



Response to BEIS consultation: Reforming the Framework for Better Regulation

Introduction

The BEIS [Reforming the Framework for Better Regulation](#) consultation looks at how the UK can *redesign our approach to regulation post-Brexit, to ensure that the framework meets the current demands facing business and society and to ensure the UK grows in strength as a global leader in effective and robust regulatory practices*. It sets out proposals to implement the recommendations from the Taskforce on Innovation, Growth and Regulatory Reform ([TIGRR](#)) and *highlights parts of the Better Regulation Framework not covered by the scope of TIGRR*. The deadline for responses is 1 October 2021, and it is noted they *welcome views from businesses, the community and voluntary bodies on the overall approach to regulation, the role of regulators in the UK framework, how the UK framework for new regulation can encourage the right design of interventions, and how the impacts of regulation are measured and scrutinised*.

The UKRN response has been developed through engagement with our 13 member regulators, and through discussion with BEIS and BRE officials to better understand the nature of the consultation proposals. Given this, the UKRN response is high-level, but we understand many of our members are to respond in more detail either individually, or through their sponsor departments.

UKRN are keen to assist with development of proposals, and to facilitate cooperation and communication with and between our members.

Chapter 3.1 The common law approach to regulation

Question 1: What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common law-focused approach?

Question 2: Please provide an explanation for any answers given.

Question 3: Are there any areas of law where the Government should be cautious about adopting this approach

1. The UKRN welcomes the aspiration for a less codified approach to future regulation – for example through use of enforceable principles or outcomes. Many of our members have or are already implementing a more principles or outcomes-based approach, to focus on securing the best outcomes for consumers in their sectors.
2. However, the operating environments and remits of our member regulators varies widely – *one-size does not fit all*. Some members have indicated that codified or prescriptive rules are sometimes preferred by smaller businesses, and are more appropriate for areas where the risks to health and safety (or human life) are higher. This suggests the ‘ideal’ may be a hybrid mix of prescription or codified rules where appropriate or desirable, with a more outcomes-based approach in other areas where a higher degree of risk can be tolerated, or where change is rapid.

3. Where codified rules are developed, UKRN suggest these should ideally be backed by a clear rationale, purpose, outcome or principle. This would form a legal reference should the prescription become irrelevant for example due to rapidly evolving circumstances, and would support the basis for any derogations or relaxation of rules that may be applied in order to keep pace with rapidly changing situations. Such an approach would support the goals of adaptability and flexibility of regulation made throughout the consultation.
4. Members also observed that many of our sectors have regulation that has built up over years or even decades, and while it may appear desirable to replace much of this codification with principles or objectives for regulators, doing so would be resource intensive and could unravel complex connections between consumer protections. Members will comment in their own responses on their individual circumstances, but it may be that Government could provide support to target and remove/revise specific areas of codified rules in order to understand the benefits and risks, and learn lessons before wider changes are made. As such a resourced 'transition programme' may be helpful to ensure such change can be implemented without impinging on regulators' essential day-to-day business.
5. We should note that financial regulation is subject regulatory reform under a separate policy process which is further advanced so we will not seek to include reference to the specifics of those sectors here.
6. We note that regimes for online regulation are also being developed – the approach to those new frameworks is matter for Government and provides opportunities to develop agile and responsive regulation.

Adopting a proportionality principle

Question 4: Please provide an explanation for any answers given.

Question 5: Should a proportionality principle be mandated at the heart of all UK regulation?

Question 6: Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

Question 7: If no, please explain alternative suggestions.

7. UKRN recognises the importance of proportionate regulation, a principle which already is at the heart of UKRN members' approaches to setting, implementing and enforcing regulation and is embedded in the existing statutory objectives.
8. Introduction of an explicit 'Proportionality Principle' may help to embed this approach across regulators more generally (beyond UKRN members), specifically but not exclusively (as individual Member regulators may have further views):
 - in providing for support for low-level sanctions for relatively minor or first-time non-compliance, in lieu of expensive and slower recourse to the Courts for enforcement action (which can be costly and slow);
 - in providing for a proportionate approach to derogations, exemptions or sandboxes where businesses can demonstrate they can meet the intended outcomes of regulation.
9. These – and other measures which can be explored – support a focus on outcomes rather than "tick-box" compliance.

