

It is time to regulate wisely

**DfT's Reducing Regulation
Annual Report
2012**



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Introduction

This is the Department for Transport's first report detailing its regulatory performance over the previous year in the context of the Government's reducing regulation policy². If there is demand for it, this will become an annual report reviewing the previous year's performance. Such a report would also list the regulations made in the course of the year, along with links to the impact assessments and opinions of the Regulatory Policy Committee relating to them.

Reducing regulation is a key priority for the Coalition Government. Eliminating avoidable burdens of regulation (from both the flow and stock of regulations) and cutting bureaucracy is a fundamental part of the Government's growth strategy and the Department for Transport (DfT) is playing a key role in this. The Department is not only procuring key transport infrastructure to support the economy going forward, but is also in the forefront of delivering the Coalition's reducing regulation policy. Our work in these areas demonstrates our commitment to supporting economic growth in the UK.

The nature of managing, and/or setting a framework for the management of, the UK's transport networks means that some regulation is necessary for a safe and environmentally sustainable transport network and in fact some regulation helps underpin growth. However, we are determined to ensure that we only regulate as a last resort and that burdens on the economy from any necessary regulation are minimised.

We are keen to engage with those affected by our legislation and to better understand any concerns. We, therefore, welcome feedback on our regulatory programme. Feedback can be sent to the Better Regulation Team at BetterRegulation@dft.gsi.gov.uk

² The Government's policy for cutting regulatory burdens is sometimes referred to interchangeably as the better regulation policy, the reducing regulation policy, the deregulation policy and the regulatory reform policy.

The Reducing Regulation Policy

Summary

1. This section gives a brief overview of the Government's reducing regulation policy. The following section then provides some brief context on how this is applied within DfT.

The Reducing Regulation Policy

2. The Coalition Government has adopted an ambitious policy for reducing regulation in order to encourage private sector growth and to promote individual freedom and responsibility. The policy involves four main aims.

- I. **A different approach to thinking about regulation**: for example, regulation should only be used as a last resort when other methods of delivering the policy aim are not appropriate and EU legal requirements should not be gold-plated.
- II. **Tackling the flow of regulation**: by exposing regulatory proposals to tougher, more meaningful, scrutiny in the form of new regulatory clearance processes and policies such as 'one in, one out'.
- III. **Tackling the stock of regulation**: opening up existing regulation to scrutiny and challenge, for example, through the Red Tape Challenge process.
- IV. **Streamlining and improving the way regulation is enforced**: by departing from 'tick-box' systems of inspection and audit to a more risk-based approach.

3. The Better Regulation Executive's³ website provides more information on this policy, it can be found here: <http://www.bis.gov.uk/bre> In addition, the Government's 'Reducing Regulation Made Simple' publication of December 2010 gives more detailed information on the overall agenda. The publication can be found here: <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/r/10-1155-reducing-regulation-made-simple>

I: A Different Approach to Thinking about Regulation

4. The Government has adopted two sets of better regulation principles that all Departments are required to comply with. They set out the new way of thinking about regulation for domestic and EU/international legislation. These are:

- general principles of regulation (these include the requirement to regulate as a last resort and to consider alternatives to regulation); and

³ The Better Regulation Executive (BRE) sits within the Department for Business, Innovation and Skills (BIS) and is tasked with leading the implementation of the reducing regulation policy across Government.

- guiding principles for EU legislation (these include the undertaking not to gold-plate EU requirements and to consider alternatives to regulation).

5. The Government's general principles of regulation can be found here: <http://www.bis.gov.uk/policies/bre/better-regulation-framework/regulatory-decision-making/general-principles>

6. When transposing EU law, departments have to use the Government's guiding principles for EU legislation to guide it, which can be found here: <http://www.bis.gov.uk/policies/better-regulation/policy/european-legislation/guiding-principles-eu-legislation>

7. Thinking about legislation in a different way extends to how we view EU and internationally derived legislation, although our scope for shaping such legislation in the UK's favour is of course limited given such legislation is necessarily the product of negotiations amongst many nations. Alongside policies aimed at reducing domestic regulatory burdens, the Government is strongly committed to reducing the burden of EU and internationally derived legislation. It is doing this in two main ways:

- firstly, by leading efforts across the EU to persuade the EU institutions and fellow Member States to take reducing regulation seriously in order to minimise regulatory burdens, especially on small businesses; and
- secondly, by requiring transposition of EU legislation⁴ to be carried out in a plain vanilla manner with no gold-plating.

II: Tackling the Flow of Regulation

Definition of Regulation

“Regulation: a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes”.

