Department for
Business, Energy
& Industrial Strategy

# Reforming the Framework for Better Regulation

## A consultation

Closing date: 1 October 2021

July 2021



Any enquiries regarding this publication should be sent to us at:
BRFrameworkReview@beis.gov.uk

# Ministerial Foreword: Our Principles for Regulation

## By the Rt Hon Kwasi Kwarteng MP and the Rt Hon Lord Frost CMG

After over 40 years, the UK has left the European Union. We have regained sovereign control over our laws, borders, and money. For the first time in a generation, we have the freedom to conceive and implement rules that put the UK first. Our laws no longer need to represent a compromise between competing interests among many European states - they can be tailored to our needs and traditions, and we can respond rapidly to new needs and emerging technological developments. This will be a crucial part of boosting our productivity and helping us bring the benefits of growth to the whole of our country.

This means that now is the time to think boldly about how we regulate, and do so with all those who have an interest in this issue. That is why we are launching this consultation.

We have high ambitions to reform the ways in which we design, implement, and evaluate our regulatory interventions. We can embrace new ideas and technologies, help set the pace internationally in how we regulate, and get ahead of the game in managing new growth sectors.

Build Back Better, our plan for growth, set out four objectives for the UK's approach to regulatory reform: to unlock cutting-edge technologies, to modernise our approach, to ease burdens and cut red tape, and to boost competition.

To achieve these objectives, we will base our approach to regulation on five principles.

1) A sovereign approach: we will use our new freedoms to follow a distinctive approach based on UK law, protected by independent UK regulators, and designed to strengthen UK markets.

2) Leading from the front: we will focus on the future, shaping and supporting the development of new technologies, and creating new markets. We will use our new

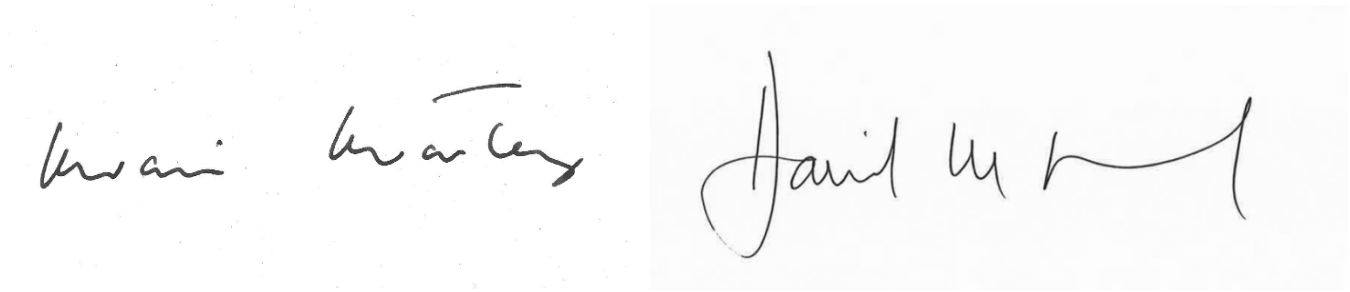
freedom to act quickly and nimbly, and we will pursue high-quality regulation because it leads to better markets.

3) Proportionality: Where markets achieve the best outcomes, we will let them move freely and dynamically. We will pursue non-regulatory options where we can. When strong rules are required to achieve the best outcomes, we will act decisively to put them in place and enforce them vigorously.

4) Recognising what works: we will thoroughly analyse our interventions based on the outcomes they produce in the real world, and where regulation does not achieve its objectives or does so at unacceptable cost, we will ensure it is revised or removed.

5) Setting high standards at home and globally: we will set high standards at home and engage in robust regulatory diplomacy across the world, leading in multilateral settings, influencing the decisions of others, and helping to solve problems that require a global approach.

Finally, in putting these principles into practice, we and our independent regulators must always remember that the way we make and enforce regulation makes a tangible difference to people. Our job is to help people and businesses to achieve better outcomes for themselves. That was what taking back control for the UK was about.



**RT HON KWASI KWARTENG MP**

**RT HON LORD FROST CMG**

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# Consultation details

## Why we are consulting

1. The UK has earned an international reputation as a great place to set up and scale a business, due to its stable and predictable regulatory environment, competitive product and labour markets and dynamic financial sector. The UK's exit from the EU with the Trade and Cooperation Agreement, and the UK's determination to reignite the economy to help it recover from the impacts of Covid, present us with new opportunities to redesign our approach to regulation.

2. Regulation is essential to the functioning of the economy. It can help ensure fair competition, consumer confidence and can also create the right conditions to foster growth and innovation. Regulation can also support societal outcomes such as protecting the environment – for instance enabling the UK to reduce its carbon emissions. It plays an important role in keeping the public safe and protecting vulnerable people. But we also know that poorly designed regulations, administrative systems and compliance mechanisms can lead to costs without these benefits.

3. The UK Government's current approach to regulation is set out under the Better Regulation Framework. This framework, which is published by the Government periodically, sets out the process for ensuring that the better regulation principles are applied when the Government brings forward new measures that will affect business, bringing rigour and transparency to the process. The key principles underpinning the framework seek to ensure that regulation is transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. The standards of cross-government analysis, such as those set out by HM Treasury in the 'Green Book', are applied to decisions on new regulation, particularly through the independent scrutiny of impact assessments conducted by the Regulatory Policy Committee as the independent verification body.

4. In February 2021, the Prime Minister convened the Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) to scope out and propose options for how the UK can reshape its approach to regulation and seize new opportunities from Brexit with its newfound regulatory freedom. On 16 June 2021, TIGRR published its independent report[1], which made over 100 recommendations to the Prime Minister. The first 14 relate specifically to the UK's regulatory framework.

5. This consultation seeks to consult on the recommendations relevant to the UK regulatory framework, and highlights parts of the Better Regulation Framework not covered in the TIGRR report that should also be reviewed. We welcome views from businesses, the community and voluntary bodies on the overall approach to regulation, the role of regulators in the UK framework, how the UK framework for new regulation

[1] https://www.gov.uk/government/publications/taskforce-on-innovation-growth-and-regulatory-reform-independent-report

can encourage the right design of interventions, and how the impacts of regulation are measured and scrutinised.

6. This consultation presents the opportunity to redesign our approach to regulating under the Better Regulation Framework, to ensure that the framework meets the current demands facing businesses and society and to ensure the UK grows in strength as a global leader in effective and robust regulatory practices. In achieving this, we will not compromise on public safety, including fire and building safety.

## Consultation details

**Issued:** 22 July 2021

**Respond by:** 1 October 2021

**Enquiries to:**

BRE Frameworks
Department for Business, Energy and Industrial Strategy
4th Floor, Area Victoria 2
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London
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Email: BRFrameworkReview@beis.gov.uk

**Consultation reference:** Reforming the Framework for Better Regulation

**Audiences: Businesses, trade organisations, business groups or representatives, other interested parties.**

**Territorial extent:** Whole of the UK

## How to respond

The best way to respond to this survey is via the interactive online form hosted by Citizen Space.

**Respond online at:** https://beisgovuk.citizenspace.com/bre/better-regulation-framework

**Email to:** BRFrameworkReview@beis.gov.uk

**Write to:**

BRE Frameworks
Department for Business, Energy and Industrial Strategy
4th Floor, Area Victoria 2
1 Victoria Street
London
SW1H 0ET

When responding, please state whether you are responding on behalf of an individual business or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our privacy policy.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names of organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

# Chapter 1: Overview

1.1 The Government is committed to a regulatory system that is smart, proportionate and considers the needs of business. The system we use to manage the flow of regulation and understand its impacts is key to delivering this commitment and plays an important role in helping to drive behaviour and approaches to policy making across government. Regulatory activities should also be carried out in a way that is transparent, accountable, proportionate, and consistent, and should be targeted only at cases in which action is needed. This is underpinned by express legal requirements for most of our regulators.

1.2 Individual government departments are responsible for proposing interventions that will achieve their desired policy outcomes. In designing regulatory interventions, departments undertake proportionate analysis to determine whether or not the measure is likely to achieve its policy objectives and to understand the measure's potential impacts on business and wider society. The framework also helps to ensure that alternatives to regulation (such as voluntary standards or incentives) are considered before regulation is introduced, by requiring impact assessments to include consideration of a range of options for achieving the desired policy outcome, including non-regulatory methods.

1.3 In some cases, regulations are implemented and enforced by regulators. The decisions regulators take about how this is done will contribute to how businesses experience regulation and how burdens may be felt. Implementation decisions taken by regulators are also subject to the Better Regulation Framework (with certain exclusions) if they have business impacts over £5 million.

1.4 This consultation provides an opportunity to review this approach to Better Regulation, building on the recommendations in the Taskforce on Innovation, Growth and Regulatory Reform report, and other areas that require review. This includes reviewing the scope for bringing forward a less codified, more common law focused approach to regulation and reviewing the role of regulators. The consultation also considers proposals to change the processes and requirements for new regulations, the scrutiny of regulation, and how we measure the impact of regulation. In taking forward this review and subsequent reforms, it is important to highlight that the Government's response to Grenfell will continue to be excluded from the framework, regulatory offsetting, and any deregulatory targets.

1.5 The approach to overseeing regulation has evolved over the past fifteen years. The Better Regulation Executive (BRE) was set up in 2005 to oversee the Better Regulation Framework and lead the regulatory reform agenda. Early initiatives include the Administrative Burden Reduction Programme, which focused on reducing the cost of compliance with regulation and the 'One In, One Out' and 'One In, Two Out' policy, which required a department creating additional regulatory costs to business to find matching savings elsewhere. The remaining legacy of these initiatives is the Small Business, Enterprise and Employment Act 2015 which provides for the Business Impact Target (BIT). Since 2015, the approach has shifted towards ensuring transparency of decision making and overall business impacts, as well as promoting more efficient regulation and enabling innovation.

1.6 As the 2019 white paper 'Regulation for the Fourth Industrial Revolution'[2] set out, regulation can have a powerful impact on innovation. It can stimulate ideas; but can also block their implementation. It can increase or reduce investment risk – and steer funding towards valuable research and development rather than tick-box compliance. It can influence consumer confidence and demand – and determine whether firms enter or exit a market. Regulation of some sectors, such as digital technologies, may also require a more bespoke approach, to ensure regulation drives innovation and growth for fast-growing, interconnected and highly complex areas of the economy.[3] We continue to reshape our regulatory approach so that it supports and stimulates innovation that benefits citizens and the economy, ensuring that our world-leading regulatory system continues to be fit for purpose.

1.7 As part of these efforts to create a regulatory approach that supports innovation, the Government established the Regulatory Horizons Council (RHC) to identify the implications of technological innovations and provide impartial, expert advice on the regulatory reform required to support their rapid and safe introduction. They have so far delivered recommendations on fusion energy and shortly will be doing so for three other areas: genetic technologies, medical devices, and drones, with more areas to follow. In the recently published Innovation Strategy[4], the Government has commissioned the RHC to produce a set of high-level guiding principles for regulation that may apply broadly to any sector of innovation. This follows the publication of the Plan for Digital Regulation[5], which sets out government's pro-innovation approach to regulating digital technologies. It outlines the principles for digital regulation to promote innovation, achieve forward-looking and coherent outcomes, and exploit opportunities and address challenges in the international arena.

1.8 However, domestic reform will only take us so far. International regulatory cooperation will be critical to effectively responding to global challenges and making the most of our changing relationship with the world by reducing regulatory barriers to trade with a wider range of countries. Following the Government response to a recent Organisation for Economic Co-operation and Development (OECD) Review[6], our upcoming International Regulatory Cooperation Strategy will set out steps to reduce the regulatory burden on UK firms that trade internationally and help our innovators access global markets.

1.9 Our digitalisation projects are developing new approaches to help policy makers and businesses interpret and understand regulation, which will in turn promote better regulations that supercharge growth and investment. They will back innovative ideas to eliminate bureaucracy and reduce the burden of regulation. Central to this goal is the creation of the Open Regulation Platform, which will openly publish UK primary and secondary legislation and regulatory guidance as machine-readable data, developing an

[2] https://www.gov.uk/government/publications/regulation-for-the-fourth-industrial-revolution/regulation-for-the-fourth-industrial-revolution
[3] https://www.gov.uk/government/publications/digital-regulation-driving-growth-and-unlocking-innovation/digital-regulation-driving-growth-and-unlocking-innov ation
[4] https://www.gov.uk/government/publications/uk-innovation-strategy-leading-the-future-by-creating-it
[5] https://www.gov.uk/government/publications/digital-regulation-driving-growth-and-unlocking-innovation/digital-regulation-driving-growth-and-unlocking-innovation
[6] https://www.gov.uk/government/publications/international-regulatory-cooperation-for-a-global-britain-government-response-to-an-oecd-review

accurate dataset of the real-world regulatory obligations faced by businesses. By interfacing with this platform, government, businesses and third parties will be able to develop tools to help navigate and comply with regulatory obligations in smarter and less burdensome ways.

