REGULATION OF GOVERNMENT: HAS IT INCREASED, IS IT INCREASING, SHOULD IT BE DIMINISHED?

CHRISTOPHER HOOD, OLIVER JAMES AND COLIN SCOTT

This article examines arms-length ‘regulation’ of UK government – the public-sector analogy to regulation of business firms – and assesses the precepts for public-sector regulation embodied in the Blair Labour government’s official vision of public-management reform, its Modernising Government White Paper of 1999. As a background to assessing the recipes for public-sector regulation in Modernising Government, the article shows that such regulation grew markedly both in the two decades up to 1997 and in the plans and activities of the Blair government from 1997 to 1999. Against that background, the design principles for public-sector regulation contained in Modernising Government are assessed. The White Paper was notable for embracing a doctrine of ‘enforced self-regulation’ for the public sector that involved aspirations to both more and less public-sector regulation in the future. It put its faith in a mixture of oversight and mutuality for ‘regulating regulation’. But in spite of the radical-sounding tone of Modernising Government, the measures proposed appeared limited and half-hearted, and two well-known institutional design principles for regulation seemed to be missing altogether from the Blair government’s view of administrative ‘modernity’.

This article looks at regulation of UK government, focusing on the secondary overseers of public bodies beyond the courts and the legislature, the two classic primary regulators of government in constitutional theory. First, it examines the growth of such regulation from the mid-1970s to 1997 – an era of largely Conservative rule witnessing the rise both of the so-called ‘New Public Management’ and the claimed development of an ‘Audit Society’ (Power 1997). This first section briefly summarizes findings to 1997 from our earlier research on regulation of government (see Hood et al. 1999). In the rest of the article we apply the same framework to examining changes in regulation of UK government under the Blair New Labour government up to the publication of its Modernising Government White Paper of 1999 (Cabinet Office 1999). The aim is to characterize and assess the Blair government’s plans, practice and philosophy for regulation of government and in particular to evaluate the precepts for regulation of the public sector embodied in Modernising Government.

Our argument is that the two decades to the mid-1990s were an era of
dramatic but largely unacknowledged growth in regulation of government while public service staff declined. This growth was not even and the style was not uniform across the public sector. But regulation of government seems to have become more formal, complex and specialized in many of its domains despite – or perhaps because of – the ostensible ‘New Public Management’ drive to ‘let managers manage’ in the public services. In some ways the Blair New Labour government continued the pattern by announcing plans to extend regulation of government by adding new regulators (notably for ‘OFSTED-izing’ the NHS) to the Conservative-created ones. But in contrast to the unacknowledged and unrationalized style of regulatory growth of the earlier era, a distinct philosophy of such regulation began to emerge, partly expressed in the 1999 *Modernising Government* White Paper. That philosophy embraced a first, albeit tentative, recognition of the compliance cost problem associated with public-sector regulation and a doctrine of ‘enforced self-regulation’ involving aspirations to combine the iron fist of Draconian central intervention with the velvet glove of self-regulation. In our assessment of the public-sector regulatory philosophy associated with *Modernising Government*, we argue that the strength of this approach is that it embodies a basic design that could limit regulatory compliance costs in those circumstances where wholesale abandonment of public-sector regulation is neither possible nor desirable. Its corresponding weaknesses include a half-hearted and limited development of the regulatory-design logic and untested assumptions about the politics of regulatory escalation.

As noted earlier, we are concerned here with the secondary regulation of government beyond the direct activity of the primary regulators (parliaments and law courts). Such secondary regulation (roughly though not exactly analogous with regulation of business firms) involves oversight of bureaucracies by other public agencies operating at arm’s-length from the direct line of command, the overseers being endowed with some sort of official authority over their charges (cf. Light 1993, pp. 16–7; Harden 1995, p. 302). This secondary regulation is a form of steering or control system that involves a combination of information-gathering, standard-setting and attempts at behaviour modification, but its particular institutional manifestation as regulation broadly comprises three elements (see Hood *et al.* 1999, pp. 8ff), all of which must be present:

(i) one public bureaucracy in the role of an overseer aiming to shape the activities of another;

(ii) an organizational separation between the ‘regulating’ bureaucracy and the ‘regulatee’, with the regulator outside the direct line of command (this feature distinguishes intra-organizational controls from arm’s-length oversight by another organization);

(iii) some official ‘mandate’ for the regulator organization to scrutinize the behaviour of the ‘regulatee’ and seek to change it.

No one of these elements (discussed at more length in Hood *et al.* 1999)
is sufficient on its own to distinguish secondary regulation of government from other processes (like direct line-of-command control, advice or lobbying). It is only when the three elements come together that the arm’s-length, authority-based features characteristic of regulation are produced, and that secondary regulation (by bureaucracies) is distinguished from primary control by legislatures and law courts.

On that three-part definition, numerous different families of secondary regulators of government can be distinguished. For instance, some are agents of legislatures (like parliamentary auditors), some are international overseers established by treaty, some are quasi-independent from both legislature and executive government (like probity overseers), some are executive-government organizations created to oversee ‘doer’ organizations at arm’s-length, and some are regulators of both public and private sector organizations (like data protection and safety-at-work agencies). Methods vary too, including audit, inspection, adjudication, authorization and certification. Like regulation of business, regulation of government involves a range of diverse organizations employing different instruments but sharing the three characteristics outlined above.

1 HAS IT INCREASED? REGULATION OF GOVERNMENT TO 1997

The scale of secondary regulation of UK government on the multi-criterion definition given above cannot be estimated with precision. Dependent on precisely what organizations we count as located within the public sector, our estimate of the number of national-level ‘regulator’ organizations overseeing public-sector bodies in the mid-1990s ran from about 135 to over 200. Our estimate of the staff size of such regulator organizations ran from almost 14,000 to almost 20,000 and our estimate of the direct annual running costs from about £750m at the low end to about £1bn at the top end (see Hood et al. 1998 and 1999, pp. 21–8).

