OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN THE UNITED KINGDOM

GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in the United Kingdom. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in the United Kingdom* published in November 2002. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Peter Ladegaard, Cesar Córdova-Novion and Rolf Alter in the Public Management Service of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in the United Kingdom. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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UK regulatory policies are anchored in a centuries old twin track tradition of informal decision-making and respect for the rule of law. With twenty years of continuous effort behind it, the United Kingdom is one of the most experienced OECD countries in regulatory reform. Privatisation and at a later stage economic policies to stimulate competition have provided a major impetus for deregulation and reform of the regulatory system, and, placed regulatory reform among recent Governments' top priorities. In recent years, regulatory policies have been broadened to include both consumer protection and market efficiency. Improving regulatory quality has increased in importance, alongside eliminating regulations.

A constant up-grading of instruments has occurred simultaneously with the establishment of an array of regulatory policies, institutions, and tools many of them innovative and unprecedented. This has formed a set of broadly efficient, transparent and accountable regulatory systems of high quality.

Successive UK governments have developed and refined regulatory policies and principles to guide the preparation of new regulations. Principles have been supported by explicit standards for regulatory quality. Recent landmarks include the White Paper "Modernising Government" of March 1999, which established broad government priorities for reform, and marked a new drive to remove unnecessary regulation. The White Paper also required departments to implement Regulatory Impact Analysis (RIA) for policies, which impose new regulatory burdens. Good regulation guides followed in the white paper's wake. The "Policy Makers' Checklist" of 1999 is an integrated electronic tool to help policy-makers identify the likely impacts of regulation. The "Good Policy Making Guide to Regulatory Impact Assessment" of 2000 set out RIA procedures for departments. The Better Regulation Task Force (BRTF) developed a set of "Principles of Good Regulation" in 1998 which have been incorporated in the RIA guide

Institutionally the Regulatory Impact Unit in the Cabinet Office (scrutiny and advice), the Better Regulation Task Force (advocacy) and the Panel for Regulatory Accountability (accountability and awareness at the political centre of government) provide a strong driving force from the centre for regulatory quality and reform. In each of the key regulatory departments a specific Minister has been given responsibility for regulatory reform. A system of satellite units, the Departmental Regulatory Impact Units, is established in each government department to carry out the day-to-day work of co-ordinating regulatory activities and advising regulators. The Small Business Service (SBS) provides a voice for small firms within government because of its strong institutionalised position in the regulatory process. Finally, a set of independent regulatory institutions is in place to provide neutral regulatory oversight in liberalised or privatised sectors, and prudential oversight of competitive markets.

Regulatory tools must be deployed in a consistent and mutually supporting manner if systemic quality assurance is to be the result. Essential tools are public consultation, communication, appeals mechanisms, compliance burden reduction measures, enforcement, consideration of regulatory alternatives, regulatory impact analysis, and mechanisms to review existing regulation. In the UK detailed formal and informal law-making requirements are in place and respected, though there is no legislation installing specific criteria and obligations for the development of regulations.

Public consultation is widely used and based on a long tradition of pragmatic and flexible approaches to effective consultation. A Code of Practice in effect from 2001 sets 12 weeks as the standard minimum period for consultation, and a 12 weeks period between when a measure is announced and implemented. The Government is active in making regulatory requirements easily accessible; a series of new steps have been taken to broaden and ease access via the Internet. In terms of administrative appeals, all British public bodies which have significant dealings with members of the public need to have well-publicised and easy-to-use complaints procedures. One central web site provides easy accessible information about complaint procedures with direct links to relevant department and agencies web sites. Most UK public bodies are within the jurisdiction of an independent Ombudsman, and judicial reviews are accessible primarily to test if regulatory decision-makers have observed due procedural standards and acted with their legal powers. To reduce the variability in the quality of enforcement, in particular between local governments, the UK government - in close involvement with relevant stakeholders - have developed an Enforcement Concordat. The Concordat is a voluntary non-statutory code aimed at helping compliance, describing what business and others can expect form enforcement officers. The vast majority of local authorities and central agencies have adopted the concordat. The United Kingdom is also active in raising awareness of compliance, among others by requiring that compliance issues are explicitly considered in the preparation of regulations. The UK has a tradition of using regulatory alternatives such as regulations based on voluntary agreements and codes. Government guidance encourages all policy makers to consider alternatives to command-and-control regulation wherever possible. This is supported by substantial operational guidance on the characteristics and uses for alternatives.

The UK government has put considerable emphasis on the development of RIAs. The current policy was established in August 1998 and requires that new legislation or regulation, which has a non-negligible effect on business, charities or the voluntary sector, has to be accompanied by a regulatory impact assessment. Substantial guidance is available for regulators and policy-makers on how to prepare RIA's. In the regulatory process special attention is paid to any burden placed on small businesses. Furthermore, on a pilot basis from February 2002, and mandatory for all RIAs from 1 September 2002, competition considerations should be included in RIAs.

Several tools are in place to reduce administrative burdens and to ensure that regulations continue to meet their intended objectives. For example, following a recent government commitment (July 2001) every government department will be required to review the impact of major pieces or regulation within three years of implementation. The Regulatory Reform Act (2001) enables ministers – subject to scrutiny by Parliament Committees – to amend or repeal laws in order to remove or reduce regulatory burdens and anomalies. Furthermore, the Public Sector Team, created in 1999, located in the Cabinet Office's Regulatory Impact Unit, work with front-line staff to identify and remove unnecessary paperwork and procedural formalities.

In sum, twenty years of continuous innovation and reform has made the United Kingdom one of the most experienced OECD countries in attempts to improve government capacities to assure high quality regulation. Results are apparent when considering the situation in the UK in the early 1980s or when comparing to other countries with a similar endowment. The institutions, procedures, and other regulatory tools in the UK now form an efficient, transparent and accountable regulatory policy relative to most other OECD countries, which should enable further progress in terms of economic development, social cohesion, and environmental priorities. In fact, the UK fulfils to a very large extent the OECD Recommendation on Improving the Quality of Government Regulation and in many aspects is confronting the challenges of building upon them and leading the analysis and application of the basic principles of good regulatory governance.

However, improvements and a leading position relative to OECD countries in defining requirements and guidelines for regulatory quality management is, as the British authorities recognise, no reason for complacency. The UK needs to persevere with its programme of improving regulatory policies and practices in the following areas.

Efficiency: The UK needs to continue to seek greater efficiency in delivering high quality regulations. As the UK moves beyond OECD guiding principles it should focus on obtaining continued efficiency-gains currently constrained by the lack of coherent and systematic cost-benefit appraisals of regulatory proposals and by an insufficient knowledge about the impact of "soft law" and regulations within government. Comprehensive evaluations of the regulatory "super structure" and the cumulative burden of regulations, not least of the multitude of regulatory institutions and control mechanisms, may also be an import step forward to keep and raise further the performance of the regulatory environment. An area for closer scrutiny is public consultation where incipient 'consultation fatigue' may be reducing the potential benefits of open and transparent rule-making, and thereby the efficiency of the regulatory system.

Transparency: Recognising the many benefits of the informal and flexible British regulatory system, a higher degree of formality and enforceable criteria may raise de facto transparency. Procedures that are informal, varying across

regulators, and based on tradition fall short of providing clear rights for citizens and obligations for the administration and they are less transparent for outsiders. Additionally, while consultation generally improves transparency, there is also a real risk that overly extensive consultation processes cloud the issues instead of enlightening and engaging the affected groups.

Accountability: Accountability is well embedded in the British regulatory system, but the complexity of the institutional structure and the informality of many procedures may blur or reduce the responsibility chain of regulatory policy-makers and the accountability for outcomes. Linked institutions and procedures evolving in an ad hoc manner also tend to complicate the possibilities for evaluating decisions and testing regulations.

Finally, though the principles and potential for regulatory quality management are permeating to the policy-making process, indications are that further efforts are required to truly embed such awareness in the administrative culture of senior policy-makers.

1. REGULATORY REFORM IN A NATIONAL CONTEXT

1.1. The administrative and legal environment in the United Kingdom

For more than two decades regulatory reform has been at the centre of economic programmes of structural reform intended to strengthen competition and the vigour of the private sector, to improve public sector quality and accountability, and empower consumer choice and influence. Privatisation and at a later stage economic policies to stimulate competition have provided the major impetus for deregulation and reform of the regulatory system, and, indeed, placed regulatory reform among recent governments' top priorities.

The UK's dynamic and complex political structure has a defining impact on the regulatory system.[1] The UK does not have a single codified system of law, courts, police, or local government. There is substantial sharing of administrative and enforcement functions with lower levels of government, although the balance of power differs among jurisdictions and is constantly shifting.

UK regulatory policies are anchored in a centuries old twin track tradition of informal decision-making and respect for the rule of law. British policy culture is informal, co-operative and voluntary, and there seems to be a relatively high level of trust between regulator and regulated. In many ways, regulation is characteristically decentralised, consensual, flexible, and non-litigious.[2]

Box 1. **Good practices for improving the capacities of national administrations to assure high-quality regulation**

The OECD Report on Regulatory Reform, which was welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this Chapter, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Assess regulatory impacts
2. Consult systematically with affected interests
3. Use alternatives to regulation
4. Improve regulatory co-ordination

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(In addition to the strategies listed above)

1. Review and update existing regulations
2. Reduce red tape and government formalities

Regulatory measures in the United Kingdom are expressed in a wide variety of legal and informal instruments — including parliamentary laws, Orders in Council, by-laws, circulars, guidance, "directions", codes of practice, and "consent agreements" for individual companies[3] — issued by multiple levels of government and private bodies (see Box 2).

Box 2. **Hierarchy of UK legal and regulatory instruments***

(1) *Primary (parliamentary) legislation.* The Parliament is the supreme legislative authority. Under the doctrine of parliamentary sovereignty practised in the United Kingdom, no body or individual has (until recently) had the power to amend or reject legislation approved by the Parliament. UK courts, for example, have traditionally had no authority to review parliamentary law. The EC Court of Justice, and UK courts, however, can strike down parliamentary law in conflict with EC law. As in many OECD countries, the trend is for the government to seek wider delegated powers from an over-burdened parliament to issue and revise lower levels of regulation without the need for new primary legislation.

(2) *Constitutional law*. The UK's constitution is unwritten and can be changed by ordinary primary legislation. These are, however, some constitutional conventions, such as that the Monarch dissolves Parliament when the Prime Minister asks him/her to, and a bill must be read three times to be valid.

(3) *Statutory instruments (secondary parliamentary legislation)*. Most primary laws provide delegated powers for either the Queen (Orders in Council issued by collective ministerial decision) or, more commonly, for individual ministers to make regulations called "statutory instruments".[4] Statutory instruments are subject to Parliamentary approval (but not to amendment), following review in most cases by the Joint Committee (of both Houses) on Statutory Instruments. A different procedure is in place for statutory instruments made under the Regulatory Reform Act 2001 (see Box 10 below).

(4) *Other provisions having statutory effect*. Detailed provisions are issued to direct (*e.g.* to nationalised industries), regulate (*e.g.* revenue), fix fees, set dates, periods, and procedures (*e.g.* for consultation), propose codes of practice,

and establish a wide array of licences and approvals. In some cases, there may be a requirement to lay such instruments before Parliament, but for its information only. Ministers' guidance to independent regulators, issued under the terms of the relevant Act, also constitutes regulation, in that it calls for particular regulatory behaviour.

(5) *Local by-laws*. Local governments have a variety of regulatory powers such as land-use planning, and they also enforce many national regulations. The quality of local by-laws and actions has improved in recent years, due to the control exercised by confirmation procedures under which central departments confirm or refuse by-laws, and the practice by central departments of drawing up model by-laws.5

Other instruments that are not “regulation" in the legal sense may also have regulatory effects. “Codes of practice," for example, may establish legal liabilities if violated.

*. Not including EU legislation.

As in most OECD countries, the volume of regulation existing is not recorded systematically. There is no centralised accounting of regulatory activities or, for that matter, any comprehensive legal code. Yet there is considerable discussion about the increasing complexity and growth of regulations.[6] The increasing volume of regulation is in part due to (1) the implementation of the European Single Market (2) new regulatory regimes to oversee competitive markets, particularly for the network industries (3) an increase in public policy concerns in areas such as food safety and the environment, health and safety at work etc. Whilst the figures in the table below show the number of regulations, they give no indication of the importance, the geographical coverage, burdens or benefits of the measures.[7]

Table 1. **Primary and secondary legislation passed in the UK 1996-2000**

	Primary legislation	**Subordinate legislation**
1996	76	3 291
1997	74	3 114
1998	55	3 323
1999	42	3 716
2000	71	3 890

Source: The Government of the United Kingdom.

In recent years an important change in the political structure has been the constitutional reform of the House of Lords and the devolution of powers to Scotland, Northern Ireland, Wales[8] and to the establishment of the new Greater London Assembly. Reform of the electoral system is also under consideration.[9] In Scotland, where devolution has been taken furthest, the Parliament and Executive now have legislative and regulatory responsibility for most aspects of domestic, economic and social policy while the United Kingdom Parliament retains control of foreign affairs, defence and national security, macro-economic and fiscal matters, employment and social security.[10] The National Assemblies for Wales does not have the power to make primary legislation, but enjoys extensive executive powers and may implement secondary legislation.[11] The continuous devolution of legislative powers from the UK parliament to Scotland, Wales and Northern Ireland creates pressure for local adaptation in areas such as regulatory quality management and enforcement policies.

As the current debate in the UK indicates, the country today faces new issues and challenges that need to be tackled to maintain its lead as a pioneer of regulatory reform. Six areas merit particular attention.

First, regulatory quality has been linked to economic performance. Several comparative studies of market regulation have shown the UK framework to be among the least restrictive in the OECD.[12] This can be related to the development of sophisticated regulatory and legal institutions and capacities. However, while real GDP per capita has remained above the OECD average, regulatory reform in the UK has taken place in the context of disappointingly low productivity growth. Although the gap in productivity between the UK and other European countries has narrowed since 1989, this seems to have been more because the rate of productivity growth has slowed in other countries than because of any noticeable improvement in the UK. (Chapter 1 of this report looks in detail at the macroeconomic context for regulatory reform in the UK).

Second, regulatory policy debates in the UK are increasingly concentrated on the performance and governance of the regulatory regimes that manage the more competitive markets established during the 1980s and 1990s in areas that had traditionally been regulated monopolies. In particular, the roles and effectiveness of the clutch of new regulatory bodies overseeing privatised industries are being re-examined. In recent years, alongside the successful and effective regulation of network industries such as electricity and telecommunications, questions have been raised about the regulatory failures apparent within sectors such as the railways. Although regulation is only one factor influencing performance, these difficulties have been associated with the initial regulatory set-up, and in all the network industries there are challenges in balancing long-term investment incentives with the interests of consumers in low prices. Furthermore, more difficult questions focus on the overall performance of the network of bodies and institutions that include not only regulators and competition authorities, but also the judiciary and legislative powers. These issues, that go beyond budgetary or purely economic aspects, address transparency and accountability challenges raised by a network of institutions forming the complex UK regulatory architecture. Some independent regulators' objectives are increasingly being directed toward delivering on equity concerns and protection of less resourceful consumers.[13] Users have generally welcomed this shift in emphasis from efficiency to a "fair deal for consumers", but it raises other concerns since there is no clear framework for where and how to strike the necessary balance between consumers and the commercial interests of the producers.

Third, the extensive informality of the British regulatory system may make it more difficult to trace its connection to principles of good regulation. A particular concern is the increased use of "soft law" or "quasi-regulation". Soft law can be defined as official guidelines, instructive letters, resolutions, recommendations etc. that (1) call for particular behaviour or steps to be taken, but (2) are not covered by procedural safeguards and requirements applicable for formal regulation. Soft law is useful in the sense that it can be more proactive, dynamic and persuasive than formal command approaches. But the lack of consistent procedural safeguards could reduce transparency[14] and the quality of the regulation, and create uncertainty about the rights of the regulated entity in terms of complaints and redress.[15] Additionally, although a continued or stronger reliance on soft law can decrease transaction costs, in those cases where requirements may not be easy for new entrants to identify, the costs of entry may rise. So, although these strong traditions of informality and the "systemic ease" with establishing new regulatory regimes and institutions have provided the UK with a flexible and responsive regulatory system, the downside of these features merit attention.

Fourth, tendencies toward a regulatory policy based on performance in stead of command-and-control based rights and obligations create new challenges for the appraisal of regulations. Some important regulatory areas such as occupational health and safety regulations have in recent years increasingly adopted general standards.[16] This means that actors are given greater freedom to determine what action will best meet the regulatory goal. It also means that the concrete content of the standard is determined by enforcement and adjudication authorities *ex post* rather that by the regulator *ex ante*. Both these effects create challenges for the appraisal of regulatory proposals since they are faced with the uncertainties of the behavioural response of actors to the standard and how the authorities will interpret it.[17] Thus, while this sort of performance-based regulation should, in principle be less restrictive, it does make it more challenging for the public authorities to appraise regulatory proposals in advance, since they will be faced

both with uncertainty about how the regulated will respond and how interpretation of the standard will develop.

Fifth, the British government has not conducted any overall evaluation or review of regulatory reform across government. Although the same could be said of most other OECD countries, it is perhaps more noticeable in the case of the United Kingdom, which has more than two decades of experience in carrying out extensive regulatory reforms. Nevertheless, many departments, regulators and oversight bodies such as the National Audit Office and Better Regulation Task Force have undertaken such reviews in particular areas. Filling out the gap could be seen as an important prerequisite for guiding and obtaining broad support for continued reforms.

Sixth, as regulations become more sophisticated and "smarter" they tend in many cases to shift the burden back to governmental structures. Although the requirements to measure impacts on business, citizens and charities are well in place and much in focus, there has until recently been less emphasis on the costs of regulation within government. Consideration and, to some degree assessment, of the regulatory burdens is being undertaken by the RIU's Public Sector Team (burdens on front line public service providers), and as part of Treasury's spending reviews and review of regulators' business plans. But the work that is already under way to make this assessment more systematic needs to be pursued.

1.2. Recent regulatory reform initiatives to improve public administration capacities

As noted, regulatory reform in the United Kingdom has since the early 1980s been a key part of successive governments' economic programmes of structural reform intended to strengthen competition and private sector vitality. Five key features of recent regulatory reforms in the UK can be identified.

