Reducing the burden of government regulation

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SMF Social Market Foundation

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FOREWORD

By John Penrose MP

The very first graph of this excellent and well-informed paper should give every policy maker, regulator and public official a sharp pain in their chest. It shows that we have been gaily adding to the millstone of costs which is slung around the neck of British businesses and wealth creators, and no-one seems terribly concerned about the damage that's being done to our economy's competitiveness, productivity or growth.

No-one? Well, not quite. Stephen Gibson and his co-authors are experts in this field, and thank goodness they have taken the trouble to lay bare the problems. They understand that free market competition isn't the 'law of the jungle', and that the energy and dynamism of entrepreneurialism and wealth creation needs rules which set standards so contracts can be enforced, staff aren't exploited, our environment is preserved, buildings are safe to live and work in, and monopolies, cartels or criminals can't rip off their customers and suppliers either. The answer isn't to get rid of these standards, but to deliver them as cheaply, efficiently and unbureaucratically as possible.

That's easier said than done, because every system in Whitehall and Westminster is set up to create new rules, adding weight to the millstone of costs rather than reducing it. But even though cutting red tape never comes naturally, this excellent and timely paper shows that is it possible and that the UK did it successfully between 2010 and 2017 with a 'one-in-one-out' and then a 'one-in-two-out' system. After that, this proven approach was abandoned and we've been going rapidly backwards since 2018.

The fact that the FCA Vulnerable Customers rules (which imposed more costs than everything else combined in 2020-21) or the Whiplash Injury & Civil Procedure (which saved 5 times more than the nearest rival piece of deregulation) aren't political folklore shows just how little attention and focus the heroes and villains in this area currently get, and why there's a political mountain to climb. I hope the authors of this report will have an ally in the Prime Minister, who I'm sure will be horrified at Britain's recent track record of larding on extra red tape costs, and will want to forge a new, cheaper, nimbler, less bureaucratic and far more competitive regime instead.

EXECUTIVE SUMMARY

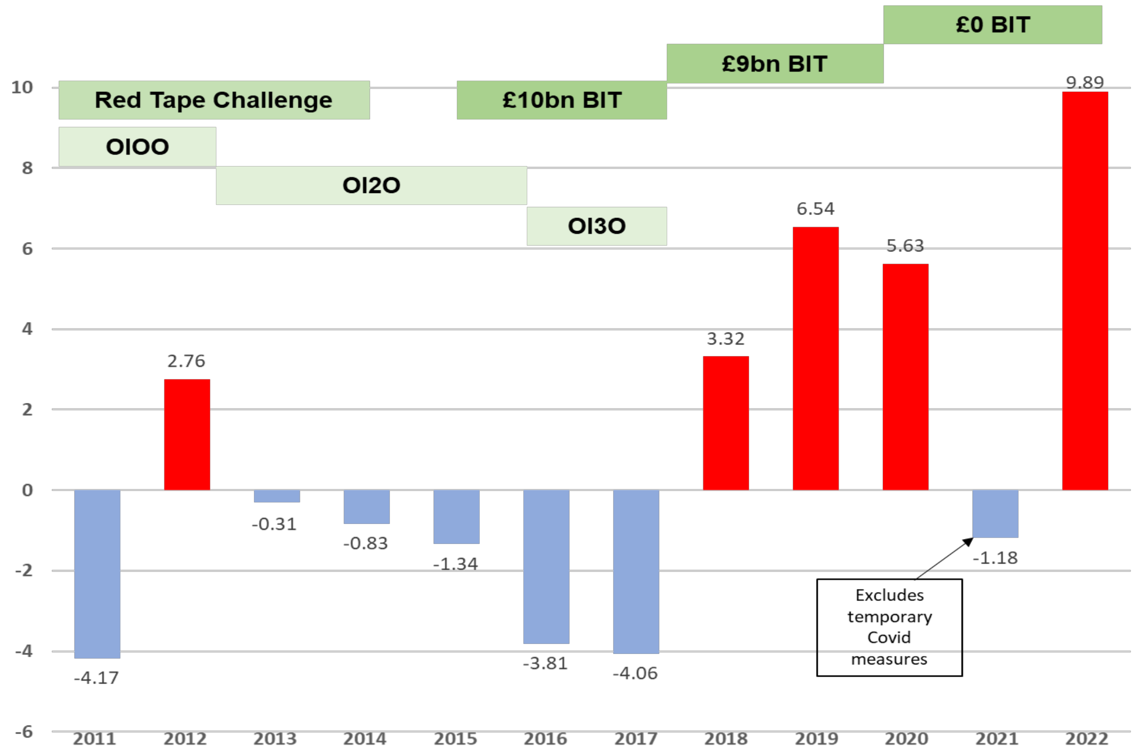
Government regulations can impose significant costs on businesses that are then passed onto consumers in higher prices. This paper considers the different approaches that the UK and other governments have adopted to try to reduce the burden of regulation, how successful these approaches have been, and what we can learn for current and future government policy. These approaches have included:

