



Chartered
Institute of
Environmental
Health

Transforming regulatory enforcement: freeing up business growth

Response by the Chartered Institute of Environmental
Health to the discussion document published by the
Department for Business Innovation and Skills

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The Chartered Institute of Environmental Health

As a Chartered **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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1. Introduction

- 1.1 The CIEH has over 120 years of working with government in all matters relating to regulation and wider environmental health matters.
- 1.2 The CIEH has a pivotal involvement in the issues discussed in the consultation paper having members who work in regulation (in both local authorities and national regulators), in business (as health and safety, pollution and waste control, and food safety managers) as well as members working to support both the private and public sectors in training and consultancy.
- 1.3 The CIEH has responded recently to the Government on a range of regulatory issues in particular the review of local authority statutory duties and the Löfstedt review of health and safety regulations.¹
- 1.4 The CIEH notes with regret the excessive bias towards the business view in the Discussion Paper and the red tape challenge website. These publications seem wholly slanted towards engagement with the business community and appear to take the consumer and regulator community's voice as read. It is vital that a balance is maintained in the enforcement White Paper later in the year.
- 1.5 There is no question that the CIEH supports the Government's desire to improve the enterprise and wealth-creation of British businesses. We also strongly promote a culture of good quality regulation applied proportionately by competent and professional regulators. We believe that this approach leads to high standards of public safety, consumer confidence and successful business as well as environmental protection. It is that mix of outcomes that gives the UK competitive advantage in global markets.
- 1.6 It is therefore wholly disappointing to be left with the sense that the Government through the tone of the consultation paper is concentrating its dialogue with businesses and is sidelining regulators and consumers from discussions. The CIEH would argue that the objectives that we share in terms of public protection, fair competition and sustainability require a genuinely open debate between all relevant parties and a fair and balanced legislative base to support growth.
- 1.7 Good regulation is good business, it ensures a fair level playing field where all businesses, small medium and large, are expected without favour to comply with minimum standards. Those standards must be clear and seen to be complied with.
- 1.8 In preparation for this response, the CIEH conducted a survey of members on regulatory issues. A copy of the results of the survey is set out at an appendix to this response.

2. Principles and beliefs

- The CIEH believes in the firm application of regulation by competent professionals. The competence frameworks developed by the CIEH ensure the necessary competence.
- Such application should be proportionate to risk and based on evidence.

¹ See <http://www.cieh.org/WorkArea/showcontent.aspx?id=38100> and <http://www.cieh.org/WorkArea/showcontent.aspx?id=36748> and <http://www.cieh.org/WorkArea/showcontent.aspx?id=36504>

- The application of regulation which is proportionate, evidence based and applied by competent professionals is a positive **benefit** to business. The application of regulation by environmental health practitioners (EHPs) represents an example of good practice in good regulation.
- The CIEH supports the Government's antipathy towards 'tick box' regulation. It must be recognised however that professional, risk based, proportionate regulation needs to be adequately funded.
- Regulation should not be considered in terms of burdens. The term is unhelpful, inexact and unduly pejorative.
- Multi site businesses that can **maintain and demonstrate** sound policies and practices are entitled to **earn** recognition from regulators.²
- Businesses and duty-holders should take ownership of their legal responsibilities.
- The CIEH supports the principles of 'fee for intervention' being introduced by the HSE.
- Small and medium size enterprises (SMEs) value their relationship with regulators.³ SMEs often cannot afford external professional advice and rely on regulators for such advice.
- The CIEH believes that it is entirely appropriate that such regulatory advice and support to SMEs by regulators should be funded from general taxation in order to support businesses, local economies, consumers, workers and public health generally.
- The application of regulation to large businesses is very different from the application to small and medium sized enterprises and significantly different approaches by government are required, as the vast majority of businesses are by definition small.
- Professional judgement and flexibility fosters proportionality in enforcement.
- The CIEH believes that the application of 'environmental health' regulations by EHPs overwhelmingly represents good practice in regulation.⁴
- Undue attention is being paid by the Government to anecdotal evidence and the views of big businesses; insufficient acknowledgement is made of the efforts of local authorities in dealing with and supporting SMEs. The Anderson review "The good guidance guide: taking the uncertainty out of regulation" (2009) addressed the issue as it affects small businesses.
- Government should concentrate its attention on issues which are constantly raised by businesses as being complex and problematic, affecting large and small businesses alike, such as employment law, data protection, working time directive and tax (PAYE) issues.

3. Questions in the Consultation Paper

3.1 **Question 1: Are these the right principles to underpin the front line delivery of regulation?**

3.1.1 The principles are appropriate but insufficient; they are already largely in place in EH regulation. Such regulation applied by EHPs employed by democratically

² See CIEH policy on Earned recognition- http://www.cieh.org/uploadedFiles/Core/Policy/Earned_recognition_-_SEP_2010.pdf

³ See Report and Recommendations to the Minister of Labour, Expert Advisory Panel on Occupational Health and Safety, Ontario — http://www.labour.gov.on.ca/english/hs/pdf/eap_report.pdf

⁴ Environmental Health interventions are a model of good practice of partnership. Regulators and businesses work together to achieve good standards of health and safety, food safety etc. Regulations are one of the tools to achieve this but they are not used in isolation. Advice, sharing of good practice, signposting services etc all form part of the intervention package.

elected local authorities with established complaints procedure is by definition transparent and accountable. Local authorities have a duty to be accountable to their elected members and thereby to their constituents. The CIEH does recognise however that some businesses do not perceive this transparency and have encountered problems in registering complaints against local authorities. The local government community generally needs to work to address any such negative perceptions and experiences and to disseminate good practice.

- 3.1.2 Conversely, businesses are 'accountable' to their customers (and shareholders if they have them) but manifestly this does not always result in regulatory compliance.
- 3.1.3 Transparency in EH regulation is achieved through for example the availability of food hygiene reports, food hygiene rating schemes and the Freedom of Information Act.
- 3.1.4 Good communication is the key to accountability and the principle should apply equally to regulators and to businesses (as duty-holders).
- 3.1.5 Many LAs have established effective working partnerships with businesses but it is important that national regulators (viz. FSA and HSE) are fully involved and engaged.

3.2 **Question 2: Are there other principles you would like to see included?**

3.2.1. The seven principles of better regulation identified in the Hampton report (2005) would form a good basis⁵. Principles which the CIEH believes should be included are

- The improvement of public health
- Public benefit
- Fairness (for all stakeholders)
- Risk and evidence based practice
- Competence (of both regulators and businesses)
- Protection
- Support and education
- Partnership working (between local and national regulators and businesses)
- Proportionality
- Consistency

3.2.2. It should be noted however that proportionality and consistency may not point to the same resolution in every case.

3.3 **Question 3: What aspects of regulatory enforcement are most problematic for you?**

- Lack of knowledge by businesses (primarily SMEs) of legislative requirements
- National regulatory initiatives distorting local priorities

⁵ The key Hampton principle is 'no inspection without risk'. However, guidance issued by Defra for Environmental Permitting regulations prescribes a strict inspection frequency regime which is subjected to annual reporting to and audit by Defra. Leagues tables are subsequently published and letters sent to leaders and chief executives of local authorities who do not achieve a 100% inspection regime.

- Inappropriate or inaccurate advice to businesses by consultants and contractors
- Lack of wider availability of spot fines or remedial action notices
- Businesses with large resources being able to impede or frustrate local authorities, with limited resources available for enforcing legislation, through appeals and not guilty pleas being withdrawn at the last minute.
- Regulations which are too prescriptive and allow insufficient flexibility in enforcement (such as informal action)⁶
- The application of legislation produced in haste following major incidents, outbreaks etc.
- Lack of clarity in some regulations leading to misinterpretation.
- Duplication of regulatory requirements (for example, overlapping requirements to undertake risk assessments)
- Over-complicated guidance; an example frequently identified by members is guidance produced by the Food Standards Agency on E coli.
- Occasional difficulty experienced by businesses in contacting enforcement officers (often due to the establishment of central contact points by some LAs).
- Lack of recognition by regulators, of national policies and procedures established by larger businesses.
- Failures by businesses at local level to follow their own nationally established policies and procedures.
- Inconsistent advice from national regulators.
- Extensive reporting and monitoring requirements placed on local authorities by national regulators.
- Conflicting legislative priorities between for example environmental health enforced legislation and planning requirements.
- Obfuscation by some businesses which can impede local authorities in identifying responsible persons.
- Lack of intelligence sharing between regulators.
- Inconsistencies across political and administrative borders caused by organisational changes in local government.

