HM Government

Reforming the Framework for Better Regulation

Summary of Responses to the Consultation

January 2022

Contents

Summary of Responses

The Government's consultation on reforming the framework for better regulation was open from the 22nd July 2021, to the 1st October 2021. 188 written responses were received, of which:

- 30 were from regulators;
- 54 from trade and industry bodies;
- 22 from businesses;
- 27 from private individuals;
- 7 from Non Departmental Public Bodies;
- 3 from Government Departments;
- 42 from other non-profits, and;
- 3 were from overseas respondents.

During the consultation period, the government also ran a series of virtual engagement events, the outputs of which are summarised below.

High Level Summary

High level summary of written responses

Most respondents (71%) welcomed some degree of reform to the UK's regulatory framework, although this often came with qualifications.

Respondents tended to support the following proposals, but many also asked the Government to take a flexible approach to their application, particularly in relation to product, environmental and food safety where they often advised a more cautious approach:

- An objectives-based framework for regulators;
- the adoption of the proportionality principle;
- greater sandboxing powers being given to regulators;
- the embedding of competition and innovation into regulators' guidance or objectives.

There was *strong support for:*

- Having an earlier point at which proposals for regulation are scrutinised by an independent body, and asking departments to demonstrate that standards have been considered as alternatives to regulation;

- Greater responsibility being delegated to regulators, and this being balanced with increased accountability to parliament;
- Maintaining an independent body to scrutinise regulatory proposals;
- Regulators being asked to survey those they regulate;
- Deep dives being undertaken to review the effectiveness of individual regulators, and;
- The baselining of regulatory burdens.

Most respondents did not support:

- A re-introduction of 'One in X Out' (OIXO) as a means of regulatory offsetting, and;
- Proposals to streamline impact assessments

Finally, the response in relation to the following areas was not conclusive:

- There was broad support for changing the way that Government reviews regulatory policies post implementation. A significant minority (explored in detail below) argued that it would be inappropriate to mandate that reviews always take place after 2 years, as the impacts of policies take different lengths of time to materialise; they suggested that departments instead define a more appropriate review period when introducing legislation.
- Responses to a multiple-choice question regarding how the Government should measure the burden of regulation were also inconclusive, although there was support in free-text responses for using a more holistic measure that includes the wider effects – both intended and unintended - of policies.

Methods of analysis

Written consultation responses were analysed using mixed methods. Closed questions were analysed with standard quantitative techniques. Open ended questions were analysed using qualitative techniques involving breaking the text down into thematic categories, also taking into account positive or negative sentiments. Those thematic categories were then grouped and consolidated into a framework to draw out common perspectives among the respondents.

Additional engagement carried out during the consultation period

During the consultation period, the Department for Business, Energy and Industrial Strategy (BEIS) and the Cabinet Office (CO) ran a series of virtual engagement events:

Within government, detailed engagement with officials from other government departments allowed policy and analytical specialists to contribute to technical policy development work, which will continue over the early months of 2022.

For wider stakeholders, BEIS and the CO also ran two virtual round table events, which were attended by over 100 regulators representing a range of sectors, and a ministerial round table – chaired by Lord Callanan - for wider stakeholders. These events offered an opportunity for stakeholders to learn about and discuss the Government's proposals. Discussion during these sessions often mirrored themes emerging from written responses to the consultation, but the following additional issues were also raised:

- The importance of ensuring that appeals mechanisms outside of the courts remain available to consumers;
- That proposals to replace detailed legislation with detailed regulatory guidance may not reduce compliance costs for businesses in practice;
- That care must be taken to ensure that sandboxing opportunities are made available to a range of companies;
- That regulator resource is finite, and any increase in evaluation burdens risks reducing the resource available to enforce regulation, and engage with regulated businesses and consumers;
- That businesses do not recognise the difference between the administrative burden associated with tax (which is *not* currently included in the Governments calculations of the regulatory burden) and that associated with regulation, and so the exclusion of taxation-related administrative burdens from any burden reduction target is artificial.

Detailed Summary of responses: A Common Law Approach to Regulation

We proposed that a less-codified approach to regulation could be adopted in the UK. This would mean that the government and parliament would set the policy framework, including the outcomes that regulators would be expected to achieve, but would no longer set out detailed legislation relating to business regulation. Regulators, meanwhile, could set out the detail of regulatory standards and rules. We asked for views, too, on the proportionality principle being mandated at the heart of British regulation.

We asked what areas of law would benefit from reform to adopt a less codified, more common law-focused approach and whether there were any areas of law where the Government should be cautious about adopting this approach.

A large majority of responses to the consultation expressed no view on this matter (68% for benefits & 73% for areas where the Government should be cautious).

On areas that could benefit from the adoption of a less codified approach, suggestions ranged from ‘all sectors’, to areas that respondents considered to be fast-moving, including emerging technologies, genetics, health and the environment and finance. When subsequently explaining why such an approach could be beneficial, 22% cited the potential for agility and flexibility if a less codified approach is adopted (11 of 50 responses to this question).

Some respondents representing small businesses recognised the potential value this proposal in so far as it might entail a more flexible approach being taken to regulation:

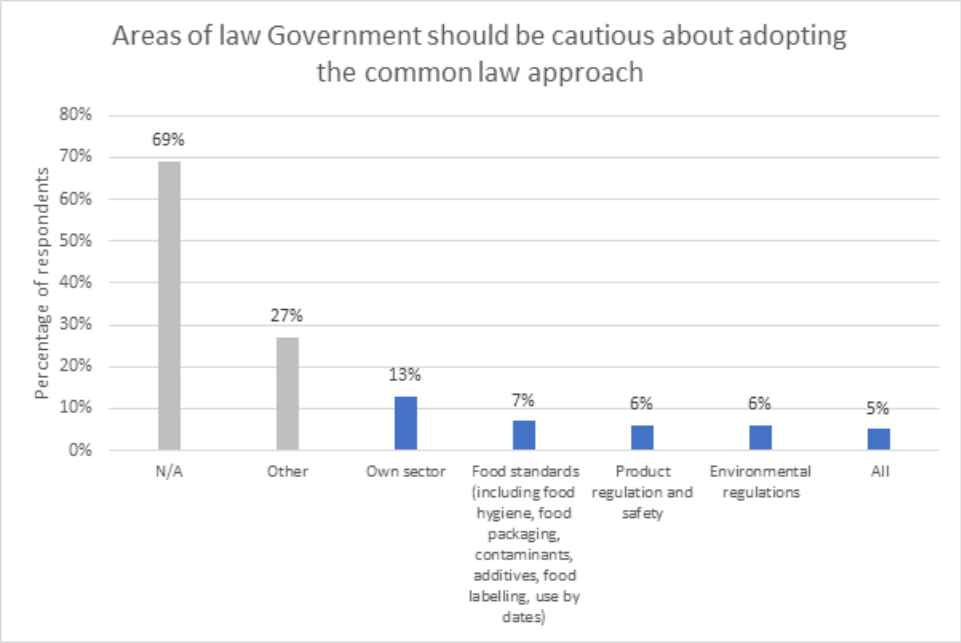
> *“Greater flexibility in licencing has enabled the sale of alcohol as off-sale or take-away, pavement trading and more during covid, essential easements that have enabled businesses to survive. However, this could and should go further, enabling more flexible trading practices, more capacity to enable enterprise for local authorities, such as the licencing of events, pop ups, street trading from*

> *public and private land and food trucks / mobile caterers moving between pitches / to customers." The Nationwide Caterers' Association (this response goes on to highlight potential risks, please refer below).*

Clear themes emerged, too, in suggestions of areas where caution should be exercised in adopting such an approach. As with other proposals, respondents tended to be wary of less-codified approaches being taken to food (20%, or 14 responses of 70), health and safety (11% or 8 responses of 70), product safety (16%, or 11 responses of 70), environmental safety (16%, or 11 responses of 70), and services provided to vulnerable people (7%, or 5 responses of 70). Responses from a small number of lawyers also suggested that private international law and international criminal law should be out of scope. 36% of respondents to this question (25 of 70), representing a wide range of business sectors, simply suggested that caution should be exercised in their own sector.