- **Regulatory offsetting – One-In-One-Out (OIOO), (followed by One-In-Two-Out and One-In-Three-Out)** prevented the introduction of new regulation unless an existing regulation of equivalent or greater value was removed. Many other countries, including 10 EU member states, have introduced regulatory offsetting rules.
- **The Red Tape Challenge (RTC)** sought to identify regulations that could be removed or reduced via 'crowdsourcing' suggestions sent to the RTC website. A similar approach was introduced in British Columbia.
- **The Business Impact Target (BIT)** – where the government set itself a target for regulatory burden reduction.

An additional approach (which is currently being considered for retained EU law), is the sunsetting of regulations if they are considered no longer effective at achieving their objectives.

The data do not provide a clear picture of the relative performance of the different approaches. However, the BIT approach has been the least successful, with regulatory costs increasing significantly during its period of operation and the Government consistently missing the target it set itself for reducing regulatory burdens.

Figure: Change in UK net regulatory burden (£ billions, 2019 prices) and regulatory reduction measures



Source: RPC documents and authors' analysis

Note: figures adjusted to cover calendar years

The key lessons for policymakers seeking to effectively reduce the burden of government regulation are to:

- **Clearly signal political support for initiatives to reduce regulation** – regulatory burden reduction can often conflict with other political objectives, therefore if burden reduction approaches are to be effective, it is imperative that they have strong political backing.
- **Independently validate regulatory burden calculations** – this provides reassurance that impacts are being properly assessed and improves the quality of regulatory burden calculations.
- **Set the scope of the framework appropriately** – ensuring that there are not significant areas of regulation that are excluded from the burden reduction framework.
- **Focus on the small number of regulations that generate most of the regulatory burdens**
- **Involve stakeholders** – both to identify regulations that might be removed and providing evidence to quantify the burden reduction.

Making announcements about ambitions to reduce regulatory costs without a proper framework in place to monitor and deliver on those ambitions (and an ongoing commitment to that framework from Ministers) is unlikely to be effective.

The Government introduced the Retained EU Law (REUL) Bill in 2022. This automatically sunsets all retained EU legislation by December 2023 (unless it is retained or reviewed beforehand). The REUL Bill is illustrative of many of the lessons drawn in this paper, in particular it does not provide sufficient time or resources to properly assess the roughly 4,000 pieces of Retained EU Law involved. Political motivation to ‘get Brexit done’ is driving particularly zealous attempts to cut regulation and it is likely that instead of a golden opportunity to properly review the effectiveness of a large batch of existing legislation, regulations are cut without properly thinking through their value. Ironically, this is the opposite to the normal situation, in which ministers propose regulations without sufficiently considering the costs involved. The solution is the same in both cases: good regulatory policy requires careful and reasoned judgement supported by evidence and analysis, respect for institutions, and engagement with the trade-offs between regulatory policy and other policy objectives. Extending the REUL sunsetting deadline, providing clear guidance around the internal processes to be used to assess the retained EU regulations, together with a properly managed and resourced assessment and review programme would be the best way to achieve this.

