

Regulation for Enterprise? Recent Reforms and the Implications for Risk Regulation in Smaller Businesses

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Abstract

The drive to reduce the burden of regulatory compliance costs on enterprises has recently been reinvigorated in the UK by the publication of the report by Philip Hampton (2005) commissioned by the Treasury. This has recommended the better targeting of inspection and enforcement activity in order that resources can be released to support alternative measures, such as improved advice and education for smaller enterprises in particular; the government has subsequently announced that these recommendations are to be adopted in full. The paper draws on secondary evidence to explore the policy dynamics behind 'better regulation' and the likely feasibility of reducing the burden of regulation on enterprises while at the same time maintaining or improving regulatory outcomes.

Introduction

The issue of how regulatory compliance on the part of business organisations can most effectively be secured while at the same time minimising regulatory burdens and, in so doing, contributing to the fuller realisation of an 'enterprise culture' continues to be the subject of considerable policy debate. The UK government's acceptance of the recommendations of the Hampton report (Hampton, 2005) appears to have created a dominant consensus as to the role to be played by regulatory agencies charged with monitoring and enforcing organisational compliance with statutory legal requirements. In essence, this consensus is centred on the notion that such agencies should commit greater resources to the provision of

advice and guidance and should reserve the use of the more 'burdensome and expensive method' of inspections to the small minority of 'high risk' situations where its use is merited. This consensus is premised on expectations relating to the potential of alternative means of achieving compliance, including an increasing role for non-state actors, and that the vast majority of organisations want to be compliant and that much of their failure to do so stems from ignorance rather than deliberate, and calculative, intent.

This paper draws on secondary evidence to explore the validity of this approach and the policy dynamics behind 'better regulation' in the UK, with particular reference to the implications for environmental health regulation as it applies to small and medium sized enterprises. It begins by summarising the recent evolution of the policy debate around better regulation and the main theoretical approaches to understanding regulatory change in a wider socio-political context. The main prescriptions of the Hampton report are then summarised, followed by a consideration of their validity in the light of the responses of key stakeholders and the empirical evidence relating to the compliance behaviour of businesses. The paper concludes with a discussion of the policy dynamics behind better regulation.

The origins of 'better regulation'

The argument that regulation is a key barrier to business growth and performance has received considerable attention in recent years (Baron, 2002; FSB, 2002; HM Treasury, 2002; OECD, 2002). Recent concerns in the UK reflect similar experiences in a number of advanced industrial countries during the 1980s/1990s of a so-called 'regulatory crisis' focused on alleged over-regulation (Hutter, 2005), with the policy debate leading to waves of initiatives concerned with 'deregulation', 'smart regulation' and 'better regulation'. Current debates and developments follow on from a longer-standing critique of 'command and control approaches' to regulation (Sinclair, 1997), which are seen as being inefficient, expensive, innovation stifling, leading to enforcement difficulties and focusing on 'end of pipe' solutions. The critique of command and control approaches to regulation has been widely accepted by policy makers (OECD, 2002) and regulatory reform in European environmental health risk regulation (i.e. including, health, safety, food safety and environmental risks) has been driven over a number of years by the increasing application of 'enforced self-regulation' (Braithwaite, 1982; Fairman and Yapp, 2005a). This involves regulators setting goal-oriented responsibilities and duties for businesses to implement through their own internal rules and procedures, rather than emphasising

detailed prescriptive standards. This has been the predominant approach in UK health and safety regulation (Sinclair, 1997); in food safety (FSA, 2001) and in some aspects of environmental protection (RCEP, 1998). More recently, there has been a growing interest in the potential for increasing the role of non-state actors in regulatory regimes, whether 'economic actors' (businesses, trade associations etc) or 'civic actors' (a range of non-governmental organisations and advocacy groups) (Hood et al., 2001; Hutter, 2006).

