

# 3

## Better Regulation Initiatives

Chris Booth

### 3.1 Introduction

When introducing a subject, one often begins by trying to define it. This might be sensible with a scientific term, like gravity or metabolism, but it would be a mistake to try to do so with a concept like better regulation. There is no set of features that exclusively defines a set of laws or their implementation as “better regulation”. The different laws and regulations and their practical implementation, enforcement, and so on that are placed in this category enjoy many resemblances of one to the other, but there is not a universal set of traits that is common to all of them.

Furthermore, once you start to try to define better regulation, one naturally comes up against the problem of defining “better than what?” or of justifying that “better” regulation is preferable to plain “same old” regulation or “worse” regulation, which hardly needs saying. So, perhaps an easier task is to describe it in terms of the *need* for better regulation. A succinct UK example is shown in Box 3.1 and a European Union example in Box 3.2.

---

C. Booth (✉)  
Regulatory Specialist, Bristol, UK

### Box 3.1 The Need for Better Regulation

Regulation has many purposes, including protecting consumers, employees and the environment, promoting competition and supporting economic growth. Regulation can benefit both businesses and consumers through, for example, building consumer confidence in the products and services they buy. However, businesses incur costs in complying with regulations, which can act as a barrier to competition and reduce productivity (House of Commons Committee of Public Accounts, 2016).

### Box 3.2 Better Regulation Why and How

The better regulation agenda is about designing and evaluating policies and laws transparently, with evidence, and backed up by the views of citizens and stakeholders. It covers all policy areas and aims for targeted regulation that goes no further than required, in order to achieve objectives and bring benefits at minimum cost. (European Commission 2016a)

So instead of spending time and effort on definitions of better regulation, this chapter explores the types and characteristics of better regulation initiatives that have actually been implemented. For the purposes of this chapter, like the rest of the book, the emphasis will be on regulation of *business*<sup>1</sup> rather than of individuals or households, and the focus is on *environmental* regulation of business. Having said that, this chapter starts with *wide-ranging* initiatives of better regulation of business before moving on to those initiatives related exclusively to *environmental* regulation. It covers the significant developments in better regulation in the European Union (EU) and provides more detail on specific UK initiatives.

It is perhaps worth clarifying, before going any further, that many better regulation initiatives discussed below have not actually been labelled as *better regulation* but have come under various similar headings such as those in Box 3.3. No doubt the individuals and organisations who chose such terms rather than using *better regulation* have reasons for doing so, and maybe they might argue there is a difference in their meanings. However, for the purposes of this chapter, the author has included initiatives under such headings where they have attempted to change regulation for the better.<sup>2</sup>

**Box 3.3 Some other terms often used in place of “better regulation”**

Deregulation  
Modern Regulation  
Smart Regulation  
Regulatory Reform  
Austerity Regulation  
Inspection Reform  
Good Regulation  
Future Regulation

## 3.2 Types of Better Regulation Initiatives

Most wider better regulation initiatives have generally started from a political perspective based on the assumption that although regulation of business has its place it should not be unduly burdensome so as to add costs to business, prevent growth, or make business start-ups unreasonably difficult. Often this is accompanied by a recognition that small and medium-sized businesses are proportionally more affected by such “regulatory burdens” than larger businesses.

These initiatives have included one or more of the following aspects:

- New legislation: scrutiny of any new proposals to determine, for example: the regulatory impact of the legislation; whether or not it is needed; whether or not policy goals could be achieved by other means. For example, the Regulatory Policy Committee was set up at the end of 2009, to provide external scrutiny of the policy-making process in England and Wales.
- Existing individual pieces of legislation. To review and remove if they are unduly burdensome to business and/or ineffective, etc. An example was the Red Tape Challenge (RTC)—a comprehensive government

review of 21,000 regulations on different themes. As a result, certain specific items of legislation were revoked such as the Site Waste Management Plans Regulations (HM Government 2008) which made it compulsory for construction projects over £300,000 to produce site waste management plans. This was revoked in 2013 (HM Government 2013).

- Overall *categories* (rather than individual pieces) of legislation applying to business in a particular category such as health and safety law, employment law or environmental law. The purpose of this can be to establish how legislation as a whole is operating in any given area. Reviews might cover for example: to what extent the legislation appears to be a coherent integrated whole; whether it is consistent in its terminology, philosophies, descriptions of offences and penalties, reporting requirements, and so forth; and whether it can be easily interpreted by users. The purpose here being, where appropriate, to simplify, streamline, integrate, and so on. An example is the smarter environmental legislation project in the Department for the Environment, Food and Rural Affairs (Defra) (Department for the Environment, Food and Rural Affairs 2014). This is part of the Smarter Environmental Regulation Review in Defra (Department for the Environment Food and Rural Affairs (Defra) 2012). This is described more fully in chapter 4.
- Implementation of Legislation. Better regulation initiatives in this area have looked at the application of regulation in practice. Aspects covered include reporting, guidance, enforcement mechanisms, risk-based allocation of inspection resources and alternative approaches to inspection (inspection reform). An example is the integrated Environmental Permitting Regime, developed and implemented in stages by Defra and the Environment Agency (EA) from 2005 to 2013. The regime covers facilities previously regulated under the Pollution Prevention and Control Regulations 2000, and Waste Management Licensing and exemptions schemes, some parts of the Water Resources Act 1991, the Radioactive Substances Act 1993, and the Groundwater Regulations 2009 (Department for Food, Environment and Rural Affairs 2013). Another example is the work done by the European Union Network for the Implementation and Enforcement of

Environmental Law (IMPEL) on complementary approaches to inspections described below.

- Evaluation: Either “ex-ante” during design stage before implementation and or “ex-post” after implementation. For example, the EU undertakes evaluations and “fitness checks” on EU legislation (European Union 2015).

Such better regulation initiatives are not necessarily solely confined to environmental regulation, but cover wide-ranging aspects of what has been called *social regulation* such as health and safety, finance, employment, gaming, and so on. The common element of social regulation is that it seeks to intervene in the affairs of business so that business operations do not adversely affect aspects of wider society such as health and safety, employees’ rights, vulnerable individuals, and of course the environment. Examples of *wide-ranging* better regulation initiatives that affect such a broad range of social regulation are discussed below particularly where they have had a bearing on *environmental* regulation. Later sections describe some specifically *environmental* better regulation initiatives.

### 3.3 Wide-Ranging Better Regulation Initiatives

#### Better Regulation in the UK 1997–2010

Following the 1997 General Election of “New Labour”, and over the next ten years or so, the UK Government established a number of bodies charged with better regulation duties and initiatives to see these through. The scope of these was wider than (but included) *environmental* regulation. The most significant of these bodies and initiatives were:

1. *The Better Regulation Task Force* which quickly devised the following five principles of “good” regulation:
  - Proportionality
  - Accountability

- Consistency
- Transparency
- Targeting

(Better Regulation Task Force [1997](#))

2. *The Better Regulation Commission* was established in 2005 as a non-departmental body, sponsored by the Department for Business, Enterprise and Regulatory Reform (BERR) to provide independent advice to government, from business and other external stakeholders, about new regulatory proposals, and about the Government's overall regulatory performance. Its terms of reference were "To advise the Government on action to reduce unnecessary regulatory and administrative burdens, and ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted" (Better Regulation Commission [2006](#)). It was replaced by the Better Regulation Executive in 2008 (see below).
3. *The Local Better Regulation Office (LBRO)* was established in 2007. It was subsequently given a range of statutory duties and powers under the Regulatory Enforcement and Sanctions Act 2008 (Department for Business Innovation and Skills [2011](#)). In 2009 it established and subsequently coordinated the Primary Authority scheme. Primary Authority enables businesses to form a statutory partnership with one local authority, or fire and rescue authority, which then provides robust and reliable advice for other local regulators to follow when carrying out inspections or addressing non-compliance. Agreements can cover broad or specific areas of environmental health, fire safety, licensing and trading standards legislation. The aim is to ensure that local regulation is consistent at a national level and sufficiently flexible to address local circumstances (Regulatory Delivery [2016a](#)). The scheme was extended and simplified in 2016 and an updated handbook published (Regulatory Delivery [2016b](#)). The LBRO was replaced by the BRDO in 2012 (see below).
4. *The Hampton Review*. In his final report (Hampton [2005](#)) of his review for UK Government, Sir Phillip Hampton set out a vision for a regu-

latory system that targeted persistent offenders whilst supporting those businesses that want to comply. The report proposed:

- “reducing inspections where risks are low, but increasing them where necessary
- making much more use of advice, applying the principle of risk assessment
- substantially reducing the need for form-filling and other regulatory information requirements
- applying tougher and more consistent penalties where necessary
- reducing the number of regulators that businesses deal with from thirty-one to seven
- entrenching reform by requiring all new policies and regulations to consider enforcement, using existing structures wherever possible
- creating a business-led body at the centre of government to drive implementation of the recommendations and challenge departments on their regulatory performance”.

Along with these specific recommendations, The Hampton Review set out some key principles that should be consistently applied throughout the regulatory system:

- “regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- no inspection should take place without a reason
- businesses should not have to give unnecessary information, nor give the same piece of information twice
- the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions
- regulators should provide authoritative, accessible advice easily and cheaply
- regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work

- regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection”.

