

# REBUILDING THE REGULATORY ECOSYSTEM

How Labour in government should approach regulatory reform

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# Foreword

Since 2010, the Conservatives have failed to achieve their main objective of reducing regulation while, at the same time, making the quality of regulation worse.

They have skirted scrutiny and made a mockery of government procedures, often failing to publish impact assessments or doing so at short notice. In Labour's last full year in office, in 2009, the government published 359 assessments of the likely impact of its legislation and regulation on businesses, workers, and wider society. Last year, the Conservative government(s) published just 98.

The Conservatives have overseen poor standards, with as many as one in four assessments rated "not fit for purpose" by the government's own watchdog. In one instance, a Treasury impact assessment was found to miscalculate the potential impact of regulatory changes by £1bn a year.

They have cut the funding of inspection and enforcement bodies to the bone. Health and Safety Executive prosecutions, for instance, fell by more than 70% between 2010/11 and 2021/22. Since 2010, fire safety audits by local fire and rescue services have fallen by more than 40%. Today, almost a third of workers at or around the wage floor are underpaid the minimum wage.

This is the opposite of what an effective regulatory regime looks like. It is also anti-business. It rewards bad businesses who ignore the rules and punishes the good ones who follow them. There is little wonder that businesses were not jumping for joy at the prospect of less EU regulation but more from this government.

There is another way. The Conservatives have left behind a dysfunctional regulatory system. Labour can and must rebuild it.

The idea that regulation writ large is "good" or "bad" is outdated, simplistic and wrong. Regulation can support economic growth, give confidence to businesses and encourage innovation. But it needs to be designed effectively. Regulation must be high quality and pro-growth. But nor is the answer to all our economic and social problems ever more regulation either. Interventions should be proportionate with clear net benefits. Regulation should also tend towards the least interventionist option to minimise unintended consequences and it must be enforceable.

Under the last Labour government, the UK was a trailblazer on regulation, introducing innovative approaches to analysing and scrutinising decision-making. The next Labour government must follow this legacy and make the UK once again a world-class regulatory environment in which citizens, businesses and investors can have confidence. That will require reform of structures, processes and a transformation of culture.

Nathan Yeowell,  
Executive Director,  
Progressive Britain



# Executive Summary

Regulation has got worse under the Conservatives, and a Labour government would need to rebuild an effective regulatory system.

That is the central argument of this paper. It may seem a counterintuitive conclusion about the Conservatives — a party that obsesses over “red tape” (especially when it originates from the EU) and is apparently concerned about the impact of bad regulation — but it is substantiated by the data and the narrative history of regulatory policy in this report, as well as over a dozen conversations held with senior figures in regulatory policy past and present.

“Got worse” here means that the quality of regulation — the process, design and enforcement of rules — has declined, not that the quantity of regulation has increased, although it has.

Quality is difficult to capture in hard data, though the unequivocal message from interviewees was that it had declined, but there are indicators that capture part of the story.

On process, published impact assessments were equivalent to just 5% of primary and secondary legislation passed in 2022, down from around 13% when Labour left office.

On design, the speed of policymaking is crucial. Slower is often better as, without time, civil servants cannot devise the most effective regulatory solutions. Under the Conservatives, since 2015, the rate of fast-tracked legislation has been more than double that under Labour.

Finally, on enforcement, many regulators that rely on significant government funding, as well as local authorities, have significantly reduced their enforcement activity due to resource pressures. A single example is fire safety in non-domestic buildings. Since 2010, fire safety audits by local fire and rescue services have fallen by more than 40%. Some of that might be efficiencies, but a lot of it will be missed opportunities for prevention that result in avoidable damage to property, health and even loss of life.

It is the quality of regulation that policymakers should fixate on, not the quantity. Throughout the recent history of deregulatory initiatives, fixating quantity has rarely led to targets being met and has distracted governments from regulatory quality. But, more importantly, evidence shows that costs associated with regulation — and, therefore, the balance of net benefits to society from introducing it — are very often dependent on regulatory quality. When done well, regulation can even be growth-enhancing.

Those who still worry about the quantity of regulation should take comfort from the fact that a focus on quality will inevitably slow the flow of new regulation and refocus attention on reforming the existing stock, in turn having an impact on quantity.

Promoting economic growth and high standards should be the two pillars of an effective, modern regulatory system. Economic growth — which will underpin a Labour government’s ability to invest in high-quality public services — must be front of mind in the design of regulation. This will require trade-offs. It will mean that where social impacts of regulatory options are comparable, the more pro-growth option is favoured. And where the impact on growth would be strongly negative, it will require concerted efforts to identify mitigations to offset or reduce that impact.

By high standards, I do not mean making regulation as stringent as conceivably possible. High-standard regulation means maintaining effective protections and extending them where necessary, but also tailoring regulation to the level of risk and, crucially, integrating it with the existing stock. This has not been attempted in any serious way in recent history.

Labour's task, then, is not just 'better regulation'. It is to rebuild a decision-making system that can deliver high-quality regulation, focused on growth and high standards. It will not be simple, requiring a renewed set of cross-government structures and processes. But, most importantly, it will require a change in culture, both among politicians and officials. Labour ministers will need to accept relatively slower decision-making on key issues to allow proper scrutiny and consultation. It will mean resisting pressure to pursue the same "sticking plaster" policies for which Labour have fairly criticised the Conservatives. Civil servants will need to fully embrace the importance of revisiting existing regulations, not just creating new ones. But a genuine partnership is possible, where officials are given the political space to do high-quality analysis and civil servants buy into a more holistic view of the regulatory landscape.

Regulation is a vital part of any serious governing agenda. It is perhaps the most important — though often underappreciated — tool that would be available to Labour should they form the next government. Regulation is not simply about reducing risks but capitalising on opportunities too. Drawing on conversations with over a dozen current and former politicians, political advisers, civil servants and experts, as well as reviewing major regulatory policies from 1997 to the present day, six priorities are identified, as follows.

1. Taking a more strategic approach to regulation
2. Adopting a more holistic mindset
3. Making the flow of new regulation more robust
4. Improving the stock of existing regulation
5. Prioritising enforcement
6. Strengthening the UK's pro-innovation regulatory environment

Collectively, these provide a coherent framework to begin to rebuild the regulatory ecosystem and improve regulatory quality, from aligning upstream strategic priorities through to enforcement of rules on the ground.

The report includes 26 recommendations on how the next Labour government could improve the regulatory process and quality. These include the following.

- Asking the most active regulatory bodies to devise action plans to deliver Labour's five national missions.
- Asking departments to assess existing regulatory requirements in areas they wish to add significant further costs.
- Setting an ambitious "fit for purpose" target for all regulatory impact assessments.
- Strengthening guidance to increase the use of statutory review and sunset clauses.
- Asking departments to demonstrate that better enforcement of existing regulations could not achieve similar outcomes to new regulation.
- Embedding the Regulatory Horizons Council within the new Industrial Strategy Council.

This report is a starting point for debate on what Labour's regulatory agenda should look like. It does not attempt to review the entire regulatory landscape — an impossible task — but explore ways in which change can be driven from the centre of government to improve regulation across the board. The role of regulators is broadly left aside for another piece of work.

# Summary of recommendations

## Taking a more strategic approach to regulation

1. On day one, pause and review all new regulation being developed to assess whether it aligns with the strategic objectives and priorities of a Labour government. Stating this intention in advance would allow civil servants to prepare to undertake such a review at speed once in office.
2. Ask the most active regulatory bodies to devise action plans to ensure that regulation is focused on delivering Labour's five national missions. This should be complemented by asking the National Audit Office to produce an annual assessment of regulatory activity and its contribution to achieving the national missions.
3. Adopt a 'reform first' approach to public services. Operational and financial performance improvements should be a pre-requisite for significant medium-term funding boosts to ensure ministerial and public confidence that taxpayer money is being used as effectively as possible. Some additional short-term funding may be part of achieving these reforms. This should begin with healthcare, and actionable improvements should be delivered quickly.
4. Commission a comprehensive review of regulatory costs on public services and citizens. This would be a major part of a 'reform first' approach. The healthcare system should be the first priority. Interim findings should be delivered within the first three months of a Labour government and most immediate actions to take implemented within the first six months.
5. Launch a review of regulators' statutory duties. This should seek to identify both crosscutting strategic priorities and sector-specific requirements. There must be an effort to ensure duties are updated but also simplified, collectively deliverable and coherent.
6. Give the Regulatory Policy Committee (RPC) a stronger role in overseeing regulation. The RPC should take on a number of additional functions, including assessing the coherence of new regulatory proposals across departments and carrying out post-implementation reviews.

## Adopting a more holistic mindset

7. Ask departments to produce an assessment of existing regulatory requirements in areas they wish to add significant further costs. Regulatory impact assessments should take account of the overall costs of proposed regulatory measures in conjunction with existing measures.
8. Introduce mandatory regulatory impact assessments for regulation that is likely to have significant costs for public services. This would begin to address the significant burdens that departments add to public services each year without thorough, systematic assessment.
9. Identify principles and priority areas to retain regulatory autonomy and pursue international co-operation on regulation. To ensure coherence between Labour's domestic and international regulatory efforts, Labour should identify early any red lines on regulation, such as protecting public health, for negotiations with international partners.

# Making the flow of new regulation more robust

10. Set an ambitious 'fit for purpose' target for all regulatory impact assessments. It should not be the norm, as is currently the case, that the government's analysis of as many as one in four significant regulatory measures is considered 'not fit for purpose'.
11. Require departments to submit a wider range of proposals for independent light-touch assessments by the Regulatory Policy Committee. This would ensure that some miscalculations of the expected impact of regulations by departments that mean they currently fall below the mandatory threshold for full impacts assessments and RPC scrutiny currently are captured.
12. Publish a live dashboard of all regulatory activity across departments and regulators. This should build on the example of the Regulatory Initiatives Grid published by the Financial Conduct Authority (FCA). A live dashboard would improve transparency and make it easier for stakeholders to identify relevant regulatory proposals and engage with them.

# Improving the stock of existing regulation

13. Strengthen guidance to increase the use of statutory review and sunset clauses. For significant regulations, post-implementation reviews should take place unless in exceptional cases. Systematically reviewing the existing stock of regulation is vital to ensuring the continued effective operation of the regulatory system. This is especially important to keep pace with rapid technological change and prevent the unplanned accumulation of requirements on businesses and public services.
14. Ask the RPC to conduct post-implementation reviews to provide an independent assessment. Departments should not mark their own homework. These reviews should include recommendations as to how departments could improve regulations' operation or whether they should be removed altogether.
15. Ask the RPC to audit existing departmental impact assessments. There appears to be no systematic effort currently to review and learn lessons from impact assessments. Departments are missing opportunities to improve their accuracy and currently have little accountability.
16. Return to a considered approach to reviewing and reforming retained EU law. There is a good case for reviewing EU law brought onto the UK statute book but this should be done in a careful and considered manner. The government is flying blind, with potentially damaging unintended consequences from 'accidentally' removing valuable regulations.
17. Initiate a project to codify existing regulation by sector. A project to consolidate existing regulatory requirements for businesses in a single location, written in accessible language, would significantly ease business costs and lower barriers to entry, especially for new and small businesses. This should start with the most highly regulated sectors.



## Prioritising enforcement

18. Conduct a review to identify rarely enforced regulations. If existing protections are never used by those they are intended to protect, it is difficult to justify compliance costs associated with them. This process should identify areas where more effective regulation can strengthen protections in practice that currently exist mainly in theory.
19. Ask departments to demonstrate that better enforcement of existing regulations could not achieve similar outcomes. Currently, little account is required of the effectiveness of enforcement of existing regulations before new ones are proposed and implemented. This is both potentially wasteful of civil service resources and risks contradicting or counteracting existing regulations.
20. Consider expanding the use of “earned” relief from some regulatory requirements. There are already a number of earned recognition schemes in place, especially in the agricultural sector. Businesses with a proven track record of exceptional corporate governance standards could be rewarded with fewer inspection and reporting requirements, subject to periodic, light-touch, reviews.,

## Strengthening the UK’s pro-innovation regulatory environment

21. Embed the Regulatory Horizons Council (RHC) within the new Industrial Strategy Council. This would ensure close co-operation, collaboration and alignment of work plans, as well as sharing of resources and maximising synergies while also reducing costs.
22. Ask the RHC to horizon scan for innovative approaches to regulation. This could be done through a simple amendment to the RHC’s Charter without adding significant burdens. To provide the government with the best advice on priorities for regulatory reform, the RHC needs a good understanding of new and novel approaches taken elsewhere.
23. Explore the most applicable uses of machine-readable regulation across government. Nascent applications are currently being implemented in financial services, but there are potentially much wider uses that could both reduce regulatory costs for businesses and public-sector bodies, as well as improve compliance, and make monitoring and enforcement more efficient and effective.
24. Create ‘challenger groups’ within regulators to identify and support growing businesses in their sectors. These specialist units would proactively engage with and support rapidly growing businesses and potential new market entrants to encourage competition and innovation.
25. Develop scaleboxes to support to ‘future success’ businesses. Departments and agencies should be encouraged to devise packages of support for businesses at the scale-up stage of their lifecycle in relevant, high-growth sectors.
26. Commit to the UK becoming a ‘fast follower’ of innovation. The above recommendations are aimed at supporting innovation within the UK, but where innovation takes place outside the UK our competitive advantage outside one of the world’s major regulatory blocs is to be nimble in quickly adopting innovative approaches to regulation that work elsewhere.

# What is regulation?

Regulation is the set of rules, standards and guidance — and, crucially, their enforcement — that government imposes to reduce public risk from business and other activities. Even the most ardent free-market advocate would accept the need for some regulation, recognising that markets are inherently imperfect and produce negative impacts on the economy and society. These can include abuse of market position that drives up prices for consumers or environmental damage. Regulation provides a set of tools for governments to lessen these risks while preserving the economic and social benefits of allowing business and social activity to take place as freely as possible.

In most contexts, regulation is an intervention at a single point in time within complex and constantly changing economic and social systems. Even the most targeted, carefully crafted and effectively enforced regulations will inevitably become outdated as the world changes around them. The work of ensuring a high quality and effective regulatory system is, therefore, never complete. This explains why every government over the past 30 years or more has dedicated significant attention and resources to improving the regulatory environment, even though they had different ideas about how best to achieve it.

## Understanding risk

Regulation is ultimately a response to risk and, sometimes more importantly, perceptions of risk. It is not feasible, or desirable, for governments to attempt to eradicate risk altogether. The unintended consequences of trying to do so would often be worse than the original activity being regulated.

Our level of risk tolerance as a society strongly influences the degree of regulation introduced. The lower this risk tolerance, the more stringent regulation will be. As we saw during the pandemic, governments have the ability to significantly reduce the spread of infectious diseases through draconian social restrictions. However, outside of a pandemic, we are generally more willing to accept a higher level of transmission risk to ensure a greater degree of individual liberty. The rapid development of vaccines during the pandemic is an example of our willingness to accept a higher level of perceived risk (scientist and regulators will say that no additional real-world risks were introduced). Because of the social and economic imperatives, we accepted a more agile approach by regulators from existing norms to speed up assessment and approval. This has now broadly reverted to its pre-pandemic state, partly due to a redistribution of resources away from a single, all-consuming issue.

Risk perceptions change and are often conditional. So before considering what an appropriate level of regulation is, we must first determine the level of risk that we are willing to accept in return for the gains of economic and social freedoms.

## Regulation is not ‘free’

There may be a perception, especially in a tight fiscal environment, that regulation is the “free” lever that governments can pull. However, this is not the case. First, many regulations that apply to businesses will often apply to public-sector organisations as well, directly adding costs to their operations, which then have to be paid for by taxpayers. Second, if regulation adds costs to businesses, these will often be passed on, in whole or in part, to consumers. Third, there are often indirect costs to the economy, and therefore government revenue.

If resources are being used to comply with regulation, they may be diverted from other, more productive uses. Such regulation may be entirely justified, but it is not cost free, for businesses, citizens or the government.

Just as policymakers need to consider the level of risk they are willing to accept and for whom, they also need to consider the costs — direct and indirect, and on whom — that they are willing to impose to achieve a policy objective. But there will always be costs to consider.

## **As little as possible, as much as necessary**

Getting the regulatory balance right requires policymakers to take seriously the least prescriptive options possible to achieve a policy aim. In some cases, this may still be relatively interventionist. In others, it will mean non-regulatory measures.

The option chosen will depend on the evidence in each individual case, but successive governments, including the previous Labour government, have encouraged regulators to consider less prescriptive options. The mantra “as little as possible, as much as necessary” — echoing the old German social democrat view on the role of the state — captures the need to both ensure regulation is proportionate to generate greater net benefits from regulation while retaining clarity about the willingness to intervene to reduce risk in the public interest.

