



# **THE ARCULUS REVIEW: ENABLING ENTERPRISE, ENCOURAGING RESPONSIBILITY**

**A report for the Conservative Party**

*“If you have 10,000 regulations, you  
destroy all respect for the Law.”*

*- Winston Churchill*

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# 1. Foreword by Ken Clarke

Getting Regulation right is one of the hardest jobs for any Government. Have too much and you will stifle the economy. Have too little and you will deprive citizens of the protections which they rightfully expect.

When Michael Heseltine first lit the bonfire of regulations back in 1986, he probably little realised how hard a road it would be. David Sainsbury, David Young, Francis Maude, Chris Haskins and then David Arculus subsequently took up the baton. The volume of regulation has grown sometimes for good reasons and always with good motives. The burden of regulation remains a major complaint of business managers, professional people and volunteers in the private, public and voluntary sectors of our economy. We still have not got the balance right.

We should be clear that there is a difference between how we regulate the financial and non-financial sector. In banking and the financial sector at large, the challenges posed by systemic risk mean that the regulatory approach needs to be completely different. The Conservative Party commissioned a review into the tripartite system of banking regulation, delivered earlier in the year by Sir James Sassoon, and we recognise the urgent need for wide scale reform of regulation in banking and financial services. That imperative should not overshadow the need to reduce the burden of unnecessary red tape elsewhere in business and the public services.

The aim of this review is to offer advice on a framework for regulation which a Conservative Government can develop as it seeks both to boost Britain's economic competitiveness and, at the same time, to protect its citizens.

I am indebted to the many talented people who contributed to this report, and particularly David Arculus, Julian Smith, his co-author and their nine person review team. I hope that, as well as offering a road map, it will open an informed and productive debate on regulation.

**Ken Clarke MP**

**Shadow Secretary of State for Business, Enterprise and Regulatory Reform**

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## 2. Summary

This review looks at how regulation can be improved across the British economy. I and my team have deliberately concentrated on what most people would describe as the real economy – the non banking sector. This real economy comprises manufacturing, services, small and large businesses, the public sector and charities. It does require the lubrication which the financial system supplies, but it does seem likely that when this lubrication is restored that the real economy will have to take up the mantle of economic growth from a smaller but hopefully fitter banking sector.

My aim is to enable the Conservative Party to develop an agenda which will reduce the regulatory burden on both the private and the public sector whilst maintaining the protections which society judges to be necessary. Good regulation provides a necessary framework for all economic activity. Bad regulation imposes unnecessary costs on us all, costs which we cannot afford in difficult economic times. The trick is to get the balance right. Some of the biggest failures of the last decade have been failures of regulation. Bank lending may have been under regulated, but many people in the real economy, be they doctors or police officers or small businesses would feel over regulated. With regulation the devil is always in the detail.

To get it right, we have to create a regulatory framework from which good decisions will flow. These decisions should be taken by those close to the detailed issues, rather than by distant figures in Whitehall or Brussels. There are examples of good practice amongst the regulatory community, equally there is much that can be done better. The structure within which they operate needs attention as does the law-making process itself, both at national and European level. My concern is to build on the good and to strengthen the challenge mechanisms which can help to sort the good from the bad.

**I advocate the formation of an Independent Panel for Regulation and Risk, a strengthened system of regulatory budgeting, stronger Parliamentary Scrutiny, and more vigorous engagement with Brussels. I want less regulatory bodies, less centralised control of the public sector and far more use of alternatives to regulation.**

This report seeks to both enable enterprise and encourage responsibility. I believe both of these will be necessary attributes as we seek to rebuild the prosperity which has made Britain one of the best countries in the world in which to live. A necessary condition is to have a Prime Minister who cares passionately about these issues.

**David Arculus**

**May 2009**

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# A framework which will lower regulatory burdens and foster economic efficiency

## **CHALLENGING REGULATION**

- Strengthen and build upon the existing architecture of Better Regulation and de-Regulation.
- Set up a Business Challenge panel to review manifesto commitments.
- Establish a Ministerial ‘Star Chamber’ for all new regulations.
- Establish an Independent Panel for Regulation and Risk with significant powers to slow the flow and reduce the stock of regulation.
- Use the RPI-X regime to control costs of regulators and public sector bodies.

## **REGULATING THE REGULATORS**

- Sunset regulatory bodies and then landscape review the survivors every seven years.
- Radically improve the Governance and Accountability of regulators.
- The main regulators to be accountable to Parliament and appointed by Parliament.
- Limit the burden of regulations by establishing a comprehensive system of regulatory budgets.
- Apply the principles of Better Regulation to the Public Sector as well as the Private Sector.
- Transfer accountability for, and control of, public services to the local level.

## **GOVERNMENT**

- Improve the Parliamentary process with a clear ‘Statement of Purpose’ to accompany all new proposals, and increased powers for Select Committees.
- Get better domestic involvement with European legal and regulatory processes.
- Use BERR as the clearing house for all European Regulation.
- Proactively seek to improve the European regulatory system, and adapt UK legislation to fit Europe, rather than starting from scratch.

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# Specific Actions

## **BETTER PROCESS**

- Consult on the issue not on the legislation.
- Common Commencement Dates to change from bi-annual to annual.
- Bigger penalties on those who have breached the trust put in them.
- A one in, one out system for new regulations.
- Champion Alternatives to Regulation.
- Give a ‘free pass’ to genuine alternatives to regulation.
- Concentrate on providing better information such as ‘Scores on the doors.’
- Government forms to clearly state how long they should take to complete.

## **BUSINESS AND CITIZENS**

- Help citizens to seek redress and establish a ‘Regulatory Court’.
- Simplify Government contracts for small business and third sector.
- Encourage diverse models of supply in the public and third sectors.
- Establish a website to link the public directly to departments and make better use of helplines.
- Address issues of complexity and burden of the corporate tax regime and set a clear direction of travel.

## **LAW MAKING**

- Sunset legislation which does not go through the full process.
- No law to become effective until thirteen weeks after guidance has been published.
- Use Piloting wherever possible.
- Establish a traffic light system for Statutory Instruments.
- Undertake post-legislative scrutiny.

## **PARLIAMENT AND BRUSSELS**

- Make permanent the Lords committee on regulation.
- Base a senior Minister in Brussels.
- A European Law Commission to reduce the Stock of EU Legislation.
- Strengthen select committees to be specially alert for holding regulators to account and for issues of gold plating.



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## 3. THE STATE OF REGULATION IN THE UK

Regulatory reform is a hard road. The natural tendency of Politicians is to pass laws. The natural instinct of newspapers is to call for greater protection when things go wrong. Regulators meanwhile like to expand and interpret those laws and protections, and of course to preserve and strengthen their organisations. On the other side, there are self interested or irresponsible people, both in the private sector and sometimes in the public sector, who do actually need regulating, as the recent banking crisis has demonstrated.

In the face of these pressures a framework of Better Regulation has been put in place in the UK which has had some successes, although no-one would argue that we have yet struck the perfect balance in the quest for the holy grail of economic efficiency backed by protection for citizens.

The World Economic Forum's Business Competitiveness Index (BCI) ranked the UK in 11th place for 2007, whereas in 2006 it had been in 7th place, and in 2005 in 5th place<sup>1</sup>. The report also found that the burden of Government regulation is a notable competitive disadvantage for the UK, ranking 58th out of 131 in this area. The World Bank Group's Doing Business 2008 data set placed the UK in 6th place again, the same as in 2007. In the ease of employing workers category, however, the UK had fallen from 19th to 21st place (out of 178 economies).

### **<sup>1</sup> The Global Competitiveness Report 2007-2008**

It is not just business that loses out - the high degree of central control in the public sector has created a costly structure of overlapping rules and regulations. Public Sector inspectorates and regulators play a major part in this centralized approach. Regulation and Inspection regimes sometimes become politicized, acting as yet another mechanism for government to set targets and centrally assess performance.

For Charities burdens come not only from formal regulation, but also from the way that funding streams and targets operate. Charities suffer heavily from administrative burdens imposed by the constant need to bid for funding and contracts. This is a major constraint in encouraging long term thinking and innovation.

Our argument is not against regulation per se, but against poor and ineffective initiatives including those that are ill conceived, badly drafted, poorly communicated and enforced in an unsatisfactory manner. Too much regulation creates burdens; burdens on businesses, charities, schools, hospitals, youth groups, institutions, individuals – everyone.

As far as possible we seek to Roll back the State and Roll forward Society.

### **The Costs and Benefits of Regulation**

The annual cost of regulation to the UK has been placed at between ten and twelve percent of GDP. More than 3,000 pieces of legislation were introduced in 2007, there are about 18,000 pages of legislation per year, plus a further 11,000 pages of new EU legislation covering some 2,000 regulations and 100 directives. In fact Government has responded to the flood of European legislation not by better scrutiny but by doubling the volume (as measured by pages) of its own legislation.

Good regulation is one of the cornerstones of all economic activity, but when it becomes excessive it creates diminishing returns – stalling productivity and interfering with an overly heavy hand. Regulatory burdens come from poorly drafted Bills, Statutory Instruments and overlapping Legislation, assisted by consultants and bureaucrats who over-interpret legislation down the line.

Urgent work needs to be done to foster a more sensible regulatory relationship between the state and businesses,

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charities, and the citizen. Not only is it crucial for UK business competitiveness, but it will also help to ensure that we protect our freedoms and encourage greater responsibility from individuals and institutions. In this Review we propose a number of ideas to challenge both over regulation and poor quality regulation, and to encourage greater responsibility. We shall examine the source of Regulation which is the law making process in both Europe and the United Kingdom, employment law being a particular example.

One of the greatest needs in the regulatory world is for consistency. No review of regulation can exist without considering the efforts that have gone before and strengthening them where necessary.

## **Principles of Good Regulation**

A good starting point is the five Principles of Good Regulation which were drawn up by the Better Regulation Task Force. These are set out in detail in Appendix 2. In summary, the Principles urge:

### **Proportionality**

- Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimized.

### **Accountability**

- Regulators must be able to justify decisions and be subject to scrutiny. Information should be freely available.

### **Consistency**

- Government rules and standards must be joined up and implemented fairly.

### **Transparency**

- Regulators should be open and keep regulation simple and user friendly. Transparency in the regulated is also a good principle, eg., bankers' bonuses.

### **Targeting**

- Regulation should be focused on the problem and minimize side effects.

These five principles are widely used across Government and it is from them that the present framework of regulatory scrutiny has evolved.

The main pillars of this are:

### **Impact Assessments**

- which are basically a cost benefit analysis of upcoming law and regulation.

### **Simplification Plans**

- which are prepared by Government Departments and Regulators to minimise redundant regulation.

### **The Law Commission**

- which consolidates and weeds out redundant law.

### **The Administrative Cost Reduction Programme**

- which seeks to reduce the red tape aspect of regulation by 25%.

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**Consultation**

– which can probably be greatly improved both through modern technology but also through better use of seminars and conferences.

**Alternatives to regulation**

– which should be sought at the pre-legislative phase.

**Common Commencement Dates**

– which should be broadened and strengthened to once a year rather than the current once every six months.

**Guidance**

– no legislation to come into force until thirteen weeks after guidance has been published.

***Proposal***

*We need to strengthen and build upon the existing architecture of Better Regulation and de-regulation.*

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## 4. CHALLENGING THE REGULATORY STATE – THE INDEPENDENT PANEL FOR REGULATION AND RISK (IPRR)

The cultural shift required to challenge unnecessary or poor quality regulation will only occur if there are stronger checks in place to question the merits, methods and costs of regulatory intervention. More rigorous analysis needs to be undertaken to decide whether new rules are appropriate, whether the benefits outweigh the costs and what better alternatives there might be. This shift needs to be led from the highest levels of government.

It is important that we have a Conservative Leader and Prime Minister who shows his personal commitment to the issue of Better Regulation. Culture change also requires a series of ‘trip wires’ to ensure that there is a more difficult and demanding process in place. These ‘trip wires’ will not stop good, sensible regulation but they will dampen the process and help to ensure that unnecessary rules and knee jerk reactions cannot get through the system.

### **Ill thought manifesto ideas should be trashed at birth**

Manifesto ideas can seem good at the time they are worked up – sometimes on the back of an envelope late at night. But if such policies make it onto the manifesto without proper consideration of the impacts it is the perfect set-up for a downfall. One manifesto pledge that has come back to bite the current Government are the now infamous HIPs. The reason behind the Home Information Packs was that a survey early on would prevent property chains from collapsing last minute because of a significant find in someone’s survey. When HIPs were introduced they were a watered down version as the requirement for a full condition survey was dropped. The main benefit now centres around the energy performance certificate, there is no longer a belief these will make the home buying process any smoother. The introduction of the scheme was also a disaster, it was meant to be applicable for all homes, but at first it was only applied to houses with four bedrooms (but not three plus a study).

***Proposal** All potential manifesto proposals put forward that affect business should be reviewed and scrutinised by a Business Challenge Panel made up of independent experts. This Panel should also review the non-regulatory alternatives proposed.*

Regulation must be seen, like public spending, as a potential cost to the economy. The benefits of individual regulations may outweigh their costs, but as with Government spending there also needs to be a cap on total regulatory spend. Just as the Chief Secretary to the Treasury must sanction any spending proposals prior to them being discussed by Cabinet, we believe that there must be a single individual, at Cabinet level, empowered by the Prime Minister, who should be the ‘gatekeeper’ for the next Government’s regulatory proposals. A Conservative Government should therefore give much higher prominence to the regulatory policing role of the Secretary of State for Business, Enterprise and Regulatory Reform.