These developments need to be understood in the broader socio-political context of regulatory change and the theoretical approaches which seek to explain this. Regulatory decision-making often involves complex trade-offs between different interests such as consumer choice and consumer health, conflicting business interests and the interests of regulatory professionals themselves (Rothstein, 2004). Complexity, particularly in contexts where evidence bases are inconclusive or appear to conflict) means that views as to appropriate regulatory measures and levels of enforcement activity are likely to vary according to the values and perceptions of different stakeholders (including conceptions of business compliance behaviour), the perceived levels of risk involved, and expectations of the role of the state in regulating risk.

The two most pertinent theoretical approaches to explaining the meaning and implications of regulatory change, emphasising either an interest-based perspective or more cultural explanations, have therefore tended to be critical of the modernistic framework which underlies 'command and control' approaches and a view of regulation as involving probabilistic risk assessment, rational planning and clearly delineated relationships. In doing so, interest-based perspectives emphasise the role of power relations, struggles between diverging interests and an increasing influence of a neo-liberal rationality in transforming the state and how it relates to business. Such perspectives have been particularly influential in contexts where class-based interests are clearly defined, as in the case of working conditions and health and safety (e.g. Beck and Woolfson, 2000; Toombs, 2006) but have also been applied to environmental regulation (e.g. Vlachou, 2005), including a number of studies arguing that environmental policy making has tended to be dominated by particular discourses that bias how policy problems are conceptualised and their appropriate solutions (e.g. Hajer and Versteeg, 2005, p. 179).

Meanwhile, cultural/institutionalist explanations also emphasise struggles between various groups, but give greater priority to complexity, fragmentation, interdependencies, 'ungovernability' and the lack of a clear distinction between the public and private spheres. Hence Black (2002) conceptualises regulation as increasingly 'decentred' and as being the product of a wider set of interactions, negotiations and techniques than those which are solely or mainly administered by the state.

A recent and important contribution by Lidskog et al. (2005) usefully highlights the strengths and weaknesses of both these approaches, suggesting that, although regulation is increasingly dispersed, the concepts of knowledge, power and control remain central to understanding the processes by which the regulation of environmental and health risks are negotiated. This perspective consequently reinforces the need to clarify the nature of the policy trade-offs involved and the precise role of central government, the regulatory agencies and various civic stakeholders in the process of defining and implementing 'better regulation.'

The case of 'better regulation' in the UK

The policy debate in the UK can initially be understood in relation to the economic objectives of the of the government , notably its vision of building an “enterprise society”, and its stated aim of making the UK “the best place in the world to do business” (HM Treasury, 2002). Government policy towards enterprise has therefore been organised under seven strategic themes, of which developing better regulation is one.¹

The evolving policy debate on what might constitute 'better regulation' has recently culminated in the UK with the work of Philip Hampton commissioned by the Treasury (Hampton, 2004; 2005) and a related report to the Prime Minister by the Better Regulation Task Force² (BRTF, 2005). Hampton considered the work of 63 national regulators and 468 local authorities, which between them conduct more than 3 million inspections per year, and, in the case of the national regulators covered, send out 2.6 million forms for businesses to complete every year. The focus of this work was “to

¹ The government's policy framework for small business, *Small Business and Government – The Way Forward*, was published in December 2002 and sets out the new policy framework for a government-wide approach to helping small firms (SBS, 2002).

² The government has subsequently established a Better Regulation Commission to continue the role of the BRTF to advise the government on regulatory proposals, the government's overall regulatory performance and other new responsibilities following from the 2005 Budget.

identify ways in which the administrative burden of regulation on businesses can be reduced, while maintaining or improving regulatory outcomes.” (Hampton, 2005, p. 3) The review therefore “considered the burden imposed by licencing, form filling, inspections, and enforcement activity including prosecutions” and also “how the structure of the UK’s regulatory system affects the ability of regulators to minimise administrative burdens when interacting with, and encouraging compliance from businesses.” (op cit. p. 3).

