



House of Commons
Regulatory Reform Committee

Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda

Fifth Report of Session 2007–08

*Report, together with formal minutes, oral and
written evidence*

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The Regulatory Reform Committee

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

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Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

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Summary

Improving the approach to regulation is a priority in many developed economies. Since 2005, the Better Regulation Executive has had the job of co-ordinating the UK Government's approach to regulatory reform. Three years in to the BRE's existence, we wanted to review its performance. We looked at how the BRE pulls together the different strands of the regulatory reform agenda, whether it has sufficient support in its role, how it interacts with its customers and how it works as an organisation. We considered the major themes of the current regulatory reform agenda and how to improve scrutiny.

We have recommended regular parliamentary scrutiny of the BRE through annual reporting to Parliament. We believe that the BRE should tighten certain internal procedures and focus more on setting clearly defined and prioritised targets and then measuring against them – both for itself and for Departments and (where relevant) Agencies. The BRE should itself scrutinise the robustness of reporting in programmes such as the Administrative Burdens Reduction Programme. We have also suggested that Government Departments provide information on progress in burdens reduction in their Annual Reports. That information would then be available for scrutiny by the relevant Departmental Select Committee. The Government should keep up the pressure to achieve the targets of the administrative burdens programme, but preoccupation with those targets should not detract from robust measuring and from a shift toward changing burdens that are real “irritation factors”.

We believe that there is a role for the BRE in continuing some selective monitoring of impact assessments, although not in all cases. The Government should consider ways to control the flow of regulation, as is occurring through the consultation on regulatory budgets. We would welcome a greater flow of legislative reform orders through the Regulatory Reform Committee, subject to proper management and prioritisation, although we acknowledge that, depending on circumstances, other routes for amending legislation might be more appropriate.

We conclude that the BRE has made a significant contribution to improving regulation in a relatively short period and will have a crucial role to play in co-ordinating further reform. It is seen as a positive force in changing regulatory culture, although it could perhaps do more to publicise its role and achievements, which we believe should be more widely recognised.

The BRE now needs to focus on change that builds on reform to make greater impacts on perceptions of regulation. That will need creative and persistent work to fit regulation better to the way in which businesses, consumers and all members of society behave.

Conclusions and recommendations

BRE strategy, role and location

1. The pressure for regulatory reform should continue, but we recommend that the BRE should set clear priorities, together with timetables for delivery. We recommend that the BRE consider how better to co-ordinate communication of its initiatives to stakeholders. (Paragraph 16)
2. We urge the BRE to apply good regulatory practice and target initiatives where they will be most productive. Better regulation principles including consultation and impact assessment should be applied to regulatory reform initiatives themselves. (Paragraph 17)
3. The Panel for Regulatory Accountability should continue to provide real-time scrutiny of impact assessments. We recommend that amendments made during the passage of legislation be referred to the PRA for post hoc analysis. (Paragraph 20)
4. We recommend that experience in the promotion of better regulation be taken into account as soon as possible in determining structures for Civil Service career development. (Paragraph 22)
5. We believe that, for the time being at least, the BRE should remain at BERR. However, we recommend that the Government take positive steps to ensure that the BRE retains freedom to pursue a balanced regulatory reform agenda that serves the interests of all sectors, and that it is seen to do so. (Paragraph 34)
6. Although we recognise the steps that the BRE has already taken to engage a cross-section of stakeholders, we recommend that the BRE review its resource allocations, programmes and communications and continue to take steps toward achieving greater recognition of consumers, employees, local government, the public sector and the third sector, alongside business interests, in determining the priorities for regulatory reform. (Paragraph 35)

BRE Operational approach and relations with other bodies

7. We recommend that the BRE consider whether its procedures and practices for retaining and sharing institutional knowledge are adequate in light of the policy of relatively high staff turnover. (Paragraph 38)
8. We recommend that the BRE strengthen its channels for obtaining grass roots information from the level of individual businesses and individual local authorities, as well as individual organisations in the third sector. The BRE should use its contact with the new Local Better Regulation Office as one means of achieving that objective. The BRE should take steps to advertise its existence at all levels, including trade associations. (Paragraph 41)

9. We recommend that the BRE become more actively involved in facilitating greater sharing of best practice among regulators and Government Departments. The new Local Better Regulation Office should be involved in articulating the local authority perspective in that exchange. (Paragraph 43)
10. We recommend that the BRE play an active role in holding Government Departments to account for their performance in the area of regulatory reform and that the BRE develop a system for monitoring and evaluating Departmental performance and reporting the results publicly. It should work with Government Departments to develop suitable evaluation criteria with appropriate weighting of those criteria and agreed evidential sources for assessing performance. Agencies should be included in such evaluation when relevant. (Paragraph 46)
11. We recommend continued strong interaction between HMRC and the BRE on the implementation of regulatory reform, reinforced by an established pattern of regular meetings, and that HMRC should operate under the same initiatives and principles as all Government Departments with respect to the regulatory reform agenda. (Paragraph 51)
12. We recommend that the Risk and Regulation Advisory Council should be given a clear role in providing independent challenge in the regulatory reform area. (Paragraph 53)
13. We recommend that, in order to provide greater accountability and a measure of independent review, the BRE submit an annual report to Parliament, addressing performance against its clearly defined objectives. The report should distinguish between the work of Government Departments and the work of the BRE itself. (Paragraph 55)
14. We recommend that given the high importance attached to the regulatory reform agenda the Government give serious consideration to including the position of Executive Chair of the BRE on the list of senior posts which should be subject to future pre-appointment hearing. (Paragraph 56)

Current Regulatory Reform Policy

15. We believe that the credibility of the Administrative Burdens Reduction Programme savings figures and the achievement of meaningful results are more important than preoccupation with avoiding, say, a 2% or 3% shortfall on the 25% target. We therefore recommend careful scrutiny of all savings figures, but at the same time call for recognition that the shortcomings of the standard cost model require acceptance of flexibility around targets. The ABRP should not be considered to have failed if, for instance, 22% of real burdens reduction has a discernible impact. (Paragraph 66)
16. We recommend that there be constant scrutiny both of ongoing progress on the ABRP and of the robustness of claimed Departmental savings. The BRE should play a continuous role in such monitoring, which should cover burdens reduction indicators beyond that of the 25% target, such as irritation factors to businesses and others. (Paragraph 67)

17. We recommend that Government Departments and Executive Agencies include in their Annual Reports their progress against simplification plans, and that there be greater measurement of actual take-up of savings proposals. We recommend that the BRE to continue to look for ways to make greater impacts on burdens reduction. (Paragraphs 68, 69 and 71)
18. We recommend that the BRE consider setting up a body in this country analogous to the Stevens and Wientjes Committees in the Netherlands. (Paragraph 73)
19. We recommend that the BRE focus on the issue of customising communications to individual business sectors. (Paragraph 74)
20. We recommend renewed focus on the target of reducing public sector data requests by 30%. We recommend that progress in reducing public sector and third sector burdens—and their measurement—be given equal emphasis to that of the business sector programme. (Paragraph 75)
21. We recommend that the BRE should have a role in scrutiny of impact assessments, selected on the basis of financial thresholds, including in support of any introduction of regulatory budgets. (Paragraph 81)
22. Any proposed system for setting and publicising regulatory budgets should take into account the fact that desirable regulation, not least in the environmental and health and safety areas, carries with it certain inevitable costs. Similarly, there should be safeguards against undue pressure to remove necessary regulation merely as a means of meeting budgetary targets. (Paragraph 85)
23. We recommend that, if regulatory budgets are adopted, and subject to the outcome of any review on independent scrutiny, Government Departments provide relevant data in their Annual Reports as a means of providing proper scrutiny. We recommend that Departments begin already to focus on their plans for post-2010. Whatever the nature of the then Government, there will be a need for further progress in regulatory reform. (Paragraph 86)
24. In November 2006, the Davidson review reported on the issue of gold-plating and other over-implementation of EU legislation, and concluded that although instances of gold-plating could be identified, its overall incidence was not substantial. We welcome the fact that it is now a requirement of impact assessments that they contain an indication of whether gold-plating is occurring, and require it to be fully justified. We welcome the Minister's confirmation that, if regulatory budgets are adopted, they will include EU legislation. (Paragraphs 87 and 88)
25. We recommend that the BRE prioritise how to increase its influence in achieving regulatory reform at the EU level. We recommend that the BRE undertake a feasibility study of where it would like EU regulatory reform to be from the UK perspective, where the resource gaps are in getting there, and how to remedy them. Subject to the outcome of any such study, it might wish to consider having permanent independent representation in Brussels. (Paragraph 91)

26. We recommend that Better Regulation Ministers within Government Departments keep the flow of legislative reform orders under review and take every opportunity to use them to their fullest extent. We recommend that legislative reform orders be used primarily for their intended purpose of reducing burdens and improving regulation, and that steps be taken to improve the preparation of primary and secondary legislation to avoid the need for corrective legislation shortly after the passage of an originating measure. We further recommend that the Government establish proper mechanisms for prioritising and managing the flow of legislative reform orders. In addition, we recommend that we receive periodic updates of the measures that are intended to be reviewed via primary legislation, by way of a copy of the BRE's schedule of such information. (Paragraphs 93 and 94)
27. We recommend that a cost/benefit analysis of the retail enforcement pilot be undertaken. We further recommend that the BRE and the Department of Work and Pensions consider conducting a pilot study on simplification of processes to consider where and how decisions on benefit awards might be capable of delegation to local offices without the need for data collection, and that the results of that study be shared with other Departments as a potential model for rationalising data collection. (Paragraph 98)

Conclusions

28. We agree that the challenge for the BRE is in better measurement of progress and accountability and in showing how activities are contributing to major desirable changes. We recommend that the BRE focus its attention on delivery of current objectives and on setting clear future objectives and measuring against them. (Paragraph 100)
29. We believe that, in its short lifetime, the BRE has made a significant contribution to improving the UK's regulatory environment on the basis of a demanding agenda. Its major challenges are to maintain strategic focus—particularly if the new programme of regulatory budgets is adopted—and to ensure that there is proper quality control and measurement of deliverables against clear targets, including in relation to burdens reduction figures. It needs, too, to be rigorous in assessing its own performance, to focus on improving perceptions, and to look at improving some of its internal operating procedures as we have suggested. (Paragraph 101)

1 Introduction

Scope of the inquiry

1. “Regulation is about a million small details”, the Executive Chair of the Better Regulation Executive (BRE) told us when we visited the BRE offices on 10 June. Even a cursory review of recent regulatory reform initiatives, however, demonstrates that the devil can be in those details—particularly when it comes to changing perceptions of regulation. We have therefore taken the opportunity afforded by the expansion of the Committee’s remit to inquire into the BRE’s work on the current regulatory reform agenda and to ask whether the strategy adopted is getting results.

