

Government response
to the Anderson Review

MARCH 2009

Contacts

This document and supporting data can be accessed via:

Website: <http://www.berr.gov.uk/whatwedo/bre/reviewing-regulation/page45287.html>

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Ministerial Foreword



Regulation plays a vital role in protecting consumers and workers, whilst helping businesses to operate in a fair environment. However, for regulations to achieve their objectives businesses need to know what they should do to comply with the law. And in the current economic climate it is more important than ever that we help to reduce the time and money businesses spend on compliance. Getting guidance right for small businesses frees up precious time and resources which people need to run their businesses.

Therefore I am particularly grateful to Sarah Anderson for her Review “The Good Guidance Guide” which has listened to small businesses and third sector organisations and brought forward a series of innovative ideas about how we can improve the guidance available to them. This document sets out the actions that we will take forward in response to it.

This Government is committed to improving the guidance we give on regulation, to ensure it is simple to understand, concisely written and clearly communicated. The actions from this response will make our guidance more reliable and accessible. It will also look to make sure when business people read guidance, they can be certain of what it is offering them. As a result this should help businesses to operate more effectively and avoid unnecessary costs, as well as encouraging more businesses to employ people. The actions from this response, excluding the helpline proposal, should save UK small businesses more than £50m per year. The savings from the helpline proposal will become clearer over the next few months as we continue our work.

The Government has already made good progress toward improving guidance through the Code of Practice on Guidance published last year and work in particular areas such as developing new guidance on employment law. I believe the actions we are taking forward here will deliver effective and long lasting improvements to guidance. This will result in better outcomes for businesses, employees and consumers in what are challenging economic circumstances for everyone.

A handwritten signature in black ink, appearing to read 'S. Carter', written in a cursive style.

Stephen A. Carter
Parliamentary Under Secretary of State
Department for Business, Enterprise and Regulatory Reform

Introduction

The Government welcomes The Good Guidance Guide from the Anderson Review and thanks Sarah Anderson for her work. We are delighted to take forward work to address the intent of all of them.

Many of the recommendations build upon ongoing work to improve guidance across departments and regulators. This work is already starting to bear fruit both in particular areas of guidance such as employment law and in the way that inspection and enforcement are carried out on the ground. But we can do more.

The Government believes that it should make clear that it takes responsibility for its guidance, improve access to it, increase the clarity of its message and reduce inconsistent interpretation between government departments.

Through these actions, the Government aims to increase the number of small and medium sized enterprises (SMEs) which uses its guidance, to help them more easily comply with their regulatory obligations and reduce unnecessary business costs. Many third sector organisations will also benefit from these recommendations as many of the areas that SMEs find difficult are the same areas that the third sector struggle with.

This response covers guidance which is issued by government departments and their agencies to help businesses and third sector organisations comply with their regulatory obligations. It is not intended to include information that seeks to describe best practice rather than how to comply with regulations, or guidance which has nothing to do with regulatory obligations. It does not apply to guidance where most organisations covered by the guidance are in the public sector, for example in education or healthcare, although the guidance may also have an impact on some business sectors. It is also not intended to apply to guidance where the relevant enforcement authority's primary focus is in regulating the public sector.

A number of the recommendations concern Acas which is a non-departmental body governed by an independent Council. The Government asks that the Council considers the recommendations in the context of the Government's response and looks forward to their views.

These recommendations cover regulatory guidance in England and reserved areas for the devolved administrations. The Government commends the recommendations to the Devolved Administrations and encourages them to consider them in areas of devolved responsibility.

Response to recommendations

RECOMMENDATION 1:

The Government must make clear to SMEs that it takes responsibility for its current guidance through the following actions:

(a) not including disclaimers of responsibility, but including positive statements about what users can expect from guidance;

(b) where a government enforcement body has discretion over what enforcement action can be taken, they will not prosecute or impose a punitive sanction if SMEs have reasonably followed their advice. Redress should be made available where appropriate.

The Government should ensure that it updates its guidance to reflect the current legal position. The Government should ensure that changes to regulations are provided to relevant organisations.