The work involved consulting with over 300 stakeholders, including regulators and other relevant government departments and agencies, local authorities, industry representative bodies (including a number of individual businesses), professional bodies, campaigning organisations, trade union bodies and academics.

Hampton made a number of recommendations with a view to achieving “greater excellence in regulatory outcomes - but to do so substantially more efficiently, by:

- entrenching the principle of risk assessment throughout the regulatory system, so that the burden of enforcement falls most on highest-risk businesses, and least on those with the best records of compliance;
- in particular, ensuring that inspection activity is better focused, reduced where possible but, if necessary, enhanced where there is good cause; [...]
- making much more use of advice, again applying the principle of risk assessment;
- substantially reducing the need for form filling – in practice, most businesses’ most frequent and most direct experience of regulatory enforcement – and other regulatory information requirements; and
- applying tougher and more consistent penalties where these are deserved.” (para. 24, p.8)

The full implementation of risk-based assessment, in particular, is expected to release resources that can then be used “to provide improved advice, because better advice leads to better regulatory outcomes, particularly in small businesses.” (op cit., p.9) Central to Hampton’s prescriptions is that risk assessment, identified as an essential mechanism for directing scarce regulatory resources, needs to be more consistently applied. In this regard, Hampton identified that 36 of the 63 national regulators use some form of risk assessment, “only 25 of them, however, include an explicit element of earned autonomy, where good performers are visited less often, or have less onerous reporting requirements.” (op cit p. 4) All regulators are further

expected to “have a performance management framework and systems in place to deliver fully risk based inspection, improved advice services and to monitor the impact of these changes on those they regulate” (Hampton, op cit., p. 10).

The government has subsequently announced in the 2005 budget that the recommendations of the Hampton BRTF reports are to be adopted in full, with the Chancellor promising to reduce inspections by regulatory agencies by one million a year, or a third (*Hazards* 91, August 2005).

Even prior to Hampton, however, some of his main recommendations had already been reflected in policy statements of key regulatory agencies. Hence the case for a more risk-based approach to inspection had already been made by the Health and Safety Commission (2004)³ and the Environment Agency (2005).⁴ With regard to the changing emphasis with respect to enforcement, previous work commissioned by Unison has identified the extent to which in recent years there has been a decline in inspections (although also a significant increase in investigations, albeit from a very low level) (Unison/CCA, 2002).⁵ This research also showed that levels of inspections, investigations and prosecutions varied considerably by region and sector (Unison/CCA, 2002a, 2002b) and also between local authorities (responsible for regulating environmental health in lower risk businesses). Recent developments are therefore best understood as part of evolutionary trend towards the de-emphasise of the role of inspection, rather than as representing a radical break.

A number of studies have been commissioned by regulatory agencies to examine regulatory efficacy and the potential of alternatives for specific areas of regulation (e.g. Howard and Galbraith, 2004). The main alternatives considered or under consideration include regulatory thresholds (i.e. excluding enterprises below a certain size), removing regulations altogether, and alternative ways of achieving compliance/behavioural change, including the wider adoption of voluntary codes,

³ A discussion paper, ‘Regulation and recognition’, exploring the best mix of methods followed: <http://www.hse.gov.uk/consult/condocs/cd-interventions.htm>

⁴ Although note also that risk assessment and a targeted approach has long been used by these agencies. Similarly, the HSE has supported a number of initiatives over the years aimed at strengthening information provision and education to assist businesses to comply with legal requirements.

⁵ Selected key findings include that the number of inspections of workplaces declined by 41% in the five years to 2001 - a decrease of 48,300; that a workplace registered with HSE currently received, on average, an inspection once every 20 years; and that, in spite of increases in the investigation of reported incidents over the previous five years, in 2000/01

kitemarks, reputational sanctions etc. It has been noted, however, there is limited experience of more novel interventions on compliance (e.g. Fairman and Yapp 2005b, p. 33 in the case of health and safety). The BRTF has expressed that, "despite positive recent developments, there still seem to be cultural barriers to the consideration of the full range of alternative approaches" (BRTF, 2003, p. 15).

