Regulatory Quality and the Regulatory System in the UK

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“If you have ten thousand regulations, you destroy all respect for the law.”

Winston Churchill

Executive Summary

Regulatory quality is one of the core principles for good governance today, and is usually considered an essential instrument for development. However, in order to make good regulation it is necessary to have an institutional architecture to support it and ensure that the necessary measures are taken. With this in mind, this paper attempts to identify how the British regulatory institutions have developed in the last years to contribute to better regulation in the country as well as what still needs to be done.[1]

[1] This is the final paper presented at the conclusion of a 3 month programme organized by the Hansard Society in which apart from the Democracy and Public Policy classes at LSE, I was able to work as an intern in the Law Commission and the Better Regulation Executive. My research is based on published and non-published articles and documents as well as on the experience of working in those organizations, participating of meetings and seminars and interviewing people from the UK Parliament, the Parliamentary Counsel, the Law Commission and BRE.

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1. Introduction

Guaranteeing the quality of regulations and regulatory system is a challenging task even in stable governing environments. Some OECD countries have been trying for 25 years to improve their regulatory management practices, but none of them is fully satisfied with its performance. (OECD, 1994:7).

The facility with which new regulations can be made, and the belief that the mere existence of these regulations would solve problems simply by existing, has caused many countries to end with excessive badly-formulated regulation, that are often ignored. In response to these problems, most OECD countries set off administrative reforms to facilitate more careful and effective regulations. These reforms developed into systematic management frameworks to discipline and control the development of new laws and regulations.

1.1. Regulation and Regulatory System

There is no accepted international definition of regulation. Some of the literature about the theme refers to regulation as secondary legislation, that is, delegated legislation, which is made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation.

However, “regulation” in this paper will follow the OECD broader concept, that is, “the full range of legal instruments and decisions – constitutions, parliamentary laws, subordinated legislation, decrees, orders, norms, licenses, plans codes, and often even “grey” regulations such as guidance and instruments – through which governments establish conditions on the behaviour of citizens and enterprises”. (OECD, 1994:9)

“Regulatory system” is then the whole structure of which regulations are the product. This includes the processes and institutions through which regulations are developed, enforced, interpreted and arbitrated, that is the Parliament, the President, Ministers, Ministry staff, Counties, Municipalities, Courts, Tribunals, etc.

It should also include the processes of public consultation, communication, and the updating of the regulations. National regulatory systems should also include regulations produced by sub-national levels of government as well as the ones developed through international processes such as treaties and agreements.

1.2. Why regulatory quality matters?

Although the good governance concept has not very fixed standards, up until the end of the 1990's, the main pillars for good governance, considered by most scholars, were: political stability, the rule of law, control of corruption, transparency, accountability, good management practice (government effectiveness) and participation of civil society.

The main attention given to the law, referred to the "rule of law". The concept of the rule of law involving the legal maxim that no one is immune to the law. The main aspect of the rule of law considered by scholars of governance is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle was intended to be a safeguard against arbitrary government, whether by a totalitarian leader or by mob rule. However, not much attention was given to making a judgement about the "justness" or the quality of law itself.

Morita and Zaelke (2007), in a more recent article about the relation between the rule of law, good governance and development, defined the rule of law, for good governance, as "independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all of its people."

The World Bank in its paper Governance Matters III (2003), refers to the Rule of Law as "the extent to which agents have confidence in and abide by the rules of society." The indicators measured by the World Bank attempt to measure the success of a society in developing an environment in which fair and predictable rules form the basis for economic and social interactions.

However, by the early twenty-first century it became clear the importance of the quality of laws and regulations for development. Then, "regulatory quality" started to be considered one of the pillars of

good governance by most authors. In the World Bank papers published in 2003 and 2006[2], six indicators were considered to measure the level of governance of 199 countries: (1) Voice and Accountability; (2) Political Stability and Absence of Violence; (3) Government Effectiveness; (4) Regulatory Quality; (5) Rule of Law and (6) Control of Corruption.

The quality of laws and regulations is of immediate concern for both economic and democratic development. Poorly drafted laws can be incomprehensible, inconsistent, ineffective and unenforceable and they may worsen rather than improve citizens' quality of life. Poorly-conceived rules can have unexpected and disastrous effects on competitiveness, investment, and job creation.

It is also important to stress that when citizens and enterprises do not respect or even ignore their regulations, the credibility of the whole regulatory system is affected, and as a consequence the integrity of the state and government is harmed. Furthermore, the regulation process itself is onerous, since it requires highly qualified human and material resources. Thus, the making of unnecessary legislation can be very burdensome for a country.

In summary, regulations can have both beneficial and damaging effects on societies. Thus it is fundamental that governments are careful when deciding to regulate and when so, spend the necessary time and resources in order to ensure that regulations attend their purpose.

[2] Governance Matters III: Governance Indicators for 1996-2002 and A Decade of Measuring the Quality of Governance – Governance Matters 2006, Worldwide Governance Indicators

2. Contextualization – The Regulatory State in Britain

2.1. The rise of the regulatory state

The rise of the regulatory state in Britain is a consequence of a number of transformations in the system of government, such as the withdrawal of historical forms of interventions like public ownership and the creation of new forms of control.

After the Second World War, the government had the responsibility for the stabilisation of the economy and in order to carry this out, it initiated a programme of nationalisation of many of the key industries of the old industrial economy, such as steel and coal, and almost all important public utilities, such as electricity, water and gas. Even though there was strong government control over social and economic life by that time, there were vast areas of social and economic life that were not controlled by the state. Most of economic life was regulated, but most aspects of it were not regulated by the state. That is, 'self-regulation' was the main form of regulation in British economic life.

Then, when the Conservatives come into power, most of the public owned industries were privatised during the great privatisation programmes of the 1980's and 1990's. The state was no longer the owner of the main means of production, however, the new privatised industries were subjected to legal control, usually administered by a specialised agency. Self-regulation was each time less common. The prestigious professions, financial markets, elite institutions, the food consumed, the conditions of the working places, the equipment used at home or in the offices - all were then subject to regulation. (Moran, 2001: 19-20).

The economic and institutional reforms were the main element in the rise of the regulatory state in Britain, however some other factors contributed significantly for the increase of regulations in the country, such as the intervention of the European Union; the "audit explosion"; the impact of scandal; and rise of the risk society. (Moran, 2001: 26-29)

The influence of the European Union is significant since a considerable number of regulatory measures in Britain can be mapped out directly to their obligations as a member of the Union, seen by Giandomenico Majone, as a Regulatory State itself. (Moran, 2002:402-403).

The practice of audit expanded in different arenas such as social, academic, health care, local and national government in the last decades of the twentieth century and this expansion entailed a great expansion of regulatory powers and the creation of new regulatory bodies.

Scandals involving the medical profession, financial services, food safety (such as “mad cow disease”) have also been the reason for many innovations in regulation in the last quarter of century since they opened the opportunity for new groups to question old statements and interests.

