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Making Better Regulation, Making Regulation Better?

Introducing ‘Better Regulation’

In 2004, Chancellor of the Exchequer Gordon Brown established the Hampton Review, to consider “the scope for reducing administrative burdens on business by promoting more efficient approaches to regulatory inspection and enforcement without reducing regulatory outcomes”. (Hampton 2005) The announcement followed a year in which anti-regulatory tape rhetoric had been considerably ratcheted up amongst senior echelons of Government and the civil service, and across a range of print and broadcast media outlets. (Tombs 2015; Almond 2009) Hampton’s remit encompassed all (63) major, national regulators, as well as 468 local authorities (Hampton 2005, 13, 3).

Hampton’s subsequent 2005 report – *Reducing Administrative Burdens: Effective Inspection and Enforcement* – was a turning point in the trajectory of business regulation and enforcement across Britain. It called for more focused inspections, greater emphasis on advice and education and, in general, for removing the ‘burden’ of inspection from most premises. Citing the work of Ayres and Braithwaite (1992) on responsive regulation, the report drew upon risk-based claims as the basis for withdrawing inspectorial scrutiny from compliant businesses (Hampton 2005, 27). The “consensus” established in and through this review and report (Vickers 2008, 215) marked the consolidation of the establishment of what had already been termed ‘Better Regulation’. This entailed a formal policy shift from enforcement to advice and education, a concentration of formal enforcement resources away from the majority of businesses onto so-called high risk areas, and consistent efforts to do more with less, bolstered by (somewhat Orwellian) claims that less is more (Vickers 2008).

For students of business regulation and enforcement, Better Regulation is a significant initiative. Almond and Colover (2012) recently characterised work on regulation in terms of a “‘deterrence school’ of thought” and a “regulatory orthodoxy”. The former, they claim, advocates “tough penalties and a proactive enforcement strategy” and is inherently punitive, based upon a prescriptive, command-and-control model of regulation. In contrast, what they

term the “regulatory orthodoxy” suggests a more selective use of the threat of prosecution as a ‘last resort’ (1010) and in general, “gives support to approaches that utilize enforcement rarely and prioritize compliance-centred, accommodative, self-regulatory strategies of risk *management*” (emphasis in original; Almond and Colover, 2012: 1000). Whether cast in terms of risk-based, smart or responsive regulation – all of which have been invoked as rationales for Better Regulation by its policy and political advocates – this orthodoxy requires a minimal level of inspectorial presence for at least two reasons: first, if regulatory resources are to be effectively targeted then there needs to be a credible level of intelligence as regards the regulated population; second, because a credible resort to formal enforcement must remain, even if only in the last instance (Tombs, 2015). One of the weaknesses of all forms of the regulatory orthodoxy is, however, its failure to provide any evidence for what that level of inspectorial resource should be, either in qualitative or quantitative terms. And this is one of the deficiencies within the literature which has made it vulnerable to use by those who would claim that effective (better) regulation can proceed on the basis of ever declining inspection and enforcement (Tombs and Whyte, 2013).

In policy terms, Better Regulation can be traced back to the 1990s, and in the UK and in the EU it received particular impetus from the first Blair Government, elected in 1997. For example, that Government established, in 1997, a Better Regulation Task Force which was to develop and institute the five basic principles of BR across Government, to be most fully established in 2005. (Better Regulation Task Force 2005) Blair had emphasised the bases for ‘Better Regulation’ in 1998 in the context of Britain’s Presidency of the EU. In a Comment piece for the *Financial Times*, he set out his views on regulation – neither “old left nor old right” (Blair 1998, 18), in a classic articulation of the then-still fashionable ‘third way’ approach (Dodds 2006, 526). “The argument is not the old one – more regulation against less regulation. Our focus is on getting regulation right – better regulation ... regulation that will improve, not hinder, business competitiveness” (Blair 1998, 18).

Thus he committed his Presidency of the EU to ensuring that better regulation becomes “a priority for Europe” (18). In fact, it was to be Blair’s second Presidency of the EU in 2004 which was to prove one of the pivotal moments in advancing Better Regulation through the EU (Wiener 2006). So much so that, by 2007, one commentator was able to note that, “Better regulation has become ‘*one of the most fashionable terms circulating in the corridors in Brussels*’” (Allio 2007, 82, emphasis in original).

The European Commission's vice-President Verheugen was clear on both the nature and the aim of Better Regulation in "a highly publicised press conference" in 2005. There, he stated that "Better Regulation at all levels constitutes a central component in the Commission's proposal for revitalising the Lisbon process" (cited in Allio 2007, 94). This revitalisation of the Lisbon process would entail a focus simply on "growth and jobs"; thus its original commitments when launched in 2000 to "sustainable economic growth, with more and better jobs and greater social cohesion and respect for the environment" were jettisoned (European Commission 2010, 2). "The equation is simple", continued Verheugen: "less red tape = more growth and jobs" (cited in Allio 2007, 94).

