Department for Business & Trade

Smarter Regulation and the Regulatory Landscape:

Summary of findings from the Call for Evidence

May 2024

Contents

Section 1: Introduction and overview of findings

The Smarter Regulation Programme

1. On 10 May 2023, the Government published Smarter Regulation to Grow the Economy. This introductory report set out our vision for regulation and committed to a series of regulatory reform announcements across the year to benefit businesses and drive innovation and growth.

2. Smarter regulation is about only using regulation where necessary, implementing it well, and ensuring its use is proportionate and future-proof. When delivered effectively, regulation and the work of regulators plays a vital role in protecting consumers, the environment and setting the right frameworks for businesses to thrive.

3. The Smarter Regulation Programme is led by the Department for Business and Trade and has three core pillars: (1) reforms to the stock of existing regulation to reduce business burden and future proof regulations; (2) addressing the flow of new regulation through improved scrutiny of regulatory proposals and use of alternatives to regulation; and finally (3) ensuring the landscape of regulators works well and delivers the right outcomes. It is this third pillar with which this paper is concerned.

Call for Evidence on the regulatory landscape

4. In recent years, stakeholders have raised concerns over the functioning of the landscape of regulators[1]: these concerns span a range of related issues, including the number of different regulators; the number and complexity of their duties; the proportionality and consistency of the decisions that they make; skills and sector understanding; their relationship with government and the role of strategic guidance; and their performance and accountability to Ministers and Parliament.

5. On 17 October, the Department for Business and Trade launched our Call for Evidence on the regulatory landscape to systematically understand the scale and span of these concerns across different stakeholders and establish an evidence base

[1] Recent reports include Policy Exchange (2022) Re-engineering Regulation: A Blueprint for Reform; Centre for Policy Studies (2021) Regulating the Regulators ; Regulatory Reform Group (2023) The purpose of regulation Improving accountability of our regulators to get a better deal for consumers, businesses and the United Kingdom. Most recently, there is the House of Lords Industry and Regulators Committee report Who watches the watchdogs? Improving the performance, independence and accountability of UK regulators

for what works well and what could be improved across the landscape of regulators. This closed on 17 January 2024.

6. The Call for Evidence was by design very general – it did not name specific regulators, with a scope broadly covering most independent regulatory authorities that are accountable to UK Central Government and UK Parliament, but not directly local authorities. We welcomed responses from all stakeholders across all sectors in the economy, including businesses; consumers and consumer groups; regulators themselves; and think tanks. Financial services regulators and regulation were not in scope of the call for evidence: these are handled by HM Treasury, where there have been positive and industry-welcomed reforms in this space in recent years.

7. We received **199 distinct responses** in total, with 138 via email submission and 61 via Qualtrics online survey. The distribution of responses is as set out in Table 1 below. As set out in the call for evidence itself, all responses were treated in confidence, and we will not be publishing individual responses.

Table 1: Distribution of responses by stakeholder group

Respondent type	**Percentage**
Small and Medium-sized enterprises	12%
Large businesses	20%
Trade Associations	35%
Consumer Groups	2%
Regulators	10%
Public Bodies / ALBs / Accreditation services	8%
Think tanks and academia	8%
Other	6%

8. Alongside the Call for Evidence, we also ran an extensive series of roundtables with stakeholders to discuss the work. Across November and December 2023, we ran 10 roundtables with businesses; consumer groups; regulators and academics. These

roundtables spanned 45 individual stakeholders in total. The findings presented in this paper relate solely to the formal submissions to the call for evidence.

9. This document serves as a detailed summary of the findings from the call for evidence. It is a supplementary product to the White Paper on “Regulating for Innovation, Investment and Growth: Working with regulators to deliver a world-class service”.

10. A number of the reforms included within the White Paper were developed using the evidence gathered during the Call for Evidence and cover a broad range of issues raised be stakeholders. We are continuing to analyse the evidence base from the call for evidence and, as part of the Smarter Regulation programme, we will explore further opportunities for improving the landscape of regulators and how government can support this process.

Overview of key findings

11. Responses to the Call for Evidence were varied, with stakeholders offering detailed and at times contrasting perspectives on what works well and what can be improved across the landscape. The below summary aims to capture some of the more general views from stakeholders, with the subsequent section offering more detailed and nuanced summaries of the responses to each section.

12. Overall, most stakeholders were of the view that a fundamental, first-principles re-design of the UK’s regulatory ecosystem is not required. The current system is broadly well-structured, can be proportionate and is recognised internationally. However, in some cases, there is scope for significant improvement. Firstly, the existing system could be better explained so it is easier for stakeholders to understand the relationships between different actors in the system, whether they be regulators, government departments or both. Secondly, some stakeholders have found particular aspects of the UK’s regulatory framework to be problematic and in need of reform, which if pursued would represent significant changes to the regulatory system.

Complexity and ease of understanding the regulatory system

13. Many stakeholders were of the view that the existing regulatory landscape can be difficult to navigate, with a need for structures, roles and responsibilities to be better explained. Alongside this, several stakeholders identified a number of specific

problems with the structure of the regulatory system, including the number of regulators and their remit; devolved regulatory responsibilities; and the establishment of regulators and regulation through legislation.

14. Stakeholders also highlighted concerns over the expansion of regulator duties and responsibilities over time, which they suggest has caused regulators to lose focus on their core objectives and given rise to potential scope creep in their activities.
15. Domestic and international regulatory cooperation was another point commented on by respondents. While a number of stakeholders pointed to positive examples of international cooperation, some stakeholders set out concerns, including that (a) the division of responsibilities between UK regulators is not always clear; and (b) some regulators are less engaged in international fora since leaving the EU. Stakeholders also raised concerns with the perceived regulatory instability - in the form of frequent changes to regulation, regulatory remits and inconsistent decision making - and transparency of the existing landscape, which they argue creates uncertainty and disincentivises investment.

Regulator agility, responsiveness and skills

16. Regulator agility and responsiveness was one of the most prominent themes in the Call for Evidence responses. Respondents identified several constraints to regulators' ability to identify and respond to emerging challenges and opportunities within their sectors, including rigid legislative frameworks that the regulator is subject to, alongside internal processes and perceived limited resources. Stakeholders suggested a range of alternative regulatory models to enable more agility and responsiveness, including principles-based, outcomes-based and risk-based approaches. They also encouraged the use of regulatory sandboxes within these models to help drive agility and responsiveness.
17. The central theme of comments on regulator skills was the concern that regulators may lack practical industry experience and/or the necessary technical expertise to understand and therefore regulate the sectors or practices in their remits. Many stakeholders highlighted the difficulties regulators face in retaining and recruiting skilled staff due to what they describe as uncompetitive salary structures in the public sector, compared with the private sector.