The “risk society” refers to a concept that the modern industrial societies have created new kinds of “catastrophic” risks that individuals cannot do much to protect themselves against (e.g. safety failures of the nuclear power industry or the BSE upheaval). This awareness of risk exists independently of objective circumstances and as a result it leads to ever more complex regulation of the workplace, the home and the physical environment in an attempt to maximise safety.

2.2. The “faces” of the regulatory state

Moran (2001:21-25) points out that the regulatory state has many “faces” and he points out four of them: the regulation of newly privatised industries; the transformed world of self-regulation; the “social” face of regulation; and the world of regulation inside the public sector. As he emphasises, privatisation was the most obvious cause of the regulation boom. The newly privatised industries, as well as the franchise system played far too important a role in social and economic life to be left to the free play of market forces, so the answer was to supervise and control.

The second “face” described by Moran is “the transformation of self-regulation”. The new regulatory state tends to regulate the exercise of most practices and professions. The author highlights as examples the medical and accountancy professions that used to be regulated by councils run by the professional themselves and the financial markets that used to be run as “private clubs” that largely controlled their own affairs.

The third “face” refers to the rise of social regulation. Even though regulation typically begins as economic regulation, in an attempt to ensure honesty and efficiency, in a second stage it is of a much more ambitious scope trying to protect whole populations against social discrimination and risks. In the United Kingdom the increase of social regulation is especially visible in three areas: legislation to protect workers against discrimination in the workplace on grounds of ethnicity, gender or religion;

legislation to regulate health and safety in the workplace; and legislation to regulate the hazards of enterprises - in an attempt to protect the whole community against the consequences of damage to the physical environment (e.g. emissions and discharges from industrial processes), as well as protect consumers against the apparent risks coming up from consumption or use of goods and services marketed by firms (e.g. food safety).

The fourth “face” of the regulatory state turns the attention to the “inside” of the state machine; it refers to the regulation of government - which has seen a fast growth of regulatory activity in recent years. Although public institutions in Britain have a long tradition of regulation, as part of their duty to provide accountability for their activities, the new “regulatory state inside the state” brought a series of new features, such as the scale of resources committed to the regulation of government; the degree to which it now involves the creations of distinctive, specialised groups of regulators applying explicit codes; the elaboration and occurrence of these new regulatory codes and the way they attempt to apply rigid control over the behaviour of public sector employees; and the extended range and ambitions of regulations covered by the new regulatory state.

For the reasons mentioned, the number of regulations in the UK increased significantly in the last decades of the twentieth century. Then, by the beginning of the new century, there was a strong sense that the State had too much control of the lives of people, organizations, enterprises, the market and professionals; and, as a response, there was the resurgence of the need for self-regulation and deregulation.

This is actually one of the main topics of the agenda of the new coalition government, with programmes such as “Your Freedom”, in which the Government challenges the public to find out the worst regulations in the country with the promise to eliminate them; the “one-in one-out” approach, in an attempt to reduce the volume of new regulations; the end of the “gold-plating” of EU rules; and the adoption of “sunset clauses” on regulations, determining the date they must be dissolved.

3. Improving the quality of regulations

In the 1980's it became clear for many OECD countries that their regulatory systems were not working as well as they should. There were too many regulations and they were usually too complex for citizens to understand and administrators to enforce. Regulations were too rigid for changing economic and social conditions, they were inconsistent with other rules, the regulatory processes were not sufficiently transparent and there was a lack of accountability. In addition to that, regulatory costs imposed on businesses were too high, reducing economic growth, job creation and competitiveness. There was also an understanding that government was invading into private life in ways that were not considered consistent with democratic values (OECD, 1994:17)

The discussions about the importance of the quality of laws and regulations increased in Europe in the 1990's. Up to some years before, the main criteria used to analyse the quality of legislation referred to technical quality, i.e. basically the quality of its writing. However, later on, it was clear that well drafted legislation could not guarantee efficiency or be considered democratic. It became clear that other criteria should be taken into account when legislating.

Some European countries have adopted criteria of good regulation that are used to evaluate the quality of its legislation. It is important to remember though that political support is fundamental to improving regulatory quality since in democracies, regulation is essentially a political instrument. That also means that regulatory reform cannot be viewed as a technocratic or legalistic exercise isolated from the mainstream of public sector reform. If regulatory reform is to have the necessary political backing and access to resources, it must be integrated into broad policies, and should support and improve the standards and results of the government in general.

More recently the discussions about the need for regulatory reform reached the European Parliaments as well. In 2000, at the Conference of the Speakers of European Union Parliaments, in Rome, the Speaker of the Finnish Parliament, Ms Riitta Uosukainen, reported on the conclusions of the Working Group on the Quality of Legislation, set up in Helsinki, and presented its final Memorandum containing guidelines to establishing forms to improve the quality of legislation within the EU framework. The Memorandum requests governments to offer Parliaments clear and concise information regarding

impact assessment and such evaluation should be open to specialists as well as the affected public. Also in the European Council special meeting held on 23-24 March 2000, in Lisbon, the Council requested the Member States:

> - to set out by 2001 a strategy for further coordinated action to simplify the regulatory environment, including the performance of public administration, at both national and Community level. (…)

After that, a working group was created with the responsibility of elaborating this strategy for coordinated action. The Mandelkern Group on Better Regulation (after its chairman, M. Dieudonné Mandelkern) adopted a final report in November 2001, which was signed up by representatives of all 15 member states, setting out in detail the actions that needed to be undertaken in order to improve Europe's regulatory environment. It described a comprehensive overall approach with a set of seven core principles: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. The group also identified seven key areas responsible for the success of a programme of quality of regulations: policy implementation options; impact assessment; consultation; simplification; access to regulation; structures and implementation of European regulation. (Fraga and Vargas, 2007:63-64)

In the Communication from the President Verheugen on the review of Better Regulation for the European Union (COM(2006) 689/2 and /4, 14 November 2006) at the Commission to the European Parliament, the priorities for the member states were identified as: the development and enforcement of consultation mechanisms; a more systemic analysis of the economic, social and environmental impact assessments; more transparency in the legislative process; development of programmes of simplification; and improvement of the submission of the European legislation.

Thus, it is noticeable that there has been a simultaneous or coordinated attempt in European institutions, governments and parliaments for the improvement of the quality of regulation in a common understand of its importance to development and democratic values.

3.1. Regulatory quality

A number of OECD countries have set some clear standards for the quality of **individual regulations**. (OECD, 1994:12). These include:

- Clarity, simplicity and accessibility for private citizens and businesses;
- Flexibility and consistency with other rules and international standards;
- Orderliness, clear drafting, terminology, and the existence for clear legal authority for action;
- Relevance to clearly-defined problems and to real-world conditions;
- Benefit-cost and cost-effectiveness tests, or measures of impacts on small business, competitiveness and trade;
- Implementation standards such as practicality, feasibility, enforceability, public acceptance, and availability of needed government resources.