3.2. The role of regulators

Question 8: *Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?*

- a. *Embedded into existing guidance*
- b. *Embedded into statutory objectives*
- c. *Creating reporting requirements for regulators*
- d. *Other (please explain)*

10. Several UKRN members have objectives related to promoting competition and have done for some time. This may not be true of the wider body of other regulators. Several of our members also have specific concurrent powers with the CMA to enforce competition law in the UK.
11. We note that issues set out in this consultation overlap with the separate BEIS consultation on [Reforming competition and consumer policy](#), and the developing thinking on economic regulation reform more broadly. We would ask government to review responses to those engagements when considering how to take forward better regulation, for example on whether competition requirements form part of any new cross sector regulatory steer.

Question 9: *Should innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?*

- a. *Embedded into existing guidance*
- b. *Embedded into statutory objectives*
- c. *Creating reporting requirements for regulators*
- d. *Other (please explain)*

12. It should be noted that innovation already features in the duties of several member regulators. Effective competition helps drive innovation in markets and where there is market failure such that regulators are required to intervene, one of the outcomes regulators will have regard to is creating conditions for innovation. As noted for competition in response to question 8, innovation objectives may be a candidate for any new cross sector regulatory steer, which itself could usefully draw together the steers that Government provides for all regulators. Regulator-specific SPS' could then draw from this CSPS, providing tailored sector-specific prioritisation for each regulator.

Question 10: *Are there any other factors that should be embedded into framework conditions for regulators?*

13. UK regulators are recognised and emulated globally for promoting a pro-business, pro-investment environment while protecting consumers. One of the fundamental tenets of this is predictability, as set out in Government's [Principles for Economic Regulation](#) issued in April 2011. Frameworks for economic regulation that provide a stable environment, based on regulatory independence that takes a long-term view, are widely

recognised as promoting investment. Such long-term certainty is important to ensure a stable investment regime and ultimately supports lower costs for consumers, therefore the framework conditions for regulators should ideally be enduring. In this context, any short-term direction to regulators should be provided as steers through other means (such as department SPS), for regulators to have regard to in this wider context.

14. Further, as noted in the response to question 9, it is important to tailor and focus steers for each individual regulator so as to not distract from regulation of high-risk areas.

Question 11: *Should the Government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules rather than legislation?*

15. Guidance is an important tool in the toolbox of UKRN members. Regulators provide a body of guidance as necessary to regulated businesses, and there is a range of guidance that ranges from statutory and binding to less formal and advisory. At the less formal end the status of guidance can be relatively unclear and unenforceable, which in itself can cause a lack of clarity.
16. UKRN view, in line with established best regulatory practice, is to that we should seek to minimise growing a large body of guidance and rather focus on ensuring clarity of rules, and focussed guidance where necessary. For example, guidance can provide a useful interpretation for outcomes or principle-based regulation, and can also be used to explain to consumers their rights with respect to regulations.
17. Where it is not possible or desirable to avoid a level of prescription in rules – the UKRN – as set out in response to question 1 – considers that such prescription should be backed by clear outcomes or principles to explain what such rules are intended to achieve. That way if there is any flexibility, derogation or otherwise waiving of the rules, the onus would be on the regulated businesses to demonstrate how they would still meet the intended outcome or principle. As such, outcomes and principles would form the first point of legal reference for an agile approach.

Question 12: *Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes?*

a. legislating to give regulators the same powers, subject to safeguarding duties

b. regulators given a legal duty

c. presumption of sandboxing for businesses

18. The UKRN recognises the advantages of sandboxes, and several members have put in place trials or have formal exemptions or derogations processes, or regulatory carve outs e.g. for small businesses. Such approaches are always balanced against risks, and a blanket approach may not be appropriate where there are safety risks and risks to human life. Furthermore, any such carve-outs should be transparent and fair, so as to minimise risk of 'gaming' by unscrupulous companies to the detriment of consumers or to gain unfair advantage over competitors.