## **Unintended consequences**

Regulation, like all government interventions, faces the challenge of seeking to influence behaviour within complex economic and social systems. It is impossible to predict how each individual or organisation will respond to the changes in incentives that regulations bring, and what ripple effects these will have on others. It is inevitable, therefore, that regulatory measures will produce unintended consequences. A realistic objective is to minimise the most obvious ones without expecting to be able to eradicate them altogether. This is partly why the form of intervention should be carefully considered and tend towards the least interventionist, so that impacts — intentional or not — are as contained as possible.

There are an infinite number of examples of such unintended consequences in action, but one will suffice to make the point here. Repeated Conservative administrations since 2017/18 have frozen the level of domestic university tuition fees in England, at £9,250 a year to ensure university remains an accessible and affordable option for domestic students. In practice, this has had the effect of eroding the financial value of domestic students to universities whose incentives are increasingly weighted to recruiting international students, whose fees are two or three times higher.

According to data from the Higher Education Statistics Agency (HESA), between the academic years 2017/18 and 2020/21, English universities’ income from domestic fees rose by 16%, whereas income from international (non-EU) students grew by 42%<sup>1</sup>. International student numbers also grew by 37% over this period while domestic students rose by 10%<sup>2</sup>. The result will be either fewer places for domestic students, or a degradation in the student experience for all students as universities seek to recruit more international students to plug the real-terms financial gap. This demonstrates the unintended consequences even of “standstill” regulations and that the “do nothing” option may store up more trouble for later.

## **When regulation is appropriate**

There are three basic questions that policymakers need to ask before introducing new regulations:

1. Is regulation the appropriate response?
2. What form should it take?
3. How can it be enforced effectively?

The answer to the first question depends on at least three factors. First, whether a substantial risk to the economy or society exists (note, this is not the presence of any risk whatsoever). Second, whether that risk can realistically be reduced significantly via regulation. Third, whether the net impact of regulation is justifiable given the relative costs to those regulated and gains to society. Even if there is a clear risk of harm and a reasonable expectation that regulation might reduce it, that alone should not suffice without considering whether the net benefits justify the intervention and do not have unintended consequences that, in fact, increase risk or displace it elsewhere.

This leads to the second question of regulatory form. Regulation is often characterised as a spectrum, ranging from non-regulatory measures at the least interventionist end to financial and other penalties at the most interventionist. Typically, a chosen form of regulation should be proportionate to the level of risk posed by the activity that is being regulated in order to minimise costs and unintended consequences, and ensure clear net benefits. For instance, workplace regulation in the construction industry, which has one of the highest rates of workplace injury<sup>3</sup>, is highly stringent and often results in large fines for non-compliance because the risks can be a matter of life and death. By contrast, rules and punishments for sectors such as professional services, which are often desk-based, are much less severe. Regulation aligns with risk.

Spectrum of regulatory interventions



Source: National Audit Office<sup>4</sup>

On the third question — enforcement — almost everyone will agree that compliance with regulation should be made as easy as possible. This is partly a question of achieving the behaviour change that regulation is intended to incentivize. If, for instance, the cost of complying with a business regulation is high, the effect may be to force businesses out of the market altogether (a potential unintended consequence with implications for the level of competition) or, in fact, incentivize non-compliance and drive business activity underground.

Compliance requirements must therefore balance the need to achieve a desired behavioural change without creating substantial unintended effects that render the regulation ineffective.

How the government assesses the impact of regulation

Regulatory impact assessments (RIAs)

The main tool the government uses to assess the impact of new regulations is regulatory impact assessments (RIAs). These were first introduced by the previous Labour government in 1998 and have been developed since. An RIA is a cost-benefit analysis of regulatory proposals that seeks, in part, to quantify the net expected impacts of regulation on businesses and society.

RIAs are a central part of the government’s “Better Regulation Framework”, which — read alongside the Treasury Green Book — guides civil servants in improving regulatory quality. This framework is currently being reviewed and reformed following recent consultation.

In recent years, it has taken its lead from the 2015 Small Business, Enterprise and Employment (SBEE) Act<sup>5</sup>, which defines regulation for the purposes of identifying what is within scope of the government's "Business Impact Target" (BIT)<sup>6</sup>. The BIT is the government's target for each parliament to reduce regulatory costs on businesses. The government's Retained EU Law (REUL) Bill, before parliament at the time of writing, contains provisions to abolish the BIT. Currently, business regulations that are not on the government's (rather large) exemption list<sup>7</sup> are within scope of the BIT. Measures within scope and whose annualised net impact on business (positive or negative) is above £5m are required to have a full RIA that is scrutinised by the government's independent Regulatory Policy Committee (RPC). The £5m threshold was raised to this level in 2017, from £1m, in part to alleviate the administrative cost on departments during the Brexit process.

Departments may voluntarily produce impact assessments for regulations not in scope and ask for RPC scrutiny. There is also a general expectation that RIAs "should be prepared for all significant regulatory provisions as a standard of good policy making", irrespective of financial impacts, although there will clearly often be alignment between the two<sup>8</sup>. Where full RIAs are not required or voluntarily undertaken, departments are still expected to undertake "proportionate" analysis.

### RIA Requirements for different regulations

Type	Description	RIA expected?	RPC scrutiny?
Within BIT scope, large potential impact	Business regulations not exempted whose expected annual net direct impact is expected to be above £5m	Yes	Yes
Outside scope, large potential impact	Exempted regulatory measures whose business impact is expected to be above £5m	No, but "proportionate" assessment	Optional
Outside scope, small potential impact	Exempted regulatory measures whose business impact is expected to be below £5m	No, "proportionate"	No

In practice, even regulation within scope and above the threshold have not always been subject to a full RIA (or not one that was published). The House of Lords Secondary Legislation Scrutiny Committee has been particularly critical of the inconsistent publication of RIAs. In a recent report, it argued that RIAs are "not just about 'paperwork'" but a matter of scrutiny from within and outside Parliament, and important for the policy development process<sup>9</sup>. Another criticism was the apparent lack of any sanction for departments that do not complete and publish RIAs where required. Given its position as a non-departmental public body, it is difficult for the RPC to apply meaningful pressure to departments when they fail to uphold these requirements.

Recent Conservative governments have also played fast and loose with the parameters and exemptions for RIAs when politically convenient. For instance, after the 2015 general election, the government's introduction of a National Living Wage was estimated by the National Audit Office (NAO) as adding over £4bn in annual costs to businesses (a justified cost, in my view). However, because this would have damaged the government's deregulatory credentials, it was excluded from the BIT, despite not obviously falling under any of the existing exemptions. This also demonstrates the arbitrary and counterproductive nature of deregulatory targets, which often exclude consideration of net benefits to society and encourage fiddling the numbers.

### Post-Implementation Reviews (PIRs)

The other main tool used to assess regulations is post-implementation reviews (PIRs). These are another form of cost-benefit analysis, usually undertaken around five years after a regulation enters into force. PIRs seek to establish whether: a) original policy objectives have been achieved b) there were any unintended



consequences; c) any opportunities have been identified to reduce the costs for businesses; and d) how the measures compare to international equivalents<sup>10</sup>.

Government guidance on whether or not to include a statutory review clause, requiring a PIR, in regulations is not clear cut<sup>11</sup>. Where regulations' business impact is expected to exceed the £5m threshold, the guidance leans towards including a review clause, though this may be counteracted by other factors, such as proportionality and other existing review plans. Below this threshold, the expectation leans towards not including such clauses, unless other factors suggest a clear need for doing so. This gives departments, whose are not incentivised to reopen previous measures, significant discretion.

Over the past five years, according to RPC data, the ratio of RIAs to PIRs has averaged 8:1<sup>12</sup>. This shows a significantly higher level of scrutiny of significant new regulations compared to ones already on the statute book. Given PIRs are one of the only mechanisms by which ineffective or unjustified regulation may be improved or removed, this shows an in-built bias towards retaining existing regulation, regardless of its real-world impact. Yet there is no a priori justification for doing so. There are also indications that the quality of analysis in RIAs and PIRs is not sufficient. The latest RPC data shows that between 2017 and 2022, the share of RIAs that were considered "fit for purpose" averaged only 73% and 78% for all regulatory measures reviewed by the RPC, including PIRs<sup>13</sup>.

## **The need for an holistic approach**

A glaring omission from the existing regulatory review process is proper consideration of the interaction between new regulatory measures and existing ones, and what their collective net impact might be. This is despite the fact that it is the collective impact of regulation that, in practice, matters most to businesses, public services and individuals.

There may be better compliance with and understanding of new regulation if there were recognition on the part of government of the scale of existing requirements. Departments often implement new regulations without clear visibility over the cumulative regulatory cost in a given area. This "goldfish" approach to regulation — forgetting or ignoring the stock of existing regulation on the books — leads to an unhelpfully narrow analysis of the regulatory landscape. Considering not just what is new, but how it relates to the existing regulatory stock, would encourage a more holistic approach to regulation. If, at an early stage, policymakers have clear sight of the cumulative cost to which they are adding yet further, they may be more likely (and should be encouraged) to consider how they can make complementary changes elsewhere within the same regulatory framework to retain an overall cost impact that is justifiable for the level of risk. This is especially important to keep pace with rapid technological change. Otherwise, there is a risk of regulatory creep that does not align with the strategic priorities of the government.

# Regulatory reform under the previous Labour government

The previous Labour government undertook substantial efforts to improve the UK regulatory environment over more than a decade in office. When Labour came to power in 1997, it shifted away from the de-regulatory agenda dating back to at least the mid-1980s under Margaret Thatcher and towards a concept of “better” regulation<sup>14</sup>. As a sign of these shifting priorities in action, the existing Deregulation Task Force and Deregulation Unit in the Cabinet Office (CO) became the Better Regulation Task Force (BRTF) and Better Regulation Unit (BRU) respectively. The overall tenor of Labour’s better regulation agenda was “aimed at simplifying necessary burdens and reducing unnecessary bureaucracy”<sup>15</sup>. This better regulation framing remains the way in which the government talks about regulation today.

## Blair’s first term

In 1997, the BRTF devised five principles of good regulation (see table below), which provided the basis for subsequent regulatory reform efforts<sup>16</sup>. These are still used as a reference point for the government. The BRTF published reviews on regulation across a range of areas. In its first two years, these included consumer affairs, social care, childcare, licensing legislation, employment law, packaging waste, utilities, food, mortgages, and more, to which the government published responses<sup>17</sup>.

### Better Regulation Task Force Principles of Good Regulation

Proportionality	Only intervene where necessary, ensure interventions are commensurate to the level of risk posed, and associated costs should be identified and minimised.
Accountability	Consult those affected prior to taking decisions, explain how and why decisions have been reached, ensure clear criteria against which regulation can be judged.
Consistency	Regulation must be joined up, take account of existing regulation, be predictable and consistently enforced.
Transparency	The need for regulation should be clearly communicated, consultation must happen early, guidance must be clear and simple, and consequences of non-compliance must be clear.
Targeting	Focused interventions, using a goals-based approach, with guidance and support, and enforcement focused on high-risk activities, followed by regular systematic review.

In 1998, the government introduced regulatory impact assessments (RIAs), replacing previous compliance cost and risk assessments. Under Labour, the UK was a trailblazer in attempting to quantify, or monetise, the expected impact of regulations to give a real-world estimate of regulatory impacts. In 1999, as part of the “Modernising Government” agenda, all legislation and regulations were required to be cleared by the BRU, which then became the Regulatory Impact Unit (RIU)<sup>18</sup>. Ministers for regulatory reform were appointed in seven key regulatory departments and formed a “star chamber” Cabinet committee (an idea reheated under the Coalition Government in 2010), including the then chair of the BRTF, Lord Haskins. Its impact was seemingly limited due to a lack of engagement by senior members of the Cabinet and the prime minister.

In December 1998, the Treasury published a command paper introducing Public Service Agreements (PSAs) — performance targets expected to be delivered by each department<sup>19</sup>. At the Spending Review (SR) in 2000, the PSA targets for the CO, which drove the better regulation agenda, included ensuring that “rigorous Regulatory Impact Assessments (RIAs) of proposed regulations are undertaken and, for significant proposals, that the costs are justified by the total economic, social and environmental benefits”, with full compliance expected by end-2005/06<sup>20</sup>.

In 2001, the Regulatory Reform Act — the first of three pieces of regulatory reform legislation passed by the previous Labour government — entered into law. This replaced the Deregulation and Contracting Out Act 1994 (and was itself replaced by the 2006 Legislative and Regulatory Reform Act)<sup>21</sup>. One of its key reforms was to introduce Regulatory Reform Orders (RROs). These made it easier for ministers to remove or reform existing regulations in primary or secondary legislation that were more than two years old. By January 2005, 20 RROs had been made, with a further eight laid before parliament, below the 30 expected to be delivered by the end of 2003. At the 2002 spending review, the government had set a target to deliver 60 RROs by the end of 2005 and later 75 by March 2008<sup>22</sup>. RROs were replaced by Legislative Reform Orders (LROs) as part of the 2006 Legislative and Regulatory Reform Act. These remain in place today and are a key part of the government’s controversial Retained EU Law (REUL) Bill (more on that below).

**Blair’s second term**

In 2002, the Labour government published a regulatory reform action plan, containing more than 260 reform proposals (see table below)<sup>23</sup>. Many of these focused on streamlining or consolidating existing regulations. Fire safety legislation, for instance, which had been spread over 120 Acts, was rationalised into a single framework<sup>24</sup>. Similar changes were made regarding weights and measures<sup>25</sup>. Other examples included raising the audit threshold for small businesses<sup>26</sup>, consolidating the five existing media and communications regulators in one (Ofcom)<sup>27</sup>, and simplifying consent procedures for offshore wind farms<sup>28</sup>. There were also proposals to reduce the administrative costs for individuals, such as permitting phone and internet transactions to replace driving licenses.

**Proposals in Labour’s 2002 regulatory reform action plan**

By primary legislation	48
By Regulatory Reform Order	63
By secondary legislation	59
By European legislation	11
Administrative changes	57
Other, including deregulation orders	28
Total	266

At the 2004 budget, Chancellor Gordon Brown announced that the then chair of Sainsbury’s, Philip Hampton, would lead a review of administrative costs, with a view to reducing requirements “without compromising regulatory standards or outcomes”<sup>29</sup>. The final report — which considered the work of 63 national regulators and 468 local authorities — was published in March 2005. It found:

- inconsistent use of risk assessments, resulting in disproportionate and suboptimal interventions;
- insufficient emphasis on using advice as a tool to drive compliance;
- too many, often overlapping, forms and data requirements;
- penalties used ineffectively, sometimes falling short of the commercial value of breaching regulations;
- the patchwork of regulators, especially at local level, resulted in a lack of joined up practices; and
- there were too many interfaces between businesses and the government.

The report's recommendations included replacing the RIU with a Better Regulation Executive (BRE), led by a senior businessperson, to be a strong body at the centre of government to hold regulators and departments to account and put a brake on their ability to increase administrative costs, as well as reducing 31 national regulators to seven thematic bodies.

Alongside the Hampton report, the BRTF also published a report on reducing regulatory costs. Its key recommendations included adopting a Dutch-style approach to measuring administrative costs — the standard cost model — setting targets to reduce costs, and implementing a “one in, one out” policy to force departments to “prioritise between new regulations and to simplify and remove existing regulations”<sup>30</sup>. The BRTF also recommended establishing “a rolling programme of simplification to identify regulations that can be simplified, repealed, reformed and/or consolidated,” following the approach in the Netherlands (this became the Administrative Burdens Reduction Plan — see below).