1.10 A key use case of the Open Regulation Platform data is a Digital Regulation Navigator tool which seeks to develop an external business-facing digital service, to make it easier for small and medium sized businesses to understand the regulatory environment. We have recently completed our Smart Regulation project, supported by the GovTech Catalyst innovation fund, to use cutting-edge data science techniques to create a tool to help policy-makers understand the cumulative impacts placed on business by regulatory requirements.

1.11 In addition, part of our contribution to the National Data Strategy is looking to unlock the value of data in the custodianship of regulators. We are exploring with regulators the opportunities and challenges in opening up data to facilitate business innovation. This includes considering of the role of regulators in helping drive data availability in the wider economy.

1.12 In his Mansion House speech in July 2021, the Chancellor set out an ambitious agenda of reform for the financial services sector. Over the next few years, the Government will implement a sweeping set of reforms to sharpen the UK's competitive advantage in financial services, making sure they continue to deliver for communities and citizens across the UK, and working internationally to set higher standards around the world. This includes the Future Regulatory Framework Review, which is already considering solutions for some of the issues outlined in this document, such as the role of the regulators, tailored to the specific requirements of our financial services sector.

1.13 This consultation is not seeking to reopen matters on which the Government has already consulted, and continues to engage with stakeholders on, through that process. We are keen to use this consultation to stimulate thought on how we can ensure that the UK's regulatory framework across other sectors can also be tailored to our markets.

# Chapter 2: The Better Regulation Framework

2.1 The Better Regulation Framework is designed to ensure that government regulation is proportionate and is only used where alternative non-regulatory approaches would not achieve the desired policy outcomes. The framework enables ministerial decisions to be based on robust analysis of the costs and benefits of different options, including the direct costs on businesses, and means that decision making is clear and transparent. The framework helps ensure that new burdens are only imposed where there is clear evidence they will generate sufficient benefits for society, and that measures are implemented and enforced in a way that is easier for businesses to deal with.

2.2 The framework builds on the principles of appraisal and evaluation as set out in HM Treasury's 'Green Book' and 'Magenta Book' to ensure objective analysis is provided to support decision making, and to ensure the Government is accountable for new regulation. Where government intervention requires a legislative or policy change, departments are expected to analyse and assess the impact of the change on the different groups affected. This generally takes the form of an impact assessment (IA) which is explored in more detail below.

2.3 The Better Regulation Framework sets out both legal and administrative requirements. It is only the aspects set out in the Small Business, Enterprise and Employment Act 2015, and duties set out in other legislation[7], that government is obliged to comply with (for example, submitting assessments of qualifying regulatory provisions for independent scrutiny and validation).

2.4 The steps for regulatory policy making under the current framework can be broken down into three stages:

1. **Pre-consultation** – This refers to the initial development of policy proposals, prior to (or in preparation for) formal or informal consultations.
2. **Pre-implementation** – This refers to the stage following initial consultation prior to the introduction or laying of legislation. If the legislation has significant annualised impacts on business, departments must produce an IA for independent scrutiny, unless an exclusion applies, and include a review clause within the legislation unless a statement is made on why it would not be appropriate to include one.
3. **Post-implementation and review** – Once the proposals have come into force, this stage offers the opportunity to monitor and evaluate whether the regulation has met its intended objectives.

### Impact assessments

2.5 Impact assessments (IAs) summarise the rationale for government intervention, the different policy options (including non-regulatory options) and the impacts of intervention, as well as quantifying expected costs and benefits to business. IAs are prepared for all

[7] Such as the Public Sector Equality Duty in the Equality Act 2010

regulatory provisions where the annualised impact to business is greater than £5 million and are subject to formal scrutiny by an independent verification body (IVB) – currently the Regulatory Policy Committee (RPC). The IVB has a statutory role in validating the assessment of impacts of measures counted against the Business Impact Target (BIT). The IVB's scrutiny role is also designed to ensure policy decisions are based on robust evidence and analysis; they can 'red rate' IAs where the estimated impact to business is not supported by robust evidence. IAs are not required for regulations with an annualised impact to business of less than £5 million and these are not subject to scrutiny by the IVB. In these circumstances, departments are required to undertake proportionate analysis to support the passage of the regulation through Parliament.

2.6 The process of producing an IA is recognised internationally as a standard of good policy making that helps ensure government understands the real-world impacts of its policies. Parliament also expects to see IAs and associated RPC opinions to inform its scrutiny of regulation.

2.7 While IAs ensure the impact of regulatory measures on business is considered, there is currently little challenge or scrutiny of whether regulation is the most appropriate policy response before the decision to regulate has been taken. This means that there is limited opportunity to challenge why alternative options including non-regulatory or market solutions, or a more lightweight regulatory approach are not being taken forward. This consultation explores options for bringing forward scrutiny of IAs, which could ensure that alternatives to regulation, and other options are fully considered.

2.8 The extent to which regulatory impacts are considered across different policies can be inconsistent. For example, departments are also required to consider how regulatory proposals might affect competition in a market where products and services are provided by public sector or private sector organisations, impacts on international trade and investment, UK international commitments, the Public Sector Equality Duty[8] and how regulation might impact the environment.[9] The expansion of the type and number of impacts expected to be included in IAs has become more complex for policy makers, which often leads to long qualitative assessments rather than succinct quantitative analysis and can slow down the policy making process. This consultation presents a good opportunity to review the process for the creation of IAs, including the potential to streamline the process.

**Small and micro business assessment**

2.9 The Government announced the introduction of the Small and Micro Business Assessment (SaMBA) in June 2013. It requires that IAs provide clear evidence of the potential impact of regulations on small and micro businesses.[10] The default assumption under SaMBAs is that there will be a legislative exemption for small and micro businesses where a large part of the intended benefits of the measure can be achieved without

[8] The Equality Act 2010 - Public Sector Equality Duty
[9] The Environment Bill 2020 obliges policy-makers to have due regard to the environmental principles policy statement when choosing policy options, for example by considering the policies which cause the least environmental harm.
[10] A micro business has 1-9 employees and a small business has 10-49.

including them. As a result of this policy, small firms can have confidence that future regulation will be more manageable for them and that they will not face disproportionate regulatory burdens.

2.10 The IVB, which scrutinises those measures with annualised impacts greater than £5 million, may 'red rate' the IA if they consider the SaMBA assessment to be inadequate. This helps to ensure that policymakers give extra consideration to the impacts of their policies on small businesses without adding undue burden to the policy development cycle.

**Monitoring and evaluation**

2.11 Monitoring and evaluation (M&E) plays an important role in the policy cycle and is crucial to understanding if original policy objectives have been met. It provides an evidence-based assessment of whether a policy measure continues to be justified and whether objectives remain relevant in real world settings. This goes beyond an assessment of what the measure has achieved, as it includes taking stock of how much has changed in the regulatory landscape as a direct consequence of the policy.

2.12 The process helps to improve government understanding of the links between policy intervention and policy impacts when making regulatory changes. In addition, the monitoring of regulatory measures helps to generate useful information about the impacts of the measure during the delivery phase. It is a continuous and systematic process of data collection on the regulatory intervention itself, prompting evaluation to identify any problems that could prevent the delivery of the policy objectives.

2.13 M&E findings are then compiled into ex-post policy reviews. One of the most common types of policy reviews carried out at present is the Post Implementation Review (PIR) based on a five-year statutory review clause within the relevant legislation.

2.14 International evidence continues to highlight the importance of good M&E to inform decision making by using lessons learnt to address performance deficiencies going forward. Despite the considerable government guidance on the importance of M&E, including the HM Treasury Green Book and Magenta Book, the present consideration of M&E comes too late in the policy design and development process, and is often focused on the fixed statutory review point of five years. This means that valuable insights about the effectiveness of the policy (both during and after policy implementation) are lost, and feedback gained from this process is not used to inform new policy measures.

**The Business Impact Target**

2.15 The Government is required by the Small Business, Enterprise and Employment (SBEE) Act 2015[11] to set a Business Impact Target (BIT) for the whole term of a Parliament and an interim target covering the first three years. The BIT aims to provide a system of incentives on government and regulators to reduce and minimise new regulatory burdens

[11] https://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/business-impact-target

on business and ensures government can be transparent on the impact of new regulation to business.

2.16 Transparency is achieved through the publication of IAs and government reports on the progress made towards the BIT. The SBEE Act sets out reporting obligations, requiring the Government to publish an annual update report on the progress made against the BIT and any interim target, as well as details of the regulatory provisions that have come into force or ceased to be in force during the same period. The Government is also required to publish a report at the end of each parliamentary period, setting out the aggregated impacts for the entire duration of that Parliament.

2.17 Government departments, regulators, and businesses have provided feedback that there are problems with the ways in which the BIT is set, measured and reported against. This section will explore those issues in more detail.

**What's in scope?**

2.18 Not all regulations contribute towards the BIT; it covers the regulatory provisions of central government departments and regulators, but not regulatory provisions in areas that are devolved. Section 22(3) SBEE Act sets out the definition of a regulatory provision for the purpose of the target, which reads as:

> *3) A "regulatory provision", in relation to a business activity, means a statutory provision which—*
>
> *(a) imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance, in relation to the activity, or*
>
> *(b) relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to the activity.*

2.19 Regulatory measures can be legislative or non-legislative. Non-legislative regulatory measures are those taken by ministers or certain regulators via statutory powers. Certain types of measure are excluded from the definition of a regulatory provision and are therefore not subject to the Better Regulation Framework. The exclusions are set out in section 22 of the SBEE Act and relate to:

- imposing, abolishing, varying or in connection with any tax, duty, levy or other charge;
- procurement;
- grants or other financial assistance by or on behalf of a public authority; and
- making or amending measures which will have effect for a period of less than 12 months.

2.20 Having these exclusions set out in law provides certainty to policymakers and businesses, but this comes at the cost of the lack of flexibility to bring these types of measures in or out of scope of the framework without needing to amend primary legislation.

### Administrative exemptions

2.21 Under the SBEE Act, the Government determines the types of measure that are qualifying regulatory provisions for the purposes of the BIT. The Government has done this by making all regulatory provisions in scope of the target, unless they meet one of the administrative exclusions as set out in the Written Ministerial Statement of 15 December 2020.[12] The administrative exclusions ensure that the government policy making process is proportionate to the size of the business impact and that necessary public protections are prioritised. Examples of current administrative exemptions include:

- regulatory provisions that have been certified by departments or regulators as falling under the de minimis rule, namely those that have an equivalent annual net direct cost to business of less than ±£5 million;
- regulatory provisions relating to civil emergencies;
- regulatory provisions that implement changes to the classification and scheduling of drugs under the Misuse of Drugs Act 1971, where these follow the recommendations of the relevant independent advisory body; and
- regulatory provisions that have been certified by departments or regulators as relating to the safety of tenants, residents and occupants in buildings that stem from, or relate to, government's response to the Grenfell tragedy, reviews, inquiries or working groups.

### Measuring the business impacts

2.22 The BIT is based on a methodology that captures the direct costs to business of implementing new regulation, which is calculated over a ten-year period and then annualised to produce one figure: the Equivalent Annual Net Direct Cost to Business (EANDCB).

2.23 There are however three economic metrics included within the BIT report. These change in breadth to demonstrate the full impacts that a regulatory provision will have and ensure consistency with the HM Treasury Green Book. However, only the EANDCB is used to determine the BIT score, which is defined in legislation as a measure of the economic impact on business activities.

2.24 The National Audit Office and Public Accounts Committee have previously been critical of the way that the target is calculated, as it is not designed to reflect all administrative costs to business and does not ensure the wider social costs and benefits of regulation are adequately considered. We have heard the same message from UK businesses.

### Equivalent Annual Net Direct Cost to Business

2.25 The EANDCB calculates business costs minus business benefits – a positive score represents a cost and a negative score a saving. It is a narrow metric and only captures the direct costs or direct benefits, meaning the immediate and unavoidable impacts on business of a regulatory provision, on an annualised basis. The rationale for using this as the BIT metric is that these impacts will be most recognisable for business.

[12] https://questions-statements.parliament.uk/written-statements/detail/2020-12-15/hlws646

**Business Net Present Value (bNPV)**

2.26 This covers the wider impacts of a regulatory provision on business. It covers both direct and indirect (subsequent/second-order) impacts of a policy over a given appraisal period (normally ten years). Subsequent/second-order impacts normally involve some element of human decision making to lead to a change. For example, if a business decides to change its approach to avoid a penalty charge brought in by a provision, then any costs or benefits associated with that decision would be a secondary impact. This was not originally chosen as the metric for the BIT score because calculating indirect impacts can be subjective and this can lead to differences of opinion.

