Chartered Institute of Environmental Health

A Bill for Better Regulation: Consultation Document

Comments of the Chartered Institute of Environmental Health

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THE CHARTERED INSTITUTE OF ENVIRONMENTAL HEALTH

Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and education body, dedicated to the promotion of environmental health and to encouraging the highest possible standards in the training and the work of environmental health professionals.

The Chartered Institute has approximately 10,000 members, most of who work for local authorities (LHAs) in England, Wales and Northern Ireland. As well as providing services and information to its members, the Chartered Institute provides information to government departments and evidence to them on proposed legislation relevant to environmental health.

In 1993 the Chartered Institute became the World Health Organisation (EURO) Collaborating Centre for Environmental Health Management in Europe.

General comments on the Consultation Paper

The CIEH welcomed the Hampton Review report, particularly its focus on the role and purpose of regulation. The Bill for Better Regulation consultation paper seeks to take forward in to legislation many of the principles established in the Hampton Review report and as such, much in the document is also welcome. The CIEH is pleased to have the opportunity to comment on the consultation paper and looks forward to a continuing constructive dialogue with LABREG and the Better Regulation Executive in taking forward reform, especially in the improvement of the local authority role in regulation and enforcement.

However, some of the Chartered Institute's concerns with the original Hampton Report also recur in the consultation paper. Principal among our concerns is that the consultation paper identifies alleged 'key problems' with the regulatory regime but then proposes solutions from the "wrong end" in that it does not address the issue that in our view creates many of the difficulties. It cannot be over-emphasised that regulators do not create law, they interpret and enforce it. Business is not burdened by simple and effective legislation, as advocated by regulators, rather it is burdened by legislation that is based in political expediency rather than the proper assessment of risk; by legislation that suffers from poor Parliamentary drafting in the initial stages and by legislation that suffers from a lack of proper Parliamentary scrutiny of the draft legislation as it progresses.

Ample illustration of this gap in the paper's analysis of the problem is the proposal to remove the two-year rule. It is the view of the CIEH that legislation less than two years old should only need to be reformed in the most exceptional and previously unforeseen of circumstances; if the legislation had been properly drafted and scrutinised in the first place then reform would not be necessary.

Our whole approach to the regulatory framework is that it should create the conditions for the continued improvement and enhancement of public health. Central to the purpose of regulation must be the protection of the public. As such, we are less preoccupied with the structure of regulation than to ensure that environmental and public health is always critical to the central purpose. The issue for the Chartered Institute is not primarily about who does things and how, but how priorities are set and co-ordinated and what underpins those priorities.

Regulatory Reform Orders

Although very few RROs have had a substantial impact on the environmental health service, we are not content with the consultation paper's proposals to extend them, because we feel that the effect of RROs is obscure and the process of their making lacks transparency and inhibits public participation. Furthermore, we are unclear as to who should define for instance whether Law Commission proposals are "uncontroversial" – we are unhappy that such "uncontroversial" proposals should proceed with proper public scrutiny.

In terms of the proposals for "simplification", whilst we of course do not support unnecessary legislation, there are different views on what is "unnecessary" and the RRO process inhibits airing those differences. Consolidation certainly has its benefits, including as the paper notes making the law more accessible and transparent, but consolidation usually involves old statutes whose modern relevance arguably deserves better consideration.

As previously stated, we are also unhappy with the proposals on the two-year rule. The inconvenience of waiting two years before a measure can be a candidate for a RRO imposes some discipline to think ahead and get the parliamentary drafting right in the first place.

The Enforcement Concordat

In our view the Enforcement Concordat has been an effective tool in improving clarity in the regulatory regime, but we do not believe that putting it on a statutory footing would enhance its

impact. To the extent that almost every local authority has adopted the Concordat, often taking it forward with one or more enforcement policies, enacting a duty to observe it is in our view an example of unnecessary legislation itself. Our fear is that enactment could unreasonably fetter a sovereign authority from carrying out its duties in a way that it believes best suits its circumstances. We do not believe it to be desirable to see authorities' regulatory decisions challenged not just as now at appeal on their detail or by judicial review of their *vires,* but through complaints about their proportionality. This appears to be inconsistent with one of the stated aims of the Hampton Review to reduce administrative burdens.

We support updating of the Concordat in the light of 5-plus years of experience of its operation and adoption, but we feel it must remain a bipartisan agreement operating on an equal footing. Crucially, whilst there must be clear obligations on regulators to be transparent and proportionate etc, the revised Concordat must be explicit in its requirement that a fundamental basis of UK legislation is that it [legislation] is to be complied with by both individuals and corporate bodies irrespective of size. Whilst it is acknowledged the actual enforcement of legislation may be at times 'soft touch', nevertheless the obligation for compliance must explicitly remain.

Incidentally, in terms of the consultation paper's proposal to apply the Concordat to national regulators, it is our contention that it already applies to national bodies – that certainly was the original conception of the Concordat and it was our understanding that it explicitly included national regulators. It should therefore continue to be so; if that status has been amended over the years, then we would support its application to national regulators.

Mergers etc

We have stated previously our view that the underlying principle for regulation must be the protection of the public and the enhancement of public and environmental health. We think it is important that the environmental health input must be present at all levels of the regulatory regime and its structure, although we are less preoccupied with its precise composition.

In principle, we are opposed to the seemingly automatic response to create a new regulatory body to address a new area of regulation and/or enforcement, so we are in general supportive of the proposals to consolidate and/or merge many of the smaller regulatory bodies.

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