

BIS | Department for Business
Innovation & Skills

Progress report on
commitments made in
response to the Anderson
Review

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BRE
BETTER
REGULATION
EXECUTIVE

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Introduction

Making guidance from Government to business as clear, accessible and consistent as possible is vital.

In January 2009 Sarah Anderson CBE published her review of Government guidance, 'The Good Guidance Guide: taking the uncertainty out of regulation'¹. Sarah Anderson stated in her report, "it is in everyone's interest for businesses to comply with their regulatory obligations". Good guidance will help businesses do this since, if it is difficult for them to understand their obligations, fewer will comply. If fewer comply this, in turn, makes life more difficult for enforcement bodies, who are less able to focus on the small minority of rogue businesses deliberately breaching the law.

In its response to the Anderson Review², in March 2009, the Government welcomed the twelve recommendations, addressed them in turn and set out the proposed follow-up actions.

This progress report details measures that the Government has implemented to date to improve guidance and achieve Sarah Anderson's aims of:

- increasing certainty over outcome
- making guidance more accessible
- providing clearer guidance
- achieving consistent guidance across government
- changing the culture of the relationship between regulators and businesses

The Government will continue to improve its guidance, particularly keeping in mind the needs of Small and Medium-sized Enterprises (SMEs) and is grateful for the independent and challenging perspective which Sarah Anderson has brought to this mission.

¹ <http://www.bis.gov.uk/files/file49881.pdf>

² <http://www.bis.gov.uk/files/file50352.pdf>

Executive Summary

The Government has made significant progress towards achieving the aims of the recommendations made by the Anderson Review. In some cases it has not been considered appropriate or practical to take the precise action suggested by Sarah Anderson but the Government has sought to achieve the aims of these recommendations through other means.

Improving guidance involves all departments and other public bodies who issue guidance for businesses and the third sector on how to comply with the law. There has been widespread commitment from these organisations to implement the suggested improvements.

The Code of Practice on Guidance on Regulation

Departments and other public bodies are expected to follow the Code of Practice on Guidance on Regulation³. This was revised as a result of a number of recommendations in the Anderson Review and the latest version was published in October 2009. This incorporates three key changes:

- the introduction of quick-start summary guidance
- the removal of legal disclaimers from guidance
- the inclusion of information within guidance on how to provide feedback.

These changes mean that businesses can be confident that, in most cases, if they follow government guidance, they will be compliant with regulations.

A quick-start guide is recommended, unless full guidance is already very brief and straightforward. Quick-start guides should be an entry point to the more detailed guidance, allowing organisations quickly to assess whether the regulations apply to them and broadly what they need to do.

Instead of legal disclaimers, Government will include a positive statement to let businesses know what they can expect from the guidance and its scope.

By including contact details on the guidance itself, as well as the link to the better regulation website www.betterregulation.gov.uk, companies will find it easier to offer feedback on guidance, including identifying any inaccuracies or inconsistencies.

Designing advice and guidance around the needs of business

The Government wants to make its services as user-friendly as possible and to that end encourages customer feedback. A number of departments and agencies regularly survey their business stakeholders to find out whether the service they are receiving is effective. Some include customer service targets in their objectives.

³ <http://www.bis.gov.uk/files/file53268.pdf>

Enforcement authorities are continuously striving to improve the way that they interact with businesses, so that they have all the necessary information to help them comply with their obligations. The Better Regulation Executive (BRE) and the Local Better Regulation Office (LBRO) are working with regulators to ensure that they are upholding the Hampton Principle that “Regulators should provide authoritative, accessible advice easily and cheaply.”

As part of this, LBRO has a current focus on broadening the skills of inspectors and making inspections and advice more targeted around the needs of businesses.

In cases where, despite these efforts, guidance may have been inaccurate, regulators should exercise discretion in not imposing a sanction on a business which has reasonably followed the available advice.