**Net Present Social Value (NPSV)**

2.27 This covers the wider impacts of a provision to the economy and society overall (businesses, government, wider society, etc.). It covers both the direct and indirect impacts of a policy over a given appraisal period. This is the measure set out in the HMT Green Book to be used to assess the impact of all policies across government (regulatory and spending). NPSV cannot currently be used as the metric for the BIT score because it does not meet the terms of the legislation as it includes wider impacts, as well as the economic impacts on business.

**The BIT score**

2.28 To produce an overall BIT score for the term of the Parliament, the EANDCB for each qualifying regulatory provision (QRP) is calculated. For most QRPs, their BIT score is calculated by multiplying a provision's EANDCB by five, in order to estimate the cumulative impacts that the regulatory provision would have on business over an assumed five-year Parliament. The only time this is not used is if a measure is expected to be in force for less than five years, in which case the expected lifetime is used. The scores for the individual measures are then totalled to provide the overall BIT score for the year.

2.29 Using the EANDCB as the basis for the BIT metric covers the direct impacts of a provision. These impacts will, theoretically, be the most relevant for business as they are immediate and unavoidable, so business should be able to recognise them clearly.

2.30 Multiplying the EANDCB by five ensures that the incentive on departments to introduce provisions that benefit business remains strong throughout the Parliament (i.e. under this approach, deregulation delivered late in the Parliament counts equally towards the BIT as deregulation delivered early in the Parliament).

2.31 EANDCB is familiar to both departments and the RPC (the independent verification body tasked with validating the BIT). It has been used as the BIT metric previously, so the scores can be compared between the current and previous Parliaments.

2.32 The BIT's focus on the EANDCB calculation means that it only provides a partial picture of the impacts of the Government's regulatory programme, measuring only direct business impacts. Indirect benefits and non-monetised benefits, such as environmental

and social benefits, which normally would have significant benefits for consumers, do not count towards the BIT. For example, the wider benefits to consumers from regulatory measures that impact on businesses through a direct transfer of financial benefit from the business to the consumer, in order to protect the consumer from particular business practices, would not score towards the BIT – only the direct cost to businesses would score towards the BIT. This consultation explores options to reform the BIT to capture the wider impacts of regulation.

**Reporting requirements**

2.33 The BIT reports must be published for each 12-month period beginning with the commencement of the Parliament. The full requirements of what must be included in the reports are set out in detail in sections 23[13] and 24[14] of the SBEE Act, but the main purpose of the reports is to assess the economic impact on businesses of qualifying regulatory provisions that have come into force (or ceased to be in force) during the period covered by the report. The reports must also include lists of these regulatory provisions as well as the economic impact of each provision against the target.

2.34 There are pros and cons to reports being due every 12 months: this allows departments and regulators to assign resources efficiently, as well as making it clear to stakeholders when reports will be published; but some feel that the requirement to compile and publish reports every year is overly burdensome. Conversely, the fact that BIT reports are only retrospective means they are not necessarily an effective disincentive to government increasing the aggregate burdens on businesses and the wider economy at the point at which regulation is made.

2.35 A greater problem occurs at the end of a parliamentary term, especially when an early or snap election is called, because the reporting requirements as set out in the SBEE Act are predicated on there being regular five-year Parliaments, as established under the Fixed-term Parliaments Act 2011[15], and the final report for a Parliament must be published before the dissolution of Parliament. In the event of an early election being called (as we saw recently in 2017 and 2019), it is simply not possible for departments to gather all the information required at such short notice. However, the issue is currently being addressed by the Government through the minor and consequential amendments in the Dissolution and Calling of Parliaments Bill, which would repeal the Fixed-term Parliaments Act, and would resolve this issue. If passed, the Bill would change the time for the Government to report at the end of a Parliament so the report would not be due until three months after the new Parliament had begun.

2.36 Questions on the reform of the BIT metrics are found in Chapter 3.

[13] https://www.legislation.gov.uk/ukpga/2015/26/section/23/enacted
[14] https://www.legislation.gov.uk/ukpga/2015/26/section/24/enacted
[15] Fixed-term Parliaments Act 2011

# Chapter 3: Options we are consulting on

## 3.1. A “common law approach” to regulation

3.1.1 Central to the Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) report on a new regulatory vision for the UK is the introduction of a form of common law approach to regulation, which would allow regulations to be made in a more agile and proportionate way.

3.1.2 The TIGRR report proposes this can be achieved by delegating more power and discretion to the UK’s regulatory bodies, removing many of the detailed rules in the existing statutory frameworks to make them less prescriptive (replacing them with outcomes to be achieved), and allowing the regulatory regime to be shaped more by case law.

3.1.3 The TIGRR report observes that much of EU law is set out in a heavily-codified way that includes hundreds of pages of detailed rules, including implementing international rules through legislation rather than through regulators’ rules. For example, the report sets out how Australia, New Zealand, Canada, the US and Singapore all implemented the Basel III financial stability accord through their prudential regulators, whereas the EU chose to implement primarily in legislation.

3.1.4 The European Union (Withdrawal) Act 2018[16] retained thousands of EU regulations forming a body of “retained EU law” in UK domestic law to ensure the statute book remained functional at the time. Although powers have been used to ensure deficiencies in that law were fixed, more substantive changes require further legislation. The challenge is that, while the UK was a member of the EU, many regulations under the European Communities Act legislation were introduced via secondary legislation, often with minimal parliamentary debate. As a result, new primary legislation will be needed in order for the Government to make changes to these regulations and other EU instruments which have become retained EU law on the UK statute book. Some of these measures will be minor, others will be complex, but having to introduce primary legislation and create new powers to make the changes in new regulations is a resource-intensive and protracted solution and risks replicating the regulation-heavy approach we saw build up during our EU membership.

3.1.5 This has left a lot of detailed and inflexible regulation on the statute book. The TIGRR report cites the example of the Bank of England and Prudential Regulation Authority assessing over 10,000 pages of financial sector-related EU legislation and over 12,500 pages of EU technical standards and regulators’ rules. The Government is already seeking to address this through the Future Regulatory Framework (FRF) Review for financial services, which is running in parallel to this consultation.

[16] https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted

3.1.6 The TIGRR report proposes that Parliament should set out only what is prohibited or the outcomes to be achieved, in plain English, and set out any parameters within which regulators would need to operate to meet these outcomes, but then giving regulators appropriate powers and discretion over how to do so, rather than legislation setting out all of the rules that businesses have to comply with in detail.

3.1.7 Following this approach, regulators would still have to set out some detail in rules and guidance but would have flexibility to change these without having to petition the Government to introduce further legislation. This would give regulators the freedom to regulate based on whether the outcomes set by Parliament are being achieved rather than whether a particular rule has been followed. Where regulators provide for detailed rules or processes, they would also be able to provide for exemptions and waivers to reach the outcomes set out by Parliament in the most sensible way.

3.1.8 Giving effect to this vision would necessarily be subject to the constraints that penalties and criminal offences must be clearly set out in the law, and that any regulatory requirement having the force of law must be drafted with sufficient certainty and clarity so that regulated businesses and individuals can understand what is required of them. The Government remains committed to avoiding the proliferation of unnecessary criminal offences and making greater use of civil sanctions for regulatory enforcement, in line with the Macrory principles of regulatory enforcement.[17]

3.1.9 The TIGRR report's proposal is that a principles-based regulatory framework would allow regulators to be more responsive in allowing the sectors they manage to grow and innovate. The TIGRR report proposes combining this with a more direct form of accountability by regulators to Parliament, alongside maintaining important public protections.

3.1.10 In practice, the benefits of this approach are likely to vary from regulator to regulator based on their regulatory functions and the markets they regulate. The Government wants to identify areas where the envisaged benefits of a move to a less codified, more common law focused approach are likely to be the greatest, and areas where the Government should be more cautious about adopting such an approach.

**Question 1:** What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common law-focused approach?

**Question 2:** Please provide an explanation for any answers given.

**Question 3:** Are there any areas of law where the Government should be cautious about adopting this approach?

[17] https://www.regulation.org.uk/library/2006_macrory_report.pdf

**Question 4:** Please provide an explanation for any answers given.

## Adopting a proportionality principle

3.1.11 The TIGRR report recommends a new 'Proportionality Principle'[18] that should be mandated at the heart of all UK regulation. Under this principle, the Government would focus on regulating in a proportionate way.

3.1.12 Some of the current regulatory standards the UK has inherited from the EU are based on an overly restrictive interpretation of the precautionary principle. The precautionary principle is a principle of risk management applied where risks of some action or technology are identified as more than hypothetical, but there is scientific uncertainty about the reality or extent of the risk. It is possible that by applying the precautionary principle on a case by case basis, the burden of proof may be reversed in relation to a producer, manufacturer or importer, so that those wishing to do the potentially dangerous thing should have to show the absence of danger before they are allowed to do it. This principle is applied in relation to the environment, and human and animal health. It is present in UK law mainly by way of its presence in EU law.

3.1.13 There are areas where the precautionary principle, used in a proportionate way, can ensure that a lack of total scientific certainty is not used to postpone cost-effective measures to prevent a perceived risk of serious future harm. This can be applied, for example, to the environment, where the Government is placing the precautionary principle on a statutory footing through the Environment Bill. But, in practice, the precautionary principle can also sometimes result in the stifling of innovation or persisting with outdated practices that are not in line with more up-to-date scientific thinking or technological advances. In some regulatory areas, bolstering it or replacing it with a proportionality principle might be more appropriate, such as when regulating emerging technologies.

3.1.14 The TIGRR report also places central emphasis on regulation being enforced in a way that is scaled with risk and outcomes. The compliance burden would accordingly be reduced on smaller businesses and voluntary organisations, compared to larger businesses. A proportionality principle would also involve instructing regulators to focus on regulating in a proportionate way that focuses on allowing businesses to grow, while allowing greater flexibility to try innovative new approaches.

3.1.15 This proportionality principle could be designed to operate in two key ways:

1. Risk: ensuring the design, appraisal and implementation of regulations, including their cost, is proportionate with the level of risk being addressed.
2. Reaching the right outcome: regulation should be based on outcomes rather than assessing mechanistic "tick-box" compliance with rules. Remediation and penalties where a bad outcome (such as a harmful data breach) occurs should be

[18] TIGRR distinguishes this from the legal concept of proportionality as found in EU law.

proportionate to the harm caused as well as the size and ability to pay of the business involved.

**Question 5:** Should a proportionality principle be mandated at the heart of all UK regulation?

**Question 6:** Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

**Question 7:** If no, please explain alternative suggestions.

## 3.2. The role of regulators

### Regulators' role in promoting innovation & competition

3.2.1 The TIGRR report proposes giving regulators duties to promote and report on competition and innovation. This could involve giving regulators statutory objectives to promote competition and innovation in the markets they regulate and establishing a framework for regulators to report publicly on how they have promoted competition and innovation in these markets.

3.2.2 Regulators have an important role in influencing the innovation and pro-competition activities of companies, industries, and the whole economy. Existing statutory obligations on regulators are many and varied, and include:

- **The Regulators' Code**:[19] A principles-based framework for regulatory delivery that supports regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities. The current Code requires regulators to act in a certain way. This includes regulating in a way that supports those they regulate to comply and grow; ensuring that they actively engage with those they regulate; and basing their regulatory activities on risk.

- **The Deregulation Act 2015 (the Growth Duty)**:[20] The growth duty establishes a government expectation that economic growth is an outcome that regulators should be working towards.[21] It ensures that specified regulators give appropriate consideration to the potential impacts of their activities and their decisions on economic growth.

[19] https://www.gov.uk/government/publications/regulators-code
[20] Growth Duty, Statutory guidance
[21] While 'Growth' was deliberately not defined in the Act, it can be reasonably interpreted as referring to the five drivers of productivity growth: Investment, Skills, Innovation, Entrepreneurship, and Competition. So it can be argued that competition like innovation is within the ambit of the Growth Duty and its statutory guidance.

3.2.3 The TIGRR report acknowledges that some regulators already have their own objectives to promote innovation and competition; however, it also found that their application is varied in practice. Whilst there is some mention of innovation in the Growth Duty guidance, there is no mention of regulators' duty to consider competition. There is also no mention of innovation and competition in the Regulators' Code. To address these points, the following options could be taken forward to give regulators a stronger duty to promote and report on competition and innovation in the markets they regulate:

- embedding competition and innovation objectives into existing guidance where appropriate, such as the guidance on the Growth Duty or the Regulators' Code;
- reforming existing statutory objectives so there is a clear statutory duty to promote competition and innovation. This could also include establishing bespoke reporting requirements relating to these new objectives; and/or
- placing a duty on regulators to report periodically on how the decisions they have taken have been in line with the Growth Duty.

