



Department for
Business & Trade

Smarter Regulation to Grow the Economy

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Introduction - our vision for regulation

The productivity of British businesses is the fundamental driver of our economic performance, and in turn the prosperity of every household. When we tie businesses up in red tape we limit their ability to innovate and hamper our national growth prospects.

Leaving the EU was a historic moment for this country, giving us for the first time in many decades the final say over the way we regulate. We have already taken advantage of many of the opportunities this has created, including: taking back control of law-making; setting our own tariff regime via the UK Global Tariff, cutting tariffs to reduce prices for UK consumers; ending free movement of people and taking back control of our borders by introducing a points-based immigration system; and reforming the financial services regulations we inherited from the EU. And today we are building upon this by launching the first in a series of upcoming regulatory reform announcements, focusing on how we can improve regulation across the board to reduce burdens, push down the cost of living and drive economic growth.

We do not consider regulation to be a dirty word, but it must be used only where necessary and be implemented in a way that provides the right foundations for our economy to thrive. There is little doubt that governments too often reach for the lever of regulation first, when other ways to improve and safeguard outcomes are available. The result is that businesses face hundreds of new rules being imposed on them every year, and bear costs of familiarisation, legal advice and compliance. These costs are passed on to consumers in the form of higher prices. Further, each of us as consumers loses out when such regulation blocks innovation and competition, increases prices or lowers the quality and choice of goods and services available. Or regulation can simply make people's lives that little bit more difficult and annoying.

Brexit affords us the opportunity to re-think how and when we regulate, from first principles: this includes ridding the statute book of unnecessary and burdensome retained EU laws through a process of revoke and reform, while also applying the same scrupulous lens to wider regulations that have accumulated over time so that they are fit for purpose and of benefit to the UK. But this isn't simply about cutting burdens to benefit business, we're doing this because ensuring markets function properly will benefit each and every one of us as consumers and citizens of this country.

The first part of this paper sets out how we are reforming the Better Regulation Framework to address the fact that too often historically we defaulted to regulation, with scrutiny of decisions to regulate left too late to materially change course. This new framework, guided by the five regulatory principles set out in the Benefits of Brexit report,¹ will better consider non-regulatory approaches in the first instance, and provide earlier and more rigorous scrutiny of regulatory proposals. When new regulation is introduced it will be subject to more consistent monitoring and evaluation to ensure that it is delivering on its aims.

The second part sets out our agenda to ensure that regulators help drive economic growth. Too often growth has not been given the priority by regulators that it needs and we are determined to change that. We set out plans to consult on refreshed guidance on how regulators deliver their growth duties, following the outcome of the ongoing review by Professor Dame Angela McLean, as well as the best routes to drive growth through the activities of key economic regulators (Ofgem, Ofcom and Ofwat). We will also be consulting on steers for the Competition and Markets Authority, and on the Energy priorities that will steer Ofgem and the Future Systems Operator.

The third part sets out the Government commitment to reforming our existing stock of regulation. Today we are announcing proposed changes to employment law that will cut red tape for businesses and save £1bn per year whilst safeguarding the rights of workers. Forthcoming measures will further reduce red tape on business, improve consumer outcomes and drive innovation. Already on our list of future announcements are how we will reform regulations to reduce the cost of living, deliver choice to consumers, establish trailblazing regulation to catalyse innovation and make the UK a Science Superpower, and remove obstacles to building world-class infrastructure.

The reforms we are setting out in this document, combined with other measures, such as full expensing and the labour market package announced in the Spring Budget, will create a more competitive and productive economy. An economy which is better able to attract businesses to our shores, better able to innovate, better able to serve households, and delivers prosperity across our nation.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexit.pdf

Delivering an improved Better Regulation Framework

Improving how we regulate is necessary to ensure UK businesses flourish in the global marketplace.

The current Better Regulation Framework is built around verifying the economic impacts of regulation for the Business Impact Target, but it means the independent scrutiny comes too late in the policy development process - when there is limited scope to influence or improve regulation. It has also resulted in a narrow focus on direct costs to business, rather than a holistic assessment of impacts on consumers or areas such as innovation and competition. The Government therefore committed at the start of last year to repealing the Business Impact Target via the Retained EU Law (Revocation and Reform) Bill. We are addressing the current limitations of the Framework and launching a reformed system in the summer.