(Department for Business Innovation and Skills 2017)

5. *The Macrory Review of Sanctions*. The Hampton Review also highlighted the need to revisit the range of sanctions available to regulators. This was subsequently undertaken by Professor Richard Macrory in 2006 who recommended introducing a set of “civil sanctions” that would allow regulators to impose proportionate, flexible and meaningful sanctions in situations of regulatory non-compliance, as an alternative to criminal prosecution. The recommendations from these reviews were accepted by the UK government, and the conditions for granting and use of civil sanctioning powers were incorporated into the Regulatory and Enforcement Sanctions Act 2008 (RES Act). As this marked a significant change in enforcement practice, a proviso was imposed that, before a regulator can exercise these powers, ministers must be satisfied that the regulator will use the powers in accordance with the principles of good regulation, that is, that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed. These principles are set in statute by the Legislative and Regulatory Reform Act 2006 and exemplified by the Regulators’ Code (Better Regulation Delivery Office 2015).
6. *The Better Regulation Executive*. As a result of the final recommendation of the Hampton Review above, the government created the Better Regulation Executive (BRE) to oversee the reduction of regulatory burdens on business, and hold government departments and regulators to account. This replaced the Better Regulation Commission as a joint unit of the former Department for Business, Innovation & Skills (BIS) and the Cabinet Office.
7. *The Hampton Implementation Reviews*. In November 2006, the government announced that “the National Audit Office would work with the Better Regulation Executive, regulators and business to develop a



process of external review of regulatory performance”. The assessment process focussed on the extent to which regulators were performing in line with the Hampton principles and Macrory characteristics, and would encourage continuous improvement. Five major national regulators were to be assessed by the end of 2007 (Health and Safety Executive, Food Standards Agency, Financial Services Authority, Environment Agency (EA) and Office of Fair Trading) (National Audit Office 2007). The 2007 assessment of the Environment Agency (EA) is discussed below.

## Better Regulation in the UK 2010–2016

The Coalition Government in 2010 put even more emphasis on better regulation. Better regulation was a central component of the Government’s Economic Recovery Plan after 2010 in all departments. The prime minister’s approach to the economy and to business included a desire to tackle regulation, as he expressed in his letter to cabinet ministers (see Box 3.4).

Specific bodies and initiatives in this period included:

8. *The Better Regulation Delivery Office (BRDO)*. This was established in 2012 to replace the Local Better Regulation Office (LBRO). This was a directorate within BIS responsible for promoting the better delivery and enforcement of regulation. BRDO took over and further developed the Primary Authority scheme (Regulatory Delivery 2016b). “Good regulation”, “regulatory reform”, and “inspection reform” seemed to be preferred terms used by BRDO rather than

### **Box 3.4 Extract from the prime minister’s letter to all cabinet ministers, 6 April 2011**

“We need to tackle regulation with vigour to free businesses to compete and create jobs, and give people greater freedom and personal responsibility... I want us to be the first Government in modern history to leave office having reduced the overall burden of regulation, rather than increasing it” (Department for Business, Innovation and Skills 2015).

“better regulation”. They described their purpose as “reforming regulatory policy, inspection reform and the reform of regulatory delivery”, focussing on improving the way regulations are enforced, which includes inspection practice, culture and knowledge of regulators, risk analysis, business engagement and accountability (Better Regulation Delivery Office 2016). They set up an Inspection Reform Network and held international bi-annual conferences to promote regulatory reform. BRDO was merged with another body on 1 April 2016 to become “Regulatory Delivery”.

9. *The Regulatory Policy Committee*. This is an advisory non-departmental public body, which scrutinises and validates the estimates that government departments make of the costs and benefits to business of regulations. It publishes its findings regularly (Regulatory Policy Committee 2016).
10. *The Government’s approach to regulation, “Reducing Regulation made simple”*. This was published in December 2010. This was an important aspect of the Government’s overarching objective of achieving sustainable economic growth. This set out the government’s expectations of Parliament, Ministers, Civil Servants, Regulators and Business (Better Regulation Executive 2010) (See Box 3.5).

It also stressed the need to consider alternative approaches to regulation (see Box 3.6).

### Box 3.5 The government’s vision of a system of government for UK and European regulation

**Parliament:**

- thoroughly scrutinise both new regulatory proposals and old regulatory frameworks that are subject to review
- challenge the impact of the regulatory framework and recommend actions to reduce the burden of ineffective regulation

**Ministers:**

- ensure that the government is only intervening when necessary and justified
- focus on identifying the most effective way to achieve desired policy outcomes
- resist the temptation for hasty regulation, even under intense media pressure
- exercise discipline in considering new regulatory measures, as any new costs must be offset by reductions elsewhere so the cumulative burden is reduced
- look at the cumulative impact of new EU measures
- encourage and challenge civil servants to actively explore creative, non-regulatory solutions to achieve desired policy outcomes, including in the EU
- encourage building alliances across Europe to increase the UK's effectiveness in achieving good regulatory results

**Civil  
Servants**  
policy-makers  
including  
lawyers and  
economists:

- develop appropriate incentives, skills and knowledge to actively explore and implement innovative, non-regulatory solutions to achieve desired policy outcomes
- are equipped with analytical tools to provide expert policy advice to ministers on non-regulatory options, including for implementing EU obligations
- develop effective policies that work constructively and imaginatively with businesses' and citizens' needs and circumstances
- enable businesses, individuals and other organisations to get involved in delivering the desired outcomes
- review more frequently whether policies are delivering the intended outcomes, and whether regulations can be simplified or removed to reduce regulatory burdens
- are equipped with the skills to work effectively across international boundaries—both at international and European level and with the devolved administrations

#### Enforcers of regulation:

- work with the grain of businesses' and other organisations' own incentives and processes, reducing oversight and inspection of organisations where effective self-regulatory systems and controls exist
- focus efforts on high-risk businesses, particularly those who deliberately seek to get an advantage over their competitors by breaking the law

#### Businesses, civil society groups and citizens:

- experience less intrusive, costly and prescriptive regulation
- can take greater personal responsibility for the way they deal with their obligations under the law in ways that suit their circumstances
- have more of a say in the way regulation is made and enforced

### Box 3.6

#### Examples of alternative approaches to command and control regulation

*Self-regulation:* An approach initiated and undertaken by those whose behaviour is to be regulated. For example, an industry or profession might choose to develop and adopt its own code of practice promoting ethical conduct.

Examples:

- Unilateral codes of conduct
- Customer charter
- Unilateral sector codes
- Negotiated codes

*Co-regulation:* Similar to self-regulation but involves some degree of explicit government involvement. For example, an industry might work with government to develop a code of practice. The code would usually be enforced by the industry itself, or a professional organisation, rather than by the government.

Examples:

- Recognised codes
- Statutory codes
- Approved codes
- Voluntary agreements
- Trade Association codes approved by the Office of Fair Trading
- Accreditation and Standards

*Information and education:* Can be used to empower consumers to take their own informed decisions.

Examples:

- Inform, enhance consumer choice
- Independent recommendation schemes
- Ratings systems
- Labelling, disclosure.

*Economic instruments:* Can be used to modify behaviour by adjusting the economic incentives facing businesses and citizens. This approach allows individuals to make their own decisions, based on their estimates of whether the benefits of acting in a certain way justify the costs.

Examples:

- Taxes
- Subsidies
- Quotas and permits
- Vouchers
- Auctions
- Competition

*No new intervention:* In many instances, it might not be necessary for government to initiate new action at all. Regulation and its alternatives will almost always impose costs as well as generating benefits, so policy makers should think carefully about whether action by the government is required at all.

Examples:

- Use existing regulation
- Simplify or clarify existing regulation
- Improved enforcement of existing regulation
- Make legal remedies more accessible or cheaper
- Do nothing at all

(Better Regulation Executive. 2010)

11. *The Reducing Regulation Cabinet sub-committee (RRC)* has oversight of Government policy on regulation, including the Principles of Regulation (see Box 3.7). Scrutiny and clearance from the RRC is the central means by which better regulation concerns are reflected in the collective agreement process.

The RRC also clears the contents of the Statement of New Regulation (SNR): a six-monthly publication, setting out measures which will

### Box 3.7 The UK Government's Principles of Regulation

The government will regulate to achieve its policy objectives only:

1. having demonstrated that satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches
2. where analysis of the costs and benefits demonstrates that the regulatory approach is superior by a clear margin to alternative, self-regulatory or non-regulatory approaches
3. where the regulation and the enforcement framework can be implemented in a fashion which is demonstrably proportionate; accountable; consistent; transparent and targeted. There will be a general presumption that regulation should not impose costs and obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made. The Government will adopt a One-in, One-out approach [now a One-in, Two-out approach].

(Department for Business, Innovation and Skills 2015)

come into force over the coming six months and reporting on progress under the One-in One-out and One-in Two-out rules.

12. *Business Impact Target*. The Government set a target, known as the Business Impact Target, to reduce the total cost of regulation for business by £10 billion between 2015 and 2020. The Better Regulation Executive is responsible for developing and implementing a framework for achieving these cost savings. Departments and regulators are responsible for delivering the cost savings to achieve the target through the regulatory decisions they make (House of Commons Committee of Public Accounts 2016).
13. *Red Tape Challenge (RTC)*. This was a cross-government programme to review the stock of existing regulation. The default was that regulation should go unless it can be well defended. Following on from the RTC, each Government Department established “Better Regulation Units” and developed regulatory review measures. For example, the Better Regulation Unit in Defra was established and carried out the Smarter Environmental Regulation Review (SERR) which is described in detail in chapter 4. More details about the

impact of the RTC on *environmental* regulation are provided later in this chapter.