3.4 **Question 4: Do you have examples of when you feel you have been treated unreasonably?**

3.4.1 Inappropriate fines imposed for serious offences.

3.4.2 Isolated cases of obstruction of or threats to regulatory officers.

3.4.3 Use of resources by large businesses to impede or frustrate legitimate enforcement by regulators (such actions are not an option for the vast majority of businesses which do not have the necessary resources).

3.4.4 It should be noted that the majority of inspections and visits ultimately constitute advice. This is evidenced by a comparison of the number of visits and letters with the number of enforcement notices served and prosecutions taken.

3.5 **Question 5: How frequently have these problems occurred?**

3.5.1 Most such problems are isolated and not frequent but when they occur they consume an unsustainable level of resources by both businesses and LAs.

⁶ The CIEH notes the contrast with HMRC which has and enforces tight and inflexible deadlines.

- 3.5.2 The CIEH is aware of many customer satisfaction surveys conducted by EH services in local authorities. The results are significant and place the anecdotal evidence supplied by (primarily) large businesses into context. Some example surveys are set out in the appendix to this response.
- 3.5.3 It is worth noting that the scores for many EH services in LAs in respect of the former National Indicator 182, were in the region of 80-90%; this supports the view of the CIEH that the vast majority of businesses value EH regulatory interventions.
- 3.5.4 A report from the Federation of Small Businesses⁷ found that, when asked, businesses cited Environmental Health as only 28th out of a list of 33 in a list of “burdensome regulations” being cited by just 15% of businesses questioned.
- 3.5.5 Of far greater concern to businesses were issues such as: employment legislation (top out of 33); data protection (3rd); working time directive (6th); planning and building regulations (8th and 9th); PAYE (11th); VAT(14th); representing the real burdens on business, particularly SMEs.

3.6 Question 6: Do you feel there are effective mechanisms in place for you to appeal or complain about the way regulations are enforced?

- 3.6.1 LAs have accessible complaints procedures. Businesses occasionally experience difficulties in making complaints about regulators but many options are available including contact with line managers, department heads, chief executives, elected members or the ombudsman service. Concomitant options for regulators are far more limited.
- 3.6.2 It is standard practice for LAs to identify and differentiate between legislative requirements and good practice advice and to explicitly state appeal options and procedures.

3.7 Question 7: What aspects of regulatory enforcement work best for you?

- Regulations that have a clear public benefit
- Clear unambiguous guidance in compliance standards (industry guides are particularly helpful)
- Mutual respect and dialogue between businesses and regulators
- Tangible advantages of compliance to businesses
- Clear distinction between legal requirements and good practice
- Availability of fixed penalty notices and other civil sanctions
- Promotion of good practice and advice ahead of litigation wherever possible/appropriate
- Understanding of the benefits of regulation by businesses and consumers
- Regulatory inspectors professionally trained and competent who have a comprehensive knowledge and understanding of the regulatory requirements for which they are responsible and can answer questions posed by businesses

- 3.7.1 Many LAs have instituted innovative and sensible approaches to enforcement.⁸

⁷ Baldwin and Anderson (2005), Inspector at the Door

⁸ See Environmental Health News Sept 2011 —

<http://www.cieh.org/ehp/ehp3.aspx?id=38626&terms=%22great+yarmouth%22>

3.8 **Question 8: What are the best examples of when you've been dealt with well?**

- 3.8.1 Small and micro businesses appreciate good quality, fair contact with regulators who can assist them with compliance. They often have few other sources of low cost trustworthy guidance.
- 3.8.2 Businesses which are open, co-operative and understanding are more likely to benefit from regulatory intervention.
- 3.8.3 Local authorities regularly undertake customer satisfaction surveys which invariably demonstrate high levels of business satisfaction.
- 3.8.4 Data from the now defunct national indicator for local authorities to measure business satisfaction with regulators would provide objective evidence of the value of local authority regulation for businesses.
- 3.8.5 Business fora facilitated by local authorities play a significant role in raising standards of compliance at both local and national levels.
- 3.8.6 An innovative approach to taxation and funding could go a long way towards improving the regulatory environment. For example funding from business taxation could be top sliced to support small businesses that cannot afford professional advice (by employing professionals or through the use of consultants). Such support could be channelled through enterprise partnerships, chambers of commerce or other local small business groups.
- 3.8.7 Furthermore, this support could be funded from a proportion of fines imposed on businesses for significant contraventions.

3.9 **Question 9: How would you want to be involved in this sort of sector-based review of enforcement and the regulatory landscape?**

- 3.9.1 The CIEH would wish to be fully involved and engaged in such a review and is ready and willing to participate to the full. We would be able to develop defined standards and good practice that would benefit regulators, businesses, consumers and workers. The CIEH has already published detailed good practice guidance on a wide range of regulatory matters.
- 3.9.2 All business communities at all levels need to be involved in designing solutions since the correct approach for large organisations with good central arrangements and good translation of these to the front line service will need a different solution to compliance than a small locally owned shop, which in turn will be different for an SME.
- 3.9.3 The regulator experience is often that food safety and Health and Safety systems often fail at the local level. This position needs to be recognised and addressed within any proposed enforcement remedy. Local Authorities are well placed to detect and highlight this and as such are in a good position to effect change.
- 3.9.4 Reviews should map regulatory topics and attention should be given to identification of the full range of bodies that quote and cite regulations in support

of their particular agendas. On occasion this can cause confusion, misunderstanding and poor interpretation; for example, food safety regulations quoted in OFSTED reports.

3.10 Question 10: How can reviews be used to strike a better balance between 'self-managed compliance' and intervention by state regulators?

- 3.10.1 Interventions should not be considered only as enforcement action, such as the service of notices and litigation. The value of advice and guidance by regulators to SMEs that cannot afford external advice, must not be overlooked or underestimated. In particular the justification for providing such services to SMEs at tax payers' expense should be examined. Businesses pay taxes as do consumers and workers and the advice by regulators benefits all parties, helps local economies and protects public health.
- 3.10.2 Self-managed compliance must incorporate the issue of the competence of in-house advisors and consultants. Compliance in many large organisations' outlets is dependent on the effectiveness and commitment of local managers; local authorities can evidence many examples of poor performance by local managers who appear unaware of or who do not properly follow policies and procedures of their employing organisations.
- 3.10.3 The experience of LA regulators shows that most SMEs have little interest in self managed compliance preferring to be advised and guided by their regulators. The reviews must ensure engagement with small and micro businesses; such businesses are always difficult to engage with so additional effort must be made by government to do so and not allow the voice of large businesses to unduly influence policy.
- 3.10.4 Reviews should be risk based, proportionate (to both risk and business interests) and should reflect internal control measures. Reviews should also address, by sector, the effectiveness and relevance of regulations by outcomes in order to eliminate duplication and overlaps. One size will not fit all.
- 3.10.5 Consideration should be given to engagement with the insurance industry with a view to developing schemes to further encourage compliance through the use of no claims bonuses.

3.11 Question 11: What are the key things you would like to see reviews cover?

- 3.11.1 Reviews should engage all stakeholders viz. regulators, businesses, professional bodies, consumers, workers, customers, consultants. They should examine evidence from all parties and arrive at evidence and risk based proportionate conclusions. A key aim should be to ensure that the scarce resources of regulators are targeted at the worst performing businesses, be they large or small.
- 3.11.2 The reviews should address the issue of confidence in management and the actual levels of compliance by businesses. Other issues the reviews should cover include:
- Consistency between the advice of regulators and business advisers and consultants

- Internal audit procedures
- Confidence in management system and controls at all levels
- Audit transparency
- Peer review of audits between regulators and between businesses
- Impartiality
- Proportionality
- Duplication of audits by regulators
- Outcomes of regulatory intervention
- Cost effectiveness
- Ease of incorporation into the training of regulators and businesses
- Ongoing effectiveness

3.12 Question 12: How can such reviews be made effective at delivering improvements in the way that regulation is enforced?

3.12.1 This should be achieved by ensuring the participation of all stakeholders viz. Businesses (both large and small), regulators, professional bodies, consumers, workers and customers.

3.12.2 Reviews should identify duplication of regulation, for example petrol filling stations can potentially receive visits from up to five separate local authority officers.