Increasing the range of information services available

In addition to improving existing information channels, the Government is developing a number of new sources. This explicitly recognises the Anderson finding that different businesses appreciate different types of government contact and support, including improved web-based tools, physical leaflets and improved telephone and face-to-face contact.

In a world where business is increasingly reliant on the internet, Government continues to develop its website for businesses, businesslink.gov.uk. Businesslink.gov.uk is a resource for all businesses but is particularly useful for SMEs, who are less likely to have dedicated resource focused on regulatory compliance. Government has committed to have all relevant guidance available through businesslink.gov.uk by 2011 and this guidance is becoming increasingly innovative and user-focused. For example, a recent new addition to the “Employing People” theme on the site includes a free downloadable desktop tool which provides a summary of key obligations that employers in SMEs need to meet; with links to full guidance on the website.

HM Revenue and Customs (HMRC) sends packs to newly registered employers with guidance on their payroll and tax responsibilities. There are plans for a new short Acas leaflet with additional employer guidance to be included in that pack.

HMRC, the Department for Business Innovation and Skills (BIS), HSE and Acas have worked together to further improve HMRC Business Advice Open Days. These provide businesses with advice, information and support to enable them to meet their statutory obligations whilst setting up, sustaining or expanding their organisations.

Aware that there are occasions where, particularly for SMEs, more personalised advice is needed, the Government is also piloting helplines providing tailored and 'insured advice' to help businesses comply with employment and health and safety law. These pilots are examining the barriers to businesses taking up insured advice and are testing different marketing strategies.

Increasing awareness of the resources available to business

As Sarah Anderson noted, it is important that businesses are informed of the improvements that are being made to advice and guidance otherwise they will not be able to take advantage of them.

The measures described above are being accompanied by appropriate marketing activities, which appear to be having some impact as increasing numbers of people are now consulting businesslink.gov.uk. The visit figures are also backed up by anecdotal feedback.

“It is important to be on top of how to manage your employment obligations if you want to be a successful and competitive business. As a small business, you have to watch every penny and get as much support as possible. I subscribe to the Business Link newsletter service and look at the site whenever the need occurs.

“The tools on the site are very useful and simple to use. When I need specific advice I will turn to the professionals but do a lot of the groundwork myself, and using the site isn’t time consuming or complicated.”

John Charles, Catering2Order

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.

The Government committed to remove legal disclaimers of liability from new guidance and updated guidance instead including a positive statement of what users can expect. It also agreed in principle that where they have discretion, enforcement authorities should not generally prosecute or impose a punitive sanction where a business has reasonably followed their advice.

Complete**a) Legal Disclaimers - Revised Code of Practice on Guidance**

The BRE published a revised Code of Practice on Guidance on Regulation on 21 October 2009, which applies to all new and revised guidance produced from that date. This Code applies to all those producing government guidance to help businesses or the third sector comply with regulations. Golden Rule Five of this Code states that guidance will not contain legal disclaimers and will instead have positive statements.

*Extract from Golden Rule Five of the Code of Practice on Guidance***5. Designed to provide users with confidence in how to comply with the law**

Guidance will not contain legal disclaimers of liability as businesses should be confident that, in most cases, guidance can be relied upon to achieve regulatory compliance. Guidance will clearly state the circumstances under which it applies.

...To provide users with confidence in how to comply with the law, guidance will not contain legal disclaimers of liability, but will contain a positive statement of what users can expect from it, its scope and limitations.

The Government is developing and spreading the use of positive statements, for example BIS has used the following statement in its guidance on the Waste Electrical and Electronic Equipment (WEEE) Regulations⁴ published in November 2009.

Extract from Guidance on the Waste Electrical and Electronic Equipment (WEEE) Regulations

This guidance cannot cover every situation and of course it may be necessary to carefully consider the relevant legislation to see how it applies in your circumstances. However, if you do follow the guidance it will help you to comply with the law and reduce the impact that waste electrical and electronic equipment has on the environment.

b) Sanctions when guidance has been reasonably followed

As stated in the government response, there is a statutory duty on many regulators (under the Legislative and Regulatory Reform Act 2006) to ensure that their regulatory functions are transparent, accountable, proportionate and consistent.