8. On entering government the Coalition implemented a series of policies, including robust regulatory clearance processes, in order to reduce the flow of and minimise the burdens from new regulations.

9. All regulatory and deregulatory proposals have to be cleared by the Reducing Regulation sub-Committee⁵ (RRC) at both the consultation and final stage before they can be implemented. In addition, any regulatory proposal requiring an impact assessment⁶ has to first receive a ‘fit-for-purpose’ opinion

⁴ Directives require transposition into the domestic legal system of the Member State in order to become effective.

⁵ A committee of ministers tasked with reviewing all regulatory and deregulatory measures.

⁶ For more information on impact assessments and when they are required, please see the following documents: <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1110-impact-assessment-overview> and <http://www.bis.gov.uk/assets/BISCore/better-regulation/docs/i/11-1111-impact-assessment-guidance.pdf>

from the Regulatory Policy Committee (RPC), an independent body that has been tasked with scrutinising proposed regulatory measures prior to them being considered by the RRC.

10. The RPC reviews all regulatory impact assessments (IAs) before they can be sent to the RRC and gives them a Red, Amber, Green rating. IAs rated Green and Amber are classed as fit-for-purpose, but Amber opinions include recommendations that must be addressed before the IA is finalised and sent for RRC clearance. The opinion and, where appropriate, an explanation of the improvements made in response to the RPC opinion has to be attached to the letter seeking clearance from the RRC. An opinion rated Red is not considered fit-for-purpose and any IA receiving one will have to go through the clearance process again if the policy is to go ahead.

11. In addition to the regulatory clearance process outlined above, there are a number of reducing regulation policies that apply to new regulations imposing burdens on businesses and charities. These include:

- The 'one in, one out' (OIOO) policy. This requires any domestic regulatory proposal imposing net burdens on business to be offset by the removal of equivalent burdens. The main purpose of OIOO is to curb the cost of regulation to business and the voluntary sector by reducing the number of new regulations that are introduced, and ensuring that regulation is only used as a last resort;
- Micro-business Moratorium. A three year moratorium for micro-businesses, running to 2014, from new domestic regulation that would impose burdens on them;
- Statement of New Regulation. A twice yearly published forward look of domestic regulatory proposals impacting on business.
- Sunset Clauses. Required for all new domestic regulations imposing burdens on business (to be sunset within a maximum of seven years).
- Review Clauses. Required for all UK legislation that is domestic and EU derived (to be reviewed every five years).

12. Further information on these and other reducing regulation policies can be found on the BRE website: <http://www.bis.gov.uk/bre>

III: Tackling the Stock of Regulation

13. Scrutinising and minimising the flow of new regulations whilst crucial will do nothing to reduce the existing stock of regulation which in some instances may no longer be fit for purpose.

14. The Government, therefore, widened the scope of the reducing regulation policy by launching the Red Tape Challenge (RTC) in April 2011. The RTC is a comprehensive review of the existing stock of regulations. This Government-wide exercise is being led by the Cabinet Office and the BRE in BIS in conjunction with all Whitehall departments. The website can be found here: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

15. The RTC has involved splitting government regulation into themes and posting them on the RTC website for public comment, theme by theme. Each theme remains on the website for comment for a month or so. The parent department then scrutinises the comments when reviewing its regulations in order to ascertain which ones could be scrapped or improved in some way.

16. We would encourage people to take advantage of this opportunity to scrutinise the value of the existing regulatory stock by getting involved and posting comments on the remaining themes on the RTC website.

17. In addition to the RTC, there are a few other policies aimed at ensuring the existing stock of regulations remains fit for purpose, such as the employment law review (where departments review the employment law they are responsible for to ensure it remains fit for purpose).

IV: Regulatory Enforcement

18. The Government has committed to carrying out a programme of regulatory reviews, extending regulatory reform beyond Whitehall by getting to grips with the burden of inspection and enforcement as it affects sectors of industry and civil society. This will identify and build on good practice, as well as investigating areas for improvement. The first three reviews will examine enforcement in chemicals manufacturing, small food manufacturers and volunteer events.

19. Feedback is sought from businesses and the public on how regulators affect them through a website: <http://discuss.bis.gov.uk/focusonenforcement/> If you have any areas of concern or good practice you think should be reviewed or highlighted, please use this website to set out your views. The Government has also published a comprehensive list of all regulators, including their remit and budget, on the website.

Implementing Reducing Regulation in DfT

Summary

20. This section outlines how the reducing regulation policy is governed within DfT and gives an overview of DfT's regulatory performance against the four policy aims described above.

Transport regulations are derived from three main sources.