3.12.3 Regulators need to be aware of the preponderance of auditing of (and within) many organisations. Cross auditing of systems between companies and sectors, and peer reviews of quality control systems should be incorporated in the reviews.

3.12.4 The practice by some government departments of requiring enforcement data from local authorities and publishing league tables of enforcement (such as fly tipping and Environmental Permitting Regulations) tends to reinforce an enforcement culture in LAs. Such requirements should be reviewed.

3.13 Question 13: What are the key issues faced by business in the day-to-day experience of locally managed enforcement services?

- Differences in enforcement policies between LAs.
- Variation in (political) priorities afforded to regulation by LAs (which affect resource allocation).
- Variations in advice between LAs (often due to local priorities and circumstances).⁹
- Problems experienced by enforcing local authorities in getting timely responses from primary authorities.
- Lack of knowledge and awareness of regulatory requirements.
- Inaccurate, inappropriate and disproportionate advice (to businesses) from consultants.

⁹ It should be noted that there is also a concomitant variation in the performance at the local level of multi site businesses.

3.14 Question 14: What role do you think Local Enterprise Partnerships could play in driving improvements?

3.14.1 LEPs are primarily concerned with growing business; their role in regulatory compliance is peripheral. However they could be a useful intermediary to deliver model standards, working with economic development teams.

3.14.2 LEPs usually comprise large compliant businesses. The challenge is to engage SMEs and less compliant businesses. They will need to engage at more local levels to be effective in driving improvements; many LEPs operate at regional levels and are effectively inaccessible or even unknown to local SMEs.

3.14.3 LEPs should encourage transparency and engagement with all stakeholders and work to address the latent mistrust, by some businesses, of regulators (despite the efforts of many local regulators to engage).

3.14.4 LEPs could facilitate or deliver advisory meetings, promoting best practice across business sectors to improve standards of compliance (effectively assuming the role of Business Link in providing the currently provided safety and health awareness days, breakfast meetings, training events etc).

3.14.5 Paragraph 32 states "...LEP's play a key role in bringing local businesses and government agencies together...". The key role of local authorities is not acknowledged here.

3.15 Question 15: What else could help deliver improvements in locally managed regulatory services?

- More opportunities for regulators to educate and advise businesses
- Greater use of trade associations in the production and dissemination of industry guidance
- Regional and sub regional liaison between regulators and businesses.
- Availability of (non enforcement related) local professional advice
- Voluntary accreditation schemes to help drive up standards and apply peer pressure amongst businesses

3.15.1 Initiatives such as 'Pub Watch'¹⁰ can be effective conveying consistent information in a non confrontational way.

3.16 Question 16: Do you have compliance measures in place that you feel are being over-looked?

3.16.1 The CIEH policy on earned recognition¹¹ addresses the principles espoused in the consultation paper.

3.16.2 Regulators should be able to adjust risk assessments and work programmes to deal with cases where other compliance measures are being used by a

¹⁰ <http://pubwatchonline.co.uk/>

¹¹ CIEH policy on earned recognition http://www.cieh.org/uploadedFiles/Core/Policy/Earned_recognition_-_SEP_2010.pdf

business.¹² Compliance measures should be open to independent, competent and accredited audit.

- 3.16.3 Recognition for compliance measures must be earned (and maintained) by businesses. A key element of earning recognition is a manifest willingness to address promptly regulatory contraventions. Specific advice can only be given on site.
 - 3.16.4 Earned recognition must incorporate elements of personal responsibility, particularly at the local level. Regulators need to have confidence in local management in addition to national policies and procedures. The development of earned recognition takes time and cannot be regarded as a quick fix. Once earned it must not be allowed to remain in perpetuity. Businesses must continue the earning process and be liable to have the recognition withdrawn in the event of significant contraventions. Responsible persons (for the recognition) should be identified by the business.
 - 3.16.5 Businesses that are granted earned recognition should be entitled to expect reduction in the risk rating ascribed to them by regulators. This should result in fewer inspections (excluding inspections to deal with complaints and/or accident investigations).
 - 3.16.6 It is important that regulators do not unduly lose the ability to intervene to address significant contraventions notwithstanding the establishment of earned recognition. It is also important that the principle is not applied to the extent of disadvantaging SMEs and other single site businesses which constitute the vast majority of businesses.
 - 3.16.7 A key requisite for earned recognition is a common language between business and regulators particularly in respect of competencies and compliance terminology. To this end the government should initiate dialogue between key stakeholders viz. business, regulators and professional bodies. The CIEH has members who work as regulators and in business and is therefore ideally placed to take a lead; the CIEH stands ready to take this role.
- 3.17 **Question 17: How could we ensure that existing compliance measures are given proper consideration?**
- 3.17.1 The key requisite components are openness and transparency. Businesses need to make available to regulators all relevant documentation at both national and local level. Regulators need to publish their assessment criteria and acknowledge, at all levels, nationally agreed policies and procedures. Primary authorities can provide a role in ensuring existing compliance measures are given proper consideration.
 - 3.17.2 The qualifications and expertise of auditors should be properly assessed and monitored. Standards used (such as ISO 9000) should be appropriate to the context; such accreditation does not of itself guarantee compliance.

¹² For example, businesses that use accredited laboratories to test products should be exempt from further testing by regulators.

- 3.17.3 Problems can arise when businesses operate as sub contractors or suppliers to larger businesses and are required by the larger business to comply with contractual obligations that are not necessary aligned with regulatory obligations. Government should work with industry and regulators to produce guidance for such businesses.
- 3.17.4 Businesses need to be prepared to fund costs incurred by regulators in operating Earned Recognition schemes.
- 3.17.5 Standards should be set to establish the effectiveness of internal controls by businesses to assist regulators in assessing levels of confidence in management.
- 3.18 Question 18: Are there areas where you think co-regulation could be applied to enable more formal sharing of regulatory responsibility, including delegating functions to business or third party providers?**
- 3.18.1 Provided clearly defined standards and guidance are in place in an open and transparent environment, there is no reason why regulatory responsibilities cannot be shared. Recognised standards such as ISO etc would contribute to the effectiveness of such schemes and help to ensure necessary competencies.¹³
- 3.18.2 Care must be taken however to ensure that relationships carefully established over a number of years, between local authorities and businesses are not adversely affected. It is also crucial that advice from co-regulators is accurate and consistent.
- 3.18.3 Any third party providers should be subject to regular systematic independent audit and should be publicly accountable. Such accountability should by definition render providers liable to the loss of contracts in the event of demonstrable poor performance.
- 3.19 Question 19: What specific functions do you think could be delegated from particular public regulators?**
- 3.19.1 Certain specific regulatory functions relevant to environmental health could be delegated. These include pest control, animal welfare, accredited landlord schemes, elements of gas and electrical safety and specific statutory equipment assessments such as lifts and hoists, lifting equipment, pressure systems etc.
- 3.19.2 Broader functions such as food safety and health and safety are not appropriate for such delegation.
- 3.20 Question 20: Are there existing frameworks of professional standards that you feel could be given greater consideration in managing regulatory compliance?**
- 3.20.1 One of the key criteria for effective regulation is competence. The CIEH has developed a range of competency frameworks and these have been further

¹³ A sub-regional group of three London Boroughs has worked with a large (multi-national) retail catering organisation (Starbucks). Through the earned recognition of the company having appropriate management systems and independent auditing and subject to those audit reports being deemed satisfactory, the company has been given dispensation from routine inspections (excluding complaints and accident notifications).

developed by the Local Better Regulation Office in partnership with CIEH. The CIEH was also responsible for developing, with the Health and Safety Executive, the health and safety competence framework, which was developed into the Regulators Development Needs Analysis toolkit. This, together with the Guidance for Regulators Information Point (GRIP) can form a model for competence assessments for all regulatory staff.

3.20.2 Other frameworks worthy of consideration include some standards imposed by insurance companies; standards set by the Legionella Control Association for water treatment companies; considerate contractor schemes and passport schemes for construction sites.

3.20.3 Recognised organisations of technically competent professionals such as electricians, gas engineers, etc could be given powers to serve improvement and prohibition notices. Prosecution for breaches could be undertaken by publicly accountable bodies such a local authorities or the HSE.

3.21 **Question 21: Are there areas where you feel new professional standards schemes could be usefully developed?**

3.21.1 External independent validation and/or accreditation of such schemes is an essential pre-requisite of such schemes. They should incorporate all the relevant regulatory requirements.

