Re-engineering Regulation

Policy Exchange

A Blueprint for Reform

Stephen Booth

Foreword by Mark Sedwill

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About the Author

Stephen Booth is Head of Britain in the World and leads the Re-engineering Regulation Project within Policy Exchange. He was previously Director of Policy and Research at the think tank Open Europe. He has written extensively on trade, regulation, and immigration policy. He has appeared regularly in the media and to give evidence to several parliamentary select committees, including the House of Commons International Trade Committee and the House of Commons Committee on the Future Relationship with the European Union. His work at Policy Exchange focuses on the UK's economic relationships with Europe and the rest of the world and he is the author of the Policy Exchange report *Post-Brexit freedoms and opportunities for the UK*.

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Chair's Foreword

Mark Sedwill

As the global economy recovers from the pandemic, absorbs the impact of Russia's invasion of Ukraine, and wrestles with inflation, the British economy faces the additional challenge of the Brexit transition. Whatever the future direction of fiscal and monetary macro-policy, re-shaping the supply side micro-economy is vital to the growth, productivity, and competitiveness on which our future prosperity depends. The United Kingdom's regulatory regime isn't as eye-catching a topic as debates over tax, spending and interest rates, but getting our regulatory regime right is central to Britain's long-term economic growth in the post-Brexit world.

Brexit has seen regulatory authority returned to the UK. So far, however, we have largely maintained the regulatory system inherited from the EU. It is time to act, and not by setting fire to all regulation. Why? Smart, agile regulation must be part of post-Brexit Britain's competitive advantage, while maintaining the economic, social and environmental standards our citizens demand, and which are central to modern free trade agreements, including the new free trade areas encompassing some of the world's fastest growing economies with which Britain wishes to trade.

We need regulation to improve safety and environmental standards, protect citizens, promote fair competition and innovation, and tackle abuse. That said, it is clear existing regulatory regimes often ratchet risk aversion and red tape onto both regulators and regulated. To avoid blame for things going wrong, regulators are incentivised to add precautionary procedures to the legislation and regulations for which they are responsible, and, to avoid being caught out, compliance teams within businesses and the public sector add another layer. Big businesses can afford this regulatory tax. SMEs and public services can't. And every pound spent on precautionary padding is a pound not invested in public service improvement or business innovation.

Too often, regulation snarls the compliant in red tape without tackling real abuse. Public sector professionals, like nurses, teachers and police officers, complain that they are diverted from the frontline by unnecessary bureaucracy, compromising service to citizens and damaging their professional well-being. Businesses say the same.

Nor is it a level playing field across regulators. Some have magisterial authority and can intervene flexibly across their sectors as new issues arise. Others find themselves colliding with each other and struggle to respond to changing circumstances. Elsewhere, rapid technological change is bringing the challenges of how to regulate new sectors, such as artificial intelligence and machine learning, while offering opportunities

to modernise regulatory supervision and compliance to free up resources and reduce burdens on those they regulate. This is a good thing. And we already know how, as our response to the pandemic has offered an insight into a less bureaucratic model for many in the public sector. In summary, there are lots of potential levers to pull to deliver better regulation.

For the past few months, I have convened a panel of leading professionals from the private sector and public service, who have worked with the think tank Policy Exchange to develop the reforms needed to address these systemic and cultural challenges. The key proposals could – and should – be adopted by governments of all political complexions.

Britain needs fewer, more authoritative regulators, with clear mandates from Government and accountable to Parliament, for promoting the health as much as assuring the hygiene of their sectors, judged on impact, not process. Regulators' performance should also be subject to regular independent review by the National Audit Office.

Regulators should be required to collaborate with each other and with international counterparts to triage their interventions to minimise the regulatory burden on compliant individuals and institutions, support and coach those who need help (especially SMEs), while putting most effort into tackling the deliberately abusive.

Regulators should be dynamic and responsive. This means establishing feedback loops and internal challenge functions, drawing on data analysis and behavioural science, plus the experience of public servants at the sharp end and citizens and business on the receiving end of regulation. This should ensure that regulatory regimes and interventions are the minimum necessary to deliver public safety and confidence.

These concrete proposals for reform to the regulatory system will succeed only if underpinned by the right incentives and culture throughout that system, into the businesses and institutions being regulated, with Government and from Parliamentary oversight. Regulators must be confident that ministers have their backs. Regulated institutions and individuals must be confident that regulators want them to succeed.

The UK has the opportunity both to streamline regulation and modernise it to deliver the high environmental and social standards our citizens desire plus the competitive edge the post-Brexit economy demands. It is now for the Government and Parliament to seize it.

Executive Summary

Regulation is about managing risk and offering essential protections from harm, whether it be to individual citizens, or society at large. These risks range over economic, social, environmental, health and other threats. However, regulation inevitably imposes costs as well as benefits. Successive governments' recurrent attempts to reduce red tape and the number of regulatory quangos illustrate that there is a constant tension between the impulse to regulate and an acknowledgement that regulation places costs on organisations and limits the freedom of individuals and their capacity to exercise judgment. Unnecessary or disproportionate red tape imposes costs on businesses that are passed on to consumers and, in the public sector, it reduces the resources available to deliver public services. Regulation can act to change incentives to the extent that organisations get diverted from their original or core mission.

Calls for new regulation are inevitable as new risks for society to manage emerge. But, the UK needs to ensure that its regulatory regime delivers long-term economic and social objectives. Excessive and complex regulation stifles the competition, innovation and motivation that is needed for organisations and individuals to increase productivity and economic prosperity. Every pound or hour spent on regulatory compliance is one that cannot be used to improve public services or invest in innovation, so there needs to be accountability for imposing these costs.

However, we live in a world where, when things go wrong, society in general, including the media, are quick to look for someone to blame and, generally, the public thinks government is best placed to deal with the risks facing society. Fundamentally, risk aversion means that the incentives to regulate tend to outweigh the incentives to forbear from regulating, or review and simplify existing regulation. The reforms proposed in this report are intended to address this ratchet effect.

Regulation should only be deployed where it is necessary and should be targeted at tackling abuse and insuring against risk that causes harm. Good regulation should be designed and implemented to achieve desired outcomes in ways that are as cost-effective and user-friendly as possible, and regulation should be responsive to evidence of its successes or failures. This requires a regulatory system that is transparent, democratically accountable, dynamic, and reflexive, with incentives to drive constant improvements to regulation and the performance of regulators.

The need for review and reform of the regulatory state

There are new as well as perennial reasons why significant reform is required:

- Brexit has seen large swathes of regulatory power returned to the UK, offering not only the choice to diverge from rules inherited from the EU, but raising questions about how these powers should be wielded by government, parliament and arm's length or independent regulators. Having "taken back control" of regulation from the EU, the Government has undertaken to delegate many of these powers to regulators. The powers of regulators are set to increase and this calls for a commensurate increase in democratic scrutiny and accountability.
- The response to new policy challenges such as climate change, increasing the resilience of national infrastructure, and rapid technological advances means arm's length regulators are increasingly weighing political trade-offs. These trade-offs have distributional consequences for different producers and providers and their consumers and between generations – choices that should be made by democratically elected politicians. There needs to be greater strategic guidance from government, and more active dialogue between regulators and minsters, to provide greater clarity about the outcomes government wishes to deliver via regulation. Equally, regulation and regulators need to adapt to the rapid pace of technological development and the demands and opportunities presented by the digital revolution. Regulators need to understand, anticipate, and react to evolving trends in the digital and the real economy and take the opportunity to modernise their operations.
- The persistent challenge of ensuring that regulation balances the management of risk against the bureaucratic burdens placed on regulated businesses and the public sector has been brought into sharper focus by the current economic challenges we face and the experience of the pandemic. Outside of the EU, there is an opportunity to reduce burdens on smaller, entrepreneurial businesses, and improve outcomes for consumers through greater competition and innovation. There need to be greater incentives and accountability throughout the regulatory system to ensure regulatory outcomes offer protections, without unduly hindering competitiveness, innovation, and growth.
- Regulatory reform tends to be preoccupied with the impact of regulation on businesses in the private sector. However, an over-arching regulatory policy should not only consider the impact that regulation has on business, it must also address regulation and regulators affecting the public sector and the delivery of public services. The desire for accountability in the delivery of public services is both understandable and legitimate. Inspections and

reporting can have a critical role to play in highlighting variations and improving performance in public service. However, managerial accountability to a set of targets devised remotely in Whitehall, which often do not reflect the practical challenges faced by healthcare workers, teachers, and the police, does not build trust and creates bureaucratic burdens.

Key themes and recommendations

1. Restructuring the regulatory state and the role of regulators

The design of an effective regulatory system must address: the division of responsibilities between government, parliament, regulators, and the regulated; policies to improve the quality of regulation and its cost effectiveness; and mechanisms to ensure democratic scrutiny and accountability.

Taming the rise of the regulators. Much of the institutional architecture of the modern regulatory state can be traced back to the 1980s and 1990s. Since this period, arm's length regulators, each with varying degrees of independence from government, have played an increasingly significant role in the governance of the private and public sector. Delegation to arm's length regulators can provide essential expertise in the design and implementation of regulation. Insulating technical regulatory decisions from day-to-day politics provides stability and certainty to long-term investors and can improve public confidence in individual decisions. However, government cannot and should not abdicate responsibility for setting strategic priorities or making difficult political choices. The fundamental principle should be that democratic politics should decide the ends, while regulators, subject to accountability mechanisms, are given the tools and provide the means for achieving those ends.

Government and Parliament should hold regulators to account for the hygiene and health of their sectors. i.e. the balance struck between reducing risks for the beneficiaries of regulation – be it to consumers, users of public services, or society as a whole – and the outcomes that regulation has produced in the sectors they regulate, such as the burden on those they regulate or the impact on innovation, competitiveness and growth. It should be emphasised that 'do nothing' or making better use of existing regulation is a legitimate regulatory choice.

Fewer, bigger regulators in key areas would enable greater democratic accountability for regulatory outcomes, both regarding the protection of the public and the cost of regulation. The sheer number of regulators operating in certain sectors brings challenges of managing the risk of overlaps, duplication, or inconsistency in regulation. For example, meeting the demands of the UK's multiple financial regulators can be a major barrier to innovation and new market entrants, who do not have as much resource as larger, well-established firms. Meanwhile, in England, the NHS is regulated via 10 different service regulators and 8 different regulators of the healthcare professions. The overlap of functions

simultaneously increases the burden of regulation on the NHS, creates a potential for conflicting requirements that need to be reconciled, and risks individual regulators avoiding responsibility for the consequences of regulatory failures. Consolidating the number of regulators in individual sectors would subject the leaders of these regulators to greater scrutiny and accountability. There should be a presumption against the creation of new regulators and government should explore opportunities to consolidate the number of regulators in any given sector. However, consolidation should not come at the expense of ensuring that the remit and objectives of regulators are coherent and joined-up.

When establishing or reviewing existing regulators, government and parliament should ensure that the statutory objectives and duties of regulators are set out as clearly as possible, including how those objectives and duties should be prioritised. It is welcome that the Government has committed to reviewing the duties of the utility and financial regulators. Government should conduct a thorough review of the statutory objectives and duties of all regulators. Such a review requires cross-departmental coordination since many policy objectives, such as addressing climate change or the protection of vulnerable customers, cut across sectors and the activities of several regulators.

Ministers should make greater use of powers to issue strategic guidance to regulators, particularly where such guidance can ensure effective coordination across sectors. Strategic guidance should not be a substitute for statute, but in an increasingly complex world and if regulators are required to weigh multiple objectives, it cannot be expected that all the challenges regulators might face can be foreseen and accounted for in legislation. For example, guidance should specify how political trade-offs around questions such as fairness for vulnerable consumers or levels of resilience should be judged, rather than simply directing regulators to have regard to a general or vague objective. To avoid operationally independent regulators becoming subject to short-term political pressure, this guidance should be given once a parliament.

Meanwhile, regulators should have a formal and transparent mechanism for requesting strategic guidance from ministers when they feel their statutory objectives are in conflict. Providing structures for a two-way dialogue, so long as it is transparent, would not compromise regulators' independence over individual decisions. However, it would bring greater clarity to regulators, regulated entities, and the public, about government's desired outcomes and increase democratic accountability. In securing greater clarity and transparency around regulators' objectives and ministerial guidance, measures should be taken to minimise the litigation risk that would involve the trade-offs and assessment of priorities being second guessed by the courts.

Regulators should define where the boundary between systemic and non-systemic risk lies in their field and make this public, so that these judgments are subject to scrutiny. Regulation often places a disproportionate burden on small businesses compared to larger

competitors due to resource constraints and requirements that raise barriers to entry or scale. Tougher regulation is appropriate for the systemically important – be it in finance, pharmaceuticals, or infrastructure – while regulation can be more accommodating for others. There should also be greater transparency regarding how regulators judge the appropriate level of supervisory oversight applied to regulated organisations moving up the systemic risk scale. There should not be sharp step changes but rather a gradual escalation considering size and, most importantly, risk.

Gaining a greater grip on regulatory policy at the centre of government. Over time, institutional responsibility for cross-government policy on regulation has shifted from the centre of government to the business department. It should be returned to the centre of government to increase coordination, prioritise areas for reform, and hold departments to account for regulatory costs and benefits.

Successive governments have developed various policymaking tools, such as the use of regulatory impact assessment and cost-benefit analysis, under the banner of "Better Regulation". The evidence suggests that while the use of impact assessments has increased transparency regarding the estimated costs and benefits of new regulation, it has had a limited impact on incentivising policymakers to adopt alternatives to regulation. Other tools, such as post-implementation review, are not used frequently enough to have a significant impact on efforts to simplify or streamline the stock of regulation.

To resist regulating in the face of risk is a politically difficult choice to make. However, it is essential that evidence and analytical processes are used to assess whether regulating avoids the significant risk of doing more harm than good. **Policymakers should always consider alternatives to statutory regulation, such as education and information, self-regulation, for example through codes of conduct, standards or accreditation, and co-regulation, and explain why these tools would not meet the policy objective.**

The Government's proposals to overhaul the Better Regulation framework have the welcome potential to encourage departments to consider alternatives to regulation, or the most cost-effective means of regulating, before the decision to regulate is made. Equally, the commitment to place greater emphasis on reviewing regulation once it is in place, and subsequently at regular intervals, would better enable government and parliament to reform or repeal regulation that is either ineffective or imposes excessive costs. However, these tools can only be effective if they are used and adhered to. For example, departments currently only conduct post-implementation reviews on between 25% and 40% of the regulations that should be reviewed. Ultimately, if government wishes to use these tools to promote Better Regulation, it must hold departments and regulators to account for doing so.

Meanwhile, there is currently no high-profile forum for coordinating reform across the whole of the public sector, or the same degree of cross-government attention and oversight that applies to the private sector.

Therefore, much of the work on public sector regulation remains in silos or is sub-sector based.

Government should establish a new Regulatory Reform Unit within the Cabinet Office and appoint a dedicated Minister for Regulatory Reform. This new unit would consolidate and merge the functions of the Cabinet Office's Brexit Opportunities Unit and the Better Regulation Executive, which is currently in the Department for Business, Energy, and Industrial Strategy. The new Regulatory Reform Unit would return strategic responsibility for regulatory reform to the centre of government, increasing cross-government oversight and accountability for private and public sector regulation. This unit should be responsible for developing the Better Regulation framework, conducting periodic reviews of the role and performance of regulators, and developing long-term government priorities for regulation.

The Covid-19 pandemic has offered an insight into a less bureaucratic model for many in the public sector. The pandemic placed immense pressures on staff working in frontline services to perform in exceptionally difficult circumstances. However, there is evidence that the need to streamline processes and remove some bureaucratic demands in many cases proved liberating for staff. **A bolstered Regulatory Reform Unit should conduct a cross-government review of the regulatory burdens relaxed during the pandemic with a bias to removing them permanently.**

2. Continuous improvement and feedback

Enhancing parliamentary scrutiny and democratic accountability. Democratic scrutiny and accountability are essential to ensuring regulation is effective and necessary.

Parliament should hold government to account for its overall regulatory strategy. This includes its policies to improve the quality and reduce the burden of regulations. Parliamentary scrutiny should also be applied to the interaction between government and regulators. A more active dialogue between government and regulators is desirable but this needs to be transparent and weighed against regulators' independence to make day-to-day decisions. There is a risk that short-term political considerations lead to conflicts arising between regulators' objectives or that regulators are left to work out for themselves how to balance multiple objectives. **Parliament should probe whether government guidance to arm's length regulators is either sufficiently clear or overly prescriptive**.

Regulators should be regularly audited against the objectives set for them by government and parliament. To increase transparency and accountability, **regulators should publish easily digestible performance metrics in their annual reports**. This should include measures of their performance against statutory objectives and ministerial guidance, the impact of their activities on industry and consumer outcomes for their sector, efforts made to simplify existing regulation, and operational costs and staff numbers over five years.

Given the technical complexity of regulation and the work undertaken

by regulators, parliament would benefit from greater expert input on the outcomes that regulation generates in individual markets and across sectors. Therefore, **the NAO should be empowered and resourced to conduct and publish regular audits of regulators' performance, including industry and consumer outcomes for their sector.** NAO audits should draw on feedback from regulated entities and consumer bodies, such as ombudsmen, to inform its assessment of regulators' performance.

Departmental select committees should continue to scrutinise sectoral regulators associated with their department. However, an enhanced cross-sector parliamentary role is required. Given their other activities, these committees do not have the time and resource to dedicate to detailed scrutiny of government's overarching regulatory priorities or consider the increasingly significant impact of regulation across sectors. **The Public Accounts Committee (PAC) could be given the responsibility for providing democratic oversight of overarching government policy on regulation and the performance of regulators. Alternatively, this function could be given to a new a dedicated House of Commons Committee or a Joint Committee of both Houses.** The PAC is conventionally chaired by a politician from the opposition party and replicating this model would ensure it took an independent view from government. However, the publication of independent expert assessments of regulators' performance would mean political and public debate is informed by sound evidence. Enhancing these scrutiny and accountability functions will require additional resources and the development of new skills within the NAO and among the secretariats supporting parliamentary committees.

Focussing on outcomes rather than process. How regulators seek to meet their objectives and implement and enforce regulation is just as important as reforming the structure of the regulatory state. Regulation is only effective if it achieves the desired outcome and tackles abusive or harmful practices. Equally, the methods regulators employ to meet their objectives can have more or less of a burden on those they regulate.

