

**RESPONSE TO THE CABINET OFFICE CONSULTATION DOCUMENT  
“A BILL FOR BETTER REGULATION”**

1. The Confederation of British Industry (CBI) is the national body representing the UK business community. It is an independent, non-party political organisation funded entirely by its members in industry and commerce and speaks for some 240,000 businesses that together employ around a third of the UK private sector workforce. The CBI’s membership includes 80 of the FTSE 100, some 200,000 small and medium-sized firms, more than 20,000 manufacturers and over 150 sectoral associations.
2. The CBI is pleased that better regulation is a key priority for the Government. The CBI is a strong advocate of the benefits of fair competition and open markets and it is the CBI’s view that an appropriate regulatory environment is a key factor in ensuring both fair competition and the efficient operation of open markets. An appropriate regulatory environment provides certainty in the functioning of the market, underpins investor confidence in an economy and is crucial for preventing rogue companies flouting the law and thus undermining the market position of compliant companies. Businesses accept the need to meet a certain level of regulatory requirement, combined with a commitment to best practice in company operations. That said, the Government must not lose sight of the need to lessen the overall burden of regulation on business, as well as striving for better regulation.
3. The CBI welcomed the Hampton Review report with its practical recommendations for how the Government should proceed with its efforts to cut the administrative costs on businesses caused by regulation. However, delivery of change will be the acid test and what will matter most to the UK business community is that the outcome of the implementation of the Hampton Review recommendations is even regulatory enforcement and consistency.
4. **The CBI supports the broad thrust of the proposed Better Regulation Bill and supports its use as an enabling tool for implementing what is set out in the Hampton Review report. However, we would like to take this opportunity to comment on some specific proposals in the Better Regulation Bill consultation document and to re-emphasise some of the points that we made in our response to the Hampton Review consultation.**



The CBI believes that:

- **The Regulatory Reform Order powers should be extended as proposed to enable swift enactment of proposals for simplification of legislation and deregulatory measures and that the current safeguards in the Regulatory Reform Act 2001 should be carried forward as recommended.**
  - **The Enforcement Concordat should be updated and strengthened. We strongly believe that the Concordat should be placed on a statutory basis since current arrangements for voluntary compliance with the Concordat have not been effective. Placing the Concordat on a statutory basis would have the effect of requiring all regulators to sign up to it. The system should allow for non-compliance with the Concordat principles to be used as evidence in the event of legal proceedings.**
  - **In order to achieve consistent enforcement for regulated businesses, the Government should use this opportunity to update regulatory structures, as described in the consultation document. In addition, provided that it is done on a case-by-case basis and with full consultation with stakeholders, it would be reasonable to use the proposed powers to include mergers of regulators not identified by the Hampton Review.**
  - **Giving enforcers the option of imposing instant fines on business, in the form of administrative penalties, without due legal process would be to circumvent justice and accountability. Business must have the right to appeal against decisions on penalties and if these decisions are settled outside of court, this right will be difficult to guarantee. To ensure that the penalty regime is in accordance with the Hampton Review ethos, compliance officers should be encouraged to work constructively with business to give them a period of time to come up to compliance standards.**
5. We believe that the implementation of the Hampton Review's recommendations will be vital for maintaining a competitive business climate in the UK. This is a real opportunity for the Government to ensure that regulation and regulatory enforcement in the UK adhere to the principles of better regulation set out by the Better Regulation Task Force (BRTF) prescribing proportionality, accountability, consistency, transparency and targeting.

### **Amending the Regulatory Reform Act 2001**

6. One of the CBI's main concerns about the Hampton Review was that its remit was limited to the way in which regulations are enforced once they are made. The CBI has previously argued that to solve a problem, its source has to be identified and dealt with to avoid problems arising in the first place. Before regulation, regulator and enforcer, comes legislation and it is always going to be the appropriateness of any legislation, allied to the way in which it is enforced, that will determine the success of a regulatory regime.