14. *The Regulators' Code*. The UK Government's Regulators' Code came into statutory force on 6 April 2014 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. The Code applies to most UK non-economic regulators, including local authorities, fire and rescue authorities and national regulators such as the EA who must have regarded to it when developing policies and procedures that guide their regulatory activities. There are six provisions of the Code:
  - Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
  - Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views;
  - Regulators should base their regulatory activities on risk;
  - Regulators should share information about compliance and risk;
  - Regulators should ensure clear information, guidance and advice are available to help those they regulate meet their responsibilities to comply; and
  - Regulators should ensure that their approach to their regulatory activities is transparent.

(Better Regulation Delivery Office. [2014](#))

15. *Better Regulation Framework Manual*. In 2015, BIS published this practical guidance for UK Government Officials involved in policy development (Department for Business, Innovation and Skills [2015](#))
16. *Regulatory Delivery*. In April 2016, BRDO and the National Measurement and Regulation Office became a single directorate in BIS to focus on regulation and enforcement. The directorate is working to ensure that the way regulation is enforced is proportionate and risk based. It delivers functions such as Primary Authority, legal metrology and hallmarking policy, technical regulation and enforcement work (Regulatory Delivery [2016c](#)).

## Better Regulation in the European Union up to 2016

- In 2002, the EU Better Regulation Programme was established and was a first step in simplifying and improving EU legislation. It introduced obligatory impact assessments and stakeholder consultations for all new initiatives proposed by Commission.
- In 2005, the European Commission set out its position in a “Communication to the Council and the European Parliament” on “Better Regulation for Growth and Jobs in the European Union”. This aimed to better design regulation so as to increase the benefits for citizens, and to reinforce the respect and the effectiveness of the rules, and to minimise economic costs—in line with the EU’s proportionality and subsidiarity principles. The actions it proposed to achieve this were:
  - by further promoting the design and application of better regulation tools at the EU level, notably in so far as impact assessments and simplification are concerned.
  - by working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators. As well as action at EU level, the communication emphasised the importance that transposition of EU legislation by the Member States and that national regulatory initiatives have a direct effect as well, not just on national administrations and on citizens but also on businesses, particularly SMEs, from across the Union.
  - by reinforcing the constructive dialogue between all regulators at the EU and national levels and with stakeholders (European Commission 2005).

The “Simplification Rolling Programme” was established and covered 164 simplification measures for 2005–2009 and became part of the annual Commission work programme.

- In 2007, the Commission proposed and the European Council agreed that burdens arising from EU legislation, including national rules implementing or transposing this legislation, should be reduced by 25% by 2012. It therefore established an “Action Programme for Reducing Administrative Burdens in the European Union”. It also



invited Member States to streamline their purely domestic legislation by setting “national targets of comparable ambition”. It put the needs and concerns of small businesses at the very heart of the programme (European Commission 2010a). A “High Level Group of Independent Stakeholders on Administrative Burdens” was to advise the Commission on the implementation of the Action Programme. This “HLG” group was set up in 2007, chaired by Edward Stoiber, former prime minister of Bavaria consisting of 15 members selected on the basis of their expertise in better regulation and or policy areas covered by the action programme. The HLG adopted more than 30 opinions covering more than 300 suggestions on how to reduce burdens for businesses (High Level Group of Independent Stakeholders on Administrative Burdens 2011). By the end of the action programme, the Commission reached its target of cutting by 25% the administrative burden for businesses stemming from EU legislation (estimated annual savings €30.8 billion) (European Commission 2016f).

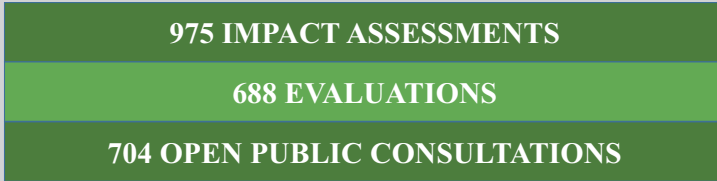
- In 2009, the Commission presented “Sectoral Reduction Plans” for each of the 13 areas covered by their Action Programme. These plans showed that the reduction measures already adopted, could lead to savings of €7.6 billion per year. That could become about €40 billion if the European Parliament and the Council backed the measures pending approval or under preparation. From seven Member States in 2006, all 27 had, by 2009, set ambitious targets for reducing burdens stemming from purely national rules (European Commission 2010b).
- In 2010, the Commission updated its 2005 Communication, with one entitled “Smart Regulation in The European Union” with the aim of ensuring that European laws benefit people and businesses. In this communication, the Commission set out plans to further improve the quality and relevance of EU legislation, in particular:
  - evaluating the impact of legislation during the whole policy cycle: when a policy is designed, when it is in place, and when it is revised
  - encourage Member States to apply “smart regulation” in their work
  - to increase the period of its public consultations from 2012 onwards so as to strengthen the voice of citizens and other stakeholders

(European Commission 2010b)

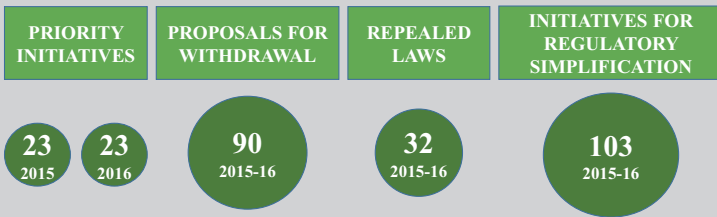
- In 2012, the Commission's Regulatory Fitness and Performance (REFIT) programme was established to make EU law simpler, and to reduce the costs of regulation while still achieving benefits. REFIT aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives (European Commission 2016a). This is all part of the Commission's work on assessing the performance of the existing body of EU law and making changes where necessary to keep laws up to date.
- Since the appointment of Jean Claude Juncker as Commission president in 2014, the Commission made clear that it would break with the past and change the way the Commission works and sets its policies, by putting better regulation principles at the heart of its policy-making processes, to make sure its policies deliver better results for citizens, businesses and public authorities. It committed to be "big on the big things and small on the small things", by focussing action on those issues that really matter to the citizens and where European action is most necessary, and making sure that Member States take responsibility where national action is more appropriate (European Commission 2016b). Specifically, it strengthened REFIT, by creating more possibilities for stakeholders and EU countries to contribute. The REFIT platform (European Commission 2016g) chaired by the new First Vice-President Timmermans, collects suggestions (European Commission 2016f) and makes recommendations on how to simplify laws. David Cameron himself provided a list of suggestions of what the UK suggested removing. The state of play of REFIT initiatives for simplification and reducing regulatory burden is published in the REFIT scoreboard (European Commission 2016f). Evaluations and fitness checks are used to assess if EU laws, policies and funding programmes are delivering the expected results at minimum cost (European Commission 2016h).
- In its September 2016 Communication entitled "Better Regulation: Delivering better results for a stronger Union" (European Commission 2016b), the Commission produced a very useful summary of its various better regulation initiatives and progress made (see Box 3.8). For

### Box 3.8 Better regulation initiatives of the European Commission in numbers

Overview of better regulation activities since their launch in the Commission:



Better regulation in numbers over 2015-16



European Commission (2016b)

example, since the launch of the REFIT, almost 200 initiatives for burden reduction and simplification have been launched. This includes a reduction of up to 95% in the registration fees for SMEs required by chemicals legislation (REACH), and a reduction in administrative costs associated with compliance monitoring and reporting by approximately €345,000–€460,000 per year, for binding annual greenhouse gas emission reductions by Member States from 2021 to 2030. This was complemented by further simplifications in monitoring and reporting across energy and climate-related legislation.

- The “Inter-institutional Agreement on Better Law-making” reached by the European Parliament, the Council, and the European Commission, entered into force in 2016 (European Commission 2016d). This clarified the way in which these bodies would work together on various matters, mostly concerned with better regulation, and according to the Commission, marked a significant step forward in the culture of better regulation.

As a result of the above better regulation initiatives, the work of the Commission is now very much more about evaluating, reviewing, simplifying and improving its current stock of legislation and the way it is implemented rather than drafting of new legislation. Indeed, in the Environmental arena, the 7th European Environmental Action Programme (European Commission 2014) had very little in the way of new legislation but emphasised the following four so-called “enablers” which will help Europe deliver on its environmental goals:

- better *implementation* of legislation
- better *information* by improving the knowledge base
- more and wiser *investment* for environment and climate policy
- full *integration* of environmental requirements and considerations into other policies

### 3.4 Better *Environmental* Regulation

The better *environmental* regulation initiatives over the last 20 years or so have generally been undertaken within the *wide-ranging* better framework covered above. Having said that, the environmental better regulation initiatives in the UK have often led the way for other regulatory regimes. One example is the risk-based inspection system OPRA<sup>3</sup> which was developed in the first half of the 1990s by Her Majesty’s Inspectorate of Pollution (HMIP) and later implemented by the EA. This was perhaps the first published risk-based inspection methodology in the UK, since when other regulatory regimes have developed similar systems and BRDO has developed a common methodology for use by national regulators and local authority regulatory services (Better Regulation Delivery Office 2012).