## **Timeline of regulatory efforts under the previous Labour government**

1997	Better Regulation Task Force (BRTF) and Better Regulation Unit (BRU) in the Cabinet Office (CO) established (previously the Deregulation Task Force and Deregulation Unit respectively)
	BRTF publishes its five principles of good regulation
1998	Public Service Agreements (PSAs) introduced
1999	All legislation and regulations to be cleared with the BRU
	Panel for Regulatory Accountability (PRA) established as a Cabinet committee
2001	Regulatory Reform Act enters into law, creating Regulatory Reform Orders (RROs)
2002	Government publishes regulatory reform action plan, containing over 260 reforms
2005	Hampton review on reducing regulatory costs published
	BRTF “Less is More” report on reducing regulatory costs published
	BRTF becomes the Better Regulation Commission (BRC) and the BRU becomes the Better Regulation Executive (BRE), with an expanded remit
	Administrative Burdens Reduction Plan introduced
2006	Legislative and Regulatory Reform Act enters into law
2007	BRE moves to a reconstituted Department for Business, Enterprise and Regulatory Reform (BERR) from the Cabinet Office
	BRE publishes reports “The Next Steps on Regulatory Reform”, “Regulation and Business Advice” and “Cutting Bureaucracy for Public Services”
2008	Regulatory Enforcement and Sanctions Act enters into law
	BRC report “Public Risk — the Next Frontier for Better Regulation” published
	Regulators’ Compliance Code comes into force
2009	Regulatory Policy Committee (RPC) established
2010	Manifesto commits to reducing cost of regulation by £6bn by 2015
	Better Regulation Executive publishes its forward programme of 200 new regulations

In 2005, the government accepted the recommendations of the Hampton report and established the BRE, which remains in place today. In May of that year, Chancellor Gordon Brown launched a Better Regulation Action Plan to carry forward the recommendations in both reports. Adopting a risk-based approach to regulation, the government said there would be “no inspection without justification, no form filling without justification, and no information requirements without justification”.<sup>31</sup>

Departments were tasked with measuring the administrative cost on businesses and expected either to deregulate or explain why it was not possible. The government also announced plans to reduce 29 regulatory bodies into seven and pledged to focus on the impact of local authorities on administrative costs. From this followed a spate of further reviews, including the Macrory Review on regulatory sanctions<sup>32</sup>, the Davidson Review on over-implementation of EU legislation<sup>33</sup> and the Rogers Review on local regulatory enforcement<sup>34</sup>.

In 2005, the government launched the Administrative Burdens Reduction Plan, a programme to identify and remove unnecessary costs associated with demonstrating compliance with regulations. A 2010 report at the end of the programme claimed that £3.5bn had been generated in savings in net annual direct costs<sup>35</sup>. It was also claimed that more than half of departments that committed to a 25% reduction in regulatory costs achieved their targets. In relation to the public sector, more than a third of information requests from central government were removed. The biggest individual saving (£418m) was the development of free-to-use employment law guidance, with online tools, template letters and agreements. Almost 80% of baseline regulatory costs were identified as sitting with just four departments and agencies: the Department for Business Innovation and Skills (35%), the Department for Communities and Local Government (19%), the Health and Safety Executive (15%) and the Department for Health (9%). Overall, the programme delivered just over 300 simplifications.

In 2006, the Legislative and Regulatory Reform Act, which replaced the 2001 Regulatory Reform Act, entered into law. The Act replaced RROs with LROs, with similar effect allowing ministers to implement measures to reduce or remove financial and administrative costs, sanctions or other obstacles to “efficiency productivity or profitability”<sup>36</sup>. The underlying objective was to ensure that regulation complied with the better regulation principles and provided the government with a streamlined mechanism to achieve this.

## **Brown administration**

Under Gordon Brown as prime minister from 2007, regulatory reform efforts continued, with a focus on risk-based regulation. This included a pledge in July 2007 to reduce administrative costs by 25% by 2010. By the end of 2008, the BRE said departments had implemented 240 administration-reduction initiatives, with claimed savings for businesses of £1.9bn. A National Audit Office (NAO) survey of businesses in 2009 found mixed results, with concerns remaining over government understanding of and engagement with businesses<sup>37</sup>. In 2007, the Department for Business, Enterprise and Regulatory Reform (BERR) — now the Department for Business and Trade (DBT) — published its “Next Steps on Regulatory Reform” report, focused on simplifying regulation, improving guidance and advice, and strengthening political accountability<sup>38</sup>.

In January 2008, Gordon Brown set up the Risk and Regulation Advisory Council (RRAC) to replace the Better Regulation Commission (BRC), itself the successor to the BRTF. In the context of the Global Financial Crisis (GFC), the RRAC was asked to provide “a fuller and more rounded consideration of public risk”<sup>39</sup>. This followed the 2006 BRC report “Risk, Responsibility and Regulation — Whose risk is it anyway?”, which sought to draw a clearer line between personal responsibility and government responsibility in the management of risk<sup>40</sup>. A further BRC report, “Public Risk — the Next Frontier for Better Regulation”, in 2008 fleshed out these ideas, recommending the government set up an RRAC to drive a culture change in the understanding of public risk in government and among the public<sup>41</sup>.



Later in 2008, the Regulatory Enforcement and Sanctions Act — the third and final regulatory reform Act of the previous Labour government — entered into law. Partly, this Act aimed to address some of the administrative costs at local government level identified in the Hampton review. It sought to achieve this in part by establishing a Local Better Regulation Office (LBRO), later scrapped by the Coalition Government in 2012, to ensure that local regulations complied with the principles of good regulation. In 2008-09, Labour had also considered introducing so-called “regulatory budgets”, an idea that had been discussed as early as 1999. These would have been similar to financial budgets, with departments requesting allowances for new regulations over a three-year period, but the idea was dropped in April 2009<sup>42</sup>.

Thereafter, government attention was diverted to dealing with the fallout of the GFC. This also changed the context of regulatory reform efforts and led to some retrenchment from Labour’s previous approach. The 2010 manifesto, for instance, pledged (somewhat unavoidably) that “banks will face tighter regulation”<sup>43</sup>. Nonetheless, Labour did recommit to simplifying regulation and avoiding “unnecessary red tape”, setting a new target to reduce the cost of regulation by £6bn by 2015.

## Conclusion

More than a decade of proactive regulatory reform efforts showed the difficulties of making a substantial impact in this area. Because many of these reforms were granular, a large volume of changes was required to achieve a significant impact on overall regulatory costs. Although Labour did a lot to improve the regulatory process, there was more attention on reducing the quantity of regulation over improving quality. But this period did produce lasting change. Some of the structures and mechanisms that the previous Labour government introduced remain in use to this day. The BRE remains the policy lead within government for better regulation and RIAs remain central to the policy development process, albeit there is room for improvement. Within RIAs, introducing a methodology to monetise the impact of regulation was another innovation that has become embedded. Labour also introduced LROs, which continue to be a tool used to reform and update regulation.

Perhaps Labour’s biggest legacy is shifting the regulatory reform debate towards a more considered understanding of both the costs and benefits of regulation. After 13 years in office in which the Conservatives have constantly toyed with deregulatory gimmicks, they have now broadly moved back to the position that Labour — and, it must be said, the majority of the public (see next section) — left regulatory policy by 2010.

# Approach to regulation under Cameron and May

The change in government in 2010 marked a significant shift in regulatory policy, particularly on the Conservative side of the Coalition Government. The agenda shifted from Labour's "better regulation" approach towards so-called "common sense" regulation. What that meant in practice, although not articulated this way, was foregrounding the proportionality principle of good regulation and trying to find areas where regulation was deemed unnecessary.

Before entering office, in 2009, the Conservatives' published their report "Regulation In The Post-Bureaucratic Age: How To Get Rid Of Red Tape And Reform Quangos". Several of its proposals, including introducing a "Star Chamber" cabinet committee to enforce a "one-in, one-out" rule for new laws, were later carried through in government. Others included allowing the public to nominate regulations to be removed (later part of the "Red Tape Challenge") and introducing a "sunset clause" for regulators<sup>44</sup>.

At the 2010 general election, all three major UK parties made commitments to reduce the cost of regulation. Conservative pledges included:

- to force government bodies that planned to introduce regulation to "reduce regulation elsewhere by a greater amount";
- to give the public the opportunity to force the worst regulations to be repealed; and
- to reduce the number of forms needed to register a new business – moving towards a 'one-click' registration model.<sup>45</sup>

The Liberal Democrats made similar pledges, including:

- using sunset clauses to ensure the need for a regulation is regularly reviewed;
- working towards the principle of one in, one out for new rules; and
- ending the so-called 'gold-plating' of EU rules.<sup>46</sup>

Unlike the Conservatives, the Liberal Democrats also pledged to tighten regulations in several areas related to climate change.

## The Coalition Government

The Coalition Agreement amalgamated these pledges<sup>47</sup>. A one-in, one-out rule was introduced, but defined as a commitment not to bring in new regulation without cutting it elsewhere by a greater amount. The agreement also carried forward the sunset clause pledge but expanded it to include not just regulations but regulators. Other pledges giving the public the opportunity to challenge regulations, working towards a one-click system for business registration and ending the gold-plating of EU rules were all included.

A month after entering office, new Liberal Democrat business secretary Vince Cable announced a government action plan to reduce regulation<sup>48</sup>. This included the introduction of: a Star Chamber (the Reducing Regulation Sub-Committee), chaired by Cable, which would immediately review all new regulation in development inherited from the previous government; a "challenge group", which would become the Behavioural Insights Team, to design non-regulatory interventions; and a one-in, one-out rule, only allowing new regulations once reductions had been made to existing rules greater than the cost of new ones. However,

Cable also acknowledged that “we need to reduce regulation and at the same time meet our social and environmental ambitions,” revealing tensions between the governing parties and recognising the two sides of the regulatory dilemma.

Later in 2010, the government published Lord Young’s review of health and safety law and “the growth of the compensation culture”. Among other things, the report proposed reducing health and safety requirements in low-hazard workplaces and reducing the incentives to make personal injury claims<sup>49</sup>. In 2011, a more comprehensive review of health and safety legislation was undertaken (the Löfstedt review) that concluded, among other things, self-employed activity that did not pose a risk to others should be outside the scope health and safety regulation, and called for greater coherence and consistency in how rules were enforced<sup>50</sup>.

The Beecroft review of employment law was also delivered in 2011, as well as a review of farming and food regulation and a “Big Society De-regulation Taskforce” to explore deregulation of the charitable and voluntary sectors<sup>51</sup>.

In April 2011, the government published its six principles of economic regulation. These were not intended to replace the earlier “Principles of Good Regulation” but to “set out a clearer policy and strategic context in which independent economic regulators, consumers and investors can take informed decisions.” These were as follows (and remain in place today).

- Accountability — decision-making powers of regulators should be exercised transparently and subject to appropriate scrutiny and challenge.
- Focus — economic regulators should concentrate on protecting the interests of end users of infrastructure services and should have clearly defined, articulated and prioritised statutory responsibilities focused on outcomes.
- Predictability — a stable environment should enable those affected to anticipate the context for future decisions and make long-term investment decisions with confidence, acknowledging that necessary investments should allow for a reasonable return.
- Coherence — economic regulation should form a logical part of the Government’s broader policy agenda and regulatory frameworks should enable cross-sector delivery of policy goals.
- Adaptability — the framework needs capacity to evolve to respond to changing circumstances, and continue to be relevant and effective over time.
- Efficiency — policy interventions must be proportionate and cost-effective while decision making should be timely and robust.

Alongside these, the government committed to a series of actions. These included: reaffirming the clear division of responsibilities between the government and regulators (i.e. their independence); setting a once-a-parliament strategy and guidance for each regulator; and considering an independent third party to regularly assess the efficiency of regulators.

From April 2011, the Coalition Government began to publish six-monthly “statements of new regulation”, which detailed progress against the government’s one-in, one-out policy for domestic regulation<sup>52</sup>. The ninth and final such statement at the end of 2014 claimed that the government had removed more than £2bn in net costs to businesses<sup>53</sup>. In practice, the one-in, one-out policy proved difficult to maintain, with just over 300 new domestic regulations brought in by July 2015 — although the government claimed only 119 added net costs to businesses — and just over 200 removed. The most active regulatory departments were BIS (85 regulatory actions), DfT (69), CLG (64), Health (60), DEFRA (53) and DWP/HSE (46).

Alongside this activity ran the government’s so-called “Red Tape Challenge”, a central part of which was an open public consultation to identify overly costly regulations<sup>54</sup>. The government subsequently claimed to be reviewing more than 6,000 regulations as a result of this process, later committing to abolish or reform at least 3,000. When Michael Fallon became business minister in 2012, the rhetoric was upgraded to a “Red Tape Blitz”<sup>55</sup>. In early 2013, the “one-in, one-out” policy was raised to “one-in, two-out”<sup>56</sup>.

At the 2012 budget, the government announced the launch of sectoral reviews of regulatory enforcement to “ensure it is enforced at the lowest possible cost to business”. The government pledged to start with chemicals, manufacturing, volunteer events and small businesses. This became the government’s “Focus on Enforcement” campaign to review how regulations were enforced, identify good practice and make improvements<sup>57</sup>. This included a request to businesses to flag to government areas where improvements could be made. By the end of the Coalition, reviews had been completed across social care, childcare, pubs, appeals, coastal investments, fire safety, pharmaceutical manufacturing, livestock inspections, fresh food imports and electronics exports, with the government claiming to have saved £40m a year for businesses<sup>58</sup>. Examples of reforms included consolidating guidance for childcare providers from 1,100 to 30 pages and a reduction in fire-safety audits for business premises from six hours to 45 minutes. A later iteration, announced at the 2014 Autumn Statement, included an application process for industry bodies to run regulatory reviews in their sectors<sup>59</sup>.

## **What was the upshot of all this activity?**

Just before the 2015 general election, the Regulatory Policy Committee (RPC) published a report reviewing the impact of these efforts<sup>60</sup>. Over the parliament, the RPC reviewed almost 1,000 regulatory proposals that ultimately became law, over 500 of which related to domestic legislation and were within scope of the “one-in, one-out” and “one-in, two-out” rules. The RPC judged that efforts to reduce the impact of regulation saved businesses and other organisations net £2.2bn a year — similar to the £1.9bn a year savings made as part of Labour’s Administrative Burden Reduction Plan in 2005-10. However, just ten of these changes accounted for more than 90% of the savings, and the change in the indexation of occupational pensions from RPI to CPI accounted for more than 60% alone. Without this single pension reform, there would have been a net increase in regulatory costs of more than £1bn a year of measures within scope. Most changes had minimal impact. The RPC estimated that around 70% contributed total net savings for businesses of less than £1m each.

Just before Parliament dissolved for the 2015 general election, the government passed the Small Business, Enterprise and Employment (SBEE) Act 2015, which included significant provisions on regulatory reform<sup>61</sup>. The most notable was a requirement for the government to set a “Business Impact Target” (BIT), effectively a deregulation objective, for each parliament. The 2015 Conservative manifesto pledged to “cut a further £10 billion of red tape over the next Parliament”<sup>62</sup>. This subsequently became the BIT for 2015-20. However, the NAO raised objections, arguing “the government does not know how much cost businesses incur as a result of its existing regulations”, and therefore that “it cannot know how ambitious its target for reducing regulatory costs is”<sup>63</sup>. Moreover, it pointed out that significant business costs such as tax administration (often cited as the most costly area of compliance) and EU regulation were not in scope, making it difficult to assess the overall impact of the target.

Another bill with significant regulatory implications, the Deregulation Act, was also passed just prior to the 2015 general election<sup>64</sup>. This wide-ranging bill made changes that affected all businesses and others targeted at specific sectors. Its most high-profile provision was to impose a statutory duty on non-economic regulators to “have regard to the desirability of promoting economic growth” — the so-called growth duty. The government argued that “its purpose is not to achieve or pursue economic growth at the expense of necessary protections,” but to require them to consider the impacts of their decision on economic growth<sup>65</sup>.

## **The second Cameron administration**

Shortly after the 2015 general election, new business secretary Sajid Javid launched the next phase of the Conservatives’ deregulatory programme. Unconstrained by a coalition partner, the Conservatives were more explicit in their desire to “roll back the state”<sup>66</sup>. This was not only the stated aim of Javid’s deregulatory push, but also reflected in the aim of Chancellor George Osborne to reduce government spending to

the equivalent of 36% of GDP. According to the latest forecast by the Office for Budget Responsibility (OBR) in March 2023, it will be around 45% of GDP by the expected time of the next general election in 2024<sup>67</sup>. This continued a theme repeated since of Conservative governments promising to reduce the role of the state and being unable to deliver.

In his first major speech as business secretary, Javid recommitted to the Conservatives' manifesto pledge to implement £10bn in cuts to red tape, including a £5bn interim target in the first three years of the parliament; to seek to extend this deregulatory push to EU level; and to extend the Primary Authority rule — providing businesses with a single point of contact in local government for the purposes of regulatory compliance — which was introduced by the previous Labour government in 2008. These were legislated for in the 2015 Enterprise Act<sup>68</sup>. The government also further upgraded its regulatory rule, from "one-in, two-out" to "one-in, three-out", despite little evidence that it had been able to deliver "one-in, one-out", with the list of excluded activities seemingly ever expanding<sup>69</sup>.