The Crown Prosecutors' Code⁵ and the Regulators' Compliance Code⁶ already require enforcement authorities to exercise such discretion. The former identifies as one of its "common public interest factors against prosecution" that "the offence was committed as a result of a genuine mistake or misunderstanding". The latter states, "when considering formal enforcement action, regulators should where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach". In both cases it is acknowledged that this principle may be disregarded in particularly serious cases but that it should generally be applied.

Furthermore, the Regulators' Compliance Code requires those that are bound by it to act in accordance with the principles set out in the Macrory Review. This means only imposing a sanction or penalty where, amongst other conditions, it has the aim of changing the behaviour of the offender or deterring future non-compliance.

The Government has also recently completed a round of 36 Hampton Implementation Reviews which have involved a structured assessment of regulators' approach against the standard of the Macrory and Hampton Principles on issues including guidance and enforcement.

⁴ <http://www.bis.gov.uk/files/file54145.pdf>

⁵ <http://www.cps.gov.uk/Publications/docs/code2004english.pdf>

⁶ <http://www.bis.gov.uk/files/file45019.pdf>

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.

BERR (now BIS) committed to 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 and safety regulations.

Complete

The Government has launched three helpline pilots. These focus on tailored and 'insured advice' to help SMEs comply with employment and health and safety law. Acas, HSE and other Government departments were involved in the design of the pilots and are represented on the Programme Board. The pilots are examining the barriers to businesses taking up insured advice and testing different marketing strategies.

Although the registration period has not yet closed, early indications are that take-up of the insured advice helpline is slow. There will be increased communications activity to boost awareness, including telemarketing, direct-marketing, a regional press release and reminding those who have registered to take advantage of the service before the trial period ends.

'Control' Pilot – October to November 2009

This took place in the East Midlands with the aim of testing whether greater awareness of insured advice encourages businesses to utilise it. SMEs were sent direct marketing inviting them to visit www.bis.gov.uk/insuredadvice which listed 25 insured advice providers who asked to participate in the pilot and demonstrated they provided the type of advice that the Anderson Review recommended. The results from this pilot were used to shape the 'No Wrong Door' and 'Open Market Campaign' pilots, which started in January 2010.

'No Wrong Door' Pilot – January 2010 to late September 2010

In the 'No Wrong Door' pilot, up to 4,500 SMEs in the North West region are being offered a free trial of tailored, insured advice on employment and health and safety regulation, which they will access by calling either Acas, HSE Infoline or Business Link North West. The insured advice is provided by two providers, the Forum for Private Business and Peninsula Business Services, which were selected by BIS following an open competition in October 2009. The registration period finishes on 31 March.

‘Open Market Campaign’ Pilot – January 2010 to late September 2010

In the 'Open Market Campaign' Pilot, up to 4,500 SMEs in the Yorkshire region were invited to register for a £50 discount to be used on a selection of insured advice products from 13 insured advice providers listed on the Business Link Yorkshire & Humber website⁷. These providers were selected by BIS following an open competition.

Although around 1,500 businesses have registered, initial indications are that take-up of policies may require further marketing intervention.

Results from the pilots, which will be fully evaluated in the Autumn, will be used to determine the best way of carrying this recommendation forward. This will include working with the devolved administrations who will be kept informed of pilot progress. If current low levels of participation in the pilots are unaffected by the increased communications activity, it may be concluded that there is not sufficient appetite amongst SMEs for a full roll out of a nationwide insured advice service.

⁷ www.businesslinkyorkshire.co.uk/insuredadvice

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.

The Government agreed with the intent of the recommendation and committed to discuss with 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 judgement given orally and to evaluate whether the principle can be applied to other statutory codes in other courts.

Not taken forward

Employment Tribunals

The power to issue practice directions rests with the respective Employment Tribunals Presidents. Neither President wished to issue such a direction.