While it is beyond the scope of this paper to assess in detail existing knowledge relating to new forms of intervention, given the wide range of regulatory contexts involved, insight into the potential for greater self-regulation in a context of reduced enforcement can nevertheless be gained from the more general literature on business compliance behaviour (see further below).

The response of other stakeholders

Many of Hampton's proposals have been broadly welcomed, particularly those relating to simplifying procedures, eliminating unnecessary bureaucracy and adopting a systematic approach to regulatory impact assessment. Others, however, have been subject to considerable criticism by representative/professional bodies and campaigning organisations, particularly in relation to the enforcement of occupational health and safety (e.g. CCA, 2004; TUC, 2005).

The general view expressed by such actors is that routine inspection should not be reduced since such contacts are essential to assessing risk including in 'low risk' businesses (which should therefore not be exempted from inspections altogether), and that greater resources are therefore needed by the Health and Safety Executive (HSE) and local authorities for them to conduct more targeted and proactive inspections.

In a similar vein, the House of Commons Work and Pensions Committee concluded in July 2004 that "the HSE should not proceed with the proposal to shift resources from inspection and enforcement to fund an increase in education, information and advice," and that "the evidence supports that it is inspection, backed up by enforcement, that is most effective in motivating duty holders to comply with their responsibilities under health and safety law" (HCWPC, 2004, para. 142).

the vast majority of major injuries to workers (80%) and to the public (93%) were not investigated.

Most recently, the national press has reported criticism from Prospect, the trade union which represents almost half of HSE's 3,500 staff, of plans by the HSE to lose 350 jobs as part of government budget cuts (*The Guardian*, 11 August, 2006). An HSE spokesman is reported as responding that "the job losses were part of budget cuts at the Department of Work and Pensions designed to achieve savings of £8 million over two years" [...], and that "the major hazards, which includes nuclear installations, onshore and offshore fuel storage and oil rigs would be exempt" since these are "Charged back to the employers, they are not part of the anticipated cuts" and further that "350 job losses was a worst case scenario".

The evidence base

There is a diverse and disparate body of research relating to risk-regulation and the impact of regulation on businesses and their compliance behaviour, some of which is focused on start-ups and small businesses.

With regard to the impact of regulation on growth, the policy emphasis on reducing regulatory burdens fits uneasily with evidence that the UK regulatory environment is already relatively 'business friendly' compared to other countries (e.g. Nicoletti and Scarpetta, 2003). This apparent paradox has recently been noted in a review of the impact of regulation in general on small business growth conducted for the Small Business Service (SBRC, 2005) which also suggests that, while there is a growing body of literature on the burden of compliance costs faced by small businesses, there is also a need to take account of other evidence of inaccurate reporting of such costs which may, to a degree, have been amplified by the limitations of the survey methodologies utilised.

Further important recent evidence that lends some support to this view is provided by a study by researchers at Warwick Business School and Universitat Autònoma, Barcelona (Capalleras et al., 2005). This research looked at differences in start-up size and employment growth in new firms in highly regulated (Spain) and less regulated (the UK) national economies. Despite sharp differences in the regulatory approaches of the two countries⁶, the surveys of new firms in the two countries showed more similarities than differences. The authors suggest that their findings are compatible with a framework which views regulation as a 'second division'

⁶ For instance, time needed to start up a business in Spain is 108 days compared to just 18 days in Britain; the cost of starting a business in the UK is 0.9% of Gross National income per capita in the UK compared to 16.5% in Spain (World Bank data in *Doing Business in 2005*).

influence upon the performance of new and small firms and that of greater significance are the characteristics of new and small firm owners, notably their skills and determination.