#### Better Environmental Regulation Initiatives in the UK

As might be expected, these were led by the EA in the 1990s. At that time, other environmental regulators with smaller resources, such as the

Scottish Environment Protection Agency (SEPA) and the similar Northern Ireland Environment and Heritage Service often followed the EA in England and Wales and modified EA systems for their own use. However, over more recent years, the environmental regulators in Scotland, Northern Ireland and Wales have developed better regulation initiatives at a similar pace to the EA in England.

## The Environment Agency's Better Environmental Regulation

The EA has developed several better regulation approaches since its formation in 1996. In 2005 it published its regulatory approach (Environment Agency 2005).

These were summarised in 2006 as shown in Box 3.9.

### **Box 3.9 Four Environment Agency tools which fit together to make up its compliance assessment process**

#### **Operator and pollution risk appraisal (OPRA) scheme**

The OPRA scheme assesses the environmental risk of an activity. It assesses the hazards associated with an activity and how well they are being managed. The assessment provides a risk-rating or profile which EA uses as part of its compliance assessment process. The OPRA score for an activity determines how much EA charges businesses for regulating an activity.

#### **Compliance assessment plans (CAP)**

Compliance Assessment Plans are used to match EA's regulatory effort and available resource to the risk profile that OPRA has given the activity.

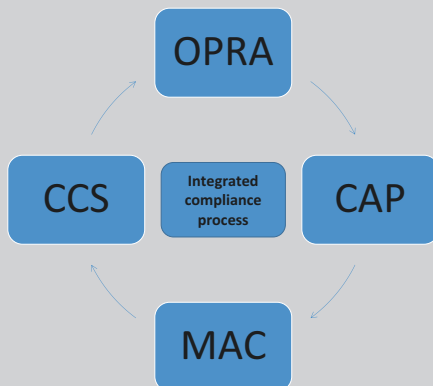
#### **Methodology for assessing compliance (MAC)**

The Methodology for Assessing Compliance is a guide for EA staff undertaking all types of compliance assessment activities including audits, inspections and sampling. The guidance enables a consistent and transparent approach to be taken to compliance assessment across regulatory regimes. It describes what to do to assess compliance and how to report the findings.

#### **Compliance classification scheme (CCS)**

The Compliance Classification Scheme provides consistency across different regulatory regimes in the reporting of non-compliance with permit conditions and the action the EA takes. The information from the CCS contributes to an activity's OPRA risk rating or profile.

Diagram showing how the above four Environment Agency tools all fit together:



**Box 3.9.1** Four agency tools (Environment Agency 2006)

The Hampton Implementation Review team examined the EA and concluded, in its report in March 2008, that the EA had taken significant steps to implement the Hampton agenda, although there was further progress to be made in translating the strong lead shown at senior levels to the day-to-day experience of individual businesses. It found that better regulation was certainly in the language of the organisation, but was not yet embedded throughout its culture (Better Regulation Executive and National Audit Office 2008). The specific findings are shown in Box 3.10.

Since the Hampton Implementation Review and the change of government, the EA has developed its regulatory approach further from the model described in Box 3.9. They are now placing more emphasis on achieving outcomes and on gathering intelligence, and helping businesses to manage compliance themselves through internal environmental management systems. This is allowing the EA to focus its inspection work on those sites and activities where it has particular concerns.

The EA is also developing new ways of working that are improving alignment with business sectors. For example, as part of their Future

**Box 3.10 Better regulation in the Environment Agency in 2008 (as described in the findings of the Hampton Implementation Review)**

**The EA has had a strong commitment to better regulation over a number of years**

The EA Board and Chief Executive are clearly committed to modern regulation, and are taking the lead in embedding this within the organisation. This is reflected in the EA's work to re-examine various aspects of its operations, its move towards a more risk-based approach to regulating, and its efforts to influence debate in Europe.

**The EA has made encouraging progress in implementing the Hampton principles**

The EA has taken forward a number of initiatives to support its modern regulation programme. These include, for example: the instigation of a Regulatory Scrutiny Panel to provide internal challenge to legislative and policy development; the Operator and Pollution Risk Appraisal (OPRA) as a tool for assessing environmental risk; and the recent implementation of the agricultural waste regulations with a high degree of consultation with the farming sector. There is scope for OPRA to be used more effectively to incentivise compliance and to inform risk-based interventions.

**The EA is making progress in reducing the burden of regulations on business**

The EA has made considerable efforts to rationalise and simplify the complex EU Directive-driven regulatory environment, from the viewpoint of regulated industries. Notable initiatives so far include the removal of some activities from regulation, such as some water abstraction activities and some low-risk hazardous waste activities. Other examples include:

- NetRegs, a web-based source of environmental guidance for businesses—although relatively few businesses actually use this resource;
- the National Customer Contact Centre (NCCC), which provides a single telephone point of contact and advice for business and public inquiries;
- the Environmental Permitting Programme (due to be implemented shortly), which will further build on the Pollution Prevention and Control (PPC) covering the discharge of damaging substances into the environment, and also incorporate waste management licensing into one simplified regime; and
- the Integrated Regulation programme (due to be implemented shortly), software which will bring together all the EA's online regulatory activities, including permit applications and payments. Further work is required regarding the rationale for undertaking inspections and requiring businesses to collect monitoring data, as these continue to place burdens on businesses whilst often having no clear link to environmental outcomes.

**The EA is taking a lead in Europe in driving the better regulation agenda.** The EA is using its influence to work with the European Commission and agencies in other Member States to help ensure that new regulations are in line with the principles of better regulation.

**There is a general agreement amongst business stakeholders that the EA uses prosecutions in a fair and proportionate way.** There is also recognition that, in some areas, the EA lacks the range of sanctions that would enable it to maximise its effectiveness in implementing regulations.

**The EA has made notable efforts to improve the quality of its written advice, forms and publications**

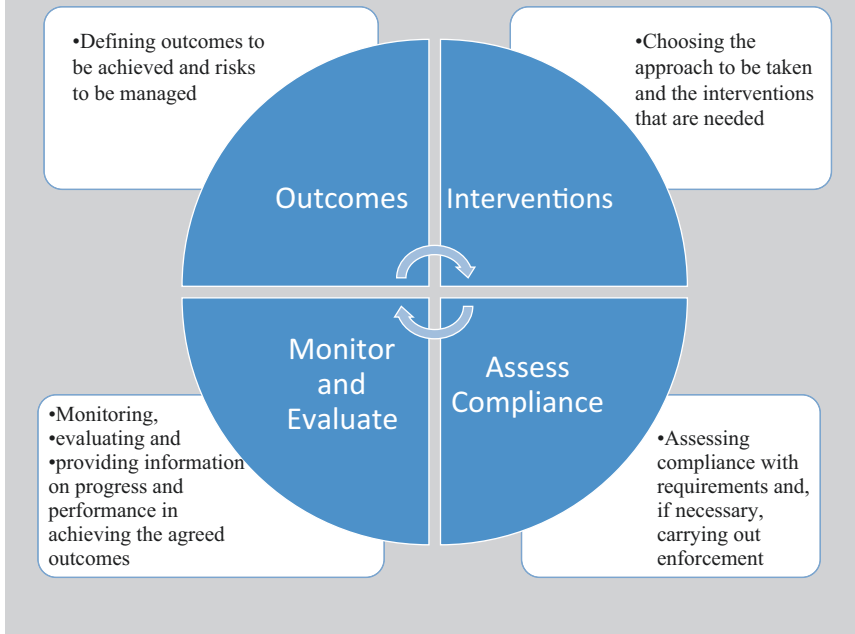
The EA has invested time and resources into producing new guidance and forms that are accessible and easy to read or complete. Recent external documents are written in plain English and the number of documents is being reduced. There are some good examples of guidance being produced in consultation with businesses, although there remains a significant legacy of written publications which are somewhat older and do not meet the EA's new standards. This and other initiatives would have greater impact if there was a more strategic approach to coordinate the different strands of advice and guidance provision: the EA reported that it has started to develop such an approach. (Better Regulation Executive and National Audit Office 2008)

Approach to Regulation (FAR) programme, it has reorganised regulation of sites according to key business sectors, allowing staff with expertise in specific sectors to provide a more tailored engagement. Working in this way allows the EA to gather and use sector-specific intelligence more effectively at all stages of the regulatory cycle, helping to make the right intervention at the right place and time (Environment Agency 2014). The sector-based approach is discussed in more detail in chapter 5.

The current EA model for regulation as of 2014 updates the previous one in the diagram in Box 3.9 and makes a few small changes to reflect the changes in emphasis. It is summarised in Box 3.11. No doubt this will be amended and updated as the EA continues to develop its approach, while at the same time facing cuts to its budget. For example, in October 2016, it suspended its “definition of waste panel” following budget cuts. This service advised businesses on creating new products out of their waste, providing advice on the EU End of Waste Regulations. The panel consisted of agency experts who helped businesses with this process (Chartered Institution of Wastes Management 2016).



### Box 3.11 The Environment Agency's model for environmental regulation



## Simplifying and Streamlining Environmental Legislation

A few reviews have taken place of the overall suite of environmental legislation applying to businesses to establish how legislation as a whole is operating in any given area. Reviews have covered, for example: to what extent the legislation appears to be a coherent integrated whole; whether it is consistent in its terminology, philosophies, descriptions of offences and penalties, reporting requirements, appeals; and whether it can be easily interpreted by users (Department for Environment, Food and Rural Affairs 2013a). The purpose of such reviews has generally been to simplify, streamline, integrate and make the whole body of legislation easier to understand and to apply by businesses and environmental regulators.