In terms of the quality standards for **regulatory system**, the understanding is that it should be:

- Coherent, consistent, and balanced among competing policies;
- Stable and predictable of regulatory requirements;
- Ease of management and oversight, and responsiveness to political direction;
- Transparent and open to the political level and to the public;
- Consistent, fair and due to process of implementation;
- Adaptable to changing conditions.

OECD countries have made some substantial improvements in designing regulatory systems to result in desired regulatory quality, using economic, legal, and managerial techniques. These techniques include: (1) Managing Regulatory Systems; (2) Ensuring Public Consultation and Participation; (3) Ensuring Legal and Technical Quality; (4) Assessing costs and Economic Effects; (5) Assessing Compliance and Implementation Requirements; (6) Communicating and Codifying Laws and Regulations (OECD, 1994).

1. **Managing Regulatory Systems**

Systematic management frameworks are essential to discipline and control the development of new regulations. Their objective is to help governments make better decisions on when and how to use legal and regulatory powers.

Strategies for regulatory management include the creation of a central oversight body, a checklist of quality standards as well as a checklist for regulatory decision-making in the ministries; and a system to track, register and plan for new regulations, establish mechanisms for public consultation, conduct systematic reviews of existing regulations and promote cultural change within bureaucracies.

2. **Ensuring Public Consultation and Participation**

The involvement of citizens and private businesses in the development, issuance, and review of regulatory requirements can substantially strengthen democratic legitimacy, regulatory effectiveness, and public acceptance of regulation. Regulation is an essential mechanism of the governing process, so decision making procedures must respect proper standards of openness, communication, and accountability if democratic values are to be preserved.

It is important to ensure the involvement of potentially affected parties during the whole “life” of legal requirements: the development, revision, and deregulation. As a result, governments can increase the chances that their requirements are based on a precise comprehension of the problem, of the consequences of government actions, and of the ability of affected parties to comply.

3. **Ensuring Legal and Technical Quality**

Governments are sometimes tempted to believe that passing a new law is the solution to solve a certain problem and end up failing to guarantee that their actions are supported by a proper legal basis. However, if an action is taken without the observance of existing legal endorsement, they may be unpredictable and arbitrary. Additionally, if the actions are not legitimate and popular accepted they will probably not be effective. Therefore, the chances that such actions be annulled by the courts are considerably higher. Thus, it is important that Governments set up explicit standards to guarantee that new legislation is legal.

Nonetheless, beyond mere legality, regulations must be easy to understand, observe the due process and have good substantive content. Thus, governments need to establish explicit standards for these attributes and mechanisms to ensure that the standards are met, such as clarify the authority to initiate laws and regulations; ensure that new regulations fit into the existing legal structure, i.e. that they comply with higher levels of domestic and international laws; establish standards for quality of drafting; evaluate the substantive content of regulations; require implementation feasibility studies; and establish centralised drafting, coordination, or review of legal texts.

4. **Assessing Costs and Economic Effects**

The quality of regulations is vital to the economic capability and well-being of a country. An example is that the countries that adopted regulations that encourage capital formation, foreign investments, market competition and international trade after the Second World War witnessed a rapid grow while the countries that did not adopt the same policies were left behind.

The economic analysis seeks especially to determine which government actions provide the greatest net benefits for the country as a whole and not only for specific sub-groups benefited from a policy (e.g. farmer, unions, government workers). That is, to consider if the country will be better off with or without this regulation. The first question to be answered is if there is an economic need for the regulation. The assumption of market economics is that if there is no market failure (externality, natural monopoly or inadequate information) the best government policy is supposed to be not to regulate.

An important step in this process is the creation of an independent economic analysis unit to provide analyses to regulatory policy-makers before final decision. Then, it is fundamental that an assessment of the economic effects on income growth, jobs and inflation is undertaken and discussed at some point during the process of draft making. The impact analysis should include an estimate of total costs, to both public and private sectors, and of total benefits.

5. **Assessing Compliance and Implementation Requirements**

Passing a good piece of regulation is not enough if a government is not capable of putting it into practice. In order to do so, careful planning, sound public management practices, and attention to a multitude of detailed technical implementation steps are necessary.

Three factors can influence the implementability of regulations. The first is the technical quality of regulations. In order that people understand and comply with regulations, they must be clear, logically organised and consistent internally and with other legal instruments. As a result, the potential for differing interpretation is reduced. The second factor refers to capability of government institutions, i.e. the capability of a government to establish the institutions and carry out the functions required for “delivery” of the regulatory programme. The third factor refers to capacity and willingness of regulated entities to comply.

Some important measures to ensure success in implementation are the inclusion of implementability and enforceability criteria in drafting legal instruments; the use of an implementation assessment checklist; the requirement of explicit parliamentary consideration and approval of resources required for implementation; and the organisation of training sessions for Ministry Staff on Implementation assessments.

6. **Communicating and Codifying**

The final essential step to the success or failure of a regulation refers to the public understanding of and access to regulations. Regulations must communicate clearly to those who must comply with the requirements. They can be seen as "information system" that links administration and citizens.

Serious problems can occur if legal requirements are not clearly understandable, such as low levels of compliance; uncertainty regarding obligations (both for citizens and administrators); problems with enforceability and consistency; distance from the general public and failing to devote to the rule of law. Interesting techniques are the establishment of editorial review boards and central drafting offices.

Governments must also ensure that regulations are easily available to citizens. Governments can only expect to achieve sound levels of submission to the regulation if there is ample broadcasting of information of their legal requirements. In many cases, laws and regulations are not respected simply because citizens are not aware of them. Some techniques include the publishing of national gazettes containing new laws and rules or amendments to old ones; the preparation of period codifications of laws and regulations; and the establishment of public information offices and intra-governmental workgroups.

4. Best practices in the UK

The United Kingdom has focused its attention and engaged efforts to improve the quality of their regulation for more than two decades now[3]. A number of initiatives in different bodies have contributed to the attempts to improve the quality of regulations in the UK.

It is important to point out that the **Parliamentary system** in the UK also contributes to the quality of their regulation. One important feature is that practically all draft bills are prepared by the Government in their different Departments and drafted by a centralized body. The Parliament rules make it quite difficult to pass a Private Member's bill since the opportunity for presentation is rare and all members must be in accordance with it. In the 2009-2010 Session, only 7 Private Member's bills received royal assent. The five years behind, the numbers ranged from 3 to 5[4]. In practice, many of these bills are prepared by the Government itself that for political reasons or technicalities forward the task to their party's MPs. This system reduces greatly the chances of the passing of "symbolic" bills to satisfy electoral individual reasons or please the interest of small groups. Such type of legislation is common in countries that have not yet started a regulatory reform or in Presidential systems in which the Legislative and Executive branches are disputing the making of regulations. Symbolic laws tend to boost the statute book with increasingly unnecessary laws.