2. Neither the BRE nor its predecessor the Regulatory Impact Unit have been the subject of a previous parliamentary inquiry. It seemed to us timely, therefore, to consider the BRE’s activities and to examine the Government’s progress on regulatory reform.

3. The inquiry’s terms of reference were to assess:

- the extent to which the BRE has developed a coherent strategy for implementing regulatory reform;
- whether the BRE works effectively with other areas of government to implement regulatory reform initiatives;
- whether the approach to measuring and reporting on performance and outcomes is sufficiently robust; and
- whether the current approach to regulatory reform is delivering genuine results.

4. For the most part, we have not attempted to consider individual policies and regulations. Rather, we have focused on strategic direction and on the specific subject matter of the inquiry’s title: whether the BRE and regulatory reform are getting results. Similarly, we have not considered every current initiative—particularly those that appear to be working well, such as improvements in the quality of regulatory guidance—although we take their success into account in assessing the overall achievements of the agenda.

Acknowledgments

5. We received written evidence from 24 organisations and individuals. We also held five oral evidence sessions. We are grateful to all those who produced oral and written evidence to the Committee. A list of witnesses is provided in Annex 1¹ and a list of those who submitted written evidence is contained in Annex 2.² The oral and written evidence is published in a separate volume of the Report. During the course of our inquiry we had the assistance of the National Audit Office, to whom we express particular thanks. We also

1 See page 42

2 See page 43

thank the NAO for making additions to its 2007 survey examining business perceptions of regulation in order to assist our understanding.

6. In June 2008, we visited Copenhagen, Stockholm and The Hague accompanied by our NAO adviser. The purpose of the visit was to compare good practice in each of those countries, and we gained many valuable insights. We are grateful to the Foreign and Commonwealth Office posts for their help and hospitality, and to each of the bodies and individuals visited for their openness and willingness to share information and views. A list of the organisations and individuals we met on our visit is contained in Annex 3.³

2 Background to the current regulatory reform agenda

7. Before we began our inquiry, the National Audit Office prepared for us a paper summarising the recent history of regulatory reform.⁴ As that paper makes clear, there has been considerable growth in activity in this area. In 2005, the Hampton Report⁵ emphasised risk-based approaches to regulation and led to the formation of the Better Regulation Executive with a remit to “deliver better regulation and reduce unnecessary bureaucracy in both the public and private sectors.” In the same year, the Better Regulation Task Force report *Less is More*⁶ recommended, *inter alia*, the setting up of an administrative burdens reduction programme along the lines of the initiative adopted in the Netherlands, together with a review of the Regulatory Reform Act 2001. In response, an administrative burdens reduction programme was started in 2005, and in 2006 the Legislative and Regulatory Reform Act streamlined the processes for revising legislation and promoting better regulation. Also in 2006, the Davidson review of “gold-plating” of EU legislation reported its findings.⁷ In 2007, the Government published further proposals in *Next Steps on Regulatory Reform*,⁸ including for reviews of consumer and employment law, improving the guidance that accompanies regulation, and improving accountability of regulators. In addition, the Regulatory Enforcement and Sanctions Bill is scheduled to be enacted in July 2008. It contains a number of measures that build further on the Hampton Report.

8. The current major UK initiatives and responsible bodies are set out in Tables 1 and 2. Improving the approach to regulation is a priority in many developed economies, but the tables illustrate the ambition and scope of the UK’s agenda compared with that in other countries, and the size of the tasks that the BRE has set itself—a point that deserves full recognition. Table 3 shows BRE departmental responsibilities and budgets. Importantly, in July 2007 the BRE moved from the Cabinet Office to the Department for Business,

3 See page 44

4 http://www.nao.org.uk/publications/Reg_Reform_Brief.pdf

5 <http://www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf>

6 <http://www.berr.gov.uk/files/file22967.pdf>

7 See paragraph 87

8 <http://www.berr.gov.uk/files/file44370.pdf>

Enterprise and Regulatory Reform (BERR). We consider the ramifications of that move in this Report.⁹

9 See paragraphs 23 to 25

Table 1
Key elements of the BRE's Better Regulation Programme

		Working with Departments and regulators to simplify and modernise existing regulations	Working with Departments to improve the design of new regulations and how they are communicated	Working with regulators (including local authorities) and Departments to change attitudes and approaches to regulation to become more risk-based
	Domestic	<ul style="list-style-type: none"> Administrative Burdens reduction programme www.betterregulation.gov.uk website Programme for reducing data requests on front-line public sector workers 	<ul style="list-style-type: none"> Embedding Impact Assessment Review of Consultation Policy Commitment to publish total costs of new regulations from April 2008 Code of Practice for Government guidance Improved communications around new regulations introduced on Common Commencement Dates Regulatory budgets 	<ul style="list-style-type: none"> Mergers of national regulators / inspectorates Reviews of Independent Regulators Regulators Compliance Code Statutory Duty on Regulators to Address Burdens Clarifying regulatory priorities for local authorities Establishing Local Better Regulation Office
Systems reform	EU	<ul style="list-style-type: none"> 25% EU Admin burdens target. Davidson Review for reducing burdens in stock of EU legislation 	<ul style="list-style-type: none"> Ongoing work to improve Impact Assessment in the EU 	<ul style="list-style-type: none"> Building on relationship with other members states to promote overall improvements in European regulatory reform
Interventions around specific policy areas	Domestic	<ul style="list-style-type: none"> Consumer Law Review Review of impact of Health & Safety regulations on low-risk businesses Support for Flanagan Review of Policing 	<ul style="list-style-type: none"> Ongoing engagement between BRE staff and departments on the development of new domestic and EU policy Clearance of new regulations by the Panel for Regulatory Accountability 	<ul style="list-style-type: none"> Retail Enforcement Pilot

	EU	<ul style="list-style-type: none">• Will potentially follow from EU Admin burdens work		
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BRE's communications programme is cross-cutting and spans all elements of the programme.

Table 2: Roles and Responsibilities

COORDINATION	IMPLEMENTATION	SCRUTINY
<p><u>The Better Regulation Executive:</u></p> <ul style="list-style-type: none"> • Project manager and coordinator for the various regulatory reform initiatives. • Issues guidance on impact assessments, provides advice to departments and monitors compliance with IA requirements. 	<p><u>Departments:</u></p> <ul style="list-style-type: none"> • Primary responsibility for delivering high quality regulation. Each department has: • A Better Regulation Minister who is accountable for the wider better regulation agenda. • A Better Regulation Board Level Champion, to promote to board members the wider better regulation agenda. • A Better Regulation Unit (BRU) supporting policy teams in delivering reductions in administrative burdens and the wider better regulation agenda. The BRUs act as the liaison point for the BRE and have responsibility for working with policy teams to identify and implement measures to reduce administrative burdens by 2010. 	<p><u>The Panel for Regulatory Accountability</u></p> <ul style="list-style-type: none"> • The PRA is a Cabinet Sub-Committee, chaired by the Chief Secretary to the Treasury, which was set up to ensure that proposals which imposed a significant regulatory burden on business, the public sector or the third sector are considered collectively. • Provides scrutiny of departmental simplification plans and major policy proposals which are likely to impose a cost of over £20 million per annum or disproportionately impact a particular sector. <hr/> <p><u>National Audit Office:</u></p> <ul style="list-style-type: none"> • Works on behalf of Parliament to hold Government to account. • Examination of various aspects of the regulatory reform agenda. <p><u>The Regulatory Reform Committee:</u></p> <ul style="list-style-type: none"> • Provides parliamentary scrutiny of matters relating to regulatory reform. <p><u>The Public Accounts Committee:</u></p> <ul style="list-style-type: none"> • Examines NAO reports – in February 2008, the Committee examined the NAO report on the Administrative Burdens Reduction Programme.

Table 3: BRE Departments and budget breakdowns

Budget 2008/09	Total Administrative	Programme	Responsible for delivering:
Regulatory Reform Directorate	£2,400,416	-	<ul style="list-style-type: none"> Administration burdens reduction programme, including coordination of Simplification Plans. Public sector strategy, including data stream reduction and the public sector compliance code. Dedicated account teams working with departments on the design of new regulation, including embedding and scrutinising impact assessments. Improving small business regulation. Review of consultation policy. EU Regulatory Reform, including the EU 25% admin burdens target, work to improve the EU Impact Assessment and working with Departments and EU institutions to improve regulation and its implementation. Panel for Regulatory Accountability.
Regulatory Innovation Directorate (includes the Regulatory Enforcement and Sanctions Bill Team and responsibility for the Local Better Regulation Office)	£2,984,535	£4,400,000	<ul style="list-style-type: none"> Projects to improve existing regulation, including: <ul style="list-style-type: none"> Consumer Law Review Health and Safety review Secretariat to the Killian/Pretty independent review of planning (with CLG). Projects to improve the design and implementation of regulations, including: <ul style="list-style-type: none"> Regulatory Budgets Work with the OCC on Climate Change Secretariat to Sarah Anderson's independent review of guidance Improved communications around Common Commencement Dates Regulatory Enforcement and Sanctions Bill and its implementation. Reviews of how regulators are implementing the Hampton vision. Regulator's compliance code. Economic regulators policy. The Local Better Regulation Office
Strategic Communications	£668,176	-	<ul style="list-style-type: none"> New communications strategy – designed to improve two-way communication with the outside world on Better Regulation

Budget 2008/09	Total Administrative	Programme	Responsible for delivering:
Strategic Support Team	£694,873	-	<ul style="list-style-type: none"> • Chair and Chief Executive and their private office. • HR, recruitment, financial and performance management. (Includes the BRE's Central training programme) • Coordination of the Senior Management Team. • Overview of business planning and overall strategy.
	£6,748,000 ¹⁰	£4,400,000	

10 The administrative budget is subject to some upward revision in order to implement Regulatory Budgets

3 The Better Regulation Executive's strategy, role and location

BRE strategy

9. One of the most important objectives for the inquiry was to consider whether the BRE has developed a coherent strategy in its approach to the many initiatives that form part of the regulatory reform agenda.

10. The written evidence submitted by Professor Baldwin of the London School of Economics is consistent with the view of Sir William Sargent, the BRE's Executive Chair, referred to in paragraph 1, in that it suggests that regulatory reform should not stress any one approach (particularly one based solely on impact assessments) to the exclusion of others, but should instead deploy a mixture of policy approaches and a variety of strategies.¹¹ In his oral evidence, Trevor Huddleston, Department of Work and Pensions (DWP) strategy director, said: "I do not think you can bite off a strategy as big as Better Regulation with one initiative."¹² We agree that a pragmatic approach is needed in such a complex and varied area. Nevertheless, there is a need for coherence between different strategies, and we heard evidence that suggested a lack of coherence at times.

