CabinetOffice

90441

David Miliband MP
Minister for the Cabinet Office

70 Whitehall
London
SW1A 2AS

Telephone 020 7276 0652
Fax 020 7276 0655
E-mail psmco@cabinet-office.x.gsi.gov.uk
Web www.cabinet-office.gov.uk

David Arculus
Chair
Better Regulation Task Force
22 Whitehall
LONDON
SW1A 2WH

2 February 2005

Dear David,

GOVERNMENT RESPONSE TO BETTER REGULATION TASK FORCE REPORT 'AVOIDING REGULATORY CREEP'

I am writing to thank you for this valuable and informative report, which identifies some of the main causes of regulatory creep and also sets out clear ways to tackle this issue. I enclose the Government's response to the report.

The report provides an excellent opportunity to make further progress on the Government's better regulation agenda. All 10 recommendations made in the report have been fully accepted. Across Whitehall and when required, departments will be putting specific practices in place in order to meet the recommendations made.

I am copying this letter to the Prime Minister, Regulatory Reform Ministers and Sir Andrew Turnbull.

Yours ever,

DAVID MILIBAND

Government response to Better Regulation Task Force ' Avoiding Regulatory Creep' Report.

Introduction

The Government welcomes the Better Regulation Task Force (BRTF) report on 'Avoiding Regulatory Creep' and would like to thank the BRTF for this clear and comprehensive discussion of the factors that can contribute to 'regulatory creep'. The report highlights the importance of BRTF's 5 Principles of Good Regulation and the need for them to be applied throughout the regulatory process, including in the formation of guidance.

The Government has carefully considered the 10 recommendations made in the report and has accepted them all in full. Responses to specific recommendations are set out below.

Recommendation 1: The Task Force recommends that when considering options for achieving the policy objective, policy makers should consider what scope there is for a set of measurable minimum standards for compliance that can operate alongside a goal-based approach.

Accepted

The Government recognises the attraction of a 'goal based' approach to regulation in terms of its flexibility and does not want to restrict this. However, the Government is also aware of the need to off-set this with a clear indication of what compliance means in practice.

There are already sections of the guidance on Regulatory Impact Assessments (RIAs) that address enforcement/sanctions and monitoring. Consultations should also routinely address the scope for setting measurable standards.

The Government agrees however that there is further scope for utilising measurable minimum standards for compliance alongside a 'goal based' approach. The Cabinet Office Regulatory Impact Unit (CORIU) will therefore make this explicit in the RIA guidance by spring 2005.

Many departments are already putting this recommendation into practice. For example, the Office of the Immigration Services Commissioner (OISC) is developing a series of information leaflets/practice notes to help those it regulates to understand better what is required of them.

The Health and Safety Executive (HSE) often includes practical means of compliance in its published guidance. Furthermore, HSE is actively considering whether it should increase the amount of specific, as opposed to goal-setting, advice given in regulatory contacts and guidance.

Recommendation 2: The Task Force recommends that policy makers should involve those being regulated and enforcers in the early stage of policy and

development, so all parties involved share a common understanding of what demonstrating compliance will mean in practice. This advice should be included in the Cabinet Office's guidance on consultation.

Accepted:

The Government's Code of Practice on Consultation states that policy makers should involve all those who may be affected by a policy proposal throughout the policy making process. Ideally, they should be engaged with early on and consulted with informally, as well as through a written consultation document.

The Government will add specific advice to its web-based guidance on consultation, which is currently undergoing revision. The work will be completed by the end of January 2005. The guidance will state that policy makers should ensure that options for demonstrating compliance with new regulation are clearly set out in the consultation (document) and that respondents are given ample opportunity to comment on these proposals.

In addition, the Cross Government/Industry groups referred to under recommendation 6 now get early sight of regulatory proposals and are involved in the drafting of guidance. These groups currently cover the Automotive, Retail, Construction and Chemicals sectors; and the Government intends to increase these number over time.

