

Briefing – Better Regulation Taskforce

‘Better Regulation’

‘Better Regulation’ is a regulatory economic concept that is pursued by the European Union, UK and Scottish Governments in legislative and policy practice. It posits that the state should only perform regulatory intervention if and only if its attempt to ensure protection standards for individuals and communities can be achieved with minimum costs to business competitiveness and growth. Furthermore, the state should move to remove ‘red tape’ which either no longer serves its purpose or is excessively burdensome to business. It promotes alternatives to legally-binding agreements, such as self-regulation (voluntary agreements or codes of conduct) or co-regulation (where the desired outcome has a legal basis but the means of achieving this is left to the parties involved). This concept differs from the de-regulatory approach in that it can add regulation on specific business spheres, whereas de-regulation only reduces or removes it.

[It has been argued however](#) that this policy practice has clear deregulatory effects. For example, most regulations placed on businesses could be viewed as ‘unnecessary burdens’ as they may impact on business productivity, leading to a negative, imbalanced view of all regulation and associated administrative duties.

European Union

The ‘Better Regulation’ framework has been a part of the European decision-making apparatus [since 2002](#) and informs every stage of the EU policy cycle. Every proposed EU Commission initiative has to undertake a regulatory impact assessment (RIA). These assessments are subject to [Better Regulation Guidelines](#). The principal reason behind the adoption of this approach is the reality of the EU common market: unnecessary administrative and regulatory costs have to be minimised in order to facilitate a fully functioning, competitive internal market between member states.

The EU Commission’s Regulatory Scrutiny Board acts as an independent body that reviews regulatory impact assessments on draft initiatives and conducts ‘fitness checks’ on existing legislation. The Board has to provide, in principle, a positive opinion on any draft initiative tabled by the Commission.

In its [May Decision](#) 2015, the EU Commission launched the [Regulatory Fitness and Performance Programme \(REFIT\)](#) to cement this approach in legislation by involving all EU institutions, key stakeholders and citizens in policy formation with the aim being to ensure that this regulatory framework is predictable, stable and embedded in regulatory culture.

Better Regulation Task Force

The use of the 'better regulation' approach in UK policy practice began through the Better Regulation Task Force (BRTF) in September 1997. The BRTF identified five key principles to test whether any regulation is 'fit for purpose'. Regulatory intervention has to be: [proportionate, transparent, accountable, consistent and targeted](#).

The current UK Government has two independent review and advisory 'better regulation' bodies: the Better Regulation Executive (BRE) and the Better Regulation Delivery Office (BRDO). The former leads the regulatory agenda across government departments; and the latter is responsible for delivery and enforcement of the agenda for business and civil organisations. The UK Government also has the Regulatory Policy Committee, which is an advisory committee of independent experts that provide independent challenge to the impact assessments that are carried out on proposed draft legislation. The Department of Business, Industry and Skills (BIS) retains strategic oversight of both the BRE and BRDO.

Two examples of 'better regulation' in domestic UK policy practice lie in the Government's 'One-in, One-out' (OIOO) and 'One-in, Two-out' (OITO) rules and adoption of Primary Authority by local government.

The OIOO introduces a rule whereby no new regulation is brought in, and has direct costs to business of civil society organisations, without other regulation being cut. The second, OITO, is a rule that states that any new regulatory measure, having the same impact, must be offset by deregulatory measures providing savings of at least double that amount.

Primary Authority is a [statutory scheme](#) which allows the BR framework to be adopted by local authorities when dealing with businesses that operate in their area. Local authorities can create legally recognised partnerships with an eligible business in order to reduce costs and 'regulatory inconsistencies.'

At a national level, the UK Government uses this framework when engaging with EU draft initiatives. It argues that before imposing new directives on Member States, the EU should focus on finding alternatives to regulation: either through self or co-regulation.

Scotland

The Scottish Government has adopted the 'Better Regulation' framework to: support Scotland's Economic Strategy; related elements in the National Performance Framework; and the EU's Better Regulation agenda. The Scottish Government's approach adheres to the principles identified by the Better Regulation Task Force and therefore attempts to reform the 'culture of regulation'. Subsequently, the Scottish Government has created structures that aim to imbed the approach in strategic policy practice. Firstly, in 2004 it established the Regulatory Review Group which acts as an independent regulatory monitor and advisory body and secondly;

provided a statutory footing for Better Regulation within the Regulatory Reform (Scotland) Act 2014. [Regulatory Reform Act \(Scotland\) Act 2014](#)

The aim of the Act is to legislate for better regulation in Scottish policy practice: to promote the use of common standards to all government regulators, of which the Care Inspectorate is included. Ultimately, it is a legislative framework that allows provisions to be made regarding regulatory activities and binds regulators to the [Strategic Code of Practice](#).

Regulatory Review Group (RRG)

The aim of the body is to provide independent advice and assessment on all aspects of the Scottish Government's better regulation agenda. It reviews and judges the Scottish Government and its regulatory agencies' better regulation performance. This also extends to reviewing legislation to consider whether the principles of better regulation are met, and whether the outcomes of legislation (in this context) have been achieved. The Group [reports annually](#) to the Deputy First Minister on regulatory themes and issues, as well as what work has been undertaken in the year. The membership of the body, as of December 2015, consists of representatives from Scottish business and trade organisations, COSLA and the Scottish Government.

Primary Authority

The Act provides the legal framework for the implementation for Primary Authority in local authority areas. Already well-established elsewhere in the UK, a primary authority would have three functions: to issue 'assured' (binding) advice to the business; co-ordinating enforcement actions (of regulatory functions) across all locations used by the business; and developing an inspection for the business as a whole.

The Scottish Government is currently undertaking work to develop a suitable scheme for Scotland. In April 2015, it launched a consultation to gain further views on particular primary authority issues (such as when and how would an enforcement action would be applied) and an analysis of the responses can be found [here](#).

Primary Authority and the Health and Social Care Sector

As stated above, primary authority partnerships are underway in different parts of the UK and many between local authorities and businesses who operate in the Health and Social Care Sector. [For example](#), Salford City Council provides a regulatory and advice package to the Carers Trust business in Greater Manchester.