The centralized drafting body is the **Office of the Parliamentary Counsel**. It is composed of around 60 specialised lawyers who have the responsibility of drafting all Government Bills for introduction into Parliament. The Parliamentary Counsel also drafts subordinate legislation when specially instructed and review subordinate legislation which amends primary legislation, particularly in relation to European matters. The Counsel was founded in the 19th century with the objective to standardise drafting styles.[5] The Counsel has been counting with a commercial electronic database (LexisNexis) with all legislation updated to help with their research, since the official governmental database was not updated with the amendments approved later to legislation. However, on July 29th, 2010, the

[3] See Appendix D.
[4] House of Commons Information Office (2010).The Success of Private Members' Bills.
[5] Information released at the Seminar at the Law Commission for England & Wales for Commonwealth Drafters on June 22nd, 2010; and interview with Law Drafter.

Government launched a new website, www.legislation.gov.uk, with the objective of having all the legislation available to the public on a single government webpage. At the moment not all regulation is available yet, but the intention is to have all of them soon. There has also been a rising concern in the last decade with the clarity of the texts produced by the Counsel. There is also a "Guide to Making Legislation"[6] to give orientations and standardize all the drafts produced.

Another important mechanism of the British parliamentary system is the **Legislation Committee**. This Ministerial Cabinet Committee, chaired by the Leader of the House of Commons, has the responsibility to formulate the Legislative Programme that must reflect the Government's priorities for each Session of Parliament. The Legislative Programme usually consists of up to 30 bills, but this number may vary depending on the length of the Session and the time individual bills are expected to take during their passage. This planning of new regulations not only facilitates the approval of the bills in Parliament but also intend to balance the interests of departments and the interests of the Government as a whole and make Government prioritize which new policies are the most important for its programme. This practice also oblige the Departments to have their draft bills prepared before the beginning of each Parliamentary Session since bills that are awarded a slot but are not ready on time can not be included in the Legislative Programme. This makes Departments work on their policy planning and preparation in advance.[7]

Concerns about the quality of legislation have also reached **Parliament**. In 1997, the first report of the Select Committee on Modernisation of the House of Commons pointed out a series of problems in the British regulatory system such as: limited or non-existent consultations to support bills; the fact that the Government itself presented a number of amendments in Parliament, which showed they were being "produced too quickly to get the policy and drafting right"; and the chaos of the last few days of the session due to the attempts to complete the Government programme, proving the need for planning. Then, in 1998, a Deregulation and Regulatory Reform Committee was created, changing its name to Regulatory Reform Committee, in 2002, with the task of considering the draft legislative reform orders under the Legislative and Regulatory Reform Act 2006. In addition to this, the House of Lords created a Delegated Powers and Regulatory Reform Committee with the main task to supervise delegated powers to other bodies and delegated regulation made by them. There is also a Joint Committee on

[6] At http://www.cabinetoffice.gov.uk/making-legislation-guide.aspx
[7] Guide to Making Legislation at http://www.cabinetoffice.gov.uk/making-legislation-guide.aspx

Statutory Instruments with the responsibility to scrutinize all statutory instruments made in the exercise of powers granted by Act of Parliament, including instruments not laid before Parliament.

However, the four institutions that are the central object of this research were seen as the main pillars of the regulatory reform in the UK. They have contributed significantly in recent years to better regulation in the country. They are: the Law Commission, the Better Regulation Executive (BRE), Consultations and Impact Assessments. Thus, they will be given special attention.

4.1. The Law Commission

The Law Commission is an independent body established by the Law Commissions Act (UK) in 1965, with the mandate to take and keep under review all the law (of England and Wales – another Law Commission was created to Scotland by the same act) with a vision to its systematic development and reform. The Law Commission Act 1965 (UK) appointed ways to achieve this task including codification and modernization of the law and the repeal of obsolete and unnecessary enactments.[8] The Act also determined the composition of the Commission that should have a Chairman and four other Commissioners appointed by the Lord Chancellor (former nomenclature for the Minister of Justice). The Chairman must be a judge of the High Court or Court of Appeal and the other Commissioners persons suitably qualified – usually experienced judges, barristers, solicitors or teachers of law.[9]

The requests for its creation happened because the bodies that were supposed to be responsible for the law reform, such as the Departments and law reform committees were not been able to perform the mission adequately. No specific Minister had overall responsibility for law reform, the Lord Chancellor claimed there was no time or staff to perform such duty, and the law reform committees were not able to reform the law systematically because they were either provisional or part-time bodies or had been given a very narrow mandate. The creation of the Law Commission represented an advance to law reform because for the first time England and Wales had a body that was both full-time and permanent, whose sole responsibility was to reform the whole of the law. (White, 2005:34-35)

[8] Law Commissions Act (UK) 1965.
[9] Law Commission - Who we are and what we do. (leaflet)

At present, the Law Commission has around 60 employees, including the lawyers and research assistants, administrative staff, the communication team, members of the Parliamentary Counsel, and more recently Economists (with the responsibility of preparing the impact assessments of the projects). The Commission is formed by four teams that address mainly to Public Law; Commercial Law and Common Law; Criminal Law and Evidence and Property and Trust Law. Each team typically has a Commissioner, three Government Lawyers (one of whom is a Team Manager) and three Research Assistants, although this may vary according to workload. The Government Lawyers are legally qualified and the Research Assistants are usually recent graduates from law school.

The Law Commission independence means that it is a non partisan body, that is, it is independent from the Government it advises. The Commission is free to choose the topics to consider, recommend whatever reform solution it understands best and consult whomever it believes would be beneficial. As pointed out by White (2005:144), this independence from Government is likely to be more congenial for consultees since they can feel freer to express their opinion and actually be listened to. They are also more likely to give their time and expertise to an independent body than they would to Government.

However, at the same time the Law Commission is independent in that sense, it is still part of the Government machine. First, because it is supported by Government funding; second, because it relies on the agreement of Government before its work becomes law. Understanding this need to be closer to Government to have more success in the approval of its projects, a Protocol Between the Lord Chancellor (on Behalf of the Government) and the Law Commission was signed in 2009 to set out how Government departments and the Law Commission can work together to deliver law reform in the most effective way possible.

Consultations

A very remarkable feature of the Law Commission, since its creation, is the regular practice of consultations, which bases all its work. The Act of its creation defined that one of its function was “to receive and consider any proposals for the reform of the law which may be made or referred to them”. However, it did not instruct the obligation to initiate such suggestions or seek out other people’s views. Still the practice to consult started in the early years of the creation of the Commission making the Law Commission a pioneer in this practise.

In the beginning, the consultation documents were internal working papers that were produced to assist the Commissioners' debate (that is why the consultation documents were called working papers for a long time). However, these internal documents would be shown to a few people outside the Commission whose comments turned out to be very useful. After some time the documents were more and more widely circulated and before long, they were officially published and became publicly available. (White, 2005:117).

Today, every project taken by the Commission is subject to consultation exercises. Every three years the Law Commission organizes a big programme of consultation that is used to decide which projects the Commission should analyse during the following years. The Law Commission Act 1965 requires the Commission to submit programmes for the examination of different branches of the law to the Lord Chancellor for his approval before undertaking new work. In order to decide which projects to progress, the Law Commission consults judges, lawyers, Government departments and the general public. The main criteria used to decide on new projects are: (1) importance - how unsatisfactory the law is, as well as the potential benefits from reforming it; (2) suitability - whether the Law Commission is the most suitable body to carry out the revision; and (3) resources - whether there is funding available, if the projects are in accordance with the programme and if the Commissioners and staff have experience in the theme.