Question 13: *Are there alternative options the Government should be considering to increase the number and impact of regulatory sandboxes?*

19. Sandboxes are only one form of enabling innovation, in sectors where in-depth regulation is a barrier to market entry. We suggest that regulators are given the opportunity to showcase and also develop new ways of promoting innovation, beyond the regulatory sandbox model, and to share their learnings and experiences with other regulators, UKRN, and Government.

Question 14: *If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to Government and Parliament?*

Question 15: *If you agree, what is the best way to achieve this accountability? If you disagree, please explain why?*

20. Regulators are subject to a variety of accountability mechanisms, including through reporting to Select Committee Hearings, audits and regular government review. As such regulators expect their work to be regularly scrutinised by both committees in their sponsor departments as well as a cross-sector committees, such as the PAC and Science and Technology Committees.

21. Regulators welcome the potential to respond more nimbly and directly to tackle new or emerging practices without the need for new government legislation which can take years to develop (for example the consumer protection regime). Some of our members have powers to intervene directly, such as the FCA, and issue fines. We recognise the need to balance powers against accountability, and members will be keen to explore further with policy makers what that looks like in practice in their regimes – noting the parallel policy development on the future of financial regulation, competition and consumer powers, and economic regulation may consider these matters.

22. Some regulators also wish to propose candidate areas for greater flexibility.

Question 16: *Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?*

23. Regulators survey both consumers and regulated firms alike, as well as the wider stakeholder population, to understand their impact and reach. Securing meaningful feedback on the impact of their regulation is key, balanced against the importance of not over burdening businesses and consumers with requests and surveys.

Question 17: *Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?*

24. Most regulators are subject to regular review and audit through a number of mechanisms. Regulators are required to publicly report on their performance and then scrutinised on this by Parliament on a regular basis as well as independent public bodies, e.g.

- NAO: sector by sector scrutiny ranging from rail and product safety (in 2021 alone); cross-sector studies such as the [Vulnerable consumers in regulated industries](#) and [Regulating to protect consumers: Utilities, communications and financial services markets](#);
 - The National Infrastructure Commission undertakes in depth reviews of the UK's frameworks for infrastructure including on regulation, e.g.: 2019: [Strategic investment and public confidence](#), a review of UK's model of regulation for energy, water and telecoms, 2020: [Anticipate, react, recover – Resilient infrastructure systems](#).
 - Some areas are also subject to Market Review by the CMA.
25. The benefits of additional scrutiny need to be balanced against the resource and costs of such exercises.

3.3 Revising the process and requirements of better regulation

An early regulatory gateway

Question 18: *Do you think that the early scrutiny of policy proposals will encourage alternatives to regulation to be considered?*

Question 19: *If no, what would you suggest instead?*

Question 20: *Should the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process?*

26. Regulators actively consider the range of tools to determine what is most appropriate to respond proportionately to market failure and get the right outcomes, and some have recourse to engaging industry on voluntary standards, industry-led codes modifications, publicity of performance etc rather than direct command-and-control regulation.
27. As noted later in the consultation (3.6.2; page 37) the introduction of regulatory offsetting has incentivised the use of alternatives to regulation in regulatory policy making. Is there evidence this has not been successful enough in prompting alternatives to direct regulation? Should regulators look to measure use of such alternatives to regulation?
28. The UKRN recognises there is a role for standards and indeed scorecards, in addition to publication of reporting of performance to 'shine a light' on business performance (e.g. such as league-tables of performance) as an alternative to direct regulation, to encourage improved consumer outcomes. The utility of standards and scorecards should however be monitored with a view to their removal if they do not have impact.

Streamlining regulatory impact assessments

Question 21: *Do you think that a new streamlined process for assessing regulatory impacts would ensure that enough information on impacts is captured?*

Question 22: *If no, what would you suggest instead?*

Question 23: *Are there any other changes you would suggest to improve impact assessments?*

Question 24: *What impacts should be captured in the Better Regulation framework? Select all which apply:*

- a. *Innovation*
- b. *Trade and Investment*
- c. *Competition*
- d. *Environment*

Question 25: *How can these objectives be embedded into the Better Regulation Framework? Can this be achieved via:*