3.21.2 The Safety Assessment Federation (SAFed) scheme which incorporates statutory inspections and examinations of plant and equipment in association with Association of British Insurers is worthy of consideration and further development. These ideas need to be taken forward in partnership with professional bodies.

3.22 **Question 22: What barriers do you think might stop this approach from being used more widely?**

- Lack of confidence in the enforcement of the schemes
- Conflict of interest in respect of trade associations
- Sanctions, or lack of them, to address non compliance
- Resource implications for SMEs
- (In)consistency of application
- Conflicting priorities between schemes (and regulators¹⁴) leading to lack of clarity and reduced engagement by businesses

3.23 **Question 23: Would you welcome assured guidance?**

3.23.1 A wealth of guidance relevant to EH is available and widely used but little of it is assured. The use and application of guidance is an everyday part of the work of EHPs in regulation.

3.23.2 Part of the complexity inherent in the concept is the issue of (over) prescription with the consequent lack of flexibility and proportionality which businesses rightly prefer.

¹⁴ For example conflicting priorities regarding planning, historic building preservation and differing priorities of local authorities and fire authorities.

- 3.23.3 Assured guidance that has been produced by publicly accountable bodies in consultation with all stakeholders (especially business and regulators) would be welcomed provided that regulators are not inhibited from taking enforcement action in cases of material breaches of the law.
- 3.23.4 Any guidance needs to be written in plain English and be fully accessible to both regulators and businesses.
- 3.23.5 The CIEH has a strong track record in producing guidance and with its wide ranging membership as identified earlier, the Institute is ideally placed to produce assured guidance for government and stands ready to assist.
- 3.23.6 The CIEH is aware of situations in which LAs have experienced problems arising from differing interpretations of guidance between themselves and national regulators. This highlights the need for the guidance to be clear and unequivocal.

3.24 Question 24: What would be required to make it work?

- 3.24.1 The (assured) guidance would need to be published by government and it would need to be endorsed by both regulators and business (and produced with the full engagement of all stakeholders).
- 3.24.2 Government should systematically examine guidance produced by professional bodies and by industry and be more active in bestowing government endorsement.

3.25 Question 25: How best could this be achieved?

- 3.25.1 This could best be achieved by the Government setting up steering groups of all relevant stakeholders to identify the appropriate issues so that the production of the guidance can be tendered.

3.26 Question 26: Are there particular areas of skills and expertise that you feel could be helpfully developed for enforcement officers?

- 3.26.1 One of the key indicators of competence for regulators is understanding business; this aspect of competence should be regularly tested by employers of regulatory staff. This understanding should encompass the needs of all types of businesses by sector, but also by size (large, medium, small and micro) as well as particular issues which are relevant to ethnic communities and businesses.
- 3.26.2 Professional bodies which are responsible for the professional standards, qualifications and performance of their members who are engaged in regulatory work, should be required to account for the way in which this issue is addressed by them.
- 3.26.3 Shadowing and trading places schemes are useful but limited in their effect. An ongoing effort is required. CIEH members who have moved from local authority enforcement into business have found that understanding the business culture can take a considerable amount of time.

3.26.4 Other key skills include relationship management, interpersonal and communications skills and risk assessment.

3.27 Question 27: What are your worst experiences of interactions with regulators, and how could these be improved through professional development?

3.27.1 EHPs working in regulation have experienced abuse, rudeness and obstruction from business operators, as have all regulators from time to time.

3.27.2 Conversely, EHPs working in business have occasionally experienced lack of understanding of, and consideration for, the needs of business by regulatory EHPs. This can include failure to follow up inspections and not following their own procedures. Understanding of the needs of businesses is a key indicator of competence in a regulator.

3.27.3 The CIEH is aware of allegations of occasional poor performance by EHPs; the evidence however is anecdotal, isolated and not representative of the vast majority who operate in a professional manner.

3.27.4 Businesses deprecate inconsistency whilst at the same time calling for proportionality; the concepts are however often incompatible. Businesses could usefully be provided with clear guidance on challenging alleged inconsistent enforcement.

3.27.5 The application and use of existing and developing professional competency frameworks coupled with peer review and feedback undoubtedly have a significant impact on regulatory performance. Such frameworks are relevant to both regulators and businesses; both sides of industry should aspire to full competence.

3.28 Question 28: Have you ever referred to the Regulators' Compliance Code when seeking to address an issue with a regulator?

3.28.1 The CIEH is not aware of any cases where a business has referred to the Code when seeking to address a regulatory issue.

3.29 Question 29: Are there ways in which you think the Regulators' Compliance Code could be enhanced to help improve regulatory services?

3.29.1 If applied and used correctly, the Code is fit for purpose. One of the keys to its effective use is good management by employers of regulatory staff.

4.0 Summary

4.1 The CIEH remains concerned at the government's apparent lack of regard for the interests of consumers and workers in the consultation paper but stands ready to work with the government to improve the regulatory environment for the benefit not only of business but also for consumers, workers and the UK economy as a whole.

Appendix 1 – survey of CIEH members

Transforming Regulatory Enforcement

Survey of members of the Chartered Institute of Environmental Health

August 2011

Introduction

Following the publication by the Department for Business Innovation and Skills (BIS) of the discussion document “Transforming Regulatory Growth: Freeing up Business Growth” in June 2011, the CIEH has conducted a survey of members to accompany the formal submission to BIS on the discussion document.

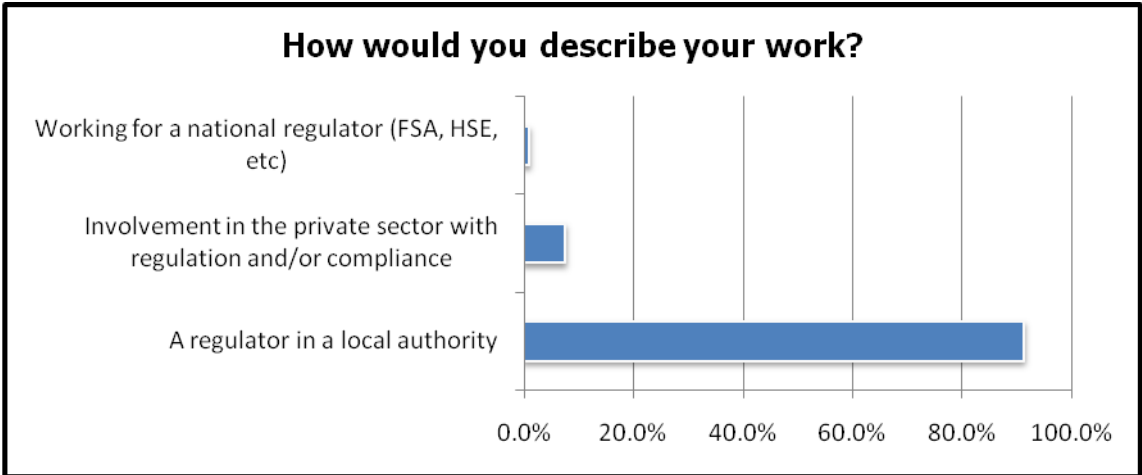
This report provides a summary of the results from this survey.

Results

567 responses to the survey were received.

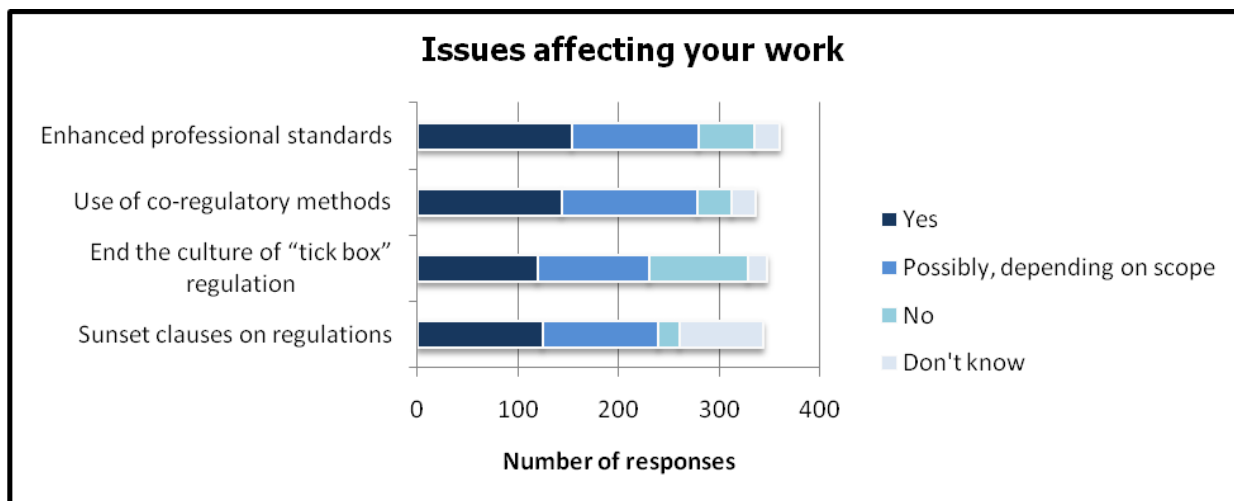
Survey respondents

508 (90%) of survey respondents indicated that their work involves the enforcement of environmental health laws. These respondents were then asked to describe the nature of their work. The majority work as regulators in a local authority (91%), 8% work in the private sector with regulation and/or compliance and 1% work for a national regulator such as the Food Standards Agency (FSA), Health and Safety Executive (HSE), etc. We also received responses from a retired member, an academic, a member working in the Local Better Regulation Office (LBRO) and a policy advisor.