The formal consultation process starts usually one year before the next programme of law reform begins. After the Law Commission agrees to review an area of law, the remit of the project is decided along with the applicable Department. After the projects are chosen, a thoughtful study of the area of law is taken in order to identify its faults. Then a consultation paper is published with the details of the existing law and its deficiencies, presenting arguments for and against possible solutions and inviting consultees to comment. The paper is circulated widely to all interested persons, organizations and the media in order to receive comments. After an extensive process of consultation, the Law Commission finishes its report and submits it to the relevant Department with its final recommendations. Usually, a draft bill is also included as well as the impact assessment regarding the recommended changes.

White (2005), in a study where he compares the Law Commission and the Australian Law Reform Commission, pointed out that the Law Commission adopts an "expert model" of consultation, since it emphasises consulting those with expertise. Even though it does not exclude the general public, its

main target is those consultees that have expertise, especially legal expertise in the area being considered. That is certainly a characteristic of the Law Commission, which has a strong concern on being efficient in its recommendations rather than involving people in the process or stimulating participation simply for the sake of it.

However, it is very noticeable that the Law Commission has been more concerned about reaching more people involved in the subject being discussed. For example, the number of interested bodies and individuals contacted during the 10th Programme carried out in 2007 was 400[10], for the 11th Programme, carried on in 2010, this same number was more than 1,600[11]. The Law Commission also organizes informal forms of consultation for its specific projects such as seminars, meetings, workshops and public hearings.

Since its creation, the Law Commission has presented 179 Law Reform Reports recommending changes in the law[12]. From this total, 70% have been accepted, 68% enacted and 10% are [13]awaiting response. Another important responsibility of the Law Commission refers to simplifying the law. Some important work done in this respect refers to codification, consolidation and repeals of laws from the statute book that were obsolete. Since 1965, the Law Commission has drafted 18 law repeal bills. They all have been enacted, repealing 2,500 acts in its totality and partially repealing a further thousand acts[14].

4.2. Better Regulation Executive

The Better Regulation Executive (BRE) was set up on the 1st of January 2006 (initially with the name of Better Regulation Commission) as a non-departmental public body of the British Government, independent of any government but under the oversight of the Department for Business, Enterprise and Regulatory Reform (now Department for Business, Innovation and Skills).

[10] The Tenth Programme of Law Reform Report (2008). Appendix A.
[11] Number provided by the Communications team of the Law Commission.
[12] Law Commission Annual Report 2008-2009 pgs 68-77.
[13] Seminar at the Law Commission for England & Wales for Commonwealth Drafters, 22 June 2010.
[14] Law Commission Annual Report 2008-2009 pg 40.

However, the Better Regulation Task Force, a predecessor to BRE, was created in 1997. The BRTF was independent of government – formally a Non-Departmental Public Body, attached to the Cabinet Office, with the main role of providing independent advice and challenge to government on action to ensure that regulation and its enforcement were in accordance with the Five Principles of Good Regulation. It was formed by a diverse membership of unpaid volunteers drawn from different areas (industry, small business, trades unions, public sector, voluntary sector and consumer groups and the professions (law, accountancy, economics), who were passionate about improving regulation for all[15]. Thus, the "Better Regulation" theme has been an important issue for the UK government for a significant period of time.

The Better Regulation Task Force Report (1998) set out the Five Principles of Good Regulation, from policy development to implementation, which have been followed by BRE up to today. The Principles are:

- Proportionality: Regulators should only intervene when necessary;
- Accountability: regulators must be able to justify decisions and be subject to public scrutiny;
- Consistency: Government rules and standards must be in harmony and implemented fairly;
- Transparency: Regulators should be open, and keep regulations simple and user-friendly;
- Targeting: Regulation should be focused on the problem and minimise side effects.

The role of BRE in Government,[16] as the driver of the process of regulatory reform, involves:

- Establishing whether regulation really works and if the costs imposed on the public, private or third sectors are justified;
- Improving what have been done instead of producing new regulations;
- Helping the ones who comply with new regulation to understand them;
- Changing the perception of regulation;

[15] Better Regulation Task Force Annual Report 2005.
[16] "Life in BRE: Who are the BRE?", Better Regulation Executive (Leaflet).

- And persuading regulators that their role is to help and encourage businesses to comply, instead of focusing in catching out businesses who do not comply.

Thus, there are four main areas for the role and work of the BRE.

- Simplify **stock**: Work with departments and regulators to simplify and modernise existing regulations;

- Minimise **flow**: Ensure that new regulations are justified and burdens minimised;

- Change **culture**: Work with regulators to change their behaviour as enforcers, and departments to change their culture as producers of regulation;

- **Communicate**: Increase dialogue with the external public on better regulation, showing what the Government is doing and the importance of collaboration to change the reality.

Thus, BRE is divided into three Directorates responsible to focus on BRE's main objectives: the Regulatory Reform Directorate (RRD), which is responsible for supporting and challenging Government departments and regulators; the Regulatory Innovation Directorate (RID), which focuses on special projects and future policy and includes the Improving Regulatory Delivery (IRD), responsible to promote and push cultural change in other governmental bodies; and the Communications Team, which is responsible to divulge BRE's ideas and initiatives.[17]

Since its establishment, BRE managed to build a whole Better Regulation network structure at different levels across government to support and deliver Better Regulation processes and programmes. This structure is composed by: Departmental Better Regulation Units (coordination level), Board Level Champions (senior level) and Regulatory Reform Minister (Ministerial level), as well as Local Better Regulation Offices (LBRO).

Better Regulation Unit (BRU) - At present, most Departments have a BRU with the role to coordinate and support their department's work on improving regulation. They are expected to assist policy makers in developing new policy/ regulations, as well as revising existing ones and provide advice and training on better regulation to staff.

[17] Publication "Life in BRE: Who are the BRE?", Better Regulation Executive

Better Regulation EU Units - Some departments with considerable EU exposure (such as the Department for Environment, Food and Rural Affairs) have also EU Units.

Better Regulation Board Level Champions - has the role to ensure that departmental board members are committed to Better Regulation and to provide adequate resources within their departments for it. The idea is having a formal network of board level officials with the compromise to promote the better regulation agenda across Whitehall. This network has the mission to help BRE to engage with departments at a strategic level and underline the importance of this agenda to policymakers.

Better Regulation Ministers – Departments also have a Better Regulation Minister who is accountable for Better Regulation within his/ her department (combined with other responsibilities). Better Regulation Ministers meet periodically to discuss strategic issues and challenges and report to the Panel for Regulatory Accountability. They also, along with their officials, report on their regulatory performance and progress to BRE.

