

In praise of red tape: getting regulation right

Imagine a city where hundreds of thousands of people live. In the centre is a huge industrial plant which produces chemicals. One night there is an explosion in the plant. A deadly gas settles over much of the city and the sleeping people. By morning thousands are dead.

The agony doesn't stop there: in the decades that follow, many thousands more die from the effects of the gas, or from birth deformities; hundreds of thousands more have their lives ruined; and the land and water around the plant are poisoned.

This is not fiction.

This happened, in 1984 in a place called Bhopal in India. I've been to Bhopal and visited the site. The chemical plant is still there, derelict and rusting away. People still live all around it, many of them the victims of the explosion or their children. The land is still poisoned and the water is still undrinkable. Nearly forty years on, no one has been held accountable. The sense of loss and injustice is visceral.

Bhopal is a textbook example of failed regulation. A hazardous industrial plant was allowed to operate in the middle of one of the most densely populated cities in the world without proper checks and precautions until one day disaster struck.

Bhopal is why I believe in regulation. Teachers like to say that if you think education is expensive, try ignorance. If you think regulation is expensive, try not doing it.

So my first point is that regulation – good regulation – is essential.

Good regulation protects people and the environment from harm. Good regulation creates a level playing field for business, allowing well-run companies to thrive and stopping those who don't want to play by the rules from undercutting them. Good regulation drives growth and innovation. Good regulation doesn't just protect the environment but enhances it.

Good regulation is also a moral duty: responsible industries welcome it as a way to help reduce the risk their operations could otherwise pose to people or the environment. Responsible industries also accept that they, not the government or the taxpayer or the local community, should pay the cost of being regulated: the cardinal principle for protecting the environment is that the polluter pays.

And I am here to tell you that regulation works.

Take air quality. Since 2008, the sites the Environment Agency regulates have cut emissions of sulphur oxides by 81%, Nitrous Oxide by 65%, greenhouse

gases by 47%, and PM 10 – one of the most damaging particulates – by 37%. Good law, good practice and good regulation has made our air healthier.

It's done the same for water: since 1995 water company discharges of ammonia into our watercourses have dropped from over 15,000 tonnes a year to around 3,000; and discharges of phosphorus from over 20,000 tonnes a year to around 2,000.

But not all regulation works and not all regulation is good. We can all cite examples of bad regulation – too prescriptive, too bureaucratic, too expensive, out of date for the industry it regulates, worst of all, ineffective at doing what it is supposed to do – protect people and the environment.

So even though I have titled this speech, deliberately provocatively, "In praise of red tape", let me be clear that I am against red tape, if by red tape we mean regulation for its own sake, or bad regulation.

What does good regulation look like? It regulates the right things in the right way to produce the right outcomes.

You will be reassured to know that even though I head up one of the biggest regulatory authorities in the country, I don't think all human activity should be regulated.

In fact, I would rather have fewer activities being regulated, better. As they teach you at Harvard Business School, the main thing is to make sure that the main thing really is the main thing. The more regulators have to focus on things which are not the main thing, the bigger the risk that the real main thing gets neglected, until something bad happens. In regulation, as in so much else, less is more.

At its heart regulation is about managing risk. Nothing in life is risk-free. But you only need regulation where there is a material risk to life, livelihoods or the environment which needs to be carefully managed. That is why the Environment Agency regulates nuclear power stations, chemical plants and the waste industry but not (say) ice-cream sellers or kite-flyers.

As well as regulating the right things, we also need to regulate in the right way. That means regulation which is risk-based, proportionate, and business friendly. The amount and nature of regulation needs to be keyed to the amount of risk in the activity being regulated; and it needs to be proportionate to the risk – too much regulation of too little risk is a cost on business and a dangerous distraction for the regulator from other activities on which we should be focused.

Good regulation also looks actively to support legitimate businesses. Those businesses are providing the jobs, growth, and goods and services we all need. It is our duty as regulators to help them do that while protecting people and the environment.

That is why the Environment Agency's philosophy is "Yes, If": yes to a business operating as it needs to operate, if the necessary protections can

be put in place.

That is why, as businesses struggle with the impact of Coronavirus, the EA has supported them, including by adopting Regulatory Position Statements that allow them not to give effect to all their normal obligations if they cannot do so in the current circumstances. And that is why our default regulatory approach is to provide advice and guidance to businesses to allow them to operate successfully, and to use our powers of enforcement only when necessary.

But good regulation also needs teeth, because not everyone plays by the rules. The EA will not hesitate to go after waste criminals who damage communities and legitimate businesses or water companies who cause serious pollution of our rivers.

We welcome the fact that the courts are now imposing much stronger sentences for environmental crime – including during my time as Chief Executive a seven and a half year jail sentence for a waste fraudster in Leeds, and a £20m fine against Thames Water for dumping over a billion litres of raw sewage in the Thames.

And just as good regulators should go after bad performers and support the good ones, so good businesses should support good regulators. All businesses have an interest in their reputation, and there is nothing so damaging to your reputation as causing a major pollution incident: working with regulators rather than against them helps business ensure that.

