

Response by the Professional Contractors Group to the consultation document on the proposed Better Regulation Bill

Introduction

The Professional Contractors Group is the representative body for freelance contractors and consultants in the UK. Our members work in a wide variety of sectors including IT, engineering and oil and gas extraction. As the smallest of small businesses, PCG members are supportive of efforts to enable the more efficient revision of regulation and pleased to see an acknowledgement from the government, however tacit, that regulation in recent years has at times been more zealous and well-intentioned than it has been effective.

PCG is also pleased to hear of some of the other initiatives referred to in the consultation document. The Varney review's ambition of creating a single tax account and single point of contact with HMRC, to which information is provided only once, sounds extremely promising. The wholesale review of regulatory penalties by the Better Regulation Executive is also of great interest to us and we will be keen to contribute to it at an appropriate juncture.

A response to the questionnaire included in the consultation document follows, but a few additional observations are included here. Firstly, we would observe that the Regulatory Reform Order would certainly seem to be a powerful tool for amending legislation, but that this could cut both ways. RROs are only as good as the intentions and competence of the government deploying them and thus rest to a large extent on the ability and will of the government to put forward effective reform and not to increase regulatory and administrative difficulty. PCG hopes that future RROs will be as well-publicised as any legislation, to allow ample opportunity for stakeholders to offer their views and expertise as the Orders undergo parliamentary scrutiny. We also hope that the use of RROs and the comment on page 14 of the consultation document suggesting that recommended changes need only be approximately implemented does not signal the beginning of a "that'll do" approach to government.

Responses to questions posed in the consultation document

On questions not answered here PCG offers no specific comment.

Chapter One: Amending the Regulatory Reform Act 2001

Recommendation One

- Do you think it is appropriate that RRO powers should be extended to allow the implementation of simplification measures and uncontroversial Law Commission recommendations?
Yes. PCG very much welcomes the approach of the consultation document concentrating on the overall regulatory burden rather than each regulation. We are also impressed with the potential usefulness of RROs: the speedy reform of legislation that has proved problematic is highly desirable. The speedy formulation of regulation itself is less desirable and PCG hopes that the use of RROs will not lead to new measures being as ill-thought-out as those they replace.
- Are there other ways in which the powers should be widened in order to enable the delivery of better regulation and law reform measures?
No. RROs are still novel and innovative; PCG would prefer changes at this stage to be limited to the tweaking of RROs suggested in the consultation document.
- Do you agree that the simplification and Law Commission powers should be separate from the burdens element?
Yes.

Recommendation Two

- Do you agree that the reference to activity should be removed?
Yes.

Recommendation Three

- Do you agree that the block on reforms that only remove or reduce burdens on Ministers or government departments should be removed?
No. PCG feels that this would remove an incentive for departments to get legislation right in the first place.

Recommendation Four

- Do you agree that the proposed simplification powers should be defined in this way?
Yes.
- Do you agree that the simplification power should allow for some substantive amendments to legislation? In what circumstances would substantive change be appropriate?
Yes. The limit to substantive change should be defined by the reactions of the parliamentary scrutiny committees: if even a small minority objects to the changes, they should be shelved until full legislation can be introduced.

Recommendation Five

- Do you agree that there should be a power to implement Law Commission recommendations by Order and that the power should extend to proposals for the reform of common law?
Yes, the power should extend to implementing Law Commission recommendations, but not to reforming the common law. The separation of powers between legislature and judiciary is one of the key features of the constitution and if the common law is to be superseded it should be by full legislation.

Recommendation Six

- Do you agree that the current safeguards should be maintained and applied comprehensively across all three types of orders?
Yes.
- Do you agree that the requirement to provide an estimate of savings or increased costs should be extended to cover a wider impact assessment, where appropriate?
Yes.

Recommendation Seven

- Do you agree that the two-year rule should be removed?
No. Again, we feel that this would remove an incentive to get the legislation right in the first place. It is also not clear that the impact of regulations can be fully assessed within a period of much less than two years, other than in cases where they have been hopelessly mis-judged. A reduction of the period in question from two years to eighteen months might strike a better balance between allowing time for the impact of regulations to become clear and allowing for manifestly unsuccessful regulations to be removed.

Recommendation Eight

- Do you agree that RROs should be able to provide for sub-delegation provided that proposals are subject to the usual safeguards?
No. RROs are already radical measures and adding to this the ability to beget secondary legislation, when they are themselves secondary legislation, would be a step too far at this point.
- Is it desirable that all RROs should receive the same level of scrutiny, regardless of size or complexity?
This is a leading question. All RROs should be thoroughly scrutinised and it is unacceptable for them to be “nodded through”. In response to the enormous disparity in length and scope

between various RROs, PCG would suggest that simple RROs should be subjected to thorough scrutiny and more complex ones should be subjected to even greater scrutiny.

- Is the super affirmative procedure necessary for all Orders, or could some be delivered by the faster procedures for ordinary statutory instruments?
The super-affirmative procedure should be used for all Orders.

Chapter Two: Implementing the Hampton Review

- Do you agree that the Enforcement concordat should be updated as described?
Yes. PCG will be keen to contribute to the consultation on this issue when it is launched.
- Should the Concordat apply to national as well as local regulators?
Yes.
- Should the concordat be put on a statutory footing?
Yes.
- Should the government take a power, as described, to update regulatory structures?
Yes. PCG has been impressed by the proposals for streamlining the range of regulators and supports efforts to update regulatory structures.
- Are the safeguards proposed adequate to ensure the powers are used appropriately?
Yes.
- Should these enabling powers be limited to completion of the Hampton review recommendations or wider so as to include mergers not identified by the Hampton review?
Enabling powers should, in the first instance, be limited to the completion of the Hampton review recommendations.
- Should the government take a power in this bill to deliver penalty regime reform?
Yes.
- Should such a power be limited to reforms coming out of the BRE's penalty review?
Yes.