11. The Environment Agency spoke of "initiative overload" from the BRE,¹³ and the need for "better forward planning with clearly defined and agreed goals and more realistic timescales".¹⁴ It referred to the danger of "poorly thought through ideas leading to unintended consequences" if regulators are insufficiently consulted, leading to "business expectations being raised and dashed".¹⁵

12. The Department for Environment, Food and Rural Affairs (DEFRA), too, mentioned initiative overload, and the need to focus action and attention on those initiatives which have the capacity to deliver the best outcomes.¹⁶ It said: "The pace and scope of change can often be daunting and there should be flexibility to look in more detail at balancing competing demands."¹⁷

13. The Health and Safety Executive (HSE) told us that the BRE approach can "sometimes be reactive or unplanned"¹⁸ and that there has been a challenging volume of initiatives.¹⁹ The Food Standards Agency said that the BRE "can at times appear to be driven by the

11 Ev 187

12 Q 128 [Mr Huddleston]

13 Ev 122

14 *Ibid.*

15 *Ibid.*

16 Ev 83

17 Ev 80

18 Ev 90

19 Ev 91

need to introduce new initiatives before older initiatives have had time to deliver fully the benefits intended.”²⁰

14. The Department of Health (DoH) memorandum stated: “we struggle with maintaining the necessary pace and scope of delivery, whilst attempting to balance this with the need for cultural change.”²¹ On the other hand, the Department of Health considered that building on the Hampton Review of regulators, on *Less is More*, and on the application of regulatory principles of targeting, accountability, proportionality, consistency and transparency, had ensured overall coherence.²² DEFRA took a similar view but warned against complacency.²³

15. When we asked Baroness Vadera, Minister of State at the Department of Business, Enterprise and Regulatory Reform, whether there had been initiative overload, her response was that the BRE needs to push hard in order to achieve delivery.²⁴ **We agree with that, and the pressure should continue.** However, the views expressed in evidence about lack of clear direction were to some extent borne out by our own initial interactions with the BRE during the inquiry. Its first memorandum to us²⁵ lacked the coherence and direction of its later submission.²⁶ Several commentators referred to the need for the BRE to apply more soundly the principles of good regulation—particularly targeting and proportionality—in its own methodology.²⁷ The need for timely consultation was also mentioned.²⁸ We therefore welcome the more rigorous approach taken in the BRE’s recent communications with us and the progress in developing coherence of vision that has been made during the course of the inquiry. We trust that it is being reflected elsewhere.

16. **We acknowledge the need for a diversity of initiatives and the need to maintain the momentum of reform. The pressure for reform should continue, but we recommend that the BRE should set clear priorities, together with timetables for delivery. We suggest that the BRE consider how better to co-ordinate communication of its initiatives to stakeholders. That would help avoid impressions of “initiative overload” and take into account the capacity of stakeholders to manage change.**

17. **We urge the BRE to apply good regulatory practice (for example, in applying targeting and proportionality in stipulating frequency of inspections), and to target initiatives where they will be most productive. Better regulation principles including consultation and impact assessment should be applied to regulatory reform initiatives themselves (as has been the case in relation to the proposals for regulatory budgets).**²⁹

20 Ev 202

21 Ev 93

22 *Ibid.*

23 Ev 79

24 Q 325

25 Ev 1

26 Ev 133

27 See, for example, Q72, Ev 121, Ev 133 and Ev 203

28 Ev 203

29 As to which, see paragraphs 82 to 86

BRE's role and leverage within Government

18. The BRE defines its role as being “to lead the overall strategy to deliver regulatory reform, provide mechanisms, tools and guidance which will allow the better regulation agenda to be delivered, and work across Government and with regulators to embed the better regulation agenda.”³⁰ DEFRA’s perception of the role that BRE should usefully play within Government coincided. In its opinion: “The BRE’s primary function is to champion good policy-making, embed better regulation principles, promote early engagement with stakeholders, and integrate rigorous cost-benefit analysis into the development of policies and legislation in Whitehall.”³¹ The CBI view was similar: that the BRE has two key roles—as a champion of better regulation across Whitehall and at a more pragmatic level in working on practical solutions.³² Significantly, the CBI also commented that many of the BRE’s achievements probably go unrecognised because they are effected by means of quiet persuasion within Whitehall.³³

19. We were interested in whether the BRE has sufficient levers to push through the most important parts of its agenda when necessary, which the British Chambers of Commerce (BCC), the TUC and the National Consumer Council (NCC) all questioned.³⁴ In particular, the NCC said of Departments: “they are quiet happy to dish it out but they maybe do not enjoy being subject to anybody else’s scrutiny.” It also said: “it is really important that it feels like the BRE have some sort of backing at the high level within Government so that they can go in and influence so far as possible and be a little bit heavier when necessary.” The BCC said that the BRE should be “pushed further towards the centre of regulatory activity within Whitehall and must be backed by strong political support.”

20. The Minister told us that the BRE has high-level backing from the Prime Minister and that the BRE Executive Chair has Cabinet-level access. She said: “I think that the system tends to respond to [the] institutionalised structures which the BRE has the ability to influence, to use as a lever to influence outcomes.”³⁵ She was emphatic that BRE’s move to BERR, which we address below, had increased its leverage on Government.³⁶ We asked about the role of the Panel for Regulatory Accountability (PRA).³⁷ The Minister said that the PRA is useful in providing challenge to regulatory initiatives and in forcing reconsideration of impact assessments. **It seems to us that, to support the BRE in its work, the PRA should continue to provide real-time scrutiny of impact assessments.**³⁸ **We recommend that amendments made during the passage of legislation be referred to the PRA for post hoc analysis.**

30 Ev 138

31 Ev 83

32 Q 2

33 Q 57 [Mr Fell]

34 See Ev 42, Q70 and Q78 [Mr Cullum]

35 Q 256

36 Q 306

37 The role of the PRA is summarised in Table 2.

38 For impact assessments, see the separate section at paragraphs 77 to 81

21. An issue that touches on BRE leverage within Government is that of career development within the Civil Service. Whether the BRE message on better regulation falls on receptive ground may depend on civil servants knowing that they can advance their careers through being involved in the better regulation agenda just as much as through, for example, supporting a Bill through Parliament. Professor Radaelli of Exeter University's Centre for Regulatory Governance claimed that "good RIA³⁹ desk officers are not promoted."⁴⁰ The Institute of Directors (IoD) described the issue as the elephant in the room.⁴¹ In its memorandum it said: "No number of measures tackling various pressure points of regulation will deliver meaningful outcome[s] if the incentive structures and career developments paths of the Civil Service are not examined in the light of their effects on regulation and usage of legislative solutions."⁴²

22. We requested a memorandum from the Cabinet Office on this issue.⁴³ The response showed that the importance of impact assessment awareness is recognised in Civil Service training and career progression, although it did not point to specific examples of where, or how, involvement in regulatory reform projects is perceived as equivalent to and equally as valuable as involvement in a Departmental Bill team. The Minister told us: "I think there has been a radical change in the culture, but I think that we have a long way to go still."⁴⁴ She added: "I think we should be encouraging, in particular, the senior Civil Service to be looking at this further."⁴⁵ We agree. The inclusion of training in the regulatory reform agenda is to be welcomed but career progression is a separate issue. **We therefore recommend that, as soon as possible, those matters be taken into account when determining structures for Civil Service career development.**

BRE's location within Government

23. The question of BRE's leverage with Government Departments is linked to that of its recent move from the Cabinet Office. We heard a variety of opinions on the impact of the move to BERR. The BRE's own perspective was that any transitional difficulties have been resolved.⁴⁶ Save for the comments made in relation to influencing the European agenda (see paragraph 32 below), the Departments and the HSE indicated that they had noticed little change, although the DWP observed that if the BRE became less enthusiastic about addressing burdens on the public sector and on citizens, DWP would itself lose clout in helping push that agenda along.⁴⁷ Among the business organisations, the BCC felt that its relationship with the BRE had warmed since the move.⁴⁸ The Federation of Small Businesses (FSB) took the view that there was less confrontation, including—perhaps not

39 Meaning regulatory impact assessment

40 Ev 191

41 Q 20 [Mr Ehmann]

42 Ev 37

43 Ev 204

44 Q 262 [Baroness Vadera]

45 Q 264

46 Ev 29

47 Q 132 [Mr Huddleston]

48 Q 57 [Ms Low]

surprisingly—between BRE and BERR.⁴⁹ The IoD considered that the jury was still out, but was not aware of any problems.⁵⁰

24. In oral evidence, the NCC said that it was not obvious that BERR has the leverage to empower the BRE to influence behaviour across Government.⁵¹ However, the Environment Agency took the opposite view: that BERR Ministers have a voice, whereas within the Cabinet Office the BRE could have been marginalised.⁵²

25. The TUC had concerns that the relocation might reinforce the perception held in some quarters that there was too much BRE emphasis on assisting the business sector. They argued that the BRE would “have to work extremely hard if they are going to stay in BERR and establish themselves as a reputable better regulation authority that is capable of understanding issues outside the context of the concerns of...small businesses [in particular].”⁵³

26. The NCC memorandum argued that the move “risks sending mixed messages to regulators and weakening the power of the BRE to drive change”⁵⁴ and that “Locating the BRE within BERR may hinder the promotion of an effective better regulation agenda, given the Department’s present aspiration to be the voice for business.”⁵⁵ The Environment Agency’s memorandum said:

“We think that the BRE has failed to strike the right balance. Seemingly distracted by the current emphasis on reducing the burden on business, it may have lost sight of how regulation and the outcomes that it delivers can be supported and made most effective. We would like to see the BRE adopting a more balanced approach, working more closely with regulators to ensure that regulatory reform delivers real results. This would benefit the environment, the public, consumer protection and business, as well as maintaining credibility and public confidence in regulation.”⁵⁶

27. One of the Environment Agency witnesses said: “I get the sense that the BRE accepts the word of the business community without much analysis.” The Agency had complained to BERR about the responsible Minister being given the title “Minister for Deregulation”.⁵⁷ The Local Authorities Co-ordinators of Regulatory Services (LACORS) memorandum commented: “We feel the Government [should] ensure that the needs to ensure that businesses are not burdened with undue “red tape” are fairly balanced with the needs to protect consumers, workers and local communities from health safety, welfare and economic harm.”⁵⁸

49 Q 2 [Mr Davenport]

50 Q42

51 Q 78 [Mr Cullum]

52 Q 232

53 Q78 [Ms Veale]

54 Ev 63

55 *Ibid.*

56 Ev 120

57 Q232

58 Ev 110

28. When we visited the BRE, we put to Sir William Sargent the criticism that the BRE is too focused on satisfying business interests. His response was that he preferred to see the BRE as being “economy focused”. However, in its oral evidence session, the NCC noted that the BRE website states: “Life’s too short to be bogged down by rules and regulations. And that’s where the Better Regulation Executive comes in... We make a positive difference to you and your business”, the assumption being that everyone who visits the site does so from a business perspective. Even the BCC said that there should be more emphasis on the case for better regulation at the citizen or individual level.⁵⁹

29. The House of Lords Merits Committee has recently expressed concern about potential burdens on business being far more rigorously assessed than potential burdens on the public sector.⁶⁰ In the Committee’s opinion, that was aggravated by the BRE’s move from the Cabinet Office. The Committee added that it had doubts as to whether public sector legislation was drafted with the same attention to cost/benefit analysis as instruments that have an impact on business.