One such review which lasted from 1998 to 2002 was undertaken by the Department of Environment Transport and the Regions and the EA (Department for Environment, Food and Rural Affairs 2003).

The review addressed several areas in the form of a critical analysis of existing regimes, procedures and legislative controls. It focussed on:

- the procedures or mechanisms currently used by the agencies, for example an opportunity to consider a consolidated consent, authorisation or licence, in place of individual consents, and so on.
- the simplification and rationalisation of control regimes, for example radioactive and heavy industrial processes.
- the differences in legislation (between water, air, waste etc.) and the different ways in which these are operated.

The review did not recommend wholesale revision of environmental legislation, but it did lead to another successful joint Defra and EA programme, the “environmental permitting regime programme” which replaced several pieces of legislation and procedures and terminologies with a single environmental permitting regime (Department for Food, Environment and Rural Affairs 2013). The Environmental Permitting Regulations 2010 that implemented the new regime, were generally applauded for addressing integration problems overall (UK Environmental Law Association 2012).

Notwithstanding the success of the environmental permitting regimes, it was recognised that there was still a number of areas that could be improved. For example:

- An examination of the provision for environmental appeals uncovered that they appear in over 60 pieces of legislation relating to the environment. Appeals go to a wide range of different bodies including the High Court, Magistrates Court, the Planning Inspectorate, and different government departments (Macrory 2011). The report of this examination concluded that “The system lacks common procedure and intelligibility ... There is little in the way of underlying principle in choice of the appeal body ... Over the years we have developed a system of environmental appeals which is complex and confusing”.

- An examination of the effectiveness of UK environmental legislation in terms of whether there are problems of lack of coherence, integration and transparency concluded that the environmental permitting regime was “a significant success in this respect, by integrating the administration of a number of regulatory regimes in England and Wales”. However, it recognised that “problems of legislative coherence, integration and transparency not only impede the effectiveness of environmental legislation; they may also undermine the rule of law” (UK Environmental Law Association 2012). The report made 18 recommendations including the following three which called for improvements in coherence and integration:
  - governments should consolidate legislation more routinely
  - governments should provide an on-line single port of call for information about all relevant environmental legislation and associated guidance on a particular topic
  - further work should be done to consider the potential role that environmental principles might play in UK environmental law to address problems of legislative coherence, integration and transparency.

Following on from the above, Defra included a review of environmental legislation as one element of its Smarter Environmental Regulation Review in Defra (Department for the Environment Food and Rural Affairs (Defra) 2012). The terms of reference said England’s environmental law had evolved in a “piecemeal way”, and it was tasked with proposing a new long-term direction and framework. It examined models in other countries, such as Wales’ two new sustainability laws, and work undertaken in Germany to reformulate its environmental legislation. It asked whether you could come up with a legislative outcome that was better for the environment and better from a business and regulatory efficiency point of view, and the answer was pretty strongly “yes” from all the sectors consulted. A report was produced within Defra but at the time of writing has not been published (Kaminski 2016).

In its report on manufacturers’ views of progress on Defra’s regulatory reform agenda, the Engineering Employers’ Federation said: “there is a strong appetite amongst manufacturers for deeper, legislative reform of environmental policy to bring together the layers of legislation that have

developed over the years into a more coherent and understandable structure” and “Government should commit to wide-sweeping reform of environmental legislation to rationalise and consolidate the existing stock, but without compromising the levels of environmental protection afforded by it” (Engineering Employers’ Federation 2015).

Northern Ireland has taken several measures in its Better Environmental Regulation Act (Northern Ireland Assembly 2016) to streamline and integrate its environmental legislation. For example:

- Creation of an integrated environmental permitting regime, which will allow the Department to issue an integrated permit that, where possible, will cover all environmental controls that relate to activities being undertaken at a site
- Rationalising powers of entry and associated powers such as inspection and investigation

In Scotland, a number of better environmental regulation initiatives have introduced more streamlined, integrated and consistent approaches, for example:

- The single authorisation framework which will bring together all the permissioning arrangements for SEPA’s four main regulatory (water, waste, radioactive substances and Pollution Prevention and Control) into a single permissioning structure and under a single standardised procedure (Scottish Government 2017).
- SEPA’s regulatory charging scheme replaces five existing schemes covering waste, waste exemptions, radioactive substances, Pollution Prevention and Control and water discharges and abstractions with a single, risk-based scheme. This makes SEPA’s charging simpler, more consistent and transparent (Scottish Government 2016b).
- New Environmental Enforcement Framework. Historically, the options for dealing with environmental offences had been limited and inconsistent and focussed more on the offence rather than changing the behaviour. SEPA now has a suite of new enforcement measures and Scotland’s courts have new powers (Scottish Government 2016a).

In Wales, there have been several initiatives to streamline and integrate environmental legislation and its application, since the formation of Natural Resources Wales. The [Wellbeing of Future Generations Act](#) (Welsh Government 2015) and the [Environment \(Wales\) Act](#) (Welsh Government 2016) both include numerous provisions in this regard.

## **Better Regulation Delivery Office Reviews of Regulators Against the Principles of Good Regulation**

BRDO carry out regular reviews against the Principles of Good Regulation. In addition to providing useful feedback to regulators on how to improve, assurance that a regulator is following the principles of good regulation is a prerequisite for it to be granted civil sanctioning powers.

In 2015, following one of its regular reviews of regulators, BRDO published its report on its review of Natural Resources Wales against the Principles of Good Regulation.

The review team noted the following key areas where NRW is performing particularly well:

- NRW has made efforts to embed all six provisions of the Regulators' Code in its policy, culture and practice.
- NRW shows ambition to develop a new and different regulatory approach which recognise its diverse role, business expectations and focus on outcomes.
- NRW recognises the value of engagement and has put in place a variety of mechanisms to ensure those they regulate, or who are impacted by regulation have the opportunity to share their views.
- The NRW approach to working with the hydropower sector is noteworthy and an excellent example of regulatory co-production.
- Transparency is a key strength of NRW.

(Better Regulation Delivery Office [2015](#))

## DEFRA's Better Environmental Regulation Initiatives

The most significant better regulation work of Defra recently has been the Smarter Environmental Regulation Review. This is covered in chapter 4.

A central feature of Defra's approach to better environmental regulation is to drive higher compliance by focussing on the users and simplifying and improving regulation and regulatory requirements so that more businesses know what they have to do. It established a Better Regulation Unit to produce evidence and reform Defra's regulations in accordance with Government Better Regulation Policy. Its key work on Better Regulation is published on the Gov.UK website (Department for Environment, Food and Rural Affairs 2013d).

One key aspect of that work was dealing with the Red Tape Challenge (RTC) so far as it affected environmental regulations. "The responses received as part of the RTC made clear that neither the public nor the industry wants to see environmental or other protections watered down. Nevertheless, it was equally clear that the accumulation of rules, guidance, reporting, and inspections makes it sometimes impossible to put the rules into practice. The biggest short term gains could be made from making what to do in practice much simpler and clearer" (Lockhart-Mummery 2015). As a result, Defra established the Smarter Environmental Regulation Review, which is described in detail in chapter 4.

"The Red Tape Challenge included a consideration of 278 pieces of legislation relating to the environment. From one side (the business camp) came forth gasps of exasperation at the myriad of overlapping or apparently unnecessary requirements that were hard to comprehend and costly and time-consuming to comply with; from the other (the green camp), cries of terror that this might be a cunning wheeze to do away with important environmental protections". (Oliver, Smarter and wiser? An update on Defra's Smarter Environmental Regulation Review 2014).

However, "in a statement about the Red Tape Challenge dated 25 March 2015, Defra Minister George Eustice announced that by May the Department would have made '650 legislative reforms' which would reduce the number of regulations in force by over 20% compared to May

2010 ... This covers all of Defra's legislation, not just its environment laws but includes many measures that relate to the environment ... They mainly consist of reforms to tidy up what had become a rather messy legislative sprawl ... This has been done partly through revoking or repealing moribund legislation such as the water classification schemes that have been superseded by the Water Framework Directive. There has also been some impressive consolidation and simplification of requirements that were spread across several statutory instruments, or that had been subject to numerous amendments. For example, the Environmental Liability Directive—formerly transposed by a total of twelve different statutory instruments—has been re-implemented by the Environmental Damage Regulations 2015 (which also introduce new measures concerning offshore oil and gas). Similarly, the Nitrates Directives—formerly transposed through six separate sets of regulations—has been re-implemented by the Nitrate Pollution Prevention Regulations 2015 ... The Red Tape Challenge then so far as the environment was concerned did not do away with environmentally protective measures or downgrade standards by characterising the requirements as costly red tape” (Oliver, Environmental regulation—stripping back bureaucracy or protection? 2015).

Defra committed to developing an Instrument Selection Guide for Policy makers (Department for Environment, Food and Rural Affairs 2013b) and published a very useful “draft” Instrument Selection Guidance at the end of that year (Department for Environment, Food and Rural Affairs 2013c).