Proportionality

18. Stakeholders raised many points in relation to whether the decisions and actions of regulators are proportionate. This includes the concern that regulators are too risk averse and impose burdensome steps to limit risk in delivery or legal challenge, rather than achieving the best outcomes. This is driven by a range of factors, including concerns around judicial review, or a lack of retained knowledge within the regulator due to challenges in retaining and recruiting specialist staff and skills.
19. Responses also noted that regulators do not always act consistently across comparable situations, and that this applies both within the same regulator and between multiple regulators operating in the same sector. Stakeholders noted various alternative approaches to regulation could achieve better outcomes in a more proportionate manner, while still balancing risk. However, responses considered that there are a number of constraints to taking these forwards, including legislative restrictions, regulator resources, and a lack of engagement between regulators and businesses.

Process, Accountability and Governance

20. Many stakeholders raised concern with a perceived lack of transparency in appeals processes, suggesting improvements that are required. These include a lack of transparency in how regulators reach decisions, a lengthy process that is not appropriate for the pace of certain industries and a process which discourages engagement by appearing to focus on punishment rather than outcomes.
21. Separately, they also noted large variations in process in how regulators and government run consultations on proposed regulatory changes. Stakeholders are of the view that regulators and departments do not follow a standardised process and pointed to anecdotal evidence of consultations pre-judging the outcome or only engaging with certain industry participants.
22. Finally, stakeholders drew attention to potential improvements that could be made to the governance structures of regulators, such as having board members represent minority stakeholders or truly independent board members. They also suggested improving the governance structures and channels of communication between regulators and government. This was noted as being especially welcome in areas which are covered by multiple regulators and sponsoring departments, where more joined up governance, standardisation where possible and communication from government could remove uncertainty and improve performance.

Regulator performance

23. Stakeholders suggested that some regulators are not sufficiently funded, resourced or have the capacity to achieve full operational efficiency.
24. Stakeholders noted that monitoring of regulator performance is, in some cases, opaque and that regulators are, in some cases, not collecting the correct data, metrics and Key Performance Indicators (KPIs) to adequately demonstrate their performance.
25. The relaxation of performance targets can be indicative of declining regulator performance, with an example provided of how resulting time delays impacts business performance.

Section 2: Complexity and ease of understanding the regulatory system

Introduction

26. This section of the Call for Evidence concerned the structure of the regulatory system, and the ease at which stakeholders can understand and navigate it. Responses were focused around several sub-themes, including:
    a. the general design of the regulatory system – how the system could be better explained for stakeholders and particularly problematic aspects of the regulatory framework;
    b. stability and transparency – how stability and transparency over areas such as objectives, remits and decision-making processes can bring certainty for businesses and incentivise investment;
    c. duties and objectives – whether the objectives of regulators are appropriate, whether they are sufficiently clear and how they manage conflicting objectives; and
    d. cooperation between regulators, domestic and international – whether the division of responsibilities between regulators is clear and the correct structures are in place to enable domestic and international regulatory cooperation.

General design of the regulatory system

27. Overall, most stakeholders were of the view that a fundamental, first-principles re-design of the UK's regulatory ecosystem is not required. The current system is broadly well-structured, can be proportionate and is recognised internationally. However, in some cases, there is scope for significant improvement. Firstly, the existing system could be better explained so it is easier for stakeholders to understand the relationships between different actors in the system, whether they be regulators, government departments or both. Secondly, some stakeholders have found particular aspects of the UK's regulatory framework to be problematic and in need of reform, which if pursued would represent significant changes to the regulatory system.
28. To ease navigating the regulatory landscape, stakeholders have called for more clarity and co-ordination on the design of the existing regulatory system. This includes:

a. an explanation of the various classifications of regulators and how this relates to their purpose, statutory functions and governance structures. For example, it is often unclear why some regulators are situated within ministerial government departments, while others are non-departmental public bodies or non-ministerial government departments, or why some regulators rely on primary legislation and others on secondary;
b. clearly setting out the various remits of regulators in relation to particular sectors and the delineation of their responsibilities - this has become more unclear since regulators have been given additional powers post-EU Exit. In some areas there is regulatory overlap and in other areas there are regulatory gaps, which can cause regulatory overreach and uncertainty for businesses; and
c. clear signposting and explanations of the relevant regulation for particular sectors in a single, accessible format.

29. In addition to better explaining the regulatory system for stakeholders, some respondents also identified particular aspects of the UK's regulatory framework as problematic and in need of reform, which if pursued would represent significant changes to the regulatory system[2]:
a. some stakeholders consider there to be too many regulators with too many duties and too wide a remit, which causes duplication. Equally, the fragmentation of the system can create regulatory gaps as issues fall through the cracks when there is uncertainty over regulatory responsibility. An exercise to consolidate regulators, their duties and remits and identify regulatory gaps could resolve this;
b. differences in the regulatory approach between UK-wide regulators and those operating solely in the devolved administrations can cause complexity for businesses and prevents joined-up approaches to achieve shared objectives;
c. the perception that regulators have too much freedom to interpret their own legislation, which can cause over regulation and scope creep;
d. the establishment of regulators and regulation through legislation can mean that less high-profile regulatory issues – which garner less media or political attention – are ignored due to the scarcity of legislative time. An approach which gives regulators more autonomy to act outside of the legislative process would mitigate this; and

[2] A number of these points may be at tension, such as restricting regulator remits and maintaining consistent processes for consultation, scrutiny and accountability, while providing regulators with more autonomy to act.

e. concern that governments too often seek to resolve politically salient issues by establishing regulators with short term objectives, without considering the longer term and wider regulatory impacts.

Stability and transparency

30. Responses highlighted the importance of stability and transparency in the regulatory system, to provide businesses with certainty outside of the political cycle and attract investment and foster innovation, in particular:
    a. stakeholders called for international regulatory alignment and minimal divergence where possible, including through the use of internationally recognised standards, to maintain stability and certainty in markets and supply chains, minimise costs for businesses, maximise the range of products available to consumers; and facilitate international trade;
    b. stable and transparent legislative frameworks to avoid scope creep where regulators have discretion to act outside of their core, intended remit, which can cause business uncertainty and instability;
    c. maintaining regulatory independence and minimising political interference, to enable long term planning and investment, and clarity over the responsibilities of regulators versus that of the government;
    d. transparency over various strategic aspects of regulators to ensure predictable outcomes and a consistent regulatory environment for stakeholders. This includes the remit of regulators, how they interpret and prioritise their duties, their long and short-term strategic objectives, and the regulatory tools they can and will leverage in enforcement. This could be achieved through the use of Terms of Reference, Memoranda of Understanding and strategic statements;
    e. the necessity for regulators to explain in advance their priorities, where these may shift and sufficient lead-in times for regulatory changes to enable businesses to understand and adapt their operations accordingly;
    f. consistently clear guidance for businesses to simply explain regulator duties and objectives, which are at times difficult to interpret in legislation, and guidance on compliance and enforcement, all in an accessible format; and
    g. explanations of regulator decisions and their decision-making processes, including how these relate to their duties and objectives.

