

Research Article

Assessing Regulation inside Government in the United Kingdom

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Abstract: This study is a review on the extant of regulation inside government in the United Kingdom (UK) and critiques on the mass regulation effort. Regulation in the UK is delivered through inspections by several inspectorates including the auditors (Audit Commission). The inspection subjects cover all aspects of government activities from operations to reporting. The inspectorates check on the subjects based on pre-determined criteria and on number basis. The results will then be calculated and the inspected organizations will also be ranked. Literatures argue that besides giving justice to the public sector reform agenda, regulation inside government have influences government spending and alter participant behavior.

Keywords: Auditing, government regulations, inspection, performance measurement, public sector

INTRODUCTION

'Regulation' is generally used to mean governing, the ways in which public purposes are decided on and implemented; however, it has taken on a more specific meaning as achieving public goals using rules or standards of behavior backed up by the sanctions or rewards of the state (James, 2003). Regulation in that sense has always been thought of as what government does to businesses (Wilson, 1980; Hancher and Moran, 1989; Noll, 1989; Majone, 1994; Ogus, 1994). Hood *et al.* (1998) wrote that regulation inside government is hard to define with precision and suggest the following concept:

"The way public organizations are subject to influence from other public agencies operating at arm's-length from the direct line of command and endowed some sort of authority over their charges" (Hood *et al.*, 1998).

In Hood *et al.* (1998, 1999), regulation inside government in the United Kingdom (UK) is described as consisting of three basic features; one bureaucracy aims to shape the activities of another; there is some degree of organizational separation between the 'regulating' bureaucracy and the 'regulatee'; and the regulator has some official mandate to scrutinize the behavior of the regulatee and seek to change it. These days, government itself is also subject to regulation by a large and diverse body of 'regulators'. Many literatures have explored the ways government regulates itself through a range of bodies which set standards for public sector organizations, monitoring them and seek to bring about compliance with those standards (Hood and Scott, 1996; Hood *et al.*, 1998, 1999, 2000).

Regulators common to private sectors like auditors, inspectors, licensing bodies, competition and fair trading authorities are now scrutinizing and overseeing the public sector (Hood *et al.*, 1998). In addition, public sector organizations are being watched by further specific regulators including systems of audit, grievance chasing, standard setting, inspection and evaluation. These make a typical public bureaucracy face scrutiny by a growing army of waste-watchers, quality checkers, 'sleaze-busters' and other regulators (Hood *et al.*, 1998). This study presents an assessment of the regulation inside government in the UK covering the actors involved in the regulations, the regulation processes and critiques forwarded by researchers in the area.

MATERIALS AND METHODS

The reform in UK public management since the 1970s is meant to ease management from excessive rules so they can add more value to public services and make management in government like that in businesses. However, the supposed flexibility in management specified to public managers has been compensated by stricter regulations; increased formality, complexity, intensity and specialization over the past two decades (Hood *et al.*, 1999). The rhetoric of public services reform by reducing 'red tape' and allowing managers' greater discretion has led to an increase in formal public sector regulation (James, 2003). This has added to the procedural constraints and 'second guessing' faced by public managers (James, 2003); increasingly formal controls that are contrary to the cutting down of red tape (Hoggett, 1996). Power (1997) argues that the search for audit ability associated

with declining trust in traditional styles of professional self-regulation has produced a formalized self-regulation. Increased regulation has been accompanied by decreases in managerial discretion (Hood *et al.*, 1998).

Hood *et al.* (1998) wrote that regulators use a range of methods to shape the behavior of their charges, running from the role of official whistle-blower, able to do no more than draw public attention to lapses or problems, to the role of ‘terminator’, able to close down an organization deemed to be failing (or to impose financial surcharges and disqualifications from office on local councilors and officials). Some regulators are more separated from their charges than others and their mandates also vary. Some regulators have statutory authority, some are established by Order in Council and many have no formal mandate other than what is assumed to be the policy of the government of the day.

Regulation is a multi-faceted concept and is used interchangeably with concepts associated with specialist practices such as audit, inspection and scrutiny (Kelly, 2003; Boyne *et al.*, 2002). Regulation is also practiced through advice and guidance from regulatory bodies, professional organizations and government departments on how organizations should act in order to comply with their regulatory regime. The ideology of ‘New Public Management’ (NPM) itself emerged from private sector practice, popularly summarized for public sector practitioners by Osborne and Gaebler (1992) ‘Reinventing Government’.

