

REGULATION IN THE POST-BUREAUCRATIC AGE

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How To Get Rid Of Red Tape And Reform Quangos

A Policy Paper On Better Regulation

1. Executive Summary

Since 1997, the Labour Government has introduced an unprecedented number of new regulations, which have undermined social responsibility and reduced the UK's economic competitiveness. The exponential increase in regulation has not only hit businesses (particularly small businesses), but it has also increased the bureaucratic burden on individuals, charities, public bodies and social enterprises. This has hindered innovation and social action and has also led to a rapid increase in government spending on administration and inspection regimes. Unfortunately, as we have seen with the failed system of tripartite financial regulation, Labour's bureaucratic approach has not only impacted negatively on businesses, social enterprises, charities and public bodies; it has also been largely ineffective.

A different way is possible. We need to sweep away Labour's ineffective system of bureaucracy and replace it with a post-bureaucratic approach to regulation that makes use of new technologies and insights from social psychology and behavioural economics to achieve our policy goals in a less burdensome and intrusive way.

Achieving this innovative and post-bureaucratic approach to regulation across government will not happen overnight. It will require a fundamental culture shift amongst policymakers in Whitehall and beyond, which will only be made possible through significant structural reforms.

These structural reforms fall into two major categories. First, institutional changes that will curb the volume of new regulations, and remove existing regulations that are shown to be ineffective or overly burdensome. Second, policy changes to improve the quality and effectiveness of any new regulations, and ensure that they are genuinely post-bureaucratic and reflect the latest insights from academic research.

Key policy announcements:

A Conservative government will introduce a powerful new 'Star Chamber' cabinet committee, to be chaired by Ken Clarke, which will enforce a stringent 'One In – One Out' requirement where any new law must include cuts in old laws which, together, produce a net 5% reduction in the regulatory burden. Professor Richard Thaler will be a senior advisor to, and member of, the Star Chamber committee.

The public will be given the power to nominate the most poorly designed and burdensome regulations, which would be repealed within 12 months unless they were modified or approved by Parliament.

A Conservative government will apply a 'Sunset clause' to all Regulators. During the first term of a Conservative government all Regulators will be re-assessed and their duties reviewed.

Parliamentary Accountability for regulators and inspectorates will be strengthened with Select Committees holding the key public service regulators to account. In addition, the appointment process of Chairs of major Regulatory Bodies should be subject to Parliamentary Select Committee approval.

A Conservative government will publish cost and value comparison measures for local councils that allow the public to see exactly how well their council is delivering on its value for money remit. This will replace the bureaucratic and expensive system of Audit Commission inspections and reports.

The powers of Government inspectors will be drastically curbed by allowing firms to arrange their own, externally audited inspections and, providing they pass, to refuse entry to official inspectors thereafter. We will also introduce 'MOT style' inspection reports, quoting precisely which section of which law has been broken, to prevent regulatory 'scope creep' where laws are applied too strictly by overzealous inspectors.

We will consult carefully on changes that may be required to the employment and discrimination tribunals system, to ensure the system offers fast, cheap and accessible justice, and that it is fair to all sides.

2. Understanding The Problem: Britain's Regulatory Burden

2.1 How Have We Come To This?

The credit crunch and recession have reignited an old debate, polarising views and sharpening differences over the correct role of, and the need for, regulation in a modern liberal democracy.

The classic view from the left is that the banking crisis and resulting recession is ample proof of capitalism's failure, clearly illustrating the need for more and tighter regulation in future. According to them, regulation is a necessary and desirable way to tame free markets. It allows politicians to intervene not just to prevent the wilder swings of the business cycle, but also to neuter the inequality, greed and exploitation which they see as inevitable outcomes of capitalism. Nationalisation of key industries may have been largely discredited, but regulation offers an alternative route to achieve a similar goal. Rather than owning and running businesses outright, New Labour has passed laws imposing increasing collective control on organisations in the private, public and third (voluntary and charitable) sector by the state instead. In their view, this new approach is cheaper, stealthier and just as effective.

The view from the centre-right is sharply different. We believe that the UK has become simultaneously and dangerously under-regulated in some areas (particularly systemic risks in the banking sector) but chronically and severely over-regulated elsewhere. It's clear that some regulation is both necessary and desirable in a modern, liberal democracy – everyone expects the food we eat to be safe, for example – but once we are properly protected from unscrupulous people and hidden dangers, that is where it should stop. Everything else should, wherever possible, be a question of individual choice rather than collective control.

This is not just a question of political philosophy and belief. It is crucial for the UK's competitiveness too. Britain's economic recovery after the current recession will already be hobbled by the need to repay interest and principle on enormous levels of Government debt, and we can't afford to weigh it down even further with an unnecessarily large burden of red tape and regulations as well.

Not only that, but many of the new regulations are either ineffective, or bureaucratic, or costly, or all three. Lots of red tape specifies processes and procedures to be followed, rather than results which must be achieved. In many cases this approach is a defence mechanism to insure officials and politicians against judicial review of their decisions, rather than a commitment to excellence and delivering high quality results for consumers instead. And, sadly, following processes and ticking boxes does not necessarily deliver the right results, as the tragic case of Baby P illustrated.