31. However, it is worth noting that, in some cases, the stability of duties and regulator legislation may compromise agility and responsiveness. This could mean regulators may be unable to respond sufficiently rapidly or flexibly to emerging issues and opportunities due to inflexible legislation or the rigidity of their duties. Additionally, stakeholders highlighted that transparency over particular decisions may not always be legally possible, such as where there are ongoing investigations.

The duties and objectives of regulators

32. Objectives and duties were of the most prominent themes commented on by respondents. Respondents largely agreed that regulators' objectives and duties have increased steadily over time, despite some exceptions. Although the number of duties and objectives have increased, of the stakeholders who commented on the appropriateness of duties and objectives:
    a. 25% were satisfied that regulators have the right duties and objectives and they are clearly stated.
    b. 19% of stakeholders commenting on the appropriateness of duties and objectives responded that they are appropriate but that they are difficult to locate, understand and should be consistently explained across all regulators.
    c. The remaining 57% of stakeholders who opined on the appropriateness of the objectives and duties of regulators responded that they are not appropriate for a multitude of reasons, and/or that regulators are not appropriately balancing their duties and objectives.
33. The specific issues stakeholders raised with duties and objectives were:
    a. *core objectives* – the multitude of duties and objectives assigned to regulators has diluted their primary purpose, be that regulating a particular sector or specific cross-sector issue, causing them to lose focus on effectively delivering their core objectives and enabling scope creep. These additional duties can often reflect short-term political and economic priorities, which interferes with long term, stable decision making, and do not always align with key sectoral challenges and opportunities;
    b. *legitimacy* – there is blurring of policy and regulatory responsibilities between government and regulators which impacts the legitimacy of the existing model. Government is adding duties and objectives to regulators to deliver particular policy aims, which are traditionally outside the scope of the role of regulators in relation to a specific sector or cross-cutting issue. This is

causing regulators to make decisions – e.g. on normative issues such as fairness and distributional outcomes - which they do not necessarily have the legitimacy to do and should, suggest stakeholders, be the role of the government;

c. *managing conflicts* – there are often conflicts or trade-offs between the duties and objectives of regulators, but there is concern that government is not providing clear steers on how to manage trade-offs and prioritise duties. This can lead to inconsistent approaches across regulators (made worse when they operate in the same sector), unpredictable outcomes for businesses and mean regulators are vulnerable to influence by the loudest stakeholders;

d. *regulatory overlap* – overlapping objectives between regulators causes uncertainty and inconsistency of approach. It is important that government establishes common objectives or a shared vision for regulators to enable a co-ordinated approach and joined up thinking to regulation;

e. *accountability* – there were mixed views on whether regulators act within their remit, however where duties and objectives are ambiguously explained, regulators have cover to act outside of their remit, to the detriment of consumers and businesses. It is important that regulators clearly explain how they interpret their duties and objectives and link any decisions and enforcement activity back to their duties and objectives to enable accountability; and

f. *resources* – the duties and objectives of regulators have expanded over time; however, this has not been matched with an expansion of resources. As a result, the performance of regulators is decreasing and regulators are being forced to prioritise particular duties and objectives over others, causing inconsistency across regulators and impacting delivery.

34. Additionally, multiple consumer groups commented that consumer interests were not sufficiently considered in the duties and objectives of regulators, or that they were often de-prioritised where conflicts occur.

Cooperation between regulators, domestic and international

35. Of the stakeholders who responded to the question of whether they are often required to engage multiple regulators on the same issue, 65% said that they are, which creates complexity. Although some respondents are clear on the division of responsibilities between UK regulators, many businesses called for more clarity on

which regulator is responsible for particular aspects of regulation within a sector and which regulators and regulations apply to them.

36. Where respondents were clear on what the remits of different regulators are, some reported being unclear about how these remits interact with one another and the various hand-off processes in place. Additionally, stakeholders commented that where multiple regulators operate within a particular sector, they thought that the hierarchy of regulators can be unclear, including which regulator has the ultimate decision-making authority when regulations are in conflict, causing uncertainty for businesses.
37. Respondents largely agreed that there should be greater co-operation between regulators (including with regulators operating with devolved responsibilities and at the local authority level), particularly when operating within the same sector.
38. Stakeholders commented that a lack of regulatory alignment can cause disconnected policy and government should play a greater role in facilitating and incentivising co-operation between regulators under a common vision or government priority for a particular sector, to minimise the impacts of regulatory overlap. These impacts include confusion over responsibility for emerging issues and regulatory gaps; conflicting regulation and objectives; a lack of data sharing limiting the effectiveness of enforcement and causing delays for approvals; and duplication of compliance practices for businesses.
39. One suggestion for how to do this would be for government to enhance the role of existing regulatory fora, such as the UK Regulators Network and Digital Regulation Cooperation Forum, to highlight the interconnectedness of regulation. Although responses were mixed on the existing level of cooperation between regulators, there was broad agreement that where co-operation does exist government and regulators could do more to communicate this and its benefits to businesses.
40. International cooperation is another area which was raised by stakeholders. Many commented that the UK's exit from the EU is an opportunity for the UK to lead international regulatory cooperation, however there was concern that since Brexit international cooperation, including via existing EU fora, has significantly reduced or become unclear.
41. Although some regulators cooperate more internationally than others, stakeholders highlighted that international cooperation can bring benefits such as tackling cross-border challenges, identifying emerging issues and opportunities, removing barriers to trade and reducing costs for consumers. To enable this, stakeholders suggested greater use of international standards and alignment, mutual recognition agreements,

ensuring international operability of new domestic regulation and the sharing of best practice.

Section 3: Regulator agility, responsiveness and skills

Introduction

42. This section of the Call for Evidence focused on how regulators respond to emerging issues and opportunities, as well as whether they have the necessary skillset to regulate effectively. There was a natural overlap between many of the points made on agility and on responsiveness. Agile organisations have the right structures and processes in place to allow them to respond to emerging challenges and opportunities swiftly and effectively. Responsiveness relates to whether regulators are able to identify emerging challenges and opportunities in their sectors, which they can then respond to with agility. Amongst other points made on skills, the key concerns of stakeholders centred around staff within regulators having sufficient technical understanding of their sectors and practical experience of business operations.