To the direct staff and operational costs of regulator organizations must be added the compliance costs of such regulation – what it costs regulatees to meet the requirements of those who regulate them. Compliance cost data are not routinely collected across government as a whole, and we could only estimate them on the basis of limited data (ibid). Defining compliance costs in the narrowest possible way (excluding other costs and looking only at what it costs regulatees to interact with their regulator, including provision of information requested, consulting the regulator, setting up and acting as guides on visits and inspections), we concluded that the compliance costs of regulation in UK government at the very minimum matched the £750m to £1bn of direct spending on regulatory bureaucracies in the mid-1990s.

Moreover, there is evidence of considerable growth in regulation of government as defined above over the two decades to the mid-1990s. Over a time when UK government substantially downsized in public service staff numbers, secondary regulation of government seems to have ‘upsized’
markedly, in numbers of organizations, direct spending and staffing. When we examined numbers of regulators in 1976 and 1995 in different parts of the public sector, we concluded that the number of ‘regulator’ organizations overseeing government had risen by over a fifth during those two decades. Spending appeared to have grown more than the body count of organizations. Over two decades to the mid-1990s overall spending (in constant prices) on regulation of government seemed to have more than doubled, with particularly vigorous growth in ombudspeople and funder-regulators (see Hood et al. 1998; Hood et al. 1999, pp. 28–33).

For employment, we estimated that the total staffing of regulators of UK government grew by about 90 per cent between 1976 and 1995, and that too is a conservative figure. This dramatic staff growth contrasts sharply with what happened to staffing in the public sector as a whole, with a fall of more than 30 per cent in total civil servants and over 20 per cent in local authority staff (Cabinet Office 1995, p. 47; DOE 1996, p. 57).

In general, therefore, the answer to the first part of the question in the title of this article would seem to be a resounding ‘yes’. Secondary regulation of government outside the law courts and legislature grew substantially over the twenty years to the mid-1990s. This finding links to Hoggett’s (1996) observation that the public management revolution produced increasing formality of controls and Power’s (1997) claim that there was an explosion of formal audit associated with declining trust in professional self-regulation. Whether or not Majone (1994) and others are correct in identifying growth of a ‘regulatory state’ in society at large, there certainly seems to have been increasing regulation of the state. But there was no official policy of increasing regulation of UK government over the twenty years to 1997, no official recognition of the overall pattern and no official discussion of how regulatory growth fitted with the received managerial rhetoric of ‘letting managers manage’ in public services. Regulation of government grew in an ad hoc and unrationalized way and there was no equivalent to the official concern with compliance costs imposed by government regulation of business.

2 IS IT INCREASING?

The brief summary of our earlier work indicates that the Blair government inherited a legacy of growth in numbers and cost of arm’s-length regulators of the public sector, but no coherent doctrine about the design of such regulation. Examination of the Blair government’s plans and activities from its election in 1997 to the publication of Modernising Government in 1999 indicates at least three main features. The first is continuation and even acceleration of the previous pattern of long-term growth in arm’s-length regulation of government. The second is a continuing difference in the style of regulation applied to core Whitehall departments from that applied to local government and other parts of the public sector. The third is aspiration to
move public-sector regulation in the direction of ‘enforced self-regulation’.
Each of these features is briefly discussed below.

(a) Continuing population growth
During its first two years, the Blair Labour administration announced plans for a substantial further net extension of secondary regulation of UK government as defined earlier. Though it rejected arguments for a Human Rights Commission to police compliance with the 1998 Human Rights Act (incorporating the European Convention of Human Rights into UK law), its plans and activities presaged an acceleration of growth in numbers of regulators, resources devoted to regulation and the scope of regulation. Table 1 identifies a dozen or so major new organizations for regulating government (according to the definition given above) that were created or announced under the Blair Labour administration up to the time of its 1999 Modernising Government White Paper. It is divided into six categories.

The first notes ‘inertia growth’ in the form of regulator bodies initiated by the Conservatives but set up under Labour. The two main examples of such inertia growth are a new Training Standards Council to oversee training providers and a Benefit Fraud Inspectorate (BFI) within the DSS, together involving direct costs of about £11.4m per year. (The latter was primarily designed to be a regulator of government rather than of benefit claimants alone and to investigate central government agencies, local authorities and local authorities’ private contractors (Benefit Fraud Inspectorate 1998, appendix 3).) The second category involves arm’s-length regulators set up by the Conservatives and scrapped by Labour. The main death in the family of arm’s-length public-sector regulators under the Blair Labour government was the Funding Agency for Schools, the overseer of public-sector schools that had ‘opted-out’ of local authority control.

The third category notes regulator bodies initiated by Labour and set up by Spring 1999. As can be seen, the head count in this category is modest, involving only a new Youth Justice Board and various central government units that are somewhere on the boundary of policy advice and arm’s-length regulation (notably the Performance and Innovation Unit in the Cabinet Office). Much more significant for growth of public-sector regulation are the bodies included in the fourth category of table 1, that is, organizations initiated by Labour but not set up before Modernising Government was published. New Labour’s ‘Best Value’ regime for local government included two extra inspectorates (DETR 1998, ch. 7, §7.45) and its plans for regulating the NHS also involved two substantial new regulators. One was a Commission for Health Improvement (to oversee clinical quality and governance and take action against poor performers). The other was a National Institute for Clinical Excellence (a quasi-regulator to promote clinical audit and cost-effectiveness, partly taking over functions previously carried out by other bodies (DOH 1998, ch. 7, §7.11–4). In addition, in the wake of the third Nolan Committee Report on Standards of Conduct in
### TABLE 1  Regulation of UK Government from 1997 to Modernising Government – Some Key Developments