- Domestic policymaking – legislative proposals put forward by UK ministers.
- EU policymaking – legislative proposals put forward and agreed in the EU.
- International policymaking – legislative proposals put forward and agreed in international fora such as the International Maritime Organisation.

The majority of new regulations implemented by DfT are now EU and internationally derived. Many of them have a positive impact on the UK, for example, by creating a level playing field for British businesses, allowing them to compete in markets that were previously closed to them.

21. We have supported and will continue to support the reducing regulation agenda across Government, by implementing it robustly and by exporting to other departments various best practices, such as some of the regulatory challenge functions that we pioneered in DfT (set out in the Tackling the Stock of Regulation section below).

22. The reducing regulation policy is one that has real longevity given its importance to supporting economic growth. A major aim of the policy, therefore, is to bring about a change of culture in government towards one where to consider regulating is not the first reaction to determining the appropriate policy response to a problem.

23. Such a change in culture will not happen overnight, but will take time. Nevertheless, there are encouraging signs within DfT that this change is becoming embedded. For example, the internal challenge process undertaken as part of the Red Tape Challenge has involved officials from across the Department challenging one another on the justification for existing regulations. This license to challenge one another, irrespective of grade or profession, is really beginning to change the collective mindset to a non-regulatory one.

Reducing Regulation Governance in DfT

24. Across all departments, Better Regulation Ministers are leading the task of challenging policy-makers to meet the Government's commitments on reducing regulation. They in turn are supported by the Better Regulation

Executive which is tasked with overseeing the delivery of the agenda as a whole within Government, and by a senior official (a Board Level Champion) and Better Regulation Units (BRUs) who are the resident experts in their department on the new policy. Together they are responsible for championing the new approach and supporting their policy colleagues in making the changes needed.

25. In addition, DfT has set up a Better Regulation Steering Group made up of senior officials and chaired by our Board Level champion, to ensure that the policy is considered a priority by all parts of the Department and that the new regulatory processes are understood. There is also a Better Regulation Reference Group comprised of policy leads representing all parts of the Department including its Agencies that is used to disseminate and help implement the policy across the whole Department.

DfT's Implementation of Reducing Regulation

26. The following part of this section provides some background on how the four main aims of reducing regulation that were outlined in the first section are being applied in DfT. The four aims being:

- I. A different approach to thinking about regulation;**
- II. Tackling the flow of regulation;**
- III. Tackling the stock of regulation;**
- IV. Streamlining and improving the way regulation is enforced.**

I: A Different Approach to Thinking about Regulation

27. DfT not only considers alternatives to regulation where appropriate, see the box below for an example, but is also working hard to minimise future EU and international regulatory burdens.

Alternatives to Regulation in DfT

DfT has been active in considering alternatives to regulation. In 2010, Mike Penning, DfT's Better Regulation minister, spotted a potential opportunity to use alternatives to regulation in relation to the requirement for road hauliers to undertake eco-driving training. There was already a cost incentive for industry to ensure that its drivers drove economically, especially in the current environment of high fuel prices. This seemed to be a prime example of an area where government could work with industry to encourage best standards to be adopted rather than forcing them through regulation.

DfT, therefore, considered and consulted on two options: regulation and a non-regulatory alternative. Following consultation, ministers decided to pursue the non-regulatory alternative approach. The early signs are that the freight industry is capable of working together, voluntarily, to tackle its harmful emissions. For example, the Freight Transport Association (FTA) Logistics Carbon Reduction scheme, endorsed by DfT, covers over 56,000 HGVs and freight-carrying vans. Scheme members have committed to achieve an eight percent reduction in CO₂ emissions by 2015.

28. DfT is at the forefront of EU influencing efforts. We are analysing likely upcoming EU Commission proposals to better inform our EU engagement strategy aimed at stemming the flow of regulation that imposes unacceptable or disproportionate burdens. We are also stepping up our engagement activities with EU institutions and other Member States to try and minimise regulatory burdens.

29. This is especially important to us because DfT is responsible for implementing a large amount of EU and internationally derived legislation. In fact, over half of our regulatory proposals by number are EU or internationally derived, which in turn account for an even larger proportion of the regulatory burden imposed from transport legislation.

EU Regulatory Concerns – talk to us

We are interested in hearing from businesses and individuals who have concerns either about the areas in which the Commission proposes regulating (as outlined in Annex D) or on domestic transport regulations. If you do have specific comments, please send them to the Better Regulation Team at BetterRegulation@dft.gsi.gov.uk

II: Tackling the Flow of Regulation

30. In addition to the cross-Government clearances that are required for regulatory proposals, there are robust internal DfT clearances that have to take place before an impact assessment (IA) can be submitted to the Regulatory Policy Committee (RPC) for their opinion and Reducing Regulation Committee (RRC) clearance sought. IAs to be sent to the RPC have to first

be peer reviewed by a DfT economist outside of the policy area in question and then be signed off by the Department's Better Regulation Team. The flow chart in Annex A is a simple illustration of this DfT clearance process.