This point was echoed by a Public Accounts Committee report in September 2016, which criticised the selective inclusion of different measures and the fact that "departments do not know the cost to businesses of their existing regulations, making it difficult for the Government to know where to prioritise its efforts"<sup>70</sup>. It also argued that too little account was made of the wider social costs and benefits of regulations beyond those affecting businesses, including for the environment, consumers and employees. This repeated an argument made by the then chair of the RPC, Michael Gibbons, who said in 2015 that "the framework should be reformed to require departments to report more transparently the impacts of the Government's regulatory reform programme on the welfare of consumers and wider society".<sup>71</sup>

In mid-2015, the Better Regulation Executive (BRE) launched a "Cutting Red Tape Programme", a successor to the "Red Tape Challenge", to review and reduce regulatory costs across Anti-Money Laundering and Terrorist Financing laws<sup>72</sup>, energy<sup>73</sup>, house building<sup>74</sup>, mineral extraction, agriculture, waste<sup>75</sup>, childcare<sup>76</sup> and care homes<sup>77</sup>, as well as by local authorities (announced later)<sup>78</sup>. These led to a series of small-scale efforts to, among other things, improve regulatory guidance, reduce duplication and remove overlapping interventions by different public authorities.

As efforts to cut "red tape" struggled to have much impact, the government was incredibly effective at deregulating in one area: enforcement. In mid-2019, the campaign group Unchecked UK published the first of a series of reports on the under-enforcement of existing regulation across a range of sectors<sup>79</sup>. It claimed that, from April 2010 to March 2017, real-terms funding at ten social and environmental regulators had fallen by 50%, partly reflected in a 30% fall in full-time staff. Across food safety, trading standards, pollution, health and safety, fire safety and other areas, there were substantial falls in inspections activity. This amounted, in practice, to substantial — though unplanned — de facto deregulation across a swathe of sectors, with agencies and local authorities forced to cut back due to centrally driven budget cuts. As with cuts to local government funding, this was an area where the impact of austerity was keenly felt but less visible to the public.

## The May administrations

After the EU referendum in June 2016 and a change of prime minister, the anti-red tape agenda lost some momentum — somewhat ironically given the deregulatory zeal of some pro-Brexit politicians — given the dawning realisation within government of the scale of the challenge facing the UK.

Attention necessarily turned to exit negotiations and preparing the UK state to operate outside the EU. The implications of leaving the EU for the UK's regulatory landscape were, and continue to be, enormous, affecting almost every area of the economy in some way, whether competition policy, medicines, procurement rules, data, financial services, road transport, energy, farming, aviation, food safety, climate, employment rights, asylum policy or police cooperation, to name only some.



In this period, the government did produce the “Regulatory Futures Review”, a collective effort among UK regulators to share good practice and deepen collaboration across more than 70 regulatory bodies<sup>80</sup>. It concluded that self-assurance continued to be the most effective regulatory model, with those regulated responsible for compliance, supported by government guidance and advice. It also reiterated that outcomes-based regulation, allowing entities some freedom to find the most effective means for them to achieve regulatory objectives, remained the most desirable approach.

However, the report recommended shifting further towards a “regulated self-assurance” and “earned recognition” approach, where entities could gain certification through state inspection of their compliance. One of the main benefits of this approach was seen to be rewarding good businesses by requiring fewer inspections post-recognition. Another key recommendation was to improve information sharing between regulators so that regulated entities are only required to inform regulators once, reducing unnecessary duplication through a “Regulatory Intelligence Hub”.

Outside government, there was a nascent effort across the Brexit divide to identify regulatory gains that could be implemented outside the EU<sup>81</sup>. The “Red Tape Initiative”, a two-year project led by Nick Tyrone and chaired by former Conservative Cabinet minister Oliver Letwin, considered nine sectors: housing, infrastructure, training & apprenticeships, retail, tech, health, energy, tourism, media and culture. The initiative’s research director, Oliver Lewis, was the research director for the Vote Leave campaign and later a Special Adviser to Boris Johnson as prime minister. The aim was to identify “bad” regulation or regulation that could be reformed to produce material economic benefits.

The outcomes were modest. Retail firms were as worried about ill-advised regulation originating from the UK in future (an often-overlooked concern) as replacing EU ones. The Mortgage Credit Directive was seen as worth getting rid of, but too small to be a priority. A UK equivalent of the Habitats Directive could be made less costly, but the existing rules were found to be broadly working. State aid rules could be relaxed, but that ran into problems of Conservative ideology around state intervention (now complicated further by the Northern Ireland Protocol). Procurement regulations could be improved, but to no significant economic impact. Data protection rules could be relaxed but risked losing data adequacy recognition by the EU, and by extension some police cooperation. On health, the loss of free movement on staffing was found to more than offset any theoretical gains from eradicating EU directives. The UK’s transposing of EU law was often claimed to be “gold-plating”, so some costs were not about directives themselves but how the UK chose to implement them, and that probably would not change post-Brexit. “Diamond-plating”, where the UK government used EU regulation as a precursor to go beyond its scope, was found to be a problem, but again these were UK-led choices.

The 2017 Conservative manifesto was the Theresa May government’s first proper statement of its approach to regulation. The manifesto recognised the need for regulation and identified several areas for proactive intervention, while aiming to reduce the cost of regulation by focusing on improving the existing stock<sup>82</sup>. Following the Cameron years, which were heavily focused on numerical reductions in regulations, the May administration shifted emphasis while retaining the “Red Tape Challenge”, reverting to a less onerous “one-in, two-out” rule (Cameron was aspiring to “one-in, three-out”) and still aiming to achieve £9bn in savings. There were pledges, among others, to improve utilities regulation, reduce costs on small businesses, become a global leader in digital regulation, add to health and safety regulations and the Equality Act to put mental health on a par with physical health, amend regulation to improve disabled access to buildings, and strengthen the consumer voice.

## Grenfell

The gradual retreat of the deregulatory agenda was reinforced by the Grenfell Tower tragedy in June 2017.

That event was a catalogue of regulatory failings — some associated with the building itself, others with the cladding, and yet more with the enforcement and inspection system — that cost the lives of 72 people. A report on the tragedy by the Fire Brigades Union blamed “deregulation”, claiming that business interests were placed above people living in council and social housing<sup>83</sup>. Others argue that building regulation had, in fact, become too intrusive and granular, leading businesses to focus on petty compliance with technical obligations while overlooking more fundamental responsibilities to ensure the safety of residents. A major part of the government’s response was the Building Safety Act 2022, which among other measures created a new Building Safety Regulator with the HSE<sup>84</sup>.

## Competition and regulation

At the 2019 spring statement, then Chancellor Philip Hammond asked the Competition and Markets Authority (CMA) to review the impact of regulation on competition and the UK business environment. In its report, the CMA’s starting claim was that the UK remained a highly competitive economy, noting (among others) the UK’s high ranking in the OECD’s Regulatory Policy Outlook<sup>85</sup>.

The OECD found that the UK performed well on consulting with stakeholders and publishing information online but needed to make improvements either side of the core policymaking process by informing the public in advance of consultations and improving ex post evaluations<sup>86</sup>. The CMA report found that “greater regulation is, on average, associated with less competition” but that “the specific impact of regulation on competition will depend on both the form of regulation and the way in which it is implemented”.

It also concluded that there was no consensus as to whether the current regulatory balance was appropriate, and that it was hard to assess impacts at such a macro level. The most significant anti-competitive regulations were those that raised barriers to entry, limiting market disruption and innovation. One of its most interesting insights was that establishing and maintaining communication with new entrants or innovative firms was crucial in ensuring well-designed regulation that did not favour incumbents. Finally, the report argued that tailored rather than across-the-board regulation supported innovation and competition, such as by using delayed introduction of compliance requirements or thresholds at which rules apply.

## Regulation for the Fourth Industrial Revolution

In June 2019, under business secretary Greg Clark, the government published its white paper “Regulation for the Fourth Industrial Revolution”<sup>87</sup>. The paper aimed to identify how the UK’s regulatory system could keep pace with rapid technological change. Once again, the UK’s regulatory system was characterised positively as “a national asset” while claiming the UK needed to “act now to maintain our world-beating regulatory system.” The white paper identified six challenges that needed to be addressed, as follows.

- Being on the front foot in reforming regulation in response to technological innovation
- Ensuring that the regulatory system is flexible and outcomes-focused so innovation can thrive
- Enabling greater experimentation under regulatory supervision
- Supporting innovators to navigate compliance requirements
- Building dialogue across society and industry on how technological innovation should be regulated
- Working with global partners to reduce regulatory barriers to trade and innovation

This led to a series of recommendations, including (next page):

- Establishing an independent Regulatory Horizons Council (later enacted) to advise the government on the regulatory reform needed to support the quick and safe introduction of technological innovation producing regular reports and feeding into the Ministerial Working Group on Future Regulation;
- Piloting an “innovation test” to consider the impact of legislation in innovation, including when the right time is to introduce regulation; and
- Developing new ways to trigger post-implementation reviews.

## Conclusion

Largely distracted by the Brexit process, the May administrations adopted a notably different approach to regulation compared to its predecessor, in line with a broader shift in policy towards more interventionist policies. Given the predominance and large resource requirements of the process to leave the EU, it is unsurprising that other parts of the policy agenda, such as regulatory reform, lost prominence. The “Regulation for the Fourth Industrial Revolution” white paper was perhaps the substantive work on regulatory reform under May. Its main legacy is the Regulatory Horizons Council, which remains an important part of the institutional landscape, especially in promoting innovation.

The preceding period under David Cameron as prime minister, including in coalition, was marked by repeated deregulatory efforts manifesting in “one-in, one/two/three-out” policies and the Business Impact Target aimed at reducing regulatory costs on businesses. In rhetoric at least, this became more intense for the brief period after the 2015 general election once the Conservatives were no longer restrained by a coalition partner and before the EU referendum. The legacy of the Cameron governments on regulation has been gradually unwound by subsequent Conservative administrations, which have since rebuked the key pillars and adopted a more sophisticated view of regulation, or “red tape”, as both having value as well as increasing costs.

# Regulation in a post-Brexit era

Following the change of Conservative leader and prime minister in the summer of 2019, newly appointed Chancellor in Boris Johnson's administration, Sajid Javid, announced yet another red-tape challenge at Conservative Party Conference that autumn<sup>88</sup>. Its stated purpose was to "help identify EU regulations that we can improve or remove." This pledge was included in the 2019 Conservative manifesto, but there was little detail beyond a desire to "ensure that regulation is sensible and proportionate", as well as being sensitive to the needs of small businesses<sup>89</sup>. There was no assessment of any expected economic gains from this programme in the party's policy costings document either<sup>90</sup>. This was, in rhetoric at least, a continuation of the approach adopted under Theresa May, beginning to recognise the social gains of regulation, not just the costs to businesses.

In early 2020, the Confederation of British Industry (CBI) published its own red tape challenge report, setting out "business priorities for the future UK-EU economic relationship"<sup>91</sup>. Contrary to government red-tape challenges, this one was about limiting the inevitable bureaucracy that would come with leaving the EU single market and customs union. Obvious missing pieces highlighted by the CBI that remain missing today are a mobility agreement (which the UK excluded from negotiations with the EU) and "a mechanism to manage divergence over time." One of the CBI's headline concerns was the loss of the UK's competitive advantage in services trade.

Just prior to the onset of the pandemic in March 2020, the government launched a "Regulatory Reform Initiative"<sup>92</sup>. It appeared to be a reshaped version of Javid's red tape challenge, calling for input from businesses and the public "to help government ensure that regulation is sensible and proportionate". It began, again, by recognising that "good regulation is essential to successful business," and acknowledged that regulation was about striking a balance between social and environmental protection, and creating a conducive environment for businesses to operate in.

In February 2021, Conservative MP John Penrose published his review of UK competition policy and the consumer regime<sup>93</sup>. This was largely focused on the work of the CMA but included an assessment of the UK's regulatory system overall. In line with the trend of the last decade, Penrose called for "better regulation, not deregulation" but nonetheless suggested "cutting the size and weight of these regulatory millstones around the neck of our economy." In practice, this was a fairly pragmatic call for regulation that "maintains the standards but applies them in the least-costly, unbureaucratic way possible." Penrose also advocated for well-worn ideas of alternative forms of regulation and non-regulatory measures; taking an outcomes-based approach, including a wider range of measures in the government's better regulation assessments; and independent assessment of regulatory quality. He called for a stronger better regulation regime, including a version of a "one-in, two-out policy" and removing all exceptions from the government's assessments of regulatory change.

In March 2021, the government published its "Build Back Better: our plan for growth" white paper, which effectively spelled the end of the government's industrial strategy<sup>94</sup>. The paper included four priorities underpinning the government's approach to regulatory reform: 1) unlocking cutting-edge technologies, 2) modernising our approach, 3) easing costs and cutting red tape and 4) boosting competition. There was little supporting detail or analysis beyond these headline commitments, which seemed to retrofit existing policies and programmes into an apparent rationale.

In June 2021, the government published the final report from the "Taskforce on Innovation, Growth and Regulatory Reform (TIGRR)", led by Conservative MPs Iain Duncan Smith, Theresa Villiers and George Freeman<sup>95</sup>. The premise of the taskforce was to identify how the UK could take advantage of new regulatory freedoms outside of the EU — so-called "Brexit opportunities". The report made around 100 recommen-

dations covering: 1) a new regulatory framework; 2) specific reforms in high-growth sectors; and 3) how these could be implemented. Yet again, the report did not question the need for regulation, arguing “good regulation, set up in the right way, can be a vital part of the infrastructure to support growth.”

Some of the report’s main recommendations were to:

- reintroduce a “one-in, two-out” rule for all government departments;
- create a responsible cabinet minister and cabinet committee for regulatory reform;
- put a new “proportionality principle” at the heart of the new regime;
- give regulators statutory objectives to promote competition and innovation;
- widen regulatory impact assessments to include impacts on innovation, competition, the environment and trade; and
- introduce an annual innovation scorecard to assess departments and regulators.

In July 2021, the government launched a review of the Better Regulation Framework based on the TIGRR report recommendations and areas of the framework not covered in that report<sup>96</sup>. The consultation was careful, once again, to point out the need for balance in regulatory reform, focused on reforming regulation that produces costs without social and environmental benefits. The clear message from the responses to the consultation was that there was no strong desire for wide-ranging reform<sup>97</sup>. This was echoed more recently in a survey of members by the British Chambers of Commerce, which — in response to the Retained EU Law (REUL) Bill — found “Large-scale deregulation [is] not a priority for UK businesses”<sup>98</sup>. The main conclusions of the review largely supported existing accepted wisdom, namely:

- having proposals scrutinised earlier by an independent body;
- asking departments to show that standards have been considered as an alternative to regulation;
- greater responsibility being given to regulators, alongside greater scrutiny by parliament;
- having regulators survey those they regulate;
- deep-dive analyses of the effectiveness of independent regulators; and
- establishing a baseline assessment of regulatory costs.

There were also common arguments around impact assessments taking better account of potential unintended consequences of regulation. There was a clear lack of support for reintroducing a “one-in, one-out” rule and streamlining impact assessments.

In January 2022, the government published its “The benefits of Brexit: how the UK is taking advantage of leaving the EU” report, which carried forward some of the recommendations from this consultation<sup>99</sup>. Yet again, this report claimed that the UK had a high-quality regulatory system. It set the ambition for the UK to “position ourselves as a global hub for innovation and a science and technology superpower”. This would be achieved by: 1) renewing the UK’s regulatory framework; and 2) reviewing retained EU law (which was copied onto the UK statute book on leaving the EU).

The government repeated its commitment to the five regulatory principles set out in the better regulation consultation (see table below) — alongside the “Principles of Better Regulation” and the principles of economic regulation, the third set of regulatory principles now in play — and pledged a range of improvements. These included taking a more holistic approach to assessing regulatory proposals, including their impact on innovation and achieving net zero, as well as reviewing the powers and duties of some regulators to take into account the wider economic impacts of their decisions. The government pledged an outcomes-focused and experimental approach from regulators, embracing more opportunities to support innovation through test-beds and sandboxes. It also accepted proposals to introduce independent scrutiny earlier in the regulatory process, and to require engagement with the “alternatives team” in the BRE to explore other options than regulation.



## Reforming the framework for better regulation principles

A sovereign approach	Rules would be tailored to the UK context and aimed at boosting growth
Leading from the front	The UK would “act nimbly” to support the development of new technologies
Proportionality	Non-regulatory options would be used where possible while strong rules would be used where needed
Recognising what works	The government would thoroughly analyse regulations to ensure they work in the real world
Setting high standards at home and globally	The UK would use high standards at home in regulatory diplomacy, seeking to lead in multilateral settings

The government explicitly rejected introducing a “one-in, two-out” rule because “we do not think it is consistent with delivering world-class regulation”. Another notable proposal was to require departments to identify criteria for analysing the success of a regulatory intervention post-implementation. The government also proposed removing the BIT — now being enacted in the REUL Bill — and replacing it with more wide-ranging metrics than net business costs. There was also a promise to update guidance on the use of sunset clauses and Legislative Reform Orders. At the same time, the government set a target to cut £1bn in business costs from retained EU law.

