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## BRIEFING FOR REGULATORY REFORM SELECT COMMITTEE

### Regulatory Reform in the UK

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## INTRODUCTION

The Government has stated that effective and well-focused regulation can play a vital role in correcting market failures, promoting fairness and increasing competition. It believes that inefficient regulation or blanket enforcement imposes a significant and unnecessary burden on business, which should be minimised. The Government's stated objective of the regulatory reform agenda is to improve the productivity of the UK economy by removing unnecessary regulation for the public, private and voluntary sectors or reducing the costs associated with complying.

interacts with departments to implement specific initiatives.

- Part 3 discusses the range of regulatory reform initiatives that contribute to the agenda and examines how they fit together to achieve the Government's regulatory reform objectives.
- Part 4 examines the mechanisms for evaluating the Government's successes in delivering the intended regulatory reform objectives; and holding the Better Regulation Executive and departments accountable for their performance.

This briefing paper provides the Regulatory Reform Committee with an overview of the current regulatory reform landscape in the UK and describes how the agenda has evolved in recent years. The briefing is structured as follows:

- Part 1 sets out the evolving focus of the regulatory reform agenda and describes the institutional structures supporting delivery.
- Part 2 discusses the role of the Better Regulation Executive (BRE) and how it has developed over the years. It explains the BRE's approach to delivering the regulatory reform agenda and the way in which it

## PART 1: THE EVOLVING REGULATORY REFORM AGENDA

*This part sets out the development of the Government's approach to reforming the UK's regulatory system since 1997. It sets out the evolving nature and focus of the agenda, and the institutional structures in place for delivery.*

### **Better regulation in the UK has evolved continuously since 1997.**

1. In 1997, the new Labour Government identified reforming the regulatory system in the UK as a key priority. It shifted the focus away from 'de-regulation' to 'better regulation' with the aim of reducing the costs to business of complying with out-dated and unnecessary regulations. The Government also appointed the Better Regulation Taskforce (BRTF), an independent advisory body, to take the agenda forward. The BRTF established five principles of good regulation - *proportionality, accountability, consistency, transparency and targeted* - to guide the development of regulation and its enforcement. These principles formed the basis of the Government's approach to reforming regulation - and are still applicable in 2008.

2. In 1999, the Government broadened its approach and signalled a new drive to remove unnecessary regulations. The Regulatory Impact Unit in the Cabinet Office was established and had responsibility for coordinating delivery across departments. In particular, the Government introduced a requirement that departments prepare a Regulatory Impact Assessment (RIA) when

considering policies which impose new regulatory burdens. It also committed to introducing new legislation to facilitate deregulatory action.<sup>1</sup>

3. From 2000 to 2003, the focus of Government reforms was aimed primarily at small-medium sized businesses, and focused on simplifying taxation and accounting requirements. In 2004, the Government announced a package of better regulation measures intended to deliver significant benefits to business - combining measures to deliver deregulation immediately, with more fundamental reform of the policy-making process to improve the quality of regulation and inspection over time.

4. At the same time the Government asked Sir Philip Hampton<sup>2</sup> to 'consider the scope for reducing administrative burdens by promoting more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes'.<sup>3</sup> Hampton reported in 2005, and recommended that regulators should use risk assessment as the basis for their inspection and enforcement programmes, thus focusing resources where they could

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<sup>1</sup> The Regulatory Reform Act 2001 replaced the Deregulation and Contracting Out Act 1994, and came into force in April 2001. It has subsequently been replaced by the Legislative and Regulatory Reform Act 2006.

<sup>2</sup> Sir Philip Hampton is the chairman of J Sainsbury plc, parent company of the Sainsbury's chain of supermarkets.

<sup>3</sup> Hampton, P. *Reducing Administrative Burdens: effective inspection and enforcement*, March 2005, Executive Summary

have the greatest impact.<sup>4</sup> In March 2005 the BRTF also published the Less is More Report, which set out eight recommendations for how the UK Government might reduce the cost to business of complying with regulation. The publication of these reports marked a watershed in the better regulation agenda, and the size, scope and pace of change has increased substantially since.

5. Since 2005, the Government has directed its efforts towards implementing the recommendations made by Hampton and the BRTF in order to 'deliver better regulatory outcomes while driving down the cost to business of complying with regulation'.<sup>5</sup> Parts 2 to 4 of this briefing paper explain how the BRE has sought to achieve these aims.

**There is now a well established institutional structure supporting regulatory reform in the UK**

6. The Government has established an institutional structure to facilitate the delivery of the regulatory reform agenda (Figure 1 over). The BRE is responsible for the co-ordination and delivery of the regulatory reform agenda in the UK. It seeks to support and challenge departments and regulators, and promotes the agenda in Europe. Departments and regulators are primarily responsible for the quality of their

own regulations and implementing regulatory reform initiatives. It is important, therefore, that there is strong coordination and a cooperative approach to delivery.