Our new approach to regulation will deliver rules that are proportionate to the outcomes they are trying to achieve. Some of the current regulatory standards inherited from the EU are based on an overly restrictive and often disproportionate interpretation of the precautionary principle. Sometimes, this reverses the burden of proof, for example through requiring an innovator to demonstrate the absence of possible harm from an innovation before it can be commercialised. The UK's new approach instead recognises that regulation should be applied proportionately, and there must be sufficient evidence that any identified risk is credible and real. The new framework will provide us with the right system to ensure the future regulation of our changing economy is streamlined, recognises dynamic factors not just immediate compliance costs, and puts smart, forward-looking regulation at the heart of government decisions.

This new framework follows the five regulatory principles set out in the Benefits of Brexit report:²

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.

We set out below some of the key details of the revised Better Regulation Framework, and will publish further guidance ahead of implementation in the summer.

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brex-it.pdf

Ensuring regulation is a last resort, not a first choice

We will end the default expectation of government departments that regulation is a first choice. Instead we will require departments to evidence a thorough consideration of non-regulatory options before any regulatory solution to a policy issue becomes a serious possibility, and before launching any consultation where regulation is a lead option. Alternatives to regulation, such as standards and guidance, are often more flexible and quicker to introduce. They are also easier to adjust or remove when no longer working effectively – for example, to keep pace with changing technologies.

Ensuring earlier and more holistic scrutiny of regulatory proposals

We will ensure that any regulation that passes through the revised framework aligns with UK interests. We will do this by focussing early-stage impact assessments for significant regulations on a holistic set of criteria and metrics, including impacts on businesses, households, international trade, competition, innovation.

We will also ensure earlier influence of independent scrutiny, by asking departments to provide a clear justification of their decision to pursue regulatory options earlier in the process.

Earlier and more consistent evaluation of whether a regulation is achieving its aims

As part of an earlier scrutiny process, we will ensure the use of monitoring and evaluation with departments being required to share at an early stage their criteria for judging whether a regulation has been successful in practice and to set out a proportionate plan for evaluating their regulation

Regulations need to be reviewed at the right time so where they occur post implementation reviews of regulation should be proportionate to the impacts of the regulation in question and the availability of evidence. Departments will endeavour to conduct reviews to appropriate timelines. Where regulations are not working we will seek to remove or change them.

Working with regulators to drive growth and improve outcomes

While the regulation that comes from central government departments is most frequently in the spotlight, independent regulators themselves impose significant regulatory burdens on the sectors that they cover. Either from direct rule-making powers, or how the regulator interacts with and collects information from those it regulates, or the potential disproportionality of any sanctions it imposes.

We are announcing reforms today, detailed below, which provide a clear signal that driving innovation, investment and growth should be at the heart of what our regulators do.

Improving regulators' focus on growth

As the Prime Minister has set out, one of the foundations for building a more secure and prosperous country is delivering economic growth and better paid jobs. Our world class regulators have a key role to play in building our future economy but many currently have no formal responsibility to make sure this happens. We are reinvigorating the Growth Duty which requires regulators exercising specified functions to have regard to the desirability of promoting economic growth but we must do this the right way.

That is why the Government announced in the Budget that Professor Dame Angela McLean will lead a review of the regulators' Growth Duty ensuring that they prioritise growth alongside delivery of their core functions, such as protecting consumers or our natural environment. Following Dame Angela's review, the Government intends to consult on refreshed guidance, underpinned by law, on how regulators deliver their growth duties. The Government wants regulators to be transparent and accountable on how they are supporting growth as well as their other crucial responsibilities.

The Government is also considering the merits of commencing statutory reporting under the growth duty, with a view to improving regulators' focus on delivering against it. We consider the introduction of reporting could offer benefits in holding regulators accountable for whether they have properly considered economic growth in their decision-making and to encourage regulators to share ideas and good practice. However, we are also mindful of the new burden reporting would place on regulators, which should be proportionate and not distract from the activity of supporting growth. Having included provision for annual reporting in the Enterprise Act 2016, the Government believes regulators have had sufficient time to begin demonstrating publicly how they are helping to grow our economy.

The Growth Duty does not currently apply to Ofwat, Ofgem and Ofcom (water, energy and telecoms), which regulate sectors that alone account for 13% of annual private UK investment. Given the significant size and importance of those sectors, the Government believes that these three regulators should also be mandated to consider how best to promote economic growth as they carry out their core functions. This could be achieved by including them in the scope of the Growth Duty or via other routes, noting their existing duties with respect to innovation and investment. The Government intends to consult in the coming months on reforms to regulation from these economic regulators, including on issues around their regulators' duties.

