

A new Office for Product Safety & Standards (OPS&S) has been created to provide national capacity on product safety. The OPS&S supersedes the former Regulatory Delivery directorate.



Department for  
Business, Energy  
& Industrial Strategy

Regulatory Delivery

## **Business Reference Panel**

**10:30 – 13:15 – Wednesday 6 December 2017**  
**Westminster Conference Centre, 1 Victoria Street, London**

### **MEETING NOTES**

#### **1. Welcome and Introductions**

Gordon Maddan welcomed everybody to the meeting. For new members, Gordon explained the purpose of the panel, which is to bring together regulatory experts from a broad range of sectors, to help government to gain a steer from businesses on how experiences of regulation can be improved on the ground.

#### **2. Industrial Strategy**

Greg Dyke, BEIS Industrial Strategy Team, gave an overview of the Industrial Strategy. This contains five foundations:

- Ideas
- People
- Infrastructure
- Business Environment
- Places

The Business Environment strand looks at a holistic view on a how specific sectors are regulated.

The Places strand includes Local Enterprise Partnerships, Growth Hubs and Primary Authority. A Business Strategy Council has been set up, looking ahead over the next five years. Although some deals are already agreed, there are still other ways to become involved.

Kathryn Preece, Regulatory Delivery, gave an overview from RD's perspective. There are opportunities within the Industrial Strategy. The biggest impact is probably within the Business Environment foundation.

The Strategic Regulation team works with business organisations, LEPs and local authorities, where regulation is delivered to simplify the local landscape. It is important to see regulation being recognised as part of business support. The Industrial Strategy expresses firm commitment to Growth Hubs and LEPs. Local businesses and Growth Hubs work together to provide a one stop shop.

The Industrial Strategy includes a review of LEPs, looking to strengthen them and offering additional funding. RD has built up good relationships with the LEPs through development of Better Business for All regulatory partnerships.

Exports feature in the Industrial Strategy, and RD is working with the Department of International Trade to enable local regulations to support exports. The Industrial Strategy refers to joining up the export advice, and regulation needs to be considered as part of this package. PA is embedded in the Industrial Strategy, supporting the continuation of government in supporting businesses to comply. Primary Authority is now available to all businesses and Growth Hubs support PA.

Discussion:

- A food sector council is currently under discussion, being led by Defra. If any of the BRP wish to become involved, please let us know.
- There are no LEPs in Wales, so RD is working with groups of Welsh authorities who have a similar synergy. This is covered in the final chapter of the Industrial Strategy on Places.
- Some members felt that the Government still appears to function in silos, and the Industrial Strategy does not do enough to address leadership and co-ordination. This is because the Council is largely looking at how things currently work.

If any members wish to contact the Industrial Strategy team, please contact:

[Greg.Dyke@beis.gov.uk](mailto:Greg.Dyke@beis.gov.uk)

### **3. Rotational Sessions (Group A: Large and Multi business; Group B: Small business/TAs; Group C: Food)**

#### **a) Drivers of Compliance – what works to drive change in compliance behaviour?** Presented by Prof Chris Hodges, Oxford University, and Chris Hunter, RD.

Chris Hodges:

A move from criminal to civil can be easier for regulators but more important is the shift in terms of supporting behaviour change. The aim is to widen the enforcement toolbox and to work out in which circumstances the appropriate tool is used. The objective is to support ethical businesses and solve problems – to identify the problem, share information and undertake root cause analysis to identify the real cause. Non-compliance is a symptom of something deeper that can be solved by applying a fix, repairing any damage and moving on. Ethical business regulation is about sharing information on problems and finding solutions – the last thing you want is for problems to be ignored and not sorted. Assured advice solves more problems and thus improves the level of compliance.

Chris Hunter:

Want to determine the appropriate balance between criminal and civil sanctions for technical regulation falling within the RD remit. Do we have the right range of approaches? Civil sanctions are fairly common in environmental regulation including some areas for which we are responsible – WEEE and ROHS. The options are currently more limited in product safety and legal metrology.