7. Another key point is clarity and consistency with regard to interpretation of legislation and regulation. It is a concern for businesses that they in many cases receive contradictory or vague information from regulators, sometimes from different officials within the same regulator, regarding how regulations should be translated into practical terms. This leaves companies uncertain as to what actions they need to take to comply with regulations and their legal standing. It is the CBI's view that central government has a key responsibility for issuing clear advice and guidance on the interpretation of legislation and its objectives to all regulators. In addition, to improve the quality of guidance, full consultation with business would allow government to tap into the wide-ranging expertise available in companies about how to deal with regulated areas of business.
8. The CBI agrees with the proposals to extend the Regulatory Reform Order powers to enable swift enactment of proposals for simplification of legislation and deregulatory measures and with the recommendation to carry forward the current safeguards in the Regulatory Reform Act 2001. The current system is seen as too slow, unwieldy and opaque and does not support the development of a business-friendly legislative and regulatory environment.
9. The CBI agrees that data-sharing between regulators and government departments and improved information management would be one way of reducing the overall paperwork burden on business inherent to complying with regulation. We would like, however, to reiterate our belief that any information-sharing has to be done on a case-by-case basis. There are concerns related to data protection and privacy that have to be considered carefully and in detail to make sure that there would be proper safeguards in place. Shared information should be limited to information that would already be available in the public domain. In addition, if a company gives certain specialised information to one regulator or government department for a specific purpose, it may not be understood in the right context by another body.
10. The CBI welcomed the recommendation that the Government should set a target for reducing the administrative burden on business caused by regulation, as well as the simplification measures recommended by the BRTF in its report "Less is More". Therefore, we would also support a government move to redesign the powers within the Regulatory Reform Act to achieve the reduced administrative costs of regulation and increased efficiency of the UK regulatory regime as envisaged by the BRTF.
11. With regard to the particular proposals that come under the heading 'simplification', we welcome the emphasis on consolidation of legislation to remove overlaps and clarification of legislation to remove doubts and ambiguities about its meaning. The CBI has emphasised that a growing concern among the business community is 'regulatory overlap'. 'Overlap' causes uncertainty for companies trying to ensure that they are fully compliant with regulations governing different areas of their business operations. In addition, the private sector seeks clarity and consistency from government and it must be the responsibility of central government to eliminate ambiguity about the meaning of laws, as well as to provide guidance on the way in which laws should be interpreted, implemented through regulation and by regulators.

## **Implementing the Hampton Review**

### ***Updating the Enforcement Concordat***

12. The CBI supports the Enforcement Concordat and considers that a modern and effective strategy for an enforcement regime would be one that via the Concordat focuses on compliance and care. The Enforcement Concordat has a significant part to play to ensure that enforcement is as consistent as possible between and among national bodies and local authorities.
13. The CBI has previously expressed concerns that the translation of the principles in the Enforcement Concordat into practice has not been widespread. Furthermore, in the CBI's response to the Hampton Review consultation, we suggested a review of the Enforcement Concordat in order to ensure that it is up-to-date and responding to the needs of the market. At that time we also pointed out that a review might be beneficial for highlighting the need for enforcers to abide by the principles of the Concordat. In addition, we suggested publication of a new concise statement of said principles with some formal basis to make it clear that adherence to these principles would have evidential status in court.
14. Through the Local Authority Better Regulation Group (LABREG) work is now underway on revision of the Enforcement Concordat to reflect more closely the principles of better regulation. The CBI is fully engaged in the work of LABREG and welcomes steps to update and strengthen the Concordat.
15. The CBI also strongly believes that the Concordat should be placed on a statutory basis since current arrangements for voluntary compliance with the Concordat have not been effective. We propose that putting the Concordat on a statutory basis should mean requiring all regulators to sign up to it and also ensuring that non-compliance with its principles can be used as evidence in the event of legal proceedings.
16. The CBI therefore agrees that the Enforcement Concordat should be updated as described in the consultation document, that it should apply to national as well as local regulators and that it should be put on a statutory footing.

