The Future of Regulation

By Tom Clougherty
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Acknowledgements

The authors would like to thank several current and former colleagues at the Centre for Policy Studies for their help with this report. In particular, James Heywood, Eamonn Ives, Caroline Elsom, Jethro Elsden and Conor Walsh made a significant contribution to the early stages of the research, as did Dillon Smith and Karl Williams to the analysis of the data.

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Executive Summary

How much is regulation costing the economy? It is a surprisingly hard question to answer. Tax and spending decisions are generally subject to extensive scrutiny, both inside and outside Whitehall. But decisions to regulate, and their costs, get only a fraction of the attention.

This paper represents an attempt to change that. It is based on detailed scrutiny of the official Impact Assessments accompanying **every piece of legislation** published between 2010 and 2019.

Our analysis shows that:

- In 2023 prices, a total of **£35.0 billion** of gross annual regulatory costs were imposed over that decade.
- This rose to **£57.1 billion** if you include the introduction of auto-enrolment pensions.
- Despite promises to reduce regulation, the net annual burden on business increased significantly.
- In addition to net annual costs of more than £2 billion, there were just over **£148 billion** in one-off transition costs to business.
- These figures were distorted by the shift to CPI indexation for occupational pensions, which accounted for £108.3 billion of the total. But that left another **£39.6 billion** in additional costs to business, for a net increase in the business burden over the decade of **£6.0 billion per year**.
- Detailed analysis of the statistics shows that every Government over the decade **broke its promise** to reduce the overall burden of regulation.
- However, the official figures **very certainly underestimate** the total cost of regulation.
- For example, they do not include the cost of **several thousand EU regulations** that were incorporated directly into UK law.
- In addition, the costs of any changes stemming from **secondary legislation** are often not included or are not the subject of impact assessments.
- Our research also found **multiple significant errors** in the impact assessments, including orders of magnitude being omitted or mixed up, and negative numbers recorded as positive numbers.

- For example, the MiFID II financial regulations were claimed to deliver a net annual benefit to business of **£105.20**, rather than a net cost of £105.2 million (which itself is almost certainly a huge underestimate).

- Attempts within Whitehall to monitor the flow of new regulation have **repeatedly foundered**, with impact assessments produced by junior staff, late in the process, to justify decisions that have already been made.

- **Two former Cabinet ministers** told us they had never read the impact assessments produced for them, despite overseeing departments spending hundreds of billions of pounds. There is also no requirement that the impact assessments go into ministers' red boxes alongside the policy proposals themselves.

- Tellingly, the estimated costs of measures proposed do not follow a natural distribution, but **cluster around certain convenient figures** – e.g. £0, £0.1m or £0.3 million.

- The wider promise to cut the burden of regulation was also fatally undermined by the exclusion of EU and Treasury activity from the regulatory budgeting system. While impact assessments were produced for most measures, **86% of net costs imposed** on business fell outside the scope of the 'one in, one/two/three out' system that was intended to keep a lid on the regulatory burden.

- The system is also vulnerable to manipulation, as when a **tax on plastic bags** was classified as a deregulatory measure in order to help Defra hit its targets, or when recent government reforms on building safety were simply excluded from the framework.

- In addition, there is no understanding within Whitehall of the stock of existing regulation, let alone its impact. Only **one department** even has a full list of all the regulations that it has been responsible for imposing.

- The new Better Regulation Framework introduces external scrutiny of regulatory costs earlier in proceedings. But it is **hugely weakened** by the lamentable decision to abandon any form of overall regulatory budgeting, whether a 'net zero cost' approach or 'one in, one/two/three out'.

- A House of Lords committee has accused the current impact assessment system of **'failing Parliament and the public'**. We entirely agree.

- Unless we **take regulation as seriously as we do tax and spending**, and create the same framework of accountability around it, we will never be able to get an accurate picture of the burdens being imposed on businesses and consumers by the state – let alone begin to stem the tide.

Introduction

The Brexit vote in 2016 was about many things. But for some of the most fervent advocates of leaving the European Union, it was above all a vote about regulation. They worried that Britain had yoked itself to a hidebound, sclerotic, safety-first regulatory regime. And they believed it was only by leaving, by diverging, that we would be able to seize the economic opportunities that the 21st century presented.

Even before Brexit, however, there had been a longstanding focus on the growing regulatory burden imposed by government. In 2010, the think tank Open Europe calculated that domestic and European regulation introduced over the previous 11 years had cost the economy £176 billion.[1] The Cameron government launched an entire programme of regulatory reform, including attempts to crowdsource ideas from the public.

‘In 2010, the think tank Open Europe calculated that domestic and European regulation introduced over the previous 11 years had cost the economy £176 billion’

Since Brexit, the focus on regulation has redoubled. In the last few years alone we have had a major consultation on regulatory reform in the summer of 2021, which led to the ‘Benefits of Brexit’ White Paper in January 2022, the ‘Smarter regulation to grow the economy’ policy paper in May 2023, and then in September 2021 the publication of a new Better Regulation Framework.

A commitment to axing EU law in particular also became a symbol of political virility within the Conservative Party. During Rishi Sunak’s summer 2022 leadership campaign, one of his videos took viewers on a tour of the ‘Brexit Delivery Department’, which consisted of a white-shirted office drone feeding piles of EU rules into a shredder while the Ode to Joy blasted out on the soundtrack.[2] Hence the disappointment when it was announced in April 2023 that the Government would sunset only 587 EU-derived legislative instruments, rather than the many thousands that some Brexiteers had hoped for.[3]

But the central argument of this paper is that none of these reform efforts address the real root of the problem – especially since, despite some laudable elements, the new Better Regulation Framework is significantly *weaker* than its predecessors. Indeed, the Government has quietly abandoned the entire concept of regulatory budgeting, because it intends to do so much extra regulating.

This report began as an attempt to evaluate the scale of the regulation imposed on the British economy in the years after 2010. Yet this led us inexorably to the conclusion that the entire regulatory apparatus in Britain is not fit for purpose. It is

1 Open Europe, ‘Still out of control? Measuring eleven years of EU regulation’, June 2010. Link

2 Ready for Rishi, ‘Brexit Delivery Department’, August 2022. Link

3 Retained EU Law (Revocation and Reform) Act 2023, July 2023. Link

not a question of 'bonfires of red tape', or 'one in, two out'. It is that we simply do not take regulation seriously enough. And given that a decade of reform has succeeded only in slowing the addition of new regulatory burdens, it is hard to believe that the new framework will make any meaningful difference to the dynamism of the British economy.

The debate over the regulations the UK has inherited from the EU is certainly important. But ultimately, it is obscuring a far more fundamental issue.

Since the 1980s, the nature of the British state has changed dramatically. We have gone from having a predominantly fiscal-activist state – one that tries to achieve its objectives by taxing and spending, by owning and doing things itself – to having a state that is largely regulatory in nature.

Of course, the modern British state still taxes and spends, and indeed tends to tax more and spend more with every year that passes. But increasingly, the state has tried to achieve its objectives indirectly, by regulating the conduct of businesses and individuals.

'The ratio of regulators to financial services workers increased from 1:11,000 in 1980 to 1:300 in 2011'

In characteristically British fashion, there was no grand plan for this – no detailed blueprint for more efficient government that was being followed. Instead, we developed a vast, complex and powerful regulatory state almost by accident.

But what do we actually know about that state, and the scale of the subsequent regulatory burden? We certainly have a sense that it is large, and growing. Back in 2012, the economist Andy Haldane gave a famous speech highlighting the increased scale of financial regulation. He pointed out that the ratio of regulators to financial services workers had increased from 1:11,000 in 1980 to 1:300 in 2011.[4] Counting up the numbers in various annual reports, that figure today stands at roughly 1:75.[5] In other words, the relative number of regulatory personnel appears to have quadrupled in just over a decade. Likewise, the number of regulatory entities has been growing steadily, despite promises of a 'bonfire of the quangos'.

But the more you try to get an accurate snapshot of the regulatory state as a whole, the more blurred the details become. In other countries, in particular America, there is not only a healthy literature on the topic, but active and ongoing monitoring of new regulatory burdens from academics, think tanks and federal and state governments.

In Britain, however, the system is essentially opaque. The most commonly cited estimate for the total burden of regulation comes from a 2005 report from the Better Regulation Task Force. It put the total cost of UK regulation somewhere between 10% and 12% of GDP, which would imply an annual cost of more than £200 billion per year today.[6] But this was reached simply by taking estimates from the United States and the Netherlands, and applying them to the UK.

This project therefore began as a long overdue effort to calculate the full extent of the regulatory burden in Britain. But our central finding is that there is no reliable estimate either of the stock, or the flow, of the regulatory burden either across the UK

4 Andrew G Haldane, 'The dog and the frisbee', August 2012. Link

5 CPS calculations based on regulators' annual reports.

6 Better Regulation Task Force, 'Regulation – Less is More', March 2005, p. 12. Link

economy, or within specific areas of it. And our central recommendation is that this needs to be urgently addressed.

This may come as a surprise, since in theory Britain has exactly the kind of regulatory framework suited to a modern state. There are regulatory impact assessments, which scrutinise the costs of proposed measures. There is a Better Regulation Framework, and a Better Regulation Executive. There have been periodic drives from the centre to reduce and rationalise the bureaucratic process.

But this is, in too many ways, a Potemkin system – that is to say, an attractive façade hiding something that is far less impressive once you peer into the detail.

As part of our research, we examined every legislative impact assessment across the decade from 2010 to 2019. We also adjusted for inflation using the Bank of England inflation calculator to convert all financial estimates into today's prices. Our analysis suggests that £35.0 billion of gross annual regulatory costs were added over that ten-year period. This translated into more than £2.0 billion worth of annual net cost to business, given that the regulations also brought with them countervailing benefits (at least according to the Government's estimates). Once you add the £39.6 billion in one-off transition costs, this gives us our headline estimate of £6.0 billion in annual costs over the decade.

> **'We examined every legislative impact assessment across the decade from 2010 to 2019'**

What this means is that once you account for the full spectrum of regulations entering into force from 2010 to 2019, even if you ignore the one-off costs, then every £1 of benefit for business delivered through regulatory change was accompanied by £1.06 of cost imposed.

This obviously differs from the 'official' account of deregulatory efforts over the decade. The explanation is that significant parts of what the Government does were not included in the one-in, two-out or Business Impact Target rules that guided 'regulatory budgeting' in the 2010s.

For example, the Government claimed to have reduced the regulatory burden by £10 billion during the 2010-15 parliament. But the National Audit Office pointed out that almost half (46%) of the 951 regulatory decisions it had made during that period were not included in its scoring system. Had they been, the extra £2.8bn in annual costs would have more than wiped out the claimed £2.2bn in annual savings.[7]

Another, related issue is that the current framework does not capture the impact of many European and international rules.

Our analysis showed that the bulk of regulatory cost during the 2010s was added via domestic legislation, rather than European. But caution is required. When Brussels regulates via 'directives', domestic implementing legislation is required, and an impact assessment (IA) will be produced. But Brussels can also introduce 'regulations', which have direct effect in EU member states without any corresponding domestic laws. In such cases, no country-specific IA is produced.

7 NAO, 'The Business Impact Target: cutting the cost of regulation', June 2016. Link

During the 2010-19 period, there were 5,199 such regulations, many of which will have either been translated directly into the UK regulatory corpus or accepted as part of the Brexit transition process.

But a more important point is that the impact assessments themselves are flawed – not least because they enable departments to mark their own homework.

The IAs we studied were, especially in the earlier years of the decade, often riddled with errors or typos. If you take the relevant IA literally, the Markets in Financial Instruments Directive (MiFID II) – a huge piece of regulation – brings an annual benefit to the UK economy of £105.20, rather imposing a cost of £105.2 million.[8]

We found similar examples of positive numbers that should be negative, or cases where the preferred policy option was not actually the one costed in the relevant box. Or cases where both the direct and indirect benefits of a policy had been included, but only the direct costs. Anecdotally, we were told that IAs are usually handed to relatively junior staff to complete, in order to justify a pre-determined course of policy – rather than being a genuine part of the policymaking process.

This is reinforced by our analysis of the figures. If IAs represented a genuine estimate of costs, the numbers produced should be randomly distributed. Instead, we found significant clustering around particular convenient numbers.

‘When the Government claimed in 2016 to have already made £900 million of regulatory savings since the 2015 election, it had in fact made no progress at all’

Perhaps the most misleading use of numbers we came across concerned plastic bags. In 2015-16, the Department for Environment, Food and Rural Affairs (Defra) was falling short of its target to reduce regulation, as was the Government as a whole. So, as the NAO noted, someone within Whitehall had the brilliant idea of classifying the new requirement for supermarkets to charge for plastic bags as a deregulatory measure, on the basis that it would mean they ended up buying fewer of them.[9] The annual net saving was estimated at around £200 million, which when added up across a five-year parliament came to £1 billion.

In other words, when the Government claimed in 2016 to have already made £900 million of regulatory savings since the 2015 election, it had in fact made no progress at all.[10]

Normally, however, it is a lack of scrutiny rather than statistical trickery which is the key problem. One senior civil servant described the extensive process of evaluation and contestation applied to departmental spending decisions, then observed that the same cost could be imposed on business with a click of the fingers.