As a set of practices, Better Regulation is more than a simple exercise in deregulation. Rather it is best understood as a relentless programme of *re*-regulation, advanced via four central mechanisms: a long term *rhetorical* assault on regulation as burdensome, red tape and so on; the establishment of a plethora of *institutions* within and of Government; various *legal reform* initiatives which have delivered both *de*-regulation and *re*-regulation; and a constant stream of *reviews* of specific regulatory agencies and of the practice and purpose of regulation in general (Tombs, 2015). In combination, these initiatives have cemented ideologically and materially the assumptions and practices of Better Regulation in Britain. These can be summarised thus: most businesses comply with most regulations most of the time; enforcement resources should be targeted at the non-compliers, and for the most part involve advice not sanctions; and less regulation and less enforcement are the keys to a growth economy. Thus, via political and, latterly, economic pressures, both national and local regulators are increasingly under pressure to do more with less (OECD 2014, 4). The net effect is the institutionalisation of regulation without enforcement as an emerging political initiative. As this paper seeks to demonstrate, this regulatory trajectory has latterly been over-determined by the economics and politics of austerity, fuelling a seemingly unstoppable momentum.

This article begins by setting out some quantitative indicators of trends in national and local enforcement in three key areas of protective regulation – food hygiene and food safety, workers' health and safety, and pollution control – from 2003/4 to 2012/13. Regulation of these three areas in Britain can be traced back to the latter half of the 19th Century and, taken together, represented the first concerted state effort to regulate private capital and mitigate its

harmful effects. The time-span is more than a ten year convenience; 2003/4 saw a ratcheting up in re-regulatory efforts in the UK, while this ten year period also encompasses the financial crisis which rampaged across much of the globe from late 2007 onwards. It also, in the UK, covers three Governments, including all three main political parties. In this way, the analyses herein underscore that the re-regulatory trajectory and agenda is largely a matter of mainstream political consensus.

Having presented a quantitative summary of trends in enforcement, the article goes on, in its main sections, to detail some of the ways that Better Regulation, latterly under conditions of austerity, has worked through at the level of local enforcement; in so doing, it draws principally upon qualitative insights from a series of interviews, as well as data gleaned from a further series of Freedom of Information Act requests, alongside some published quantitative indicators. This combination of methods is relatively rare in studies of regulation and enforcement, whilst allowing here an overview of some of the broad empirical trends in enforcement which have accompanied the roll-out of Better Regulation – a series of trends so clear and stark that their import is difficult to contest – alongside qualitative insights into how the logics of Better Regulation impact at local level in the context of ‘street-level’ enforcement, effects which range from the very material through to the psychological. In these ways, I consider both how Better Regulation is constituted, and the extent to which this makes regulation better.

Better Regulation in action: some quantitative indicators

In this section, I present some contextual quantitative data which provides some indication of enforcement trends in three key protective fields in the sphere of social regulation in Britain. Regulation across the three areas of concern here is something of a patchwork of national and local responsibilities.

- Food Safety enforcement in the UK operates almost entirely at the Local Authority level, and is overseen by the national body, The Food Standards Agency (FSA). Local functions are divided between Environmental Health Officers (EHOs) and Trading Standards Officers. Food EHOs oversee food safety and food hygiene, enforcing law across all forms of retail food business organisations (restaurant, shops, and so on), as well as food processing and food manufacturing outlets.

- Occupational health and safety regulation is divided between a national regulator, the Health and Safety Executive (HSE), and Health and Safety EHOs at a local level; the division is based on the main activity of any premises.

- Pollution Control is also divided between a national regulator, the Environment Agency, while at local level, pollution control EHOs cover various forms of non-business activities, notably littering and fly-tipping, and a significant part of the work of pollution EHOs is with noise, both domestic and commercial. The focus here, relates to pollution control efforts aimed at businesses, which are overwhelmingly the operators of what are termed ‘Part B’ premises.

The data refer only to three indicators of enforcement activity: inspections (or ‘visits’ as some regulators record these), and prosecutions (and/or cautions where prosecutions are either not used or are used negligibly). These indicators highlight the level of and trends in, activity at two ends of an enforcement continuum. On the one hand, the numbers of inspections/visits made by enforcement officers are indicative of the most basic, routine activity of inspectors and thus indicates the extent to which an inspectorial presence, as even potential enforcers of law, is more or less real. In short, the inspectorial presence is the *sine qua non* of a regulatory strategy. By contrast, prosecution (or caution) represents the ‘last resort’ of all social regulators, at least in Britain (and probably more generally; Snider 1993). All regulators considered here have recourse to a range of other enforcement techniques – verbal and written - which fall short of prosecution and which are used more frequently. But prosecution retains a special *symbolic* significance within the regulator’s enforcement toolkit. It indicates social and moral censure, expressing a normative commitment to ‘do something’ about companies which violate the law egregiously. In fact, to resort to prosecution might be even more significant when regulation and enforcement are generally being undermined, as a means of retaining some moral legitimacy for regulation (Almond 2013, 32, 77, 159, and *passim*).

Summarising inspection and enforcement data between 2003/04 – 2012/13, across three regulatory functions overseen by five sets of regulators, we find the following:

Local Environmental Health Officers enforcing food safety and hygiene law undertook:

- 12% fewer food hygiene inspections;
- 34% fewer food standards inspections;
- 28% fewer prosecutions.

Health and Safety Executive inspectors, the national Health and Safety regulator, undertook:

- 53% fewer inspections (on the part of Field Operations Directorate, the body within HSE which undertakes by far the vast majority of inspections;
- and 40% fewer prosecutions of Offences, resulting in 32% fewer convictions.

Local Environmental Health Officers enforcing health and safety law undertook:

- 90% fewer preventative inspections;
- 56% fewer total inspections;
- 40% fewer prosecutions, resulting in 38% fewer successful convictions.