7. Departments have established a common internal structure to implement the agenda. Each department has a Better Regulation Minister who is supported by a Board Level Champion. The Board Level Champion is responsible for promoting better regulation and the importance of the agenda within the department. They engage at a strategic level and provide a link to senior officials, including the Permanent Secretary. Better Regulation Units have also been established to raise departmental awareness of better regulation initiatives; provide support and challenge to policy teams; and to liaise with the BRE

<sup>4</sup> Better Regulation Executive, *Implementing Hampton: from enforcement to compliance*, BRE website – available at:

<http://bre.berr.gov.uk/regulation/reform/hampton/index.asp>

<sup>5</sup> Quote by the Chancellor of the Exchequer in Budget 2005

Figure 1: Roles and Responsibilities		
STRATEGY AND COORDINATION	IMPLEMENTATION	SCRUTINY
<p><b>The Better Regulation Executive:</b></p> <ul style="list-style-type: none"> <li>Provides strategic direction for the better regulation agenda in the UK, and liaises with Europe.</li> <li>Project manager and coordinator for the various regulatory reform initiatives.</li> <li>Provides support and advice to departments.</li> <li>Issues guidance on specific initiatives.</li> </ul> <p><b>The Panel for Regulatory Accountability</b></p> <ul style="list-style-type: none"> <li>Its stated objective is to provide scrutiny of departmental simplification plans and major policy proposals</li> </ul>	<p><b>Departments:</b></p> <ul style="list-style-type: none"> <li>Primary responsibility for delivering high quality regulation. Each department has:           <ul style="list-style-type: none"> <li>A <b>Better Regulation Minister</b> who is accountable for the wider better regulation agenda.</li> <li>A <b>Better Regulation Board Level Champion</b>, who ensures that board members are committed to the wider better regulation agenda, and liaises with BRE senior management.</li> <li>A <b>Better Regulation Unit (BRU)</b> dedicated to supporting policy teams in delivering the wider better regulation agenda. The BRUs are the key liaison point for the BRE and work with policy teams to implement regulatory reform initiatives.</li> </ul> </li> </ul>	<p><b>National Audit Office:</b></p> <ul style="list-style-type: none"> <li>Reports to Parliament on departmental and BRE performance.</li> <li>Examines various aspects of the regulatory reform agenda.</li> </ul> <p><b>The Regulatory Reform Committee:</b></p> <ul style="list-style-type: none"> <li>Provides parliamentary scrutiny of matters relating to regulatory reform.<sup>6</sup></li> </ul> <p><b>The Public Accounts Committee:</b></p> <ul style="list-style-type: none"> <li>Holds hearings on NAO reports. In February 2008, the Committee will examine the NAO report on the Administrative Burdens Reduction Programme.</li> </ul>

8. The Better Regulation Units have oversight of the way in which 'their' department considers and embeds regulatory issues into the mainstream policy making process. They seek to maintain the focus and

momentum of the agenda within their department, as well as offering advice and assistance to policy officials. Originally, their role focussed on overseeing and advising on Impact Assessments, but has expanded in line with the growth of the regulatory reform agenda. They are now responsible for improving policy officials' understanding and application of regulatory reform initiatives, as well as coordinating and reporting departmental progress on specific initiatives; eg drafting simplification plans for the Administrative Burden Reduction Programme (Figure 3).

9. In June 2007, the Machinery of Government changes which accompanied the change of Prime Minister moved the BRE from the Cabinet Office to the newly formed Department for Business, Enterprise and Regulatory Reform (BERR). The BRE now operates within the reporting and accountability structures in BERR, but has retained its responsibilities (Figure 1). It has kept its Executive Chair and a direct link to the Prime Minister. The BRE's Chief Executive also sits on BERR's Management Board.

*A system of oversight of the delivery of regulatory reform exists.*

#### *Government scrutiny*

10. The Government has established the Panel for Regulatory Accountability (PRA), which is a Cabinet Committee chaired by the

<sup>6</sup> The Committee's remit was extended in 2007, prior to this the Committee was responsible for the scrutiny of Regulatory Reform Orders.

Chief Secretary to the Treasury<sup>7</sup>. Its objective is to 'ensure that the burden of regulation on business, the public sector and third sector is kept to the minimum necessary'. The PRA scrutinises departmental plans to reduce burdens and major regulatory proposals.

**11.** The Better Regulation Commission (BRC) - formerly the Better Regulation Taskforce (para 1) - was established in 2005 to provide independent challenge to Government on its overall regulatory performance. The BRC was made up of 15 independent and voluntary members from a variety of backgrounds including business, the public sector, the voluntary sector and trade unions.

**12.** In July 2007, the Prime Minister asked the BRC 'to carry out further work on how policy-making can benefit from a fuller and more rounded consideration of public risk.'<sup>8</sup> On 16 January 2008, the Prime Minister accepted the recommendations of the BRC report<sup>9</sup> and established the Risk and Regulation Advisory Council. The new council, which replaces the BRC, will work with Ministers and senior civil servants to develop a better understanding of public risk and how best to respond to it, and work with external stakeholders to foster a more

considered approach to public risk and policy making.<sup>10</sup>

#### *External scrutiny*

**13.** The National Audit Office (NAO) helps Parliament hold the BRE and departments to account for their performance in implementing the better regulation agenda, and disseminates good practice. We have played an active role since 2001 and published reports on two of the major regulatory reform initiatives, Impact Assessments and the Administrative Burdens Reduction Programme. We have examined the extent to which these regulatory reform initiatives are being implemented effectively and delivering their intended outcomes. The work of the NAO is considered further in Part 4.