30. The Minister argued that the perception of preoccupation with business interests derives from the BRE’s duty to point out the business impact of regulatory decisions to Departments and regulators.⁶¹ Nevertheless, it seems to us that at the very least there is an approach that puts business satisfaction at the top of the agenda at the BRE, and that that attitude might extend into the degree of importance attached to certain programmes. We acknowledge the importance of a competitive economy to all sectors, but, as the NCC pointed out,⁶² and as the BRE itself acknowledged,⁶³ consumers and individuals also have an interest in better regulation, in that they are the ones who ultimately pay the price of bad regulation.

31. The Minister emphasised that the Department is indeed a Department for Regulatory Reform as well as Business and Enterprise, and took the view that the move to BERR helped the BRE to “leverage off the relationships of one major stakeholder, which is business”.⁶⁴ However, BERR needs to ensure that the BRE has freedom to take on the mantle of the balanced regulatory reform agenda that fully reflects the intention behind the renaming of the Department, without inappropriate pressure to conform to the business agenda at all times.

32. In the oral evidence session with Departments, DEFRA commented that the move from the Cabinet Office to BERR might have diminished BRE’s influence at the EU level. However, the HSE seemed to suggest the opposite. The Minister was adamant that there had been no diminution in influence, citing the example of the BRE’s success since the

59 Ev 42

60 House of Lords, *The Management of Secondary Legislation: follow-up*, Thirteenth Report of the Select Committee on the Merits of Statutory Instruments, Session 2007-08, HL Paper 70, paragraph 17

61 Q 267

62 Ev 63

63 Ev 136

64 Q 300

move to BERR in getting better regulation prioritised within the EU Small Business Act.⁶⁵ The BRE's Chief Executive agreed.⁶⁶

33. Ultimately, on the question of where the BRE is located, we agree with the concluding remarks of Mr Cullum of the NCC, who said: "I would agree with the general point that there is never a perfect solution." He added: "I am not sure that [BERR] is the ideal place for them but if everybody behaves in the right way, you could make it work."⁶⁷ Our view is that the real point is one of joined-up Government; that is, how things are done and how well, rather than where. In any event, we do not believe that the disadvantages of the move are so overwhelming as to merit reconsideration at this early stage.

34. Accordingly, we believe that, for the time being at least, the BRE should remain at BERR. However, we recommend that the Government take positive steps to ensure that the BRE retains freedom to pursue a balanced regulatory reform agenda that serves the interests of all sectors, and that it is seen to do so.

35. Although we recognise the steps that the BRE has already taken to engage a cross-section of stakeholders, we recommend that the BRE review its resource allocations, programmes and communications and continue to take steps toward achieving greater recognition of consumers, employees, local government, the public sector and the third sector, alongside business interests, in determining the priorities for regulatory reform.

4 BRE's operational approach, and relations with other bodies

BRE management, staff and resources

36. The BRE's management and staff were well regarded by our witnesses. The TUC described BRE as well organised and well managed, and the NCC said that it was impressed with the quality of the BRE's people.⁶⁸ There was good feedback on the performance of both the Executive Chair and the Chief Executive of the BRE. On our visit to the BRE on 10 June 2008, we were impressed with the professionalism and enthusiasm of those we met, even allowing for the "school inspection" factor that might be assumed to have preceded our arrival.

37. The BRE has a deliberate policy of recruiting staff on short-term contracts and/or secondments. That has the advantages of introducing cross-fertilisation of ideas both from and to other sectors, and from that point of view we would encourage the policy to continue. However, some of our contact with the BRE suggested that the policy could lead to newcomers being expected to have more familiarity with working practices and outside organisations than is possible, which might create a bad impression with such organisations and bodies, as well as being procedurally inefficient. When we put this point

65 Q 301

66 Q 307

67 Qq 82 and 83

68 Q 93 [Ms Veale and Mr Cullum]

to Sir William Sargent, he told us that the BRE's recruitment policy allows it to obtain the benefit of absorbing information from a cross-section of staff backgrounds.⁶⁹ We appreciate that that is a likely benefit of the policy, but the point remains that high staff turnover creates the need for efficient handover and information sharing procedures.

38. We recommend that the BRE consider whether its procedures and practices for retaining and sharing institutional knowledge are adequate in light of the policy of relatively high staff turnover. We further recommend that the BRE improve its induction and mentoring procedures for staff on short-term contracts or secondments so that those staff are not expected to have dealings with outside bodies until they have sufficient training.

BRE working relations

39. A fairly constant theme of the evidence was that the BRE has developed positive working relations with its partners. The Department of Health said that the BRE had “worked hard to understand our agenda” and that there was “a good balance between being a critical friend and challenging, offering advice and support...”.⁷⁰ The BCC referred to a “good dialogue”.⁷¹ However, the IoD said: “the onus is very much on us to go to the BRE with what we want rather than the BRE coming to us a lot more proactively.”⁷² That sentiment was endorsed by the FSB.⁷³ The CBI commented that whereas communications with business representative organisations were good, those with businesses themselves—especially smaller business—could be more proactive.⁷⁴

40. An analogous point was made by LACORS in relation to local authorities; that is, that BRE relations with LACORS and the Local Government Agency (LGA) are good but that the BRE does not have a high profile at the local authority level.⁷⁵ They specifically referred to a lack of BRE engagement with the shift in policy on key performance indicators. When we visited the BRE offices, Sir William Sargent told us that the BRE has a target of making 1,000 outside visits per year. However, anecdotal evidence suggests that a lack of awareness of the BRE and its agenda might persist in some quarters.

41. We therefore recommend that BRE strengthen its channels for obtaining grass roots information from the level of individual businesses and individual local authorities, as well as individual organisations in the third sector, possibly as part of its structure of account managers or by means of round table dialogue sessions. The BRE should use its contact with the new Local Better Regulation Office as one means of achieving that objective. It should also take steps to advertise its existence at all levels, including trade associations.

69 Q 327

70 Q 121 [Mr Wilmore]

71 Q 57 [Ms Low]

72 Q 55 [Mr Ehmann]

73 *Ibid.* [Mr Davenport]

74 Q 55 [Mr Fell]

75 Q 181

42. Several witnesses also mentioned the desirability of greater dialogue at various levels. The TUC representative said that when it was suggested that unions, the BRE and small businesses should meet together, “the suggestion [was] met with, ‘Yes, that’s a good idea’ with a terrified look at the same time.” She also said: “The BRE needs to get better at talking to the right people and getting different groups in the room at the same time and developing some sort of synthesised thinking about things. Often, in dialogue, something will emerge from the third way...or some other possibly consensual way of doing something.”⁷⁶ DEFRA’s memorandum specifically requested more frequent discussions between its policy makers, BRE and business interests to ensure that balanced views are obtained.⁷⁷ However, while observing that it is not the BRE’s role to look at policy, the Minister referred to the Gibbons review⁷⁸ on resolution of employment disputes as an example of the produce of dialogue.⁷⁹ Sir William Sargent was also keen to point out that dialogue already takes place.⁸⁰

43. The NCC was emphatic about the scope for much greater sharing of best practice between regulators, and about the role that the BRE could play in facilitating that.⁸¹ The Environment Agency was enthusiastic about greater sharing of best practice between regulators, although it stressed its view that regulators face different models and risks.⁸² Nevertheless, it agreed that there was a role for the BRE in facilitating the sharing of best practice.⁸³ **Consequently, we recommend that the BRE become more actively involved in facilitating greater sharing of best practice among regulators and Departments. The new Local Better Regulation Office should be involved in articulating the local authority perspective in that exchange.**

Accountability to the BRE

44. Alongside the question of the BRE’s leverage within Departments is that of the accountability of regulators to the BRE on their progress in reforming regulation. The Environment Agency expressed concern that the BRE might encroach on oversight of their responsibilities as a regulator and that the BRE’s approach was too much that of “one size fits all”.⁸⁴ The HSE said: “it is important that we preserve a structure whereby bodies are accountable to their own management and through [them] to Parliament and the public; not that they start an alternative line of accountability...to colleagues in the BRE, because I think that would only lead to confusion.”⁸⁵ However, the NCC said: “One of the things we observe often with regulators is that, although they may often require other organisations

76 Q90 [Ms Veale]

77 Ev 82

78 <http://www.berr.gov.uk/files/file38516.pdf>

79 Q 332 [Baroness Vadera]

80 Q 332 [Sir William Sargent]

81 Ev 62, and throughout its oral evidence

82 Ev 122

83 Q 230 [Ms Young]

84 Ev 121

85 Q 129

to produce metrics on how they are doing, they quite often do not have very many indicators themselves on how they are doing.”⁸⁶

45. It seems to us that there is some inertia in the UK system of implementing better regulatory practice at Departmental level, but that so far as regulators are concerned it is important to preserve the principal line of accountability to regulators’ management, and to Parliament and the public. However, both Departments and regulators should bear in mind that, if they want the BRE to assist them in matters such as sharing best practice, as they told us they did, they should expect to hold themselves to account to the BRE on how efficiently that best practice has subsequently been implemented. Equally, as mentioned in paragraph 17, it is incumbent on the BRE to apply good regulatory principles of proportionality and risk-based assessment, and not insist on across-the-board implementation of initiatives by all regulators, and on submission of multiple reports (which was mentioned by the Food Standards Agency⁸⁷—although in fairness it seems that the BRE compromised on that issue), if such implementation and reporting would not achieve truly beneficial outcomes.

46. To avoid the possibility of inertia, we recommend that the BRE should play an active role in holding Departments to account for their performance in the area of regulatory reform and that it should develop a system for monitoring and evaluating Departmental performance and reporting the results publicly. The BRE should work with Departments to develop suitable evaluation criteria with appropriate weighting of those criteria and agreed evidential sources for assessing performance. Agencies should be included in such evaluation where relevant.