Regulator Agility – the right structures to respond to emerging challenges and opportunities

43. Regulator agility was another of the most prominent themes stakeholders engaged with in the Call for Evidence. With some exceptions, including positive comments on the way in which regulators responded to the COVID-19 pandemic, ~40% stakeholders responded that regulators could be more agile in their approach to emerging challenges and opportunities[3]. Respondents stressed the importance of both agile regulators and regulation in enabling the use of new technologies and mitigating against any potentially harmful impacts. This is particularly vital as the pace of technological change increases, with emerging technologies such as artificial intelligence (AI) and their constantly evolving nature.
44. Stakeholders highlighted the following constraints that they see to regulatory agility:
    a. *legislative frameworks* – the slowness and inflexibility of legislative frameworks prevents agility in response to emerging challenges and opportunities. This is particularly a concern for sectors or issues which are

[3] This includes stakeholders from a several categories, including regulators themselves. Some responses acknowledge constraints to regulator agility, which may be outside of the control of regulators, such as rigid legislative frameworks.

less of a priority and therefore command less legislative time. It is important that there is an appropriate balance of primary and secondary legislation to mitigate against this;

b. *excessive duties* and limited resources meaning regulators are doing too much and unable to reprioritise where required;

c. *the absence of a long-term vision for sectors*, changing government priorities and political uncertainty, meaning regulators are unsure how to approach particular challenges and opportunities when they emerge;

d. *perceived budgetary constraints* preventing regulators from allocating sufficient resources to respond to queries in a timely manner and provide industry with regulatory guidance when issues emerge;

e. *a culture of risk aversion within regulators* - such as a tendency to unnecessarily escalate decision making and seek multiple senior approvals rather than make swift decisions, a hesitancy to interpret existing legislation broadly and opting instead for a narrow approach, and a reluctance to issue quick guidance when able to; and

f. *limited co-operation between regulators*, including slow hand-offs, barriers to information sharing and clear final decision-making protocols.

45. Respondents highlighted a number of measures that they consider that would enable more agile regulation, including:

a. more principles-based and outcomes-focused regulatory approaches, rather than narrower and inflexible rules-based regulation[4]. Principles-based regulatory approaches are government setting the principles it would like regulators to adhere to and regulators setting the principles they would like the sector to adhere to in achieving a particular outcome, with the responsibility on them to decide how best to align with these principles. Outcomes-focused regulation is government setting the outcomes it would like regulators to achieve, or regulators setting the outcomes it would like the sector to achieve, providing flexibility for them to decide how to deliver this. Both of these approaches provide more flexibility than prescriptive, codified regulatory approaches which are more rigid and limit agility in responding to emerging challenges and opportunities;

b. risk-based models, such as those which allow fast track approvals for products deemed to be low risk or already approved by trusted regulators internationally; and

[4] These measures were also raised as proposals to enable more proportionate regulation, detailed in section 4.

c. the wider use of short-term mechanisms – such as temporary regulatory position statements – while legislation is updated; and the greater use of regulatory sandboxes to trial regulatory easements and attract investment from innovative companies. Both of these measures could be utilised under the alternative regulatory approaches outlined above.

46. However, respondents also noted the potential trade-offs between (i) quick decision making and agile regulation, and (ii) the necessary steps for transparency and accountability, consistent decision-making, long-term planning, engagement through consultation processes, and the importance of evidence-based decision making. There were also comments that different sectors pose different risks and therefore government should be cautious about introducing one-size-fits-all approaches.

Responsiveness and proactivity in identifying emerging challenges

47. Alongside the importance of regulators having the right structures and processes in place to be agile in reacting to emerging challenges, stakeholders also stressed the importance of regulators having their "ears to ground" to identify emerging challenges in their sectors – e.g., the need for horizon scanning etc.

48. The most common reason given for regulators' lack of responsiveness was inadequate resources. Stakeholders responded that regulators are not adequately resourced to identify emerging trends and quickly develop regulatory solutions and issue guidance to enable businesses to react. This is compounded by the fact that effective horizon scanning requires regulators to have the correct level of technical expertise and industry experience to understand new technologies and respond accordingly, which less competitive pay structures do not facilitate.

49. Other than resourcing issues, respondents cited the following other reasons for regulators' lack of responsiveness:

    a. poor systems of information sharing among regulators and with industry and limited use of data to identify emerging challenges and opportunities; and

    b. a perceived lack of leadership or willingness to challenge the status quo within regulators, including a reluctance to be forward thinking and embrace new technology, services and business models, which may not always favour established stakeholders.

50. To enable more responsiveness among regulators, respondents stressed the importance of engagement with industry to understand new technologies and communicate how regulation applies to new innovations at the earliest possible

stage. Stakeholders highlighted several examples of regulators already demonstrating good practice in this regard.

Regulator Skills

51. Related to resourcing, another key theme commented on by respondents was skills – around one third of respondents said that regulators lack the appropriate level of skills to effectively deliver their duties and objectives. Two broad issues were raised, which are set out in more detail below: (1) concern around limited industry experience and practical understanding of their sectors, underlying business operations and consumer behaviour; and/or (2) concern around the limited technical expertise and overall skill level needed to effectively regulate their sectors.
52. *Industry experience.* In particular, there was concern that staff within regulators do not have the necessary industry experience or practical understanding of business operations required to regulate effectively. While regulators may have sufficient academic or theoretical understanding of sectors, without hands-on experience of commercial, financial and routine business operations, regulators can fail to understand how compliance issues may occur, make incorrect industry assumptions, fail to recognise the unintended consequences of regulation (e.g. supply chain issues), or design regulation in a way which is impractical to implement. There were also comments around regulators not having sufficient understanding of customer behaviours, needs and expectations, as well as from the perspective of businesses.
53. *Technical skills.* In addition to a lack of industry experience, another key theme in relation to skills was that staff within regulators do not have the required level technical expertise to effectively regulate their sectors. This can mean regulators are unable to identify and respond to technological challenges and opportunities with agility, which is increasingly significant as the pace of technological change accelerates across sectors. Additionally, respondents highlighted that limited technical capability within regulators can prevent confident, risk-based, swift decision-making, causing excessive bureaucracy and slowing down decision making and approval processes. Equally, without the required level of technical expertise regulators may fail to understand the significance of key issues or decisions when communicating with the sector.
54. Stakeholders commented that skills gaps occur within regulators at both policy development and regulatory enforcement levels. Digital capability is also increasingly

essential to enable regulators to harness data and digital tools to support more effective regulation.