Finally, all this increased bureaucracy and centralising micro-management has had an insidious and profound effect on British society as well. It has taken power away from individuals and local communities, and from the voluntary, private and public sector organisations which are the backbone of local society, and transferred it to quangos, regulators and bureaucrats in Westminster and Brussels instead. This sense of powerlessness, lack of involvement and distance from decision making has damaged British society, reducing people's ability and willingness to take responsibility and control over their own lives, and to contribute to the communities and institutions within which their lives are played out.

2.2 The Government's Track Record

In spite of frequent policy launches and fresh initiatives, the regulatory burden has shot up under Labour. The massive increase in regulation and red tape hasn't just hit businesses – particularly small firms – hard, but has also increased the bureaucratic burden on individuals, charities, public bodies and social enterprises. It doesn't just make life harder for Britain's wealth creators, it weighs down innovation, community action and social responsibility, and drives up Government spending on administration and inspections too. Successive reports have highlighted the scale and costs of the problem:

- The British Chambers of Commerce calculate that the Government's own Impact Assessments (IAs) show the additional burden on business of new regulations since 1998 is over £75 billion.
- In 2007, more than 3,000 separate pieces of legislation, totalling some 29,000 pages of text, became law in the United Kingdom. 18,000 pages originated domestically and 11,000 came from the implementation of over 2,000 EU Regulations and Directives. The Government's own figures show that, in 2008, all this new regulation cost the British economy £663 million in increased administration alone.
- In a recent Government small business survey regulation was the third most frequently cited barrier to success: it was cited by 59 per cent of businesses and only the economy (64 per cent) and tax (62 per cent) were mentioned more often.
- The latest PricewaterhouseCoopers global survey of CEOs revealed that more CEOs with businesses headquartered in the UK felt the Government had failed to reduce the regulatory burden than any other country covered by the survey.
- The Federation of Small Businesses' (FSB) survey of its members shows they spend on average seven hours every week filling in official forms and coping with red tape.
- The Federation of Private Businesses (FPB) survey of their members shows red tape costs small and medium sized business £9.3 billion each year, and compliance takes 34 hours per month for each firm.
- The UK has fallen from 22nd to 28th in the latest World Bank 'Employing Workers' indicator.

Most of the figures and surveys focus on regulatory costs for businesses in the private sector, but the burdens on public sector organisations like schools and hospitals, and on charities and voluntary groups in the third sector, are extremely high too – hospitals face regulation and inspections by more than 40 different organisations, for example.

Even though these statistics are awful, they almost certainly underestimate the true costs of red tape. Most of them (such as the Government's own Administrative Burdens Reduction Programme) only include the administrative costs (the costs of complying with each new regulation,) but ignore the policy costs of the regulation itself. As an illustration, if the Government passed a law banning work on a Wednesday the administrative costs of checking to make sure no-one was working would be fairly large, but the policy cost to Britain's economy would be enormous.

2.3 Different Shades Of Red Tape

Red tape comes in a variety of different forms, and from several sources too.

2.3.1 Hard Law

First, there is the ‘hard law’ which originates in Westminster and Brussels in the form of primary legislation, EU directives and secondary Statutory Instruments (SIs). Hard law also includes the decisions of the courts, which establish case law, and the regulators, where they have legal force.

2.3.2 Soft Law

Second, there is a plethora of ‘soft law’ which sits around the hard law, extending and expanding its reach hugely. It takes various forms:

- Mandatory guidance from government departments, regulators and quangos on how to interpret and comply with ‘hard law’, or requirements which must be satisfied for any organisation wanting to bid for public contracts.
- Mandatory codes of conduct or other requirements from industry bodies or professions which, even though they are not directly imposed by Government, are still a practical necessity for anyone wanting to operate in a particular sector. This would also include requirements imposed or strongly suggested by expert intermediaries like insurance firms, health and safety advisers and lawyers.
- Advice or guidance from government departments, regulators and quangos which was supposed to be voluntary, but has been applied by the courts or regulatory inspectors in a way that makes it effectively mandatory.
- Soft law does not include genuinely voluntary advice and guidance on good practice from organisations like standards boards, since they can be accepted or rejected without legal consequences.

Soft law causes three potentially serious problems:

- It is not subject to the same level of democratic scrutiny as the ‘hard law’ it supports and can be changed at will by Ministers.
- Without it, an army of entrepreneurial advisers in areas such as health and safety will fill the resulting vacuum with extensive fear-based marketing campaigns to push organisations into often unnecessary and over-complex action plans and risk assessments in advance of each new regulation that comes into force.
- It is vulnerable to regulatory ‘scope creep’ if a clear distinction between regulatory guidance and business advice is not maintained at all times. Governments may provide advice on best practice or broader business support (through Business Links and other programmes, for example) but following it is voluntary, like recommendations from an external management consultant, rather than mandatory. It is very easy for regulators and their inspectors to cross this line, particularly because they are often asked for help from the organisations they are inspecting on what needs to be done to achieve a passing grade. This is a normal and helpful part of risk-based inspection, but it is vital to draw a clear line between guidance on the minimum actions necessary to clear a regulatory threshold, and advice on ‘nice to have’ items which are not strictly needed to pass an inspection.