Her Majesty’s Revenue and Customs (HMRC)

47. At present, HMRC falls outside of the BRE’s remit, although during our visit to the BRE Sir William Sargent explained that there is frequent dialogue between the two bodies. It was suggested in written evidence from the IoD and the Professional Contractors group (PCG) that HMRC should be brought within BRE’s remit. The IoD observed that in a March 2007 survey, two thirds of its members cited HMRC as the Government body with which they had most recently interacted. It went so far as to say that: “In an environment where the HMRC form such a critical role in frequent contact, the development of business perceptions of Government as well as the role they occupy as a significant source of regulatory burdens, it is untenable for the Department to fall beyond the reach of the current Better Regulation agenda and the BRE.”⁸⁸ The CBI referred to what it said was a lack of proper consultation by HMRC in relation to recent capital gains tax changes⁸⁹ The PCG likewise referred to the degree of contact between business and the HMRC, and also to lack of proper consultation, attributing that to HMRC’s place outside the BRE’s remit.⁹⁰

86 Q 88

87 Ev 203

88 Ev 37

89 Ev 38

90 Ev 189

48. We put the question of whether to bring HMRC into the BRE's remit to a number of witnesses. The FSB said that it was intrigued to know the reasons why the HMRC should not be included in BRE reviews.⁹¹ The TUC seemed to think that there might be a strong argument for incorporating HMRC into the BRE's remit.⁹² Of HMRC involvement in regulatory reform, the IoD representative said: "I do not think we can achieve valuable change without that."⁹³ He added: "I think the BRE needs to have as much of a stick as they have with any other Department with HMRC, in fact perhaps more so."

49. We asked Baroness Vadera to explain the Government's thinking. She said that the argument for HMRC being outside of the BRE's remit is that it is not formally a regulator in the sense of setting rules and regulations.⁹⁴ On the other hand, it is involved in a massive amount of data collection from essentially every business, organisation and individual in the country.

50. Nevertheless, we believe that this is another area in which action speaks louder than definitions, and that bringing HMRC within the remit of the BRE would not necessarily achieve a discernible benefit. The BRE should, however, foster continued interaction with HMRC. HMRC should operate in accordance with the same regulatory initiatives and principles as other Government Departments with respect to regulatory reform and should certainly consult in accordance with the same guidance as applies across Government.

51. We recommend continued strong interaction between HMRC and the BRE on the implementation of regulatory reform, reinforced by an established pattern of regular meetings, and that HMRC should operate under the same initiatives and principles as all Government Departments with respect to the regulatory reform agenda.

Scrutiny of the BRE and annual reporting

52. Earlier this year, the Better Regulation Commission⁹⁵ was replaced by the Risk and Regulation Advisory Council (RRAC), an independent advisory panel of seven members, with a mandate to focus on risk-based management of regulation.⁹⁶ Before its replacement, the BRC had provided independent oversight of the BRE as well as a degree of independent and high-level thinking. For instance, the BRC itself recommended greater focus on risk-based regulation and the establishment of a body with that focus as its main remit. It also recommended consideration of regulatory budgets.⁹⁷ Nevertheless, the dismantling of the BRC seems to have led to a perception that there is something of a vacuum of both scrutiny and strategic thinking. The Institute of Chartered Accountants expressed concern about

91 Q 4 [Mr Davenport]

92 Q 101 [Ms Veale]

93 Q 20 [Mr Ehmann]

94 Q 322

95 The BRC, formerly the Better Regulation Task Force, had been established in 2005 to provide independent challenge to Government on regulatory performance

96 Membership is currently: Rick Haythornthwaite (Chair), The Earl of Lindsay, Lynne Berry OBE, Philip Cullum, Tim Heymann, Donald Macrae and Sarah Veale CBE

97 Addressed in paragraphs 82 to 86 of this Report

this issue,⁹⁸ as did the CBI.⁹⁹ The TUC regretted the BRC's demise¹⁰⁰ and said that there was a need for a thinktank.¹⁰¹ The HSE said that there was a role for the RRAC in “perking up ideas”.¹⁰² Most notably, when we asked ACTAL¹⁰³ during our visit to the Netherlands which single measure they believed would make the biggest favourable impact on the UK system of regulatory reform, the response was that the BRC should be re-formed.

53. The Minister told us that high-level strategic thinking is provided by the Government. Her view was based on her belief that it was principally the Government that had driven the regulatory reform agenda during the past six or seven years. We acknowledge the merit in that view, but in the light of the comments we have referred to we wonder whether there remains a role outside Government for independent challenge. We believe that there is. **Accordingly, we recommend that the Risk and Regulation Advisory Council should be given a clear role in providing independent challenge in the regulatory reform area.**

54. Currently, the BRE reports on a six-monthly basis to the Prime Minister, but there is no system of regular reporting to Parliament. The NCC suggested that an annual stock take by BRE was desirable in general terms.¹⁰⁴ We are also aware of a wider calls for greater parliamentary scrutiny in the area of regulation.¹⁰⁵

55. **In order to provide greater accountability and a measure of independent review, we recommend that the BRE submit an annual report to Parliament, addressing performance against its clearly defined objectives. The report should distinguish between the work of Departments and the work of the BRE itself.**

56. Finally, on our recommendation, the House of Commons Liaison Committee suggested that the position of BRE Executive Chair be added to the Government's proposed list of appointments that should in future be the subject of a pre-appointment hearing.¹⁰⁶ The Government has, as yet, not accepted that view. Given the Minister's claim in her evidence about the importance of better regulation and the degree of high-level support for the BRE, we believe that the Government might wish to act positively in this regard. **We therefore recommend that, given the high importance attached to the regulatory reform agenda, the Government give serious consideration to including the position of Executive Chair of the BRE on the list of senior posts that should be subject to future pre-appointment hearing.**

98 Ev 197

99 Q 44 [Mr Fell] and Ev 39

100 Q 71

101 Q 70

102 Q 130 [Mr Podger]

103 The Netherlands independent watchdog body with responsibility for scrutiny of impact assessments

104 Q 86 [Mr Cullum]

105 For example, the BCC publication: *The Burden of Regulation: Who is watching out for us?*

106 First report of Liaison Committee 2007-08; *Pre-appointment hearings by select committees*; HC 384

5 Current regulatory reform policy

57. In this section of the Report we consider some of the more significant current regulatory reform initiatives and the part that the BRE is playing in their implementation, particularly with regard to its objectives of reducing the stock and the flow of legislation as well as in improving the quality of the regulatory environment. We have not considered all current initiatives, but rather those that are either particularly significant or were the subject of divergent opinion.

The Administrative Burdens Reduction Programme

58. The background to and purpose of the Administrative Burdens Reduction Programme (ABRP) and the standard cost methodology on which it is based are set out in Appendix 1.¹⁰⁷ A similar Dutch programme succeeded in its objective of reducing administrative burdens by the target figure of 25% by 2005. However, when we visited the Dutch regulatory reform bodies, they were frank about two points. First, it seems likely that the Netherlands started from a higher baseline of total regulatory burden than the UK, so that an initial 25% reduction was probably easier to achieve. Secondly, despite the Netherlands having embarked on a further programme of burdens reduction, with renewed 25% targets, there has yet to be any significant positive feedback from the business sector on the success of the programme.

59. The UK's ABRP has likewise not yet achieved the impact that was intended, and the evidence submitted to us reflected that. Professor Radaelli described the programme as “badly conceived.”¹⁰⁸ In their evidence, Professor Chittenden of Manchester Business School and Tim Ambler, a senior fellow at the London Business School and an adviser to the BCC, described it as “more hype than substance”.¹⁰⁹ Essentially, the criticisms boil down to the following:

- The 25% target is arbitrary;
- It is wrong to apply the same 25% target to all Government Departments;
- The standard cost methodology is flawed in that it does not provide statistically reliable data, and therefore savings figures based on it are also flawed;
- Too much stress on administrative costs misses the point that other costs might be more burdensome or that businesses might continue to undertake a certain administrative procedure for their own internal reasons, or because, for example, their clients or outside financing bodies require it;
- The programme is not having any noticeable impact;

¹⁰⁷ See page 45

¹⁰⁸ Ev 191

¹⁰⁹ Ev 199

- The UK should learn the lessons of the experience in the Netherlands, where the programme has not, as yet, changed perceptions of regulation in the way that was intended.

We have weighed these criticisms not least in the light of what we heard on our visit, particularly to the Netherlands. We note too that both the NAO and the Public Accounts Committee have published or will shortly publish reports of their own on the Administrative Burdens Reduction Programme.¹¹⁰

60. It is certainly correct that the 25% target was chosen for pragmatic rather than objective reasons. The BRE Chief Executive was clear about that in the initial oral evidence session with him.¹¹¹ However, DEFRA told us of the advantages of having a demanding target.¹¹² The arbitrary nature of the target would not of itself alone deprive it of merit, provided the target still resulted in an overall downward pressure on real burdens.

61. We note in passing that one way to provide Departments with an incentive toward further burdens reduction would be to allow them to retain the consequent internal cost savings. We did not have the opportunity to explore that idea in detail with the Minister, but she expressed some enthusiasm for it.¹¹³ We learned on our visit that it happens at least to some extent in the Netherlands—the Dutch Ministry of Health being cited to us as an example.

62. The CBI said that it had given the standard cost model its broad endorsement.¹¹⁴ The BCC said: “from the outset we have questioned the robustness of the standard cost model...However, despite methodological flaws we recognised that this exercise has some value for our members.”¹¹⁵ There is an element of damning with faint praise in that observation, but the overall impression we gained, including from our overseas visit, was that the standard cost model is an imperfect tool but a useful one nonetheless. It provides a basis for targets in reducing burdens and for measurement and comparison of progress toward those targets.

63. The HSE’s written evidence argued that a too rigid application of the 25% burdens reduction target in the ABRP risks working on targets at the expense of addressing the real concerns of business.¹¹⁶ The IoD said that the programme has been “driven more by outputs than outcomes” and that there has been too much focus on the 25% rather than on the shift in perception that is needed.¹¹⁷ The CBI pushed for annual reporting of

110 See <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpublic/363/363.pdf>

111 Q 03 [Mr Kohli]

112 Q 140

113 Q 263

114 Q 16

115 Ev 42

116 Ev 90

117 Q 2 [Mr Ehmann]

Departmental simplification plans¹¹⁸ to allow comment on whether goals have had the take-up predicted in the report.¹¹⁹

64. The standard cost model was never intended to provide more than indicators of where savings might be made, and we therefore take the view that the right approach is to use the 25% target to drive outcomes, but not to the point of preoccupation with fitting the real savings to the targets. Measurement of savings should be robust and accurate.