Environment Agency officers engaged in national pollution control undertook:

- 52% fewer inspections¹
- and 54% fewer successful prosecutions, while issuing 42% fewer cautions

Local Environmental Health Officers enforcing local pollution control law undertook

- 48% fewer 'Part B' Inspection Visits
- and 30% fewer 'Part B' Notices²

Taken in isolation, perhaps no one individual data set on any specific of enforcement activity data relating to any one regulator over a ten year period is particularly surprising. What *is* remarkable, certainly for a set of social scientific data, is that *each set of data reveals precisely the same trend*: that is, notwithstanding variations across regulators, the form of law being enforced, and indeed within regulators and specific forms of enforcement activity by year, *each set of data unequivocally indicates a long term downwards trend in every form of enforcement activity*.

There are two further observations which might be made on this data. First, while the trends in relative declines are striking, indeed uniformly so, this should not be allowed to

obscure the fact that for the most part the data also indicates some *absolutely* low levels enforcement activity. To take the example of health and safety regulation, by 2012/13, if we combine HSE and Health and Safety EHO data, there were just over 130,000 inspections visits – albeit, between them, these regulators enforce law across more than 2.5 million workplaces. Second, then, this data indicates that for all of these regulators, prosecutions are indeed the formal enforcement action of last resort: for example, in the case of food EHOs, almost 350,000 visits led to just 398 prosecutions.

Regulation and enforcement at Local Authority level

Introduction to Merseyside as a case study

The qualitative data referred to in this main section of the article draws upon a case study of regulation and enforcement in the local authorities which make up Merseyside. Specifically, the data is from interviews with EHOs in four³ of the five authorities of Merseyside, interspersed, where appropriate, with quantitative data mostly generated through FoI requests. Again, the focus is on food hygiene and food safety, health and safety at work, and pollution control, functions enforced through Environmental Health Offices, usually located in ‘Regulatory Services’ departments of Local Authorities.

First, some brief observations on Merseyside as a region. Merseyside is a populous conurbation, and is also one of the poorest, if not *the* poorest, in England. The Index of Multiple Deprivation is a ranking of all English Local Authorities, where 1 is the most and 326 the least deprived Local Authority, based upon Government’s measurement of 38 indicators of deprivation. Liverpool is, on this Index, the “poorest” local authority in England, Knowsley the fifth poorest; three of Merseyside’s five local authorities are in the poorest decile of local authorities in the country. (see Table 1) Moreover, all of the five local authorities of Merseyside have higher than the national average of unemployed and benefit claimants; of those employed, all of the five local authorities have higher than the national ratio of part-time to full-time jobs (Liverpool City Council 2014, Tables 2-5b). All also have a higher percentage of public sector jobs, and a lower than national average of jobs in the private sector (Tables 2-4a and 2-4b). In general, these observations all indicate a far great reliance of local population upon the local state for a range of welfare, social and public

services, as well as employment opportunities, so that changes in any of these impact disproportionately upon local people, as residents, consumers, and workers (Centre for Local Economic Strategies 2014a).

Table 1. Basic Data by Merseyside Local Authority

	Population 2013⁴	Businesses 2012⁵	IMD Rankings 2010 (2007)⁶
Knowsley	146,086	2,735	5 (5)
Liverpool	470,780	11,955	1 (1)
St. Helens	176,221	7,510	51 (47)
Sefton	273,207	4,180	92 (83)
Wirral	320,295	8,355	60 (60)
Merseyside	1,386,589	34,735	(n=326)

The most recent data indicate 34,735 active businesses in Merseyside; in the four authorities from which my interview data is drawn, there are about 27,000 such businesses (in 2012; see Table 1). Across these four authorities there were, at April 2013, 27.75 Full-Time Equivalent (FTE) ‘Food’ EHOs, 13.5 FTE EHOs whose primary responsibility was Pollution Control, and 8.4 FTE ‘Health and Safety’ EHOs. This is indicated in Table 2, along with a count of interviews conducted in each authority.

Table 2. Environmental Health Offices' Staff (FTEs) 2 April 2013 ⁷

Local Authority	Food Safety	OH&S	Pollution Control	Total (FTEs)	Number of Staff Interviewed⁸
C	1.6	1.4	1.2	4.2	4
D	12	2	2	16	5
E	5	3	4	12	3
F	9.15	2	6.3	17.45	13

Any local authority has its peculiarities, so the data presented below may not be generalisable. At the same time, “formal generalization is overvalued as a source of scientific development, whereas “the force of example” is underestimated” (Flyvbjerg 2006, 228). I am clear, then, that what is presented here may reflect peculiarities but not mere idiosyncrasies. And the qualitative insights offered add to the quantitative data summarised above – specifically, to enhance an understanding of how the politics and economics of Better Regulation might impact upon local authority enforcement efforts.

General views on origins and nature of Better Regulation

Several different kinds of views about Better Regulation in general were expressed by respondents. A minority view, expressed solely amongst (a minority of) managers of EHO departments and teams, was that the Better Regulation agenda was positive; one, for example, talked about constant efforts to “push this agenda forward” (C1).⁹ For another, it chimed with his view of the EHO function, “it’s about effecting change in business, positively”, “what it says in the book doesn’t always work, you’ve got to help business grow” (F5). And one enforcement officer said, it was “the future” of the role, which he characterised as, “I’m your advisor, you pay the business rates, we provide the service” – “trying to get away from the image of EHOs as scary men in white coats”, the latter being “a stigma” (F6).