2.3.3 Obligation, Information And Inspection

Finally, it is important to understand how the costs of hard and soft law take their toll on our day to day lives. The burdens arise in three ways:

- The simplest and most straightforward cost of red tape is through obligation, where red tape stops people from doing things they want to do, or requires them to do things they do not.
- One of the most visible and resented forms of burden is the cost of the information which has to be kept, organised and provided to regulators, quangos, Government Departments and Town Halls to prove they are complying with each regulation, delivering each target, or bidding for a public sector contract.
- The final cost is inspection, where regulated organisations face periodic and, all too often, inconsistent and intrusive visits from officials checking whether they are complying with each set of regulations. Some organisations are subject to so many regulators that they face potentially continuous sequential inspections on a rolling basis throughout the year. Even worse, the recommendations and action points from each successive inspection report may bear no relation to its predecessors, so inspectors may recommend mutually contradictory actions. For example, Health and Safety may require a particular door to be locked shut, while the Fire Authority may demand it is unlocked or open at all times.

Equally, inspectors may apply inconsistent or over-zealous standards ('scope creep'), either between different areas of the country, or in the same area over time.

Finally, inspectors may focus on organisations which are easier to inspect, or which they know will react positively to their recommendations, rather than the high risk places that really need attention.

Many quangos which are not 'official' regulators nonetheless impose one or more of these types of regulatory burden. Sir David Arculus (former head of the Better Regulation Executive) lists not just the 25 statutory regulators covered by Sir Phillip Hampton's report on regulation, but also more than 120 other quangos which have some additional regulatory role. Including all the quangos that impose an information burden as well would probably increase the total still further.

3. A Post-Bureaucratic Approach To Regulation

It is tempting to assume that better regulation always means deregulation. And, given the scale of Britain's regulatory burden and the challenge of reducing it, that is probably a good starting assumption. But it is also important to remember that many regulations are worth keeping – we all want to know our doctors and teachers are well trained and trustworthy, for example – and that many bad regulations have a sensible purpose which means they should be reformed to become less bureaucratic and costly rather than simply deleted entirely.

As a result, we need to understand how to recast red tape wherever we can't simply abolish it. This section lays out the principles which will underpin our approach .

3.1 Principles of Good Regulation

The Better Regulation Executive (BRE) has enunciated a series of principles to describe what makes good regulations instead of bad ones, which were later taken up in Sir Phillip Hampton's review of regulation. They have won widespread acceptance and are an excellent starting point:

Proportionality	Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
Accountability	Regulators must be able to justify decisions, and be subject to public scrutiny.
Consistency	Government rules and standards must be joined up and implemented fairly.
Transparency	Regulators should be open and keep regulations simple and user friendly.
Targeting	Regulation should be focused on the problem, and minimise side effects.

3.2 Understanding Labour's Failures

We can learn a great deal from understanding why Labour's attempts to reduce bureaucracy and red tape have failed so badly. Apart from their instinctive mistrust of free markets, which prompts them to use regulations as a way to impose collective control, they have made a series of other mistakes as well:

- They have sought to act as the nation's 'risk manager', attempting to manage away all risks in all situations. As a result, Labour ministers are involved at an increasingly micro level of risk management in today's society, managing areas ranging from the exact size and location of signs in public buildings, to the latest proposals requiring parents to undergo criminal vetting tests.
- They have been far too quick to respond to a media story by announcing new regulations in order to be 'seen to be doing something'. This knee-jerk approach to regulation is almost always counter-productive, and typically leads to poorly thought-through and clumsily drafted regulations.
- They have failed to decentralise, taking power away from individuals and local communities and transferring it instead to Quangos, regulators and bureaucrats in Westminster and Brussels. This has also given rise to a debilitating 'box-ticking' culture, as politicians and regulators have failed to recognize the importance of independent institutions and professional responsibility in shaping behaviour.
- They have failed to take into account human nature. Without a realistic conception of human behaviour, Labour policymakers have resorted to simplistic, ineffective and clunking

interventions. This is a missed opportunity: drawing on insights from social psychology and other related disciplines can help public bodies to develop policies that are more effective and which impose lower economic and social costs.

3.3 Going With The Grain

New research by social psychologists and behavioural economists is giving policymakers around the world an opportunity to develop more effective, less bureaucratic regulations. For example, human decisions are powerfully influenced by framing and social contexts, as well as by social norms, habits, morality, formal and informal authority, non-monetary incentives, community expectations, and the way choices are presented. By and large, state-run bureaucracies and the regulations they administer are pretty poor at dealing with these kinds of soft – but nonetheless powerful – influences. Understanding them can help us to create a new approach, designing policies that go with the grain of human nature, and therefore achieve our goals in less intrusive and bureaucratically-burdensome ways.

3.3.1 Empowering Consumers With Better Information

Setting data free and improving transparency can replace intrusive government regulation with post-bureaucratic pressure from individuals and other organisations. This can not only be more effective than clunking state regulation, but it can also encourage social and commercial innovation.

Case study: Credit card user information in the United States

Barack Obama recently announced that credit card providers will be required to send their customers a data file containing two important categories of information: pricing and usage.

Consumers will be able to upload this machine readable raw data onto third party price comparison websites, which can then use this information to provide detailed advice on whether other credit card providers could deliver better value for money, given that consumer's precise usage behaviour.

This innovative post-bureaucratic policy will make markets more competitive and help consumers get a better deal by increasing transparency, enabling switching and promoting better informed choice. It is far less intrusive and bureaucratic than traditional policies involving compliance regimes and inspections.