3.2.4 Ensuring that regulators have a clear duty to promote innovation and competition would encourage regulators to adopt practices that are more conducive to innovation and healthy competition in markets. For example, regulators could be encouraged to adopt more innovation-friendly initiatives in their sectors, such as regulatory sandboxes, and could adopt more agile approaches to regulating where permissible.

**Question 8:** Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

a. Embedded into existing guidance
b. Embedded into statutory objectives
c. Creating reporting requirements for regulators
d. Other (please explain)

**Question 9:** Should innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

a. Embedded into existing guidance
b. Embedded into statutory objectives
c. Creating reporting requirements for regulators
d. Other (please explain)

**Question 10:** Are there any other factors that should be embedded into framework conditions for regulators?

## Delegating discretion to regulators to achieve regulatory objectives

3.2.5 The TIGRR report makes proposals on allowing regulators to operate more flexibly in order to deliver a proportionate approach that is focused on risk and reaching the right outcome. The report emphasises the benefit of being able to adapt regulation quickly in fast-changing markets. This also involves giving regulators more freedom to try innovative new approaches, such as through the increased use of regulatory sandboxes which is explored in more detail below.

3.2.6 There are pros and cons to delegating more power and discretion to regulators to achieve regulatory objectives in a more agile and flexible way. The pros include the ability for regulators to do more through guidance, decisions and rules that can be adapted quickly outside of legislative frameworks. This could allow them to adapt more quickly to disruptive new technologies or other changes in circumstances. Requirements could be set out in guidance in plain English that can be more easily understood than legislation, making them more accessible to the average reader.

3.2.7 On the other hand, this approach could lead to more uncertainty in the regulated markets and more litigation. It could ultimately lead to more regulation being created overall, through mechanisms which are less responsive to public scrutiny and democratic accountability. Regulatory regimes need certainty to be effective and enforceable, so flexible regimes need to have safeguards in place to ensure that requirements are clearly framed in unambiguous terms to avoid uncertainty. It is also important that businesses and individuals have reasonable notice of changes so they can know what is required of them at any given time, and to ensure that breaches can be effectively enforced.

3.2.8 A shift away from prescriptive statutory regimes, leaving regulators to shape the detail in individual regulatory areas, could mean more court time taken with regulated parties defending prosecutions or other sanctions – for example, if the requirements were too vague and uncertain. There would need to be clear outcomes, set out in legislation, for regulators to achieve and clear criteria for regulators on how they should achieve those outcomes. A further consideration for regulatory regimes where it is relevant is that criminal offences and penalties must be provided for in law.

3.2.9 However, the Government needs to consider what giving regulators more discretion means in practice and the degree to which it would it be expected to retain overall responsibility in policy areas for ensuring fundamental protections (for consumers, environmental, public health etc). The trade-off is between maintaining these responsibilities while still giving more power and discretion to regulators to achieve their regulatory objectives in a more autonomous manner.

3.2.10 This is a proposal that will have far-reaching consequences – potentially both positive and negative – so the Government will consider it carefully. We are also considering whether the extent to which flexibility is delegated should vary by regulator based on what they are responsible for, as the pros and cons of this approach are likely to vary depending on the area of regulation, or whether regulators should have more limited flexibility to only exercise discretion in targeted ways. For instance, regulators could be

granted flexibility to waive or derogate from regulations in certain growth and innovation areas, but not have equivalent flexibility to impose more onerous restrictions than already set out in legislation. We would appreciate views to help inform this decision.

**Question 11:** Should the Government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules, rather than legislation?

## Regulatory sandboxes

3.2.11 The TIGRR report makes a number of recommendations in the area of regulatory sandboxes, including the use of digital sandboxes to test innovations more quickly and also the use of "scale-boxes" to give agile regulatory support to high-growth, innovative scale-up companies.

3.2.12 Regulatory sandboxes encourage innovation by allowing innovators to trial new products, services or business models in a real-world environment under regulator supervision. This can accelerate the introduction of new and improved products, processes, and services to market. Currently they are established by individual regulators, so far as their legal framework permits. Some regulatory sandboxes have been established through the UK Government's Regulators' Pioneer Fund. Through this fund, the UK Government invested approximately £10 million between 2018-20 in 14 regulator-led projects to stimulate innovation in their sectors. Examples of sandboxes set up under the scheme include the Civil Aviation Authority's (CAA) regulatory sandbox which works closely with innovative companies to explore regulatory barriers and test innovations in a safe environment.[22]

3.2.13 Regulatory sandboxes have also been set up outside the scheme, including the Financial Conduct Authority's (FCA) and City of London Corporation's (CLC) digital sandbox pilot. This pilot was launched in 2020 to provide enhanced support to innovative firms tackling challenges caused by the coronavirus pandemic, and built on the FCA's experience of using regulatory sandboxes to encourage innovation over a number of years. The FCA's evaluation of the pilot found that access to a digital testing environment accelerated development times for 84% of participants, as well as providing other benefits such as improving product design and refining early-stage business models.[23]

3.2.14 Recognising the benefits of regulatory sandboxes, this consultation seeks views on options to increase the number and impact of regulatory sandboxes. The options in this area include:

a) legislating to give all regulators the same powers to disapply rules, subject to safeguards. Under the current framework, not all regulators have the same ability to operate regulatory sandboxes. We would need to carefully consider the differences

[22] https://www.gov.uk/government/publications/evaluation-of-the-regulators-pioneers-fund-rpf-round-1/evaluation-of-the-regulators-pioneer-fund-round-1-interim-case-studies-november-2019-to-january-2020-web
[23] https://www.fca.org.uk/publication/corporate/digital-sandbox-joint-report.pdf

across different sectors in relation to innovation before taking forward this option, and safeguards may have to be applied differently, depending on the area of regulation;

b) requiring regulators to consider regulatory sandboxes as part of any legal duty to consider innovation; and/or
c) creating a presumption of sandboxing by providing a route for any business to seek an exemption from a regulation by providing a sufficiently strong case that it is testing innovation.

**Question 12:** Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes?

a. legislating to give regulators the same powers, subject to safeguarding duties
b. regulators given a legal duty
c. presumption of sandboxing for businesses

**Question 13:** Are there alternative options the Government should be considering to increase the number and impact of regulatory sandboxes?

## Accountability of regulators

3.2.15 As highlighted above, the TIGRR report advocates delegating greater flexibility to regulators to help them regulate in a fast-moving world. As a counterweight to this increased autonomy, it also argues for increased accountability and scrutiny of regulators.

3.2.16 The UK regulatory landscape includes numerous regulators, each created to fulfil a specific role but with a clear objective of maintaining independence from undue influence while operating within an overall legal and policy framework established by government. UK regulators are accountable to Parliament either directly or indirectly through varied sponsorship arrangements with ministerial departments. Most regulators are arm's length bodies using the Cabinet Office administrative classification of Executive Agency (EA), Non-departmental Public Body (NDPB), or Non-ministerial Department (NMD). However, some regulators are independent bodies, for example the General Medical Council. Accordingly, there is considerable variation in the constitution, governance, sponsorship and funding arrangements of regulators.

3.2.17 The TIGRR report suggests that where additional flexibility is delegated to regulators, there should be increased accountability and scrutiny of regulators to ensure regulation is serving the public and remains proportionate. This aim could potentially be achieved through existing parliamentary arrangements. Policy and strategy statements – which are drawn up by the Government and approved by Parliament – could be used to set out the Government's strategic priorities for a policy and the outcomes to be achieved. Regulators would then have the duty to have regard to the strategic priorities when carrying out their regulatory functions (or to respond to them however the governing legislation provides for) and to carry out those functions in the way they consider is best

calculated to further the delivery of the specified policy outcomes. While any changes to parliamentary business arrangements would be a matter for Parliament, we welcome views on whether regulators should be more directly accountable to government and Parliament where they are given more flexibility in their governing legislation.

**Question 14:** If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to Government and Parliament?

**Question 15:** If you agree, what is the best way to achieve this accountability? If you disagree, please explain why?

## Improving the way businesses are regulated

3.2.18 The Regulators' Code outlines that those regulators in scope of the Code should provide simple and straightforward ways to engage with those they regulate and hear their views. However, the Government does not hold data on the extent to which this takes place, and any evidence on changes to regulators' approach that were made as a result of any engagement. Ensuring that regulation works for the regulated is fundamental to fostering growth and innovation.

3.2.19 To improve this process, the Government could invite regulators to survey all of the businesses they regulate to receive ideas on how they can do that more efficiently from the point of view of the businesses being regulated. Regulators could then be invited to explain what they have learnt from this exercise and what changes they propose to make in response.

### Deep dives of individual regulators

3.2.20 The Government could also conduct a series of deep dives into individual regulators and act as a critical friend to develop recommendations for the regulator to consider (in a manner that would respect the independence of regulators). Such deep dives could involve shadowing the regulator to look at its practices and procedures, scrutinising the regulators' appraisals of regulatory change, and talking to its customers directly, and would be used to identify areas where change could be introduced to smooth processes for the regulated businesses. The results of the survey outlined above could help inform these deep dives and help inform areas of focus.

3.2.21 The deep dives should lead to a final report which is shared with the Government and the regulator in question. The regulator would be invited to discuss the findings and recommendations. The report could be published to ensure openness and transparency. The principle of regulatory independence will however need to be considered and protected, especially for economic regulators given considerations of investor confidence.

**Question 16:** Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

**Question 17:** Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?

## 3.3. Revising the process and requirements of better regulation

### An early regulatory gateway

3.3.1 Under the current framework, the scrutiny of impact assessments (IAs) by the independent verification body (IVB) takes place after the preliminary stage of developing and appraising policy options. The scrutiny therefore takes place after ministers have agreed to the policy option they want to take forward and a decision has been made to regulate to achieve the policy aims. This can be too late in the policy development cycle and does not ensure scrutiny of the decision to regulate (in the form of legislation) rather than using non-regulatory approaches to achieve the desired aim.

3.3.2 Scrutiny of policy proposals could happen at the beginning of the policy development cycle, when policy options are developed and appraised and the alternatives to regulation are considered. This process could start when a decision has been made by a minister to regulate; an early document could be produced setting out the options that have been considered and why none of them are as suitable as regulation. The impacts of regulating are not needed in full detail at this point so an assessment of impacts would not be scrutinised; instead, the document need only set out why regulating is the best option and demonstrate consideration of the positives and negatives of non-regulatory alternatives in sufficient depth. It could be akin to the strategic outline case set out in HMT Green Book and Business Case Guidance where the rationale for intervention is assessed and the outcomes desired from regulatory change set out.

3.3.3 Standardisation[24] can act as an alternative to regulation by enabling self-regulation, whereby market participants agree to adopt a behaviour consistent with public policy objectives, such as the protection of vulnerable consumers or environmental sustainability. Voluntary standards that describe good practice can also be a potent tool to complement outcome-focused regulation. Referencing standards in regulation allows businesses to adopt them to demonstrate that they comply with outcome-focused requirements as set out in legislation. Government has an important role to play in encouraging market-led developments and adoption of such standards, thereby limiting the need for direct intervention through legislation and regulation. Consideration of standards as part of the early appraisal of options and alternative measures could

[24] A standard is a technical document that is used as a rule, guideline, or definition. It is a consensus-built, repeatable way of doing something, developed by bringing together all interested parties such as manufacturers, consumers, and regulators of a particular material, product, process, or service. This process is managed by the British Standards Institution in their role as the UK National Standards Body.

ensure a more systematic approach and could drive greater flexibility for businesses to adapt.

3.3.4 The TIGRR report proposes that, as part of a new regulatory framework, there should be a UK standards strategy to promote the use of British standards internationally. The recently published Action Plan on 'Standards for the Fourth Industrial Revolution'[25] suggests that a greater focus on standards is needed to meet policy goals while helping businesses and innovation to thrive.

3.3.5 Enabling scrutiny earlier in the policy development cycle would place more emphasis on the consideration of alternatives to regulation and standardisation at the earliest stage. This could support more thoughtful policymaking and encourage officials to fully consider non-regulatory approaches.

**Question 18:** Do you think that the early scrutiny of policy proposals will encourage alternatives to regulation to be considered?