In addition, although the more comprehensive application of risk assessment to improve targeting of enforcement activity is fundamental to Hampton's recommendations, the potential limitations of risk assessment (particular in a context of reduced inspection activity – seen as essential for gathering the data required to assess risk in individual businesses) is given little attention in his report. Hence a number of studies in the environmental field have pointed out that assessments of risk, cost and benefit tend to favour businesses as the immediate costs to businesses are always much easier to calculate than are the wider socio-economic benefits (e.g. Yeager, 1991). There is also, as previously suggested, a substantial body of work taking socio-cultural perspectives on the perception of risk, which sees risk as endemic to all systems of social ordering, and which challenges the distinction made in earlier scientific/technical approaches between risks that are measurable and unpredictable uncertainties (see Taylor-Gooby and Zinn, 2005, for a recent wide-ranging review).

Furthermore, the existing literature on business compliance behaviour, particularly that which focuses on smaller enterprises, provides a far from clear endorsement of Hampton's conclusions and recommendations, as the following brief summary of its main relevant findings shows.

First, it is clearly the case that small firms have more limited resources than do larger organisations, including limited financial resources for investment in new plant, equipment and training and also limited management time and skills for identifying and addressing hazards and risks (Chittenden et al., 2002; Lancaster et al., 2003; Walters, 2003). A number of studies also confirm that small firms typically have a low awareness of regulatory requirements (e.g. Fairman and Yapp, 2005; Hillary, 2000; Vickers et al., 2005). It has been further shown that the widespread lack of knowledge among small firms is frequently compounded by difficulties they experience in understanding how the legal requirements relate to their business and a tendency to conceive compliance differently to the view of enforcers. Fairman and Yapp (2005a and b) therefore argue that enforced self-regulation poses particular problems for many small businesses who lack the requisite systems-based management approaches. The difficulties that smaller firms in particular experience

in self-regulating has meant that inspectors have tended to rely heavily on persuasion and education where such businesses are found, as is not uncommon, to be non-compliant. Regarding this, a number of studies have revealed the extent to which inspectors have long used advice, discretion and flexibility, according to the nature of the business and the risks involved (e.g. Hawkins, 2002; Hutter, 1997).

Meanwhile, compliance and the adoption of compliance-related improvements have been noted to be better amongst businesses which are more connected to external organisations and those that are, more generally, receptive to external influences, such as directly through their customers (notably in the case of food safety, e.g. Hutter and Jones, 2006) through trade membership, supply chain / franchise arrangements and taking courses (e.g. Lowrie and Greenberg, 1997 in relation to ground water contamination; Baldock et al, 2007 in relation to health and safety). Employees in small firms are also much less likely to be members of trade unions and to have access to representative arrangements through which joint consultation over health and safety matters can occur; a situation which several studies have identified as being associated with higher rates of injury (Nichols et al, 1995; Nichols et al, 2004). A range of studies focused on occupational health and safety have further identified that small firms are most responsive to direct contact techniques including inspection (Briggs and Crombie, 2000; Davis, 2004; Rakel et al., 1999; Wright et al., 2004).

Existing research findings also indicate that the small firm 'sector' is highly heterogeneous and that how enterprises respond to regulatory and other compliance related pressures consequently varies considerably according to their particular characteristics (e.g. the awareness and motivation of owner-managers, and the capabilities and 'culture' of enterprises) and their operational contexts (e.g. the nature of product market and supply chain influences) (Edwards et al., 2002; Hutter and Jones, 2006; Vickers et al. 2005). Thus, while previous research supports the understanding that many small firms have a reactive stance towards regulation, often expressing that they find it burdensome, it also demonstrates how attitudes and motivations can range considerably from overt rejection of the legitimacy of regulation and its avoidance to more positive and even proactive stances towards compliance, suggesting that responses to newer 'soft-regulation' initiatives are, in turn, likely to vary considerably.