Local Better Regulation Offices (LBRO) – More recently, in 2007, LBROs were created with the task to improve the performance of local authorities in regulatory services, promote consistency and best practice in regulatory enforcement of national regulations.

BRE has been done a vital work with the other Departments in Consultations and Impact Assessments developing national standards for both practices. It developed a Code of Practice on Consultations that has been used by all Departments as a guide of practice to their consultations as well as a whole guidance on Impact Assessments to assist the Departments in preparing the IA for their policies.

Another interesting initiative forwarded by BRE was the adoption of the Common Commencement Dates. The CCDs are the dates in which the new regulation bearing on business must start be taken into effect. The regulations can be approved all over the year but they will commence for business only on the 6th of April or 1st of October. The purpose of such initiative is to help business plan for new regulation and to increase awareness of the introduction of new or changed requirements, resulting in improved compliance levels.

BRE has claimed in its published Annual Review 2009 that businesses in the UK are already benefiting from almost £ 3 billion a year of savings due to the simplifications made on regulations and,

according to the World Bank's Doing Business Report, the UK is now considered number one in Europe and 5th in the world with the best business environment. These figures are certainly the result of BRE's efforts to create the right conditions to help businesses start up, grow and invest.

4.3. Consultations

Governmental organizations in the UK usually consider formal consultations the written exercises run to collect people's contribution on a specific issue which are then analyzed and used to help guide policy makers in their decisions. Consultations are not public vote, they are qualitative exercises to seek evidence to help deliver the most effective and efficient policy within the constraints set. In practice, they are usually done in the format of questionnaires that are sent to stakeholders and interested parties with specific issues of a new policy.

Consultation exercises in the UK have already been institutionalized, and it is common practice in most governmental bodies. The Directgov webpage lists a number of 42 governmental bodies that are constantly consulting society for the implementation of new policies. The number of formal written consultations carried out by the UK Government departments ranged from 571 to 621 per year during the years of 2002 to 2006[18].

Informal forms of consultation are also a practice in the UK such as deliberative engagement techniques, meetings, seminars and workshops and they have been used especially to supplement traditional consultation exercises.

More recently websites and online forums have become more popular for central Government to seek input from and have dialogue with the public but they are still seen as informal type of consultation. One example is the newly launched website Your Freedom[19], in which the new Government expects the public to express their view on which regulation is the worst in the UK. However, formal consultation is the pattern in UK government, and after the "Your Freedom" website collects the public's opinions, a formal consultation exercise will be carry out as a continuation of the project.

[18] Internal document delivered at the Consultation Coordinator Network Meeting, June 2010.
[19] http://yourfreedom.hmg.gov.uk/

Nevertheless, the Departments use the Internet to have their consultation forms and information on line and consultees can download and return them by email. In a few departments consultees can fill the consultation questionnaires on line. At the moment, the Central Office of Information (COI), the Government's centre for marketing and communications, has just developed, with the incentive of BRE, an open source digital engagement platform to be used for all Departments, to run on line consultations and facilitate exercises making them quicker and easier to make as well as facilitate the record and analysis of the information collected. The new platform will be available in August (2010).

The Government (through BRE) has also developed a Code of Practice on Consultation, published in 2008, and signed by 68 public sector organisations.[20] The Code serves as a guide to officials as well as consultees and society about when and how formal, written consultation exercises on matters of policy or policy implementation should be done. It sets criteria such as the importance of consulting in an early state, while there is scope to influence; the minimum duration of 12 weeks; the clarity of scope and impact; targeted accordingly; keeping the burden of consultation to a minimum and the importance of analyzing the responses carefully and provide clear feedback to consultees.

Some Departments have adopted the practice and have been consulting so often that they have actually started to be considered too numerous. As an example is the Department for Environment, Food and Rural Affairs possibly due to a great number of EU regulations implementation in the UK. Since 2001, it has consulting much more than any other governmental body; and in 2006 it consulted more than twice as other Departments. Since formal written consultation exercises can be quite expensive, the recommendation by the Government is that they should be done only when really necessary and improve engagement with key stakeholders and seek their input in other forms of informal consultation.

4.4. Impact Assessments

Another practice that is already institutionalized in the regulatory system in the UK is the Impact Assessment (IA). The practice has been accepted as a tool to enable policy-makers think through the

[20] List available at http://www.bis.gov.uk/policies/better-regulation/consultation-guidance

consequences of possible and actual Government interventions; to weigh the costs and benefits of intervention and decide if it is worthy of implementation.

The United Kingdom has been aware of the importance of assessing the costs and benefits of new policies to help the formulation for almost three decades. The practice started in late 1980s with the "Cost Compliance Assessments" developing to mandatory "Impact Assessments" since mid 1990s. In 2007, the Impact Assessment with a fixed format for all Departments was introduced being revised in 2010[21].

IAs are compulsory for most policies. They are mandatory if the proposal: imposes or reduces costs on business, third sector or public sector; seeks collective agreement for UK negotiating positions on EU proposals; and for primary or secondary legislation, codes of practice or guidance, self-regulation or opt-in regulation.

IAs must identify winners and losers, have a complete description of costs and benefits, clarify the impacts and be fully monetized. It also must clarify other policy options considered; evaluate enforcement and implementation requirements; and must identify economic, environmental, social impacts as well as sustainable development. More recently, a "Post Implementation Review (PIR) Plan" has also been included in the IAs requirements. PIR is supposed to be done 3 to 5 years after the implementation of the policy with the objective to examine if the implemented regulation have achieve their objectives, assess their costs and benefits and identify if they are having any unintended consequences.

They must be formally produced and published at different stages of policy making: consultation stage (if a consultation is conducted); final proposal stage; at the time of legislation enactment; and when a post-implementation review is carried out. The Departments have economists in their team with the responsibility to make the impact assessments of the policies proposed by them.

In the last couple of years, a few policies also prepared Equality Impact Assessments (EqIAs)[22] to analyse the potential or concrete effects of the policy on disability, ethnic minority, gender, faith, age, transgender and maternity groups. The objective is to investigate potential impact in advance of

[21] IA template at www.bis.gov.uk/IA-Template
[22] Available at http://www.bis.gov.uk/equality-impact-assessments

implementation, and to make appropriate adjustments to eliminate or reduce negative impacts, or create or enlarge positive ones.

BRE has been making great efforts to help Departments in preparing their Impact Assessment. In 2010, they also launched the Impact Assessment Guidance[23] with practical and objective information about when and how to make IAs; the Toolkit[24,] to guide IA makers to fill the IA Template in an efficient way; and the new on line electronic IA library. The IA Library[25] was launched in 2008 as a beta version, where all impact assessments made by governmental agencies were available. The 2010 version, to be launched until the end of the summer, promises to have new devices such as a searchable public dataset; connection of IAs with related legislation, IA numbering and an electronic IA form with basic error checking.