65. The IoD's opinion was that the administrative burdens reduction programme is heavily backloaded to 2010, that there is a risk of an "Armageddon scenario" in which business loses faith in the current agenda if no results are seen by business soon, and that there is a need for quicker delivery.¹²⁰ On the other hand, the FSB said that what the BRE is doing at the moment is beginning to work.¹²¹ The Minister acknowledged that there is backloading but was confident that the targets should be met as procedural and process changes reach fruition. She told us that she had "cracked the whip" in relation to BERR's own targets.¹²²

66. We believe that the credibility of the ABRP savings figures and the achievement of meaningful results is more important than preoccupation with avoiding, say, a 2% or 3% shortfall on the 25% target. We therefore recommend careful scrutiny of all savings figures, but call for recognition that the shortcomings of the standard cost model require acceptance of flexibility around targets. The ABRP should not be considered to have failed if, for instance, 22% of burdens reduction has a discernible impact.

67. We recommend that there be constant scrutiny both of ongoing progress on the ABRP and of the robustness of claimed Departmental savings. The BRE should play a continuous role in such monitoring, which should cover burdens reduction indicators beyond that of the 25% target, such as irritation factors to businesses and others.

68. We recommend that Government Departments and Executive Agencies include in their Annual Reports their progress against simplification plans.

69. We recommend greater measurement of actual take-up of savings proposals.

Perceptions

70. The IoD memorandum referred to a survey of its members which showed that 46% felt that regulation had worsened over the preceding 12 months and 48% that it had remained the same. Only 1% felt it had improved. Research appended to the FSB memorandum indicated that 72% of businesses felt that health and safety administrative requirements had become more bureaucratic.¹²³ This is despite changes to health and safety regimes and the savings of £800m of administrative costs that are claimed already to have been made under the ABRP and Departmental simplification plans.

118 Departmental simplification plans set out individual Department plans for implementing the ABRP targets

119 Ev 40

120 Q 59 [Mr Ehmann]

121 Q 7 [Mr Davenport]

122 Q 278 [Baroness Vadera]

123 Ev 34

71. Clearly, there is a problem with perception in some quarters, a fact that was recognised by the BRE.¹²⁴ We heard that it is taking steps to communicate its achievements, but this needs to be combined with greater efforts to look at real “irritation factors”. To that extent, we welcome the BRE’s forthcoming reviews of health and safety law and consumer law, where there is scope for making an impact on such irritation factors. **We recommend that the BRE continue to look for ways to make greater impacts on burdens reduction and its perception.** The Netherlands organisations that we met told us that they were impressed by the UK’s record in relation to impact assessments and common commencement dates, but there might equally be lessons to be learned by the UK from approaches in other countries. The Swedes and the Dutch, for example, are both looking more closely at irritation factors within the regulatory environment, and considering ways to set priorities in minimising them. The IoD suggested that all forms submitted to Government should indicate where criticisms can be directed.¹²⁵

72. In Sweden, NUTEK¹²⁶ told us about initiatives based on consideration of Government processing times. The Danish “burden hunters” initiative, and the Dutch study of allowing licences to proceed in the absence of express refusal (the “lex silencio” initiative) were two other programmes of interest. The Dutch also told us about their Stevens and Wientjes Committees, which have acted as an interface between stakeholders groups, including business, and government and regulatory reform bodies.¹²⁷ The Minister told us that the HMRC has set up similar consulting groups.¹²⁸

73. Although there is a need for both the BRE and Departments to deliver on their promises of further burdens reduction, and to communicate results, we were interested, during the Committee’s visit to Copenhagen, to hear the Confederation of Danish Industries say that trade bodies in Denmark have a responsibility to communicate the results of regulatory initiatives to business. A UK equivalent to the Stevens and Wientjes Committees on which UK business bodies are represented and have both buy-in to decision making and then joint responsibility with Government for communicating the outcomes are one possible means of addressing that point. **In late supplementary evidence, the BRE indicated that it did not believe that UK equivalents to the Stevens or Wientjes Committees are necessary.**¹²⁹ However, we recommend that the BRE consider setting up an analogous committee in this country.

74. As was noted during oral evidence,¹³⁰ there is a particular need to concentrate on assisting small businesses, especially those that are not members of trade organisations. We particularly commend efforts in this regard, and to that extent we welcome Sir William Sargent’s description of BRE’s efforts to communicate with one million small businesses during 2008.¹³¹ We also heard that there have been shortcomings in BRE’s ability to

124 Qq 05, 050 and 052

125 Q 4 [Mr Ehmann]

126 The Swedish Agency for Economic and Regional Growth

127 Note: the Wientjes Committee has replaced the Stevens Committee

128 Q 279

129 Ev 179

130 Qq 10, 14 and 16

131 Q 017

customise its approach to business sectors.¹³² **We recommend that the BRE continue to focus further on that issue.**

The public sector and the third sector

75. Perception of regulation has been a problem in the business sector. There is a similar story of perception gaps in relation to the public sector. In its memorandum, the DWP claimed already to have made progress toward reducing the number of local authority data requests towards the target of 30% by 2010. It said “the Department is confident that it will deliver reductions in excess of 30 per cent by the 2010 deadline.”¹³³ However, the LACORS memorandum says that “90% of councils who have responded to the LACORS survey on national enforcement priorities said that they had not noticed a change in the type or volume of initiatives/requests on regulatory issues coming from...central government departments and agencies.”¹³⁴ We have the impression that the 30% target has been demoted in significance compared with the 25% ABRP target, because there has not been the same degree of measurement of progress. **We recommend renewed focus on this target and that progress in reducing public sector and third sector burdens—and their measurement—be given equal emphasis to that of the business sector programme.**

Next steps

76. The IoD told us that amendments to the ABRP rather than wholesale changes should be the order of the day.¹³⁵ In light of all the above, we agree. The CBI said “we should not rip up [the ABRP] and start again. It has at least started to change culture in that there are now teams of officials working to identify ways of simplifying legislation to get...to the 25% target, and quite clearly some Departments will get there and some might not, but everyone is pointing in the right direction.”¹³⁶

Impact assessments

77. Professor Baldwin, Professor Radaelli and Professor Yarrow all had criticisms of the UK approach to impact assessments and suggestions for improvement.¹³⁷ Professor Baldwin in particular was critical of any attempt to rely solely on impact assessments as a panacea in regulatory reform. However, as previously mentioned,¹³⁸ during our visit the Dutch also praised as world leading the UK’s pioneering approach to impact assessments in primary legislation. The BRE’s clear role in achieving that success deserves recognition. We therefore welcome the fact that the Government plans to build on this success by

132 Ev 36

133 Ev 87

134 Ev 111

135 Ev 36

136 Q 22

137 See Ev 181, Ev 190 and Ev 192

138 See paragraph 71

publishing, from 2008-09, annual cost:benefit figures based on final impact assessments—a measure that the Professional Contractors Group expressly welcomed in its paper to us.¹³⁹

78. There is an issue as to whether there should be independent review of impact assessments, as provided by ACTAL in the case of the Netherlands. Regiegroep Regeldruk¹⁴⁰ told us that having a source of independent validation of the numbers in impact assessments was one of the major advantages of the existence of a body such as ACTAL, and that the Organisation for Economic Co-operation and Development (OECD) had taken the same view. Sweden is in the process of setting up a similar body in the form of a Regulatory Council, which will begin its work in September.¹⁴¹ In its recent follow-up report on the management of secondary legislation, the House of Lords Merits Committee expressed concern that the BRE does not adequately police impact assessments.¹⁴² However, when we asked whether the BRE should have a policing role there were some firm views from Government Departments that it should not. The BCC took the opposite view. In oral evidence, it suggested that there should be a more robust approach to the policing of Departments and that it would not be inappropriate for the BRE to measure and analyse the impact of burdens.¹⁴³ The Institute of Chartered Accountants in England and Wales (ICAEW) was of the same opinion.¹⁴⁴

79. The BRE agrees with the position taken by Departments, on the basis that it is for Departments themselves to take up the responsibility of applying regulatory good practice by standing on their own two feet as far as impact assessments are concerned. The BRE's argument is that if it has responsibility for scrutinising impact assessments, that will let Departments off the hook.

80. We agree that the BRE has a responsibility to continue to spread best practice among Departments on how to prepare impact assessments, rather than to write impact assessments themselves. We also agree that any scrutiny role carries a danger of upward delegation of the responsibility of preparing a sound assessment. Nevertheless, we believe that there is a role for independent review of certain, although probably not all, impact assessments. However, we are reluctant to recommend the setting up of more Government bodies.

81. We recommend that the BRE should have a role in scrutiny of impact assessments, selected on the basis of financial thresholds, including in support of any introduction of regulatory budgets.¹⁴⁵ A review of the reports on the relevant impact assessments should then form part of the Annual Report to the Regulatory Reform Committee recommended below.

139 Ev 190

140 Regiegroep Regeldruk is the section of the Dutch Ministry of Finance with responsibility for regulatory reform. Its position is therefore somewhat analogous so that of the BRE.

141 Similarly, Germany has the Normenkontrollrat.

142 Merits Committee Report, *op. cit.*, paragraphs 17 to 18

143 Q 3 [Ms Low]

144 Ev 197

145 See paragraphs 82 to 86

Regulatory flow and regulatory budgets

82. The BCC said that efforts to reduce the stock of existing legislation have achieved a measure of success.¹⁴⁶ However, the BCC the CBI and the IoD all wanted more focus on the flow of new legislation, including statutory instruments. The BCC have suggested dividing statutory instruments into those that make substantive legislative change and those that are merely administrative, such as the large numbers of road-closing orders and updating measures, so that a better track can be kept on the flow of secondary legislation.¹⁴⁷ The CBI wanted better mechanisms for tracking the progress of statutory instruments.¹⁴⁸ This has also been mentioned by the House of Lords Merits Committee.¹⁴⁹ The Institute of Chartered Accountants' memorandum said that: "The flux of new regulation is more troubling for a business than the stock of old regulation as businesses will already have coping strategies for old regulation."¹⁵⁰

83. The March 2008 Government White Paper *Enterprise: unlocking the UK's talent*¹⁵¹ proposed consultation on introducing regulatory budgets to set out rolling limits on the annually recurring costs of new regulation introduced by each Department in a given period. The White Paper acknowledged that when the then Better Regulation Taskforce proposed such budgets in its 2005 *Less is more* report, it conceded that such a move would be difficult and would take time, as well as setting an international precedent.