> *"Our sector, hospitality and events could benefit from a reform to adopt a less codified, more common law approach to support innovation but the risk of getting it wrong are likely too great. The only way to manage this approach effectively is to work with the sector's trade associations to ensure that they get to feed into policy and guidance to avoid bad guidance hindering business." Nationwide Caterers' Association*

Figure 1. 'Are there any areas of law where the government should be cautious about adopting [a common law] approach?



Q3- Are there any areas of law where the government should be cautious about adopting this approach?

Bar chart showing that responses thought their own sector, followed by food standards are the areas of law for which government should be cautious about adopting a common law approach, after excluding 'Not applicable' and 'Other' responses.

Note: 'N/A' stands for responses that were not applicable or left blank, 'Other' relates to responses that had a below 5% selection by respondents, and 'All' relates to

respondents who stated that the government should be cautious about adopting a common law approach, regardless of area of law.

When outlining the risks of a common law approach, respondents cited a range of concerns relating to:

- Divergence from EU regulation, as 15% (12 of 80) felt alignment had previously worked well for the UK, and 25% (20 of 80) raised concerns around divergence potentially creating trade barriers for business;
- A less codified approach reducing certainty and clarity for business (31%, or 25 of 80 responses), or having a negative impact on business & investor confidence in the UK's regulatory system (14%, or 11 of 80 responses);
- Proposals being likely to increase the volume of litigation against businesses, which would be costly and time consuming for businesses and regulators (20%, or 16 of 80 responses). This was also highlighted as a particularly marked issue for small businesses (13%, or 10 of 80 responses), and;
- A common law approach potentially causing issues for consumer protection & wellbeing (23%, or 18 of 80 responses), or potentially being ill-suited to addressing collective problems, such as achieving net zero (5%, or 4 of 80 responses).

  "I can understand the attractions implicit in this [common law] approach but, on balance, strongly endorse the document's concern that it 'could lead to more uncertainty in the regulated markets and more litigation'. Smaller entities and the general public need the certainty provided by parliamentary legislation because they do not have the resources to challenge perverse regulatory policies" Private Individual

Regulators, businesses and trade organisations attending our stakeholder engagement events tended to echo the wide range of views expressed in the written responses to our consultation. A wariness around increasing the volume of litigation was balanced by support for the broad principle of the UK adopting a more agile approach to regulation, and allowing regulators greater flexibility to regulate in an agile, outcomes-focussed manner.

We asked whether a proportionality principle should be mandated at the heart of all UK regulation and whether it should be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome.

74% of those that responded to the question (86 out of 117) were in favour of mandating a proportionality principle. Non-profits were the only group of respondents that did not follow this trend; roughly even numbers of non-profits were in favour of and against the proportionality principle (48% in favour amongst those who responded to this question).

Responding to a later question, a further 80% were in favour of such a proportionality principle being designed to ensure that regulations are proportionate with the level of risk they address, and that they focus on reaching the right outcome (78 out of 98 responses).

> *"While proportionality is an outcome to be desired in and of itself, it is also vital for promoting competition and the UK's international competitiveness"- UK Finance*

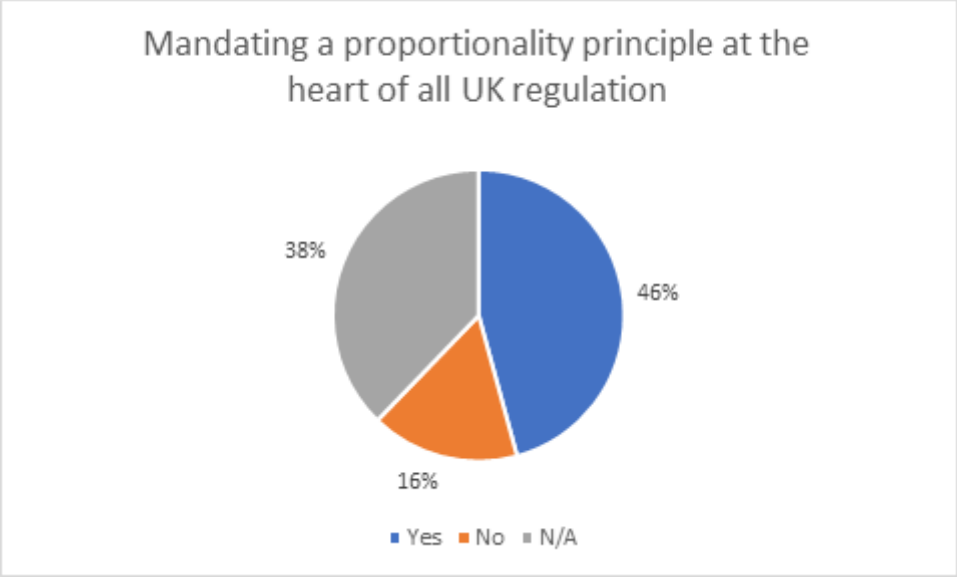
Some respondents pointed to the importance of the proportionality principle forming part of a wider suite of interventions to reduce burdens, particularly for small businesses:

> *"Alongside each measure being proportionate, we would argue that:*
>
> - *Departments should make stronger efforts to consider non-regulatory approaches to solve policy problems;*
> - *As a default position, small businesses should be excluded from the scope of new regulatory requirements;*
> - *If it's not possible to exclude small businesses altogether, then they should face lesser burdens where possible, and a light-touch, supportive approach to enforcing compliance." Federation of Small Businesses (FSB)*

Others asked for flexibility in the adoption of any approach to regulation, including the proportionality principle:

> *"It is important to be clear that a one-size fits all approach reduces regulatory flexibility to meet the specific needs of different actors across different sectors, and is not appropriate in all cases" The UK Civil Aviation Authority (CAA)*

Figure 2. Respondents' view on whether government should mandate a proportionality principle at the heart of all UK regulation



Q5- Should a proportionality principle be mandated at the heart of all UK regulation?

Pie chart showing that respondents thought government should be mandate a proportionality principle at the heart of all UK regulation, after excluding 'Not applicable' responses.

Note: 'N/A' stands for responses that were not applicable or left blank.

Those who did not support mandating a proportionality principle in UK regulation pointed to:

- A desire to retain a precautionary principle for high risk areas, such as public safety, the environment, and the protection of key markets (46%, or 31 of 67 responses);
- A view that there was no need for change, as regulation was already proportionate (31%, or 21of 67 responses), or because there was limited evidence of the precautionary principle being taken too far, and;
- The risks associated with moving away from a clear statement of the rules (21%, or 14 out of 67 responses).