### ***Simplifying the Regulatory Structure***

17. Business is looking for even enforcement and consistency, as well as access to quality advice and information from regulators. The CBI is of the view that consolidation of national regulators could bring many benefits for business and deliver efficiency gains. The Government should therefore use this opportunity to update regulatory structures, as described in the consultation document.

18. However, consolidation should not be an end in itself. The test for determining whether to pursue consolidation should be that the proposed new regulator is capable of delivering a common and business-friendly 'culture' throughout the regulator to guarantee a joined-up and consistent approach to enforcement decisions and inspection. To achieve this the regulator must display the following 'characteristics':
- Regulators must have a correctly defined scope to allow them to interface effectively with businesses. However, big is not necessarily better and allowing a regulator's remit to be too wide-ranging will prevent it from being effective.
  - Competence must always be a key priority and business is looking for enforcers who have appropriate expertise and knowledge. Any move to consolidate regulators that would jeopardise their competence must be avoided. There is a real risk that in some areas a 'single sectoral regulator' would have breadth but no depth of knowledge. The CBI considers this an unacceptable trade-off because it would undermine the relevance and effectiveness of the regulator and, not least, because in many areas there is great need for enforcers to have detailed technical knowledge.
  - There must be an open dialogue between regulators and business. This includes certainty for business that where advice is sought for specific applications adequate responses will be provided within a reasonable time-frame.
  - There must also be a flexible and understanding approach from regulators towards business. For example, firms and regulators should be able to decide together what the optimum way of handling risk is. Regulators should have the flexibility to be able to accept different ways of dealing with a situation rather than having to pedantically enforce inflexible rules.
19. As long as these 'characteristics' can be delivered where regulators are merged, the CBI thinks that in order to promote consistent enforcement for regulated businesses, it would be reasonable to use the proposed powers to include mergers of regulators not identified by the Hampton Review. This should be done on a case-by-case basis and with full consultation with stakeholders and only if 'critical mass' in terms of scope and a commonality of risk can be identified. Taking this as a 'go ahead' for consolidation in all areas would be wrong.
20. It should be noted further that those industries, for example the rail industry, that have recently experienced upheaval to regulatory structures would not welcome further change in the foreseeable future.
21. The CBI would also like to emphasise that it must be possible to measure and assess the effectiveness of new regulators. A framework would be needed within which clear objectives can be set and against which performance can be assessed. Transparency and accountability will all be key issues for business' satisfaction with new structures.

## ***Modernising the Penalty Regime***

22. The CBI supports the general notion that the penalty regime should aim to have an adequate deterrent effect on those contemplating illegal activity. However, punishment and prosecution should always be a last resort and when used it should be targeted on those who are guilty of causing harm to others. Any penalties for transgression must be proportionate to the infringement.
23. Prevention of harm must be the main focus of a penalty regime and any reform of the penalties system should focus on improving the advice and guidance available to business. There is also a need for clarification in terms of when and where penalties will be used. Reform and enhancement of the improvement notice regime should be a priority. An improvement notice should be the preferred form of action over penalties.
24. The consultation document states that the Government is considering creating alternative penalty routes such as administrative fines, and it was suggested by the Hampton Review team that administrative penalties could replace some offences that are currently prosecuted in a magistrate's court. The CBI believes that giving enforcers the option of imposing instant fines on business without due legal process would be to circumvent justice and accountability. Business must have the right to appeal against decisions on penalties and if these decisions are settled outside of court, this right will be difficult to guarantee. Compliance officers should be encouraged to work constructively with business to give them a period of time to come up to compliance standards, an approach that would be consistent the Hampton Review ethos.
25. Reputation is important to a majority of businesses. Consequently, the threat of penalties or prosecution already acts as a significant incentive for complying with regulation. If it is too easy for enforcers to impose penalties on or prosecute business, both sanctions will lose their currency not only for business but also for enforcers.
26. The consultation document states that a review team is being established in the Better Regulation Executive and that a review of the penalty regime will run from August 2005 to September 2006. The CBI would like to be involved in the review work and would appreciate being kept up-to-date on the progress and findings of the review team.

**CBI Corporate Affairs**  
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