Competent professionals and risk-based, proportionate regulation

The survey asked respondents if a number of specific issues contained in the Government’s coalition agreement affect their work. Responses are shown in the chart below:



Respondents were asked to elaborate on how these issues affect their work. The strongest response of all was a rebuttal of the allegation of a **"tick box culture"**:

*Environmental Health legislation has been moving away from "tick box" regulation over the past decade and more, with very little "tick box" legislation remaining on the statute book
I do not consider that I or my colleagues carry out tick box regulation
I inspect premises in a methodological way, but not in a 'tick box' way
No regulation should be tick box, it should all be proportionate and risk based
I do not believe we have a culture of tick box regulation in Environmental Health
At [name of District Council] we have never used a tick box culture
I do feel that in Health & Safety the culture of tick box regulation ended many years ago
I do not do "tick box" regulation, I don't know of any competent regulator who does*

Responses demonstrate an appropriate professional interest in the issues of sunset clauses, co-regulatory methods and enhanced professional standards.

While there is an interest in, and understanding of, the purpose of **sunset clauses**, some concerns were expressed:

*By the time new legislation is introduced it takes several years to implement and educate especially when enforcing housing law
While there may be scope for consolidating some regulations to try & make them less complex simply expiring regulations through a sunset clause could well lead to the loss of some legislation which is still being used
There would be additional costs in ensuring sunset clauses and reviews are not missed
It is essential that any changes to regulation are as a result of a measured evaluation of the evidence that the regulation is not required*

There is an interest in understanding how **co-regulation** would work in practice and concerns about maintaining a regulator's impartiality and preserving public confidence:

*Co-regulatory methods will support the desire and the need for businesses to take responsibility for managing their risks but with an approach which, as Hampton desired, will allow regulators to concentrate on those that are blatantly non-compliant
Co-regulation can also be considered as regulators working together to achieve an appropriate outcome in relation to environmental, public and business risk
Co regulation should be a possibility and works well in northern Europe. Whilst there still needs to be light touch checks concentrating limited resources on those who blatantly*

disregard the law must be right

There is a potential conflict here with co-regulation where non specialists are more likely to have a superficial tick box approach

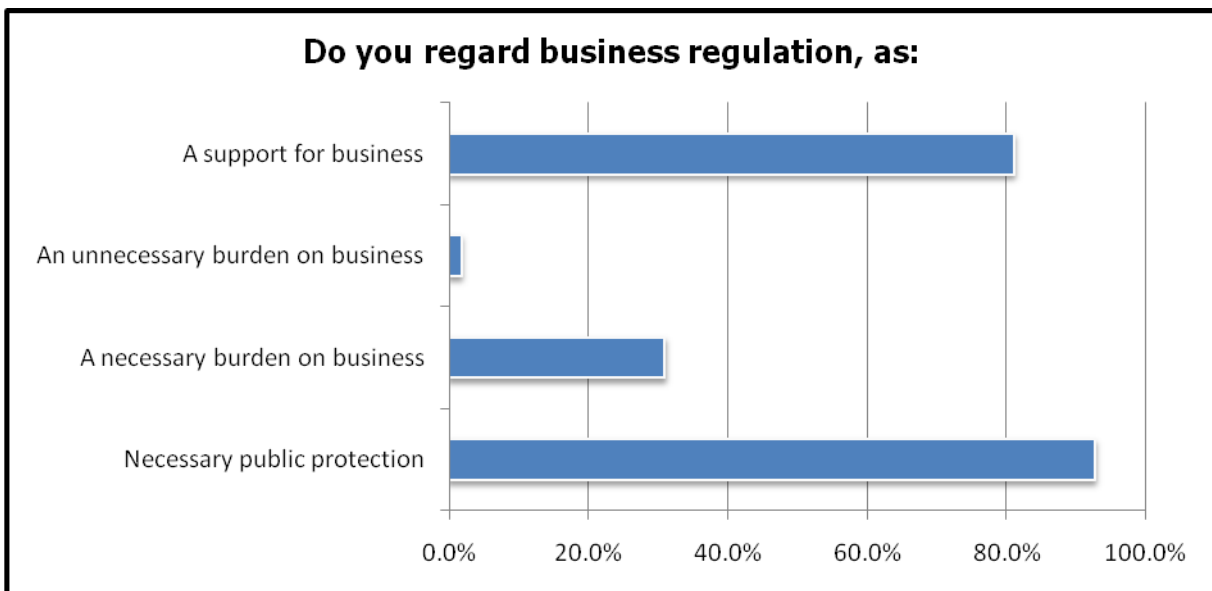
There is strong support for any regulatory system to be based on the exercise of professional judgement and for regulatory professionals to keep their skills up to date. For most, **enhanced professional standards** means greater use of competency frameworks:

*Enhanced professional standards may be considered to be set by competency frameworks
I see this as a positive step, and should tie in with competency based standards expected in the workplace*

A system of enhanced professional standards might be of significant benefit

The value of regulation to businesses (including workforces), consumers and society

The survey then asked members to indicate if they agreed with a series of statements regarding the regulation of business activities. There were 381 responses to the question. 93% of these regard regulation as a necessary public protection, 81% as a support for business, 31% as a necessary burden on business and 2% as an unnecessary burden on business



Note: Respondents were asked to tick all of the statements that they agreed with and so the total number of responses do not sum to 100%.

Respondents were then invited to elaborate on their answers. Responses make clear that regulators are committed, passionate even, in their services to humanity.

The value of regulation most frequently cited is public protection. The following examples of the values cited are ordered – the first-mentioned being cited most often, the last one least cited:

1. Public protection:

*Environmental Health Officers and Trading Standards Officers work involves genuine public protection in terms of health, safety and welfare. Both professions put significant effort into risk assessment so that they deal with the worst first and in being proportionate
Regulation is necessary public protection against those who will not behave responsibly
It is evident that self regulation is not a feasible method to achieve compliance with food and health and safety legislation in the majority of cases. Local government regulation is therefore*

essential for public protection

Protection of the public is paramount

Having also worked in business I feel it is necessary for there to be a regulatory framework in order to protect the public and employees

I see the result of both good and badly run businesses and have had the misfortune to see the effects of serious accidents on the injured persons and their families

The legal requirement for a business to comply with health and safety legislation is there to protect employees and members of the public

Regulation is definitely needed to provide public protection. Even the multi nationals can fall short of their own standards

Food hygiene regulations are basic requirements keep your place clean and in good order and make sure food is safe..... The public quite rightly have an expectation of food businesses to meet this standard. The basic standard protects the public

People must remember the purpose of the legislation - To protect the public from harm

2. Support for business/level playing field:

Regulation ensures a level playing field for businesses to play on. Regulation helps to enhance and promote the reputation of businesses that may otherwise suffer from the unscrupulous competitors

For SMEs in particular, EHOs offer free and impartial advice on the law and the minimum standards of compliance required. They also help to provide a level playing field for businesses

A recent questionnaire following visits to our local business premises showed that 86% of respondents felt that the visit was beneficial to their business

We surveyed 30% of our business customers last year 97% were satisfied both with the service overall and the professionalism of our staff

In partnership with councils across the East of England we have pioneered ERWIN - Everything Regulation Whenever it's Needed <http://www.everythingregulation.org.uk>. This website provides tailored, prioritised advice sheets and links to other websites, aimed specifically at businesses