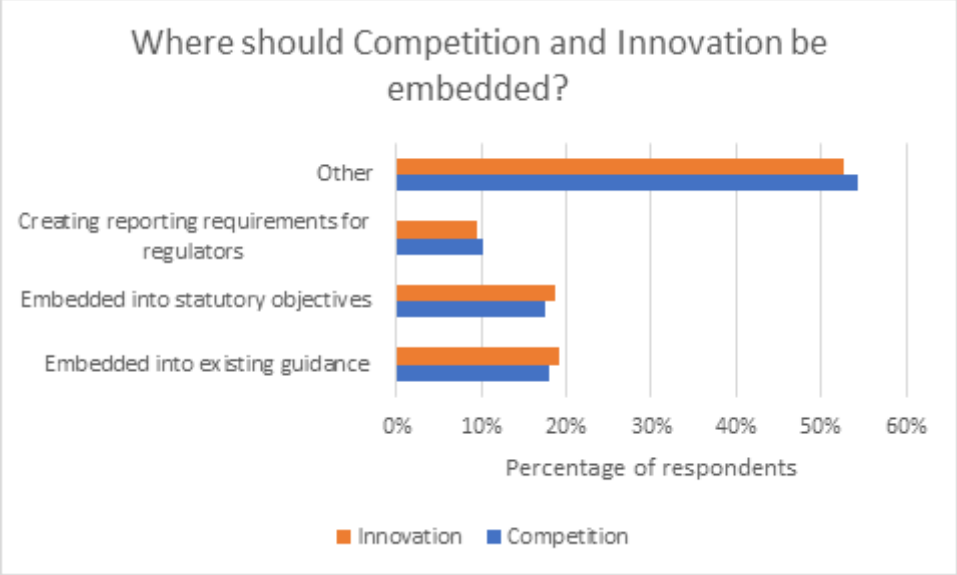
Detailed summary of responses: The Role of Regulators

We put forward proposals relating to the role of regulators, exploring the extent to which regulators could be given discretion to achieve regulatory objectives in a more agile and flexible way, and how objectives such as innovation and competition might be promoted through regulation.

We asked if competition and innovation should be embedded into existing guidance for regulators or embedded into regulators' statutory objectives, and whether there were any other factors that should be embedded into framework conditions for regulators.

Responses to the consultation were inconclusive on this matter. The majority of respondents selected 'other'.

Figure 3. Respondents' view on where competition and innovation should be embedded



Q8 and 9- Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives? And, should innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

Bar chart comparing competition and innovation showing that almost equal numbers of respondents thought that competition and innovation should be embedded into existing guidance as felt they should be embedded into statutory objectives.

Note: 'Other' relates to responses that had response outside the options above.

Some common themes did emerge, however in the free-text responses provided. In relation to competition, these were:

- Concerns about how this might conflict with the core objectives of regulators, such as ensuring safety (32%, or 22 of 68 responses);
- Sentiments that competition was already embedded in the statutory framework for some regulators (21%, or 14 of 68 responses), and;
- That there should therefore be flexibility around how regulators approach competition (19%, or 13 of 68 responses).

  "We support the intention to promote competition […] However, competition is likely to apply in different ways to regulators across different sectors […] Whilst competition is not always at odds with public protection in certain circumstances there may be a tension between the two. It therefore may not be appropriate to embed a duty to promote competition within the statutory objectives for healthcare professional regulators." Professional Standards Authority

In relation to innovation, these were:

- A desire for regulators to balance innovation against other considerations, such as safety or the environment (28%, or 17 of 60 responses);
- A suggestion that regulators could promote innovation by intervening in emerging markets at a later stage, to enforce standards developed by industry (15%, or 9 of 60 responses), and;
- A conviction that innovation should happen naturally, and that it was unrelated to the actions of regulators (10%, or 6 of 60 responses).

  "It feels to us wrong to require regulators to undertake the promotion of innovation for its own sake. Regulators exist, on some level, to protect the public from harm or guard against some concern. [….] A duty to promote innovation, positioned at the same level in the hierarchy of duties as the regulator's raison d'être may not therefore be appropriate." – The Regulatory Horizons Council (RHC)

We also asked whether any other responsibilities should be embedded into framework conditions for regulators.

We received a very wide range of suggestions, including:

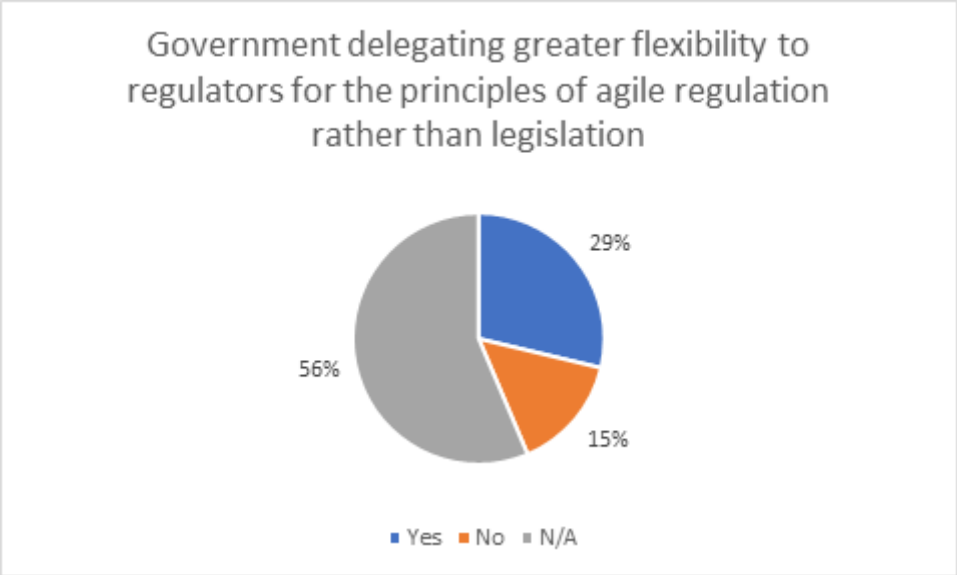
- Transparency (22%, or 11 of 51 responses);
- Environmental protection and sustainability (18%, or 9 of 51 responses);
- Consumer protection (10%, or 5 of 51 responses);
- Health (10%, or 5 of 51 responses);

- Supporting growth and foreign direct investment (8%, or 4 of 51 responses);

We asked if the Government should 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.

Most respondents favoured greater flexibility being delegated to regulators.

Figure 4. Respondents' views on whether government should delegate greater flexibility to regulators.



Q11- 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?

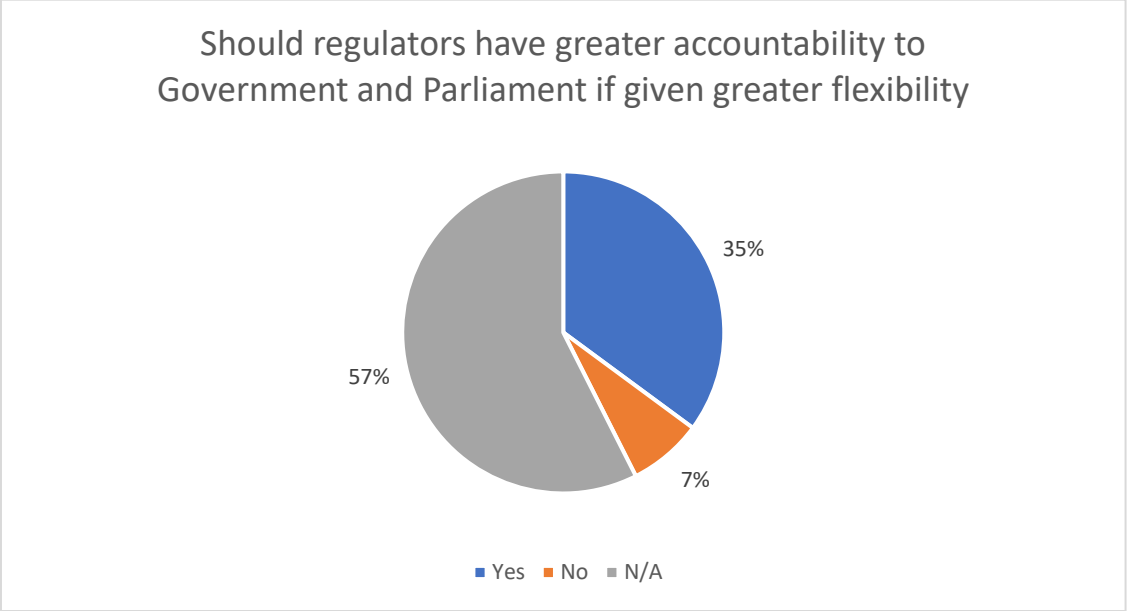
Pie chart showing that respondents thought government should delegate greater flexibility to regulators rather than not do so, after excluding 'Not applicable' responses. 29% agreed, 19% disagreed, and 56% did not respond.