55. Among the multiple reasons provided by respondents for skills gaps within regulators, a lack of resources was the most significant. Inflexible and perceived uncompetitive pay structures mean regulators are unable to attract experienced industry experts with the level of expertise they require. Stakeholders noted that this is compounded by the fact that many sectors are experiencing a reduction in the number of skilled workers and technical expertise in the labour market, increasing the level of competition further e.g. nuclear engineering. It is therefore essential that regulators offer long-term career pathways to develop and retain experienced, skilled staff.
56. Some respondents expressed more positive views about the level of skills and expertise within regulators. However, stakeholders commented that where regulators are able to develop skills and technical capability in-house, retention becomes an issue as staff often leave to command higher salaries in the private sector. Some regulators were described as similar to a ‘college’ for the industries they regulate. Additionally, other respondents highlighted that the issue of ‘staff churn’ is not solely an issue of movement from regulators to the private sector but also an issue within the public sector as a whole. Like the civil service, stakeholders commented that staff within regulators (many which are part of the civil service) frequently move posts in search of other career opportunities within the public sector. High levels of staff turnover, combined with an inability to recruit industry experts, can cause frequent and lengthy training processes for regulators; institutional memory loss; risk averse behaviour due to inexperience; and prevent stakeholders from building relationships with regulators, which is particularly an issue for proportionality at inspection and enforcement level. Respondents also highlighted that by using consultants to plug skills gaps, rather than investing in recruitment and training, regulators are compounding the issue of institutional memory loss.
57. Finally, many stakeholders drew connections between an expansion in the remit of regulators, such as through additional duties, and the increase in the responsibilities and activities of regulators since leaving the EU, with widening skills needs at regulators. Respondents commented that regulators are increasingly required to do more, although this is not matched by investment in skills and capability.
58. To address issues with skills in regulators, respondents suggested a number of measures:
    a. further collaboration with industry experts, particularly instead of consultants, to understand emerging technological challenges and opportunities, harness

data and enforcement related intelligence, and ensure regulation is designed with consideration of operational practically;

b. investment in recruiting, developing and retaining experienced and specialist staff within regulators, such as through offering long-term career pathways, which will be repaid through efficiency gains and improved industry outcomes in line with government priorities; and
c. initiatives such as secondments and placements between regulators and the private sector.

Section 4: Proportionality

Introduction

59. This section of the Call for Evidence was concerned with whether the approach of regulators to delivering their objectives and outcomes is proportionate. The methods regulators employ to meet their objectives can increase or decrease regulatory burden, not only on those they regulate but the wider sector too. A proportionate approach to managing risk is key to balancing important protections, with an environment that fosters innovation and accelerates economic growth and technological development.
60. Responses in this section discussed the approach of regulators to risk, how regulators and government collaborate and act, the ability of alternative regulatory approaches to achieve different objectives and goals and finally broader points on proportionality in the regulatory system.

Approaches to risk

61. Regulators need to balance a catalogue of risks in their decision-making – these include, for example, risks in delivery and risks of unintended consequences. On top of these, there are risks of legal challenge and reputational risks that could undermine market confidence.
62. Although in some sectors stakeholders believe regulators achieve the right balance of risk in making their decisions, around two thirds of respondents (60%)[5] believe in general that regulators are too risk averse compared to only 7% that think regulators allow too much risk in their decision making. Responses feel that this is impacting the regulators' ability to deliver proportionate outcomes. Suggested reasons from stakeholders for this include:
    a. Stakeholders suggest that regulators can be overly restrictive in their approach, with too much focus on reducing the perceived or real risks they may face, such as risks in delivery, legal challenge or reputation. This can come at the expense of achieving the right outcomes. Instead, regulators should focus on ensuring a functioning sector, that better balances the risks to best deliver on their objectives.

[5] Based on Qualtrics responses and submissions that explicitly answered Question 21.

b. There is concern that regulators do not appropriately balance their duties when undertaking decisions that involve risk, such as disproportionately prioritising consumer protection (in a way not justified in their duties) at the expense of innovation, investment and growth. In sectors dealing with high-risk products (e.g., chemicals, drugs) where possession or activity is restricted via stringent licensing or outright bans, there is a perception that it is very challenging for regulators to be proportionate in their approach.
c. Lack of real world or business experience (especially experience in SMEs & start-ups) by the regulator encourages them to act in an overly cautious manner.
d. Similarly, there is concern that a lack of specialist skills and knowledge in high-risk areas leads some regulators undertake more burdensome inspections and compliance assessments, rather than engaging with business to understand where the real risks could occur.

63. Some responses felt that regulators risk aversion comes from concern over the risk of losing a judicial review. Regulators do not want to lose an appeal (or have the appearance of failing consumers/customers) as this would be deemed too damaging for their reputation, take up valuable time and legal costs and face an imbalanced legal strength from the private sector. It also has the potential to set precedents for future reviews or challenges. Responses feel this leads to a risk averse culture where the cost of failure is priced too high.
64. Some responses highlighted inconsistency in approach to risk by individual regulators and the impact this has on the market. Stakeholders are concerned that regulators actions differ for certain types of operators in the market in way that may not be justified by different risk profiles.
65. Response also highlighted inconsistency between regulators with overlapping responsibilities. Although they understand the need for different risk profiles between regulators, responses noted that in some cases this inconsistency created regulatory gaps and unnecessary burdens.
66. There is stakeholder concern that regulators pivot their risk profile in response to media or political pressure, leading to the introduction of immediate short-term solutions which either do not fully fix the issue or create future regulator inefficiencies. The fact that regulators are funded by bidding to sponsor departments further incentivises regulators to pivot and react to an issue.
67. Stakeholders feel there is a culture of risk aversion with government and regulators, caused by:

a. A lack of accountability and drive to improve risk approach within regulators from senior leadership to drive culture change.
b. Staff churn resulting in inexperienced staff unable to take balanced decisions.
c. Complicated changes to internal processes and the need of large-scale internal reform to address new technologies and to unlock new risk profiles have not been undertaken.

68. Stakeholders have suggested that regulators should publish and communicate transparently its risk thresholds, decisions and priorities so that businesses can plan and engage accordingly. Stakeholders note that regulators risk aversion creates onerous engagement and unnecessary data requests for very low risk issues.
69. Although responses noted there is a perceived lack of risk based on current actions undertaken by regulators and government, they noted that if the government increases the risk tolerance, it needs to be explicit about oversight and accountability. An increase in risk tolerance could lead to more market failures, more judicial reviews and negative impacts that the Government needs to be transparent about, including a clear responsibility for the consequences to the consumer.

Different approaches to regulation

70. Stakeholders set out a range of different approaches to regulation that they consider would help regulators and government in taking proportionate decisions. These include, but not exclusively:
    a. An incentive-based approach to regulation, which is designed to encourage specific types of behaviours across market participants and can be effective in doing so in a proportionate manner. Consideration of the risk of non-compliance must be considered and that this may not be the best approach for high-risk areas where outright bans and licensing may be more appropriate.
    b. A principles-based approach to regulation shifts the dial away from detailed and prescriptive regulations and more towards higher level principles, allowing for more flexibility for business, so that they can meet the regulatory requirements in a range of proportionate ways. It also provides flexibility for trialling as well new innovative approaches.
71. Although respondents set out a range of different approaches to regulation, there was a broad consensus that:

a. There is not a one size fits all approach to regulation that can applied across the entire regulatory system, because different approaches are applicable for achieving different objectives or supporting different sectors.
b. In some high-risk sectors, there is a fine balance between regulatory approaches that may reduce business burden but at the same time increase the risk to consumers and other individuals. Some sectors require strict regulatory deterrence and enforcement, and therefore the current regulatory approach, although burdensome, may actually be the most efficient approach to achieve the regulatory objectives.
c. It is crucially important that regulators engage with stakeholders during the design and implementation of regulatory approaches, systematically reviewing their effectiveness and adopt an updated approach, where necessary.

