

REGULATORY DELIVERY: A BREATH OF FRESH AIR FOR BUSINESS

1.1. Today, the 2nd of April, the UK government signalled its commitment to a new dimension of Regulatory Reform - Regulatory Delivery - by establishing a new body that is unique in the world of regulatory reform. It is called the Better Regulation Delivery Office (BRDO)¹ and is located in the Department for Business, Innovation and Skills, the UK's Trade Ministry. It sits alongside the Better Regulation Executive (BRE), the UK's central oversight body for the “Better Regulation” agenda.

1.2. Having both the BRE and the BRDO sitting side by side illustrates that the UK is now pushing hard on two strands of regulatory reform - the more traditional Regulatory Policy approach under BRE and the relatively new Regulatory Delivery approach under BRDO.

1.3. So what is Regulatory Delivery and how does it differ from Regulatory Policy? The latter is about rules and rule-making. It is about policy expressed through rules. The other is about relationships on the ground, once the rules are put into practice. Regulatory Delivery is about “the regulatory experience” for business, rather than the abstract analysis of rules and their possible impact. It is about actual impact, and not just of the rules but of all the interactions between businesses and the various regulatory authorities. It is about day-to-day, ongoing relationships within the framework of rules.

1.4. A few illustrations may help demonstrate why this dimension matters:

- A regulated business has its “information obligations” cut by 25% under a traditional Administrative Burden Reduction programme, which may lead to some opportunity costs being realised in time saved giving that information. But it is then scrutinised by one of its regulators who wants detailed reports on its activities that are considerably more than its rule-based reporting requirements. The net result for that business in its “regulatory experience” is highly negative, despite the success of the burden reduction exercise.
- A regulated business operates branches in over 400 local authority areas, each of which has its own inspectors. The rules it has to comply with are the same throughout and are a textbook case of light-touch, minimal regulation. But the business can be faced with more than 400 different interpretations of these rules by the inspectors for stores in each local authority area. The clarity and simplicity at the rule-making level disappears into confusion and costly systems design.
- A small business start-up is trying to understand its new operating environment, in terms of the sectoral culture, the commercial challenges, the management of a business and the framework of regulations from perhaps as many as ten sources. An inspector calls. Does he find loads of faults and

¹ <http://www.bis.gov.uk/brdo>. See the Press release on launch - <http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=423993&NewsAreaID=2>.

penalise the business for each or does he recognise that the business is willing to comply and guides it through some of the maze?

The way in which regulations are implemented and enforced can mean at least as much if not more to businesses as the actual rules themselves. And it is what they live with on an ongoing basis, after the fuss about the rules dies away. Regulatory reform that looks only at the rule-making level does only half the job.

1.5. But the UK has also recognised that Regulatory Delivery can lead to positive business benefit, rather than just reducing business cost (which is as much as most rule-based schemes can now do). In the above examples, the inspector in the third case can be the most positive support which that small business owner has come across - the inspector understands the systems and has seen hundreds of small businesses going through the same problems. There is a real asset there to develop. And Regulatory Delivery can also help the large companies. In the UK, the second scenario above is resolved by the business engaging one local authority as its “Primary Authority”.² If approved by BRDO, that relationship has statutory backing and requires that regulator to give advice on enforcement and interpretation on which the business can rely in all its branches. BRDO's predecessor body, LBRO, has already partnered 468 businesses with 81 local authorities, affecting over 48,700 premises.

1.6. The Regulatory Delivery level can be much more challenging than the rule-making level because it means getting out and about, engaging with businesses, trade associations, local authorities and understanding how these complex networks of incentives and practicalities actually work. The UK government recognised the need to do so when it commissioned the Hampton Review on Inspections and Enforcement in 2005³ and the work that BRDO is now bringing back inside the heart of government flows through from that report. Many other EU countries see the UK as leading on this area of regulatory reform and some have already adopted and adapted the “Hampton Principles” in their own legislation and practice. The World Bank Group, through the International Finance Corporation (IFC) has also been pioneering similar work in an apparent parallel dimension, working primarily in the Former Soviet Union, East Africa and Latin America, looking at the “investment climate”⁴ and factors such as reform of inspections and the granting of permits and licences.⁵

² <http://www.bis.gov.uk/brdo/primary-authority>.

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<http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system>.

⁴ <https://www.wbginvestmentclimate.org/>.

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<https://www.wbginvestmentclimate.org/uploads/How%20to%20Reform%20Business%20Inspections%20WEB.pdf>

1.7. BRDO's predecessor and IFC have joined forces over the last 18 months, comparing experiences across developed, developing and transition economies and learning much from each other. What stands out is how much of this agenda is generic to different countries, systems and economies. BRDO is developing an International Competency Product to explore what is generic about inspections, with a view to greater professionalization of the task of inspecting, which should also lead to a more efficient and effective deployment of staff and increasingly realising the potential of inspectors to support, encourage and advise the willing, whilst also being able to target and sanction the deliberately non-compliant. The international product will build on the work already done in the UK to establish the generic layer.

1.8. When analysing the contribution of regulation to Growth, the rhetoric tends towards regulation being universally bad for business, leading to the simple approach of constantly reducing regulation. But business cannot function without a basic regulatory infrastructure - as various developing countries have shown. The real challenge is to get the best of both worlds - a regulatory infrastructure that allows businesses to operate, itself operated in a way that supports business rather than stifles them. Good Regulatory Delivery leads to economic growth.⁶

1.9. Implementation has always been the poor relation of policy-making. The UK government is taking the bull by the horns and recognising that it is under-played because of its difficulty, not its lack of importance, and is showing determination to take on that difficulty. BRDO's predecessor, LBRO, and IFC have shown across a range of countries and systems that this can work. More countries should now take on the challenge.

⁶ <http://www.bis.gov.uk/brdo/resources/knowledge/regulation-and-growth>.