The dominant views of Better Regulation, however, were to see this in negative, or cynical, terms, or both. One respondent saw Better Regulation as an impediment to

enforcement - “It seems that everything is being put in our way, they’re making it as difficult as possible for local authorities to protect public health” (D4) – while another translated Better Regulation into being increasingly “controlled” and feeling “under the hammer” (F11). For some, it was an anti-enforcement agenda in the name of business: “the message is that for the sake of UK Plc, the message is don’t enforce against business” (E1). A sizeable minority of respondents were simply cynical, and cited the BR agenda as emanating from, and suiting the interests of, large corporations and free market advocates: “a few large businesses setting the agenda and whispering in his ear, they ‘dominated’ Hampton” (E3). Another, similarly, was highly critical about “the burdens on business agenda”: “if we’re there for an hour once every five years, how can that be a burden?” this respondent added that she thought that it was “the likes of Tesco’s, Sainsbury’s and the big boys, they’re whispering into Government’s ear about burdens” (F11). For another, “The coalition has tried to roll back regulation under the guise of red tape, bureaucracy” and “regulation has been rolled back anyway in terms of funding” (D2).

Finally, there were those who were somewhat dismissive of Better Regulation, claiming in various ways that it was largely irrelevant since it required local regulators to do that which they had been doing anyway: “we’ve always risk-rated our premises ... so operating on the basis of risk targeting is nothing new for local authorities” (C1); “it’s what we were doing anyway” (E1); “I think we’ve been doing this before Better Regulation came in ... we’d expect our officers to be following these principles without them being written down” (E2); and, “we all want to encourage business” (F2). Notwithstanding the identification of some continuities between ‘pre’ and ‘post’ Better Regulation enforcement *approaches*, such responses tend to elide the depressive effects that the Better Regulation agenda on the *level* of enforcement, as indicated above.

These latter observations also chimed with characterisations of enforcement styles gleaned through the interviews. In general, the practice of enforcement reported to me was one ostensibly advocated within Better Regulation discourses. Thus, for one EHO, enforcement was characterised as being about “advice and education” in the expectation that “compliance was a long term outcome” (F4), while similarly: “The key part of our role is to communicate with businesses” (F5); “enforcement is about building relationships ... slow, long term work, education, education, education” (F7).

It was noted by many respondents that not all EHOs shared this view, and that there was a minority who were 'enforcement-oriented'. So EHOs were classified in a series of ways to characterise this difference. There were references to "soldiers, the anti-Better Regulation people", "they are just concerned with their regulatory function" (F5). It was expected that this "deadwood in the Department" would be "cleared out" through staffing cuts (F10). Thus, these "resisters" were those who "have been here for 20, 25 years, they are stuck in an insular, traditional, local government model" (F1). Others drew dichotomies between the "young, academically bright" and the "old bastards" or "old buggers", (F2) "the advisers versus the enforcers" (F10).

But many respondents were hardly naïve about what they could achieve in enforcement terms. One EHO who described his role in terms of "negotiation" nevertheless noted that, "most businesses do not comply with most law, but for the most part this isn't malevolence, probably much more ignorance. This applies to the big, reputable companies who you would expect either to know or comply with the law" (F2). And, similarly, from others: "lots of big food and pub chains, they're on the edge of compliance, they do what they think they can get away with" (E1); "We should be able to trust petrol stations run by big companies like BP to comply effectively, and to focus on others, the independents, the smaller outfits, but we can't" (F8).

A further series of observations pointed to a contradiction within Better Regulation. Therein, a key discursive support for reduced enforcement activity overall is the claim that inspection resources should be targeted upon the minority of businesses who do not comply with the law. This, in turn, requires a level of intelligence about the overall regulated population – precisely echoing the regulatory pyramid and responsive regulation arguments espoused over many years by Braithwaite and colleagues (Tombs and Whyte 2013, 2010). However, two clear themes that emerged from the interviews were: first that intelligence regarding the local business population was in decline, as a result of declining inspectorial presence; and, second, that this lack of knowledge was itself exacerbated by failures on the part of businesses to comply with, or the removal of, legal requirements to register with the local authority.

On intelligence, it was commonly stated that, "we're not targeting effectively" (F8), "we have virtually no contact with the regulated, the once in every five years visit if we're

lucky” means that “there were businesses in the borough that we have never been to” (F11). Another respondent said that she “knew little” about the business population”, “there are no relationships”, “we have very little contact” (F11). This lack of knowledge was not just about a lack of a relationship with local businesses, and therefore meaningful intelligence about their levels of compliance; it extended to even knowing which businesses were in the local area. On the latter point, regulatory changes meant that not all businesses had any longer to register with their Local Authority, and while food businesses *did* have to do so, within 28 days of opening, “a lot don’t bother” (F10). “80% of businesses don’t register as required by law” (F5). This lack of knowledge is exacerbated in areas of deprivation where there tends to be a higher turnover of small businesses (D5). So many businesses “are just spotted” as one respondent noted; “knowledge of the regulated, it’s essential”, he said, but his main way of finding out about new businesses was “by driving around” (F7). The combination of lack of contact through declining intelligence of the most basic form – the very presence of a business – combined with the general decline of inspectorial presence, meant that “we do a lot less actively working with business to provide advice and guidance now” (D1). It “is breaking the link with businesses, for example for giving advice” (E2). In other words, underlying logics of Better Regulation – to focus on non-compliers, and to prioritise advice and education, broke down.