It is considered not to be the appropriate tool to achieve the desired outcome. It would be inappropriate for a judge to seek to elevate the status of a code passed by Parliament. Moreover, it would not be possible for Presidents to make practice directions, which have a specific legal function, on matters for which they are not responsible.

The Employment Act 2008 replaced prescriptive regulations about the processes required to handle internal grievances with more principles-based regulation. This Act⁸ also allows tribunals, when considering an award of compensation, to take account of a failure on the part of an employer to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures⁹. Where an award has been varied using these powers, reasons issued by a tribunal would have reference to the Code amongst other things¹⁰. However, judgements and written reasons, still less oral reasons, are unlikely to be circulated widely enough to make them a useful communications tool.

There have not been enough cases since the new regulations on disciplinary and grievance procedures came in to force in April 2009 to assess the frequency of reference to the Code. This is partly a result of a high volume of

⁸Section 3(2) of the Act inserts section 207A of the Trade Union and Labour Relations Act 1992.

⁹<http://www.Acas.org.uk/index.aspx?articleid=2174>

¹⁰ Ultimately, the power to vary an award must be assessed by the tribunal against the test of just and equitableness set out in the legislation.

cases submitted under the previous regime, which have continued to be heard beyond the point at which the new regulations came into force. The recent economic climate has also led to a high proportion of tribunal cases associated with redundancy, to which the Code does not apply. Anecdotally, one unfair dismissal case claimant was awarded an additional £2,086.80 because her former employer had failed to follow the Code.

Other courts and codes of practice

The Ministry of Justice does not consider it appropriate to extend the principle to codes of practice in other courts. Other statutory codes of most relevance to SMEs, such as those covering health and safety, financial services and Freedom of Information are largely owned by independent regulatory bodies. As such, matters relevant to these codes which come to court will already have been subject to prior enforcement actions by the regulator.

Under the Regulators' Compliance Code the regulator "should ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken." The business should therefore be aware of the relevant Code and it would almost certainly be mentioned during any subsequent court case. Requiring further mention by the judiciary would be disproportionate.

Judicial training and guidance are matters for the judiciary and judgements are the responsibility of the individual office holder. It would be inappropriate for Government to seek to intervene in the exercise of judicial independence.

Raising the profile of Codes through alternative means

Making sure that employers are aware from the outset of the resources available to them to help them comply with their legal obligations is vital. It is preferable for all that employers avoid taking actions which might lead to an Employment Tribunal.

New codes usually have a large amount of publicity. When the Acas Code was launched, for example, significant activity took place to help employers understand the changes. Working closely with a range of employers and trade associations, a leaflet for employers produced jointly with Acas and the Chartered Institute of Personnel and Development (CIPD) was sent by direct mail to nearly one million businesses across the country.

Other communications activity included (i) the funding of an Acas-run series of "informing employer" seminars and workshops; (ii) the funding of other seminars on dispute resolution with partners such as the British Chambers of Commerce, the Engineering and Manufacturing Federation, the British Retail Consortium, and the Federation of Small Business; (iii) speaking slots at a range of meetings and seminars organised by stakeholders such as the CBI Employment Committee, the CIPD, and NHS Employers; (iv) articles on dispute resolution in the HMRC Employer Bulletin, which goes out to all registered employers in the UK; (v) articles in other stakeholders newsletters and magazines such as the Federation of Master Builders magazine; and (vii) adverts in People Management and Personnel Today magazines.

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.

The Government accepted the intent, to widen the use of businesslink.gov.uk. The Business Link Strategy Group, where business bodies and Regional Development Agencies/Business Link contractors respectively represent users and suppliers, has oversight of the brand and its ongoing development.

Not taken forward

The Government has not seen robust evidence to support the claim that the Business Link brand is deterring businesses from using the businesslink.gov website although it accepts that further communications activity could increase awareness among business and enforcement community.