84. Concern was also expressed that the credibility of the better regulation agenda depends on having a plan for beyond 2010, "otherwise there is a feeling that it is perhaps government holding in its stomach to reach 2010".¹⁵² It was interesting that, of the memoranda submitted by Government Departments, only the DEFRA memorandum addressed the post-2010 period.¹⁵³

85. Adopting regulatory budgets would be one means to tackle regulatory flow, and to create further incentives for regulatory reform on Departments. We welcome the fact that a full consultation is taking place on this proposal for regulatory reform, although we note that the Netherlands has already experimented with them without their necessarily producing emphatic results. Any proposed system for setting and publicising regulatory budgets should take into account the fact that desirable regulation, not least in the environmental and health and safety areas, carries with it certain inevitable costs. Similarly, there should be safeguards against undue pressure to remove necessary regulation merely as a means of meeting budgetary targets.

86. We recommend that, if regulatory budgets are adopted, and subject to the outcome of any review on independent scrutiny, Departments provide relevant data in their

146 Q 2 [Ms Low]

147 Ev 42

148 Ev 39

149 Merits Committee report *op. cit.*, paragraph 27

150 Ev 198

151 <http://www.berr.gov.uk/files/file44992.pdf>

152 Q 20 [Mr Ehmann]

153 Ev 82

Annual Reports as a means of allowing proper scrutiny. In any event, we recommend that Departments begin already to focus on their plans for post-2010. Whatever the nature of the then Government, there will be a need for further progress in regulatory reform. If regulatory budgets are not adopted then the UK needs to consider alternative means to impose continuing discipline on the flow of new domestic legislation and to provide incentives for Departments to achieve further burdens savings.

EU legislation

Gold Plating

The Cabinet Office Transposition Guide¹⁵⁴ sets out guidelines for transposing EU legislation into UK law. It defines “gold-plating” as occurring when EU legislation is implemented so as to go beyond the minimum standards necessary for compliance, in one or more of the following ways:

- extending the scope, adding in some way to the substantive requirement, or substituting wider UK legal terms for those used in the directive;
- not taking full advantage of any derogations which keep requirements to a minimum;
- providing for sanctions, enforcement mechanisms and matters such as burden of proof which go beyond the minimum needed; or
- implementing early, before the date given in an EU directive.

87. In November 2006, the Davidson review¹⁵⁵ reported on the issue of gold-plating and other over-implementation of EU legislation, and concluded that although instances of gold-plating could be identified, its overall incidence was not substantial. During our visit, we heard that two Netherlands studies have reached the same conclusion in relation to Dutch legislation. The IoD told us that they had looked at the issue of gold-plating and had found only one continuing serious instance—namely in relation to the Intrastat system of import and export reporting, which we understand is in the process of being reformed. When we asked whether the BRE had undertaken a quantified study on the extent of gold-plating, Baroness Vadera replied that that had been considered and rejected, on the basis that the cost was not considered to have merited the potential outcomes, and that the Davidson methodology had been preferred.¹⁵⁶ The Cabinet Office has issued guidance on how to transpose EU Directives effectively.¹⁵⁷ The Minister confirmed that, if regulatory budgets are adopted, they will include EU legislation.¹⁵⁸

154 <http://www.berr.gov.uk/files/file44371.pdf>

155 http://www.hm-treasury.gov.uk/media/E/F/davidson_review281106.pdf

156 Q 311

157 See the explanation of gold-plating on this page

158 Q 318

88. **We welcome the fact that it is now a requirement of impact assessments that they contain an indication of whether gold-plating is occurring, and require it to be fully justified. We welcome the Minister’s confirmation that, if regulatory budgets are adopted, they will include EU legislation.**

89. The BCC argues for better linkage between EU and UK impact assessment processes. It believes that member states should carry out impact assessments before the European Commission makes its own assessment of costs.¹⁵⁹ That would arguably allow for UK interest groups to be consulted on EU proposals earlier in the policy making process and would provide the Commission with reliable data to assist its calculations.

90. The Hampton Implementation Review of the Environment Agency comments favourably on the Agency’s efforts to influence the regulatory debate in Europe.¹⁶⁰ The Environment Agency memorandum says: “The BRE could usefully focus on how the UK might more effectively influence the EU legislative agenda to deliver better regulation”¹⁶¹ and “...we would also like the BRE to enable common regulatory approaches at UK and EU level and to explore options to improve funding arrangements to enable delivery of the modern regulatory approaches that they call for.”¹⁶²

91. **We recommend that the BRE prioritise how to increase its influence in achieving regulatory reform at the EU level. We recommend that the BRE undertake a feasibility study of where it would like EU regulatory reform to be from the UK perspective, where the resource gaps are in getting there, and how to remedy them. Although the Minister told us that the BRE has a presence in Brussels through UKRep,¹⁶³ and we heard that there is a BRE director with a European remit,¹⁶⁴ the BRE might wish, subject to the outcome of any feasibility study, to consider having permanent representation in Brussels.**

Legislative Reform Orders

92. Until July 2007, our sole remit was to consider regulatory reform orders under the Regulatory Reform Act 2001. We considered a total of more than 30 orders under the 2001 Act, but to date the Government has laid only a very limited number of legislative reform orders before Parliament.¹⁶⁵ We fully appreciate that a substantial proportion of Government legislative reform occurs on the back of primary legislation, but we question why there is not a steadier flow of LROs alongside that. **We recommend that Better Regulation Ministers within Government Departments keep this under review and take every opportunity to use LROs to their fullest extent.**

159 Ev 41

160 http://www.nao.org.uk/publications/EA_Hampton_report.pdf

161 Ev 121

162 Ev 122

163 The UK Permanent Representation to the EU

164 Q 046

165 The Committee considered two LROs in July 2008

93. The Committee has repeatedly expressed its willingness to assist in the regulatory reform agenda through its consideration of LROs, provided that the flow of LROs is properly managed so that LROs do not all arrive simultaneously, and provided there is communication on the timetable and on priorities. That remains our position. In the meantime, although it is obviously desirable to correct defects in legislation, it seems to us regrettable when LROs are used for that purpose in relation to very recent legislation that should have been more carefully prepared in the first place. The draft Legislative Reform (Consumer Credit) Order 2008 is a case in point. The House of Lords Merits Committee has expressed similar concerns.¹⁶⁶

94. We recommend that LROs be used primarily for their intended purpose of reducing burdens and improving regulation, and that steps be taken to improve the preparation of primary and secondary legislation to avoid the need for corrective legislation shortly after the passage of an originating measure. We further recommend that the Government establish proper mechanisms for prioritising and managing the flow of legislative reform orders. In addition, we recommend that we receive periodic updates of the measures that are intended to be reviewed via primary legislation, by way of a copy of the BRE's schedule of such information.

Data sharing, the retail enforcement pilot, and process innovation

95. A consistent complaint about regulation is that there are multiple requests for the same data. The Environment Agency memorandum said: "We would also urge the BRE to work with regulators to facilitate data sharing and the funding of IT investment to enable more data sharing and joined up working between regulators thereby reducing the burden on business."¹⁶⁷ This was emphasised in oral evidence.¹⁶⁸ Obviously, the same point applies to burdens on non-business organisations and on individuals.

The Retail Enforcement Pilot

The Retail Enforcement Pilot was set up in March 2005 to test proposals for a new, joined-up approach to regulatory enforcement in the retail sector. Its basic principle is for different inspection agencies, such as trading standards, environmental health, licensing and fire services to agree which of them will act as lead inspector for particular premises, based on a risk assessment. The lead agency then carries out its normal routine inspection and at the same time collects key information on behalf of the other relevant agencies, who agree not to visit that business unless the information collected indicates a genuine cause for concern. By summer 2008, it will be operational in some 30 local authorities.

96. Referring to the Retail Enforcement Pilot (REP), LACORS told us that it was heartened that the Government is now "focusing on evaluation of that project around data sharing,

¹⁶⁶ Merits Committee report, *op. cit.*, paragraph 9

¹⁶⁷ Ev 122

¹⁶⁸ Q 224

rather than as a prescriptive regime about how to conduct inspections.”¹⁶⁹ The LACORS representative expanded on that point in oral evidence, explaining that a number of authorities had been unable to participate in the pilot because they had wanted to adopt a slightly different model.¹⁷⁰ If that is the case, it seems to us to be regrettable. We urge the adoption of greater innovation and flexibility in regulation, so that, for example, instead of merely looking at whether forms can be simplified and data shared between them, a step change is made into looking at entire underlying processes. The way in which information is acquired by Government should be linked to processes that take place in the outside world, and certain processes that currently require the collection of data, such as the award of benefits, should be rationalised so that the decision on whether to award a benefit is taken at the point of interview with the applicant, rather than by a remote administrator. The BRE’s Chief Executive specifically referred to the work that has already been done and will continue to be done by the DWP in the area of benefits claims.¹⁷¹

97. LACORS also mentioned that the REP had not been the subject of proper cost/benefit analysis. It seems to us that if the pilot is to be assessed for adoption elsewhere, such an analysis must be forthcoming as a matter of urgency. The BCC said that “initiatives like the retail enforcement pilot are starting to turn theory into practice. While the recognition of this from the business community may not be immediate we get the sense that over time we will see results.”¹⁷² However, without cost/benefit data, the REP would clearly constitute an example of a lack of “robust measuring and reporting”.

98. We recommend that a cost/benefit analysis of the retail enforcement pilot be undertaken. We further recommend that the BRE and the DWP consider conducting a pilot study on simplification of processes to consider where and how decisions on benefit awards might be capable of delegation to local offices without the need for data collection, and that the results of that study be shared with other Departments as a potential model for rationalising data collection.

6 Conclusions

99. Is the BRE getting results? The CBI told us that: “The BRE has, in our view, been a positive force in driving regulatory reform across Whitehall, [which] would occur at a slower pace without [its] input and influence. It has encouraged Departments to raise their game in communicating with business, offering advice and holding focus groups on regulation, and has helped develop a better regulation culture throughout Government.”¹⁷³ In oral evidence the CBI representative referred to the UK being ahead of the game in Europe in areas such as impact assessments, common commencement dates, and simplification plans.¹⁷⁴ The IoD—another body with high standards in the area of regulatory

169 Ev 112

170 Q 197

171 Q 334 [Mr Kohli]

172 Ev 41

173 Ev 38

174 Q 34

reform—referred to “the important contribution of the BRE and the political will that its creation demonstrates.”¹⁷⁵

100. Professor Radaelli said “we should not underestimate the achievement of having learned about better regulation – most EU countries are still struggling with this stage...The Better Regulation Executive is right to say that they are leaders in Europe.”¹⁷⁶ He went on to say that the challenge was in better measurement of progress and accountability and in showing how activities are contributing to major desirable changes. **We agree and we recommend that the BRE focus its attention on delivery of current objectives and on setting clear future objectives and measuring against them.**

101. We believe that, in its short lifetime, the BRE has made a significant contribution to improving the UK’s regulatory environment on the basis of a demanding agenda. Its major challenges are to maintain strategic focus—particularly if the new programme of regulatory budgets is adopted—and to ensure that there is proper quality control and measurement of deliverables against clear targets, including in relation to burdens reduction figures. It needs, too, to be rigorous in assessing its own performance, to focus on improving perceptions, and to look at improving some of its internal operating procedures as we have suggested.

