



Chartered
Institute of
Environmental
Health

Cabinet Office: Review into unnecessary regulatory barriers to growth placed on businesses by Local Authorities

Submission of the Chartered Institute of Environmental Health

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Regulation and the role of environmental health professionals within it

Consideration of the delivery of local authorities' regulatory functions, particularly in respect of food safety, occupational health and safety, private sector housing standards and environmental protection, all of which fall within the remit of 'environmental health', is both timely and welcome. "Regulation", as discussed in this response, extends across the entire range of initiatives aimed at securing compliance with standards and requirements underpinned by legislation. This includes inspection and enforcement, but these are just some of the tools at the disposal of environmental health practitioners.

The context of regulation changes over time, but predominant now are meeting the challenges of national and international economic conditions. Businesses and central and local government alike have to respond to huge financial pressures. The impact of reduced government funding is having a significant impact on local authorities, with many facing reductions of 30% or more in their budgets in the last 10 years.

The fast pace of change intensifies threats to existing service delivery and also increases opportunities for considering new ways of delivering. Wealth-creators and legislators are equally focused on how to innovate and adapt in order to deliver more effective services at lower cost.

The Chartered Institute of Environmental Health (CIEH) takes the view that public policy, once it has reached a consensus on what the public needs protecting against, the degree of protection to be provided and how costs are to be apportioned, has to respond by facilitating bold, forward-thinking and collaborative solutions. The reality of life is that such solutions are already being embraced by the innovators and early adopters amongst both regulators and those public policy has decided should be regulated.

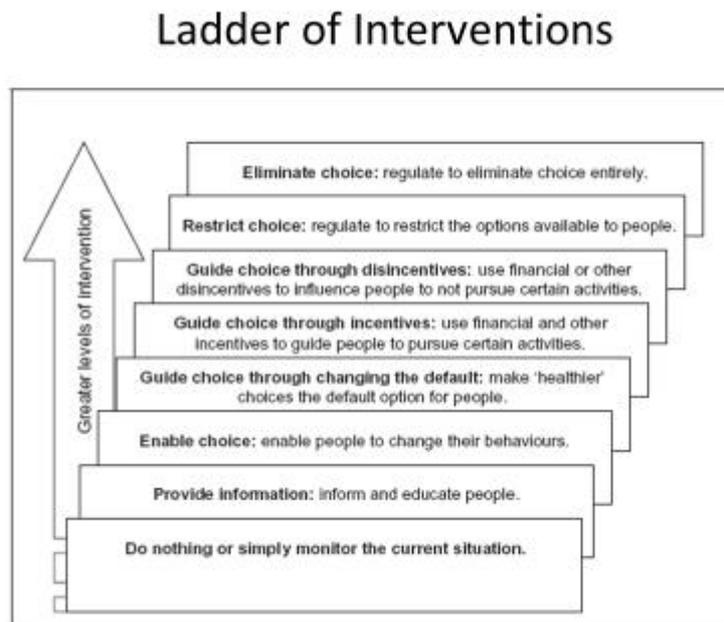
Environmental health professionals are, of course, much more than regulators and regulators are much more than people who impose burdens on the regulated or who take legal action to stop something happening or to punish someone. Environmental health practitioners are accomplished problem-solvers, capable of working holistically to arrive at the best solutions and they are experienced at working in partnerships to achieve common goals. The knowledge, skills and competencies of environmental health professionals are increasingly being recognized and utilised in a variety of different employment settings and roles. It is, however, mainly local government where the profession was first established and has evolved with the same focus that remains today on protecting people from adverse environmental conditions. The work environmental health professionals do is vital in today's world in addressing unsafe food, unhealthy housing and harmful work or leisure activities and in addressing the underlying causes of a lack of well-being which contributes to social, mental and chronic ill-health,.

Environmental health professionals provide a public protection service that contributes both to the public's health and environmental protection. They do this by taking a proportionate, risk based approach to regulation that also establishes and maintains a level-playing field for business to operate fairly and this supports conditions for well-managed, socially responsible businesses to thrive.

Environmental health professionals use a range of tools and interventions in order to secure improvements and gain compliance and practitioners are educated in their use from the earliest stage of their training so that they regard risk (in whatever its form) and control (in

whatever its form) to be as one. In so doing, they make judgements all the time about the most appropriate interventions – broadly following a 'ladder of interventions' (see figure 1) that range from doing nothing, to education and encouragement through to the use of legal procedures including the service of enforcement notices and other legal proceedings to eliminate choice.