Alongside the benefits of Brexit paper, the government published an economic regulation white paper focused on the operation of utilities regulators<sup>100</sup>. This followed an earlier report from the National Infrastructure Commission (NIC) on the regulation of the water, energy and telecoms sectors<sup>101</sup>. The government recommitted to the six principles of economic regulation first articulated in 2011. In response to decarbonisation and digitalisation in particular, it claimed the economic regulation framework needed updating to “help foster an enterprising and innovative economy which promotes growth.”

The focus of the paper was regulators’ duties, their strategic direction, driving more competition in strategic investment, and promoting more transparency and consistency. In response to the growing scope and complexity of duties that have been required of utilities regulators, the government pledged to launch a review of utilities regulators’ duties, with a view to making them more coherent and sensitive to price and quality, resilience and the environment. In terms of strategic direction, the government published a letter alongside the report<sup>102</sup>, providing guidance as to the priorities it expected regulators to pursue (see below).

## Government strategic guidance to utilities regulators

### Promoting growth

Competition — supports removing new strategic investments from standard price control processes and opening them up for competition

Investment and innovation — expect regulators to work together on the common challenges in setting the periodic cost of capital, aligning methods

### Delivering a fair deal for consumers

Fairness — regulators to work together, through the UKRN, to jointly consider effective means to support long-term investment within and across sectors

Vulnerable consumers — welcome the continuation of an ongoing dialogue between companies, regulators, and the government on these issues

### Fostering sustainability

Resilience — encourage regulators to consider resilience in decisions to support investment and seek opportunities to test, adapt and transform infrastructure

Net zero — encourage regulators consider the impacts of decisions on emissions and the environment, and ask them to review regulatory framework for their compatibility with Net Zero Strategy pathways to 2050 and our interim carbon budgets

Environment — expect regulators to challenge companies to take appropriate steps to protect and enhance the natural environment

On competition, the government pledged to open up major infrastructure projects to competition across the supply chain rather than allowing natural monopolies to manage and lead those processes. Finally, on transparency and consistency, the government committed to more closely aligning the price control methods of utilities regulators and their appeals processes, with the UK Regulators' Network (UKRN) taskforce to publish recommendations on price control methods. The UKRN consulted on recommendations in late 2022.

In May 2022, the NAO published an assessment of the readiness of key regulatory bodies — the Food Standards Agency (FSA), the Competition and Markets Authority (CMA) and the Health and Safety Executive (HSE) — to take on new responsibilities post-Brexit<sup>103</sup>. It found that all three were struggling to hire the necessary specialist expertise and that losing access to EU data and information had impeded their abilities to regulate effectively, with little progress made on regulatory co-operation with the EU.

In August 2022, the conservative thinktank Policy Exchange published its paper “Re-engineering Regulation”, co-developed by former Cabinet Secretary Mark Sedwill<sup>104</sup>. This began again from the same broad consensus that regulation provides important and necessary protections to individuals and society but needs to be as responsive and user-friendly as possible.

Key recommendations included: creating fewer but bigger regulators in some strategic areas such as financial services and the health service; establishing a new Regulatory Reform Unit (RRU) within the Cabinet Office and appointing a dedicated Minister for Regulatory Reform; the RRU should conduct a cross-government review of regulation relaxed during the pandemic with a bias to removing them permanently;

and regular audits by the NAO of regulators against their statutory objectives.

## Retained EU Law Bill

In September 2021, then Cabinet Office minister Lord Frost announced a review of retained EU law, with a view to identifying and then reforming law that had been taken onto the UK statute book during the Brexit process in 2018 via the EU Withdrawal Act. The rationale for having done so, sensibly enough, was to provide stability and certainty in the short term before gradually adapting adopted EU law over time. In the government's Queen's Speech in May 2022, it promised a so-called "Brexit Freedoms Bill" to allow the government to more easily change or remove inherited EU law. This became the controversial REUL Bill, introduced in September 2022. It includes a sweeping provision that would see all secondary REUL automatically "turned off" by the end of 2023, whether the government gets around to reviewing it or not. Former Conservative Justice Secretary Robert Buckland unsuccessfully sought to amend the bill to ensure laws were not scrapped "by mistake"<sup>105</sup>.

The deepest of ironies is that a bill, part of whose purpose is to address the idea that, in the words of Lord Frost, "many laws that were retained are not necessarily right for the UK", has itself been heavily criticised as inadequate by the government's own regulatory standards body, the RPC<sup>106</sup>. It said the government "has not undertaken any substantive analysis to support the Bill" in terms of its costs and benefits. An endeavour ostensibly concerned with regulatory quality risks landing the UK with a shoddy piece of legislation, the impacts of which the government not only does not understand but has not even tried to understand. It is little surprise, therefore, that both the Scottish and Welsh governments have recommended their legislatures withhold consent for the bill<sup>107</sup>.

As a regulatory exercise, the REUL Bill undermines just about every regulatory best practice that has built up domestically and internationally over recent decades. There is limited and insufficient time for meaningful consultation with affected stakeholders, given the sheer number of changes. The government conducted a shoddy impact assessment that was roundly criticised by the RPC. Because of time constraints, the government will not be able to carefully consider the potential unintended consequences, disproportionate impacts or tailor regulation appropriately. These will, by necessity, have to be sweeping decisions. The Bill does not include any automatic means to review the impact of changes, despite their potentially wide-ranging impact. By accident more than design, subsequent ministers will be able to amend changes but that is not the primary intention of granting greater powers to ministers.

And the burning deadline that means REUL needs to be dealt with so swiftly? Partly, a false perception that the existing reform process is taking too long. As of early May 2023, just under 700 measures — almost a fifth of those identified on the government's Retained EU Law dashboard — had been amended, repealed or replaced since Lord Frost announced the review in September 2021. By comparison with other regulatory reform efforts, this is relatively fast progress. As discussed above, New Labour's "Administrative Burdens Reduction Plan" reformed around 300 measures over five years, and the Coalition's "one in, one out" policy saw around 200 removed, also over five years.

In October 2022, the short-lived Truss administration announced a change in guidance to remove more SMEs from some regulatory requirements by redefining the threshold from 250 employees or fewer to those with 500 or fewer<sup>108</sup>. In the same month, the House of Lords Secondary Legislation Scrutiny Committee published a report on the impact assessment system<sup>109</sup>. The committee was concerned that some impact assessments were "scrambled together at the last minute to justify a decision already taken". It also noted a lack of central tracking of how accurate impact assessments had proved to be five years after being produced.

At the Autumn Statement in November 2022, the government announced a project, to be led by Chief Scientific Adviser and National Technology Adviser Sir Patrick Vallance, to “consider how the UK can better regulate emerging technologies, enabling their rapid and safe introduction”<sup>110</sup>. This will focus initially on digital technology, life sciences and green industries, and subsequently advanced manufacturing and creative industries, with a view to identifying opportunities to adapt regulation in order to attract investment and support business growth.

In March 2023, the review of digital technologies was published. It identified four key challenges facing government in regulating new digital technologies: 1) incoherence across government as many departments have some responsibility for digital policy; 2) deciding at what stage of development regulators should intervene; 3) the difficulty of regulators in attracting talent compared to the firms they are regulating; and 4) a lack of clarity in regulators’ mandates as to how they should balance risk and reward. Nevertheless, the report urged quick action from the government, including setting up a multi-regulator sandbox for AI by the autumn of 2023 and facilitating greater industry access to public data, alongside a Future of Transport Bill to provide more regulatory clarity on autonomous vehicles.

## Conclusion

Underneath the government’s hardline rhetoric on EU-derived regulation is the culmination of a long path away from a deregulatory mindset to a more rounded view of the role of regulation in the economy. The rolling back of key policies of former Conservative governments, such as the Business Impact Target, and the refusal to adopt a new “one-in, two-out” rule, recognise the flawed nature of such initiatives, which had been the centrepiece of the regulatory framework for many years. In many ways, Labour would inherit a regulatory environment that has gone full circle since the party has been out of office, back towards a more enlightened view of regulation as a valuable tool but one that needs to be used with care.

# A modern approach to regulation

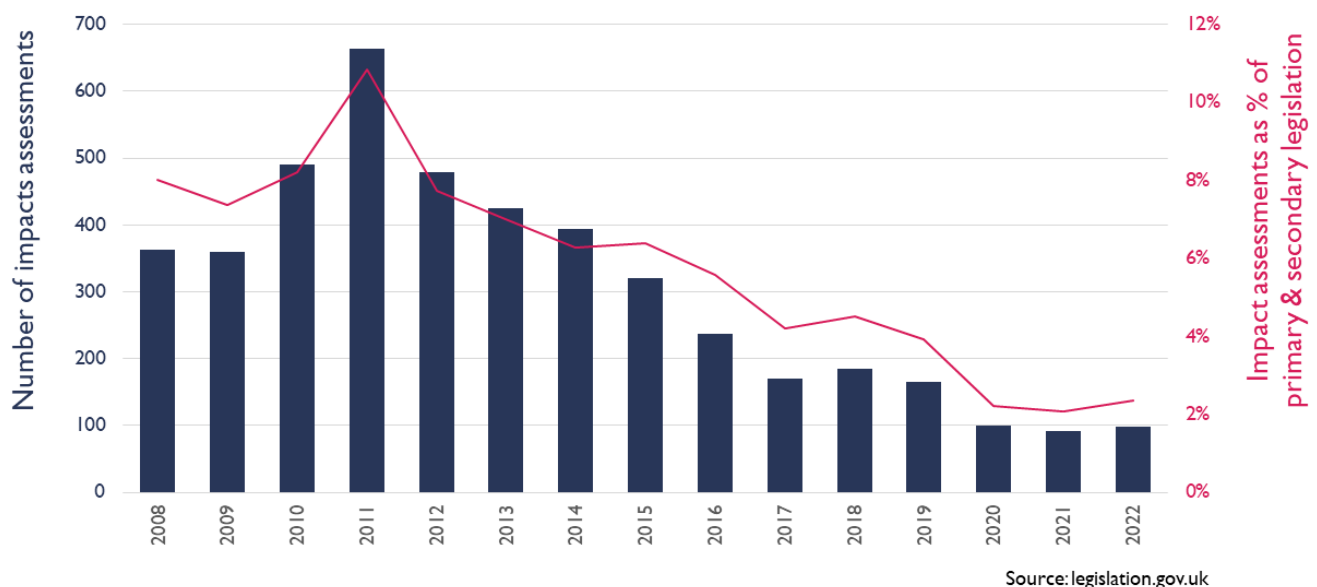
## The Conservatives' legacy on regulation

Under the Conservatives, regulatory quality has significantly worsened. This is clear when you consider regulation in three main areas: process, design and enforcement. In each of these, there has been a significant decline since the Conservatives took office in 2010.

On process, performance has collapsed (see chart below). In the final years of the previous Labour government, the equivalent of around 13% — or 1 in 8 — pieces of primary and secondary legislation received formal published impact assessments. In 2022, this had plummeted to 5%, or 1 in 20. The threshold for mandatory impact assessments was raised in 2017, from £1m to £5m, which accounts for some of this decline, but the trend was evident before then. It may be argued that it is more effective for civil servants to focus their efforts on fewer but more impactful regulations. However, overall, this has not been a strategic decision on the part of government based on considered analysis but a gradual degradation of standards.

### Under the Conservatives, proper regulatory processes have fallen off a cliff

Number of published impact assessments



Another concerning trend within the regulatory process is the ballooning government spend on consultants at the same time as civil service turnover is at record high levels<sup>111</sup>. By some estimates, government spending on consultants has grown by almost five times over recent years, and is set to grow further. According to Cabinet Office data, consultancy spend in 2015/16 was £500m<sup>112</sup>. A recent report put the figure for 2022 at £2.8bn<sup>113</sup>.

According to data from the analysis firm Spend Network, which tracks public-sector procurement data, public bodies spent just under £950m on consulting in the first quarter of 2023, setting consulting spend on course to reach £3.8bn in 2023 should this trend continue over the year<sup>114</sup>. Growing public-sector demand for consultancy support is partly indicative of a hollowing out of institutional capacity and resources, and should be a concern for regulatory quality.

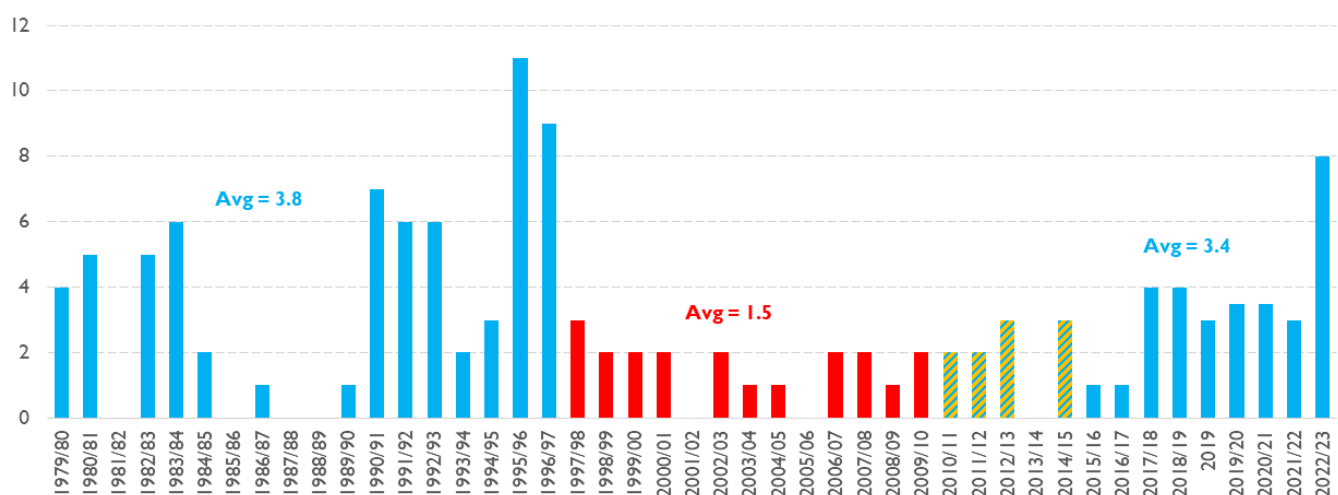


On design, speed of regulatory policymaking is crucial. Fast turnaround of some regulation is necessary, for instance during the pandemic. But that process showed that speed inevitably leads to errors. According to the Hansard Society, many of the main lockdown regulations contained errors and had to be corrected subsequently<sup>115</sup>. There was even an instance of a minister signing the wrong version of regulations, which then had to be revoked and re-tabled. As Jonathan Jones, the former head of the government's legal department, has described, "lack of time may mean the drafter having to reach for the least elegant solution – for example bolting chunks of new text on to existing legislation – whereas with additional time a more streamlined and user-friendly solution might have been possible"<sup>116</sup>.

An indicator of a less considered approach having become more prevalent under the Conservatives- and not just during a national emergency - is the number of fast-tracked bills pushed through Parliament. As the chart below shows, since 2015 the Conservatives have pushed more than three bills of this kind through per parliamentary session, more than double the rate under Labour from 1997<sup>117</sup>. The historical data also show a similar trend, with Conservative governments between 1979 and 1997 pushing through almost four bills of this kind per session. There will be good reasons for any government to fast-track some bills, but taken over a term in office (when, all things being equal, imperatives to fast-track bills should even out) the Conservatives have been much more willing to forego parliamentary scrutiny, which inevitably affects legislative quality. This is symptomatic of a wider disregard for proper process and scrutiny.