Note: 'N/A' stands for responses that were not applicable or left blank.

Some respondents also provided free-text comments relating to this question, typically on the subject of how greater flexibility could be achieved. A few pointed to the risk of greater regulator flexibility disrupting efforts to monitor the burden of regulation on business, while some others reminded that clear guidance should be provided to policy makers to ensure the right balance between clarity and flexibility.

We also asked whether, if greater flexibility is delegated to regulators, they should be more directly accountable to Government and Parliament.

Figure 5. Respondents' view on whether regulators should have greater accountability to Government and Parliament if given greater flexibility



Q14- If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to Government and Parliament?

Pie chart showing that respondents thought if greater flexibility is delegated to regulators that they should be more directly accountable rather than not accountable, after excluding 'Not applicable' responses.

Note: 'N/A' stands for responses that were not applicable or left blank.

Respondents were also given the option to provide a free-text return, to nuance their response, and 87 responses were received, of which:

- 55 (63%) reiterated that regulators should be accountable to Parliament, including some who expressed a desire for regulators to be solely accountable to parliament (rather than Government as well). A small number of others suggested the formation of a new parliamentary committee to whom regulators could be accountable;
- 25 (29%) felt that the government should maintain supervision of regulators;
- 20 (23%) pointed to the value of regulator transparency in ensuring public accountability.
- 13 (15%) wanted independent oversight of regulators by a body with similar powers to the National Audit Office, and 15 (17%) requested an independent ombudsman or regulatory commission[1];

A small number expressed alternative views:

> *" [We] disagree that regulators should be given greater flexibility or that they should be accountable to parliament and Government. Regulators should be independent of Government and parliament and have the duty to enforce as per*

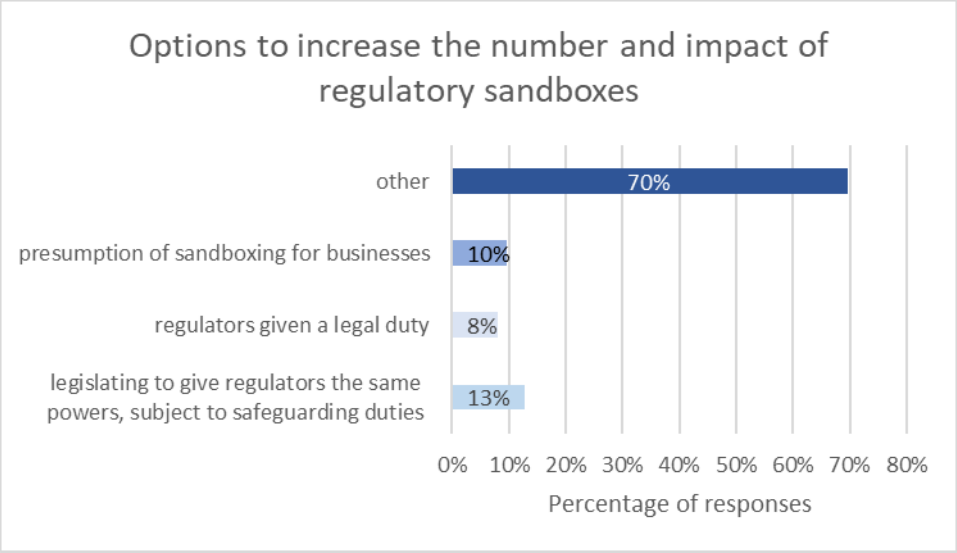
[1]The total, here, is greater than 100% as each response raised multiple themes.

regulation. They must have the resources and staffing numbers to do this"- UK Hazards Campaign

We asked whether there are alternative options the government should be considering to increase the number and impact of regulatory sandboxes. Regulatory sandboxes can encourage innovation by allowing innovators to trial new products, services or business models in a real-world environment under regulator supervision.

- 24 respondents said that the best way to do this would be legislating to give regulators the same powers, subject to safeguarding duties;
- 15 respondents said that this would be best achieved by giving regulators a legal duty to provide sandboxes;
- 18 said that there should be a presumption of sandboxing for businesses, and;
- 131 did not return a response.

Figure 6. Percentage of respondents who indicated support different ways in which the government could increase the number and impact of regulatory sandboxes



Q12- Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes?

Bar chart showing that 13% of respondents indicated support for the government legislating to give regulators sandboxing powers, subject to safeguarding duties, and 10% and 8% supported a presumption of sandboxing for businesses, and regulators being given a legal duty to provide sandboxes respectively.

Note: 'N/A' stands for responses that were not applicable or left blank

We also asked for suggestions about alternative ways for the Government to increase the use of sandboxes, and suggestions included:

- Ensuring that opportunities for participation in sandboxing initiatives are well communicated to a range of businesses and made simpler to join, and;
- Regulators working together to run multi-regulator sandboxes, sharing best practice and lessons learned, and regulators learning from international best practices.

A small number of respondents argued that as sandboxing was not appropriate in every circumstance, it should not be a legal requirement. Others suggested that decisions about whether sandboxing should go ahead should be proportionate to the level of risk associated with a product or service.

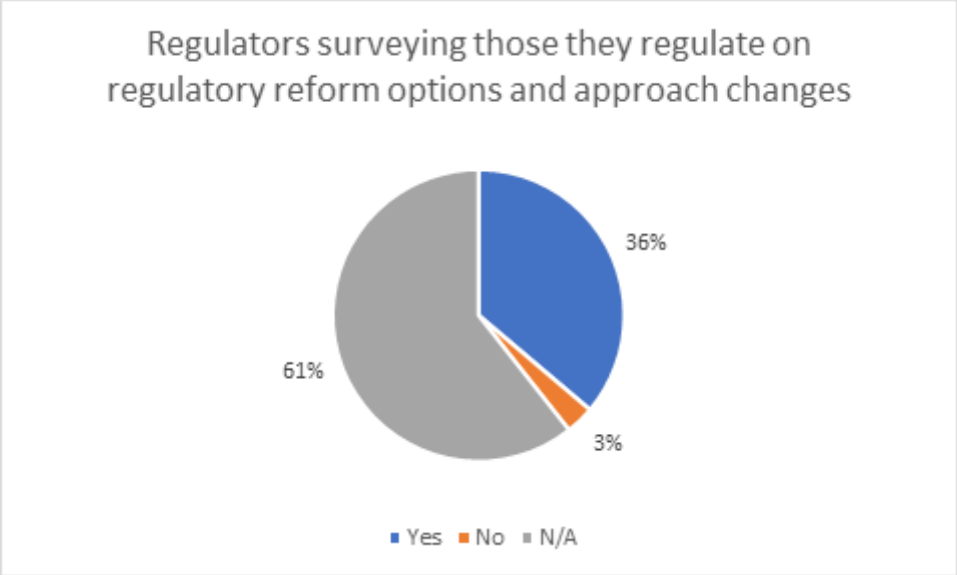
A business representative group at a round table discussion held during the consultation period also emphasised the importance of ensuring that a wide range of businesses have access to sandboxing opportunities, because participation in a sandboxing scheme tended to attract investment.

We asked if regulators should be invited to survey those they regulate on options for regulatory reform and changes to the regulator's approach.

There were 74 responses to this question. Of those:

- 92% (68) said yes, and;
- 8% (6) said no (of which 3 were private individuals).