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<thead>
<tr>
<th>Type of change</th>
<th>Regulatory organization or project</th>
<th>Approx. annual change in direct costs</th>
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<tr>
<td>1 Bodies initiated by the previous government and set up since 1997</td>
<td>Benefit Fraud Inspectorate to oversee central and local government (1997) Training Standards Council (1998)</td>
<td>+ £3.4m. + £8m.</td>
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<td>2 Bodies set up by the previous government and dismantled by Labour</td>
<td>Funding Agency for Schools (funder-regulator for oversight of schools ‘opted out’ of local authority oversight), abolished 1998</td>
<td>-£10m.</td>
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<tr>
<td>3 Bodies initiated by Labour and set up before Modernising Government</td>
<td>Youth Justice Board (1998) Various quasi-regulatory ‘co-ordinating’ units in the Cabinet Office, including the Performance and Innovation Unit (1998) and a new audit section to review all the main Citizen’s Charters over 1998–2000</td>
<td>+ £2m. + £1m.</td>
</tr>
<tr>
<td>4 Bodies initiated by Labour but not set up before the publication of Modernising Government in March 1999</td>
<td>National Institute of Clinical Excellence (1999) Commission for Health Improvement for England and Wales (1999) Best Value Inspectorate within the Audit Commission, including the Housing Inspectorate (1999) General Teaching Councils for England, Wales and Northern Ireland (largely professional self-regulation) (not yet established) Standards Board for England and similar arrangements for Wales and Scotland (not yet established) Commission for Care Standards (not yet established)</td>
<td>+ £10.3m. + £5 to + £15m. (est) at least + £20m. (est) n/a</td>
</tr>
<tr>
<td>6 Other regulatory initiatives from 1997 to Modernising Government</td>
<td>Re-announcement of Public Sector Benchmarking Project originated by previous government (Cm 4310 1999, p. 39) Strengthening of five-yearly reviews of executive agencies and NDPBs Best Value framework for local authorities from 1998 Public Service Agreements linked to Comprehensive Spending Review (ibid, p. 40) Public sector organizations to adopt quality management schemes (ibid, p. 42) PCA’s jurisdiction extended to 158 more bodies (ibid, p. 27)</td>
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Local Government, the Blair government announced new regulators of local-authority probity, in the form of Standards Boards to investigate complaints about breaches of Codes of Conduct by local councillors (DETR 1998, ch. 6 §6.3–4). It announced a Commission for Care Standards to oversee care institutions and an extension of educational regulation in the form of General Teaching Councils for England, Wales and Northern Ireland to compile registers of teachers and strike off teachers for misconduct. (These Councils involved a system of state-organized professional self-regulation, matching the long-established Scottish system, and in that sense different from the other regulatory initiatives noted in table 1).

The fifth row of table 1 notes mergers, major reorganizations and makeovers of public-sector regulators between 1997 and 1999, notably the creation of a single Quality Assurance Agency for higher education and makeovers of the Citizen’s Charter and former Deregulation Unit. The sixth row identifies some of the principal regulatory initiatives that were not associated with new regulator institutions, such as the extension of the PCA’s jurisdiction to 158 more public bodies (Cabinet Office 1999, p. 27).

What this analysis shows is that the main element of public-sector regulator growth in New Labour’s first two years was ‘inertia growth’ inherited from the previous Conservative government, largely offset by the death of the Funding Agency for Schools. However, the real growth lay in the fourth row of table 1 – commitments to more public-sector regulation that had not yet come on stream at the time of Modernising Government. So some estimate of the likely minimum size of those commitments needs to be added to the known net costs of rows 1–3 of table 1 to gain a picture of the overall rate of increase in public-sector regulators sparked off by the Blair government in its first two years.

No such estimate can be very precise, because detailed plans and budgets were not available at the time of writing. Moreover, as often applies to new bureaucratic creations, in several cases some reshuffling of resources would take place between previous and newly-created units (for example over clinical audit (DoH 1998a)) and between local and central government (such as for inspection of care standards (DoH 1998c)).

Nevertheless, a broad estimate of the likely dimensions can be made. Given that the Commission for Health Improvement was intended to visit all of the over 400 NHS trusts and give concentrated attention to problem cases (DoH 1998b, p. 3), the organization required would need to be at least four times the size of the Prisons Inspectorate. Indeed, a conservative estimate of the total cost of the CHI is £5 to £15m per year (Walshe 1999, p. 195). And to carry out the 1,000 annual inspections projected for the ‘Best Value’ regime (Audit Commission 1999a, p. 22), the Best Value inspection system could scarcely cost much less than £20m per year if the costs are similar to those involved in OFSTED’s school inspections (and could well be substantially higher, since Best Value inspections were intended to be
closer to bespoke tailoring than the ready-to-wear approach characteristic of OFSTED’s school inspection system).

Putting those elements together, the net overall direct costs of the major Blair government additions to regulation of government announced in its first two years could scarcely be much less than £40m per year, and could be closer to £50m. Whatever assessment is made of the scale of such costs relative to the Blair Labour government’s ambitions for improving public service quality, it seems safe to conclude that growth in regulation of government was not slackening over the first two years of New Labour rule in terms of resources. If anything, it seems to have quickened in numbers of organizations being created.

(b) Central government departments and other parts of the public sector

Our earlier research suggested that the system of UK public-sector regulation inherited by the Blair New Labour government in general involved more formalistic and heavy-duty regulation over local government and the outer reaches of the public sector than of core central government departments (Hood et al. 1999, ch. 3). Within central government itself, the process of carving executive agencies out of departments meant that agencies were subject to arm’s-length regulation from parent departments. But core departments themselves were for most purposes exposed to a lighter regulatory yoke and regulation for those organizations grew at a slower pace than for other parts of the public sector. This pattern appeared consistent with Black’s (1976) idea of ‘relational distance’ as shaping formality of enforcement processes.

Changes under the Blair government up to Modernising Government seem to have broadly maintained this pattern. In general, local public bodies and the mixed public/private sector seem to have borne the brunt of planned regulatory increases rather than core central government departments – continuing and extending the pattern of the previous twenty years. Only three of the dozen or so new regulator bodies shown in table 1 were targeted at Whitehall departments, with the other new regulatory artillery aimed at other parts of the public sector.

