

Submission to Reforming the Framework for Better Regulation consultation – Unchecked UK

About Unchecked UK

Unchecked UK makes the case for common-sense protections which help keep people safe and allow businesses to thrive. We carry out research and investigations to highlight the loss of protection for the UK public that results from the erosion of important rules. Through public insights and communications research, we help to shape new positive narratives about our shared protections and the enforcement teams who work hard to keep us safe. We run campaigns to show the importance of the protections that we all take for granted; protections that safeguard our families and let us get on with doing the things we love. We work to broaden political and public discussion around regulation, and to build momentum for strong protections which safeguard the things that matter to British people.

Introduction

We welcome the Government's commitment to the creation of a world class regulatory system. Regulations are the invisible framework that support stability in the UK. They provide security and predictability for citizens and businesses. Regulations underpin trust, including between businesses and consumers. Sound regulations are also key to securing the UK's reputation as a trade partner and a destination for investors. Our departure from the EU should be an opportunity to consolidate the UK's reputation for high standards and robust regulations.

We know that well-designed and enforced regulations produce a wide range of positive economic outcomes. Strong regulations around low emissions vehicles, waste reduction, low carbon power and sustainable construction have already benefitted UK industries, created jobs and made them increasingly competitive in international markets. They have also yielded tangible returns. Defra has estimated that the benefits of its regulations are 2.4 times greater than their costs in monetary terms, for example.ⁱ Similar or higher returns have been calculated in relation trading standardsⁱⁱ and waste crime enforcement.ⁱⁱⁱ In the case of taxes, the returns to investment into enforcement rise to 15 times.^{iv}

Conversely, evaluations of previous drives to cut back on regulation have indicated that these exercises generate little by way of economic benefits. One study of One in One Out exercises in eight countries by Oxford University's Smith School 2017 concluded: "none of the countries we review has demonstrated that this policy innovation has actually led to improvements in economic efficiency".^v Indeed, claims that initiatives such as the Business Impact Target (BIT) and the 2011 Red Tape Challenge have led to cost savings for businesses or government are increasingly questioned.^{vi} Likewise, Regulatory Impact Assessments (RIAs) have been found to increase administrative burdens on departmental teams.^{vii}

In this submission we set out four guiding principles which we believe underpin the pursuit of a world class regulatory system moving forward. Our view is that whilst most of these principles are implicit in the better regulation consultation, they should be far more explicit and put at the centre of this process.

Principle One – Balance

A core aim of the Reforming the Framework for Better Regulation initiative should be to strike the right balance between under-regulation and over-regulation.

Our view is that, in its current form, the review gives too much weight to concerns about over-regulation. Whether it's starting up a new company or obtaining credit, **the UK is today one of the easiest places to do business in the world.**^{viii}

Unchecked UK can point to scant or no evidence to suggest that business or industry groups are concerned about the impact of regulatory burdens. Our view is that over-regulation figures low in the priorities of a majority of UK businesses.^{ix} At the same time, many in the business community, particularly those that have adopted Environmental, Social and Governance (ESG) agendas, are increasingly concerned that ill-regulated markets risk becoming detrimental to the pursuit of those goals (for example, enabling under-cutting and acting as a disincentive for long-term investments into green technologies or skills development).^x Indeed, for businesses which have systems and processes in place to comply with existing regulations, deregulation could be perceived as an unwelcome distraction at a time when the private sector is having to juggle the multiple pressures arising from the pandemic, the transition to net zero and Brexit.

Conversely, a mounting body of evidence suggests that UK regulations are increasingly falling behind when it comes to protecting social and environmental goals, including in ways which could have significant economic ramifications. For example, concerns about the poor working conditions are increasingly linked to growing labour shortages in key industries such as haulage and social care.^{xi} Likewise, concerns about the safety, health and wellbeing of UK consumers have also been put at stake by poor practices in key industries, most notably the water industry, continue to mount.^{xii} The under-regulation of digital markets has also exposed UK consumers to a range of new risks with regulators struggling to keep up.^{xiii} The evidence that the UK is tipping towards under-regulation is mounting.

Indeed, the consultation document acknowledges that regulations which place costs on companies are often those which deliver the greatest social, environmental and economic benefits. For example, it has been estimated that the direct monetary cost of the national minimum wage (NMW) was in the region of £4.1 billion. However, studies have shown NMW has both transformed the lives of the lowest paid workers and been a key driver for labour productivity in recent years.^{xiv} In the past, standardisation of tobacco packaging and the prohibition of psychoactive substances were also noted as costly to business. Again, the benefits of these regulations for the health of the UK population, and the impact they have had on our health and the NHS, are indisputable.

Recommendation – The BEIS consultation document acknowledges that the Business Impact Target “provides a partial picture of the Government’s regulatory programme, measuring only direct business impacts. Indirect benefits and non-monetised benefits, such as social and environmental benefits, which normally would have significant benefits for consumers, do not count towards the BIT.” (p. 17-18) BEIS should abandon crude targets which are predicated solely on monetary costs of regulations on business. Overly simplistic metrics risk generating perverse incentives within policy making, where departments are ranked by their progress in minimising regulatory costs to business,

and not on delivering what is best for the wellbeing of citizens and the protection of the environment.

