



# **Better Regulation Bill**

The UNISON Scotland submission to the Scottish Government Consultation

**October 2012**

## **Introduction**

UNISON is Scotland's largest public sector trade union representing over 160,000 people delivering services across Scotland. UNISON members deliver a wide range of service protecting the public: environmental health, food hygiene, meat hygiene and planning. UNISON Scotland is able to collate and analyse member's experience to provide evidence to inform the policy process. We therefore welcome the opportunity to submit evidence to the consultation on the Better Regulation Bill.

## **Response**

### **General comments**

UNISON is concerned that rather than better regulation the proposed bill is aiming for less regulation. The basic premise is that "Better regulation is crucial to delivering sustainable economic growth and providing a favourable business environment in which companies can grow and flourish." There is little evidence to support this view as even the consultation admits: "At this stage we have been unable to quantify costs and benefits in any proper way." Everyone supports clear unambiguous legislation, particularly our members who have to implement it. However, complaints of red tape are rarely about the detail of specific legislation, instead they are about regulation in general. This is because some employers' organisations promote the myth of a 'red tape' crisis to try to dissuade governments from defining minimum standards for workers; consumer rights and safety; protection for the environment and safety. The UK version of this approach is specifically being used as an excuse to weaken employment rights and undermine health and safety.

Regulations don't just protect the public from unscrupulous and dangerous practices they protect other businesses as well. Companies who don't follow the rules can offer a cheaper and/or faster service this makes it difficult for those who do the right thing to compete. Fly tippers can charge a lot less than those who pay to have their waste disposed of or recycled. This drives down profit margins and increases costs for taxpayers who have to pay to have streets cleaned.

The OECD has developed measures of the administrative burdens on business and whether regulation is more or less strict. The UK ranks lower than virtually any other OECD economy on all the indicators. UK government research also suggests that the methodology used for employer organisations surveys is flawed; in they are most likely to be answered by a group of small business employers who are over-pessimistic about regulation. For most businesses it simply isn't an issue. The consultation quotes support for change from the Federation of Small Businesses (FSB) but even their report indicated that less than a third of those who responded see regulation as a problem for their business. The examples given in the consultation, like the misunderstanding about refreshments, shows poor understanding of regulations by individuals not poor regulations. A national standard is not the best route to tackle performance management.

These proposals have particular relevance to local authorities and NDPBs who carry out regulatory functions like environmental health and planning. The Scottish Government is proposing to take major powers of direction that could further undermine local democracy. The core proposal is for new powers enabling duties to be placed on local authorities and other regulators to

implement national regulation systems and policies except where a local authority makes a compelling case that local circumstances merit a variation. This effectively turns local authorities into the administrative arm of central government. UNISON has on occasion been critical of local authorities for reinventing the wheel, when some strong guidance from CoSLA would have ensured greater consistency, without undermining genuine local responses. However, the solution to that difficulty is better coordination and best practice guidelines, rather than imposition from government.

The consultation also returns to proposals that have previously been questioned like review measures and sun-setting to ensure regulation is kept up to date, is effective and removes that which is no longer needed. It is highly questionable if these approaches are anything other than a gimmick, particularly the 'one in, one out' approach. There is nothing wrong with ensuring that regulations are relevant but setting a fixed number for regulations will in no way ensure that this is the case.

Scotland has the highest level of E-Coli infection in the world, three people died in a recent outbreak of Legionnaires' Disease in Edinburgh cutting back on vital regulation and inspection can and will costs lives. This proposed Bill is chasing the wrong target. All the evidence shows that businesses succeed because they have a good product or service to sell, which is delivered in a well-organised way. In contrast, deregulation favours 'cowboy' employers who want to race each other to the bottom of the hill. The government's role in supporting business and the economy is through building and maintaining infrastructure, a functioning legal system and through providing education and healthcare so that employers have a well educated population to provide employees and customers. Regulations are part of that legal system, they ensure that businesses operate of a fair playing field and that ordinary people are protected.

### **Define and implement national standards and systems**

Local Government has its own democratic mandate. The Scottish Government's proposal will further centralise services and limit the scope of local government to respond to its citizens. Authorities should be able to set their own standards and respond the local situations. A more constructive approach is through national guidance which can promote best practice without reducing the autonomy of local authorities. There is no evidence that national standards would improve public safety or support businesses. As stated in the consultation: "At this stage we have been unable to quantify costs and benefits in any proper way."

This is not unusual, as one European study of better regulation initiatives concluded, "Relatively few of the initiatives included an assessment of the intended benefits regarding environmental outcomes, or cost savings to business and regulatory bodies. The example given in the consultation regarding the provision of tea and coffee shows that the officer concerned didn't understand the rules. There is no evidence that this was because they were set locally. This is poor implementation not poor regulation.