Figure 7. Respondents' views on whether regulators should be invited to survey those they regulate



Q16- Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

Pie chart showing that respondents thought regulators should survey those they regulate about options for regulatory reform and approach changes rather than not, after excluding 'Not applicable' responses.

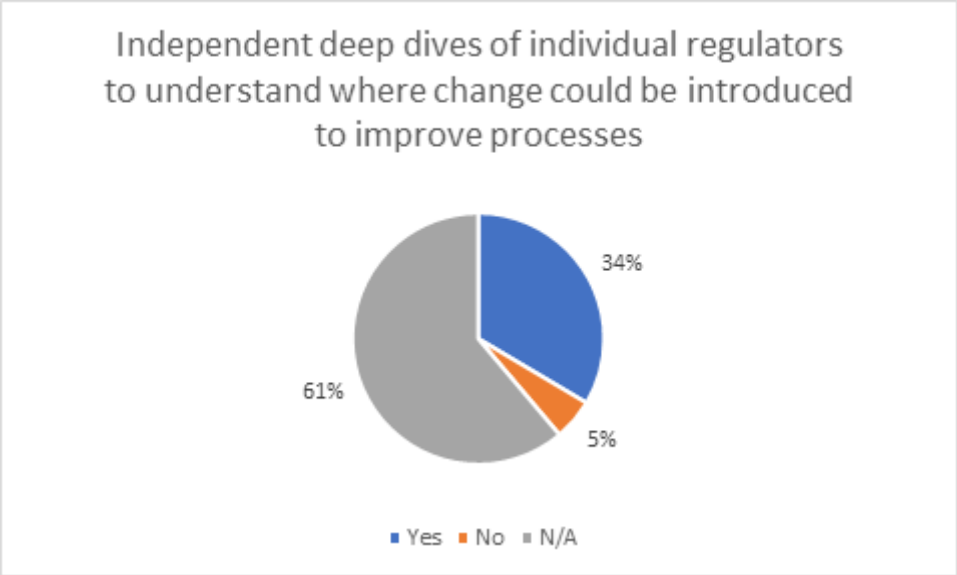
Note: 'N/A' stands for responses that were not applicable or left blank.

We asked if there should be independent deep dives of individual regulators to understand where changes could be introduced to improve processes for the regulated businesses.

There were 73 responses to this question. Of those:

- 86% (63) said yes;
- 14% (10) said no;

Figure 8. Respondents' views on whether there should be independent deep dives of individual regulators to understand where change could be introduced to improve processes



Q17- Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?

Pie chart showing that respondents thought there should be independent deep dives of individual regulators to understand changes to improve processes rather than do so , after excluding 'Not applicable' responses.

Note: 'N/A' stands for responses that were not applicable or left blank.

Detailed summary of responses: Revising the process and requirements of better regulation

We asked for views on proposals for introducing earlier independent scrutiny of policy proposals with an impact on business, and streamlining the impact assessments which regulators and government departments are required to produce when introducing regulations, though still following the HMT Green Book methodology. .

We asked whether early scrutiny of policy proposals would encourage alternatives to regulation to be considered.

There were 75 responses to this question. Of those:

- 91% (68) said yes;
- 9% (7) said no;

Responses indicated broad support for the early scrutiny of proposals. 28% of those who responded on this question (11 out of 40) also indicated a desire for the Government to take greater account of stakeholder views when formulating Impact Assessments.

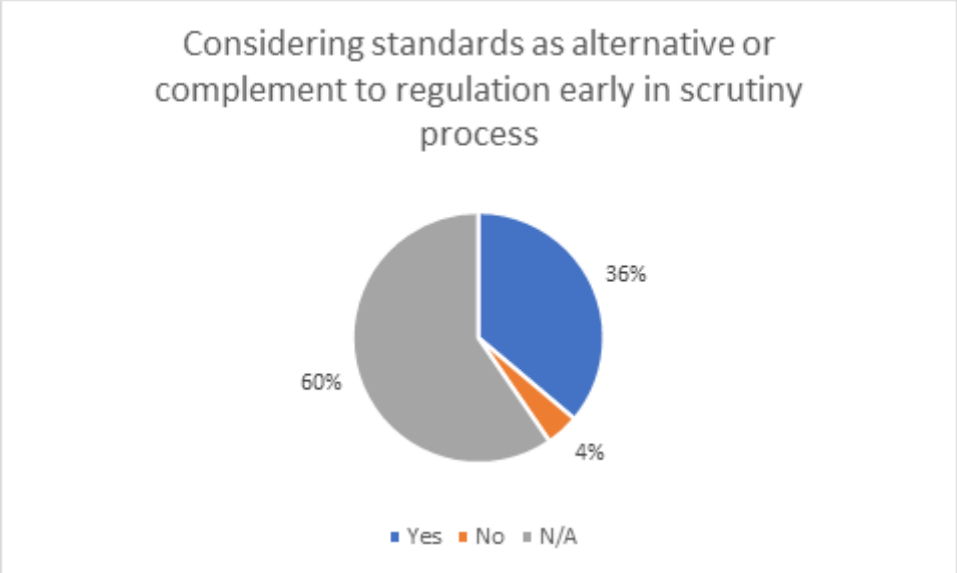
> *"Early scrutiny of the policy proposals by an independent verification body can help establish where different routes could achieve the same objective more efficiently or with less impactful or burdensome measures. However, this will be most effective when businesses are also involved in the process by being consulted before the proposal is formally introduced."-The Cosmetic Toiletry and Perfumery Association*
>
> *"No, leave things be!"- Private Individual*

We asked whether the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process.

There were 76 responses to this question. Of those:

- 89% (68) said yes;
- 11% (8) said no;

Figure 9. Respondents views on whether consideration of standards should be embedded into the early scrutiny process



Q20- Should the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process?

Pie chart showing that respondents thought considering standards as alternative or complement to regulation should be embedded early in the scrutiny process, after excluding 'Not applicable' responses.

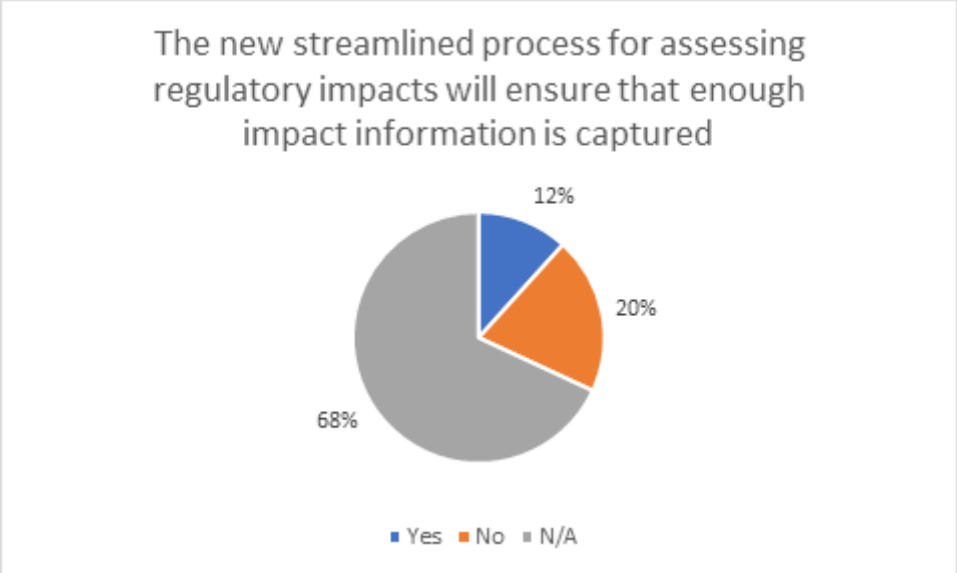
Note: 'N/A' stands for responses that were not applicable or left blank.