Increased use of businesslink.gov.uk, with more than 14 million unique visitors for the year 2009-10, and 93% of users rating the site as good, very good, or excellent¹¹ suggests that the brand is becoming better known and valued. The NAO's 2009 Business Perceptions Survey¹² found that over 70% of employers were aware of and had confidence in the guidance placed on the "Employing People" pages on businesslink.gov.uk. Monthly visits to those pages have more than doubled over the course of the Employment Law Guidance Programme (since 2007) and totalled 377,000 in February 2010.

Businesslink.gov.uk offers many useful tools, such as a Regulation Checklist¹³, which prepares a tailor-made list of regulations for any business. Users can also keep up-to-date with free e-mail alerts on areas they are interested in¹⁴ and can consult the Forward Regulatory Programme which sets out the planned changes to regulations that will impact on business and that are due to come into force by April 2011

The Government does not consider the costs of a full re-brand of businesslink.gov.uk to be justified in view of the increasing brand recognition and business engagement. Indeed, a change in identity at this stage could be detrimental to the usage of the website's tools and guidance.

However, Government is not complacent and is always looking to increase awareness of the useful information and tools which businesslink.gov.uk offers to all businesses. As part of the frequent research and perception studies the Government undertakes, it has recently commenced a study of the brand health and quality of communications of the Business Link service, including the enhanced on-line service, to help refresh the branding guidelines.

¹¹ Impact Assessment 2009

¹² http://www.nao.org.uk/publications/0809/complying_with_regulation.aspx

¹³ www.businesslink.gov.uk/regulationchecklist

¹⁴ www.businesslink.gov.uk/regulationupdates

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.

The Government committed to HMRC working with BERR (now BIS), Acas and HSE to develop proposals for how government can increase the value for businesses of HMRC's Business Advice Open Days (BAODs).

Complete

BIS, HMRC, Acas and HSE established a working group to agree options for addressing the recommendations on improvements to HMRC's BAODs.

The working group agreed that BAODs were an appropriate channel and could play a useful supporting role in helping SMEs both to cope with new regulation and to raise their confidence and competence in managing their existing obligations in a proportionate and effective way.

HMRC, BIS, Acas and HSE have committed to participate in the full 2010/11 BAOD programme. The services provided will focus on compliance advice and business support services, as opposed to more commercial offerings and will address employment and health and safety issues.

As well as those new to business, the events are specifically aimed at SMEs who are thinking of taking on, or have just taken on, a new employee, whose businesses are growing quickly and SMEs with sustainable businesses who may be unaware of their duties but are open to advice/guidance.

Advice and guidance will be delivered through a combination of:

- prominent visible material used on stands
- literature handed out to visitors
- introducing new workshops within the events themselves
- providing an opportunity to discuss specific issues with attendees on a face-to-face basis.

BAODs form part of the Government's Service Transformation agenda and should be viewed as part of a wider offer of advice and support for business – including web-based solutions, helplines, literature and face-to-face services – offering SMEs in particular the help that they need in the form that they want it, and when and where they need it.

HMRC has also been trialling a programme of smaller events that will provide advice, predominantly on tax and health and safety issues to businesses in locations which do not have sufficient density of businesses or suitable venues for a full Business Advice Open Day.

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.

The Government committed that new and revised guidance, which is of sufficient length and complexity to warrant it, should be accompanied by a 'quick-start' summary guide.

Complete

This requirement has been incorporated into the revised Code of Practice on Guidance, under Golden Rule number four.

From Golden Rule Four of the Code of Practice on Guidance on Regulation

4. Easy for the intended users to understand

Guidance will be written in concise and jargon-free language appropriate to the intended audience. If guidance is not already very brief and straightforward then a quick-start guide will be made available.

The easier guidance is to understand the more likely it is to be followed correctly. The language used should be as clear as possible. We will avoid jargon and acronyms which are not familiar to the end user. Clear communication is not restricted to text. When appropriate we will use graphics, flowcharts and videos to help to make guidance easier to understand.