#### *Parliamentary scrutiny*

**14.** Parliamentary scrutiny is important in holding the BRE, departments and regulators accountable for the delivery of this agenda, and the extent to which it is delivering its intended objectives. Four committees have recently played, or intend to play, a role in evaluating performance:

- in November 2007 the House of Lords Select Committee on Regulators<sup>11</sup> published a report on the UK economic regulators, which included an assessment of the use and quality of

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<sup>7</sup> Membership includes the Secretary of State for Business, Enterprise and Regulatory Reform, and William Sargent, the Executive Chair of the BRE.

<sup>8</sup> Better Regulation Commission website - <http://www.brc.gov.uk/>

<sup>9</sup> Better Regulation Commission, *Public Risk – the Next Frontier for Better Regulation*, January 2008, available at: <http://www.brc.gov.uk/>

<sup>10</sup> Risk and Regulation Advisory Council website - <http://www.berr.gov.uk/about/economics-statistics/rrac/index.html>

<sup>11</sup> The Committee is an ad hoc Committee.

- impact assessments produced by Ofcom, Ofgem, Ofwat, Postcomm and the ORR. The Committee's conclusions on impact assessments were based on a review carried out by the NAO;
- in January 2008 the House of Lords Select Committee on the Merits of Statutory Instruments took evidence from Pat McFadden (the then Minister) on the management of secondary legislation, which covered the better regulation agenda;
  - on 20 February 2008, the Committee of Public Accounts will hold a hearing on the NAO's report on the Administrative Burdens Reduction Programme; and
  - the House of Commons Regulatory Reform Committee reviews legislative reform orders and will conduct its first inquiry in 2008.

**Potential lines of enquiry for the Committee**

- (i) examine how the regulatory reform agenda in 2008 differs from 1997 – and explore what has been achieved over this period and what success looks like. Examine whether the focus of the agenda has changed, or just been re-packaged;
- (ii) consider the context and challenges of delivering regulatory reform and explore whether the Government's approach to policy development gives due weight to better regulation principles;
- (iii) examine whether the existing arrangements for scrutiny and challenge are operating effectively; and
- (iv) explore how increased Parliamentary scrutiny could play a valuable role in holding the BRE and departments to account, and creating stronger incentives to deliver the regulatory reform agenda.

## PART 2: THE ROLE AND NATURE OF THE BETTER REGULATION EXECUTIVE

The Better Regulation Executive has been tasked by the Prime Minister to minimise bureaucracy for businesses; front-line staff in the public sector; and charities and the voluntary sector. The establishment of the BRE was recommended in the Hampton Report and it replaced its predecessor, the Regulatory Impact Unit. This part sets out the intended nature and role of the BRE and examines how it has developed since 2005.

### **The BRE is responsible for the coordination and delivery of the regulatory reform agenda across Government**

15. Between 1999 and 2005 the Regulatory Impact Unit was responsible for working with departments and regulators to seek fair and effective regulations. Its work involved promoting the principles of good regulation; removing unnecessary, outdated or over-burdensome regulations; and improving the assessment and development of new regulations through oversight and scrutiny. In 2005, the Government established the Better Regulation Executive. The new body took over the functions of the Regulatory Impact Unit but its scope, nature and function was expanded. The BRE was given responsibility for the coordination and delivery of the regulatory reform agenda in the UK and, in particular, was tasked with:

- being 'at the centre of Government, to hold regulators to account for their performance against the principles of regulatory enforcement'; and

- 'having scrutiny and oversight responsibility for the whole regulatory system.'<sup>12</sup>

16. The BRE has, therefore, responsibility for delivering the Government's commitments for regulatory reform and promoting the agenda in Europe. In February 2008, it stated that it had four main functions for pursuing the Government's commitments (Figure 2).

**Figure 2: Key functions of the BRE<sup>13</sup>**

- |  |
|--|
| (i) Scrutinise new policy proposals from Departments and Regulators  |
| (ii) Speed up the legislative process to make it easier to take through deregulatory measures  |
| (iii) Work with departments and regulators to reduce existing regulatory burdens affecting business and the voluntary sector, and frontline staff in the public sector |
| (iv) Drive forward the better regulation agenda in Europe  |

17. In 2007-08 the BRE had 89 staff<sup>14</sup> and an operating budget of £10.6 million.<sup>15</sup> There are three teams:

- regulatory reform directorate (approximately 36 staff) - which supports and challenges departments and regulators, and covers the European agenda;

<sup>12</sup> Hampton, P. *Reducing administrative burdens: effective inspection and enforcement*, March 2005

<sup>13</sup> BRE website as at February 2008. Available at: <http://bre.berr.gov.uk>

<sup>14</sup> This includes the Better Regulation Commission Secretariat staff, who were re-assigned to other tasks in the BRE during the course of the year.