One Cabinet minister of long standing, responsible for hundreds of billions of pounds in spending decisions over the years, told us he had never even read an IA during his time in office. Another, equally senior, told us he had never paid attention to them. A third minister pointed out that there was no obligation to include them in red boxes alongside the relevant policy papers, nor any custom of doing so.

8 HM Treasury, 'MiFID II Impact Assessment', March 2015. Link

9 National Audit Office, ‘The Business Impact Target: cutting the cost of regulation’, June 2016. Link

10 Regulation.org.uk, ‘Regulatory Budgets, One In/Three Out, etc.’ Link

The business figures we spoke to were scarcely kinder about the process. The consensus was that IAs are a product of policy-based evidence-making, rather than the reverse.

To see what they mean, it is worth considering a more recent example than the period covered in this paper. In the wake of the Grenfell disaster, the Government consulted on a requirement that all buildings more than 30m in height should have a second staircase, in order to mitigate fire risks. The relevant consultation paper estimated the annual net direct cost to business (EANDCB) at around £181 million.[11]

The Government then proceeded not just to implement the 30m restriction – as favoured in the consultation – but to bring the height limit down to 18m. The annual cost of this was originally estimated at £292m, but in the recently published impact assessment it has been reduced to £268m.[12]

It is welcome that the relevant impact assessment has finally been published – although telling that it was signed off well after the decision was actually made. But the figure appears to be woefully inaccurate.

The costs referred to in the impact assessment mostly derive from the capital costs of actually building a staircase. But this ignores the significant amount of residential floorspace lost – an estimated 350-700 sq ft from every floor of every building, according to industry sources. The IA gives an estimated value for this of £7,500 per square meter. A midpoint estimate for space lost would be 48.8 sq m per floor, which translates to roughly £365,000 per floor, or £7.3m for a 20-storey building.

The IA essentially hand-waves the issue away, on the grounds that developers can simply expand the property or increase the height. (Its authors have presumably never tried to navigate the planning system). Therefore they give an estimate for the loss of internal space of just £583,500 per building, or £170.4m in total.

‘Britain’s regulatory structures are in an extremely poor state. We know that the regulatory state is imposing very significant burdens on companies and individuals’

This appears to be out by an order of magnitude. Yet there is no way for anyone outside DLUHC to challenge the figures, not least because the new Better Regulation Framework exempts ‘regulatory provisions for the safety of tenants, residents and occupants in buildings’ from independent scrutiny.[13]

To add insult to injury, the original consultation admitted (as Dame Judith Hackitt’s inquiry concluded) that the evidence for the safety impact of an additional staircase was ‘limited’.[14] But the Government went ahead and lowered the limit anyway. In the process, it made it economically unviable to build many popular and attractive types of building, such as traditional mansion blocks – an issue unmentioned either by ministers or the impact assessment. The assessment itself also makes it clear that the number of fatalities and injuries expected to be prevented in any major or catastrophic scenario is incredibly small in buildings under 50m high – indeed, it can

11 Department for Levelling Up, Housing & Communities, ‘Sprinklers in care homes, removal of national classes, and staircases in residential buildings’, December 2022. Link

12 Department for Levelling Up, Housing & Communities, ‘Impact Assessment on the introduction of Second Staircases in residential buildings above 18m’, March 2024. Link

13 Department for Businesss & Trade, ‘Better Regulation Framework: Guidance’, September 2023. Link

14 Dame Judith Hackitt, ‘Building a Safer Future: Final Report’, May 2018. Link

cite 'no incidents in practice that are appropriately comparable', given that current fire service response practices 'are effective to the point that mass evacuation via the stairwell is an extremely rare occurrence'. Again raising the question of why the extra staircase is actually needed.

In summary, Britain's regulatory structures are in an extremely poor state. We know that the regulatory state is imposing very significant burdens on companies and individuals. And we have a strong sense that it is rapidly increasing in size. But monitoring of the flow of new regulations is patchy, and estimates of their costs unconvincing. And it is an even worse picture when considering the stock of regulation. Only a single Whitehall department, Defra, has ever carried out a full audit of all the regulations it has imposed. And there is a whole parallel process of secondary legislation and regulatory guidance that often gets even less scrutiny.

The current Government has, on paper, an ambitious regulatory reform agenda. Its stated goal is to make the UK 'the best regulated economy in the world' – regulating only where absolutely necessary, keeping the costs of regulation as low as possible, and involving business as an equal partner when drawing up new regulation that affects it.[15]

These objectives are impressive and important. If Britain is to thrive in the years and decades to come, the Government must do everything in its power to support a dynamic, innovative, and growing economy. Better regulation is an essential part of any such pro-growth agenda.

'Regulation can be a dry, technical and arcane topic. But it is only by getting our regulatory regime right that we can guarantee the country a richer and more exciting future'

But we need to take regulation seriously – as seriously as we do tax and spending. That requires not just moaning about red tape and bureaucrats, but understanding that the real driver of regulation is often ministers determined to leave their mark in the history books. As we were often told while researching this report, no one in Whitehall ever got promoted by saying 'Yes, Minister, what a wonderful idea, let's just check the cost-benefit ratio.'

The economic case for Brexit rested largely on the promise of competitive divergence; the idea that Britain could prosper by regulating less and better than the European Union. But previous governments, which also appeared to have the best of intentions on regulatory reform, have failed to get to grips with the rise of red tape – or at least only succeeded in temporarily slowing an advancing tide.

The fundamental purpose of this report is therefore to outline a series of policies that we think will help the Government, and its successors, to overcome the failings of previous administrations. To create a system in which we take the costs and consequences of regulating as seriously as those of taxing and spending – in which departments and ministers, of whatever party, are not simply left to mark their own homework.

Regulation can be a dry, technical and arcane topic. But it is only by getting our regulatory regime right that we can guarantee the country a richer and more exciting future.

15 HMG, 'The Benefits of Brexit', January 2022. Link

Key Recommendations

1.	The Government should carry out a comprehensive audit of the whole body of UK regulation, regardless of its original source, to establish a baseline for the current regulatory burden. All regulation and associated analysis should be brought together in a sophisticated, machine-readable open platform.
2.	The whole regulatory reform 'machine' should be centralised under a senior government minister, with the same oversight of regulation that the Chancellor has of fiscal policy. That minister's work should be supported by a new Regulatory Audit Office that would provide independent assessment of regulatory costs and give government access to in-depth, expert analysis.
3.	The Government should establish a new regulatory budget to replace the one in, one/two/three out rules and the Business Impact Target. This should cover the whole regulatory state, with no exemptions. And while it should start with an established metric for regulatory costs, a more sophisticated 'RegData' approach, as developed by the Mercatus Centre – using machine learning and text analysis to quickly identify and quantify 'restrictive clauses' – might prove superior in the long run.
4.	Any decision to regulate should be properly scrutinised and externally audited as part of the policymaking process, not as an afterthought once the decision has already been made. The new Better Regulation Framework constitutes a positive step in this direction, but we need to ensure that completed options assessments are made publicly available, and that we strengthen the power of our proposed Regulatory Audit Office to kill off regulatory proposals that are not considered fit for purpose. We should also sharply cut down on the list of exemptions from independent scrutiny in the BRF. For example, even if a court has ordered the Government to do something, or a measure applies to building safety, it is still worth getting a robust estimate of how much it will actually cost.
5.	All regulations should be evaluated against clear success criteria after implementation, with their impact being re-examined five and 10 years after being passed. Crucially, such reviews should be tied to mandatory sunset clauses: we should reverse the burden of proof and make it so that regulations automatically expire unless a positive decision is made to renew them.
6.	All regulation should be subject to a proportionality principle: any burden must be appropriate to the risk being addressed. Regulators should also be given a clear dual mandate to support innovation and economic growth – rather than it being one of many secondary objectives.
7.	To further support innovation, the Government should bring existing 'regulatory sandboxes' together to form a new agency that would license and oversee novel products and processes across the entire economy – outside existing regulatory structures. In long run, a new generation of 'principles-based' bodies could replace outdated sectoral regulators.

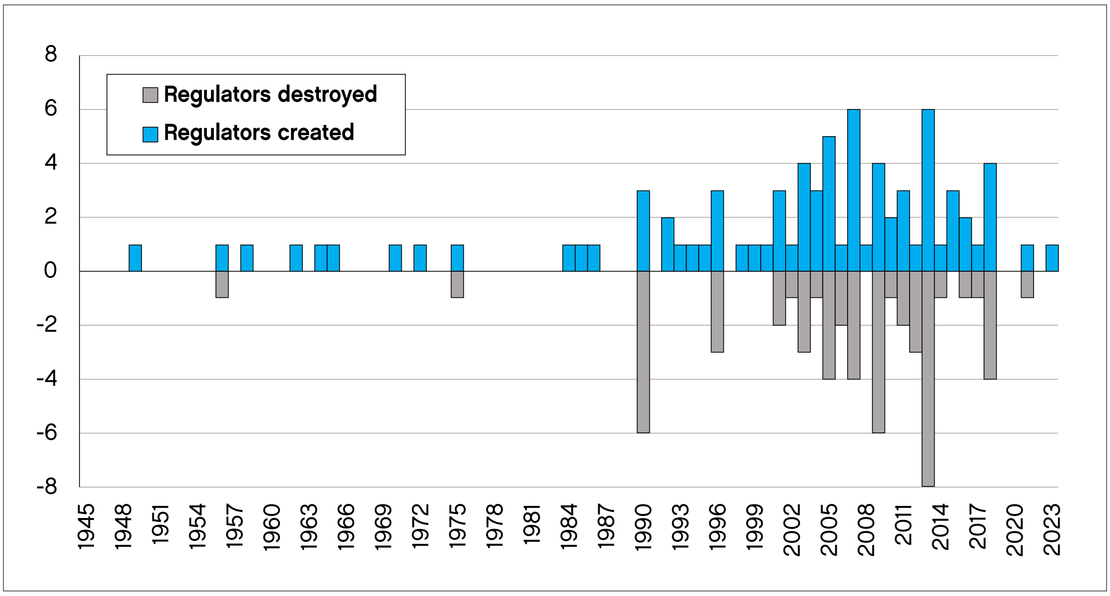
How Big is Britain's Regulatory State?

Before we can get to grips with Britain's regulatory regime and how to improve it, we need to find out something very basic – what regulations, and regulators, are already in place?

Unfortunately, assessing the size and impact of the present-day British regulatory state is not a simple task.

According to the most recent figures available, from the National Audit Office's 2019 'Regulation Overview', there are around 90 regulatory bodies in the UK, with annual spending of nearly £5 billion (£6.1 billion in today's money).[16] Local authorities, which are not included in those headline figures, also fulfil a number of regulatory functions. And as this chart shows, the number of regulators has been growing over time, especially in recent decades.[17]

Regulatory bodies created and destroyed by year since 1945



However, regulation has an impact on the British economy that goes far beyond direct spending on regulators. At the most basic level, regulations require businesses and individuals to act in ways that they otherwise wouldn't. That tends to create costs, which could be reflected in reduced profitability or higher prices – or simply lead to a disconnect between what consumers want and what business can deliver.

Then there are the less direct effects of regulation. An accumulation of red tape tends to reduce competition by raising barriers to market entry. It can undermine productivity by diverting time, talent and resources from value creation to

16 National Audit Office, 'Regulation Overview 2019', March 2020, p. 4. Link
17 CPS analysis of official data

compliance. It can deter the creation of new businesses, or the expansion of existing ones. And it can delay or even prevent useful innovations by putting regulatory barriers in the way of their development.

In one respect, the true costs of regulation are unknowable – because they are about things that never actually happen. How do you measure the cost of a business never getting off the ground? Or an invention never coming to market? Or a career spent managing regulatory risk instead of supplying goods or services that consumers want, need or simply enjoy?

Still, there are ways to measure at least the direct costs of regulation – and these certainly add up.

The most commonly cited estimate for the UK comes from a 2005 report of the Better Regulation Task Force, which put the total cost at somewhere between 10% and 12% of GDP.[18] That would imply an annual cost of more than £200 billion per year today.

This figure might seem impressive. Yet it is little more than an educated guess. To quote the report in question: 'Information from the United States and the Netherlands suggests that the total cost of regulation is 10-12% of GDP. It is unlikely to be much different in the UK.'

> **'A 2005 report by the Better Regulation Task Force put the total cost of UK regulation at somewhere between 10% and 12% of GDP. But this was little more than an educated guess'**

That said, more recent international studies do suggest that this is around the right ballpark for an economy like the UK's. For example, a 2014 report for the US National Association of Manufacturers found that regulation cost America about 12% of GDP, with the burden falling disproportionately on smaller businesses.[19] The Institute of Public Affairs in Melbourne applied the same methodology to the Australian economy in a 2016 report, and came up with a total regulatory cost of 11% of GDP.[20]

Such figures may seem high at first glance – roughly equivalent in scale to the amount the state collects in income tax. But it is actually quite plausible that they are an underestimate – especially if you take a broader view of the costs of regulation.