Fig.1



To be fully effective, any single regulatory intervention ought to be part of a broader comprehensive approach, which includes all components necessary for success. Regulatory policies may impose burdens on business initially but, when designed properly, the burden of regulation can be minimised and enforcement limited to those that are necessary and proportionate to the policy objectives they are designed to achieve. A good example is our smoke free legislation, which the Better Regulation Executive itself¹ has cited as a case study of effective regulation, and which was considered by over 80% of business decision makers to be a 'good idea', led to significant improvements in air quality particularly in pubs and bars, and achieved compliance rates over 95% from the outset.²

Regulation and the "One In Three Out" principle

In respect of current policy initiatives associated with reducing regulation and, in particular, the application of the recently announced "One in Three Out" (OITO) rule; it is the view of the CIEH that such blanket rules militate against regulation that is designed to protect and improve public health. We also take the view that such rules will deter Government departments from introducing regulations, even where it can be convincingly shown that the wider social and economic benefits are greater than the costs to business that regulation imposes. An effective deregulatory agenda needs, in our opinion, a more sophisticated approach than blanket application of the OITO rule. For example, there should be a detailed

¹ Better Regulation Executive. Better Regulation, Better Benefits: Getting the Balance Right. DBIS May 2009

² "Smoke Free England one year on". DH. 2008

consideration of the original regulatory impact assessment to determine whether the intended purposes of the legislation have been achieved. For historic legislation, enacted before the requirement for regulatory impact assessments, there should be an alternative assessment procedure that takes into account the cost benefit considerations.

Future regulations to protect public health are threatened by the OITO policy, which requires Government departments to remove regulations worth twice the cost to business of any new regulation they introduce. We believe that, as it is currently stated, the OITO principle sets an unreasonable hurdle for new public health focused regulations.

For example, if food labelling regulations lead to consumers buying less processed food due to high levels of salt, fat or sugar, then this is counted as a cost to business, while the benefits to wider society, and in particular the potential savings to the NHS, are not properly considered. It is appropriate that costs to business of regulation should be considered in deciding whether a regulatory measure is effective, and cost-effective, but not that this should be the sole determining factor.

The burden of meeting the OITO standard therefore falls on individual Government departments with no account taken of the wider benefit to society of such regulations.

We feel that the rule should be reformed so that in assessing cost and benefits due consideration is given to costs *and* benefits to society overall and not just to business. Alternatively, there should be an exemption for public health measures, in the same way as regulations on civil emergencies and financial systemic risk are exempted. Furthermore, the OITO rule should be reformed so that any compensating deregulatory action, required when a new regulation is introduced, does not necessarily have to be taken by the Department introducing the new regulation. Finally, as a matter of urgency, the OITO rule should be reformed so that the distinction between "direct" and "indirect" costs to business does not operate in a way that effectively discriminates against public health protection.

The costs and benefits of regulation

The CIEH believes that relationships between businesses and regulatory services should reflect shared goals of public protection, supporting enterprise and growth and developing a sustainable future for our people and our planet. Law and practice needs to underpin and promote these goals.

Well-written law, proportionately and consistently applied, forms the foundation for public protection and is good for the economy, society and the environment. The law needs to be clear about the duties of care applying to individuals, the state and businesses. The starting point for regulatory services is that citizens and businesses in the main intend to be in compliance with the law.

Research shows that a positive regulatory environment contributes significantly to economic development and sustainable growth, improves the openness of international markets and creates a less constricted business environment for innovation and entrepreneurship. It protects compliant businesses by enabling fair competition and provides business with the confidence to invest, grow and create new jobs.³ A further study from 2014 has shown that businesses can benefit from positive experiences of regulation.⁴

³ Regulation and Growth, LBRO March 2012

⁴ Business Perceptions Survey (IFF), National Audit Office and LBRO May 2014

Environmental health interventions seek to contribute to public protection and improvements in health outcomes through the wide range of interventions they undertake in a number of settings including workplaces, food outlets and rented housing. Effective and holistic regulatory delivery, allied to openness and transparency, will support public health objectives, including improving health and well-being of both people and the environment.