An aid to this process would be to reconstitute the Cabinet sub-committee known as the Panel for Regulatory Accountability. This served as a star chamber for new legislative proposals under the Blair administration but has latterly fallen into dis-use. The advantage of this Panel is that it would overcome the objections of Ministers who felt that they owed no allegiance to BERR. Indeed when considering Public Sector matters it could be chaired by the Cabinet Office Minister. In any event, both the BERR Secretary of State and his Cabinet Office equivalent, along with others, would be full members. (See Chapter 10).

***Proposal** The Secretary of State for Business, Enterprise and Regulatory Reform and the Panel for Regulatory Accountability should consider all major regulatory proposals.*

Government’s desire to regulate often comes down to risk and management of risk. Being clear that the government cannot be the nation’s ‘risk manager’ in all situations is an important step in challenging many of the decisions to regulate. The State is involved at an increasingly micro level of risk management in today’s society, managing areas ranging from the exact size and location of signs in public buildings to enforce the smoking ban, to the detailed internal processes a business should use in order to discipline an employee.

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*Proposal      The public and press assumptions that encourage excessive regulation should be challenged. The economic and social need to ensure proportionate regulation and reduce burdens of unnecessary bureaucracy must be clearly explained.*

## **An independent statutory challenge**

Better Regulation initiatives have recently been led by the Better Regulation Executive (the BRE), part of the Business, Enterprise and Regulatory Reform department. As this unit sits within Government, it has limited ability to objectively challenge departments. Whilst we see the role of the BRE continuing, we believe that an independent view and challenge is now required.

*Proposal      A Conservative Government should establish an Independent Panel for Regulation and Risk. This panel would commission evidence based cost/benefit analysis of major legislative proposals, challenge the role and scope of regulators and advise the government on risk issues.*

The panel would report directly to Secretary of State for BERR and the Prime Minister. It should be formed with statutory powers to question and challenge legislative proposals across government. It would have an independent Chairman and Committee, with a small executive containing economists and risk experts, some of whom would be seconded from the Private Sector.

It would prepare an annual report to Parliament that reviews the totality of regulation from all sources including regulatory agencies and from all forms of regulatory instrument - including instruments with regulatory effect in the public sector such as guidance notes, recommendations and targets. It would also be equipped with powers that go beyond review. It should be able to reject departmental proposals that are based on poor quality regulatory analysis and to prompt departments and independent regulatory bodies on areas it sees fit for regulatory improvement. These 'Prompt letters' would be public, ensuring that departments and regulatory bodies are kept on their toes.

### **OIRA: Office of Information and Regulatory Affairs**

OIRA, part of the Office of Management and Budget (OMB) in the USA, has been providing independent scrutiny and analysis of new regulations since 1980. It operates as a clearing house that ensures all "major" draft rules\* comply with the principles laid out in Executive Order 12866; covering the consideration of alternatives to regulation and a proper analysis of both costs and benefits. Staffed by more than 50 personnel, both political appointees and career civil servants, it has up to 90 days to review the rules. If a draft rule has not considered alternatives or done sufficient cost and benefit analysis, OIRA can "return" a rule to the agency, for further analysis or greater consideration of the alternatives. OIRA's intervention at the "draft" stage of formulating a rule gives it genuine weight as a scrutinising body and creates a real need for agencies to reconsider their thinking and ideas.

OIRA is also able to issue Prompt letters (introduced in 2001), which pro-actively suggest issues agencies might address, either to fill gaps in regulation, or to modify regulation that is no longer needed and could be modified or rescinded. The Regulatory Right to Know Act requires OIRA to make "recommendations for reform" of regulations in its annual Benefit/Cost Report, for which it asks for suggestions from the public.

**\* A major rule is one with an annual economic effect over \$100m.**

The panel would also be an independent body to which government can address issues of so called regulatory creep. **Regulatory creep** has a number of causes; over-interpretation of regulations (sometimes in the interface with local authorities), overzealous inspection, guidance becoming de facto law or on the other side profiteering from consultants, insurance companies and lawyers in their advice to business to over comply with regulations. Regulatory Creep is considerably more than a government or regulatory body issue and the panel will help drive resolution of the biggest issues of regulatory creep through engaging all stakeholders. Similarly it would act as an independent lead on Risk issues.

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## **Mandate of the Independent Panel for Regulation and Risk (IPRR)**

We outline below the main responsibilities we see for the panel. It is clearly impractical for it to look to examine every piece of legislation – we envisage it focusing on those pieces of legislation which will have a major economic impact or on those pieces of legislation that may cumulatively add to the burdens on a particular sector.

- Commenting on upcoming regulatory proposals.
- Making an early challenge to departments to encourage them to look at alternatives or ‘do nothing’ on regulatory issues.
- Reporting annually to Parliament on regulatory budget numbers.
- Advising government on risk and leading initiatives on risk communication.
- Monitoring the success of the Government in slowing the flow of regulation and reducing the stock, with help from the Law Commission.
- Ensuring Public Sector regulation receives the same level of challenge as Private Sector regulation.
- Conducting regular reviews of Regulators and Inspectorates and monitoring their effect on competition.
- Undertaking post legislative reviews of major legislative proposals, with support from the National Audit Office. (NAO)

The IPRR will need to co-operate closely with the burdens reduction programme led by the Better Regulation Executive. Funding would come in part from the current budget of the Better Regulation Executive, and in part from the Risk and Regulation Advisory Council, whose mandate is now due for review.

## **Reducing Running Costs of Regulators, Quangos and the Public Sector**

One of the most successful regulatory innovations has been the use made of the RPI-X cost regime by the economic regulators. This forces cost out of regulated businesses and encourages efficiency. At this time of economic stress, we recommend that there should be a presumption that this methodology should also be applied to the regulators themselves and to the many Quangos, Public Sector organisations and Government departments, unless there are strong arguments for exempting particular bodies.

*Proposal*        *There should be a presumption that the RPI-X regime should be applied to regulators, Quangos, Public Sector bodies and Government departments.*

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## 5. 'SUNSETTING THE REGULATORS' – REGULAR REVIEW AND REFORM OF REGULATORS AND INSPECTORATES

During the past decade we have witnessed extraordinary growth in the regulatory community (See Appendix 3). This growth has been driven by public policy decisions at both the EU and UK levels. Some of these policy decisions have contributed positively to a better, safer society and more open markets, whilst others have imposed costs, constraints and unnecessary bureaucratic processes on business and consumers. The number of regulatory bodies has grown, with limited oversight over their mandates, and some degree of overlap with bodies that are already in place.

We believe the 150 plus regulators are due for tougher, more regular independent review. Regulators of various shapes and sizes have emerged with different strategic and operating objectives. In some cases there is the unnecessary situation of one regulator overseeing just one major organization such as Camelot and the National Lottery Commission. In other cases there may be overlap between regulators as at the Office of Fair Trading and the Competition Commission.

Regulators get created for a variety of reasons: **economic reasons** following privatisations; **legal reasons** not least for enforcing our European Commitments; **practical reasons** to take the strain off Government departments and reduce the size of central administrations; **political reasons** where the Government just wants to be seen to be doing something. What is much harder to do is to reduce the number of regulatory bodies, the current tally of 150 plus is surely capable of reduction.

The business world is in a constant state of creation and destruction. It is a very Darwinian process of survival of the fittest. Regulators by contrast are usually created by Statute and are indeed bound by Statute despite the fact that the world around them has changed and that they might need to have freedom to behave in a different way to when they were created. For instance, several might want a duty to promote competition to be included in their duties.

It is for this reason that we recommend work should be undertaken on the mandates and scope of all regulatory bodies. We anticipate that a good number will have come to the end of their evolutionary cycle and should be either sunset or merged with other regulatory bodies. This process should be led by the Independent Panel for Risk and Regulation with support from the National Audit Office and the Audit Commission. At the same time no new regulators should be created before a landscape review has been completed by the NAO.

The overwhelming evidence is that companies and organisations prefer to be responsible to regulators rather than to Government Departments. The quid pro quo for this should be a tougher penalty regime for organisations which break the rules. Tougher penalties should go hand in hand with a reduction in the number of rules and regulations and a focus on the main issues.

The ultimate goal must be to make UK regulators fewer but fitter, with high quality staff and clearer, more focused mandates.

*Proposal      A Sunset clause should be applied to Regulators. During the first term of a Conservative Government all Regulators should be re-assessed and their duties reviewed.*

*Proposal      Undertake subsequent landscape reviews of all regulatory bodies, their mandates and scope. We recommend a seven year cycle.*

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**Proposal**      *There should be tougher penalty powers for regulators. Tougher penalties should go hand in hand with a reduction in the number of rules and regulations and a focus on the main issues.*

## **Who Regulates the Regulators?**

The best regulators are experts in their fields in a way that politicians cannot be and are conscious that they are there to deliver outcomes not processes. They need to intervene in a timely way, to be consistent in a risk based and proportionate and transparent fashion and where possible they should use the market to achieve their desired outcomes. They must deliver value for money. The question that this poses is “Who regulates the regulators”. And the answer, at present, is nobody in particular. There is some scrutiny by Parliament, some by the National Audit Office and the Audit Commission and some through Departments where regulators are relevant to their particular sector.

To whom should regulators really be accountable? Should they be in the palm of individual Government Departments or should they, whilst working to a set of agreed duties, be truly independent bodies, accountable to Parliament? We believe that independence, particularly for the larger Regulators, is advisable. A necessary condition for this to happen is better Governance of Regulatory Bodies, all should have a non-executive Chair, and a majority of non-executive members.

The Government has with others put large amounts of effort into the Corporate Governance of the private sector, often with noticeable improvements. Yet the Governance of the Regulators is noticeably confused particularly on the issue of the Chairman versus the Executive. The Chairman should run the Board; the Chief Executive should run the organisation. The non-executives are there to give their experience and opinions, not to try to develop their own strategies. One way to achieve this would be to insist that no regulatory Chairman is paid for more than two or three days a week on the job.

There must be a transparent appointment and dismissal process. All appointments and dismissals of Chairs of major Regulatory Bodies should be subject to Parliamentary Select Committee approval. The whole point of having Independent Regulators is that they should not be the poodle of their sponsoring department.

There are pockets of real expertise and quality amongst regulatory agencies. OFCOM would be one, the Food Standards Agency another. (See Appendix 4 - Proposed Criteria for being a World Class Regulator). The Health & Safety Executive has also moved in recent years to a much more risk based approach. An issue with many regulators is that responsibility for enforcement is often in the hands of Local Authorities. Some of the classic stories in the tabloids about over-regulation are caused by individuals at Local Authority level over-interpreting the rules. There are other areas like Postcomm, where they try to be over prescriptive and end up in a stand off with the regulated.

**Proposal**      *Each major Regulator should be ultimately responsible to a Select Committee whilst having a dotted line responsibility to relevant Government Departments.*

**Proposal**      *The Corporate Governance of Regulatory Bodies should be up to private sector standards, with part-time Chairs, and a majority of non-executive Directors.*

**Proposal**      *The appointment (and dismissal) process of Chairs of major Regulatory Bodies should be subject to Parliamentary Select Committee approval.*



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## 6. CONSULTATION, IMPACT ASSESSMENTS AND REGULATORY BUDGETS

The decision to legislate, the pre-legislative process and ultimately the way legislation is drafted plays a major role in adding to the regulatory burden. Government often fails to conduct sufficiently thorough consultation and analysis of proposed legislation. This in turn leads to poor law-making and unnecessary burdens on business and society.

### **Poorly prepared implementation – Licensing Act**

The Licensing Act 2003 intended to introduce a new era for the entertainment and pub industries when it took effect in November 2005, the new Act gave licensees the ability to apply for the opening hours that best suited their business. Set up to be controlled by local authorities within Government guidelines, “the new Act provided an opportunity for licensees, police and local authorities to work together in partnership to build a thriving local social scene, with the emphasis on customer service, comfort and safety, and offering both customers and businesses the chance to enjoy more freedom than ever before,” according to one local authority’s briefing at the time.

However, two years later and both the industry and local authorities were “still getting to grips with the nuances of the law and the Prime Minister was promising to review the Act. The Live Music Forum reported that the Act had not led to the hoped for increase in live music. Instead the environmental health department of one local authority had become engaged in the licensing process, objecting to 54 applications for live music and frequently raising objections to applications for live music in the absence of objections from other parties, including local residents.

Many small voluntary organisations were faced with dramatic rises in licensing fees - from £25 per annum to £900 per annum was not untypical - added to unnecessary bureaucracy with long forms to fill in and requirements to advertise and provide maps and plans.

According to Lord Clement-Jones in a House of Lords debate, local authorities had to resort to creative interpretation of the Act, such as classifying Swindon's Mela as a garden fete under Schedule 1 of the Act. Notting Hill carnival dancers in 2006 were said to fall within the Morris dancer exemption. The Live Music Forum criticised the Act and the guidance under it, rather than the local authorities. Or as Lord Clement-Jones put it: “Producing fresh guidance, although an improvement on the current situation, would simply be tinkering around the edges. It is the Act itself that needs changing.”

### **Engaging more effectively – better consultation**

Engagement with business and other parts of society on pre-legislative ideas is often poor, and even when there is good intent, the consultation process can be conducted in a way which deters business. Greater effort must be made to engage directly with those organizations and people affected by legislative and regulatory change, and consult them on their views – more use of face to face discussions should be made. Innovative use of the internet and other technologies should also be encouraged.