National standards and systems conflict with the bottom up approach recommended in the Christie report which the Government welcomed. UNISON does have feedback from our members working in food hygiene and environmental health that cuts are impacting on their ability to protect the public.

Adequate funding for services, like food hygiene and environmental health, is a better way to avoid the issues raised by the FSB than cutting back or centralising.

The best way to ensure that regulation and inspection works for business and consumers is to focus on helping business meet standards rather than reacting to failure. The Food Safety Department Great Yarmouth Council have seen real improvement from taking this route. The department faced the double challenges of being bogged down in reactive work and so unable to be proactive in promoting prevention and were facing budget cuts. This meant there was little possibility of employing new staff to deal with the growing workload.

They spent some time consulting with staff and the businesses they inspected as well as the public. Key learning from the process was that the team was spending a lot of time replying to members of the public who did not want a reply and that there were a 184 steps to the food inspection process, 116 of these steps came about because officers had to re-turn to the office to sign off work. This led to work being handed off to 11 different sections just to get a letter sent off to a food business. Inspectors also focused on meeting inspection targets rather than the core of their jobs which they agreed was "to ensure food for public consumption is safe". The new ways of working mean that officers spend less time in the office. They are out with businesses rather than filling in forms. Businesses are clearer about how to meet standards rather than focusing on where they fail to comply.

### **Duty to improve economic and business growth in regulatory activity**

UNISON believes that the key role of regulation is to protect citizens. Scotland has a poor history of food hygiene with the highest rates of E-coli in the world. Three men died from an outbreak of Legionnaires Disease this year. Days are lost at work through accident or ill-health caused by poor food hygiene, substandard housing and accidents at work. All of these are a greater burden on our economy than adhering to regulations. The majority of businesses surveyed by the Federation of Small Business did not see regulation as a major problem for their businesses.

The role of regulation in improving economic and business growth is in providing standards that all have to adhere to. This protects businesses from unscrupulous or illegal actions from other businesses and from pressure to squeeze their margins when others are doing so by endangering the public. The primary role of protecting the public should not be overridden by a duty to promote economic and business growth.

### **Reviews and sunseting**

It is highly questionable whether the reviews and sun-setting are anything other than a gimmick: particularly the 'one in, one out' approach. There is also a risk of setting up another layer of bureaucracy to undertake the reviews. This process would also undermine the role of local authorities in deciding on their own regulatory structure.

### **Prompt payment**

While clearly the public sector should pay its bills promptly this proposal seeks to add more regulation and administrative costs to the public purse. UNISON does not believe that adding a statutory deadline for payment is the best way to

improve efficiency. The deadline would push staff to prioritise the deadline over accuracy. There would also add a new layer of bureaucracy to monitor the payment deadline adding extra costs.

### **Common commencement dates**

UNISON's experience of employment law suggests that common commencement dates work well. The common dates help communicate changes to our members and plan how to implement change. There is a need to ensure that there is scope for specific legislation to be implemented quickly if required.

### **Transferable certificates of food hygiene compliance for mobile food business**

UNISON believes that there may be some merit in transferable certificates for mobile food businesses. Looking at the example cited in the consultation, it seems that areas such as the Highlands where businesses may be a long way from base would insist of having different cleaning facilities in a mobile unit than an urban authority. Therefore our members working in food hygiene believe that certain safeguards would be required. Businesses can't be allowed to "shop around" for lowest standards. They would have to have a reasonable attachment to the area where they are inspected and issued a certificate. Local authorities must still have the right to inspect any business operating in their area to ensure that there was no danger to the public.

### **Linking planning application fees to the performance of the planning authority**

Despite the radical reform of the planning system in 2009 the government is proposing further changes to the performance management of planning authorities. The proposal to link fees to the performance of the planning authority is a management approach is normal for NDPBs, but this would be a major interference in the role of councils. Such scrutiny is the role of democratically elected councillors.

UNISON is concerned that this would impact severely on the already constrained planning budgets. Delays are due to underfunding and heavy workloads. They deal with a range of issues from large developments to house extensions. The number of planning disputes and often bitter and lengthy neighbourhood feuds over boundaries, extensions and hedges show how important it is for planning decisions to be right in the first place. This requires adequate funding. UNISON is not aware of any evidence that punishing public or private sector in this way drives real improvement. This comes instead through adequate funding and staffing levels and empowering staff and giving them the time to reflect learn and implement change.

### **Conclusion**

UNISON Scotland represents a UNISON members deliver a wide range of regulatory services including environmental health, food hygiene, meat hygiene and planning. We also represent a range of health workers who deal with the

consequences. UNISON is concerned that this bill will weaken the essential protections needed to ensure that Scotland is a safe place to live and work. We therefore welcome the opportunity to submit evidence to this consultation.

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