The economic historian Nicholas Crafts estimated that fixing Britain's disastrous planning system (a particularly unfortunate manifestation of the regulatory state) could 'add about 2% to GDP each year.'[21] Anya Martin pointed out in a recent CPS essay collection that replacing the 1947 Town and Country Planning Act as the foundation of our capital's planning system with the 1894 London Building Act could result in one of the greatest economic booms in the history of the developed world, as low-rise districts were turned into new Chelseas and Marylebones – even if the politics make such a prospect distinctly unlikely. However you want to look at it, we are not dealing with small numbers here.[22]

If we did want to get a more up-to-date and UK-specific sense of the cost of regulation, and the size of the regulatory state, the obvious route is to look at

18 Better Regulation Task Force, 'Regulation – Less is More', March 2005, p. 12. Link
19 W. Mark Crain and Nicole V. Crain, 'The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business', National Association of Manufacturers, September 2014. Link
20 Mikayla Novak, 'The $176 billion tax on our prosperity', Institute of Public Affairs, May 2016. Link
21 Nicholas Crafts, 'Liberalise planning and housebuilding can revive growth', City AM, April 2013. Link
22 Various authors, 'Justice for the Young', Centre for Policy Studies, October 2023. Link

the numbers the Government releases as part of its programme of regulatory impact assessments. Indeed, this is precisely what previous attempts to monitor the regulatory state have relied on. In the early 2000s, the British Chambers of Commerce used to release an annual 'Burdens Barometer', which kept track of the cumulative (gross) cost of new regulations.

The now-defunct think tank Open Europe undertook a similar project in 2010, totting up the annual cost of regulations introduced between 1998 and 2009.[23] The figure it came up with was £32.8 billion (£48.4 billion in 2023 prices). The think tank calculated that in total, regulation introduced over those 11 years had cost the economy £176 billion (£260 billion), of which £124 billion (£183 billion), or 71%, had its origin in the EU.

This chapter is therefore split into two parts. In the first, we use figures taken from the Government's own regulatory impact assessments to calculate both the increase in the gross annual cost of regulation from 2010-19, and the true path of the total 'Equivalent Annual Net [Direct] Cost to Business' of regulation over that decade. In both cases, we have done what the Government did not, and included all regulation in our totals – regardless of whether it had a domestic or international source, or whether it was 'qualifying' or 'non-qualifying' for the purposes of the Government's various regulatory budgets.

'Open Europe estimated the annual cost of regulations introduced in the 2000s at £32.8 billion (£48.4bn in 2023 prices)'

The inescapable conclusion of this analysis is that the regulatory burden continued to grow in gross terms, and that the supposed progress made on net regulatory costs was largely an illusion. Perhaps the best that can be said about deregulatory efforts since 2010 is that we spent several years running to stand still.

The second part of this chapter dives deeper into limitations of the regulatory regime over the 2010s. Many, though not all, of the problems we identify here apply to the new Better Regulation Framework as well – and therefore inform the recommendations we make in the subsequent chapters of this report.

What the Impact Assessments tell us about the total cost of regulation

The best available tool for estimating the cost of regulation, or at least the one that is at the heart of the Better Regulation Framework, is the regulatory impact assessment. In theory, for each piece of legislation an official Impact Assessment (IA) is produced.

Each IA contains an estimate of the costs and benefits of the measure in question, or the range of measures under consideration. This allows us to evaluate both the raw cost to businesses and consumers of a particular measure (and indeed the benefits), and how they are expected to even out. In doing so, we relied both on the 'Gross Annual Cost' figures listed in IAs and on the Equivalent Annual Net [Direct] Cost to Business (EANCB) they display.[24]

23 Open Europe, 'Still out of control? Measuring eleven years of EU regulation', June 2010. Link

24 Over the course of the period studied, the Government stopped talking about Equivalent Annual Net Costs to Business (EANCB) and started talking about Equivalent Annual Net Direct Costs to Business (EANDCB). However, both numbers are calculated by dividing the 'Present Value of Net Costs to Business' by an annuity rate. They are thus, to all intents and purposes, the same thing and we have treated them as such. For the sake of simplicity, we have used the acronym EANCB for figures across the entire period.

Even at this very early stage, however, we ran into complications.

First, while each piece of legislation is attached to an Impact Assessment, the number of assessments that are relevant is much smaller, because IAs do not necessarily cover individual regulations. They may be commissioned to cover multiple policies within the same programme of legislation, or even to accompany preliminary consultations covering a whole batch of policy changes. This means the same assessment can end up being attached to multiple separate regulations, and that the documents often include estimated costs and benefits for a whole list of potential legislative outcomes. They may require close reading or further research to work out which was eventually implemented.

Our research team therefore had to download and scrutinise each IA individually, building a customised database of the relevant data. This was a painstaking process that took months of their collective time. Even then, some impact assessments for legislation passed much later in the decade may show up in earlier years in the data, because the assessment was carried out several years before.

‘The gross annual cost of regulations introduced between 1998 and 2019 was £83.4 billion’

We have also had to exercise our judgement. For example, the single biggest domestic regulatory cost imposed during the period we studied, at £15.7 billion a year – and £22.1 billion in today’s prices – was the product of the introduction of auto-enrolment pensions. This obviously did involve an increase in cost to businesses, which had to pay significantly more towards their employees’ pensions. But it also involved individuals paying more themselves – and of course receiving the cash back at the end. Given the complexities of the issue, we therefore chose to exclude the measure from our headline figures, even though this would again mean that our numbers are, if anything, an underestimate.

We have also made adjustments for inflation, though these are necessarily imperfect. The financial figures in the original IAs cover a range of years, depending on when the assessment was conducted and what baseline figures were used, with 2002 being the earliest date and 2019 the most recent. We have used the Bank of England inflation calculator to render these figures in today’s prices (basis October 2023). Unless otherwise indicated, all totals have been adjusted accordingly – though as we shall see, it is also worth looking at the original figures, as this makes some of the absurdities in the IA process readily apparent.

With all those provisos – and more below on the quality and accuracy of the impact assessments we reviewed – what did we discover about the burden of regulation in the UK?

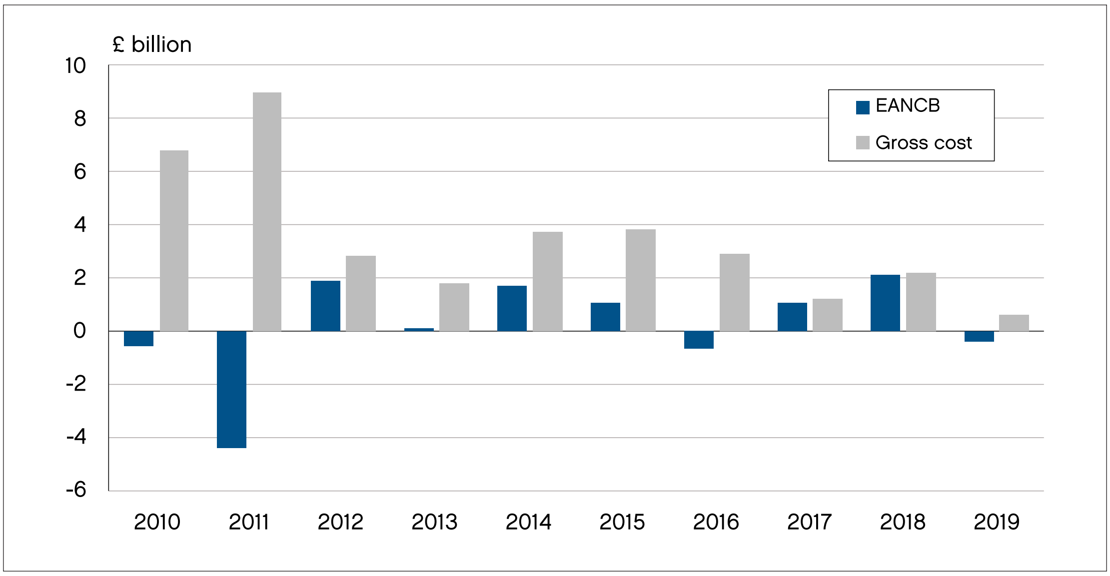
- Our analysis of impact assessments published from 2010 to 2019 suggests **that a total of £35.0 billion of gross annual costs was imposed over that decade.**

- This means that **the gross annual cost of regulations introduced between 1998 and 2019 was £83.4 billion** (in arriving at this number, we are taking Open Europe’s research at face value).

- In contrast to Open Europe’s findings, we found that **74% of the £35.0 billion annual cost added was accounted for by domestic regulations** (£25.8 billion of it). Only £9.0 billion came from EU-derived legislation, and £134 million from regulations listed as coming from an ‘international’ source.

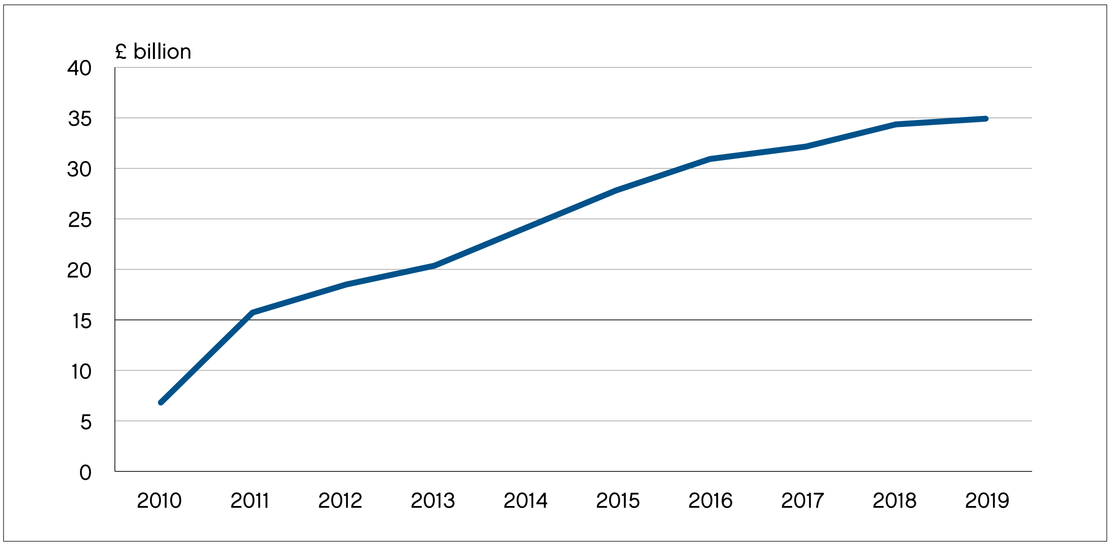
- Of course, many regulations were claimed to bring benefits as well as costs. In terms of net costs to business, as measured by the EANCB, we found that **the net annual burden on business increased by more than £2.0 billion.** This is obviously substantially less than the gross cost – but once you include the £39.6 billion in one-off transition costs over the decade (excluding a further £108 billion for pensions indexation) you get **a cumulative net annual total of £6.0 billion**.

Cost of new regulations by year, 2010-19



- The data suggests that the **costs of new regulations declined towards the end of the period studied.** This may indicate that policy innovations such as the 'one in, one/two/three out' rules and the Business Impact Target had some positive effect. A more likely explanation, however, is the natural course of government – and the size of parliamentary majorities. The Coalition came into office after a long period of Labour administration and passed a large amount of legislation in its early years, as we might expect. There are 490 impact assessments for 2010 and 664 for 2011. By contrast no year since 2016 exceeded 200 impact assessments – whether because the Government had run out of legislative steam, or because a smaller majority made it harder to get legislation through.