The Government should publish how it will take forward these recommendations by April 2009.

Accept the intent

The Government agrees with the intent of this recommendation that users should be confident that the Government takes responsibility for the quality of its guidance.

- (a) The Government is committed to producing guidance that is accurate and can be relied upon. Government departments and regulators will remove legal disclaimers of liability from new government guidance and when updating existing guidance.

We will however ensure that new guidance contains a positive statement of what users can expect from it, its scope and limitations. We agree that users should be confident that government guidance is accurate, however, businesses also need to be aware of the limits of guidance, that their particular circumstances may not be covered by the guidance and where they may need to seek further advice.

The Anderson Review provides an example of good practice from HSE and on positive statements on guidance (page [21]).

- (b) The Government agrees in principle that where an enforcement authority has discretion over what enforcement action is taken, they should not generally prosecute or impose a punitive sanction where a business has reasonably followed their advice and there are no other factors which indicate that a prosecution would be appropriate. The Government recognises that this can not apply in “party-to-party” type enforcement actions brought by individuals or groups of individuals, including employment tribunals.

Regulations are enforced by a range of Government departments, agencies and local authorities under a variety of regulatory regimes. Many regulators are already under a statutory duty, by virtue of section 21 of the Legislative and Regulatory Reform Act 2006 to ensure that their regulatory functions are exercised in a way which is transparent, accountable, proportionate and consistent.

The Regulators Compliance Code requires that all legal requirements relevant to the regulated activities, as well as changes to those legal requirements, are promptly communicated or otherwise made available to relevant businesses. Those regulators that are bound by the Regulators’ Compliance Code should be satisfying this requirement and exercising discretion as set out above if they are complying with the Code.

As the Anderson Review recognises, it still remains the responsibility of businesses to comply with their obligations under the law. Decisions should be taken on a case-by-case basis as there will always be cases where immediate action is required to prevent or respond to a serious breach. Prosecutors have no legal power to grant prospective immunity from prosecution, ie. for offences yet to be committed.

When revising the Code of Practice on guidance, the Better Regulation Executive will explore how to make it clearer to users the options for redress available to them, where they feel that they have received inaccurate guidance. However, we recognise that in certain circumstances the options for redress available in particular cases will be limited. Options for redress may be limited in a number of ways, including where Parliament has granted a regulator statutory immunity from liability in damages (as, for example is, the case in respect of the Financial Services Authority).

Regulators are bound by the Regulators Compliance Code to operate a complaints process with the opportunity of appeal to an independent body. A number of government departments operate a complaints process which may include a discretionary ex-gratia payment as one of the options for redress. Users may have the right to take their complaint to the Parliamentary Ombudsman or the Local Government Ombudsman after they have completed any internal appeal or review. The Parliamentary and Health Service Ombudsman has issued ‘Principles for Redress’ which sets out the Ombudsman’s approach to remedy. In some circumstances, appeal may be available through the courts by way of Judicial Review.

We recognise that guidance needs to be up to date to be of value to its users. We will ensure that where there is a change in the law which makes the guidance wrong or misleading, the guidance will be reviewed and updated or withdrawn as soon as reasonably practicable.

The Code of Practice on guidance requires the guidance to state a date by which it will be reviewed. When scheduling this date we will take into account the likelihood of major changes resulting, for example, from negotiations taking place at a European level or the dates that judgments in major cases are likely to be delivered.

RECOMMENDATION 2:

The Government should provide access for SMEs to a tailored, insured advice helpline on employment and health & safety regulations and provide free access for one year from the point of first contact.

The Government should publish how it will take forward this recommendation by April 2009, with a view to having a helpline in place as soon as possible and by October 2009.

Accept in part

The Government is attracted to this idea as a means to help and encourage businesses to comply with their regulatory obligations. We agree that providing greater certainty for businesses in these regulatory areas is desirable in order to increase compliance and improve outcomes.

BERR will work with Acas, HSE and other Government departments to develop an approach by Spring 2009 to piloting an insured advice helpline for employment and health & safety regulations.

