

### Attendees

**Chair**

Michael Gibbons

**RPC Secretariat**

Hiroko Plant Head of Secretariat  
Secretariat staff

**Committee Members**

Alex Ehmann  
Jonathan Cave  
Nicole Kar  
Jeremy Mayhew  
Martin Traynor  
Sarah Veale  
Ken Warwick

**Better Regulation Executive (BRE) officials**

Carl Creswell  
Rachel Egan  
BRE officials

**Federation of Small Business (FSB)**

Richard Hyde  
Andy Poole

### A. Matters arising

**Minutes of June Committee meeting**

1. The minutes of the 11 September meeting were agreed without any changes

**Matters arising**

2. Conflicts of Interest: One member (JC) stated that he had two new potential conflicts of interest
3. Staff joining the RPC: The Chair introduced the newest addition to the RPC secretariat.

### B. Meeting Updates – United Kingdom Accreditation Service (UKAS)

4. The committee lead for civil society engagement (SV) and a member of the secretariat met representatives of UKAS (Malcolm Hynd and Susie Daley), who wanted to hear more about the work of the RPC following the launch of the RPC Corporate Report in July. They also provided a useful update on their work, especially in relation to Brexit, where they are discussing the role of standards and accreditation in the context of new trade agreements.

### C. Feedback on Sponsorship Meeting

5. The note of the sponsorship meeting (Annex 2) held on 28 September was presented to the committee. The Chair introduced the BRE sponsorship Deputy Director (RE), who outlined her background in better regulation. She also noted that she planned to review the RPC's sponsorship.
6. The Chair said that the sponsorship meeting had been conducted in a constructive and open manner and a suitable approach to future meetings had been agreed. There was a clear sense of direction and it had been agreed that that RPC and BRE would continue with the Framework which would be revisited and if necessary revised.

7. BRE provided an update on committee appointments. The Chair recruitment campaign was with ministers, and a decision was expected soon. The preparatory work on members' recruitment was underway, but some elements of the work could not be undertaken until the recruitment of the Chair had been completed, as the Chair's approval was needed. She would therefore arrange to consult with existing members over the possibility of extending their terms, and over whether or not they would wish to seek re-appointment where necessary. **(Action: Chair and HoS to ensure position is clear for, and agreed with, all members individually, and to communicate members' views to BRE; BRE to ensure members are kept up to date on planning and progress around recruitment, reappointment and extension)**
8. The Chair explained that the business plan agreed in March/April had been somewhat overtaken by events such as the election and therefore needed to be updated as a matter of urgency. The RPC, as an NDPB, is required to publish its business plan, but to publish the existing plan without context would not be appropriate. It was agreed that HoS and the BRE sponsor (RE) should review the business plan and consider next steps. This should be done in time for consideration at the next committee meeting. **(Action: Business Plan to be reviewed by HoS and BRE and confirmed with Chair and BRE Director once agreed)**

#### D. Federation of Small Business – What small firms want from Brexit

9. The two representatives (Richard Hyde and Andy Pool) from the Federation of Small Business (FSB) presented key findings from the FSB's report 'Regulation Returned – What Small Firms Want from Brexit', which was issued in July 2017. This was the fourth FSB report in a series on EU Exit; the others covered Trade, Labour Market and EU funding. It was based on a survey of the FSB's members and a series of focus groups held in the North, Midlands and the South of the country.
10. The FSB's key points were that:
  - In the short term, their members recognised the scale of the task of ensuring EU regulation is appropriately transferred into UK law, and were keen to see a smooth exit from Europe, from a regulatory point of view.
  - In the longer term, more than half of the FSB's members felt that Brexit provides scope for reforming regulations that impact on them, though a third were concerned that it could reduce the scope to do so, or increase the regulatory burden on small businesses.
  - Over 70% of small firms identified regulations that were helpful to running their business, recognising that some regulations such as health & safety, intellectual property law, and employment law, could be beneficial to businesses and boost standards.
  - The key overarching concern for the FSB's members was the overall scale, poor design, and complexity of the regulatory system as a whole. This systemic failure reduced profits, reduced innovation and created unnecessary costs to small businesses, particularly where they had to buy in external advice to help them navigate the complexities of specific regulatory areas.
  - The FSB plans to build on the current better regulation agenda, to challenge the rationale for intervention in individual cases, and to press for better overall design of regulation.
  - Its members would like to see the RPC continuing in its current role and to see that role strengthened; in particular, the FSB suggested giving the RPC's wider scrutiny role a