We asked whether a new streamlined process for assessing regulatory impacts would ensure that enough information on impacts is captured, and about what impacts should be captured and how they should be embedded in the Better Regulation framework.

We proposed creating an alternative, shorter, impact assessment that could focus more narrowly on the essential elements of cost-benefit analysis, following the HMT Green Book methodology. We also proposed that the discursive elements of IAs could be replaced by 'success criteria' - a short statement of expected outcomes from the regulation - and a concrete evaluation plan setting out how these outcomes will be measured over time.

Most respondents (128 of 188) did not clearly indicate whether they agreed that such a streamlined process would ensure that enough information on impacts was captured. Amongst those that did respond, 63% (38 of 60) felt that the proposed streamlining would not capture enough information on impacts. Trade and Industry Bodies and non-profits were most likely to say that streamlined processes would not capture sufficient impacts: 70% of trade bodies (14 of 20), and 86% of non-profits (12 of 14) provided a response did not support proposed streamlining. Overall, 22 respondents did support streamlining impact assessments, including 63% of regulators (5 of 8), 50% of private individuals (6 of 12), and 30% of trade and industry bodies (6 of 20) who responded.

Figure 10. Respondents' views on whether a new streamlined process for assessing regulatory impacts will ensure that enough information is captured.



Q21- Do you think that the new streamlined process for assessing regulatory impacts will ensure that enough information on impacts is captured?

Pie chart showing that most respondents did not think the new streamlined process will ensure that enough information on impacts is captured, after excluding 'Not applicable' responses.

Note: 'N/A' stands for responses that were not applicable or left blank.

When explaining their rationale for answering 'no', 37% (18 of 49 who chose to provide a rationale) raised concerns that in streamlining impact assessments, government risked immature proposals passing into policy without proper scrutiny, as impact assessments would not capture enough information. 24% (12 of 49) asked that impact assessments be conducted using input from external stakeholders.

> *"In so far as streamlining is intended to reduce time spent on scrutiny, there is an inevitable risk that insufficient information will be gathered and that there will not be sufficient appreciation of the impacts. [We also believe it is important to bring] business representation, along with other interested stakeholders, into the policy and regulatory process as soon as proposals are put forward"- BEAMA (Trade Association)*

A small number of others pointed to an inherent fallibility in impact assessments themselves, as expressed by the respondent below. Such views also support the rationale for our proposals to strengthen post implementation reviews of regulation, by which point the impacts of regulations will be clearer:

> *"Impact assessments often fail to account for the 'unknown unknowns', that is, the unforeseeable and unintentional but substantial impacts of regulatory actions on business operations." Adam Smith Institute (Think Tank)*

We also asked what other changes respondents would suggest to improve impact assessments, and received 59 responses. There was particularly marked support (25%, 15 responses), spread evenly across different types of stakeholders, for greater consideration of the environmental impact of policies. A wide range of other impacts were suggested for inclusion, including consumer rights, existing trade commitments, health , social, growth, foreign direct investment, competition, small businesses, and/or innovation. Some respondents also pointed to the importance of clear options appraisal, to justify the decision to regulate:

> *"If there is no other suitable option other than regulation then we would like to see an explanation as to why alternatives to regulation would be less successful. In addition to this, we would like to see a clear rationale as to why small businesses cannot be wholly or partially exempted from any new regulations." Federation of Small Businesses (FSB)*

Other themes raised in relation to impact assessments included:

- The importance of the government consulting business groups and other stakeholders in the formulation of policy and impact assessments, (a view shared by BEAMA, above and a small number of other respondents);
- An appetite to improve the consistency of IAs across government, including suggestions for cross-government peer review of IAs as a means to achieve this.

Detailed summary of responses: Scrutiny of regulatory proposals

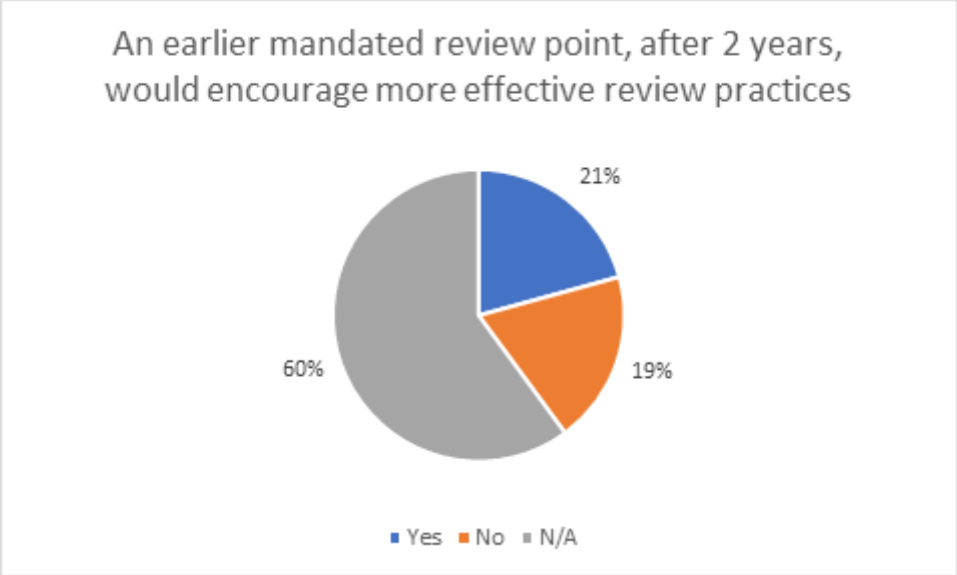
We set out proposals to further improve the way in which the government reviews regulations once they are in place, and a suite of options for how the analysis of regulations – both pre and post implementation – could be scrutinised.

We asked whether earlier post-implementation reviews – two years after the introduction of regulations, rather than five - would encourage more effective review practices.

60% of respondents (113 of 188) expressed no clear view around whether the Government should mandate post implementation reviews two years after the introduction of regulation. Of the minority that did express a view, the responses were split almost equally between those that agreed (52%, or 39 of 75) and those that did not (48%, or 36 of 75).

- Several regulators and government departments set out a case for a more flexible system. In the free text responses, 42% (25 of 59 who expressed a view, 9 of whom were regulators) argued that mandating a fixed review point would not yield the most useful analysis, as the benefits of different types of regulations take different amounts of time to materialise. Those respondents therefore requested flexibility around the timing of reviews, and asked that departments be able to define a suitable review point as part of evaluation plans developed prior to implementation.
- Some regulators attending our engagement events spoke about a desire for a proportionate approach to evaluation. They argued that regulator resource is finite, and so any increase in evaluation burdens would risk reducing the resource available to enforce regulation, and engage with regulated businesses and consumers.

Figure 11. Respondents' views on whether an earlier mandated review point, after 2 years, would encourage more effective review practices



Q26- 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?

Pie chart showing that respondents were almost equally divided in their views (21% agree and 19% disagree) as to whether an earlier review point would encourage more effective review practices, after excluding 'Not applicable' responses.

Note: 'N/A' stands for responses that were not applicable or left blank.