3.3.2 Influencing Social Norms

Creating social norms, changing them or making them more transparent are all powerfully effective ways of regulating behaviour without heavy-handed state regulation, because people's behaviour is often powerfully shaped by the behaviour of others.

Case study: Cutting tax evasion in Australia

The Australian government recently sought to cut tax evasion in the tax return process. Without changing their existing penalties, and rather than introducing a heavy-handed and bureaucratic approach such as increasing the number of tax inspectors or increasing the amount of complex anti-tax evasion legislation, the government simply informed the public that most people were 'honest' in terms of the information they provided on tax return forms.

This proved to be highly successful: the average tax deduction claim fell sharply from \$286 to \$151. Assuming an average tax rate of 30%, this would mean a revenue gain of more than \$800 million.

3.3.3 Framing Decisions

Social psychologists have long understood that the way in which decisions are framed, and the context in which they are made, can powerfully affect the outcome of those decisions. For example, complex systems can hinder responsible decision-making, while simple choices can encourage responsible behaviour without intrusive regulation.

Case study: Cutting road accidents in the Netherlands

In the Netherlands, roads have been stripped of warnings and signs, making drivers more cautious and aware because they felt more responsible for their actions. This has proven to be highly successful in encouraging responsible driving without intrusive state regulation such as speed cameras or new legislation.

Case Study: Australian Airline Industry

The Australian government recently recognised that consumers were not taking advantage of lower flight costs offered across the airline industry, but tended to stick with one or two well-known airlines. As a result, competition in the airline sector was not working as effectively as it should have been.

Rather than introducing complex regulations to cap flight costs or introduce government monitoring of airline activities, the Australian government simply required airlines to publish their flight prices in a standardised format, allowing consumers to compare prices more easily.

3.3.4 Self-contracting

Research by social psychologists has shown that self-contracting is highly effective in regulating individual and organizational behaviour in a non-bureaucratic and voluntary way. This approach is effective because people tend to make better long-term decisions when in a so-called ‘cold’ state,

Case study: Cutting problem gambling in Australia

Australian states have introduced programs allowing gamblers to sign themselves to a ‘self-exclusion’ list that bans them from casinos. A recent review indicated that some 30% of participants abstain completely, with significant reductions across all participants in the urge to gamble, and in the consequences of gambling for daily activities, social life and work. Pathological gambling scores were significantly reduced over six months.

This is a far more effective and less burdensome approach than traditional regulatory policies, which are typically non-voluntary and therefore restrict individual autonomy.

rather than when they are in an excited ‘hot’ state.

3.3.5 Setting default options

Many new regulations are intended to prevent individuals from making bad decisions – for example choosing inappropriate financial products. However, Labour’s approach to regulation typically involves blanket bans or counter-productive box-ticking inspection regimes. By contrast, case studies from around the world have shown how it is possible to use default options to help people make better choices without restricting their options at all.

Case study: ‘vanilla’ mortgages in the United States

Mortgages have become increasingly complex, with new features such as balloon payments, teaser rates and prepayment penalties. Rather than restrict the sale of these products, which would significantly reduce consumer choice and competition, Michael S. Barr, an assistant Treasury secretary, Sendhil Mullainathan, an economist at Harvard and Eldar Shafir, a professor of psychology and public affairs at Princeton have proposed that banks in the United States should offer straightforward ‘vanilla’ products such as a 30-year, fixed-rate mortgage or a five-year, adjustable-rate mortgage. The features of these plain mortgages would be uniform, much as in a standard lease used in most rental agreements. These mortgages would be the ‘default’ option for first-time buyers, who would be able to switch to a more complicated product if they so wished. This would protect consumers whilst also protecting consumer choice and competition.

3.4 Other Ways To Recast Red Tape

Using insights from behavioural economics isn’t the only ways to reduce the weight of our regulatory burden. We need to design objectivity, simplicity and responsibility into our laws and regulations from the start. Trying to repair an inherently complex system through more explanation, advice or clever IT may be helpful, but does not solve the fundamental design problems which underlie it.

3.4.1 Outcomes and Objectivity

Regulations based on achieving outcomes, rather than following processes, typically allow more variation, flexibility and creativity in how people and organisations deliver the outcomes which are required. This approach should be economically more efficient and give better value for taxpayers' money. It will also make these new-style regulations more 'future proof', by giving regulated organisations more flexibility to adopt innovative new technologies which offer a better, quicker or cheaper way to achieve the required results.

3.4.2 Intuition And Common Sense

Most areas of life work on intuition and common sense, based on society's normal expectations. Criminal law is a good example: people are not legal experts but know broadly what is right and wrong, otherwise we would all need legal advisers every time we walked down the street. But that's very different from employment law, for example, where most business people feel uncomfortable hiring, promoting, disciplining or firing staff without taking extensive specialist advice to guide them through the complexities first. Consequently, things become slow, expensive, bureaucratic and inefficient. This burden falls on the whole economy, including public and third sector organisations as well as private firms, but is particularly tough on smaller organisations which haven't got the scale to afford the expert advice which they need to compete effectively.