Regulation of central government departments was extended and re-branded in ways other than by creation of new overseer organizations, as shown in rows 5 and 6 of table 1. Notable examples were the re-launch and extension of the Citizen’s Charter as ‘Service First’ (Cabinet Office 1998b, §2.8 and §4.22) and a makeover of the Conservative government’s Deregulation Unit. The Unit was re-branded as the Better Regulation Unit (later the Regulatory Impact Unit) and refocused through the appointment of a high-profile Better Regulation Task Force, to put more pressure on government departments and other public bodies to review and improve regulatory regimes. (This approach was also stressed by the OECD in its recipe for regulatory reform (OECD 1997, vol. II, ch. 2).)

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However, much of the extension of arm’s-length regulation of core central government departments tended to be more soft-focus in character than that applying to other parts of the public sector. While *Modernising Government* promised a rather vaguely defined process of ‘peer review’ among core Whitehall departments (Cabinet Office 1999, p. 6), peer review did not figure large in the recipe for the rest of the public sector. Indeed several developments in regulation of core government departments lay on the boundary line between ‘regulation’ as defined above and promotional or advisory activity. Some of the new promotional and co-ordinating bodies introduced by the Blair government into the Cabinet Office (the Women’s Unit, the Social Exclusion Unit and the Performance and Innovation Unit) were of that type.

By contrast, three times as many new regulator organizations were created to oversee other parts of the public sector and most of the extensions of regulation for those other parts of the public sector were anything but soft-focus in approach. For instance, New Labour both embraced and extended the heavy-duty OFSTED school inspection regime in England created by the Conservatives, and its ‘Best Value’ policy for local authorities substantially broadened the scope of local authority regulation by central bodies. (The latter involved new cost and quality standards for service delivery and extension of inspection to services including libraries, planning and transport (DETR 1998, ch. 7, §7.39).)

(c) A new philosophy of public-sector regulation?
The analysis above suggests the answer to the second part of the question in the title of this article should also be ‘yes’. Regulation of government apparently continued to grow in the early years of New Labour. But there were some indications of a change in style, at least in official doctrine. *Modernising Government* and the institutional design ideas on which it built marked a departure from previous practice over public-sector regulation in at least three ways.

One was the first tentative acknowledgement that excessive regulation and regulatory compliance costs could be a problem for the public sector as well as business firms. *Modernising Government* announced the extension of the deregulation provisions (Part 1) of the Deregulation and Contracting Act 1994 to the public sector (Cabinet Office 1999, p. 38). This proposal was less dramatic than might at first appear, since few of the burdensome regulatory requirements placed on public sector actors derive from legislation (and, as will be shown in the next section, the deregulatory commitment appeared likely to have very limited overall impact). But it was at least a notable shift in rhetorical tone from a previous pattern of blithe disregard for the costs and burdens of public-sector regulation coupled with official concern about compliance costs and egregious burdens of regulation for business.

A second was more official concern with consistency of practice and link-
ages among different regulators. *Modernising Government* (ibid, p. 23) expressed concern about the effect of audit and inspection processes in ‘hinder-dering cross-cutting work’ and proposed more co-ordination of inspection functions, with the development of a common set of inspection principles (ibid, p. 43). This theme was linked to an emphasis on co-ordination that ran through the White Paper, and was reflected in developments like the creation of a Public Audit forum and proposals for a new Best Value inspectorate forum (ibid, p. 37). It suggests some reaction against the *ad hoc* pattern of public sector regulatory growth over the previous twenty years, with no common practice and even deliberate proliferation of regulators pursuing different and conflicting agendas (as in the early days of the Audit Commission). How far the measures proposed were likely to achieve the co-ordination desired, however, will be discussed in the next section.

A third was official embrace of ‘enforced self-regulation’ for large parts of public sector regulation. As noted earlier, Labour inherited a trend towards greater formality in regulation of many public bodies (especially of local government and the outer reaches of the public sector as seen from Whitehall), in the sense of less involvement of regulatees in regulatory decision making and more formal sanctioning rather than persuasion (see Hood *et al.* 1999, pp. 194–7). By contrast, *Modernising Government* (Cabinet Office 1999, pp. 30–1) stated a doctrine of intervening ‘in inverse proportion to success’ and striking ‘an appropriate balance between intervening where services are failing and giving successful organizations the freedom to manage’ (skating delicately over the fundamental tension that may be implied in those two goals). The same aspiration to ‘enforced self-regulation’ (developing a trend towards more formal and external regulation for public-sector regulatees seen as poor performers whereas good performers are rewarded with lighter oversight regimes) appeared in plans and designs announced by the Blair government in several domains of public-sector regulation.

Enforced self-regulation consists of external enforcement of rules written by regulated bodies and internal enforcement of externally set rules. Different types of regulation are arranged in the form of a pyramid, with self-regulation at the bottom, more interventionist styles of regulation in the middle and the most interventionist types at the apex. Ayres and Braithwa-ite (1992, p. 116) elaborate this approach, arguing that in many conditions it is an improvement on both pure ‘self-regulation’ and externally set and enforced regulations. Perhaps it is not surprising that such a ‘third way’ model should appeal to New Labour policy makers.

As suggested in the previous sub-section, the approach to regulation of the inner core of Whitehall looked more like simple self-regulation for many purposes, with a velvet fist inside a velvet glove. But the enforced self-regulation idea does seem to capture the design principles being applied to several public-sector regulatory systems. Six applications of this approach seemed to be visible in changes made or proposed to regulation of clinical
quality in health care, ethical standards, financial management and service efficiency in local government and the certification of service quality under the Citizen’s Charter programme. Those changes are summarized in table 2.