72. Some responses feel that the current regulatory system is too reactive and based around fines, which in turn deters investment, risk and innovation. Stakeholders are of the opinion that this is caused by lack of skills or resourcing, resulting in regulators being unable to implement more effective systems, or that this is caused be a 'legacy mindset' where regulations objective is to punish and deter. A few responses noted a perceived lack of awareness across government of alternative regulatory approaches.
73. Related to this, a number of stakeholders are of the review that regulatory fines and sanctions are not proportionate, equal or balanced, and that they seem arbitrary and not consistent across the sector.
74. Stakeholders note that the regulatory system could be more efficient and cost effective if it switches to a pre-emptive or early intervention model with increased engagement amongst all stakeholders. To note as mentioned above, this should only be introduced where applicable and the risks considered. Some regulatory approaches should still focus on deterrence and fines to achieve its objectives.
75. Responses noted that alternative regulatory approaches can help introduce this proactive mindset to address problems in advance. The use of clear guidance, advice, best practice and engagement can intervene in advance and reduce long run regulatory burdens.

Non-regulatory alternatives

76. Stakeholders also drew attention to the importance of considering and adopting non-regulatory alternatives, as a way of achieving the best outcomes more proportionately. This is consistent with the approach that the government is adopting via the Smarter Regulation programme and improved Better Regulation Framework.
77. Non-regulatory alternatives can either be used in place of regulation or alongside it, depending on the circumstances. Examples include guidance, voluntary agreements, codes of best practice, standards, utilising behavioural insights or leveraging reputational damage to encourage better behaviour.
78. A **standards-based approach** can reduce the cost of compliance and, where appropriate, can reduce trade barriers through mutual standards. For example, International Recognition Procedures with trusted regulatory partners and standards can speed up approvals. Stakeholders also feel that this approach has the benefits of being transparent, agile and easier to enforce.
79. Stakeholders drew attention to the restrictive nature of legislation being used to implement regulation as having unintended consequences, such as mandatory inspection timelines. Moving away from legislation towards non-regulatory alternatives will enable regulators to implement new regulatory processes so that they are able to adapt to meet new market trends and products or hindering the ability to reduce regulatory burden.

Regulator support for businesses

80. Multiple responses noted the importance of engagement between regulators and stakeholders, and that better and more frequent engagement led to a reduction in regulatory compliance costs and improved business efficiency.
81. However, some felt that business engagement and support is a low priority for regulators, despite the noted benefits. Stakeholders suggested that some regulators had poor records of engagement, resulting in the need for Freedom of Information requests to increase engagement and get the required information.
82. Increased engagement was found to have led to better performance and improved data sharing, which in turn lowered compliance costs and improved business efficiency. However, some felt that the support was dependent on relationships and long-term engagement, and that one off support was not as effective, while others felt that engagement needed to improve across the entire sector.

83. Some stakeholder drew attention to Covid as an example of how increased engagement and collaboration can help businesses and regulators act in a more efficient way, noting that sometimes stakeholders get it wrong, and engagement and amnesty is sometimes a better solution.
84. SMEs that responded noted the unique problems they face, and that regulator support for SMEs and start-ups could be improved:
    a. SMEs tend to face higher regulatory burdens as a proportion of their activity and that requirements imposed on them do not show enough flexibility to comply.
    b. Some SMEs and new entrants responded being more confused due to lack of experience and that they would like more support to ensure they don't accidentally break regulations.
    c. They also note that it is difficult to communicate with the government and regulator to explain their position or get guidance due to their size or heft, which also increases the burden.
85. Some responses noted that regulators are too reliant on legal advice in some sectors and are unwilling to take ownership of any advice that has not gone through extensive legal and policy checking. This is reported to have caused stress and uncertainty for businesses who are stuck in a legal limbo until the regulator can help. A more risk averse approach or better engagement is felt would help unblock these regulatory blockers.
86. Multiple responses noted that regulators made unnecessary or overly complex data requests of businesses to help understand the industry and drive support. Although they saw the usefulness of this – especially the benefit of data sharing - they felt it was implemented without consideration to the burdens of collating and submitting the data.
87. Guidance that is offered by regulators was a common theme that stakeholders found valuable, and in some cases essential, but was an area that needed improving:
    a. Some noted that published guidance was out of date on gov.uk and that not all guidance and support is allowed to be published on gov.uk. This creates an unnecessary duplication but is the only way regulators can engage in certain cases.
    b. Guidance is found across multiple locations and websites, and there is a perception they conflict, don't align or are outdated. Guidance doesn't include time estimates resulting in inability to business plan effectively.
    c. Guidance was perceived to be too technical or detailed in some areas, which then required further clarification and engagement. However, a response

noted that guidance needs to be at the correct technical level in some areas, and suggested this could be supported by a summary version.

d. Some felt that guidance was published upon implementation, rather than in advance meaning they are unable to plan accordingly.

Collaboration and consistency across regulators

88. Stakeholders note that collaboration between regulators and their sponsor government departments, between regulators involved in the same sector; and between regulators with overlapping responsibilities is essential for a well-functioning regulatory environment.
89. Responses also commented on the importance of consistency of actions within individual regulators; by all regulators in the same sector or industry; and between regulators and government. They consider this to be essential for a fair and efficient regulatory system.
90. Stakeholders have reported that inconsistent actions and lack of collaboration undertaken by regulators and government have led to increased regulatory burdens, market distortions, regulatory gaps, deterred innovation and eroded business confidence.
91. Of the stakeholders who responded to the question of whether they are often required to engage multiple regulators on the same issue, 65% said that they are, leading to the perception that there is poor collaboration across the regulatory system and that collaboration between regulators is infrequent. They feel this has led to:
    a. Multiple forms of engagement (e.g. data requests, consultations, compliance requests) from regulators to industry overlap, are duplicative and occur in quick succession. This creates unnecessary regulatory burdens on businesses to respond.
    b. The overlapping engagement leads to business fatigue and inability to engage with potentially efficient reforms, which in turn results in either the status quo or increasing regulatory burdens. To improve regulatory efficiency, collaboration between regulators must increase to support businesses.
    c. Unnecessary regulatory burdens created from mismatches of regulatory standards and requirements within the same sector.
    d. Lack of response to requests for clarity from overlapping regulators has led to regulatory gaps which could be fixed by collaboration and joint guidance.
    e. Inconsistent transparency in decision making on enforcement activities and inefficiencies in joined up enforcement actions.

f. Lack of collaboration between those making the regulation, government, and those implementing the regulation, usually regulators, resulting in poor outcomes not matching objectives.