3.4.3 Personal Responsibility And Bad Luck

Regulated organisations such as employers and providers of goods and services should be entitled to expect reasonable levels of personal responsibility from their staff, customers or volunteers, and regulations should not make the organisation responsible if they do not get it. The reasonable standard will vary, of course, particularly where an organisation is in a powerful position compared to its staff, customers or volunteers but, in designing and implementing regulations, we need to recognise that there will always be some instances where staff, customers or volunteers suffer some form of detriment even though their employer or product provider has taken reasonable steps to protect them. We need to be careful not to regard this as a failure for which blame or legal liability needs to be attached. Sometimes bad things happen and no-one should be legally liable. We cannot and should not try to deny the existence of bad luck, nor should we pretend it is possible or desirable to legislate risk out of our lives entirely.

3.5 Alternatives To State Regulation

A lot of Britain's regulatory burden is created because we resort to state regulation and red tape when other, lighter touch alternatives would do the job just as well instead.

3.5.1 Professional Standards And Co-Regulation

Both professional standards and co-regulation (a hybrid where regulators and accredited professional organisations share different elements of a regulatory regime) still create a regulatory burden but, provided they are set by a recognised professional body, have the advantage that they can be modified and updated promptly and relatively easily compared to Government measures which would require not just Ministerial agreement but also consultation and approval in Westminster, Whitehall and frequently Brussels too. Also, because the standards are originated, monitored and maintained by experts in each field they are far more likely to be effective while also minimising bureaucratic costs and burdens than Government red tape.

Neither professional standards or co-regulation are necessarily a perfect solution to over-regulation. They are vulnerable to 'producer capture', where the professional bodies dilute their standards until

they become ineffective. This risk can be minimised by an external accreditation body such as the UK Accreditation Service (UKAS) which will certify whether a particular set of standards are sufficiently rigorous. Equally, professional standards can be abused by incumbents to erect unfair regulatory barriers to market entrants, which can reduce or stifle competition.

Providing these risks are properly managed, with high quality professional bodies, independent accreditation and vigorous competition authorities, professional standards are an extremely effective and unbureaucratic alternative to state regulation.

3.5.2 Stimulating Competition And Consumer Power

Law and regulation are less necessary if people have all the necessary information, opportunity and choice to make their own decisions. We should aim to provide these essentials wherever possible, to make more regulations and regulators unnecessary or obsolete.

4. Culture Change In Whitehall And Beyond

Westminster, Whitehall and Brussels are regulation factories. They have large numbers of very clever and highly paid people employed to think up, debate and draft new laws and regulations. The professional reputations of politicians, civil servants and other officials, not to mention lobbyists, are all made and lost by creating new laws, not by cutting or simplifying them.

Achieving a post-bureaucratic approach to regulation across government will not happen overnight. It will require a fundamental culture shift amongst policymakers in Whitehall and beyond, which will only be made possible through significant structural reforms, backed up by strong political leadership. David Cameron and George Osborne have consistently made clear that reducing the negative impact of bureaucratic and ineffective regulations will be a top priority of a Conservative government, and Conservative ministers will be expected to develop and champion innovative and post-bureaucratic approaches to reducing regulation in every policy area.

4.1 Changes To The Machinery Of Government

4.1.1 A Powerful Cabinet ‘Star Chamber’

Every proposed new law or regulation will have to get prior approval for the regulatory burden it would impose from a new ‘Star Chamber’ cabinet sub-committee before going ahead, in the same way as proposals are signed off by Treasury for financial costs. This will apply to all measures, whether they affect public, private or third sector, to ensure the costs of red tape are being properly addressed across the entire British economy. It will also apply to British negotiations on draft EU directives in Brussels, and will prevent gold plating of the laws which are created later, when an agreed directive is translated into UK law by Parliament.

4.1.2 ‘One-In – One-Out’ For All New Laws

A Conservative government will introduce a demanding new ‘One In – One Out’ requirement for all new regulation. It will impose a system of regulatory budgets where any new regulation must include cuts in old laws which, together, produce a net 5% reduction in the regulatory burden. This means:

- The ‘One-In – One-Out’ approach will be underpinned by Impact Assessments (IA) of the regulatory costs and benefits of each measure. To give the process teeth, the IA will be produced by the Department sponsoring the new law but audited & signed off by an external body such as the National Audit Office (NAO) or the Audit Commission. If the audit opinion is not adequate it will not come before the Star Chamber. This is particularly important because, at present, too many IAs are extremely poor quality and do not provide accurate or thorough information on the true costs of each new piece of red tape. The NAO’s most recent review of IAs noted marked differences between the best and worst, with insufficient analysis of the evidence in the weaker IAs: in 2008, 40% of IAs did not quantify the benefits and 33% did not quantify costs.
- IA methodology will be developed and approved by an external body (equivalent to the Accounting Standards Board) to provide independent and heavyweight standards to be applied to the IA by the external audit body. It must apply to both policy and compliance costs, and should cover hard law, soft law and information costs too. It will pay particular attention to the impact of extra red tape on small firms and public or third sector organizations, since they are often worst affected by additional burdens.
- The final chapter of each new Bill will contain the deregulatory measures required to counterbalance the costs of the new rules at the front. This will help to instill the necessary

culture change at the heart of Whitehall, Westminster, British representatives in Brussels and regulators too, since deregulatory thinking will become an essential part of creating and piloting any new law, EU directive or regulation into force in future. It will also prevent the deregulatory items from being separated from the new laws, and stop them from being promised at some indeterminate point in the future, if and when the Parliamentary timetable allows.