Government and parliament should encourage and challenge regulators to explore how outcomes-based, collaborative approaches to delivering their regulatory objectives would improve outcomes for the beneficiaries of regulation and improve regulatory efficiency.

Risk or outcomes-based approaches to regulation allow for a more flexible, adaptable, and proportionate approach, which can be more supportive of innovation and growth. Rather than focussing on detailed rules, regulators can work with those they regulate to improve outcomes for consumers, industry, and society. Regulators can also target their resources and interventions on stamping out abusive practices, while building trust with those that demonstrate they are meeting expected outcomes.

How much flexibility regulators will have to adopt this approach will to some extent depend on the relationship between regulators and to whom they are accountable, notably government and parliament. It will

be important that the instinctive reaction to any failure is not just to call for more rules and that there is sufficient stability regarding the long-term outcomes that regulation is intended to deliver, enabling regulated entities to plan. It should be noted that outcomes-based regulation is not necessarily a substitute for rules and process. Rules are required to ensure regulation upholds minimum standards. Meanwhile, if the objective of outcomes-based regulation is vague and creates uncertainty, ever increasing amounts of guidance are required, which can create its own burden.

The extent to which a more collaborative relationship between regulators and the regulated is possible or appropriate depends on the sector. Some sectors, such as aviation, already operate an open and collaborative relationship. However, there are sectors in which an adversarial relationship between regulator and those they regulate may be harder to avoid. For instance, the high stakes nature of financial services, and the economic and political risks associated with failures, will inevitably lead to legitimate concerns about regulatory capture.

Encouraging the professionalisation of regulators and harnessing outside skills. Regulators must possess the skills and expertise to fulfil their functions effectively. A greater emphasis on outcomes-based regulation requires personnel with improved training in risk management and best practice tools, supported by a culture change throughout the regulator. Securing the best talent requires a combination of recruiting and training graduates and hiring talent from regulated sectors, mindful of the risk of capture.

Regulators should seek to facilitate the movement of talent in and out of regulators throughout all career stages. This includes making greater use of secondees from regulated sectors to provide important perspectives on how regulation affects behaviour in regulated organisations as well as operational insights to ensure regulation is workable in practice. Equally, encouraging secondment to and from regulators in other countries would offer opportunities to learn from other jurisdictions and promote UK regulatory philosophy elsewhere. Given the generally high regard in which UK regulators are held internationally, greater professionalisation within regulators could provide an important opportunity to exercise UK soft power.

Government should encourage regulators and education providers to develop dedicated training programmes and greater opportunities to transfer knowledge across different areas of regulation. The Bank of England's recent partnership with Warwick Business School to offer a postgraduate qualification in global central banking provides an example others could follow.

Encouraging internal challenge within regulators, informed by feedback loops. A greater focus on regulatory outcomes, rather than processes, calls for more effective feedback loops between regulators and the regulated, and regulators and the beneficiaries of regulation. Feedback loops should provide regulators with crucial information about their impact on outcomes in their sector. For example, the costs of regulation are often

amplified by compliance teams within regulated organisations due to risk aversion and gold-plating, and therefore the impact can go beyond what regulators intended. Confident, outcomes focussed regulators should use feedback to develop a culture of robust internal challenge, continuous improvement, and give greater clarity to regulated entities about how to comply with regulation in a cost-effective way.

Each regulator should ringfence some of its budget to fund an internal challenge function, drawing on feedback from the experience of those that are regulated and consumer representatives. Internal challengers should act as agents for continuous improvement, review the impact of existing rules, identify opportunities for regulatory simplification, and provide a counterweight to the natural tendency towards mission creep. Research on why regulated entities may be reluctant to engage with regulators is limited, but reasons can include fears of retribution for raising issues with regulators. Therefore, regulators that have a close supervisory relationship with those they regulate, such as within financial services or inspectorates in the public sector, could model an internal challenge function on the Bank of England's Independent Evaluation Office (IEO). The IEO conducts in-depth evaluations of the Bank's performance but sits at arm's length from other internal functions and reports directly to the Court. Crucially, it is empowered to seek external input from those who are affected by Bank policy and regulation. It is therefore an important channel of intelligence directly to the Court, unfiltered by the executive. Such an arm's length structure could provide guidance to regulated entities seeking support with how to comply with regulation, without the fear of retribution from supervisors or those carrying out enforcement.

3. Cooperation, collaboration, and modernisation

Government should require regulators to collaborate, and there should be a statutory duty for regulators to report on how they comply with that requirement. Performance against the requirement should be audited by the NAO. There remains significant untapped potential to improve regulatory effectiveness and efficiency through greater cooperation and collaboration between regulators. For example, greater collaboration between the economic regulators would ensure that they do not take contradictory actions regarding government policies on climate change and resilience.

Regulators should use collaboration and data-sharing to target their interventions on the routinely uncompliant and take a lighter touch approach to those that can demonstrate a history of compliance. Information and data sharing provide significant opportunities to develop more efficient and targeted regulatory interventions. At its most basic level, data sharing can fulfil the "tell us once" principle, whereby regulated entities do not have to provide the same information to multiple regulators. Meanwhile, pilot projects developed by individual regulators have demonstrated that more sophisticated use of data sharing and risk-based approaches to enforcement could significantly improve efficiency

across multiple regulators and reduce burdens for those they regulate.

Every regulator should be obliged to produce and publish a digitisation plan for its activities where appropriate. Regulators need to adapt regulation to the digital revolution and take greater advantage of digital processes, such as automated regulatory reporting and artificial intelligence, to free up resources and reduce burdens on those they regulate. This plan should set out:

- A vision for digitising the conduct of regulation within its remit, together with a specific plan to implement this vision, including costs and timetable. This plan should address topics such as machine readability of rule books, digital reporting to the regulator and use of artificial intelligence. This technology is likely to be most useful in simplifying rules-based compliance in sectors such as finance but would not be appropriate where subjective judgment plays a significant role in determining outcomes, for example in media regulation or decisions regarding social services.
- A route to digitise the operations of the regulator itself, including infrastructure and communications.

These published plans should be reviewed by the NAO and be subject to public discussion, debate, and parliamentary accountability.

Individual reforms must be underpinned by culture change

Regulation requires complex trade-offs to be made between risk and insurance, in terms of tolerance for either. However, the need to address the culture around regulation, risk, and responsibility throughout the regulatory system – in government, parliament, regulators, regulated entities, and public debate – has emerged as a key theme throughout our research and stakeholder engagement. Understandably, ministers, policymakers, regulators, and those subject to regulation have a general fear of the consequences of being blamed for failures. Indeed, new regulation often comes as a direct response to a high-profile scandal. In many cases a regulatory response may be warranted to provide greater public protection, but in others regulation can stem from the desire for "something to be done", establishing a cycle whereby ever-increasing levels of regulation, rules and guidance are both the consequence and the cause of increased risk aversion.

Greater transparency and democratic accountability must be underpinned by culture change throughout the regulatory system. A system that seeks constantly to improve outcomes for society, and promotes efficient and effective regulation, rather than simply adding to its volume and complexity as a knee-jerk reaction to past crises, requires a mature national debate about risk appetite and public safety.

Moving to a culture that is more focussed on outcomes than process also requires a shift in the attitude of the regulated. Regulated organisations often complain about the burden of rules-based regulation,

but simultaneously crave the security and certainty that rules and tick-box compliance can provide. A successful move to outcomes-based regulation therefore requires regulated organisations to take on greater responsibility for improving and demonstrating improved outcomes without defaulting to tick-box compliance.

About this report

Re-engineering Regulation Project Advisory Panel

This research project has been supported by an Advisory Panel of leading figures from a range of fields across the public and private sector. Advisory Panel members attended four editorial roundtables and provided comments on report drafts. They may not necessarily agree with every analysis and recommendation made in this report.

Advisory Panel members:

- **(Chair) Lord Sedwill KCMG FRGS,** former Cabinet Secretary and National Security Adviser.
- **Sir John Armitt CBE,** Chairman of the National Infrastructure Commission and National Express Group.
- **Lord Bilimoria CBE DL,** Chancellor, University of Birmingham, former President of the CBI and Chairman of the Cobra Beer Partnership.
- **Baroness Falkner of Margravine,** Member, Enforcement Decision Making Committee, Bank of England, and Chair, Equality and Human Rights Commission.
- **Dame Patricia Hodgson DBE,** Deputy Chair of Policy Exchange, former Chair of Ofcom, and former Principal of Newnham College, Cambridge.
- **Dame Elaine Inglesby-Burke CBE,** non-executive director at the National Institute for Health and Care Excellence (NICE), former Interim Chief Nurse at Liverpool Universities Hospitals, and former Group Chief Nursing Officer at Salford Royal Hospital and the Northern Care Alliance Group.
- **Sir Stephen Laws KCB QC,** former First Parliamentary Counsel.
- **Barnaby Lenon CBE,** Professor and Dean of Education at University of Buckingham and former Headmaster of Harrow School.
- **William Salomon,** Senior Partner of Hansa Capital Partners LLP.
- **Sir Paul Tucker,** fellow at Harvard Kennedy School and former Deputy Governor of Bank of England.
- **Rt Hon Lord Udny-Lister Kt PC,** former Senior Strategic Adviser to the Prime Minister.
- **Mark Yallop,** Chair of the Financial Markets Standards Board.

The purpose and scope of this report

The starting point of Policy Exchange's *Re-engineering Regulation Project* is that an effective regulatory system should be characterised by informed, proactive, and proportionate risk management, focussed on delivering better outcomes for society and individuals.

Our objective is not to reduce necessary regulatory protections. Calls for new regulation are inevitable as new risks for society to manage emerge. However, good regulation should always be focussed on the outcomes policymakers intend to deliver and must balance the costs against the benefits. It should be designed and implemented to achieve them in ways that are as cost-effective and user-friendly as possible, and regulation should be responsive to evidence of its successes or failures. This requires a regulatory system that is transparent, accountable, dynamic, streamlined and better targeted, with incentives to drive constant improvements to regulation and the performance of regulators.

Given the breadth and complexity of the UK's regulatory landscape, the objective of this report is not to offer a detailed evaluation of sector-specific regimes or individual rules. The aim is to provide principles and proposals for reform which are applicable across the UK's wider regulatory system.

Our aim is to inform and influence government's ongoing reform of regulatory policy, and how parliament develops its role in providing scrutiny and accountability for regulation. We hope that our ideas will help practitioners within regulators and those they regulate to consider how reform would improve the design and implementation of regulation in their sectors. The beneficiaries of an improved regulatory system would not just be businesses, consumers, wider society, and public protection, but the many professional workers and individuals in the private and public sector whose daily lives are negatively affected by poor regulation, which limits their freedom and responsibility to exercise their professional judgment.

Methodology

This report is based on desk research, interviews, and a series of workshops with experts and practitioners across regulators and regulated sectors in the private and public sector. The following workshops were organised to discuss cross-cutting themes and lessons from particular sectors:

Re-engineering Regulation Project workshops	
1	Regulatory design and structures.
2	Collaboration and feedback throughout the regulatory system.
3	Regulation and public services (policing, education, and healthcare).
4	Regulation of financial services.
5	The opportunities and challenges from the digitisation of regulation.

1. Introduction: why reform of the regulatory state is needed

1.1. The regulatory landscape

Regulation is a necessary component of a modern democratic society and market economy. The need for regulation typically stems from an imbalance of interests or information between providers of goods and services, on the one hand, and the beneficiaries of regulation, on the other. Fundamentally, regulation is about managing risk and offering essential protections from harm, whether it be to individual consumers of goods and services, or society at large. These risks range over economic, social, environmental, health and other threats. Government uses regulation to set frameworks that enable the private and public sector to deliver public policy objectives, such as investment in the energy transition and improved standards of public services. Effective regulation facilitates competition and investment by establishing the rules of the game across markets.

Regulation inevitably imposes costs as well as benefits. Regulators are funded by government or the sectors they regulate, but by far the biggest impact – economic or otherwise – are the obligations imposed on organisations and individuals to change their behaviour and to demonstrate compliance with rules or processes. Successive governments' recurrent "wars" on red tape, "bonfires" of quangos and pledges to roll back the "nanny" state illustrate that there is a constant tension between the impulse to regulate and an acknowledgement that regulation places costs on organisations and limits the freedom of individuals and their capacity to exercise judgment and to innovate. Overly complex or poorly implemented regulations create barriers to new market entrants, stifling economic growth and innovation.[1] Unnecessary or disproportionate red tape imposes costs on businesses that are passed on to consumers and, in the public sector, it reduces the resources available to deliver public services.

It is up to elected representatives in Government and Parliament to design a regulatory system and legislation that strikes the balance between the need to reduce the risk of harms and the constraints that regulation places on organisations, individuals, and the drivers of economic growth. However, the regulatory state has become increasingly entrenched and complex, due both to the cumulative impact of regulation and arm's length regulators playing an increasingly important role in the governance of the private and public sector. Lord Justice Haddon-Cave has argued that

1. CMA (2020), *Regulation and competition; a review of the evidence*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857024/Regulation_and_Competition_report_-_web_version.pdf

the rise of the regulatory state has "been the most significant cause of the volume and density of laws in this country."[2]

The rise of the regulators

Much of the institutional architecture of the modern regulatory state can be traced back to the 1980s and 1990s. Since this period, a key feature of regulation has been the delegation of power from government and parliament to arm's length regulators, each with varying degrees of independence from government. There are currently over 90 regulatory bodies in the UK (see Appendix). Between them, these regulators had a total expenditure of around £5bn (a figure which of course excludes the significantly higher compliance costs faced by those they regulate).[3]

Regulators operate within and across various fields of activity:

Economic regulation

Privatisation of the utilities and nationalised industries led to the establishment and development of independent, sector-specific 'economic regulators'. Today, these are Ofwat, Ofcom, Ofgem, the Civil Aviation Authority, the Office of Rail and Road, and the Payment Systems Regulator.[4] These economic regulators typically control prices and conduct in markets such as the privatised utilities, where the provision of services or the control of a substantial part of the infrastructure needed to deliver them is dominated by the successor to a state monopoly. They promote efficiency and fairness for consumers, while providing stability and predictability to enable long-term investment in these vital network industries and infrastructure. The Competition and Markets Authority (CMA), which is not strictly an economic regulator, exists in parallel and has overall responsibility for the UK's competition regime.[5]

Business conduct regulation

Traditionally self-regulated professions, such as accountancy, legal services, and the financial markets, have come under the oversight of specialised regulators with statutory authority to regulate business conduct, protecting the interests of consumers, other businesses, and wider society. For example, the Financial Conduct Authority (FCA) regulates the conduct of financial services firms, while the Prudential Regulation Authority (PRA) regulates the safety and soundness of firms. Some regulators have responsibilities which span different types of regulation. Ofcom regulates telecoms infrastructure and the provision of telecom and postal services but also regulates the conduct of broadcasters, including on matters such as the impartiality of news programming.[6] While the role of regulating infrastructure and the services it is used to provide is analogous to other independent economic regulators, such as Ofgem and Ofwat, the regulation of broadcasters' impartiality can take Ofcom into politically charged debates around freedom of speech.

2. Lord Justice Haddon-Cave (17 June 2021), *English law and descent into complexity*, Gray's Inn reading; https://www.judiciary.uk/wp-content/uploads/2021/07/ENGLISH-LAW-AND-DESCENT-INTO-COMPLEXITY-1.pdf
3. This excludes local authorities, which also play an important role in the regulatory framework by granting licences, conducting inspections, and taking enforcement action. See NAO (2020), *Regulation overview 2019*; https://www.nao.org.uk/wp-content/uploads/2020/03/Overview-Regulation-2019.pdf
4. There are also economic regulators where responsibility for some industries has been devolved, in Northern Ireland and Scotland, such as the Northern Ireland Authority for Utility Regulation and Water Industry Commission for Scotland.
5. Although the structure of the privatised industry regulation was built on the model of the OFT and the Competition Commission (the CMA's predecessor) and the CMA continues to have a role in the economic regulation of those industries see eg sections 11Cff of the Electricity Act 1989.
6. https://www.ofcom.org.uk/__data/assets/pdf_file/0020/42770/ch2.pdf

Social regulation

Cross-cutting and social regulation such as health and safety at work, food safety, product regulation, and environmental protection is typically applied across the entire economy to protect the whole population from risks. These areas of regulation also have dedicated regulators, such as the Health and Safety Executive and the Environment Agency. These cross-cutting horizontal regulators often intersect with sector-specific regulators in the private and public sector.

Public sector regulation

The public sector is not only subject to the same cross-cutting regulation as the private and voluntary sectors, a growing number of dedicated regulatory bodies and inspectorates oversee the performance of the public sector and the delivery of public services, such as healthcare, education, and policing. This has been accompanied by an increasing use of performance management tools – indicators, targets, and audits – intended to improve standards and provide accountability. Arguably, this makes the public sector more highly regulated than any other.

1.2. There are new as well as perennial reasons why reform is needed

There are several factors that call for a modernising regulatory agenda:

1.2.1. Regulating post-Brexit

Brexit has seen large swathes of regulatory power returned to the UK, offering not only the choice to diverge from rules inherited from the EU, but raising questions about how these powers should be wielded by government, parliament, and arm's length or independent regulators. The current Government has placed a renewed focus on regulation as part of its post-Brexit programme. One element of this is to review the entire body of regulation inherited from the EU and identify priority areas for reform.[7] Financial services rules are being reviewed separately under the Treasury's Future Financial Services Framework Review.[8]

Beyond individual rules, Brexit offers the opportunity and the necessity to undertake broader reform of the apparatus of the regulatory state. The Government has established the Brexit Opportunities Unit within the Cabinet Office to review and reform regulatory policy and, in January 2022, *The benefits of Brexit*[9] white paper stated the broad ambition to make the UK the "best regulated economy in the world", setting out a series of principles for reform (see box). These high-level proposals and aspirations set the direction of travel towards a regulatory system that is more agile, dynamic, proportionate, and accountable. The challenge is to turn these principles and aspirations into practical reality.

7. https://www.gov.uk/government/speeches/lord-frost-statement-to-the-house-of-lords-16-september-2021
8. Currently, many changes to retained EU law would require primary legislation and therefore significant parliamentary time. Therefore, the Government is seeking new powers to diverge from individual inherited EU regulations more easily under a Brexit Freedoms Bill. The planned Financial Services and Markets Bill will revoke retained EU law and replace it with bespoke UK regulation, much of which will be placed on regulators' rulebooks. See HMG (2022), *Queen's Speech 2022*; https://www.gov.uk/government/speeches/queens-speech-2022
9. HMG (2022), *The benefits of Brexit*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexit.pdf

Summary of the principles and aspirations for regulatory reform set out in *The benefits of Brexit* white paper

The benefits of Brexit white paper set out the following headline principles and aspirations for the UK's approach to regulation:

A sovereign approach

- Reviewing inherited EU regulation and prioritising areas for reform and divergence.
- Ensuring regulators have the right powers, duties, and accountability mechanisms.