92. Stakeholders think that the government should set out its best practice and principles to help support consistency and collaboration between regulators in overlapping areas. Improvements in cooperation between regulators that overlap can improve the attractiveness of the UK in key sectors such as finance and life sciences.
93. The government and regulators should look at digitalisation to help with better collaboration and sharing of data between regulators to minimise duplicative requests. Regulators should develop a ‘gather once, use many’ mentality where data requests should be in standardised formats to allow repeated use.
94. Stakeholders suggest that improving collaboration between regulators and government should include all relevant bodies, such as devolved authorities and local authorities if applicable. One response suggested collaboration needs to come from senior levels at the relevant departments to help drive an improved culture.
95. For regulators to improve collaboration a larger focus should be given to concierge services and signposting to guide businesses through their regulatory engagement and pathway, as businesses report it is difficult to engage with multiple regulators.

Wider points on proportionality

96. In addition to the specific points above, stakeholders also suggested that:
    a. There is a general tendency for regulators to not consider the cumulative or aggregate effects of increased regulatory burden, or where new regulations complicate prior ones.
    b. Introduction of new regulations to target specific offenders or parts of the sector may achieve their objectives, but they increase burden on those already compliant.
    c. As sectors and industry have expanded and grown over time, regulators are having to interpret regulations that were based on a market that in some cases is no longer applicable or relevant, leading to disproportionate actions by regulators and increased unintended burdens
    d. Overbearing regulation leads to businesses behaviour stifling innovation and growth, as employees see it as a tick box bureaucratic exercise.

Section 5: Process, accountability and governance

Introduction

97. This section discusses whether the actions, processes and the governance structures of regulatory authorities are conducive to delivering the best outcomes and whether the rationale for decisions is well communicated. Regulators have a variety of governance structures which underpin their decision making. Responsibility is also assigned throughout the regulatory system between government departments and regulators. The balance of this relationship is vital for the successful delivery of regulatory outcomes. Regulators are in place to deliver certain outcomes, as set out in their duties and guidance. As in any organisation, internal processes need to be put in place to operate effectively and consistently. It is however crucial that those processes drive rather than limit outcomes.
98. Responses in this section comment on the appeals and consultation process, and the use of post-implementation reviews and impact assessments to drive effective regulation. They then go on to discuss the accountability of regulators and enforcement mechanisms, before concluding on how governance structures can be improved.

Process

99. Responses noted various issues with regulator processes that resulted in regulators being unable to deliver their regulatory actions in an efficient manner. Although there are several regulatory processes which were highlighted as good examples that followed best practices, many responses noted differing issues affecting regulator process. Examples include:
    a. Implementation of new or amended regulations at dates that are very challenging for businesses, including at the start of the year (Jan 1st) when many employees are on leave or during accounting periods.
    b. Limited engagement and support for businesses that operate in areas than span both reserved and devolved regulatory responsibilities.
    c. Responders note that some processes are outdated, favour the regulators and incumbents and have not been through internal improvement reviews.
100. Stakeholders had multiple comments on the regulators' appeal process:
    a. Appeals processes are often lengthy and insufficiently agile for the pace of change in certain industries/sectors. In some cases, appeals process can

hold up major investment or business activity, while its overall issues discourage engagement from businesses.

b. The appeals process is not always clear or transparent, with a perception that this is intentional. More up to date and detailed guidance on the appeals and review process would help improve business understanding and engagement with the process.

c. Some responses are concerned that the appeals process is designed to discourage businesses from raising concerns as they could be punished for bad practice. Some noted a lack of desire to appeal in case they faced an ‘industry black mark’ from the regulator.

d. Improving appeals processes by improving transparency, accountability and simplification would result in better business engagement and a more stable business environment.

e. In some cases, the design of the appeals processes is particularly resource intensive and costly, have a high bar to pass and can only be used in specific circumstances.

101. Responses noted lack of transparency in how regulators use evidence and experts, or how they reach decisions. The responses were mixed on how regulators communicate their final decisions but noted these do not always include their reasoning or evidence.

102. Stakeholders also noted that the consultation process is inconsistent. Although some responses noted examples of best practice, the need to gather a strong evidence base and successful consultations, other responses noted:

a. There is a perception that in some cases consultations are a formal process, as there is no statutory obligation to consult, with the proposed policy outcome or decision already having been made with little opportunity for industry to comment of input.

b. The consultation best practice is not always followed, with inconsistent processes and consultation lengths varying or extending/closing suddenly. Numerous stakeholders note that consultations should be of appropriate duration and consider external circumstances such as holiday periods.

c. On a similar note, responses note that consultations are not always completed in the correct stage of policy development, with consultations being issued after guidance in some cases.

d. Lack of engagement of next steps and actions following the consultation process results in business fatigue following the effort of their engagement.

Consultation responses are not always clear or transparent as to how they came to a decision.

e. Consultations do not include a wide enough variety of stakeholders, with responses not always including the view of consumers or entities which are not directly impacted by the regulation but operate in the sector.

f. Lack of collaboration between departments, with responses noting multiple overlapping consultations being issued in quick succession causing lack of engagement from businesses.

103. Responses noted the inconsistent use of ‘Post Implementation Reviews’ (PIRs) and Impact Assessments (IAs) by regulators, making it hard to understand and quantify the real impact of regulation. Responses noted the following concerns:

a. Regulators should develop IAs and PIRs with industry’s input to get a more accurate understanding of the impact of regulation. Regulators should also complete a PIR and an IA for every regulatory proposal.

b. PIRs and IAs were often developed in silo and do not consider the aggregate or wider impacts of new regulation will have with the current regulatory landscape.

c. Some responses raised concerns that regulators treat IAs and PIRs are bureaucratic tick box exercises to be completed, rather than a useful tool to develop efficient regulation.

104. The uptake and introduction of digital services by regulators is inconsistent and not maximising the potential efficiencies, such as standardised electronic data collection systems. Responses noted that they are not resourced to implement digital transformation, with local authorities particularly pressured. Simple digital issues, such as up to date distribution lists and digital warning systems, are found to be lacking.

Accountability

105. Responses noted that to ensure that regulation is proportionate, balanced, and effective, there needs to be strong accountability and enforcement of punishments. This must be supported by clear alignment of responsibilities with accountabilities for all stakeholders involved.

106. While over half (54%) of responses think that regulators act within the scope of their remit, 42%[6] believe that regulators go beyond their remit that may negatively impact the outcomes that they are trying to deliver.

107. Regulators that are established through statute are felt to be better subjected to parliamentary scrutiny of regulatory actions and funds. Responses noted that for this system to work, parliamentary and ministerial time must be allocated to efficient scrutiny, which is not always the case. Some regulators which do not have a similar statutory footing or process are perceived to 'go under the radar' in terms of scrutiny or accountability.