The CIEH therefore supports a regulatory system that is founded on research, and that is risk-led and evidence-driven. Its effectiveness will be defined less by a set number of inspections and more by the quality of the relationships established between those involved in ensuring compliance. Collaboration leads to focus on interventions that are founded on sound evidence with resources targeted where they are most needed. The UK's regulatory system protects people and communities from harm, safeguards against public health risks and contributes to improved quality of life for all. Through using, advice, education and regulation, environmental health professionals are able to support economic development and sustainable growth, both through the nature of the interventions they select and the way that they interact with businesses in the course of their work. To the business, environmental health interventions and support can provide:

- Reductions in business costs associated with dealing with the consequences of non-compliance and consequential reputational damage
- Ensure fair competition and a level playing field
- Information to business to enable confident decision making and investment
- Protection to customers and encourage customer confidence
- A safe trading environment
- Better management control of risks to the business
- Business and consumer trust in open and fair markets
- Wider public health and environmental benefits

In addition it is important to recognise that environmental health functions are also critical within businesses and to acknowledge the direct contribution of environmental health professionals working within commercial enterprise and industry.

When businesses are able to demonstrate that they have in place and use appropriate systems for ensuring compliance, they are able to earn recognition of this and regulatory oversight can be adjusted accordingly. Businesses needing support to achieve compliance can rely on regulatory services to support them to become compliant but, those unable or deliberately intending not to comply will rightly be targeted for appropriate enforcement interventions as the public and other businesses should not have to bear the cost of incompetence, negligence or wilful non-compliance. Different settings call for a range of differentiated interventions but, in their delivery, regulatory services must always seek to be fair, consistent and transparent with the degree of intervention required being determined, in part, by the degree of interaction between the business and the regulator so that the latter can properly evaluate the level of confidence held in the business.

We believe that the CIEH and other professional bodies, working alongside businesses, government bodies and other agencies have an ongoing role in supporting business compliance and effective regulatory service delivery.

Examples of positive and supportive regulation and regulation providing frontline protection for public health

The CIEH believes that the following are but a small selection from a myriad of examples that demonstrate positive, supportive regulation and showcase environmental health professionals operating with discretion, sound judgment and on the basis of evidence to support business and to deliver expected levels of health and public protection. An example of port health regulation is also included to demonstrate that regulation can also provide frontline protection for public health. In all cases, the examples quoted are provided by our members, are taken from publicly available material and the CIEH has the consent of the material owners to cite them within this submission.

Cornwall Council working with Public Health - The Nippers' Nutrition Programme

The Nipper's Nutrition Programme was developed following a nationally co-ordinated nursery meal survey in 2009/10. Cornwall Council's Environmental Health, Trading Standards and Children's Schools and Families teams worked together to survey four Cornish settings. The survey assessed the nutritional quality of meal provision over one week and provided settings with a dietician's report to identify improvements.

The findings of the survey in Cornwall mirrored national findings:

- The level of salt in the food was significantly above the Caroline Walker Trust Guidelines - salt levels were linked to use of packet mixes, gravy, sauces and excessive use of processed food
- Low levels of zinc and iron were found
- Poor levels of vitamin C were linked to inadequate provision of fruit and vegetables
- Other common themes were lack of understanding about portion sizes appropriate for young children and understanding food labels.

In April 2010, jointly with the NHS Healthy Weight Programme, the Nippers' Nutrition Programme was developed aimed at supporting settings to provide children in their care with nutritious food.

What the Nippers' Nutrition Programme settings say!

Smiling Faces Pre-School, Falmouth - Lisa, Manager responsible for staff and childcare at Smiling Faces, Falmouth said: "Joining the scheme had been a really positive experience". She said "It has given us a strong link with parents and the ability to provide more information to support the parents in providing nutritious meals for their children. The parents have been very positive about the scheme" she added, "When we had some potential new parents looking round they were very impressed and I think that was a contributory factor to an extra large intake of children St. Minver Pre-School- We've put menus on our website and on the notice board for the parents to see and they're really happy. They are pleased that the Pre-School is participating in the scheme and that they can use the same menus at home. I think that the better diet has resulted in better behaviour amongst the children. The word seems to have got around about the scheme - there has been a lot of interest from new parents who have been looking round. I think it has been a factor in some parents' decisions to place their children with us".

Woodlane Nursery, Falmouth- "The Nippers' Nutrition Programme has provided us with fantastic support to make changes to our menus and we have learnt so much from the

process. We will be much better informed the next time we plan new menus.” “The feedback from parents has been brilliant. One said ‘it provides reassurance that my child has the best possible food provision’, and another ‘I have confidence in the setting that our children are in the best possible place’. They were particularly impressed with the Menu Planning Tool which they have been able to take home and use themselves

Healthier Catering Commitment - Islington

Islington used healthy catering commitment as part of a British Heart Foundation funded Hearty Lives project which allowed them to progress at a faster pace than they would have otherwise done. This also meant that they could test approaches faster whilst adhering to the principle of small changes make a difference.