Moreover, the right kind of regulation helps business. Farmers, for example, have an interest in following the regulations on soil use. That's because their soil is their biggest asset, and degrading it or allowing it to wash away into the rivers – which is the effect of failing to follow the right practices – is the fastest way to undermine their own business.

Let me give you a specific example of how regulators and business can work together to mutual advantage: the Thames Tideway Tunnel. This is a new 25km sewer running from west to east London mostly under the River Thames. It will address the problem of overflow from Bazalgette's Victorian sewers, ensuring that after high rainfall sewage discharges don't empty straight into the Thames as now but are collected, moved east, and treated.

The EA is closely involved with this project because of the major impacts on the environment and flood risk from the Thames. Rather than the traditional arms' length relationship between the regulator and the regulated, EA staff are actually embedded in and funded by the Thames Tideway team itself.

This is a win for everyone. It's a win for the project, because it means they can get the best advice and quickest possible decisions from the EA team, essential for them to complete the project fast and on budget.

It's a win for the EA, because it gives us the best possible understanding of the issues and the biggest possible influence on the outcomes to ensure maximum environmental benefit.

Most of all it's a win for the environment and for London, because the project will bring the biggest single change to the quality of the water in The Thames in generations, and increase London's resilience to the higher rainfall that the climate emergency is bringing.

Good regulation is focused on the outcome not the process. Old-style regulators would tell a company precisely how it had to operate. But the how is not really the point.

What matters is the what – the outcome you are seeking to achieve. It is much better for regulators to tell companies the effect they need to achieve and let the business identify the most cost-effective way to achieve that effect: the business is much more likely to know the right answer than the regulator.

Example: the EA has worked with Wessex Water to reduce pollution in Poole harbour. Most of the pollution was coming from nearby farms, where the run-off of chemicals applied to land was entering the watercourses and ending up in the harbour. In the old days the EA would have told Wessex Water how to solve this: by requiring them to build a costly water treatment plant somewhere at the bottom of the catchment to strip the chemicals out of the water before it reached the harbour.

But the point is what you achieve not how you do it.

The what here was preventing pollution of the harbour, and together Wessex Water and the EA came up with a better answer for the how: paying farmers to reduce the chemicals they apply to land in the first place, through a reverse auction initiative called EnTrade, so solving the problem at source, and saving Wessex Water (and their customers) the cost of a water treatment plant.

Since we are focusing on outcomes, let's remember the ultimate outcome we are seeking. The goal of good environmental regulation should not be merely to reduce the damage that human activities do to nature, nor should it even be to prevent that damage. The goal should be to enhance the environment and do what the EA exists to do: create a better place.

For too long we have been insufficiently ambitious as regulators.

As the Secretary of State for the Environment George Eustice has said: "in recent decades, our approach to environmental regulation, particularly in regards to nature and biodiversity, has been to protect what is left and to stem the tide of decline. However, if we really want to realise the aspirations that the public have for nature then we need policies that will not only protect but that will build back greener."

The OxCam arc is a good example of where we could achieve that ambition. This development between Oxford and Cambridge may see up to one million new homes by 2050, more infrastructure, and more businesses based on the knowledge economy.

The EA is working to turn the environmental risks into opportunities: to secure the homes and jobs that people need, but also to deliver environmental

net gain, climate resilient infrastructure, and better places to live for people and wildlife. With the right regulatory approach we can build energy and water efficient homes; clean businesses supported by low carbon energy and transport; and green and blue spaces that are beautiful life-enhancing places to be.

That's ambitious: good regulators need ambition.

But we also need a generous dash of humility, because despite all the evidence to the contrary, regulators are human too. Sometimes we make mistakes, stick with an approach which has been overtaken by events, or adopt a position which isn't as proportionate, risk based or business friendly as it should be.

So just as we challenge others to do the best they can, it is right that we are challenged to do likewise. And right that when we get things wrong, which we will from time to time, we have the character to acknowledge it and change our approach.

Today the nation faces a series of challenges: rebooting the economy after Covid, making a success of the UK's new position outside the EU, and tackling the biggest of all threats, the climate emergency. The right regulation can help with all three.

The immediate challenge is to secure a green recovery.

The Prime Minister set out the government's approach in a major speech on 30 June. I agree with him that we need to move with energy and speed that we have not needed for generations; that we need to build better, faster and greener; and that we must ensure that red tape doesn't stop green growth. Which is why we need to get our regulation right.

Much of the regulation we currently enforce derives from EU law. Leaving the EU offers us opportunities, if we want to take them, to change that law.

In a recent speech George Eustice made two powerful points about this. He said, first, that "When it comes to our new approach to the environment, we must have an appreciation of what worked in the EU in the past, and also what didn't work.

Where there were approaches inside the EU that helped our environment, we should recognise these and be willing to borrow features from them."

But he went on to say, rightly, that "there is no point leaving the EU to keep everything the same. The old model has not stopped the decline in our natural world. We must therefore challenge ourselves to think creatively, to innovate and to consciously avoid clinging to processes and procedures just because they are familiar".