108. Some stakeholders note that expansion of duties and scope has not always been matched by increased resources or powers for increased accountability.

109. There is a perception that regulators with multiple duties or stakeholder groups, or those who have had an expansion of duties and scope, do not prioritise all stakeholders equally to the detriment of the industry and regulator performance. This is usually found in areas where there is lack of accountability or responsibility for failing to achieve by the regulator.

110. Responses noted that part of accountability is transparency. Regulators should be required to explain their decision making and the trade-offs they considered when making their decisions. Responses noted the opacity of some regulators performance and decision making.

Governance

111. Stakeholder responses were clear that it is essential that regulators have the correct governance systems in place to ensure effective delivery. This includes governance structures within a given regulator to monitor its own performance, as well as the right governance structure for engaging with key stakeholders, including government.

112. Some responses highlighted potential governance and communication issues between government departments and regulators. There is a concern that expansion of regulator responsibilities over time has not been matched by clear governance structure of how the regulator and government departments interact with each other. In some cases, responses noted that their increase in operational responsibilities had not been matched by department funding or required support.

[6] Based on Qualtrics responses and submissions that explicitly answered Question 7.

113. Some respondents consider there to be a lack of clarity between regulators and government departments, concerning which department is responsible for specific regulation. This can also apply in relation to links with devolved administrations having regulatory responsibility. Stakeholders suggest that this is particularly an issue for the UK following EU exit.

114. The responses included multiple suggestions for the introduction or reforms to how central government could improve regulator governance and therefore efficiency:

a. Introduction of an independent review and validation of the cost of regulation that the Government is introducing.
b. Introduction or inclusion of regulation in a government committee that is committed to holding departments to account for the introduction of new regulation.
c. Introduce a central office which is responsible for co-ordination between regulators to help minimise regulatory overlap, remove regulatory gaps, reduce regulatory burdens, and provide central strategic advice and clarity.
d. Encouraging boards and governance structures at different regulators to collaborate more efficiently in areas they overlap to remove burdens and uncertainty. Regulator boards should consider the impact of their actions on the overall sector and look at aggregate impact if their actions interact with other regulators.

115. Within the governance structures of regulators themselves, respondents noted the following problems and issues with governance that is hindering efficient operations:

a. Formal governance arrangement requirements are overly burdensome for SMEs and a more flexible structure can achieve the same outcomes in certain scenarios.
b. Some governance structures are not sufficiently independent or do not split out arbitration, adjudication, and judicial / appeals functions from the regulator.
c. Some boards also contain industry representatives so have the potential to undertake regulatory actions where they would commercially benefit.
d. Boards do not contain the required skills, experience, and focus to hold the regulator accountable. For example, boards not only need members with a business background but also those with knowledge or experience of the impact of regulation on a business.

e. Boards do not consist of wide representation, so specific regional issues or wider spillover impacts are not considered fully. Boards should include representatives that consider the impacts on devolved nations or customers for example.

Section 6: Regulator performance

Introduction

116. This section of the Call for Evidence focused on regulator performance, including whether stakeholders consider that regulators are delivering on their objectives and whether there is sufficient monitoring in place.

Regulator Delivery

117. Stakeholders tend to agree that regulators' performance is most effective when they are clearly established, usually through statute, with clear objectives, duties, and powers. It is important that regulators are put on a permanent footing and sufficiently empowered to achieve their role.

118. Stakeholders suggest that regulators are insufficiently focused on achieving their goals in the least burdensome way possible. Responses have perceived that regulators focus on demonstrating that they have met their statutory duties rather than focusing on ensuring an effective regulatory system.

119. A large number of stakeholders also have concerns that regulators are insufficiently resourced to achieve their statement performance aims and goals. There is concern that regulators are either having to spread their resources across multiple areas or are having to prioritise performance in certain areas. Stakeholders argue that this is felt in areas such as enforcement, where they consider there to be insufficient resources.

120. Stakeholders also note that regulators in recent years have been given additional responsibilities which has not been matched by increased resources. It is important that any new or additional powers regulators are provided with is matched by resource capability.

121. In complex regulatory areas that involve multiple regulators, there is a mismatch between the challenges and resources each regulator applies to their part of the pathway. This leads to increased regulatory burden for businesses who deal with multiple overlapped requests and are required to be proactive due to lack of regulator ownership.

Proportionality, objectivity and transparency of performance reporting

122. Stakeholders highlighted that it often is hard to hold the regulators performance to account without being able to review regulator performance reports and metrics. Common complaints include:

(a) Regulator performance reports being hard to access or poorly communicated to stakeholders, with little to no signposting.

(b) Performance reports provide too much, or in some cases unclear, information to enable proper scrutiny of performance (see KPI's point below) by stakeholders.

(c) Performance reports are not transparent or sufficiently objective to allow a fair review of performance by stakeholders.

(d) Performance reporting would benefit from more scrutiny by parliament.

123. In some areas of regulatory oversight, such as compliance and inspections, stakeholders suggest that performance reporting can be improved to help drive efficiencies and identify regulatory gaps.

124. Regulators performance reporting should go through an independent or external review and appraisal process to ensure that performance reporting is efficient, accurate and applicable.

Criteria and metrics for performance management

125. While stakeholders welcomed the fact that a number of regulators do produce performance reports, they consider that the key performance indicators within them are not always the right ones. 18 different responses across a variety of sectors and all stakeholder groups specifically noted this.

126. Examples include:

a. It is unclear how the KPIs and metrics regulators report on relate to their purpose, duties and objectives. In some cases, performance reports have not been updated to reflect additional responsibilities following EU exit

b. KPIs and metrics are sometimes not ambitious enough or not strict enough to hold regulators performance to account – one response noted a new 6-month application approval timeline, which was originally 1 month when the regulator was formed.

c. KPIs and metrics are not developed collaboratively with business or sector input and therefore are not effective.

127. Stakeholders suggested improvements to the performance metrics and KPIs, such as:

a. Regulators should include a KPI, metric or survey question in their performance reporting, which covers the perception of their performance from those who they regulate.
b. Increasing the consistency of KPIs across regulators where possible, to allow comparison and cross sector learning between regulators to help improve performance monitoring.
c. Reviewing performance of KPI's and metrics to drive efficiency and change at the regulators. For example, reviewing the number of individual regulations enforced and identifying potentially unnecessary regulations via those very rarely enforced.
d. Engage with businesses and Government to ensure that KPIs and metrics are developed and selected in a more efficient manner. KPIs and metrics need to be based on realistic stakeholder data requests and inputs to ensure accurate reporting and include true reporting on the wider impacts felt by businesses by regulations.
e. Developing new KPI's and metrics linked to how regulators in sectors with emerging technology that demonstrate support and growth for the sector, such as sandbox usage.

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