As Chancellor, the Prime Minister instituted this growth focussed approach in financial services. The Financial Services and Markets Bill introduces new, secondary growth and competitiveness objectives for the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). This will ensure that the PRA and the FCA can act to facilitate medium to long-term growth and competitiveness for the first time.

Using strategic steers to drive growth and improve outcomes

Alongside updating the duties of regulators, which will take time to deliver, there are levers that the Government can pull that could both signal a pro-growth direction of travel and start the process of regulatory reform.

Many regulators have legal requirements to have regard to the strategic direction or guidance set by departments. The exact mechanism for setting this advice varies by regulator, but can include the relevant Secretary of State laying a strategic policy statement before parliament or sending a remit letter. Strategic policy statements can be utilised to ensure growth and innovation is embedded into regulators' approach in the short, medium and long term, and be agile and responsive enough to react to external developments.

We will now look to use these instruments more frequently, to update guidance to regulators to be more pro-innovation, pro-investment, and pro-growth. And we can today set out the first such steer, for energy policy and will shortly be setting out the second for the Competition and Markets Authority.

Consulting on the Strategy and Policy Statement for Energy

Alongside this document, the Government is seeking views on its first ever Strategy and Policy Statement (SPS) for energy policy in Great Britain.

Following publication of the Net Zero Growth Plan and Energy Security Plan in March this year, the SPS for energy sets out the Government's strategic priorities and other main considerations of its energy policy; the policy outcomes to be achieved and the roles and responsibilities of those who are involved in implementation of that policy.

The SPS will guide Ofgem (the independent energy regulator in Great Britain), and the Future System Operator (FSO), once established, and focus their activities towards the Government's energy security and net zero priorities. Ofgem and the FSO will be required to have regard to the strategic priorities in the SPS when carrying out their functions and to carry them out in the manner which they consider best calculated to further the delivery of the policy outcomes. This statement will therefore support strategic alignment between government, Ofgem, the Future System Operator and industry through making clear what the Government wants to achieve in the energy sector, including enabling anticipatory investment and innovation.

Consulting on the Strategic Steer for the Competition and Markets Authority

The Government will soon publish a strategic steer to the Competition and Markets Authority (CMA) to lay out key areas of focus, such as the cost of living and using the new powers provided by the Digital Markets, Competition and Consumers Bill. Importantly, the steer encourages the CMA to continue to support investment, innovation and growth. Alongside the expectations of the CMA, the steer re-commits the Government to a presumption of acceptance of CMA recommendations and to the 90-day timeline to respond to CMA recommendations.

The Strategic Steer is an important tool for communicating government priorities, whilst retaining the operational independence of the CMA to promote open, innovative and fair markets. The Government will consult on this steer, recognising the diverse interests in UK competition policy.

Reforming regulations to reduce burdens

We are also reducing the existing stock of regulation, too much of which unnecessarily burdens business, impedes competition or acts as a block on innovation. We are committed to reviewing existing regulations on an ongoing basis with a view to removing or reforming those which are no longer fit-for-purpose.

This is particularly important following our departure from the EU, with significant quantities of out-of-date, unworkable and unnecessary EU laws still on our statute book. The Government has introduced the Retained EU Law (Revocation and Reform) Bill (“REUL Bill”) which is providing powers to amend, remove and replace unsuitable retained EU law with bespoke UK provisions. But alongside reviewing and reforming the regulations we inherited from membership of the EU, we are also reviewing and reforming our domestic regulations which we legislated independently of the EU and too often still hold back business.

Following the UK’s exit from the European Union, the UK Government has been working jointly with the Scottish Government, the Welsh Government and the Northern Ireland Executive to develop UK Common Frameworks. Common Frameworks are designed to manage regulatory divergence. This includes divergence which may result from provisions in the REUL Bill. Both the UK Government and devolved governments agree that where Common Frameworks are operating they are the right mechanism for discussing REUL reform in the areas they cover. When using the powers in the Bill, we will use Common Frameworks to engage with the devolved governments on decision-making across the UK.

We have already made leaps and bounds in leveraging post-Brexit regulatory freedoms – including in areas such as tariffs and trade, in financial services, procurement and subsidy control, and in a new approach on data protection – and today we are announcing the first of a series of reform packages each focussing on specific areas of regulation. This first package addresses employment law where there is an opportunity to improve regulation following our departure from the EU, whilst maintaining UK labour standards which are some of the highest in the world. These reforms are key to the Prime Minister’s mission to boost the UK economy, putting business, consumers, and the British public first, and are just the next down payment on this Government’s ambitious regulatory reform agenda.