**Question 19:** If no, what would you suggest instead?

**Question 20:** Should the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process?

## Streamlining regulatory impact assessments

3.3.6 As highlighted in chapter 2, an IA is a tool used to inform policy decision-making. It uses cost-benefit analysis, an analytical tool that sits within the wider methodology provided by HMT Green Book for appraising options to ensure good practice in developing policy based on robust evidence. Whilst the process enables the impacts of regulation to be captured, especially for measures that have a significant impact, there have been suggestions that it is overly bureaucratic and decreases the speed at which policies can be processed. IAs also do not often set out clearly how the success of a regulatory intervention will be measured and assessed in practice, which makes later assessment of whether a regulation has been effective more difficult.

3.3.7 A more streamlined process could be implemented which requires an alternative, much shorter and less bureaucratic IA focused more narrowly on the essential elements of cost-benefit analysis, where the cost-benefit analysis would continue to be developed following the HMT Green Book methodology (and would be presented at the pre-consultation write-round stage). The discursive elements of IAs could be replaced by 'success criteria': a short statement of expected outcomes from the regulation for it to be deemed successful at achieving its stated purpose, and a concrete evaluation plan setting out how these outcomes will be measured over time. These success criteria would function both as a 'sanity check' of the policy prior to implementation, and as

[25] https://www.gov.uk/government/publications/standards-for-the-fourth-industrial-revolution-action-plan

rigorous evaluation measures for use in later post-implementation reviews. The options for scrutiny of these measures have been highlighted under section 3.4 on 'Scrutiny of regulatory proposals' below.

3.3.8 Changes to this process will be made in compliance with our international obligations under the EU-UK Trade and Cooperation Agreement and other Free Trade Agreements already signed or under negotiation. These obligations require parties to the agreements to produce IAs for major regulatory measures, although exceptions may be provided for. Changes will also need to take into account our World Trade Organization obligations to justify our regulatory approach for measures that impact trade.

3.3.9 As part of the TIGRR report's call to promote productivity, competition and innovation through a new framework, the report places emphasis on wider impacts being captured in IAs, including innovation, competition, environment and trade.

3.3.10 Under the current framework, impacts on innovation, competition and the environment are captured under wider impacts in IAs. Capturing these wider impacts is a non-mandatory assessment, but officials are strongly encouraged to undertake a proportionate assessment of these impacts when bringing forward new regulatory proposals, especially if their policy will impact upon the area in question. An assessment of trade and investment impacts is mandatory for policy proposals that impact on trade and investment. Such assessments are often completed in partnership with the Department for International Trade (DIT).

3.3.11 Conversely, there are criticisms that IAs are not the most appropriate ways to capture wider impacts, which are often more qualitative or political in nature. A more streamlined model would ensure that IAs are focused on areas of core economic impact, while departments would be provided with guidance on how to measure wider effects in parallel to IAs, where these were appropriate to the regulations in question. Trade and innovation impacts, for instance, could be analysed as a core part of streamlined IAs, or separately alongside them.

**Question 21:** Do you think that a new streamlined process for assessing regulatory impacts would ensure that enough information on impacts is captured?

**Question 22:** If no, what would you suggest instead?

**Question 23:** Are there any other changes you would suggest to improve impact assessments?

**Question 24:** What impacts should be captured in the Better Regulation framework? Select all which apply:

a. Innovation
b. Trade and investment
c. Competition
d. Environment

**Question 25:** How can these objectives be embedded into the Better Regulation Framework? Can this be achieved via:

a. A requirement to consider these impacts
b. Ensuring regulatory impacts continue to feature in impact assessments
c. Encouragement and guidance to consider these impacts, but outside of IAs
d. Other? (please explain)

## 3.4. Scrutiny of regulatory proposals

### Assessing the impacts of regulation - Post Implementation Review

3.4.1 Policy reviews play a crucial role in the design and development of future policies by providing feedback about past policies. They ensure that policymaking is informed by robust evidence of what has and has not worked in the past. As mentioned under Chapter 2, the most common form of policy review used at present is the Post Implementation Review (PIR).

3.4.2 Under the current framework, there is a legal requirement for regulatory measures (with limited exceptions) to be reviewed no later than five years after they have been implemented or, where a provision for review is deemed inappropriate, ministers must publish a statement explaining the rationale. For example, guidance sets out that a review provision may not be appropriate where there is no significant impact on business (i.e., annual impacts to business below ±£5m). PIRs for regulations that are considered to have significant impacts on business are then scrutinised by the IVB, which assesses and comments on the quality of evidence.

3.4.3 These reviews provide valuable feedback for future regulatory actions and international guidance recommends that policy makers conduct systematic reviews of regulation against policy goals, including costs and benefits, to ensure that regulations remain up to date, cost effective, consistent, and deliver intended policy objectives. These goals are reflected in UK international commitments – for example, the EU-UK Trade and Cooperation Agreement[26] outlines that each party shall ensure that its regulatory

[26] https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union#history

authority has in place processes or mechanisms for the purpose of carrying out periodic retrospective evaluation of regulatory measures in force, where appropriate.

3.4.4 As an alternative to current arrangements, PIRs could be mandatory in all cases and be brought forward to evaluate the first two years of the regulation's performance, with findings published in the third year post-implementation, unless a different timeframe was explicitly set out in the evaluation plan and agreed when the proposals are first scrutinised. Creating a mandatory earlier review point will ensure that attention is paid to the extent of the success of the measure.

3.4.5 There could also be a further role for scrutiny, via an independent body, a minister responsible for effective regulation, or from within departments. Where a review conveys that expected outcomes are not being met, or are being met at a much higher cost than forecast prior to introduction, the minister responsible could be required to consider revising, replacing or sunsetting the regulation in question.

**Question 26:** The current system requires a mandatory PIR to be completed after 5 years. Do you think an earlier mandated review point, after 2 years, would encourage more effective review practices?

**Question 27:** If no, what would you suggest instead?

## The scrutiny function in the Better Regulation Framework

3.4.6 The scrutiny function for the Better Regulation Framework is currently provided by the Regulatory Policy Committee (RPC). The RPC was established in 2009 as the Government's independent advisory body to provide scrutiny of the evidence and analysis of regulatory changes affecting businesses. At that time, the RPC had an entirely non-statutory function designed to improve the quality of analysis by commenting on the evidence presented by departments in the form of an IA to help ensure ministerial decisions are based on robust evidence.

3.4.7 Since the Small Business, Enterprise and Employment Act 2015 came into force, the RPC's non-statutory role has also been combined with a statutory function under that Act, as the appointed independent verification body (IVB) which verifies the impacts of measures in scope of the Business Impact Target (BIT). In its capacity as the IVB, the RPC scrutinises the assessment of impacts of measures above the ±£5m equivalent annual net direct cost to business (EANDCB) threshold. Under this remit, the RPC can issue a red rating for the following:

- the equivalent annual net direct cost to business (EANDCB);
- the small and micro business assessment (SaMBA); and
- quality of evidence used in PIRs if this is inadequate.

To encourage improved IAs, the RPC operates a process where it gives departments early notice of points it considers likely to result in red-ratings and allows revisions of the IA to address these points in advance of issuing a final opinion.

3.4.8 On a non-statutory basis, the RPC also provides informal scrutiny of measures with estimated impacts greater than the ±£5m EANDCB threshold at pre-consultation stage. This means submission of pre-consultation IAs to the RPC is non-mandatory for departments, as scrutiny of these IAs is often viewed as resource intensive and time-consuming for departments. The RPC cannot red-rate on the quality of evaluation plans or assessments on wider impacts recorded under IAs such as innovation, environment and competition – it can however provide informal comments on these areas.

3.4.9 In this consultation, we are seeking views on this scrutiny function, and exploring possible alternative options. This should be reviewed in light of the proposals for a revised process set out under the sections above on revising the process and requirements of better regulation, including the streamlining of IAs.

3.4.10 There are different options for how this scrutiny function could operate which have been outlined below:

- **Option 1) Scrutiny undertaken internally as part of government processes.** This could take the form of a cross-governmental group of ministers, supported appropriately by the civil service.
- **Option 2) An independent body** could continue to provide a scrutiny function which would operate independently from the Government. They could provide scrutiny of regulatory proposals and their impacts to government departments directly.
- **Option 3) Government scrutiny with independent expert advice.** This could take the form of a cross-governmental group of ministers as in option 1, but with an external body providing expert input and advice, or scrutiny could be provided by a joint committee of ministers and experts from industry and academia.

**Question 28:** Which of these options would ensure a robust and effective framework for scrutinising regulatory proposals?

a. Option 1
b. Option 2
c. Option 3
d. Other (please explain)

## 3.5. Measuring the impact of regulation: reviewing the BIT

3.5.1 The TIGRR report makes a number of recommendations on how to capture the impacts of regulation on a wide set of priorities, including innovation, competition, and productivity. In terms of outcomes, some of these can be monetised using the existing cost-benefit analysis methodology in HMT Green Book (e.g. productivity) but concepts which are more difficult to measure, such as innovation, are not currently amenable to this approach. The TIGRR report instead proposes a scorecard approach for assessing the impact on innovation, and that is reflected in one of the options presented in this section.

3.5.2 We have taken the strengths and weaknesses of the current system of measurement into consideration to develop four options. They provide a range of reform, from minimal adjustments to the current metric to removing it entirely. The options are not all mutually exclusive, so administrative options available to strengthen the framework are possible under most of the four proposals.

3.5.3 In assessing these options, you are invited to consider their potential to deliver the objective of the Better Regulation Framework to strike a balance between economic growth and public protections, by:

- enabling evidence-based policy and decision making;
- incentivising the behaviour of policy makers;
- supporting the delivery of policy objectives;
- providing transparency of impacts;
- providing quality assurance and accountability; and
- enabling agile policy responses in changing circumstances.

3.5.4 Below the four options are summarised with their main pros and cons. A more detailed examination of each option is provided at Annex A.

| Brief description of option | Pros | Cons |
|---|---|---|
| **Option 1: ADJUST** | | |
| Minor changes to the current metric, such as including indirect costs and benefits, splitting policy and admin costs, using an updated EANDCB or business net present value (bNPV) to measure impacts. | Does not require new legislation.<br><br>Little work for departments and regulators to adjust.<br><br>Can continue to include non-statutory reporting on wider impacts. | Retains a burdensome reporting regime.<br><br>BIT would still provide a narrow view of the full impact of regulation. |
| **Option 2: CHANGE** | | |
| Include wider costs and benefits such as those which can be measured using NPV and the | | Requires changes to legislation. |

| Brief description of option | Pros | Cons |
|---|---|---|
| HMT Green Book methodology. This could include environmental, trade, productivity etc. | A more holistic approach to assessing impacts of regulation.<br><br>NPV is already calculated for IAs so additional burden is minimal in theory.<br><br>The methodology is well aligned with the HMT Green Book and should better reflect the process of options appraisal which new policies should have been subjected to. | NPV not always able to monetise all possible social outcomes.<br><br>NPV is often not comprehensively assessed in current IAs; the quality of analysis would need to be scrutinised more carefully, creating additional cost. |
| **Option 3: REPLACE**<br><br>Introduce a totally new system to measure a wide range of government priorities, including those which are difficult to monetise in cost-benefit analysis. This could include additional, hard-to-measure considerations such as competition, wellbeing, and innovation. The metric for this option would be a scorecard or a simple scoreboard type approach. | This system would be able to represent any government priority in a scoreboard format to show the direction of travel.<br><br>A scoreboard will be useful provided it is accompanied by a shift in outlook to broad improvements rather than too much focus on detail. | Requires changes to legislation.<br><br>Likely to be somewhat inaccurate and variable across measures and departments.<br><br>Requires a new system to be designed from scratch and large amounts of upskilling for analysts to work it sensibly. |

| Brief description of option | Pros | Cons |
|---|---|---|
| **Option 4: REMOVE**<br><br>Have a central regulation strategy, but remove the BIT requirement, most likely in conjunction with a strengthening of the PIR processes, and assessing the impacts based on data collected post implementation - Policy Success Metrics. | Less burdensome for departments, although more resource required for PIRs.<br><br>PIRs based on actual evidence of what works is likely to be more reliable than forecast estimates of impacts. | Requires changes to legislation.<br><br>Without a central metric would be difficult for the government to have overview of the impacts of regulation. |

## Further considerations

3.5.5 By definition, a BIT focuses on business, but there is value in estimating a standard societal NPV within IAs and alongside the chosen business metric. There would also be value in trying to capture the costs to consumers of regulation more directly. By going wider still and considering a range of entirely indirect effects of regulation we end up looking at options which are not clear replacements for the BIT but something else entirely, and with the potential to help meet multiple government objectives.

3.5.6 There are clear trade-offs between the elements of each option. The current system is generally fairly precise and accurate, but very narrow in scope. As we move through the options and widen the scope there is an inevitable loss of precision and accuracy in the attempt to bring a disparate set of priorities into a single system of measurement. However, more than one of these metrics could be used at the same time, as they each have their strengths and weaknesses. This raises the issue of whether a multi-pronged approach, where more than one metric is used, would assist with transition to a new system, or even have value on a permanent basis.