Guidance should be as concise as possible so that users do not have to spend too much time reading it. Users should be able to tell quickly whether the regulation is likely to apply to their organisation, so they can decide whether to continue reading the guidance.

The Guide to Code of Practice on Guidance¹⁵ refers to good practice examples. Since the publication of the revised Code, further quick-start guides have been produced to make it easier for businesses to identify guidance which is relevant to them. For example, BIS' quick-start guide to the Aerosol Dispensers Regulations 2009 published in February 2010¹⁶ and the HSE's 'Reducing ill health and accidents in motor vehicle repair'¹⁷, published in December 2009.

¹⁵ <http://www.berr.gov.uk/files/file53281.pdf>

¹⁶ <http://www.berr.gov.uk/files/file54567.pdf>

¹⁷ <http://www.hse.gov.uk/pubns/indg356.pdf>

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.

The Government committed that the revised Code of Practice on Guidance would require every new and revised piece of guidance to state whether it complies with the Code, provide a link to the Code and a place to report breaches. It also stated that by December 2009 all departments and agencies would publish a list of their most frequently used guidance, stating when it will be updated to comply with the Code.

Complete

Updated Code of Practice

The updated Code of Practice on Guidance on Regulation, published on 21 October 2009 states under Golden Rule Eight “Guidance should carry a link to the code and clearly state whether it is compliant with the eight rules of good guidance, when it was issued or last reviewed, how long it applies for or when the next review is planned.”

The Government is committed to ensuring that new guidance is in line with the Code of Practice and that existing guidance is brought in line with the October 2009 revision of the Code as soon as reasonably practicable.

At least 18 Departments and agencies subject to the Code of Practice on Guidance have published lists of their most frequently used guidance stating when they plan to update these in line with the revised Code.

A full list of guidance will be published on businesslink.gov.uk by 2011 when content is merged onto this single guidance website.

Guidance which has already been fully merged onto businesslink.gov.uk is compliant with the current Code of Practice on Guidance on Regulation. This is because its template does not include legal disclaimers and requires an introductory section for each area of guidance which fulfils the requirements of a quick-start guide. Users can report inconsistencies or inaccuracies at the Better Regulation website www.betterregulation.gov.uk, which will soon be merged onto businesslink.gov.uk at www.businesslink.gov.uk/betterregulation.

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.

The Government committed that Acas would consider this recommendation and that HMRC would work with Acas if they decided to go ahead, to develop an approach.

Not taken forward

The working group, mentioned under recommendation 5 and comprising BIS, HMRC, Acas and HSE, also considered this proposal. It concluded that the principle which sits behind the proposal, to improve awareness and practice among new employers, is a valid one which Acas supports and which sits well with the Acas mission.

In view of the following practical considerations, the working group concluded that the aims of the recommendation can be better achieved by a different approach:

- the likelihood that the use of vouchers could raise complaints of State Aid, unfair competition and HMRC/Acas use of privileged information
- the need to reach approximately 250,000 new employers each year (of whom some 140,000 do not formally have an accountant/intermediary)
- feedback from micro businesses that they are unlikely to be willing to travel far to attend a training course, meaning that to reach the desired audience, courses would need to be run so frequently and in such varied locations that it would impose a disproportionate cost to the public purse
- the need to satisfy Treasury rules which require consistent charging for all users of a defined service.

Acas plans to leaflet new employers through the packs which new employers receive from HMRC when they take on their first employee. These short leaflets, which can also be used as a wall poster, will include outline guidance on employers' obligations when taking on an employee and top tips to remember. They will also signpost new employers to businesslink.gov.uk's "Employing people" tool and to Acas's Helpline and website page for new employers.

Additionally, HMRC are raising awareness of Acas guidance and services through its EmployerTalk events and its Employer Bulletin.

The Government believes the proposed approach will better deliver the desired outcomes of making more new employers aware of their responsibilities and the resources available to help them comply with these responsibilities.

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.