I am all for doing that innovative thinking, including about which bits of inherited EU law we should keep and which we should change. If changing the law will allow us to regulate better and achieve higher environmental standards we should always be open to that. Sometimes it will and sometimes

it won't.

Let me give you some real life examples of EU laws we could repeal, amend or keep.

I would repeal the EU Floods Directive.

It requires member states to carry out flood risk assessments, create maps of flood risk and develop flood risk management plans. All very sensible, except the UK was already doing most of those things before the Directive arrived and will carry on doing them. The Directive was not really about those things: its purpose was to drive cooperation between continental EU member states like France and Germany who share large river basins.

We are not in that category and don't need the Directive, but it still drives some nugatory work. On the basis that less is more, I would get rid of it. The government's recent Flood Policy Statement, and the Environment Agency's new Flood Strategy, set out a much more modern and comprehensive approach to reducing flood risk and enhancing resilience in the face of climate change.

I think we should also consider reforming one of the totemic EU laws, the Water Framework Directive. The WFD, as it is known to the practitioners, was a landmark piece of legislation. It set high standards and demanding deadlines for improving water quality in rivers, lakes, estuaries and groundwater, and it has driven much of the work that the EA and others have done over the last twenty years to secure those improvements.

There are lots of great things about the WFD, in particular its recognition that water quality is perhaps the biggest single X factor for the environment; that water bodies need to be managed in an integrated way as part of catchments; and that the health of rivers is not just about the chemicals that should or shouldn't be in them but their biology and hydromorphology: the depth, width, flow, river bank structure – all of which should respect nature as far as possible, rather than forcing rivers into engineered straitjackets from which they are all too likely to burst.

However, the WFD is not perfect.

It has a famous "one out all out" rule, under which rivers fail to meet the required status if they fail on any of the four categories in the directive: biological (phytoplankton, macroalgae, fish, invertebrates, etc), physical-chemical (temperature, pH, dissolved oxygen, ammonia, etc), chemical (concentrations of pollutants like arsenic and iron), and hydromorphological.

There are two problems with this approach.

The first is that it can underplay where rivers are in a good state or where improvements have been made to those that aren't. Right now only 14% of rivers in England qualify for good status under the WFD, because most of them fail on one or other of the criteria. But many of those rivers are actually in a much better state than that, because most of them now meet most of the criteria: across England, 79% of the individual WFD indicators are at good status.

The second problem with the one out all out rule is that it can force regulators and others to focus time and resources on indicators that may not make much difference to the actual water quality, or where we realistically cannot achieve one of the criteria – some of England's heavily engineered rivers in urban centres, for example, will never be restored to their natural state.

So, the WFD is not in my view a candidate for repeal – because it has driven a lot of improvement in our waters – but it is a candidate for thoughtful reform to deliver even better outcomes.

I am not for slash and burn. There is a lot of EU-derived law that I would keep as is. Much of it was written by UK experts, and much of it does well what we all want: protect or enhance nature.

Example: the Bathing Waters Directive, which protects public health and the environment by keeping coastal waters free from pollution. It has done exactly that, driving the water companies, the regulators, the local authorities and local communities to hugely improve the water quality on most of our beaches.

Result: last year, out of the 420 bathing waters in England, all but 7 met at least the minimum standard, and 300 were rated Excellent – a great example of good law and good regulation producing better environmental outcomes.

There's one final thing that good regulation can do for us, and that is to save the planet. The biggest of all threats we face – to our environment, our economy, our future – is the climate emergency. And the climate emergency is a great example of where regulation works and can stimulate not choke business.

Successive UK governments have led the way here.

The 2008 Climate Change Act required the progressive reduction of greenhouse gas emissions. Since 1990 the UK has reduced emissions by 42% and grown our economy by 72% – which shows we can both tackle climate change and have the sustainable growth we all want. And the 2019 legislation committing the UK to get to net zero by 2050 was groundbreaking: it made the UK the first major economy in the world to pass laws to end its contribution to global warming by 2050.

The EA's regulatory work is helping us get there. We play a central role in reducing greenhouse gas emissions by regulating many of the sectors involved (power stations, landfill sites, etc), implementing the current EU Emissions Trading Scheme and the arrangements that will follow that at the end of the Transition Period, and giving permits to renewable and low carbon technology (hydropower, tidal barrages, anaerobic digestion, etc) – all of which is driving innovation and growth.

Let me leave you with three quotes about regulation from three very different people. I suspect that none of them would be likely to agree very much with each other, but each of them has expressed a view on regulation which I

endorse.

The first is Christine Lagarde: "Regulation is necessary, particularly in a sector which exposes countries and people to risk".

The second is Hilary Clinton: "There's nothing magic about regulation: too much is bad, too little is bad".

And the third is Margaret Thatcher: "Every regulation represents a restriction of liberty. Every regulation has a cost. That is why, like marriage in the Book of Common Prayer, regulation should not be enterprised unadvisedly, lightly or wantonly".

Let us resolve to avoid wanton regulation. But let us also recognise that good regulation is not red tape: it is what gets you green growth and a blue planet.