Whitehall must move from the idea of ‘consultation on legislation’ to ‘consultation on the issue’. A shift in mentality is needed towards properly considering feedback and reconsidering proposals accordingly. Consultation should happen much earlier in the process and represent a real and vigorous attempt to seek input and improvements.

**Proposal**     *A Conservative Government should ‘consult on the issue’ rather than ‘consult on the legislation’. More face to face consultation with businesses should take place and technology should be used where appropriate. Consultation should actively encourage alternative proposals.*

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The Australian government has recently set up a business consultation website following the recommendation of the 2006 report Rethinking Regulation. The Regulation Taskforce under the Chairmanship of Gary Banks found consultations were often sporadic, half hearted, done too late or left too little time for response to consultation. "Poor regulation often reflects poor analysis" and so the importance of consultation cannot be underestimated. Now each Australian government agency with responsibility for business regulation publishes a regulatory plan on its website early on in each financial year, with information on changes to business regulation and activities planned in the current financial year which could lead to changes in business regulation. Consultation registration can be done via the website – this asks questions regarding how the business wants to be consulted, how many times a year they want to be consulted and what areas they want to be consulted on. There is a similar registration process for firms in the UK to join the "small firms consultation database", but it does not have its own website dedicated to it and it is restricted to small businesses, unlike the Australian version which has a registration process for individuals and all businesses.

## **Improving Impact Assessments**

Impact Assessments are the means used by departments to assess whether regulation is necessary and ensure that the benefits of legislation outweigh the costs. The Impact Assessment process should play a key part in the process of slowing the flow of regulation by weeding out poor quality proposals. However they are often used to justify a legislative proposal rather than to question the costs and benefits of it. In addition, MPs are often unaware of Impact Assessments and fail to consider them in their debates.

We recommend the following improvements -

- More widespread use of pre-impact assessment.
- Inclusion of a clear Statement of Purpose as to the legislation's key aims.
- Provision of a summary of resources and ability to deliver the policy from those responsible for delivering it.
- Much clearer economic data as to the benefits of the proposal in the impact assessment. It may be that BERR economists should help Departments on major projects.
- Impact assessments on significant legislation to be audited by the National Audit Office.
- Strengthening of the questions posed – is the desire to legislate the result of a failure of legislation or enforcement?
- Provision of more detail for monitoring the effects of the legislation after it has been introduced
- Clear statement of which alternatives to regulation have been looked at
- For EU directives, highlight the additional cost to the UK of bringing these into law

**Proposal**      *Specific improvements should be made by a Conservative government to Impact Assessments. Impact Assessments should also be reviewed and updated as legislation is amended.*

## **Regulatory Budgets**

It is our strong belief that what gets measured gets done. Regulatory burdens stem about one third from the red tape associated with bureaucratic and compliance costs (the administrative burden) and about two thirds from achieving the desired outcomes (the policy cost). The present Administrative Cost Reduction Programme was launched by the Government following the Better Regulation Task Force's (BRTF) 'Less is More' report. It is being conducted on a department by department basis (excluding HMRC) and all departments are being subjected to a 25% reduction target over a three year period using simplification plans.

### **Simplification agenda**

In 2006 all major government departments and agencies produced simplification plans as part of the Government's drive for better regulation. Simplification includes de-regulation, consolidation and rationalisation of regulation, and the reduction of administrative burdens. The aim is that these 'Simplification Plans' will save business and the third sector over £2 billion in administrative costs. The Health and Safety Executive alone has committed to saving over £300 million through making compliance easier.

Some of the key areas where the simplification plans will be implemented include

- 1 The Companies Act will introduce fundamental reforms that will deliver estimated administration savings of almost £150 million.
- 2 Initiatives to deliver a simpler, faster and more efficient planning system will save £124 million.

Following on from the successful introduction of the Administrative Cost Reduction Process the government is now considering the measurement of policy costs and their inclusion, along with administrative burdens, into full regulatory budgeting. At first glance this might be thought to involve the practical problem of measuring the cost of policy decisions which have been in place for decades or even centuries. It would also involve the more vexing political question of whether the populace would support a 'bonfire of regulation' – probably not – and would be a dangerous route to go down if reactions to previous proposals are taken into account.

However there is a middle way proposed in the Government consultation and that is to measure the policy cost of new regulations and then impose some sort of cap on them over a three or five year period. We would go somewhat further than this and say that not only should we be aiming to slow the rate of growth but actually to stabilize the total regulatory burden, and then to hopefully start reducing it.

A necessary condition of this process will be the existence of high quality impact assessments with a strong economic analysis of likely costs. However, even if precision cannot ever be fully attained a desirable direction of travel should be achievable.

Given that there will always be some need for new regulations; we propose that there should be a target to take away an equal regulatory burden, when a new law is introduced. This process has been dubbed **One In – One Out**.

A surgeon writes: It is perfectly possible to train surgeons within the European Working Time Directive EWTD weekly limit of 48 hours. Most units currently do so. The big problem is that junior doctors are still subject to the 'New Deal' implemented in 1999. It has far more stringent rest and length-of-duty requirements than the EWTD. If any day on any doctor's diary card fails the New Deal restrictions the hospital is punished. New Deal should be revoked as the European Working Time Directive alone will work.

What is certain is that there are a vast number of overlapping laws in the UK and that although the process of rationalisation will be hard work it will be possible. A body such as the Law Commission might be able to make a significant contribution. This process should also be applied to European Laws. Often these are of a horizontal nature, for instance the EU's imposition of a general duty not to trade unfairly, might reduce the need for the highly prescriptive type of product laws which we tend to have in the UK. (See Chapter 11 – Gold Plating)

It is notable that the Government is not planning to include the Public Sector in its regulatory budget plans. We think that this is a serious omission. Some of the worst bureaucratic burdens and policy costs occur in the Public Sector with many overlapping regulators each fighting for their own place in the sun. We believe that the burdens in the Public Sector should be subjected to the same regulatory disciplines as other parts of the economy. A possible reason why they are being excluded is that BERR, which is driving the process, is seen as a business department. The Conservative Government might wish to finesse this turf war issue by giving the Cabinet Office some sort of oversight role as far as the Public Sector is concerned.

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There is a whole debate to be had about the level at which Regulatory Budgets should be set. Should we be looking solely to prioritize the most cost effective regulations as the Consultation paper implies, or should we be looking at a levelling out of costs, or an absolute reduction, or for a rate of increase slower than that of GDP? Also should costs be assessed across the board or on a department by department basis? There is also the very important question of whether climate change measures should be exempted from the process.

Our suggestion is that for the first period of regulatory budgeting, three or five years, that each department be set a zero increase budget in real terms. Climate change costs should be measured separately and then added to the other costs, with the constraint that even after the climate change costs are included the rate of increase would need to be below that of GDP when assessed across Government as a whole.

The foregoing is a bold agenda, the UK will be the first country in the world to introduce a system of full regulatory budgeting but we believe it is something that a Conservative administration should get behind and support, and in several vital respects be braver than the present Government.

### **In Summary;**

*Proposal        We believe regulatory budgeting should be used first to stabilise and subsequently to reduce the UK's total regulatory burden.*

*Proposal        The Public Sector of the economy should be included in the process.*

*Proposal        The costs of climate change laws should be measured and ring fenced within the regulatory budget process.*

Generally speaking, it takes considerably more effort by Government to negotiate satisfactory alternatives to Legislation than to resort directly to law making. It is for this reason that we advocate that when successful alternatives are developed they should be kept outside the Regulatory Budget process, so that Civil Servants and Ministers have a real incentive to travel down this harder but often very effective path. Where there is statutory backing for the alternative perhaps 50% of the cost should be awarded.

*Proposal        Alternatives to regulation should be kept outside the process, ie awarded a free pass, where no legal backing is in place.*

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## 7. ALTERNATIVES, INFORMATION AND ROUTES TO REDRESS

### Alternatives

Alternatives to regulation have advantages for business and other organisations, in that they have the ability to be developed to fit the industry concerned and can be easily amended as circumstances change. Piloting should be used to test these proposals and we encourage a Conservative government to expand the use of piloting.

Alternative approaches include the following -

**Self Regulation** – where an industry sets up and funds its own regulator. For instance the Advertising Standards Authority which polices the integrity and honesty of advertising. Self regulation often follows codes of practice and can morph into:

**Co Regulation** – Where codes of practice have a statutory backing, for instance the British Standards Institute or ACAS codes of practice.

**Information and Education** – An example is the traffic light scheme red, green, and amber being developed on foods by the Foods Standards Agency. Sometimes firms will oppose such schemes as is happening at the present time. If this happens statutory backing may be necessary.

**Comply or Explain** – the Combined Code on Corporate Governance uses this device whereby firms either stick within the guidelines or set out why they choose to differ.

**Incentives (using carrots)** – by using incentives the government can encourage particular types of behaviour.

**Quotas and permits** – can be created as is now happening in Carbon Trading.

**Price Caps** – can be established as with wholesale charges for mobile roaming in the Telecoms world.

**Tax** – can be used to alter behaviours, the increase in the landfill tax is an example of a tax used for other reasons than raising revenue.

Other alternatives include **Voluntary Opt outs** for small business and **Earned autonomy**.

*Proposal      The Independent Panel for Regulation and Risk should be tasked to lead a major initiative to promote alternatives, develop a database of international examples of best practice, and identify essential elements for success in a best practice guide to Alternatives to Regulation.*

*Proposal      Before imposing regulation on any industry, sector or profession, Government should give serious consideration to stakeholders who propose a self or co-regulatory option.*

#### **ASA code**

The Advertising Standards Authority is the independent body responsible for ensuring that advertisers follow the Advertising Code. Regulating non-broadcast advertising is funded by the advertising industry itself. Levies are set at a fixed percentage of display advertising costs and Mailshot contracts, and the monies are collected by a separate body, the Advertising Standards Board of Finance (Asbof). This separation of responsibilities effectively stops the ASA from knowing how much money each advertiser is contributing, so that economic power should not be able to influence decision making. In addition, responsibility for the advertising codes is done by another separate body, the Committee of Advertising Practice (CAP). CAP is made up of advertisers, sales promoters, direct marketers and interactive advertisers, agencies and media owners. The ASA investigates complaints about advertising which breaches the Codes and conducts research into how well advertisers are following the Codes of Practice. If rules are flouted the OFT and Ofcom can act as a backstop. Broadcasters can be referred to Ofcom, for example, if a licensee is not sticking to the rules or if an advertiser, agency or publisher persistently run misleading ads that breach the Codes, they can be referred to the OFT.

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## Information

Information is a key tool in reducing the need for regulation in certain cases. Through technology, it has become possible to better inform consumers, businesses and investors. Whilst there are some examples of publishing information as a simple way of ‘enforcing’ regulation, we believe that the use of information should become more widespread. If the fear of having to put inspection results on their front door inspires restaurants to play by the rules, as has been the case in California, and is now being piloted in the UK, perhaps this could be applied to other sectors. Publishing information often reduces the need for costly and complex regulatory bureaucracy.

The Food Standards Agency has been working on a food safety scheme called “Scores on the Doors” following the success of a similar scheme in Los Angeles, where hospitalisations from food poisoning were reduced by 20 per cent. This scheme makes food safety information more easily available to consumers by publishing ratings on a website and issuing businesses with a sticker to display. Pilots of this scheme have been running across Britain, and the Food Standards Agency has now made a recommendation for a national scheme.

**Proposal**      *Information should play an important role in reducing formal regulation as it empowers people to make informed choices. It is also useful in encouraging peer pressure amongst companies and public sector organisations to improve performance.*

The Retail Enforcement Pilot promotes joined-up working amongst regulators within health and safety, alcohol licensing, trading standards, environmental health and fire safety through using mobile technology and data-sharing to pass on the intelligence they generate in each area. This information helps them assess how well different businesses are managing risk, enabling regulators to distinguish between well-run organisations and those performing poorly or trading illegally. Efforts can then be targeted where they are most needed.

## Fighting back – routes for Citizens to seek redress

Citizens need an accessible way of raising regulatory issues with government. Belgium developed a highly popular website called Kafka which enabled citizens to challenge rules and regulations. We believe there needs to be a British version of this. The current website run by the Better Regulation Executive is not well promoted and has limited functionality.

### **Kafka**

The Belgian federal, regional, and community authorities launched a joint initiative called 'Kafka' to fight red tape and bureaucratic complexity across all levels of government. Citizens were encouraged to communicate their views on complex forms, redundant processes and contradictory procedures through a new website called Kafka or through a toll free telephone service. Over 3,800 proposals and 220,000 hits were made in a three month period. The initiative, aimed at identifying problems and potential solutions for simplifying public administration, was the result of a joint effort by the federal government and the country's regional authorities and communities. Citizens' comments were stored in a central database, analysed and then routed to the relevant authorities.

A high profile route to redress will encourage people to engage more widely with the regulatory agenda and also provide government with a strong feedback mechanism. To be effective, complaints need to be published and there must be a commitment to follow them up. There should be a feedback channel for every law and a scheduled review date.

In addition to improving the feedback mechanism, we believe that a Conservative government should develop a redress mechanism for citizens to challenge unfair or overzealous implementation of rules and regulations by arms of government. As a model Her Majesty's Court Service now has an online claims service for individuals and companies to make small financial claims efficiently and cheaply. The Ministry of Justice should be asked to look at the concept of an online ‘regulatory court’ that will allow claims against unfair implementation of regulations.