In general, while there seemed to be some sympathy towards the principles of Better Regulation amongst interviewees, there was also a clear sense of problems with some of its central assumptions, motivations and operationalisation. In the context of this overall general assessment, two further issues raised through the interviews are worth exploring. First, it was variously noted how attempts to continue to roll out Better Regulation within conditions of austerity had combined to make the formal principles of Better Regulation less feasible, even contradictory – a point that clearly applies to the issue of intelligence-based targeting, for example. Second, it appears that the effects of austerity may actually have revealed the essential rather than apparent nature - or at least likely trajectory of - ‘Better Regulation’, that is, creating conditions where businesses are relatively free of local *enforcement*, where regulation and compliance are increasingly defined by businesses themselves, and where businesses are able to call on local authority resources in order to support accumulation. It is these observations upon which I wish to focus for the rest of this article.

The economics of austerity and the politics of Better Regulation

During the latter half of the period under examination here, 2003/4-2012/13, it is clear that the politics of Better Regulation became substantially over-determined by the economics of austerity. From 2009/2010, local government funding from central Government came under pressure - “grants from central government (excluding those specifically for education) were cut by 13.3% in real terms between 2009–10 and 2011–12” (Crawford and Phillips 2012, 131). By 2014, the Office for Budget Responsibility estimated that 60% of planned Government cuts had still to be effected – so will take effect in the current parliament. In its words, the “implied squeeze on local authority spending is simply severe” (cited in Centre for Local Economic Strategies 2014a, 3).

Moreover, of all the cuts to Government departments between 2010-2016, the Department for Communities and Local Government (DCLG) is impacted most of all (3-4; see also Institute for Fiscal Studies 2015) . Funding for non ring-fenced local services at local authority level, including regulatory services, will fall *on average* by 46% between 2015 and 2020. (4) And this ‘on average’ calculation masks two factors: first, that within the non-protected services, cuts will be differentially distributed – and budgets for regulatory services are not ring-fenced. (Hampton 2005: 102); second, that the cuts will impact disproportionately upon the poorest local authorities (Centre for Local Economic Strategies 2014b) such as those of Merseyside. For example, DCLG data released in 2014, based on the amount per household that councils are losing between 2010-11 and 2015-16, indicated that

Councils covering the 10 most deprived areas of England – measured according to the index of multiple deprivation – are losing £782 on average per household, while authorities covering the richest areas are losing just £48 on average. Hart district council in Hampshire, the least deprived local authority, is losing £28 per household, while in Liverpool District B, the most deprived area, the figure is £807 (Sparrow 2014).

Through a series of requests made under the Freedom of Information Act 2000, I accessed data relating to Full-Time Equivalent staffing levels by function across the four Local Authorities in which I was able to conduct interviews (see Table 3).

Table 3: Environmental Health Officers (FTEs), 2004-2013¹⁰

Environmental Health Officers (FTEs), by principal responsibility	1/4/2004	1/4/2007	1/4/2010	1/4/2013
Local Authority C				
Food	N/A	2.45	1.85	1.6
Health and Safety	N/A	1.45	1.65	1.4
Pollution Control	N/A	2.7	2.7	1.2
Total Staff	N/A	6.6	6.2	4.2
Local Authority D				
Food	14	14	14	12
Health and Safety	4	4	4	2
Pollution Control	5	5	5	2
Total Staff	23	23	23	16
Local Authority E				
Food	N/A*	N/A*	5.5	5
Health and Safety	N/A*	N/A*	3	3
Pollution Control	N/A*	N/A*	6	4
Total Staff	N/A	N/A	14.5	12
Local Authority F				
Food	11.0 *	10.0	8.95	9.15
Health and Safety	5.0 *	5.0	5.0	2.0
Pollution Control	8.0 *	7.0	7.0	6.30
Total Staff	24*	22	20.95	17.45

*No records available; manual reckoning

Incomplete as this data is, it nevertheless demonstrates clearly that staffing levels across each of the functions across all of the four local authorities have diminished. It is worth noting the absolutely low numbers of staff resource at issue here, in any authority in any year, but notably by the final year for which data is provided, that is, 2013. Without

revealing the identity of the authorities documented in this Table, some sense of the paucity of inspection resources can be gleaned from reading this alongside Table 1, so that it is clear that any one of these authorities has regulatory responsibilities for thousands of businesses.

Table 4. Four Local Authorities combined

Environmental Health Officers (FTEs), by principal responsibility	1/4/2004	1/4/2007	1/4/2010	1/4/2013	
Food	N/A	N/A	30.3	27.75	
Health and Safety	N/A	N/A	13.65	8.4	
Pollution Control	N/A	N/A	20.7	13.5	
Total Staff	N/A	N/A	64.65	49.65	

The data on staffing levels presented in Tables 3 and 4 certainly coheres with what were remarkably similar phrases used to describe the state of regulatory and inspectorial resources in the course of the interviews: “to be honest we/re now doing statutory stuff only” (F9); “there’s nothing left to cut now” (C1); “there is no padding left, we’re below the statutory minimum ... there are no areas of discretion left” (E1); “there’s nothing else to be cut” (D3). Three respondents spelt out the implications of such reductions in staff resources in remarkably similar terms:

Where we are now, we’re at the point where worker safety is being jeopardised (F2).

