

Institution: King's College London
Unit of Assessment: UoA 17
Title of case study: 'Risk-Based' Regulatory Reform
<p>1. Summary of the impact</p> <p>Over the last decade, research by the Department of Geography's King's Centre for Risk Management (KCRM) has helped successive UK governments to reform regulation by making regulatory inspection and enforcement more 'risk-based'. Risk-based approaches promise to make regulation more efficient by targeting regulatory activities only at cases that pose unacceptable risks rather than by trying to prevent all possible harms. KCRM research has helped make UK regulation more risk-based in three important ways. First, KCRM research significantly informed the key recommendation of HM Treasury's <i>Hampton Review of Administrative Burdens on Business</i> that all regulatory inspection and enforcement should be risk-based. Second, KCRM supported the implementation of that recommendation when it gained statutory force for almost all regulators in 2008 through practical advice to a number of government departments and agencies. Third, KCRM's impact on regulatory reform was reinforced by HM Government's full acceptance and ongoing implementation of Löfstedt's recommendations to strengthen risk-based regulatory practice in his 2011 <i>Independent Review of Health and Safety Regulation</i>.</p> <p>2. Underpinning research</p> <p>Supported by a series of ESRC and government department grants, research at KCRM by Fairman (KCL:1993-2007), Howard (KCL:1999-present), Löfstedt (KCL:2002-present), Rothstein (KCL:2006-present) and Yapp (KCL:2002-2008) has made significant contributions to understanding the emergence, meaning, practice and effectiveness of 'risk-based' techniques of regulation. The central idea of risk-based regulation is that it is neither possible, nor desirable, to try to eliminate all adverse regulatory outcomes. To try to do so would be disproportionately costly to achieve and could distract attention from more serious problems. Instead, proponents of risk-based regulation insist that regulators should aim for an optimal level of risk by focusing control efforts only on those adverse regulatory outcomes deemed unacceptable based on assessments of their <i>probability</i> as well as <i>impact</i>. As such, risk-based approaches hold out the promise of a more consistent, rational and efficient basis for regulatory practice.</p> <p>Building on previous ESRC-funded research on the institutional factors shaping risk regulation regimes (1997-2000) (3iii), Rothstein's research at KCRM showed how the emergence of risk-based regulation is a response to particular institutional contexts of accountability and transparency (3vi). That novel theoretical insight was tested through Defra funded research (3xviii), which identified critical factors shaping the adoption, practice and problems of risk-based policy tools in a wide range of policy contexts (3vii).</p> <p>In parallel, a series of government funded micro-case study research projects by Fairman, Howard and Yapp examined the impact of enforcement interventions on small and medium sized enterprises across a range of regulatory domains, such as food and occupational health and safety (3ix-3xvii). In particular, the research provided evidence of the need for enforcement strategies to be more 'risk-based' in ways that took account of the organisational size, structure and culture of businesses as well as their attitudes towards non-compliance (3ii; 3viii; 3xi; 3xv; 3xvi).</p> <p>Löfstedt has also studied 'risk-based' regulation in both a national and an international context (3i; 3iv; 3v). For example, his research comparing EU decision-making on food and chemical safety regulation identified a series of political challenges in moving away from simple bans on hazardous substances towards more risk-based regulatory approaches (3v). Most notably, Löfstedt's research for his eight-month long 2011 <i>Independent Review of Health and Safety Regulation</i> (5xii), which was commissioned by a government that was deeply sceptical of health and safety regulation (5ii), provided detailed evidence both of the value of risk-based approaches in that policy domain and of the wide support they enjoy with both industry and the trade unions. Nevertheless, Löfstedt also identified five key problems that were impeding the effective operation of efficient risk-based regulatory controls (see Section 4).</p> <p>3. References to the research <i>Where a doi / url is not supplied, a hard copy is available if requested.</i></p> <p>Key peer reviewed outputs and publications</p> <p>3i Boudier F., Slavin, D., and Löfstedt, R. 2007. <i>The Tolerability of Risk: A new framework for Risk Management</i>. London: Earthscan</p> <p>3ii Fairman, R. and Yapp, C. 2005. 'Enforced Self-Regulation, Prescription, and Conceptions of</p>

