 'Getting Results' page 36

139 Q77

140 A contrary view came from Trading Standards, who argued that there are consumer benefits to additional protection on a national basis – see Ev 45

141 Ev 77

The EU and British Regulatory Systems,'[142] they argue for an effective UK IA system for EU-sourced legislation in which the UK preliminary IA appears immediately after publication of the Commission's annual legislative programme and not later than the first EU draft IA, so that EU legislation is challenged early enough [for the challenge] to be effective."[143]

63. We mentioned the arguments for better linkage between EU and UK IA processes in our previous report.[144] It seems to us that it must make sense to try to deal with any issues of EU over-regulation through earlier UK impact assessment input in the EU process and a more co-ordinated approach, and we put that view to the Minister, who agreed that influencing legislation from its inception is key.[145]

64. **To assist in maximising objective but effective challenge to EU-sourced legislation, we recommend that the BRE: (a) revisit the recommendations in our previous report regarding a feasibility study on EU regulatory reform objectives and the need to increase BRE influence on EU regulatory reform (including by means of a permanent representation in Brussels) and as a matter of urgency (b) explore means of improving and bringing forward in time the UK's input into EU impact assessments.**

4 Conclusion

65. **The better regulation agenda is more important now than ever; in current economic conditions businesses are concerned with maximising productivity and minimising the administrative burdens on them. The evidence we collected tells us that the principles of the agenda still hold good; proportionate and risk-based regulation, if properly applied, can deliver the vital protection of regulation without creating unnecessary burdens on business. But the debate around better regulation is shifting in light of the financial crisis, there is increasing pressure against so called 'light-touch' regulation and concern that risk-based regulation has not been implemented or enforced effectively. Our inquiry has shown that there is scope for regulators better to understand both individual-level risk and systemic risk and to use their powers of enforcement more effectively.**

66. **Now is therefore an important time for the BRE to establish and communicate publicly its principles and priorities for future better regulation and to set out clearly the direction of the agenda. The BRE's ongoing role must be to ensure that better regulation principles are embedded into Departments and regulators and that those principles deliver the intended outcomes both for businesses and consumers.**

142 British Chambers of Commerce, May 2009

143 See Executive Summary page 5

144 'Getting Results', Paragraph 89

145 Q155

Formal Minutes relating to the report

Tuesday 14 July 2009

Members present:

Andrew Miller, in the Chair

Gordon Banks
Lorely Burt
John Hemming

Draft Report (Themes and Trends in Regulatory Reform), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 66 read and agreed to.

Conclusions and recommendations agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned to a date and time to be fixed by the Chairman

Witnesses

List of written evidence

List of Reports from the Committee during the current Parliament

Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
Second	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 209
Third	Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	HC 210
Fourth	Draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009	HC 399
Fifth	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 400
Sixth	Draft Legislative Reform (Limited Partnerships) Order 2009	HC 794
Seventh	Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009	HC 795
Eighth	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 883

Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) **(**England and Wales**)** Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090