- Every other public body which does not create hard law, but which creates soft law of any kind, will be required to produce an annual Regulatory Budget Statement showing the total cost of the requirements they currently impose (calculated in the same way as IAs) and should aim to cut them by 5% each year. This will apply to every regulator, and to a great many quangos since, even though many of them aren't officially regulators, they nonetheless impose red tape in the shape of obligations, inspections or information requirements.
- Any Secretary of State who cannot find the necessary 5% regulatory cuts to get approval for a piece of new legislation will have to agree compensating net cuts with their cabinet colleagues, to affect other Whitehall Departments or regulators in order to reach the 5% target and get their agenda through.

4.1.3 A Powerful Regulatory Adviser

We will appoint Professor Richard Thaler as a senior advisor and member of the Cabinet Star Chamber, to ensure that regulations are being reviewed and reformulated in the best possible way.

4.2 Taming Regulators And Quangos

David Cameron has already explained how, under a Conservative government, the role of quangos will be reduced to providing administrative decisions and services that need specialist technical expertise, impartiality from political control or interference, or particularly high levels of transparency. This should significantly reduce the number, size and scope of quangos under a Conservative government.

A Conservative government will introduce a rolling programme to review the role, scope and mandate of every regulator and regulatory quango. Each one will be given a charter which will include:

- *a sunset clause requiring its role to be reviewed and renewed every seven years so its performance can be assessed over time, and so it can be modified, downsized or even merged if appropriate in future.*
- *a new duty to reduce its overall regulatory impact by a specified amount over the course of the charter's life, by promoting competition and increasing consumer power.* The ultimate aim should be to reduce the need for regulation in these areas to no more than is normal for any other sector of the UK's economy. At that stage, those elements of each quango's role will become redundant, and the residual competition and consumer responsibilities will be passed across to the OFT to be treated in the same way as every other sector.
- *modernised and post-bureaucratic Governance structures.* The Government has remodelled many regulators to become 'Non Ministerial Departments' (NMDs). These involve a similar structure to private sector corporate Governance, with independent Boards of non-executive Directors and separate roles for the Chair and Chief Executive. They are directly accountable to Parliament, although a sponsoring Government Department is responsible for their budget and appointing senior positions, and most feedback indicates they strike a good balance between arms length technocratic independence and political accountability. We will consult and consider carefully whether this model, or other alternatives, should be applied more widely to other quangos as well.

Giving The Public Power To Nominate Bad Laws

At present, UK lawmakers spend too little time evaluating whether existing regulations are working. There is no automatic mechanism to ensure that lessons are learnt from either successes or failures, and no systematic process to modify laws or regulations which need urgent reform because they have failed badly. Without these things it will be extremely difficult to create and maintain the deregulatory culture change which is needed in Town Halls, regulators, Whitehall, Westminster and British representatives in Brussels.

A Conservative Government will create a process for reviewing and, if necessary, modernising the 30 worst failures in regulations and red tape each year. Once a regulation has been officially entered for this process, it will automatically acquire a ‘sunset clause’ which will repeal it entirely 12 months later, unless the Government or Parliament takes positive action to reaffirm or modernise it in the meantime.

The regulations to be re-examined would be selected in the following way:

- The ten laws or regulations with the largest negative gaps between the costs and benefits which were estimated on the original Impact Assessment (IA) and those which have actually been achieved on the (now standard) three or five year post implementation review of the IA’s accuracy.
- The ten ‘most hated’ regulations nominated by the public on the BIS better regulation website. We will create a voting system to allow the most resented regulations to be nominated and quantified, subject only to the conditions that they must impose a net regulatory burden (i.e. the benefits on the Impact Assessment must be less than the costs, so the process is not hijacked by pressure groups whose agenda has nothing to do with better regulation), that they must be more than five years old (so they don’t duplicate the automatic post implementation review process above) and that they must not have been reviewed within the past five years either.
- The ten ‘most hated’ laws or regulations nominated by representative business and consumer bodies such as Consumer Focus, Which, the British Chambers of Commerce, the Federation of Small Businesses, the Confederation of British Industry or the Institute of Directors. These nominations would be subject to the same conditions as the public nominations described above.

4.4 Changes To Parliament: Better Control and Scrutiny

We will underpin and institutionalise the deregulatory culture change by creating a stronger and more assertive Parliament which can scrutinise new regulations more effectively.

4.4.1 Controlling ‘Hard Law’

A Conservative government will:

- ***loosen Government control over Parliament’s timetable by merging the Commons Modernisation and Procedure Committees, with a Opposition Chairman elected by MPs on a free vote, and create a new Business Committee, with a Chairman elected in the same way and with Government control restricted to setting an ‘out date’ for their Bills.***
- ***strengthen Select Committees by electing Chairmen in a secret ballot, reducing whips office powers over membership, giving Select Committees a role in major public appointments and presenting their reports to Parliament as Oral Statements.*** Strengthening Select Committees should improve pre-legislative scrutiny, forcing Governments to move away from ‘consultation

on legislation’ (which is often focussed on insuring against judicial review of a regulatory or Ministerial decision as much as on improving a new law) to ‘consultation on the issue’, which will allow stronger and more vigorous consideration of alternatives to regulation before the regulatory ratchet has had a chance to work.