Table 2 summarizes the pre-Blair government arrangements for regu-

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<th>Regulatory domain</th>
<th>Pre-Blair government arrangements</th>
<th>Changes announced by Blair government</th>
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<tr>
<td>1 Regulation of clinical standards in the National Health Service in England and Wales</td>
<td>Encouragement of clinical audit in 1990 NHS White Paper but with no central oversight unit (outside NHS line management) regulating the process</td>
<td>Commission for Health Improvement to conduct spot checks and recommend sanctions if local control of clinical quality is judged inadequate (DoH 1998, p. 59 and ch. 7, §7.13)</td>
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<td>2 Regulation of school education in England</td>
<td>Development of more extensive and formal school inspection regime since 1992, with powers to recommend closure of schools found to be ‘failing’ by OFSTED inspectors</td>
<td>(a) more graduated sanctions available for failing schools (DfEE 1997); (b) plans for less stringent inspection of best-performing schools; (c) LEA Development Plans to be drawn up in line with a central Code of Practice</td>
</tr>
<tr>
<td>3 Local authority standards of conduct regulation for England, Wales and Scotland</td>
<td>No central regulator; mixture of voluntary self-regulation and audit regimes</td>
<td>Local codes of conduct and registers of interest, in line with central guidelines, policed by central regulators investigating complaints and applying sanctions including disqualification/ suspension of local councillors</td>
</tr>
<tr>
<td>4 Local authority financial regulation in England</td>
<td>Central oversight of local authority finance, including powers of central government as regulator to cap local taxes and spending and approve capital investment</td>
<td>(a) ‘Beacon councils’ (for some/all services) subject to less oversight, e.g. over capital spending (Cm 4319 1999, p. 37) (b) Differentiated sanctions for ‘poor performers’ (DETR 1998, ch. 5)</td>
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<tr>
<td>5 Local authority efficiency and performance regulation in UK</td>
<td>Oversight of Compulsory Competitive Tendering Regime from the 1980s plus value-for-money audits (on top of traditional fiscal audits) and inspection of particular services</td>
<td>‘Best value’ system: (a) local performance reviews, plans and standards; (b) central standards for some services (DETR 1998, ch. 7); (c) central monitoring by auditors and Best Value inspectors (ibid, §7.37–42); (d) follow-up action to be required for plans deemed inadequate or failure to achieve target standards</td>
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<tr>
<td>6. Certification of public service quality through Charter Mark system</td>
<td>Competition only for externally assessed charters</td>
<td>Addition of self-assessment option to external Charter Mark system (Cabinet Office 1998b)</td>
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</tbody>
</table>
lation of six public-sector domains and indicates the changes announced up to *Modernising Government*. In several of the cases (notably 3 and 5) the changes involved more involvement by regulatees in writing their own rules (those conditions applied before 1997 to case 1) and likewise a graduated scheme of enforcement was introduced for three of them (2, 4, 5). Case 6 is included only because self-assessment was introduced in addition to external oversight through certification. For cases 1 and 5 in particular, the stated intention, consistent with Ayres and Braithwaite’s (ibid, pp. 40–1) ideas about enforced self-regulation, was for the majority of regulatees (local authorities or health trusts) to be correcting their own shortcomings at the bottom of the enforcement pyramid. Only occasional intervention by central regulators seems to have been contemplated. But where local actions were found to be inadequate by those regulators, a quiver of arrows to shoot at poor performers was provided. (For example, under the Best Value scheme, the secretary of state could require local authorities to draw up action plans for improvement or oblige them to stop providing a specified service directly (DETR 1998, ch. 7, §7.47.).

Hence while regulation of government seemed set for continued growth in resources and organizations as a result of decisions made by the Blair Labour regime in its first two years, it could be argued that the government’s aspirations to more responsive regulation involved both an increase and a decrease in regulation in a qualitative sense. The enforced self-regulation doctrine has been hailed by Vincent-Jones (1998; see also Daintith and Page 1999, p. 385), following Ayres and Braithwaite, as likely to lead to better regulation in the public sector by creating a more reflexive and less conflict-ridden regime. And it has the rhetorical advantage that government appeared to be doing a great deal about public service failure without having too many local authorities in the chamber of execution.

But – as with so many successful rhetorical strategies – whether this design for both more and less regulation could be reflected in actual outcomes is problematic and remains to be seen. How conflictual the model turns out to be depends on how many public-sector regulatees are picked up as unsatisfactory by overseers and pushed up to the higher levels of the enforcement pyramid. And here there is a fundamental dilemma in regulatory strategy. To keep conflict to a manageable level, the logic of enforcement pyramids suggests killing only an occasional public-service admiral to encourage the others. That applies to school closures under the OFSTED regime since 1992, in spite of recurrent tough-talking rhetoric from successive governments about ‘zero tolerance’ of failure (cf. Hood *et al.* 1999, pp. 1544–5). But if failure and chronic under-performance in public services provision is really as widespread as some of the ‘standards’ rhetoric suggests (cf. Blair 1998, pp. 11 and 20), the logic would imply the execution of whole admiralties, overloading the capacity of the centre. The compliance climate could alter if central-local relations worsen, and high-level intervention against too many authorities could turn what is intended to be an
‘enforcement pyramid’, with most regulatees at the base, into a costly, litigious enforcement ‘cube’.

3 SHOULD IT BE DIMINISHED?

If secondary regulation of UK government seems to have grown markedly over the two decades to 1997 and to have continued in the early years of New Labour, is there a case for reducing it? Those who complain about the burden of an ‘audit explosion’ certainly think so. They see the advance in regulation of government, with its growing direct and compliance costs, as over-ripe for a robust application of the sort of cost-benefit scrutiny used for the appraisal of business regulation over the past fifteen years. For those who accept Power’s (1997) thesis about an ‘audit explosion’, more regulation of government might be expected to consume extra public resources in unnecessary ‘rituals of verification’ (ibid) without removing deep-seated policy and administrative failings and possibly weakening collegial systems of self-regulation inside the public sector.