First, an extensive programme of *privatisation*, economic deregulation, and targeted re-regulation was carried out. These endeavours, together with a broad-based programme to reduce regulatory costs, were prominent strategies in the effort to reduce state intervention in the economy. They also set the United Kingdom among the pioneers with respect to microeconomic reform.[18] Government economic strategies in the early 1980s intended to reinvigorate the private sector through a combination of a more stable macroeconomic environment and enhanced competition. They were designed to introduce fundamental structural reform into an economy that had suffered from relatively low rates of growth since 1960.[19] Although a privatisation strategy was not initially high on the 1979 government's priorities, it quickly grew in importance — for pragmatic as much as ideological reasons — when efforts to control public spending proved more difficult than expected, and as the financial positions of state-owned enterprises worsened after the second oil shock.[20]

Economic deregulation was accompanied by extensive *"re-regulation"* through the creation of new regulatory bodies and regimes. As monopoly providers of services in sectors such as water, telecommunication, electricity and gas were privatised, new economic regulators, independent of government, were set up. Important lessons can be drawn from the UK's experience about the difficulty of establishing competition in these sectors. These lessons have implications for the design of reform programs, specifically the weight that should be attached to competing objectives in privatisation programs and consequential institutional issues. These matters are taken up further in Chapters 3 and 5. The central role of some of the independent regulators was to foster the development of competition in the previous vertically integrated monopolies and near monopolies, as well as to control and regulate the remaining monopoly features. Since 1997 the role of some of the independent regulators has been broadened to include a wider range of distributional and consumer considerations. UK experience with independent regulators are discussed in further detail in Section 3.4. Furthermore, in the recent past the UK has been developing strategies to allow greater private sector involvement and competition in the publicly funded provision of services such as health, education, and social services. This has involved some regulatory changes, mainly within government, and the establishment of a limited number of new regulators.

Reducing regulatory *burdens on small and medium sized enterprises* (SMEs) is a third central feature. The establishment of the Small Business Service in 2000 confirmed this tendency. As a large proportion of new regulations taking effect in the UK originate in EU initiatives, the government has paid special attention to reducing costs during the transposition and to improving the quality and timely implementation of these regulations.

The fourth central feature of the recent UK experience has been *public sector reforms* to assure the quality, effectiveness and homogeneity of public service delivery. These reforms include a comprehensive "agencification" of public service delivery organisations with the purpose of focusing and specialising services and to improve efficiency and accountability.[21] The creation of an array of new agencies was accompanied by a number of complementary quality assurance initiatives such as the "Citizens Charter",[22] "Charter Mark[23]" and "Service First"[24] and the introduction of Public Service Agreements.

The establishment of arms-length agencies subject to agreements setting quantitative targets and agency responsibilities for the improvement of their services has been matched by the establishment of mechanisms to police, guide and monitor the provision of these services. Consequently, the UK has experienced a marked growth of "regulation inside government"[25] over the last two decades.[26] As noted, it has only been more recently that attention has been paid to the cost of regulation within government to determine whether it was justified, analogously to the regulatory costs imposed on business.[27] Regulatory impact assessments, however, are still not required if regulatory costs are only on government. The greater emphasis on targets and outcomes for public sector activities has been generally been held to have increased efficiency and improved public service delivery relative to the more traditional emphasis simply on controlling inputs. Nevertheless, questions have been raised about the use of targets as the key performance management tool. The National Audit Office, while generally supportive of this approach, in a recent report revealed some uncertainty whether the widespread use of outcome targets for departments' performance is a useful control and incentive mechanism. The report found worries among departments about the lack of incentives to meet targets; about the possibility to identify "high-level quantifiable measures of the intended outcomes" and about the ability to influence final outcomes.[28]

Lastly, three recent initiatives mark a continued effort to improve public sector capacities to assure high quality regulations. First, the White Paper *Modernising Government* from March 1999 set out requirements on departments preparing policies, which impose new regulatory burdens, to produce regulatory impact assessments. The White Paper also established broad government priorities on regulatory reform, stressing a new drive to remove unnecessary regulation. The white paper has been the main reference point for reforms launched since then. A number of the Modernising Government initiatives are described in detail in the following sections. The government, re-elected in June 2000, indicated its intention to accelerate reforms in the public services Secondly, in August 2000 new guidance was issued on the RIA process which required, amongst other things, an initial assessment to be made early in the policy-making process, consultation with the Small Business Service where there will be impacts on small businesses, more emphasis on the alternatives to regulation and greater clarity concerning the presentation of costs and benefits. Furthermore, on a pilot basis from February 2002, and mandatory for all RIAs from 1 September 2002, competition considerations should be included in RIAs. Third, in April 2001 *The Regulatory Reform Act* was enacted, providing ministers with a streamlined approach to put proposals to Parliament amending burdensome primary legislation. It is expected to become an important and powerful tool for the government to cull out superfluous and inefficient regulation (see also Section 4.1).

All these initiatives have been accompanied by an intense institution-building effort. Indeed, a general feature of the United Kingdom reform efforts has been the constant establishment of committees, commissions and task forces to address regulatory quality problems as — or perhaps sometimes even before — they occur. Recent initiatives include the Small Business Service, The Panel for Regulatory Accountability, and The Public Sector Team. This dynamic approach certainly reflects the flexibility and adaptability of the British regulatory management system. There is a strong and dynamic focus on

proactive measures to address "the regulatory problem of the day", and managing the tools put in place. However, launching of many new initiatives without eliminating past procedures may cause some duplication and increase compliance costs. When moving forward the UK has eliminated some past procedures and works to ensure that it can manage the multiple tools and organisations effectively. Less concern, however, has been given the overall architecture of the regulatory system.

In conclusion, reliance on free market approaches — together with an emphasis on SME-policies — have motivated regulatory reform in the UK over the past two decades. Regulatory reform in the UK continues to be directed primarily at reducing burdens on businesses, particularly small and medium-sized businesses that are imposed by national regulations. In recent years, the government has been directing the policy towards consumer "empowerment" and protection instead of focusing only on market efficiency. Improving regulatory quality has taken the step over eliminating regulations. It is recognised at political and administrative levels that public demand for regulations, particularly in health, safety and environmental areas, means that general deregulation is neither feasible nor desirable. This has meant that improving regulatory quality has increased in emphasis relative to eliminating regulations, though the UK's passing of the Regulatory Reform Act and its active programme of Regulatory Reform Orders is envisaged to be an important tool of regulatory reform.

Box 3. **Milestones in improving capacities to assure high quality regulation**

1985:	A White Paper 'Lifting the Burden' addresses the negative effect of over-regulation on business.
	Following the report's recommendations all government departments are required to provide CCAs — Compliance Cost Assessments — for regulatory measures.
1986:	A White Paper 'Building Business - Not Barriers' re-addresses business compliance costs.
	The report leads to the establishment of a central task force, the 'Enterprise and Deregulation Unit' set up in the Department of Employment. It is given power to oversee and co-ordinate the 'anti-red tape' efforts of the individual Departments.
	Deregulation Units are set up and a Departmental Deregulation Minister is appointed in each department.
	Creation of the Deregulation Task Force, an independent government advisory panel.
1987:	The Enterprise and Deregulation Unit, now named 'Deregulation Unit' is moved to the Department of Trade and Industry.
1989:	Creation of a Cabinet Committee on regulation (with ministerial membership).
1994:	Enactment of the *Deregulation and Contracting Out Act* establishing fast track procedures to reduce regulatory burdens caused by primary and secondary legislation.
1995-96:	Creation of an Advisory Panel (made up of business people).
	The Deregulation Unit is moved to the Cabinet Office.
	Seven Business Taskforces are set up look at sector specific regulations.
1997:	The Deregulation Unit is renamed the Better Regulation Unit.
	The Deregulation Task Force is renamed the Better Regulation Taskforce, and new members appointed by the Prime Minister.
	Change of emphasis from deregulation to better regulation and a greater emphasis on small firms.
1998:	The Better Regulation Task Force publishes a set of principles of better regulation, which are later endorsed by the government.
	The Compliance Cost Assessment is replaced by a Regulatory Impact Assessment.
	Assessment expanded to incorporate benefits and impacts on charities and the voluntary sector in addition to businesses.

1999:	A Public Sector Team is set up in the Regulatory Impact Unit to give "hands on" advice to public sector service delivers on how to facilitate compliance with reporting and paperwork requirements.
	Regulatory Reform Ministers are appointed in each department.
	The Better Regulation Unit is renamed the Regulatory Impact Unit.
	The Ministerial Panel for Regulatory Accountability (chaired by a Cabinet Office minister) is established to scrutinise regulation.
2000:	The government publishes a new RIA guidance.
	The Small Business Service is set up to safeguard small business considerations in the regulatory process.
2001:	The Regulatory Reform Act is passed, with over 50 potential Regulatory Reform Orders announced.
Source:	The Government of the United Kingdom and OECD.

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation."[29] The *1995 OECD Council Recommendation on Improving the Quality of Government Regulation* contains a set of best practice principles against which reform policies can be measured.[30] The content of, and formal political commitment to regulatory reform policies in the UK demonstrate a high level of consistency with these recommendations.

Since 1985, various UK governments have been developing principles of 'good regulation' to guide the preparation of new regulations in accordance with OECD best practices. The principles have been supported by explicit standards for regulatory quality established in a series of non-statutory policy documents issued by the government:

The "*Good Policy Making: Guide to Regulatory Impact Assessment*"[31] published in 2000 sets out procedural steps for all government departments and agencies to follow when developing new regulation. It provides government regulators with guidelines and requirements for carrying out consultation, estimating costs and benefits of the regulation and alternative options, securing compliance, and how to monitor and evaluate the regulation (see also Section 3.3. for a detailed discussion of the RIA). A similar *Guide to Better European Regulation*[32] applies for regulatory proposals submitted to the EU Council and European Parliament (see Section 2.3.2).

The *Policy Makers Checklist*[33] was published in 1999 as an integrated electronic tool to allow policy makers to address a range of different impact assessments. The checklist provides screening questions to help policy makers identify the areas likely to be affected by their proposals and directs them automatically to the appropriate impact assessment guidance.[34]

In 1998, the Better Regulation Task Force (BRTF), an independent government advisory group, developed a set of *Principles of Good Regulation.* The principles, which were marginally revised in 2000, have been accepted by the government and incorporated into the Governments Guide to Regulatory Impact Analysis. The principles should be met by good regulations and their enforcement to ensure that regulations are "necessary, fair, effective, affordable and enjoy a broad degree of public confidence".[35] In total, the BRTF has an array of 13 criteria for testing regulations[36] including five 'basic' principles, which are:

- Transparency — regulations should be open, simple and user-friendly;
- Accountability — towards ministers, parliament as well as the users and the wider public;
- Targeting — regulation should focus on the problem and minimised side-effects;
- Consistency — regulation should be applied coherently; and
- Proportionality — that regulatory responses fit the extent of the risk.

The BRTF's Principles of Good Regulation also outlines eight "Tests of Good Regulation and Pitfalls to be avoided" which also should be applied to state regulation as well as to alternatives to regulation. According to the eight tests regulations must:

- Have broad political support;
- Be enforceable;
- Be easy to understand;
- Be balanced and avoid impetuous knee-jerk reactions;
- Avoid unintended consequences;
- Balance risks, cost and practical benefit;
- Seek to reconcile contradictory policy objectives, and
- Identify accountability.

The numerous test criteria clearly indicate that proportionality considerations are an important aspect when testing regulations. However, there are unavoidable trade-offs among the decision criteria. And their management becomes more complex as they multiply. As a country like the UK moves beyond guiding principles of good regulatory governance and enforces a policy with focused objectives, it should be important to develop clear standards and criteria based on the principles to improve decision-making. This is particularly important, if further efforts for evidence-based RIAs are launched. In this extremely arduous field, UK may also lead OECD countries in an effort to merge and streamline the number of essential principles/criteria and to provide a set of explicit standards for each principle with a specific guidance on the tests to be applied to each of them. A further elaboration would be to develop a weighting system permitting to clarify the trade-offs between competing principles, as some commentators have tentatively done.[37]

In terms of improving the quality of existing regulation, the United Kingdom enacted in April 2001 the *Regulatory Reform Act*. As described in more detail in Section 4.1 the purpose of the Act is to widen the application and scope of the Deregulation Orders under the *Deregulation and Contracting Out Act* of 1994. It gives Ministers powers to repeal and amend by secondary legislation provisions in primary legislation, which imposes a burden. Given the limited time available for primary legislation the *Regulatory Reform Act* is expected to be a powerful tool to speed up the elimination of unnecessary burdens and regulations.

2.2. Mechanisms to promote regulatory reform within the public administration

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on schedule, and to avoid a recurrence of over-regulation. Mechanisms to promote regulatory reform within the public administration, however, are not only about installing explicit responsibilities with regulatory reform agencies and authorities, but also about designing and evaluating the overall architecture of the regulatory system. As this section indicates, the UK scores high on the first criterion, while there seems to be scope for improvement on the second criterion.

Considerable experience across the OECD has shown that central oversight units are most effective if they are independent from regulators (not closely tied to specific regulatory missions), if they work under a clear regulatory policy endorsed at the political level, if they are horizontal (cut across government), staffed with experts (have information and capacity for independent judgement), and linked to existing centres of administrative and budgetary authority (centres of government, finance ministries). The institutional set-up of regulatory institutions in the United Kingdom reflects these experiences. As in all OECD countries, the United Kingdom emphasises the responsibility of individual ministers for matters within their portfolios. Each Minister is formally seen as having a significant responsibility for the implementation of regulatory reform policy. But it is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based. To this end, the United Kingdom has also established a number of oversight bodies, which at a central government level promote and review regulatory reform. The following paragraphs describe the main institutional "players" in regulatory reform in the United Kingdom.

The Executive

The Panel for Regulatory Accountability. The Panel was established by the Prime Minister in November 1999 to "take an overall view of the regulatory implications of the government's regulatory plans" and to "ensure necessary improvements in the regulatory system and the performance of individual departments".[38] The Panel generally meets monthly and is chaired by the Minister for the Cabinet Office. Its other members are: the Secretary of State for Trade and Industry, the Chief Secretary to the Treasury and the Cabinet Office Parliamentary Secretary. The Chief Executive of the Small Business Service, and the Chairman of the Better Regulation Task Force are also invited to attend. Ministers may appear before the panel to report on their department's programmes of regulatory reform and to justify specific costly or controversial proposals. Ministers also report to the Panel on the regulatory activities and performances of their department.[39] The Cabinet Office Regulatory Impact Unit provides the secretariat support to the Panel.

The Regulatory Impact Unit (RIU). The RIU forms a part of the Cabinet Office. It monitors, reports and advocates progress on regulatory reform across the government. A central unit with these overall functions — though under different names, responsibilities, and departmental attachment — has been in place since 1986.[40] The Unit also produces guidance for and reviews regulatory impact assessments on domestic and EU legislation, it manages external communication of the government's policy on regulatory reform and it takes forward practical projects to minimise the burden of regulation in the public sector. In addition, the Unit acts as secretariat for the independent Better Regulation Task Force (below). The RIU is staffed by civil servants, most of whom are on secondment from departments for typically two years[41] as well as business people and professionals seconded from the private sector. By end 2001 RIU counted 61 full time employees, 44 with less than two years experience in the Unit.[42]

Departmental Regulatory Impact Units (DRIUs). RIU is at the centre of a system of satellite units, the DRIUs, established in each government department. The DRIUs carry out the day-to-day work of co-ordinating regulatory activities and advising regulators. Although the DRIU's line management lies entirely within their own departments, they are also in act as independent filters culling out burdensome regulations and poor quality cost assessments. They are responsible for giving departments advice on which other advice to seek and which procedures to follow. Involvement of the DRIUs in the preparation of RIAs varies, depending among others on the expertise of other involved parties in the department already working with the regulation in question. The staffing and expertise of DRIU's vary across departments depending on how much regulatory business is done in their area. There are between 1 and four staff in the DRIUs.

Regulatory Reform Ministers. In each of the key regulatory departments a specific Minister has been given responsibility for regulatory reform. They are charged with removing any regulations which are outdated or burdensome, and to ensure that the new regulations are not introduced unless they are necessary and impose the minimum cost to business.[43] Departments report their regulatory performance to Cabinet Office, and Reform Ministers report to the Panel for Regulatory Accountability on progress on regulatory issues, including how many new regulations each government department has introduced and how many it has abolished.[44] RIAs are signed off by the Minister responsible for the policy (who may or may not be the Regulatory Reform Minister in the relevant department).

The Small Business Service (SBS). SBS was established in April 2000 to provide a single organisation dedicated to helping small firms and representing them within government. The main objectives of the SBS are to provide a strong voice for small firms within government, to simplify and improve the quality and coherence of support to small firms; and to help small firms deal with regulation and to ensure that small firms' interests are properly considered at the earliest possible moment. SBS has a strong institutionalised position in the regulatory process, for example the right to have its views recorded in the RIA in a wording of its own choice. As per June 2001 the SBS had a total staff of 281 of out which 27 are concerned with regulatory issues.

Treasury. Treasury is not formally involved in the regulatory appraisal procedure and is not involved in policing the quality of RIAs. There are however close contacts between RIU and Treasury via the Treasury DRIU and the Treasury spending teams monitoring department spending. Furthermore, a senior Treasury Minister sits on the Panel for Regulatory Accountability. Informally, among others through performance appraisals of departments and agencies, Treasury has an important role in assessing existing regulations and the quality of enforcement.

Parliamentary Counsel Office (PCO). The PCO drafts the Government's primary legislation other than that relating exclusively to Scotland. The Office also "vets" all secondary legislation which amends primary legislation. The Office employs around 40 lawyers who specialise exclusively in the drafting of Bills for the Government. The Office is responsible for ensuring that legislation is of generally high legal quality (*i.e.* consistent with existing legislation, implements the policy effectively). The drafters

are not responsible for designing policy. Ministers and departments "instruct" the drafters on the policy which the legislation is to implement. The PCO also advises Ministers and their Departments on aspects of the Parliamentary handling of Bills, and on occasion, provides legal advice to Parliament.

