

Hampton Review Detailed ICAEW Response

The following is the Institute of Chartered Accountants in England & Wales (ICAEW) response to the specific questions posed in the review.

1. Measuring Administrative Costs

- 1. Is a standard methodology for calculating the administrative costs of regulation possible?*
- 2. Is it desirable to have, and use, such a single methodology?*

The ICAEW is doubtful that a single methodology would fully reflect the diversity of UK businesses – given size, sector, differing management styles and approaches inherent in UK businesses. However, we have been disappointed with the standard of some Regulatory Impact Assessments (RIAs) and any attempt to introduce a single methodology, provided its limitations are openly acknowledged, can only be an improvement on the current process for identifying the benefits and costs of proposed legislation through RIAs.

We are in agreement with the Small Business Council recommendation (in its 2004 annual report) that the government state on each form businesses have to complete, the length of time this is expected to take. It would be instructive for the Better Regulation Task Force or the Cabinet Office to undertake assessments of the total time taken on completion of government forms (including Revenue and Customs) for “typical” businesses.

Such a methodology would not identify the time and cost of

- a) a business initially finding out about the general nature of new regulations,
- b) deciding whether it applies to the business and, if so, what its impact will be, and
- c) setting up routine systems to comply with its legal obligations.

Such “capital” or “set up” costs (as compared with the costs of routine form filling or compliance) can be significant.

2. Responsive Regulation

- 3. Should regulators make a commitment not to prosecute businesses who have followed simple guidance, except in the most serious cases?*
- 4. Should regulators give greater emphasis to their advice services?*
- 5. Should regulators evaluate their advice services on the basis of outcomes?*

Many small businesses lack the resources to spend time on compliance. Time spent on compliance is a diversion from developing and growing the business and meeting the competitive challenges.

In assessing penalties for non-compliance, regulators should consider all the available evidence as to whether the business has made reasonable attempts to ascertain its responsibilities and to introduce a compliance system. Such evidence might include

whether the business had taken advice from an adviser or a representative organisation or trade body. The Annual Small Business Survey 2003 found that 52.7 % of respondents had not sought advice or information from any external source during the past year about regulations which might affect them. However the likelihood of seeking such advice increases sharply with the size of business, such that among medium sized businesses, only about a fifth (21.1%) had not done so. Clearly the source of advice also needs to be considered in this context. If the business had taken suitable (in the context of the resources available to the business) advice or has followed “official” guidance, but still got it wrong, there is a clear case for the regulator not prosecuting the business.

The ICAEW believes that regulators should give greater emphasis to their advice services. But businesses, particularly SMEs are not well served by a multiplicity of advice services. Advice should be channelled, at least initially, through user friendly services such as www.businesslink.gov.uk website. These “entry points” should contain signposting to more detailed sources of advice including telephone helplines, specific websites, etc. Regulators need to be aware that not all businesses have access to the web or are comfortable seeking information through it. Greater dissemination through representative organisations, trade bodies, local and regional support services and advisers such as Chartered Accountants can target these businesses.

In evaluating the effectiveness of advice services, regulators should take the broader perspective of whether the advice services improved compliance and not how much revenue or penalties they managed to get back.

3. Inspection and Risk

6. How should inspection be targeted?

7. Should regulators eliminate routine inspection for lower-risk premises?

8. Should businesses with a good compliance record have inspection holidays?

9. Should risk assessment calculations include external factors such as accreditation or performance in other regulated areas?

10. Should regulators consult on their risk assessment methodologies?

Inspections should be targeted at those businesses that represent the greatest risk. Evidence which suggests a business takes its responsibilities seriously should result in less frequent inspections. If inspections are to be more risk-based, there needs to be greater transparency about what the risks are and what criteria are used to assess them. This is an ongoing concern over the Inland Revenue and their selection of Self Assessment enquiries. Bodies that target their inspections using risk criteria should make sure their information sources are good enough so that they select the right targets.

More Effective Incentives

11. Should the penalty regime be reformed to make penalties quicker and tougher?

12. Should businesses get prior notice of an enforcement action?

13. Should regulators discuss with business the potential application of a penalty before it is applied to allow the business to correct the infraction?