3.5.7 As mentioned above, the TIGRR report recommends that the Government considers the "wider effects of proposed policies in IAs, including on innovation, competition, the environment, and trade." Environment and trade would be easily covered by option 2: CHANGE, but competition and innovation are less easy to monetise and not explicitly covered in HMT Green Book methodology. To capture less developed concepts such as innovation, competition, wellbeing, and security the scorecard approach in option 3: REPLACE would be needed.

3.5.8 Clearly whichever metric is chosen it needs to be clear, effective and transparent. It also needs to be consistent with our international commitments and the overall direction of regulatory reform and link with the One-In, X-out regime (OIXO), if adopted, which is also recommended in the TIGRR report. OIXO is covered in the chapter below but does not affect the choice of metric presented in this chapter; rather, it acts as a general constraint on government policy making which would need its own careful set of rules to

ensure the regulatory INs and OUTs are balanced in a sensible fashion and that it achieves the right objectives.

**Question 29:** Which of the four options presented would be better to achieve the objective of striking a balance between economic growth and public protections?

a. Adjust
b. Change
c. Replace
d. Remove
e. Other (please explain)

## 3.6. Regulatory offsetting: One-in, X-out

3.6.1 The TIGRR report proposes minimising new regulation and removing burdens through regulatory offsetting and a full audit of EU derived regulation with a view to deregulation and reducing burdens. The UK's exit from the EU has provided this unprecedented opportunity. Outside of the EU, there is now, potentially, a considerable amount of legislation that can be removed that was not within the scope of previous deregulatory actions. We also have the advantage of having experience of regulatory offsetting and periodic reviews of the stock of existing regulations, as they have been key aspects of UK better regulation reform in the past. The UK coalition government pioneered regulatory offsetting back in 2010 with a view to boosting enterprise and supporting a growth staged approach, moving from a one-in, one-out condition to one-in, three-out until its discontinuance in 2017. In order to ensure that key public safety regulatory provisions are retained, certain regulations such as those pertaining to building and fire safety would be kept out of scope.

3.6.2 Regulatory offsetting has been found to have both upsides and downsides, both in the UK and other leading countries such as Germany and Canada. In the UK, it was a useful exercise:

- to make policymakers more aware of the costs of regulation, including how to account for costs and limit them;
- to incentivise the use of alternatives to regulation;
- to get policymakers to consider implementation of regulation in the least burdensome way;
- due to its mandatory nature, maintain the momentum to deliver reductions in unnecessary legislation; and
- alongside the Red Tape Challenge, regulatory offsetting helped to clear out decades of accumulated statutory cruft – over 2,000 regulations were amended or scrapped.

3.6.3 The 2016 National Audit Office (NAO)[27] report noted that the estimated savings to business of £10 billion for the 2010-2015 Parliament did not fully reflect all administrative and regulatory costs to business including those arising from EU legislation and tax administration, "with no overall picture of how these costs affect business". However, outside of the EU, we would want to measure relevant costs better. Most leading countries are moving towards developing 'smarter' and more 'agile' regulation and earlier and more qualitative ways of monitoring and evaluating regulation. So, regulatory offsetting can divert departments and regulators, with limited regulatory resources, away from their capacity to respond flexibly and swiftly to the pace of change in enterprise, innovation, competition and trade.

3.6.4 Central to successful re-introduction of regulatory offsetting would be to address some findings of a 2012 NAO report[28] and ensure that the regulatory burden of each department is assessed fully, and that regulation is used effectively to secure departmental objectives. Reintroducing a gateway 'One-in, X-out' (OIXO) condition for new regulations would require departments to identify at least one compensatory deregulatory measure for every proposed new regulation. However, not every regulation has impacts of equal value, so the use of a uniform metric could be a way of measuring the costs of different regulations captured by the OIXO approach.

3.6.5 The use of any metric poses difficulties and has limitations. The better regulation system has to strike a balance between competing objectives: the quantification of costs and benefits needs to be plausible; but the system needs to be sufficiently simple and robust to be workable for departments, and to ensure all measures are assessed in a consistent way. The 2016 NAO report highlighted the limitations of the metric used to calculate the costs of regulatory measures and benefits of deregulatory measures for the OIXO approach. This includes its restriction to direct costs, disregard for wider social and economic impacts, complexity of the cost-benefit methodology used, and not fully including all administration and regulatory costs to business.

3.6.6 Robust governance arrangements are essential for any regulatory offsetting programme to work well in government. Central to achieving the objectives of regulatory offsetting are robust internal arrangements for oversight, scrutiny, challenge, validation, and reporting. This could also include accountable Board level departmental champions to promote and manage regulatory offsetting and burdens reduction as well as providing robust guidance and training to officials engaged in policy design and implementation.

3.6.7 The metric of business costs and savings that underpinned OIXO and continues to underpin the BIT has some significant weaknesses. The Government has committed to review it. For example:

- Government's aggregate metric can be dominated by a few large measures. The metric does not distinguish between small costs affecting a large number of businesses and large costs affecting a small number of businesses, meaning that good, business-friendly policymaking which helps numerous businesses counts less against the overall target and becomes deprioritised;

[27] https://www.nao.org.uk/report/the-business-impact-target-cutting-the-cost-of-regulation

[28] https://www.nao.org.uk/report/submission-of-evidence-controls-on-regulation

- the metric only counts ‘direct’ costs and benefits. Often HMG’s interventions rely on an ‘indirect’ behavioural change to deliver benefits, and these are not counted; and
- the metric does not distinguish between policy costs, that are intended, and administrative costs, which should be minimised.

3.6.8 As such, establishing a new metric is an important part of considering whether to introduce a gateway condition like OIXO.

3.6.9 These points are illustrated in the real-world example below:

**Real world example: Gaming Machines Review – maximum stake on B2 machines (fixed-odds betting terminals) cut from £100 to £2 (2018)**.

This measure scored a large (EANDCB: £450million per annum) cost on business, but that was precisely the policy intention: it was considered necessary to restrict stakes to strike the right balance between allowing industry to grow in a socially responsible way and protecting individuals and communities.

A £450m regulatory ‘IN’ makes any efforts to save businesses a few £m in other regulatory areas virtually immaterial for the overall government target. Policymakers in other areas are not effectively incentivised to find ‘small’ savings to business.

The Department for Digital, Culture, Media and Sport (DCMS) said it expected there to be significant benefits to society, including from reduced government expenditure in areas linked to gambling-related harm such as healthcare or the criminal justice system, but these could not be monetised or accurately quantified.

The result, under the current BIT metric, was a measure costing £450m pa to business, or £2.3bn against the BIT (being £2.3bn of £8bn costs in the last Parliament, with this regulation contributing 30% alone).

In a One-in, X-out system, presumed to use this same metric, government would therefore have needed to find £450m pa (or £900m pa – for one in, two out) offsetting savings (‘OUTs’) to have enabled the stake cut to have been made. £450m pa is almost the *total* savings of the Red Tape Challenge initiatives over 2011-2014, a sustained successful deregulatory effort over three years involving amending or revoking over 2000 regulations. If One-in, X-out applied, this could have made it very difficult to introduce this policy change.

## Baselining the burdens on a sector

3.6.10 The UK has never baselined the full costs of its regulations, unlike some other high-performing countries (Canada, Netherlands, Denmark, Germany). Working from a known baseline would allow more flexible approaches than OIXO and would enable meaningful measures of progress. It would also chime with business views that it is the cumulative impact of legislation and regulation which is particularly burdensome, rather than individual pieces of it. While this is a large task, which could take approximately one to two years to complete by a suitable body, leaving the EU and resuming full

regulatory autonomy provides an ideal opportunity to undertake this task and reap the benefits in the future.

3.6.11 Additionally, baselining the impacts might allow for a targeted version of OIXO focused on a particular sector or type of regulation. This would help to identify the right regulations to be revoked.

**Question 30:** Should the One-in, X-out approach be reintroduced in the UK?

**Question 31:** What do you think are the advantages of this approach?

**Question 32:** What do you think are the disadvantages of this approach?

**Question 33:** How important do you think it is to baseline regulatory burdens in the UK?

a. Very important
b. Somewhat important
c. Somewhat unimportant
d. Not very important

**Question 34:** How best can One-in, X-out be delivered?

## 3.7. Further comments

While this consultation covers a number of different subjects on the UK regulatory framework, we welcome feedback on other matters not mentioned above.

**Question 35:** Are there any other matters not mentioned above you would suggest the Government does to improve the UK regulatory framework?

# Chapter 4: Consultation questions

## 4.1. Responding to the consultation

4.1.1 Instructions for how to return your responses are contained in the General Information section of this paper. To best respond to this consultation, we recommend that you answer the consultation questions contained in the preceding sections of this paper, summarised below.

## 4.2. The common law approach to regulation

**Question 1:** What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common law-focused approach?

**Question 2:** Please provide an explanation for any answers given.

**Question 3:** Are there any areas of law where the Government should be cautious about adopting this approach?

**Question 4:** Please provide an explanation for any answers given.

**Question 5:** Should a proportionality principle be mandated at the heart of all UK regulation?

**Question 6:** Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

**Question 7:** If no, please explain alternative suggestions.

## 4.3. The role of regulators

**Question 8:** Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

a. Embedded into existing guidance

b. Embedded into statutory objectives

c. Creating reporting requirements for regulators

d. Other (please explain)

**Question 9:** Should innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

a. Embedded into existing guidance

b. Embedded into statutory objectives

c. Creating reporting requirements for regulators

d. Other (please explain)

**Question 10**: Are there any other factors that should be embedded into framework conditions for regulators?

**Question 11**: Should the Government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules rather than legislation?

**Question 12**: Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes?

a. legislating to give regulators the same powers, subject to safeguarding duties

b. regulators given a legal duty

c. presumption of sandboxing for businesses

**Question 13:** Are there alternative options the Government should be considering to increase the number and impact of regulatory sandboxes?

**Question 14:** If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to Government and Parliament?

**Question 15:** If you agree, what is the best way to achieve this accountability? If you disagree, please explain why?

**Question 16:** Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

**Question 17:** Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?

## 4.4. Revising the process and requirements of better regulation

**Question 18:** Do you think that the early scrutiny of policy proposals will encourage alternatives to regulation to be considered?

**Question 19:** If no, what would you suggest instead?

**Question 20:** Should the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process?

**Question 21:** Do you think that a new streamlined process for assessing regulatory impacts would ensure that enough information on impacts is captured?

**Question 22:** If no, what would you suggest instead?

**Question 23:** Are there any other changes you would suggest to improve impact assessments?

**Question 24:** What impacts should be captured in the Better Regulation framework? Select all which apply:

a. Innovation

b. Trade and Investment

c. Competition

d. Environment

**Question 25:** How can these objectives be embedded into the Better Regulation Framework? Can this be achieved via:

a. A requirement to consider these impacts,

b. Ensuring regulatory impacts continue to feature in impact assessments,

c. Encouragement and guidance to consider these impacts, but outside of IAs,

d. Other? (please explain)

## 4.5. Scrutiny of regulatory proposals

**Question 26:** The current system requires a mandatory PIR to be completed after 5 years. Do you think an earlier mandated review point, after 2 years, would encourage more effective review practices?

**Question 27:** If no, what would you suggest instead?

**Question 28:** Which of the options described in paragraph 3.4.10 would ensure a robust and effective framework for scrutinising regulatory proposals?

a. Option 1

b. Option 2

c. Option 3

d. Other (please explain)

## 4.6. Measuring the impact of regulation

**Question 29:** Which of the four options presented under paragraph 3.5.4 would be better to achieve the objective of striking a balance between economic growth and public protections?

a. Adjust

b. Change

c. Replace

d. Remove

e. Other (please explain)

## 4.7. Regulatory offsetting: One-in, X-out

**Question 30:** Should the One-in, X-out approach be reintroduced in the UK?

**Question 31:** What do you think are the advantages of this approach?

**Question 32:** What do you think are the disadvantages of this approach?

**Question 33:** How important do you think it is to baseline regulatory burdens in the UK?

a. Very important

b. Somewhat important

c. Somewhat unimportant

d. Not very important

**Question 34:** How best can One-in, X-out be delivered?

## 4.8. Further comments

**Question 35:** Are there any other matters not mentioned above you would suggest the Government does to improve the UK regulatory framework?

# Next steps

We will publish a response to this call for evidence after the close of the consultation.