<sup>15</sup> Minister of State, Department for Business, Enterprise and Regulatory Reform, *Memorandum to the House of Commons Regulatory Reform Committee – The Government's Regulatory Reform Agenda*, January 2008

- regulatory innovation directorate (approx 33 staff) – which focuses on special projects and future policy, and also includes a Bill Team; and
- regulatory services team (approx 14 staff) – which works with regulators and local government to improve inspection and enforcement regimes.

18. The remaining staff work for the Strategic Support Team and support the Executive Chair and Chief Executive in the running of the BRE.

19. BERR has a series of Public Service Agreement (PSA) targets, one of which relates to better regulation and to which the BRE is a key contributor. In the 2005-08 period the target was: ‘to ensure that departments deliver better regulation and tackle unnecessary bureaucracy in the public and private sector’ (prior to the machinery of government changes in June 2007, this target was held by the Cabinet Office). From April 2008, the target will be ‘to deliver the conditions for business success’. The regulatory reform indicators focus on: (i) ensuring the introduction of new regulation is justified and proportionate; and (ii) delivering on the commitment to reduce administrative burdens<sup>16</sup>. The regulatory reform agenda is also part of BERR’s Departmental Strategic Objectives. Annex A

provides further detail on the targets and indicators.

20. Progress in delivering the PSA targets will, to a large extent, be influenced by the performance of departments in successfully implementing regulatory reform initiatives. It is vital, therefore, that the BRE works constructively with departments, regulators and inspectorates to deliver its commitments.

**The BRE has to work with departments and regulators to deliver the regulatory reform agenda**

21. The BRE has introduced a system of account managers to shadow departments and provide support, advice and challenge on plans to simplify regulatory burdens and introduce new regulations. Approximately 20 out of the 84 staff perform this role. They work with departmental Board Level Champions and Better Regulation Units and, increasingly, more directly with policy officials. The aim of account managers is to maintain an oversight of the way in which departments are implementing the regulatory reform agenda.

22. The introduction of account managers reflects the BRE’s intention to be more strategic in its engagement with departments. It has moved away from the Regulatory Impact Unit’s previous role of routinely scrutinising Impact Assessments, and now focuses on proposals which have significant impacts or are of major concerns to stakeholders. The BRE’s aim is to engage in the earlier stages of policy development to

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<sup>16</sup> Further information can be found at:  
[www.berr.gov.uk/about/strategy-objectives/PSA-Targets](http://www.berr.gov.uk/about/strategy-objectives/PSA-Targets)

ensure the principles of good regulation are applied throughout the policy process.

23. Each department (or regulator) is responsible for monitoring its implementation of better regulation initiatives. The BRE reviews the performance of departments twice a year to ensure that they are meeting deadlines and achieving reductions in the burden of regulation. The aim of the exercise is to improve departments' approach to regulating. These results are reported to Ministers and are not reported publicly, but the BRE has reported departments' progress in delivering the Administrative Burdens Reduction programme and, in December 2007, published a table showing identified reductions and savings delivered. The NAO is currently undertaking a value for money examination which will report on the robustness of claimed reductions and review the BRE's role in scrutinising departments' claims.

24. The BRE and departments both have responsibilities to deliver the regulatory reform agenda (Figure 1). Whilst departments are primarily responsible for implementation and delivery, the BRE drives the agenda, co-ordinates progress and, ultimately, is responsible for the Government's performance on regulatory reform. The BRE seeks to influence behaviour, in partnership with departments, by:

- promoting a culture of better regulation within departments;
  - providing guidance and support;
  - influencing regulatory proposals; and
  - driving forward cross-Government initiatives.
25. Effective cooperation between the BRE and departments is crucial to the successful implementation of the regulatory reform agenda. The nature of the BRE's strategic and challenge role means that, inevitably, there can be a level of tension in the working relationship with departments.
26. In addition, the BRE has sought additional powers in the Regulatory Enforcement and Sanctions Bill to 'allow Ministers to impose a duty on regulators who require additional focus to meet the requirements of the Government's better regulation agenda.'<sup>17</sup> The duty will not allow a Minister to direct any operational decisions of a regulator but will enable them to require regulators to review the burdens they impose in the delivery of their objectives; to reduce those that are found to be unnecessary and unjustifiable; and to report on progress annually.<sup>18</sup> According to BERR, the most likely scenario where this duty would be

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<sup>17</sup> Better Regulation Executive, *Regulatory Enforcement and Sanctions Bill* information pages, available at: [http://bre.berr.gov.uk/regulation/enforcement\\_sanctions\\_bill/index.asp](http://bre.berr.gov.uk/regulation/enforcement_sanctions_bill/index.asp)

<sup>18</sup> BERR, *A Guide to the Regulatory Enforcement and Sanctions Bill*, available at: [http://bre.berr.gov.uk/regulation/documents/enforce\\_sanc\\_t/res\\_bill\\_guide\\_3.5\\_071122.pdf](http://bre.berr.gov.uk/regulation/documents/enforce_sanc_t/res_bill_guide_3.5_071122.pdf)

applied would be where 'the Government believes that to do so would further the better regulation agenda.'<sup>19</sup> The duty can only be applied by way of a statutory instrument requiring the approval of both Houses of Parliament.