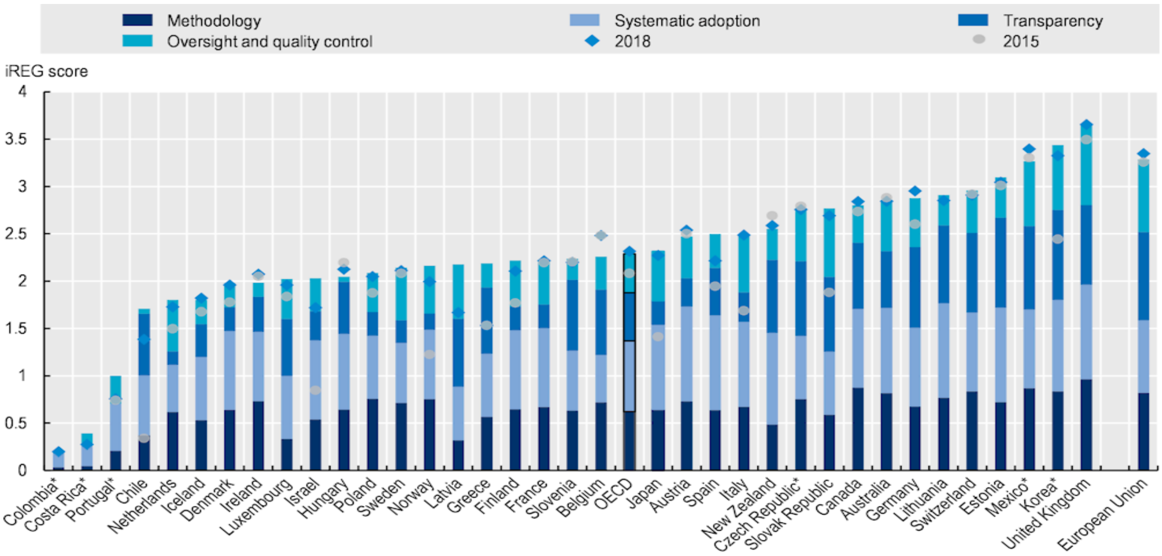
CHAPTER ONE – INTRODUCTION

Politicians often announce plans and commitments to reduce the burden of regulation on businesses and households[1].

> *"I want us to be the first government in modern history to leave office having reduced the overall burden of regulation rather than increasing it"*
>
> *David Cameron*

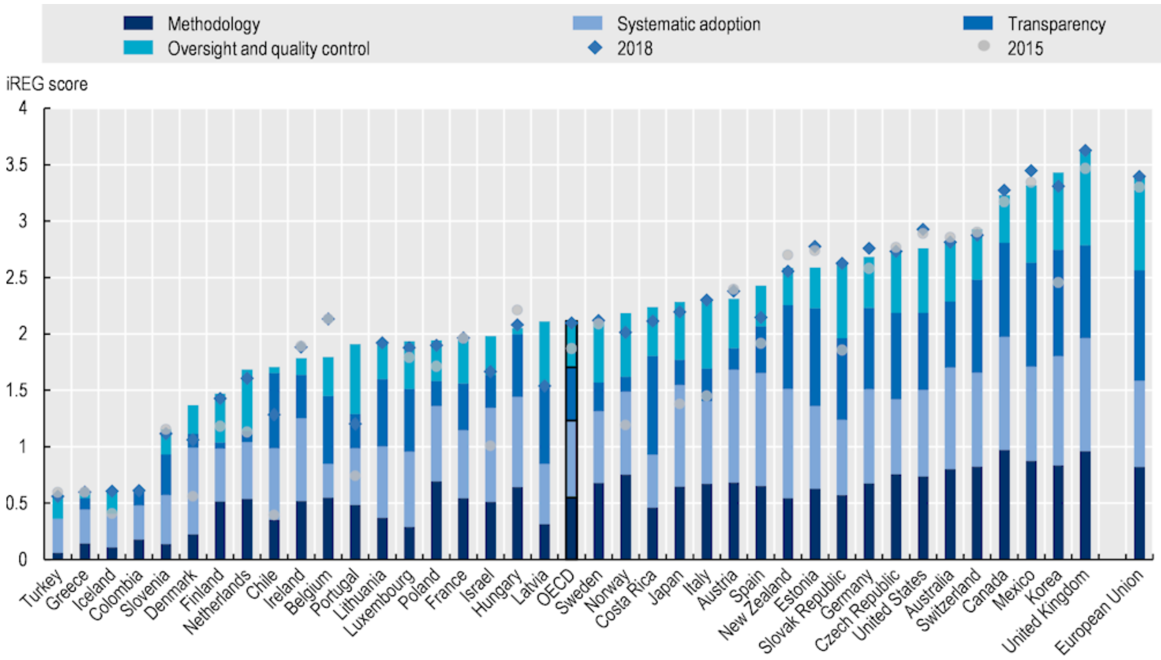
This paper considers the different approaches that the UK and other governments have adopted in their attempts to reduce that regulatory burden, how successful those approaches have been and what we can learn from these approaches for current and future government policy. The UK is a particularly useful model to consider, because it has a well developed regulatory evaluation framework and is the most highly ranked OECD country in terms of its use of regulatory impact assessments for developing primary laws and secondary regulations (Figures 1 and 2).