[23] Impact Assessment Guidance at http://www.bis.gov.uk/assets/BISCore/better-regulation/docs/10-898-impact-assessment-guidance.pdf
[24] Toolkit at http://www.bis.gov.uk/assets/BISCore/better-regulation/docs/10-901-impact-assessment-toolkit.pdf
[25] IA Library at http://www.ialibrary.berr.gov.uk/

5. Findings and Recommendations

The literature on regulatory quality points out that establishing a central oversight body is essential in a regulatory system. Their task is supposed to range from "day-to-day review of individual rules to co-ordination among ministries to general monitoring of regulatory activity and advising the politicians". They must act as "watch-dogs" over the regulatory and legislative process. (OECD, 1994:21)

However, BRE, as the central oversight body for Better Regulation in the British regulatory system, is clearly accumulating two different functions. At the same time it accomplishes the task of working with the other Departments in order to ensure better regulation in all areas, it has also been acting as the Better Regulation Unit for the Department for Business, Innovation and Skills (BIS) to ensure the quality of regulation for the business sector.

BRE 2009 Annual Review, starts with a quote from the Secretary of State for Business, Innovation and Skills that says: "We are transforming Government culture to make sure that regulation is effective, targeted, proportionate and that we only regulate when absolutely necessary, delivering a regulatory framework fit for the 21st century and the right conditions for businesses to succeed." In general, most documents published by BRE focus on Better Regulation for business. Therefore, it is easy to note how much BRE is focused on better regulation for business.

The literature also says that the central oversight units should preferably be located in central management offices reporting straight to prime ministers (OECD, 1994:21). Nevertheless, BRE is located at the Department for Business, Innovation and Skills accumulating the function of oversight body and better regulation unit for business regulation. The recommendation is that BRE should be based at the Cabinet Office, and focus on its central oversight functions and that a BRU was created in BIS (possibly a bit more robust than the other BRUs). This would not only clarify BRE's purpose but would help BRE officials to work with other Departments officials. At present, the fact that BRE is located on BIS does not make it clear for other Department officials that it has a supervisory role over them, what makes it more difficult to perform its duty among Departments.

It is also noticeable that the UK Government is more focused on the quality of regulation that affects business than the quality of all kinds of regulations. It is certain that regulations that affect business can have a bigger impact on development, but the quality of regulation as a whole is fundamental for

the development of a state in a broader sense. Possibly this emphasis on business is responsible for the way the British see their own regulations. In some informal conversations I had, it was noticeable that people in the UK do not consider their regulations as being good. This negative perception certainly affects the reliability of the whole regulatory system, and as consequence the integrity of the government and the state is affected. The UK Government should put more effort into making it clear to British people that it understands the importance of improving the quality of all regulations and not only regulations that affect enterprises.

In relation to Consultations, even though they are largely institutionalized in the country, and sometimes are even considered too many, there still seems to be a lack of directive in the Departments. The Code of Practice has certainly helped to guide officials responsible for consultations, but since it does not determine many details about when and how to consult, some Departments seem a bit lost when having to make decisions. Another consideration is that some Departments seem to be consulting for the sake of doing it; because they have the obligation to consult. It is not very clear for them the real reasons and goals when consulting. Having a clear idea of its goals is fundamental to conduct effective consultation. Thus, the recommendation is that the Code of Practice should be more specific and detailed, and BRE should work closely with the Departments on the awareness of consulting as an extremely important tool to improve the quality of regulations and help them thinking and planning their consultation exercises.

Regarding Impact Assessments, at present they are done by the proponent Department itself. That increases the chances that the Department may be too positive when making their IAs, since they have a great interest of having their policies approved. OECD recommends the establishment of a central economic analysis unit that should be objective and independent, and have the mission of reviewing proposed IAs made by the other Departments (OECD, 1994:42). At the moment, there is no such unit in the UK system and BRE does not review the IAs made by different Departments in a systematic basis. The recommendation is that BRE should have this duty.

The main weakness of British regulatory system appears to be at the end of the regulatory process, i.e. in the regulatory implementation and post scrutiny evaluations. At the moment, there are no specific programmes or central guidelines for regulatory implementation although they must now be evaluated in the Impact Assessments. In relation to post scrutiny evaluation, in 2006, the Law

Commission made a study on “Post-Legislative Scrutiny” when it recommended the systematic reviews in the Departments and in Parliament on whether the policies objectives have been met by the legislation, and how effectively they have been. It is important to point out that the Law Commission review the laws, not policies, and it is not done in a systematic way. As a response to the Law Commission recommendation, the Government presented to Parliament, in 2008, the “Post-Legislative Scrutiny - the Government’s Approach”, in which it was proposed that 3 years after a law had passed it should be reviewed by the relevant Government Department and then by Parliament to check how the legislation have worked in practice. Even though the Post Implementation Review study started to be a requirement at IAs, the reviews have not been done in a regular basis yet. Now, the new government, also understanding the need for systematic regulation review, has announced the adoption of “Sunset clauses” by which a specific date will be set for the regulation to be dissolved unless, as a result of a positive review, active measures are taken to continue them. The adoption of these clauses will also force that reviewing is taken.

Another consideration refers to the new Government regulatory politics rather than technicalities of the system. The new coalition Government is surely focusing its attention on regulation. The paper “Regulatory Reform for Recovery and Growth”, published by OECD in May 2010, calls the attention to the importance of regulatory reform as a strategy for economic crisis recovery. According to the paper, an economic crisis can be the right moment for making the necessary changes to liberate the productive forces to increase competitiveness and growth. It also points out the importance of communicating and demonstrating the results of reform and show how governments are committed to improving the regulatory system in a way of re-establishing the confidence of citizens and businesses in regulatory system and institutions. The new Government is aware of that and is taking the recommendations to implement the necessary changes and re-gain citizens and businesses trust.

However, the new Government seems to be putting too much emphasis on deregulation rather than better regulation. Its programmes are focusing especially on deregulation, such as “Your Freedom”, “one-in one-out”, the end of gold-plating EU regulations, etc. Even though deregulation was the reaction for the regulatory state, it must be taken very carefully since it is a complex decision. Deregulate can leave a vacuum in the statute book that can cause some substantial problems that will have to be solved in the courts and end up producing new jurisdiction. As stated by Moran (2001:32) “the regulatory state is here to stay”. It happened as a response to the decay of older methods of

control, and the rise of new demands by citizens, so it is impossible to go back to the old practises. Therefore, the focus should be in better regulation – regulation that is legitimate, accountable and effective.

Anyhow, it is important to conclude by bringing back to mind that OECD studies highlight the importance of an institutional architecture as well as the support from all the relevant institutions to accomplish regulatory reform and the United Kingdom is considered today to be one of the States that is most advanced in terms of regulatory practices. They have shown to be focusing on improving the quality of their regulations for a couple of decades now and have adopted important practices and the implementation of a complex and well articulated regulatory system.

The most institutionalized practices and bodies have shown to be the Law Commission, the Better Regulation Executive, Consultations and Impact Assessments, that are quite sophisticated institutions compared to most countries. However, there is still more to be done. There is still scope to develop stronger relationships and strength with key actors on central and local government; educate and involve decision-makers; training on implementation assessment; develop communication programmes, reviewing of regulations, etc. In any case, the Labour Government developed important practices to improve the regulatory system in the UK during its time in power and it is quite clear that the new coalition Government is focusing its attention in improving the quality of their regulation as well. Thus we can conclude that the United Kingdom is moving on the right track.