14. *Should regulators be held accountable for enforcement actions that are later reversed?*
15. *Should a business' past performance affect the level of a penalty?*
16. *Should there be more administrative penalties?*
17. *Should personal criminal sanctions be used more often?*
18. *Should company directors be held liable for serious infractions for which they are currently exempt?*
19. *Should penalties be set as a proportion of a company's turnover?*
20. *Should there be greater use of reputational sanctions?*
21. *Should there be restitutive penalties, where companies are required to remediate damage caused, or to fund improvements elsewhere?*
22. *Should there be more positive incentives for businesses to comply with regulation?*

The ICAEW believes regulators should be sensitive to the circumstances of the business, including evidence of it taking compliance seriously, the extent to which advice has been sought and the resources available to the business. We do not favour increasing personal criminal sanctions. This would not sit well with government initiatives encouraging more people to start a new business. Personal criminal sanctions should be used when there is clear contempt for the law and has resulted in lives having been put in danger.

It is interesting to observe that the questions in this section are actually all about penalties and sanctions, despite it being headed More Effective Incentives. Only Q22 mentions incentives. An example of a “penalties and sanctions” regime, is the tax regulatory system which is considered by many to be unsatisfactory in that contains many penalties and sanctions and there are really few incentives – getting a slightly lower, penalty or something like that, would not be viewed as an incentive by many businesses.

4. Dealing Fairly with Business

23. *Are the criteria for appeal mechanisms set out in Chapter 4 the right ones?*
24. *Should there be a central reporting point for conflicting regulations?*

No comment

5. Joint Working between Regulators

25. *Should regulators share information to improve their risk profiling?*
26. *Should regulators establish common reporting frameworks to minimise duplication of the data that businesses have to submit?*
27. *Should local authorities cross-train their staff, so they can advise and inspect on a wider range of regulations?*
28. *Should there be a single number or code to identify businesses?*

The ICAEW believes that local authorities should cross train staff so that they can advise and inspect on a wider range of visits. An initial visit by generalists might help increase awareness amongst businesses and help regulators to build up a profile of the business as well as help persuade business owners that regulation is not synonymous with

enforcement. If there are serious concerns arising from the initial visit, a specialist inspector might then be brought in.

The ICAEW experience of the tax authorities sharing information is not encouraging. For example, income declared for Income Tax and for Tax Credits may be different because of slightly different rules for the two regimes. If the Inland Revenue compare the declared income from both sources they might find a mismatch which could trigger an enquiry, although there are internal procedures which should prevent an enquiry just for this reason. We are concerned that the potential for misunderstanding would be significantly greater if information was shared between two completely different departments.

6. Consolidation of Regulators

29. Should there be a structural consolidation of regulators where appropriate synergies could be realised?

30. If so, what changes should be made?

Consolidation of regulators should be encouraged but not at the expense of simply increasing the numbers employed in, and complexity of, the regulatory system. Consolidation might encourage wider sharing of good practice.

7. Local Authority Enforcement

31. What is the right level for inspection and policy setting in trading standards and environmental health?

32. How should local regulators join up their activities across boundaries?

The system currently in place is national inspection and policy setting, but there is tension with the increasing regulation arising from the European Union.

8. Reducing the Paperwork Burden

33. Should regulators be required to gain approval from a relevant business reference group before introducing a new form?

34. Should regulators merge forms, with the aim of creating a single form for each business or in each sector?

35. Should the review set out a long-term ambition of a single electronic form?

36. Should the review set out the ambition to collect and examine all of the current forms to identify areas of duplicate information?

37. Should regulators share information on businesses to reduce the form-filling burden?

38. Should regulators provide businesses with pre-populated 'check and sign' forms?

The ICAEW believes that increased consultation with business reference groups before introducing new forms would inject awareness of business reality to a procedure. We doubt whether single forms for each business or sector is feasible but it is a laudable concept.

Our research suggests that once a business has ascertained the legal or compliance requirements and set up systems to deal with them on an on-going basis, it would prefer not to have to make frequent changes. In general we would like to see regulators giving more thought to forms before they are introduced and then committing to leaving them unchanged for, say, five years. As mentioned in 1 above the “set-up” costs can be significant particularly if accounting or other business systems software is required, such as for the Intrastat returns.

The suggestion of pre-populated “check and sign” forms is something we would like to see considered for tax and tax credits forms. This approach could also be relevant to other compliance situations.

9. Better Central Benchmarking of Regulators

39. Are the functions listed in paragraph 4.44 the right ones to secure an improvement in the inspection and enforcement activities of regulators?

40. How could these new functions best be delivered without creating duplication and overlap?

As we have stated in the accompanying letter, many Chartered Accountants act as advisors to business. Frequent contact, consultation and dialogue with the ICAEW and its members as well as representative small business and trade organisations would increase the probability of regulators getting it “right first time”.

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