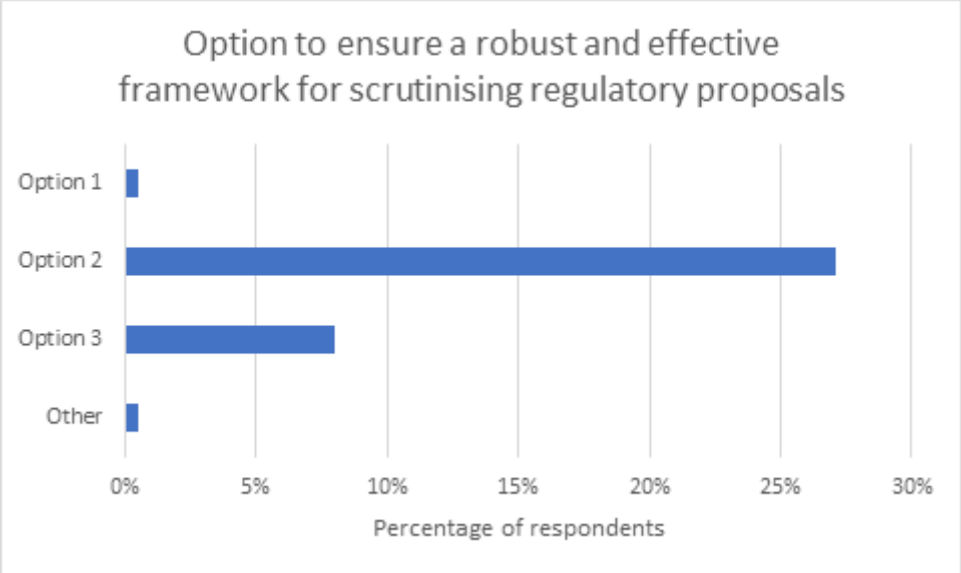
We asked how we could best ensure a robust and effective framework for scrutinising regulatory proposals.

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. We explored the following potential new scrutiny options:

- 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.

68 of 188 (36%) respondents replied to the question. Of those, 51 (75%) favoured option 2, an independent body continuing to provide a scrutiny function operating independently from the government. Those providing free-text responses also emphasised the importance of transparency and accountability in any scrutiny system.

Figure 12. Respondents' views on the most robust and effective option for scrutinising regulatory proposals



Q28- Which of the options described in paragraph 3.4.10 would ensure a robust and effective framework for scrutinising regulatory proposals?

Bar chart showing that respondents thought Option 2 was the best option for ensuring a robust and effective framework.

Note: 'Other' relates to responses that were selected for thoughts that did not fall into the categories above by respondents.

Option 1) was supported by 1% of all respondents;

Option 2) was supported by 27% of all respondents;

Option 3) was supported by 8% of respondents;

Option 4) was supported 1% of respondents;

63% of respondents did not express a view.

Detailed summary of responses: Measuring the impact of regulation

We asked how best to amend the system of measuring the impact of regulation to achieve the objective of striking a balance between economic growth and public protections. Under the current system, the impact on regulation is captured via the Business Impact Target (BIT).

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. The government is required to set a BIT for the whole term of a Parliament, and an interim target covering the first three years.

The consultation explored four options for measuring the impact of regulation:

ADJUST: Minor changes to the current metric, such as including indirect costs and benefits, splitting policy and admin costs etc.

CHANGE: Include wider costs and benefits such as those which can be measured using NPV (net present value) and the HMT Green Book methodology.

REPLACE: Introduce a totally new system to measure a wide range of government priorities. Metric could be a scorecard or simple scoreboard approach.

REMOVE: Have a central regulation strategy, but remove the BIT requirement, most likely in conjunction with strengthening other elements of the Better Regulation Framework.

We received 99 responses to this question which allowed for multiple options to be selected. Of these responses:

- 15% answered “adjust”;
- 19% answered “change”;
- 18% answered “replace”;
- 14% answered “remove”, and;
- 33% answered “other”.

No free-text commentary was requested for this question unless respondents had selected ‘other’. However, during our engagement events with business and regulators, some trade body stakeholders expressed a desire for the government to move away from thinking about regulation exclusively in terms of its costs, especially given that these can be unclear prior to and immediately following implementation. Another said that businesses do not recognise the difference between the administrative burden associated with tax - *not* currently included in the Governments calculations of the regulatory burden - and that associated with regulation, meaning that the exclusion of taxation-related administrative burdens from any burden reduction target would be artificial.

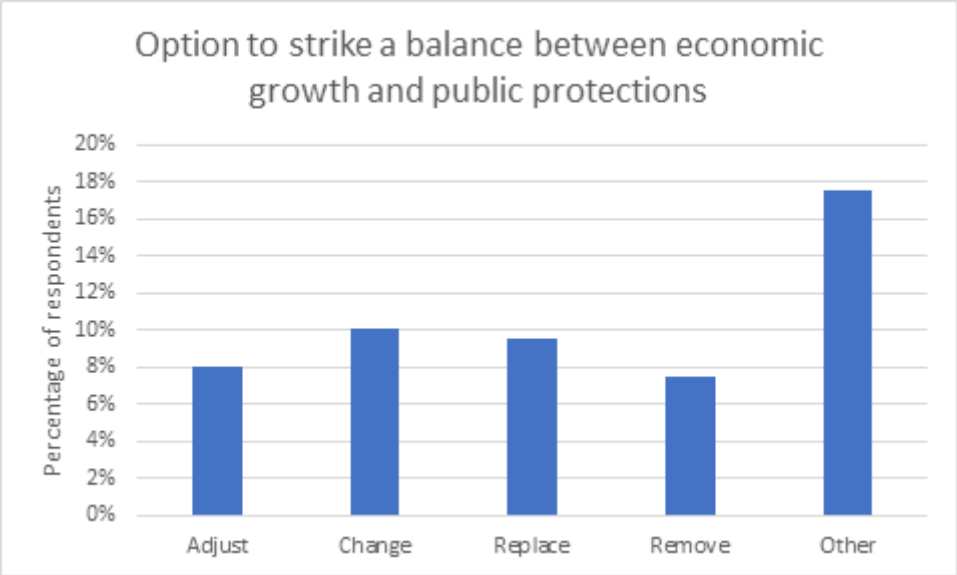
The most popular theme raised by respondents that provided “other” as an answer included the importance of government taking a holistic approach towards measuring the impact of regulation (13 responses). Some quotes from these respondents are given below:

> *“Need a comprehensive, holistic approach that includes protecting and restoring the natural environment.” (Non-profit organisation)*
>
> *“There needs to be an effective way of assessing and reviewing the impact of regulatory measures, but these need to be part of a more holistic approach that considers the full intentions and impacts of regulatory interventions.” (Non-profit organisation)*
>
> *“We would urge that the Government’s approach goes beyond those aspects that are easily monetised and include those that cannot be given a financial value*

would give a better indication of the genuine impact of regulation." (Local government)

"(We) consider the most effective metric would be to take a holistic approach and include the wider costs and benefits, that is the full social Net Present Value However, some of those wider social or environmental impacts (especially for health and safety legislation) are very difficult to quantify or monetise and to attribute to the intervention. If this method was adopted there would need to be a change in mindset on the types of evidence that would be considered acceptable. Where impacts are hard to assess, for example, a mix of qualitative and quantitative evidence would inform the metric." (Regulator)

Figure 13. Respondents' preferred options for measuring the impact of regulation



Q29- 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?

Bar chart showing a slight preference for the CHANGE (19%) and REPLACE (18%) options, compared to for ADJUST (15%) and REMOVE (14%).

Note: 'Other' relates to responses that were selected for thoughts that did not fall into the categories above by respondents.