**Potential lines of enquiry for the Committee**

The Committee might want to explore the implications of the changes in responsibility and approach for scrutinising the implementation of the regulatory reform agenda. In particular, the Committee may explore whether there is sufficient real time, independent scrutiny of the implementation of regulatory reform initiatives. It might also want to examine the role of account managers; for example, whether they have developed a consistent approach and the limitations of their scrutiny.

Therefore, the Committee may wish to:

- (v) examine the role of the BRE including:
  - how it has expanded and grown since 2005;
  - the current costs of the BRE and historical information on staff numbers;
  - explore how the BRE determines its allocation of resources and links this to its commitments;
  - the BRE's performance in delivering against the better regulation PSA targets; and
  - the ability of the BRE to influence departments and regulators and whether there are adequate processes and mechanisms in place.
- (vi) the strength of the BRE's scrutiny / quality assurance arrangements for evaluating departmental performance in delivering and embedding better regulation initiatives; and
- (vii) factors which could help increase the effectiveness of the regulatory reform agenda - eg whether there are sufficient incentives on departments to deliver and whether the operation of the institutional framework could be improved.

<sup>19</sup> BERR, *A Guide to the Regulatory Enforcement and Sanctions Bill*, available at:  
[http://bre.berr.gov.uk/regulation/documents/enforce\\_sanc\\_t/res\\_bill\\_guide\\_3.5\\_071122.pdf](http://bre.berr.gov.uk/regulation/documents/enforce_sanc_t/res_bill_guide_3.5_071122.pdf)

### PART 3: REGULATORY REFORM INITIATIVES

The BRE has introduced a number of initiatives to deliver the regulatory reform agenda. This part sets out details of the various initiatives and how they fit together to deliver the intended objectives of the regulatory reform agenda.

#### **The BRE has introduced many initiatives in pursuit of regulatory reform.**

27. Since the BRE was established in 2005, the primary focus of the Government's regulatory reform initiatives has been on improving the business environment. There have been numerous statements linking regulatory reform with the success of the UK economy; for example, in July 2007, the Prime Minister stated that "regulatory reform is essential to economic and social goals" and the Minister of State said "tackling unnecessary regulatory burdens .... is a key element of keeping the economy strong"<sup>20</sup>.

28. The BRE's vision for the regulatory reform agenda is not made clear on its website and presentation in strategic documents has varied over time. In July 2007, the BRE published The Next Steps on Regulatory Reform, which stated that the Government was committed to:

"ensuring that it tackles unnecessary regulatory burdens on the private, public and third sectors.<sup>21</sup>"

29. The BRE has implemented the better regulation agenda by introducing a series of

initiatives which seek to improve the business environment. The pace of change has increased since 2005 and Figure 4 sets out the key initiatives that are now being implemented. Between 2005 and 2007 the BRE has sought to meet the Government's commitments to regulatory reform by expanding the agenda in two distinct ways:

- the original focus on challenging the introduction of new regulations has expanded by introducing new initiatives to reduce the burdens of complying with regulations and improve enforcement and inspection regimes; and
- the agenda has widened in scope from a focus on Government departments to include regulators, inspectorates and local authorities.

**Figure 3: Regulatory reform initiatives**

#### Impact Assessment Format and Guidance

The Impact Assessment (IA) – previously the Regulatory Impact Assessment – is a key tool for challenging the need for new regulations as departments deliver policy. IAs serve as:

- a continuous process to help policy-makers fully think through and understand the consequences of possible and actual Government interventions in the public, private and third sectors; and
- a tool to enable the Government to evaluate and present the relevant evidence on the positive and negative effects of such interventions.

#### Private inspection mergers

The Hampton Review recommended a number of regulatory mergers, which will reduce 31 regulators to 7 by April 2009. The relevant Departments have the lead in the detailed

<sup>20</sup> BERR publication: Next Steps on Regulatory Reform, July 2007

<sup>21</sup> BERR publication: Next Steps on Regulatory Reform, July 2007

planning of mergers, but the BRE is overseeing their work and ensuring that merger planning is on track and consistent with Hampton's recommendation.

#### Administrative Burdens Reduction Programme

The 'Less is More' report recommended that the Government measure the administrative burdens which it imposes, set targets for their reduction and publish simplification plans. Since 2006, departments have published annual simplification plans which detail their progress.

#### Retail Enforcement Pilot

The Retail Enforcement Pilot (REP) seeks to demonstrate early practical delivery of the Hampton agenda in terms of reducing administrative burdens on business by improving the delivery of regulatory enforcement services.