Our interview programme (involving some 80 public-sector regulators and regulatees) predictably indicated that regulatees outside central government departments were more inclined to endorse some form of Power’s ‘audit explosion’ thesis than regulators and central departmental officials. But the implication that formal regulation of government needed to be radically reduced was contested by several senior civil servants, who argued that such regulation had developed precisely because older, less formal systems of control had weakened in many parts of the public sector. They pointed to trends such as a relative move away from traditional career-service and jobs-for-life employment patterns in the public sector (with more lateral entry into senior positions) undermining the traditional internal conditions and incentives that supported mutuality-based controls in the public sector. A Permanent Secretary drew an explicit parallel with the more formal regulation applied to financial services as participation widened beyond a traditional elite whose unwritten rules were foreign to a new breed of entrants. Some of the regulators related the growth of regulation to a broader change in the social habitat of public services, with more litigious and less compliant consumers (cf. Wood 1999) and less deference to public-service professionals. Even if there had been no internal degeneration of mutuality-based collegial systems of control, such external changes could be expected to prompt more challenges to cosy collegiality. Given that it is unfeasible (and for many, undesirable) to turn the clock back on such developments, it might be argued that it would be dangerous to return formal regulation of government to the level of the 1950s and 1960s. Indeed, for bodies like the World Bank (1999, p. 7, §3.12), explicit and properly enforced formal regulation of government is a key element in achieving transparency and accountability.

Modernising Government, and the various Blair government initiatives it described and embraced, implied that regulation of government should
both be diminished and expanded. The ‘enforced self-regulation’ doctrine, as discussed earlier, involves the deployment of heavier regulatory tackle against the incompetent or recalcitrant, while lightening the regulatory yoke over good performers. Some of the cultural and political conditions that appear to be needed for the success of such a policy have already been discussed. Along with the enforced self-regulation doctrine, *Modernising Government* implied that the quality of public-sector regulation was more important than its quantity, and proposed a mixture of mutuality among regulators and regulation of the regulators to improve the quality. That represented a more coherent approach to designing regulation of government than anything that had been produced in the previous two decades. But it can be argued that the measures proposed for improving the quality of public-sector regulation were limited and half-hearted, and that *Modernising Government* did not even mention two potentially powerful ways of keeping public-sector regulatory growth in check without abandoning arm’s-length oversight of public bureaucracies. The following four subsections briefly develop this argument.

(a) Applying mutuality to regulation of government

In line with its general emphasis on co-ordination and cross-departmental working, *Modernising Government* expressed enthusiasm for more mutuality among the various regulators of government as a means of improving the quality of what they did. As well as general measures to encourage the spread of best-practice ideas around the public service, it endorsed the development of fora for exchange of ideas and experience among public-sector regulators. Though it did not mention the principal and longest-established regulator forum (the British and Irish Ombudsmen Association), it hailed the development of the Audit Forum (set up in 1998 to comprise the NAO, NIAO, Audit Commission and Accounts Commission for Scotland) and re-announced proposals to establish an Inspectorate Forum to discuss common inspection interests relating to the ‘Best Value’ regime for local government (DETR 1998, ch. 7, §7.44; Cabinet Office 1999, pp. 31 and 37).

The Blair administration’s much-discussed aspirations for co-ordination or ‘joined up government’ (which figured large in *Modernising Government*) would certainly seem to imply more mutual interaction among the players in the more complex regulatory systems that have emerged over the past twenty years, with their overlapping jurisdictions and rising burdens on regulatees. And, like their counterparts in business regulation, regulators of UK government have tended to be institutionally fragmented in the past, according to the findings of our previous work (Hood *et al.* 1999, ch. 2). But *Modernising Government*’s endorsement of summit meetings within regulatory families was hardly radical or new. What it did not create were cross-domain fora to join up the different families of regulators. Even for the proposed Best Value Inspectorate Forum, it is not clear how mutual interac-
tion would take place between inspectors, audits and the various other regulators of local government. (Yet the Blair government’s ‘Best Value’, ‘Beacon Council’ and ethical standards regimes made consistency and complementarity among different regulator families increasingly important, since those schemes depended on an assessment process based on reports from multiple overseers.) Thus, while there is some evidence of attention to the creation of new fora for mutuality, these developments were limited and failures of co-ordination among regulators could have more damaging consequences under the new regimes than in the past.

Moreover, *Modernising Government* made no specific proposals for improving mutuality among regulators of government by cross-posting among the different organizations involved. Effective transfer of innovation and ideas across organizations often comes more from mobile individuals over the course of a career (cf. Breyer 1993) rather than from ‘summit meetings’. Such mobility seems to have been very limited in the past, with only a few secondments and exchanges, for example between NAO and the European Court of Auditors and NAO and the Audit Commission (Hood et al. 1999). But no specific arrangements were proposed in *Modernising Government* for making it easier for career paths to cut across the 130-plus national-level organizations regulating UK government, to augment the very limited career moves across those organizations in the past.

Nor did *Modernising Government* appear to contemplate more structural solutions for narrowing communication gaps among regulators doing related work. One possible model from business regulation is the ‘umbrella’ or ‘double-decker’ agency, like the HSE and the Environment Agency. Such regulators combine specialized expertise in sub-units at the operating level (like the Railways Inspectorate or the Nuclear Installations Inspectorate), but add to that another layer of more general policy analysis, strategic direction, political ‘clout’ and capacity for application of high-level sanctions. Apart from combining the advantages of being ‘close’ to and ‘distant’ from regulatees within a single organization, such structures create incentives for development of common policy frameworks and routines across different specialisms (see Hutter 1997, pp. 21–7). The idea of applying a similar organizational logic to regulation of government was not discussed in *Modernising Government* or any of the other official documents relating to regulation of government under the Blair Labour administration. Indeed, the issue of how the aim of co-ordinated inspection was to be achieved under the ‘Best Value’ regime for local government was left studiedly vague (see DETR 1998, ch. 7, §7.41). At the time of writing there is little sign of an HSE-type model developing, with the Audit Commission as a central co-ordinating body overseeing sectoral specialists. Rather, the Audit Commission (1999b, p. 16, §16) apparently saw its role in ‘Best Value’ as that of inspecting those local authority services not under another inspectorate, leaving existing inspectorates like OFSTED, with their links to their associated policy departments at the centre, to operate in parallel. Hence, although
'Best Value' increased the costs of conflict and tension among regulators, it did not change the basic institutional characteristics of a ramified multi-organizational system with overlapping responsibilities. The same goes for the relationship between the Standards Board, the Commission for Local Administration in England and local auditors, all of which had a role investigating impropriety (DETR 1998, ch. 6, §6.33). Our investigation of the pre-Blair system of public-sector regulation indicated that the relationship among regulators of government was neither fully collegial nor fully competitive (Hood et al. 1999, ch. 10), and there were no structural changes proposed in Modernising Government to change that pattern.