- ***introduce Annual Introduction Dates for all new regulations, in place of the current six monthly timetable.*** This will reduce the rate of regulatory change and the friction costs created by each alteration. Each regulation should be introduced a minimum of 3 months before the expected introduction date, to ensure there is enough time for it to be properly scrutinised, and Parliamentary recesses should not count towards the 3 month scrutiny period.
- ***require stronger Parliamentary pre-approval of negotiation mandates for Ministers in Europe, and give the European Scrutiny Committee more power to take evidence, meet in public, force debates and votes, and control the timetable for EU scrutiny in Parliament.***
- ***introduce presumptions that any European Directive which is being translated into English law will only be introduced once a majority of other EU states have introduced it first. And also that Impact Assessments for UK enactment of any European Directive should include a costed comparison with the impact being imposed on equivalent organisations in other EU states.***

4.4.2 Controlling ‘Soft Law’

A Conservative government will ensure stronger democratic control over soft law in future by:

- ***requiring guidance to be clear and simple, expressed in plain English and published at the same time as the rest of a Bill, rather than afterwards when its impact cannot be properly debated and scrutinised.***
- ***giving the public the same powers as they will already have to nominate the 30 ‘most hated’ hard laws, so they can vote for the 30 worst pieces of guidance, and the 30 worst official forms each year too.*** Each one will have to be shortened, simplified or re-written within 12 months.
- ***progressively recasting regulatory guidance so it explains simple and low cost generic steps required to achieve the minimum legal outcomes which are required.*** The recommended steps may not be absolutely the best or cheapest way to achieve the required outcome for each individual organisation – that would cross the line into advice rather than guidance – but they should provide a safe minimum guarantee to reassure small organisations and their advisers or insurers that they have satisfied the regulations, or that legal liability has been avoided.
- ***automating information collection and processing wherever possible.*** Many Government processes are still too manual, so costs can be reduced still further.
- ***We will accelerate existing moves towards data sharing and IT interfaces (where allowed by civil liberties concerns). We believe that there is considerable scope for bolstering this in a number of different areas (e.g. HMRC/Companies House): we will launch an early consultation process to understand better the scale and significance of the opportunities.***

4.5 Sweeping Away Labour’s Bureaucratic Inspection Regime

Inspection costs are a key element of the regulatory burden. We will sweep away this bureaucratic structure with transparent measures which will let individuals and citizens hold public bodies to account.

A Conservative government will:

- *publish cost and value comparison measures for local councils that allow the public to see exactly how well their council is delivering on its value for money remit. This will replace the bureaucratic and expensive system of Audit Commission inspections and reports.*
- *extend the Primary Authority Scheme introduced by the Local Better Regulation Office (LBRO) which means multi-branch organisations (like retail chains) are inspected by a single local authority rather than facing different interpretations of the same regulations in every county around the country.*
- *require cross-regulator co-ordination of all inspections* so that the relevant inspectors all turn up as a multi-disciplinary team and present a single set of recommendations at the same time, rather than a new team from a different regulator arriving each week and contradicting the recommendations of the previous inspectors.
- *introduce low-frequency, random and unannounced inspections for all low-risk organisations.* This will dramatically reduce costs for both the inspectors and the organisations they cover, but will still enforce good behaviour because of the risk of an extremely thorough and intrusive audit at zero notice. This approach is already used to great effect by the tax authorities. High risk organisations will, of course, still be subject to a more structured and frequent inspection regime, which should give them strong incentives to be reclassified as low risk in future.
- *prevent ‘scope creep’ in regulatory inspections by introducing ‘MOT style’ written inspection reports (wherever they do not exist already)* quoting precisely which section of which law has been broken if they have failed the inspection. If an inspector is also asked for advice on how to achieve a passing grade in future, he or she will be able to provide generic guidance, but must make it clear if they also offer advisory recommendations which are entirely voluntary. This change will promote greater precision, objectivity and consistency from inspectors and reduce the likelihood of arbitrary or incomprehensible decisions. It will also provide a better audit trail for appeals where needed.

4.6 Promoting Alternatives To Red Tape

4.6.1 Professional Standards And Co-Regulation

A Conservative government will encourage professional standards wherever possible and appropriate, before considering Government regulations instead. We will also consider and consult on a new model of professional co-regulation. This means replacing regulator-run public teams of inspectors with a model closer to financial controls and audits. Well run companies would employ professionally qualified experts in, for example, health and safety or food safety, in the same way as they use accountants in a finance function to ensure that the correct internal processes and controls are in place, and that reported results are reliable. An external member of the same profession would be paid to audit them in the same way as a company’s financial accounts, and to issue an audit opinion that they are satisfactory. This could be filed with the regulator (like filing annual accounts at Companies House).

The advantages of this approach are that regulators would have a quick and evidence- driven way to identify low-risk organisations and target their inspections elsewhere. Regulated organisations would benefit by regaining control of the timing and method of any assessments and improvements to their internal processes and, once their audited reports were on file, would become exempt from external inspections by the regulator too. Equally, the audited reports should reduce contractual red tape and pressure from insurance companies for higher premiums, or for unnecessary and expensive risk assessments and preventative work, since they would have proof that the organisation was already in a low-risk category.