Leading from the front

- Encouraging bold, outcome- focused and experimental activity from regulators, who will work collaboratively with businesses to embracing new technologies, such as robotics and artificial intelligence.

Proportionality

- Regulation to support businesses, not burden them.
- Introducing scrutiny earlier in the policymaking process to ensure alternatives to regulation are considered.
- Regulators working collaboratively with industry to identify issues and drive a culture of continuous improvement.
- A target to cut £1 billion in costs to business by removing inherited EU red tape.

Recognising what works

- Greater emphasis on evaluating the impact of regulation, particularly after it has been implemented.
- Greater accountability to ensure departments conduct evaluation.
- Reforming impact assessments and the Business Impact Target.
- Use of sunset clauses and Legislative Reform Orders.

Setting high standards at home and internationally

- Working with international partners and engaging in regulatory diplomacy to influence international rules, norms, and standards.

Having "taken back control" of regulation from the EU, the powers of regulators are set to increase. For example, the Health and Safety Executive has an expanded role in regulating chemicals, the Food Standards Authority has greater responsibility for assessing food and animal feed safety risks and the CMA has increased responsibilities for assessing mergers, and for enforcing competition law.[10]

Meanwhile, the Treasury's Financial Services Future Framework Review and Financial Services and Markets Bill 2022[11] has set out the Government's intention to move inherited EU law from the statute book to the rulebooks

10. NAO (2022), *Regulating after EU exit*; https://www.nao.org.uk/wp-content/uploads/2022/05/Regulating-after-EU-Exit.pdf
11. https://www.gov.uk/government/collections/financial-services-and-markets-bill

of the financial regulators, the PRA and FCA. This will bring inherited EU law into line with the approach taken with domestic financial regulation, giving regulators significant power to develop rules and guidance without further legislation in parliament.[12]

While the EU tended to regulate through prescriptive, detailed legislation, which was scrutinised and amended line-by-line by the European Parliament, the model being proposed for the UK's financial regulators would enable a more agile and flexible approach to regulation. It remains to be seen exactly how much discretion other regulators will be granted within the statutory framework.[13]

However, as Chief Executive of the Prudential Regulation Authority Sam Woods has noted, increasing the power of regulators raises issues of accountability and scrutiny, which was previously conducted at the EU level:

> *"I can see the point that some in Parliament have been making that if we do more rule-making, and with European Parliamentary scrutiny of rule-making no longer present, then we might be expected to do more to support Parliament in probing technical regulatory issues."*

With the power of regulators set to increase, it is increasingly important there are adequate mechanisms in place to ensure that regulation remains anchored by democratic accountability and scrutiny.

12. HM Treasury (November 2021), *Financial Services Future Framework Review: proposals for reform*; chapter 7; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032075/FRF_Review_Consultation_2021_-_Final_.pdf

13. The Government's Better Regulation Framework consultation indicated that this was an option being considered for different regulators.

Opportunities for and limits on regulatory divergence in the international context

Brexit offers opportunities to diverge from inherited EU regulation.[14] However, when assessing the case for divergence or the design of future regulation, the UK will need to consider how its domestic regulatory regime impacts on global UK businesses and multinational businesses operating in the UK, and how it compliments or clashes with other jurisdictions.

Independent regulation can offer the UK the opportunity to utilise first mover advantage to boost international competitiveness and influence regulation globally. For example, the UK has led the way globally in its policy and regulatory approach to fintech, supported by initiatives such as the FCA's regulatory sandbox and innovation team.[15]

However, fragmentation of domestic regulatory regimes can pose significant costs on organisations operating across multiple jurisdictions and there is a balance to be struck between developing the UK's domestic philosophical approach and how this interacts with the approach of large non-UK jurisdictions, particularly the EU and the US. In sectors where international standards play a major role, such as financial services, UK regulators are likely to follow international standards set by the Basel Committee of Banking Supervision (BCBS), the International Association of Insurance Supervision (IAIS) and the International Organisation of Securities Commissions (IOSCO).

International trade agreements also present potential practical constraints. For example, the UK-EU Trade and Cooperation Agreement is designed to discourage certain forms of regulatory divergence. Both sides are bound to maintain a minimum level of labour protection, environmental protection, and subsidy control. A rebalancing mechanism allows either side to argue that divergence in practice justifies rebalancing trade protection and restrictions on market access. These provisions primarily address conditions of production not product or service regulation, which are covered by UK and EU market regulation.

1.2.2. Responding effectively to long-term policy challenges and the digital revolution

When they were first established, the economic regulators' duties were more focussed on their roles of regulating monopolies, promoting competition, and setting prices. Determining which policy issues were for government and which for regulators was therefore relatively simple. However, the need to balance the short and long-term interests of consumers has become more complex as these original duties have grown and increasingly need to be balanced against other long-term policy challenges, such as transitioning to net zero, and investing in the upgrade and resilience of key infrastructure. Requiring independent regulators to consider, for instance, resilience alongside price necessarily raises questions that require political trade-offs. This calls for a more active dialogue between ministers and arm's length regulators.

The use of price controls and/or competition within markets has traditionally been viewed by policymakers as the primary method of achieving the best outcomes for consumers. However, there has been a growing consensus that greater focus should be placed on the consumer interest, and that competition policy alone is insufficient. The

14. Policy Exchange (2021), *Post-Brexit freedoms and opportunities for the UK*; https://policyexchange.org.uk/publication/post-brexit-freedoms-and-opportunities-for-the-uk/

15. Ron Kalifa (2021), *The Kalifa Review of UK fintech*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978396/KalifaReviewofUKFintech01.pdf

Government has therefore said that it intends to legislate to give the CMA greater administrative power to enforce consumer protection law directly, without having to go through the courts.[16] The National Infrastructure Commission[17] has previously called for the utility regulators to gain a similar power to enforce consumer law in their sectors to quickly address consumer detriment.[18]

Meanwhile, the rapid pace of technological development in the past two decades is transforming the economy and many businesses, as it has also changed society more widely. More information, greater processing power, immense storage facilities for data, increased connectivity, private networks, and the internet, all coupled with the development of highly sophisticated analytical engines, have rebuilt traditional businesses as well as enabling many new ones. This new economy is moving faster and in more complex ways than its analogue forerunner.

Regulation needs to adapt to these changes, more rapidly than it is so far doing, for several reasons. The most obvious issue, on which most attention has been focussed, is the question of how to regulate new and fast-moving technologies themselves to address risks and enable innovation.[19] This is an important debate, but there are at least two other aspects to consider.

First, the business of traditional firms that are (already) being regulated, and the risks that they face and pose to consumers, is being changed as they respond to the digitisation happening around them; and regulation needs to be nimble enough to adapt to the evolving landscape. Increasing digital expertise at the regulators, and adapting regulation itself to the digital age, is the first challenge.

Second, regulators themselves, largely analogue organisations in an increasingly digital world and facing material resourcing challenges, need to become more digital. Digitising the business of regulation is not just a rational response to the wider economic and societal changes, it is vital to enabling them to fulfil their obligations and at an affordable cost.

1.2.3. Increasing incentives to ensure regulation is necessary and effective

Given the current economic backdrop, the need for stronger incentives throughout the regulatory system to ensure regulation does not distract from productive activity, or unduly hinder competitiveness and innovation is greater now than ever. Strong political leadership and accountability will be required to establish a culture throughout the system that increases the incentive to constantly review and simplify regulation, rather than adding to its volume and complexity.

The need to rebalance the culture around regulation, risk, and responsibility throughout the regulatory system – in Government, Parliament, regulators, regulated entities, and public debate – has emerged as a key theme throughout our research and stakeholder engagement. We live in a world where, when things go wrong, society in general, including the media, are quick to look for someone to blame and, generally, the

16. HMG (2022), *Reforming competition and consumer policy*; https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response#chapter-3-consumer-law-enforcement-1

17. National Infrastructure Commission (2019), *Strategic investment and public confidence*, p55; https://nic.org.uk/app/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf

18. This will require a review of the consumer protection regimes for the privatised utilities and the related institutions within these regimes - see eg s. 27A Water Industry Act 1991.

19. BEIS (2019), *Regulation for the fourth industrial revolution*; https://www.gov.uk/government/publications/regulation-for-the-fourth-industrial-revolution/regulation-for-the-fourth-industrial-revolution

public thinks government is best placed to deal with the risks facing society.[20]

Understandably, ministers, policymakers, regulators, and those subject to regulation have a general fear of the consequences of being blamed for failures. Indeed, new regulation often comes as a direct response to a high-profile scandal. In many cases a regulatory response may be warranted, but in others regulation can stem from the desire for "something to be done", establishing a cycle whereby ever-increasing levels of regulation, rules and guidance are the consequence and the cause of increased risk aversion. Fundamentally, the risk appetite of regulators tends to be low and the incentives to regulate tend to outweigh the incentives to review and remove existing regulation.

A review conducted into the causes of complex legislation by former First Parliamentary Counsel Richard Heaton noted that "…while there are many reasons for adding complexity, there is no compelling incentive to create simplicity or to avoid making an intricate web of laws even more complex. That is something I think we must reflect upon."[21] Regulators that are risk averse tend to elevate compliance processes over outcomes, causing further regulatory creep and increasingly complex regulation. The 2017 Cabinet Office *Regulatory Futures Review* highlighted an example of this type of regulatory creep regarding Ofgem:

> *"When energy supply licences were first introduced more than 10 years ago each supplier licence was approximately 160 pages long. A review to get rid of unnecessary and verbose conditions led to a shorter licence of approximately 60 pages. But now the licence is approximately 500 pages long! Approximately 200 of these pages were introduced by Ofgem in response to specific incidents of wrongdoing within the industry such as mis-selling and unauthorised doorstep sales."*[22]

This effect can be compounded by regulated entities taking a risk averse approach to compliance, particularly in sectors where firms and regulators have an adversarial supervisory relationship, such as financial services, or where public service providers are subject to inspection. Over-compliance with regulation or guidance can result from the fear of getting on the wrong side of a regulator and regulation has created an industry for consultants and lawyers offering advice on compliance or assurance services.

Meanwhile, small businesses complain about so-called "blue tape" requirements, which are not imposed by statutory regulation but by customers, other businesses, businesses intermediaries, or consultants, which result in compliance levels above those required by statutory regulation.[23] Research by the Health and Safety Executive identified several sources of disproportionate requirements, including local authority procurement practices, the requirements of insurers driven by concerns over future litigation, supply chain management systems, and third party consultants. It noted that those who impose these burdens are "not always held to account for the burdens they impose, nor is the value that they may add critically evaluated."[24]

20. PwC (23 May 2021), *How the pandemic has changed public attitudes to risk*; https://www.pwc.co.uk/services/risk/rethink-risk/insights/how-pandemic-changed-public-attitudes-to-risk.html
21. Office of the Parliamentary Counsel (2013), *When laws become too complex: a review into the causes of complex legislation*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf
22. Cabinet Office (2017), *Regulatory Futures Review*, p31
23. FSB (2021), *Escaping the maze: how small businesses can thrive under the British Columbia regulatory model*, p9-10
24. HSE (2019), *Understanding the impact of business to business health and safety 'rules'*, p5; https://www.hse.gov.uk/regulation/assets/docs/understanding-impact-business-to-business-health-safety-rules.pdf

Regulation often places a disproportionate burden on small businesses compared to larger competitors due to resource constraints and requirements that raise barriers to entry or scale.[25] Outside of the EU, the UK has an opportunity to move away from the maximum harmonisation approach and adapt regulation to help smaller, entrepreneurial businesses. Regulation should reflect a mature evaluation of and debate about systemic risk. Tougher regulation is appropriate for the systemically important – be it in finance, pharmaceuticals, or infrastructure – while regulation can be more accommodating for others.

The lever of regulation is difficult to resist, and once regulation is in place a natural status quo bias often results in a reluctance to remove or simplify it. For example, an academic study of anti-money laundering regimes across the globe, estimated that "compliance costs exceed recovered criminal funds more than a hundred times over, and banks, taxpayers and ordinary citizens are penalised more than criminal enterprises."[26] A 2017 Government review[27] of the UK's anti-money laundering regime noted that banks felt under so much pressure from supervisors to focus on tick-box customer identity checks that resources were diverted away from more effective risk-based anti-money laundering prevention and detection functions – such as the monitoring of suspicious transactions. Meanwhile, the overwhelming focus on the use of hard copy identity documents often prevented people, particularly those vulnerable to financial exclusion, from being able to access bank accounts altogether.

1.2.4. A greater emphasis on public sector regulation

Regulatory reform tends to be preoccupied with the impact of regulation on businesses in the private sector. However, an over-arching regulatory policy should consider the major impact that regulation and regulators have on the public sector and the delivery of public services.

The desire for accountability in the delivery of public services is both understandable and legitimate. Inspections and reporting can have a critical role to play in highlighting examples of good and bad performance and variations in public service. However, the question is whether the methods employed are effective, efficient, and proportionate. The philosopher Baroness O'Neill argued in her 2005 critique of public sector regulation, *A View from 'Near Abroad'*, that the quest for accountability can often result in over-centralised, top-down management:

> *"The distinction between management and accountability has been increasingly blurred for those working in the public sector. The blurring is particularly evident in the big public sector institutions such as the NHS, schools and universities. All are assured that they must manage themselves, and that they are not managed from, but are rather accountable to, Whitehall. Yet the ways in which funding is provided, in which targets are set, in which information is required, in which performance is measured and monitored in abstraction from primary tasks, and sanctions are organised, often converge with and become indistinguishable from management from afar.* [28]

25. Federation of Small Business (2021), *Escaping the maze: how small businesses can thrive under the British Columbia Regulatory Model*.
26. Ronald F. Pol (2020), *Anti-money laundering: The world's least effective policy experiment? Together, we can fix it*, Policy Design and Practice, 3:1, 73-94; https://www.tandfonline.com/doi/full/10.1080/25741292.2020.1725366
27. HMG (March 2017), *Cutting red tape: review of the UK's anti-money laundering and counter financing of terrorism regime*, p11-12; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594290/anti-money-laundering-crt-red-tape-review-report.pdf
28. O Neill, O. (2005), 'A View from "Near Abroad"' in *Changing Times: Leading Perspectives on the Civil Service in the 21st Century* and its enduring values, ed. and pub. Civil Service Commissioners

O'Neill does not argue that accountability is undesirable or unnecessary but that many current methods of seeking accountability damage rather than repair trust. Rather, O'Neill has stressed the need for "intelligent accountability":

> *"Intelligent accountability, I suspect, requires more attention to good governance and fewer fantasies about total control. Good governance is possible only if institutions are allowed some margin for self-governance of a form appropriate to their particular tasks, within a framework of financial and other reporting. Such reporting, I believe, is not improved by being wholly standardised or relentlessly detailed, and since much that has to be accounted for is not easily measured it cannot be boiled down to a set of stock performance indicators."*[29]

Regulation in the public sector forms part of a wider set of performance management tools, such as guidance, standards, targets, and inspections. A common issue across public services such as policing, education, and healthcare, is the tension between regulation, managerial accountability, and professional autonomy. Participants in our workshop recognised that regulation and accountability play an important role in improving service delivery. However, there was also a common view that regulations, rules, and guidance, performance management, and accountability frameworks that significantly limit professional autonomy distract from the core task of service delivery and have a significant negative impact on staff morale.

In a report for the NHS Confederation, Professor Sir Chris Ham noted that performance management and regulation have contributed to improvements in NHS care, such as reductions in waiting times and healthcare-acquired infections, and improvements in areas of clinical priority like cardiac and cancer care. However, he added:

> *"Equally important is the danger that performance management fosters a culture of compliance and risk aversion that inhibits innovation and engagement with local people. At its worst, reliance on standards and targets has the effect of disempowering those working in the NHS, creating an over dependence on the centre and a substantial workload in responding to regulators."*[30]

In June 2022, Sir David Sloman, Chief Operating Office of NHS England, highlighted that these regulatory costs reduce the resources available to deliver frontline services:

> *"Is the total amount of resource that we have on the overhead in the right place, compared to the amount of total resource we've got on frontline clinical delivery? Undoubtedly there needs to be a shift in that… probably most organisations of any nature in the UK, would be having the same debate. I think there's been a history of this… the number of pennies in every pound that we spend as a percentage of the total on regulation has probably gone too far. That needs to swing back, but undoubtedly there is going to be a need for some sort of regulation."*[31]

Meanwhile, the National Association of Head Teachers has argued that a culture of 'tick-box' compliance and lack of professional autonomy can

29. O'Neill, O. (2002), *Reith Lectures: a question of trust – Lecture 3: called to account*; http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020417_reith.pdf
30. Ham, Prof. Chris (2022), *Governing the health and care system in England: creating conditions for success*, p24; https://www.nhsconfed.org/sites/default/files/2022-02/Governing%20the%20health%20and%20care%20system%20in%20England.pdf
31. Health Service Journal (16 June 2022), *Spending on regulation has 'gone too far', says NHSE chief.*

stifle the innovation and motivation needed to strive for excellence:

> *"Top-down accountability might help schools get to 'good' but it will struggle to lift standards higher…a 'tick-box' culture has taken hold in many schools, where compliance with what Ofsted is perceived to want has become the overwhelming driver of improvement activity."*[32]

Case study: Police crime recording procedures do not provide the clarity intended

The National Crime Recording Standard (NCRS) was introduced due to concerns that some police forces were under-recording crime and that victims of certain crimes were less willing to come forward to report them. The NCRS is designed to be victim-centred, ensuring that victims of crime receive a proper service, promote consistency between forces, and maintain public confidence in the police by informing the public "of the scale, scope and risk of crime in their local communities."[33]

No one could reasonably disagree with the objectives of the NCRS, and the accurate recording of crime is understandably a desirable way of informing society about the risk of crime. However, the logic of the rules governing NCRS risks providing an inaccurate picture to the public, while imposing a significant bureaucratic burden on police forces and individual officers.