### Under the Conservatives, use of fast-tracked legislation has almost doubled that under Labour

Public bills receiving 2nd and 3rd reading in the Commons on the same day



Source: House of Commons Library, "Expedited legislation: Public bills receiving their Second and Third Readings on the same day in the House of Commons"

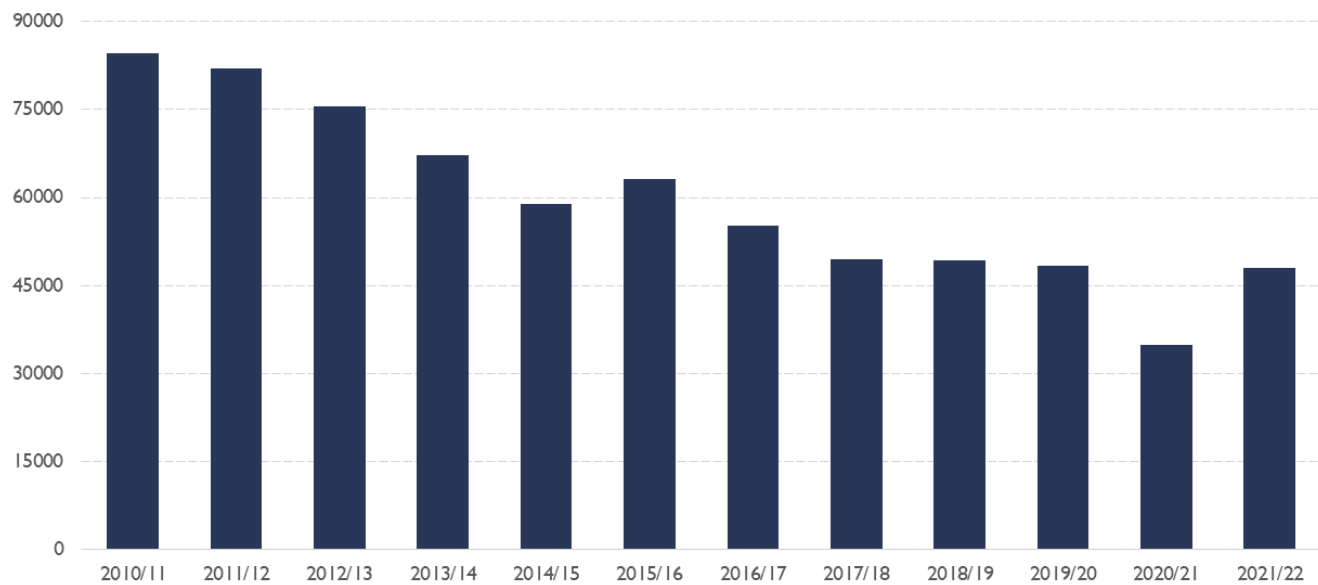
Finally, on enforcement, resources are vital and have a direct impact on capacity. According to the National Audit Office (NAO), between 2010/11 and 2020/21, local authority funding in England fell by more than 50%<sup>118</sup>. Local authorities have over 1,300 statutory duties, including a range of regulatory inspection and enforcement responsibilities<sup>119</sup>. These will inevitably have been affected by such severe budget cuts, given inspection is a relatively easy short-term cost savings, albeit with significant longer-term risks. Some regulators have also seen major reductions in their budgets.

The Health and Safety Executive (HSE), for instance, has seen significant funding and headcount reductions since 2010, which has unsurprisingly coincided with falling activity, including legal proceedings and prohibition notices<sup>120</sup>. Since 2009/10, prosecutions by the HSE have fallen by over 70%, from over 1,000 to below 300 in 2021/22. Conviction rates have always been above 90%, so there is likely inaction on hundreds of cases of criminal behaviour in the workplace, for which workers are bearing the cost. Another example is fire safety (see chart below). Fire safety inspections, or audits, of non-domestic premises carried

out by fire and rescue services have fallen by over 40% since 2010. Campaign group Unchecked UK have also gathered a litany of data on reductions in funding and staff across regulators and local government over the last decade<sup>121</sup>.

**Under the Conservatives, fire safety inspections have fallen by more than 40%**

Number of fire safety audits carried out by fire and rescue services in England

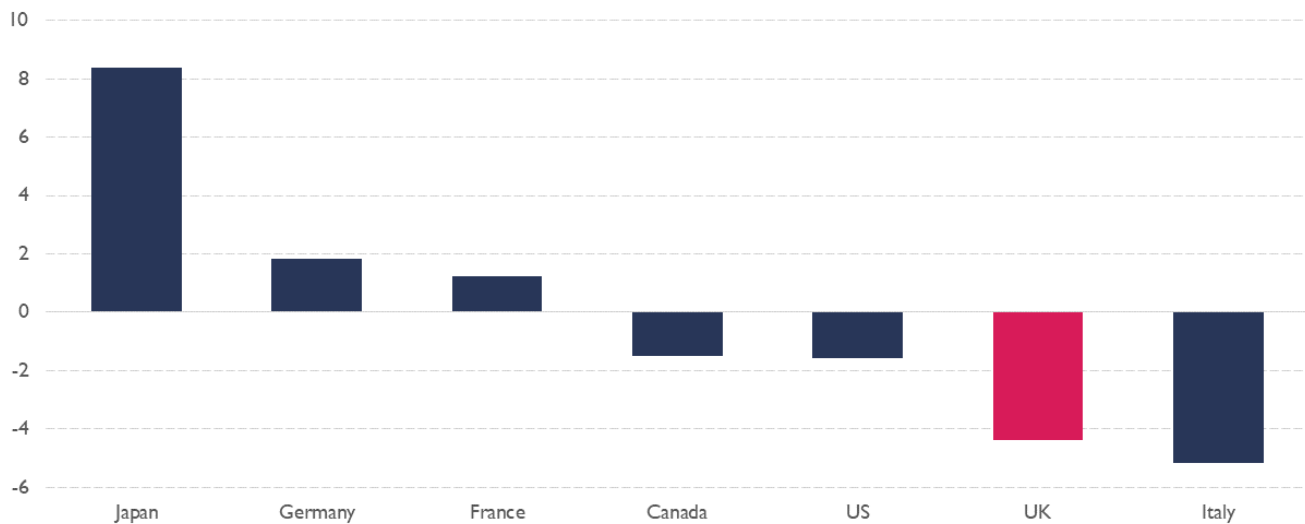


Source: Home Office, "FIRE1202: Fire safety audits carried out by fire and rescue services, by fire and rescue authority"

In truth, process, design and enforcement are connected. Poor regulatory processes lead to poor design, which can make enforcement difficult and/or expensive. Nor is it surprising that all three — and therefore regulatory quality overall — have worsened. The Conservatives have shown themselves increasingly indifferent to standards of good governance, whether in the conduct of ministers or evidence-based consideration of legislation (e.g. the Retained EU Law Bill). On regulation, the Conservatives promised a world-leading regulatory environment post-Brexit. The reality is they are likely to leave behind one in which robust consideration of much regulation is the exception not the rule, where analysis that is done is often sub-standard, where enforcement across a swathe of areas has withered and where perceptions of the quality of the UK regulatory environment at home and abroad are fast declining (see chart below).

**Under the Conservatives, UK regulatory quality has declined by more than any other G7 member except Italy**

Regulatory quality index, change from 2011 to 2021



Source: World Bank, Worldwide Governance Indicators

Granted, there is some counter evidence. The OECD regulatory policy outlook 2021 continues to rank the UK's regulatory system highly and well above the OECD average on all main measures.

However, the data on which this is based is a self-reported questionnaire on requirements, not an independent assessment of what is actually delivered in practice, which, as we have seen, can be very different.

## **Why regulatory quality matters**

The relationship between regulation and economic growth is more complicated than the simple good/bad dichotomy sometimes presented in political discourse<sup>122</sup>. Deregulation can be bad for growth just as regulatory protections can have unintended consequences worse than the risks seeking to be mitigated. Nonetheless, it is generally accepted that a certain level of regulation is important to provide stability and predictability so businesses can thrive — a level playing field. It is also accepted that regulation can discourage businesses from investing, innovating and growing by distorting incentives, especially where regulation results in high barriers to entry, discouraging new entrants and innovation<sup>123</sup>.

Beyond this basic understanding, the impact of regulation depends on a range of factors, including country, economic context and, crucially, the design of regulation itself. A recent study found that where existing levels of regulation are low and economic uncertainty is high, flexible regulation that creates different obligations in different scenarios supports economic growth, higher wages and more profits<sup>124</sup>. More rigid regulation was found to have a negative impact. The CMA came to a similar finding in 2019 when asked to explore the evidence on the relationship between competition and regulation, concluding “the proper design of regulation can substantially reduce the negative impacts on competition”<sup>125</sup>. Although it is difficult to argue that regulation writ large is inherently good or bad for the economy, regulation certainly can have negative impacts on growth, especially when not properly considered.

What is increasingly acknowledged as the key question is not more or less regulation, but how and what kind, to ensure it is designed and enforced effectively. That is why the Conservatives' record on regulation is so concerning. They have tended to fixate on the quantum of regulation while neglecting the crucial question of quality. They have also all too often dismissed process and evidence, which are vital for well-designed regulation.

## **High standards and economic growth**

Labour should develop a regulatory agenda that prioritises maintaining high standards and supporting economic growth. There will clearly be trade-offs. Where regulation is justified, it should be designed in a sophisticated way that balances the need to support growth. This will require careful thought and consideration, and a change of culture from that which has developed under the Conservatives. When considering alternatives, it will demand that where social impacts are comparable, the more pro-growth option is favoured. And where the impact on growth would be strongly negative, it will require concerted efforts to identify mitigations to offset or reduce that impact.

In absolute contrast to the Conservative approach, a pro-growth regulatory regime is one in which the regulatory ecosystem within central government is carefully rebuilt, where proper process is integral to developing effective regulation, where enforcement bodies are properly supported, and where a culture of collaboration and mutual respect delivers regulatory cooperation across government.

## **Approach to regulation outside the EU**

The UK's regulatory environment will clearly not develop in a vacuum. We have one of the world's major regulatory blocs, the – EU – on our doorstep, which is already influencing, and will continue to influence, regulatory choices made by UK policymakers.

The Biden administration's Inflation Reduction Act, which introduced large-scale incentives for domestic manufacturing across green industries in the US, has brought into sharp relief the challenges the UK faces in remaining globally competitive. Growing concerns about economic resilience and overdependence on unreliable partners for vital goods and materials requires UK policymakers to consider how regulation can underpin economic security, as well as innovation.

In the context of big-power geopolitical rivalry on regulation, the UK as a mid-sized player will need to be pragmatic, nimble and innovative in order to compete. Practically, that will mean being open to quickly aligning with best-practice from elsewhere when appropriate, developing regulatory processes that allow us to gain first-mover advantage in fast-changing markets and also proactively supporting innovative domestic firms through regulation.

## **Rebuilding an effective regulatory ecosystem**

Labour's task on entering government would be no less than having to rebuild an effective regulatory ecosystem. Some of the institutions that Labour created when last in government, including the BRE and RPC, remain but must be reformed and strengthened as part of a cross-government effort to reinstate serious regulatory policymaking. This requires reform of structures, processes and, crucially, culture.

There are, in my view, six priority areas to achieve this. First, reform efforts need to be targeted and strategic. Regulatory reform activity under recent administrations has often been piecemeal and scattergun, with the emphasis on the number of regulations removed or improved, rather than their quality.

Second, assessments of regulatory impacts need to be much more sophisticated. To date, regulatory impacts have primarily assessed in terms of cost to businesses. The impact on public services and a much broader range of issues, including economic growth, the impact on innovation and competition, environmental and social impacts, and enforcement need to be taken into account more systematically.

Third, and relatedly, regulatory analysis needs to be more robust and consistently applied. Ensuring the flow of new regulation onto the statute book is properly considered is crucial to ensuring that interventions achieve their objectives, minimise unintended consequences and are worth using finite civil service resources to deliver.

Fourth, there is far too little consideration of the existing stock of regulation, in terms of understanding both the cumulative and real-world impacts of regulation. Post-implementation reviews ought to be done much more frequently and departments should not mark their own homework — the RPC should conduct such reviews. This is especially important to keep pace with rapid technological change.

Fifth, all of the above counts for little if enforcement is ineffective. Far more attention and resource needs to be dedicated to implementing existing regulations effectively before seeking to introduce new ones. As part of impact assessments, departments should be asked to account for both the existing stock of regulation in a given policy area and explain why improving enforcement of existing regulations would not achieve a policy objective.

Finally, although the UK already has a reasonably good regulatory environment for innovation, we need to go much further. Especially now that we are outside the EU, it is vital that we are world leaders at supporting innovative businesses to come to market and be at the leading edge of utilising and supporting digital innovation in particular. Regulation is not simply a barrier to new markets developing, but can often be a catalyst.

## Six priorities to improve the UK's regulatory system

1. Taking a more strategic approach to regulation
  - Target reform efforts at delivering the five national missions
  - Prioritise real-world impact over arbitrary numbers of regulations removed or reformed
2. Adopting a more holistic mindset
  - Introduce more rounded assessments of regulations' impact, including economic growth, innovation and competition, and environmental and social impacts
  - Impact assessments, and their reviews, should consider wider regulatory environment beyond individual measures
3. Making the flow of new regulation more robust
  - Reform impact assessment processes to make them more robust
4. Improving the stock of existing regulation
  - Introduce a more systematic process for reviewing existing regulation on the statute book
  - Do not allow departments to mark their own homework and give the responsibility to an independent body
5. Prioritising enforcement
  - Rebalance resources towards better enforcement of regulation over introducing new ones
  - Make consideration of better enforcement of existing regulations a core part of impact assessments
6. Strengthening the UK's pro-innovation regulatory environment
  - Become world leaders in supporting innovative businesses
  - Utilise and support digital innovation

## Public opinion

An important factor is what the public think about regulation. Public support is crucial to provide permission to reform but also ensure compliance. Fortunately, the picture is consistent. Although a Labour government should always take a considered approach to regulation, it should be emboldened by the fact that the public is generally closer to Labour's worldview — i.e. that high standards and protections are important — than is sometimes the case among Conservatives, especially more deregulatory elements within that party.

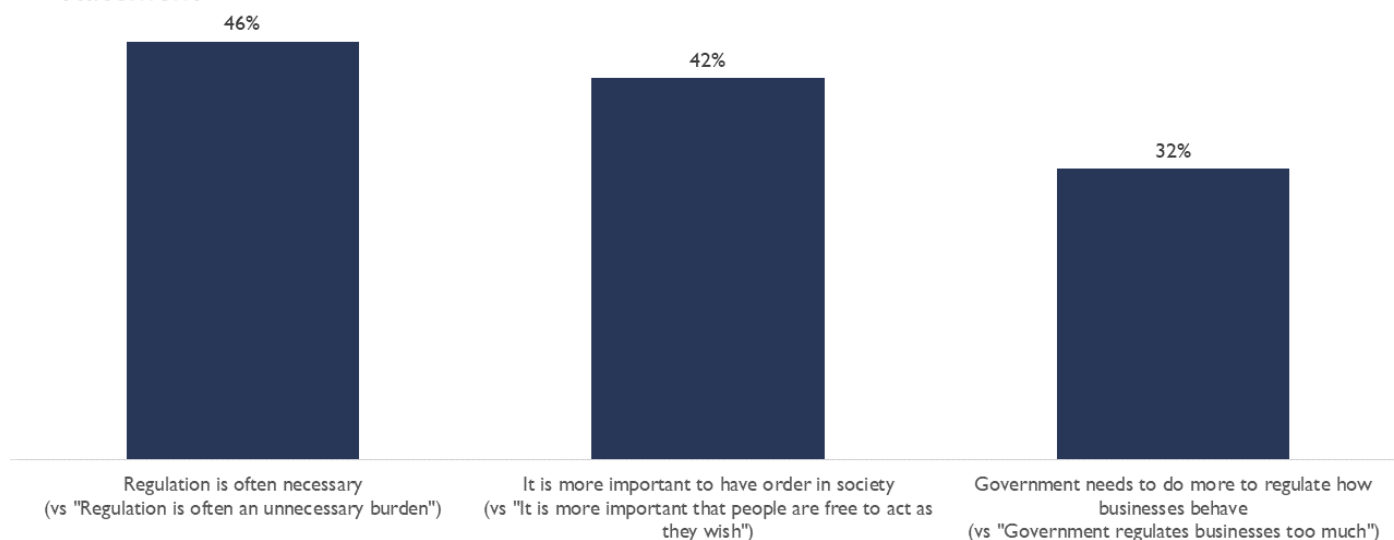
This should not be surprising. Work by the academic Paula Surridge shows that UK voters tend towards the authoritarian side of the social spectrum (and to the left of the economic spectrum), indicating a willingness towards intervention, as opposed to a more liberal approach<sup>126</sup>. This is also borne out in a 2017 report by the right-wing thinktank the Legatum Institute, which concluded: "We find that on almost every issue, the public tends to favour non-free market ideals rather than those of the free market. Instead of an unregulated economy, the public favours regulation"<sup>127</sup>.



Asked whether regulation was often necessary or an unnecessary cost, a clear majority of both Conservative and Labour voters said the former.

### The public is generally supportive of regulation

Net score – balance of positive/negative responses – agreeing with each statement



Source: Legatum Institute, "Public opinion in the post-Brexit era: Economic attitudes in modern Britain", October 2017.

More recent polling by the Tony Blair Institute found similar public sentiment, with 54% of voters preferring strict domestic regulation even at the price of a US trade deal and 27% against<sup>128</sup>. It is also easy to forget how willing the British public were to be regulated during the pandemic. One YouGov poll from December 2021 found that 62% would support banning unvaccinated people from shops and public events, and Conservative voters were even more in favour than Labour voters<sup>129</sup>.