A framework for understanding regulation and enterprise

In order to further explore the implications of 'better regulation', it is useful to draw on a framework for understanding small firm responses to regulation based on the previous work of the author and his colleagues (Vickers et al., 2005). Survey evidence and case study findings suggest a typology by which businesses can be differentiated in terms of their attitudes and responses towards regulation (in this case health and safety): (1) *Avoiders/Outsiders*; (2) *Reactors*, including the sub-categories of (a) *Minimalists* and (b) *Positive Responders*; and (3) *Proactive Learners*. These categories are further elaborated below.

(1) *Avoiders/Outsiders*: Enterprises in this category have a very limited awareness of statutory requirements, and are likely to be ephemeral and/or transient, low profile and non-compliant with other areas of legislation and, in some cases, to routinely employ dishonest measures to gain competitive advantage. A prime motivation is to minimise short-term costs and also any contact with officialdom, particularly in the case of enterprises involved in the grey/shadow economy (notably paid informal work in 'cowboy' enterprises).⁷ Employment conditions may be poor generally and the workforce is likely to be unqualified (or lacking in relevant qualifications), low skilled, and/or insecure and vulnerable to exploitation. Many micro/smaller enterprises and self-employed contractors may fall into this category due to their 'low visibility' and limited exposure to positive external pressures, regulatory or otherwise.

(2) *Reactors*: The majority of small businesses are likely to fall under this broad category, which can be further sub-divided into (a) *Minimalists* and (b) *Positive Responders*. *Minimalists* exhibit poor to non-existent awareness of regulatory requirements, are likely to view the regulations as an unnecessary burden and are wary of officialdom, although they may be more exposed in this respect than are the *Avoiders/Outsiders* by their being more established and 'visible'. The need to minimise short-term costs when faced with highly competitive market conditions is also a key factor, as is a propensity to employ 'short cuts' and/or dishonest measures. Health and safety is typically viewed by the owner-manager as a 'commonsense' matter and largely the responsibility of individual employees. Employment conditions may be poor to average and the workforce typically unqualified and/or unskilled. Such businesses will

⁷ Although it is increasingly recognised that many businesses that do not obviously fall into this category, including larger businesses, may promote conditions that support such practices (e.g. through their purchasing decisions), and may be engaged in 'informal' practices themselves.

respond to regulators under compulsion but may subsequently relapse into non-compliant practices.

Positive Responders, on the other hand, have some awareness, often obtained from external agencies, notably inspectors and customers, and are more tolerant of, and responsive to, intervention, although requiring clear guidelines. Motivations here include a greater acceptance of the legitimacy of regulation, not least because of its role in controlling unfair competition, an active concern to protect/retain staff, and a belief that good health and safety practice is synergistically related to good housekeeping, 'commonsense', and/or customer care. Such businesses may be in more niche market contexts and therefore less subject to intensive competition on cost, and may also be subject to the requirements of large customers. Working conditions in general are better than in the case of the two previous categories and the business may provide and/or invest in some training. Employees are also more likely to be skilled and qualified and have greater bargaining power and/or be more highly valued by owner-managers for reasons associated with the close nature of working relationships in small enterprises and/or patriarchal care and concern for employees.

(3) Proactive Learners: Businesses in this category have a relatively good awareness of legislative requirements compared to other categories, and policy and good practice is embedded in organisational routines. As the appellation suggests, such businesses are most likely to proactively investigate the requirements of the legislation and typically treat regulatory interventions as opportunities for learning and improvement, a view which accords with previous studies which show that some businesses will seek to gain competitive advantage by being ahead of potential competitors in terms of legislative compliance (e.g. Smallbone *et al.*, 1996).⁸ Proactive Learners exhibit the most positive attitudes and responses to regulators and will use inspectors as 'free consultancy', although they may also be demanding in this respect. Such businesses are typically higher profile (i.e. they are likely to be involved in more hazardous and complex processes, and may also be larger businesses, but not in all cases); are more likely to accept that compliance offers benefits to the business, provided that they perceive that administrative costs are not unduly excessive and that enforcement is consistent; and also have the ability to invest in staff development, new equipment and other protective measures which