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*Proposal*      *An independent branded website should be developed which links the public directly to Departments and to the IPRR. It should be mandatory for all correspondence from the State to have a clear reference to this site.*

*Proposal*      *A Conservative government should ask the Ministry of Justice to assess the viability of a 'regulatory court' to allow claims to be made against unfair implementation of regulations.*

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## 8. SPECIFIC MEASURES TO HELP BUSINESS AND THE THIRD SECTOR

### **Small Business**

Small business is key to the success of the UK economy. But every piece of new legislation and regulation impacts particularly hard on small businesses. Every hour of an entrepreneur's time spent processing a new government initiative is an hour of productive work lost. The 4 million plus small businesses in the UK are the backbone of our economy. Less than one third of them employ more than one person. Making life easier for small businesses must be a priority for a new Conservative government.

Small business is usually able to cope with individual regulations, taken in isolation. However the cumulative burden and constant change makes life difficult for them.

One of the biggest regulatory burdens for small business is employment law. The UK has fallen from 22<sup>nd</sup> to 28<sup>th</sup> in the latest World Bank 'Employing Workers' indicator. Even members of the current government have become concerned about the complexity and burdens imposed by employment law –

*“The question now, for every country, is how they can best act to ensure their economies and societies thrive in the face of these new economic realities... the competition is getting tougher every day. .. exercising the right to work ultimately depends on getting the right balance in employment law. Having a multiplicity of employment rights won't amount to a great deal if you can't get a job in the first place. The best employment policy is therefore one that allows the economy to remain strong and successful and helps businesses to create more and more jobs.” John Hutton, lecture to Fabian Society, May 2007*

We suggest the following ideas to help small business-

**Proposal**      *An Employment Law rewrite programme, codifying and consolidating existing rules and processes. This should include a thorough analysis of the effect of relevant European Law.*

**Proposal**      *Acceleration of efforts to simplify disciplinary and grievance procedures. The pressures and resource constraints of small business should be given particular consideration, as part of this process.*

**Proposal**      *Ongoing review of the employment tribunal system to ensure that simple cases are dealt with more quickly and efficiently.*

One of the perverse side effects of regulation is that large incumbent businesses can sometimes rather like regulation, which creates barriers to competition, or which bears down particularly hard on new market entrants or on smaller businesses. It is for this reason that we advocate that as legislation is being developed, greater consideration should be given to ways of alleviating the impact on small business. Whilst exemptions would not necessarily be the right way to go, they and other methods of reducing impacts, such as derogations and transition periods should always be considered.

**Proposal**      *Impact Assessments should 'think small'. Specific effects on small business should be given better consideration in the pre-legislative process.*



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**Proposal**      *In its assessment of legislative proposals, The Independent Panel for Regulation and Risk should rigorously assess the impact of forthcoming legislative and administrative initiatives on small business.*

**Proposal**      *The present system of Common Commencement Dates for legislation including employment legislation should be widened to no more frequently than once a year, rather than the current once every six months.*

In addition to the flow, the stock of existing legislation impacting small business needs to be examined. The Independent Panel for Regulation and Risk should seek the repeal of legislation that causes undue burdens on small business. At European level the Commission has recently signalled its desire to promote small business reforms, through its Small Business Act.

**Proposal**      *As part of its review of the stock of existing regulations, the Independent Panel of Regulation and Risk should, with assistance from the Law Commission, give particular attention to the removal of legislation and regulation that is a burden to small business.*

A frequent complaint from both large and small business is the complicated and duplicative nature of Government forms. We need to shorten forms and reduce the time they take to complete.

**Proposal**      *Any Government form should clearly state how long it should take to complete.*

Another complaint from SMEs is a lack of understanding of what they might be expected to do. It is possible that this could be solved via the simple expedients of help lines and quick start guides. As the recent Anderson report pointed out, the way that Government guidance is currently provided and disseminated, leaves SMEs with a great deal of uncertainty, potentially creating additional costs for their businesses. We like the idea of increasing certainty over outcome by providing access for SMEs to a tailored, insured advice helpline, and taking responsibility for the quality of its guidance.

**Proposal**      *More use should be made of helplines providing tailored, insured advice to SMEs, accompanied with quick start guides.*

In general there can be a fear of regulation which, with a little gentle help, might be converted into a better experience. Perceptions of regulation are sometimes worse than the actual experience of regulation.

In a well received report on business regulation Philip Hampton argued for:

- Moving from inspection and punishment to advice and guidance.
- Changing government's role from doing to facilitating.
- Legislating less, better and more simply.
- Interfering less.
- Engaging better and more creatively.
- Challenging Brussels harder.

Finally, small business also shares with third sector organisations the issue of obtaining easier and better access to Government contracts. This is an important issue which has several similarities to the issues faced by Charities. (See Charity section)

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## Larger Businesses

If you ask a small business what is their prime regulatory concern they will most probably mention employment law. For a large business the answer is at the other end of the scale and that is tax. The small firm most probably could not contemplate going offshore, the large one most definitely can and probably will. Some of the greatest businesses in the world are based in Britain. In energy, in banking, in pharmaceuticals, in aerospace and in various other sectors we punch well above our weight.

But worrying trends are starting to emerge. Shire, UBM and WPP announced recently that they are moving their tax domicile from the UK to Ireland. The four big accounting firms are between them looking at the issue of tax domicile for an ever growing band of FTSE 100 companies, and almost every time a large company is taken over by an overseas organisation tax is at the heart of it.

The problem is that our tax laws are overly complicated with a high corporate rate but a network of allowances. Tolley's Tax Handbooks are now over 11,000 pages long and to compound the problem HMRC was not subject to the full burden of the Administrative Burdens programme. Tax issues can be opened retrospectively. At least one major multinational based in the UK has had an assessment from the early 1990's recently challenged by HMRC. Most importantly of all in an increasingly international and competitive world in which HQs are mobile, corporate tax rates are higher than our competitors. The companies moving to Ireland will be charged corporate tax on profits at 12.5% compared to 28% here. (Ireland incidentally now collects more than it did under its previous much higher tax regime). This issue matters to Britain for a number of reasons:

- The exodus could become a flood with huge losses of corporation tax.
- The companies will become subject to overseas reporting regimes.
- Head office jobs will gradually be lost.
- We will have less influence over the companies, particularly in respect of soft law such as Corporate Responsibility.
- Corporation tax is but one of many taxes paid by business (NI, Stamp Duty, Property Taxes, VAT, etc). It is inevitable that a change of domicile will have some effect on these as well.

We are concerned at the balancing act between short and long term which a new Conservative government will have to achieve on the issues of tax but we would make three proposals.

*Proposal*      *HMRC should be subject to Simplification Plans and Regulatory Budgets in the same way as other Whitehall departments.*

*Proposal*      *There should be a clear direction of travel for Corporate tax which balances the requirements of the short term, with longer term considerations.*

*Proposal*      *There should be time limits to tax cases being re-opened and a presumption against excessive retrospection.*

## The Financial Sector

We decided in this review not to make detailed recommendations on the Regulation of the Financial Sector. It is clear that there are lessons to be learned for the regulatory system both from an analysis of the events leading to the dramatic market shocks in international financial markets since August 2007 and the UK's subsequent handling of the threats to financial stability domestically. We agree that given the global nature of financial

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markets the questions for the regulatory system must be considered at an international level, but that decisions must be made without unacceptable delays to reach consensus, while decisions about the structure of UK financial regulation and the management of financial crises must be dealt with by our own Government.

We emphasise the importance international policymakers are giving to:

- Maintaining higher levels of bank capital throughout the economic cycle, particularly during periods of strong money supply and expanding leverage in the banking system when risk has been priced too cheaply by financial markets.
- Moderating the pro-cyclical effects of mark-to-market accounting, but without returning to the harmful and irrelevant data produced by historic cost accounting.
- Introducing more robust liquidity requirements which reflect the array of financial instruments present in the global financial system.
- Extending regulation to cover so-called new pools of capital, such as hedge funds, which have come to operate at the heart of the financial system.

An incoming Conservative Government should review the division of regulatory responsibilities between the Bank of England and the FSA. This review should aim to remove existing ambiguities, ensure financial supervision is set and conducted in the context of monetary policy and that clear unambiguous leadership is established for handling financial crises.

We believe very strongly that the policy framework for financial markets must promote and reward good market behaviour which serves and better aligns the interests of shareholders, customers and employees. But this market based approach needs a stronger underpinning in terms of capital and liquidity and also in the penalties companies and senior individuals may face if they fall out of line. Boards of financial institutions must accept a higher degree of responsibility (perhaps formally imposed) for setting compensation policies which are consistent with the fair treatment of customers and the delivery of shareholder value through the economic cycle.

## **Specific Measures to Help Charities**

The Voluntary & Community Sector employs around 100,000 people with up to a further 16,000,000 part-time Volunteers. It is characterised by an ethos that blends public benefit, a response to current needs, a desire to help and an interest in neighbours and communities. Around three quarters of those employed in the Voluntary Sector are involved in social care work. Their ability to provide flexible needs based services make them particularly valuable providers.

### **Charity Commission:**

The Charity Commission is responsible for over 190,000 charities which have a combined total income of nearly £45 billion, employ over 600,000 paid staff and over 927,000 positions. What the Charity Commission aims to do is enable charities to maximise their impact, enable their compliance with legal obligations, encourage innovation and effectiveness and promote the public interest.

Reducing burdens on charities is therefore, high up the Commission's agenda. Over the past few years it has been working to refine its approach to risk based regulation and to provide streamlined and effective regulation, minimising the burden on charities. Key developments that have helped to achieve this include:

1. The introduction of Charity Commission Direct, the single point of contact for all enquiries and requests coming into the Commission, resulting in faster response times, a better service and quicker decisions about whether we will or will not get involved.
2. Creating an online Annual Return facility.
3. Removing information requirements from the Annual Return, with a focus on reporting serious incidents.
4. Flexible traffic light model that categorises risk into Green (low risk), Amber (medium risk) and Red (high risk issues). Red risks would include things like significant financial loss to the charity, sham charities set up for improper purpose and where a charity's independence is seriously called into question.

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Administrative burdens and regulations by funding stream can stifle innovation and productivity in the third sector, which contributes some £30bn to GDP.

Many of the burdens on charities do not come from the Charity Commission or from formal regulation per se. Charities suffer heavily from administrative burdens imposed by the constant need to bid for funding and contracts. In addition, the State as a major procurer of services from the sector should focus on both bureaucratic simplification, and on encouraging innovation and diverse solutions, even where the State is not involved in funding.

The Carer's Sitting Service provided relief to carers by giving them a day off a week from the care of seriously ill relatives. The CSS would provide a carer to sit at home and feed and generally look after the sick person. It all worked well until the Regulator found out and demanded that the carers should have formal NVQ qualifications .....fortunately, after several months of debate, the BRTF was able to face the Regulator down.

Reducing bureaucratic burdens in the sector requires a major focus on simplification initiatives from government when the State is acting as procurer, together with sponsorship of innovative approaches to reduce the burden on charities when government is not doing the funding.

The Conservative party has recently published a set of proposals to address these issues which the Review supports. These include:

- Reduction in the bureaucracy voluntary groups face by preferring longer-term grants.
- Minimising the paperwork involved in applying for grants by drawing up model agreements and establishing a funding passport scheme.
- Establishing a standard for contracts to be based on at least three years (unless the circumstances demand a shorter contract).
- Publishing a model contract so that charities do not have to face the bureaucracy of every contract with a funder being written in a different way.
- Enshrining these principles in a revised compact between the public sector and the voluntary sector and giving the compact the teeth it currently lacks by undertaking to abide by the judgments of the Commissioner.
- Operating a genuine one-stop funding portal for statutory grants.
- Requiring significant grant schemes to be registered on a single, simple website.
- Establishing a fundseeker's passport scheme to cut out repetitive grant application bureaucracy.

***Proposal***        ***Contracts for Third Sector organisations need to be for longer time periods and standardised to a simpler format.***

***Proposal***        ***Every effort should be made to facilitate the diverse models of supply which the Third Sector can provide.***

Other issues on which we shall not offer or endorse proposals but which deserve attention are;

- Obstacles which deter volunteering. For instance, the lack of clarity around whether those on work sponsored volunteering schemes are subject to the full panoply of Health and Safety regulations which surround business. Another factor might be the perceived bureaucracy around necessary Criminal Record Bureau checks
- Gift Aid and whether it can be made more attractive to individual donors.
- The National Lottery, and whether its original principle of additionality is being undermined

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## 9. THE PUBLIC SECTOR – AND GIVING MORE POWER TO THE PEOPLE

*'You have shown us the future – and it is bottom up' David Cameron at the Google Zeitgeist Conference (describing an era where true freedom of information makes possible a new world of citizenship, choice and local control)*

The Public Sector is usually neglected in any discussion of regulation. Not only are the problems entrenched and difficult but they are also felt to be different to those faced by business. There is also the problem that it is difficult for BERR as a department to exert sufficient influence on other departments of Government. Yet Public and Private are significantly intertwined in Britain, and a lack of efficiency in the Public Sector will inevitably affect both the country as a whole and the Private Sector.

Not surprisingly perhaps, the two sectors do have things to learn from each other. We shall argue that better information flows, less overlap between regulators, better Governance, and improved Parliamentary Accountability for Regulators and Inspectorates are just as desirable in the Public Sector arena. However the problem of turf wars between Whitehall Departments is a very real one and it is difficult to see the Home Office, for instance, bowing to BERR's opinion on particular issues.