Independent bodies linked to the government

The Better Regulation Task Force (BRTF). The BRTF is an independent advisory group established in 1997 to

> *…advise the Government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, simple to understand and administer, taking particular account of the needs of small business and ordinary people.*[45]

The Better Regulation Task Force replaced the Deregulation Task Force set up by the previous government. The Prime Minister appoints members in their personal capacity, for the first instance for two years. The 18 members are unpaid and come from a variety of backgrounds - from large and small businesses, citizen and consumer groups, unions, the voluntary sector and those responsible for enforcing regulations. The Task Force members and its publications have had a strong influence on setting the regulatory reform agenda in the United Kingdom. This is by many attributed to the Task Force's chairman since 1997 who enjoys high respect in government and in the business community. The Task Force is supported by staff from the Cabinet Office Regulatory Impact Unit. The Task Force's major single achievement has been the preparation and the government acceptance of its "Principles of Good Regulation" which all government regulations shall now meet.[46] (See Section 2.1) The Task Force undertake discrete studies of particular issues, primarily selected and chosen by the Task Force itself, but on occasion by request of the government. The Task Force often takes up issues that are being intensively discussed in the media. All reports are endorsed by the full Task Force, and then sent to the relevant Ministers asking for their responses. The Prime Minister has instructed Ministers that they must respond to the BRTF reports within 60 days of publication. The Task Force regularly reviews how Ministers and departments have acted on recommendations in earlier reports. The government has taken up and implemented a large proportion of BRTF's recommendations.[47]

Parliament

Parliament Committees. The Joint Committee on Statutory Instruments is required to consider all statutory instruments made by ministers, whether laid before Parliament or not. (with the exception of those made under the Regulatory Reform Act, see next paragraph). It determines whether the special attention of the House should be drawn to the instrument on a variety of grounds, including doubts about its legal basis, drafting defects, and so forth. It draws a "rigid" line between, on the one hand, policy and merit, and, on the other hand, technical/legal matters, and declines to review the former. The Committee several times a year publishes reports on legal drafting errors. This public review is considered an effective method of raising the standards of drafting, from a point of view of form and legality.

Two other parliamentary committees — the Deregulation Committee in the House of Commons and the Delegated Powers and Deregulation Committee in the House of Lords scrutinised ministerial proposals under the 1994 *Deregulation and Contracting Out Act* and now - as the Regulatory Reform Committee in the Commons and the Delegated Powers and Regulatory Reform Committee in the Lords - under its successor, the 2001 *Regulatory Reform Act*. In addition, there are the Public Accounts Committee which has powers to demand information and personal appearances from ministers, as well as other Standing and Select Committees which scrutinise departmental activities.

The National Audit Office (NAO). The NAO investigates a wide range of issues and has the discretion to decide how to undertake those investigations. It has used this discretion to produce a number of reviews of regulatory capacities and practises in various sectors and departments.[48] This has contributed to setting the regulatory reform agenda in the United Kingdom by pointing to important regulatory challenges in areas such as performance management of public sector agencies, and utility regulation. The NAO has conducted a wide-ranging review of the RIA process.[49]

In conclusion, the United Kingdom has over the past 20 years progressively built a series of generalist and specialised bodies to drive the regulatory reform policy. The large number of bodies with specific responsibility for elements of regulatory management and reform constitutes an important strength of the British system, as reform is carried out across a broad front and has numerous supporters or "champions". The large number of bodies also reflects a high degree of dynamism and pro-activeness. At the same time, this complexity of bodies poses a challenge for a swift and effective co-ordination and for ensuring that launching new initiatives and establishing new institutional players is accompanied by the abolition of old organisations and processes to avoid duplication and a rise in the cost of government.

Box 4. **The regulatory decision-making process at a glance**

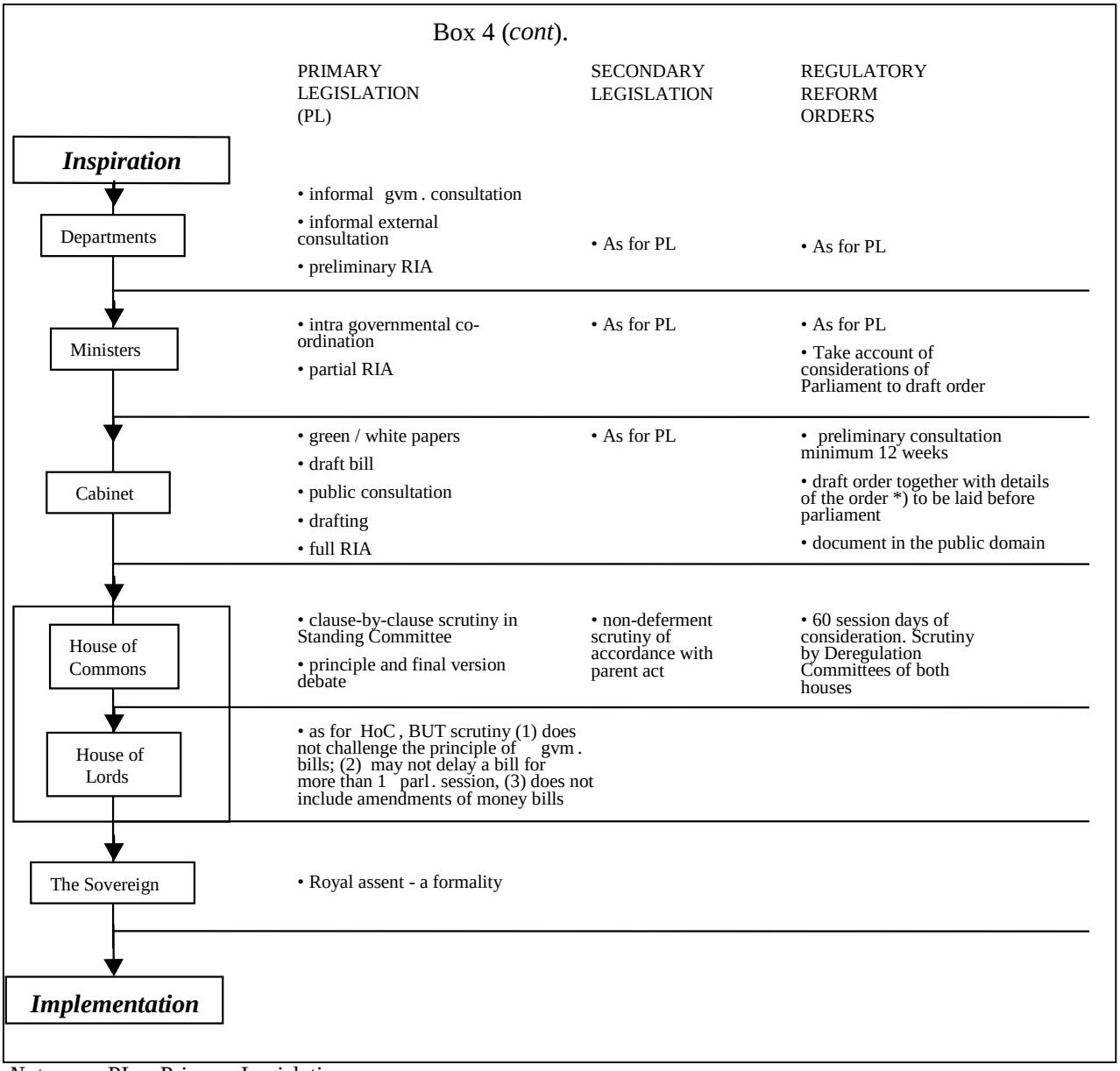
All subordinate regulation and almost all bills originate in the government. Policies to be embodied in primary legislation must be approved by Cabinet before the bill is drafted and approved for presentation to Parliament. Extensive consultation within government and with interested bodies takes place as proposals are developed. Proponent departments — policed and guided by the Cabinet Office — are responsible for ensuring that other departments with an interest are consulted at an appropriate stage and that the necessary collective agreement is obtained. Once the Government has decided to introduce new legislation, consultation will often take place before it is introduced to Parliament. But in some cases, typically when the legislative action is required urgently, the legislation will be introduced immediately. Comments from interested parties will then be taken into account during the process of the passage of the legislation through Parliament. Draft Bills are always supported by a Regulatory Impact Assessment.

Consultation within government is based on long-standing traditions and informal rules as well as explicit government policy and guidance.[50] Proponent departments are responsible for ensuring that other departments with an interest are consulted at an appropriate stage and that the necessary collective agreement is obtained. The Cabinet Office Regulatory Impact Unit has a leading role in the co-ordination of proposals for regulations which would have an impact on business, charities and voluntary organisations. The actual involvement of RIU depends on the economic and policy implications of the proposal. RIU has no formal power to block departments' or government proposals for regulation if they do not reach expected quality standards. However, early and if needed intense internal consultations between departments normally enables the presentation of cross-departmentally consolidated proposals before they are sent to Cabinet for political discussion. In the infrequent cases where such agreement cannot be reached and as an effective deterrent to Cabinet consideration of the proposal, the Minister for the Cabinet Office can inform Cabinet colleagues that he is in disagreement with the regulatory impact assessment.

To become *law*, generally speaking, bills must be passed by both the lower House of Parliament (the elected House of Commons) and the upper House (the unelected House of Lords) receive the assent of the Queen (a formal matter).Bills may be amended in both the Commons and the Lords and in some cases are rejected. But there are special constitutional provisions whereby the Lords can only delay the passage of various Bills originating in and passed by the Commons; and whereby the Lords does not amend bills concerning taxation. Since the British Westminster parliamentary system (as a nearly historical rather than constitutional fact) gives the governing party a majority in the Commons the majority of government bills progress to royal assent. Bills are usually scrutinised by Parliamentary Committees prior to debate on the floor of the House and frequently emerge in considerably amended form, although the government's majority usually ensures that only amendments which do not alter the character of the bill are passed.

Parliamentary scrutiny of *subordinate regulation* (statutory instruments — (SI)) is not concerned with their merits. It rather focus in assuring that delegated power to the government is in accordance with provisions in the Parent Act.[51] *Regulatory Reform orders* under the Regulatory Reform Act are a special form of Statutory Instruments. Due to wide powers given to ministers special — and statutory — safeguards are set up in the parliamentary scrutiny process. This includes thorough examination of all proposed Orders in Select Committees in each House.

Box 4 (*cont*).



Note: PL = Primary Legislation.
Source: FCO (2000); House of Commons (2001).

2.3. Co-ordination between levels of government

The 1997 OECD Report advises governments to "encourage reform at all levels of government". This difficult task is increasingly important as problems and regulatory responsibilities are shared among many levels of government, including supranational, international, national, and subnational levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform.

2.3.1. National - Local

In the United Kingdom government administration is carried out by 18 ministerial departments, 23 non-ministerial departments (including sectoral regulators), 121 executive agencies, 1 035 non departmental public bodies and 468 local authorities.[52] Although the United Kingdom is a national system where Westminster is in charge of most of the regulatory policy, a strong tradition and recent initiatives have given local governments a stronger say in regulatory matters. The structure of local government varies by region.[53] The complex pattern of local authorities regulates directly and, more importantly, enforces many regulations established in national departments.

During the 1980s and until 1997 the powers of local government were reduced both in terms of regulatory powers and local spending discretion.[54] For example, a substantial number of the reform activities carried out under the Deregulation Initiative (1994) targeted local governments. An important purpose was to target inconsistency of interpretation and implementation by local governments of national laws and regulations. However, local governments still have a variety of regulatory powers such as land-use planning and approval of business licenses. Much government service delivery is carried out at lower levels of government.

The quality of local by-laws and actions has improved in recent years, due to the control exercised by confirmation procedures under which central departments confirm or refuse by-laws, and the practice by central departments of drawing up model by-laws.[55] The government consults with local government authorities as early as practicable on policy developments that affect local government, including the preparation and planning of new legislation. This is particularly important because of the major role in implementation and enforcement played by local governments. The relationship between the central government and local governments in England, Wales and Scotland is formalised in agreements specifying the framework for co-operation, common obligations and commitments, whereas for Northern Ireland the framework for co-operation is specified in law.[56] Co-ordination and follow-up on local government service delivery has traditionally taken a "silo approach" — sector by sector, top down from the central level to the local level, rather than a cross-departmentally standardised approach. Several recent initiatives such as three years Spending Reviews, the Enforcement Concordat, Best Value programmes, etc. have been set up to support homogeneous implementation, compliance and efficient service delivery. However, there is no evidence available on the effects of past and recent initiatives to uniform local interpretations and implementations of national law.

2.3.2. Co-ordination with devolved administrations

Co-ordination with devolved administrations is set out in a *Memorandum of Understanding* between the UK government and the devolved administrations[57] and bilateral departmental concordats. Most co-ordination between the UK government and the devolved administrations is carried out on a bilateral basis. A Joint Ministerial Committee consisting of the Ministers for the UK government and the devolved administrations carries out central co-ordination.[58]

2.3.3. European level

According to the British government around 40% of new regulations with a significant impact on business taking effect in the UK have their origin in EU initiatives. Improving the quality and timely implementation of these regulations is seen as an important step in producing a better regulatory climate in the United Kingdom.

In transposing European Directives into UK law, a broadly similar process of impact assessment must be made as for regulations introduced on a domestic UK initiative. The government's "Guide to Better European Regulation"[59] sets out procedural and substantive requirements and advice for policy makers, administrators and legal advisers who are involved in the negotiation, implementation, or presentation of EU legislation, in particular when implementing EU directives.[60] This includes criteria for preparing RIAs, internal and external consultation procedures etc. The guidance not only goes into procedural requirements and advice on how to improve the technical quality of the EU regulation. Strong emphasis is also laid on the strategic and iterative aspects of the EC regulatory procedures: "…the best outcome may not [be] achievable, so the UK is then in the business of securing the best deal it can".[61] The European Secretariat in the Cabinet Office is responsible for driving forward and co-ordinating the government's EU regulatory activities. It also co-ordinates on legal questions and it is a mediator when agreements cannot be reached between departments. Departments are required to consult the Secretariat "as necessary throughout the negotiating process, particularly where any UK difficulties might arise".[62] As for domestic regulation, any Cabinet correspondence that identifies significant policy, legislative, or regulatory proposals must contain a passage on the regulatory burden. This passage should be agreed with the Cabinet Office's Regulatory Impact Unit in advance. The Parliament is also involved in scrutinising proposals for EU regulation.[63]

The uneasy overlay of European Community regulation, drawn from the European civil law tradition, upon the common-law legal system of the United Kingdom has been arousing debate and criticism. The common-law-based UK approach to detail and precision is sometimes at odds with the civil-law style of EU regulations. British implementation of EU directives is also often accused of 'gold-plating' or over-implementing EU directives. This critique is sometimes focussed on the sheer length of the directives when implemented into UK law. This "enlargement" of the directives, however, may also be due to British practise of writing penalties and sanctions into the law and of complementing directives with guidance to provide the regulated with as much certainty as possible (*e.g.* examples of the types of behaviour that would be considered in compliance or not with the regulation).[64] Furthermore, the phenomenon of 'double-banking' — the simultaneous existence of parallel UK and EC legislation[65] — has led to some confusion about the jurisprudence in force.

Fostered by such considerations, the government has taken several safeguards and initiatives to address such real, imagined or potential over-implementation of EU legislation. The 'Guide to better European Regulation recognises the temptation and limits of the traditional approach in UK legislation: "Despite the obvious desirability of offering as much certainty as possible….it may sometimes be impracticable to do so".[66] To avoid 'gold-plating', the Guide also requires departments to consult with the Cabinet Office Regulatory Impact Unit whenever risks or possibilities for over-implementation arise. More importantly, the authorities given to Ministers in the newly passed *Regulatory Reform Act* enable the removal of 'double-banking' without having to go through traditional and time-consuming Parliament procedures for eliminating superfluous legislation. The UK has been considered to be slow at implementing EU legislation, transport and public procurement being particular problem areas. But recent figures indicate that the UK initiatives are now bearing fruit: the UK is now among 7 out of the 15 EU countries that have met the target for 98.5% on-time transposition of European Directives.

As part of its re-election policy proposal the government has in June 2001 announced its continued commitment to better regulatory discipline in the European Union.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATION OF HIGH QUALITY

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps insure against undue influence by special interests. Just as important is the role of transparency in reinforcing the legitimacy and fairness of regulatory processes. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeals processes that are predictable and consistent.

The British regulatory system is one of the most elaborate and transparent among OECD countries, but room for improvements exists. The most important and overarching challenge seems to move the numerous and *effective* transparency mechanisms further toward more *efficient* arrangements.

3.1.1. Transparency of procedures: transparency in rule making

Transparent and consistent processes for making and implementing legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the formulation of laws. In the majority of OECD countries, such procedures are established in legislation.[67] These specify matters such as requirements for transparency and consultation (within and/or outside government), publication, scrutiny by legislatures, and due process for appeals. Such laws can also be supplemented by decrees or other policy statements.

Except for registration and publication requirements for statutory instruments, the United Kingdom has no general law placing obligations on the government for the development of regulation similar to what exists under an administrative procedure law in many other countries.[68] One exception to this, however, is the *Regulatory Reform Act*, which gives ministers a power to amend or change existing burdensome legislation. The Act has built-in procedural requirements on consultation, communication, impact assessments etc. (See also Section 4.1.)

Despite the absence of legislation, detailed formal and informal law-making requirements are in place and respected. In general, procedures to elaborate laws and regulations are non-statutory. Transparent procedural requirements are assured in most policy fields in the form of well-established practices and guides issued by the government or independent regulators. This machinery is evolving on a case-by-case basis, leading to different rules for different sectors. Thus, for example, the guide “Good Policy Making: A Guide to Regulatory Impact Assessment” and “Policy Makers Checklist” set out guidance and steps for all government departments and agencies to follow when developing regulations and policy proposals, and the “Consultation Code of Practice” sets standards for consultation documents issued by the government. Regulations made by independent regulators are not constrained by these guides,[69] and these authorities have developed other standards and practices, although often similar to government guidance.

Procedures that benefit from a greater degree of formalisation would increase transparency for outsiders. In a globalised world where regulatory stakeholders — citizens and business — are not only nationals, such benefits become bigger. In many ways quality regulation can be considered a right for citizens and an obligation for the administration. The formalisation of such rights and obligations can provide even stronger safeguards and more predictable results. So, although strong traditions of informality have provided the UK with a flexible and responsive regulatory system, the UK should consider whether there might be benefits in a stronger formalisation of the rights of the regulated.

3.1.2. Transparency as dialogue with affected groups: use of public consultation

Public consultation gives citizens and business the opportunity to have active input in regulatory decisions. A well-designed and implemented consultation programme can contribute to higher-quality regulations, identification of more effective alternatives, lower costs to businesses and administration, better compliance, and faster regulatory responses to changing conditions. Just as importantly, consultation can improve the credibility and legitimacy of government action, win the support of groups involved in the decision process, and increase acceptance by those affected. Studies of consultation practises in across OECD countries have stated that best practice consultation programmes include the following characteristics:[70]

- Consultation programmes must be flexible enough to be used in very different circumstances.
- Consultation is more effective when information is made available earlier, although consultation must be timed to the regulatory process.
- Communication with consulted groups can be improved by making information more accessible at lower cost.
- Consultation should be broadly based and balanced, structuring a continuing dialogue with a wide range of interests.
- Consultation processes themselves must be transparent.
- Cost-effectiveness of consultation could be improved through more investment in evaluation and review of current consultative approaches.
- Consultation is more than just a set of procedures. A habit of consultation must be built into the administrative culture of regulatory organisations.