The scope, scale and modus operandi of regulation inside government: Hood *et al.* (1998)¹ outlined three main themes of scope, scale and how regulation inside government works:

- Regulation inside UK government, (taken together all its forms) amounts to a large enterprise, approaching, if not exceeding the scale of regulation of private businesses.
- Internal regulation of government seems in many of its domains to have increased in formality, complexity, intensity and specialization over the past two decades.
- The behavior of regulators inside government seems to be related to how close they are to those they oversee in professional/social backgrounds.²

All the three themes may put pressures on public managers and open rooms for variations in control regimes imposed by regulators upon regulatees. UK government invests more resources (staff and public spending) in regulating itself than it does to regulate the privatised utilities (Hood *et al.*, 1998). The scale of investment in the regulation of government is close to the total of private sector regulation even on the most restrictive definition of the public sector at national government level (Hood *et al.*, 1998, 1999). This means

more tax-payers money being channelled to regulation and less money for other core activities. The authors also wrote that the increased numbers of regulatory organization inside government has also substantially escalated their claims on public budget. Hence, the cost effectiveness of enhanced regulation is arguable.

Hood *et al.* (1998, 1999) evidenced that the number of regulating staffs was then increasing while public sector organizations were downsizing. This situation raises questions as to how does the government body cope with their activities when their size keeps on decreasing and at the same time they are being strictly watched and subjected to many rules and regulations. Spending more on regulation and less on other activities would possibly limit the government bodies’ spending on training or hiring better-skilled staff to enhance their performance. Besides that, the staff of local authorities will be kept busy with adhering to regulators requirement than their core responsibilities.

In supporting their arguments, Hood *et al.* (1998, 1999) estimated that the number of regulatory organizations in the UK public sector ranges from about 130 to over 200 and that estimated regulatory staff runs from almost 14,000 to 20,000. The running costs were estimated at £ 800 m to £ 1 billion. These costs (which could be more now) are only the direct costs of internal regulation (staffing and operating costs for the regulatory bureaucracies). From their examination on expenditure over the past two decades, they found that the level of central government regulators spending had increased by a factor of at least two on the regulation of local government. Spending on public audit bodies has at least doubled; it has increased by a factor of three for inspectorates and has grown at least fourfold for some other regulatory organizations.

Hood *et al.* (1998) also maintain that this is the most visible part of the iceberg of regulatory compliance. If the other part of costs incurred in complying with the regulations (i.e., the compliance cost) faced by regulates is considered, it will add substantially to the overall costs of regulation inside government. It is also possible for compliance obligations to change (usually in the direction of imposing much greater costs on regulatees) without any substantial change in the administrative inputs of the regulators (Hood *et al.*, 1998). From their interviews and other material, they suggested that the growth in compliance costs was commensurate with, or even greater than, the growth in direct cost of regulation inside government.

Those costs are only estimates because they are not routinely collected across government as a whole (Hood *et al.*, 1998). Does this mean that governments do not expect the costs of regulations to be this high or that they perceive that the results they will get from enhanced regulation outweigh the money and time

spent? From their interviews, they found that regulators tended to turn a blind eye to the compliance costs, claiming that compliance costs were not an issue in the public sector and therefore, did not need to be measured. However, they also noted that this view was not shared by those who are being regulated.

Hood *et al.* (1998) also evidenced that regulation inside government was not just substantial business but also expanding. They examined the number of regulators from 1976 to 1995 in different parts of the UK public sector and found growth in all sectors, with stronger growth in the body-counts of organizations in local government. They estimated the overall staff increase in regulatory bodies inside UK government was 90% between 1976 and 1995 and this growth contrasts sharply with what happened to staffing in the public sector as a whole, with a fall of more than 30% in total civil servants and over 20% in local authority staff (Hood *et al.*, 1998, quoted from Cabinet Office, 1995; DoE, 1996b).

Regulation inside government is not just large and growing but also diverse in several senses (Hood *et al.*, 1998). The regulators were found to pursue various and sometimes conflicting goals, with no sense of belonging to any overall community and with no central point in the government machine capable of, or responsible for, gauging the overall size and growth or reviewing how it operates. From the 134 regulators within the UK public sector included in their study, over 60% of organizations, over 75% of the staff and over 80% of spending were devoted to oversight of organizations outside the core of central government and many more resources devoted to the regulation of local than central government. They also found, the social 'distance' between those who regulate and those who are regulated tends to be greatest in the public sector and regulatory behavior tends to be most formal (as in the case of central government civil servants regulating local authorities). Some regulators or overseers in government bodies came from the same professional and social backgrounds as their clients, their roles being reversed when they move on with their career and change jobs.