Measurements used to understand the impact of regulatory interventions should be holistic. Cost-benefit analyses should consider social and environmental costs, alongside the impacts on business. Where possible, social and environmental impacts of regulations should be monetised, and therefore given weight in the appraisal process. The Regulatory Policy Committee (RPC) should include perspectives beyond those of business and be given the ability to 'red rate' a policy on social and environmental grounds. Indeed, the RPC itself has called for the scope of RIAs to include societal costs and benefits.^{xv}

Principle Two – Enforcement

Global markets and technology are evolving faster than ever before. Unfortunately, the pace of change is accelerating against the backdrop of the systematic erosion of the UK's enforcement capability. Between 2009 to 2018, real terms funding for the environmental and social protection work of nine national regulators fell by 51%. The number of full-time staff working at these regulators fell by 35% in this period. Meanwhile, spending by Local Authorities in England on key enforcement activities fell on average by 35%.^{xvi}

We need to ensure that regulators are equipped with the skills, resource and capacity to tackle 21st Century challenges. Unfortunately, given the evidence, we believe the trend is moving in the wrong direction. As set out by the Public Accounts Committee: "While we heard from government and regulators about the actions they are taking to step up to the challenges they face, we are concerned that they have much more to do to ensure regulatory bodies have the frameworks and capabilities they need."^{xvii} Whether it's gene technology or AI^{xviii} we need a robust regulatory system which has the capacity, resources and expertise to keep up with a fast changing reality. Bold decisions, such as the recent move to sanction gene editing in agriculture, will only be safe and secure public support if they are underpinned by a strong regulatory framework.^{xix xx} The UK should strive to be at the forefront of regulating these new frontiers. To do so, it needs to invest in its enforcement capabilities.

Recommendation – Alongside consideration of the responsibilities and duties of regulators, Government needs to ensure that UK regulators across a range of areas are fit for purpose and can respond to the rapidly changing context. Failure to do so will undermine the UK's ability to benefit fully from the opportunities offered by technological and scientific innovation, heighten risks and will compromise public trust. As part of the review, Government should conduct a **comprehensive audit of the UK's regulatory infrastructure, considering whether regulators are indeed fit for purpose.**

Principle Three - Engagement

The UK public cares deeply about the role which regulations play in protecting what they care about.^{xxi} Polling by Unchecked UK consistently highlights how the majority want to see standards of protections for the environment and society to be either maintained or improved now that we have left the EU.^{xxii xxiii} Indeed, previous public engagement exercises confirm that, given the choice, the UK public is overwhelmingly in favour of preserving the strength of regulations.^{xxiv}

We therefore welcome the proposal to set up channels for public engagement in the process of regulatory review. A growing body of evidence shows the real benefit which public authorities can gain from involving citizens in the policy making process. These approaches help unlock more

legitimate policies by ensuring that they are grounded on people's lived experience and can therefore secure public confidence.^{xxv}

Indeed, as set out in the first section, we believe that a process of engagement of this kind would provide an important social and environmental balance to the disproportionate attention currently given to UK business. UK citizens, including the vulnerable groups who can stand to gain the most from regulatory protections, should be at the heart of the process of reforming regulations.

Recommendation – Whilst we welcome the principle of public engagement, we question whether a crowdsourcing process is the best method of public engagement in this instance. This was the approach taken for the 2011 Red Tape Challenge with very mixed results (a review of the evidence carried out by Unchecked UK recorded significant administrative burdens on civil servants and high costs, in return with questionable quality of submissions).^{xxvi}

To bring real value, processes of public engagement should be underpinned by genuine deliberation of the evidence and the options available with the public. Choices around regulation are complex and involve important trade-offs. As an option, Government could instead consider a deliberative citizen panel similar to the Climate Assembly UK. That would enable Government to reflect the trade-offs associated with lessening or strengthening regulations. This would create a space for a more legitimate, informed, and productive public consultation.

In the short term, the proposed review of regulatory sandboxes should include adequate representation of social and environmental representatives with the aim of achieving balance (principle 1). This will help ensure that processes devised to review regulation are transparent and can take full account of the wide-ranging set of implications of deregulation, with perspectives from both the private sector and civil society.