Public consultation in the United Kingdom is highly used and based on a long tradition of pragmatic and flexible approaches to effective consultation. There is no general legal requirement for consultation, though some laws require consultation in specific cases.[71] Consultation with businesses during regulatory development has been required by government policy since 1985, and has been expanded and reaffirmed in subsequent years as important components in other government initiatives such as the Deregulation Initiative, Modernising Government and most recently with consultation guides published in 1998 and 2000 (see below).

In June 1998 the government published a guide on "How to conduct written consultation exercises - An introduction to central government". The guide set out best practice for departments and agencies when producing and issuing consultation documents and taking follow-up actions. It did not set out hard and fast rules, but stated that departments must have good reasons for not following the best practice principles in the guide. Following a commitment in the guide to evaluate the guide on a regular and systematic basis and make results public, an evaluation was published in early 2000. Among the main findings of the evaluation were that.[72]

- Most departments were aware of the guide, but less than half used it;
- The quality of consultation documents varied between departments;
- Most departments did not monitor centrally the quality of consultation exercises;
- Those being consulted cited inadequate response times as a major concern;
- External organisations said departments did not publicise the results of consultations enough;
- Business and trade union organisations expressed concern over the way in which the views of organisations were weighted.

In response to this evaluation the government introduced in November 2000 a package of measures to improve public consultation, including a new code on practise on written consultation and the commitment to set up a register of current consultations to bring together all main written consultations going across government. The changes in consultation procedures came into effect by 1 January 2001. The Code on written consultation applies to all UK departments and agencies, but not to devolved administrations, non-departmental public bodies and independent regulators, even though the latter two are encouraged to apply it. One of the central improvements of the Code of Practice was the setting of twelve weeks as the standard minimum period for a consultation. This may be an important element to counter concerns regarding a very limited but important consultations carried through by "emergency" procedures that by-passed normal consultative practise. The code also encouraged departments to improve the co-ordination and accessibility of consultation documents inside the government. Finally, the code introduced a set of consultation criteria to be followed in all consultation documents of all UK departments and agencies (see Box 5). In parallel with setting 12 weeks as the standard minimum period for consultation, the British Government announced a 12 weeks period, between when a measure is announced or guidance issued and when it is implemented.

Box 5. **Consultation criteria for government regulations in the United Kingdom**

The criteria should be reproduced in any government consultation documents, with an explanation of any departure, and confirmation that the criteria have otherwise been followed.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

Consultation is an integrated part of the Regulatory Impact Assessment process mandatory by government policy for all departments and agencies. Policy-makers and regulators are encouraged to consult informally with important stakeholders at an early stage of preparing regulatory impact assessments, paying particular attention to small businesses, in consultation with the Small Business Service. In preparing the partial RIA, proponent ministries may "take some early soundings from those likely to be affected".[73]

In the case of independent regulators such as the Office of Telecommunication (Oftel) and the Office of Gas and Electricity Markets (Ofgem), their parent law normally sets out broad requirements to follow in consultation procedures (see Section 3.4).

A well-recommended practice to safeguard transparency during rulemaking consists in establishing and enforcing the procedure commonly known as '*notice and comment'*. In the UK this practice - pioneered by the United States in 1946 and now mandatory for all new technical standards under WTO obligations - is not yet generalised. Individual departments though, announce proposed regulations and make them available in advance. Furthermore, the Government provides access from one Web site[74] to all government proposals available. The register provides the central listing of all the main consultations in progress or finished. At a later stage it will contain a summary of responses and links to each consultation document. The register will also permit e-mail notification to anyone who asks for it about consultations in areas that interest them; along with a register of forthcoming consultations permitting people with views to prepare themselves, and departments to join up their efforts.[75] The consultation process will also include direct contact with the relevant trade associations, the Small Business Service, the business affected and other stakeholders.[76]

The UK government routinely publishes consultations in Command Papers when preparing major reforms. The UK central government produced 338 Command Papers in 1999 and 408 Command Papers in 2000. The number of consultations is higher than those in command papers. There is no oversight of how many consultations are issued annually. As noted above, the public consultation procedures in the UK are highly developed and effective. However, as the UK moves beyond general OECD good practices, the potential of public consultation within the current set-up may be reaching its limits in terms of providing participative, efficient and value-adding contributions to the process. Observers and participants in the regulatory system have noted that the increasingly extensive consultations are beginning to overload the capacities among the interested parties to respond.[77]

In conclusion, the British system of public consultation is consistent with international good practices for flexibility, transparency and accessibility. A 'notice and comment' requirement would strengthen the system further though. Yet, paradoxically, there is a risk that the substantial amount of consultation papers jeopardises the quality assurance and participatory aspects of the consultation procedures. The risk associated with this potential "consultation fatigue" is that the real efficiency of consultation may become much lower than its apparent effectiveness indicates: Interested and affected parties may not have the resources to participate equally or even to select their participation rationally.

3.1.3. Transparency in implementation of regulation: Communication

The British government is active in making regulatory requirements easily accessible to the population. It has recently taken a series of new steps to broaden and ease access via the Internet. The full text of all new primary and subordinate legislation in the United Kingdom is available from an easy searchable web site managed by Her Majesty's Stationery Office. The documents are placed on the Internet simultaneously or at least within 24 hours of their publication in printed from. There are bound volumes of the Acts and Statutory Instruments for each year. These are published chronologically.[78]

Primary legislation has effect from the moment when Royal Assent is given.[79] There are no rules stating that failure to include primary legislation in a public register prevents its enforceability. Secondary legislation has no effect until it is published by the Queens Printers. Whilst there is no single consolidated register of all primary and subordinate regulation currently in force, there are commercial publications, on-line and CDRom sources of data and various departments and NGOs issue guides to sections of the legislative code. In practice access to existing regulation is easy, in particular via the Internet. When preparing new legislation the staff in the Parliamentary Counsel Office rely on advice from the department sponsoring their legislation, research and searchable databases etc. to identify the potential conflict and overlap with other pieces of legislation. There is no general policy requiring "plain language" drafting of regulation.[80] The centralisation of all primary law drafting in the Parliamentary Counsel Office, however, is an important safeguard for the legal quality and consistency of primary legislation. The Cabinet Office's "Good Policy Making: A Guide to Regulatory Impact Assessment" requires that " guidance [to regulations] should be as short, simply expressed, and jargon-free as possible".[81]

3.1.4. Application, compliance and enforcement of regulations

The adoption and communication of a law or regulation is only part of the regulatory framework. The framework can achieve its intended objective only if each law is adequately applied, enforced and complied with. A mechanism to redress regulatory abuse must also be in place, both as a fair and democratic safeguard of a rule-based society, and as a feedback mechanism to improve regulations. The United Kingdom in all these issues shows commitment and intention for further progress beyond its already high level.

A fundamental feature of regulatory justice is the existence of clear, fair and efficient procedures to appeal administrative decisions based on a regulation as well as the regulation itself. Anchored in the British traditions of 'due process' and rule of law, the United Kingdom has a panoply of procedures to protect the rights of citizens and businesses against bad regulations and regulatory decisions.

In terms of administrative appeals, all British public bodies which have significant dealings with members of the public need to have well-publicised and easy-to-use complaints procedures.[82] One central web site provides easy accessible information about complaint procedures with direct links to relevant department and agencies web sites.[83] Some public bodies have their own external adjudicator.

The second route for complains is to an Ombudsman. Most UK public bodies are within the jurisdiction of an independent Ombudsman. The accessibility to ombudsmen's services, however, are constrained by several factors. Firstly, complaints to ombudsmen about central government cannot go directly to an ombudsman. They must be put first to a Member of Parliament, who would then bring the case to the ombudsmen. Secondly, the ombudsman functions are spread across a large number of different ombudsmen with different jurisdictions, powers and processes making accessibility less easy.[84] The UK government is aware of and concerned with this. A Cabinet Office report in April 2000 concluded that the current legislative provision for the ombudsmen is restrictive and is distorting the service.[85] The report recommended a radical overhaul of the ombudsmen institutions. The UK government is now considering the report. The *Human Rights Act* 2000 provides further safeguards and possibilities of appeal of regulatory decisions.

Lastly, a plaintiff may launch a judicial review, either to appeal to the courts an alleged abuse of discretion by decision-makers or an appeal against regulators appealing the validity of the regulation itself. Judicial review is sometimes seen, in the absence of a general administrative law, as an agent for promoting good administrative procedures throughout the administration.[86] The circumstances under which the courts can review the exercise of decision-makers' discretion on substantive grounds are limited, and on issues not involving human rights issues the intensity of the courts' review is likely to be low. Normally, the courts do not measure the weight a decision-maker gives to a relevant consideration.[87]

Review can, however, cover not only whether public bodies have acted within their legal powers in a narrow sense, but also whether they have observed the canons of "natural justice" through the application of minimum standards of fair decision-making, rationality, and procedural proprietary.[88] There is a growing tendency for judicial review to be sought of regulations of major economic or commercial significance, and even of constitutional questions. In 1999, out of 4 959 applications to the High Court for permission to apply for judicial review, 1 373 were granted.[89] Access to judicial review is constrained. Except in Scotland, an application to the High Court takes place in two stages. First a single judge of the Court considers whether there is an arguable case. If there is, he grants permission to proceed to a full hearing before a panel of judges. The application must be made in any event within three months of the action or decision, which is complained of.[90] In sum, judicial review is limited to issues of legal authority, fundamental procedural fairness, and gross proportionality to proper purposes, while it is nearly impossible to appeal the content of a regulation.

Enforcement. The United Kingdom has a strong tradition of local government through which substantial regulatory authority is wielded. As local authorities tend to regulate directly and, more importantly, enforce many regulations established in national departments, different patterns of enforcement coexist. However, no harmonisation exists. The strictness of enforcement will vary from one jurisdiction to another or even between one policy area and another in the same jurisdiction. Moreover, a certain strategic attitude can be perceived: a local authority or government may want to influence business expansion and development through a more flexible enforcement of planning and licensing. In addition, concerns about the burden on local governments of enforcing an ever-increasing number of regulations have given way to broader concerns about the quality and capacity of local authorities to apply and enforce properly the whole regulatory framework. A situation compounded by the inconsistency in enforcement strategies and interpretation, as businesspeople have complained.

To reduce as far as possible and desirable the variability in the quality of enforcement, UK governments have launched a number of initiatives which have targeted local governments.[91] A recent innovation has been an approach based on co-operation between enforcers and those subject to enforcement, by developing an *Enforcement Concordat* with the close involvement of representatives of business, the voluntary sector, the enforcement community and consumer groups. The Concordat is a non-statutory code that describes for businesses and others what they can expect from enforcement officers, with the emphasis on helping businesses to comply, on the basis that prevention is better than cure. Central and local government enforcement bodies commit themselves voluntarily to its principles and procedures. The Enforcement Concordat sets out six principles for enforcement agencies' practices. The principles are service standards, openness and plain language, helpfulness, publicised and timely complaints procedures, proportionality in actions, and consistency. The Concordat also sets out procedures for communication of advice, requirements and actions. Enforcement authorities adopting the Concordat commit themselves to production of an implementation plan setting out any changes that are needed to their procedures or officer training to ensure compliance with the Concordat. Adopting authorities are also required to produce an annual report on their performance against the Concordat. By the end of 2001, the Concordat had been adopted by 96% of local authorities in England and Wales, by all the local authorities in Scotland and by the vast majority of central government agencies.

Provisions provided in the recent Regulatory Reform Act give Ministers a reserve power to set out a code of good practice in enforcement if problems are encountered in the voluntary approach of the enforcement concordat. The power is intended to counter unjustifiably inflexible or over-zealous enforcement. It would provide a safeguard if problems were encountered with the voluntary approach. The intention is to provide assurance to business, the voluntary sector and others that the government would be able to bring pressure to bear on enforcers that failed to apply best practice along the lines of the Concordat. A code made under this power would not be directly binding on enforcers. But businesses found by a court or tribunal to be in breach of a statutory requirement would be able to ask for the enforcer's failure to follow the code to be taken into account in determining the appropriate penalties, award of costs or other action.

Compliance. Good regulation does not consist only in having well-drafted legislation in place, and proper and effective enforcement mechanisms. A crucial performance instrument for any regulation is the degree of compliance it generates.[92] Assessments of compliance are seldom part of the regulatory process in OECD countries. Though no general study has been made on the issue[93], the United Kingdom is in the forefront of OECD countries in raising awareness among rule makers about the issue. Government policy and guidance on the preparation of regulations include explicit considerations on securing compliance. Policy makers are encouraged to consider a variety of compliance factors, including taking a balanced approach between high compliance and (over-) active enforcement. In this respect, British practices come close to the Dutch "Table of Eleven" process[94] in identifying compliance issues *ex ante*.

3.2. Choice of policy instruments: regulation and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In the OECD area the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of the applicability of market mechanisms increases. At the same time, administrators, rule-makers and regulators often face risks in using new tools. A clear leading role — supportive of innovation and policy learning — must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

The performance of the British system in adopting a wide range of policy instruments is generally strong. The UK has a tradition of using regulatory alternatives such as regulations based on voluntary agreements and codes. Compared to other OECD countries, the British regulatory system presents strengths, considerable experiences and potential for maintaining its dynamic and progressive use of alternatives to traditional control-and-command regulation. The range of policy instruments in use includes taxes on specific substances and products, grants and investment schemes for environmentally sound behaviour, voluntary agreements with industry and information programmes. Policy instruments also include the use of advanced regulatory arrangements in which traditional command-and-control regulation within one regulatory scheme is combined with alternative instruments.[95] Government guidance encourages all policy makers to consider alternatives to command-and-control regulation wherever possible. This is supported by substantial operational guidance on the characteristics and uses for alternatives.[96] The RIA system requires that alternatives be identified and assessed in the impact assessment. This gives high transparency and accountability as to the choice of regulation over other options.

Commitment to the use of alternatives is patent in a report on the "Government's use of Alternatives to state Regulation" published by of the Better Regulation Task Force in July 2000.[97] The report reviewed 54 schemes mapped according to the level of state underpinning, whether the scheme was compulsory or voluntary, the nature of risk and the extent of risk. The main purpose of the review was to investigate if there was any relation between government involvement in the regulation according to the level of risk exposed to the regulated. The underlying assumption was that high and intense government involvement would be found in areas of high risk, and vice versa. The report found that the state was involved in alternative regulatory schemes for a variety of reasons: To provide information, to raise standards, to protect vulnerable groups etc. The report demonstrates the big variety of alternatives in use, their use across different sectors and the high level of sophistication in some regulatory schemes. The report's main conclusions were mixed: the government use of alternatives was varied and inconsistent: There was no strong correlation between levels of risk and the degree of state involvement in regulatory solutions. There was little evidence that policy makers had used the degree of risks as a determining factor for deciding the level of state involvement in regulation. Among the main recommendations to the government was to review, and publish, its arrangements for the provision of redress in the public sector, and that the government should develop, and publish, guidance for policy makers on the use of alternatives to state regulation. In its response to the recommendations, The UK government accepted all

recommendations and restated its commitment to consider further guidance on alternatives to state regulation.[98]

Among the most used alternatives to command-and-control instruments in the UK is self-regulation — an arrangement in which an organised group regulates the behaviour of its members.[99] Arrangements for self-regulation in the United Kingdom can be seen in many sectors, such as financial services, advertising, insurance, media and sport.[100] Even formal regulatory bodies may contain elements of self-regulation. Workplace safety and health, for example, is regulated by the tripartite Health and Safety Commission (HSC), whose nine members include representatives of industry, labour, and local government. The effectiveness of a self-regulatory approach compared to more formal styles of regulation is not firmly established. In some respects, it appears to deliver better results. Comparative studies of chemical and environmental regulation, for example, have found that the British style has protected people just as well as more formal American and continental European approaches but probably at lower cost.[101] In the environmental area, it may have achieved superior compliance, and more rapid response to new hazards. On the other hand, in an earlier preliminary review than the one previously mentioned, the BRTF noted some possible disadvantages of self-regulation, such as the need for external checks and balances, the risk of promoting restrictive behaviour that can mislead consumers, and the danger of self-regulation leading to anti-competitive behaviour, especially in terms of restricting market entry beyond restrictions required to protect consumers. The BRTF also signalled that lines of accountability could be undermined if the government was seen to endorse codes of practice over which it has no on-going supervision.[102]

Box 6. **Self-regulation in the United Kingdom**

Several studies of the British regulatory system have found that "British policy makers have opted for a higher degree of self-regulation than their counterparts in other countries".[103] Why is the use of self-regulation so prominent in the United Kingdom's regulatory system?

It is surely rooted in the historical social, political, and economic development of the country. In part, it reflects the characteristics of British policy culture described as informal, co-operative, and voluntary. The general constitutional framework of the United Kingdom — non-codified and dependent on understood conventions of behaviour rather than legal strictures – may also have set the stage for a less formal legal system.

There are several advantages of self-regulation. First, since the rules are made by those to whom they apply, they are likely to be more effective because they enable a regulation of the spirit, rather than the letter, of the law. Second, a self-regulatory body can be quicker at rewriting rules than can a government department and can therefore respond more flexibly in dealing with problems and new developments. Third, self-regulation is cheap for the government, because the regulated bear the costs of regulating. Hence, government may have much to gain from self-regulation in terms of administrative efficiency.

But in other areas, critics have questioned the rigor and public interest with which some self-regulators have acted. In the 1990s, well-publicised scandals in the financial and insurance industries fuelled debate about whether there is a need for more direct government involvement. And, while negotiated rules can achieve a great deal, regulators who over-value consensus may risk giving away too much. These criticisms, combined with the emergence in the United Kingdom of a wider range of interest groups seeking inclusion, led to a marked shift in certain areas (*e.g.* financial services) toward replacement of self-regulation with more formal regulation. One observer[104] has found a general shift away from traditional self-regulation toward direct regulation, inclusion of outside members in systems that remained self-regulatory, and formalisation. Regulatory pressure from the European Community could also be seen as eroding the informal and pragmatic approach basis for self-regulation in Britain.

Since 1997, however, there seems to have been a return swing of the self-regulation pendulum. The government White Paper Modernising Government strongly encourages self-regulation, not only for economic regulation, but also for regulation within government itself.[105]

As in other OECD countries such as the United States, Denmark and the Netherlands, the use of alternatives to traditional regulation is more developed in environmental protection, compared to other policy areas. In the case of the UK, the use of taxes and subsidies is prominent in the government's attempt to tackling environmental challenges. The strategy is based on diversified use of incentive schemes, regulatory instruments and alternatives such as taxes, charges, permit trading, public spending and voluntary agreements.