Group A:

- TS have quite a range of sanction possibilities civil and criminal. In practice they use informal contact or criminal prosecution – there does not appear to be an incentive to use civil sanctions.
- HSE revised sentencing guidelines have driven behaviour towards a formal prosecution route.
- Civil sanctions need to be easy to apply and the benefits for compliance recognised.

- The rationale for civil sanctions varies – in some cases its around redress to repair an issue. OFGEM are now imposing a small penalty based on the business then doing the right thing to provide redress to consumers affected. CMA appear more focussed on punitive sanctions.
- TS weak and under resourced and Government is turning a blind eye.
- Lack of enforcement at all in some sectors is a real problem. Legitimate businesses having invested in standards and compliance being undercut on price by those that have not. Need hard enforcement against cowboys.
- Where is the reward for businesses doing the right thing? There should be benefits to open book accounting approaches on compliance.
- There remains huge inconsistency between individual local authorities for example some local authorities will still formally challenge for one food product one day out of date.
- Shouldn't have choice of both civil and criminal sanctions covering the same circumstances. There is little incentive to be open and share information with the threat of criminal action in the background.
- There need to be well set out appeals and defence provisions. Civil processes are less clear.
- Product stewardship programmes have a role to play in supervising industry standards.

#### Group B:

Members were asked for views on the current suite of sanctions and increasing the range:

- More important for regulators to use the tools they have already
- What is happening to enforcement of rogues, too much focus on talking to business - regulations need to be enforced
- Regulators fail to look at the impact of non-compliance on the rest of the sector. This leads to increased costs and therefore customers opt for cheaper products which undermines safety
- TS focus on the regulations that are easier to enforce rather than the more complex regulations
- Tendency to prosecute simple issues as they are black and white. As soon as it gets complicated then enforcement falls apart. TS don't have the understanding and technical expertise. Danger of a 'traffic warden ' mentality. Squeeze on regulators has caused this
- Need market surveillance, expertise and enforcement
- Need legal aid for enforcement agencies - national fund
- There is an onus in toy safety for business to prove a toy is safe, have a technical file. It is not up to the regulators to test and prove safety
- HSE Fee for Intervention started with relatively low amounts but now cases more complex and costing £1000s. Inspectors not competent and using experts and costs just rise beyond control of business
- Tyre sector has worked with HSE to produce guidance

#### Group C:

- Largely members talked more generally than the specific question about whether the sanctioning regime for product safety and metrology was appropriate.
- Felt sanctions needed were there but not being used enough.
- Discussion on the view that prosecution judgements were sometimes thought to be out of step of what is deserved and that it is difficult because enforcement authorities don't have control over the judgements as these have to go to court.
- There was some discussion about whether sentencing guidelines are followed.
- Discussion about the need for regulators to give advice, to take an approach of building trusting relationships and helping businesses to comply. There was a specific example of

where one business was non-compliant but the LA helped them to understand what they had to do which was effective.

- Food supplement sector are sharing intelligence with the FSA food fraud intel unit in relation to “rogues” that they are aware of in their sector. Other TAs expressed an interest in this.

**b) Innovation, standards and regulation – creating a pro-business regulatory environment**

Presented by Steve Brunige, BSI, Ian Cass, FPB and Rod Freeman, Cooley LLP

Group A:

- Robustness of process and opportunity for all to engage with the standards making process is important.
- On line collaboration tools rather than focus on meetings – an agile standards development process.
- Concern that standards making process was too slow.
- Standards might have a role to play in regard to provision of food information on line.

Group B:

- There is sometimes a pressure to get new products to market before anyone else and therefore testing may not be as rigorous. Role here for standard?
- Why is regulatory lag so prevalent when society knows the issues, eg social media. Does this mean it is time for a different process for passing legislation?
- Perhaps we need a different mindset, not wait for perfection in regulations, but be prepared to adapt.
- Role for UK to lead here post EU Exit, as we have a good understanding of standards
- Is it possible that we are too keen to promote innovative technologies etc and do not want to hinder through regulation. There is a balance to be struck between business and protecting the citizen.