Recommendation 3: The Task Force recommends that policy makers should include in the Regulatory Impact Assessment consideration of how those being regulated will be expected to demonstrate compliance, paying particular attention not to generate unnecessary paperwork burdens. The guidance 'Better Policy Making: A Guide to Regulatory Impact Assessment' should be amended to reflect this by the end of 2004.

Accepted

The Government agrees that consideration of how those regulated will be expected to demonstrate compliance can be strengthened in the Regulatory Impact Assessment (RIA) guidance. The Cabinet Office Regulatory Impact Unit (CORIU) is currently updating the RIA guidance and as part of this update, the issues raised in this recommendation will be addressed. It is anticipated that the updated guidance will be published in Spring 2005.

Recommendation 4: The Task Force recommends that the Government and regulators should include clear statements in their guidance documents setting out their purpose and legal status.

The Regulatory Impact Unit, working with the Small Business Service, should revise current advice to policy makers on developing guidance. The guidance will be published by spring 2005.

This advice should:

- include the need for a clear statement of the purpose and status of guidance;
- stress the importance of applying the Principles of Good Regulation to the development of the guidance;
- encourage those who draft guidance to take into account the projected costs and benefits of the original regulatory proposal to make sure that the guidance does not stray beyond the original intention; and
- encourage those who draft guidance to involve those being regulated and enforcers in the development of the guidance.

Accepted

The Government agrees that the purpose and status of guidance should be made clear. CORIU will therefore work with the Small Business Service (SBS) to revise the current advice provided to policy makers on developing guidance. The Task Force's recommendations will be reflected in revised guidance, to be published in Spring 2005.

Departments are already endorsing this recommendation in a number of ways. For example, one of the Department of Health (DoH) External Gateway's controls, applied to Government communications since December 2001, is that all documents should include purpose statements and/or executive summaries at the front to ensure clarity about:
- who the document is aimed at;
- what it's key messages are;
- any must do requirements;
- any timetables for action or implementation dates; and
- whether the 'guidance' also applies to the rest of the UK.

In addition, DoH introduced an Information Reader Box (IRB) for all communications in January 2003. The IRB is essentially a standard cover sheet that provides a summary of the document's content, target audience, action required and relevant timescales.

There is a specific field on the IRB template covering the document's purpose which must identify the category into which the document falls i.e. best practice or regulations/directions.

These and other examples of good practice will be examined and taken on board as part of the review of the guidance.

Recommendation 5: The Task Force recommends that in applying the openness principle of good enforcement policy that sponsoring Departments should ensure that enforcement agencies publish their enforcement policies and guidance to inspectors on what constitutes compliance on their websites.

Accepted

In line with Freedom of Information policy, the Government believes that openness and transparency in any regulatory environment gives confidence to the regulator, those regulated and those who come into contact with those being regulated, and is the cornerstone of an effective regulatory regime.

The Government therefore fully endorses this recommendation and will continue to highlight what compliance will mean in practice on enforcement agencies' websites. Many Departments are already doing this. For example, the Environment Agency first published their enforcement policy in 1998. The Health and Safety Executive (HSE) now publish enforcement policies and guidance on their websites and are planning to put all (fully) open internal operational instructions and guidance on what constitutes compliance on their website http://www.hse.gov.uk/foi/internalops/index.htm .

HM Customs and Excise (HMCE) and HM Inland Revenue (HMIR) have a wide range of leaflets and public notices about compliance with taxes on their website. One of these, Notice 989, is specifically about what should happen, what is expected from traders and what they should expect from HMCE when the department conducts an audit.

HMIR and HMCE also publish an extensive list of frequently asked questions that include details of what is needed to comply. Departmental RIAs also include details on proposed enforcement and sanctions.

The integration of HM Customs and Excise and the Inland Revenue in 2005 will see further progress in the shape of a co-ordinated approach to compliance. A key priority for the new department will be providing enhanced support and education to improve the capacity of firms to comply with their obligations.