The Government committed to aim to resolve issues of inconsistent guidance within 90 days. It also stated that enforcement bodies would consider, where discretion exists, not prosecuting or imposing a punitive sanction upon a business which has made a complaint of this type until the case has been resolved and to encourage Local Authorities to take the same approach.

Complete

Resolving issues of inconsistent guidance

A commitment ideally to resolve uncertainty over inconsistent or inaccurate guidance within 90 days is included under rule eight of the revised Code of Practice on Guidance.

The Government has also committed to respond to suggestions made to betterregulation.gov.uk within 90 days. In cases of inconsistent or misleading guidance, such a response should provide the person identifying the issue with advice on what action they should take in their particular circumstance or where else they can find advice. If the confusion with the guidance they have identified is likely to affect a significant number of users, published guidance should be updated or withdrawn by the issuer as soon as reasonably practicable.

Not imposing sanctions until such complaints have been resolved

The Crown Prosecutors' Code and the Regulators' Compliance Code require enforcement authorities to exercise discretion when considering whether to prosecute or impose a sanction. The former lists as one of its "common public interest factors against prosecution" that "the offence was committed as a result of a genuine mistake or misunderstanding". The latter, "when considering formal enforcement action, regulators should where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach".

In both cases it is acknowledged that this principle may be disregarded where particularly serious breaches of legislation may have occurred. Regulators may also impose a sanction if they have good reason to believe that the business concerned is deliberately using the reporting mechanism to avoid compliance.

The Regulators' Compliance Code applies to Local Authorities.

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.

The Government committed that the Local Better Regulation Office (LBRO) would work with national regulators and professional bodies to establish a common framework for competency to ensure the skills of regulatory services staff respond to the demands of their stakeholders, including businesses.

Ongoing

The Regulators' Compliance Code encourages regulators to provide clear and accessible guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Regulators should also provide targeted and practical advice that meets the needs of those they regulate.

A “Hampton-like” symptom identified by the guidance for Hampton Implementation Review teams¹⁸ is that “Advice and guidance materials are accurate, concise, regularly updated and written in plain English. Where appropriate, tailored to the full range of business requirements such as the needs of SMEs, particular sectors, etc.”

LBRO is working to simplify the complex local regulatory system and enable all local regulatory services to work more efficiently and effectively. It has a number of work streams exploring and promoting joined-up inspection and advice to business, tailoring advice and support to the needs of sectors and types of businesses, providing consistent and assured advice to business, and providing common and effective regulatory competence standards across local regulatory services. Progress on these areas includes the following:

1. **Competence Project:** LBRO’s “World Class Coalition” of national regulators and professional bodies, is developing a common competence framework for application across trading standards, environmental health, licensing and fire regulation. The core framework builds on a model developed by the HSE, the Chartered Institute of Environmental Health, the Royal Environmental Health Institute of Scotland and Local Authority Coordinators of Regulatory Services. The framework is applied through a bespoke assessment tool and complementary development solutions package. The framework and model have been agreed by the coalition, and the development phase will begin shortly. This project includes

¹⁸ <http://www.bis.gov.uk/files/file48275.pdf>

working with businesslink.gov.uk to provide web based sector specific advice using info from regulators and business

2. **Trading Places:** This is an exchange scheme between regulators and businesses to enhance the awareness and understanding of local regulators of the businesses they regulate. It has been in operation since April 2009 and has been well received by both regulators and the businesses which have offered placements. It is one of the development solutions which complement the business and customer skills elements of the competence framework discussed above.
3. **Retail Enforcement Pilot:** This tested the benefit and feasibility of common inspections across local regulatory areas and has provided valuable learning. All those authorities involved have taken the model further in some form and, in particular, LBRO has supported the Manchester Public Partnership to carry out a further joint inspection pilot. This work comes closer to providing the 'one stop shop' for local regulation that many small businesses would welcome.
4. **Primary Authority:** This is a statutory scheme to enable businesses which trade or work across Local Authority boundaries to receive assured and consistent advice, guidance and enforcement by requiring other authorities to respect the advice given by the business' selected Primary Authority. The scheme has been operating since April 2009 and allows a new relationship to be developed between the regulator and the business regulated, giving businesses more flexibility in how to comply. By January 2010 the scheme had created 79 partnerships, which represents 14,500 premises.
5. **SAFE and Micro business Project:** LBRO is working with the BRE to explore the specific regulatory issues experienced by micro-businesses and, through its Single Accreditation For Enterprise (SAFE) project, is exploring a range of potential solutions to meet the Anderson recommendations. These projects are in the early development and research phases.

