



Chartered
Institute of
Environmental
Health

Amending the Regulators' Compliance Code

Response to the BIS/BRDO consultation

May 2013

Question 1:

Do you agree that the Regulators' Compliance Code and the voluntary Enforcement Concordat should be replaced with a new code?

Response: Yes. Simplification and clarification of the Code is supported.

Question 2:

Do you agree with the name of Regulators' Code? If not, please suggest alternative titles for the Code.

Response: Yes. The proposed name seems appropriate.

Question 3:

Are the draft requirements of the Regulators' Code appropriate? Please provide any supporting evidence in your response.

Response:

General

The recognition of the need for flexibility is welcomed. A one size fits all approach would not be appropriate given the wide range of businesses covered by the Code and their varying situations e.g. even with a national chain there will be variation between outlets in terms of structure, management and consequent levels of risk. The difficulty that is likely to occur is perception of inconsistency. A key to tackling such difficulties will be regulator competence and effective local management.

Regulators should carry out their activities in a way that helps businesses and regulated bodies to comply and grow

Regulators' duties require them to consider both prosperity and protection. It will be to no one's benefit if these 2 elements are not properly and transparently balanced. Consumers and employees have reasonable expectations that businesses will be held to account by regulators in meeting their legal duties and responsibilities. If this is not clearly the case then confidence in business is likely to be damaged. That being said, the regulator must not impose unnecessary regulatory burdens on business. It is the CIEH view that this need for balance is generally well understood and applied by Environmental Health Practitioners (EHPs).

Regulators should provide simple and straightforward ways to communicate with those they regulate, and resolve disputes

Effective communication of expectations and requirements is essential. Good communication skills are a core requirement for EHPs

It must however be recognised that there can be necessary constraints in some circumstances e.g. there are potential conflicts with legal requirements if informal dialogue takes place when offences have been identified. Past evidence shows that prosecutions can be compromised where informal approaches are taken. The application of PACE requirements is a clear example of a barrier to informal communication. Such conflicts must be properly recognised and should be addressed through a suitable enforcement policy.

Regulators should base their regulatory activities on risk, including the use of alternatives to enforcement

The CIEH supports this approach and believes that in areas of Environmental Health regulation this is in place through use of national codes e.g. Food Law Code of Practice, Local Authority Circular 67/2.

It is reasonable and fair to recognise fully a business's own mechanisms to ensure compliance e.g. through use of 3rd party accreditation schemes. However any such schemes need to be mapped against regulatory requirements. Independence, frequency of audits and auditor competence need to be part of any consideration of the regulatory "value" of a scheme. From a regulator's perspective national assessment of commonly used schemes would be useful so that a consistent value might be assigned to each one.

The concept of Earned recognition is supported in principle but there must be robust and transparent "checks and balances" in place to maintain the confidence of consumers, customers and employees in such an approach. Consideration should be given to proportionate regulatory action in case of failure in a business operating under "Earned recognition" and the implications for the regulator.

Until such considerations have been undertaken at a national level it is not easy to see how a consistent assessment of a risk based weighting might be made at a local level.

There needs to be consideration of the most appropriate level at which information on effectiveness of compliance should be published. Unnecessary burdens on regulators should be avoided e.g. where national data is gathered this might be published centrally rather than at a local level. Greater clarification on the most appropriate levels for the requirements to be met would be useful.

Regulators should provide advice and guidance to help businesses and other regulated bodies meet their responsibilities to comply with the law

Clear guidance and advice is essential. Much can be provided at a national level but there will always be requirements for "bespoke" advice at a local level. Consistent advice will require competent professionals and appropriate levels of resource. Ongoing cuts are likely to limit the extent to which "bespoke" advice can be provided.

The need for advice will vary dependent upon the resources of the business. There is good evidence that SMEs need a greater level of support and advice than larger business. It must be recognised that at a local level the majority of businesses are SMEs and that advice may be needed in multiple languages, all of which has resource implications.

Question 4:

Are there additional requirements you consider important that are not captured by the draft code? Please state these and your reasons.

Response: None specific.

Question 5:

Do you agree with the principles based approach of the code, together with the requirement for each regulator to publish detailed, specific service standards?

Response: Yes.

Question 6:

What should be included in regulators' service standards to meet the requirements of the code and ensure that these standards enable businesses and other regulated bodies to hold regulators to account?

Response: The CIEH welcomes the inclusion in the service standards of the specification of the professional competency of officers. CIEH has worked with BRDO and national regulators for some time in defining frameworks for competence of regulators via the RDNA scheme. CIEH believes that a consistent approach to professional competence is essential to ensuring consistent regulatory outcomes. CIEH believes that such an approach should be further supported and expanded and is aware that BRDO is already looking into this. CIEH supports this approach.

Question 7:

How should regulators' compliance with the requirements of the code and their published service standards be monitored?

Response: Monitoring needs to be transparent but should impose minimum burdens on regulators. Consideration should be given to existing data collection to see how it might be used to fulfil this purpose.

Question 8:

How can the code be made more accessible to business and regulated bodies and how can they be encouraged to engage with regulators in developing policy and challenging poor practice?

Response: Regulatory visits can be used to provide information to businesses. There are a number of initiatives that focus on information sharing currently as well as a range of mechanisms that can bring regulators and regulated bodies together e.g. LEPs, business clubs and the Health and Safety Estates Excellence project. A review of the different types of mechanisms currently in use could provide good practice case studies that might be employed more widely.

Question 9:

How should the scope of the Regulators' Code be defined?

Response: No specific comment.

Question 10:

Should the scope of the Regulators' Code be amended? Please provide reasons and any supporting evidence for your answer.

Response: No specific comment.

Question 11:

Do you agree with this approach to providing guidance on the code?

Response: As the Code will cover a wide range of regulators and businesses guidance is likely to be helpful and encourage consistency of understanding and application.

About the Chartered Institute of Environmental Health

As a **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 guidance notes 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 10,000 members across England, Wales and Northern Ireland.

Any enquiries about this response should be directed in the first instance to:

Jenny Morris
Principal Policy Officer
Chartered Institute of Environmental Health
Chadwick Court
15 Hatfields
London
SE1 8DJ

Tel. 020 7928 6006
Email information@cieh.org