Box 7. **The British Government's approach to environmental taxation**

In the past decade, the United Kingdom has developed an array of fiscal instruments to reduce negative externalities on the environment and to develop incentives for environmental friendly approaches. Some of the important tools are listed below:

- The climate change levy (CCL) is a tax on the use of electricity, gas, liquefied petroleum gas (LPG) and solid fuels. All revenues are recycled back to business through a cut in employers' national insurance contributions and additional support for energy-efficiency measures and energy saving technologies and related measures.
- Investment incentives. As part of the CCL package, the UK Government offers a 100% first year capital allowance for investments in designated energy-saving technologies.
- Negotiated agreements. 80% discount on the rate of the climate change levy available to energy-intensive sectors that agree challenging targets with government to increase energy-efficiency and reduce emissions.
- Emission trading. Entry to the UK emissions trading scheme open to any entity responsible for emissions in the UK. Companies in Climate Change Levy negotiated agreements will be able to use emission trading as a way of reducing the costs of meeting their negotiated agreement targets.
- VAT reductions. Reduction in VAT rate from 17.5% to 5% on the installation of specific energy-saving materials. 5% reduced rate of VAT for government grant-funded installation of new central heating systems and their maintenance and repair, and heating appliances in the homes of the less well off.
- Company car tax. Income tax charge on a company car based on a percentage of the car's list price graduated according to the level of the car's CO_2 emissions. Statutory system of mileage rates providing incentives to drive cleaner vehicles for business trips.
- Vehicle excise duty (VED). This duty is linked to carbon emission levels of the car and the type of fuel used.
- Green travel. Removing VAT from the purchase of adult cycle helmets; increasing the income tax and free mileage rate employers can pay for cycle use for business trips; special mileage rates per mile per passenger to encourage car-sharing on business trips.
- Fuel duty differentials. Duty differentials in favour of ultra-low sulphur petrol (ULSP) relative to unleaded petrol.

Source: HM Treasury (2001).

In conclusion, the UK has demonstrated an extensive use and many good practices in applying alternatives to traditional regulation. The monitoring by the government and the BRTF has permitted a

better understanding of the potentials and weaknesses of alternatives. Current polices encourage and support increased and further nuanced use of alternatives. There seem to be scope for more use and a higher consistency if policy goals for using regulatory alternatives should be met. Moreover, as the UK moves beyond guiding principles toward a systematic approach it will provide important input to setting standards in other OECD-countries. However, a continuing challenge for the UK will be to balance the use of alternative instruments based on informality, self-regulation and co-operation (which can lead to collusion between insiders) with other alternative mechanisms based on markets and competition, such as permits and vouchers.

3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development review and reform of regulations". A list of RIA best practices has been suggested in "Regulatory Impact Analysis: Best Practices in OECD Countries".[106] The report provides a framework for the following description and assessment of RIA practices in the United Kingdom.

The United Kingdom has placed considerable emphasis on strengthening assessment of regulatory impacts. Its current form is the result of more than 15 years of experience. From 1985, as part of the Deregulation Initiative, UK departments preparing regulatory proposals have been required to undertake a compliance cost assessment. The 1985 requirements involved principally an estimate of the costs to business of complying with the proposed measure and, if an alternative would have achieved the same regulatory objective at lower cost to business, an explanation of why such alternative was rejected.[107] In May 1996, a new system of regulatory appraisal was introduced for all government departments.[108] It required regulators to attribute, where possible, a value to the expected benefits of the proposed measure and to compare them with the costs, not only to business, but also to consumers and the government. This gradual evolution is illustrated by the successive changes of name of the central oversight unit in charge of apply the tools: from Deregulation to Better Regulation and currently the Regulatory Impact Unit.

The current policy was established in August 1998 and requires that new legislation or regulation, which has a non-negligible effect on business, charities or the voluntary sector, has to be accompanied by a regulatory impact assessment. This criterion is identically applied to primary and secondary legislation. Government policy and guidance for regulators and policy-makers on how to prepare RIA's is set out in "Good Policy Making: A Guide to Regulatory Impact Assessment".[109] RIAs should, as far as possible, be quantified and expressed in monetary terms. It should cover costs as well as benefits of the proposed regulation on business, charities and the voluntary sector.

A RIA has to be available, in the form of a partial (that is, a provisional or preliminary) RIA when collective ministerial agreement is being sought to the principle of legislation or regulation in a particular area. A second requirement consists of providing an expanded RIA when public consultation is being carried out. Subsequently, a full regulatory impact assessment is developed to include the results of public consultation and is the basis on which Ministers decide on action. As from October 2000 to strengthen accountability, the responsible Minister must sign a declaration that, having read the RIA, he/she is satisfied that the benefits justify the costs. The final regulatory impact assessment should then be placed in the libraries of the House of Commons and House of Lords when the regulation or legislation is presented to Parliament.

In the regulatory process special attention is paid to any burden placed on small businesses. Since October 2000, if the proposals affect small businesses, the Small Business Service must be consulted. Its purpose is to ensure that the views of small firms are addressed in RIAs and that efforts have been made to

consider alternative ways to achieve the government's policy objectives. Furthermore, on a pilot basis from February 2002, and mandatory for all RIAs from 1 September 2002, competition considerations should be included in RIAs. In the following paragraphs, the UK experiences and practises with RIA are gauged according to the RIA best practices identified by the OECD.[110]

Maximise political commitment to RIA. Political commitment to RIA should come from the highest level of government. The British system rates highly on this criterion in terms of formalising and making the political accountability for the RIA transparent. As mentioned above, government policy requires that all bills and regulations presented to the Cabinet or Parliament must have RIAs attached. Before presenting regulations or proposals to Parliament the RIA guide also requires that the responsible minister personally sign off the impact assessment. Finally, ministers with regulatory responsibilities are required by government policy to report regularly to the Panel for Regulatory Accountability. However, RIAs are not required for regulations that have impact only on government,[111] for some types of "soft law" and for regulations of devolved administrations and independent regulators — though in the case of the latter there are substitute mechanisms in place.[112] The government should consider expanding its RIA requirements into these areas.

An important precondition for addressing the challenges of soft law is to establish an overview of the size and kinds of soft laws in use. As in most other OECD countries such statistics are not being produced in the UK. There are, however, already requirements in place to make RIAs on certain types of soft law such as Approved Codes of Practise.

Allocate responsibilities for RIA programme elements carefully. Experiences in OECD-countries show no exception to the rule that RIA will fail if left entirely to regulators, but will also fail if it is too centralised. To ensure ownership by the regulator and at the same time establishing quality control and consistency, responsibilities should be shared between regulators and a central control unit. In the UK the proponent department is responsible for preparing the RIA and organise the consultation based on the RIA (see below). It also needs to contact the Small Business Service (SBS), who is responsible for reviewing and commenting on effects on small businesses.[113] As indicated above, the individual ministers are held accountable for the regulatory activities of their departments. Ministers report to the panel for Regulatory Accountability on their regulatory activities and performance of their department. Quality control is also largely the task of regulatory departments.

At the other end, the Scrutiny Team in the Regulatory Impact Unit (RIU) in the Cabinet Office is responsible overall for policing, supporting and developing policy on RIAs. In the RIU 16.5 professionals assess departments' RIAs. The RIU sees about half of the RIAs produced. There were 185 RIAs published in 2000, 166 in 1999.[114] The degree of actual scrutiny varies depending on the nature of the proposals and hence the degree of RIU interest (see also section below on targeting the RIAs).[115] The screening and review of RIAs by the RIU takes place in an informal and continuos co-ordination between the proponent departments, the departmental regulatory impact units, the SBS and the RIU Scrutiny Team. The RIU does not have a challenge function vis-à-vis the proponent departments, but the RIU can – and often does – delay collective government agreement on measures with inadequate RIAs. Exceptionally, the relevant Treasury spending team also intervenes.

The system is sound. An important issue merits attention, though. The RIU is using its capacity and expertise primarily to advise and promote the RIA programme within departments and across government. In order to raise the standards— including in the area of cost-benefit analysis— experience from other OECD countries suggests that a challenge function at the centre of government can be an important driver of further progress. Plans of the RIU to put its assessment of departments' overall compliance with guidance on a more formal and structured basis can be seen as step in that direction. It is debatable, however, whether in the UK's institutional and cultural context a more formalised challenging relationship between the RIU and departments would improve the quality and policy effectiveness of RIAs.

Train the regulators. Regulators must have the skills to produce high quality RIAs. The Cabinet Office in particular, but also other departments and agencies such as Treasury and SBS, have produced a considerable and growing quantity of detailed guidance on different aspects of conducting RIA.[116] Guidance exists on the procedural aspects of conducting a RIA, on consultation, on methodological issues as well as approaches toward small firms. The Regulatory Impact Unit intends to revise their guidance again in 2002. RIU regularly runs seminars, formal training sessions and workshops on regulatory impact assessment, including for new staff.[117] RIU is also involved in providing training to officials through the Civil Service College's training courses on policy-making. Overall, most of the civil servants engaged in the regulatory process have been exposed to the tool: those who draft the RIAs, lawyers and other specialists.[118]

Successful efforts to upgrade the skills for performing high quality RIAs could have implications for the RIU itself, if it is to exercise its overall responsibility for the RIA process effectively. It may in fact require introducing more specialists, similar to those working in the competition authorities and sectoral regulators to match the increasing capacity elsewhere.

Use a consistent but flexible analytical method. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." A cost-benefit test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (*i.e.* maximising welfare).[119] The UK system complies with the general criterion. The RIA guide stresses the importance of flexibility in analytical method and resources spent on analysis. It recommends that costs and benefits as far as possible should be expressed in monetary terms, but "the techniques used will very much depend on the situation…There is no set formula for all [RIA] analysis".[120] In practice, this endorsement of an ad hoc approach means a significant variety in the quality of the quantitative analyses and in particular to the cost-benefit tests, which are characterised by methodological heterogeneity and a varying degree of details and dept. This makes it difficult to compare and monitor RIAs across time and across governments. A certain harmonisation of the methodologies and analytical quality is happening, though. For instance, all departments are required to use HM Treasury's "Green Book on Appraisal and Evaluation in Central Government" as a guide in preparing cost-benefit analysis. This trend should be strongly encouraged and expanded to include not only know-how on how but also when to do cost-benefit analysis.

Develop and implement data collection strategies. In most OECD countries lack of information is a key reason for quality problems in RIA. Innovative and more cost-effective data collection strategies can play an important role in improving analytical quality. As noted, in the UK there is no single method or approach for assessing costs and benefits of regulations. However, the RIA guide provides information on basic concepts and techniques to be considered when assessing costs and benefits.[121] Moreover, the extensive consultation of RIA is intended to provide a clear feedback on the potential impacts.

Target RIA efforts. RIA resources should be targeted to regulations where impacts are largest, and where prospects are best for altering outcomes. The amount of time and effort spent on regulatory analysis should be commensurate with the improvement in the regulation that the analysis is expected to provide.[122] As noted above, an RIA is required for all new government legislation or regulation which will have a "non-negligible" effect on business, charities or the voluntary sector. The RIA is carried out by the proponent department. If the regulation is "significant" there needs to be an agreement about a regulatory impact statement with the Regulatory Impact Unit. Significance is defined in government guidance as those proposals with costs in excess of £20 million, high topicality, or a disproportionate impact of the regulatory burden.[123] The Scrutiny Team tends to focus on those RIAs with the potential for a very significant effect on business. In its overall positive review of the RIA process, the National Audit Office (2001) recommends that current guidance is improved to avoid differences of opinion between policy makers and those affected as to whether the regulatory impact is negligible. The NAO also recommends that guidance could be specific on whether secondary legislation that implements policies already subject

to a RIA needs a separate RIA, and on the circumstances in which non-legislative regulation, such as national standards, should be accompanied by a RIA.

Integrate RIA with the policy making process. Great emphasis is placed on integrating regulatory impact assessments at an early stage in the policy making process. The Cabinet Office Guide recommends departments to prepare an *initial regulatory impact assessment* of the policy options available when preparing a policy proposal. In the Cabinet Office's "Policy Makers Checklist" it is recommended to consider producing a RIA as one of the immediate steps after having established a clear policy objective. Further, a *partial regulatory impact assessment* must be submitted with "any proposal needing agreement from Cabinet, Cabinet Committee, No. 10 [the Prime Minister's Office] or other interested ministries". All full RIAs are accompanied by a statement signed by the responsible minister who thereby declares that he/she "is satisfied that the benefits justify the costs". It is government policy that the RIA is published alongside all primary, secondary, and EU legislation when it is presented to Parliament.

Involve the public extensively. Public consultation is considered a fundamental quality control and information collection device and it is seen as key to the success of the RIA process. Cabinet Office guidance recommends that RIAs should be made available on departmental Web sites in a clear and accessible manner and linked to the RIU Web site. Although its timing is not formally specified, the Cabinet Office encourages departments to prepare the analysis as early as practicable. As noted above, the government intents to develop the existing Web site for consultations into permitting e-mail notification to anyone who asks for it about ongoing consultations — including RIAs — in areas that interest them. These innovations are indeed at the very forefront of OECD good practises. However, there are indications that the consultation system is increasingly being overloaded, and risks of overflow and fatigue are real. Therefore an initiative favouring the quantitative instead of the quality aspects of consultation would not be efficient and could risk not being supportive to the objective of the RIA and the public consultation mechanism.

Apply RIA to existing as well as new regulation. UK procedures score high on this criterion. While RIA is required by government policy for all significant government proposals for regulation and legislation, the *Regulatory Reform Act* requires that a RIA-like procedure is applied when reviewing existing legislation. See also Section 4.1.

In conclusion, the United Kingdom has developed RIA standards, which — compared to most OECD countries — are comprehensive and transparent. The current status is the results of a gradual evolution and improvement of tools over more than 15 years. However, scope for improvements exist. The UK government should consider expanding the types of regulation to which RIA and the RIA procedure applies; in particular to regulations regulating government and "soft law " that have significant behavioural — and economic — effects on the de facto regulated. Now that the RIA process is accepted and working properly, the UK should start to raise the standards, in particular in terms of quantitative analysis, needed in particular for benchmarking efforts through time and departments.[124]

3.4. Building Regulatory Agencies

In most OECD countries, economic structural reforms - promoted in part by international commitments - have prompted the establishment of independent sectoral regulators and the remodelling of existing regulators, in infrastructure sectors such as telecommunications, energy, transport, water as well as for financial services. These institutions are intended to provide neutral regulatory oversight in liberalising or privatising sectors, and prudential oversight of competitive markets. The United Kingdom has been a historical pioneer in the development of the new regulatory institutions (see Box 8). Its leadership also meant that Britain is now dealing with new questions and challenges concerning the efficiency, accountability and transparency of the whole institutional architecture.

UK regulators and regulatory regimes not only differ between sectors but also are in a continual evolution.[125] They share the central objective to balance the interests of consumers in low prices and high quality services with those of shareholders in receiving a reasonable rate of return on their investments. Achieving this difficult balance, together with the need for a long-run perspective autonomous from the political cycle is the justification for their independence from government and stakeholders. Regulatory agencies have been set up on an *ad hoc* basis reflecting different circumstances of each sector as well as the experience gained through their development.[126] Emulation, relying on previous examples (rather than a priori reasoning about the best solution or a common formal framework) leads to the echoing of features of agencies.[127] Despite the different origins, the bodies share important commonalties. The following subsection will provide a general overview of the new institutions for the utilities sector, as well as some elements concerning the transport, financial and postal services.[128] The performance of some of these institutions will be explored in more detail in other Chapters of the report.

Box 8. **Main Sectoral Regulators in the UK**

Regulators	**Date of creation**	**Staff**	**Homepage**
Financial Services Authority (FSA)	1986 under the Financial Services Act (renamed in 1997)	2 500	www.fsa.gov.uk
Office of Telecommunications (OFTEL)	1984 under the Telecom Act	210-220	www.oftel.gov.uk
Office of the Gas and Electricity Markets (OFGEM)	1999 (OFGAS created 1986 under the Gas Act)	334	www.ofgem.gov.uk
Office of the Rail Regulator (ORR)	1993 under the Railways Act	117 (ORR and IRR together)	www.rail-reg.gov.uk
International Rail Regulator (IRR)	1998 under the Railway Regulation		www.rail-reg.gov.uk/oirrhome.htm
Civil Aviation Authority (CAA)	1971 under the Civil Aviation Act	1 200	www.caa.co.uk
Office of Water Services (OFWAT)	1991 under the Water Industry Act	230	www.ofwat.gov.uk
Postal Services Commission (PSC)	2000 under the Postal Services Act	30	www.psc.gov.uk

3.4.1. Utilities

The creation of sectoral regulators was concomitant to the privatisation programme of the 1980s and 1990s designed progressively to reduce the role of the state in providing commercial services.[129] The market structures set in place at this time effectively retained large vertically integrated businesses as monopolies or near monopolies, with the exception of electricity. Recognising that such privatised monopolies would have considerable scope and incentives to restrict output and increase prices so as to increase their profits, the government established economic regulators, independent of government, for each of the utility sectors.[130] In 2000, the government produced an important White Paper, which culminated in the Utilities Act, attempting to set up a framework of regulators starting from first principles. A particular objective of the review was the question of assessing the need for multi-sectoral regulator(s). In the end the Act led to an amalgamation of only OFFER and OFGAS into OFGEM which has a new governance structure. OFTEL and OFWAT structures and roles remained mostly the same. In 2001 the government published a White Paper recommending the merger of the telecom and broadcasting functions in a new regulator, Ofcom (see Chapter 6). The new institutions nevertheless have shared from the beginning important tools, such as the RPI-X system (see Box 9), as well as features concerning accountability and transparency.[131]

UK sectoral regulators enjoy a series of powers and responsibilities specified in the parent statute. The most important are enforcing and modifying licence conditions, determining certain disputes

and prices, obtaining and producing information and keeping documents, advising the Secretary of State and the OFT on certain concurrent issues, setting or overseeing quality of service standards, the terms on which consumers are to be compensated for breaches, and monitoring compliance with standards, investigating complaints, and exercising some functions under the general competition law. The approach of sectoral regulation through licences and their modification is flexible and responsive to changes in the market; this can be compared to regimes that rely on promulgation which may be subject to the political process. More recently, the government has issued guidance on social and environmental issues, which some of the regulators will be required to take into account alongside their other duties.

Box 9. **The invention of new regulatory tools, the RPI-X system**[132]

A central feature of the UK approach to regulate infrastructure markets has been the development and use of what is commonly referred to as "RPI-X" regulation of price levels. Although similar systems were developed previously in the United States, it was in the UK that the system was standardised and utilised on a large scale, first in 1984 for the telecommunication services and then extended to the rest of the sectors.