# Annex A: Detailed descriptions of the four options for reform of the regulatory impact metric

## Option 1: ADJUST the system

A.1 The first proposal is to make minimal adjustments to the current metric. This option is proposed on the basis that the current system is a good enough way of achieving our objective and that minimal changes would provide improvements to how we measure our success without requiring an additional investment of resources. Taking this approach avoids the need for legislative change and retains robust regulatory scrutiny for the largest measures across government (including regulators). The requirement to set the Business Impact Target (BIT) would remain as it currently is, however we would look to adjust the methodology used to calculate it to better reflect the total impact of regulation on business, while still complying with the statutory requirement to report on ”the economic impact on business activities”. We would also review the current administrative exemptions and amend them if necessary, to improve the accuracy of the picture of the regulatory landscape provided by the target.

A.2 There are several options for the changes and the metrics to reflect them. In terms of the metrics the broad choice is between updating the EANDCB to include indirect costs and benefits, (becoming Equivalent Annualised Net Costs to Business – EANCB) or switching to Business Net Present Value (bNVP) which allows for both direct and indirect costs to businesses to be included. The advantage of the EANCB is that by annualising the impacts measures are more comparable on a yearly basis. However, if government wishes to take a longer view on costs and benefits there is scope to move to bNPV instead. For example, a two-year measure with high annual costs may score similarly to a ten-year measure with lower annual costs under a bNVP metric, but higher under an annualised metric such as EANCB.

A.3 Beyond this choice of metric there are three further adjustments which could be made fairly easily:

**a. Including some indirect impacts on business**

One drawback of the current EANDCB metric is that the distinction between direct and indirect impacts is often not intuitive and at times appears inconsistent. There are significant difficulties in including indirect impacts in the metric ‘across the board’ and this is not proposed here. It is possible, however, to consider including some types of indirect impacts in situations where scoring direct impacts only would result in perverse outcomes or undermine departmental incentives. This would need to meet tightly defined criteria and care would have to be taken not to introduce more perverse outcomes and incentives elsewhere in the BIT system. Areas to consider could be measures aimed at tackling illegal behaviour (e.g. scrap metal theft) or, less straightforwardly, unethical behaviour (e.g. late payment practices). An alternative

option would be to seek to have an exclusion category defined for these types of measures.

It may not be feasible or even desirable to identify all the rounds of indirect effects that occur as a result of regulatory changes. A variation of the metric could therefore be to only include intended effects, i.e. effects which are part of the intended pathway of solving the issue at hand. A further qualification could be that only intended indirect effects for which there is robust evidence should be measured, to reduce the potential for including speculative beneficial effects for which there is limited supporting evidence.

### b. Splitting policy and administrative costs

An addition to this approach would be to split policy from administrative costs. For our purposes administrative costs are those costs which are not intended as part of the measure and are borne directly by businesses as additional costs. It would then be possible to apply a target to administrative costs only, on the basis that policy costs are intended, they may also be manifesto commitments, and it could be argued they should be exempt from a target designed to reduce unnecessary business burdens.

Distinguishing between these policy impacts and other costs could help drive policy makers to concentrate their efforts on designing regulation without adding unnecessary burdens. There is also scope to strengthen the guidance we provide to departments and regulators regarding how to calculate the likely administrative costs of changes.

The table in Annex B shows the 2020 BIT report's Qualifying Regulatory Provisions in terms of bNPV, Net Present Value (NPV), BIT score, and EANDCB separated out into policy and administrative cost components. The EANDCB of policy costs totalled £1,120m compared to the relatively small £43m of administrative costs. The policy intention of several measures was to deliberately increase administrative costs, through improved reporting/governance/audit trails etc. Where these increases in administrative burden were part of the policy intention they have been counted as policy costs

A future Independent Verification Body (IVB) would need to make a judgement over the splits in cases where the precise impact of the policy intention was not clear cut. If all administrative costs, whether intentional or not, were to be included in the target, the balance would shift somewhat, but policy costs would still dominate.

It is difficult to know exactly how firms view administrative costs. Although the administrative costs are minor compared to policy costs, they may be more aggravating in nature, by taking up staff time with form filling etc. On the other hand, businesses may be more inclined to worry about the overall bottom line, which will tend to be affected by policy costs overall. Another factor is the disproportionate impact of administrative costs on small and micro businesses. Whereas large businesses may be more concerned with the policy costs, smaller businesses are less able to deal with administrative burdens by economies of scale, automation of processes etc.

### c. Other improvements

The metric should not be seen in isolation but considered alongside other elements of the BIT system, in particular the scope and target itself. A relatively simple change would be to adjust the exclusion categories rather than the metric. For example, post-Grenfell, the present BIT excludes measures relating to building safety. Going forward,

consideration could be given to excluding other high priority policy areas, such as measures that are necessary to achieve net zero.

The current metric has historically had some known perverse outcomes - particularly where intended beneficiaries of regulation are other businesses (e.g. Scrap Metal Theft where the benefits to businesses that are the victims of theft do not score, but the costs imposed on scrap metal yards does score). Some of these issues could be addressed thorough accompanying methodological fixes such as restoring a version of the Zero Net Cost (ZNC) category so that such measures might score no worse than zero for BIT purposes

It is expected that any of (a), (b) and (c) above, or their variants could be applied fairly easily alone or in combination. In addition, we would strengthen the non-statutory elements of the Better Regulation Framework, for example to build in earlier scrutiny or include an expectation that innovation is considered in impact assessments (IAs).

| **Benefits associated this approach** | **Limitations and risks associated with this approach** |
|---|---|
| Retaining a familiar framework and accounting approach will mean little additional work for departments and regulators to adjust. | The Business Impact Target would still provide a narrow view of the full impact of regulation. |
| Would not require legislative changes to implement. | Remains focused solely on the regulatory aim of reducing burden to business. |
| Would strengthen requirements for policy makers to consider administrative costs when assessing impacts. | Business Net Present Value is open to interpretation and so could present issues when applying independent scrutiny. |
| Can continue to include non-statutory reporting on wider impacts. | Retains a burdensome reporting regime. |
| Would ease difficulties on boundary of direct/indirect in some cases and would align more closely with business experience of regulation. | Would need clear definitions of admin and policy cost/savings. |
| The ease of estimating ‘Brexit dividend’ savings. Various EU directives, which might be candidates for repeal, or revocation could form a basis for estimated savings. A move away from EANDCB could make that identification of savings more difficult. | Indirect effects are more difficult to quantify and monetise, and it is unclear where to draw line on indirect costs or benefits - 2nd order, 3rd order etc. The end result could be low or no cost to business. |
| Any of the three parts could be applied independently or together. | It does not articulate the benefits/costs to individuals or society which are the intended policy outcomes (e.g. health measures related to tobacco, duty of candour etc). More emphasis on the |

| Benefits associated this approach | Limitations and risks associated with this approach |
|---|---|
| | societal NPV in the reporting framework however could help to address this. |
| Allows for interdependencies across sectors, more in line with the HMT Green Book. | Analytically, the distinction between direct and indirect impacts is often not intuitive and inconsistent with the HMT Green Book. However, this could partly be overcome through additional guidance and case histories. |
| | Pro-growth impacts (e.g. innovation) may still be difficult to capture accurately. |
| | Potentially this allows for the identification of speculative indirect benefits which could be used to offset the costs of regulatory proposals. Care would need to be taken to avoid undue speculation of benefits by departments. |
| | Excluding the policy costs from the target could seem like a retrograde step and may not reflect the felt impact of regulation on business. |
| | Allowing ‘pass through’ of costs (or savings) from businesses to consumers or other business would allow some significant regulatory measures to avoid scoring as burdens; we miss being able to capture the burdens as they are first felt. |

## Option 2: CHANGE the system

A.4 The second proposal would see bigger changes made to the system. This option is proposed on the basis that the current system is good but its ability to deliver parts of our objectives, such as incentivising behaviour, delivery of policy objectives and transparency of impacts is limited by the restrictions in the Small Business, Enterprise and Employment Act 2015. We would make changes to legislation that allow a target to be set to reflect better regulation goals more broadly and provide a fuller picture of

regulatory impacts. This could mean a target that considers more than just the economic impacts of regulations on business; for example, reporting environmental impacts and progress towards net zero, while also driving wider priorities such as productivity, competition and trade, provided they can be monetised. We could strengthen the legislative requirements to support and facilitate a greater emphasis on the importance of these factors when designing regulation to help achieve the objective of balance. The framework would continue to support the legal requirements, and could be strengthened by having mandatory analytical questions and independent scrutiny of the responses.

A.5 In terms of the methodology, amendments could be made to the legislation to allow a target not only to be measured against both direct and indirect impacts but also filter out deliberate policy costs and shift the focus to unwanted 'red tape' costs, much like the ADJUST option, although similar caveats would apply if that were the case.

## Net Present Value (NPV) as a regulatory impact metric

A.6 An approach which uses NPV as the basis for a regulatory impact metric would have the advantage of widening the scope of the impact measurement to include some of the broader things which government is interested in. Such an approach would be aligned with the HMT Green Book creating a solid consistency of approach with other government appraisals when the NPV is used alongside the wider HMT Green Book methodology.

A.7 NPV clearly doesn't have the same conceptual basis as the current metric. It is not concerned specifically with impacts on business and is not limited to direct impacts. In theory, with an objective of raising social/societal welfare, all regulatory interventions would be expected to have a positive NPV, even if it is not possible to capture these impacts in monetisable form. Any such 'target' could only be an objective, a threshold to exceed, rather than a constraint, and there is a risk that an NPV target could encourage departments to think more in terms of interventions where a positive NPV can be generated for reporting purposes.

A.8 NPVs are already captured for IAs, and it is instructive to see how this current practice plays out. Of note:

- Frequently NPVs are reported as the same as bNPVs, so societal benefits of regulatory change are often not being captured by departments in the IAs. It is possible that the reason for bNPV and NPV being frequently the same could be behavioural. If departments/regulators are not under any pressure to improve their estimates of NPV they may tend not to look more widely for impacts and benefits.
- Regulators only have to submit BIT assessments currently and may face similar difficulties to departments if required to produce a wide ranging NPV measure.

A.9 We could also look to influence policy maker behaviour by setting standards for regulatory change that represent good practice. These standards could be set based on the things which business have said they value including:

- Providing one destination for information and updates about regulations.
- Consulting thoroughly on new regulations or changes.
- Maintaining regulatory stability by providing sufficient notice of changes.

| **Benefits associated this approach** | **Limitations and risks associated with this approach** |
|---|---|
| Would provide a clearer picture of the regulatory landscape, making it easier for business and the public to understand the full impacts of regulation, as a much wider set of considerations would be accounted for using NPV as a metric. | Would require amendment to primary legislation. |
| Has the potential to better influence policy-maker behaviours to drive desired regulatory outcomes for business and society. | Some of the additional impacts will be difficult to monetise leading to an incomplete picture. Many IAs do not fully monetise societal impacts and often (notionally) report a negative NPV. This appears to be largely due to difficulties in monetising some impacts with sufficient rigour. |
| As NPV is already calculated for IAs it would not increase burdens on departments in theory, although the quality of analysis would need to be scrutinised more carefully creating additional cost elsewhere. | NPV would benefit departments already having processes set up to convert expected impacts of regulation into monetised outcomes, or where there are HMT Green Book monetisation methods to assess the externalities, e.g. health and safety or many aspects of the environment. Other social outcomes are less amenable to monetisation of benefits, e.g. competition. This could lead to uneven acceptance of this metric. |
| The methodology is well aligned with the HMT Green Book and should better reflect the process of options appraisal which new policies should have been subjected to. | Even where NPVs are fully monetised, the figure is likely to be uncertain, somewhat subjective, and to have a wide margin of error. |
| | NPV leads to complications of ‘pass through’ and general equilibrium. Businesses pass on some/all of the costs of regulatory compliance, for example to other businesses and consumers, and identifying where the costs ultimately land is challenging. |
| | NPV is often not so meaningful a figure in absolute terms; NPV is mainly used in |

| | |
|---|---|
| | relative terms, i.e. to rank options at the shortlist stage of options appraisal, and thereby inform a decision of whether to intervene (an option where the NPV is superior to the 'business as usual' option) and how (usually the option with the highest NPV of the 'do something' options). |

# Option 3: REPLACE the system

A.10 An alternative proposal would be to make significant changes to the emphasis and processes of the system. This could involve changes to the legislation to move away from requirements to set a target over the Parliament or to amend how accounting requirements are applied to individual measures. This could be replaced with a requirement for government to publish a statement setting out its regulatory strategy for the Parliament instead. This approach could drive more effective accountability for performance against the strategy, not just for individual measures but across the whole regulatory programme.

A.11 This approach would emphasise the role that better regulation frameworks have in driving better outcomes and policy design. It would also address the point that more holistic and tailored approaches do not readily fit within the existing legal requirements. This approach could include an increased focus on the range of impacts regulation can have (whether on the environment, competition or innovation) in a way that is not captured by a single metric; or an increased emphasis on the importance of outcomes of regulation by placing greater importance on effective monitoring, evaluation and review.