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- Compliance within Small Businesses: The Impact of Enforcement'. *Law & Policy* 27(4): 491–519. doi: 10.1111/j.1467-9930.2005.00209.x
- 3iii Hood, C., Rothstein, H. and Baldwin, R. 2001. *The Government of Risk: Understanding risk regulation regimes*, Oxford: OUP. Second edition 2004. Also available online: www.oxfordscholarship.com
- 3iv Löfstedt, R. 2005. *Risk Management in Post-Trust Societies*. London: Earthscan
- 3v Löfstedt, R. 2011. 'Risk versus hazard: How to regulate in the 21st century'. *European Journal of Risk Regulation*, 2: 149-168
- 3vi Rothstein, H., Huber, M., and Gaskell, G. 2006. 'A Theory of Risk Colonisation: The spiralling regulatory logics of societal and institutional risk'. *Economy and Society*, 35(1): 91-112. doi: 10.1080/03085140500465865
- 3vii Rothstein, H. and Downer, J. 2012. 'Renewing Defra: Exploring the Emergence of Risk-Based Policymaking in UK Central Government'. *Public Administration*. 90 (3): 781–799. doi: 10.1111/j.1467-9299.2011.01999.x
- 3viii Yapp, C. and Fairman, R. 2006. 'Factors affecting food safety compliance within SMEs: Implications for regulatory and enforcement strategies', *Food Control*, 17(1):42-51. doi: 10.1016/j.foodcont.2004.08.007

Supporting Grants

- 3ix Fairman, R. 2001. *The use of licensing as a risk management tool* (£3500). Chartered Institute of Environmental Health
- 3x Fairman, R. and Howard, M. 2001-03. *Effective enforcement of food safety legislation in small and medium sized enterprises* (£92,909) UK Food Standards Agency
- 3xi Fairman, R. 2004. *An evaluation of the effectiveness of interventions to achieve compliance with health and safety law in SMEs* (£60,000). UK Health and Safety Executive. (Published as: Fairman, R. and Yapp, C. 2005. *Making an impact on SME compliance behaviour: An evaluation of the effect of interventions upon compliance with health and safety legislation in small and medium sized enterprises*. HSE Research Report 336 www.hse.gov.uk/research/rrpdf/rr366.pdf [Accessed June 2013])
- 3xii Fairman, R. 2005. *Developing a harmonised enforcement risk assessment model* (£10,000). UK Department of Trade and Industry
- 3xiii Fairman, R. 2005. *Building an evidence base for a Food Safety Intervention Strategy* (£10,000). UK Food Standards Agency
- 3xiv Fairman, R. 2006. *The use of compliance assessment and regulatory indicators in different regulatory regimes* (£35,000). UK Environment Agency
- 3xv Howard, M. 2003-04. *Concordance in health and safety enforcement in the hospitality industry* (£50,228). UK Health and Safety Executive. (Published as: Howard, M. and Galbraith, A. 2004. *Occupational health and safety enforcement strategies to promote concordance in the hospitality industry*. HSE Research Report 259 www.hse.gov.uk/research/rrpdf/rr259.pdf [Accessed June 2013])
- 3xvi Howard, M. 2004. *Factors influencing local authority health and safety intervention and enforcement activity* (£36,413). UK Health and Safety Executive. (Published as: Howard, M. and Galbraith, A. 2004. *Factors influencing Local Authority health and safety interventions and enforcement activity*. HSE Research Report. www.hse.gov.uk/research/misc/lainterventions.pdf [Accessed June 2013])
- 3xvii Howard, M. and Day, C. 2006-08. *A review of the IFD's (Imported Food Division) initiatives to improve LA sampling activities and recommendations for future work* (£40,000). Food Standards Agency
- 3xviii Rothstein, H. 2007-08. *Risk in Policy-making* (£80,000). Defra

4. Details of the impact

KCRM research has made three important impacts on efforts by successive UK governments to reform regulation by making it more risk-based.