statutory basis and widening the scope of the RPC's power to red-rate assessments (for example on wider societal costs and benefits).

- The FSB also especially welcomed the RPC's approach to small and micro business assessments, which they felt helped departments and regulators to focus on seeking suitable exemptions for small firms.

11. The Chairman thanked the FSB for their support and asked how the RPC can address the challenges their members had identified. A number of comments were made by RPC members:

- In the context of Brexit, removal or amendment of regulation should be considered as options alongside transfer into UK law – as is the case for PIRs. (AE).
- The approach to many of the larger opportunities for deregulation following EU exit (such as employment law and health and safety) could be disputed even within the FSB's membership. It might be sensible for the FSB to focus on less contentious opportunities, at least initially (AE).
- Once the UK exits the EU there will be plenty of opportunities for consolidation of regulations. FSB should also be aware of regulatory changes tagged to Brexit bills (MT).
- It was important to distinguish between perception and reality with enormous anxiety amongst SMEs on Brexit. One should rethink regulation in the light of Grenfell Tower and the need to manage public risk. (SV).
- Another issue of concern was larger firms imposing burdens on smaller firms. Regulation should ensure a level playing field (SV).

12. FSB thanked the committee for their comments. They accepted the distinction between perception and reality. However, they noted that their members feel that the burden of regulation falls disproportionately on smaller rather than larger businesses. For example, larger businesses have more capacity to absorb regulatory burdens than smaller ones. They are also mindful of the behaviour of large firms towards the small ones and the issue of Blue Tape. They feel that Brexit will be a major challenge for their members, and look forward to working with the RPC on many issues that concern their members.

## E. BRE Presentation on future directions

### Introduction by BRE Director

13. The BRE Director made some introductory remarks on the future of Better Regulation. The steer he has received is that better regulation remains a high priority, but needs a strategic overhaul; in particular, ministers are keen not to focus on tick-box accounting or on how things were done in the past. There is also a clear shift towards better regulation rather than deregulation. He has reshaped BRE accordingly, and the Frameworks team is working closely with government departments to develop a workable and effective process that satisfies their concerns in the short term, alongside a more radical strategic overview.

14. The following comments were made by the committee:

- BRE should not be seeking to create a system that satisfies departments completely, but should move towards the optimum level of dissatisfaction – it is inevitable that any system of accountability will create some dissatisfaction (AE).

- Concerned that the current BIT has too many exclusions from its scope - such as fees, charges and tax administration. In considering a radical overview, BRE should take this bigger picture into account (AE).
- In the experience of the RPC, departments are consistently not considering alternative to regulations adequately; a new system should provide strong incentives to consider whether objectives could be achieved differently (JC).
- The nature of the existing interventions – and conversations - is that all regulation is seen as imposing a burden. In fact, regulation is not always burdensome and can be beneficial - something that BRE may wish to articulate and take into account in developing strategy (JC).
- The BRE approach appears highly Whitehall-centric; in particular, in it appears that less account is taken of the needs of business stakeholders than of Whitehall departments (JM).
- The premise should be that RPC has the ultimate right to call-in and there can be no compromise of this. It might be that RPC call-in and BRE facilitates (JM).
- Limiting the RPC's right to call in would have a disproportionate impact on perceptions of the Committee's independence (KW).
- Regulations do not take into account challenger businesses, and often support incumbents rather than encouraging competition from new entrants to markets (MT)