⁸ Although note that Hampton (2004, p.6, para. 1.8) emphasises the danger of 'over-compliance by nervous businesses' as a result of 'regulatory creep' causing unnecessary administrative costs.

other businesses would consider to be a burdensome cost. There is also likely to be workforce involvement and representation. Prior experience of a health and safety related incident and associated costs, and the desire to avoid any further such incidents, may also be a motivating factor. Such businesses are additionally likely to operate in niche markets where quality, innovation and responsiveness to customers are important, to have ongoing/long term relationships and a workforce that includes highly qualified and/or skilled staff. It is consequently this category of business which is the most likely to be able to effectively self-regulate, in accordance with the philosophy underlying the current framework of British health and safety law.

The main characteristics of businesses in all four categories are also summarised and compared in Appendix Figure 1.

Although this typology draws attention to the learning potential of those 'ideal' businesses which are most likely to use the regulatory regime as an opportunity for continuous improvement and perhaps innovation, it is also important to note that businesses in other categories 'learn' and innovate, although in ways which may have more negative consequences for consumers and/or other businesses, as well as for occupational health and safety. Some businesses in the Avoiders/Outsiders category involved in the grey/shadow economy, for instance, may be highly creative in terms of improvising cost-cutting measures, including concealing 'fiddles' from customers and other illegal practices.

More generally, the above analysis supports the argument that attempts to improve health and safety in small businesses need to be multi-dimensional in that they should ideally be shaped to the differing attitudinal characteristics, motivational factors and contexts of the different types of businesses.

In contexts where enforcement is minimal, however, the danger is that enterprises are undeterred from routine recourse to 'informal' practices and associated non-compliance which, as well increasing risk exposure to employees, the general public and the environment, is a source of unfair competitive advantage against those businesses which are more committed to regulatory compliance and the adoption of good practice. In fact, there is some existing evidence that regimes that depend on self-regulation are open to abuse and difficult to maintain in the absence of explicit

sanctions (e.g. Gunningham, 1995 King and Lennox, 2000 in the case of the chemical industry).⁹

Hampton (and related policy statements from government) appear to present a relatively simple conception of businesses compliance behaviour, with (a) a majority who are well-intended towards legal requirements that they view as being 'reasonable', and which are substantially compliant most of the time (and in need of 'better education' rather than inspection, insofar as they are not compliant); and (b) a small minority of 'rogue traders' needing greater regulatory attention.

This dualistic conceptualisation of business compliance behaviour is also consistent with the perspective promoted by industry bodies such as the CBI and IOD and towards which Hampton and the UK government have been particularly responsive. The alternative conceptualisation suggested here, however, suggests a more complex reality, where many small businesses struggle with self-regulation and are most responsive to direct contact techniques (including inspection) and where other enterprises, in a context of minimal enforcement, are increasingly undeterred from routine recourse to 'informal' practices and associated non-compliance which, as well increasing risk exposure to employees, the general public and the environment, is a source of unfair competitive advantage against those businesses which are more committed to regulatory compliance and the adoption of good practice.

Discussion and conclusions

This paper has attempted to critically assess the evolving strategy and practice of environmental health risk regulation in the UK in response to the recently renewed policy emphasis on reducing the burden of regulation on businesses, while at the same time "maintaining or improving regulatory outcomes". Many of the recommendations of the Hampton and BRTF reports have been broadly welcomed - particularly those relating to simplification and reducing form filling. Some campaigning groups, trade union bodies, and academics, however, have raised particular concerns in relation to the implications for workplace health and safety of the reduced emphasis to be given to enforcement in the form of inspections. The

⁹ BRTF (2003, p.41-45) also notes the potential disadvantages of self-regulation and co-regulation, citing the example of the failure of a voluntary code and Kitemark introduced by the Federation of Master Builders to "deal with the problems of 'cowboy builders'". The DTI

debate has been characterised by differing views (and interpretations of the evidence base) as to the impact of regulation on businesses and the potential that there may be for alternative approaches to 'classic' regulation and enforcement.