REP provides a framework for collaborative working between local authorities and national regulators which is intended to reduce the burdens of inspections upon compliant businesses by promoting risk based interventions and increase the efficiency of local authority (LA) regulatory services through joint local working.

#### Legislative and Regulatory Reform Act 2006

On 8 January 2007, the Legislative and Regulatory Reform Act 2006 (LRRA) came into force and replaced the Regulatory Reform Act 2001. The LRRA includes two order-making powers which a Minister may use to amend primary legislation. The first allows a Minister to make a Legislative Reform Order (LRO) for the purpose of removing or reducing burdens; the second allows a Minister by LRO to ensure that regulatory functions are exercised so as to comply with the five Principles of Good Regulation.

#### Regulatory Enforcement and Sanctions Bill

Introduced to Parliament on 8 November 2007<sup>22</sup>, the Bill is comprised of four parts.

**Part 1** establishes the Local Better Regulation Office (LBRO) that will promote greater consistency amongst local authorities, and between them and central government, helping

them work together to keep the burdens of regulation on compliant businesses to a minimum.

**Part 2** establishes a Primary Authority Principle, overseen by LBRO that will deliver the Government's commitment to place Home and Lead Authority Principles on a statutory footing.

**Part 3** provides a framework for a range of new administrative sanctions which will allow regulators to tackle non-compliance in ways that are transparent, flexible, and proportionate to the offence.

**Part 4** provides for power to allow Ministers to impose a duty on regulators who require additional focus to meet the requirements of the Government's better regulation agenda. The duty will require any specified regulator to review the burdens they impose in the delivery of their objectives, to reduce those that are found to be unnecessary and unjustifiable, and to report on progress annually. (see paragraph 25)

#### Regulators' Compliance Code

The Government has issued the statutory Regulators' Compliance Code with parliamentary approval following a wide and lengthy consultation process. The Code comes into force on 6 April 2008.

The code of practice is intended to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement among the regulators.

30. Figure 4 shows that the BRE's approach has comprised of a mix of initiatives, including:

- initiatives to improve existing regulatory processes - for example, the revisions to the impact assessment process are designed to strengthen challenge of new regulations;
- new work programmes designed to achieve specific objectives - for example, the Administrative Burdens Reduction Programme; and

<sup>22</sup> As at 21/01/08, the Bill is at committee stage in the Lords

- enhanced legislative support to strengthen departments' ability to deregulate.

31. The majority of the initiatives originate from two independent reviews commissioned by the Government to examine specific aspects of the regulatory environment. The Less is More report and the Hampton Report<sup>23</sup>, published in March 2005, were the most important assessments and provided the basis for much of the ongoing regulatory reform work. For example, the Regulatory Enforcement and Sanctions Bill, Retail Enforcement Pilot and private inspection mergers were all part of the strategy to implement the Hampton Report (which recommended that regulators rationalise their inspection and enforcement regimes). The Government accepted in full the recommendations of these reports and implemented the programmes of work in Figure 3.

32. There were also three other independent reviews which focused on:

- The implementation of EU legislation: The Davidson review<sup>24</sup> recommended removing unnecessary burdens in ten

legislative areas<sup>25</sup> so that the burden on business was kept to a minimum.

- Regulatory penalties and sanctions: The Macrory review<sup>26</sup> made recommendations aimed at ensuring regulators had flexible and fit for purpose sanctions to complement the Hampton principles.
- National enforcement priorities for Local Authorities: The Rogers Review<sup>27</sup> set out six national priorities<sup>28</sup> for local authority regulatory services to assist them in prioritising their resources.

#### A new range of initiatives was introduced in 2007

33. In 2007 the BRE published three more publications outlining new initiatives to be introduced as part of the regulatory reform agenda (Figure 5).

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<sup>23</sup> Hampton, P. *Reducing administrative burdens: effective inspection and enforcement*, March 2005 (the Hampton Report) and The Better Regulation Taskforce, *Less is More*, March 2005 (Less is More).

<sup>24</sup> Davidson, *Implementation of EU Legislation*, November 2006.

<sup>25</sup> Rogers, *National Enforcement priorities for local authorities regulatory services*, March 2007.

<sup>26</sup> The six national priorities are: air quality, alcohol licensing, hygiene of food businesses, improving health in the workplace, fair trading and animal and public health

**Figure 4: Regulatory reform initiatives announced in July 2007**

**Next Steps in Regulatory Reform<sup>29</sup>**

This publication sets out a range of new initiatives intended to help realise the benefits of better regulation for businesses, third sector organisations and the public sector front line.

**Target simplifications to improve the effectiveness of regulation through -**

- Rethinking Consumer Protection legislation and working to make employment law more straightforward for all parties to report by Spring 2008.
- Health and Safety - a review to improving outcomes and easing the burden on low risk businesses.

**Helping people understand regulation through -**

- High quality and timely guidance. Research has found that businesses want improved guidance on new regulations to make it easier for them to comply.
- A range of actions<sup>30</sup> to transform the quality of the information it requires third party organisations - such as businesses - to give consumers.