The threshold for the requirement to record crimes is set very low, with the 2021 Home Office Counting Rules stating that[34]:

> *"An incident will be recorded as a crime (notifiable offence) for 'victim related' offences if, on the balance of probability:*
>
> (A) *the circumstances of the victims report amount to a crime as defined by law (the police will determine this, based on their knowledge of the law and counting rules); and*
>
> (B) *there is no credible evidence to the contrary immediately available.*
>
> *A belief by the victim (or a person reasonably assumed to be acting on behalf of the victim, that a crime has occurred is usually sufficient to justify its recording."*

The noble aim of this victim-centred approach is to ensure that victims are encouraged to come forward to report crime and have confidence that it will be reported as such. However, these rules do not necessarily conform well to the reality police face in many cases. For example, situations such as a drunken fight lack the convenient distinction between victim and offender. The risk is either that victimhood is ascribed to the first person to make a compliant, or that the police must record several crimes when the public would reasonably view it as just one incident. In contrast, many crimes have no direct victim. Examples include criminal markets in firearms, drugs, or prostitution.[35] It is therefore questionable how accurate a picture NCRS can provide society of the true risk of crime.

32. NAHT (2018), *Improving school accountability*, Report of the NAHT Accountability Commission, p4; https://www.naht.org.uk/Portals/0/PDF%27s/Improving%20school%20accountability.pdf?ver=2021-04-27-121950-093/
33. Home Office (2014), *Vision and purpose statements for crime recording*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387762/count-vision-december-2014.pdf
34. Home Office (2021), *Crime recording general rules*, sections 2.2 and 2.3.; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992833/count-general-jun-2021.pdf
35. McFadzien, K. and Phillips, John K., (2019), *Perils of the subjective approach: a critical analysis of the UK national crime recording standards*, journal article in Policing, pp1-14.

Meanwhile the administrative burden of fulfilling the NCRS and the system of audit is substantial. Police forces' crime recording is inspected by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) under the Crime Data Integrity (CDI) programme. The victim-centred approach means that such audits are biased strongly towards detecting any crime that might have been missed, rather than a recorded crime that did not in fact take place. The NCRS requires no actual evidence in order to record a crime, other than a belief by the victim that a crime has occurred, whereas a recorded crime cannot be cancelled unless "additional verifiable information" (AVI) is "found and documented which determines that no notifiable crime has occurred."

Dave Thompson, Chief Constable of West Midlands Police, has stated that he is "gravely concerned" about the crime recording rules, arguing that the AVI threshold makes it "close to impossible" to remove a recorded crime, which "creates an inaccurate picture and corrupts the assessment of what is happening in crime." He added that "the shift away from recording the principal crime to recording multiple crimes is creating a bureaucracy and a misleading picture of what can be detected."[36] Donna Jones, the Police and Crime Commissioner for Hampshire and the Isle of Wight, noted the pressures placed on her force by the need to demonstrate that every possible crime had been recorded:

> *"The constabulary has people whose entire job is to listen to old 999 calls to scan for any side issues that may have been missed. In due course, Her Majesty's Inspectorate will request recordings of a sample of the calls received and will calculate how many crimes have been missed. Fall below the target and there will be trouble."*[37]

Advocates of the NCRS would no doubt state that despite the system's flaws, it is better than nothing and, that the aims of the NCRS rules are well-intentioned. However, against this, it is important to evaluate whether the burden of the process of compliance and audit of these rules is proportionate to the outcomes achieved for wider society.

The Covid-19 pandemic has offered an insight into the potential of a less bureaucratic model. The pandemic placed immense pressures on staff working in public services to perform in exceptionally difficult circumstances. However, there is evidence that the need to streamline processes and remove some bureaucratic demands in many cases proved liberating for staff.[38]

A Department of Health and Social Care consultation of frontline healthcare staff noted that "We have heard a clear message that there is an appetite not to go back to 'old ways'."[39] The Government's Vaccine Taskforce and the Medicines and Healthcare products Regulatory Agency's use of a rolling review process to speed up the development and authorisation of Covid-19 vaccines without compromising on safety is an example of what can be achieved when there is a focus on outcomes over process.[40]

38. Royal College of General Practitioners (2020), *General practice in the post Covid world: Challenges and opportunities for general practice*, p4;

39. DHSC (24 November 2020), *Busting bureaucracy: empowering frontline staff by reducing excess bureaucracy in the health and care system in England*; https://www.gov.uk/government/consultations/reducing-bureaucracy-in-the-health-and-social-care-system-call-for-evidence/outcome/busting-bureaucracy-empowering-frontline-staff-by-reducing-excess-bureaucracy-in-the-health-and-care-system-in-england#what-does-bureaucracy-look-like-in-the-health-and-care-system

40. House of Commons Public Account Committee (2021), *Principles for effective regulation*, p8; https://committees.parliament.uk/publications/7292/documents/76394/default/

36. See Dave Thompson's on twitter (24 November 2021); https://twitter.com/DaveThompsonCC/status/1463577635833982980?s=20&t=DMHwNN1xVETfuH_L92OcSw and https://twitter.com/DaveThompsonCC/status/1463578637345734663?s=20&t=DMHwNN1xVETfuH_L92OcSw

37. See article for Conservative Home (13 August 2021), *Red tape is thwarting the efforts of police to fight crime*; https://www.conservativehome.com/platform/2021/08/donna-jones-red-tape-is-thwarting-the-efforts-of-the-police-to-fight-crime.html

2. Democratic design of the regulatory state

The design of an effective regulatory system must address: the division of responsibilities between government, parliament, and regulators; policies to improve the quality of regulation and its cost-effectiveness; and mechanisms to ensure democratic scrutiny and accountability.

Government and parliament are ultimately responsible for the overall design of a good regulatory framework and incorporating it into law, including whether regulation is needed and what powers to delegate to arm's length or independent regulatory bodies. Meanwhile, responsibility for developing individual regulations rests with individual departments, and parliament enacts or amends primary legislation and scrutinises secondary legislation. Government is responsible for monitoring and improving regulatory performance within this framework and is accountable to parliament for this.

This section of the report therefore examines:

- The role of regulators: their duties and objectives; the relationship between government and regulators; and the number, overlap, and coherence of regulators.
- Government Better Regulation policies to improve the quality of regulation and reduce regulatory burdens.
- Parliamentary scrutiny and accountability.

2.2. The role of the regulators

Regulators wield significant power. Where designated to do so, regulators implement and enforce regulation, operating within the powers defined by ministers and parliament or within a framework of statutory duties and objectives approved by parliament. This can include capping prices; issuing licenses, guidance, and rules; monitoring compliance; and imposing sanctions.

Regulators operating at arm's length or independently from government can build up important technical skills and expertise, which can be used to deliver what is often detailed technical regulation and advice to government. However, the main purpose of giving regulators independence from government is to insulate decision making from the pressures of day-to-day politics. For example, the independence of economic regulators is cited as an important factor in providing the certainty and stability to attract private finance for long-term investment in

regulated sectors.[41] Delegation to regulators can also support policymaking in the public interest by committing governments to a long-term policy objective, which can only be amended by expending political capital to alter the statutory framework.

The role and status of arm's length regulators have not developed systematically. The *Regulatory Futures Review* noted that "in some cases regulatory activities have been combined with non-regulatory activities" and that the combination of functions delegated to regulators "is often a product of history and convenience as much as logic".[42] Therefore, while some regulators have been established by statute solely as regulators, other organisations are hybrids, carrying out regulatory functions alongside other activities. For example, the Environment Agency is a non-departmental public body responsible for flood and coastal risk management and advising government, but it also regulates a wide range of industry sectors regarding environmental standards.

Meanwhile, the administrative status of various arm's length regulatory bodies is often inconsistent. The House of Commons Public Accounts Committee previously noted that:

> *"The Care Quality Commission (CQC) and Ofsted are both inspectorates. The CQC inspects health and social care services in England, and Ofsted performs a parallel role inspecting children's services. However the CQC is an [non-departmental public body], and Ofsted is a non-ministerial department. The reasons for this difference are not clear. It is also not clear to what extent each is intended to be under the influence of the minister in order to support government policy, or independent of ministerial influence in order that its regulatory functions are not seen as subject to political influence."*[43]

In practice, regulators' degree of independence from government depends on the specific governance and budgetary arrangements that apply to them. In most cases, government has a role in making appointments to regulators' boards, and sometimes issues guidance which signals government's priorities and view of how legislation should be interpreted. Some regulators, such as the Health and Safety Executive, rely on central government for the majority or all their budget, while others, such as the FCA, generate all their revenue from charging the industry they regulate.

Ofsted identifies independence as one of its core values.[44] However, the Department for Education influences Ofsted's work in a number of ways. The Department can direct Ofsted to carry out inspections, for example if it has particular concerns about a school, and the regulator must prioritise these inspections, which reduces the resources available for other work.[45] In contrast, the FCA has far greater operational independence from the Treasury.

These differences may be appropriate given the considerations of regulating different sectors, and it is understandable that government should seek a closer relationship with public sector regulators. However, it is clear some 'independent' regulators are more independent than others and this can make it difficult for the public to understand lines of accountability.

41. HMG (2011), *Principles for economic regulation*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf
42. Cabinet Office (2017), *Regulatory Futures Review*, p17
43. House of Commons Public Accounts Committee (4 November 2014), *Who's accountable? Relationships between Government and arm's-length bodies*; https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/11005.htm
44. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916620/Ofsted_strategy_summary.pdf
45. NAO (2018), *Ofsted's inspections of schools*; https://www.nao.org.uk/wp-content/uploads/2018/05/Ofsteds-inspection-of-schools.pdf

Indeed, the names of various regulators can contribute to this confusion. The various "Of-s" – Ofgem, Ofwat, and Ofcom – that regulate the private sector utilities are more politically independent than the "Of-s" – Ofsted and Ofqual – that regulate the education sector. There is a tendency to identify "independence" as a virtue in itself without a thorough analysis of the nature of the required independence and distinguishing that from activities that should be subject to political accountability.

2.1.1. The number, overlap and coherence of regulators

The sheer number of regulators brings challenges of managing the risk of overlaps, duplication, or incompatibility or inconsistency in regulatory requirements. Meanwhile, the complexity of the institutional landscape makes the job of applying meaningful democratic accountability and scrutiny difficult. This is particularly the case with multiple regulators in an individual sector, although similar issues can arise, but are less likely to be so problematic, in the case of cross-sectoral regulators e.g. health and safety or environmental standards across the economy.

Individual firms in a given sector can face demands from several regulators with different or overlapping priorities. Following the 2007-8 financial crisis, the UK split the Financial Services Authority into the PRA, responsible for the prudential regulation and supervision of deposit taking institutions, and the FCA, which is the conduct regulator for financial services firms and financial markets. In addition, the Bank of England, the Payment Systems Regulator (PSR), and the CMA also have roles in regulating and supervising financial services firms.[46]

Such a complex regulatory landscape can be a major barrier to new market entrants, who do not have as much resource to navigate the demands of various regulators as larger, well-established firms. There are advantages and disadvantages to adopting a single versus multi-regulator approach to financial services (see box below). In contrast to the UK, other major financial hubs have maintained a unified single regulator approach. Examples include Switzerland's Financial Market Supervisory Authority and the Monetary Authority of Singapore. Industry body UK Finance notes that:

> *"Getting a single view on applicable regulations and licences is straightforward in jurisdictions such as Singapore or Switzerland, but with the BoE, the PRA, the FCA and the PSR all potentially relevant in the UK, firms often need to stitch things together themselves. This might place the UK at a competitive disadvantage in the future if innovative companies view it as too complicated to navigate."*[47]

Consolidating the number of regulators might well reduce the burden on regulated firms but the primary motivation should be to enable greater accountability for regulatory performance and attract more authoritative leadership within regulators. The leadership of these regulators would be subject to greater public scrutiny and accountability for the hygiene and the health of their sector.

46. HMT (2019), *Financial Services Future Framework Review: consultation on regulatory coordination*, p9; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819025/Future_Regulatory_Framework_Review_Call_for_Evidence.pdf

47. UK Finance (2019), *Response to HMT call for evidence: regulatory coordination*, p94; https://www.ukfinance.org.uk/system/files/HMT%20call%20for%20evidence%20on%20regulatory%20coordination%20-%20UK%20Finance%20response.pdf

Advantages and disadvantages of moving to a single financial services regulator[48]	
Advantages	*Disadvantages*
• Different regulators can set different regulations for the same activity for different players. Unified supervision can help achieve competitive neutrality. • An integrated regulator can minimise the burden of any overlaps and duplication and simplify decision making processes. • Under a system of multiple regulatory agencies, it may be more difficult to hold regulators to account for their performance against their statutory objectives, or for the costs of regulation. • A single regulator should offer opportunities to improve operational efficiency and exchange of information between different regulatory functions that may apply to the same firm.	• Given the diversity of objectives – ranging from guarding against systemic risk to protecting the individual consumer from fraud – a single regulator might not have a clear focus on the objectives and rationale of regulation and focus efforts in one area at the expense of another. A primary argument for splitting the Financial Services Authority was that its "responsibilities were too broad to allow for sufficient focus on the stability of firms".[49] • The public could assume that all creditors of institutions supervised by a given supervisor will receive equal protection generating 'moral hazard'. • There would be substantial transition costs from consolidating multiple regulators into one organisation.

Meanwhile, legal services in England and Wales, another sector historically subject to professional self-regulation, are regulated by nine front-line regulators and an oversight regulator.[50] In 2016, the CMA conducted a review of the legal services market and concluded that:

> *"Over time, there is a case for consolidation of regulators. A framework with fewer regulators may allow for better prioritisation over risk factors as these risk factors relate more to the relevant types of consumer, activity and legal services rather than types of provider."*[51]

Similarly, an independent review conducted by the Centre for Ethics & Law, University College London, argued that the current framework of legal services regulation needed to adapt to the increasing provision of legal services by non-lawyers. It concluded that "the requirement for flexibility, consistency, coherence and coordination across regulation within the legal services sector necessarily leads to a single regulator."[52]

The proliferation of regulators is also a major issue in the public sector. For example, the NHS in England is regulated by 10 different service regulators and 8 different regulators of the healthcare professions.[53] The Professional Standards Authority, the super regulator for the individual

50. https://legalservicesboard.org.uk/about-us/approved-regulators
51. CMA (2016), *Legal services market study: final report*, p216; https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf
52. Mayson, Stephen (2020), *Reforming legal services – regulation beyond the echo chambers: final report of the independent review of legal services regulation*, Centre for Ethics & Law, UCL, p13; https://www.ucl.ac.uk/ethics-law/sites/ethics_law/files/irlsr_final_report_final_0.pdf
53. Oikonomou E, Carthey J, Macrae C, et al (2019), *Patient safety regulation in the NHS: mapping the regulatory landscape of healthcare*, BMJ Open; https://bmjopen.bmj.com/content/9/7/e028663
48. IMF (2006), *Is one watchdog better than three? International experience with integrated financial sector supervision*; https://www.imf.org/external/pubs/ft/wp/2006/wp0657.pdf
49. HMT (2019), *Financial Services Future Framework Review: consultation on regulatory coordination*, p4; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819025/Future_Regulatory_Framework_Review_Call_for_Evidence.pdf

healthcare profession regulators, has argued that, "This structure makes it almost impossible for members of the public to navigate their way through."[54] Meanwhile, the Francis inquiry into failings at the Mid Staffordshire NHS Foundation Trust between 2005 and 2009 noted that:

> *"In the case of Mid Staffordshire, the regulatory regime that allowed for the overlap of functions led to a tendency to for regulators to assume that the identification and resolution of non-compliance was the responsibility of someone else. Effective accountability to the public demands a simpler regime of regulation."*[55]

It is beyond the scope of this report to consider the precise details of consolidating the number of regulators in a particular sector, be it financial services or the NHS, but it is important to note that consolidation is not primarily an issue of improving efficiency or reducing compliance costs. Fewer, bigger regulators would enable greater democratic accountability for regulatory performance, both regarding the protection of the public and the burdens of regulation. The Government's decision not to consult on the consolidation of the regulatory architecture represents a missed opportunity to consider the benefits of holding fewer, bigger regulators accountable**.** However, consolidation should not be an end in and of itself. The remit and objectives of regulators should be coherent and joined-up.

In the absence of, or as a compliment to, any institutional consolidation of the number of regulators, it is vital that there are effective mechanisms to ensure greater cooperation and collaboration between regulators operating in the same sector and across different sectors (see section 3.4. below).

2.1.2. Regulators' duties and objectives

In 2007, the House of Lords Regulators Committee set out a simple principle to govern the delegation of duties to independent regulators. It concluded:

> *"Independent regulators' statutory remits should be comprised of limited, clearly set out duties and that the statutes should give a clear steer to the regulators on how those duties should be prioritised. Government should be careful not to offload political policy issues onto unelected regulators."*[56]

However, the reality is that in many cases, the number of duties and objectives delegated to regulators has grown substantially. Since privatisation, the oil and gas regulator, Ofgem, has seen its statutory duties increase from 8 to 21.[57] Meanwhile, complaints about a lack of protection for vulnerable consumers, and 'loyal' customers getting stuck on high tariffs has increased the political salience of energy and led to greater market intervention.[58] This has left Ofgem struggling to balance multiple priorities within an increasingly complex regulatory framework (see box below).

54. https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf?sfvrsn=edf77f20_18
55. Francis QC, Robert (2013), *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, p67; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279124/0947.pdf
56. House of Lords Regulators Committee (2007), *UK economic regulators*; https://publications.parliament.uk/pa/ld200607/ldselect/ldrgltrs/189/18904.htm
57. HMG, (2022), *Economic regulation policy paper*; https://www.gov.uk/government/publications/economic-regulation-policy/economic-regulation-policy-paper-accessible-webpage-html
58. Centre for Competition Policy (2018), *Fairness in retail energy markets? evidence from the UK*; https://d2e1qxpsswcpgz.cloudfront.net/uploads/2020/03/ukerc_ccp_fairness_in_retail_energy_markets.pdf

Case study: Ofgem has struggled to balance its objectives in its regulation of the retail energy market

Over the course of 2021/22, as global gas prices rose to unprecedented levels, around 30 suppliers with around 4 million customers were pushed into insolvency. While the regulatory regime was not intended to prevent every supplier failing, the large number of firms exiting the market illustrated significant failures of regulation.