We do think that the reformed Panel for Regulatory Accountability could exert considerable influence on Public Sector departments and Regulators and that where such issues occur the Panel should be chaired by the Cabinet Office Minister. It also seems sensible that BERR should build up a real expertise in handling all regulatory proposals which emanate from Europe, and should be the lead, along with the interested department, on all such issues. (See Chapter 11)

Our principal issue with the Public Sector which, accounts for no less than 42% of the economy, is that the proliferation of central control has created a costly structure of overlapping rules and regulations. (The main public services – hospitals, surgeries, schools, policing, social care – are delivered at local level yet financed, controlled, managed and regulated by central government). If you have the misfortune to be the Chief Executive of a Hospital Trust you will find yourself accountable to some 40 regulators and inspectorates. To reduce public sector regulation we have to move upstream and look at structural issues affecting the key institutions on which almost £300bn is expended annually: Local Government, Schools, Police, Healthcare and Higher Education.

Whitehall seeks to regulate and control almost all aspects of public services. We are now probably the most centralised country in Europe. Yet the world is an ever more complicated place where the frontiers of knowledge are becoming increasingly distant. Detailed expertise is in short supply in most organisations and Whitehall is no exception. Reforms are brought in to correct previous failed reforms, thus making the system ever more complicated and dysfunctional. We have to shift from a prescriptive system of standards to devising a structure which produces diversity. Our schools, police force, medical services and local councils need and want to fulfil their respective missions in a higher calibre way. Most people in the Public Sector are keen to do a good job; we need to give them the best possible framework in which to perform. What they are asking for is principles not prescription. What they are getting is a prescription and a rules based system.

There is only so much power to go round and by seizing power from producer interests by a process of target setting the government itself has turned into the oppressor. Instead of making providers accountable to citizens, the new regime makes them accountable to Ministers and the burgeoning bureaucracy of performance management. This leads to worse Governance because good people don't want to waste their time sitting on the Boards of bodies which are controlled remotely from elsewhere.

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## Core Themes

At the heart of our proposals for lifting the burden of regulation in these key areas of the public sector are four core themes on which we believe the changes we suggest should be based:

**Diversity of supply:** The leadership of local public service institutions must be free to diversify service delivery. We believe that professional ethics can be upheld and professional standards achieved within a framework of understanding of best practice established and monitored by professional organisations. Localisation and democratisation will replace much of centralised regulation with slimmed down regulatory bodies providing information, advice and a “service delivery” backstop.

**Making key public service regulators directly accountable to Parliament:** The Select Committee System needs to be able to hold Regulators to account (See Chapter 10) whilst those bodies which underpin the provision of public sector services must perform a more effective role as providers of information and guidance on best practice.

**Good governance:** Good governance for professionals can replace prescriptive regulation to deliver a more effective framework. Strategic Health Authorities and Primary Care Trusts could be restructured so that their supervisory boards contain a majority of locally elected non-executive members. Such moves we believe could provide a superior cure for evils – perceived or real – that highly prescriptive centralised regulation was designed to fix. We look to the Local Government Association as an organisation showing the way towards an effective self-regulatory regime for local authority governance.

**Information Flows:** - Which empower individuals and local communities. Most public services have to be delivered in a specific area. We need to gear the various inspectorates to providing information that can be used locally to make good decisions.

*“I believe that by trusting people we will achieve high standards nationwide. Our current vastly over-centralised system attempts to enforce national conformity without success. It is by permitting local communities to develop their own priorities and their own innovations that we will produce a far higher general standard.” David Cameron*

## Challenging the drivers of regulation

It is time to challenge the drivers of regulation - such as national and supra national politicians intolerant of diversity. Some common standards are, of course necessary, as in the court system. Conversely many might question whether police really need to follow a legally binding guidance to the letter as opposed to exercising reasonable professional judgement in order to attempt to attain the best outcome.

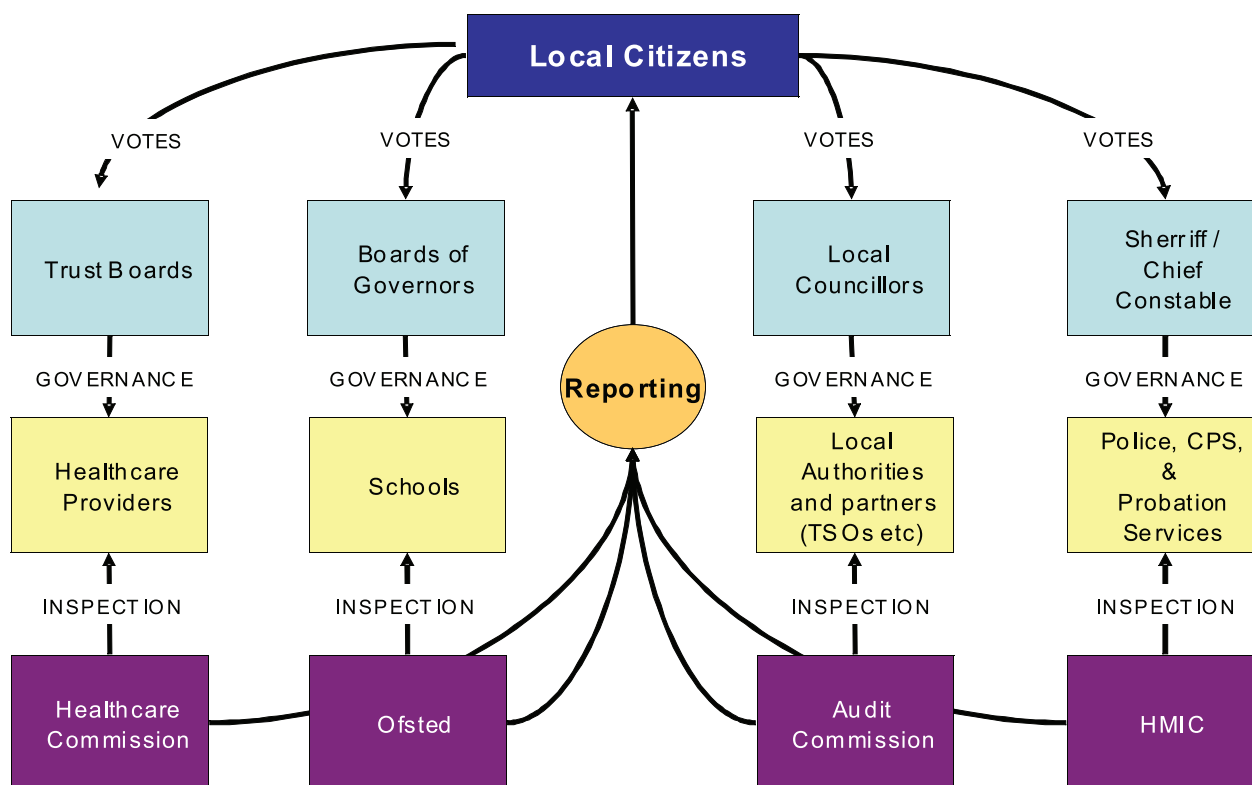
Where the line is drawn between national standards and local or operational discretion will always be an intrinsically political issue. Our contention is that over the years the line has moved too far to best serve the public good.

Despite this there are examples of best practice and signs of revolution on which we believe a new era of less regulated public services could be created. We highlight below five examples where we feel this nascent revolution is taking root:

- The **Local Government Association (LGA)** is pressing forward with a programme of self-regulation to push back on government inspection and to reform how “failing” authorities are treated. We believe the LGA’s Improvement and Development Agency provides an important model for the public sector.

- **Ofsted**, where the focus is moving away from inspection and towards self-evaluation by schools, research, the provision of information and special assistance to poorly performing schools.
- In the recently created **City Academies** which are engendering considerable local interest and support and, according to some, providing an engine for community regeneration in areas such as Bermondsey.
- **The Association of Chief Police Officers (ACPO) and Superintendent’s Association** could be encouraged to become forums for the exchange of best practice in place of ‘one size fits all’ prescriptive standard setting on many issues by the Home Office and other agencies.
- The **Medical Colleges and BMA** should be encouraged once again to take the lead in offering genuine professional support and guidance.

## Accountable alternatives to regulation



The diagram above helps to illustrate how accountability may be enhanced, relative to the status quo, whilst facilitating systemic deregulation.

At present accountability may perhaps be likened to a spider’s web – the centre of the web being the Prime Minister’s Delivery Unit in Whitehall which sets the targets and direction of travel to which public services are then expected to conform. Such a centralised model needs targets, financial regulation, legally influential guidance, codes of practice, secondary and primary legislation and is based on presumptions that there is one path; one set of ideal outcomes; and a need for central control.

We hold that each of these presumptions is highly contestable and that, combined, they amount to a flawed means of delivering public services. To the extent that politicians are willing to challenge each of those presumptions, it becomes possible to achieve meaningful deregulation of public services. There are signs that ministers have now started to row back from a centralised system realising it does not deliver the improvement in public services they desired. We believe that with a different belief structure, a different system for accountability would deliver services more effectively.

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## The Role of Inspectorates

No elected representative will be able on their own to ensure that those providing the services do so in a fit and proper manner. The need for expert inspections will remain and, as the diagram above shows, we see four principal inspectorates (**HM Inspectorate of Constabulary**, **Ofsted**, the **Care Quality Commission** and the **Audit Commission**) charged with providing information, advice and a regulatory backstop for the different types of public services. We would wish to see these regulators primarily delivering reports to the local people who were provided with the services, and to their elected representatives. In the case of poor performance, the locally elected or appointed representative would be expected to organise the requisite remedial action, with professional advice being sought as required.

In such a model the inspectorates would focus on checking on the fitness and properness of the services being provided and, perhaps, giving some views on the degree of efficiency with which those services appeared to be being delivered. The style of reports which Ofsted currently delivers to Parliament, parents and prospective parents, about particular schools, perhaps serves as a model for the type of report which the inspectorates could deliver to local citizens with more detailed work being offered to the elected representatives responsible for holding the relevant local service to account.

The National Audit Office like Ofsted, reports directly to Parliament, ensuring its independence from being steered to deliver on Whitehall objectives and working to avoid micro-management. This provides a blueprint for other regulators which would ensure that they could be proportionate rather than propping up the system of micro management through micro regulation. Guidance provided by fellow professionals is more valued and useful than that prescriptive, and frequently inappropriate, regulation which constrains them from exercising their professional judgement. The LGA, the Association of Chief Police Officers and the Medical Colleges are some of those we would see increasingly empowered to offer genuine professional support and guidance.

## Achieving De-Centralisation

In summary, excessive centralisation and prescription is the cause of a great deal of over-regulation in public services. The real solution lies in empowering citizens more, in delegating power to the lowest viable level and in letting professionals deliver in well governed democratically responsive public service institutions. Unless we are prepared to do this, de-regulation of public services will fail. However the delegation of power to local level, and the increase of influence of professional bodies will be accompanied by stronger governance arrangements.

In the particular case of the NHS, there is a need for a strong and independent NHS Board with the very highest calibre external non-executives. This would have two particular advantages. It would provide better governance and an organisation more independent of Government and political pressures. At the same time, it would free a slimmer and fitter health department to concentrate on the many issues which impinge on the creation of a healthy society such as nutrition, exercise, health education, sexual health, and advanced medical research. Arguably, the gains to health to be made in preventative areas now at least equal the potential gains from medical intervention.

This shift in power from central to local could lead a significant reduction in the head count of the key government departments involved. If significant cuts were to be made to staffing, then Permanent Secretaries would be forced to focus on the core tasks which are better conducted at national level rather than detailed issues better decided locally.



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In Summary our recommendation for lifting the regulatory burden on the public sector are:

**Proposal**      *We should encourage moves from a rules based centralised system to a system based on more local responsibility in which professionals can exercise their reasonable judgement.*

**Proposal**      *Diversity of Supply should be encouraged. City academies and NHS Direct being encouraging examples.*

**Proposal**      *Information Flows, which empower individuals and local communities to make informed judgement should be provided by efficient inspectorates.*

**Proposal**      *More Influence from Communities and Professional Bodies should be encouraged. Public services are for the most part non competitive.*

**Proposal**      *Good Governance is vital. Wherever possible we support the idea of strong, national and local Boards with clearly defined powers containing a majority of non executive members.*

**Proposal**      *Parliamentary Accountability for regulators and inspectorates should be strengthened with Select Committees holding the key public service regulators to account.*

*Footnote: So big and important are the issues surrounding the Public Sector that William Mason and Jonathan McMahon, the two members of our team who led on this work have recently published a separate pamphlet in conjunction with the Centre for Policy Studies.*

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# 10. THE ROLE OF PARLIAMENT

It is beyond the scope of this review to comment in detail on Parliamentary process, but equally it is clear to us that the ultimate source of Regulation is Parliamentary Legislation. It therefore seems appropriate to comment on specific areas in which Parliamentary process could be improved as it impacts on Regulation. We would like to see a more rigorous process of preparing Legislation, which contains penalties for a breach of process. Within this we would wish the Commons to use its powers diligently and consistently and cross party Select Committees to have greater powers and resources.

We would also like to see a change of mindset. Government has actually responded to the increasing tide of European legislation by increasing its own volume of domestic legislation. What Britain surely needs now is not more Laws but better Laws, which implies more trip wires and countervailing forces to prevent bad or overlapping law getting through the system.

Both Ken Clarke's Democracy Taskforce and the Better Government Initiative have made some excellent recommendations in this area which we support. We urge the Conservative party to encourage improvements in Parliament's scrutiny role.

## **Key Stages in the Legislative Process**

We outline below the major stages in the legislative process. Each stage should be crucial in ensuring that legislation is thoroughly challenged, whether it be domestic or European in origin.

### **Stage 1**

Policy ideas and problems debated at department level. Alternatives to be considered.