**Holding Government and regulators to account through -**

- Working with Parliament
- Creating a statutory duty on regulators to address burdens
- Applying the principles of the Regulators' Compliance Code to public service inspectorates

**Regulation and Business Advice<sup>31</sup>**

'Regulation and Business Advice' report examines the role of business advisors in implementing regulation. The report, which was published as part of the Government's Next Steps on Regulatory Reform, recommends that, with better communication and guidance, costs to business could be substantially reduced.

**Cutting bureaucracy for our public services<sup>32</sup>**

The Government is taking a comprehensive look at how public sector bureaucracy can be reduced and has asked frontline staff to help them identify areas for reform. The programme brings cross-government agreement to making the way public services are administered more transparent and takes a pragmatic approach to ensuring a tangible and permanent reduction in unnecessary bureaucracy.

34. The pace of change of the regulatory reform agenda and the introduction of new initiatives has increased the workload of departments and regulators. The successful implementation of these initiatives has the potential to contribute to the improved efficiency of their operations and better outcomes (eg risk-based and targeted inspection regimes or high levels of compliance from clearer forms). In the short-term, though, departments and regulators face the challenge of implementing the new approaches and work programmes, and obtaining the buy-in of policy officials as they seek to embed initiatives in their organisational processes. The initiatives have, therefore, resulted in transitional costs.

<sup>29</sup> BERR, *Next Steps on Regulatory Reform*, July 2007, available at:  
[http://bre.berr.gov.uk/regulation/documents/next\\_steps/next\\_steps.pdf](http://bre.berr.gov.uk/regulation/documents/next_steps/next_steps.pdf)

<sup>30</sup> BRE and National Consumer Council Report: *Warning: too much information can harm*  
[http://bre.berr.gov.uk/regulation/documents/public\\_sector\\_strategy.pdf](http://bre.berr.gov.uk/regulation/documents/public_sector_strategy.pdf)

This increases the importance of focusing on initiatives which form a coherent programme; have the potential to make the greatest contribution to the aims of regulatory reform; and can be implemented cost-effectively.

**Potential lines of enquiry for the Committee**

The Committee may want to probe the ultimate aim and desired outcomes of the regulatory reform agenda. It is possible to identify objectives and success criteria for individual better regulation initiatives, but there remains a broader question how businesses, citizens and taxpayers will know whether the Government has achieved its intended objectives and value for money. In addition, there are also questions about the incentives and tensions in the Government's approach to the implementation of regulations. For example, it is important for BRE and departments to consider the most appropriate balance between reducing the costs of regulation and ensuring there are sufficient safeguards in place to protect citizens.

The Committee may wish to:

- (viii) examine the BRE's vision for the regulatory reform agenda;
- (ix) explore whether the regulatory reform initiatives provide a coherent package of measures that will contribute to the Government's objectives in a cost-effective manner;
- (x) consider whether the BRE has a sound evidence base to support the introduction of new initiatives, and has tested the value, feasibility and implications of implementation;
- (xii) examine how the BRE manages and prioritises its programme of initiatives;
- (xiii) identify whether there is an appropriate balance between improving the business environment and maintaining the protections offered by regulation;
- (xiv) examine the resource implications - on the BRE and departments - of the expanding regulatory reform agenda. Consider whether there is a limit on the capacity of the BRE, departments and regulators to implement initiatives - and the conditions needed for more effective delivery of existing initiatives.

## **PART 4: EVALUATING PERFORMANCE**

*This part describes the evaluation undertaken to date examining the progress and success of the various regulatory reform initiatives. It also examines how the BRE is held to account for its performance.*

### **There has been limited evaluation of the regulatory reform initiatives**

35. The BRE's recent publications claim 'real', 'enormous' and 'significant' progress in delivering regulatory reform in the UK over the last ten years<sup>33</sup>. The bi-annual reporting against PSA targets stated that the better regulation targets were 'broadly on course' to be met by April 2008. However, the documents present little detail to substantiate these claims.

36. The regulatory reform indicators focus on the establishment of targets or broad statements on outcomes, and the BRE has not established a robust performance assessment framework or comprehensive set of performance measures to evaluate its impact. The BERR's new Departmental Strategic Objectives seek to provide a broader suite of measures and include seven indicators on different aspects of regulatory reform (Annex A).

37. The BRE has been active in reviewing the existing regulatory framework and specific policy areas, and has used this work to inform thinking on its future work programme. It has also begun to evaluate the outcomes of some initiatives; for example, the Retail Enforcement Pilot and a joint review - with the NAO - of the extent to which five

regulators are complying with Hampton principles (paragraph 38). There is, though, no systematic programme to evaluate initiatives and assess the extent to which they are delivering their intended objectives.

38. The BRE has often used the work of the NAO when reporting on performance. The NAO has examined the regulatory reform agenda since 2001, and provides ongoing scrutiny of three regulatory reform initiatives:

- Impact Assessments<sup>34</sup> - we have published four annual compendium reports evaluating a sample of impact assessments. The aim is to help departments improve the rigour of their analysis of the impact of policy decisions.
- The Administrative Burdens Reduction Programme<sup>35</sup> - our work in this area fulfils a request by the Chancellor to evaluate departmental performance in delivering administrative burden reductions. Our first report was published in July 2007.