This helpline will provide tailored advice and an incentive to seek and follow advice and simplified access to this advice. It will look to build on existing Government-funded information services and ensure that this new service fits (in a complementary way) with existing Government funded information services, in particular those provided by Acas, HSE and the Single Enforcement helplines. It will also look to work with the private sector providers in this market, and reinforce the roll-out of the new dispute resolution framework to encourage employers and employees to resolve more disputes in the workplace.

The timing of this pilot and scope of regulations covered by the helpline will be clarified in Spring 2009. BERR will also work, where necessary, with the devolved administrations to ensure an effective approach for areas of devolved responsibility.

RECOMMENDATION 3:

The Government should raise the profile of statutory codes that are of most use to SMEs. They should ensure that judges receive judicial training to state where statutory codes have been taken into account in their judgements.

For instance, the Government should ensure that judges in employment tribunals receive judicial training to state how an employer's adherence to the Acas Code of Practice on disciplinary and grievance procedures is taken into account. If the training does not prove effective, the Government should include this requirement in the Employment Tribunal Rules of Procedure. The Government should measure progress by October 2009.

Accept intent

The Government recognises the value of statutory codes in helping businesses to comply with regulations.

For instance, the new Acas Code on Discipline and Grievance, which will come into effect on 6 April 2009 with the new dispute resolution provisions of the Employment Act 2008, will be widely publicised by Government and Acas, and key business partners like the CBI and the Federation of Small Businesses. When the Act comes into force, we expect that Tribunal Judges will make reference to the Acas Code, where appropriate, when varying awards to reflect a failure to comply with the Code.

The Government will discuss with the Employment Tribunals Presidents for England and Wales, and for Scotland, whether it would be appropriate to issue a practice direction in relation to reasons for a judgment given orally.

The Ministry of Justice will evaluate whether the principle can be applied to other statutory codes in other courts as well as to Employment Tribunals.

RECOMMENDATION 4:

Government must review, as a matter of urgency, the branding of their single guidance website to ensure that it does not deter users e.g. "business.gov.uk".

Accept intent, to widen use of the Businesslink website

The Government is focused on getting real help to businesses during the coming period and any consideration of branding must be looked at in this context. The Government recognises that, to make guidance as accessible as possible for business, it is important that it is available from a single place. For example, as part of the Real Help for Business campaign a new "one stop shop" portal on the Business Link website has been launched to help businesses identify their financial needs.

In driving forward the continuous improvement of Business Link, the Government has set up a Business Link Strategy Group chaired by Martin Temple. The Business Link Strategy Group is made up of the key business bodies representing users and RDAs and Business Link contractors representing suppliers. The Group will have continued oversight of the brand and its ongoing development.

RECOMMENDATION 5:

HMRC should expand its work with other government departments and regulatory bodies to enable Business Advice Open Days to provide face-to-face advisory sessions on a range of other essential regulatory issues affecting SMEs, in particular employment and health & safety regulation.

Accept in part

Government recognises the opportunity to build on this existing successful approach. HMRC will work with BERR, Acas and HSE to develop proposals for how Government can increase the value businesses are able to gain from these popular events, without detracting from the special and sometimes local nature of them. BERR will report on this alongside the helpline proposal in Spring 2009.

Different parts of Government are already involved in some parts of the HMRC Business Advice Open Days. For example, BERR's Employment Law Guidance Programme team have participated at HMRC's Business Advice Open Days and EmployerTalks events, to raise awareness of the ways in which businesses can save money and time on their paperwork relating to employment law. The Environment Agency also contributes seminars or exhibitions to these events. We will build upon this successful collaborative approach.

RECOMMENDATION 6:

All guidance should be accompanied by a 'quick-start' summary version, which states the type of business to which it applies and the essential actions they must take to comply with the regulation.