III: Tackling the Stock of Regulation

31. DfT has four themes in the Government's Red Tape Challenge (RTC). These are, road transport, rail, maritime and aviation. The road transport theme was live in May/June 2011, the rail and maritime themes were live together in November/December 2011 and the aviation theme is currently planned to go live in June 2012.

32. To ensure we deliver (and continue to deliver) a successful Red Tape Challenge in DfT, we are not only working very closely with the central Red Tape Challenge team from Cabinet Office and the Department for Business, Innovation and Skills (BIS), but have also developed our own robust internal challenge process to augment both the support they provide and the public comments we receive. This involves:

- setting up a series of Star Chambers chaired by a DfT Director from outside the policy area in question. This is a challenge process that we first pioneered in a regulatory challenge context in September 2010, where we appointed a scrutinising panel, led by our Better Regulation Minister, to challenge policy leads on the need for the regulatory proposals they were responsible for;
- building on this Star Chamber challenge by adding in additional levels of independent challenge to help review our regulatory framework. To do this, we pioneered the use of so called Tiger Teams. This is where we appointed a small group of bright, questioning, individuals from across the Department to scrutinise regulations outside of their policy area with the aim of identifying regulations that could be scrapped or amended to reduce their burden. They then fed their ideas into the Star Chambers;
- appointing multiple industry stakeholder champions for each of the themes to provide further challenge, ideas and to drum up more interest from their contacts and members.

33. Parts of this robust regulatory challenge process, such as Tiger Teams, have been taken up by other departments as they too review their regulations under the Red Tape Challenge.

34. Following the public responses and internal challenge for road transport, we came up with a finalised list of deregulatory intentions that were published on the 15th December 2012 and can be found here: <http://www.dft.gov.uk/news/press-releases/dft-press-20111215>

Where appropriate, further consultation will take place before deregulatory options are implemented.

35. We are currently in the process of implementing these deregulatory options and in fact have already implemented more than ten road transport measures to date.

36. We are finalising the rail and maritime deregulatory packages and Ministers will be publicly announcing our intentions shortly. Aviation options will follow once the RTC process for that theme has finished later this year.

IV: Regulatory Enforcement

37. Transport related bodies covered by the regulatory reviews are Driver and Vehicle Licensing Agency (DVLA), Maritime and Coastguard Agency (MCA), Vehicle Certification Agency (VCA), Vehicle and Operator Services Agency (VOSA), Civil Aviation Authority (CAA), Office of Rail Regulation (ORR), Driving Standards Agency (DSA), Trinity House Lighthouse Service and the Traffic Commissioners.

DfT's Reducing Regulation Performance

Summary

38. This section provides an overview of: how DfT is doing with regards to improving the quality of its impact assessments; its 'One In, One Out' balance for 2011; as well as signposting the annexed list of legislation that it adopted in 2011 and likely upcoming EU legislation.