- a. *A requirement to consider these impacts,*
- b. *Ensuring regulatory impacts continue to feature in impact assessments,*
- c. *Encouragement and guidance to consider these impacts, but outside of IAs,*
- d. *Other? (please explain)*

3.4 Scrutiny of regulatory proposals

Question 26: *The current system requires a mandatory PIR to be completed after 5 years. Do you think an earlier mandated review point, after 2 years, would encourage more effective review practices?*

29. Again, one size does not fit all. Whilst many markets move quickly and regulation needs to adapt to and reflect this, a two year review may be too short a period of time to evaluate the effectiveness of a legislative change, as markets may have not adjusted in depth. Furthermore, current PIR exercises can be burdensome and time/resource consuming for regulators, so any reduction of timescale should be commensurate with a reduction of focussing of scope of the PIR.
30. UKRN also notes that members also have their own review and lessons-learned processes, that for example allow them to improve repetitive processes following assessment of impacts. This is something that can be further explored with members if this is within scope of the PIR review.

Question 27: *If no, what would you suggest instead?*

Question 28: *Which of the options described in paragraph 3.4.10 would ensure a robust and effective framework for scrutinising regulatory proposals?*

Option 1) Scrutiny undertaken internally as part of government processes. *This could take the form of a cross-governmental group of ministers, supported appropriately by the civil service.*

Option 2) An independent body *could continue to provide a scrutiny function which would operate independently from the Government. They could provide scrutiny of regulatory proposals and their impacts to government departments directly.*

Option 3) Government scrutiny with independent expert advice. This could take the form of a cross-governmental group of ministers as in option 1, but with an external body providing expert input and advice, or scrutiny could be provided by a joint committee of ministers and experts from industry and academia.

d. Other (please explain)

31. Scrutiny is applied to the regulatory process through a range of checks and balances currently in place, including the RPC and Select Committee Hearings, and accountability measures placed on regulators. Any new measures should be implemented in a way to replace rather than duplicate what is currently in place, and with a view to streamlining the regulatory process.
32. With regards option 1) – independent experts would help mitigate the risk to regulator independence and long-term approach. Option 2) would need to involve clear accountability for the independent body and sufficient resourcing. Any benefits of option 3) would need to be balanced against risks of delay, risks to independence and long-term framework, and resourcing costs.

3.5 Measuring the impact of regulation: reviewing the BIT

Question 29: Which of the four options presented would be better to achieve the objective of striking a balance between economic growth and public protections?

a. Adjust

b. Change

c. Replace

d. Remove

e. Other (please explain)

33. Please see response to question 28.

3.6 Regulatory offsetting: One-in, X-out

Question 31: What do you think are the advantages of this approach?

Question 30: Should the One-in, X-out approach be reintroduced in the UK?

Question 34: How best can One-in, X-out be delivered?

Question 33: How important do you think it is to baseline regulatory burdens in the UK?

a. Very important

- b. Somewhat important*
- c. Somewhat unimportant*
- d. Not very important*

Question 32: *What do you think are the disadvantages of this approach?*

- 34. The UKRN recognises the value of offsetting as a tool to help reduce the overall regulatory burden on business. However, the UKRN agrees with BRE that offsetting – as implemented in the past – was a blunt tool, compromised as it was often circumvented by exemptions and limited through no account being given for regulation avoided and the full benefits of regulation applied.
- 35. Instead, a more realistic and reflective assessment of regulatory budgets would be preferable – possibly including assessment of where alternatives to regulation have successfully avoided additional regulatory burden, and of the full benefits of regulation. Such a system could incorporate baseline of regulation for essential government priorities around risky areas such as health and safety, and new requirements for key priorities such as improved building safety and more broadly the net zero agenda.
- 36. Specifically, the UKRN cautions against introducing a gateway on new regulation that would be contingent on meeting stringent conditions; such a system could impact regulators' ability to respond in a timely and agile way to new challenges. Instead, any system needs to be agile and reflective of the burden of political commitments.
- 37. Exemptions may still have a role for exceptional or unforeseen circumstances, but ideally should be incorporated into any new framework in future revisions.

3.7 Further comments

Question 35: *Are there any other matters not mentioned above you would suggest the Government does to improve the UK regulatory framework?*