A.12 Such approaches would require the system to focus much less on accounting and put greater emphasis on stakeholder engagement, effective consultation to understand real world issues, rather than relying on a single point of scrutiny in the policy making process.

A.13 The strategy would reflect expectations and requirements across a broad range of issues. The specifics of the expectations could differ for each Parliament, depending on each government's regulatory objectives. This would allow for a more responsive approach to regulatory design that would allow strategy to reflect and respond to the rapidly changing world around us.

## A scoreboard approach as a regulatory impact metric

A.14 One possibility for a metric would be a scoreboard to assess progress on wider economic and social priorities. This could consist of a single master scoreboard covering all the government's priorities, or several scoreboards broken

down by topic. There is further scope to include metrics below this such as Key Performance Indicators, although this is not covered here.

A.15 This scoreboard approach would not be a metric for business impact and is very unlikely to be suitable for setting a target. It would also be unsuitable for setting a constraint on government. Rather, the aim of such a metric would be to allow government to understand, however imperfectly, the impact regulatory change is having on issues which it cares about, starting with those mentioned in the Taskforce on Innovation, Growth and Regulatory Reform report: productivity, competition, innovation.

A.16 The most challenging aspect of this approach is how to turn departmental assessments into a reliable and comparable set of numbers. Whilst we would still expect departments to use HMT Green Book principles where possible, only a few of these wider priorities are amenable to being monetised in a standard and well understood way. This means we would be reliant on departments to make judgements about the impacts of their measures. This is likely to result in at least three issues:

1. A lack of accuracy. Departments are likely to find difficult-to-monetise impacts equally difficult to judge in a descriptive fashion (small/medium/large) without some bias creeping in, such as tending to assume the impacts of measures are smaller overall than might be expected.

2. A lack of precision: Departments are likely to be highly variable in their assessments of non-monetisable costs and benefits. Each department will be the experts on how to carry out analysis in their subject area and it will be difficult for analysts in other departments to assess these impacts reliably. There are several options for how this might be made to work in practice:

    - We could require departments to produce extensive guidance on how to assess these impacts combined with a considerable push to upskill analysts across government.
    - The analysis could be pushed to the ‘home’ department. For example, an environmental measure which would have an impact on competitiveness might require Defra to estimate the environmental impact and commission BEIS to estimate the competitiveness impact for them.
    - We accept a lack of reliability in the short term and take very high-level views on the likely impact, subject to a qualitative argument and the final judgement of an IVB.

3. Translation of judgements into numbers. Civil servants will need to devise a method from first principles to turn judgements into numbers. One possibility is to refer to the distribution of monetised impacts for previous years and assume that non-monetised impacts would follow a similar distribution going forward. This would allow notional figures to be attached to descriptive judgments on the basis that we only expect so many very large impacts per year, so many medium impacts, and so on, and each impact could be given a score on a suitable scale.

A.17 This option would require a culture change and it will be important to stress that it is the direction of travel and approximate outcomes which are important, rather than exact figures. For example, if a policy is likely to have both a positive and negative effect on the levelling up agenda it will be important for departments to know whether the net

outcome is positive or negative, and the order of magnitude of the impact, but perhaps less important to know the precise cost or benefit.

A.18 A further point to note is that this approach is sufficiently different to the current metric that it is not really a replacement but an alternative way of registering the things the government is interested in. As such it could be run alongside a more conventional metric such as ADJUST.

A.19 There would remain a requirement to report periodically on progress against the strategy and how this progress will be measured. This would require a different approach to the way we measure success. We could consider:

- The scoreboard approach discussed above, although reliability is likely to be an issue.
- Supplementary metrics such as proxy measures for regulatory "health". This could be a measure such as the rate of business creation and closure in the UK. One downside of simple proxies is their crudeness: they may not on their own improve understanding of the issues or assist with improving regulatory policy, but they could nevertheless have a place in a redesigned system.
- Systematic use of Post Implementation Reviews, to embed a cyclical approach of review and improvement for the new flow of regulations.
- Periodically evaluating our regulatory policy in a qualitative way, providing a narrative update on how regulatory policy is performing against the objectives set out in our regulatory strategy.

A.20 All of these approaches would put a greater emphasis on planning for understanding the effect regulations have in practice through more robust monitoring and evaluation requirements.

| **Benefits associated this approach** | **Limitations and risks associated with this approach** |
|---|---|
| Increased flexibility to ensure the system incentivises better outcomes. | Would require a reasonable investment of resource to embed the new approach, especially for departments to upskill analysts in other departments or to take on additional assessments related to their subject area. |
| Reflects the multi-dimensional challenges of a regulatory strategy. | Requires substantial changes to primary legislation. |
| Supports a shift to greater emphasis on systems approaches away from focusing on individual changes. | Harder to measure performance, due to lack of accuracy and consistency in assessments. |
| Closer links between regulatory changes and understanding real world impacts. | Requires a culture shift in departments which will need to be handled carefully. |

| | |
|---|---|
| Gives government an idea of the direction of travel for various important but hard to quantify benefits. | On its own the scoreboard approach doesn't capture any direct impacts on business. All the effects listed are indirect effects. This may not be desirable on its own. |
| It would place greater value on non-monetised elements of the government's ambitions and also allow priorities to change over time. | |
| This approach could be run in parallel with a more traditional approach, although that will clearly have resource implications. | |

## Option 4: REMOVE the system

A.21 The final option goes further and proposes the removal of the current system in favour of a much lighter-touch central oversight by the Better Regulation Executive, giving departments more control. To do this we would repeal all legislation relating to the BIT and allow departments and regulators to implement their own systems for accounting for the impacts of regulation.

A.22 The Better Regulation Executive would continue to maintain a pared back framework setting out the minimum requirements and expected considerations. This would include minimum standards to ensure a certain quality of methodology and ensure that relevant regulatory measures were given due consideration. Departments and regulators could then set their own targets based on the objectives of the department, while continuing to account for the impact on business, and set out how these have been accounted for in their annual reports. In essence, each department would operate its own 'micro' framework underneath the strategic umbrella of the central framework. Each framework would have the same components as the existing framework and set out the purpose, scope and methodology. Stronger requirements for identifying upfront monitoring and evaluation plans to determine if a regulation is having the intended effect or greater use of sunsetting clauses if benefits are not demonstrated would bring more alignment between the understanding of the impact of regulation and how it is felt.

A.23 As departments will be taking responsibility for monitoring the impacts under this option, we are not recommending a regulatory impact metric. However, under the assumption that this option would strengthen the requirement for post implementation reviews, possibly making them mandatory and bringing them forward to two years after implementation, we will outline a potential Policy Success Metric here. We could consider a process which is similar to the EU REFIT program. The REFIT programme has a rather different focus as it looks at initiatives to improve or simplify existing regulation and has a strong emphasis on review. Where possible, monetary costs and

benefits are calculated, but often these calculations wait until the data becomes available, usually after an evaluation of the policy or regulatory change is carried out.

A.24 The emphasis is on an iterative process to improve policy. By the latter stages of the process, the REFIT scorecard generally contains a paragraph explaining exactly how much the simplification is expected to save member states. The EU REFIT programme appears to be a successful way of ensuring that regulation which is already in force is scrutinised and improved. As such it is more in line with the BEIS post implementation review process. It has been developed into a strong central effort to improve the existing stock of regulation using the scorecard to track progress instead of setting targets for achievement. This could be implemented alongside greater use of sandboxes and other methods, which potentially allows for more innovation, and allows for the regulation to adapt.

A.25 However, the process by which regulation originally comes into force does not appear to take into account the likely future burdens of regulation with the same rigour as BRE's BIT metric. The EU emphasis is on post hoc evaluation and improvement, rather than anticipating burdens and seeking to avoid them at the outset.

A.26 As this option does not have a unified approach a cross-government target would be impossible, and so we could consider not measuring or evaluating specific impacts in this way, but instead periodically evaluate performance against government's regulatory strategy. This could be paired with periodic reviews of the effectiveness of individual departmental and regulator systems.

| **Benefits associated this approach** | **Limitations and risks associated with this approach** |
|---|---|
| Increased flexibility for departments and regulators to focus on delivering government policy objectives. | Would require a reasonable investment of resource to embed the new approach. |
| Reflects the multi-dimensional challenges of a regulatory strategy. | Requires changes to primary legislation. |
| Could lead to closer links between regulatory changes and understanding real world impacts. | Could make it harder to provide a transparent overview of cumulative impacts. |
| Provides a more holistic approach to regulatory design that would support innovation and future changes in the regulatory environment. | Could lead to inconsistent levels of detail and analysis given to various impacts dependant on the objectives of the assessing department. |
| Reviews would be based on actual evidence of what works, and are likely to be more reliable than forecast estimates of impacts. | |

# Annex B: The qualifying regulatory provisions from the 2020 BIT report with additional columns showing EANDCB with an indicative split between administrative and policy costs

| Department / Regulator | Title of measure as in IA | Business NPV (£M) | Total Net Present Value (£M) | Business Impact Target score (£M) | EANDCB (£M) | EANDCB Admin cost (£M) | EANDCB Policy cost (£M) | Notes |
|---|---|---|---|---|---|---|---|---|
| Financial Conduct Authority | PS20/6: Pension transfer advice: feedback on CP19/25 and our final rules and guidance | -7999 | -7999 | 4646 | 929 | 10 | 919 | |
| BEIS/Employment Agency Standards | Agency Worker (Amendment) Regulations 2019 | -2430 | -3 | 1412 | 282 | 0 | 282 | |
| BEIS | The National Minimum Wage (Amendment) Regulations 2020 | -1611 | -6 | 728 | 243 | 0 | 243 | Non-wage costs are assumed to be policy costs. |
| The Insolvency Service | Corporate Insolvency and Governance Bill | 1437 | 1437 | -835 | -167 | 18 | -185 | |
| MHCLG | The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 | 1437 | 4964 | -835 | -167 | * | -167 | *The administrative savings will be a small proportion of the full EANDCB figure because land value uplift, which is the primary factor, is classed as policy. An estimate for the administrative impact would depend on precise definitions, yet to be determined, such as |

| Department / Regulator | Title of measure as in IA | Business NPV (£M) | Total Net Present Value (£M) | Business Impact Target score (£M) | EANDCB (£M) | EANDCB Admin cost (£M) | EANDCB Policy cost (£M) | Notes |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | treatment of fees and charges. |
| Environment Agency | Incinerator Bottom Ash Aggregate - Regulatory Position Statement RPS206 | 103 | 103 | -103 | -103 | 0 | -103 | |
| HMT | The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 | -698 | -698 | 405 | 81 | 0 | 81 | Assuming all costs are policy costs as the policy is to improve processes/structures/registration/reporting in order to reduce scope for money laundering. |
| MHCLG | The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 | 519 | 519 | -302 | -60 | * | -60 | *The administrative savings will be a small proportion of the full EANDCB figure because land value uplift, which is the primary factor, is classed as policy. An estimate for the administrative impact would depend on precise definitions, yet to be determined, such as treatment of fees and charges. |
| Gambling Commission | Extending the ban on the acceptance of credit card payments for gambling - BIT | -276 | 276 | 160 | 32 | -3 | 35 | The negative admin costs are due to a saving on credit card fees which the gambling companies are no longer paying for. |
| Financial Conduct Authority | PS19/16: High-Cost Credit Review: | -257 | -257 | 149 | 30 | 13 | 17 | |

| Department / Regulator | Title of measure as in IA | Business NPV (£M) | Total Net Present Value (£M) | Business Impact Target score (£M) | EANDCB (£M) | EANDCB Admin cost (£M) | EANDCB Policy cost (£M) | Notes |
|---|---|---|---|---|---|---|---|---|
| | Overdraft Policy Statement | | | | | | | |
| DfT | Taxi and private hire licensing – statutory guidance | -211 | -211 | 123 | 25 | 0 | 25 | |
| Financial Conduct Authority | FG20/1: Assessing adequate financial resources | -174 | -174 | 101 | 20 | 4 | 16 | This assumes everything except familiarisation and gap analysis is policy cost |
| Financial Conduct Authority | PS19/30: Independent Governance Committees: extension of remit | -107 | -107 | 62 | 12 | 0 | 12 | The admin costs are negligible as most of the measure is about upskilling and improving governance. |
| Defra | The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 | -48 | -46 | 28 | 6 | 0 | 5 | |
| total | | -10314 | -2201 | 5740 | 1163 | 43 | 1120 | |

This consultation is available from: www.gov.uk/government/consultations/reforming-the-framework-for-better-regulation

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