Early impact assessments and consultation should take place before ideas move forward.

The Independent Panel for Regulation and Risk will challenge major legislative proposals with public 'prompt letters' to departments.

### **Stage 2**

New proposals for legislation should lead immediately to twelve weeks consultation.

They should have attached to them a concise and clear 'Statement of Purpose'.

During this period business or public sector organizations should be invited to propose alternatives to legislation. Only if none are found or regulation is more cost effective should things move into the pre-legislative process.

Select committees should debate new policy proposals ahead of the formal scrutiny process.

### **Stage 3**

The pre-legislative process should encompass:

- Publication of an Impact Assessment.
- A statement by the sponsoring Minister that the benefits of the proposed Bill outweighs its costs.
- Summary of the resources available for delivery

- Examination of any overlapping legislation coupled with a ‘one in, one out’ process whereby if a department wants new legislation it must remove or consolidate some existing legislation
- Independent cost/benefit analysis of major proposals and challenge by the Independent Panel for Regulation and Risk.
- A plan for monitoring the effects of the legislation after it has been introduced
- A timetable for post legislative scrutiny

#### **Stage 4**

Once a Bill has gone through the pre-legislative process, it can then move to the Cabinet Sub Committee – the Panel for Regulatory Accountability. This should be Chaired by the Secretary of State for BERR but on occasion by the Cabinet Office Minister, depending on which is the sponsoring Department.

The Chair must confirm their agreement for the Bill to proceed before it goes to the next stage.

#### **Stage 5**

This is the time for Select Committee Scrutiny or Public Bill Committee Scrutiny.

Both the Better Government Initiative and the Democracy Taskforce have made useful comments. Stronger Select Committees are in our view a vital part of Better Regulation.

#### **Stage 6**

There follows debate on the floor of the House and the normal Parliamentary process of Readings and Second Readings.

If the Speaker considers that the legislation has been substantially changed from the original Statement of Purpose, he should have the power to send it back to Stage 2 for a new Statement of Purpose to be developed.

#### **Stage 7**

The new Law should not become active until 13 weeks after Guidance has been published.

In addition, where possible new regulations arising from the Law should be Piloted wherever possible.

#### **Stage 8**

Two years after the Act has become law there should be a post hoc analysis to determine whether its purpose is being fulfilled and whether the costs and benefits are as predicted in the Impact Assessment. This should be led by the Independent Panel for Regulation and Risk, supported by the NAO. The results should be published.

**Proposal**      *The Pre-Legislative process should be strengthened through a clear Statement of Purpose, Better Economic Data and examination of overlapping Legislation.*

**Proposal**      *The Chair of the Panel for Regulatory Accountability must confirm their agreement to the Bill proceeding.*

**Proposal**      *The Speaker should have the power to send Legislation back to its starting point if it has deviated radically from the original Statement of Purpose.*

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*Proposal      Emergency legislation should be forced to go through the full process outlined within a twelve month period of it becoming law. If not there should be a presumption that it will be sunset.*

*Proposal      Full use should be made of Guidance and of Piloting.*

## **Select Committees**

We are keen that the quality of Select Committees should be raised. Select Committees should have independent Chairs elected by secret ballot. There do however need to be safeguards put in place to prevent complete dominance of the committee system by the ruling party. We also like the idea of all members of the Committees being elected as opposed to appointed. These Committees must have proper research facilities and should scrutinise new Legislation rigorously and in detail. This is now the model in most Western countries with very few retaining scrutiny on the floor of the House. We believe that Parliament is primarily a law-making body and that members entering Parliament should be prepared to devote considerable amounts of their time to making good Laws. This means that the status of Select Committees needs to be raised, the members need to be properly paid, and that the oxygen of publicity is available to Select Committee Chairmen, perhaps through the appointment of appropriate press officers. There should also be visibility as to attendance records of Select Committee members.

*Proposal      A Conservative government should encourage stronger Select Committees with independent chairs, voted for by secret ballot.*

## **Statutory Instruments**

It is often difficult for Parliament to establish which regulations impose the heaviest burden or which need more analysis. This is because many regulations are enacted through secondary legislation.

Statutory Instruments – the means through which ministers can take particular actions – are confusing as they deal with both regulatory issues and matters that are not related to regulation at all – processes of government such as a temporary road closure. As a result of this confusion, Parliament often fails to identify the Statutory Instruments which need most focus. The House of Lords Merits of Statutory Instruments Committee found in its 2006 report, *The Management of Secondary Legislation*, that 8 per cent of the SIs they analysed had shortcomings, either in the way they had been prepared and laid before Parliament or in the quality of the end product.

Acts of Parliament cannot cover every rule or regulation for every detail of the subject they deal with. In order to prevent the need for an Act of Parliament every time a detail needs to be updated or added to, an Act can give the Government the power to do this at a later stage. The powers themselves are called Statutory Instruments and have the full force of law. The laws made through these powers are also known as Secondary Legislation (the parent act is also known as Primary Legislation) or Delegated Legislation. For example a Statutory Instrument can be used for the fixing of fees or charges. The Statutory Instruments can allow fees or charges to be updated without the need for a new Bill. About 3,000 Statutory Instruments are issued each year. Statutory Instruments are just as much a part of the law of the land as the parent Act of Parliament. They are usually drafted in the legal department of the government department that presented the Bill to Parliament and they name the person, usually the Secretary of State or Minister, to whom authority is given to make the changes. They all contain an explanatory note that explains their scope and purpose. There are two types of Statutory Instrument; negative and affirmative.

The volume of Statutory Instruments needs to be controlled and examined more effectively by the relevant Parliamentary Committees that cover each ministerial department. Statutory Instruments should be split into two categories: Regulatory Statutory Instruments and Process Statutory Instruments. They should be published, numbered and ordered separately. The Redwood Review made interesting recommendations in this area.

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***Proposal***      ***There should be a clearer process to differentiate between types of Statutory Instruments. We suggest a process of colour coding. Red – to indicate those statutory instruments with regulatory consequences, Green – for those clearly not of a regulatory nature.***

Many regulations are passed in the form of a Statutory Instrument, often through the negative resolution procedure. Instruments subject to negative resolution procedure become Law unless there is an objection from the House. The Instrument is laid in draft and cannot be made if the draft is disapproved within 40 days. Instruments subject to affirmative resolution procedure cannot become law unless they are approved by both Houses (unless it is a financial SI, in which case only the Commons need approve it).

***Proposal***      ***All Statutory Instruments of a Regulatory nature should be debated by a Select Committee before approval. They should also be able to be amended by Parliament.***

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# 11. ENGAGING WITH BRUSSELS

Over 50% of new rules and regulations governing the UK now come from Brussels. A new Conservative government must lead a stronger challenge at UK and European level in order to change the mindset of the European Union in favour of fewer and better quality directives and regulations.

## UK level

There should be more focus by the UK on European legislation at a number of levels. There needs to be one Department within Government which acts as the clearing house for all European Directives and Regulations and becomes the centre of expertise and Corporate Memory on all European matters within Whitehall. It seems logical that BERR should fulfil this role. There should also be a regular Cabinet Meeting devoted to European matters as happens in France, we would suggest once a month would be the appropriate frequency. Wherever possible, we should adapt UK legislation to fit Europe, rather than starting from scratch.

In addition, UK Governments and Ministers have historically placed a much lower priority on participating in EU business than other Member States. This has meant that UK interests have not been promoted as actively as they should have been, and that unnecessarily burdensome regulation has been enacted to the detriment of the UK and the EU as a whole. Yet when the UK does get engaged, benefits flow and others follow. This became particularly evident around the time of Britain's 2006 EU Presidency when Brussels followed our initiatives on Impact Assessments and the Administrative Cost Reduction project. Following our lobbying Commissioner Verheugen also canned some seventy upcoming pieces of EU legislation.

*“The motto of administrative burden reduction has to be: As little legislation as possible. Europe has to give priority to ideas and innovation without bureaucratic stop signs. We will give economic growth in Europe a forward push if we manage to get on with this”. Edmund Stoiber*

One way to enhance our effectiveness is to use more senior Ministers and Civil Servants in negotiations and perhaps to have a senior Minister based in Brussels.

In addition, Parliament needs to take a more proactive interest in European matters. Apart from the importance of Select Committee involvement (which we have discussed) there is a strong case for making permanent the Lords Committee on Regulation with a wide remit across all aspects of UK economic regulation and interaction with EU systems.

### **Europaudvalge**

“In Denmark MPs sit down to grill ministers every Friday and go through the agenda for the following week's EU meetings. Ministers explain how they plan to vote and request a mandate. If the members of the Committee do not give their approval the Danish government will not sign up to legislation. The Danish system also involves an efficient follow-up process. Which allows the members of the Committee to check whether the minister has kept within the limits of his mandate for negotiation? Sometimes the members of the Committee or of a specialised committee will put written questions in order to get a more detailed description of certain items in the minutes. If the matter is of major political importance, the minister may be called in for consultation to give a more detailed explanation. If the Committee is unhappy with the outcome it can trigger a major debate in the Chamber of Folketing and the debate can result in the passing of a resolution censuring or approving the minister's behaviour. The Committee covers even the highest level EU meetings. Before and after each meeting of the European council (which meets four times a year) the prime Minister appears at the Committee. 95 per cent of the written accounts by the government received by the European Affairs Committee are public and accessible to the general public and available on the Internet”. Source: Open Europe

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Overall there is potentially a continuing role for Britain as the thought leader in Brussels to follow on from Regulatory Initiatives begun during our Presidency.

*Proposal*                    *BERR should be the clearing house within Government for all EU business at European Level*

*Proposal*                    *There should be a Cabinet meeting each month devoted to planning the UK's tactics for negotiating forthcoming EU legislation*

*Proposal*                    *A Conservative Government should enhance the effectiveness of UK Government lobbying in Europe by using senior Ministers and Civil Servants. Consideration should be given to basing a senior Minister in Brussels.*

*Proposal*                    *The structure of Parliamentary Committees which scrutinize European Legislation should be reconsidered, with the possibility of making permanent the Lords Committee on Regulation.*

A Better Regulation reduction agenda has taken root, mainly around the Commission but this needs to be given even higher level sponsorship and commitment from all European institutions. A Conservative government must champion the need for Brussels to legislate and regulate with greater care, reduce the existing stock of rules and ensure that Europe's competitive position in the global economy is optimised.

## **Gold Plating**

No discussion of our relationship with Europe can be complete without mention of the dangers of our 'Gold Plating' European Law. A factor which encourages this tendency is that European Law, at least where it is based on the Napoleonic Code, tends to rely on grand horizontal principles such as that there should be a 'General Duty not to Trade Unfairly'. English Common Law by contrast takes a very much more specific view of what should or should not be done. We thus have two systems of Law which are not entirely compatible. There is clearly an argument that with a 'General Duty not to Trade Unfairly' being introduced much of the UK's product specific legislation could be allowed to wither on the vine. Alternatively we should adapt UK legislation to fit with Brussels' demands, rather than as now having so many overlapping laws.

Another factor is that there is a tendency by Government Departments to tack pet projects onto European initiatives, and equally a tendency by Parliament not to scrutinize such initiatives sufficiently.

In both cases the answer would seem to lie with Parliament and Parliamentary Select Committees in particular doing their job better.

Officials and enforcement agencies can add yet more gold plating by developing guidelines that businesses are expected to follow, or by applying laws inappropriately or too rigidly. In addition, there is a danger of UK Courts treating guidance as legally binding. (see Regulatory Creep – Chapter 4)

*Proposal*                    *Select Committees should be especially alert to issues of Gold Plating European Legislation*

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## European Level – Consultation, Impact Assessment and Pre-legislative Scrutiny

As in the UK, the consultation process needs to be more methodical and considered. EU consultation currently lasts only eight weeks.

*Proposal*      *EU consultation should be increased to be at least in line with the UK at twelve weeks. The European Commission should be encouraged to engage earlier when it proposes new policies.*

Once an Impact Assessment has been completed by the relevant Commission department, these go, along with the legislation to the Parliament to discuss, debate and amend clauses.

In this process, legislation can be reworked to such an extent that it is virtually unrecognizable when compared to the original legislation on which the Impact Assessment was based. There needs to be a better process for updating Impact Assessments as they pass through the various European Institutions. In addition, the Impact Assessment Board, the body established to challenge the impact assessments produced by the European Commission, is restricted to just ten members. Currently these comprise only European Commission officials. This needs to be broadened. To ensure that there is an effective reduction in regulation, there also needs to be external audit. In the UK the NAO has a valuable experience and skill in evaluating Impact Assessments. The EU now needs a similar external challenge.

*Proposal*      *The UK government should encourage more effective coordination between the three European Institutions to ensure that Impact Assessments are effective.*

*Proposal*      *The new European Commission's Impact Assessment Board should be expanded to include external independent, non-executive directors.*

*Proposal*      *Independent evaluation and challenge similar to that done by the NAO in the UK should be encouraged at EU level.*

## European Level - Revision and Reduction of Existing Legislation

The EU's simplification programme, announced in 2003 has put forward 400 legal acts for repeal, modification or replacement and consequently 300 legal acts (5,000 pages in the Official Journal) will be removed from the Statute Book. However, this reduction focuses on consolidation and cutting down on over-lapping points in different legislation. It does not seek to take away pieces of legislation, even though there may be a strong case for doing so. Recent work by the International Monetary Fund has also suggested that the growth of legislation and regulation has often not been accompanied by comparable resource and effort devoted to effective enforcement. It is now time to change the balance from constantly developing new legislation towards ensuring full and efficient enforcement of existing powers on European and national statute books.