The features of regulation inside government: Hood *et al.* (1998, 1999) offered three basic dimensions (James, 2003 described these as 'features') of regulation inside government to comprise the followings:

- One bureaucracy aims to shape the activities of another (the regulator has a degree of authority over the regulated bodies and sets standards for them).
- Organizational separation between the regulating bureaucracy and the 'regulatee' (organizational separation of regulators and regulated bodies, so regulation is distinct from internal management within an organization).

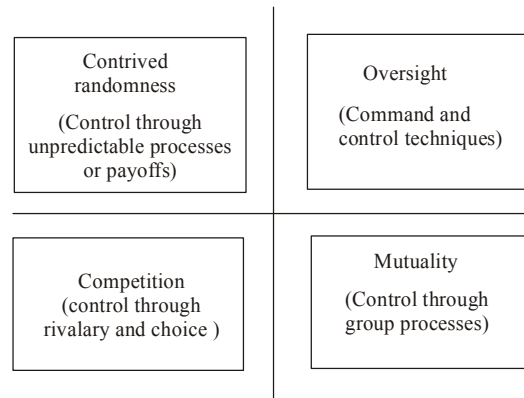


Fig. 1: 'Oversight' and three other 'inspector free' types of control over public management (different mechanisms used to keep public bureaucracy under control (Hood *et al.*, 1999)

- Some official mandate for the regulator organization to scrutinize the behavior of the regulatee and some authoritative basis for changing it (the regulator monitors performance and uses persuasion or direction over the regulated bodies to change their behavior).

Regulation inside government is a subset of the broader context of control over bureaucracy and there are many ways to classify various mechanisms usable to keep public bureaucracy under control (Hood *et al.*, 1999). Oversight comes in various forms; self conscious oversight is also different from the inspector-free control over bureaucracy. Self conscious oversight or comptrol (Hood, 1996) is when the system is held within limits without overt controllers in the form of official overseers, the bureaucratic version of Adam Smith's hidden hand. However a hidden hand is not the sole determinant for exchange process of a market, because culture also generally regulates human behavior. Hood *et al.* (1999) wrote that it is important to distinguishes 'comptroller' and 'inspector-free control' because the main lesson of cybernetic analysis for bureaucracy is that a system can be under control without having identifiable overseers and that, in any complex system, control cannot be affected by simple steering alone, but must in large measure constitute of self controlling mechanism (Beer, 1965; Dunsire, 1978; Brans and Rossbach, 1997). Hood *et al.* (1999) concentrate on four types of controls; oversight, mutuality, competition and contrived randomness, as shown in Fig. 1.

'Command and control styles' of regulatory intervention can possibly produce unintended side effects or even reverse effects through functional disruption of the system being regulated (Hood *et al.*, 1999, quoting Teubner, 1987; Sieber, 1981). However,

the problem of excessive or over-legalistic intervention has been much less discussed for regulation of government than for regulation of society at large (Hood *et al.*, 1999; with exception to Loughlin, 1996).

Competition: Recognized as one important inspector-free control over public bureaucracy, also aimed to promote competition within and among bureaucracies. Competition is common in the British civil service for promotion purposes. Competition is also achieved by generating a ranking based on performance which is common among universities. Similarly, competition among departments, agencies and other units for ‘turf’, budgets and the policy limelight that is commonly argued as a key element for maintaining external control over bureaucracy. However, there is some doctrine that competition within the public service is wasteful and disruptive. For those of a ‘public-choice’ persuasion, a gram of competition in bureaucracy may be viewed as worth a tonne of regulation through oversight. The star-ranking system for CPA introduced for local government supported this control feature.

Mutuality: Works in the opposite way to oversight because, through mutuality, a group will influence individuals. Hood *et al.* (1999) borrowed an example from a classic study by Hecllo and Wildavsky (1974); seeing mutuality as an informal oversight-central regulatory process from Ministers or Parliament to govern the behavior of top civil service in Britain. This resembled a small ‘village world’, with the villagers’ intent to pursue reputation among their peers and rating their colleagues. Regulating through mutuality will work when everybody in the group knew what should be achieved. However there is an issue of mutuality being built into formal structures of consultation or group decision making, through board or collegial structures. The system of committee that is pervasive in Britain seeing individual action being restrained by group decision-making and the climates of expectation and mutual obligations that those committee structures generate.

Contrived randomness: Acts as a check on behavior by making outcomes and operating conditions unpredictable. Contrived randomness works with not telling employees on what job, which organization, which location and with whom they will be working in the future. With this, they will not have the opportunities for joining up ‘scams’ or corrupt anti-system conspiracies at any level. Contrived randomness is obvious in the operation of imperial bureaucracy, tax bureaucracy and large field structures in many kinds of organization, including churches and multinational corporations. In these structures, the organization will post key employees unpredictably around the system to prevent them going native and their next posting will be

kept unpredictable. The UK civil service also has a tradition of limited-term posting which is similar to the convention adopted by the Chinese imperial bureaucracy of no more than three-year tenure in one position, with no certainty about where the next position would be.