Accept in part

The Government accepts this recommendation for new and revised guidance, where the guidance is of sufficient length or complexity. The summary will be provided in a format which complements the full guidance. This reflects the 'quick-start' summary approach developed by the BRE as part of its communication of regulatory changes at Common Commencement Dates. It will build on the approach already being pursued in relation to some areas of businesslink.gov.uk, for example the "Taking on a new employee" toolkit which went live at the beginning of January. This takes an employer through the key steps of taking on their first employee, or a new member of staff. It makes clear what a business' legal obligations are, offers links to best practice and provides information tailored to businesses' needs

The Better Regulation Executive will include this requirement for a summary, including an indication of the length of guidance for which this might be necessary, in the next revision of the Code of Practice on Guidance, which will be reviewed before July 2009.

RECOMMENDATION 7:

Every piece of guidance should state whether it has complied with the Code of Practice on Guidance. By June 2009, all government departments, regulators and agencies should publish a list of all the guidance they currently produce, stating a date by when they intend to update each piece so that it complies with the Code of Practice on Guidance.

Accept in part

The Government accepts for new and revised pieces of guidance the recommendation to state on every piece whether it complies with the Code of Practice on Guidance. The Better Regulation Executive in BERR will include this requirement in the next revision of Code of Practice on Guidance, which will be reviewed before July 2009. The Code will be outlined in full, together with a link to a website to report breaches. Smaller pieces of guidance will include a link to the full Code and to a place to report breaches

All government departments and agencies will publish by December 2009 a list of its most frequently used guidance, stating when it will be updated to comply with the Code of Practice on Guidance. By 2011, when content is merged onto its single guidance website, the Government will publish a full list of guidance, including guidance which is out of date and will not be updated. The Business.gov, programme working with the Better Regulation Executive, will coordinate this programme of work.

The businesslink.gov.uk website is currently a key repository of guidance for businesses, including large databases of publications and forms as well as more than 620 guides and 1000 regulation summaries specially written for the web, covering the key generic and sectoral regulations that affect businesses. Businesslink.gov.uk is gradually auditing the 159 websites due to migrate their content and transactions by March 2011.

This work will look to build on existing progress by government departments and regulators, including:

- The Employment Law Guidance Programme, which is improving the guidance available for employers on employment law and achieving significant reductions in administrative burdens.
- The Food Standards Agency has carried out a review of their guidance. By Spring 2009 they will list all their business-focused guidance in one place on their website and give a planned review date for all existing guidance. This date will match the review of the Impact Assessment.

RECOMMENDATION 8:

When businesses take on their first employee Acas should provide to them, via HMRC, 'money-off' discount vouchers for training in essential employment regulations. This should help businesses to comply with the law from day one.

Accept intent

The Government recognises the potential value in a marketing approach to existing training courses which highlights their worth through a voucher.

This is a recommendation for Acas to consider, in order to assess how its existing offer can achieve greater take up by businesses. It will consider this recommendation and report at the same time as the development of a pilot approach to the helpline (recommendation 1) in Spring 2009.

HMRC will work with Acas, if they decide to go ahead, to develop an approach to providing vouchers to these new employers. HMRC are currently reviewing how to optimise the way they enrol new employers into their new obligations under PAYE and encourage them to access tailored guidance and support. In doing this they will seek to make new employers aware of services, which could include those relevant to their employment law responsibilities, without overloading them with too much detail too quickly.

RECOMMENDATION 9:

Businesses should be able easily to report inconsistent or inaccurate guidance to a central place. The Government should acknowledge receipt within one week and resolve these issues within 90 days. During the period that the Government is resolving the conflict in guidance, enforcers should exercise discretion to ensure that the business does not face unfair prosecution or punitive sanction.

Accept in part

The Government recognises the importance of making it easy for people to report inconsistent or inaccurate guidance and believes it should consider and respond to comments in a timely and constructive manner.

Businesses are able to report inconsistent or inaccurate guidance for resolution to the Better Regulation Executive at <http://www.betterregulation.gov.uk> and the Better Regulation Executive will make that process even simpler by Spring 2009. Businesses should however also consider reporting advice first to the original issuer of the guidance as this may be more appropriate in many cases.