Ofgem's principal statutory objective is "to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems." In addition, it has the relevant secondary duties to promote effective competition where this best protects the interests of consumers; to have regard to the need to secure that licence-holders are able to finance the activities that are the subject of obligations on them; and to have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.[59]

The historic dominance of the 'big six' large energy suppliers had raised concerns that consumers were receiving poor value for money and paying higher prices.[60] In response, Ofgem's regulatory approach was to promote competition wherever possible, through encouraging the entry of new suppliers and lowering barriers to entry. Meanwhile, the government introduced legislation placing a duty on Ofgem to implement a price cap for customers on a standard variable tariff – around 60% of customers.[61]

The strictures of the price cap were always likely to cause cost pressures for suppliers if wholesale prices rose rapidly, as they did throughout the autumn and winter of 2021/22. However, an independent review noted that the way that Ofgem regulated the market meant that many suppliers were not as financially resilient as they could have been. This was due to a combination of inadequate hedging against future price rises and "the opportunity for suppliers to enter the market and grow to a considerable scale while committing minimal levels of their own equity capital."[62] As a result, supplier failure was both more likely and more costly. The costs of transferring customers from failed to new suppliers will be mutualised and paid for by consumers' future bills.

As part of the Supplier Licensing Review in 2018, Ofgem had taken steps to impose a new Financial Responsibility Principle, designed to improve financial resilience of suppliers and limiting the risk that failures would be passed on to consumers, rather than being borne by investors. However, Ofgem noted in March 2022 that "our regime was not fully developed, and our regulatory action was overtaken by the speed of change in the energy market. We accept that, had we introduced tighter financial regulation more quickly, this would have been better for customers."[63] It should be noted that more stringent financial regulation, or allowing suppliers greater flexibility within the price cap, could have led to higher price levels for consumers over the period up to 2021/22.

Ofgem was acting within a political context that was focussed on limiting short-term costs to consumers through a combination of promoting competition and the price cap. But the failure of so many suppliers highlighted that Ofgem struggled to find the correct balance between its duties to promote competition, ensure the financial responsibility of suppliers, and the long-term consumer interest.

The economic regulators are likely to be asked to consider an ever-broader range of policy objectives, including regulating to meet the government's policies on net zero and increasing the resilience of national infrastructure. In 2019, the National Infrastructure Commission argued that updating the economic regulators' duties "to enable them to consider the environment, quality and resilience alongside price would ensure that regulation is better able to deliver the best results for the public, and particularly consumers, over the long term."[64] In 2022, the Government committed to reviewing the duties of the utilities regulators, building on the National Infrastructure Commission's recommendations.[65]

64. National Infrastructure Commission (2019), *Strategic investment and public confidence*, p12; https://nic.org.uk/app/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf
65. BEIS (2022), *Economic regulation policy paper*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051261/economic-regulation-policy-paper.pdf
59. Ofgem (2013), *Our powers and duties*; https://www.ofgem.gov.uk/publications/our-powers-and-duties
60. CMA (2016), *Modernising the energy market*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/531204/overview-modernising-the-energy-market.pdf
61. The Domestic Gas and Electricity (Tariff Cap) Act 2018; https://www.legislation.gov.uk/ukpga/2018/21/pdfs/ukpga_20180021_en.pdf
62. Oxera, (2022), *Review of Ofgem's regulation of the energy supply market: prepared for Ofgem*; https://www.ofgem.gov.uk/publications/review-ofgems-regulation-energy-supply-market
63. Ofgem (2022), *Written evidence to the Business, Energy and Industrial Strategy Committee*; https://committees.parliament.uk/writtenevidence/107169/html/

Given that most, if not all, regulation imposes costs as well as benefits, and must balance the management of risk against any chilling effect on competitiveness, innovation and growth, several regulators have been given duties that reflect the need to strike this balance. For example, the Deregulation Act 2015 introduced the Growth Duty,[66] which establishes a government expectation that economic growth is an outcome that regulators should be working towards. It ensures that specified regulators give appropriate consideration to the potential impacts of their activities and their decisions on economic growth.

Meanwhile, certain regulators have been given duties to focus on specific contributors to growth, such as competition or innovation. For example, the Payment Systems Regulator has a duty to promote innovation in payment systems.[67] The Treasury is proposing to give the FCA and PRA new secondary duties to consider long-term growth and international competitiveness and report on their performance against these duties once a year.[68]

Other regulators have a duty to keep their functions under review and ensure they do not impose or maintain unnecessary burdens. Ofcom, Ofwat and Ofgem, for example are required to report on progress each year, and these regulators publish such information as part of their annual reports.[69] However, there is not a consistent duty across all regulators that compels them to consider and report on the trade-off between reducing risks and the wider impact this has on those they regulate, be it on growth in the sector or efforts to simplify regulation. Placing a consistent requirement across all regulators for them to report on how they have regulated, not only to reduce risks, but how they have simplified regulation would improve transparency across the regulatory system and better enable government and parliament to hold regulators to account.

As noted elsewhere, the costs of regulation tend to fall disproportionately on smaller, entrepreneurial firms, which affects innovation, competition, and growth. The Regulatory Horizons Council has noted that "one of the reasons innovative new businesses often sell to a more established player at the point of moving from start up to scale is that the small business is simply unable to cope with the increasing 'overhead' of regulation it experiences during that transition."[70] A major post-Brexit opportunity is for the UK to introduce regulatory regimes that better reflect the systemic risks posed by those that are regulated. Systemically important firms should be subject to tough regulation, while others can be treated with a lighter touch. There should be greater transparency regarding how regulators judge the proportionate level of supervisory oversight applied to different organisations moving up the systemic risk scale. There should not be sharp step changes but rather a gradual escalation adapted to take account of size and, most importantly, risk. If these decisions are made in the dark or arbitrarily, they can act to deter growth. Therefore, regulators should define where the boundary between systemic and non-systemic lies in their sector and make this public, so that these judgments are subject to scrutiny.

66. The Deregulation Act 2015 (Growth Duty)
67. https://www.psr.org.uk/about-us/the-psr-purpose/
68. The FCA's primary objective is to ensure that relevant markets function well and the PRA's primary objective is to promote the safety and soundness of PRA-authorised persons and its insurance specific is to promote policyholder protection. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032075/FRF_Review_Consultation_2021_-_Final_.pdf and the 2022 Financial Services and Markets Bill 2022; https://www.gov.uk/government/collections/financial-services-and-markets-bill
69. The Regulatory Enforcement and Sanctions Act 2008 already requires Ofgem, Ofwat to do so. Ofcom has a similar duty under the Communications Act 2003.
70. Regulatory Horizons Council (2022), *Closing the Gap: getting from principles to practice for innovation friendly regulation*; https://www.gov.uk/government/publications/closing-the-gap-getting-from-principles-to-practice-for-innovation-friendly-regulation/closing-the-gap-getting-from-principles-to-practices-for-innovation-friendly-regulation

Another challenge in determining regulators' duties and objectives is establishing the so-called regulatory perimeter – the legal boundary between what a regulator regulates and what it does not regulate. This boundary is generally fixed in statute and therefore difficult to change, while markets and products evolve at a greater pace. This disconnect has been a notable problem in financial services, where some regulated firms may also be undertaking activities which are unregulated. For example, London Capital & Finance, which collapsed in 2019, was authorised and regulated by the FCA but its unregulated mini-bond business led to the collapse and consumer losses. In that case the FCA was criticised for failing to enquire beyond its legal perimeter.[71] However, it is right that regulators' activities are legally constrained. Therefore, regulators should be able to recommend formally to government changes to the perimeter of regulation, where that would enhance their ability to meet their objectives, in particular to prevent consumer harm. All such recommendations and government responses should be publicly disclosed to enable scrutiny, and to secure proper accountability, a response that involves an expansion of the regulator's remit should require parliamentary approval.

1.2.3. Regulators' accountability to ministers

When regulators are established or their duties reviewed, government and parliament should take every effort to ensure that regulators' objectives are limited and clear. Where there are multiple objectives, ranking them hierarchically ensures clarity about potential trade-offs and enables accountability for the outcomes that regulators should seek.

It is currently the case that many regulators have several objectives that are ranked equally. This poses a significant challenge with regard to the division of responsibilities between ministers and regulators. An NAO report into the role of Ofwat, Ofgem, Ofcom and the FCA in promoting consumer protection noted that:

> *"Our recent report on vulnerable consumers found that some measures to promote a competitive market, which reduces prices for consumers who switch to the best deals, can conflict with objectives to protect those in vulnerable circumstances who are less likely to switch and therefore benefit from cheaper prices…There are areas where government formally provides direction or strategic steer, for example, introducing legislation requiring regulators to introduce price caps or universal service obligations. However, regulators report that determining how to manage many of these trade-offs remains challenging."*[72]

Requiring independent regulators to consider, for instance, resilience alongside price necessarily raises questions that require political trade-offs. For example, what is the appropriate level of resilience? How should the cost of financing long-term investments to increase resilience be spread between current and future consumers? These are issues that ought to be informed by technical expertise, but strategic trade-offs need to be made by democratically elected politicians, rather than technocrats.

Beyond the statutory duties placed on regulators, the government has

71. House of Commons Treasury Select Committee (24 June 2021), *The Financial Conduct Authority's regulation of London Capital & Finance plc*; https://publications.parliament.uk/pa/cm5802/cmselect/cmtreasy/149/14902.htm

72. NAO (2019), *Regulating to protect consumers in utilities, communications and financial services markets*, p8; https://www.nao.org.uk/wp-content/uploads/2019/03/Regulating-to-protect-consumers-in-utilities-communications-and-financial-service-markets.pdf

other mechanisms to provide guidance to regulators via Strategic Policy Statements. The Government published a statement for the water sector in 2017 and set out its ambitions for the telecoms sector in a statement published in 2019. However, these powers have not been fully utilised. For example, successive governments have not finalised a statement for Ofgem, despite having the power to do so since the 2013 Energy Act.[73] The current Government has pledged to bring forward a Strategic Policy Statement for energy.

Of the strategic policy statements that government has issued, the National Infrastructure Commission has noted they "contain a lot of contextual material", which "can mask the key steers to regulators."[74] For example, in January 2022, the Government published an open letter of cross-sector strategic priorities to the utility regulators. Many of these priorities, such as promoting fairness for consumers and greater resilience of utilities infrastructure, remain ill-defined and therefore leave essentially political decisions to regulators. For example, regarding resilience, the Government's letter to regulators states that:

> *"We encourage you all to consider resilience in decisions to support investment and seek opportunities to test, adapt and transform infrastructure to maintain resilience and security of supply and reduce the risks of security compromises whilst also meeting new challenges, including net zero."* [75]

Ultimately, regulators are responsible for delivering the policy objectives set by government and should be accountable for this. However, by the same token, government cannot and should not abdicate responsibility for setting strategic priorities or making difficult political choices.

If regulators' duties and objectives are to be increased, there is a greater necessity for a more active and transparent dialogue between regulators and ministers. This dialogue need not be only top down. Where a regulator finds that government is not taking politically sensitive decisions though active strategic guidance, the board of the regulator should be able formally to seek government input, based on a set of options developed by the regulator.[76] Again, such requests, as well as the government responses to them, should be publicly disclosed to enable scrutiny and to secure proper accountability.

A more active back-and-forth between ministers and regulators would need to be achieved without compromising regulators' independence regarding individual decisions. However, such a dialogue, so long as it is transparent, would bring greater clarity to regulators, regulated entities, and the public, about the government's desired outcomes and in that way enhance democratic accountability.

While greater clarity about trade-offs and priorities is desirable, in so far as greater clarity is provided by or under legislative powers[77], so is the potential litigation risk – and risk of judicial review – increased. If legislative trade-offs or ministerial directions are subject to being second-guessed by the courts, the litigation risk is likely to take priority and to reduce the incentive for ministers to provide clarity about priorities and

73. A draft statement was prepared in 2014 but never finalised. The current Government has committed to consult on a statement for the energy sector in 2022. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343314/SPS_consultation_paper_.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051261/economic-regulation-policy-paper.pdf

74. National Infrastructure Commission (October 2019), *Strategic investment and public confidence*, p30; https://nic.org.uk/app/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf

75. BEIS, (31 January 2022), *Strategic priorities and cross-sectoral opportunities for the utilities sectors: open letter to regulators*; https://www.gov.uk/government/speeches/strategic-priorities-and-cross-sectoral-opportunities-for-the-utilities-sectors-open-letter-to-regulators

76. National Infrastructure Commission (October 2019), *Strategic investment and public confidence*, p59; https://nic.org.uk/app/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf

77. For example, the Strategic Policy Statements are provided for in legislation.

trade-offs, and for regulators to seek it. The inevitable consequence would be to induce an excessively defensive approach to regulation and the giving of guidance.

The risk of judicial review could be reduced in one or both of two ways. First, ensuring that political accountability is transparent and the approach to trade-offs and priorities approved by parliament**,** or expressly subject to other political accountability mechanisms, should dissuade the courts from intervening. For example, ministerial Strategic Policy Statements for the utility regulators should be approved by a resolution of each House of Parliament.[78] Second, this approach could be supplemented by provisions expressly confining accountability to whatever political accountability to parliament has been provided for. Regulators and those giving them guidance having been obligated, for example, to report to parliament on how they have acted in accordance with ministerial guidance, the lawfulness of the subject matter of the political reporting could be excluded from judicial challenge. [79]

2.1.4. Conclusions and recommendations

Delegation to arm's length regulators can help provide essential expertise in the design and implementation of regulation. Moreover, regulators' operational independence from day-to-day politics when making individual decisions provides stability and certainty to long-term investors and can improve public confidence. However, due to the increasing number of duties placed on regulators, there is a risk that regulators and the public lack clarity about how the government wishes its policy objectives to be delivered via regulation.

Government and parliament should be able to hold regulators to account for the hygiene and health of their sectors. i.e. the balance struck, on the one hand, between reducing risks for the beneficiaries of regulation (be it to consumers or society as a whole) and, on the other, the outcomes that regulation has produced in the sectors they regulate, such as the burden on those they regulate or the impact on innovation, competitiveness and growth. A standardised model for reporting efforts to reduce regulatory burdens would aid transparency.

Regulators should define where the boundary between systemic and non-systemic risk lies in their sector and make this public, so that these judgments are subject to scrutiny. The costs of regulation tend to fall disproportionately on smaller, entrepreneurial firms, which affects innovation, competition, and growth. There should be greater transparency regarding how regulators judge the proportionate level of supervisory oversight applied to organisations moving up the systemic risk scale. Systemically important firms should be subject to tough regulation, while others can be treated with a lighter touch. There should not be sharp step changes but rather a gradual escalation taking into account size and risk.

Having fewer, bigger regulators would enable greater democratic accountability for regulatory performance, both regarding the

78. Energy Act 2013, S135(8); https://www.legislation.gov.uk/ukpga/2013/32/part/5/enacted

79. See the approach taken under the Fiscal Responsibility Act 2010, S4(3); https://www.legislation.gov.uk/ukpga/2010/3/section/4/enacted

protection of the public and the cost of regulation. The sheer number of regulators brings challenges of managing the risk of overlaps, duplication, or inconsistency in regulation. Meanwhile, the complexity of the institutional landscape makes the job of applying meaningful democratic accountability and scrutiny more difficult. It is beyond the scope of this report to consider the precise details of consolidating the number of regulators in a particular sector, be it financial services or the NHS. However, government should consider the case for consolidating the number of regulators when conducting future reviews of regulators' duties and objectives. Consolidation should not come at the expense of ensuring that regulators' remits and objectives are coherent and joined-up.

Ultimately, regulators are responsible for delivering the policy objectives set by government and should be accountable for this. However, government should not abdicate responsibility for setting strategic priorities or making difficult political choices. The fundamental principle should be that democratic politics should decide the ends, while regulators are given the tools to operate the means, subject to accountability mechanisms.

It is welcome that the Government has committed to reviewing the duties of the utility and financial regulators. **The Government should conduct a thorough review of the statutory objectives and duties of all regulators**. Such a review requires cross departmental coordination since many policy objectives, such as addressing climate change or the protection of vulnerable customers, cut across sectors and the activities of several regulators.

Government and parliament should ensure that the statutory objectives and duties of regulators are set out as clearly as possible and there should be clear statutory direction to regulators about how those objectives and duties are prioritised. It is right that the balance individual regulators strike between managing risk and wider objectives, such as promoting competition or innovation, should depend on the regulator. For example, it is appropriate that duties to consider growth and competitiveness should be secondary to financial regulators' primary objectives to ensure safety and integrity.

Nevertheless, in an increasingly fast-moving world, it cannot be expected that all the challenges regulators might face can be foreseen and accounted for in legislation, and most regulators will need to balance more than one objective. **Ministers should therefore make greater use of their current powers to issue strategic guidance to regulators, setting out how regulators should prioritise their duties and objectives. Ministers should also issue simultaneous guidance to multiple regulators where delivering policy objectives requires coordination across sectors.** To avoid operationally independent regulators becoming subject to short-term political pressure, this guidance should be given once a parliament. To be useful, this guidance should specify how trade-offs should be made and define measurable outcomes for vague objectives such as resilience and fairness.

Meanwhile, regulators should have a formal and transparent mechanism for requesting strategic guidance from ministers when they feel their statutory objectives are in conflict. As the National Infrastructure Commission has proposed, requests for guidance could be accompanied by regulators' analysis of a range of options, including a preferred option. Guidance should not be sought on individual decisions, but on policy direction. A more active dialogue between ministers and regulators calls for an increased degree of parliamentary scrutiny and accountability of the relationship between government and regulators (see Section 2.3).

Another challenge in determining regulators' duties and objectives is establishing the so-called regulatory perimeter – the legal boundary between what a regulator regulates and what it does not regulate. This boundary is generally fixed in statute and therefore difficult to change, while markets and products evolve at a greater pace. **Regulators should be able to make formal recommendations to government for changes to the perimeter of regulation, where that would enhance their ability to meet their objectives**, in particular to prevent consumer harm. All such recommendations and government responses should be publicly disclosed to enable scrutiny and to enhance accountability.

Greater transparency and democratic accountability must be accompanied by culture change throughout the regulatory system. A system that seeks constantly to improve outcomes for society, and promotes efficient and effective regulation, rather than simply adding to its volume and complexity as a knee-jerk reaction to past crises, requires a mature debate about risk appetite and public safety.

In securing greater clarity and transparency around regulators' objectives and ministerial guidance, thought needs to be given to how to minimise the litigation risk that would involve the effectiveness of the mechanisms being undermined by the trade-offs and assessments of priorities being capable of being second guessed by the courts.

2.2. Regulatory policymaking

While regulators are increasingly important in developing and implementing regulation within their statutory bounds, statutory regulation is proposed by government and enacted or scrutinised by parliament. Individual departments are responsible for proposing this regulation via legislation.