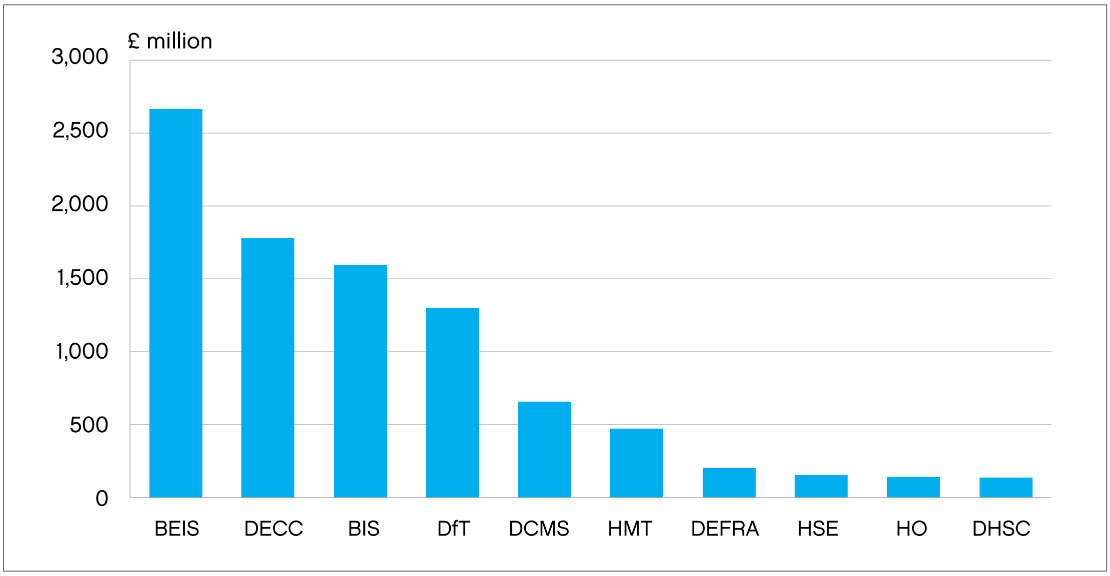
Cumulative gross annual cost of regulation, 2010-19



Source: CPS analysis of legislation.gov database of IAs, accessed via legislation.gov.uk/ukia

We also found that **by far the biggest costs were imposed by BEIS, the department covering business and energy, and its two predecessor departments.**

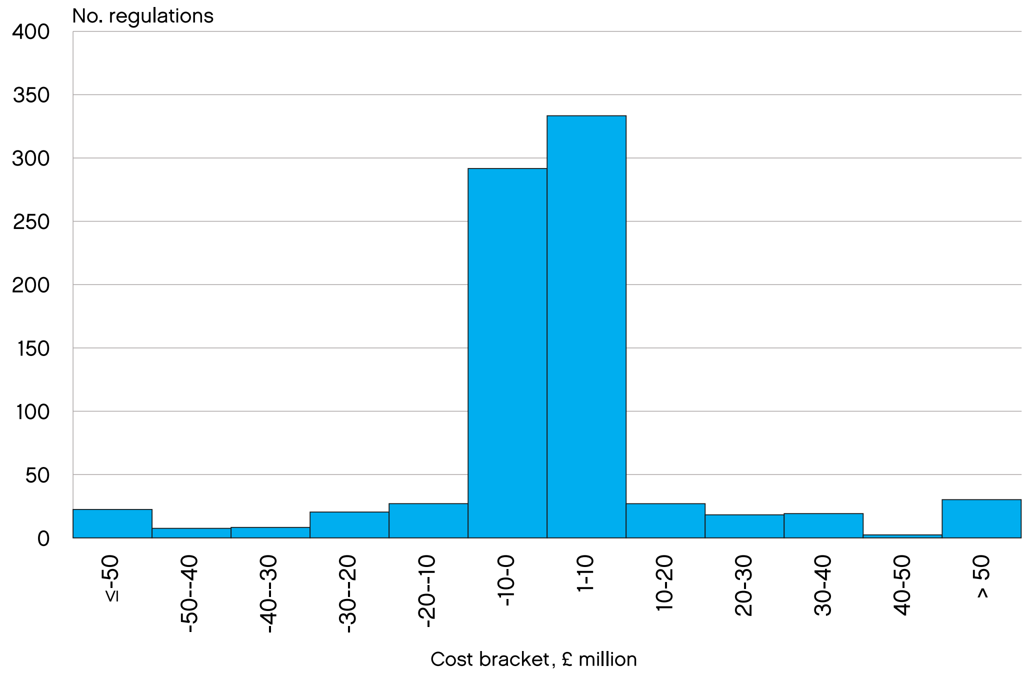
EANCB by department



Looking at the top 20 IAs by net cost also paints a clear picture: eight relate to energy and the environment; seven concern employment (mostly the minimum wage, but also workplace pensions and rules around agency workers); four focus on financial regulation. The outlier among the top 20 stems from the restrictions on fixed-odds betting terminals introduced by the May government.

IAs also generally tended to find that the net cost of most regulations was minimal, except for a small handful of major measures. As the next chart shows, most regulations were estimated to have a net cost or benefit to business of no more than £10 million. At the other end of the scale, when the Government claimed to have made a £10 billion net regulatory saving for businesses between 2010 and 2015, 90% of the claimed savings were down to just 10 measures, including changes to pension indexation and reforms to guidance on how to deal with contaminated land. This suggests either that government is passing a host of regulations that have only a minimal economic impact, or that the true economic impact of these regulations is being under-counted.

Distribution of net costs to business estimates, 2010-19



When you drill deeper into these cost figures, there is good evidence that they are not the product of rigorous research. Instead of the amounts being smoothly distributed, as you would expect, there are spikes around a few convenient figures, such as 0 (which appears 32 times), £0.01m (14 times), £0.1m (18 times) or £0.3m (12 times). Closer study of the individual assessments concerned suggested that these often seemed to be used as placeholder figures, when a more accurate total would be too complicated or time-consuming to calculate.

The limitations of the current regulatory regime

Our team went to extraordinary lengths to scrutinise the stockpile of IAs, and produce by far the most reliable estimate in years of the total cost of regulation to British businesses and consumers.

However, without wishing to undermine our own findings, we must say that carrying out this research left us with serious questions about the operation of successive better regulation frameworks in general, and the quality and accuracy of impact assessments in particular.

Indeed, our system of regulatory monitoring, while theoretically world-class, is in fact deeply inadequate. These flaws will collectively tend to result in the official figures dramatically underestimating the actual cost of government decisions on business.

So, what are these flaws?

The Impact Assessment regime is both error-prone and overly politicised

One of the most obvious things that you notice upon combing through the IAs is the frequency of mistakes and lack of standardisation.

In almost all cases, for example, an IA states that it is giving its estimates in millions of pounds. But it is a common mistake for authors to put '£Xm' into an assessment, meaning they are technically estimating costs/benefits in the trillions. When multiple policy options are being considered, the numbers included in the EANCB box should relate to the 'preferred' option, but we found several examples where this was not the case.

'It is striking how many measures appear to have estimated net costs to business of £0, £0.1 million or £0.01 million'

Even for very significant pieces of legislation, the IA can contain basic errors and still be signed off. The IA for the second Markets in Financial Instruments Directive (MiFID II), for example, has estimated costs in the hundreds of millions. But the numbers at the top of the document do not state that they are given in millions. It also gives the EANCB as a negative number (which would mean it is estimating a net benefit). This means that the IA for this major piece of legislation technically states that the EANCB is a net benefit of £105.20, rather than a net cost of £105.2m.

These sorts of mistakes are widespread in the IAs we looked at, though we must give credit where it is due and note they become slightly less common in later years. The degree of standardisation across IAs has also improved.

Furthermore, our discussions with regulatory policymakers past and present suggest that IAs are often much more political in nature than a straightforward reading would suggest – that is, they seek to justify particular courses of action that satisfy political criteria, sometimes playing a key part in Whitehall horse-trading, instead of serving as a wholly detached and unbiased analysis of alternative policies.

As mentioned above, it is striking how many measures appear to have estimated net costs to business of £0, £0.1 million or £0.01 million, to the point that these appear to be 'default' numbers used when IA authors are unsure how to quantify costs.

Normally, however, it is a lack of scrutiny which is the key problem. One senior civil servant described to us the extensive process of evaluation and contestation applied to departmental spending decisions, then observed that the same cost could be imposed on business with a click of the fingers.

One Cabinet minister of long standing, responsible for hundreds of billions of pounds in spending decisions over the years, told us he had never even read an IA during his time in office. IAs, we were repeatedly told, are generally handed to the most junior person in the office, with a firm instruction to make the numbers appear favourable towards whatever course of action the minister already intends to pursue.

Impact Assessments were often not carried out for European regulation

One of the most notable trends in UK regulation, across the second half of the 20th century, was a fall in the number of Acts of Parliament, and a growth in the number of statutory instruments, aka secondary legislation.[25] During the Coalition years, this secondary legislation increased hugely, although the numbers have since fallen back.[26]

This obviously raises important questions for any regulatory scrutiny regime, in terms of ensuring that such legislation goes through a full process of impact assessment. The House of Lords committee on secondary legislation has explicitly criticised the quality of recent IAs, noting: 'One of our major concerns is that IAs which are published late, or that appear to have been scrambled together at the last minute to justify a decision already taken, may undermine the quality of the policy choices that underpin the legislation.'[27] It accuses the impact assessment system of 'failing Parliament and the public'.

'A House of Lords committee accused the current impact assessment system of failing both Parliament and the public'

There is a similar divide when it comes to European legislation. Except that in the European case, one of these types receives no domestic scrutiny at all.

When Brussels regulated via EU directives, domestic implementing legislation would be required in member states, and so an IA would be produced in Whitehall. However, Brussels can also introduce regulations, which have direct effect in EU member states without any corresponding domestic laws. In such cases, no country-specific IA was produced – if the overall impact was estimated at all, it would be across the whole of the continent.

This may help explain one of the most surprising findings above: the apparent shift in the balance between European and domestic legislation. In contrast to the Open Europe study, covering the previous decade, we found that most of the regulatory burden being imposed was home-grown. Although, like them, we did find that EU rules tended to have much worse cost-benefit ratios than domestic proposals. For business, the benefit-cost ratio was 1:0.9 for domestic regulations, and 1:1.8 for EU ones. On gross annual costs, the benefit-cost ratios were 1:1.2 and 1:2.8, respectively.

But still – in the 2010s, by the Government's own figures, the burden from Brussels was shrinking rather than growing, in comparison to the home-grown stock of regulation. So what were the Brexiteers complaining about?

There is, however, an obvious explanation: that the balance of EU rule-making shifted in the 2010s from directives to regulations. And examination of the statistics published on EUR-Lex, the database of EU legislation and regulation, suggests that this may indeed be the case. We found 4,118 regulations and 432 directives listed for the period 2000-9, compared with 5,199 regulations and 196 directives in 2010-19. In other words, the number of regulations rose by 26%, while the number of directives

25 House of Commons Library, 'Acts and Statutory Instruments: the Volume of UK Legislation 1850-2016', April 2017. Link

26 Legislation.gov.uk, UK Statutory Instruments dashboard. Link

27 House of Lords Secondary Legislation Scrutiny Committee, 'Losing Impact: why the Government's impact assessment system is failing Parliament and the public', October 2022. Link

fell by 55%. To put it another way, the ratio of directives to regulations was roughly 1:10 in the earlier decade, and 1:26 in the later one.

To be clear, this is in no way an 'apples to apples' comparison. Directives can involve sweeping changes to major areas of public policy; regulations more typically set or amend specific, technical standards. Without further research, it is impossible to say whether the changes in the relative numbers of these EU legal acts translates into a different balance of regulatory costs.

But there is clearly a very substantial amount of European regulation that has been incorporated into UK law without any estimate of the costs to UK businesses or consumers, which again means that our calculation of overall regulatory costs will be a substantial underestimate.

> **'David Cameron said he wanted the Coalition to be the first modern government to leave office having reduced the overall burden of regulation'**

There is also a separate issue here, which again has received much coverage as part of the Brexit debate – namely Britain's tendency to gold-plate EU rules.

As a result of this tendency, the IA template (pre-Brexit) included a question asking whether the particular rule went beyond EU requirements. A total of 279 regulations were either labelled as Yes or No – something of a puzzle, given that only 191 of them were listed as being EU-derived. This could of course reflect the point above about the lack of care and scrutiny regarding IAs: in this case writing 'No' when the correct answer was 'N/A'.

However, what is particularly interesting is that of those 279 (or 191), 80 were assessed as going beyond EU requirements. When the Coalition entered office in 2010, they pledged to end the practice of 'gold-plating'. Plainly, they failed to do so. This reinforces the point that simply having left European Union will not in itself be enough to significantly reduce the UK regulatory burden – the onus is very much on British policymakers to regulate less and better.

Regulatory budgeting regimes were too restricted in scope, and too easily manipulated

So far, we have talked about the regulatory regime purely in terms of the aggregate figures given in the IAs. But this is not how those assessments were used in Whitehall. They were used to measure performance against targets, via a process known as 'regulatory budgeting'. This is also what politicians point to when they claim to have decreased the overall burden of regulation.

The Conservatives' 2010 general election manifesto committed them to 'introduce regulatory budgets: forcing any government body wanting to introduce a new regulation to reduce regulation elsewhere by a greater amount'.[28] They also pledged to 'give the public the opportunity to force the worst regulations to be repealed'.

28 Conservative Party, 'Invitation to join the government of Britain', April 2010, p. 20. Link

The Coalition government made good on these promises. A 'Red Tape Challenge' was set up in 2011 to crowdsource ideas for regulatory reform. It ran for two years, after which David Cameron said it had exceeded its target of removing or amending 3,000 regulations, saving business £850 million a year in the process.[29]

More significantly, a regulatory budget was implemented in 2010 with the introduction of the one in, one out rule. In 2013, one in, one out became one in, two out.[30] The majority Conservative government that took office in 2015 later upgraded the rule again, to one in, three out.