First, KCRM research has helped transform the basic principles of regulatory inspection and enforcement for the majority of UK regulators during the REF period through its influence on the recommendations of HM Treasury's landmark *Hampton Review* (5x), which gained statutory force in 2008 (5v: 5,7). In particular, Hampton extensively cited research and advice on enforcement interventions by Fairman, Howard and Yapp (5x: 5;35;36;137;126,140) in support of his key recommendation that all regulatory inspection and enforcement should be made risk-

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based. Fairman's research for the DTI on the benefits of risk-based enforcement for retail premises was also specifically highlighted in HM Government's full acceptance of the 'Hampton Principles' (5xi:17), and she was subsequently seconded to the Cabinet Office (2007-8) to lead work on the implementation and the continuing roll-out of 'risk-based' regulatory practice. The Hampton Principles gained statutory force in April 2008 through the *Regulators' Compliance Code*, which tasked almost all government departments and regulatory agencies with ensuring that their regulatory inspection and enforcement activities were risk-based (5v:12). For example, the Care Quality Commission explicitly drew on the Hampton Principles as the basis for refocusing its inspection regime on the riskiest of the c.50,000 health and social-care establishments that it regulates (5iv:7). As of 2011, some 36 regulators, with responsibilities ranging from the environment, financial services and football licensing to charities, equality and human rights, had filed Hampton Implementation Review Reports with the Department for Business, Innovation & Skills (5vi).

Second, KCRM has also actively supported several government departments in their implementation of the Hampton Principles through targeted research, training support and strategic advice. Government commissioned research by Fairman, Howard and Yapp, which identified the need for risk-based targeting of regulatory enforcement activities (3ii;3viii;3xi;3xv;3xvi), provided the main evidence base for the UK Food Standards Agency's (FSA) focus on compliance drivers and better use of tailored messages and guidance in its 'Enforcement and Compliance Strategy 2010-15'. Howard also led an FSA Social Science Committee working group in 2010 on the risk factors shaping the prevalence of foodborne disease, the findings of which significantly focused the prevention efforts of the FSA's *Listeria* Risk Management Programme (5a). KCRM research has also underpinned policy learning and training. For example, the Better Regulation Executive recommends the monograph (3iii) from Rothstein's ESRC-funded research on risk regulation regimes as the standard academic text on risk and regulation for civil servants (5i:9). Defra's Better Regulation training programme has also drawn on KCRM research it commissioned from Rothstein on the use of risk-based policy tools across Defra (5xiii). Finally, building on an earlier successful collaboration (3i), the Health and Safety Executive (HSE) commissioned Löfstedt to undertake research and provide strategic advice to improve HSE's risk communication practices (5iii).

Third, Löfstedt's work on occupational health and safety led to his appointment to chair his 2011 *Independent Review of Health and Safety Regulation* (5xii). His evidence-based review has had a substantial impact on that regulatory domain by persuading the UK Government to maintain and strengthen its use of risk-based approaches. That achievement was significant in a climate where politicians and media commentators commonly disparage 'elf'n'safety madness'. Even David Cameron, before becoming Prime Minister, complained that the UK's 'over-the-top' health and safety culture had created a 'stultifying blanket of bureaucracy, suspicion and fear' (5ii). Drawing on detailed research, including the advice of Rothstein (5xii:103), Löfstedt concluded that there was 'no case for radically altering current health and safety legislation' (5xii:1). Nevertheless, he identified five ways in which the risk-basis of the regime could be improved (5xii:8-11). His recommendations gained support amongst all stakeholders and HM Government committed to implementing them in their entirety (5vii:9-15), as evidenced below:

1. *Exempt the self-employed from health and safety law when their work activities pose no risk of harm to others.*
 - **Status:** The Deregulation Bill, announced in the Queen's Speech in May 2013, will implement this recommendation, exempting up to 800,000 people from the law.
2. *Review all 53 Approved Codes of Practice (ACOP) to ensure that unnecessary complexity does not stand in the way of employers understanding and meeting their legal obligations.*
 - **Status:** An HSE consultation on 25 June 2012 set out its proposals for the revision, consolidation or withdrawal of 15 of its ACOPs for delivery by 2013 and proposed a programme for the future review of the remaining ACOPs.
3. *Simplify health and safety law by reducing the number of regulations by more than 50% and by revoking regulations that have no impact on health and safety outcomes.*
 - **Status:** Twenty-one statutory instruments have already been revoked and a consultation on the revocation of a further twelve ends on 12 July 2013.
4. *Develop a binding national code of inspection and enforcement that is consistent and targeted towards the most risky businesses.*
 - **Status:** The Local Authority National Enforcement Code, which sets out a risk-based approach

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to targeting health and safety interventions, was published on 29 May 2013.