In response to the cumulative impact of increased regulation, successive governments have developed various policymaking tools, such as the use of regulatory impact assessment and cost-benefit analysis, under the banner of "Better Regulation". These tools are intended to provide transparency and accountability for regulation, ensure regulatory intervention is well designed, and that the costs and benefits of doing so are considered in the policymaking process. Governments of all stripes have waged campaigns to reduce the cost of existing regulation and stem the flow of new rules.

The Better Regulation Task Force's five principles of Better Regulation[80]

1. **Proportionality** - Regulators should intervene only when necessary; remedies should be appropriate to the risk posed, and costs identified and minimised.
2. **Accountability** - Regulators should be able to justify decisions and be subject to public scrutiny.
3. **Consistency** - Government rules and standards must be joined up and implemented fairly.
4. **Transparency** - Regulators should be open and keep regulations simple and user-friendly.
5. **Targeting** - Regulation should be focussed on the problem and minimise side effects.

The New Labour Government of 1997 established new institutions such as the Better Regulation Task Force (BRTF), which developed five principles for Better Regulation, which continue to inform the current Better Regulation Framework and the Regulators' Code (see box below). The Regulatory Impact Unit (RIU) was established in the Cabinet Office, and Regulatory Reform Ministers were appointed in each department of state. Meanwhile, impact assessments were established as a key tool in the policy making process.

Successive institutional changes saw the Better Regulation Executive (BRE) established as the strategic driver of Better Regulation policy across government. In 2007, the BRE was transferred from the Cabinet Office to the newly named Department for Business, Enterprise, and Regulatory Reform, reflecting the strong focus of Better Regulation policy on business regulation, even if the BRE's work extends beyond this.[81] There have been various subsequent reviews into regulation in the public sector.[82] However, there is no high-profile forum for advocating reform and coordinating regulation across the whole of the public sector, or the same degree of cross-government attention and oversight that applies to the private sector. Therefore, much of the work on public sector regulation remains in silos or is sub-sector based.

In 2009, the Regulatory Policy Committee (RPC) was established. Comprising economists, senior business people and civil society representatives, the RPC's remit is to provide independent expert scrutiny of the impact assessments accompanying regulatory proposals, a measure designed to ensure that the evidence base for new regulation is sound.

81. OECD (2010), *Better Regulation in Europe: the United Kingdom*, p39; https://www.oecd.org/gov/regulatory-policy/44912041.pdf

82. See for instance the independent reducing bureaucracy in policing advocate Jan Berry's report *Reducing bureaucracy in policing* (2010) and Department for Health and Social Care (2020), *Busting bureaucracy: empowering frontline staff by reducing excess bureaucracy in the health and care system in England*; https://www.gov.uk/government/consultations/reducing-bureaucracy-in-the-health-and-social-care-system-call-for-evidence/outcome/busting-bureaucracy-empowering-frontline-staff-by-reducing-excess-bureaucracy-in-the-health-and-care-system-in-england

80. Better Regulation Task Force (2003), *Principles of Good Regulation*; https://webarchive.nationalarchives.gov.uk/ukgwa/20100407173247/http:/archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf

Better Regulation: key institutions

The **Better Regulation Executive (BRE)** is a unit within the Department for Business, Energy and Industrial Strategy. It leads across Government on Better Regulation policy and is responsible for embedding it in policymaking. This includes issuing guidance on how to operate the **Better Regulation Framework**, **Regulators' Code**, and monitoring the **Business Impact Target** and publishing an annual report.

Each department has a **Better Regulation Unit**, which works with the BRE and oversees that department's processes for better regulation and advises on how to comply with the requirements of the **Better Regulation Framework**.

The **Brexit Opportunities Unit**, established within the Cabinet Office in 2021, has a remit to develop and take forward proposals for regulatory reform, including opportunities to diverge from inherited EU regulation.

The **Regulatory Horizons Council** was established in 2019 by BEIS as an expert committee to identify the implications of technological innovation with high potential benefit for the UK economy and society, and advise the government on regulatory reform needed to support its rapid and safe introduction.[83]

The **Regulatory Policy Committee (RPC)** is the Government's independent advisory body set up to provide scrutiny of **Impact Assessments**, the evidence, and analysis supporting regulatory changes, affecting the economy, businesses, civil society, and the voluntary sector. The RPC does not review IAs for proposals that regulate only individuals or public bodies.

The **National Audit Office (NAO)** conducts periodic audits and reviews of regulators, examining the way they regulate and the consequences of their regulatory actions.

2.2.1. Ensuring regulation is necessary and assessed against outcomes

It is important that there are effective mechanisms in place to provide transparency on the costs and benefits of regulation, increase incentives to look at alternatives to regulation, and ensure that regulation is subject to review after it has been implemented. The current Government is proposing to overhaul the current processes. This includes new metrics to measure the impact of regulation, introducing earlier impact assessment scrutiny of regulatory proposals, and greater emphasis on reviewing regulations once they have been implemented.

Regulatory budgeting. The principle of regulatory budgeting is that targets to reduce the cumulative regulatory burden will promote regulatory discipline, forcing government and regulators to prioritise their regulatory interventions. The Business Impact Target[84] aimed to provide such a system of incentives on government and regulators to reduce and minimise new regulatory burdens on business, requiring the government to set a target to reduce regulatory costs over a five-year parliamentary term and to report on progress annually. However, in 2016, the NAO heavily criticised the BIT process and the Government is planning to introduce new metrics that look beyond purely the business impact of regulation.[85]

Notably, government failed to meet the Business Impact Target in the previous two parliaments. During the 2017-2019 Parliament, government had a target of reducing the cost of regulation to business by £9 billion, but

84. The Government is required by the Small Business, Enterprise and Employment (SBEE) Act 201511 to set a Business Impact Target (BIT) for the whole term of a Parliament and an interim target covering the first three years.

85. For a discussion of the shortcomings of the BIT, see NAO (2016), *The Business Impact Target: cutting the cost of regulation*; https://www.nao.org.uk/report/the-business-impact-target-cutting-the-cost-of-regulation/

83. https://www.gov.uk/government/groups/regulatory-horizons-council-rhc

in fact the cost increased by £7.8 billion. In the current 2019 Parliament, government set a cost neutral holding target of zero increase in cost to business, but costs to business increased by £4.5 billion in just the first two years of the parliament. This is before considering the impact of various Covid-related regulations, which are exempted from the target, and have imposed more significant costs on business.[86]

It is unclear what will replace the Business Impact Target. The Government's white paper suggests a greater focus on reducing administrative burdens rather than direct costs to business, and a greater focus on wider social and economic costs and benefits. Ultimately, there is always a risk of a target of this kind being gamed and meeting such a target depends on the political will to prioritise cost reductions over imposing costly new regulatory requirements and on a robust, consistent, and transparent methodology for assessing the costs of regulation.

Impact assessment. Impact assessment has been a feature of Better Regulation policy for some time. However, there is evidence that impact assessment has become a box-ticking exercise, which has had a limited bearing on policymaking. Stephen Gibson, Chair of the Regulatory Policy Committee which scrutinises government impact assessments, noted the problem is that, "typically the impact assessment is done after the policy decision has been made. It does not inform the decision of whether to regulate and, if you are going to regulate, what are the lowest-cost ways of regulating."[87] Like most impact assessment, it therefore tends to suffer from the drawback of taking account of the mitigation of risk only for the preferred option and of underestimating the risks attached to the mitigation. For impact assessments to be an aid to public and parliamentary accountability, they should provide concise, clear, digestible information about the costs and benefits of regulatory proposals, including ideas considered but rejected.

Earlier use of impact assessment, as the Government is proposing, could encourage departments to consider alternatives to regulation or an early assessment of the most cost-effective regulatory approach. However, it must be emphasised that 'do nothing', making better use of existing regulation, or improving supervision or enforcement is a legitimate regulatory choice. To resist regulating in the face of risk is a politically difficult choice to make. However, it is essential that evidence and analytical processes are used to assess whether regulating would entail significant risk of doing more harm than good. Policymakers should explain why alternatives to statutory regulation, including improving education and information, self-regulation, for example through codes of conduct, standards or accreditation, and co-regulation, are not sufficient to meet the policy objective.[88]

Post-implementation review. Impact assessment can only provide an ex-ante estimate of regulatory impact. It is therefore important that regulation is reviewed after it has been implemented to assess whether the outcomes meet the original objective. This can provide a powerful tool to inform how regulation should be reformed or removed where appropriate.

86. See Chair of the Regulatory Policy Committee Stephen Gibson's evidence to the House of Lords Secondary Legislation Scrutiny Committee, 5 April 2022; https://committees.parliament.uk/oralevidence/10098/html/

87. See Regulatory Policy Committee evidence to the House of Lords Secondary Legislation Scrutiny Committee, 5 April 2022; https://committees.parliament.uk/oralevidence/10098/html/

88. NAO (2014), *Using alternatives to regulation to achieve policy objectives*; https://www.nao.org.uk/wp-content/uploads/2014/06/Using-alternatives-to-regulation-to-achieve-policy-objectives1.pdf

Post implementation review needs to look at the original purpose of the regulation and the costs and benefits of the regulation's effect in practice against what was intended. The original purpose also needs to be assessed for continuing relevance, as well as whether the regulation has produced any unintended adverse consequences, or indeed any unintended beneficial ones.

The Government has said that it will place a "stronger emphasis" on the use of evaluation, to ensure that regulation remains relevant and proportionate.[89] It should however be noted there is already a statutory requirement for post-implementation review of a wide category of regulation.[90] However, the BRE's assessment is that only "between 25% and 40%" of regulation that should be subject to a post-implementation review (PIR) receives one.[91]

2.2.2. Ensuring political direction and cross-government coordination

Previous evidence shows that policymaking tools to curb regulatory costs are only effective if they are used and adhered to. This requires political will at the top of government and central oversight to hold departments to account.

Throughout various Labour governments institutional responsibility for Better Regulation policy shifted from the centre of government to the business department (the Treasury continues to take the lead on financial services regulation). It stayed there under the Coalition Government and subsequent Conservative governments. The current Government has established the Brexit Opportunities Unit within the Cabinet Office and appointed the former Director of the BRE, Chris Carr, as its new head. This could presage a more decisive shift back to the centre. While the BRE remains within the Department for Business, Energy and Industrial Strategy, the Brexit Opportunities Unit is now driving much of current policy on regulatory reform, including reform of the Better Regulation framework. It remains to be seen whether the remaining BRE functions will be moved over to the Cabinet Office.

There are clear benefits to moving strategic responsibility for regulation to the centre of government. Firstly, it would enable government to look at private and public sector regulation in the round. As Chris Carr recently noted, "Regulation of public sector activities has not been a focus for many years. As far as I can remember, for 15 years or more, the focus has been pretty much exclusively on the impact of regulation on business."[92]. Central coordination would also better enable government to develop and promote best practice across all regulators, including policies to reduce the burden of regulation. This is sensible since the impact of cross-sector regulation, such as health and safety, is felt across the private and the public sector.

Secondly, central coordination would enable government to set long-term strategic direction for regulatory policy and prioritise regulatory interventions to support policy. The Confederation of British Industry (CBI) has suggested that an Office for Future Regulation. CBI Director

89. HMG (2022), *The Benefits of Brexit*
90. See sections 28 to 31of the Small Business, Enterprise and Employment Act 2015.
91. BRE evidence to the House of Lords Secondary Legislation Scrutiny Committee, 22 March 2022; https://committees.parliament.uk/oralevidence/10038/html/
92. BRE evidence to the House of Lords Secondary Legislation Scrutiny Committee, 22 March 2022; https://committees.parliament.uk/oralevidence/10038/html/

General Tony Danker argued:

> *"The focus of this new body should be the big bets for our economy. Regulation would be future-focused – on new technology and new consumer realities. More agile – changing when out of date, allowed to do so now that we don't need to negotiate it between 28 countries. It would be more proportionate, rooted in a better balance between investment and consumer protection. And finally, it would be more dynamic, allowing them to act quickly and decisively. Just as we saw with the vaccine when the MHRA enabled the UK to lead the world."*[93]

Thirdly, central coordination would provide greater oversight and accountability regarding individual departments' regulatory performance and any drive to reduce regulatory costs would be easier to coordinate centrally.[94]

2.2.3. Conclusions and recommendations

The current Government's proposals to overhaul the Better Regulation framework have the welcome potential to encourage departments to consider alternatives to regulation or the most cost-effective means of regulating before decision to regulate are made. Equally, a stronger commitment to reviewing regulation once it is in place would better enable government and parliament to reform or repeal regulation that is ineffective or imposes excessive costs or has other adverse effects.

However, previous evidence illustrates that policymaking tools to promote Better Regulation and reduce the cost of regulation are only effective if they are used and adhered to. Ultimately, if the government wishes to make these objectives a priority, it must have the political will to direct the machinery of government to hold departments and regulators to account for only regulating when necessary and, when the decision to regulate is made, for ensuring that interventions are confined to what is necessary to achieve the regulatory objectives and that the operation of the regulatory regime is subject to regular review.

Government should move the remaining BRE functions from BEIS and merge them with the Brexit Opportunities Unit, creating a new consolidated Regulatory Reform Unit within the Cabinet Office, under a dedicated Minister for Regulatory Reform. This would return strategic responsibility for regulatory reform to the centre of government, increasing cross-government oversight and accountability. This unit should be responsible for developing the Better Regulation framework and conduct periodic reviews of the role and performance of regulators. The establishment of such a unit at the centre of government would further symbolise a strong political commitment to regulatory reform.

2.3. Parliamentary accountability

Democratic scrutiny and accountability are essential to ensuring regulation is effective and necessary. Regulators should be held accountable for the balance they strike between the need to reduce the risk of harms and the constraints that regulation can place on organisations, individuals,

93. Speech given by CBI DG Tony Danker (3 February 2022); https://www.cbi.org.uk/articles/are-we-serious-about-growth/

94. BRE evidence to the House of Lords Secondary Legislation Scrutiny Committee, 22 March 2022; https://committees.parliament.uk/oralevidence/10038/html/

economic growth, and innovation. It is a major and important task and there is already a strong case for strengthening democratic scrutiny of regulation and regulators. However, this is even more important if government and parliament decide to delegate more discretion to regulators, as the current Government is proposing.

Government must be held to account for its overall regulatory strategy. This includes its policies to improve the quality and reduce the burden of regulations. Parliamentary scrutiny should also be applied to the interaction between government and regulators. As described in section 2.1.3. above, a more active dialogue between government and regulators is desirable but this needs to be transparent and weighed against regulators' independence to make day-to-day decisions, in light of the reasons why that independence is important. There is a risk that short-term political considerations lead to conflicts arising between a regulator's different objectives, or the objectives of different regulators, or that regulators are left to work out for themselves how to balance multiple objectives. Parliamentary scrutiny should be applied to strategic guidance given by ministers to regulators, probing whether government guidance is either sufficiently clear or overly prescriptive. The parliamentary scrutiny needs to be sufficient to justify dispensing with the need for judicial scrutiny of the same matters.

Meanwhile, regulators should be regularly evaluated by parliament on how they have exercised their powers and the outcomes resulting from their activities. However, the National Infrastructure Commission has noted that "regulators do not generally report objectives and performance in a way that makes it easy for them to be held to account".[95] Equally, the NAO has previously recommended that regulators should "do more to translate their high-level consumer outcomes into what this means in practical terms…underpinned by detailed indicators or targets…that can be used to measure performance in protecting the interests of consumers."[96]

Government could therefore provide regulators with guidelines on performance measures that allow parliament and the public to easily compare outcomes against a regulator's different operational objectives and the performance of different regulators. These performance measures should provide information on a regulator's own performance, data on industry and consumer outcomes for their sector or field of regulation, and operational costs and staff numbers. To incentivise continuous improvement, outcomes should be easily tracked over time. Regulators should also report on evaluations of the impact of their past policies and the regulatory burden placed on the regulated, including efforts made to review and simplify existing regulation.

Departmental select committees currently scrutinise sectoral regulators associated with their department. However, individual departmental select committees are likely to find it difficult to assess the impact of regulators and regulation across different sectors, which is an increasingly important task.

95. National Infrastructure Commission (2019), *Strategic Investment and public confidence*; https://nic.org.uk/app/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf, p64

96. NAO (2019), *Regulating to protect consumers in utilities, communications and financial services markets*; https://www.nao.org.uk/wp-content/uploads/2019/03/Regulating-to-protect-consumers-in-utilities-communications-and-financial-service-markets.pdf

Given the technical complexity of regulation and the work undertaken by regulators, parliament would benefit from expert input on the outcomes that regulation generates in individual markets and across sectors. The NAO currently produces occasional thematic reports on regulation and the impact of regulators' activities on certain issues, such as vulnerable customers.[97] The NAO could support parliamentary scrutiny of regulators by undertaking more systematic audits of regulators against the performance measures outlined above. It could draw on information from regulators, those they regulate and consumers. The publication of these regulator audits would complement the work of parliamentary committees and ensure that an independent assessment of regulators' performance forms the basis of political and public debate. The functions of the NAO would need to be enlarged for this purpose and it would need more resources to take on the extra functions.

In addition to stronger input from the NAO, parliamentary accountability would be enhanced if supported by increased support from better resourced secretariats. For example, the Treasury Select Committee has a larger staff of specialists than other committees, supported by seconded experts including from the regulators that fall under its remit and the NAO.

In 2021, the Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) suggested expanding the remit of the House of Commons Regulatory Reform Committee to enhance scrutiny of individual regulations and regulators.[98] Since TIGRR's report, the Regulatory Reform Committee has become defunct. However, this role could be taken on by the Public Accounts Committee, which already works closely with the NAO, or by another arrangement such as a new dedicated cross-sector House of Commons Committee on regulation or a Joint Committee of both Houses of Parliament.[99]

2.3.1. Conclusions and recommendations

Given the importance of regulation and the increased role for regulators, it is vital to have effective parliamentary scrutiny of, and accountability for, both the government's strategic priorities with regard to regulation and the impact regulators make.

Regulators should be required to publish easily digestible performance metrics in their annual reports. This should include:

- Measures of their performance against statutory objectives and ministerial guidance.
- The impact of their activities on industry and intended beneficiaries of regulation in their field.
- Evaluation of the impact of their past policies and regulatory decisions, including efforts made to review and simplify existing regulation.
- Operational costs and staff numbers over five years.