Group C:

- How can government keep up with innovation? It can't so it needs to be flexible when designing regulatory solutions. Policy makers need to accept this, and to better evaluate whether the system is working to support innovation. Use of standards can be a quicker and more flexible approach than regulating.
- Nutrition and health claims regulation – one member raised this as a barrier to innovation and asked how we could get rid of it as part of EU Exit
- Will BSI be in CEN/CENELEC on EU Exit? Working towards this, negotiating with other national standards body and looking to identify when the right time to suggest changes to statute of membership of CEN/CENELEC.

**c) Supporting Regulator – delivering the vision in RD and other regulatory areas**  
Presented by Amanda Farrell and Adrian Hall

Group A:

- Advice is only assured if it can be relied on in a court of law. PA advice should remove the possibility of going to court.
- Businesses need assurance that if they comply with assured advice that they will be safe.
- PA's must nail their colours to the mast in terms of interpretation of guidance in your particular circumstances.
- May be benefit for national retailers for inspection plans to be signed off by the national regulator.
- T/A's have potentially a lot to benefit from agreeing sectoral approaches with supporting regulators through PA in providing certainty to their members.

Group B:

- Inspection & certification industry have developed guidance with HSE and have sensed a love/hate relationship between HSE & local authorities. What has been the take up of LAs asking HSE for help?
- EHO's technical skills have diminished as the focus in recent years has been more on food than H&S
- Coatings industry commented on the disconnect between DEFRA and TS as TS don't understand the regulations and DEFRA assume they do
- HSE under DWP but enforce with business, policy and delivery in different departments. Impossible to engage with DWP on H&S, been trying for 4-5 years to discuss how HSE regulate, there is no one to liaise with in DWP

Group C:

- A specific issue was raised where the Supporting Regulator principle should assist members of a trade association in gaining certainty on how to comply, but in reality FSA had not engaged as yet. It is expected that the FSA will engage once their Board has signed off their Supporting Regulator "offer".
- Butchers that supply meat products to businesses that will then serve the meat "uncooked" – eg restaurants serving rare burgers, are being asked for different information as part of the supply chain due diligence and where the restaurants they are supplying are in multiple local authority areas are being given different advice by different local authorities on requirements.
- Some members have asked FSA for advice but not got anywhere. They have developed some PA advice, but really needs to have FSA signoff to the approach. The current lack of engagement from FSA was related to the fact that FSA Board have not yet signed off the Supporting Regulator offer. There were some concerns about whether the FSA have the right expertise and capacity in house to offer this sort of technical support.
- How do other relevant regulatory departments fit into Supporting Regulator, eg DoH, Defra. In this example FSA would be seen as the gateway to involve policy holders where appropriate.
- General discussion ref capacity/skills/expertise in national regulators to actually make this work in practice. A number of BRP members mentioned their view that government has cut back regulators too much now, to the point where they don't have the numbers of staff, or those they have don't have sufficient technical knowledge to fulfil this role. Cost recovery is part of the solution to supporting better retention of skilled staff, but clearly members felt that this might not work.

General:

- It is good as it provides a mechanism to formalise relationships
- Good if this can sort out the 'rare burger' issue and the NFMFT are happy to write the guidance.
- Would be beneficial if could ensure earned recognition for food hygiene inspections.
- Government are looking for industry to fund and produce advice, both FSA and HSE
- Already work with the HSE on guidance
- Concern about the resources and expertise at the national regulators, this is a huge risk
- No point complying with advice if the ASA and others can ignore
- More national regulators to be included, e.g. Defra, DoH
- On a related note, a couple of different delegates indicated that it is difficult for businesses to engage with Defra, and with the DWP.

#### **4. Update from Regulatory Delivery**

Graham Russell addressed the panel; with the challenges on EU Exit for Government, looking at having to take decisions now for what will happen in the next few years and the aftermath of the horrific events of Grenfell Tower all giving a challenging back drop, it would be very easy to focus on negatives and challenges. However, many good things have also happened to focus us and to give us optimism. Graham highlighted three 'Ts':

- **Together**

Panels such as this are the best way forward. Graham extended thanks to all BRP members, both those long standing and the newer members. Much can be achieved together, and the PA extension is a big part of that. The best way forward is to talk and to trust each other; taking PA forward is a big part of the plan for the next few years. There are currently 60,000+ businesses in the scheme, and the target is 250,000 by 2020.