Impact Assessments

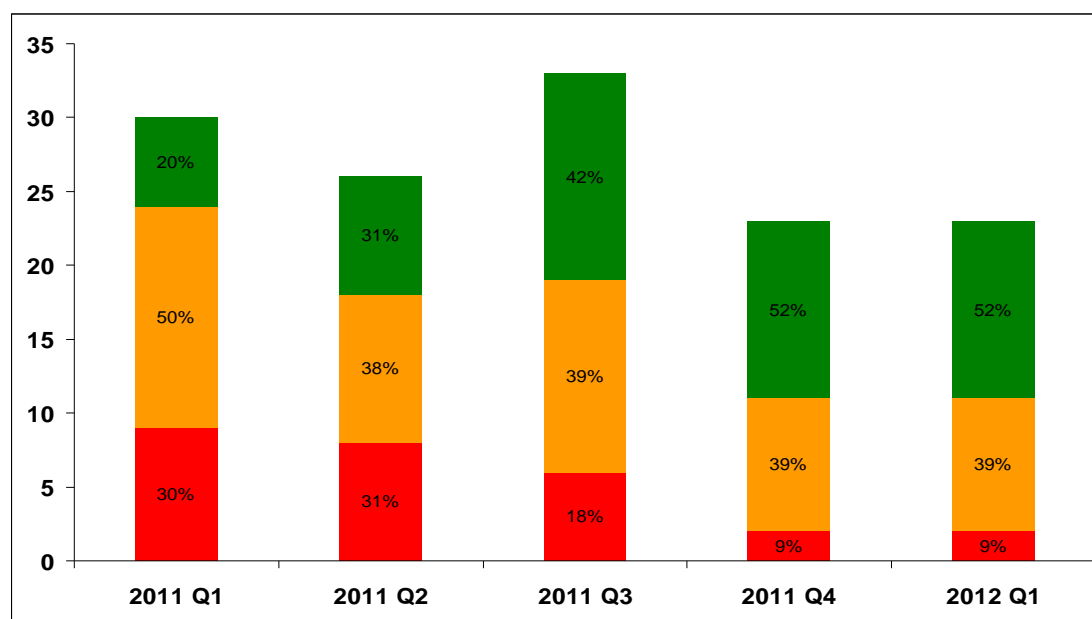
39. As explained above, the RPC independently assesses the quality of all IAs on proposed regulation. The RPC's annual report for 2011 showed that whilst DfT produced more impact assessments (IAs) than any other government department in 2011, our split of Red, Amber and Green opinions was slightly better than the average for all Departments. The RPC commented that DfT had achieved "a marked improvement between IAs submitted in the first and second halves of 2011", with approximately half of all IAs submitted in the latter half of 2011 receiving Green opinions. The report can be found here:

<http://regulatorypolicycommittee.independent.gov.uk/wpcontent/uploads/2012/03/RPC-REPORT-IMPROVING-REGULATION-March-2012-FINAL.pdf>

40. The ongoing improvement in the quality of our IAs (as can be seen from the chart below where the proportion of Green opinions has steadily grown and Reds fallen) is down to two main factors; an IA improvement strategy that we are implementing and closer working with the RPC to identify common problems and other ways of improving their quality.

41. The improvement strategy includes improved dissemination of guidance and information within the Department and a programme of training sessions that is being rolled out across the Department and its Agencies. We are hopeful, therefore, that improvements seen during 2011 will continue through 2012 and beyond.

DfT's RPC Opinions, (2011Q1 to 2012Q1)



'One In, One Out' & The Statement of New Regulations

42. As mentioned in the first section, one of the key reducing regulation policies is the 'one in, one out' (OIOO) rule. Under this policy, any domestic regulatory proposal that imposes a net cost on business (an 'in') has to be offset by identified deregulatory measures that remove equivalent burdens on business by value (an 'out'). Thus, it is not a one regulation in, one regulation out approach, but rather where a domestic regulation imposes net costs on business, the value of that burden has to be offset by the removal of equivalent or greater burdens by value.

43. The Statement of New Regulation (SNR) is a twice yearly (April and October) publication listing Government regulations that are in scope of OIOO. This allows government to track its OIOO balance, both overall and by department, and gives businesses a view of upcoming regulation.

44. DfT finished 2011 with an OIOO surplus (net reduction in burden on business) of £0.2m. There were nine measures implemented during 2011 that featured on DfT's 2011 SNRs.

DfT's Recently Adopted Legislation

45. As mentioned above, some regulation is required to support an effective transport system in the UK. Annex B lists the DfT regulations that came into force during 2011, which includes the nine that featured on the 2011 SNR Statements.

46. The text of each statutory instrument can be accessed via the hypertext link along with the associated explanatory memoranda. Where any impact on business was anticipated, an IA was prepared and published on the

Government's Impact Assessment Library. These can also be accessed by the hypertext links marked 'IA.' The RPC opinions for these regulations can also be found in Annex B attached.

47. The list does not include the many temporary orders most of which relate to specific geographical areas, for example, those imposing temporary restrictions on the use of roads so road works could take place, or flying restrictions in respect of specific events.

DfT's Upcoming EU Legislation

48. In addition to the legislation detailed in the accompanying annexes that we have either implemented recently, or plan to implement shortly, there is a considerable amount of EU derived legislation on the horizon. See Annexes C and D for some high level detail of upcoming EU legislation. This has been split into two main parts:

- the first sets out EU legislation that has been adopted by the EU institutions and published in the Official Journal of the European Union. Where the EU legislation is a Directive, Member States are usually given between one and two years to transpose them into their national law (Annex C); and
- the second outlines EU legislation at an earlier stage of development, where negotiations have yet to be completed. This is as complete a list as we can make it (Annex D).

49. As mentioned above, if you have any concerns over any of this, then feel free to let the Better Regulation team know by emailing us at: BetterRegulation@dft.gsi.gov.uk