



giving
nature
a home

Committee for Agriculture and Rural Development – Inquiry into Better Regulation

The RSPB welcomes the opportunity to respond to the Agriculture Committee Inquiry into 'Better Regulation'. Few, if any, major environmental improvements in the UK have been achieved in the absence of regulation. The RSPB is a founding member of the Aldersgate Group, an influential alliance of leaders from business, politics and civil society that drives action for a sustainable economy. The Aldersgate Group promotes policies that deliver environmental protection as well as long-term sustainable economic growth, jobs and competitiveness. We also farm ourselves - the RSPB owns a 180-ha commercial arable farm and around 25,000 livestock graze our land annually, with around 170 tenant farmers, and 200 employees. We protect and enhance habitats such as lowland farmland, heather moorland, lowland heath, wet grassland, estuaries and reed beds, and our reserves network help to protect 63 of the 77 most rare or threatened breeding birds in the UK.

About the RSPB

The RSPB is one of Europe's largest nature conservation charities, with over one million members and over 200 nature reserves covering almost 130,000 hectares and home to 80% of our rarest or most threatened bird species. The RSPB is part of BirdLife International, the world's largest nature conservation partnership. The principal objective of the RSPB is to save nature. For over 100 years, the RSPB has been at the forefront of campaigning for policies that protect wildlife, special places, and the wider environment. As well as providing vital protection for threatened species and sites, properly enforced environmental regulations play a central role in protecting the natural capital upon which our long-term prosperity and well-being ultimately depend.

The RSPB supports a move towards better regulation which removes unnecessary bureaucracy and is more effective. However, we do not support any weakening of environmental protection. The RSPB believes that a level of regulation is necessary to protect not only the natural environment and the essential services it provides, but also the long-term health of the NI economy by providing a level playing field. If regulation is to be improved, the RSPB believes enforcement of environmental protection regulations must be improved. This was also a recommendation of a report by the Criminal Justice Inspectorate whilst reviewing the work of the Northern Ireland Environment Agency (NIEA) environmental crime unit in May 2015.

Regulation is essential for nature protection

In terms of the environment, regulation provides vital protection for the UK's threatened wildlife and important wildlife sites; regulations support many of the RSPB's most important conservation work and provide the essential bedrock for biodiversity conservation in the UK. More broadly, regulation is essential for a well-functioning market economy and it plays a central role in protecting the natural capital upon which the Northern Ireland's long-term prosperity and well-being ultimately depend. The RSPB view regulation as an essential policy tool for achieving protection of the natural environment and as a means of the UK meeting its legal obligations under EU Directives such as the Water Framework Directive and the Birds and Habitats Directives.

Appropriate regulation will often be the simplest and most cost-effective solution for correcting market failures and allowing agri-business the certainty to invest, thus driving growth of a greener economy. Failure to properly implement regulation could lead to greater costs being incurred in the long run, not least if NI does not meet its wider legal obligations.

Better Regulation or Deregulation ?

Better Regulation is not the same as Deregulation. While the Inquiry is into 'better regulation', the terms of reference are couched in terms of reducing regulatory burdens on Farmers. The OECD (2010) define regulatory policy as "*an explicit, dynamic, and consistent whole-of-government policy to pursue high quality regulation*".ⁱ However, in practice such policies tend to differ considerably in the extent to which emphasis is placed on improving the overall quality of regulation (i.e. better regulation) as opposed to simply reducing the overall quantity of regulation (i.e. deregulation).¹ The former approach essentially seeks to balance the costs and benefits of regulation in order to achieve better social, economic and environmental outcomes, whilst the latter approach focuses exclusively on reducing the costs of regulation to business. This inquiry appears to focus exclusively on costs, while ignoring the evidence of the benefits of regulation for business, the environment and wider society. Better regulation should be about maximising the net benefit to society, not solely about minimising costs to those regulated.