This does not mean that a Labour government should seek to regulate without careful consideration. Public trust in government ministers and politicians generally is very low<sup>130</sup>. Voters will be instinctively sceptical about government intentions to introduce and change regulation in many areas. This is why it is all the more important to build confidence that a Labour government would focus its interventions on strategic priorities that will have most impact on public services and individuals directly, based on a more robust and considered understanding of the potential impact, with a preference for better enforcement of existing rules over new ones.

## Machinery of government

Machinery of government is important for regulatory reform, but above all what is needed is clearly articulated political support from the Prime Minister. Previous governments have had regulatory reform Cabinet committees, and the previous Labour government even had a regulatory reform department (BERR) and regulatory reform ministers. Dedicated political structures and personnel are useful, but alone they will not drive significant change.

It would be sensible to move the Better Regulation Executive (BRE) back into the Cabinet Office (CO) from the Department for Business and Trade to place it at the centre of government reform efforts with no departmental bias. With the impending abolition of the Business Impact Target (BIT), the BRE has scope to refocus its activities. It should be tasked with leading culture-change efforts across government, working with departmental Better Regulation Units, to oversee departments' regulatory efforts in contributing to achieving Labour's five national missions and refocus regulatory activity towards reforming existing regulation, as well as running a project to identify under-enforced regulations.

The RPC should be given a stronger oversight role. This should include conducting post-implementation reviews and auditing departments' regulatory impact assessments. It is important that it remains independent to insulate it from political pressure and provide it with objective distance when interacting with departments.

The Regulatory Horizons Council (RHC), established in 2019, advises the government on "the rapid and safe introduction of technological innovations"<sup>131</sup>. Given Labour's plan to establish a new Industrial Strategy Council (ISC) in legislation, it makes sense to embed the RHC as a sub-structure within the ISC to ensure a joined-up approach.

# Policy recommendations

## Taking a more strategic approach to regulation

### **1. On day one in office, a Labour government should pause and review all new regulation being developed across departments**

**Existing arrangements:** A Labour government would inherit cross-government regulatory activity driven by the political priorities of the previous Conservative-led administrations.

**Problems:** Given a mandate by the public to govern in line with its manifesto, without an immediate pause and review a Labour government would risk carrying forward regulatory measures for which there is no longer a mandate and which may not accord with its political priorities.

**Solution:** Immediately pausing activity would allow departments to review new regulatory measures in development and assess, with input from the relevant secretaries of state and other departmental ministers, which measures should proceed, be amended or be scrapped. This would mirror the approach taken by the Coalition Government in 2010 when it took office following 13 years of Labour government. In practice, by signalling its intention to do so well in advance, civil servants would have time to undertake preparatory work before the government took office, speeding up the process. The aim should be to complete this work within, at most, the first three months from taking office.

**Costs:** Such a review would occupy significant civil service capacity and ministerial time for a short period but it would be justified in ensuring coherence in the government's governing agenda from day one.

### **2. Ask the most active regulatory bodies to devise action plans to help deliver Labour's five national missions**

**Existing arrangements:** Government strategies, policies and programmes have been designed in line with the preferences of Conservative secretaries of state and ministers.

**Problem:** Existing government strategies, policies and programmes are not designed to deliver Labour's five national missions.

**Solution:** The most active regulatory departments should be asked to produce action plans on how to help achieve Labour's five national missions. The National Audit Office (NAO) should be asked to produce an annual assessment of regulatory activity and its contribution to achieving the five national missions to ensure scrutiny and accountability.

**Cost:** There should be no additional cost from taking this approach. Resource should be diverted from existing workstreams that are no longer relevant or priorities.

### **3. Adopt a “reform first” approach to public services**

**Existing arrangements:** Public-sector bodies, including the NHS, have efficiency targets but there are few clear strategic incentives or sufficient leadership from the centre to deliver.

**Problem:** Without operational and financial performance improvements, public confidence in and support for taxpayer-funded services may diminish further than it already has in recent years.

**Solution:** Significant medium-term boosts in funding must be preceded and offset by substantial improvements in operational and financial performance in order for ministers and the public to have confidence that taxpayer funds are being put to their most effective use. This is notwithstanding the fact that some short-term funding may be necessary to support improvements, particularly in digitalizing services. Adopting a “reform first” approach would also demonstrate to the public the seriousness of Labour's commitment to fiscal responsibility. This should be supplemented with an operational support programme to help public service bodies to reform effectively. Public bodies should actively engage with the review of regulatory costs on public services to support this reform process (see next).

**Cost:** The net cost of this process should be positive.

### **4. Commission a comprehensive review of the regulatory costs on public services and citizens**

**Existing arrangements:** There have been various exercises by governments in recent decades to review the regulatory costs on different sectors of the economy, and on different actors. There has not yet been a comprehensive effort to calculate the baseline level of regulation affecting public services and individuals. Rather, the overwhelming focus has been the impact on businesses.

**Problem:** The regulatory cost on public services and citizens is equally important to that on businesses. Much frustration with public services often comes down to obvious inefficiencies and dysfunctionality. The biggest impact a Labour government could have in terms of regulatory reform is focusing on improving individuals' interactions with public services and the state.

**Solution:** The objectives should be to improve the operation of public services and people's day-to-day experience engaging with public bodies. This exercise, which should be led by a reformed BRE within the Cabinet Office, should begin with the healthcare system (not just the NHS) and seek to identify ways to remove regulatory costs on both services and individuals without jeopardising safety. Interim findings, with associated immediate actions to take, should be published within the first three months of a Labour government.

Where possible, these actions should be implemented within the first six months. Reviews of other major public services should follow, prioritising those that affect the biggest proportion of the public. This would be the central pillar of a “reform first” approach.

**Cost:** This would be a significant exercise that would need to be funded from within existing departmental budgets.

## 5. Launch a review of regulators' statutory duties

**Existing arrangements:** Successive governments have progressively added to the legal duties placed on regulators, with limited consideration given to their collective application. The Office of Road and Rail (ORR), for instance, is expected to abide by more than 40 duties and sub-duties.

**Problem:** Because regulators' duties have often accumulated in an ad hoc manner over several decades, it needs to be considered whether their duties as a whole can realistically be delivered effectively, and address obvious gaps such as achieving net zero, promoting innovation and proactively collaborating with other regulators and government bodies. Over-prescriptive duties muddy responsibilities and reduce accountability.

**Solution:** A review of regulators' duties should answer two basic questions: 1) what should be the overarching, or general, duties shared by all regulators (and on which they must collaborate)? And 2) what should be their sector-specific duties? On the former, issues such as economic growth, competition, innovation and net zero should be considered. There must also be an effort on the part of government to ensure duties overall are updated but simplified, collectively deliverable and coherent, so that the public know what to expect and regulators can be effectively held to account.

**Cost:** There would be significant resourcing costs associated with a review of this kind. However, it is more than justified by working towards a more effective and trusted system of regulators.

## 6. Give the Regulatory Policy Committee (RPC) a stronger role in overseeing regulation

**Existing arrangements:** The RPC currently has no upstream function in relation to the design of regulation. It operates entirely downstream, analysing RIAs and other assessments of individual regulatory measures in isolation.

**Problem:** The RPC is under-utilised given its wide-ranging experience of and exposure to departments' regulatory activity. Through its work, the RPC is no doubt aware of contradictory measures or missed opportunities for generating greater social value through regulatory collaboration.

**Solution:** Initially, the RPC should be asked to include in its annual report an assessment of the number of new regulatory measures that either overlap with those from other departments, contradict them or represent missed opportunities for collaboration. This should include a series of recommendations to the government on how any failings can be addressed. As part of its assessment of RIAs, the RPC should also provide a view of whether departments have sufficiently considered existing regulatory measures or those in development. The RPC should also carry out post-implementation reviews, not departments, and audit departments' previous impact assessments.

**Cost:** The RPC will need to be significantly bolstered to perform a new strategic role in addition to its existing functions. However, many of these costs will be offset in the medium term by improvements made in regulatory quality and the prevention of unnecessary costs from unwise regulation.

# Adopting a more holistic mindset

## 7. Ask departments to produce an assessment of existing regulatory requirements in areas they wish to add significant further costs

Existing arrangements: Currently, RIAs must take account of the cost of measures being proposed in isolation from existing regulatory requirements.

Problem: If departments are not conscious of regulation that is already on the books and its impact, they cannot properly assess the need and justification for further regulation, and its impact on those regulated.

Solution: A section should be added to RIAs that requires an assessment of the cost of existing regulations and the additional impact of the planned measure on overall costs, as well as whether new overall costs are justified for the level of risk and any mitigations that have been considered to limit overall costs.

Cost: Expanding RIAs in this way would require more civil service resource but would be justified by improving regulatory quality.

## 8. Make RIAs mandatory for regulation that is likely to have a significant cost for public services

Existing arrangements: The current Better Regulatory Framework is directed largely at analysing the cost of regulation for businesses.

Problem: Regulatory costs that apply to businesses will sometimes also apply to public services and central government. Demands on public services can add significant cost, making them bureaucratic and inefficient.

Solution: Widening the regulatory impact assessment process to include regulatory proposals with potentially significant impacts on public services would begin to address the significant burdens that departments add to public services each year without thorough, systematic assessment. Ensuring that regulatory demands on public services are proportionate is crucial to their performance and the outcomes experienced by citizens.

Cost: This would require more civil service resource by significantly expanding the scope of the Better Regulation Framework but would be justified by improving regulatory quality.

## 9. Identify principles and priority areas to retain regulatory autonomy and pursue international cooperation on regulation

Existing arrangements: The current government has chosen to prioritise regulatory autonomy over economic and social benefits in most areas relevant to international cooperation.

Problem: There are likely areas in which, even with this autonomy, the UK will remain closely aligned with international rules, resulting in questionable value.

Solution: Labour should identify principles and priority areas in which it wishes to retain regulatory autonomy, the rationale for doing so — such as protecting public health — and, by implication, areas in which it would be open to closer alignment with all international partners, including the EU.

Cost: The net result would be cost saving, as it could enable the removal of some economic barriers.



# Making the flow of new regulation more robust

## 10. Set an ambitious “fit for purpose” target for all regulatory impact assessments

**Existing arrangements:** For regulatory measures whose annual net direct impact on businesses (positive or negative) is expected to be £5m or more, departments are required to produce an RIA, which is then assessed by the RPC. The RPC reports annually on the share of RIAs and other regulatory assessments by departments on whether they are considered “fit for purpose”.

**Problem:** Over the past five years, just 73% of RIAs have, on average, been assessed as fit for purpose. If businesses and the public are to have confidence in, and therefore be willing to comply with, government regulation, the quality of impact assessments must improve. This is also a matter of ensuring that finite government resources are used to implement what are likely to be the most effective measures.

**Solution:** It should not be the norm that the government’s analysis of as many as one in four significant regulatory measures is considered “not fit for purpose”. To incentivize higher-quality impact assessments, an ambitious central target to be achieved by the end of the parliament should be set for “fit for purpose” departmental RIAs. Such a target would also need to include bolstered support for departments and sanctions at the end of the parliament for departments that do not reach this target. For instance, underperforming departments should be subject to a thorough review of their impact assessment process and be compelled to implement improvements.

The RPC will remain independent and therefore have no incentive to fudge the numbers. Emergency measures, for which a full RIA process may not be feasible, should be excluded from this target. RPC assessments of RIAs should, in future, be broken down by department to provide transparency on performance.

**Cost:** This will demand more time and resources on the part of civil servants to undertake more thorough assessments. Better RIAs will not in themselves guarantee better regulation, but better regulation is next to impossible without high-quality RIAs.

## 11. Require departments to submit a wider range of proposals for light-touch assessments by the RPC

**Existing arrangements:** Currently, departments are required to submit impact assessments to the RPC where the expected annual net impact (positive or negative) on businesses is more than £5m.

**Problem:** There have been examples of departments grossly miscalculating the expected impact of regulations on business. In 2020, for example, the Treasury initially estimated that so-called “breathing space” regulations to give indebted individuals time to seek advice would save businesses over £850m a year. However, the RPC found fundamental errors and the updated estimate was that they would, in fact, add almost £170m in costs to businesses a year — a net £1bn+ a year miscalculation. Departments miscalculating impacts may mean that proposals that should be subject to full IAs and RPC scrutiny are not.

**Solution:** Requiring departments to submit proposals to the RPC for light-touch assessment at a lower cost threshold would partially correct this issue by giving the RPC more visibility over supposedly smaller-impact measures. The precise threshold would be subject to the outcome of the ongoing review of the Better Regulation Framework.

**Cost:** There would be a small cost to departments and the RPC to increase scrutiny but this is justified by improving regulatory quality.

## **12. Publish a live dashboard of all regulatory activity across departments and regulators**

Existing arrangements: Currently, each department and regulator publishes regulatory activity on their own gov.uk website.

Problem: There is no single, easy-to-access location to find information about all government regulatory activity, creating an unnecessary barrier to public and business engagement, especially for small businesses.

Solution: Creating a single, live dashboard would improve transparency and make it easier to engage, ultimately producing better regulatory outcomes. There are several examples of where this is done well already, including the FCA's Regulatory Initiatives Grid<sup>132</sup>. It would make most sense for this to be coordinated and managed from the Cabinet Office (CO), with departments and regulators required to provide up-to-date information on their regulatory activities. Alongside the dashboard, the CO should monitor public and business engagement, as well as proactively seek feedback from stakeholders, to gauge its impact.

Cost: There would be a small cost to departments and the CO to run and maintain the dashboard, as well as one-off upfront costs to create a landing page.

## **Improving the stock of existing regulation**

### **13. Strengthen guidance to increase the use of statutory review and sunset clauses**

Existing arrangements: Current guidance gives departments wide-ranging discretion to avoid including review clauses of regulations. Those whose expected annualised net impact on business is above the £5m threshold are more likely to be subject to post-implementation review but there are multiple get-out clauses.

Problem: Particularly for major regulatory interventions, it is vital that the government systematically revisits them to ensure their effective operation and avoid a pile-up of suboptimal, half-enforced legacy regulations that litter the statute book with semi-justified obligations. This is especially important to keep pace with rapid technological change.

Solution: This should ensure that, for significant regulations, not undertaking a post-implementation review (PIR) is the exception.

Cost: There should be no significant additional costs for departments from implementing this (see next).

### **14. Ask the RPC to conduct post-implementation reviews to provide an independent assessment**

Existing arrangements: Currently, PIRs are carried out by departments themselves.

Problem: Departments effectively mark their own homework and have few incentives to look for shortcomings or failures in regulations they implemented.

**Solution:** The process for reviewing PIRs should be handed to the RPC as an independent body to conduct a dispassionate assessment, including recommendations as to how departments could improve the regulatory measures under review.

**Cost:** This, along with other recommendations here, would require a substantial bolstering of the RPC in terms of resources and personnel. However, it would play an expanded and vital role in ensuring regulatory quality, which over the medium-term would compensate for some of these costs.

## **15. Ask the RPC to audit existing departmental impact assessments**

**Existing arrangements:** There is little systematic effort currently to review and learn lessons from previous impact assessments.

**Problem:** Departments are missing opportunities to improve the accuracy of impact assessments and have little accountability.

**Solution:** Asking the RPC to undertake an audit of impact assessments by the most active regulatory departments would provide an independent assessment. The RPC should make recommendations to the government on lessons learned from this exercise for the future approach to impact assessments. A key question for this audit should be how well regulations are being enforced.

**Cost:** This project would require additional resources but would be justified by its contribution to improving regulatory quality.

## **16. Return to a considered approach to reviewing and reforming retained EU law**

**Existing arrangements:** The government is currently proceeding with the Retained EU Law (REUL) Bill, a hangover from the Truss administration. If passed in its current form, it could see vast swathes of regulation wiped of the statute book at the end of 2023, even if the government has not had time to properly consider each measure.

**Problem:** The government is flying blind, with potentially damaging unintended consequences from “accidentally” removing valuable regulations from the statute book. It also creates unnecessary uncertainty for businesses who have less clarity over the regulatory framework from 2024 onwards.

**Solution:** As with all regulation, there is a good case for reviewing EU law brought onto the UK statute book as part of the 2018 EU Withdrawal Act. However, this should be done in a careful and considered manner to ensure the government has a reasonable understanding of the number of such laws, the impact of reforming or removing them, and minimise unintended consequences.

**Cost:** There would be some administrative costs associated with carefully analysing each regulation. However, this would prevent potentially much larger costs from removing regulations that turned out to be valuable.

## **17. Initiate a project to codify existing regulation by sector**

**Existing arrangements:** Existing relevant legislation and guidance for those wanting to set up a business in a particular sector is scattered across departments and government websites.

**Problem:** This adds an unnecessary barrier to business creation and creates significant costs in either finding out this information alone or employing specialist external support.