### **Better Environmental Regulation Initiatives in the EU**

The European Network for the Implementation of Environmental Law (IMPEL) have undertaken several projects on better regulation. It established a “Better Regulation Cluster” to commission projects and publish reports to help European environmental regulators ensure a more effective application of environmental law. For example:

- It produced a “Better Regulation Checklist” to assess practicability and enforceability of legislation (IMPEL, European Union Network for the Implementation and Enforcement of Environmental Law, 2010).
- It examined and reported on “Complementary Approaches to Environmental Inspections for Ensuring Compliance” (IMPEL, European Union Network for the Implementation and Enforcement of Environmental Law, 2012).
- It developed a toolkit for choosing appropriate interventions alongside inspections to ensure environmental compliance and achieve environmental outcomes (IMPEL, European Union Network for the Implementation and Enforcement of Environmental Law, 2014).

The Make it Work Project (MiW) is an initiative by The Netherlands (Ministry of Infrastructure and the Environment), the UK (Defra), Germany (Federal Ministry of Environment, Nature Conservation, Building and Nuclear Safety), Sweden (Ministry of Environment and Energy) and Czech Republic (Ministry of the Environment). The aim of the project is to identify concrete opportunities to improve the quality of EU environmental law and thus help to achieve the benefits associated with the law while delivering a more level playing field across the EU. In particular, it aims at establishing a more coherent and consistent framework for the EU environmental *acquis* through developing drafting principles on the use of cross-cutting instruments and procedures in EU environmental directives and regulations. MiW aims at delivering environmental outcomes more efficiently and effectively, without lowering existing protection standards. At the time of writing it has produced “drafting principles” for compliance assurance, and for environmental reporting and the Commission Fitness Check on Environmental Monitoring and Reporting (Institute for European Environmental Policy 2016).

The 7th EU Environmental Action programme has a big focus on implementation rather than (as in previous action programmes) developing new legislation. Examples include:



- integrating environmental and climate-related conditionalities and incentives in policy initiatives, including reviews and reforms of existing policy, as well as new initiatives, at Union and Member State level;
  - carrying out ex-ante assessments of the environmental, social, and economic impacts of policy initiatives at appropriate Union and Member State level to ensure their coherence and effectiveness;
  - using ex-post evaluation information relating to experience with implementation of the environment acquis in order to improve its consistency and coherence.
- (European Commission 2014)

### 3.5 Critics of Better Regulation

There is undoubtedly a certain amount of opposition to better regulation on political grounds, that it is seen as just about removing regulation, and is looking at regulation only from the aspect of “burdens” on business rather than benefits to the environment, people and indeed to business themselves. This opposition is certainly not comforted by rhetoric such as “*one in two out or the chance to rip up some of the 21,000 rules and regulations that are getting in your way*” (Department for Business Innovation and Skills 2011b). One example of such opposition entitled “better regulation for whom” challenges the labour, coalition and conservative government’s better regulation programmes (Tombs 2016) (see Box 3.12).

Tombs also makes the point that regulation is widely derided, that the politics of anti-regulation have been overlain by the economics of austerity, and austerity has particularly impacted upon regulation and enforcement at the level of local authorities (through reductions in numbers of enforcement officers).

While it is undeniable that budgets to regulators (national as well as local) have been reduced, many examples of better regulation initiatives described in this chapter are not just about politically driven deregula-

**Box 3.12 A criticism of government's better environmental regulation agenda**

"The rate of inspection and enforcement actions for environmental health, food safety and hygiene, and health and safety have all been falling. In the case of health and safety inspections by local authorities, for instance, the average business can now expect to be visited only once in every 20 years. This is not just a problem of infrequent inspections and lax enforcement. In the name of cutting red tape, governments of all political persuasions have, for over a decade, undermined independent and effective business regulation. Budget cuts under the austerity programme have compounded the problem. So too have moves to outsource and privatise regulatory and enforcement activity. Private companies are increasingly involved in 'regulating' themselves. Taken together these changes may ... mark the beginning of the end of the state's commitment to, and ability to deliver, social protection". Source: Tombs (2016)

tion, but have been designed to make things easier for regulated and regulators, while at the same time safeguarding environmental protections. Indeed, if regulators had seen budget cuts without any better regulation initiatives, it would perhaps be even harder to maintain compliance and environmental standards. Exactly how much any initiative has saved business (or not) and protected the environment (or not) is hard to say and ex-post evaluations are extremely thin on the ground.

Another criticism of the government's better regulation agenda, regarding environmental regulation in particular has come from the Aldersgate Group (Aldersgate Group 2011). Their view is summarised in Box 3.13:

Meanwhile environmental lawyers, through the UK Environmental Law Association have had concerns about better regulation (see Box 3.14).

From businesses' point of view, many better regulation initiatives have been welcomed, but there are calls for further work on coherence and integration. See Box 3.15.

### Box 3.13 Assessment of Government's regulatory reform

While reducing outdated, excessive and burdensome measures are welcome, this must not be at the expense of the vital role that regulation plays in correcting market failures, promoting fairness and protecting the environment. Regulatory reform should be primarily concerned with the effective achievement of outcomes and maximising innovation potential. Costs must be minimised but this should not be the only guiding principle.

Given that regulation is one of the few means of stimulating the economic recovery to take a more sustainable path, an overly rigid regulatory reform framework risks damaging competitiveness. A mind-set of "best-in, bad-out", rather than "one-in, one-out" that takes a whole system approach, would, for example, tailor needs more effectively to specific challenges.

Through streamlining legislation and adopting a smarter approach to implementation, it is possible to achieve greener outcomes, reduce regulatory burdens and make business in the UK more competitive and attractive. But this goal means focussing on the desired outcomes and holistic analysis of the benefits of the regulatory and non-regulatory interventions required. Choices based solely on merit and value must not be constrained by arbitrary targets on cutting red tape or achieving short-term cost benefits. Source: Aldersgate Group (2011)

### Box 3.14 Environmental lawyers' views on Defra's regulatory reforms

The UK Environmental Law Association (UKELA) recognised that Defra's better regulation reforms (Department for the Environment, Food and Rural Affairs 2014) were timely and had the potential to address many of the issues that UKELA raised in its own report (UK Environmental Law Association 2012). However, they recognised the "danger that the ambition behind the 'once-in-a-generation opportunity to set a clearer direction for environmental legislation' is thwarted by forces outside Defra's control" (Oliver, Smarter and wiser? An update on Defra's Smarter Environmental Regulation Review 2014).

Regarding the Red Tape Challenge, UKELA commented that "Defra's initial follow-up was somewhat underwhelming. Mainly this involved identifying moribund legislation that could be repealed, and some candidates for consolidation: essentially raking up fallen leaves and trimming the hedges, rather than re-landscaping the regulatory garden" (Oliver, Smarter and wiser? An update on Defra's Smarter Environmental Regulation Review 2014).

Regarding simplification of guidance UKELA commented "Rationalisation as a means of avoiding inconsistency and confusion is certainly a welcome step. However, there is a real risk that the drive to reduce massively the overall vol-

ume could mean that useful and important detailed or technical guidance is axed, causing uncertainty about compliance requirements. Further, the drive for simplicity and clarity seems to be resulting in guidance documents that merely describe what legislation requires, without guiding on matters of policy and interpretation. Greater uncertainty about such matters could result in more cases being litigated: not a particularly ‘smart’ result” (Oliver, Smarter and wiser? An update on Defra’s Smarter Environmental Regulation Review [2014](#)).

“UKELA is ...concerned that the scale of Defra’s ‘cull’ may be leading to the loss of useful guidance. In the course of the review, some guidance documents in areas such as waste and WEEE have been disappearing completely from Gov.UK with no explanation, and no apparent replacement. This has been causing problems both for practitioners advising on past issues who need to access the guidance that was in force at the time, as well as those advising on current issues who are faced with uncertainty as to how to interpret and apply regulatory requirements...”. “Useful guidance may also be lost in the process of developing new documents that are ‘simpler, quicker and clearer to use and understand’. There are fears that the new documents will include little by way of actual guidance on matters such as how to interpret key terms and regulators’ policy approaches to implementing legislation” (Oliver, Environmental regulation—stripping back bureaucracy or protection? [2015](#)).

### **Box 3.15 Manufacturers’ views of progress on Defra’s regulatory reform agenda**

- Environmental regulatory reform has the potential to cut inefficiency in both government and industry and can help to enhance the perception of UK competitiveness without compromising environmental protection.
- Manufacturers support recent efforts by Defra to simplify data reporting and guidance. Improvements here are considered to be important to business performance.
- However, manufacturers are not yet feeling the benefit of the efforts made thus far. The ultimate goal should be a single point of access for guidance for each core area and one single data reporting system for all environmental data.
- Furthermore, there is a strong appetite amongst manufacturers for deeper, legislative reform of environmental policy to bring together the layers of legislation that have developed over the years into a more coherent and understandable structure.
- To be effective, the UK’s push for deregulation must take place both domestically and within Europe.

Source (Engineering Employers’ Federation [2015](#))

## 3.6 Latest Developments in Regulatory Strategies

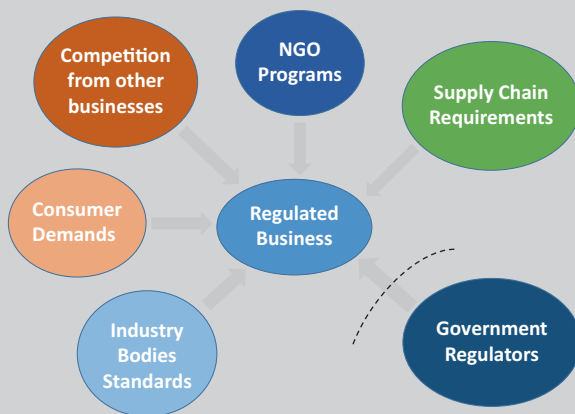
Many environmental regulators have published how they regulate and how they have incorporated better regulation principles; for example, the EA (Environment Agency 2014) set out its regulatory principles, ways of working, its model for environmental regulation (see Box 3.11), and its regulatory approaches and instruments.