However, by then Whitehall had switched focus to a new measure – the Business Impact Target (BIT). David Cameron said he wanted the Coalition 'to be the first government in modern history to leave office having reduced the overall burden of regulation'.[31] In 2015, the Regulatory Policy Committee said that the government had reduced the burden of regulation on business and civil society by an equivalent of £2.2 billion per year.[32] The 2015 Conservative election manifesto pledged to cut another £10 billion of red tape over the next parliament.[33] By the time of the 2017 election, the government's BIT score showed an impressive £6.6 billion worth of deregulation.[34]

> **'In 2015, the Regulatory Policy Committee said that the government had reduced the burden of regulation on business and civil society by an equivalent of £2.2 billion per year'**

The May government of 2017-19 was, however, rather less successful. Despite setting a Business Impact Target of £9 billion of regulatory savings by June 2022 (and an interim target of £4.5 billion by July 2020), the regulatory burden – as measured by the BIT score – actually rose by £7.8 billion by the December 2019 general election.[35] The rise was largely the result of four major regulatory 'ins': a legal obligation for energy companies to deliver energy efficiency measures to homes; new restrictions on fixed-odds betting terminals; a ban on tenant fees; and the energy price cap.

But how accurate were any of these figures for the total burden of regulation? The sad answer is: not very accurate at all. Indeed, we would argue that they were largely fictional.

The most obvious point is that there is a huge list of measures that the Government excluded from its Business Impact Target. In particular, the Treasury – while setting regulatory targets for the rest of Whitehall – managed to exclude itself from the scope of the target.

29 Gov.uk, 'Supporting business: David Cameron announces new plans', January 2014. Link

30 Gov.uk, "One in, two out': Government to go further and faster to reduce burdens on business and help Britain compete in the global race', November 2012. Link

31 Gov.uk, 'Letter from the Prime Minister on cutting red tape', April 2011. Link

32 Regulatory Policy Committee, 'Regulatory Policy Committee scrutiny during the 2010 to 2015 parliament', March 2015. Link

33 Conservative Party, 'Strong Leadership; A Clear Economic Plan; A Brighter, More Secure Future', April 2015, p. 19. Link

34 Department for Business, Enterprise and Industrial Strategy, 'Business Impact Target: Final report for the 2015–17 Parliament', May 2018, p. 8. Link

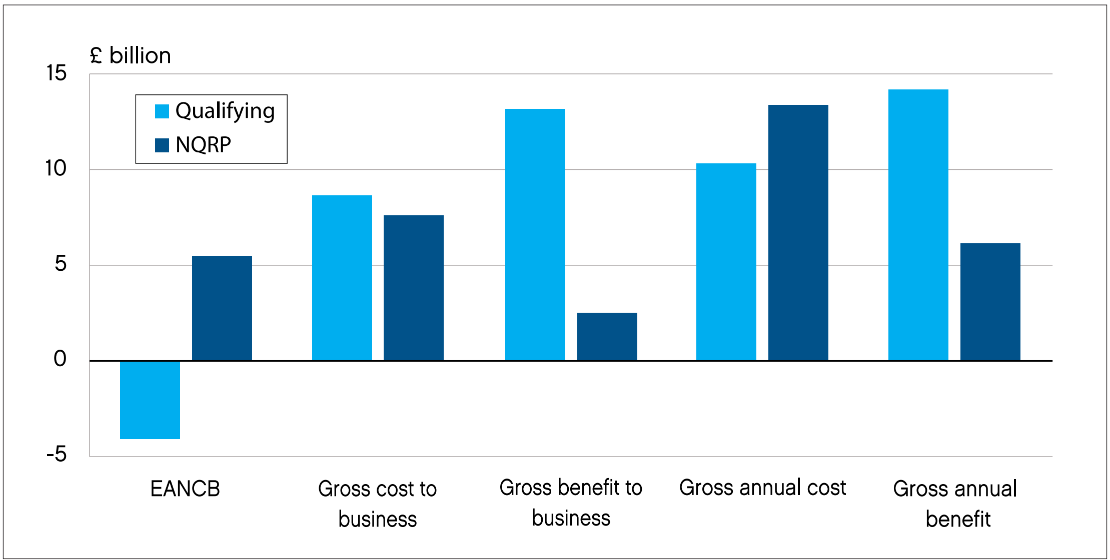
35 Department for Business, Enterprise and Industrial Strategy, 'Business Impact Target: Final report for the 2017–19 Parliament', October 2020, p. 15. Link

Some of these exclusions were written in statute, while others were 'administrative exclusions' set out in ministerial statements in a given parliament.[36] They included:

- Taxes, duties, levies, or other charges
- Procurement
- Grants or other financial assistance on behalf of a public authority
- Measures that have effect for less than 12 months
- Regulation of activities that are not 'business activities'
- Any provision with an EANCB/EANDCB of less than £5m
- EU-derived regulations
- Pro-competition measures
- Measures relating to systemic financial risk
- Measures relating to civil emergencies
- Fines and penalties
- Measures relating to classification changes under the Misuse of Drugs Act
- Regulations relating to the Government's response to the Grenfell Tower fire
- Measures relating to the activities of regulators themselves

The results of our comprehensive analysis are striking. For one thing, if you separate out the costs of regulations which are classed as 'qualifying' and those that are 'non-qualifying' for the purposes of the BIT, it quickly becomes clear that there is a vast disparity between the two sets of IAs. In particular, regulations classed as qualifying tended to have significantly lower average EANCBs than non-qualifying regulatory provisions (NQRPs). Indeed, in today's money, the net benefit to business based solely on qualifying measures was in fact £4.1 billion, whereas the net cost of measures not covered by the Government's regulatory targets was £6.1 billion. In other words, 60% of the overall cost-benefit analysis was not covered by the BIT, with the cost element conspicuously absent.

Total costs and benefits estimated in impact assessments, 2010-19



Source: CPS analysis of legislation.gov database of IAs, accessed via legislation.gov.uk/ukia

36 Department for Business, Enterprise and Industrial Strategy, 'Better Regulation Framework: Interim Guidance', March 2020 Link.

More generally, our analysis suggests that qualifying regulations tend to have much higher estimated benefits included in their impact assessments than non-qualifying measures. This supports the conclusion of the National Audit Office (NAO) in 2016, which stated that 'the current system is set up to ensure that government can hit its target', rather than to actually decrease regulation.[37]

There is also the issue of transition costs – another thing not included in the government's Business Impact Target. These came to £148 billion over the course of the ten years. Admittedly, these figures are distorted by the shift to CPI indexation for occupational pensions, which accounted for £108 billion (73%) of the total. But that is still another £39.6 billion in costs to business that is not covered by the deregulatory targets.

Ultimately, what the Government does or does not decide to include in its Business Impact Target seems arbitrary and many of the exclusions are difficult to justify. Measures relating to tax administration, for example, seem an obvious thing to include, especially since this is one of the key areas of frustration businesses mention when surveyed.[38] (See the YouGov polling of small businesses for the Centre for Policy Studies highlighted in the next chapter.) There seems little explanation for why the Treasury should be exempt from troublesome targets, apart from its status as the most powerful department in Whitehall.

'When the Business Impact Target was introduced, the Government promised to save business £10 billion in regulatory costs across the 2015-20 Parliament'

But there is one final example here which shows why the regulatory budgeting system is not fit for purpose: the plastic bag trick.

When the Business Impact Target was introduced, the Government promised to save business £10 billion in regulatory costs across the 2015-20 parliament.[39] A noble ambition. But it wasn't going well.

However, somebody within the Department for Environment, Food and Rural Affairs (Defra) had had a bright idea. In October 2015, the Government introduced a 5p charge for plastic bags in supermarkets. The aim was to discourage their use and help the environment.

Most of us would consider this a regulatory rather than a deregulatory measure: the state was literally imposing costs and rules on the private sector, albeit with worthy intentions. But in the IA, it was counted as a net saving for businesses, on the basis that they would end up providing fewer plastic bags to their customers. The annual saving was estimated at a whopping £200 million.

Under the Business Impact Target, this figure was multiplied by five, to reflect the saving across the parliament. Suddenly, Defra was almost halfway towards the £2.35 billion it had been ordered to save in those five years.[40] And the Government could happily claim in 2016 that it had already achieved £900 million of regulatory savings since the election – even though it had made no progress at all if the plastic bags measure were excluded (or if its impact on business had been categorised differently).[41]

37 National Audit Office, 'The Business Impact Target: cutting the cost of regulation', June 2016. Link

38 Richard Harries and Katy Sawyer, 'How to run a country: the burden of regulation', Reform, December 2014, p. 8. Link

39 BIS, 'Business Impact Target: Final Report for the 2015-17 Parliament', May 2018. Link

40 National Audit Office, 'The Business Impact Target: cutting the cost of regulation', June 2016. Link

41 Regulation.org.uk, 'Regulatory Budgets, One In/Three Out, etc.' Link

There is no doubt, in other words, that both the IAs themselves and the various regulatory budgets employed by recent governments are gravely flawed as means to measure the flow of regulation. And things get even worse when you consider the stock – that is, the full scale of regulation already on the statute book.

'In financial services, the complete Financial Conduct Authority handbook now costs almost £4,000, and would be roughly 7,000 pages long'

Only one ministry within Whitehall – Defra again – has a comprehensive list of the regulations it is responsible for, let alone an estimate of their collective cost to business. (And this was only undertaken because Brexit was set to have a transformative impact on the department's work, given that so many agricultural and environmental rules had been set in Brussels.) While it is true that the Government did carry out a 'legislative mapping' exercise to identify the body of retained EU law, the resulting dashboard gives no details of the accompanying costs.

There is also – beyond the scope of this paper – a huge amount of regulation being imposed by regulators. In financial services, in particular, the complete Financial Conduct Authority handbook now costs almost £4,000, and would be roughly 7,000 pages long. The guidance for those who want to be company directors is mountainous. Tolley's Tax Handbook grows ever longer. We are in many areas regulating so much it is impossible for anyone, even the regulators, to have a complete grip on the regulations.

In short, if we want to make Britain a better regulated country – let alone 'the best regulated country in the world' – we need not just a 'bonfire of red tape', but a far better understanding of how much red tape we actually have, and how much each new rule is adding to the pile.

In the next chapter, we set out how we can begin to achieve that.

How to Deliver Better Regulation

If there is one lesson we can take from the previous section of this report, it is that delivering better regulation is a lot harder than promising it. Successive governments have worked hard to reduce the burden of regulation, but progress has been patchy and sporadic. And when you look at the full range of regulation – not just the bits the state chooses to count – it is clear that we have been running very fast just to stay in place.

So how can ministers finally translate rhetoric into reality? How can we use the historic opportunity of Brexit to reset the regulatory state?

As we stated in the introduction of this report, the Government's settled approach right now – as it relates both to new domestic-source regulation and to retained EU law – does not give much cause for optimism. Yet we should not give up hope: there is still time to make significant changes.

Let's start by taking a step back. Fundamentally, there are a couple of different ways to think about better regulation. First, you can think about specific regulatory changes that will remove barriers to competition and innovation, or otherwise reduce bureaucratic burdens on business. This is the classic 'bonfire of red tape' doctrine – that the best way to deregulate is to annul specific invidious regulations, either individually or en masse.

'Successive governments have worked hard to reduce the burden of regulation, but progress has been patchy and sporadic'

There are certainly plenty of regulations that the authors take issue with: witness the Centre for Policy Studies' recent work on the Online Safety Act, among many other examples.[42]

But the argument of this paper is that making a really significant difference depends on a deeper change to the architecture of regulation – a concerted programme to put in place the processes and structures to check excessive regulation, and make existing and future regulations more supportive of innovation, competition and growth.

That is because the problem is not just with individual pieces of regulation. It is with the way one regulation is piled on top of another, so that the burden on the economy grows larger and larger over time. The famous analogy is with dropping pebbles into a stream: individually, they may have no effect, but gradually the river becomes first sluggish, and then completely blocked.

We must put in place structures that can counteract this effect. Otherwise, any progress we make in 'cutting red tape' will inevitably be overwhelmed by a rising tide of new rules and regulations.

42 See for example Matthew Feeney, 'A Censor's Charter?', Centre for Policy Studies, September 2022. Link

A large part of the explanation here, as we have seen, is that regulating is simply much, much easier than taxing or spending.

The public tends not to like being taxed, and in any case there are limits to how much revenue can be squeezed out of any economy. Spending is easier (witness the fact that every government spends more than it taxes). But we have still developed a robust institutional architecture for keeping it under some semblance of control. The Treasury, by far our most powerful department, is obsessed with spending restraint. The Chancellor, the second most powerful man in government, spends much of his time rejecting his colleagues' pleas for more cash. And an array of organisations keep a close eye on the numbers – from official bodies like the Office for Budget Responsibility and the National Audit Office to independent groups like the Institute for Fiscal Studies or the TaxPayers' Alliance.

Regulatory policymaking is not constrained in anything like the same way. The costs of regulation tend to be unintended, indirect, and hidden – and in any case do not tend to fall on 'the man on the street' in an obvious way. For politicians and the public alike, it can seem like a costless way to deal with the problem when 'something must be done'.

Regulation is also complicated, boring and diffused across a panoply of government departments and independent regulators. It is hard for all but the most committed to keep up with day-to-day developments in the regulatory state; even professional policy analysts pay less attention to it than most of the other things that government does.