Benefits matter as much as costs

The Westminster Government has estimated that the benefits of environmental regulation in the UK outweigh the costs by a ratio of 3:1. Moreover, this ratio almost certainly understates the benefits compared to the costs due to the challenges associated with monetising all of the benefits.ⁱⁱ For example, despite the proven effectiveness of environmental regulations in relation to the conservation of threatened species and sites, many of the associated benefits are non-market and are thus more challenging to value in monetary terms than the associated costs.ⁱⁱⁱ

The RSPB believe this inquiry should place as much emphasis on the benefits of smart regulation as on the costs.

What does burden refer to ?

In terms of the costs of regulation to Farming and other business activity, there are two main categories to consider: administrative costs (i.e. the costs of complying with regulatory information obligations, traditionally referred to as 'red tape') and policy (compliance) costs (i.e. all other direct costs to business associated with regulatory compliance obligations).^{iv} These latter costs are closely related to regulatory stringency and essentially reflect political decisions regarding the policy objectives to be achieved.^v A third category of costs sometimes considered are so-called 'irritation' costs; evidence suggests that business perceptions of the costs of regulation tend to be linked closely to subjectively felt 'irritation' with regulation, despite the fact that such perceptions are not always correlated with administrative costs.^{vi}

Until recently much of the focus at both the UK level and EU level has been on administrative simplification, such as under the Action Programme for Reducing Administrative Burdens in the EU (2007-2012).^{vii} The aim of such programmes has been to reduce unnecessary administrative costs at the same time as maintaining and/or improving regulatory standards. We support initiatives to streamline and improve the administration of regulation, thereby removing unnecessary burdens but believe any assessment of cost must distinguish administrative costs from compliance costs.

Regulatory burdens should not be evaluated on the basis of perceptions alone.

Businesses' subjective perceptions are not a reliable indicator of the true regulatory burden to business and to society more generally and should not be used in isolation to inform government

¹ Regulation can be broadly defined as the "*imposition of rules by government, backed by the use of penalties that are intended specifically to modify the economic behaviour of individuals and firms in the private sector*". Government regulation of economic activity is generally designed to correct market failures, to deliver public goods, or to achieve distributional objectives. See: <https://stats.oecd.org/glossary/detail.asp?ID=3295>

policy. In 2009, a report to the UK's Department of Business Innovation and Skills by the Better Regulation Executive (BRE) concluded that that "*Perceptions [of regulation] appear to be often more grounded in emotion than rational thought.*"² The BRE report highlighted the existence of a considerable "perception-reality" gap in the UK. These findings are supported by the OECD (2012) in a report suggesting that there may be a considerable disparity between perceptions of regulatory quality and their actual measurable results. In fact, the evidence suggests that "irritation" based on past experiences with regulation may have a greater influence on perceptions of the overall impact of regulation than actual measurable costs. This is despite the fact that "irritation factors" do not tend to be correlated with administrative burdens. It is just that irritating experiences tend to be more memorable.³ Overall, as highlighted by the OECD (2012) and BIS (2009), perception surveys invariably focus on costs and burdens, overlooking the benefits of regulation.⁴

Respondents to the UK's 2012 Business Perceptions that identified themselves as "not informed" about regulation were more likely to state that there was "too much regulation" than those which described themselves as "informed".⁵ We also question the disproportionate focus on business perceptions, without any consideration of the views of the intended beneficiaries of regulation i.e. consumers and citizens. Focusing on business views alone, a section of society with a short-term vested interest in looser regulations, is clearly not appropriate. Better regulation should be about maximizing the net benefit to society, not about minimising costs to business.

Enforcement and Sanctions

The RSPB welcomes consideration of enforcement and sanctions as part of the Inquiry. Regulations are only as good as the mechanisms that are put in place by governments to monitor and, if necessary, enforce compliance with the standards that are set. Two key considerations to take into account are the objective(s) of the regulation(s) to which inspections/sanctions relate, and the risks associated with non-compliance (in terms of likelihood and scale of impact). The goal should be to improve outcomes by maximizing rates of regulatory compliance at least cost, not simply seeking to arbitrarily restrict the number of inspections.