Perhaps the most recent and forward-looking regulatory strategy though was published by SEPA in 2016 entitled “One Planet Prosperity” (Scottish Environment Protection Agency 2016a). It includes several elements of “better regulation” as described above (although it does not use the term itself once). It rightly recognises how the Regulatory Reform Act (Scottish Government 2014) gave SEPA the opportunity to create what it claims will be “one of the first environmental regulatory systems in the world that is suited to the challenges of the twenty-first century”. This includes new enforcement powers and integrated authorisation and charging frameworks mentioned above as well as SEPA’s “Waste to resources framework” (Scottish Environment Protection Agency 2016b). It describes very neatly how and why the role of environmental regulators has changed since the end of the twentieth century, recognising the changes in business and the environment and the other influences on businesses environmental behaviour which it describes as follows:

- consumer demand for environmental credentials
- investor requirements for environmental performance
- supply-chain requirements for environmental performance
- assessment by external ratings bodies
- trade association membership standards
- expectations of potential employees about environmental performance
- social scrutiny (e.g. residents, NGOs) and via social media (e.g. Twitter)

The key challenge for SEPA is described as combining the things they can do to influence the behaviour of a business, with all the other influences on the behaviour of that business (see Box 3.16). This is seen by

### Box 3.16 Regulators Influence Map



Source: Scottish Environment Protection Agency (2016a)

SEPA as the most effective way to deliver full compliance, and help as many businesses as possible move beyond compliance.

## 3.7 What Might the Future Hold for “Better” Environmental Regulation

Much has been achieved in reforming regulation over the past 20 years or so in Europe and the UK and so-called better regulation initiatives have played a large part in that. Whether this was for good or ill depends on your point of view, but it obviously limits further scope for regulatory reform.

Better regulation has gone a long way to reduce burdens and simplify things *for business*. This is as true for other aspects of regulation as for environmental regulation. At the same time though, so far as environmental regulation is concerned at least, many of the better regulation initiatives also aimed to make regulation better *for achieving environmental outcomes*. That is not to say that there is not more to do on improving the way that regulation works to make it simpler for business and regulators and the public to understand and implement regulation. Efforts to

streamline, harmonise and integrate environmental legislation fall into that category. The removal of European legislative barriers to this after Brexit may help in that regard.

However, the author's view (maybe as much as in hope as in expectation) is that the future is likely to see environmental regulators put even more focus on making regulation better for the environment while at the same time working within reducing budgets.

The key to this, I think, is improving our understanding of the influences on business to behave in an environmentally sound way (or the reverse) and only making regulatory interventions when the influence of regulation is actually going to make a difference. If not, then regulators and governments will be looking to apply other interventions (directly or through other "actors") to influence business behaviour. SEPA's "Regulators Influence Map" in Box 3.16 helps to explain, and chapter 8 covers recent work on designing and choosing interventions and selecting actors to deliver them so I will not discuss that in any more detail here. However, put simply, the way that this can be done is by recognising all the motivations on business, and then working out the regulator's role and its interventions within the context of that bigger picture. This means focussing on how can regulators and government bolster the positive incentives and counter the negative incentives delivered by those other influences on business environmental behaviour. Naturally this will require a shift of skills and activities of regulators and governments towards increased analysis and intelligence of each particular set of circumstances in which businesses operate and in which they create actual or potential environmental harm.

Of course, such developments are not free of risk, in particular, the risk that any choice of interventions (and actors to deliver them) will not actually improve environmental performance of business. So, alongside any such initiatives there needs to be a much better understanding of "what works in what circumstances and why".

So, to summarise, the areas that I think are likely to occupy those concerned with reforming environmental regulation in the future and how it is applied are as follows:

- Wholesale rationalisation of the body of environmental law. Progress in this regard has been good in some countries such as Scotland, Wales and the Netherlands. So far as England is concerned, much of the

preparatory work has been done (Kaminski 2016). However, EU legislation restricted Defra's opportunities for deeper, legislative reforms of environmental policy to bring together the layers of legislation that have developed over the years into a more coherent and understandable structure. Perhaps after the UK leaves the EU such barriers to rationalisation may disappear.

- A better understanding of the many influences on businesses' environmental performance alongside that of the environmental regulators role (see Box 3.16).
- Development and application of a range of interventions by regulators and other "delivery agents" in the optimum mix for each particular set of circumstances to improve business environmental behaviours so as to meet legal requirements and environmental objectives.
- More evaluation of *what works and why*, so that policy makers and regulators have more evidence to help them choose appropriate instruments and delivery agents, according to circumstances, to achieve their environmental objectives.

### 3.8 Summary and Conclusions

Much has been achieved in reforming regulation over the past 20 years or so in Europe and the UK and the so-called better regulation initiatives have played a large part in that. Much of the emphasis of such initiatives were about removing burdens and improving regulation from the perspectives of businesses that were subject to regulation.

Reform of *environmental* regulation has arisen partly under the umbrella of the broader better regulation agenda but has also been instigated by initiatives of environmental regulators such as the EA and SEPA in order to improve the effectiveness of regulation in improving the environment.

In the future, the areas that the author thinks are likely to occupy those concerned with reforming environmental regulation and how it is applied are as follows:

- Wholesale rationalisation of the body of environmental law to bring together the layers of legislation that have developed over the years into a more coherent and understandable structure



- A better understanding of the many influences on businesses' environmental performance alongside that of the environmental regulators role
- Development and application of a range of interventions by regulators and other delivery agents according to circumstances to improve business environmental behaviours
- More evaluation of *what works and why*, so that policy makers and regulators have more evidence to help them choose appropriate instruments and delivery agents, according to circumstances, to achieve their environmental objectives.

## Notes

1. Business in this context would include individuals only so much as they are self-employed or one-person businesses. Farmers might come into that category as might self-employed haulage contractors transporting waste for example.
2. This begs the questions “did any of these initiatives actually make things better?” and indeed “better for who?” Unfortunately, there is not a great deal of evidence on the effectiveness of regulation (better or otherwise) but the author has tried to include any where known.
3. OPRA is covered in more detail in chapter 1.

## References

- Aldersgate Group. 2011. *Dealing with Deficits. Best Value Regulation to Reduce Our Environmental and Financial Debts*. London: Aldersgate Group.
- Better Regulation Commission. 2006. *About Us*. May 4. Accessed from [www.brc.gov.uk](http://www.brc.gov.uk); [https://web.archive.org/web/20061013175118/http://www.brc.gov.uk/about\\_us/](https://web.archive.org/web/20061013175118/http://www.brc.gov.uk/about_us/)
- Better Regulation Delivery Office. 2012. *Proposals for Developing a Common Approach to Risk Assessment*. London: Department for Business Innovation and Skills.
- Better Regulation Delivery Office. 2014. *Regulators' Code*. London: Department for Business Innovation and Skills.
- Better Regulation Delivery Office. 2015. *A Review of Natural Resources Wales Against the Principles of Good Regulation*. London: Department for Business Innovation and Skills.

- Better Regulation Delivery Office. 2016. *BRDO LinkedIn Pages*. October 14. Accessed from LinkedIn: <https://www.linkedin.com/company/better-regulation-delivery-office>
- Better Regulation Executive. 2010. *Reducing Regulation Made Simple*. London: HM Government.
- Better Regulation Executive and National Audit Office. 2008. *Effective Inspection and Enforcement: Implementing the Hampton Vision in the Environment Agency*. London: Better Regulation Executive.
- Better Regulation Task Force. 1997. *Principles of Good Regulation*. <http://webarchive.nationalarchives.gov.uk/20100407162704/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf>.
- Chartered Institution of Wastes Management. 2016. Environment Agency Suspends Waste Reuse Advisory Service. *CIWM Journal Online* October 2016, 1.
- Department for Business Innovation and Skills. 2011a. *The Future of the Local Better Regulation Office and extending the benefits of the Primary Authority Scheme*. London: HM Government.
- Department for Business, Innovation and Skills. 2015. *Better Regulation Framework Manual. Practical Guidance for UK Government Officials*.
- Department for Business Innovation and Skills. 2017. *Assessing Our Regulatory System—The Hampton Review*. January 11. <http://webarchive.nationalarchives.gov.uk/http://webarchive.nationalarchives.gov.uk/20100407162704/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf>
- Department for Business Innovation and Skills. 2011b. *Red Tape Challenge Kicks Off*. April 7. Accessed from gov.uk: <https://www.gov.uk/government/news/red-tape-challenge-kicks-off>
- Department for Environment, Food and Rural Affairs. 2003. *Review of Legislation relating to Integration Within the Environment Agency and Scottish Environment Protection Agency*. London: Department for Environment, Food and Rural Affairs.
- Department for Environment, Food and Rural Affairs. 2013a. *20 Ways to Influence Business Behaviour. A Short Guide to Instrument Selection for Policy Makers and Regulators*. London: Department for Environment, Food and Rural Affairs.
- Department for Environment, Food and Rural Affairs. 2013b. *Better Evidence for Regulatory Reform: Rapid Evidence Appraisal Number 5: Environmental Policy Integration*. London: Defra.
- Department for Environment, Food and Rural Affairs. 2013c. *Better Regulation Strategy Unit Evidence Plan 2013/14–2107/18*. London: Department for Environment, Food and Rural Affairs.