Under the RPI-X system, a firm's prices, or more commonly a 'tariff basket' consisting of the prices of a number of different outputs, weighted according to their importance in the firm's output, are capped over a period (typically five years) by a formula that allows a company's prices to rise in line with general inflation (the Retail Price Index or RPI), but subject to an adjustment, usually downward (the 'X' factor) reflecting the anticipated scope for efficiency savings and likely developments in other relevant cost drivers. RPI-X was designed to protect the consumer without the regulators taking over the investment decisions of the regulated. It introduces an incentive for the regulated to be efficient, through allowing efficiency savings of greater than "x" to be retained by the shareholders. This incentive effect is not a feature of the other main alternative of rate of return control.

The method is intended to strike a balance between providing incentives to companies to continuously seek savings (productive efficiency) and ensuring that these are passed on without undue delay to consumers.[133] The method is not a panacea, though and the UK system has encountered controversies. The government, for instance, imposed a heavy 'windfall tax' on utilities in 1997 to target what was considered supra-normal profits. Critics have also claimed that the X factor had been set systematically too low and rates of return in regulated industries were higher than average. But the RPI-X approach is now established as the basic method.

Central to the principle of regulatory independence is the terms of appointment and the shape of the 'executive'. British regulators are appointed for a fixed term, usually 5 years, by the government; independence is further enhanced by the difficulty in having the regulator removed. Until recently the general rule was for the government to appoint an individual, the Director General, to wield regulatory authority. Since 1999, the government has tried to de-personalise regulation by establishing a regulatory board. Some members of these boards will be full-time "internal" officials, but a majority of each will be part-time members who come from bodies outside the administration. The government believes that using a board should also reduce the risks of capture, secure stability, and limit idiosyncrasy. A board has been established to supplant the energy regulators (the Gas and Electricity Markets Authority), and boards are likely to replace the communication and competition authorities. These areas are under the general supervision of the Department of Trade and Industry. By contrast, the regulators under the Department of Transport, Local Governments and the Regions (*i.e.* the water and rail regulators) may continue to be individuals for the near future.

Accountability of regulators is provided through several mechanisms, including a mandatory annual report to be submitted to relevant Secretaries of State (and laid before the Parliament), judicial review by the courts, appeal to the Competition Commission, general parliamentary scrutiny, and monitoring by the National Audit Office and the Comptroller and Auditor General. The Competition Commission and OFT may also play a role through the concurrent competition powers (see below). Ministers possess certain powers over the regulators' decisions: they can refer matters to the OFT. The Secretary of State responsible for the area has powers, in some sectors, to act in special circumstances such as national emergencies.

Another important feature, recently enhanced, consists in establishing mechanisms to increase transparency of the regulatory decisions. As part of their statutory independence from government, regulators have opted for different procedures, including different procedures for public consultations.[134] However, as a general rule, regulators have the duty to consult publicly on most of their decisions to be taken. Autonomous consumer councils have been established to act as advocates for the consumer interest and ensure that there is a more equal input from consumer interests into regulatory decisions. The features and functions of these councils vary according to each regulator. In the case of OFTEL four Advisory Committees for Telecommunications (one for each country in the UK) and two further advisory bodies to deal with small businesses and pensioners and disabled customers provide inputs to the regulator. A report by the National Audit Office investigating these issues noted that regulators tended to consult more than was required under the law.[135] Notwithstanding that this is in principle a positive development, some regulators have tended to flood involved parties with information and consultation material. In 2000 OFTEL and OFGEM produced a total of 80 and 120 consultation papers.

The UK institutional framework has also developed an interesting system to deal with one of the most important challenges concerning the setting up of sectoral regulators, that is, the relationships between the regulators and the application of the general competition law. In particular, concurrence mechanisms have been set up to improve the relationship between the different regulators and authorities. Unusually, the sectoral regulators have statutory power to apply the general competition law in their sectors. Appeals from Competition Act decisions by the OFT and by the sectoral regulators are taken to the same body, the Competition Commission (previously known as the Monopolies and Mergers Commission). (See Chapters 3 and 5 on this issue).

3.4.2. Transport

With the privatisation of the British Airports Authority (BAA) as a single company under the Airports Act in 1986, the Civil Aviation Authority (CAA) became the regulator to the airport company and to other airports. Furthermore, the CAA has powers under the Airports (Groundhandling) Regulations Act of 1997, which implement the European Council Directive on access to the market at Community airports. The Directive is intended to liberalise handling at EU airports with more than 1 million annual passengers. However, important policy issues, such as designating which airports could carry transatlantic traffic, remained with the Department of Transport.[136]

The institutional framework for railways reflects a substantially different approach based on the complex privatisation of British Rail between 1996 and 1997, where the old British Rail was split up and sold off. The formal establishment of the Strategic Rail Authority on 1 February 2001 completed the regulatory institution for the rail industry. There are now three main domestic regulators and an international one of the railway system:

- The Strategic Rail Authority which sets the overall strategic vision, brings together passenger and freight interests; and ensures that passenger services, fares and other interests are controlled and protected in a way that provides better value, whose responsibilities cover consumer protection, administering freight grants and steering forward investment projects, at opening up bottlenecks and expanding network capacity,
- The Office of the Rail Regulator (ORR) has a separate function and is responsible for the regulation of the monopoly and dominant elements of the rail industry, especially Railtrack,
- The Health and Safety Executive (HSE), which is the main responsible body for rail safety, and
- The International Rail Regulator (IRR) responsible for granting licences to railway undertakings established in Great Britain that wish to operate international services.

3.4.3. Financial services

In 1997 the government overhauled the existing financial services regulatory landscape. In the previous system, the Bank of England supervised banks, the Department of Trade and Industry, insurance companies, and the Building Societies Commission, the building societies. Almost all the remaining financial services were subject to a two-tier regulatory system, with the Securities and Investments Board (SIB) overseeing Self-Regulatory Organisations (SRO).[137] The fragmented structure was based on sectoral divisions which were increasingly outdated and did not respond well to dynamic markets.[138] Companies had to deal with multiple and overlapping regulators, each imposing different regime, and this had its costs. Consumers, too, faced an array of regulators and different dispute resolution mechanisms. Failures and potential risks of self-regulations mechanisms became apparent. The intention of the Financial Services and Markets Act was to introduce a single regulator, the Financial Service Authority, and a single body of law.[139] By reducing scope for duplication and modernising the legislative framework, the government's aim was to deliver effective regulation where necessary and a light touch approach where appropriate. The Act provides the legal underpinning for a move towards a strong regulator with clear accountability to government, and with parallel arrangements for complaints handling.

3.4.4. Postal sector

According to the *Postal Services Act* 2000, the Post Office will remain in the public sector but be allowed to operate on a more commercial basis. An independent regulator, Postcomm, has been created to regulate its activities at arms length from government, to protect consumer interest and to ensure it does not exploit its monopoly position to compete unfairly in the newly liberalised sectors of the market. In addition the Government (by an Act of Parliament) established Postwatch to ensure that the liberalisation of postal sector leads to improved services and fair pricing. Postwatch acts independently of both the government and the Post Office.

3.4.5. Assessment[140]

Being among the pioneers of regulatory reform the United Kingdom has learned important lessons about the benefits and pitfalls of independent regulators. Although tools and institutions have been copied around the world, perhaps one of the central lessons of the UK experience is the need to continuously check the system and improve it. Moreover, the effectiveness of some regulators for instance in the water and railway sector, has been put into doubt. New challenges emerge as soon as a new arrangement is created. Today some of the challenges ahead for sectoral regulators centre on issues such as:

- Perfecting the structure of the appointment system. Today the two systems of boards and single regulators coexist, each with different costs and benefits. Though the effects of new boards are to be assessed, a key element will continue to be the political neutrality of the appointment system.

- Political accountability and transparency. As the UK moves toward more sophisticated regulatory systems with an increasing number of independent regulators and other regulatory bodies with inter-linked and shared responsibilities, the question of a clear delineation of responsibilities, accountability and reporting should become an important priority.

- Efficiency of the regulators. New responsibilities in the field of social and environmental policies are changing the incentives of regulators. A danger is that this may transform them into the 1950s and 1960s' 'National Boards', which used to act as 'custodians of the public interest'. A plethoric number of goals could give rise to excessive discretion in weighting them and to degrading the original goal of assuring competition in regulated sectors, so that resources be allocated more optimally and livings standards thereby raised.

- Managing the complexity of the regulatory framework. Despite progress in setting up a general policy for regulators, which culminated in the 2000 Utility Act, room for improvement persists in organising the network. Policies and instruments to limit duplications and overlaps between authorities covering converging sectors (*e.g.* telecom and broadcast) as well as thematic areas (*e.g.* competition policy, regulatory quality tools) need to be appraised, or even invented.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP-TO-DATE

Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. Most OECD countries have large stocks of laws, regulations and administrative formalities that have accumulated over years or decades without adequate review and revision. In the UK, some 13th century statutes are still applied. The OECD Report on Regulatory Reform recommends that governments "review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively."

4.1. Revisions of existing regulations

Until recently the government's capacity to review existing regulations was not strong and primarily based on restatement (competing for legislative time in Parliament with limited legislative capacity) and the Deregulation and Contracting Out Act of 1994, that proved to be insufficient to tackle unnecessary burdens and inefficiencies stemming from the "stock" of regulations. In the United Kingdom, three main types of review of existing regulations can be identified.

Automatic reviewing mechanisms. As part of the regulatory impact assessment there are requirements to set out how any proposed regulation would be monitored and reviewed. Such reviews will include consultation with stakeholders. Little experience exists with these reviews since they have been launched with the new RIA procedures introduced in 2000. Commitments to automatic reviews were further strengthened by recent policy proposals by the government re-elected on 7 June 2001. According to the proposals every government department will be required to review the impact of major pieces of regulation within three years of implementation.

Ad hoc reviews. Most major departments and regulators have review policies. Reviews may be conducted "regulation by regulation" but also sector by sector. Some public entities continuously review their regulations, and in other cases this may occur when an independent sectoral regulator engages in a periodic review or when the Better Regulation Task Force identifies the need to review regulations affecting a particular sector or society or industry. Since the 1960s, the Law Commission has worked to simplify some areas of the law, and to consolidate others to make them more accessible. In the last five years, the Inland Revenue has had a major project under way (the tax law rewrite project) designed to consolidate and rewrite most of direct tax legislation to make it clearer and more accessible to the public. The first of the tax rewrite bills (on Capital Allowances) was enacted in March 2001. In June 2001 an independent steering group completed a comprehensive review of British company law, including recommendations for a major re-work of the whole framework of company law.[141]

Reviews under the Regulatory Reform Act. A recent initiative, the *Regulatory Reform Act* gives ministers a powerful tool to review regulations in order to remove unnecessary burdens in primary legislation. (See Box 10). The Act can be considered a streamlined instrument to restate the law and reassign the regulatory discretion between the Parliament (*i.e.* established in law) and the government (*i.e.* subordinated regulation). It is a mechanism similar to the '*delegislazione*' mechanism used in Italy.[142] The government has issued a list of measures, which could be implemented using the power of the act. They include the reviews of such different regulations as building regulations, business tenancies, orders removing exemptions from caravan site licensing, dental services - provision by corporate bodies, repeal of the Trading Stamps Act, and fire safety.[143] This indicates that the *Regulatory Reform Act* will be used for substantial reviews of existing regulations.

High hopes have been set on the new instruments and independence and transparency have been designed from the start into these processes. It is true that much was learned from the successes and limits of the previous mechanism the *Deregulation and Contracting-Out Act* of 1994. An early challenge will be the use of competing and in some ways inconsistent review methodologies. The lack of clear standardised evaluation techniques or decision criteria for commencing or conducting reviews will also need to be closely monitored to avoid inconsistent applications. The *Regulatory Reform Action Plan* from February 2002 sets out over 250 regulatory measures to be implemented through the Regulatory Reform Act as well as through other means including primary legislation.[144]

Box 10. **The Regulatory Reform Act**

The Regulatory Reform Act came into force on 10 April 2001. It creates a powerful tool for ministers to enable regulatory reform through reforming existing regulatory burdens. It enables ministers to amend or repeal laws by ministerial order in order to remove or reduce burdens, to correct inconsistencies and anomalies, and, subject to additional safeguards, apply new burdens.

The Regulatory Reform Act is set out in particular to address the lack of legislative capacity in the British Parliament. This has been seen as a crucial barrier to reviewing existing legislation and responding to identified problems. The problem was first addressed in 1994 with the adoption of the Deregulation and Contracting-Out Act, which allowed ministers to more easily amend or repeal problematic laws by short-cutting the lengthy law-making process. The Regulatory Reform Act extends these powers, while maintaining and in some areas extending the safeguards. Regulatory Reform Orders under the Act are capable of:

- Making and re-enacting statutory provision;
- Imposing additional burdens provided they are proportionate;
- Removing inconsistencies and anomalies in legislation;
- Dealing with burdensome situations caused by a lack of statutory provision to do something;
- Applying to all legislation that has not been amended in substance during the last two years;
- Relieving burdens from anyone, except government departments where only they would benefit;
- Allowing administrative and minor detail to be further amended by subordinate provisions orders.

Regulatory Reform Orders are subject to thorough public consultation followed by detailed two-stage scrutiny by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords. The special Parliamentary procedure which Regulatory Reform Orders undergo (sometimes called the "super-affirmative" procedure), affords a strong Parliamentary scrutiny. The process for scrutinising orders made under the Regulatory Reform Act is expected to take around a year. The Regulatory Reform Act specifies — in the law itself — the procedural requirements ministers have to follow when making regulations (Orders) under this Act.

The Act also empowers the government to produce a code of good enforcement practices. Its main intention is to provide safeguards against potential problems linked to the use of voluntary approach to the Enforcement Concordat (see Section 3.1 on recent enforcement initiatives).

It is worth to note that the above mentioned requirements are not only similar to those of the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, but also mirror the current criteria used by the government to check the quality of regulations (see Section 2.1). Moreover the inclusion of such tests in a law is an important precedent for the Parliament in defining the quality of its regulatory work as well as the government's one. It can be seen as an additional step for the UK towards formalising its regulatory administrative practices under an administrative procedure law.

Source: House of Commons (2001).

Sunset clauses — providing for the extinction of regulations, regimes or parts of regimes after specified periods — have not been widely used in the UK. The option to include sunset clauses in new regulation was discussed in the House of Lords debate on the Regulatory Reform Act 2001. A proposal that legislation should be limited to five years unless it was renewed by an affirmative instrument and a government report was rejected by the government, who instead assured that it would offer a report on the operation of the Bill three years after its enactment. Sunset clauses, however, have been used in the utilities sectors. Each of the main utilities regimes established between 1984 and 1990 (telecommunications, gas, electricity and water) deployed time limited price control mechanisms. Time limits were typically of 4 or 5 years, allowing for a reasonable time horizon for which investment, operating costs and demand can be forecast. The price controls could be renewed in existing or revised form by the regulator only with the consent of the licensee or after a favourable review by the Monopolies and Mergers Commission (renamed Competition Commission under the Competition Act 1998). This type of licence provision was also used

by the telecoms regulator Oftel in 1996 to introduce time limited requirements not to engage in anti-competitive conduct.

4.2. Reducing administrative burdens

The 1997 OECD *Report on Regulatory Reform* also suggests that a priority reform issue in most OECD countries is reducing regulatory burdens on small and medium-scale businesses, which are disproportionately hit by administrative and other regulatory burdens to the extent that there are fixed compliance costs.

The degree to which these are particular problems in the United Kingdom is not clear. Business associations often claim that SMEs in the United Kingdom are heavily and disproportionately affected by regulatory costs.[145] On the other hand, an OECD report highlights the positive institutional framework for SMEs existing in the United Kingdom.[146] Much recent criticism has been directed toward costs imposed on businesses by the government's use of companies' payroll systems as the "medium" through which various tax, benefits and student loan schemes are implemented. The British government is aware of these concerns, and has as part of its recent policy commitments after the June 2001 re-election announced a review of payroll services.

An important feature of the simplification and regulatory consultation programmes in the United Kingdom has been the focus on SMEs. The institutional set-up of the regulatory process as well as analytical requirements put on regulators, and numerous initiatives launched to assist small firms with necessary transactions with the government reflect this priority. Recent significant developments include setting up the Small Business Service (SBS), a government organisation with the purpose to offer help and guidance to small firms, bringing all government support under one umbrella, being the strong voice for small businesses at the heart of government and ensuring that the regulatory approach minimises the burdens on business. A strategy launched by the Prime Minister in early 2001 — "Think Small First" — asks every part of government to integrate special focus on small businesses and entrepreneurial society in their activities and regulations.[147] Further to this, several significant measures have been initiated to support and improve innovation and entrepreneurship, with particular focus on SMEs.[148] There are also explicit programmes to review and reduce red tape and government formalities, which have had some success to date and are being broadened and further developed. These include reforms to key areas of business licensing as well as paperwork burdens.

Technology-driven mechanisms have been particularly prominent in recent years' initiatives to reduce administrative burdens. In December 1999, the National Audit Office published a report on the government's performance and delivery of web-based services. It showed that the UK's response to the opportunities of the Internet had been varying, that its targets were not sufficiently ambitious and that there had only been limited progress in establishing a government-wide Intranet. The report pointed to the need to provide more extensive services via the Internet and to strengthen the central machinery for co-ordinating and promoting development of the government web-based service delivery.

Modernising Government' stresses the importance of progressing towards an 'information age government', aiming to establish a fertile e-commerce environment by 2002, and by advancing informatisation throughout government. It sets out specific targets by 2002, such as: 25% of all dealing with government should be capable of being done by the public electronically, with 100% coverage achieved by 2005; individual citizens should be able to electronically: book their driving and theory tests; conduct job searches; submit self-assessment tax returns; receive information on benefits; receive online health information; connect to the so-called National Grid for Learning, apply for training loans and student support; business should be able to: submit VAT registers and returns; supply returns at Companies House; register for support grants; receive payments from government.

Progress on the issue of e-government are monitored by six-monthly reports. A new central government gateway has been established.[149] Within government, an 'e-envoy' has been appointed at the Cabinet Office to provide a focal point for the promotion of information technology within government departments and, in particular, to promote 'joined-up' and cross-departmental policy formulation.

Furthermore, in order to support departments and agencies in the development of their e-business strategies, an "e-government" group has established an E-business network. The network promotes best practice in deploying e-business methods in the public sector and offers a meeting place for those developing e-business strategies and provided advice on training and development. It encouraged private sector involvement and engagement with e-business strategists.