'Regulation is complicated, boring, and diffused across a panoply of government departments and independent regulators'

Within government, moreover, no one has an overarching responsibility for regulation in the way the Chancellor does for tax and spend. There are accountability frameworks in place, but they mostly fly under the radar – compare the attention paid to reports and forecasts from the Office for Budget Responsibility with the silence that traditionally greets the Government's annual reports on better regulation. Most new rules take effect without being debated, voted on or even read by most parliamentarians.

The simple, overriding objective of the regulatory reform agenda, therefore, must be to ensure that regulating is not just seen as an easy way to achieve a given party's political objectives, but a fully conscious decision taken as a necessary, proportionate and effective response to a clearly defined problem – one subject to robust oversight and review, with clear lines of political accountability.

Better regulation will only come about through sustained effort and political will, not as a one-off 'big bang'. Nevertheless, we believe the reforms outlined below will give this government, and the ones that follow it, the best chance of success.

Set a transparent baseline

One of the problems with British regulatory policymaking is that it is mostly conducted in the dark. As we have discovered in our own research, it takes a huge amount of work to keep track of and analyse the growth of regulation over time. And while government is reasonably transparent about the flow of new regulation, the stock of existing regulation goes largely unexamined.

In particular, as we mentioned above, it is extraordinary that only one ministry within Whitehall – the Department for Environment, Food and Rural Affairs – has a comprehensive list of the regulations it is responsible for, let alone an estimate of their collective cost to business.

It is true that the Government did carry out a 'legislative mapping' exercise to identify the body of retained EU law, but the resulting dashboard originally only allowed the public to download the relevant information as a PowerPoint or JPG file. It was not until our team at the Centre for Policy Studies requested the data in a more readable format that an Excel spreadsheet was published, listing all 4,918 measures. But even then the information was relatively cursory, with no information about cost attached. It is also worth noting that the original IA for the Retained EU Law Bill was itself red-rated by the Regulatory Policy Committee (RPC), not least for failing to take sufficient account of the potential impacts on business.

Getting to grips with the regulatory state requires that we fully understand what we are dealing with. We need to comprehensively map all regulation – not just regulation derived from EU law. And we need a proper assessment of the costs and benefits of that regulation, and who is most burdened by it.

> **'We know that businesses are more concerned about the cumulative burden of regulation than they are with any given rule, but at the moment we know very little about that cumulative burden'**

It was striking that when the Government's consultation on the Better Regulation Framework asked whether it was important to 'baseline regulatory burdens in the UK', those respondents who expressed a preference answered 'yes' by an overwhelming margin – almost five to one in favour.[43] Yet the new Better Regulation Framework is silent on the prospect of a regulatory baselining exercise, as was the 'Benefits of Brexit' White Paper before it. Perhaps the Government simply realised quite how big a task producing a transparent baseline would turn out to be.

Nevertheless, without a good understanding of the stock of regulation and the costs it imposes, we are operating with our eyes closed. We know that businesses are more concerned about the cumulative burden of regulation than they are with any given rule, but at the moment we know very little about that cumulative burden. This needs to change.

Going forward, every department and regulator should be required to carry out a comprehensive audit of all the regulation that it is responsible for, and then quantify the total cost of its stock of regulation. If we set up a body along the lines of the Regulatory Audit Office described below, it could obviously do a lot of the heavy lifting – perhaps taking over once departments and regulators had mapped out their regulatory responsibilities, and providing the objective analysis of the costs (or benefits) of that body of regulation. Again, it is worth noting that the response to the

43 BEIS, 'Reforming the Framework for Better Regulation: Consultation Responses', January 2022. Link

Government's consultation on this found stakeholders overwhelmingly preferring independent scrutiny of the figures, rather than letting departments continue to mark their own homework.[44]

We need to get to a situation in which we have a clear idea of the costs and benefits of the regulatory state as a whole, and how each area or type of regulation contributes to that total cost. Once we have that baseline, we will be in a much better position to decide where to focus reform or deregulatory efforts, and to keep track of whether regulatory burdens are being added or taken away.

The process of regulatory baselining should be used as an opportunity to increase transparency as well. Our whole body of regulation should be brought together in a single place as part of the Open Regulation Platform that the Government is developing. This will put 'the UK's statute book and other regulatory texts into an enriched machine-readable dataset of business regulations that is publicly accessible through an API'. The Retained EU Law Dashboard hints at the potential of such an effort – but there is clearly much more still to be done.

Impact assessments and post-implementation reviews should also be made part of this platform, with their data on the costs and benefits of regulation turned into a comprehensive and customisable database – instead of being locked away in thousands of individual PDF files (many of them not even text-searchable), as is the case today. This would allow external groups to better analyse regulation and hold government to account.

Policy Recommendations

- Carry out a comprehensive audit of the whole body of UK regulation – regardless of its original source – and establish a baseline for the current regulatory burden.
- Bring all regulation and official analysis of regulation together in a sophisticated and machine-readable open platform.

Get the institutional architecture right

The default setting of modern governments is to regulate – and that is exactly what they will do in the absence of some countervailing force. But who will provide it? After all, for all the well-meaning deregulatory rhetoric to come out of Whitehall, it only takes the briefest glance at the headlines to see many countervailing examples of ministers and MPs calling for and introducing new regulations, in apparent contradiction of the Government's stated ambition. Who will ensure that fine words translate into real change?

We suggest that, just as the Chancellor has responsibility for spending, so there should be a clear and powerful Whitehall champion for the regulatory reform agenda. Unless you have a senior government figure absolutely focused on getting to grips with the regulatory state, it will be hard to maintain any sort of momentum. Regulatory reform is bound to drift down the list of priorities, fall into the cracks between different departments' agendas, and perhaps get ignored altogether as soon as government encounters a problem that demands 'something must be done'.

44 Ibid.

One of the greatest failings of the new Better Regulation Framework is that it fails to create any meaningful central control over the flow of regulation. As long as responsibility remains diffused across Whitehall, any meaningful accountability for the overall regulatory burden will be impossible to enforce, and any progress towards a better regulated economy will likely remain a fantasy.

The ideal way to address this oversight is by centralising the various bits of government tasked with looking at better regulation under a powerful new minister in the Cabinet Office, who would focus solely on reform of the regulatory state – coordinating deregulatory efforts across Whitehall, unencumbered by any regulatory responsibilities of their own. This would entail moving the Brexit Opportunities Unit, the Better Regulation Executive, the Regulatory Horizons Council and the Regulatory Policy Committee, with a prominent, Cabinet-level minister placed in charge.

Crucially, this must not just be an exercise in rearranging the Whitehall furniture. The minister responsible for regulatory reform needs real cross-departmental power – the ability to say 'no' to any ill-advised regulatory initiative that crosses their desk, or at the very least to demand an external review of the suggested costs and benefits (a proposal which, as noted above, those being regulated overwhelmingly support).

Just as the Chancellor of the Exchequer can block any proposal to spend money, so the minister overseeing regulation must be empowered to block any proposal to regulate. The goal should be to promote the development of a powerful, centralised check on regulation at the heart of government – while also pushing forward a positive, deregulatory agenda. This is, as noted below, similar to the system which operates in the US (at least in theory), where federal agencies are challenged by a powerful central body to defend their estimated costings.

'One of the greatest failings of the new Better Regulation Framework is that it fails to create any meaningful central control over the flow of regulation'

The next question is over the roles of the existing bodies charged with overseeing the regulatory state. Chief among these is the Regulatory Policy Committee (RPC), which is at least in theory the regulatory equivalent of the National Audit Office (NAO), charged with assessing the quality of evidence and analysis used to inform regulatory proposals. However, its resources are pitifully small by comparison.

Our view is that the RPC plays a vital part in the regulatory reform agenda, providing independent scrutiny of impact assessments, and generally ensuring that the Government is not allowed to mark its own homework. However, its role is necessarily limited. There is only so much a small panel of experts can do by themselves, even with a Civil Service secretariat supporting them.

To better assist the Government in its ambition to overhaul the regulatory state after Brexit, we should consider transforming the RPC into a fully-fledged 'Regulatory Audit Office' that could fulfil several important functions within the Better Regulation Framework. These include expert scrutiny of policy proposals and the development of meaningful, evidence-based impact assessments, as well as the conduct of thorough post-implementation reviews. Such a body could also lead efforts to 'baseline' the British regulatory state, carry out 'deep dives' into specific areas of regulation, and so on. Many of these potential functions – and their importance to the regulatory reform agenda – are explored in more detail below.

It is important to stress here that the objective is not to tie the better regulation agenda up in its own brand of red tape – much less to swell the ranks of Britain's already ample quangocracy. Rather, the goal is to give the centre of government the capacity and expertise it needs to really get on top of the modern regulatory state. Without some body of this sort, the complexity of regulation is such that well-intentioned political initiatives can sometimes drown in detail and end up making little real progress. A well-resourced Regulatory Audit Office would be a useful corrective – giving government the evidence it needs to achieve its reform ambitions.

Policy Recommendations

- The whole regulatory reform 'machine' should be centralised under a single powerful minister, who should exercise an effective veto power over regulatory initiatives across Whitehall.
- A new Regulatory Audit Office should be established, both to provide independent validation on the costs of regulation, and to give government access to in-depth, expert analysis of the British regulatory state.

Establish a new regulatory budget

Once we have established the stock of regulation, how can we monitor and control the flow?

The Coalition government, as we saw above, took a twin-track approach. First, there was a 'one in, one out' rule – which in 2013 became a 'one in, two out' rule. Next, there was the overall Business Impact Target, which sought to steadily reduce the overall burden of regulation. (Though it was, as we have said, riddled with exemptions.)

Their successors have promised to take a different approach. 'Benefits of Brexit' explicitly rejected the 'some in, some out' approach, stating that:

> *While there are many merits to such a rule, including the galvanising force it will create across government and regulators, we do not think it is consistent with delivering world-class regulation to support the economy in adapting to a new wave of technological revolution or to achieving Net Zero.*

The White Paper also revealed that the Business Impact Target will be removed in its current form and replaced by something 'more holistic' that does not focus 'too narrowly on net direct costs to business'. This was confirmed by 'Smarter Regulation to Grow the Economy', which promised that a reformed and improved system would be launched this past summer. And yet there is no sign of any sort of regulatory budget contained in the new Better Regulation Framework.

We find this change both unpersuasive and potentially extremely damaging. It is true that the current regime has all sorts of flaws. But without a clear target for deregulatory efforts – aside from a strikingly unambitious goal to cut £1bn in costs from retained EU law – it is easy to see regulatory reform fading into the background as government focuses on more eye-catching initiatives.

The Government needs to revisit the Better Regulation Framework and make sure that the Business Impact Target is replaced with something that has the same 'galvanising' force across departments and regulators that it ascribes to the defunct one in, two out rule.

Of course, it is only fair at this point to put the counter-argument. There was certainly some resentment in Whitehall at the way the Business Impact Target scored May-era reforms like the energy price cap and the limits on fixed-odds betting terminals. Imposing large regulatory costs on business was precisely the point of those policies – so why mark down the Government for introducing them?

But such a mindset misses the point of regulatory budgeting. Yes, the Government may sometimes make an explicit policy choice to impose costs on business in pursuit of some larger good. But that does not mean it should be exempt from considering and being held accountable for the total costs imposed on the private sector. The whole purpose of a regulatory budget, however it is designed, is to ensure that governments do not see regulation as a free lunch. It is meant to force them to make trade-offs between competing objectives – and that is a good thing.

'YouGov polled 2,108 owners and managers of small businesses on behalf of the Centre for Policy Studies. By 68% to 22%, they told us that the tax system was not sympathetic towards the needs of small businesses'

The idea that 'intentional' regulatory costs should be excluded from regulatory budgets has a lot in common with the decisions taken by successive governments to exclude whole swathes of regulation from the regulatory accounting system. It is tantamount to saying: 'We oppose regulatory burdens on business – except when we support them.' Such an approach hollows out the concept of regulatory budgeting, sets back attempts at regulatory reform, and allows the regulatory state to keep growing on autopilot.

What, then, should take the place of the Business Impact Target?

The first point is that we really do need some binding and quantifiable commitment on the burden of regulation. It does not have to be the one in, two out rule – but if we drop the idea of regulatory budgeting altogether, government will quickly fall back into the habit of seeing regulation as essentially costless. Red tape will proliferate accordingly – whatever the best intentions of reform-minded members of the Cabinet.

Second, the key to any form of regulatory budget is to ensure that everything is included. We should not exclude small costs (they soon add up), costs stemming from international obligations, costs to do with financial stability, measures like the national minimum wage… the list goes on. Many such measures are justified, others are unavoidable, but we need to be honest about the total costs of regulation. Targets that are not comprehensive can easily be rendered meaningless.

In particular, we must not let the Treasury/HMRC exclude themselves from regulatory budgets. The indirect costs of tax administration and compliance are a very important part of the hidden burden that the state imposes on the private sector – and one of the main complaints that businesses tend to have. In 2018, YouGov polled 2,108 owners and managers of small businesses on behalf of the Centre for Policy Studies.[45] By 68% to 22%, they told us that the tax system was not sympathetic

45 Nick King, 'Think Small', Centre for Policy Studies, May 2019. Link

towards the needs of small businesses. And by 75% to 1%, they told us that the current system of tax, administration and reporting dates was too complicated rather than too simplistic. The same should also apply to arm's length bodies such as the Financial Conduct Authority or Natural England: their regulations and guidance impose costs just as much as central government's.