Reducing Working Time Regulations reporting burdens

The Working Time Regulations, which are derived from retained EU legislation, provide a number of valuable worker protections. However, these regulations place disproportionate burdens on business, specifically in relation to recording working hours and other administrative requirements, and we intend to reform them this year. We will be consulting on proposals to improve how these regulations work without affecting the rights that really matter to workers. The proposals include:

- removing retained EU case law that impose time-consuming and disproportionate requirements on business for working hour records to be kept for almost all members of the workforce. This will cut red tape for businesses and help them save £1bn per year while protecting the rights of workers; and
- reducing the administrative burden and complexity of calculating holiday pay. We propose introducing rolled-up holiday pay, so that workers can receive their holiday pay with every payslip, and merging the current two separate leave entitlements into one pot of statutory annual leave, while maintaining the same amount of statutory leave entitlement overall.

Simplifying the employment regulations that apply when a business transfers to a new owner

The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations protect employees when the business or organisation for which they work transfers to a new owner. TUPE may also apply when a service transfers to a new provider. TUPE regulations provide important protections for employees and provide a legal framework for transfers of staff, but there are some simplifications that can be made to reduce administrative burden without changing employee rights.

Currently, businesses cannot consult employees directly where they do not have employee representatives in place. Instead there is a requirement to elect new employee representatives. We are consulting on removing this requirement for businesses with fewer than 50 people and transfers affecting less than 10 employees, allowing businesses to consult directly with the affected employees. This will save businesses red tape and improve engagement with workers. These reforms will simplify the transfer process, while ensuring that workers' rights continue to be protected.

Reform non-compete clauses to boost competition and innovation

Non-compete clauses are included in employment contracts to restrict an individual's ability to work for or establish a competing business after they have moved on from a job. They can play an important role in protecting businesses who invest in their staff, but unnecessarily burdensome clauses have become a default part of too many employment contracts, including where they fulfil no purpose. This can inhibit workers from looking for better paying roles, and limit the ability of businesses to compete and innovate.

The Government intends to legislate when Parliamentary time allows to limit the length of non-compete clauses to three months, providing employees with more flexibility to join a competitor or start up a rival business after they have left a position. This will give up to 5 million UK workers greater freedom to switch jobs, apply their skills elsewhere and even earn a pay rise. The change will also provide a boost to the wider UK economy, supporting employers to grow their businesses and increase productivity by widening the talent pool, and improving the quality of candidates they can hire.

Limiting non-compete clauses will not interfere with the ability of employers to use (paid) notice periods or gardening leave, or to use non-solicitation clauses. These reforms will not cut across arrangements on confidentiality clauses, nor will they affect restrictions on (former) public sector employees under the Business Appointment Rules.

Conclusion

Now that we have left the EU, the UK can design regulation that unashamedly supports innovation, and promotes the interests of British people and businesses. Regulation in many specific circumstances is necessary to protect consumers and citizens, and uphold standards or indeed catalyse innovation, but it will not always be the most appropriate answer. Regulation should not hold back businesses from delivering for their customers, competing, and contributing to the growth of our economy and the maintenance of our environment. Nor should it stop ordinary people from getting on with their lives. Where regulation unnecessarily gets in the way, we are clear that we will remove it.

This document has set out the first in a series of regulatory reform announcements, covering the actions the Government is taking on the Better Regulation Framework, how we work with regulators and immediate steps we are taking to reduce burdens on business, to ensure that the UK is the most competitive and innovative economy in the world. We are taking this pro-growth mindset to all areas of the economy, scrutinising both the stock of legislation we have inherited from the EU and our wider regulations, to ensure that red tape does not stop businesses from growing or competing. Our laws and regulations should instead provide the foundation for an economy that delivers for the British people.

We are not stopping here, future updates will set out regulatory reforms to reduce the cost of living, deliver choice to consumers, turbocharge science and innovation, and drive infrastructure development. By getting regulation right we will develop world-leading businesses which provide the innovation to solve the challenges of the 21st Century and build the necessary infrastructure to provide prosperity for all of us. Creating the best regulated economy in the world is an ambitious goal set by this Government. It is one we will achieve by being bold and continuing on the path we are setting out today.