Regulation helps to support business by reducing bad practice and building consumer confidence. Examples might be scores on the doors, landlord accreditation, and the various health and safety awareness campaigns that are held annually

Well-established research has shown that most businesses, particularly SMEs, actually welcome regulators as they simply want to be told what to do to comply with the law as quickly / cheaply / efficiently as they can so as to get on with running their business successfully for their customers

3. Maintaining public confidence:

What is notably absent from "Transforming Regulatory Enforcement" is any mention of what the public expect of the regulators that protect their interests

The impact on the public of even a few irresponsible businesses can be very high. E.coli is a case in point

The council tax payer expects us to use the powers available to ensure standards are maintained, that food and workplaces are safe, and bring non-compliant businesses to account When considering the whole economy I believe that the preventive work that the professions fulfil actually saves over the medium term, health and social services billions of pounds

Business who are not in compliance are seen by other businesses as an injustice, there is an expectation that we will put things right and bring everybody into line with a consistent, even-handed and independent approach

Good regulation should not be a burden but should be accepted as a necessity by all including the public - for example provision of fire protection measures for high risk HMOs

I personally have experience of both Local Government and private sector working and have

seen how organisations try to 'buy' themselves compliance

4. Public health:

If we consider Dahlgren and Whiteheads framework for the determinants of health, then to ensure that we adequately protect our environment, businesses, employees and especially the most vulnerable in society the regulation is necessary

Primarily I regard regulation of business activities as an opportunity to offer and provide professional support to enable the business to deliver its activities in an improved way, be that serving safer food, reducing the likelihood of an accident to staff or customers

Compliance with health and safety laws means fewer accidents and ill health to the workforce which results in fewer compensation claims and fewer days off work resulting in a more productive business

Most regulations are not a burden on business. It should not for example be seen as onerous or a burden to keep a food premises clean or for an employer to take reasonable steps to protect his employees

The use of sanctions is only ever as a last resort but is an important tool to ensure compliance and to most importantly to protect Public Health

5. Other benefits of regulation mentioned include **education** of businesses, the success of **consumer empowerment** schemes like the Food Hygiene Rating Scheme and similar "scores on the doors" schemes, protecting the **environment**, protecting businesses from **litigation** and aiding businesses to meet their **insurers' requirements**.

There were also many references to help for **SMEs** and for **start-up businesses**. Plenty of responses stressed that good regulation is not a burden on businesses.

There were also some warnings of reduced public safety if inspection levels are further reduced:

I am an enforcement officer for food and without our inspections I could see a huge increase in food poisoning and a falling of standards

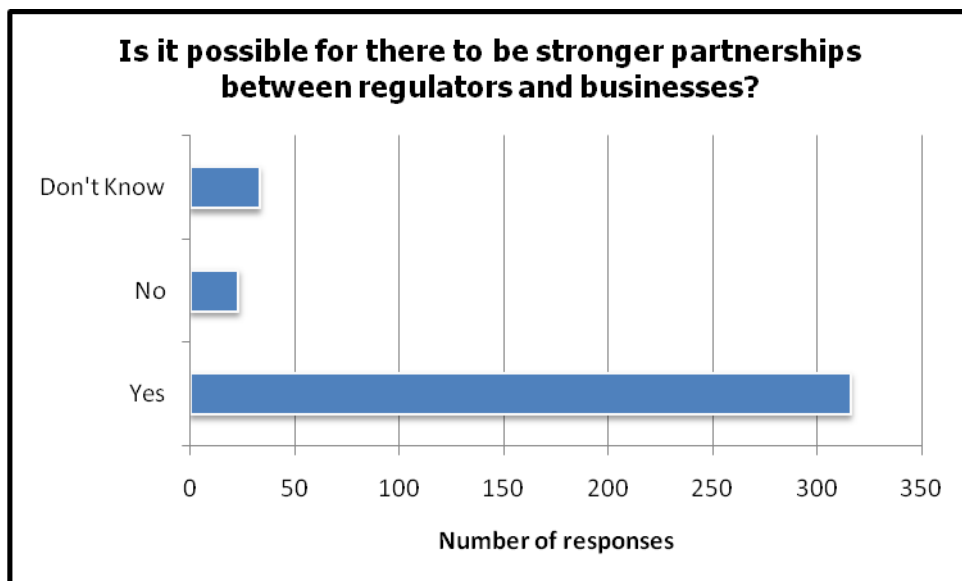
If regulation/intervention is reduced then the standard will fall and the consequence will possibly be more food related illness and a lack of confidence in the food sector

Unfortunately, if business was left to its own devices, matters would deteriorate resulting in more injury and deaths

Left free of all regulation I am afraid that in many cases the lowest common denominator is sought; and as a consequence those least able to help themselves (in my area of work in housing the vulnerable and less well off) would be forced to live in circumstances that would be detrimental to their health and well being

Constructive relationships between businesses and regulators

When asked if partnerships between businesses and regulators could be stronger, 85% of respondents answered 'yes' and 6% answered 'no'.



Once again, respondents were invited to elaborate and a common theme in the responses is that regulators feel that they already have good relationships with most businesses. Some gave examples of working in partnership with businesses:

Businesses and regulators want similar outcomes although their motives may be different. Working together in partnership can enable this to happen, however when appropriate there will be the need to take appropriate action

For support, the regulator of SMEs is often their primary source of professional advice, particularly in areas such as food and health & safety. My own authority receives encouraging feedback as to the value of such advice

Businesses and regulators have always worked together and good regulators know the value of cultivating a positive relationship with those businesses who are prepared to engage. Stronger partnerships should not be regarded as an opportunity to compromise but to raise standards and improve conditions uniformly throughout the industry

[Name of business] pays for a full time Environmental Protection officer to give advice and liaise with the community on noise and air quality. This partnership and liaison with the community has allowed 24 hour construction to continue with minimal complaints from the public to the benefit of all involved

In my experience most EHOs willingly take a collaborative approach to resolving issues with businesses/landlords both big and small

The partnerships that are successful include non-regulatory personnel. The SFBB (Safer Food, Better Business) coaching sessions involving an ex Environmental Health Officer with no enforcement role resulted in the business community being more engaged

I have been working with 8 LAs to strengthen the regulator relationship with business and have seen the direct and positive impact that an improved understanding and relationship can have on business success and the potential wider economic benefits for effective partnerships. Some respondents additionally gave examples of working in partnership with others:

I think working with Local Enterprise Partnerships would be a good move. We have worked with Business Link and our local Chamber of Commerce but stronger partnerships would be better for both regulators and businesses. However the 'bad' businesses do not get involved with any of these bodies

In Leicestershire we are participating in a scheme where regulators are looking at how they can help business grow, working with various partners in the business sector. Presently working on a pilot project with LBRO where we are using the principles of Primary

Authority on a business partnership

We have formed 5 primary authority partnerships (more in pipeline) to demonstrate our commitment to working with businesses to help them comply with applicable laws while protecting employees and the public

However, regulators recognise the danger of compromising their role, especially in respect of their enforcement activity:

We always seek to work in partnership with businesses, offering help and advice to help them comply with the law and achieve higher standards where possible. However, there MUST be a limit to these relationships that allows effective enforcement action to be taken where necessary and appropriate

Whilst there are benefits to this level of partnership working, I believe there will be a public outcry if it is seen as preventing appropriate enforcement action from being taken

Although we are always very willing to assist, we also need to keep a certain distance in order to be able to effectively carry out enforcement when absolutely necessary

However business-friendly we would like to be, a close relationship between regulators and regulated does not sit well with public expectations of how law should be enforced. At what point does a partnership become an inappropriate relationship in this context?

I think the course being taken has merits but the checks and balances must remain robust, and where any corrective actions are required the mechanism to implement them must prove swift, effective and unencumbered with permissions

Enforcement officers can benefit from understanding how their actions affect businesses, but businesses needs to understand that non-compliance is not an option

Other responses concerning more constructive relationships mention the **Primary Authority** scheme, the **Food Hygiene Rating Scheme** (again), **accreditation schemes** for landlords, improved **risk assessment** and allowing a greater focus on non-compliant businesses.

Useful agencies for enabling more constructive relationships that are mentioned include Business Associations, Chambers of Commerce, Local Employment Partnerships (LEPs), LBRO, private landlords associations and trade associations.