15. The BRE Director welcomed these comments and said that he would take them away with him for consideration. He agreed that BRE should challenge itself to consider wider stakeholder views more effectively, and to consider wider impacts including public risk. The Chair highlighted the fact that about 30% of the regulations that RPC dealt with in the last parliament has been retrospective, and the BRE Director agreed that ensuring a timely flow of high-impact IAs to the RPC is important. HoS noted that the system should be simplified, and focused on effective scrutiny at the time of policy development rather than a *post hoc* box ticking exercise

### Transitional Arrangements

16. A verbal update was given on the transitional arrangements by BRE(CatC). There were two broad areas of work. The first is the transitional arrangements and the corresponding guidance outlining the principles of *de minimis*. Second is the submission to the minister on the BIT. The committee's feedback on the transitional guidance was welcomed, and will be discussed with departments. The *de minimis* threshold of £5m has now been agreed and is operational. One member (JM) expressed surprise that it was operational and that RPC had not been informed. The BRE Director stated that this was because the write round had not been completed, but the direction of travel is clear; it is therefore appropriate to avoid nugatory work by putting arrangements in place as quickly as possible. The Chair commented that the RPC accepts the transitional arrangements in principle and that the write round and the *de minimis* are flip sides of the same coin.

### Call-in

17. BRE gave a verbal presentation on the call-in proposal and its operation, seeking comments from RPC before submission to the minister. To ensure the robustness of the better regulation system, call-in would allow appropriate scrutiny of measures which represent net direct impacts on business of £5m pa or less, but are high-profile in other ways – for example creating large transfers between businesses or significant impacts on wider society. This would maintain the credibility of the system with external stakeholders, support the IVB and BRE in meeting

statutory duties on verification, and ensure that all significant measures are supported by proper analysis.

18. However, BRE said departments had expressed concerns as to how the call-in system would operate and what would trigger a call in, being especially concerned that they will not have time to develop full IAs for smaller measures and the benefits of the *de minimis* could be outweighed by the additional burdens. Furthermore, they feared that the process could be used vexatious and had asked who would be operating the system. It was especially important to them that Brexit SIs were not delayed. BRE said that in practice they expected RPC to call in very few cases. To get the system right is going to take time and BRE will keep under review how the system operates once up and running. Also, it was important to overcome DExEU's reluctance to share material. Two options on the operation of the call-in were put to the committee.
- Under option 1, BRE would decide what is called in *ex ante*. They would take into account the views of the RPC and potentially those of external stakeholders, but the decisions on which measures to call-in would rest with BRE. To meet the legal duties for the IVB there would be *post hoc* sampling, so that RPC would still see the evidence underpinning the measure, but after the event.
  - Under option 2, RPC would be able to decide which measures would be called in, but BRE would retain oversight of the exercise without right of veto.
19. Both options have pros and cons. The first option would mean that BRE could manage the process so as to address departments' concerns, but the process would be seen as compromising the RPC's independence and might not be popular with external stakeholders. The second option would be more credible with external stakeholders and would maintain RPC independence, but would not address departmental concerns around timing and vexatious activity. BRE's preference was for the first option, as they were concerned about the possibility that concerns over call-in would jeopardise delivery of *de minimis*, which they saw as being vital to a smooth delivery of EU exit SIs.
20. The overwhelming view of the committee was that they were not happy with the proposed option. It was important to clarify the expectations on departments. Part of the exercise is to ensure that for measures falling below the *de minimis*, the departments are carrying out evidence based analysis. Should it be found that this was not the case then, the *de minimis* should be amended. Members felt that the RPC should have the right to call-in any case and that BRE should facilitate this. Neither departments nor BRE should have any right of veto over the RPC calling in cases; any more than a firm can refuse access to auditors who wish to examine particular documents. Should there be any disagreement, there should then be a transparent process for handling these. This is a key principle for the Committee, given the importance of its independent status. departments' concerns about process issues can – and should – be addressed by proper process design (**Action: BRE should clearly set out its proposal for call-in addressing the issues raised by the committee**)

#### F. Any other Business

21. There was no further business considered