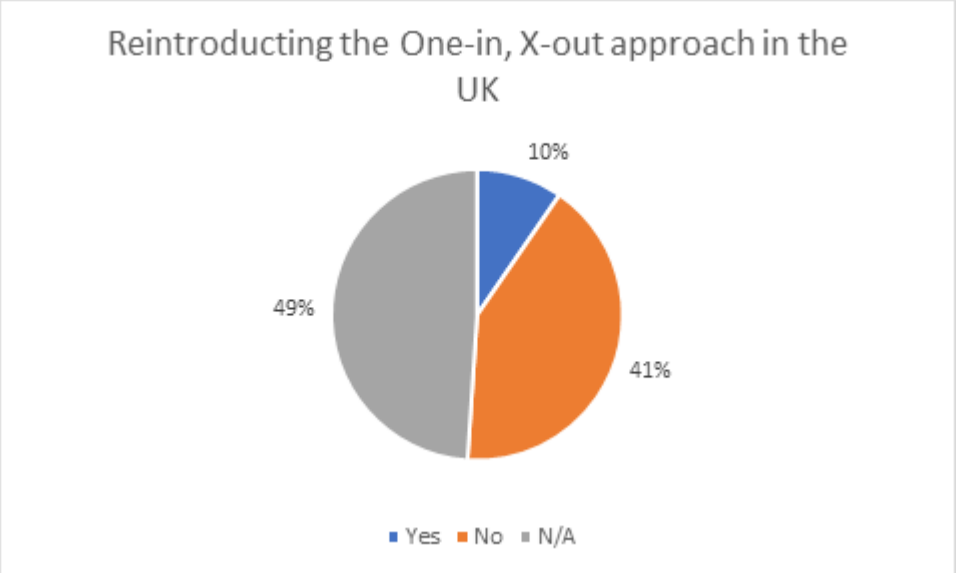
Detailed summary of responses: Regulatory Offsetting

We explained that a 'one in, x out' approach could be reintroduced in the UK, where government departments would be required to remove existing regulations in order to introduce new regulation.

We asked whether a OIXO approach should be reintroduced in the UK, and what the benefits and disadvantages of such an approach would be.

This question had one of the higher response rates of the consultation. 96 responded and of those 81% (78 of 96) were not in favour of reintroducing a One-in, X-out approach. It is notable, however, that only three organisations representing small businesses responded to the survey. Of those three, two were in favour of regulatory offsetting and one did not express a view. OIXO was seen by many others to be an arbitrary policy, and several respondents expressed concern that the Government would be forced to remove 'good' regulations in order to achieve its existing objectives.

Figure 14. Respondents' views on whether a One in X Out approach should be reintroduced in the UK



Q30- Should the One-in, X-out approach be reintroduced in the UK?

Pie chart showing that most respondents did not think the One-in, X-out approach should be reintroduced in the UK, after excluding 'Not applicable' responses.

Note: 'N/A' stands for responses that were not applicable or left blank.

Yes (10%)= 18 responses

No (41%)= 78 responses

N/A (49%)= 92 responses

Many respondents felt there were no advantages to the reintroduction of a regulatory offsetting system, and several expressed strong views around this. Some considered the underlying aims to be good ones in principle but noted that this system would be difficult to get right in practice. Those who were supportive of a reintroduction stated the main advantages were encouraging good regulatory practice and avoiding over-burdening business. Often, respondents pointed to advantages associated with the rationalisation of *existing* regulation, which is not explicitly an outcome of regulatory offsetting policies.

> *"It incentivises regulators to find regulatory savings and to limit regulatory burdens when introducing new regulations. It thereby buttresses the Business Impact Target and gives it more prominence and salience." (Private individual)*

"We believe regulatory simplification should be widely pursued which may not reduce the number of useful and valued regulations but should make them easier for business to understand and less costly in respect of the need to employ specialist regulatory and economic experts to navigate the way through often complex and inaccessible rules and guidance." (Business)

"None - it is utter folly" (Business)

A range of disadvantages for such a system were identified. Of the 88 respondents who gave a view,

- 48 (55%) felt that a One-in, X-Out system was inflexible and/or believed it to be an arbitrary target;
- 28 (32%) respondents believed that such a system could create pressure to remove 'good' regulations e.g. those relating to public safety;
- 18 (20%) raised the difficulties of weighing all regulations according to a single metric, and;
- 14 (16%) respondents elaborated on the above, adding that there are often complex methodological and implementation issues that cause such a system to be ineffective.
- 14 (16%) other respondents also noted the possibility of such a system creating perverse incentives or unintended consequences.
- Concerns were raised by 10 (11%) respondents that the system could cause delays to necessary and beneficial policies being brought in, and 9 (10%) others added that regulatory offsetting also places burden on regulators and policy makers, reducing the resource available to deliver other initiatives.

  "One-in, X-out is not practical and doesn't reflect changing risk patterns and innovation, nor does take account of the UK leaving the European Union and as a result, especially in aviation, taking on rule-making. It might also constrain the ability to create regulations that would allow new sectors and services to come into existence – e.g. a significant regulatory framework has been introduced to enable spaceflight from the UK, and further regulations are likely to be required to allow net zero technologies to be introduced. Without these frameworks, the activity could not take place, and it may not be wise to remove existing aviation safety legislation to allow these new sectors to emerge. However, regulatory guidance should reflect the onus on government and regulators to reduce the complexity, length, and impact of regulation, and there could be transparency around progress towards such an objective." (Civil Aviation Authority)

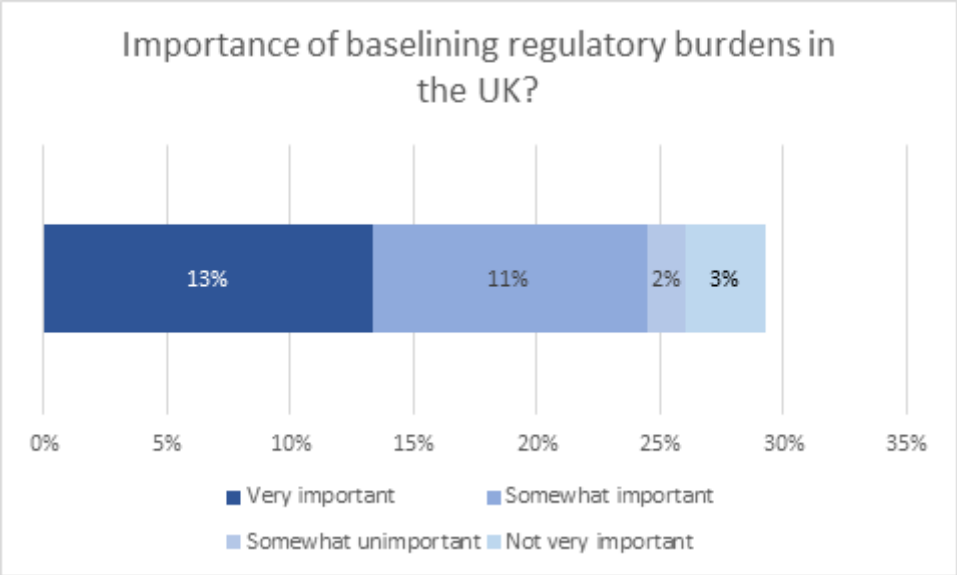
  "The impact of regulatory changes and adjustment costs must be extensively considered, and the removal of unused regulation cannot offset the cost of new regulation." (Association of Chartered Certified Accountants)

We asked how a regulatory offsetting system could best be delivered, and received 64 responses. 31 (48%, including 10 trade and industry bodies) respondents opted to emphasise their earlier response, saying it should not be introduced, and 12 (19%) also expanded this point by saying that a One-in, X-Out system would be too arbitrary, and that the introduction of regulations should be based on need.

Those that did make suggestions on delivery highlighted the need for care when implementing the system, and that it should be based on cost-benefit analysis using appropriate qualitative and quantitative evidence. Several respondents proposed that the system should exclude critical issues such as public safety and the environment.

We asked whether it was important to baseline regulatory burdens in the UK. The responses to the consultation showed that a majority of those who responded felt it was very important or somewhat important to baseline regulatory burdens.

Figure 15. Respondents' views on the importance of baselining regulatory burdens in the UK



Q33- How important do you think it is to baseline regulatory burdens in the UK?

Bar chart showing that baselining regulatory burdens in the UK is seen as very and somewhat important by a large number of respondents.

Note: 'Other' responses have been excluded from this graph, including blank responses or other thoughts around baselining regulatory burdens that did not fall into the categories above by respondents.

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

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.