The Food Standards Agency (FSA) publishes guidance to local authorities on food law enforcement within a statutory Code of Practice. This is available on the FSA's website. In October 2004 FSA launched a new Code of Practice for local authorities which changes the emphasis when determining inspection frequencies from a consideration of hazards (i.e. the types of foods handled) to how well the resultant risks are managed. It also provides greater discretion for local authorities and for the first time the flexibility for them to develop, for very low risk premises, alternative measures to inspection. FSA will closely follow the implementation of the Code and the extent to which the new flexibilities are used.

Recommendation 6: The Task Force recommends that the Government should consider the scope for creating further sector specific industry/cross government forums. The terms of reference for new and existing forums should include a clear steer that they should:

- consider at an early stage compliance issues associated with emerging regulatory proposals so all parties share a common understanding of what compliance will mean in practice; and
- have an input into the development of guidance.

Accepted

The Government fully supports this recommendation to create further sector specific industry/cross government forums wherever they add value and are supported by both industry and the relevant Government bodies. In his Pre-Budget Report on 2 December 2004, the Chancellor announced that the Food sector would be added to the Vehicle, Chemical, Construction and Retail industry sectors already covered by such Forums. Further sectors will be added as appropriate, although in some sectors alternative processes are already in place which have equal merit e.g. "The Hot-Issues Newsletter" approach that applies in the manufacturing sector and "The Regulated Industries Network" that covers water, energy and telecommunications.

The Government accepts the need for such forums to include within their Terms of Reference the need to consider at an early stage compliance issues associated with emerging regulatory proposals. Some of the existing forums already include similar references; where they do not, such references will be inserted wherever possible.

The Government will continue to encourage input from these forums into the development of guidance on implementation issues.

Recommendation 7: The Task Force recommends that the Financial Services Authority together with the financial services sector should develop a robust system for passporting ID checks between institutions that has the full confidence of the sector, by spring 2005.

We look to the Treasury, as the lead Department for the anti-money laundering regime, with the help of the Financial Services Authority, to disseminate the lessons learnt from the financial service sector's work on simplifying ID checks and to facilitate the development of a system for passporting ID checks across all sectors subject to the Money Laundering Regulations by the end of 2005.

Accepted

The Financial Services Authority (FSA) is fully committed to streamlining the customer identification regime and see an important element of this as being to reduce the number of circumstances where a customer has to be identified by more than one FSA-regulated firm in respect of the same business. This simplification will be achieved through the current revision by the Joint Money Laundering Steering Group (JMLSG) of their Guidance Notes. The FSA and the Treasury have been working with the Group, made up of representatives from a range of financial sector trade associations, to identify how best to do this within the parameters of the customer identification requirements of UK law. The JMLSG is planning to issue draft Notes for consultation shortly. However, the timescale over the Guidance Notes does not allow for the meeting of the spring 2005 deadline in the Task Force's report.

To address the broader issues relating to the customer identification procedures used in other (non-FSA regulated) parts of the 'regulated sector' and the scope for passporting between all those sectors subject to the Money Laundering Regulations, the FSA stands ready to offer its support to the Treasury as they take this forward.

HM Treasury welcomes the Task Force recommendations on regarding the anti-money laundering regime. Across Government, HM Treasury is working hard to ensure that the anti-money laundering regime is effective and proportionate and that we engage well with the regulated sector.

These objectives are set out in detail in the Government's Anti-Money Laundering Strategy document which was published on 26 October 2004. The document, which was published jointly with the Home Office and the Foreign and Commonwealth Office, explains the current regime and sets targets for the next 18 months. This document can be found at http://www.hm-treasury.gov.uk. A key goal of the strategy document is that by end 2005 the UK authorities, working with the financial services sector, will have addressed issues around customer identification and will seek to ensure that other businesses in the regulated sector benefit from the work. The FSA has established a Working Group to consider these issues.