102. Finally, we are left in some doubt about the extent to which the citizen in general is considered in matters relating to the introduction of better regulation. That is an issue to which we may well return.

175 Ev 35

176 Ev 190

Formal Minutes relating to the report

Tuesday 8 July 2008

Members present:

Andrew Miller, in the Chair

Gordon Banks
John Hemming

Judy Mallaber
Dr Doug Naysmith

Draft Report (Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 102 read and agreed to.

Annexes and Summary agreed to.

A Paper was appended to the Report as Appendix. 1.

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

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

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

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

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

Annex 1: Witnesses

Tuesday 29 January 2008

William Sargent, Executive Chair, and **Jitinder Kohli**, Chief Executive, Better Regulation Executive, Department for Business, Enterprise and Regulatory Reform

Tuesday 1 April 2008

Clive Davenport, Trade and Industry Chairman, Federation of Small Businesses, **Alexander Ehmann**, Head of Parliamentary and Regulatory Affairs, Institute of Directors, **Matthew Fell**, Head of Corporate Affairs, Confederation of British Industry, **Sally Low**, Director of Policy, British Chambers of Commerce

Tuesday 29 April 2008

Philip Cullum, Acting Chief Executive, and **Mr Steve Brooker**, Senior Policy Adviser, National Consumer Council, **Sarah Veale**, Head, Equality and Employment Rights Department, Trades Union Congress

Tuesday 13 May 2008

Richard Gregg, Head of Regulation, Division and Programme Director of the Better Regulation Programme, Department for Environment, Food and Rural Affairs, **Trevor Huddleston**, Strategy Director, Department for Work and Pensions, **Geoffrey Podger**, Chief Executive, Health and Safety Executive, **Giles Wilmore**, Director of System Regulation, Health and Adult Social Care, Department of Health

Tuesday 20 May 2008

Councillor Keith Evans, Welsh Local Government Association, **Wendy Martin**, Senior Public Affairs Officer (LACORS), **Councillor Andy Sutton**, Local Government Association; and from **Barbara Young**, Chief Executive, **Ed Mitchell**, Head of Regulatory Development, Environment Agency

Tuesday 24 June 2008

Baroness Shriti Vadera, Parliamentary Under-Secretary, Department for Business, Enterprise and Regulatory Reform, **Sir William Sargent**, Executive Chair, **Jitinder Kohli**, Chief Executive, Better Regulation Executive

Annex 2: List of written evidence

- 1 Memoranda submitted by Department for Business, Enterprise and Regulatory Reform (received (01.08; 03.04.08; 02.07.08)
- 2 Memorandum submitted by Professor Rob Baldwin, London School of Economics (received 13.03.08)
- 3 Memoranda submitted by the Confederation of British Industry (received 18.03.08; 06.05.08)
- 4 Memorandum submitted by Institute of Directors (received 18.03.08)
- 5 Memorandum submitted by the Federation of Small Businesses (received 18.03.08)
- 6 Memorandum submitted by the British Chambers of Commerce (received 18.03.08)
- 7 Memorandum submitted by the Professional Contractors Group Limited (received 20.03.08)
- 8 Memorandum submitted by the Health and Safety Executive (received 20.03.08)
- 9 Memorandum submitted by Professor Claudio M Radaelli, Exeter University (received 20.03.08)
- 10 Memorandum submitted by Professor George Yarrow, Oxford Regulatory Policy Institute (received 25.03.08)
- 11 Memorandum submitted by the Department for Work and Pensions (received 25.03.08)
- 12 Memoranda submitted by the Local Authorities Co-ordinators of Regulatory Services (LACORS) (received 25.03.08 and 23.05.08)
- 13 Memorandum submitted by the Department of Health (received 25.03.08)
- 14 Memorandum submitted by the National Joint Utilities Group (received 26.03.08)
- 15 Memorandum submitted by the Institute of Chartered Accountants in England and Wales (received 26.03.08)
- 16 Memoranda submitted by the Department for Environment, Food and Rural Affairs (received 26.03.08; 28.05.08)
- 17 Memorandum submitted by the National Consumer Council (received 27.03.08)
- 18 Memoranda submitted by the Environment Agency (received 03.04.08; 23.06.08)
- 19 Memorandum submitted by the Trades Union Congress (received 04.04.08)
- 20 Memorandum submitted by Professor Francis Chittenden, Manchester Business School, and Tim Ambler, Senior Fellow, London Business School (received 04.04.08)
- 21 Memorandum submitted by the Food Standards Agency (received 07.04.08)
- 22 Memorandum submitted by the Department for Innovation, Universities, and Skills (received 13.06.08)
- 23 Memorandum submitted by the Local Better Regulation Office (received 20.06.08)

Annex 3: Organisations visited in Denmark, Sweden and the Netherlands

Copenhagen

Confederation of Danish Industry

Danish Commerce and Companies Agency

Danish National Audit Office

Stockholm

Ministry of Enterprise, Energy and Communications

Members of Swedish Parliament Industry Committee

Swedish Agency for Economic and Regional Growth (Nutek)

The Hague

Dutch Court of Audit (Algemene Rekenkamer)

ACTAL

Regiegroep Regeldruk, the Better Regulation Unit of the Dutch Ministry of Finance

Appendix 1: The Administrative Burdens Reduction Programme¹⁷⁷

In 2005 the Government introduced the Administrative Burdens Reduction Programme (the Programme) to reduce the administrative burdens of complying with regulation. It focuses on reducing the costs to business of carrying out the administrative activities that they would not undertake in the absence of regulation, but that they have to undertake in order to comply with regulations. For example by allowing companies to send out information to shareholders by email rather than insisting that it must be sent in writing. The Programme only considers administrative costs – often paperwork – and does not seek to change the protections and benefits offered by regulations. The Programme does not consider the wider costs of complying with regulation and does not seek to change the protections and benefits offered by regulations. The rationale was that reducing administrative burdens will allow businesses to redeploy ‘saved’ resources and, in doing so, help to promote innovation and improve productivity.

In 2005-06 the departments mapped extant legislation and estimated the burden of complying. The Standard cost Model (see below) was used to measure the cost to business of complying with regulations that impose information obligations which require businesses to provide information to Government to demonstrate that, and how, they comply with a given regulation. The administrative burden of complying with regulations in the UK was estimated at just under £20 billion at May 2005.

The regulations of four departments; the Department for Communities and Local Government, the Department for Business Enterprise and Regulatory Reform, the Health and Safety Executive and HM Revenue and Customs represent about three quarters of the total administrative burdens in the UK. The burden imposed by these departments is high because many of their regulations apply to all businesses in the UK.

Departments have committed to reducing administrative burdens by 25 per cent by 2010. HMRC is a taxing authority and has set its own targets: to reduce the cost of complying with tax forms and return by 10 per cent, and the cost of complying with audit and inspections by 15 per cent, by 2010-11.

In December 2007 the BRE reported that departments are on track to deliver against the 25 per cent target by the end of the Programme in 2010. Departments estimated that they had reduced the net annual cost of complying with administrative activities by approximately £800million, equivalent of six per cent of the total baseline. In March 2008 HMRC reported reductions of almost £400 million.

The Standard Cost Methodology (SCM) seeks to measure the cost to business of complying with regulations that impose information obligations. Information obligations require business to provide information to Government that demonstrate that, and how, they are complying with a given regulation. They also include all legal obligations that Government puts on business to supply information to third parties, including shareholders and customers. The SCM estimates the cost of the tasks that businesses have to undertake to provide the necessary information to comply with regulations. It assumes that businesses are compliant and normally efficient for their type or sector.

The Standard Cost Model Formula

Administrative costs are related to the time and wage costs that a business spends carrying out a particular administrative activity. This is multiplied by the number of businesses affected and the frequency with which they have to do that task.

Administrative Activity Cost = Price x Quantity**Price** = tariff x time **Quantity** = population x frequency**Tariff** is the wage costs (plus overhead, non-wage costs) for activities done internally or cost of external goods or service providers.**Time** is the amount of time required to complete the activity.**Population** is the number of businesses affected.**Frequency** is the number of times that an activity must be completed each year.

The measurement exercise in the UK was undertaken by PWC. HMRC engaged KPMG to undertake a separate measurement exercise specific to tax regulations. The consultants conducted interviews and held focus groups with a small sample of businesses to establish the time and resources they spent carrying out the activities each year. The estimated costs of these administrative activities were then added together for each regulation.

The results from the measurement exercises provide an indicative estimate of administrative burdens. The small sample sizes and non-random sample selection mean that the results should not be seen as representative in statistical terms.

The SCM estimates the costs of a defined set of administrative activities. It does not capture the 'costs' to businesses of dealing with other administrative aspects of complying with regulation that are perceived as irritating, but that are not necessarily costly in monetary terms. These are generally related to how businesses perceive regulation and include issues such as the cumulative impact of regulations that businesses have to comply with; complexity of regulation; instances where businesses perceive that they have to provide duplicate information to Government; and not knowing which regulatory requirements apply, especially because of frequent changes made to regulations.

Furthermore, the SCM does not measure the costs to business of complying with the policy objectives of regulation; for example, having to make adjustments to premises to ensure disabled people can access them. Neither does it measure 'one-off costs' nor the 'financial costs' of complying with regulation, such as paying tax or license fees. This means that the SCM only measures one part of the total cost to business of complying with regulation.

List of Reports from the Committee during the current Parliament

Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940

Session 2006-07

First Special	Scrutiny of Regulatory Reform Orders	HC 160
Second Special	Revised Standing Orders	HC 385
First	Proposal for the Regulatory Reform (Game) Order 2007	HC 384
Second	Proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007	HC 383
Third	Proposal for the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	HC 397
Fourth	Proposal for the Regulatory Reform (Deer) (England and Wales) Order 2007	HC 411
Fifth	Draft Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007	HC 611
Sixth	Draft Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	HC 673
Seventh	Draft Regulatory Reform (Game) Order 2007	HC 674
Eighth	Draft Regulatory Reform (Deer) (England and Wales) Order 2007	HC 948