Public health have helped with by providing local area data on inequalities, coronary heart disease etc. which has helped to produce the case for change to present to business. Staff engage businesses during inspections where the score on the door is 3 or above. They go through a range of options to meet the commitment. Regulatory staff are trained to level 2 in diet and nutrition. Where menus are more complex Public Health provide access to nutritionists.

Because of the higher than average prevalence of Coronary Heart Disease, men were an initial target group so there was a targeted approach to vendors and outlets around the Arsenal stadium. Progress was made with vendors taking actions including reducing portions sizes particularly for chips, reducing salt and changing cooking methods to healthier methods. Businesses can use the award in their publicity and Award winners are listed on Islington’s website.

Other areas targeted included geographical areas around schools. This involved working with fast food takeaways and resulted in 60 signing up to the commitment. The work went alongside briefing the Islington Youth Forum on the programme. They acted as ambassadors who would ask businesses to embrace the programme. The youth forum also identified the need to brief teachers and that has led to Food Technology teachers incorporating a module on fast food takeaways into the curriculum.

Workplace canteens have also been included and are some of the most committed adopters. Since 2011, 210 businesses have signed up to the commitment.

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Kirklees Council

The Services of the Environmental Health Better Health at Work team are now entirely commissioned by Public Health. The team works to a Service Specification (September 2013) which outlines the outcomes and performance indicators and a Delivery Plan (2013 – 2016) outlines future developments of the team and an action plan.

The team comprises of 6 advisors who cover a range of initiatives including –

Workplace Well-Being Charter - Originally developed by Liverpool PCT, the Workplace Wellbeing Charter gives businesses the opportunity to officially gain recognition for their dedication to the wellbeing of their staff. It is now backed and supported by Public Health England following a re-launch in June 2014. The Charter is a statement of intent from a business / organisation about their commitment to the health and wellbeing. It provides a clear set of standards for businesses to benchmark, evaluate and improve their employee wellbeing; it focuses on eight key areas: Leadership, Attendance Management, Health and Safety, Mental health and Wellbeing, Smoking and Tobacco Ill-health, Physical Activity, Healthy Eating and Alcohol. Members of the team have undergone training to deliver and accredit the Charter. The annual target is to help 15 local companies achieve this Charter.

Health MOT's and Reviews at 3 and 6 months –This is a key component to the service. The team continually review and improve health MOTS. They are a favourite with companies and service users alike. This year Total Cholesterol and Random Blood Sugar tests are also included in the tests. The staff training and start up equipment was paid for by our successful bid for Flora funding of £1500. The consultation time has been increased to 45 minutes to incorporate these tests. It also allows the client time to talk and our Advisor time to motivate change. The team have also recently introduced follow up appointments at 3 & 6 months, for clients identified with health concerns. Over 6 months 236 clients have been seen.

Six Month Health and Well-Being Programme –continues to work successfully with larger organisations. It is an important tool to successfully connect with staff and deliver key health messages over a 6 month period. A Facebook page keeps messages live and provides for interactive discussion between events.

Preston Council

Started 3 projects, in January 2014, January 2015 and January 2016, to investigate how it could engage with poorly performing businesses more effectively, to help them improve food hygiene (and so their rating, amongst other obvious positive outcomes).

In January 2014 Council environmental health professionals contacted a selection of businesses with a rating of 0, 1 or 2, inviting them to attend for a "chat" (not an "interview") and used the opportunity to coach the Food Business Operator (FBO).

In 2015 environmental health professionals sent 1 of 3 different letters to businesses which were consistently rated 0, 1 or 2,

Letter "A" was written in a "standard" LA regulator style, and saw a 12% response rate.

Letter "B" used a number of influencing techniques and saw a 35% response rate.

Letter "C" was the same as letter "B" and included a picture of the premises, and saw a 42% response rate. A response means the FBO contacted us to discuss the content of the letter. Not all respondents attended for an interview, but a highly abbreviated form of coaching was used for the telephone contact.

Evaluation found sending any letter, whether the FBO responded or not, saw an increase in the proportion achieving broad compliance. However, the response rate; the average increase in food hygiene rating; and the proportion achieving broad compliance varied according to the

letter sent. Letter C saw the best results in terms of response rate and increase in rating. Letter A saw the lowest response rate.

For the 2014 project, 100% of businesses where the FBO attended for a chat are now broadly compliant. Food Hygiene ratings at these premises increased on average by 3 ratings.

The improved broad compliance rate for all businesses in Preston now stands at 95%. The inspection burden on the Council has dropped by 10% (or £20,000 over the full inspection programme) and FBO's who previously expressed the opinion that EHO's wanted to find fault and shut them down (reported in around 90% of those attending for a chat) now share our belief that we can work together to improve their rating.