In addition, the Treasury plans to raise the issues around ID, including the rules in relation to introduced business (passporting) and the lessons to be learnt from the FSA work on identity via the Money Laundering Advisory Committee. Consultation is currently underway on the best way of taking this work forward. Given the need for full consultation, it is unlikely that these matters will be resolved fully before spring 2005, but Treasury will begin work by this time, subject to the views of stakeholders. HM Treasury will keep the BRTF informed of progress. In addition, these matters will be considered on an ongoing basis by means of Treasury approval of industry guidance notes.

Recommendation 8: The Task Force recommends that when creating new regulators the Government should include appropriate checks and balances in the founding statute to minimise the risk of regulatory creep. In particular, the Government should include a duty on regulators to review and report annually on the regulatory burden they impose and the steps they have taken to reduce it.

For existing regulators the Government should include in their management statements a duty to review and report annually on the regulatory burden they impose and the steps they have taken to reduce it.

Accepted

The Government supports the need for regulators to be open and transparent about the decisions they make, and to assess carefully the impact of any new actions on the overall regulatory burden that they impose. Existing regulators should be encouraged to review and report on the regulatory burden that they impose and the steps they have taken to reduce it. In many cases, this is something that the regulators already do.

For example, Ofcom is required by statute to publish regular statements on how it proposes to ensure that its regulation does not impose or maintain unnecessary regulatory burdens;

Similarly, for the Financial Services Authority, Ministers made a commitment to Parliament that there should be an annual international comparison of regulatory burdens.

The Department of Health completed its review of its Arms Length Bodies (ALBs) in November 2004, which will see a reduction in numbers by 50 per cent and a saving in expenditure by ALBs of £0.5 billion by 2007–08. This will also result in a reduction in posts of 25 per cent in the same period and overall help improve efficiency and reduce bureaucracy in the ALB sector. To further support the reducing bureaucracy agenda when setting up regulators or amending the statute, the Department of Health will include appropriate checks and balances such as a duty to review and report annually on the regulatory burden imposed and steps taken to reduce it. This would then be included as a requirement in the organisation's Framework Document/ Management Statement and followed through as a target to be addressed in the Business Plan. The outcome would be reported in the ALB's Annual Report and Accounts and at the body's annual public meeting.

For existing organisations, the Department of Health will work with the relevant ALBs to ensure that their 2005-06 Business Plans and Annual Reports and Accounts pick this up.

To ensure a consistent approach, and in line with the Government's response to the BRTF's Independent Regulators report, the Government proposes that regulators should be asked to meet the BRTF's recommendation on a voluntary basis in their next annual reporting cycle. The Government would then consider the scope for imposing specific reporting requirements in the light of the response to these requests.

Recommendation 9: The Task Force recommends that the Government should consult on how it might introduce a more proportionate and targeted system for suspicious activity reporting within the anti-money laundering regime by spring 2005.

Accepted

Since the Task Force report was published, the Government has responded to industry concerns about the operation of the money laundering reporting system by making amendments to the Proceeds of Crime Act in the Serious Organised Crime and Police Bill, which was published on 24 November. These amendments include

- abolishing the need to report to NCIS when the identity and whereabouts of laundered money is unknown
- removing the requirement on banks to seek consent for every transaction when a client is suspected of money laundering
- the introduction of a new defence to get rid of the requirement to report conduct which would be illegal in the UK, if it occurs overseas and is legal under local law

These amendments will help reduce the regulatory burden on industry and make the reporting system, more effective without weakening the UK's defences against money laundering. The Government will continue to work constructively with the regulated sector and consider whether further changes to the reporting system are necessary.

Recommendation 10: The Task Force recommends that when creating statutory ombudsman to work alongside regulators, the Government should consider whether it needs to develop a mechanism for dealing with cases that have wider regulatory implications. This should ensure that proper consultation and impact assessment may take place. Cabinet Office guidance on setting up ombudsman services should be amended to reflect this by spring 2005.

Accepted

Accepted. The guidance will be updated by spring 2005.