5. *Review the scope for giving employers the right to contest civil liability claims when they have taken reasonable precautions to control workplace risks.*

- **Status:** The Enterprise and Regulatory Reform Act, which received Royal Assent on 25 April 2013, changes health and safety legislation such that 'strict liability' provisions no longer hold employers to be in breach of their duties when they have done everything that is reasonably practicable and foreseeable to protect their employees.

Löfstedt was commissioned by HM Government to undertake a follow-up independent *One-Year-On Assessment* and Mark Hoban MP, the current Minister of Employment, was 'encouraged by the positive endorsement [...Löfstedt gave...] of the Government's progress with health and safety reform' (5ix: foreword). Chris Grayling MP, the former Minister of Employment, stated that 'by accepting the recommendations of Professor Löfstedt, we are putting common sense back at the heart of health and safety' (5viii; see also 5b and 5c).

5. Sources to corroborate the impact, all available on request

Individuals

5a Head, Local Authority Audit and Liaison Division, Food Standards Agency

5b Chief Executive, Health and Safety Executive

5c Minister for Employment

Sources

5i Better Regulation Executive. *Life in BRE: My Directorate–RID*.

5ii BBC. 2009. *Cameron says health and safety rules 'over the top'*, 1.12.2009, news.bbc.co.uk/2/hi/uk_news/politics/8388025.stm [Accessed June 2013]

5iii Bouder, F. and Löfstedt, R. 2010. *Improving Health and Safety: An analysis of the HSE's risk communication in the 21st Century*. London: HSE books

5iv Care Quality Commission. 2012. *Proposals for the Compliance and Enforcement Model from April 2012*, Paper No. CM/01/12/10, Agenda Item 10, Minutes of Public Board Meeting, 15 February 2012. www.cqc.org.uk/public/about-us/our-people/board-members/board-meetings [Accessed June 2013]

5v Department for Business, Enterprise and Regulatory Reform. 2007. *Regulators' Compliance Code: A Statutory Code of Practice for Regulators*. www.berr.gov.uk/files/file45019.pdf [Accessed June 2013]

5vi Department for Business, Innovation and Skills. *Hampton Implementation Review Reports*. www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/reviewing-regulators/hampton-implementation-review-reports [Accessed June 2013]

5vii Department for Work and Pensions. 2011. *The Government Response to the Löfstedt Review*. www.gov.uk/government/uploads/system/uploads/attachment_data/file/66794/Lofstedt-report-response.pdf [Accessed June 2013]

5viii Department for Work and Pensions. 28.11.2011. *Report calls for 1 million self-employed to be exempt from health and safety law*. Press Release. www.gov.uk/government/news/report-calls-for-one-million-self-employed-to-be-exempt-from-health-and-safety-law [Accessed June 2013]

5ix Department for Work and Pensions. 2013. *A progress report on implementation of health and safety reforms* www.gov.uk/government/uploads/system/uploads/attachment_data/file/92634/progress-report-health-safety-reforms-feb-2013.pdf [Accessed June 2013]

5x Hampton, P. 2005. *Reducing Administrative Burdens: Effective Inspection and Enforcement*, London: HM Treasury

5xi HM Treasury, Better Regulation Executive, Cabinet Office. 2006. *Implementing Hampton: from enforcement to compliance*. London: HMSO

5xii Löfstedt, R. 2011. *Reclaiming Health and Safety for All: An independent review of health and safety legislation*. London: Department of Work and Pensions

5xiii Rothstein, H. and Downer, J. 2008. *Risk in Policy-making: Managing the risks of risk governance*. Report for the Department for Environment, Food and Rural Affairs. London: King's College London. Supplementary Report: Rothstein, H. and Downer, J. 2008. *Risk in Policy-making. Project case study: Heather & Grass Burning*. Report for Department for Environment, Food and Rural Affairs. London: King's College London.