(b) Applying oversight and review to regulation of government

A second recipe for improving the quality of public-sector regulation contained in Modernising Government was the development of common codes of conduct and a vague suggestion of concern with cost-effectiveness. Modernising Government proposed the development of a set of common principles of public inspection (Cabinet Office 1999, p. 37). And, as noted earlier, it went further than any previous government initiative in recognizing the risks of excessive regulation over the public sector by announcing the extension of the deregulation provisions (Part I) of the Deregulation and Contracting Out Act 1994 to the public sector.

These departures are interesting because hitherto there had been no general code of conduct for regulation of government and no unit in government responsible for reviewing the field as a whole. External reviews were rare and never comprehensive. And no-one had ever compared how much was invested in regulation of government against what was invested in regulating business and asked if the balance made sense. But no coherent principles were offered in Modernising Government as to when ‘enforced self-regulation’, as described earlier, was appropriate or what its scope and limits should be in government. Ayres and Braithwaite (1992, p. 121) argue that such an approach is inappropriate for small organizations and that it may make it harder to disseminate ‘best practice’ effectively. But no such qualifications were considered in Modernising Government, nor is there any account of why ‘enforced self-regulation’ appeared to be viewed as more applicable to local government and the outer reaches of the public sector as seen from Whitehall than to the core of central government.

Moreover, the commitment to review public-sector regulation in Modernising Government appeared both limited and ambiguous. No arrangements were set out for overall co-ordination and evaluation of regulatory burdens placed on public organizations. No system for logging compliance costs and conducting regulatory impact analysis was proposed, contrasting sharply with the approach adopted for most business regulation in the EU and Whitehall (which received additional emphasis in Modernising Government). The inevitable result is a continuing ‘evidence vacuum’ about the marginal effects (positive or negative) of increasing or reducing investment in regu-
islation of government. Indeed, some additional regulatory requirements on
the public sector (such as extended obligations to adopt quality manage-
ment schemes and closer regulation of IT systems across government) were
proposed or endorsed in Modernising Government itself, without any regu-
latory impact assessment. While, in promoting an extension of ‘charterism’
across the public service, the Citizen’s Charter Unit seemed to be ignoring
the sermons preached by the Regulatory Impact Unit about the need to
carry out impact analysis before imposing new regulatory burdens.

Thus, although Modernising Government declared (Cabinet Office 1999,
p. 31): ‘We do not want [managers] to feel swamped by . . . bureaucratic
requests for irrelevant data,’ it did not propose any system for bringing
information about the compliance costs of public-sector regulation to a sin-
gle point (as had been done for business regulation since 1985). Yet com-
pliance burdens in the sense of extra costs imposed on public-sector regul-
atees in interacting with regulators in processes of scrutiny are both
measurable and substantial (Hood et al. 1999, pp. 26–9; Hogwood, Judge
and McVicar 1998). Thus the case for an institutionalized challenge to the
‘Nelson’s eye’ approach adopted towards compliance costs by most public-
sector regulators seems just as strong as it is for regulation of business – a
case not even considered in Modernising Government.

(c) Applying competition to regulation of government

If Modernising Government’s proposals for improving the quality of public-
sector regulation through mutuality or oversight measures appeared more
limited than the radical rhetorical tone of the document would suggest,
there are also some notable gaps in its recipe for regulatory improvement.
In particular, there was a notable disjunction between the emphasis laid on
competition as one of five principles for continuous improvement of public
services (Cabinet Office 1999, p. 33) and the apparent dismissal of compe-
tition in any form for regulators themselves (in spite of the adoption of
competition among regulators in other contexts (see McCahery et al. 1996)).
Evidently the White Paper’s vision of governmental ‘modernity’ excluded
public-sector regulatory competition in the form of an element of choice by
regulators over who regulates them. (Such choice applied before 1982 to
local authority audit and to the 1992 ‘opt out’ regulatory regime for state-
funded schools that was scrapped by the Blair government.)

That vision of modernity also appeared to exclude even much more mod-
est elements of competition that often figure in mainstream administrative
designs. For example there was no discussion of exposing public-sector
regulators to more league-table comparisons. EU practice (by the DG for
Financial Control) of regulators including themselves in the league tables
of organizational performance that they publish for their charges shows
that it is possible to expose public-sector regulators to performance-indi-
cator comparisons. But that approach did not appear to be on the Modernis-
ing Government agenda, in spite of the Blair government’s enthusiasm for
publishing league-table comparisons for other parts of the public sector. Development of performance indicators for public-sector regulators is admittedly complicated by multiple, possibly conflicting objectives, the diverse range of organizations involved and the difficulty of identifying the ‘value added’ by regulators to their clients’ behaviour. But such problems also apply to many other public-service bodies (like those involved in education, health and social work), and that has not stopped regulators from applying comparative performance data to those bodies.

In addition, *Modernising Government* did not appear to contemplate exposing any public-sector regulators to sunset-testing, which is a mild form of competition in the sense that it makes regulation compete with other policy priorities and resource claims. And it is not clear whether the principle the White Paper endorsed, of identifying ‘best suppliers’ of public services (a modified form of market-testing), was to be applied to regulators of those services. Competition to provide public-sector regulation may be easiest to apply to large-scale activities involving similar operations across many units, such as schools inspection in England, and that may explain why OFSTED was a pioneer in ‘market-testing’ regulation of government. It may be harder to apply the OFSTED approach to small specialized or tightly coupled activities, but it is not clear why it could not be more widely applied to social services inspection, complaint handling or public audit work. *Modernising Government* was conspicuously silent on the issue.