Some raise the question of **charging** for additional work and others express concerns about a **lack of funding** to do more of this work:

There should be opportunity for local authorities to charge for accredited services

With dwindling resources there is a chance that services will resort to formal enforcement in high risk businesses only

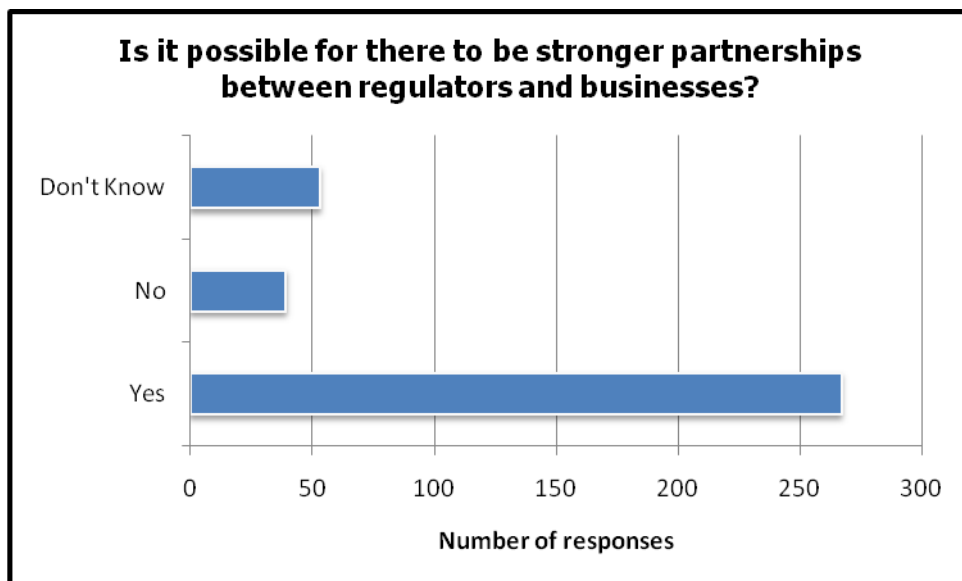
I do not think regulators have the resources available to make stronger relationships, especially in the current climate of cutbacks

It would require a different use of resources on both sides. The Primary Authority partnership being an example

Proper levels of funding to develop partnerships e.g. accreditation in private rented sector - starved of cash

Accountability and transparency of the regulatory system

In the final section of the survey, respondents were asked if it is possible to increase the transparency and accountability of regulating businesses. The majority (74%) of respondents answered 'yes', 11% answered 'no' and 15% did not know.



Responses elaborating upon this issue include many examples of ways in which regulatory services are accountable and transparent:

We already publish details of notices, prosecutions and service plans; every business we visit is given a short leaflet on our enforcement policy which also includes information on our complaints system

Internet based enforcement schemes like "scores on the doors" add transparency and are popular with businesses, members of the public and regulators alike

Clear service standards, information, policies and procedures all in consultation with businesses and others

I also believe we need to ensure there is transparency and accountability to the public and elected members who also have an interest in how we carry out our role

The Food Hygiene Rating Scheme is a good example of increased transparency and accountability

As a public sector worker who is employed by the State to carry out a function for the public I believe that the public should have 100% access to the results of work I carry out

Transparency is pretty good now. We publish hygiene scores and inspection letters on our hygiene scoring system (ratemyplace.org.uk)

The use of Local Authority websites with comprehensive information available to the public is an essential part of the provision of a transparent and accountable Local Authority

Regulators should willingly send congratulatory letters to businesses that meet required standards, as well as take appropriate action for non-compliance. Happy for businesses to be told their risk rating for each core function area

Additional comments made in the responses draw attention to **Freedom of Information** requests, local authority **websites** as a source of information, issues of awareness-raising, consistency, education, public confidence and trust. The suggestion is made that **mediation** should be more readily available in cases of dispute about accountability and openness.

Mention is made of the successful introduction and implementation of the **smokefree** legislation.

Unsurprisingly, there were several comments about the **cost** of publishing more information as well as responding to FOI requests:

Communication with businesses and trade organisations can always be improved but

*resourcing this is always going to be a challenge for cash strapped authorities
It is possible but should not become a priority if this makes it too time-consuming (e.g. regulators spend more time being transparent and accountable than actually regulating)
But this could come at a cost: money, staff & time, all in short supply with current economic cuts
Given the wide ranging scope of the Freedom of Information requests we complete I'm not sure where the idea of lack of transparency comes from*

A more prominent role for professional organisations like the CIEH

There were a number of constructive suggestions for professional organisations to support regulators and the regulatory system. The CIEH intends to work on all the suggestions that are relevant to the work it does for its members and in pursuance of its Charter and charitable objects.

Most suggestions revolved around the following:

1. **Education**, qualification, competence and continuing professional development:
*The CIEH should be leading the way in relation to this for the profession as a whole with a continuum of Professional Development based on practice and theory development, applied and reflected on
Professional standards need to be further enhanced. I fully support the use of competency frameworks such as RDNA (Regulators' Developmental Needs Assessment) and GRIP (Guidance for Regulators Information Points).*

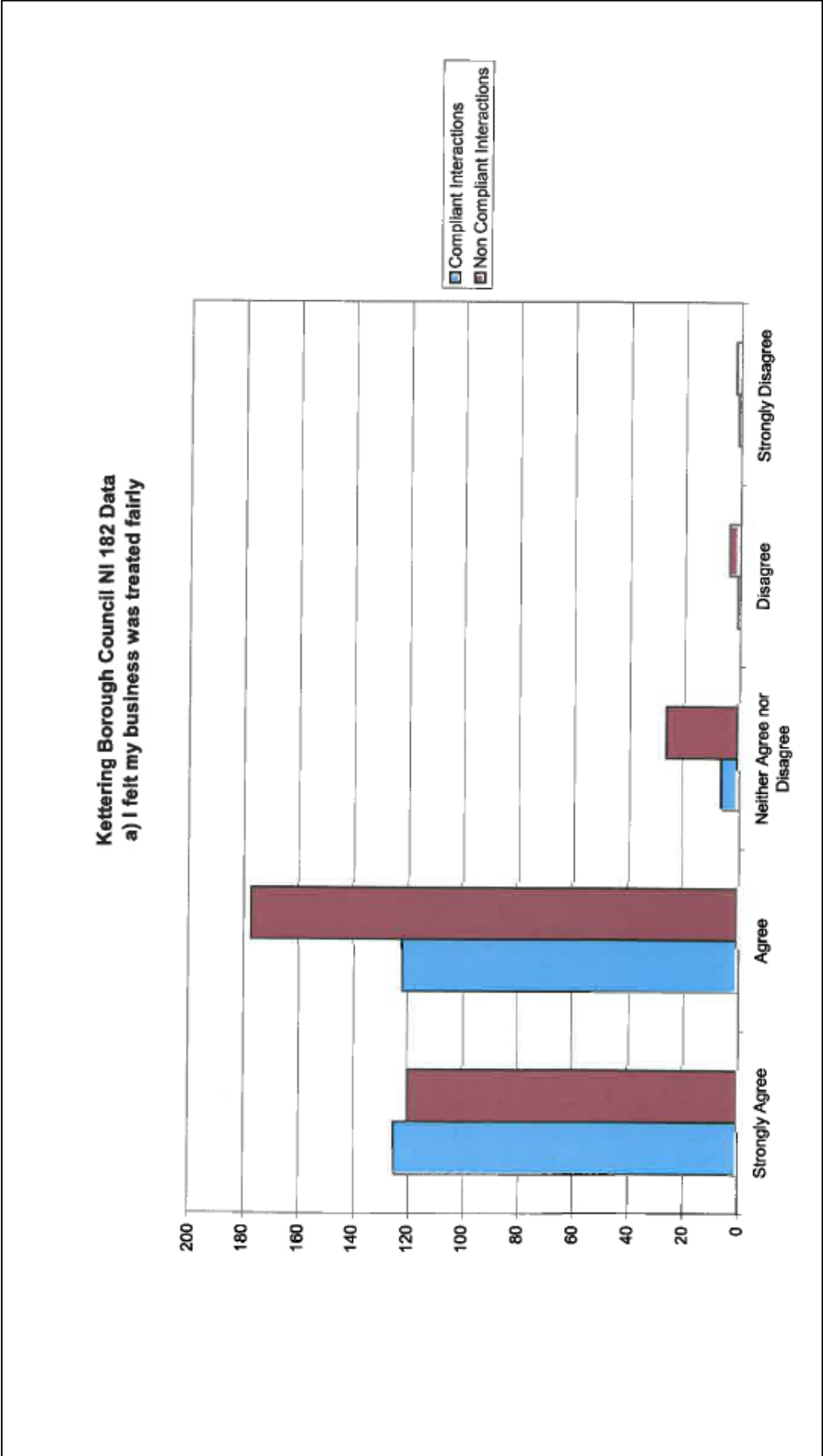
2. **Championing** the role of regulators:
*The best way to achieve this is by leaving enforcement within the local authorities, administered by suitably qualified professional officers
The beneficial effects of LA enforcement activity could be better publicised
Be an advocate, voice and channel of communication in the pursuance of promoting regulation as an essential public service:*