It’s going to come to the point where it’s going to affect the residents, the local population, in many ways we are at that point now, public health and protection is being eroded. (D4).

We’re at the point where there is no flesh left, this is starting to get dangerous, a danger to public health (F7).

In other words, numerous respondents were clear that their resources had diminished to such an extent that they were unable, or close to being unable, to fulfil their basic function, that is to protect various dimensions of public health, were Other themes emerged, which

clearly cohered with the findings of the enforcement trends data, above. Thus it is hardly surprising that the interviewees raised the issues of a long-term decline in inspection, a long term decline in the use of formal enforcement tools, and a decreasing use of prosecution. On the latter, another clear message from the data was of increasing obstacles to the ability to prosecute. The latter included: a lack of staff time; fear of losing cases; lack of support from Legal Services departments to prosecute; and an increased political risk (“flak”) in prosecuting. Moreover, these types of responses are indicative of a political context for regulatory enforcement where the idea of regulation is under attack, and are a useful illustration of how discourses and policies at national level can translate into barriers to enforcement at local levels, so that there are not just material, but ideological and social-psychological effects. On the latter, it is clear that across all authorities where interviews were conducted that staff felt thoroughly undermined by political representations of their function and the policy effects of these, so that enforcement *per se* is deemed less and less legitimate.

To return to the issue of resources in general, it should also be noted that, if all of the local authorities to which I gained access had experienced loss of staff, this did not just mean a loss of *overall* resource, but the loss of a *particular* kind of resource, that is, expertise and experience. Most notably, redundancies did not only mean that staff were not replaced but that Local Authorities lost specialist expertise – with subsequent pressures for regulators to become generalists (D3). As one respondent put it, “the last two years have been a nightmare”, the authority had lost staff and expertise – “it’s the experienced staff who have gone, so we have lost numbers and expertise” (C1). In fact, the shift from regulators being specialists to generalists was one consistent theme across the interviews, referred to by numerous respondents and in every authority: “People have had to become generalists”, and “most of them are just thankful they’ve still got a job” (C1). It is worth adding that this loss of expertise was a further aspect of a general sense of the role of enforcement officer being undermined.

Moreover, the loss of staff combined with a shift from a specialist to generalist inspection focus had made re-training necessary. However, another clear theme to emerge from the interviews was of *declining* opportunities for training – at the time when most needed. As one Regulatory Services manager put it to me, “We have a training budget, but it is now business hardened” (E1) – by which he meant that there was “little access” to training,

“except to free online courses”. An EHO translated this into the effects on an individual: “I used to go on 6 to 10 courses a year, now perhaps one or two, I’m supposed to do 10 hours of CPD a year but am struggling to manage that” (F10).

There is one further observation regarding the *education* of EHOs, that is those training to become inspectors and who might, eventually, find jobs in the profession. Changes in education appeared both to have extended the influence of the private sector and to have reflected and/or hastened the general shift away from the EHO function as an inspectorial one.

Environmental Health Officers attain professional status through a degree course accredited by the Chartered Institute of Environmental Health (CIEH) and taught at various HEIs. In 2011, the curriculum was over-hauled, partly, in the words of one interviewee, a programme leader of one such course at a North West University, to reflect “the shift in the profession from not being seen as inspection focused” (HE1). In the words of another respondent, a student EHO, CIEH “is increasingly making the content of degrees more private-sector friendly” (F5). This process had already begun as a result of Local Authorities’ inability to offer paid placements for students – placements being required for students to complete the main assessment on their degree course. Several respondents told me that local authority funded students simply no longer exist – the one student EHO I interviewed was working in the authority part-time, unpaid. More commonly, since students still have to undertake a placement, they now take these where they can be paid, or at least receive expenses, that is, in the private sector – Asda, Sainsbury’s Tesco’s were all mentioned as significant sites for such placements in the food sector. As was also said to me, this provides one avenue by which the values and perspectives of the private sector, the regulated, are inculcated into the consciousness of the student EHO, perhaps set against or over those of the regulator. In such subtle ways are the mind-sets and thus practices of a profession shifted.

The Primary Authority scheme – and the future of local regulatory services?

The Primary Authority (PA) scheme represents a paradigmatic example of how the politics and economics of Better Regulation may combine to produce a fundamental shift in the practice and principles of regulation and enforcement. Introduced by the Labour Government in 2009, but given considerable impetus by the Coalition Government from 2010, the scheme “allows businesses to be involved in their own regulation.” (Better Regulation Delivery Office 2014a, 2). By April 2014, over 1500 businesses had established PA relationships across 120 local authorities (ibid.).

The scheme allows a company – and, since April 2014, franchises and businesses in trade associations – which operates across more than one local authority area to enter an agreement with a specific local authority to regulate *all* of its sites, nationally. Thus, for example, a supermarket chain may have stores in every one of the local authorities in England and Wales. Under the PA scheme, it can reach an agreement with *one* local authority to regulate its systems across *all* of its stores in *every* local authority for complying with a relevant body of law. To regulate its systems, the company makes a payment to the local authority, agreed through contract. The benefit for the company is the absence of inspectorial enforcement in the vast majority of its outlets. These *can be visited* by inspectors in areas beyond the PA, but any enforcement action needs to be undertaken through the local authority which is the PA. Should a local authority wish to prosecute a company in a PA agreement, for example, it can only do so with the permission of the local authority which is party to that agreement. Then, under the scheme, any consideration of a potential prosecution must entail prior notice being given to the company; the company can then request that the matter be referred to the Better Regulation Delivery Office (BRDO) for determination (Williams 2013).