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Appendix A

Checklist of Regulatory Quality Techniques[26]

Managing Regulatory Systems

- ✓ Establish a system for tracking and registering existing laws and regulations, and for
- ✓ planning future laws and regulations
- ✓ Establish responsibility for improvement at the ministerial or prime minister's level
- ✓ Establish a central oversight body
- ✓ Establish a high-level advisory commission
- ✓ . Develop a standardised "checklist" for regulatory decision-making in the ministries
- ✓ Adopt an administrative procedure law
- ✓ . Establish a system of regulatory analysis
- ✓ . Establish mechanisms for public consultation and participation
- ✓ . Conduct systematic reviews of existing regulations
- ✓ . Promote cultural change within bureaucracies

Ensuring Public Consultation and Participation

- ✓ Publish an agenda listing the regulations being developed
- ✓ . Establish general requirements for public consultation
- ✓ . Establish notice and comment procedures
- ✓ Establish public hearing procedures
- ✓ Facilitate broad consultation through support of disadvantaged interests
- ✓ . Require that decision-makers be informed of consultation results
- ✓ Set up advisory groups

Ensuring Legal and Technical Quality

- ✓ Clarify the authority to initiate laws and regulations
- ✓ Establish standards of legality
- ✓ . Establish standards for quality of drafting

[26] Improving the Quality of Laws and Regulations: Economic, Legal and Managerial Techniques. OECD, 1994.

- ✓ Evaluate the substantive content of regulations
- ✓ Require implementation feasibility studies
- ✓ Establish regulatory process standards
- ✓ Establish centralised drafting, coordination, or review of legal texts

Assessing Costs and Economic Effects

- ✓ . Require impact analysis of the costs and benefits of proposed laws and regulations
- ✓ . Establish a central economic analysis unit
- ✓ . Establish an economic analysis capability in regulatory programmes
- ✓ Integrate economic analysis into the legislative and regulatory processes

Assessing Compliance and Implementation Requirements

- ✓ . Include implementability and enforceability criteria in drafting directives for legalinstruments
- ✓ . Develop systematic compliance strategies
- ✓ Use an implementation assessment checklist
- ✓ Require explicit parliamentary consideration and approval of resources required for implementation
- ✓ Apply project planning and management techniques
- ✓ . Educate and involve the decision-makers
- ✓ Organise training sessions for ministry staff on implementation assessment
- ✓ . Strengthen common elements of regulatory system
- ✓ . Ease implementation problems by slowing the pace of new regulation

Communicating and Codifying Laws

- ✓ Require that all legal requirements be comprehensible
- ✓ Require that amendments to existing laws and rules specify the changes that are being made
- ✓ Establish editorial review boards
- ✓ . Publish national gazettes
- ✓ Prepare periodic codifications of laws and regulations
- ✓ Establish public information offices
- ✓ Establish intra-governmental workgroups

Appendix B

The OECD Reference Checklist For Regulatory Decision-Making[27]

Question No. 1

Is the problem correctly defined?

The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

Question No. 2

Is government action justified?

Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

Question No. 3

Is regulation the best form of government action?

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements.

Question No. 4

Is there a legal basis for regulation?

Regulatory processes should be structured so that all regulatory decisions rigorously respect the "rule of law"; that is, responsibility should be explicit for ensuring that all regulations are authorised by higherlevel regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedural requirements.

Question No. 5

What is the appropriate level (or levels) of government for this action?

[27] From OECD (1995) Recommendation of the Council of the OECD on Improving the Quality of Government Regulation. Acessed on July, 2010 at http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=OCDE/GD(95)95&doclanguage=en

Regulators should choose the most appropriate level of government to take action, or, if multiple levels are involved, should design effective systems of coordination between levels of government.

Question No. 6

Do the benefits of regulation justify the costs?

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

Question No. 7

Is the distribution of effects across society transparent?

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

Question No. 8

Is the regulation clear, consistent, comprehensible, and accessible to users?

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

Question No. 9

Have all interested parties had the opportunity to present their views?

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

Question No. 10

How will compliance be achieved?

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

Appendix C

Model Regulatory Implementation Assessment Checklist

1. Is the law drafted in a way that will facilitate implementation and enforcement?

2. What is the strategy for securing compliance with the regulation?

3. What functions will be required to make this strategy work properly?

4. How will compliance promotion and other communications activities be carried out?

5. How will compliance monitoring be carried out?

6. How will regulatory requirements be kept up to date?

7. How will enforcement be carried out?

8. How will adjudication be carried out?

9. What types of information will be required for operation of the programme? How will it be generated, compiled, protected, and disseminated?

10. What kind and level of human and financial resources will be required? How will they be acquired and managed?

11. What organisational structure will be optimal to provide a suitable balance of control, accountability, and freedom to provide services?

12. What arrangements will be required for security?

Appendix D

Milestones in the development of Better Regulation institutions in the United Kingdom[28]

1986	Establishment of a central task force, the "Enterprise and Deregulation Unit" set up in the Department of Employment. It is given power to oversee and co-ordinate the "anti-red tape" efforts of individual departments. Deregulation units are set up and a Departmental Deregulation Minister is appointed in each department. Creation of the Deregulation Task Force, an independent advisory panel to the government.
1987	The Enterprise and Deregulation Unit, now named "Deregulation Unit" is moved to the Department of Trade and Industry.
1989	Creation of a Cabinet committee on regulation (with ministerial membership).
1995	Creation of an advisory panel (made up of business people). Deregulation Unit is moved to the Cabinet Office. Seven business taskforces are set up to look at sector specific regulations.
1997	Deregulation Unit is renamed the Better Regulation Unit. Deregulation Task Force is renamed the Better Regulation Task Force (BRTF), and new members appointed by the Prime Minister.
1999	Regulatory reform ministers are appointed in each department. Better Regulation Unit is renamed the Better Regulation Executive (BRE). A public sector team is set up in the BRE to give "hands on" advice to public sector service deliverers to facilitate compliance with reporting and paperwork requirements. Panel for regulatory accountability (ministerial committee chaired by the Prime Minister) is established to "take an overall view of the regulatory implications of the government's regulatory plans" and to "ensure necessary improvements in the regulatory system and the performance of individual departments".
2000	The Small Business Service is set up to provide a single organisation dedicated to helping small firms and representing them within the

[28] OECD (2010:65). Better Regulation in Europe: United Kingdom

	government.
2004	House of Lords Merits of Statutory Instruments Committee is set up to strengthen the scrutiny of secondary regulations (statutory instruments).
2007	Better Regulation Executive is relocated to Department for Business, Enterprise and Regulatory Reform (BERR). Small Business Service is folded into the BERR, as the BERR Enterprise Directorate.
2008	Local Better Regulation Office (LBRO) is established.