It should be noted there is a high degree of public interest associated with the enforcement and proper implementation of regulation, especially when that enforcement is seen to have failed. This has implications for the public's perception of the Government's competence. For example, the regulatory failings associated with the 'horsemeat scandal' and also the [Guardian newspaper's investigations](#) into how inadequate inspections had led to an increased risk of campylobacter on chicken carcasses both caused widespread public interest and concern. This led to the Government calling for *more* inspections of producers and processors in the case of campylobacter, whilst an [independent review](#) of the horsemeat scandal found that "industry, government and enforcement agencies [should] always put the needs of consumers above all other considerations."

Alongside inspections, sanctions for non-compliance are also required. Inspections should not be considered in isolation from sanctions for non-compliance. This fits with economic theory, whereby regulatory compliance behaviour is related to the relative costs of compliance versus non-compliance; rational economic actors will only comply with a given regulation to the extent that the costs of compliance outweigh the expected costs of non-compliance. The expected costs of non-compliance depend on the degree and effectiveness of enforcement and are thus a function of both the probability of getting caught in violating a given regulation (which itself depends on the number of inspections)

² BIS (2009). [Better regulation, better benefits: getting the balance right](#)

³ OECD (2012). [Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys](#). Paris

⁴ OECD (2012). [Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys](#). Paris

BIS (2009). [Better regulation, better benefits: getting the balance right](#) (Main Report).

⁵ IFF Research (2012). [Report: Business Perceptions Survey 2012](#). Prepared for NAO/LBRO/BRE

and the severity of the sanctions for non-compliance (e.g. the size of penalties). If you reduce the number of inspections (the probability of getting caught) then you need to consider changing the sanctioning regime too.

In 2005, the UK Government commissioned the Hampton Review of Inspections and Enforcement. This found “numerous examples” of situations where penalties fell far short of the commercial value of the regulatory breach and concluded that “if penalties do not reflect the advantage gained by a company in breaking the law, dishonest businesses are given further incentive to breach regulations, and undercut honest companies.”⁶

The subsequent 2006 Macrory Review of sanctions concluded that “regulatory sanctions are an essential feature of a regulatory enforcement toolkit and are central to achieving compliance. Therefore, it is important for Government to ensure that regulators have a flexible and proportionate sanctioning toolkit which also ensures the protection of workers, consumers and the environment. That toolkit should provide appropriate options to handle the regulatory needs of legitimate business as well as those businesses that intentionally and knowingly fail to comply with regulatory obligations on time.” According to the review, a sanction should “aim to change the behaviour of the offender; aim to eliminate any financial gain or benefit from non-compliance; be responsive and consider what is appropriate for the particular offender and regulatory issue; be proportionate to the nature of the offence and the harm caused; aim to restore the harm caused by regulatory non-compliance, where appropriate; and aim to deter future non-compliance.”⁷

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⁶ Sir Philip Hampton’s 2005 review, ‘Reducing administrative burdens: effective inspection and enforcement’ considered how to reduce unnecessary administration for businesses, without compromising the UK’s excellent regulatory regime:

⁷ Macrory, R. 2006. Regulatory Justice: Making Sanctions Effective. Better Regulation Executive, London.

ⁱ OECD. (2010). *Better Regulation in Europe: United Kingdom*. OECD Publishing.

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ⁱⁱ Department for Environment, Food and Rural Affairs. (2011). *The Costs and Benefits of Defra's Regulatory Stock: Emerging Findings From Defra's Regulation Assessment*.

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ⁱⁱⁱ Butchart, S. H., Stattersfield, A. J., & Collar, N. J. (2006). How many bird extinctions have we prevented?. *Oryx*, 40(03), 266-278.

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^{iv} OECD. (2014). *OECD Regulatory Compliance Cost Assessment Guidance*. OECD Publishing.

^v Hampton, P. (2005). *Reducing Administrative Burdens: Effective Inspection and Enforcement*. HM Treasury/HMSO, London.

^{vi} OECD. (2012). *Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys*. OECD Publishing.

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^{vii} European Commission. (2012). Action Programme for Reducing Administrative Burdens in the EU Final Report. Commission Staff Working Document SWD(2012) 423 final.