*There needs to be better recognition/understanding/acceptance of the work that regulators in local authorities already do. It is clear that this is not always understood
EHP's and the CIEH should stop apologising for their regulatory role and actively promote it and challenge those who seek to denigrate it*

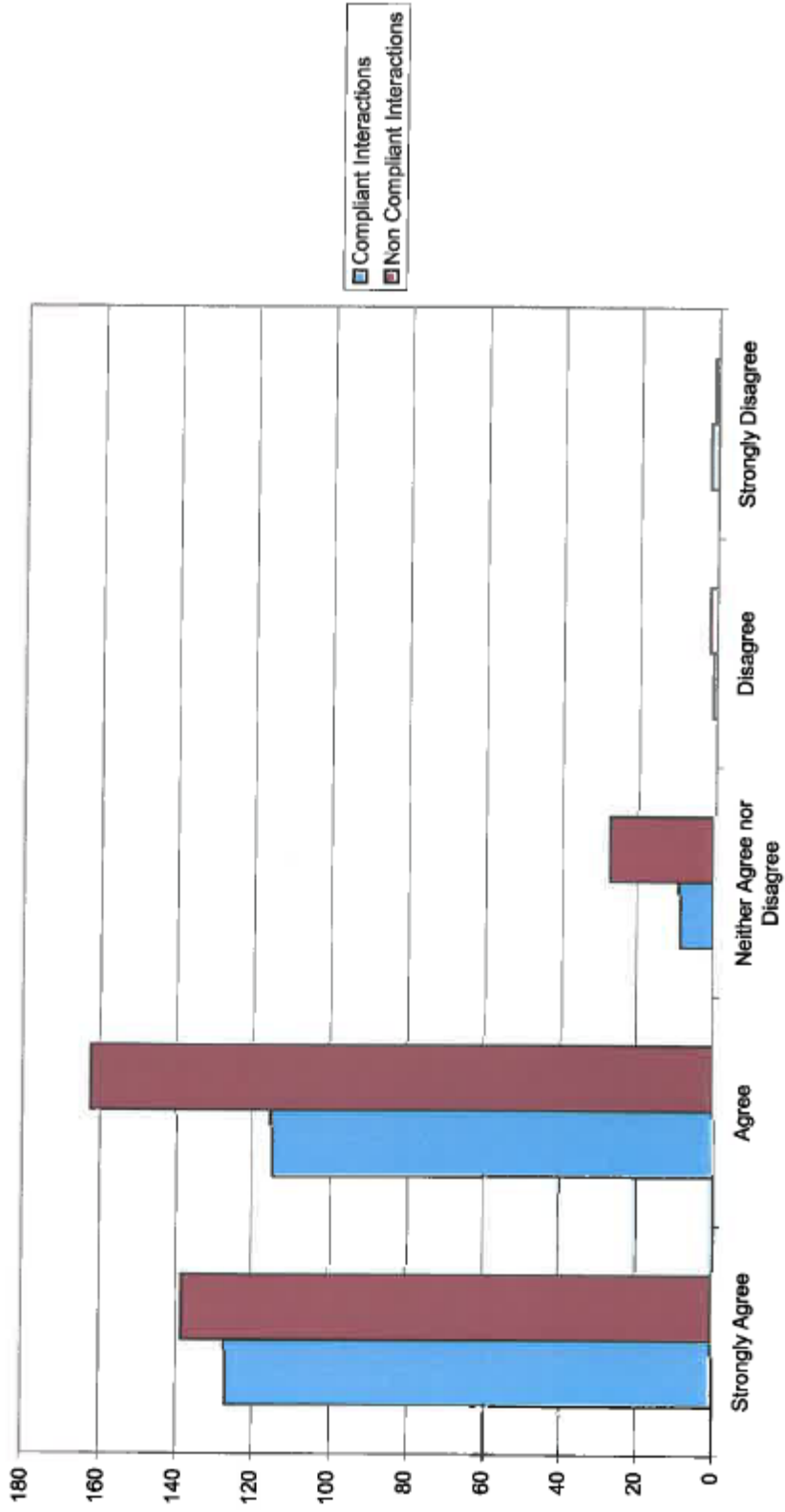
3. Support developments of **appropriate relationships** between regulators and businesses, including training in the required skills:
*Invite people in the industry to become as I am an associate member, organise seminars to inform and educate the proactive members of the industry on new legislation, what it means to them and how we can both cooperate to make it work
Seeing regulation as part of a wider system for business growth and empowering business to be more responsible
Regulators have much to gain by working together - this may mean regulators need better training in 'soft' skills*

4. Help ensure **consistency** and raise **standards** by gathering and disseminating examples of **good practice** and encouraging their wider take-up:
*Good practice should be shared and encouraged. Substandard practice should not be tolerated; intelligence from other businesses can be helpful (with safeguards)
Yes, for example, by improving the distribution of 'best practice'*

Appendix 2 – sample customer satisfaction surveys undertaken by environmental health services.



Kettering Borough Council NI-182 Data
b) I felt the contact was helpful





EAST RIDING

OF YORKSHIRE COUNCIL

FOOD SERVICES TEAM

CUSTOMER SATISFACTION SURVEYS

ANNUAL REPORT

2010-2011



The Government Standard Author: Karen Davenport
(on behalf of the Quality Working Group)

Executive Summary

Customer care and satisfaction is an extremely high priority for the Food Services Team, feedback from our customers is a major element within the quality systems in place to deliver continuous improvement.

This report¹⁵ provides the outcome data for the year's customer feedback and I should wish to thank all of our customers who have taken the time to provide the feedback information. The surveys are comprehensive and consider both the feedback from business proprietors and from the public following contact by members of the team.

How do we use this information?

- To continuously review the feedback to identify improvement opportunities.
- We use the feedback to assist in service design and delivery, e.g. how businesses prefer to receive advice and guidance.
- To monitor trends, and as service intelligence.
- As a measure of service quality and to put in place responsive ongoing adjustments to improve service quality.
- The ethnicity data is used as intelligence for equalities purposes and accessing service provision for hard to reach groups.
- Upon examining some of the responses it has become clear that the wording of some questions is confusing and ambiguous, this feedback has been used to redraft some questions to provide more meaningful data.

Headline data:

1. It is very pleasing to be able to report a high level of overall customer satisfaction with the service with **98.8%** of our customers either very or fairly satisfied.

Description	Count	%		
Very Satisfied	526	79.5%	=	98.8% Fairly or Very Satisfied
Fairly Satisfied	128	19.3%		
Fairly Dissatisfied	3	0.5%	=	1.2% Fairly or Very Dissatisfied
Very Dissatisfied	5	0.8%		
Total	662	100%		

2. Across all surveys **99.5%** of customers felt that our staff were courteous, **99.1%** felt that our staff were informative and **99.2%** found our officers to be helpful.

¹⁵ The full version of this report is available from **Stephen Headley, Food Services Manager,** Steve.headley@eastriding.gov.uk

3. In respect of ease of making contact with the council; 90.9% of customers felt it was very or fairly easy to make initial contact.
4. For businesses in relation to enforcement visits; **97%** of businesses felt that our visit was either, not disruptive at all or, not very disruptive to the business.
5. For all surveys; **98.4%** of customers felt that they had been treated fairly and **99.1%** felt that: information and advice the officer gave was easy to understand.
6. Businesses preferences for receiving advice and guidance:

Advice notes with inspection documents	53%
Emails or web-links	22.6%
Articles in Food Focus	14.8%
Daytime seminars	5.1%
Evening seminars	4.3%

We shall use this intelligence to frame our business advice and guidance approach in the coming year.

These findings demonstrate a high level of quality and customer satisfaction. Our challenge for the future is to maintain, sustain and improve upon these already high standards in a very challenging public sector environment.