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<sup>34</sup> National Audit Office, *Evaluation of Regulatory Impact Assessment 2003-04*, HC 358, March 2004.

National Audit Office, *Evaluation of Regulatory Impact Assessment 2004-05*, HC 341, March 2005.

National Audit Office, *Evaluation of Regulatory Impact Assessment 2005-06*, HC 1305, June 2006.

National Audit Office, *Evaluation of Regulatory Impact Assessment 2006-07*, HC 606, July 2007.

<sup>35</sup> National Audit Office, *Reducing the Cost of Complying with Regulations: The Delivery of the Administrative Burdens Reduction Programme, 2007*, HC 615, July 2007.

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<sup>33</sup> Next Steps on Regulatory Reform, July 2007

- The Hampton Implementation Reviews
  - the December 2006 Pre-Budget Report announced that the NAO would work with the BRE and regulators to develop a process of external review of regulatory performance. A programme of joint reviews is underway and we aim to publish an NAO compendium report in Spring 2008.

39. The NAO has examined the extent to which regulatory reform initiatives are being implemented effectively (in the case of Impact Assessments and the Hampton Review) and is examining the extent to which the Administrative Burdens Reduction Programme is delivering meaningful benefits for businesses. This evidence has been used by the BRE to measure its progress - eg the data on perceptions from the NAO's business survey will be used to report progress against the PSA target. The NAO's Impact Assessment reports have also been used as evidence by the BRE and led them to revise the guidance and format of IAs.

40. While the NAO's work can provide a valuable assessment of the use and delivery of specific initiatives, the NAO is limited in scope, as it is precluded from questioning the merits of policy objectives, and in resource. Further work would be needed to provide a full and comprehensive evaluation of the overall success of the Government's regulatory reform agenda.

**To-date, there has been limited Parliamentary scrutiny of the performance of the BRE**

41. The overall performance of the BRE has not been independently examined and, to-date, there has been limited Parliamentary scrutiny (paragraph 14). There is, therefore, an opportunity to examine the whole regulatory reform agenda, the role of the BRE and the success achieved in delivering the objectives of reform.

**Potential lines of enquiry for the Committee**

- (xv) evaluate the achievements of the BRE to-date, and review the evidence base to support its claims;
- (xvi) consider the appropriateness of success criteria and how to hold the BRE accountable for delivering the regulatory reform agenda; and
- (xvii) consider the BRE's approach to programme evaluation.

## Annex A: Targets relevant to Regulatory Reform

### **The current PSA target is to:**

By April 2008, ensure that departments deliver better regulation and tackle unnecessary bureaucracy in both the public and private sectors through:

- a. Reducing the overall administrative burden;
- b. Maintaining the UK's international standing on better regulation; and
- c. Improve the perception of regulation.

### **BERR's new PSA targets effective from April 2008 are:**

- a. raise the productivity of the UK economy
- b. deliver the conditions of business success in the UK
- c. improve the economic performance of all English regions and reduce the gap in economic growth rates between regions.

Indicators have been identified to monitor the progress against these targets. Indicator 5 and Indicator 6 are relevant to the delivery of the Better Regulation Agenda<sup>36</sup>:

### **Indicator 5 – Total benefit/cost ratio of new regulations.**

Minimum movement required for performance assessment: Expected that 'quantifiable benefits to exceed quantifiable costs' will be a lower bound.

### **Indicator 6 – Percentage by which administrative burdens are reduced across Government .**

Minimum movement required for performance assessment: 25 per cent reduction by 2010 (for the majority of the 19 departments covered by the measurement exercise) and 10 per cent and 15 percent reductions in specific administrative burdens for HMRC.

BERR has also specified a Departmental Strategic Objective (DSO) related to better regulation:

'to ensure that all Government Departments and agencies deliver better regulation for the private, public and third sectors.'

### The indicators underpinning this DSO

- Administrative burdens reduction across 19 government departments, consisting of a 25% reduction for the majority of departments by 2010. Includes BERR target to deliver 25% reduction in measured admin burdens by 2010
- Proportion of businesses (and voluntary sector organisations) who believe that "most regulation is fair and proportionate" in five policy areas - employment law, tax law, health and safety, planning law and company law
- Flow of regulation: total benefit/cost ratio of regulations coming forward over time
- Performance of local authority regulatory services as measured by the national indicator (to be agreed in 2008)
- Overall performance in the World Bank "Doing business" survey and OECD surveys of the policy environment
- Proportion of bureaucracy which the public sector front line believes to be unnecessary.
- Reduction in data stream requirements from central government to the public sector front line by 2010. Includes 30% cross-Government target to reduce burdens on front line public sector staff

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<sup>36</sup> HM Government, *PSA Delivery Agreement 6: Deliver the conditions for business success in the UK*, October 2007.