- **Technology**

There are new ways of working with product safety and other new products, especially around product recalls and other regulatory areas. Technology is being used in delivery and the use of data to inform choices. It is exciting to see what we can do to regulate better, and use data more effectively.

- **Tomorrow**

Looking forward to resolving many of the things that we are working on together. Significant progress has been made over the last nine years, and we have a good track record of what we have done together.

There is no denying there are still challenges ahead, but Graham once again extended his thanks to all members of the BRP for their continued support.

Discussion:

- There is a £10m fund available for new innovative approaches to regulation. This is run by BEIS, and this forum can be used to put ideas forward. This will be included on the March 2018 agenda.
- The Minister has re-vamped the working group on product recalls and safety (WGPRS), picking up on how businesses could support this. One of the outputs from the group was the production of a new Code of Practice to give greater clarity to both businesses and

regulators as to what the appropriate level of performance should be. Today is the final day of consultation on the Code, which is set for publication in 2018.

- Neil Gibbins, Chair of the WGPRS, said the standard has been driven forward, bringing together everyone who can make a difference in ensuring the products placed on the market are fit for purpose, with any faults identified. The new Code of Practice will benefit both businesses and regulators and will be an improvement in public safety.
- Brian Such, a member of the WGPRS, said the co-operation of the group members has enabled the Code to be developed in a very short time frame. The PAS provides guidance for business, particularly on how to pre plan corrective action and co-operation with the relevant regulatory authorities.

Everybody has a role to play in how this is promoted and embedded across all industry sectors.

## 5. EU Exit

Aaron Dunne, HMRC, Chaz Walia, DEXEU, and Holly Harkins, RD, presented this item.

Government has been listening to businesses, and is now at a pivotal point, waiting to hear the outcome from the December European Council. There are two phases to exiting the EU, phase 1 includes agreement on the way forward on citizens' rights, the divorce bill and Northern Ireland.

Phase 2 covers future trade and security partnership. It is important to move to phase 2 in the New Year. Although there are still some issues to be resolved, good progress has been made and both sides are confident completion will be made in December.

Many businesses have been frustrated by the Government just listening to them but saying nothing. The next phase should include more consultation. There will be more strands with consultations and opportunities to feed back to government.

The next EU Council is being held on 14/15 December, and any news will appear in the press as it happens.

The HMRC has engaged with many entities, and has received around 100 responses to the White Paper. The Customs Bill has been renamed the Taxation and Trade Bill and has its second reading early in the New Year. It is primary legislation, thus enabling legislation, and it is to replicate the Union Customs Code. It will be aligned to what we already have. The next 6-12 months will be spent engaging with stakeholders on the SIs (secondary legislation), looking at the finer detail.

RD has been working on the Withdrawal Bill as it works its way through Parliament, driving secondary legislation to ensure we have a Product Safety and Legal Metrology regime ready to go on day one. All scenarios for all outcomes are being looked at, with the priority to lift and shift the 50 current pieces of secondary legislation. Thanks were extended to the BRP for their input into this. RD is working across government, having more detailed conversations on the impact it will have for RD.

Discussion:

- Are there any plans to beef up market surveillance? Good businesses are being undermined by VAT fraud, and there will be an opportunity for tariff fraud. There is a debate on what will change when we leave and the change in risks.
- Many product regulations already have legislation. What is the appetite to change any of this? The focus is on lifting and shifting on day one, and the consensus was that if it is not broken, do not try to fix it.

- A sub-group of the BRP is the Trade Facilitation Panel, looking at import/export issues. This has an overlay of interest with EU Exit. The next meeting will be held on 28 February, with Howard Levine as chair. Carol Garrett is a member of the group, who heads up a TS team at Felixstowe on goods coming into the UK. For further information on this group, contact [Stewart.Gibbon@beis.gov.uk](mailto:Stewart.Gibbon@beis.gov.uk)

## **6. Future Business Reference Panel Dates**

Wednesday 7 March

Wednesday 13 June

Wednesday 19 September

Wednesday 5 December

Many thanks to Andrew Litchfield, Gowling LLP, for kindly offering to host the March meeting.

Should any other members be able to host any of the above meetings, please let Lynne Howard know.