It’s clear, however, that the scheme was proving highly problematic for local regulators, even as they sought to enter into PA agreements in order to generate income - “this is why we are really pushing the PA scheme” (C1). Another referred to ongoing negotiations with a company, stating that although she’d “always been opposed to the scheme”, it “would generate about £18K in the first year when systems and so on are being set up, this is peanuts for a multinational but half a job for us” (F4). So although one

regulatory services manager noted that the scheme “did not really work”, he and his local authority were constantly pursuing them (D1).

Moreover, as one respondent put it when discussing the PA scheme, while “in theory it could work well, in practice it protects large companies from local authority enforcement” (D3). Others noted similar problems with the scheme, for example: “under PA they [companies] only have to demonstrate the existence of systems” (D2); Local Authorities have a “disincentive to take enforcement action because PA schemes are a source of income” (D2); PA schemes “protect companies from inspection and enforcement” (D5); they operate “in my experience at the level of a tick-box rather than real co-operation or taking responsibility” (F7); and, PA schemes “work on paper only, there are hundreds of businesses in the scheme and I can’t see how these can all be genuine” (E2).

In general, then, as one enforcement officer noted, “Primary Authority has had a real impact on what we can and cannot do”; the claim was made at length that businesses “pick and choose” with which local authorities to enter into PA agreements, with the insistence that “they wouldn’t pick an authority like Liverpool”, they will pick the “no-one knows anything authority”, that is, local authorities with no experience of the industry/business (D4). Moreover, in the processes of negotiation to draw up the contract which represents the PA agreement *per se*, local authorities are at a distinct disadvantage – there is an ‘asymmetry of expertise’ (Social Enterprise UK, 2012). between local authority negotiators and private companies in such contractual negotiations, as well, of course, as a structural power accruing to private companies operating across numerous authorities to drive down the terms of contract with any one local authority.

The Primary Authority scheme represents a fundamental shift in the nature of local regulation and enforcement. It reduces inspection, exacerbates the power imbalance between regulators and regulated, builds in checks against regulation and enforcement, and operates on a marketised, contract-based system. Discussion of the PA scheme was, then, inevitably used as a way of discussing the future trajectories of local regulatory services. And, when respondents were asked where they thought their service might be in five to ten years, responses were a variation on a theme, encapsulated pithily by the response, “I don’t know if I’ll be here in one year let alone five years” (C1). Those who expanded upon this rather dispirited response indicated that the function would become marketised or privatised or likely

some hybrid of the two – reflecting more general prognoses of how local authorities would respond to the pressures of funding cuts (Hastings et al. 2013).

And such indications are hardly pure speculation. The wholesale outsourcing of regulatory functions has been realised in two local authorities. In October 2012, North Tyneside Council announced the transfer of 800 employees to Balfour Beatty and Capita Symonds (BBC News Online 2012). Then, in a much bigger contract, in August 2013, the London Borough of Barnet saw off a legal challenge to a contract to hand over its services to two wings of Capita, under what has become known as the ‘One Barnet’ model. Business services - estates, finance, payroll, human resources, IT, procurement, revenues and benefits administration, and customer and support services - have been out sourced to Capita in a ten-year contract worth £350m. A range of other services – including regulatory services – were contracted to its subsidiary Capita Symonds, in a £130m contract, also for ten years (Smulian 2013, Spear 2013)’. However, these wholesale shifts from public to private provision are the mere visible tip of a significant iceberg: recent research by the New Economics Foundation for the TUC calculated that, “Environmental and regulatory services is the sector with the second biggest proportion of expenditure paid to external contractors, at 44 per cent”. The arrangements under which this outsourcing proceeds are complex and opaque, confounding accountability and often even transparency (under clauses of ‘commercial confidentiality’), and include a diverse arrangements such as the use of Strategic Service Partnerships (SSPs), Joint Venture Companies (JVCs), shared services, and collaborative outsourcing (Trades Union Congress and the New Economics Foundation 2015, 59).

It was no surprise, then, when one of my interviewees noted that, in contexts where all possible savings had been made, notably in terms of in-house staff, that there would likely be more merging of functions and more outsourcing – claiming that “the Capitas of this world” would take over functions and make savings by “driving down pay and conditions”, so that there would be left “a rump of people working for a council who commission services” (D2). Several respondents noted that the most likely scenario was to become a commissioning authority.

Better Regulation: from enforcement to growth

Better Regulation emerges from a context where regulation and enforcement have successfully been cast as problematic – these are drains on state resources, stifle private entrepreneurship and economic growth, and must be reduced. Once such views are furthered through regulatory, legal and institutional reform, then the momentum against regulation and enforcement gathers apace – if *less* state regulation and enforcement is *always* to be preferred, then *how little is little enough?* Such political momentum is clearly accelerated in particular economic and fiscal contexts.