The techniques used have come almost entirely from the rapport building aspects of Neuro-Linguistic Programming (NLP). Environmental health professionals have also borrowed from Transactional Analysis, Cognitive Behaviour Therapy and Behavioural Economics, as well as from the Government Behavioural Insights Team and wider reading from a variety of disciplines.

Leicestershire Local Enterprise Partnership (LEP)

A series of published case studies under the LEP programme demonstrating the support of environmental health based regulation for business can be viewed at:

<http://www.llepbizgateway.co.uk/starting-a-business/law-business/work-together-local-businesses/>

North Somerset Council

A video case study demonstrating the support of environmental health based regulation for Yeo Valley Dairies can be viewed at:

https://www.youtube.com/watch?feature=player_embedded&v=TaoOIZNeFLc

Port health Regulation

Importers often complain about the bureaucracy at ports when importing foods, complaining that port health authorities slow down imports and over-exercise controls on products that are on open sale in the country of origin. It is important, however, to understand that all imports must comply with EU food legislation that has been put in place to protect public health and provide a measure of consumer protection.

Port Health Authorities are in a strong position to carry out checks at the ports and, where necessary, detaining consignments until appropriate checks have been completed. Keeping consignments at the point of entry stops unsafe food being distributed widely. It is also more effective to check a single consignment at the port as opposed to checks being conducted at every point of retail in the UK.

A good example of how the controls stopped unsafe food entering the UK is the import of dried beans from Nigeria which were contaminated with the pesticide dichlorvos at levels which are considered to be genotoxic. In 2012 a routine sample taken at a port and

submitted to the Public Analyst, showed dichlorvos present at levels significantly above the maximum residue limit. Additional consignments were sampled and the majority were found to have the same problem. By sampling and detaining consignments at the port, this prevented unsafe food being placed on the market. Later it resulted in the EU placing the product under reinforced controls before suspending all imports in 2015. The suspension remains in place as the EU is not satisfied that appropriate controls have been put in place in Nigeria.

Conclusions and a new imperative

It should follow that since environmental health professionals choose to adopt an informed yet pragmatic approach, recognising that there is more to risk than harm to health and are not slavish about compliance at all costs, the outcome of our interventions are, therefore, sensitive to the resources at the disposal of the regulator - in our case the local authority – and the regulated.

This balance is disrupted when the resource available to the regulatory body is put under strain and less qualified personnel find themselves pressed into working beyond their remit and competence. Then, regulatory enforcement can be and often is reduced to a mechanistic process which serves nobody well – particularly business.

Well educated and properly trained environmental health professionals can be expected to apply the law in ways that maximise the opportunity to assist businesses and individuals to regulate themselves by guiding them to assess the risk and consequences of their actions or behaviours. However, they know when and where the line is crossed and can then effectively determine the moment to move up through the 'ladder of interventions'. Their approach, therefore, is not to impose unnecessary burdens on business but to focus on providing risk based, proportionate and properly evidenced interventions to achieve public protection.

If this is a moment to 'take stock'; it is to decide, not so much what legislation needs to be repealed, as what needs to be done to ensure that it is used with discretion and good judgment. Certainly, the evidence that we can draw upon from our own recent research, undertaken to underpin our 2014/15 Workforce Survey (Environmental Health Workforce Survey 2014/15; CIEH July 2015), points to local authorities being able to call upon a cadre of well-educated and competent practitioners, holding hard and soft-skills and competences 'across the board', as the starting point for discretion and sound judgment.

Furthermore, the CIEH takes the view that it is important that environmental health professionals should always operate on the basis of the 'best available evidence', which should be sought in respect of both the harm being caused (or likely to be caused by not regulating) and the effectiveness of the available interventions. Additionally, CIEH believes that in situations where evidence is limited or if the application of the normal 'precautionary principle' (used to justify taking action when there is evidence of a 'potential' public health gain) is dispensed with as part of a deregulatory agenda, then doing nothing should also become an active policy decision that is made on the basis of harm or potential harm. Consequently, we believe that both inaction as well as action require justification, and the former should never be determined by political imperative alone.

We conclude that in addition to the state, other organisations, especially businesses, have obligations towards society. Many businesses already have corporate responsibility policies. Where industries fail to meet reasonable standards in these responsibilities, it is acceptable

for the state to intervene through regulations and such regulation therefore serves a positive purpose, in that it takes account of not only the level of burden imposed upon the regulated but also the level of burden imposed on society as a whole, as a consequence of not regulating.

ENDS