In fairness, the new Better Regulation Framework does list a narrower set of exemptions than previous versions did – which would be a good thing, if it had not simultaneously abandoned the discipline that well-designed regulatory budgets can bring. And even then, the new framework still has gaps in coverage. In particular, 'Regulatory provisions for the safety of tenants, residents and occupants in buildings' are expressly excluded. That means that the costly 'second staircase rule' we discussed in the introduction to this report could come into law entirely unhindered by the system designed to catch and prevent bad regulatory rules.

'A modest and realistic target that applies to everything is much better than a grander promise that applies only to a cherry-picked set of regulations'

Third, we should make our new regulatory budget realistic and achievable. If the Government really thinks it will be impossible to cut the overall burden of regulation while simultaneously regulating emerging technologies and moving towards its Net Zero target, then it should say so, and set its regulatory budget accordingly. It may even be that a government expects the overall regulatory burden to increase on its watch. That would be a huge disappointment, of course, but if such an increase is inevitable, then a realistic regulatory budget should seek to put a ceiling on how much the total regulatory burden will grow.

Effectively, what we are suggesting is that the Government should adopt a clear target for the total cost of the entire regulatory state, whether as a cash figure, or as a percentage of GDP, and then stick to it. A good target might be, say, to reduce total costs by 5% each year, averaged over the course of a parliament. But the Government might want to set a more aggressive target – or, indeed, one that is more permissive of new regulatory costs.

The point is that a modest and realistic target that applies to everything is much better than a grander promise that applies only to a cherry-picked set of regulations. Governments are rightly excoriated for attempts to move fiscal costs off the balance sheet. They should not be allowed to do it for regulation.

Of course, all of this leaves open the question of how those regulatory costs should be defined and measured. There is no perfect way to do this, and almost any real-world option is bound to have some arbitrary or perverse effects.

In the short term, we would suggest that the Government sticks to a well-established metric already captured on impact assessments, such as Equivalent Annual Net Direct Costs on Business or Equivalent Annual Net Direct Costs on Households.

Looking ahead, however, the Government could investigate an alternative to the cost-based approach suggested above – the 'RegData' approach to regulatory budgeting developed by the Mercatus Center in the United States. This approach uses machine learning and text analysis to identify and quantify 'restrictive clauses' (which use terms like 'shall' or 'must') across the entire stock of government regulation.

Once a RegData system is up and running, it allows you to track objectively the number of regulatory restrictions in force – and set targets for reducing them. British Columbia has used a version of this approach to cut its regulatory requirements. Some US states have also adopted a similar approach.

Adopting an effective RegData approach to regulatory budgeting will depend on developing the kind of comprehensive and machine-readable regulatory database we called for above. It will also require strong political buy-in, with the centre of government firmly and consistently pushing the agenda, and individual departments agreeing and being held accountable to targets for regulatory reform and restraint. But judging by its success abroad, it could hugely simplify our stock of regulations and create a more dynamic and better regulated economy.

Policy Recommendations

- Adopt a new regulatory budget to replace the one in, two out rule and the Business Impact Target.
- Ensure that this budget is comprehensive – with no carve-outs for particular areas or types of regulation – and realistic.
- Base this regulatory budget on an established cost metric initially, but look to shift to a RegData approach based on the total number of regulatory restrictions when possible.

Control the flow of new regulations… and sunset existing ones

At first glance, Britain appears to already have quite a sophisticated better regulation framework. We do many of the things that people might consider regulatory 'best practice' – consulting on proposals, drawing up impact assessments, requiring independent validation of key elements of the process, and so on.

And yet, as we have seen, once you scratch beneath the surface, all kinds of problems emerge. The exclusion of various types and sources of regulation from regulatory targets is one problem. Another is the lack of care with which IAs are sometimes approached. It was striking to discover during our research just how often obvious mistakes were made on impact assessments – putting the wrong number in the box, mixing millions and billions, confusing positives and negatives, and so on.

Off the record, many regulatory policymakers have told us that Whitehall tends to see IAs – which, by all accounts, are often handed off to junior officials with limited subject-area expertise – as a way to justify policy choices that have already been made, rather as an objective assessment of costs and benefits.

Plainly, then, there is much room for improvement in what we are already doing. But a broader problem with our approach since 2010 is that it has focused largely on one phase of the regulatory process – the bit between government deciding to introduce a particular regulation, and that regulation coming into force. By contrast, we have paid little attention to the initial decision to regulate, or to studying the effects of a given regulation after it was implemented.

To its credit, the new Better Regulation Framework represents a significant improvement in this area. Firstly, it introduces a requirement that an 'Options Assessment' (OA) is produced – and then scrutinised by the RPC – when the decision to regulate is taken. According to the Better Regulation Framework, the OA should provide…

> *… a convincing rationale for intervention, demonstrating consideration of a range of options (including non-regulatory alternatives) and identifying the main costs and benefits of the policy, with an indication of the likely scale of impacts where possible and supported with appropriate evidence.*[46]

Part of the OA is a scorecard that summarises the probable impact of the proposed regulation, stating whether its effect on a variety of metrics is positive, negative, neutral or uncertain. Those metrics are both quantitative (net present social value, business net present value, direct business impacts, impacts on households) and qualitative (wider impact on trade, innovation, Net Zero and so on). An OA must also provide a preliminary plan for monitoring and evaluating the impact of the regulation.

The next step is for the RPC to independently review the options assessment. If it finds that the proposal to regulate is 'supported by evidence and analysis' and that the responsible department has done a good job with its scorecard and monitoring and evaluation plan, then it will 'green rate' the OA as 'fit-for-purpose' and the proposal can proceed freely to the next stage of the policy process – seeking collective agreement to regulate.

If the RPC considers that the OA is not fit-for-purpose, it can 'red rate' it. While a red rating does not exactly kill the regulatory proposal stone dead, the clear intention is that it will make it much harder for departments to take the idea forward without making changes.

These reforms are good news. Until now, we have paid lip service to the idea of considering alternatives to government regulation. But by the time something 'arrived' within the regulatory process, the most meaningful decisions had already been taken and were not subject to further scrutiny. It was taken as a fait accompli that introducing regulation was the right thing to do, and we never really knew if alternatives (including the option to do nothing) had been properly considered and found wanting.

Nonetheless, there are problems with the early scrutiny aspects of the Better Regulation Framework. For one thing, the guidance says that the 'completed [Options Assessment] is not expected to be published'. This is unacceptable. If we are going to have meaningful scrutiny of the decision to regulate, we cannot leave it all to the RPC (or even an expanded Regulatory Audit Office). The public – and in particular researchers and outside experts examining the regulatory state – need to know how governments are arriving at the decision to regulate, and be able to make (and argue) their own assessments of how well-founded that case is. Just look at the issue of second staircases, mentioned above.

Secondly, the Better Regulation Framework still has too many carve-outs and exemptions. There is of course no need to carry out a full assessment when there are changes to the classification of drugs under the Misuse of Drugs Act, or when technical standards are being updated. But at the moment, the categories excluded from independent scrutiny include 'regulatory provisions that are necessary to

46 Department for Business & Trade, 'Better Regulation Framework – Guidance', p. 23. Link

implement international commitments and obligations', 'regulatory provisions that are necessary to comply with court judgments', and 'regulatory provisions for the safety of tenants, residents and occupants in buildings'.

We would all agree that Britain should meet its international obligations, and that buildings should not fall down. But all of these rules – as we can see with second staircases – do actually have a financial impact. To belabour the point made elsewhere, we cannot have a proper picture of the size of the regulatory state if we simply decide to ignore certain parts of it.

Thirdly and equally importantly, the Better Regulation Framework needs to have real teeth if it is to succeed in its objectives. That means that an RPC red rating for an Options Assessment should really be a death penalty for the regulatory proposal in question. Better still, this should be the point in the process at which the centralised veto power we outlined above would be exercised. If the senior minister in charge of better regulation does not agree with the case being made to regulate, they should be able to nix it right there and then – just as the Chancellor can say no to any spending programme.

> **'The Better Regulation Framework needs to have real teeth if it is to succeed. That means that an RPC red rating should really be a death penalty for the proposal in question'**

Note that this will mean a certain level of discomfort for other ministers. Just as our leaders love to proclaim themselves fans of low taxes, so they always insist that they are pro-business. Yet they also believe, almost universally, that the way they will leave their mark in the history books is by regulating, legislating and intervening. Even if they do not, there will be constant pressure to act in all kinds of areas from the public, the media and MPs. That is why you need someone who can tell their departmental colleagues to go back to the drawing board and find an alternative to regulation.

It is also why independent scrutiny is so important. Within a department, it will be a brave civil servant who stands up to tell a minister that a favoured policy has a disastrous cost-benefit ratio. That is why, in the United States, regulations are scrutinised at the centre by the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget (OMB) which sits within the White House. This is the role we envisage our new Regulatory Audit Office playing, challenging departments' costings and providing independent estimates of its own.

Just as important as early and independent scrutiny is strengthening the other end of the process – that is, what happens after a regulation has been introduced.

At the moment, post-legislative scrutiny of regulations is extraordinarily limited – indeed, as we have repeatedly marvelled, we don't even have a comprehensive list of regulations already in place. But to regulate properly, we need to know whether a regulation is having the intended impact – whether its stated benefits are materialising, but also whether any additional or unintended costs have emerged. And we need some mechanism for continually reviewing and removing ineffective, anachronistic or overly burdensome regulations from the rulebook. In other words, we will not need 'bonfires of red tape' if we have a process for clearing away the dead wood on an ongoing basis.

Here, again, the new Better Regulation Framework gives some cause for optimism – but also appears only to offer a watered-down version of what was previously promised.

Observers expected the Better Regulation Framework to require that post-implementation reviews generally take place two years after the implementation of a given piece of legislation, with findings published in the third year. In fact, the Better Regulation Framework only requires that regulations be reviewed within five years, with departments 'encouraged' not to resort to the five-year maximum.

That is better than nothing – and the requirement that most post-implementation reviews will also be scrutinised by the RPC is welcome – but it is disappointing that the new framework does not go further.

Toughening up the post-implementation phase of the Better Regulation Framework should consist of several changes. Firstly, post-implementation reviews should generally happen sooner rather than later, and be based on clear 'success criteria' laid out when the regulation is introduced. Ideally, these reviews should be carried out by our proposed Regulatory Audit Office, so that departments do not get to 'go easy' on their pet regulatory schemes.

Secondly, it would be extremely helpful to tie post-implementation reviews to mandatory sunset clauses for all regulation. The new Better Regulation Framework is underwhelming when it comes to sunset clauses, suggesting only that they should be used when appropriate.

Yet given the well-established tendency of the regulatory state to grow and grow, sunset clauses are a vital corrective. Ideally, we should reverse the burden of proof, so that regulations automatically expire unless they are reviewed positively enough after implementation that an active decision is made to renew them. This need not be an onerous legislative process; it just needs to be a conscious and active decision taken by the minister responsible.

It would also, we believe, be worth regularly conducting second, long-term reviews of regulations – perhaps after they have been in force for 10 years. This would help to weed out regulations that were no longer suitable or necessary given changed market conditions, and also let us identify downsides that have appeared over longer periods of time, as often happens.

Policy Recommendations

- There should be earlier, independent scrutiny of the decision to regulate, and of the estimates that departments subsequently produce.
- Post-implementation reviews should be carried out for all regulations, and tied to mandatory sunset clauses that would see regulations expire automatically unless reviewed positively and actively renewed.

Wider Principles for Regulatory Reform

In the previous chapter, we set out a series of recommendations to dramatically improve how the state monitors and controls the stock and flow of regulation it produces.

Yet it is also worthwhile making some broader points about the nature of regulation, and Britain's regulatory structures, and setting out some longer-term suggestions.

For example, one of the most frustrating aspects of regulation in the UK is how often rules seem disconnected from desired outcomes and disproportionate to the risks that are being addressed. Too frequently, we see regulations being made without a well thought-through understanding of the trade-offs involved. Regulators are incentivised to eliminate risk as far as possible, rather than to strike the correct balance between a range of competing objectives – hence George Osborne's famous observation, in relation to financial stability, that 'a graveyard is a pretty stable place but it is not necessarily the place you would want to live in'.[47]

'We need to make sure that 'regulate' is not just policymakers' default setting – indeed, the presumption ought to be against passing any new regulation, unless there is a compelling reason to do so'

If we are successfully going to deliver better regulation after Brexit, we need to change not just the rules and structures but our mindset. This, indeed, is the topic of a forthcoming CPS report which will serve as a companion piece to this – drawing on the lessons of the past to set out how to develop a sympathetic regulatory regime for innovative, high-growth sectors.

But it is still worth our setting out some general principles in this section. In particular, you would ideally want anyone considering a new regulation – whether they are a politician, a civil servant, or a regulator – to follow some approximation of the following thought process.