- Department for Environment, Food and Rural Affairs. 2013d. *Better Regulation in Defra*. August 7. Accessed from Gov.Uk: <https://www.gov.uk/government/collections/better-regulation-in-defra>
- Department for Food, Environment and Rural Affairs. 2013. *Environmental Permitting Guidance Core Guidance For the Environmental Permitting (England and Wales) Regulations 2010*. London: Department for Food, Environment and Rural Affairs.
- Department for the Environment, Food and Rural Affairs. 2014. *Terms of Reference for Smarter Environmental Legislation: Phase 2 of the Smarter Environmental Regulation Review*. London: Defra.
- Department for the Environment Food and Rural Affairs (Defra). (2012). *Terms of Reference for the Smarter Environmental Regulation Review*. <http://webarchive.nationalarchives.gov.uk/>
- Engineering Employers' Federation. 2015. *Green Tape: Manufacturers' Views of Progress on Defra's Regulatory Reform Agenda*. London: Engineering Employers' Federation.
- Environment Agency. 2005. *Delivering for the Environment: A 21st Century Approach to Regulation*. London: Environment Agency.
- Environment Agency. 2006. *Guide to Modern Regulation*. London: Environment Agency.
- Environment Agency. 2014. *Regulating for People, the Environment and Growth*. London: Environment Agency.
- European Commission. (2005). *Better Regulation for Growth and Jobs in the European Union*. Brussels: European Commission.
- European Commission. (2010a). *Action Programme for Reducing Administrative Burdens in the European Union*. Brussels: European Commission.
- European Commission. 2010b. *Smart Regulation in the European Union*. Brussels: European Commission.
- European Commission. 2014. *7th European Environmental Action Programme*. Brussels: European Commission.
- European Commission. 2016a. *Better Regulation Why and How*. Accessed from European Commission: [http://ec.europa.eu/info/law/law-making-process/better-regulation-why-and-how\\_en](http://ec.europa.eu/info/law/law-making-process/better-regulation-why-and-how_en)
- European Commission. 2016b. *Better Regulation: Delivering Better Results for a Stronger Union*. Brussels: European Commission.
- European Commission. 2016c. *European Commission*. Accessed from REFIT—Making EU Law Simpler and Less Costly: [http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly\\_en#documents](http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly_en#documents)

- European Commission. 2016d. *Interinstitutional Agreement Between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*. Brussels: European Commission.
- European Commission. 2016f. *REFIT—Making EU Law Simpler and Less Costly*. Accessed from European Commission: [http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly\\_en#documents](http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly_en#documents)
- European Commission. 2016g. *REFIT Platform*. Accessed from European Commission: [http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly\\_en#documents](http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-making-eu-law-simpler-and-less-costly_en#documents)
- European Commission. 2016h. *Evaluating Laws, Policies and Funding Programmes*. Accessed from European Commission: [http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/evaluating\\_en](http://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/evaluating_en)
- European Union. 2015. *Guidelines on Evaluation and Fitness Checks*. May 19. Accessed from European Union: [http://ec.europa.eu/smart-regulation/guidelines/ug\\_chap6\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/ug_chap6_en.htm)
- Hampton, P. 2005. *Reducing Administrative Burdens. Effective Inspection and Enforcement*. London: HM Treasury.
- High Level Group of Independent Stakeholders on Administrative Burdens. 2011. *Europe Can do Better. Report on Best Practice in European States to Implement EU Legislation in the Least Burdensome Way*. Brussels: European Commission.
- HM Government. 2008. *Site Waste Management Plans Regulations 2008*. Accessed from [legislation.gov.uk](http://www.legislation.gov.uk): <http://www.legislation.gov.uk/uksi/2008/314/contents/made>
- HM Government. 2013. *The Environmental Noise, Site Waste Management Plans and Spreadable Fats etc. (Revocations and Amendments) Regulations 2013*. Accessed from [legislation.gov.uk](http://www.legislation.gov.uk): <http://www.legislation.gov.uk/uksi/2013/2854/regulation/2/made>
- House of Commons Committee of Public Accounts. 2016. *Better Regulation Eighteenth Report of Session 2016–17*.
- IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law). 2010. *Better Regulation Checklist*. Brussels: IMPEL.
- IMPEL. 2012. *Exploring the Use and Effectiveness of Complementary Approaches to Environmental Inspections for Ensuring Compliance*. Brussels: IMPEL.

- IMPEL. 2014. *Choosing Appropriate Interventions Alongside Inspections to Ensure Environmental Compliance and Achieve Environmental Outcomes. Final Report*. Brussels: IMPEL.
- Institute for European Environmental Policy. 2016. *What is Make it Work*. Accessed from Institute for European Environmental Policy: <http://www.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/home/>
- Kaminski, I. 2016. *Buried DEFRA Policy Work 'Should Be Unearthed' to Develop New Green Law*. Ends, July 27.
- Lockhart-Mummery, E. 2015. *Clearing the Thicket Blog*. September 10. Accessed from Civil Service Quarterly Blog: <https://quarterly.blog.gov.uk/2015/09/10/clearing-the-thicket/#comments>
- Macroy, R. 2011. *Consistency and Effectiveness. Strengthening the new Environmental Tribunal*. London: Centre for Law and the Environment, University College London.
- National Audit Office. 2007. *Hampton Implementation Reviews. Guidance for Review Teams*. London: NAO.
- Northern Ireland Assembly. 2016. *Environmental Better Regulation Act (Northern Ireland) 2016*. Belfast: Northern Ireland: The Stationary Office.
- Oliver, R. 2014. Smarter and Wiser? An Update on Defra's Smarter Environmental Regulation Review. *UKELA "e-law" Newsletter. Issue 84*, 31–33.
- Oliver, R. 2015. *Environmental Regulation—Stripping Back Bureaucracy or Protection?* July 20. Accessed from LexisNexis: [https://www.lexisnexis.com/uk/lexispsl/commercial/document/412012/5GGJ-3K81-DYW7-W0BH-00000-00/Environmental\\_regulation\\_stripping\\_back\\_bureaucracy\\_or\\_protection\\_](https://www.lexisnexis.com/uk/lexispsl/commercial/document/412012/5GGJ-3K81-DYW7-W0BH-00000-00/Environmental_regulation_stripping_back_bureaucracy_or_protection_)
- Regulatory Delivery. 2016a. *Local Regulation: Primary Authority*. September 19. Accessed from Gov.UK: <https://www.gov.uk/guidance/local-regulation-primary-authority>
- Regulatory Delivery. 2016b. *Primary Authority Handbook*. London: Department for Business, Energy and Industrial Strategy.
- Regulatory Delivery. 2016c. *Regulatory Delivery News Issues 1*. London: Regulatory Delivery; A Directorate of the Department of Business Innovation and Skills.
- Regulatory Policy Committee. 2016. *Costs and Benefits of New Regulation*. March 10. Accessed from Gov.uk: <https://www.gov.uk/government/publications/costs-and-benefits-of-new-regulation-regulatory-policy-committee-opinions-since-may-2015/costs-and-benefits-of-new-regulation>

- Scottish Environment Protection Agency. 2016a. *One Planet Prosperity—Our Regulatory Strategy*. Scottish Environment Protection Agency.
- Scottish Environment Protection Agency. (2016b). *One Planet Prosperity—Waste to Resources Framework*. Scottish Environment Protection Agency.
- Scottish Government. 2014. *Regulatory Reform (Scotland) Act 2014*. The Stationary Office.
- Scottish Government. 2016a. *New Environmental Enforcement Measures*. April 29. Accessed from gov.scot: <http://www.gov.scot/Topics/Environment/waste-and-pollution/BER/EnforcementMeasures>
- Scottish Government. 2016b. *SEPA's New Charging Scheme*. April 29. Accessed from gov.scot: <http://www.gov.scot/Topics/Environment/waste-and-pollution/BER/ChargingScheme>
- Scottish Government. 2017. *Consultation on Proposals for an Integrated Authorisation Framework*. Edinburgh: Scottish Government.
- Tombs, S. 2016. *Better Regulation for Whom. Briefing 14 April 2016*. London: Centre for Crime and Justice Studies.
- UK Environmental Law Association. 2012. *The State of UK Environmental Legislation in 2011–12: Is There a Case for Legislative Reform?* London: UK Environmental Law Association, King's College London and Cardiff University.
- Welsh Government. 2015. *Well-being of Future Generations (Wales) Act 2015*. Wales: The Stationary Office.
- Welsh Government. 2016. *Environment (Wales) Act*. Wales: The Stationary Office.

**Chris Booth** worked for almost 40 years as an environmental professional in the field of environmental regulation in the UK as a regulator, as a policy practitioner, as a research manager and latterly as an independent consultant. He also worked in a water company, acting as an interface with the environmental regulators. Chris developed specific expertise in complementary and alternative approaches to regulation that policy makers and regulators can use to improve the environmental performance of businesses. This includes understanding the circumstances and drivers of businesses, which determine which interventions might work best to improve their environmental performance. Chris retired as an environmental professional in 2016 to pursue other interests.