Principle Four - Consistency

One of the key lessons from the pandemic is that decisive regulation is a powerful tool when it comes to generating a wholesale change in personal and business behaviour. An increasing body of evidence suggests that whilst voluntary standards and self-regulation can be used to achieve gradual change or influence the behaviours of best-in-class businesses, they are simply not sufficient when what is required is wholesale, ambitious, industry-wide change.^{xxvii}

Achieving major goals, such as reaching net zero, will be impossible without the leverage provided by regulations. As stated recently by the former Chairman of the Bank of England, Mark Carney: "We need clear, credible and predictable regulation from government. Air quality rules, building codes, that type of strong regulation is needed."^{xxviii} Whilst critical to the pursuit of net zero, regulation will be equally crucial in the pursuit of other goals – from boosting worker's rights^{xxix} to tackling the obesity epidemic.^{xxx}

UK business groups have repeatedly called for regulatory certainty and consistency. A strong regulatory signal is ultimately what will enable companies large and small to fall behind major social and environmental goals, and in this way strengthen the current drive for the ESG agenda. Conversely, a deregulatory drive is likely to cause confusion, putting into question the Government's stated commitment to social and environmental objectives^{xxxi}. Rolling back rules which are already in place or not being robust in ensuring their compliance will only help muddy the waters when what is needed is certainty and strong leadership.

Conclusion

Whether its achieving net zero, creating a fair labour market or securing a healthier future, regulations play a key role in the pursuit of the UK's most important goals. This does not mean standing still. It is right for the Government to be alert – regulations should be alive to the changing context in which they operate and ensure regulatory system needs to be fit for purpose. Crude deregulation is not the answer. Our view that a process which is truly geared towards regulatory excellence which is fit for the 21st century should ensure it balances social and environmental considerations with the interests of business, is as preoccupied with the design as with the enforcement of regulations, engages the UK public, and is consistent with our goals as a nation.

Phoebe Clay, Director, Unchecked UK

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- ⁱ [Emerging Findings From Defra's Regulation Assessment \(publishing.service.gov.uk\)](#)
 - ⁱⁱ Office of Fair Trading (2009), *Trading Standards impact: An evaluation of the impact of the fair trading work of local authority Trading Standards Services in the UK*
 - ⁱⁱⁱ [ESAET Waste Crime Tackling Britains Dirty Secret LIVE.pdf \(esauk.org\)](#)
 - ^{iv} [The UK Tax Gap - Unchecked UK](#)
 - ^v [workingpaper17-02.pdf \(ox.ac.uk\)](#)
 - ^{vi} [Reforming-Regulation-Initiative-consultation-response-1.pdf \(unchecked.uk\)](#)
 - ^{vii} [The Business Impact Target: cutting the cost of regulation \(nao.org.uk\)](#)
 - ^{viii} [UK ranked eighth in world for ease of doing business | Accountancy Daily](#)
 - ^{ix} [Brexit: 'Bonfire of rules' mean more costs than benefits, CBI says - BBC News](#)
 - ^x [896 \(aldersgategroup.org.uk\)](#)
 - ^{xi} See for example: [EU lorry drivers will not help Britain ease its fuel crisis, union says | Supply chain crisis | The Guardian](#) in relation to HGV drivers or [One in three employees report being in low-quality jobs \(health.org.uk\)](#) in relation to social care.
 - ^{xii} [Record £90m fine for Southern Water following EA prosecution - GOV.UK \(www.gov.uk\)](#)
 - ^{xiii} [Protecting consumers from unsafe products - National Audit Office \(NAO\) Report](#)
 - ^{xiv} [NIESR Riley Rosazza Report 2015.pdf \(publishing.service.gov.uk\)](#)
 - ^{xv} <https://www.gov.uk/government/publications/rpc-corporate-report-16-17>
 - ^{xvi} [The UK's Enforcement Gap 2020 - Unchecked UK](#)
 - ^{xvii} [Government must move to ensure regulators keep pace with post-EU, technological and social changes - Committees - UK Parliament](#)
 - ^{xviii} [Regulating AI – which approach will prevail? | Travers Smith](#)
 - ^{xix} [Plans to unlock power of gene editing unveiled - GOV.UK \(www.gov.uk\)](#)
 - ^{xx} [Revamp of UK CRISPR regulation will require public trust \(nature.com\)](#)
 - ^{xxi} [Swing voters' attitude to food regulation - Unchecked UK's Red Wall research](#)
 - ^{xxii} [Attitudes of Younger Leave Voters to Regulation and Deregulation - Unchecked UK](#)
 - ^{xxiii} [Protecting what matters: attitudes of Welsh voters to regulation and deregulation - Unchecked UK](#)
 - ^{xxiv} [workingpaper17-02.pdf \(ox.ac.uk\)](#)
 - ^{xxv} [Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave | en | OECD](#)
 - ^{xxvi} [Reforming-Regulation-Initiative-consultation-response-1.pdf \(unchecked.uk\)](#)
 - ^{xxvii} [usingregulation_tcm9-408677.pdf \(rspb.org.uk\)](#)
 - ^{xxviii} [Regulate business to tackle climate crisis, urges Mark Carney | Climate crisis | The Guardian](#)
 - ^{xxix} [Government to protect workers' rights and clamp down on workplace abuse with powerful new body - GOV.UK \(www.gov.uk\)](#)
 - ^{xxx} [Tackling obesity: government strategy - GOV.UK \(www.gov.uk\)](#)
 - ^{xxxi} [Companies to be forced by Treasury to report their impact on climate change | This is Money](#)