97. See https://www.nao.org.uk/report/the-economic-regulation-of-the-water-sector/ and https://www.nao.org.uk/report/vulnerable-consumers-in-regulated-industries/

98. Taskforce on Innovation, Growth and Regulatory Reform (2021); https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994125/FINAL_TIGRR_REPORT__1_.pdf

99. There is currently a Industry and Regulators House of Lords Select Committee.

The NAO should be empowered and resourced to conduct and publish regular audits of regulator's performance, including industry and consumer outcomes in their sector for both the regulated and the intended beneficiaries of regulation. This would ensure that regulators are held to account for improving the hygiene and the health of their sectors. **The NAO should draw on the expertise of regulated entities and consumer bodies, such as ombudsmen, to inform its assessment of regulators' performance.**

Departmental select committees should continue their current scrutiny activities, but there is a strong case for an enhanced role for parliament. In order to ensure democratic oversight over regulation in the round, this should be conducted by a cross-sector committee.

In the current absence of a dedicated cross-sector House of Commons regulatory committee, **the Public Accounts Committee could be given the responsibility for providing democratic oversight over cross-government policy on regulation and regulators**. The PAC is a powerful committee and the fact that it is conventionally chaired by a politician from the opposition party would ensure it took an independent view from government. Independent expert assessments of regulators' performance should be published so that political and public debate is informed by sound evidence. **Alternatively, rather than giving this role to the PAC, these functions could be given to a new dedicated House of Commons Committee or a Joint Committee of both Houses.** In any case, enhancing these scrutiny and accountability mechanisms will require additional resources and the development of new skills.

3. Improving Regulatory Delivery

The 2005 Hampton Report recognised that how regulators conduct day-to-day implementation and enforcement of regulation can be just as important as the rulemaking process itself.[100] Regulation is only effective if those that are regulated comply with it. Equally, the methods regulators employ to meet their objectives can have more or less of a burden on those they regulate. For example, the OECD's 2018 Regulatory Policy Outlook quoted a British businessperson as saying:

> *"As a small retailer I have to comply with thousands of regulations across a dozen themes. Scrapping two or three burdensome regulations here and there is great, but it does not make a great difference to me. What makes a difference is the attitude of inspectors. Being able to sleep at night because I know I have got it right and don't fear an inspector knocking on the door".*[101]

In adhering to the principles of good regulation, regulators should ensure their actions are proportionate, accountable, consistent, transparent, and targeted. These principles are set out in the Regulators' Code[102]. There are several ways that regulators can ensure that their activities adhere to the principles of good regulation:

- Working transparently and cooperatively with those they regulate to manage risks and minimise burdens.
- Cultivating and promoting internal challenge, informed by feedback mechanisms to understand the impact of regulation on consumers and those they regulate.
- Collaboration and intelligence sharing to identify risks and target intervention at routinely non-compliant, support those 'on the edge', and remove burdens for the routinely compliant. New technologies and digitisation also offer opportunities for regulatory efficiency and collaboration.

3.1. How regulators interact with those they regulate

The way regulators interact with those they regulate will depend on the emphasis placed on rules-based versus outcomes-based compliance. Equally, the extent to which detailed rules or an outcomes-based approach are appropriate will vary between different types of regulation.

Rules-based regulation is likely to be appropriate in setting clear minimum requirements where uncertainty needs to be reduced to a minimum or outcomes can be easily quantified, such as emissions standards. Generally, a rules-based approach is seen as more precise,

100. Hampton, Philip (2005), *Reducing administrative burdens: effective inspection and enforcement*

101. OECD (2018), *Regulatory Policy Outlook 2018*, p106

102. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf; List of regulators covered by the code available here; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300127/regulators-code-summary-cover.pdf

and therefore providing more certainty for regulated entities. However, there are several drawbacks of rules-based regulation. Rules are naturally imperfect and can be subverted. More significantly, compliance with rules does not necessarily equate to satisfactory outcomes. Taken together, this can lead to the incentive to create ever more rules to mitigate every conceivable risk.

Outcomes-based regulation has the advantage of being responsive and facilitative to innovation because it is less focused on the process by which outcomes are reached. If the intended outcome is clear, outcomes-based regulation can significantly reduce the regulatory burden. There is however a risk that if the objective of outcomes-based regulation is vague and creates uncertainty, ever increasing amounts of guidance are required, which can create its own burden.

The academic Professor Christopher Hodges has argued that an outcomes-based cooperative approach to regulation is more likely to promote ethical behaviour and embed a sense of ownership for outcomes within regulated organisations. Regulated entities can be incentivised to improve their performance by being given a stake in designing with regulators models of assurance and compliance.[103] The Government has said it wishes to promote precisely such "outcomes-focussed, experimental" regulators who "will work collaboratively with business".[104]

In some sectors regulators already work closely with industry to develop methods of self-assurance or earned recognition, which are audited by regulators. For example, the aviation sector is an example of a heavily regulated industry which relies on a combination of mandatory and self-reporting, approval and audit of airlines' own safety management systems and allowing third party entities to assure the training and quality of pilots.[105]

Case study: Co-regulation of pig and poultry quality standards to reduce burdens

In 2010, the Environment Agency (EA) introduced the Pig and Poultry Assurance Scheme. The scheme aims to reduce regulatory burdens by reducing the number of EA visits and associated EA fees for farms that are members of an appropriate quality assurance framework. Under the scheme, a third-party certification body inspects member farms and collects information on the EA's behalf. Visits usually take place at the same time as another assurance scheme, such as Red Tractor or the Lion Code for eggs.[106]

Outcomes-based regulation is likely to be more effective if there is a transparent and cooperative relationship between regulators and those they regulate based on earned trust. This requires regulators to communicate clearly the outcomes they are seeking to achieve and offer regulated entities the ability to seek guidance or challenge regulators without fear of retribution. It presumes that the regulated accept that their regulator is not just a necessity but will work with them to develop the health of their sector.

However, there are sectors in which an adversarial relationship between

103. Hodges, Prof Christopher (2021), *Outcome-based cooperative regulation.*
104. HMG (2022), *The benefits of Brexit.*
105. Civil Aviation Authority, *The CAA safety plan*; https://www.caa.co.uk/safety-initiatives-and-resources/how-we-regulate/safety-plan/the-caa-safety-plan/
106. https://www.gov.uk/government/publications/pig-and-poultry-assurance-scheme-intensive-farming/epr-intensive-farming-pig-and-poultry-assurance-scheme

regulator and those they regulate is going to be harder to avoid. For instance, the high stakes nature of financial services, and the economic and political risks associated with failures, will inevitably lead to legitimate concerns about regulatory capture. But regulatory capture and a constant adversarial battle are the two extremes of a regulator's relationship with those in its sector, and both should be avoided. For example, the FCA has operated sandboxes to encourage innovation by allowing innovators to trial new products, services, or business models in a real-world environment under regulator supervision. It has also conducted various Tech Sprints to work with industry on to develop technology-based solutions and proof of concepts to address specific industry challenges. Other regulators should be encouraged to make greater use of sandboxes to facilitate innovation in their sector.

There is a related risk that a closer relationship between regulators and those they regulate comes at the expense of the intended beneficiaries of regulation, consumers. Therefore, regulators must ensure that the consumer interest is reflected in any assessment on regulatory outcomes. This can be provided by consumer watchdogs or ombudsmen, and market or survey data is an increasingly important tool. For example, Ofcom publishes annual reports setting out how each of the major telecoms providers performs on measures including customer complaints received, value for money and overall customer satisfaction.[107]

3.2. Improving skills and expertise within regulators

Due to the technical nature of their roles, regulators must be expert bodies, possessing the skills and expertise to fulfil their functions effectively. This requires knowledge of their area of regulation, which may focus on a sector (such as financial services, aviation, or energy) or on cross-cutting issues (such as data protection, product safety, or competition and consumer protection). A shift to outcomes-based regulation requires personnel within regulators to be trained in risk management and best practice tools, supported by culture change throughout the regulator.

This could be achieved by recruiting and training graduates, who will often be able to use experience within a regulator to secure more lucrative jobs in the future. Meanwhile, regulators can benefit from hiring talent from the sectors they regulate, mindful of the risk of capture. The greater use of secondees from regulated sectors would provide an important perspective on how regulation affects behaviour in regulated organisations as well as operational insights to ensure regulation is workable in practice. Regulators should seek to facilitate the movement of talent in and out of regulators throughout all career stages. Equally, encouraging secondment to and from international regulators would offer opportunities to learn from other jurisdictions and promote UK regulatory philosophy elsewhere.

Given the importance of regulation, there is a need to encourage professionalisation of the role. This might include developing dedicated training programmes and providing greater opportunities for exchanging knowledge across different areas of regulation, which although distinct

107. https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2020/customer-service-revealed

will often be dealing with similar conceptual issues and regulatory tools. For example, the Bank of England recently partnered with Warwick Business School to offer a postgraduate qualification in global central banking.[108] Meanwhile, the Institute of Regulation was established in 2021 as a professional membership organisation to provide resources and a network for those working in and/or interested in regulation. The Institute has links to networks of regulators in Australia, New Zealand, the US, India, and Canada, and is developing training and development courses with education providers.[109] Given the generally high regard in which UK regulators are held internationally, greater professionalisation within regulators could provide an important opportunity to exercise UK soft power.

3.3. Effective feedback loops to inform internal challenge within regulators

It is essential that regulated entities have access to formal mechanisms of appeal against regulatory decisions or enforcement actions, to ensure that regulators make proper use of their coercive power. In the UK, rights to appeal are routinely included in the legislative framework, such as the right to appeal to a court or tribunal. However, the use of these mechanisms can be high stakes and costly means of challenging regulators, which can leave smaller firms at a particular disadvantage.[110]

The challenge is to enable meaningful dialogue between regulators and those they regulate which leads to continuous improvements to regulation, regulators' practices, and better outcomes. The Regulators' Code requires all regulators to provide simple and straightforward ways to engage with those they regulate and hear their views. However, government does not hold data on the extent to which this takes place, and any evidence on changes to regulators' approach that were made as a result.[111] Collecting and reporting this data could form part of regulators' annual reports, enabling government and parliament to monitor how regulators interact with stakeholders.

Consultation practices often do not take into account the resource and time constraints of smaller organisations. Documents are often too long and complex to be comprehensible. Meanwhile, the volume of and length of time to respond to consultations on regulatory changes can make meaningful engagement infeasible except for the largest firms with significant resources. For example, UK Finance noted that in December 2018, with only weeks left before the Christmas holidays, there were 24 live consultations from the BoE, the PRA, the FCA, the PSR and the CMA running simultaneously.[112]

Research on why regulated entities may be reluctant to engage proactively with regulators is limited, but interviews and surveys suggest reasons include fears of retribution for raising issues with regulators. This can be compounded because, due to the complexity of rules, regulated parties are concerned they may be found guilty of some breach even if it is not the matter at hand.[113] For example, a government review of the

108. https://www.bankofengland.co.uk/ccbs/professional-development-opportunities

109. https://ioregulation.org/about-us/

110. Appeal rights are usually more effective and user friendly if they involve references to a specialist tribunal that can itself be part of a regulatory dialogue, is familiar with regulatory issues and the use of regulatory discretion, and is able to make a value judgement about how a discretion has been exercised, rather than just testing it in a purely technical way for compliance with a legal framework.

111. HMG (2021), *Reforming the Better Regulation framework consultation*

112. UK Finance (2019), *HM Treasury Financial Services Future Regulatory Framework Review: call for evidence – regulatory coordination*, p8; https://www.ukfinance.org.uk/system/files/HMT%20call%20for%20evidence%20on%20regulatory%20coordination%20-%20UK%20Finance%20response.pdf

113. Russel, G. and Hodges, C. (2019), *Regulatory delivery*, Bloomsbury Professional, p117

energy sector noted that:

> *"Companies felt that Ofgem's dual role of regulator and enforcer was not working. There was a general sense of distrust that they couldn't have an open and frank conversation with Ofgem's policy teams, in case information was then shared with their enforcement colleagues, who would then level fines against them, rather than being used to help them fix their problems. Companies felt that as Ofgem moved into a principles based regulation a much more collaborative relationship would be required to ensure the best outcomes."*[114]

In sectors where there is a more adversarial relationship, in which every interaction is seen as part of a larger struggle, regulated entities are far less likely to engage with regulators outside of structured or legal processes. Although regulators have a duty to consult those they regulate on new rules, the incentive to take into account dissenting opinion may be weak if the only other challenge mechanism is via legal challenge.

However, in sectors where there is a more collaborative relationship between regulator and regulated, there are likely to be a range of feedback opportunities, from the informal to the structured. This can enable regulators and those they regulate to share information on emerging new risks in the sector and enable regulated entities to provide regular feedback on the impact of regulators' rules and decisions.

Where collaboration is not the norm, for example where inspection and enforcement is a major facet of a regulator's activity, regulators could establish a formal internal challenge unit separate from these functions. This unit could provide internal challenge of the regulators' performance, informed by a dialogue with regulated firms and consumer groups. It could also provide guidance to regulated entities seeking support with how to comply cost-effectively, without the fear of retribution. Such an internal challenge function could be modelled on the Bank of England's Independent Evaluation Office, which provides an arm's length challenge function, reporting directly to the organisation's board (see below).

Internal challenge in the Bank of England

The Bank of England's Independent Evaluation Office (IEO) provides a model other regulators could potentially follow. The IEO is an independent unit that sits within the Bank and assesses its performance. The IEO was established in 2014 to increase public trust in the Bank and improve its openness, learning culture and public accountability. The Court of Directors has a statutory obligation to keep the Bank's performance under review, and the IEO supports this through in-depth evaluations. When necessary, the IEO also supports reviews carried out by independent third parties, such as the NAO.

The IEO reports directly to the Chair of Court, who sets the IEO's remit and work programme, typically in consultation with other Court Directors. Crucially, it is empowered to seek outside input from those with knowledge of how industry is affected by Bank policy or PRA regulation, and therefore provides intelligence directly to the Court, unfiltered by the executive.[115] It operates at arm's length from other areas so as not to compromise the independence of the Bank's policy making.[116]

114. HMG (2016), *Cutting red tape: review of the energy sector*, p18; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/504797/bis-16-158-crt-review-energy.pdf

115. See Bank of England Independent Evaluation Office (2017), *Evaluation of the Prudential Regulation Authority's approach to its insurance objective*;

116. https://www.bankofengland.co.uk/independent-evaluation-office

3.4 Collaboration and data sharing

As noted in section 2.1. above, the sheer number of regulators raises issues of overlap, inconsistency, and duplication. Developing greater collaboration between regulators would promote more efficient and proportionate regulation and better outcomes. For example, greater collaboration and coordination between the economic regulators would ensure that they do not take contradictory actions that undermine common objectives. This is particularly relevant regarding government policy on climate change and resilience.

Data sharing provides a major opportunity. At its most basic level, data sharing can fulfil the "tell us once" principle, whereby regulated entities do not have to provide the same information to multiple regulators.

Meanwhile, regulatory enforcement should also focus on outcomes, even in a rules-based regulatory regime. The effectiveness of enforcement activities should be evaluated against the contribution they make to higher levels of compliance and reducing harm. Sophisticated use of data can enable risk-based approaches to enforcement. For example, the Health and Safety Executive has developed risk analysis tools to target inspections on higher-risk sectors and the worst performers. If data sharing can enable these risk-based tools to operate across sectors, regulators could coordinate an intelligence-led approach to calibrate their interventions appropriately. For example, evidence of persistent offences in one area could prompt closer inspection from a regulator in another field. Equally, regulated firms with a strong track record of compliance in several areas could benefit from a lighter touch regime, reducing the regulatory burden (see box below).

Using technology to target regulatory intervention within and across sectors

The Health and Safety Executive (HSE) has developed a tool called Find-It to target inspection efforts more explicitly on higher-risk sectors, poor performers, and serious regulatory breaches. Find-It matches and links disparate data and provides a combined view of regulated entities' performance. It helps inspectors target regulatory activity to where it is most needed and reduce burdens on compliant businesses.[117]

HSE subsequently worked with the Better Regulation Delivery Office to develop the Intelligent Regulatory Information System (IRIS) to enable data sharing across different regulators (workplace health and safety, care quality, food standards, and fire protection). Members of the programme could share enforcement data about business premises which they mutually regulate through a live database in order to deliver integrated, effective, proportionate and risk-based regulation. Originally a local pilot, the scheme is being rolled out nationally.[118]

The concept of a Regulatory Intelligence Hub is being developed on the back of Find-It and IRIS. The ambition is to provide a coordinated, cross-government approach to the provision of intelligence for regulation. The aim is to develop best practice and data sharing solutions, and inform regulators of where data sharing would benefit groups of regulators.

The development of government-wide tools could greatly improve the targeting and efficiency of regulatory activity by allowing more effective risk- and evidence-based interventions using appropriate sharing of data by regulators across government.

Data-sharing between regulated providers of services can also enable multiple regulators to meet shared policy objectives, such as ensuring vulnerable customers receive support. For example, water and energy companies provide a range of free services to support customers in vulnerable circumstances, such as large print bills, support to read a meter, or ensuring consistent supply for those who depend on electricity or water for medical equipment at home. Data-sharing between service providers would make it easier to identify and support these customers.[119] However, the utilities regulators and the Information Commissioner's Office will need to work together to ensure regulated providers share data proportionately and securely.

There remain barriers to effective data-sharing between regulators and between regulated providers of services. These barriers are practical and cultural, as well as legal. For example, some regulators are restricted by their enabling statutes, while confusion or misunderstandings about the legal implications of sharing data is cited as another reason for not sharing data. Meanwhile, if regulators do not consider data sharing to be useful in meeting their own priorities, data sharing is likely to be a low priority or seen as a risk.[120] Some legislative change may be needed to facilitate the levels of data sharing that would be most useful.

These barriers to data sharing could be overcome in different ways. The primary regulator in a particular sector (where there is one) could take responsibility for managing the need to reconcile the requirements of other regulators in that sector. All regulators could be given a statutory duty

119. Ofgem (1 November 2018), *Safe, secure data sharing helps those in vulnerable circumstances*; https://www.ofgem.gov.uk/news-blog/our-blog/safe-secure-data-sharing-helps-those-vulnerable-circumstances

120. HMG (2017), *Regulatory Futures Review*

117. Health and Safety Executive (2017), *Innovation in regulation*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602832/hse-innovation-in-regulation.pdf

118. For example, see County Durham and Darlington Fire and Rescue Service, *Business fire safety strategy 2020-2023*; https://www.ddfire.gov.uk/sites/default/files/2022-02/BFS%20Strategy%202020-2023%20v2.pdf

to report on their collaboration with other regulators, and performance against this duty could be assessed in regulator audits carried out by the NAO. For example, the Bank of England, FCA, PRA, and PSR have a duty to coordinate their activities.