Following increasing concerns with the burden of regulation within the public sector, the Government in November 1999 set up the Public Sector Team (PST). Located at the centre of government in the Regulatory Impact Unit in the Cabinet Office, the PST's purpose is to identify and recommend reductions in regulatory burdens on the public sector. To date the PST has carried out work in three areas: police, schools and doctors (general practitioners). The recommendations and working methods of the PST focus on reducing administrative burdens of front-line staff. The PST works with front-line staff to identify issues that take them away from service delivery. It then collaborates with relevant stakeholders (officials, associations, organisations) to obtain a negotiated agreement or commitment to remove restrictions, change guidance, simplify processes, etc. Removal of the administrative burdens identified under the PST reviews does very rarely require the removal of formal regulations.[150]

5. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

5.1. General assessment of current strengths and weaknesses

Twenty years of continuous innovation and reform has made the United Kingdom one of the most experienced OECD countries in attempts to improve government capacities to assure high quality regulation. Results are apparent when considering the situation in the UK in the early 1980s or when comparing to other countries with a similar endowment. The institutions, procedures, and other regulatory tools in the UK now form an efficient, transparent and accountable regulatory policy relative to most other OECD countries, which should enable further progress in terms of economic development, social cohesion, and environmental priorities. In fact, the UK fulfils to a very large extent the OECD Recommendation on Improving the Quality of Government Regulation and in many aspects is confronting the challenges of building upon them and leading the analysis and application of the basic principles of good regulatory governance.

The government has set up an array of institutions to drive regulatory policies. The Regulatory Impact Unit (RIU) plays the crucial dual role as scrutiniser and advisor of high quality regulations across government. The Better Regulation Task Force, which has been a strong advocate for reform joins the RIU in continuously pushing for improvements in regulatory policies. The Panel for Regulatory Accountability has raised the degree of responsibility in rulemaking and maintained regulatory policies at the centre of government. Sectoral regulators have brought lower prices and in many cases promoted more competition and better services. The Small Business Service has also led to a focus on the concerns of small firms. The administrative culture in the UK is characterised by pragmatism, integrity and professionalism. Furthermore, there is a growing awareness in the British public on the importance of high quality regulation to achieve important welfare goals. Altogether these elements constitute a strong foundation for additional steps.

The constant upgrading of instruments has occurred simultaneously with the establishment of regulatory institutions. Government guidelines for regulatory impact assessments (RIA), alternatives to

traditional regulation and consultation procedures make up an ideal framework for integrating regulatory appraisals in the policy-making process. New initiatives to increase the efficiency of enforcement and compliance have been launched and the recent enactment of the Regulatory Reform Act is intended to provide a powerful tool to improve the efficiency of existing regulations.

UK experience brings important lessons for other countries. Regulatory reform in the UK has proved to be a long-term, dynamic and permanent effort of general systemic improvement. The UK has been a pioneer in many areas of regulatory reform, and it has developed tools, such as the RPI-X formula, now widely adopted in other countries. On the other hand, regulatory reforms have often been based on a pragmatic approach, which has sometimes entailed setbacks and costs to set against the benefits it has brought. But, this spirit of innovation has also brought successes and has rewarded the British reformers with experiences and problem-solving capacities to better face future (and inevitable) challenges.

However, improvements and a leading position relative to OECD countries in defining requirements and guidelines for regulatory quality management is, as the British authorities recognise, no reason for complacency. The UK needs to persevere with its programme of improving regulatory policies and practices as some recent failures and weaknesses in key regulated sectors and public services show. (As dealt with in Chapter 1 of this report). There is still substantial scope for improving capacities to produce efficient, transparent and accountable regulations, ensure performance compatible with objectives, and establish an evaluation culture that validates past action and guide future policies.

Efficiency: The UK needs to continue to seek greater efficiency in delivering high quality regulations. As the UK moves beyond OECD guiding principles it should focus on obtaining continued efficiency-gains currently constrained by the lack of coherent and systematic cost-benefit appraisals of regulatory proposals and by an insufficient knowledge about the impact of "soft law" and regulations within government. The absence of comprehensive evaluations of the regulatory "super structure" and the cumulative burden of regulations, not least of the multitude of regulatory institutions and control mechanisms, hinders the establishment of important guidelines for continued reforms in the UK, and as such for many OECD countries. Incipient consultation fatigue is reducing their potential benefit, and thereby the efficiency of the regulatory system.

Transparency: Recognising the many benefits of the informality of the British regulatory system, informality also can reduce transparency. Procedures that are informal, varying across regulators, and based on tradition fall short of providing clear rights for citizens and obligations for the administration and they are less transparent for outsiders. Additionally, while consultation generally improves transparency, there is also a real risk that overly extensive consultation processes cloud the issues instead of enlightening and engaging the affected groups.

Accountability: While accountability is well embedded in the British regulatory system, the complexity of the institutional structure and the informality of many procedures may blur or reduce the responsibility chain of regulatory policy-makers and the accountability for outcomes. Linked institutions and procedures evolving in an ad hoc manner also tend to complicate the possibilities for evaluating decisions and testing regulations.

Finally, though the principles and potential for regulatory quality management are permeating to the policy-making process, indications are that further efforts are required to truly embed such awareness in the administrative culture of senior policy-makers. To install such a culture may be the most important and difficult long-term challenge to fully exploit the already strong capacities for high quality regulatory management in the UK. The RIU recognises and are working towards this goal.

5.2. Policy options for consideration

This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be particularly beneficial to improving regulation in the United Kingdom. They are based on the recommendations and policy framework in the OECD Report on Regulatory Reform.

- ***Clarify the overall institutional set-up of the regulatory system and strengthen the role of the centre of government.***

A large number of institutional players in the regulatory framework of the UK can blur the transparency and accountability of regulations, slow co-ordination and increase transaction and compliance costs. Clarifying and simplifying relations within the regulatory framework would be an important step to address this challenge. Strengthening the role of the centre of government from advisory and consultative toward a more structured, formalised and challenging role should increase its possibilities and obligations to create systematic incentives to assure high quality regulations. However this is unlikely to fit well into the UK's consensus approach and overall culture in the policy-making process.

- ***Extend the scope of RIA disciplines.***

The government should focus on a stricter oversight of soft law and quasi regulations, starting by listing them. A general registry of such 'regulations' would also increase transparency and reduce duplicative 'advises'. A second step should be adapting the current RIA mechanisms to such instruments. In parallel, the government should extend RIA disciplines to devolved administrations, independent regulators and non-governmental bodies currently not bound by the guidelines. Lastly, the UK should continue with its pioneering programme to apply RIAs to government's internal regulations with substantial impacts.

- ***Improve the efficiency of RIA.***

Two improvements could increase the efficiency of the current RIA. First, the quantitative assessments should play a major role in RIA in order to sharpen the political appraisal by top decision makers. For this, stricter standards in the quantification of benefits and costs should be adopted and further training to RIA drafters should be organised, expanding and encouraging expertise not only on how but also when to do cost-benefit analysis. Second, in improving guiding principles for regulatory quality beyond general OECD recommendations, the government should consider to streamline the number of essential principles/criteria in the regulatory appraisal process and to provide a set of explicit standards for each principle with a specific guidance on the tests to be applied to each of them. A further possible elaboration would be to develop a weighting system permitting to clarify the trade-offs between competing principles/criteria.

- ***Raise the expertise skills available for RIA quality assurance at the central level.***

In order to maintain its capacity of overseeing the RIA process effectively the RIU should introduce more specialists to enhance further their multi-disciplinary team, similar to the experts working in the competition authority or sectoral regulators. This adjustment in the staffing policy, would be even more important if the RIU were to assume a stronger challenge function as compared to its current emphasis on advising departments and promoting RIAs across government.

- ***Assess and monitor cumulative impacts of the regulatory system.***

Concurrent to improving the RIA, the government should start to monitor the cumulative impact of the laws and regulations. Annual and departmentalised aggregates of estimates of costs and benefits (see previous recommendations) could be one of the initial steps. This monitoring would create important guidelines for continued reforms and it would also provide a feedback to regulators, Parliament and citizens on the efforts of the administration to reduce overall burdens and raise the benefits of regulations. Some work has already been done in monitoring the effects of particular measures and regimes, particularly tax measures and public utility regulation, and the government is now committed to reviewing the impact of major pieces of regulation within three years. This latter is already a major commitment, but the government should consider expanding the scope of the review to include evaluations of entire regulatory regimes. The considerable resource costs of such review would be likely to be justified by the benefits in terms of feed back to regulators, Parliament and citizens.

- ***Move toward more formal standards for regulatory decision-making.***

An extension of RIA disciplines to devolved administrations, independent regulators and non-governmental bodies would provide a more homogeneous and transparent regulatory decision-making process, and higher quality regulations. A move toward *formalising* such requirements in law would improve transparency further, and it would provide citizens with even stronger safeguards and more accountable and predictable results. Formalisation of procedure requirements are already in place for assessments of the *stock* of legislation (with the Regulatory Reform Act), but not for the *flow* of new regulations.

- ***Continue innovation of consultation procedures.***

The UK should continue to improve its consultation procedures by targeting consultation and involving the public as efficiently as possible. Regulatory decisions are often based on extensive consultations, but paradoxically there is a risk that the substantial amount of consultation jeopardises the quality assurance and participatory aspects of the consultation procedures by overloading the consultation system. Internet based consultation procedures put in place already appear promising. They are necessary steps to avoid the consultations system to clog up. The registry of all proposed regulations open for notice and comment should be implemented as soon as possible. Anecdotal evidence indicates that the British traditions of pragmatism and trust between regulators and regulated could also be used to extending the consultation "beyond *ex ante*", *i.e.* by involving key players in the implementation of important regulations. This may be a means to ensure high compliance, participation and reduced implementation costs.

- ***Develop a general policy framework for the role and functioning of independent regulators.***

The UK's system of regulators, which have been developed ad hoc and explicitly for the sectors and the market characteristics in which they operate, has many advantages which should not be lost. However the UK government should consider developing a single policy framework for the role and functioning of independent regulators including a consistent approach to the use of RIA, consultation and other quality assurance measures. Such policy framework should define clear objectives for the independent regulators and by doing so providing clear distinctions between its objectives and those of other regulatory authorities.

- ***Encourage — especially by training — the continued development among senior policy-makers of an administrative culture supporting regulatory quality management.***

A continued effort is needed to embed good regulatory practices not only in procedural guidelines but also into the culture of the public administration. The strong understanding at the highest political level and at the centre of government of prioritising early and sincere integration of regulatory impact assessments in the policy-making process needs to be extended to other departments and regulatory authorities in order to support a broad and continuous development of high quality regulation. The development of such a culture could be encouraged by making regulatory quality management an integral part of the training not only of junior civil servants engaged in the regulatory process, but, as importantly, also to senior civil servants.

NOTES

1. The United Kingdom is a constitutional monarchy comprised of Great Britain (England, Scotland and Wales) and Northern Ireland. EC regulation and much national legislation applies throughout the United Kingdom. In England and Wales, rather than any general civil code, civil law is a mixture of common law, statute, and EC law. By contrast, Scottish law stands between the English common law tradition and the civil legal tradition of continental Europe.

2. Braithwaite (1987).

3. Beatson *et al*. (1989) p. 671.

4. The term "statutory instrument" is defined in the Statutory Instruments Act of 1946.

5. Beatson *et al*., 1989, p. 693.

6. See for example Boyfield (2000).

7. The majority of the subordinate legislation is represented by statutory instruments that have purely local effects, such as road traffic orders, and the uprating of fees etc in line with inflation. The UK government estimates that approximately 5% of statutory instruments have a significant effect on business.

8. Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998, but note that Northern Ireland had had some devolution of powers since 1923.

9. In 1997 the government set up an independent Commission to examine ways of reforming the voting system so as to give parties a share of parliamentary seats closer to their share of the vote without breaking the link between members of parliament and there constituencies. The commission published its findings in November 1998, recommending a hybrid system known as the alternative vote plus. The Government has not yet responded to recommendations. [UK to confirm].

10. Scotland Act 1998, schedule 5.

11. Cabinet Office, http://www.cabinet-office.gov.uk/constitution/devolution/devbackgound.htm 30 May, 2001.

12. See for example Lehman Brothers (2000) and OECD (1999).

13. This alteration of the emphasis of regulators' duties is also described in the Better Regulation Task Force' report on Economic Regulators (2001).

14. In terms of transparency it is important to distinguish between opacity, which refers to the lack of information — which is generally not the case in the UK — and efficient transparency, which is not only the accessibility of information but also focussed and timely information for all parties involved.

15. For a discussion of soft law in an EU context see Baldwin *et al* (1999), p. 162.

16. Ogus, A. (1994), pp. 185-189.

17. Ogus, A. (1998), pp. 59-60.

18. OECD (1995).

19. From 1960-1980, economic growth averaged only 2.3% a year in the United Kingdom, compared to 4.6% in France, 4.4% in Italy, 3.7% in West Germany, 3.5% in the United States, and 7.7% in Japan.

20. In understanding the dynamics of deregulation, it is important to realise that the specifics of deregulation, although supported by the then Government's free market philosophy, were greatly influenced by exogenous pressures, such as the deregulatory activities of the United States (airlines, financial markets) and the European Community (the professions, steel), increased domestic and international competition (banking), and technological changes (broadcasting). Swann (1988), in particular pp. 238-250.

21. The Executive Agency concept was announced in 1988 as the Next Steps initiative.

22. See http://www.cabinet-office.gov.uk/servicefirst/1998/response/bk6int.htm.

23. See http://www.cabinet-office.gov.uk/servicefirst/index/markhome.htm.

24. See http://www.cabinet-office.gov.uk/moderngov/anreport/index.htm.

25. Regulation inside government refers to ways government regulates itself through a range of bodies, which set standards for public sector organisations, monitor them and seek to bring about compliance with those standards. Regulation inside government is characterised by three features: (1) The regulator has a degree of authority over regulated bodies and sets standards for them; (2) the regulator monitors performance and uses persuasion or direction of regulated bodies to change their behaviour, and (3); there is organisational separation of regulator and regulated bodies, so regulation is distinct from internal management within an organisation. (Hood, James, Scott and Travers (1998), Regulation Inside Government. Waste-Watchers, quality police, and sleaze-busters. Oxford University Press.

26. Research by Hood et al suggests that in period from 1976 to 1995 the number of regulator organisations were up with 22% to 135, the overall spending in real terms were up with 106%, and that the compliance costs of regulation in the UK government (using a narrow definition of compliance costs) were about £ 1 billion.

27. James (2000), Hood *et al* (2000*b*).

    Recent initiatives to measure or reduce regulatory cost include the work of the RIU's Public Sector Team, the departmental Spending Reviews, the regulators' business plans and the Treasury's on-going Review of Review Bodies which includes The Police Inspectorate, Office for Educational Standards and the Audit Commission.

28. The Economist, 28 April 2001; The National Audit Office (2001).

29. OECD (1997a), p. 37.

30. OECD (1995*b*).

31. Government of the United Kingdom (2000*a*).

32. Government of the United Kingdom (1999a).

33. See http://www.cabinet-office.gov.uk/regulation/1999/checklist/intro.htm.

34. Policy makers should consider whether and what to take account of in the following areas: a) Regulatory Impact Assessments, b) Sustainable development, c) Environmental Appraisal, d) Policy Appraisal for Equal Treatment (Gender, race, age, disabled), e) Health Impact Assessment, f) Health and Safety at Work Assessment, g) Scientific advice, h) Risks, I) Human Rights Act implications, j) European Union implications and k) Consumer Impact Assessment.

35. Better Regulation Task Force (2000a).

36. As noted by Hood et al (2000*b*), there are only nine criteria if tests c), f) and h) are taken to duplicate matters covered by the five principles. Furthermore one of the five key principles — proportionality — is already enshrined in EU law. It can be argued that it therefore is redundant as a principle of good regulation over and above what the guide requires.

37. In a case study of the Dangerous Dog Act of 1991 Hood et al. (2000*b*) examine the then UK government's approach to evaluating regulations. They do so by using BRTF's criteria for testing evaluations in an attempt to assess the success of failure of the Dangerous Dog regime of 1991, which was designed to reduce the risk of dog attack in public, especially by dogs bred for fighting and most of all by pit bull terriers. The act obliged the courts to order the destruction of dogs in specified circumstances, and empowered courts to impose other sanctions, including destruction orders. They conclude the act possessed some features that were in line with every one of the principles and test criteria for good regulation. But more important, they also conclude that in the absence of an open rating approach it is not possible to assess whether the profile of the Act is better or worse than any other regulatory regimes tackling issues of equal difficulty. They note the selective basis of the test criteria (such as justice only appearing in the procedural sense of transparency and appeal routes, and efficiency and effectiveness not figuring explicitly in the criteria), and the difficulty of the approach in demonstrating that it leads to good government. Their analysis thus shows the difficulty that would come from relying on a set of principles as a decision criterion. However, the UK government's position is that the principles are a description of features of good regulation, and that it is the RIA that supports decision making, taking into account costs and benefits.

38. Cabinet Office (2000): Guide to RIA, annex 3.

39. Government of the United Kingdom (2000*a*), Annex 3. See also 44.

40. A White Paper 'Building Business - Not Barriers' from 1986 led to the creation of The 'Enterprise and Deregulation Unit' which was set up in the Department of Employment. It was given the power to oversee and co-ordinate the 'anti-red tape' efforts of the individual Departments. These activities included the conduct of compliance cost assessments and a review of regulations which had produced unintended effects, duplicated regulatory efforts and which had placed inappropriately high burdens on business. In 1987, the Unit, now named 'Deregulation Unit' was moved to the Department of Trade and Industry. It was assisted by an appointed task force of business people. The unit moved, with the Minister Michael Heseltine, to the Cabinet Office in 1995. In 1997 the unit changed its name into the Better Regulation Unit, a name more suited to its regulatory quality mandate. The unit is now called the Regulatory Impact Unit

41 The movement of UK civil servants between post in government is a common, well-established feature of the UK system.

42. OECD communication with the Cabinet Office, end 2001.

43. Government of the United Kingdom (2000a), Annex 3.

44. Reporting requirements include: (1) Monthly reporting of full regulatory impact assessments. Each department must produce a monthly return which is sent to the RIU. Any RIAs showing a cost or benefit to businesses, charities or voluntary bodies are listed on the Cabinet Office Internet site in date order, with a departmental contact name and number from whom further information can be sought. (2) Twice yearly Command Papers. Each department contributes to a twice yearly Command Paper which list all full RIAs, by department. The Minister for the Cabinet Office presents the Command Paper to Parliament.(3) Departmental annual reports. Each Department publishes in their departmental annual report an account of their regulatory performance. This includes, for example, work that has been carried out to reduce unnecessary regulatory burdens *e.g.* Deregulation Orders, throughout the previous financial year.