*Proposal*      *A European Law Commission should be established to look at which Laws could be removed for being either redundant or ineffective or inefficient on the ground. This should undertake a permanent review of the *acquis communautaire*.*

*Proposal*      *Ex post evaluation needs much greater inter institutional attention. An independent ex post evaluation group reporting to the three institutions, Council, Commission and Parliament should be established.*

*Proposal*      *The European Council should initiate a special project to direct the European Commission to come forward with proposals to tilt the balance towards effective enforcement and against further legislation.*



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## 12. CONCLUSION – Yes we can!

This is not the normal kind of report written for a political party. It is written by people who have fought in the trenches, building organizations in differing circumstances, sometimes benign, sometimes tough. What it urges is the creation of a structure that works. A structure in which there are checks and balances imposed on both law-makers and regulators. A structure in which political announcements are tested against reality, and in which decisions are made closer to the action. The failings of powerful private sector organizations have been exposed for all to see by the credit crunch. There is little evidence to support the notion that public sector organizations are universally better.

We need to build on the good and dispense with the bad. That means countervailing forces to centralized power, the formation of an Independent Panel for Regulation and Risk, less regulators, better political processes both at home and in Europe, regulatory budgeting and a major initiative to promote alternatives to regulation. It also means a move away from a plethora of rules to encouraging responsibility by both better governance and better flows of information.

Once the structure is right there are a menu of specific actions and proposals to improve things further. For instance, a one in, one out system for new regulations, or the sunseting of regulatory bodies, or better information like ‘Scores on the doors’, or government forms stating how long they should take to complete.

I definitely do not want to be seen as against regulation. Regulation is a vital underpinning of every advanced economy but to get it to the right point, avoiding under regulation in one area and over regulation in another is where the difficulty lies. Yet if we can do it the rewards to Britain are potentially huge, perhaps another percentage point or two on GDP, perhaps more.

Clear leadership from the top of a future Conservative Government is needed to achieve these kind of results and to enable a change in approach from Civil Servants, Regulators, Government Departments and Europe.

Can we do it – **Yes we can!**

**David Arculus**

**May 2009**

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# ARCULUS REVIEW GROUP

**Sir David Arculus (Chairman)** is a past Chairman of the Government's Better Regulation Task Force. In the private sector he has served as Chairman of O2 plc, Severn Trent plc, IPC Media Ltd and Earls Court and Olympia Ltd and Group Managing Director of EMAP plc. Currently he holds a range of non-executive director appointments in both public and privately owned companies.

**Julian Smith (Deputy Chairman)** is an entrepreneur. He is founder and Managing Director of Arq International, a leading financial services executive search firm specialising in transaction banking, based in London and Singapore. He is an advisor to Training for Life, a charity helping to get unemployed and disadvantaged young people back into work. Julian is a member of the Conservative party and is currently assisting shadow ministers on education, skills and enterprise policy.

**Helena Djurkovic** is Secretary of the Better Government Initiative. She has worked as a strategy consultant with the LEK Partnership (1986-1993) and in a range of strategy roles for Pearson Plc (1993-1999), including Strategy Director of the Financial Times and Development Director of Pearson Information Division. Between 2000-2005 she ran her own art retail and consultancy business.

**Ian Locks** was Chief Executive of the PPA, the trade organisation for the £26bn magazine and business media and information sectors, until March 2008. During the 20 years he held that position he was a Board director of the funding mechanism for the Advertising Standards Authority and part of the team which established the Press Complaints Commission as successor to the Press Council. He served on the Council of the self-regulatory Audit Bureau of Circulations and, until December 2008, as a Director of both the Publishers Licensing Society and the Copyright Licensing Agency.

**Ragnar E. Lofstedt** is Professor of Risk Management and the Director of King's Centre for Risk Management, King's College London. Ragnar is the author/editor of ten books and over 90 peer reviewed articles/book chapters, editor in chief of the Journal of Risk Research and serves on a number of other editorial boards. He is a member of the European Food Safety Authority's Advisory group on risk communications, The Coca Cola Corporation's Science and Regulatory Affairs Advisory Board and the Scientific and Technical Council of the International Risk Governance Council (IRGC)

**William Mason** has previously advised Sir David on his reports - Regulation - Less is More and Better Regulation for Civil Society - making life easier for those who help others. He is a Chichester District Councillor and has served as a school governor and Special Constable in the Metropolitan Police - roles which have given him all too much experience of excessive regulation. He studied at Durham and Oxford and has worked for multi-national companies on three continents. He currently works in the City.

**Graham Mather:** President of the European Policy Forum and a lawyer, educated at New College, Oxford. The first head of the Policy Unit at the Institute of Directors, and at the same time he was involved in the development of Mrs Thatcher's policies on trade union reform and privatisation. He became General Director of the Institute of Economic Affairs in 1987 and from 1989 to 1994 served as a member of the Monopolies and Mergers Commission.

He became a Member of the European Parliament in 1994, and served on the Parliament's Social Affairs Committee and on its Economic and Monetary Affairs Committee. On leaving the Parliament in 1999 he was appointed a member of the Competition Appeal Tribunal, which hears appeals against decisions of the Competition Commission and the sector regulators. He served as a member of the Ofcom Consumer Panel from 2004-2008.

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**Jeremy Mayhew** was Special Adviser to Rt. Hon. Peter Lilley, MP (1990-93). After which he worked for the BBC (1993-2001) as Head of Strategy Development and, then, as a Board Director of BBC Worldwide. Between 2000 and 2006, he also served as a Non-Executive Member of the Strategic Rail Authority Board.

Since leaving the BBC, Jeremy has worked as a Partner/Director in strategy consultancy firms. Since 1996, Jeremy has been a Common Councilman on the City of London Corporation – where he is Deputy Chairman of its Finance Committee. He is also Chairman of the Board of the Barbican Centre, a Board Member of the London Development Agency, a Governor of London Metropolitan University and a Trustee of the City Arts Trust.

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**John Tiner CBE** John is Chief Executive of Resolution. John retired as Chief Executive of the UK Financial Services Authority in July 2007. He joined the FSA in June 2001 as Managing Director. Prior to joining the FSA, he was a Managing Partner at Andersen's responsible for the Worldwide Financial Services Practice. He joined Arthur Andersen in 1979 and became a partner in 1988. He is also currently a non-executive director of Lucida Plc, New Star Asset Management Group Plc and The Financial Services Skills Council and a member of the Advisory Board of Oxford University's Centre for Corporate Reputation.

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#### *Authors Note:*

*I am indebted to the work that members of the Arculus review have put into formulating this report, and particularly to my Deputy Chairman and co-author, Julian Smith. If there are deficiencies in it they are mine, and if there are good suggestions they are the responsibility of the team and the many people who gave their time and expertise to help us. Not every proposal will command the unanimous support of the Review Group but I am hopeful and confident that the broad direction of travel which we suggest will find support not only from my team but also from the Conservative Party and others interested in the issues around Regulation.*

#### **Additional thanks to the following for their invaluable advice**

**Sarah Anderson, Edward Atkin, Steve Barclay, Frederic Boudier, Ian Byatt, Ray Chamberlin, Teresa Graham, Andrew Haldenby, Malcolm Harbour, Michael Johnson, James Libson, Graham Mather, Francis Maude, Rupert de Mauley, Philip Sack, John Tate, Martin Traynor, Andrew Tyrie, Carol Van Den End, Frank Vibert.**

**We would like to thank all those who met with us and who submitted evidence to us.**

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# The Arculus Review: ENABLING ENTERPRISE, ENCOURAGING RESPONSIBILITY

## APPENDIX 1: SUMMARY OF RECOMMENDATIONS

### THE STATE OF REGULATION IN THE UK

**Proposal** *We need to strengthen and build upon the existing architecture of Better Regulation and de-regulation*

### CHALLENGING THE REGULATORY STATE – THE INDEPENDENT PANEL FOR REGULATION AND RISK

**Proposal** *All potential manifesto proposals put forward that affect business should be reviewed and scrutinised by a Business Challenge Panel made up of independent experts. This Panel should also review the non-regulatory alternatives proposed.*

**Proposal** *The Secretary of State for Business, Enterprise and Regulatory Reform and the Panel for Regulatory Accountability should consider all major regulatory proposals.*

**Proposal** *The public and press assumptions that encourage excessive regulation should be challenged. The economic and social need to ensure proportionate regulation and reduce burdens of unnecessary bureaucracy must be clearly explained.*

**Proposal** *A Conservative Government should establish an Independent Panel for Regulation and Risk. This panel would commission evidence based cost/benefit analysis of major legislative proposals, challenge the role and scope of regulators and advise the government on risk issues.*

**Proposal** *There should be a presumption that the RPI-X regime should be applied to regulators, Quangos, Public Sector bodies and Government departments.*

### ‘SUNSETTING THE REGULATORS’ – REGULAR REVIEW AND REFORM OF REGULATORS AND INSPECTORATES

**Proposal** *A Sunset clause should be applied to Regulators. During the first term of a Conservative Government all Regulators should be re-assessed and their duties reviewed.*

**Proposal** *Undertake subsequent landscape reviews of all regulatory bodies, their mandates and scope. We recommend a seven year cycle.*

**Proposal** *There should be tougher penalty powers for regulators. Tougher penalties should go hand in hand with a reduction in the number of rules and regulations and a focus on the main issues.*

**Proposal** *Each major Regulator should be ultimately responsible to a Select Committee whilst having a dotted line responsibility to relevant Government Departments.*

**Proposal** *The Corporate Governance of Regulatory Bodies should be up to private sector standards, with part-time Chairs, and a majority of non-executive Directors.*

**Proposal** *The appointment (and dismissal) process of Chairs of major Regulatory Bodies should be subject to Parliamentary Select Committee approval.*

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## CONSULTATION, IMPACT ASSESSMENTS AND REGULATORY BUDGETS

- Proposal** *A Conservative Government should ‘consult on the issue’ rather than ‘consult on the legislation’. More face to face consultation with businesses should take place and technology should be used where appropriate. Consultation should actively encourage alternative proposals.*
- Proposal** *Specific improvements should be made by a Conservative government to Impact Assessments. Impact Assessments should also be reviewed and updated as legislation is amended.*
- Proposal** *We believe regulatory budgeting should be used first to stabilise and subsequently to reduce the UK’s total regulatory burden.*
- Proposal** *The Public Sector of the economy should be included in the process.*
- Proposal** *The costs of climate change laws should be measured and ring fenced within the regulatory budget process.*
- Proposal** *Alternatives to regulation should be kept outside the process, ie awarded a free pass where no legal backing is in place.*

## ALTERNATIVES, INFORMATION AND ROUTES TO REDRESS

- Proposal** *The Independent Panel for Regulation and Risk should be tasked to lead a major initiative to promote alternatives, develop a database of international examples of best practice and identify essential elements for success in a best practice guide to Alternatives to Regulation.*
- Proposal** *Before imposing regulation on any industry, sector or profession, Government should give serious consideration to stakeholders who propose a self or co-regulatory option.*
- Proposal** *Information should play an important role in reducing formal regulation as it empowers people to make informed choices. It is also useful in encouraging peer pressure amongst companies and public sector organisations to improve performance.*
- Proposal** *An independent branded website should be developed which links the public directly to Departments and to the IPRR. It should be mandatory for all correspondence from the State to have a clear reference to this site.*
- Proposal** *A Conservative government should ask the Ministry of Justice to assess the viability of a ‘regulatory court’ to allow claims to be made against unfair implementation of regulations.*

## SPECIFIC MEASURES TO HELP BUSINESS AND THE THIRD SECTOR

- Proposal** *An Employment Law rewrite programme, codifying and consolidating existing rules and processes. This should include a thorough analysis of the effect of relevant European Law.*
- Proposal** *Acceleration of efforts to simplify disciplinary and grievance procedures. The pressures and resource constraints of small business should be given particular consideration, as part of this process.*
- Proposal** *Ongoing review of the employment tribunal system to ensure that simple cases are dealt with more quickly and efficiently.*
- Proposal** *Impact Assessments should ‘think small’. Specific effects on small business should be given better consideration in the pre-legislative process.*

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- Proposal** *In its assessment of legislative proposals, The Independent Panel for Regulation and Risk should rigorously assess the impact of forthcoming legislative and administrative initiatives on small business.*
- Proposal** *The present system of Common Commencement Dates for legislation including employment legislation should be widened to no more frequently than once a year, rather than the current once every six months.*
- Proposal** *As part of its review of the stock of existing regulations, the Independent Panel of Regulation and Risk should, with assistance from the Law Commission, give particular attention to the removal of legislation and regulation that is a burden to small business*
- Proposal** *Any Government form should clearly state the time it should take to complete.*
- Proposal** *More use should be made of helplines providing tailored, insured advice to SMEs, accompanied with quick start guides.*
- Proposal** *HMRC should be subject to Simplification Plans and Regulatory Budgets in the same way as other Whitehall departments.*
- Proposal** *There should be a clear direction of travel for Corporate tax which balances the requirements of the short term, with longer term considerations.*
- Proposal** *There should be time limits to tax cases being re-opened and a presumption against excessive retrospection.*
- Proposal** *Contracts for Third Sector organisations need to be for longer time periods and standardised to a simpler format.*
- Proposal** *Every effort should be made to facilitate the diverse models of supply which the Third Sector can provide.*