Meanwhile, regulators should be encouraged to develop forums to exchange expertise. For example, the UK Regulators' Network (UKRN) is an association that works to communicate and coordinate across 14 regulators (primarily the economic regulators). Other regulators should be encouraged to form similar groupings where their activities overlap, for example across public service regulators.

3.5. Embracing the opportunities of digitisation

As discussed elsewhere, regulators perform a variety of functions. Generally, these consist of three core activities: policy and rule-making, supervision, and enforcement. The digital revolution impacts all three pillars.

Policy and rule-making: machine readable rules. Regulatory rule books are large and complex. In financial services, the PRA rulebook is over 638,000 words[121] and the FCA rulebook is longer still. Regulated firms are obliged to employ large numbers of technical compliance experts and lawyers to interpret these complex rulebooks. Excessive complexity is undesirable on several grounds, including as noted elsewhere, the way in which it can contribute to an unhelpful culture among regulated firms as well as at regulators.

An alternative regulatory model would have regulation published directly in machine readable format, so that rules could be promulgated more rapidly and with less ambiguity, be updated more easily and the interpretative layer of compliance at regulated firms could be (largely) eliminated. Such an approach would reduce costs for all concerned in the longer term and deliver greater certainty about regulatory outcomes. Machine readable rule making has been the subject of pilot projects by the FCA and some overseas financial regulators[122]; but serious effort should be made to extend its scope by all UK regulators across the regulated economy.

Supervision: pulling, rather than pushing data. McKinsey and Company has estimated that regulatory reporting for UK banks costs the industry £2 billion–£4.5 billion per year in run costs and risk change costs alone.[123] At the same time it is not clear that all the data received by regulators is interrogated or used in the most intelligent way: indeed the sheer volume of data submitted, and the limited resources available to the regulators, makes this unlikely.

An alternative regulatory model would have regulators able to "pull" data by extracting it directly from regulated firm systems for use as, and when, they needed it using advanced "big data" analytical tools, including artificial intelligence and machine learning techniques. Regulators could have access to more timely information and perform a greater range of analyses than they are able to with standardised reporting.[124] The greater

121. Bank of England (2019), *Future of finance*, p14; https://www.bankofengland.co.uk/-/media/boe/files/report/2019/future-of-finance%20report.pdf?la=en&hash=59CEFAEF01C71AA551E7182262E933A699E952FC

122. https://www.fca.org.uk/events/techsprints/model-driven-machine-executable-regulatory-reporting-techsprint

123. Bank of England (2019), *Future of finance*; https://www.bankofengland.co.uk/-/media/boe/files/report/2019/future-of-finance%20report.pdf?la=en&hash=59CEFAEF01C71AA551E7182262E933A699E952FC

124. Bank of England (2021), *Transforming data collection from the UK financial services sector: a plan for 2021 and beyond*; https://www.bankofengland.co.uk/paper/2021/transforming-data-collection-from-the-uk-financial-sector-a-plan-for-2021-and-beyond

scope of material that could be examined, with lower intrusion for regulated firms, would enable much more insightful analysis by regulators, at materially lower cost for all concerned.

However, there are limits to this technology. It is likely to be most useful in simplifying rules-based compliance in areas such as finance. It would not be appropriate where subjective judgment plays a significant role in determining outcomes, for example in media regulation or decisions regarding social services.

Enforcement: evaluating potential actions. The ability to take enforcement action against alleged rule breakers is a key regulatory tool. However, it is a blunt and expensive instrument, with the outcome of enforcement actions hard to predict in advance and less well-resourced regulators often facing much better resourced defendants in any action.

In some jurisdictions it is becoming increasingly common for prospective litigants to test the strength of their cases in advance of launching legal proceedings, using AI analytical engines trained on previous case history and the statute books.[125] There appears to be scope for regulators to improve the efficiency of enforcement action (and thereby to strengthen its deterrent effect), and to reduce their costs by making use of this technology as well.

Digitising the regulators

The other side of the digitisation coin is the scope that new technology presents to overhaul the operations, management, and governance processes of the regulators themselves. Regulators can improve performance and reduce operating costs by investing in cloud computing, new operating systems, and AI-driven decision-making tools. Risk management and compliance for the regulatory organisations themselves can be conducted significantly more cheaply and effectively using new technology (much of which is already being trialled or in use by firms that the regulators are supervising).

These examples, and others, are significant opportunities for every regulator to improve decision making and efficiency and show better value for money, at a time when resources are constrained for many regulators. Capturing this opportunity does however present some material challenges, not least in terms of recruitment, training and motivation of staff who are technically able to deploy and use the new technology, and in financing the investment spend required for a significant upgrade of legacy technology infrastructure. Equally, there need to be safeguards to ensure a focus on technological outputs does not come at the expense of the bigger picture and that legitimate concerns about the "black box" problem with algorithms and artificial intelligence are addressed.

3.6. Conclusions and recommendations

Risk or outcomes-based regulation allows for a more flexible, adaptable, and proportionate approach, which can be more supportive of innovation. It can also allow regulators to target their resources and interventions on

125. LexisNexis (1 February 2022), *Use of AI in law firms to predict litigation outcomes*; https://www.lexisnexis.co.uk/blog/future-of-law/using-ai-to-predict-litigation-outcomes

achieving outcomes, rather than monitoring compliance with rules.[126]

Government and parliament should encourage and challenge regulators to explore how outcomes-based, collaborative approaches to delivering their regulatory objectives would improve outcomes and improve regulatory efficiency. How much flexibility regulators will have to adopt this approach will to some extent depend on the relationship between regulators and those to whom they are accountable, notably government and parliament. It will be important that the instinctive reaction to any failure is not just to introduce more rules and that there is sufficient stability regarding the outcomes that regulation is intended to deliver, enabling regulated entities to plan. It should be noted that outcomes-based regulation is not necessarily a substitute for rules and process. Rules are required to ensure regulation upholds minimum standards and may be necessary to provide clarity regarding the pursuit of objectives. However, regulators should approach their task by first defining and communicating their desired outcomes and, if further intervention via rules is judged to be necessary, this must be justified by a robust evidence base.

A shift to outcomes-based regulation requires personnel within regulators with improved training in risk management and best practice tools, supported by a culture change throughout regulators. Securing the best talent requires a combination of recruiting and training graduates and hiring talent from regulated sectors, mindful of the risk of capture. **Regulators should seek to facilitate the movement of talent in and out of regulators throughout all career stages.** This includes making greater use of secondees from industry to provide important perspectives on how regulation affects behaviour in regulated organisations as well as operational insights to ensure regulation is workable in practice.

Meanwhile, **government should encourage regulators and education providers to develop dedicated training programmes and greater opportunities to transfer knowledge across different areas of regulation.**

Moving to a culture of outcomes-based regulation also requires a shift in the attitude of the regulated. Regulated organisations often complain about the burden of rules-based regulation, but simultaneously crave the security and certainty that rules and tick-box compliance can provide. A successful move to outcomes-based regulation therefore requires regulated organisations to take on greater responsibility for improving and demonstrating improved outcomes without defaulting to tick-box compliance.

Outcomes-based regulation would be supported by greater collaboration between regulators and the regulated working together to identify problems and solutions. However, the extent to which a more collaborative approach is possible or appropriate depends on the sector. Some sectors, such as aviation, already operate an open and collaborative relationship. However, there are sectors in which an adversarial relationship between regulator and those they regulate is going to be harder to avoid. For instance, the high stakes nature of financial services, and the economic and political risks associated with failures, will inevitably lead to legitimate

126. OECD (2021), *Regulatory policy outlook 2021*; https://www.oecd-ilibrary.org/sites/38b0fdb1-en/1/3/6/index.html?itemId=/content/publication/38b0fdb1-en&_csp_=98126082d8cd9c3becbc075f085ad466&itemIGO=oecd&itemContentType=book

concerns about regulatory capture.

A greater focus on regulatory outcomes, rather than processes, calls for more effective feedback loops between regulators and the regulated, and regulators and the beneficiaries of regulation. Confident, outcomes focussed regulators should welcome a culture of robust internal challenge informed by feedback from those they regulate and consumers.

Each regulator should ringfence some of its budget to fund an internal challenge function that acts as an agent for continuous improvement and a counterweight to the natural tendency towards mission creep. This function should draw on feedback from the experience of those that are regulated and consumer interests to improve regulatory outcomes and challenge regulators to review their practices. For regulators that have a close supervisory relationship with those they regulate, such as financial services or inspectorates in the public sector, an internal challenge function could be modelled on the Bank of England's Independent Evaluation Office, sitting at arm's length from other internal functions and reporting directly to the organisation's board.

Meanwhile, there remains significant untapped potential to improve regulatory effectiveness and efficiency through greater collaboration and coordination between regulators. **The primary regulator in a particular sector (where there is one) should take responsibility for managing the need to reconcile the requirements of other regulators in that sector. Regulators should be given a duty to report on their collaboration with other regulators, and performance against this duty audited by the NAO.**

Regulators should use collaboration and data-sharing to target their interventions on the routinely uncompliant and take a lighter touch approach to those that can demonstrate a history of compliance. Risk analysis should also be used by regulators to target support towards regulated entities that show signs being 'on the edge' of compliance. Government should work to develop initiatives such as the proposed Regulatory Intelligence Hub being developed by the Health and Safety Executive, which would promote risk-led enforcement and data sharing across multiple regulators.

Every regulator should be obliged to produce and publish a digitisation plan for its activities, where relevant. Regulators need to adapt regulation to the digital revolution and embrace the opportunities digitisation offers to make their operations more effective and cost-efficient. This plan should set out:

- A vision for digitising the conduct of regulation within its remit, together with a specific plan to implement this vision, including costs and timetable. This plan should address topics such as machine readability of rule books, digital reporting to the regulator and use of artificial intelligence to support decision making in supervision and enforcement. This technology is likely to be most useful in simplifying rules-based compliance but would not be appropriate

where human judgment plays a greater role, for example in media regulation or decisions regarding social services.
- A route to digitise the operations of the regulator itself, including infrastructure and communications.

These published plans should be reviewed by the NAO and be the subject of discussion and debate via the parliamentary accountability mechanisms discussed elsewhere in this report.

Summary of recommendations

Taming the rise of the regulators

1. **Government and parliament should hold regulators to account for the hygiene and health of their sectors.** i.e. the balance struck between reducing risks for the beneficiaries of regulation – be it to consumers, users of public services, or society as a whole – and the outcomes that regulation has produced in the sectors they regulate, such as the burden on those they regulate or the impact on innovation, competitiveness and growth.
2. **Fewer, bigger regulators in key areas would enable greater democratic accountability for regulatory outcomes, both regarding the protection of the public and the cost of regulation.** There should be a presumption against the creation of new regulators and government should explore opportunities to consolidate the number of regulators in any given sector.
3. **When establishing or reviewing existing regulators, government and parliament should ensure that the statutory objectives and duties of regulators are set out as clearly as possible, including how those objectives and duties should be prioritised.** Such a review requires cross-departmental coordination since many policy objectives, such as addressing climate change or the protection of vulnerable customers, cut across sectors and the activities of several regulators.
4. **Ministers should make greater use of powers to issue strategic guidance to regulators, particularly where such guidance can ensure effective coordination across sectors.** This guidance should specify how political trade-offs around questions such as fairness for vulnerable consumers or levels of resilience should be judged, rather than simply directing regulators to have regard to a general or vague objective.
5. **Regulators should have a formal and transparent mechanism for requesting strategic guidance from ministers when they feel their statutory objectives are in conflict.** This dialogue between ministers and regulators should be subject to parliamentary scrutiny.
6. **Regulators should define where the boundary between systemic and non-systemic risk lies in their field and make this public, so that these judgments are subject to scrutiny.** There should be

greater transparency regarding how regulators judge the level of supervisory oversight applied to regulated organisations moving up the systemic risk scale. There should not be sharp step changes but rather a gradual escalation considering levels of risk.

Gaining a greater grip on regulatory policy at the centre of government

7. **Government should establish a new Regulatory Reform Unit within the Cabinet Office and appoint a dedicated Minister for Regulatory Reform.** The Unit should be responsible for cross-government oversight and accountability for private and public sector regulation. This unit should be responsible for developing the Better Regulation framework, conducting periodic reviews of the role and performance of regulators, and developing long-term government priorities for regulation.
8. **Policymakers should always consider alternatives to statutory regulation, such as education and information, self-regulation, for example through codes of conduct, standards or accreditation, and co-regulation, and explain why these tools would not meet the policy objective.**
9. The bolstered Regulatory Reform Unit should conduct a cross-government review of the regulatory burdens relaxed during the pandemic with a bias to removing them permanently.

Enhancing parliamentary scrutiny and democratic accountability

10. **Regulators should be required to publish easily digestible performance metrics in their annual reports.** This should include:
    - Measures of their performance against statutory objectives and ministerial guidance.
    - The impact of their activities on industry and consumer outcomes for their sector.
    - Evaluation of the impact of their past policies and regulatory decisions, including efforts made to review and simplify existing regulation.
    - Operational costs and staff numbers over five years.
11. **The NAO should be empowered and resourced to conduct and publish regular audits for scrutiny by parliament of regulators' performance, including industry and consumer outcomes for their sector.**
12. **Departmental select committees should continue to scrutinise sectoral regulators associated with their department. However, an enhanced parliamentary role is required.** The Public Accounts Committee (PAC) could be given the responsibility for providing democratic oversight of overarching government policy on regulation and the performance of regulators. Alternatively, this

function could be given to a new a dedicated House of Commons Committee or a Joint Committee of both Houses. Enhancing these scrutiny and accountability functions will require additional skills and resources.

13. **Parliament should probe whether government guidance to arm's length regulators is either sufficiently clear or overly prescriptive**. There is a risk that short-term political considerations lead to conflicts arising between regulators' objectives or that regulators are left to work out for themselves how to balance multiple objectives.

Focussing on outcomes rather than process

14. **Government and parliament should encourage and challenge regulators to explore how outcomes-based, collaborative approaches to delivering their regulatory objectives would improve outcomes for the beneficiaries of regulation and improve regulatory efficiency.**

Encouraging the professionalisation of regulators and harnessing outside skills

15. **Regulators should seek to facilitate the movement of talent in and out of regulators throughout all career stages.** This includes making greater use of secondees from regulated sectors to provide important perspectives on how regulation affects behaviour in regulated organisations as well as operational insights to ensure regulation is workable in practice.
16. **Government should encourage regulators and education providers to develop dedicated training programmes and greater opportunities to transfer knowledge across different areas of regulation.**

Encouraging internal challenge within regulators, informed by feedback loops

17. **Each regulator should ringfence some of its budget to fund an internal challenge function, drawing on feedback from the experience of those that are regulated and consumer representatives.** Internal challengers should act as agents for continuous improvement, review the cumulative impact of existing rules, identify opportunities for regulatory simplification, and provide a counterweight to the natural tendency towards mission creep.

Cooperation, collaboration, and modernisation

18. **Government should give regulators a statutory duty to collaborate, and performance against this duty should be audited by the NAO.**
19. **Regulators should use collaboration and data-sharing to target their interventions on the routinely uncompliant and take a lighter touch approach to those that can demonstrate a history of compliance.**
20. **Every regulator should be obliged to produce and publish a digitisation plan for its activities where appropriate.**

Appendix: List of regulators

Education
Ofqual - Office of Qualifications and Examinations Regulation
Office for Students
Ofsted - Office for Standards in Education, Children's Services and Skills
The General Teaching Council for Scotland
General Teaching Council for Northern Ireland
Education Workforce Council (Wales)
Health and Social Care
Care Quality Commission (CQC)
Complementary and Natural Healthcare Council (CNHC)
General Chiropractic Council (GCC)
General Dental Council (GDC)
General Medical Council (GMC)
General Optical Council (GOC)
General Osteopathic Council (GOsC)
General Pharmaceutical Council (GPhC)
Health and Care Professions Council (HCPC)
Human Fertilisation and Embryology Authority
Human Tissue Authority
Medicines and Healthcare products Regulatory Agency (MHRA)
NHS Improvement - Monitor
Nursing and Midwifery Council (NMC)
Professional Standards Authority
Northern Ireland Social Care Council (NISCC)
Social Care Wales
Scottish Social Services Council (SSSC)
Pharmaceutical Society of Northern Ireland (PSNI)
Environment
Environment Agency
Forestry Commission
Marine Management Organisation
Natural Resources Wales
Northern Ireland Environment Agency
Scottish Environment Protection Agency

Finance
Financial Conduct Authority (FCA)
Financial Reporting Council
Payment Systems Regulator (PSR)
Pensions Regulator
Prudential Regulation Authority (PRA)
Justice and policing
Independent Office for Police Conduct
HM Inspectorate of Constabulary, Fire & Rescue Services
HM Inspectorate of Prisons
HM Inspectorate of Probation
Land and housing
Planning Inspectorate
Chief Land Registrar (Land Registry)
Regulator of Social Housing
Scottish Housing Regulator (SHC)
Legal
General Council of the Bar
Legal Services Board (LSB)
Solicitors Regulation Authority
Law Society of Scotland
Law Society of Northern Ireland
Master of the Faculties
Faculty of Advocates
Safety and standards
Drinking Water Inspectorate
Food Standards Agency
Gangmasters and Labour Abuse Authority
Health and Safety Executive
Office for Product Safety and Standards Delivery
Utilities, infrastructure and competition
Coal Authority
Civil Aviation Authority (CAA)
Ofcom
Ofgem - the Office of the Gas and Electricity Markets
Competition and Markets Authority (CMA)
Competition Appeals Tribunal
Office of Rail and Road (ORR)
Ofwat - the Water Services Regulation Authority
The Utility Regulator - Northern Ireland
Water Industry Commissioner for Scotland
Oil and Gas Authority (OGA)

Other
Advertising Standards Authority (ASA)
Architects Registration Board
British Board of Film Classification (BBFC)
British Hallmarking Council
Charity Commission for England and Wales
Scottish Charity Regulator
Charity Commission for Northern Ireland
Commissioners of Irish Lights
Direct Marketing Commission
Engineering Council
Equality and Human Rights Commission (EHRC)
Farriers Registration Council
Forensic Science Regulator
Gambling Commission
Groceries Code Adjudicator
Historic England
Independent Press Standards Organisation (IPSO)
Information Commissioner's Office
Intellectual Property Office
Office for Nuclear Regulation (ONR)
Office of the Regulator of Community Interest Companies
Phone-paid Services Authority
Registrar of Companies (Companies' house)
Security Industry Authority
UK Statistics Authority

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