The analysis presented here suggests that the reduced emphasis to be given to enforcement has been particularly influenced by a dualistic conception of business compliance behaviour and, arguably, over-optimistic expectations regarding the potential of risk analysis in targeting enforcement activity and also of the potential of alternative measures of achieving compliance.

Further exploration and experimentation with regard to the introduction of more innovative and cost-effective approaches to achieving policy aims is clearly desirable, although a key issue relating to self-regulatory measures appears to be the need for explicit sanctions. But whatever the outcomes of further research conducted to aid regulators in assessing the validity and practical implementation of new approaches in diverse regulatory contexts, it appears that the central government responsiveness to the dominant 'business voice' allied to the objective of achieving budget cuts in the civil service are likely to continue to be the key determining factors in the decline of the 'traditional' enforcement measures of inspection and investigation, along with the commitment of senior managers in the regulatory agencies to work within the imposed resource constraints.

Contrary to the promise of the win-win scenario offered by the government, decisions relating to 'optimal' levels of regulation and enforcement involve trade-offs between competing socio-economic objectives. The danger, however, is that 'better regulation', as prescribed by Hampton/BRTF, will tend to further encourage many businesses to accord a lesser priority to (or continue to avoid) legal compliance and the adoption of good practice in their pursuit of competitive advantage, with greater (though difficult to quantify in the short-term) costs/risks being externalised to employees, consumers and the environment. While this may well fulfil the government's immediate aims in relation to business and enterprise and with respect to reducing the financial cost of regulation, questions clearly remain as to the desirability and sustainability of the particular version of the "enterprise society" that is being endorsed and supported.

has subsequently backed a code of practice although BRTF note that "it is too soon to judge its success" (op cit p. 43).

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Appendix Figure 1. Typology of businesses according to their stance towards regulation and contextual characteristics

Categorisation:	(1) AVOIDERS/OUTSIDERS		(2) REACTORS		(3) PROACTIVE LEARNERS	
	(a) Minimalists		(b) Positive responders			
Stance						
Awareness of legislative requirements	Poor to non-existent	Poor to non-existent	Some, often obtained from external agencies (regulatory or supply chain)	Relatively good: policy and good practice embedded in organisational routines		
Attitude to compliance and enforcement	Requirements to be avoided or evaded; likely to be non-compliant with other areas of legislation	Regulations seen as an unnecessary burden; will respond under compulsion but may subsequently relapse	Tolerance: responsive to intervention, but require clear guidelines	Positive: will use inspectors as 'free consultancy' and may be demanding in this respect; most likely to effectively self-regulate		
Context						
Motivational basis	Low profile, hence lack of contact with and/or fear of officialdom; desire to minimise short-term costs; some enterprises may be highly creative in devising measures to conceal illegal practices	Suspicion of officialdom; little exposure/responsiveness to other external influences; desire to minimise short-term costs; h&s seen as 'common sense' and largely the responsibility of individual employees	Greater acceptance of the legitimacy of regulation; good h&s associated with good housekeeping, 'common sense' and/or customer care; may be in niche markets and subject to requirements of large customers; desire to look after / retain staff	Motivated to comply: often higher profile compared to other categories; acceptance of business case for compliance + able to invest; workforce involvement/representation; often in niche markets where quality, innovation and responsiveness to customers may be important; may have prior experience of h&s related incident and associated costs		
Type of employer/quality of employment	Poor: low pay, perhaps piecework rates and poor conditions generally	Poor to average	Average to good, some training	Good: commitment to training/staff development		
Nature of workforce	Unqualified; low skill; may be particularly vulnerable to exploitation	Typically less qualified/skilled and may be vulnerable	Some skilled and qualified	Includes qualified and highly skilled staff		

Source: Vickers et al. 2005