First, is regulation necessary, or are there other, less intrusive ways of achieving the desired outcome? We need to make sure that 'regulate' is not just policymakers' default setting – indeed, the presumption ought to be against passing any new regulation, unless there is a compelling reason to do so. An early scrutiny regime with real teeth, as outlined above, would help to embed this idea of necessity into the broader regulatory system.

Second, having ascertained that regulation is necessary, and that alternative approaches are not suitable, a policymaker should consider the full spectrum

47 G. Osborne, as quoted in: House of Commons, 'Oral Evidence Taken before the Treasury Committee on Tuesday', July 2011. Link

of economic downsides that the regulation could have. Will it increase costs for businesses or consumers? Will it create barriers to market entry and thus reduce competition? Could regulation have a chilling effect on innovation or the desirable kind of risk-taking that drives forward a capitalist economy? Might regulation make the UK a less attractive business and investment destination than other, competitor economies? Might it particularly hurt small or family businesses?

In a sense, these questions all point at the same fundamental thing: whether a given regulation is likely to constrain economic growth. The standardised 'scorecard' approach for regulatory proposals outlined in the new Better Regulation Framework might help to ensure that policymakers assess and consider the full spectrum of potential economic consequences before proceeding with a new regulation. But we need to be alert to the possibility that it just becomes a tick-box exercise; without a corresponding change in mindset, there is only so much that making people fill out a form can do.

Third, having developed an understanding of the potential economic downsides to any regulatory proposal, a policymaker should ask whether regulation is a proportionate response to the risk being addressed, or the broader outcome sought. If a proposed regulation is not deemed proportionate at this stage, the policymaker should consider how it could be streamlined and made less taxing. They should also think again about whether to drop the idea altogether, and go back to the drawing board. Sometimes the best thing to do is nothing.

> **'The standardised 'scorecard' approach for regulatory proposals outlined in the new Better Regulation Framework might help to ensure that policymakers assess and consider the full spectrum of potential economic consequences before proceeding with a new regulation'**

Of course, it is easy to say how policymakers ought to consider regulatory questions from a market-oriented perspective. But rule-makers will inevitably face their own political, bureaucratic and organisational incentives, which might in some cases be quite at odds with the 'better regulation' approach.

The question, then, is how to bake the kind of principles we have just outlined into the regulatory system as a whole. How do we ensure, for example, that regulatory incentives are aligned with economic growth?

One helpful move would be to develop, articulate and enforce a clear conception of proportionality at the heart of the regulatory system – a standard that every regulation should have to meet to come into effect (or, indeed, to remain in force when reviewed). As the Taskforce for Innovation, Growth and Regulatory Reform led by Sir Iain Duncan Smith suggested, proportionality should cut two ways, ensuring that regulation is proportionate to the magnitude of the risk being mitigated, and to the capacity of regulated entities to comply with regulation (in practice, this might mean exempting SMEs from all but the most essential red tape).

Another important change concerns the objectives of our regulators. Many people have talked, over the last few years, about adding growth and competitiveness considerations to regulators' objectives, whether via ministerial guidance or changes to legislation.

Any effort to get regulators to take economic considerations more seriously is to be welcomed. But we need to be realistic about this: we are unlikely to change organisational culture by adding another secondary objective or two to what is, in many cases, already a long list. Ideally, we should declutter regulators' objectives, giving them instead a crystal-clear dual mandate – to achieve their core regulatory objective and to 'support innovation and economic growth'. This dual mandate should be every regulator's primary focus.

Having put that sort of objective in place, the Government (and Parliament) should not be shy about holding regulators to account. We need to ensure that those who lead regulatory agencies fully embrace both aspects of their dual mandate. Indeed, regulators should be required to report on what they are doing to support innovation and growth, as well as their traditional regulatory objectives.

We should not underestimate the challenges inherent in driving organisational change, and in shifting the regulators from a fundamentally risk-averse mindset to one that is more pro-growth. But unless such changes can be made – and sustained – those trying to advance the cause of better regulation are likely to find themselves fighting a losing battle.

Policy Recommendations

- All regulation should be subject to a proportionality principle: any burden must be appropriate to the risk being addressed.
- Regulators should also be given a clear statutory objective to 'support innovation and economic growth' – ideally this should be part of a 'dual mandate' rather than taking the form of a secondary objective.

Remaking the regulatory state

One of the primary problems with regulation is that it tends to inhibit innovation, both in conventional business practices and in the advancement of technology. This has very significant costs in terms of forgone economic growth.

The free market ideal, of course, is permissionless innovation, with government simply staying out of the way.[48] That ideal should certainly be pursued as far as reasonably possible. But we recognise that it is not always feasible, or even desirable, to take a completely laissez-faire approach. That is where regulatory sandboxes come in to play.

The concept here is a simple one. If you are a business bringing a novel product to market, it is often hard to know in advance how existing regulatory frameworks will apply to you – or even which regulator is likely to take an interest. This uncertainty can be crippling for entrepreneurs seeking timely investment.

Regulatory sandboxes can licence and oversee new products and processes, exempting them from existing red tape for some pre-determined period. That allows companies to bring their ideas to market and test them out, even if they do not fit neatly within legacy regulatory structures. It helps innovation to take place without hindrance, but also without completely sacrificing public oversight.

Britain already has several regulatory sandboxes, and both the better regulation consultation and the 'Benefits of Brexit' paper suggested that the Government was keen to set up more. The White Paper, for example, talked about encouraging 'bold,

48 See Adam Thierer, Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom, Mercatus Center, March 2016. Link

outcome-focused and experimental activity from regulators… using test-beds and sandboxes to support innovation and the co-creation of future industries.'

This is very welcome. But there is a case for going further, by bringing existing regulatory sandboxes together under one roof and applying the principle they embody – that old rules are often inappropriate for new ways of doing things – across the entire economy rather than in narrow institutional silos.

Essentially, we are talking about creating an innovation agency – what former Office of Fair Trading chief executive John Fingleton has called an 'n+1 regulator' – to act as a catch-all regulatory sandbox.[49]

Such an approach would have several advantages. It would obviously be extremely helpful for innovative businesses whose ideas cut across different areas of regulation. It would mean that 'sandboxed' innovation was not just confined to specific markets, but could occur anywhere an entrepreneur had a good idea that sat awkwardly within existing regulatory structures.

> **'Essentially, we are talking about creating an innovation agency – what former Office of Fair Trading chief executive John Fingleton has called an 'n+1 regulator' – to act as a catch-all regulatory sandbox'**

It might also establish an institutional advocate for innovation within government, creating pressure to make the regulatory system in general more supportive of novel ideas. And importantly, it would protect new technologies from scaremongering, or accusations of a deregulated free-for-all. Instead, just as we champion and nurture scale-up businesses, so would we champion and nurture scale-up sectors and technologies – until they and their regulatory regime became mature enough to leave the nest.

The creation of such a regulator would be welcome. But it need not be the end of the Government's ambitions when it comes to remaking the regulatory state. In fact, as Fingleton and others have suggested, we could even apply the same principle – that regulatory bodies should be organised around a central, economy-wide purpose – to overhaul and restructure the UK's main economic regulators.[50]

These sectoral bodies – Ofwat, Ofgem, Ofcom, etc – often seem like their existence is set in stone. Yet they are very much creatures of their time. Many were designed to regulate prices and oversee the introduction of competition in previously nationalised industries. But they were also, lest we forget, meant to gradually make themselves redundant, fading into the background as market competition advanced. Yet, several decades on, here they are.

Of course, these sectors do need some regulation. But one big problem with dedicated sector regulators is that they tend to develop too close a relationship with the industries they oversee. This leads to bias towards incumbent firms, and perhaps even a degree of regulatory capture.

49 John Fingleton, 'Economic Regulation and Productivity', Zeeman Lecture, delivered at Regulatory Policy Institute, Oxford, December 2022. Link

50 See, for example, Luke Gardiner & Sam Bowman, 'Institutions for Growth: Four ways to make radical policy realistic in Britain', Medium, December 2019. Link

One clear manifestation of this is in the sector regulators' neglect of their competition powers. In theory, sector regulators hold such powers concurrently with the Competition and Markets Authority (CMA). But in practice, this concurrency means that competition is largely left up to them. The result is that these competition powers are hardly ever exercised. Consumers suffer as a result.

One way forward would be to make competition the sole domain of the CMA. But you could go even further, and looking to wind up the sector regulators altogether. They could be replaced with new bodies focused on core, economy-wide objectives. We could have one regulator dedicated to network access, for example, to manage a variety of monopoly infrastructure. Another could focus on consumer enforcement (absorbing ineffective trading standards bodies) to root out sharp practices.[51]

Over time, we could significantly rationalise and streamline the British regulatory state in this way, replacing countless smaller regulators with a handful of powerful watchdogs with crystal-clear and contemporary missions. Having regulators that were expert in promoting certain key principles, rather than being expert in managing particular industries, could also help to shift the emphasis away from detailed micro-regulation of business practice, and towards a higher-level, principles-based approach to rulemaking.

Policy Recommendations

- Bring existing regulatory sandboxes together into an economy-wide innovation agency, which could apply the sandbox principle to new ideas in all markets.
- Explore the idea of replacing sector-specific regulators with a new generation of regulators focused on core, economy-wide objectives.

51 For more on these ideas, see Sam Bowman & Stian Westlake, 'Reviving Economic Thinking on the Right', chapter 4D. Technology and Innovation. Link

Conclusion

The current Government inherited a relatively well-developed plan for better regulation, and has said all the right things about taking it forward.

But the awkward truth is that good intentions – and even good ideas – are not enough. Previous governments have had good plans on paper, but have found themselves at best running to stand still in terms of the regulatory burden.

If we really do want to make ourselves 'the best regulated economy in the world', ministers will need to succeed where their well-intentioned predecessors have failed – will need to make sure that this time really is different.

Delivering better regulation is central to the Government's goal of delivering higher rates of economic growth, and to demonstrating to the public that Brexit was a good idea. Ministers cannot afford to fail.

But to give this government, or any government, the best chance of success, we need to tackle the causes, not the symptoms – not individual pieces of legislation, but the whole system of legislating and regulating.

'We need to tackle the causes, not the symptoms – not individual pieces of legislation, but the whole system of legislating and regulating'

In this paper, we have shown that the state imposed a heavy burden of regulation over the 2010s. But we have also shown the gaping inadequacies in its system of assessing the extent of that burden, from the many measures which were exempted from the rules, to the EU regulations that were translated directly into UK law without country-specific impact assessments, to the fact that impact assessments are currently treated in Whitehall almost as an afterthought.

The new Better Regulation Framework makes some helpful changes to the previous system, but is in many other respects a weakening of our structures for regulatory control. Unless it is significantly toughened up – in the ways we have described in this report – it is highly unlikely to prevent the endless growth of regulation, or even an acceleration of that process.

Our suggestions for fixing the way we tackle regulation in Britain essentially boil down to three separate imperatives.

First, know your enemy. It is extraordinary that we do not currently have any clear idea of the total costs that regulation imposes on the economy. Nor is there a single, unified repository of UK regulation that government and the private sector can refer to. It is not even clear precisely how many regulators we have, let alone how many regulations. If we are really going to get a grip on regulation, the first step must be to fully understand what we are dealing with.

Second, focus on structures. We need to understand why regulation is often seen as the easy option and take steps to redress the balance. In many respects, our model in this report has been fiscal policy – under which a powerful minister (the Chancellor) and a powerful department (the Treasury) exercises control across Whitehall, under the watchful eye of the Office for Budget Responsibility, as well as the Public Accounts Committee and the National Audit Office. We need to build similar institutional surveillance of the regulatory process as we have for tax and spend.

Finally, if we are going to turn the tide on regulation, we need to make ill-considered rules harder to pass. And if they do come into effect, we need to make it as straightforward as possible to remove them. That means more early scrutiny (including of the decision to regulate), compulsory post-implementation reviews and sunset clauses, and a tougher, more comprehensive regulatory budget. The idea of regulatory budgeting should not die with the Business Impact Target. The RegData approach offers a promising alternative.

‘If we are going to turn the tide on regulation, we need to make ill-considered rules harder to pass. And if they do come into effect, we need to make it as straightforward as possible to remove them’

Beyond that, there is the prospect of thinking more radically about the future of regulation. Brexit offers an opportunity to do regulation in a fundamentally different way, and it is important that the government does not shy away from making big changes. That should mean making innovation and economic growth as much of a priority for regulators as mitigating risk. And we could even explore overhauling the regulators themselves, replacing outdated sectoral bodies with new institutions designed for the economy of the 21st century.

Above all, we need to think differently about regulation – to take it more seriously in every sense. All of the reforms outlined in this report are intended to change the way policymakers on both left and right think about regulation, and to change the fundamental incentives (political and bureaucratic) that underpin the current system. For it is only by learning from the failure of past initiatives that we can move towards a more dynamic and prosperous economic future.

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57 Tufton Street, London, SW1P 3QL
April 2024
ISBN 978-1-914008-46-7