The mixture of controls via oversights and the inspector-free mechanisms for regulation inside government comprises a variety of forms (Hood *et al.*, 1999). Variation of the mixtures will create different environments and pressures in government bureaucracy. Increased emphasis on oversight has seen heavier stress on competition in the UK public service over the past two decades. Oversight mixes with other inspector-free modes of control to produce a range of hybrids.

It is unusual to see control by pure oversights than the hybrid forms. An example of oversight linked with competition is the way that overseers of government (like the AC in its assessment of comparative local-authority performance on a range of services) often encourage their charges to compete for high ratings in a ‘saints and sinners’ table. The system of rating UK universities for teaching and research quality by panels of assessors drawn from the world of university teaching and research and linked with funding and quality control by government overseers is an example of oversight linked with mutuality. While an example of oversight linked with randomness is the way the Prison Inspectorate combines a programme of visits arranged in advance with a series of unannounced spot checks on prisons; which are said to be more effective than the visits announced in advance.

RESULTS AND DISCUSSION

The change in public management has been recognized by various academic literatures. Public bodies are required to focus more on strategic goals, rather than just delivering services (Hoggett, 1996). Increased accountability of public service organizations by judgments made on their achievements, usually by performance measurement of outputs and outcomes (Hood, 1991). Public bodies may serve consumers better by encouraging greater actual or quasi competition, either by privatization, contracting out or by employing outside contractors (McSweeney, 1988; Stewart and Walsh, 1992). Overlaps and grey areas of regulation are unavoidable; there are direct oversight of public bureaucracies by legislators and the oversight exercised by law courts besides the regulation by the AC (Hood *et al.*, 1999). The example provided by the authors is whether Britain’s administrative tribunals should be considered as a specialized administrative courts or bureaucratic regulators? Where is the drawing line between internal chain of command structures and external regulation?

Some heads of public organizations may welcome the arm's-length regulators to influence their organizations and bring extra pressure to push on problematic individuals or unit within their domains. Another grey area that is problematic to draw the borderline is between regulation and advice. Some organizations may only have the power to advice. However, the Audit Commission (AC), as champion of all inspectorates, may give advice but later enforce punishments through the scoring for performance if the public bodies did not follow their advice. Hence, should the AC be considered as giving advice or instructions because of the nature of their advice which always requires public bodies to follow? These considerations might influence local governments' actions towards performance indicators established by the AC and thereby alter their priorities.

Regulation inside government starts from the oversight of one public bureaucracy by another, but private actors also appear in the process because the AC appoints private accountancy firms to conduct some of the local authority audits. In measuring for scale and growth of regulation inside government, Hood *et al.* (1999) wrote that they recognize its fuzzy boundaries. Even though regulation inside government is not very clear in terms of its boundaries and authorities among bodies of regulators, it has become a familiar phenomenon to every public servant. Public managers and officials are exposed to multiple regulatory influences over their working life and day to day routine besides regulation from their immediate bosses in the chain of command. However, at times the regulation through performance indicators enables immediate bosses in the chain of command to encourage their officials to work and justify their actions to local authorities' elected members.

CONCLUSION

Regulation inside government is necessary to ensure efficiency, effective and transparent use of public money and delivery of public services. History and experience always served as good lesson for future improvement and other countries can learn from the UK experience. Hood *et al.* (1998) identified four main weaknesses in the current institutionalization and behavior of public sector regulators. The first weakness is lack of coordination for regulators in government for identification of good practice, examination of 'hot spots' and discussion of general approaches or overall philosophy across the various domains of regulation. The second is the government regulators' lack of systematic exposure to productive rivalry, rather than *ad hoc* turf battles or collaborative deals where responsibilities overlap. The third is a lack of clear central responsibility and finally a lack of snap inspections or random scrutinises, especially at the top and the centre of government. Dealing with the weaknesses properly would enhance the current regulation activities and agenda.

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End notes:

- 1 They conducted their study through exploration and in-depths interviews with regulators and regulatees to reveal scope and scale of regulation inside government, to discover how regulations work inside government and how it altered with the 'New Public Management' (complex of changes in public service organization).
- 2 In general, they found the more distant regulators are from their client in backgrounds, the more formally they behave (in the sense of non-participatory standard-setting, rule-bound regulatory behavior and heavy reliance on formal reporting and sanctioning, rather than participating, discretionary regulation with co-operative methods for gathering information and modifying behavior) (Hood *et al.*, 1998).