This approach would mean a small number of narrowly-defined but important technical disciplines such as health and safety consultancy, or food safety, would have to become new professions in order to train and accredit the necessary experts to a sufficiently high standard in each field. In each case the sector regulator should be closely involved in accrediting the standards, training and ongoing professional development of the new profession's members. In many cases a spell working for the regulator could easily become an accepted and essential part of each member's professional training and development, or the pinnacle of their career once they had proven their skills and won their peers' respect in private practice.

Any organisation which has undertaken a co-regulation review and has published an independently audited statement that it satisfies the required regulatory outcomes, would be allowed to refuse entry to official inspectors in anything other than an emergency. This would reduce their exposure to frequent and potentially inconsistent inspections, and allow them to take control of how they manage their regulatory compliance.

4.6.2 Promoting Competition And Consumer Power

Law and regulation are less necessary if people have all the necessary information, opportunity and choice to make their own decisions. We should aim to provide these essentials wherever possible, to make more regulations and regulators unnecessary or obsolete. That means promoting more competition and consumer choice wherever possible, and making sure that people have all the right information they need, at the right time and in the right form, to make good decisions too.

A Conservative government will give every regulator a duty to reduce, modify or abolish red tape wherever consumers in their sector have enough reliable, convenient and easily understandable information to make informed decisions, and to encourage regulated organisations in their sector to make the information available wherever possible too. Where no suitable regulator exists, the OFT will own this duty in any sectors where information isn't already available anyway. We will also standardise and simplify regulators' existing consumer duties, which are an historical accumulation of different legal definitions, processes and standards of proof. This will provide a significant one-off deregulatory benefit on its own.

Giving consumers the right information to make informed decisions is no use if they have no choices available to them. If people are faced with a monopoly provider, in either the public or private sector, they cannot vote with their feet and choose an alternative supplier. Stimulating choice and competition is an essential mechanism to reduce the need for regulation.

A Conservative government will give every regulator a duty to promote and increase competition and choice wherever the statutory framework permits within their sector, to reduce their need to regulate monopoly providers wherever possible.

4.7 Recasting Red Tape

A Conservative government will progressively recast regulations to apply a post-bureaucratic approach to regulation. The following principles will be applied to each re-written regulation:

- *The Better Regulation Executive's principles of good regulation; proportionality, accountability, consistency, transparency and targeting.*
- *The ideas which underpin behavioural economics and going with the grain of human behaviour, including using information to empower consumers, using social norms to improve*

compliance, framing decisions to encourage particular decisions, self-contracting and setting default options.

- *Mandating outcomes which must be achieved, rather than processes which must be followed. This may also require a reappraisal of the process and approach to judicial review of official decisions, which frequently specifies a process to be followed. We will consult carefully on any changes which may be required in this area.*

The outcomes which each regulation requires must be based on minimum acceptable thresholds, not best practice, if they are to reduce the burden of red tape. Governments should not be intervening in any activity beyond the minimum necessary to protect us all from unscrupulous people and hidden dangers in our lives. The threshold may be very high in some areas where the risks associated with non-compliance are very considerable – nuclear or food safety, for example – but it should always define the minimum acceptable standard.

An inherent but important implication of this approach is that *a Conservative Government will undertake an immediate review of exemptions for small businesses, or for small organisations in the public and third sectors too.* Sometimes large organisations feel they are expected to satisfy higher standards because they have deeper pockets and can afford larger investments, or because they can afford to pay fines or damages claims. This is morally and practically wrong, since the required standards should depend on the risks of the activity and the potential severity of any injury or loss which might result, rather than on the ability of the regulated organisation to pay. In these cases the regulatory threshold will have been set too high, in an attempt to mandate best practice rather than ensure a minimum acceptable standard, so *the review will lower the required standard to deliver the biggest possible deregulatory gain for all sectors of the economy.* In other cases, of course, exemptions for smaller organisations are both sensible and desirable; the requirement to file fully-audited company accounts is vital for a large public company, for example, but pointless for a sole trader with turnover of a few thousand pounds a year. *The review will evaluate where it would be safe and practical to extend small business exemptions to cover more organisations in the public, private or third sectors, or to apply regulations in a simplified form to reduce costs.*

- *Ensuring regulations are intuitive for anyone who is reasonably well-informed on a particular matter, and that they expect reasonable personal responsibility too.* This principle is particularly important because many organisations currently feel at a disadvantage, principally in the employment and discrimination tribunals system, from increasing numbers of cases which are brought in the hope of forcing them to settle out of court, regardless of the merits of the case. This view is shared by many professional lawyers operating in the area, and is compounded by a conviction that tribunal decisions on similar cases are unacceptably inconsistent too. The problem is particularly troubling because the original (entirely admirable) motivation for creating the tribunals was to provide a fast, cheap and accessible forum for fair redress, which these criticisms throw into question.

A Conservative government will consult carefully on both the need for, and the nature of, any potential changes that may be required to the employment and discrimination tribunals system to ensure these fundamental principles are being properly applied, to ensure the system offers fast, cheap and accessible justice, and that it is fair to all sides. At the same time we will evaluate the progress which has already been made towards implementing the Macrory Principles of regulatory justice, which aim to improve both the flexibility, consistency and appropriateness of regulatory sanctions, to discover whether it is possible and desirable to speed the process up in future.