**Solution:** A project to consolidate existing regulatory requirements for businesses in a single location, written in accessible language, would significantly ease business costs and lower barriers to entry to encourage new market entrants. This programme should start with the most highly regulated sectors.

**Cost:** This would be a significant project requiring dedicated funding but this would be offset by significant cost savings for businesses.

## Prioritising enforcement

### **18. Ask a reformed Better Regulation Executive (BRE) to conduct a review to identify regulations that are rarely enforced**

**Existing arrangements:** The existing stock of regulations is rarely revisited for the purposes of identifying issues with enforceability.

**Problem:** If existing protections are never used by those they are intended to protect, it is difficult to justify compliance costs associated with them, as the net benefits to society are likely to be negligible or negative.

**Solution:** A review of rarely enforced regulation would be in the interests of both businesses and workers to improve the effectiveness and enforceability of regulatory protections. There are likely to be areas where both employers and trade unions agree that existing rules add little value. This process should also identify areas where more effective regulation can strengthen protections in practice. Priority areas should be employment and consumer law.

**Cost:** As part of a reformed BRE, based in the Cabinet Office, this would be one workstream, requiring additional resources.

### **19. Ask departments to demonstrate that better enforcement of existing regulations could not achieve similar outcomes**

**Existing arrangements:** Currently, little account is required of the effectiveness of enforcement of existing regulations before new ones are proposed and implemented.

**Problem:** This is both potentially wasteful and risks contradicting or counteracting existing regulations.

**Solution:** Asking departments to show that better enforcement of existing regulations could not achieve similar objectives as part of impact assessments would shift the bias of regulatory activity towards a better understanding of existing regulatory requirements and improving the stock of regulation.

**Cost:** There would be some additional resource requirements for civil servants to conduct more comprehensive assessments of regulatory proposals but this would be offset by a more coherent regulatory system.

### **20. Consider expanding the use of “earned” relief from some regulatory requirements**

**Existing arrangements:** There are already a number of earned recognition schemes in place, especially in the agricultural sector, which reduce regulatory requirements for compliant businesses. These are usually run by industry bodies.

**Problem:** In conjunction with sanctions for non-compliance with regulation, it may be more effective to complement this with incentives for businesses to demonstrate exceptional corporate governance standards in exchange for a reduction in some regulatory requirements.

**Solution:** Businesses who open themselves up to additional scrutiny and can demonstrate a proven track record of exceptional corporate governance standards could be rewarded with fewer inspections and reporting requirements. This should not in any way reduce standards themselves but provide some relief from inspection. It should also be subject to periodic, light-touch review.

**Cost:** This would reduce the regulatory cost on businesses and the government by allowing more targeted enforcement on bad actors.

## **Strengthening the UK's pro-innovation regulatory environment**

### **21. Embed the Regulatory Horizons Council within the new Industrial Strategy Council structure**

**Existing arrangements:** The RHC is currently an independent expert committee, sponsored by DBT.

**Problem:** The work of the RHC and the prospective ISC may not make the most of potential synergies as entirely separate bodies, albeit under the same government department.

**Solution:** Moving the RHC within the structure of the ISC would ensure close co-operation, collaboration and alignment of work plans, as well as sharing of resources.

**Cost:** There are likely to be efficiencies associated with both bodies working closely together, so the net costs would be negligible, notwithstanding the cost of setting up the ISC itself.

### **22. Add horizon-scanning for new approaches to regulation to RHC's charter**

**Existing arrangements:** The RHC's Charter already includes a commitment to "scan the horizon for technological innovation and trends," but not explicitly with respect to innovative regulation.

**Problem:** In order to properly fulfil another of the RHC's Charter commitments to "make recommendations to government on broad priorities for regulatory reform," it needs to have a programme of horizon-scanning for regulatory innovation in order to provide the government with the best advice.

**Solution:** Amending the RHC's Charter to "scan the horizon for technological innovation and trends, and innovative approaches to regulation," would embed this objective in the organisation's work.

**Cost:** This would add a moderate amount to the resources required for existing horizon-scanning efforts.



## **23. Explore and pilot the most applicable uses of machine-readable regulation across government**

Existing arrangements: Machine-readable regulation (MRR) is regulation that has been converted into code that can be processed by specialist software to make it easier for organisations to understand and comply and do so more accurately<sup>133</sup>. The use of MRR remains nascent but is being developed in the financial services sector in particular. The Prudential Regulation Authority (PRA), for example, has committed to “basic machine-readability” of its rulebook by the end of 2023<sup>134</sup>.

Problem: Regulation has become increasingly complex, and regulations change frequently. This requires significant resources on the part of businesses and other regulated entities, including public-sector bodies, to monitor, adapt and ensure compliance. In fragmented sectors, this can also make it difficult to effectively monitor market behaviour and enforcement of regulations.

Solution: Although still developing, MRR is a new frontier in regulation, monitoring and compliance. Used effectively, it could significantly reduce the costs of compliance for businesses and public-sector bodies, and ensure higher levels of compliance, using regulatory technology (RegTech). For government, there may be broadly two uses: first, having machine-readable versions of regulations would reduce costs for businesses and other organisations, improving the UK business environment; and, second, the government could require regulated entities to produce information in machine-readable form to derive many of the same benefits from a monitoring perspective.

Cost: There would be small costs associated with pilots or other projects to support the development and adoption of MRR, but this would be more than offset in the medium term should it prove widely applicable.

## **24. Create “challenger groups” within regulators to identify and support growing businesses in order to promote competition**

Existing arrangements: Economic regulators are required to proactively engage with those they regulate, but there is no equivalent for potential new market entrants, although many may do so anyway.

Problem: There is sometimes a perception that regulators have been “captured” by the industries they oversee, with rule-making sometimes seen to be skewed in favour of existing market actors.

Solution: Setting up “challenger groups” within economic regulators to proactively engage with and support growing businesses or potential new market entrants would help to dispel this perception, as well as encourage further competition, which is good for consumers and innovation.

Cost: There would be some administrative cost to resourcing these units, but they should be funded out of regulators’ existing budgets.

## **25. Develop scaleboxes to support “future success” businesses at the scale-up stage of their lifecycle**

Existing arrangements: Regulatory sandboxes are in common use across the world as a tool to support innovation.

Problem: The UK has a well-evidenced problem in developing firms through the scale-up stage of their lifecycle<sup>135</sup>.

**Solution:** There is unlikely to be a single, simple policy response to address this problem, but departments and regulators should be encouraged to develop “scaleboxes”, or packages of support targeted at scale-up firms, tailored to particular sectors. These could include concessions on licensing requirements or reporting rules, or preferencing scale-up firms in procurement processes.

**Cost:** There would be regulatory risks associated with these support packages, but they should be carefully developed to minimise unintended consequences.

## **26. Commit to becoming a “fast follower” where innovation takes place outside the UK**

**Existing arrangements:** In many nascent areas of regulation, it remains unclear what the regulatory consensus will look like as markets develop, or whether such consensus will develop at all. Regulating the many applications of artificial intelligence is a prime example.

**Problem:** The global regulatory environment for new technologies and applications is likely to develop rapidly and possibly divergently as industrial competition intensifies. Therefore, given the UK is now outside one of the world’s major regulatory blocs, we must counteract that loss of influence by being nimble and pragmatic in identifying and adopting regulatory approaches where developed first by others.

**Solution:** As recommended by the Regulatory Horizons Council, committing to quick adoption of innovative approaches to regulation would ensure the UK remains at the forefront even when such innovation does not occur in the UK. The RHC’s horizon-scanning function should look to identify promising innovative approaches to regulation, with a fast-track procedure within government to consider whether and how the UK could harness such innovation.

**Cost:** This would require some resourcing to identify potential new innovations to be adopted but this should be taken from the RHC’s existing budget.

# Conclusion

Regulation is the rules, standards and guidance — and their enforcement — that government imposes to reduce public risk from business and other activities. It is a response to risk and perceptions of risk. Before considering what an appropriate level of regulation is, governments must first determine the level of risk that they are willing to accept in return for the gains of economic and social freedoms. Regulation is not “free” for government. Whether adding costs to public services or to businesses that are then passed on to consumers, or due to an indirect impact on government revenue, there are always costs to consider. Regulation, like all government interventions, faces the challenge of seeking to influence behaviour within complex economic and social systems. As a result, interventions should be carefully considered and tend towards the least interventionist, so that impacts — intentional or not — are as contained as possible.

Governments must consider three key questions before introducing new regulations: 1) Is regulation the appropriate response? 2) What form should it take? And 3) How can it be enforced effectively? Even if there is a clear risk of harm and a reasonable expectation that regulation might reduce it, that alone should not suffice without considering whether the net benefits justify the intervention and do not have unintended consequences that may, in fact, increase risk or displace it elsewhere.

The government has two main tools for assessing regulation: regulatory impact assessments, or RIAs, and post-implementation reviews, or PIRs. Where annual net impact on businesses (positive or negative) of regulations is expected to be above £5m, RIAs and PIRs are expected to be completed by departments. However, these rules are not always heeded, and some assessments are completed with short notice or as a tick-box exercise rather than making a contribution to regulatory design, which is their intended function. The most obvious gap in the UK’s regulatory regime currently is a general absence of assessment of existing regulatory measures before new ones are added.

The previous Labour government (1997-2010) undertook substantial efforts to improve the UK regulatory environment over more than a decade in office. These efforts showed the difficulties of making a substantial impact in this area. Because many reforms were granular, a large volume of changes was required to achieve a significant impact on overall regulatory costs. Although Labour did a lot to improve the regulatory process, there was much more attention on reducing the quantity of regulation over improving quality.

But this period did produce lasting change. Some of the structures and mechanisms that the previous Labour government introduced remain in use to this day. The Better Regulation Executive remains the policy lead within government for better regulation and RIAs remain central to the policy development process, albeit there is room for improvement. Within RIAs, introducing a methodology to monetise the impact of regulation was another innovation that has become embedded. Labour also introduced Legislative Reform Orders, which continue to be a tool used to reform and update regulation. Perhaps Labour’s biggest legacy is shifting the regulatory reform debate towards a more considered understanding of both the costs and benefits of regulation.

The change in government in 2010 marked a significant shift in regulatory policy, particularly on the Conservative side of the Coalition Government. The agenda shifted from Labour’s “better regulation” approach towards so-called “common sense” regulation. The Cameron period, including in coalition, was marked by repeated deregulatory efforts manifesting in “one-in, one/two/three-out” policies and the Business Impact Target aimed at reducing regulatory costs on businesses. However, the legacy of the Cameron governments (2010-16) on regulation has been gradually unwound by subsequent Conservative administrations, which have since rebuked its key initiatives. Largely distracted by the Brexit process, the May administrations (2016-19) adopted a notably different approach to regulation compared to its predecessor, in line with a broader shift in policy towards more interventionist policies.

The post-Brexit era (2019-) of regulatory reform has inevitably been focused on identifying potential opportunities for reform outside the EU. There has been a swathe of initiatives — including the Penrose review, the TIGRR report, the review of the Better Regulation Framework and the “Benefits of Brexit” white paper — all advocating different priorities for regulatory reform. The Retained EU Law (REUL) Bill has become a lightning rod in the Brexit debate. From a regulatory perspective, it is a fairly straightforward breach of most regulatory best practice that has built up domestically and internationally over recent decades. Consultation, impact assessments and careful design have all been forgone in the name of purging the UK statute book of EU-derived law regardless of its value.

Beyond this, there has been a shift among many Conservatives to more explicitly recognise the value, not just the cost, of regulation. This has now become a consensus position. Labour would inherit a regulatory environment that has gone full circle since the party has been out of office.

Overall, under the Conservatives, regulatory quality has significantly worsened. This is clear in terms of process, design and enforcement. In each of these, there has been a significant decline since the Conservatives took office in 2010. What is increasingly acknowledged as the key question in regulatory reform is not more or less, but how and what kind, to ensure it is designed and enforced effectively. That is why the Conservatives’ record on regulation is so concerning. They have tended to fixate on the quantum of regulation while neglecting the crucial question of quality. They have also all too often dismissed process and evidence, which are vital for well-designed regulation.

Labour should develop a regulatory agenda that prioritises maintaining high standards and supporting economic growth. Its task on entering government would be no less than having to rebuild an effective regulatory ecosystem. There are six priority areas to achieve this, as follows.

1. Taking a more strategic approach to regulation
2. Adopting a more holistic mindset
3. Making the flow of regulation more robust
4. Improving the stock of existing regulation
5. Prioritising enforcement
6. Strengthening the UK’s pro-innovation regulatory environment

Although a Labour government should take a considered approach to regulation, it should be emboldened by the fact that the public is generally closer to its worldview on regulation, i.e. that high standards and protections are important. As a 2017 Legatum Institute study found: “on almost every issue, the public tends to favour non-free market ideals rather than those of the free market. Instead of an unregulated economy, the public favours regulation.” This does not mean that a Labour government should seek to regulate without careful consideration, but alongside rebuilding the regulatory ecosystem Labour should be confident in seeking to introduce proportionate regulation to reduce economic, social, environmental and other risks.

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Rick Haythornthwaite	Former Chair of the Better Regulation Commission and the Risk and Regulation Advisory Council
Dame Deidre Hutton	Former Chair of the Civil Aviation Authority
Geoffrey Norris	Former Special Adviser on industrial policy to Prime Minister Tony Blair and Prime Minister Gordon Brown
Sir William Sargent	Former Permanent Secretary for Regulatory Reform in the Cabinet
Anton Spisak	Senior Fellow for UK Policy at the Tony Blair Institute and former civil servant in the Cabinet Office and Foreign Office
Sarah Veale	Former member of the Regulation Policy Committee and former Head of Equality and Employment Rights at the TUC
Giles Wilkes	Former Special Adviser to the Secretary of State in the Department of Business, Innovation and Skills, and later to the Prime Minister

# Annex - comparison of CAA and ORR statutory duties

## Statutory duties compared: Civil Aviation Authority (CAA) Office of Road and Rail (ORR)<sup>136</sup>

### Civil Aviation Authority (CAA)

1. Ensure the aviation and aerospace industry meets the highest safety standards
2. Make sure consumers have choice, value for money, are protected and treated fairly when they fly
3. Through efficient use of airspace, ensure the environmental impact of aviation is effectively managed and CO2 emissions are reduced
4. Make sure the aviation industry manages security risks effectively

### Office of Road and Rail (ORR)<sup>137</sup>

1. Promote improvements in railway service performance
2. Protect the interests of users of railway services
3. Promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable
4. Contribute to the development of an integrated system of transport of passengers and goods
5. Contribute to the achievement of sustainable development
6. Promote efficiency and economy on the part of persons providing railway services
7. Promote competition in the provision of railway services for the benefit of users of railway services
8. Promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator
9. Impose on the operators of railway services the minimum restrictions which are consistent with the performance of ORR's functions under Part 1 RA 1993 or the RA 2005 that are not safety functions



10. Enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance

11. Protect the interests of users and potential users of services for the carriage of passengers by railway provided by a private sector operator, otherwise than under a franchise agreement, in respect of the prices charged for travel by means of those services, and the quality of the service provided

12. Protect the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of the prices charged for such use and the quality of the service provided

13. In exercising functions that are not safety functions:

a. take into account the need to protect all persons from dangers arising from the operation of railways;

b. have regard to the effect on the environment of activities connected with the provision of railway services;

c. have regard to any general guidance given to ORR by the Secretary of State about railway services or other matters relating to railways;

d. have regard to any general guidance given by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in or as regards Scotland that relate to railways;

e. in having regard to guidance given by Scottish Ministers, give what appears to ORR to be appropriate weight to the extent to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers;

f. act in a manner which ORR considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions;

g. have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways or railway services;

h. have regard to any notified strategies and policies of the National Assembly for Wales, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services;

i. have regard to the ability of the National Assembly for Wales to carry out the functions conferred or imposed on them by or under any enactment; and

j. have regard to the ability of the Mayor of London and Transport for London to carry out the functions conferred or imposed on them by or under any enactment.

14. In exercising its safety functions, other than its functions as an enforcing authority for the purposes of the Health and Safety at Work etc Act 1974, to have regard to any general guidance given to it by the Secretary of State;

15. Have regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public;

16. Have regard, in particular, to the interests of persons who are disabled in relation to services for the carriage of passengers by railway or to station services

17. Secure the proper construction and safe operation of railways, tramways etc

18. Secure the proper construction and safe operation of locomotives, rolling stock or other vehicles used, or to be used, on such systems

19. Protect the public (whether or not they are passengers) from personal injury and other risks arising from the construction and operation of such systems

20. Protect persons at work from personal injury and other risks so arising

21. Exercise regulatory functions in such a manner as not to impede the performance of any development agreement

22. Facilitate the construction of Crossrail and consult the Secretary of State on this duty

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