The Government will aim to resolve issues of inconsistent guidance within 90 days. Government enforcement bodies will carefully consider, where discretion exists, not imposing a prosecution or punitive sanction on a business regarding a particular issue which is already the subject of the complaint of this type until the issue has been resolved. Where enforcement is the responsibility of local authorities the Government will encourage them to take the same approach. The Government will ensure that reporting guidance in this way cannot deliberately be used to avoid compliance with the law, recognising that there will be cases where enforcement action will be necessary despite an ongoing question about the guidance.

RECOMMENDATION 10:

Professional bodies, local authorities and regulators should examine how to broaden the skills of inspectors so that they can better provide advice and guidance that is based on the experiences and needs of business sectors. A sector-based approach to advice from inspectors would help to reduce the burden on business of seeking information about, and complying with, the array of regulatory requirements across their business.

Accept in part

(this is primarily a recommendation for professional bodies, local authorities and regulators).

The Local Better Regulation Office (LBRO) is working to promote the establishment of a World Class Regulatory Services System to “simplify the complex local regulatory system and enable all local authority regulatory services to work more efficiently and effectively”. As part of this drive, the LBRO will work with national regulators and professional bodies to establish a common framework for competency to ensure the professional skills of local authority regulatory services staff meet the increasing challenges placed upon them and are able to respond to the demands of their stakeholders, including businesses.

The Government recognises that advice and guidance provided by inspectors needs to reflect the needs and experiences of businesses. A sectoral approach to advice can sometimes be an important part of providing effective advice and guidance to businesses in specific sectors. In other cases, however, it can be difficult for a single inspector to provide in depth advice on all areas of regulation in sufficient detail. Care must also be taken to ensure that a sector-specific approach does not lead to different interpretations of regulations in different sectors.

The guidance to the Hampton Implementation Reviews of regulators identifies the following characteristics of advice services as fitting with the Hampton agenda:

- Advice services address the full range of business requirements; where appropriate, advice is tailored to the needs of SMEs, large business, particular sectors, etc.
- Feedback is regularly sought from industry (where possible) and the information is used to determine the impact of advice / guidance and to update materials.

RECOMMENDATION 11:

Departments and regulators must promote a culture of regulatory compliance through their provision of sector-specific advice.

Government departments and regulators that deal with businesses and the voluntary sector must set or prioritise public targets to 'increase customer satisfaction', against which they will be measured. Local authorities should positively consider adopting the national indicator of "satisfaction of business with local authority regulatory services" to further encourage, or give greater recognition to, improvements to the regulatory guidance they provide to businesses.

Accept intent

The Government recognises that regulators should provide targeted and practical advice that meets the needs of those they regulate.

In some circumstances this will need to include sector-specific advice, for example the Health and Safety Executive provide example risk assessments for many industry sectors. For other areas of law, such as employment policy, it is essential that consistent advice is provided across all sectors.

Departments that deal with the business and voluntary sectors will consider how to include a measure of "customer" satisfaction in their strategic objectives for those who do not already do so.

Executive agencies and regulators will decide how best to reflect this in their own objectives.

Satisfaction of business with local authority regulatory services will be reported by all local authorities from April 2009 onwards and the information made publicly available as part of the Comprehensive Area Assessment for each authority. Decisions about adopting the satisfaction indicator with local regulatory services within Local Area Agreements are made in negotiation between local authorities and Government.

RECOMMENDATION 12:

The Government must allocate sufficient funds to ensure that businesses are aware of the improvements it makes to the way it delivers its guidance.

The Government should publish a progress report, to be assessed by an independent person, measuring the progress of all recommendations after one year of the publication of the Review.

Accept in part

As part of the response to recommendation 2, the Government will set out how it plans to improve the communication of changes to government guidance. The Better Regulation Executive will promote changes to government guidance as part of its strategy to communicate with business about regulatory reform. This will build on recent successful marketing campaigns, such as the Employment Law Guidance Programme, which is reducing the administrative burdens for employers in meeting their legal requirements. Information on major changes to the delivery of guidance will be provided through the single guidance website.

The Government will commission a short progress report on these recommendations to be delivered and published in Spring 2010.

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