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.

The Government committed that departments that deal with the business and voluntary sectors would consider how to include a measure of “customer” satisfaction in their strategic objectives. Executive agencies and regulators would decide how best to reflect customer satisfaction in their own objectives.

Ongoing

Departments and agencies which deal with the business and voluntary communities take very seriously the views of their “customers”. Increasingly, across government, organisational level strategic objectives and performance measures include aims to improve customer experience and perceptions. Organisations are encouraged to seek formal and informal feedback, conduct customer satisfaction surveys and set targets for performance in this area.

HMRC’s Strategic Objective 2 to ‘Improve Customers’ experience of HMRC and contribute to improving the UK business environment.’ aims to:

- 2.1 Make customers feel it has become simpler for them to do business with us
- 2.4 Provide a better service for all our customers
- 2.6 Reduce administrative burdens on business

The Export Control Organisation within BIS, publishes a service and performance code, which states its commitments to customer service, including timescales for responding to complaints and encourages ongoing feedback via an email address¹⁹.

The Food Standards Agency conducts a regular survey of its stakeholders around every two years²⁰. It also holds frequent consumer attitude surveys²¹.

Local Authorities’ Comprehensive Area Assessments include an assessment of performance and prospects for improvement against Local Area Agreements and the wider set of National Indicators (NI). This includes NI 182 on “Satisfaction of business with local authority regulatory services”.

¹⁹ <http://www.bis.gov.uk/policies/export-control-organisation/eco-contact-details>

²⁰ <http://www.food.gov.uk/news/newsarchive/2009/sep/stakeholders>

²¹ <http://www.food.gov.uk/news/newsarchive/2010/jan/trackerdec09>

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.

The Government committed to set out plans to promote changes to government guidance, including through businesslink.gov.uk and to publish a short progress report on these recommendations in Spring 2010.

Ongoing

The Varney Review²² committed to improve access to guidance by converging all Government-originated business-facing web content onto businesslink.gov.uk and for most standalone web sites to be closed down.

Government guidance is communicated through the consistent use of this national website. [Businesslink.gov.uk](http://businesslink.gov.uk) messages have been reinforced by the service's public relations activities which reached a potential audience of nearly 100 million per month through 1,500 media items during 2009.

For example, the Employment Law Guidance Programme is helping SMEs understand and comply easily with requirements by directing them to the type of advice that best meets their needs. Communications activity has included:

- **Direct mail/e-mails** to promote the tools available on businesslink.gov and specific messages about legislative change. Over four million businesses have been sent direct mail pieces during the programme.
- **Press adverts** placed in national broadsheets and tabloids
- **Online search activity** to drive traffic to the businesslink.gov website
- **Employment Law Organiser**²³ downloadable desktop that acts as a shortcut to the core content on businesslink.gov.uk
- **Press articles** – SME Ambassadors, including Simon Woodroffe of Dragons' Den and Yo! Sushi, have been used to gain coverage in articles and on business websites (over 45 since January 2010)
- **Work with stakeholder advocates** has included: messages in the regular HMRC Bulletin for employers; editorial in Investors in People magazine; distributing co-branded copies of The Good Employer Guide through business representative bodies; and securing links to the Employment Law Organiser on the websites of professional and trade associations.

This document is the progress report committed to in this response.

²² http://www.hm-treasury.gov.uk/d/pbr06_varney_review.pdf

²³ www.businesslink.gov.uk/employmentlaworganiser

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