Something of these processes was captured in interviews with two staff at the Better Regulation Delivery Office. For each of these, they were clear that Better Regulation was established to “restore trust” on the part of business with regulators, a relationship which one described as having been “broken”. Of interest was the view, even after a decade of Better Regulation initiatives, that regulators failed to understand that “regulation and economic development and prosperity go hand in hand” (BRDO2), rather viewing the former “as a matter of enforcement” – and claiming that this was especially problematic at the de-centralised level of local regulation (BRDO1). Thus, for each of these interviewees, the Better Regulation message had not been effectively delivered at local level: “Most [EHOs] didn’t know and many still won’t where their local Economic Development programme sits within the authority”. Thus the task was still to get regulators “to see themselves in a different light in relation to business, to reposition themselves in terms of businesses” (BRDO1). This “requires a commercial mindedness that most local authority regulators simply do not have” – albeit there was optimism that newer recruits were more likely to be imbued with this attitude, and thus to embrace Better Regulation (BRDO1). This was reflected by one of my respondents, a Regulatory Services manager who had enthusiastically embraced Better Regulation: “We need to be more business friendly and get our customer focus right” he stated, later adding, “I am in the business of collaborative regulation ... there must be growth, and that is the context in which we must support business to comply with the law” (F1).

It seems hard to avoid the conclusion that Better Regulation is not really about ‘better’ regulation but, put most simply, systematically more business-friendly systems of regulation and law enforcement, driving down compliance costs and effectively de-criminalising harm-production, the costs of which are thereby increasingly socialised. The central empirical claim of this article is economic, political and ideological initiatives on regulation have combined to produce regulatory regimes that are largely based upon declining levels of enforcement. In some spheres these have declined so significantly, and, in absolute terms, often from very

low levels, that it is perhaps little exaggeration to consider these as spheres of regulation where there is now little or no enforcement. In this context, it is important to note that the trends set out in this article have attracted little critical political, social nor academic comment.

Better Regulation has continued, and will continue, apace. It is a long-term political initiative, effectively designed to break the link between regulation on the one hand and inspection or external oversight on the other. Further, and to paraphrase Fooks (Fooks 1999), what we are witnessing is a shift from the regulation *of* business to regulation *for* business. Thus, one commentary has referred to a “repositioning” of Authorities in relation to “individual well-being and quality of life as well as economic leadership” (Hastings et al. 2013, 3) with a

renewed emphasis on developing and managing economic growth as a means both to generate income and to develop the economic competitiveness of the local authority and its region in the longer term. (4)

There is good reason to suggest that regulatory functions will likely be increasingly recast as part of *growth* initiatives in which formal enforcement is absent or irrelevant (Bernat and Whyte 2014). Indeed, the duty to promote growth for regulators is now embedded in law. In 2007, the *Regulators’ Compliance Code* –which governs the work of regulators both nationally and locally – had already been amended under the Labour Government in a way that made clear the new realities of Better Regulation as they were then unfolding, so that “[r]egulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection” (Department for Business, Enterprise and Regulatory Reform 2007, para 3). A new, 2014 version made the so-called growth duty its first principle: that is, ‘*Point 1*’ of the new Code emphasised that, “Regulators should carry out their activities in a way that supports those they regulate to comply and grow” (Better Regulation Delivery Office 2014b, 3).

Certainly this article has provided some qualitative indicators as to the nature of the increasing penetration of business interests and assumptions into local and national constructions of appropriate forms of regulation, itself facilitated by and further fuelling a

plethora of political, economic and ideological initiatives, and generating shifts towards marketised forms of regulation. More latterly, the imposition of austerity from the Treasury to other Government departments and from Whitehall to local authorities, appear central to re-regulation and to the retreat from enforcement. Better regulation has been, and continues to be, made, but it is difficult to see how it makes regulation better, at least from the viewpoint of social protection.

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End Notes

¹ This figure refers to the period 1999/00-2008/09; the Environment Agency claimed it could not separate data for inspections to businesses from 2009/10 onwards.

² Notices rather than prosecutions are used, since the latter are so few as to render data almost meaningless.

³ Four, because I was unable to gain access to one of these authorities.

⁴ Source: <http://liverpool.gov.uk/council/key-statistics-and-data/data/economy/>

⁵ Source: Office for National Statistics, 2013.

⁶ Source: Department for Communities and Local Government.

⁷ Sources: Freedom of Information Request F2014-12-864; Freedom of Information Request 357573 Response; FOI - Sefton Environmental Health Officer Numbers; FOI 856837 - Tombs - Environmental Health Staffing.

⁸ A total of 35 interviews were conducted between 16/08/13-06/10/14. In addition to those included in this Table, I also interviewed Regulatory Services managers from two other North West Local Authorities, senior civil servants within the Government's Better Regulation Delivery Office, individuals in the Chamber of Commerce and Federation of Small Business, the Chartered Institute of Environmental Health, UNISON as the relevant trade union, one Council Cabinet's Member for Environment and Sustainability and a programme leader for an MSc in Public Health.

⁹ Respondents were assigned a letter, according to the organisation for which they worked, and a number, by order of interview; no other significance should be attached to this notation, which is used purely to guarantee anonymity.

¹⁰ Sources: Freedom of Information Request F2014-12-864; Freedom of Information Request 357573 Response; FOI - Sefton Environmental Health Officer Numbers; FOI 856837, Environmental Health Staffing.