## **THE PUBLIC SECTOR – AND GIVING MORE POWER TO THE PEOPLE**

- Proposal** *We should encourage moves from a rules based centralized system to a system based on more local responsibility in which professionals can exercise their reasonable judgement.*
- Proposal** *Diversity of Supply should be encouraged. City academies and NHS Direct being encouraging examples.*
- Proposal** *Information Flows, which empower individuals and local communities to make informed judgement should be provided by efficient inspectorates.*
- Proposal** *More Influence from Communities and Professional Bodies should be encouraged. Public services are for the most part non competitive.*
- Proposal** *Good Governance is vital. Wherever possible we support the idea of strong, national and local Boards with clearly defined powers containing a majority of non executive members.*
- Proposal** *Parliamentary Accountability for regulators and inspectorates should be strengthened with Select Committees holding the key public service regulators to account.*

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## THE ROLE OF PARLIAMENT

- Proposal** *The Pre-Legislative process should be strengthened through a clear Statement of Purpose, Better Economic Data and examination of overlapping Legislation.*
- Proposal** *The Chair of the Panel for Regulatory Accountability must confirm their agreement to the Bill proceeding.*
- Proposal** *The Speaker should have the power to send Legislation back to its starting point if it has deviated radically from the original Statement of Purpose.*
- Proposal** *Emergency legislation should be forced to go through the full process outlined within a twelve month period of it becoming law. If not there should be a presumption that it will be sunset.*
- Proposal** *Full use should be made of Guidance and of Piloting.*
- Proposal** *A Conservative government should encourage stronger Select Committees with independent chairs, voted for by secret ballot.*
- Proposal** *There should be a clearer process to differentiate between types of Statutory Instruments. We suggest a process of colour coding. Red – to indicate those statutory instruments with regulatory consequences, Green – for those clearly not of a regulatory nature.*
- Proposal** *All Statutory Instruments of a Regulatory nature should be debated by a Select Committee before approval. They should also be able to be amended by Parliament.*

## ENGAGING WITH BRUSSELS

- Proposal** *BERR should be the clearing house within Government for all EU business at European Level*
- Proposal** *There should be a Cabinet meeting each month devoted to planning the UK's tactics for negotiating forthcoming EU legislation*
- Proposal** *A Conservative Government should enhance the effectiveness of UK Government lobbying in Europe by using senior Ministers and Civil Servants. Consideration should be given to basing a senior Minister in Brussels.*
- Proposal** *The structure of Parliamentary Committees which scrutinize European Legislation should be reconsidered, with the possibility of making permanent the Lords Committee on Regulation.*
- Proposal** *Select Committees should be especially alert to issues of Gold Plating European Legislation*
- Proposal** *EU consultation should be increased to be at least in line with the UK at twelve weeks. The European Commission should be encouraged to engage earlier when it proposes new policies.*
- Proposal** *The UK government should encourage more effective coordination between the three European Institutions to ensure that Impact Assessments are effective.*
- Proposal** *The new European Commission's Impact Assessment Board should be expanded to include external independent, non-executive directors.*
- Proposal** *Independent evaluation and challenge similar to that done by the NAO in the UK should be encouraged at EU level.*

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- Proposal** *A European Law Commission should be established to look at which Laws could be removed for being either redundant or ineffective or inefficient on the ground. This should undertake a permanent review of the *acquis communitaire*.*
- Proposal** *Ex post evaluation needs much greater inter institutional attention. An independent ex post evaluation group reporting to the three institutions, Council, Commission and Parliament should be established.*
- Proposal** *The European Council should initiate a special project to direct the European Commission to come forward with proposals to tilt the balance towards effective enforcement and against further legislation.*



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## APPENDIX 2: PRINCIPLES OF GOOD REGULATION

***Proportionality***      **Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.**

- Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut.
- All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.
- “Think small first”. Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses.
- EC Directives should be transposed without gold plating.
- Enforcement regimes should be proportionate to the risk posed.
- Enforcers should consider an educational, rather than punitive approach where possible

***Accountability***      **Regulators must be able to justify decisions, and be subject to public scrutiny.**

- Proposals should be published and all those affected consulted before decisions are taken.
- Regulators should clearly explain how and why final decisions have been reached.
- Regulators and enforcers should establish clear standards and criteria against which they can be judged.
- There should be well-publicised, accessible, fair and effective complaint and appeals procedures.
- Regulators and enforcers should have clear lines of accountability to Ministers, Parliaments and assemblies and the public.

***Consistency***      **Government rules and standards must be joined up and implemented fairly.**

- Regulators should be consistent with each other, and work together in a joined-up way.
- New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.
- Regulation should be predictable in order to give stability and certainty to those being regulated.
- Enforcement agencies should apply regulations consistently across the country.

***Transparency***      **Regulators should be open and keep regulations simple and user friendly.**

- Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.
- Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account.
- Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.
- Regulations should be clear and simple, and guidance, in plain English, should be issued 12 weeks before the regulations take effect.
- Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.
- Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance.
- The consequences of non-compliance should be made clear.

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*Targeting***Regulation should be focused on the problem, and minimise side effects.**

- Regulations should focus on the problem, and avoid a scattergun approach.
- Where appropriate, regulators should adopt a “goals-based” approach, with enforcers and those being regulated being given flexibility in deciding how to meet clear, unambiguous targets.
- Guidance and support should be adapted to the needs of different groups.
- Enforcers should focus primarily on those whose activities give rise to the most serious risks.
- Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

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## APPENDIX 3: UK REGULATORY BODIES

1. Statutory Regulators (Source Compliance Code Statutory Instrument)
2. Non-Statutory Regulators (Source Compliance Code Statutory Instrument)
3. Other Regulators who may be brought within the Compliance Code (Source Compliance Code Statutory Instrument)
4. Economic Regulators (Source House of Lords Select Committee on Regulators)
5. Other Regulators (Listed by the Government Department to which they are most closely aligned)
6. Professional Bodies (With some Regulatory Functions)

*Note – there is no guarantee that this list or around 150 bodies is comprehensive as there does not appear to be any central list of Regulators. It also does not include industry self regulatory bodies such as the Advertising Standards Authority or the Press Complaints Commission.*

### 1. Statutory Regulators (Hampton)

- Charity Commission for England and Wales
- Civil Aviation Authority
- Commission for Equality and Human Rights
- Director of the Assets Recovery Agency
- Environment Agency
- Financial Services Authority
- Food Standards Agency
- Football Licensing Authority
- Forestry Commission
- Gambling Commission
- Gangmasters Licensing Authority
- Health and Safety Commission
- Health and Safety Executive
- Historic Buildings and Monuments Commission for England (“English Heritage”)
- Housing Corporation
- Human Fertilisation and Embryology Authority
- Human Tissue Authority
- Information Commissioner
- Natural England
- Office of Fair Trading
- Registrar of companies for England and Wales
- Registrar of companies for Northern Ireland
- Registrar of companies for Scotland (effectively, these three bullets together mean "Companies House").
- Security Industry Authority
- United Kingdom Sports Council

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## **2. Non-Statutory Regulators**

- Agricultural Wages Inspectorate
- Animal Health
- Animals (Scientific Procedures) Inspectorate
- Centre for Environment, Fisheries and Aquaculture Science
- Drinking Water Inspectorate
- Financial Reporting Council
- Hearing Aid Council
- The Insolvency Service
- Marine Fisheries Agency
- Maritime and Coastguard Agency
- Medicines and Healthcare Products Regulatory Agency
- National Counter Terrorism Security Office
- National Weights and Measures Laboratory
- Pesticides Directorate
- Plant Health and Seeds Inspectorate
- Rural Payments Agency
- The Pensions Regulator
- Vehicle and Operator Services Agency
- Vehicle Certification Agency
- Veterinary Medicines Directorate
- Local Regulators
- Fire and Rescue Authorities
- Local Authorities

## **3. Other Regulators who may be brought within the Compliance Code**

- Audit Commission
- The Assay Offices
- Bodies enforcing the money laundering regulations
- British Hallmarking Council
- Care Quality Commission
- Criminal Records Bureau
- The Coal Authority
- General Social Care Council
- Information Centre for Health and Social Care
- Legal Services Board
- Ofsted
- Office for Tenants and Social Landlords
- Postgraduate Medical Education and Training Board
- Renewable Fuels Agency
- Traffic Commissioners

## **4. Economic Regulators**

- Postcomm
- The Water Services Regulation Authority (Ofwat)
- Office of Gas and Electricity Markets (Ofgem)
- Civil Aviation Authority (CAA)
- Office of Communications (Ofcom)
- Financial Services Authority (FSA)

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- Office of Rail Regulation (ORR)
  - The Pensions Regulator (TPR)
  - Office of Fair Trading (OFT)
  - Competition Commission (CC)

## **Other Regulators**

### **Cabinet Office**

- Office for the Commissioner for Public Appointments

### **Department for Culture Media and Sport**

- Sport England
- National Lottery Commission

### **Department for Children, Families & Schools**

- Adult Learning Inspectorate (OFSTED)
- Children and Family Court Advisory and Support Service (OFSTED)
- Construction Industry Training Board
- Engineering Construction Industry Training Board
- Higher Education Funding Council for England
- Learning and Skills Council
- Qualifications and Curriculum Authority

### **Department for Environment, Food and Rural Affairs**

- English Nature
- Joint Nature Conservation Committee
- Meat and Livestock Commission (FSA)
- Wine Standards Board (FSA)

### **Department of Health**

Council for the Regulation of Healthcare Professionals, which will oversee;

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- Health Professionals Council
- Nursing and Midwifery Council
- Care Quality Commission
- Health Development Agency
- Human Fertilisation and Embryology Authority
- National Biological Standards Board
- National Care Standards Commission
- National Health Service Appointments Commission
- National Institute of Clinical Excellence
- Social Services Inspectorate
- The Commission for Patient and Public Health Involvement in Health
- Office of the Independent Regulator for NHS Foundation Trusts

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## **Department for Business Enterprise & Regulatory Reform**

- Coal Authority
- Equal Opportunities Commission
- Financial Reporting Council

## **Department for Transport**

- Transport Commissioners
- Office of the PPP Arbiter

## **Department for Work and Pensions**

- Disability Rights Commission
- Health and Safety Commission
- Occupational Pensions Regulatory Authority
- Pensions Regulator

## **Home Office**

- Office of the Immigration Services Commissioner
- Youth Justice Boards
- Legal Services Complaints Commissioner

## **Department for Committees and Local Government**

- Architect's Registration Board
- Standards Board for England

## **Other & Proposed Regulators**

- Commission for Healthcare Audit and Inspection
- Community Interest Company
- Office of Fair Access
- Office of the Independent Adjudicator
- Assets Recovery Agency
- Building Societies Commission
- Electoral Commission
- HM CPS Inspectorate

## **6. Professional Bodies (with some Regulatory Functions)**

- Association of Chartered Certified Accountants
- British Medical Association
- Bar Council
- Chartered Institute of Management Accountants
- Chartered Institute of Public Finance and Accountancy
- Council for Licensed Conveyancers
- General Teaching Council
- Insolvency Practitioners Association
- Institute of Actuaries
- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Secretaries and Administrators
- Institute of Legal Executives
- Law Society
- Royal College of Anaesthetists
- Royal College of General Practitioners

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- Royal College of Nursing
  - Royal College of Obstetricians and Gynaecologists
  - Royal College of Ophthalmologists
  - Royal College of Paediatrics and Child Health
  - Royal College of Pathologists
  - Royal College of Physicians
  - Royal College of Psychiatrists
  - Royal College of Radiologists
  - Royal College of Surgeons of England
  - Royal College of Veterinary Surgeons
  - Royal Institution of Chartered Surveyors
  - Royal Pharmaceutical Society of Great Britain

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## **APPENDIX 4: PROPOSED CRITERIA FOR BEING A WORLD CLASS REGULATOR**

(from a Food Standards Agency Paper)

### **Delivering Outcomes**

- Regulators cannot claim to be world class unless they are effective – actually delivering the protection they were created to provide.

### **Practical and timely interventions**

- World class regulators:
  - focus on practical and deliverable solutions;
  - focus on outcomes, rather than inputs and processes;
  - are timely in the interventions they make;
  - work collaboratively with their enforcement partners to help responsible businesses comply.

### **Consistent, risk-based, proportionate and transparent decision-making**

- World class regulators:
  - are consistent in their approach to the analysis of issues, acting on the basis of risk, evidence and sound science;
  - act proportionately and take account of costs and benefits, but are appropriately precautionary where evidence is incomplete;
  - act openly and transparently, adopting a consultative approach and being accountable for their actions.

### **Using the market and applying effective incentives and sanctions**

- World class regulators:
  - intervene to protect consumers where the market is not balanced, not effective, or does not provide proper levels of protection – but only where the benefits justify action and outweigh the risks of inaction;
  - use the market, where appropriate, to achieve change – minimising regulatory and administrative burdens where this does not compromise outcomes;
  - drive improvement and reward good performance, whilst seeking firm action against those who persistently fail to meet acceptable standards, or negligently expose the consumer to serious risks.

### **Continuing learning**

- World class regulators:
  - have systems in place to review risks, priorities and levels of tolerance and to adjust what is regulated and how it is regulated to reflect changing circumstances;
  - evaluate the success of their regulatory interventions; and
  - learn from and act on the assessments that we or others make of our performance.

### **Delivering value for money**

- World class regulators:
  - are efficient – finding the best way to get things done;
  - are economical – making the best use of public money, and minimising costs without reducing quality; and
  - develop their people



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## **Changing the landscape**

- World class regulators:
  - are not only reactive, but influence others and set the regulatory agenda – locally, nationally and globally; and
  - work in partnership with others to achieve common goals.