45. Better Regulation Task Force (2000*c*), Annex A.

46. The principles are developed on the basis of OECD guidelines in OECD (1995) and OECD (1997*a*).

47. See track table in Better Regulation Task Force (2000*c*).

48. See http://www.nao.gov.uk/publications/vfmsublist/vfm_reg.htm.

49 National Audit Office (2001)

50. There is an official code of conduct on consultation between government (see http://www.cabinet-office.gov.uk/regulation/1999/checklist/consultation.htm) as well as procedural guidelines set out in the RIA guide.

51. Even when Parliament reports that an SI goes beyond the power of its parent Act, neither Parliament nor the Government is obliged to take any action, although Government usually at a later stage amends instruments to take account of them (FCO:27).

52 The non-departmental public bodies (NDPB's) are also referred to as or quasi non governmental organisations (QUANGOs). The 1 035 NDPB's include 297 executive NDPBs (not to be confused with executive agencies), 536 advisory committees, 61 tribunals and 141 boards of visitors to penal establishments.

53. In Wales, Scotland and Northern Ireland, there is a single tier structure to local government. In England there is either a single or two tier structure to local government. Single tier local government in England include 36 metropolitan authorities, 33 London boroughs, 47 English shire unitary authorities. In Wales they include 22 Unitary authorities, in Scotland 32 Unitary councils and in Northern Ireland 26 District Councils. Two tier local government in England include 34 County councils, 238 district councils. For the United Kingdom as a whole this gives a grand total of 468 local authorities. Some of which, e.g. the two tier county and district councils in England, overlap.

54. Economist's Intelligence Unit (2000). pp. 9-10.

55. Beatson *et al*., 1989, p. 693.

56. For the agreement with Wales and England, see Local Government Association (1997). The Local Government Act (NI) 1972 specifies the framework for co-operation with Northern Ireland

57. *Devolution: Memorandum of Understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers and the Cabinet of the National Assembly for Wales.* London: The Stationery Office Limited, October 1999, Cm 4444.

58. *Devolution: Memorandum of Understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers and the Cabinet of the National Assembly for Wales*, London, The Stationery Office Limited, October 1999, Cm 4444, p. 7.

59. Government of the United Kingdom (1999).

60. Directives are implemented either by legislation or more commonly by a Statutory Instrument. The Statutory Instrument is made either under the European Communities Act 1974, which empowers ministers to make secondary legislation to give effect to an EU obligation, or under a separate Act that provides appropriate powers to do so. Apart from exceptions under its section 2(2) the Act forbids implementation of EC legislation to be ultra vires — that is, going beyond what the directive allows. Where EU regulations are implemented under section 2(2) of the European Communities Act 1974 or another British domestic provision which empowers Ministers to make secondary legislation to give effect to a EU obligation, there is a possibility or risk of departing from the meaning of the directive.

61. Government of the United Kingdom (1999), p. 13.

62. Government of the United Kingdom (1999), p. 14.

63. EU directives are only very rarely transposed into UK legislation through primary legislation. However, there is a longstanding tradition — but no legal obligation — that the Government with certain exceptions does not agree in the Council of Ministers to any proposal for EU legislation that has not been considered in Parliament. The UK Parliament scrutinises proposals for EU legislation in a number of ways. In the House of Commons, the Select Committee on European Legislation examines every draft proposal for legislation issued by the Commission. Debate on the legal and political importance of proposals mostly takes place in one of the three European Standing Committees. In the House of Lords the Select Committee on the European Communities and its six subject-orientated sub-committees examine all Commission proposals for legislation. The scrutiny processes in both houses often result in the production of reports. The government replies to all reports. The Joint Committee on Statutory instruments is consulted on every EU directive that is implemented as secondary legislation.

64. In the words of the Chairman of The Better Regulation Task Force "…we tend to be much too prescriptive when we incorporate them [directives] into British law". Quoted in The Daily Telegraph, 15 Nov 2000.

65. Sometimes European legislation will cover the same ground as existing national primary legislation, though in different ways and to a varying extent. Usually such parallel jurisprudence is dealt with by changing the relevant national legislation simultaneously with implementation of the new directive. In the UK however, the alternation or abolishment of existing legislation is sometimes only possible by passing this as separate piece of legislation that has to go through Parliament. Government priorities for passing other bills through Parliament has led to the simultaneous existence of UK and EC laws, also called "double-banking". The extent of "double-banking" in the UK is not known

66. Government of the United Kingdom (1999), p. 25.

67. According to the OECD Regulatory Indicators Database (1998), 17 OECD countries (of 27 respondents) establish procedures for making legislation in a specific law, while 16 countries do so in the case of lower-level rules.

68. In some cases individual statutes delegating regulatory authority may have procedures built into them, such as tribunals, to safeguard citizens from illegal regulation.

69. Sometimes the separate statutes setting up the independent regulators and the associated codes of practice will generally cover the procedural considerations that the relevant regulator should make in terms of consultation and impact assessments when exercising its regulatory powers.

70. OECD (1997), 218 ff.

71. In fact, the British Rules Publication Act of 1893, which required that departments give public notice and allow 40 days for written objections to most proposed regulations, was replaced in 1946 with the Statutory Instruments Act, which had no such requirement The apparent reversal is misleading, since consultation, particularly with business interests, is widespread.

72. See http://www.cabinet-office.gov.uk/servicefirst/2000/consult/code/report.doc.

73. Cabinet Office (2000), Part 1, step 2.2.

74. See www.ukonline.gov.uk.

75. Cabinet Office: Press release 27 November 2000.

76. Answers of the British Government to OECD questionnaire, April 2001.

77 The Better Regulation Task Force in its 2001 report on Economic Regulators also reports on the problems and effects of too much consultation (p. 35).

78 Since autumn 1998, Explanatory Notes have been produced to accompany the Government's primary legislation when it is first introduced in Parliament. These Notes are not part of the legislation and do not have legal force. They are designed to make it easier to help the reader understand the legislation the reader, by providing a commentary on it, by explaining the background to it, and by setting out other relevant material, such as the impact the legislation is expected to have on the public finances and

manpower and a summary of the Regulatory Appraisal which describes the expected impact on businesses, etc. The notes are updated when the legislation is passed by Parliament and published alongside the resulting Act. Like the legislation, the Explanatory Notes are made available on the internet by Her Majesty's Stationery Office.

79 Acts, however, sometimes include provisions which come into effect at a time in the future specified in the Act. Moreover, Acts often include powers for the Secretary of State to activate provisions at a future date, and/or to introduce secondary legislation. Often the time between Royal Assent and the date when a provisional has operational impact is designed to allow for consultation with those affected and other interested parties

80. Answers of the British government to OECD Indicators questionnaire, October 2000.

81. Government of the United Kingdom (2000*d*).

82. Answers of the British Government to OECD questionnaire, April 2001.

83. See http://www.cabinet-office.gov.uk/servicefirst/index/comp_ps.htm.

84. The major public bodies operating in non-devolved areas in the UK are within the jurisdiction of the Parliamentary Ombudsman. Similarly, many public bodies operating in devolved areas in Scotland, Wales and Northern Ireland are within the jurisdiction of the Scottish Parliamentary Commissioner for Administration, the Welsh Administration Ombudsman and the Northern Ireland Ombudsman respectively. Other Ombudsmen which may accept complaints against particular public bodies include the Health Service Commissioner (for complaints against NHS bodies in Great Britain), the Northern Ireland Ombudsman (for complaints against local councils, education and library boards and health and social services bodies in Northern Ireland) and the Local Government Ombudsman (for complaints against local councils and certain other local public bodies in Great Britain).

85. Cabinet Office (2000): Review of the public sector ombudsmen in England.

86. Morison, 1993.

87. Treasury Solicitor (2000), pp. 18-19.

88. OECD (1993), p. 311.

89. Out of these, 597 were immigration cases, Judicial Statistics Annual Report, 2000, http://www.open.gov.uk/lcd/jsarlist.htm 5 June, 2001.

90. Inland Revenue, Appeals: judicial review: procedure and time limits.

91. In July 1992, experimental Local Business Partnerships were begun, in which local authorities and local businesses agreed on lines of communication, consultation, complaint/appeal procedures, and monitoring of standards by businesses. This programme was expanded in 1993 to other local authorities and to national enforcement agencies through the Code for Enforcement Agencies which was in effect until replaced by the present Enforcement Concordat. Another innovative reform attempted to improve consistency among local authorities. The Local Authorities' Co-ordinating Body on Trading Standards has promoted uniform interpretation at the local level of the 50 consumer protection laws, over 1 000 sets of regulations, and numerous EC directives that affect retailing. One of its strategies was the principle of "Home Authority," in which a company with operations in more than one local authority is able to co-operate with a designated Home Authority (where it is head-quartered) in developing solutions to enforcement problems that can then be used as guidance for enforcement authorities elsewhere. Another reform objective has been to reduce regulatory controls on local authorities themselves to improve accountability and efficiency. A consultation document, “Deregulating Local Government” published by the local government minister in 1995 noted that "Regulatory regimes for local government should be kept to the minimum necessary…This will help local authorities to be responsive to ... their local businesses and citizens..." A series of reviews in national departments were begun in 1995 to identify possible deregulatory actions.

92. OECD (2000).

93 For telecom, OFTEL has set up a system to monitor compliance; the first year’s data will cover 2001/2002.

94. In the Netherlands “The Table of Eleven” is used both to guide reviews of compliance and enforcement relating to existing legislation and as an analytical tool in the development of new regulation. The table is in three parts:

Spontaneous compliance dimensions. These are factors that affect the incidence of voluntary compliance — that is, compliance which would occur in the absence of enforcement. They include the level of knowledge and understanding of the rules, the benefits and costs of complying, the level of acceptance of the “reasonableness” of the regulations, general attitudes to compliance by the target group and “informal control”, and the possibility of non-compliance being sanctioned by non- government actors.

Control Dimensions. This group of factors determines the probability of detection of non-complying behaviour. The probability of detection is directly related to the level of compliance. The factors considered are the probability of third parties revealing non-compliance, the probability of inspection by government officials, the probability of inspection actually uncovering non-compliance and the ability of inspection authorities to target inspections effectively.

Sanctions dimensions. The third group of factors determines the expected value of sanctions for non-compliance, that is, the probability of a sanction being imposed where non-compliance is detected and the severity and type of likely sanctions.

The “checklist” approach used in the Netherlands can help regulators consider compliance issues in a detailed, systematic fashion, and also provide a useful review and quality control tool. OECD (1999*), OECD Reviews of Regulatory Reform — Regulatory Regulatory Reform in The Netherlands*.

95. Hood *et al.* (2000*b*).

96. See: Better Regulation Task Force (2000d) and (1999); National Consumer Council (2000).

97. The Better Regulation Task Force (2000*d*).

98. See http://www.cabinet-office.gov.uk/regulation/taskforce/2000/AlternativesResponse.htm.

99. Self-regulation is not a precise concept. In general, it can be defined as an arrangement in which an organised group regulates the behaviour of its members. It can take many forms, ranging from voluntary, informal or even implicit agreements among members of groups, to formal regulatory bodies, which may have statutory legal powers, staffed or partially controlled by the group. Self-regulation is often seen to be the most efficient when underpinned by a “credible threat” from the state to intervene in case the members of the self-regulatory regime do not comply with certain goal or standards set out by the state. All of these forms of self-regulation contrast with the alternative – direct regulation by the government (although direct regulation and self-regulation often complement each other). Self-regulation is particularly valuable in leveraging the expertise and the economic and social power of professional groups. For example, a high degree of self-regulation exists in the professions "where regulatory matters are often highly technical and where there exists a strong tradition of self-discipline" (OECD, 1994, p. 444). Practitioners are also more likely to know where malpractice is occurring than is the government.

100. See for example The Better Regulation Task Force (2000), Appendix E for an overview.

101. See Vogel (1986); Brickman *et al.*(1985).

102. Better Regulation Task Force (1999).

103. Baggott (1989).

104. Baggot (1989).

105. Cabinet Office (1999).

106. OECD (1997*b*).

107. Government of the United Kingdom (1996*a*).

108. Government of the United Kingdom (1996*b*).

109. Government of the United Kingdom (2000*d*).

110. OECD (1997).

111. Research by Hood et al suggests that in period from 1976 to 1995 the number of regulator organisations were up with 22% to 135, the overall spending in real terms were up with 106%, and that the compliance costs of regulation in the UK government (using a narrow definition of compliance costs) were about 1 billion £ 1 bn.

112 It should be noted that the government already requires all proposals put forward under the Regulatory Reform Act to be accompanied by an RIA, even when they only have an impact on government.

113. Government of the United Kingdom (2000). Departments should contact SBS "as soon as possible for any proposal likely to impact on small business" (p. 4). SBS has a right to have its view explicitly recorded in the Cabinet paper or letter to minister colleagues. RIAs must record whether or not the SBS was consulted. In cases where there is no impact on small firms, the fact should be made explicit in the RIA. The SBS has a right to have its views recorded in the RIA and may offer a form of words if it chooses to do so.

114 Cabinet Office communication to OECD, June 2001.

115. Cabinet Office communication to OECD, May 2001.

116. See for example: Government of the United Kingdom (2000*d*); HM Treasury (1997); The Better Regulation Task Force (2000*b*); Government of the United Kingdom (2000*b*); SBS: See http://www.sbs.gov.uk.

117 Government of the United Kingdom (2000*c*).

118. *Op.cit.*

119. OECD (1997), p. 221.

120. Government of the United Kingdom (2000*a*), p. 14.

121. Government of the United Kingdom (2000*a*), Annex 1.

122. Morrall, John and Ivy Broder (1997), "Collecting and Using Data for Regulatory Decision-making," published in OECD (1997*b*).

123 See http://www.cabinet-office.gov.uk/regulation/1999/checklist/intro.htm.

124 Similar observations are echoed in NAO's November 2001 recommendations on how RIU and departments can improve their use of RIAs (National Audit Office (2001), p. 8, 9 and 11).

125. For instance, the BRTF is currently reviewing the UK's independent economic regulators.

126. The intellectual foundations of the British model of utility regulation were two reports by Prof Littlechild for the UK government. They were seminal in providing the basic framework and philosophy upon which the development of, and legislation enacting, the UK model of privatised utility regulation was to be based (Burton, 1997: 159). The two key elements in the Littlechild (UK) framework for utility regulation is (a) price-cap utility regulation via the RPI-X formula and (b) the regulation-reducing role of competition, meaning that, in principle, price regulation would only an intermediate target until competition would be fully in place. For some industries such as water, gas and electricity he recognised a dual role for the regulator, - not only to pare the monopoly down to a minimum, but also to continue to constrain monopoly pricing. (Burton, 1997: 159 ff).

127. Hogwood (1996), p. 2.

128. The development of sectoral regulators in Britain in the past 20 years has received extensive analysis. See Balwin and Cave, 1998, Bishop, Kay and Meyer, 1995 or government papers HR Treasury. National Account Office,

129. Between the 1940s the telecommunications, gas, electricity gas, railways and water services where provided by public corporations. Together with other privatisations, in the 1980s, nearly 10% of GDP was transferred from the public to the private sector.

130. The privatisation and creation of the regulatory regime for British utilities are based mainly on the following statures: The Telecommunications Act of 1984, the Gas Act of 1986, the Electricity Act of 1989, the Water Act of 1989, the Water Act of 1989, the Water Industry Act of 1991, the Water Resources Act of 1991, the Competition and Service (Utilities) Act of 1992, the Environment Act and the Gas Act of 1995.

131. The following paragraphs are mainly based on Chapter 14 of Baldwin, Robert and Cave, Martin (1999), *Understanding Regulation, Theory, Strategy and Practice*, Oxford University Press.

132. HM Treasury, p. 10, Balwin, Cave, *op. cit*., Chapter 17.

133. HMT (1999), *The UK approach to Utility Regulation.* Note dated August 1999, from the Competition, Regulation and Energy Team.

134. In some situations independent regulators are bound by statutory obligations to consult in a particular way. For example, the Telecommunications Act 1984 specifies precise timescales for Oftel consultation, which must be followed before making changes to licences or carrying out formal licence enforcement action. In other instances, Oftel has a wide discretion on consultation timescales, Oftel (2001), Chapter 1.

135. National Accounting Office, Report by the Comptroller and Auditor General (1996), *The Work of the Directors General of Telecommunications, Gas Supply, Water Services and Electricity Supply*, HC645 Session 1995-6, London, July.

136. Hogwood, (1996), p. 6.

137. Economist Intelligence Unit (2000), *Country Profile*, p. 31.

138. The self-regulatory bodies licensed by the Securities and Investment Board (SIB) were The Securities Association (TSA) covering the Stock Exchange, the Investment Managers Regulatory Organisation (IMRO), the Association of Futures Brokers and Dealers (AFBD), the Financial Intermediaries, Managers and Brokers Association (FIMBRA) and the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). By the mid 1990s, these organisations were merged into three new bodies: The Securities and Future Authority (SFA), the Investment Management Regulatory Organisation (IMRO) and the Personal Investment Authority (PIA).

139. There is also a proposal for PAYCOM, to regulate certain banking payment systems. The document at this site goes into more detail. http://www.hm-treasury.gov.uk/pub/html/reg/pay/main.html.

140. This assessment will be completed with the findings of other Chapters of the report.

141 *www.dti.gov.uk/cld/final_report/index.htm*

142. See OECD (2001).

143. See *www.cabinet-office.gov.uk/regulation/act/examples.htm*

144 See *www.cabinet-office.gov.uk/regulation/publicsector.reports.htm*

145. Several observers and special interest organisations have assessed cost of red tape. The British Chambers of Commerce: GBP 10 Billion; the Institute of Directors: GBP 5 billion; CBI: GBP 13 billion (Source: Cabinet Office Minister Graham Stringer quoted in M2 Presswire UK, 25 Oct 2000). In May 2001 British Chamber of Commerce (BCC) estimated administrative burdens on British business to 15 billion pounds. (Sunday Times, 6 May 2001).

146. OECD (1999), Chapter 1.

147. Government of the United Kingdom (2001).

148. There is very favourable regulatory environment for SME's in the UK (cf. OECD: 1999), but entrepreneurship is only half of that of the USA. Based on this the British Government has provided

incentives over and above the reduction of administrative barriers to promote the commercialisation of science. The more generous tax treatment to SMEs has been questioned. OECD (2000*b*), pp. 88-89.

149. *www.UKonline.gov.uk*

150 For a closer description of results and working methods of the PST, see *www.cabinet-office.gov.uk/regulation/PublicSector/ProgressReport.pdf*

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