(d) Applying randomness to regulation of government

Finally, a way of keeping both the compliance and administrative costs of regulation down that did not even rate a mention in *Modernising Government* is the use of randomness in checking procedures. Random checking systems involve several well-known advantages (cf. Hood 1998, ch. 7). One is the greater chance of breaking through information asymmetries through unannounced inspections or audits. A second is the avoidance of pre-inspection stress or ‘dentist’s waiting-room effects’ when inspections are announced long in advance. A third is the reduced cost of limited sampling checks rather than following a search-every-suitcase strategy. A fourth is the reduced compliance costs for regulatees when inspectors visit them unannounced to view them in normal operation and thereby avoid the heavy costs (of document preparation, rehearsals, refurbishment of premises, etc.) often associated with long-heralded inspections. Our earlier study of regulation of government (Hood *et al.* 1999, ch. 10) showed that a few regulators of UK government (like the Social Services Inspectorate and the Prisons Inspectorate) applied elements of randomness in selecting units for inspection. And some of the developments mooted under the Blair government (like spot checks envisaged to be made by the Commission for Health Improvement) may extend the practice.

Along with the advantages noted above, random inspection also has its disadvantages as an administrative device. It can preclude the anticipation
effects of long-expected visits, in which the mere announcement of an inspection can produce more efforts at improvement than the inspection itself (dependent on the cultural conditions). But what was missing from *Modernising Government* or any of the other Blair government official documents was any attempt to work out a coherent doctrine of when spot checks and random inspection of public-sector organizations are appropriate, as against visits announced in advance. In the past, the principle of random selection of units for scrutiny by public-sector regulators (where it was applied at all) had largely been applied to lower-status organizations or routines, like prisons, social care institutions or routine financial operations (ibid, pp. 223 ff). That pattern looked set to continue under the Blair Labour government. In line with traditional practice, *Modernising Government* put the stress on mutuality (peer reviews, committees of Permanent Secretaries and the like) rather than oversight for regulating the centre of Whitehall and on predictable review schedules linked to strategic overall targets. It did not even consider the case for random checking systems at the top and centre of government, where power is concentrated and the players know each other well (possibly too well). Nor was there any consideration of other uses of randomness in regulation, for example to limit the risks of capture of regulators (cf. Niskanen 1971, pp. 219–20; Rose-Ackerman 1978, pp. 167–88) or to counter the distorting effect of predictable performance indicator regimes (cf. Blau 1955).

4 CONCLUSION

Regulation of UK government seems to have grown substantially during the ‘New Public Management’ era (of bureaucratic downsizing and changing styles of public service delivery) that preceded the Blair Labour government. Along with apparently deregulatory ‘let managers manage’ rhetoric went a marked (but largely unremarked) increase in the resources, staffing and organizational numbers of arm’s-length regulators of the public sector. The UK’s New Public Management era cannot be adequately understood without reference to this growth of public-sector regulation. (Light’s (1993, p. 17) study of the Inspectors-General in the US federal government also points to the contrast between Congressional and presidential efforts to reduce regulatory compliance costs on business and ‘willingness to impose an ever-increasing level of regulatory and reporting requirements on executive agencies and their employees’.) Were the growth rates of the recent past to be maintained, the new century would see rapid further expansion of public service regulators relative to the ‘doers’ – a feature not usually included in visionary statements about what public management will or should be like in the new millennium.

Regulation in government continues to increase. Growth in regulator organizations and the direct and indirect resource costs of regulation were a marked feature of the plans and activities of the Blair Labour government up to the publication of *Modernising Government* in 1999. But, as suggested
earlier, the story of public-sector regulation under the first two years of that government was not simply one of continuing expansion but also of the emergence of a doctrine of public-sector regulation explicitly embracing the idea of more ‘reflexive’ regulation or ‘enforced self-regulation’.

Careful thought about the organization and administrative strategy of public-sector regulation certainly seems to be needed, since it is hard to see how such regulation could be returned to the level of thirty or forty years ago. A more fragmented public service structure with more lateral entry is likely to be hard to govern through traditional informal, mutuality-based approaches to bureaucratic control, particularly when coupled with broader social developments augmenting legal formalism, transparency and declining public trust in middle-class professionals. But (whatever novelty it may represent in other aspects of public management: it has been examined here solely from a regulatory perspective), Modernising Government represented only a modest break with traditional approaches to public-sector regulation. It did not grapple seriously with the compliance cost issue, beyond vaguely acknowledging the existence of the problem. Its enthusiasm for administrative and policy fora did not apparently extend to promoting more general exchanges across the regulatory ‘families’ and its enthusiasm for competition as one of five principles for improving public services did not appear to extend to the regulators of those services. It would be easy to conclude that the traditional pattern, in which regulators of government neither fully compete nor fully collaborate, follow no general or consistent principles, and are not exposed to the disciplines they impose on their charges, is set to continue.

The key doctrinal change over public-sector regulation in Modernising Government (articulating a pattern developing particularly in local authority regulation and partly built into pre-existing practice by some public-sector regulators) is the enunciation of ‘enforced self-regulation’ as a general recipe. Some likely limitations of that approach have been suggested earlier, including capacity limits to putting hard cases ‘in the clinic’ and political processes tripping the enforcement escalator. But unless a twenty-first century future in which more and more regulators oversee each public service ‘doer’ is acceptable, some slackening in the pace of growth of secondary regulation of UK government will need to take place. ‘Enforced self-regulation’ in principle offers a way both to increase and diminish regulation of government, reducing high-level bureaucratic routine while increasing overall regulatory hitting power. It remains to be seen how far that approach lives up to its promise.

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