Figure 1: Composite indicators – regulatory impact assessment for developing primary laws, 2021



Source: OECD (2021), OECD Regulatory Policy Outlook 2021

Figure 2: Composite indicators: regulatory impact assessment for developing secondary regulations, 2021



Source: OECD (2021), OECD Regulatory Policy Outlook 2021

Why governments regulate and why reducing the burden of regulation is important

Government regulations cover almost every aspect of our economic activity, from employment law to health and safety regulations, and from environmental protection to transportation rules. Governments introduce regulations to help them achieve their public policy objectives (such as reducing inequality, supporting vulnerable groups, protecting workers, promoting public health, ensuring safety, reducing global warming and ensuring market stability etc). Many regulatory objectives could alternatively be achieved (sometimes more effectively) through (or in combination with) other public policy tools including taxation, subsidies, direct public provision and exhortation[i] (or through non-regulatory measures such as self-regulation).

Regulation is also often used to correct market failures such as:

- Imperfect competition – where a company with significant market power is able to raise prices, forestall competition, cross-subsidise competitive products or otherwise drive outcomes that are sub-optimal compared to competitive market outcomes;
- Information asymmetry – where differences in information or understanding between players leads to sub-optimal market outcomes;

[i] For example, the government objective to reduce cigarette and cigar smoking has been addressed by a combination of taxation (high duties on tobacco), regulation (who can buy cigarettes, how they can be sold, how they can be packaged, how they can be advertised, where they can legally be smoked etc), as well as education and public health campaigns.

- Public goods – where goods are non-rivalrous[ii] and non-excludable[iii] so that the market mechanism faces a 'free-rider' problem and underprovides or fails to provide the good; and
- Externalities – where production or consumption of the good leads to costs or benefits that fall on third parties and so are not properly taken into account in the market transaction.

However, regulation can impose significant costs on businesses, civil society organisations and households, including initial implementation costs and ongoing compliance costs, which can feed into higher prices to consumers. It may make domestic industry less competitive both in international markets and against foreign competitors in domestic markets. Regulation can also be a disincentive for firms to locate in the UK. There is an opportunity cost to regulation in terms of the business and consumer activities forgone – reducing regulation can free up private sector capacity to innovate, diversify, and expand.

Regulation can also have inequitable distributional consequences – it can have a disproportionate effect on smaller businesses or businesses using specific technologies or processes, and it can impose or reinforce barriers to entry making it difficult for new firms to enter the market, reducing competition and preventing innovation. Regulation in one part of the market can have unintended consequences in other parts of the market – for example upstream regulation can impact downstream markets, or in other product markets.

Regulation can also induce strategic behaviour by firms to 'game' the regulation which can lead to unintended and perverse consequences.

Further, the impact of multiple regulatory requirements on economic growth can be significant. Coffey et al estimate that: "*Economic growth in the United States has, on average, been slowed by 0.8 percent per year since 1980 owing to the cumulative effects of regulation*".[2] Sanders argues that the costs are even greater: "*Federal regulations added over the past fifty years have reduced real output growth by about two percentage points on average over the period 1949-2005. That reduction in the growth rate has led to an accumulated reduction in [US] GDP of about $38.8 trillion as of the end of 2011.*"[3] However, a report for the UK Department of Business, Energy and Industrial Strategy found that: "*The relationship between regulation and growth can be both positive and negative depending on the type of regulation considered*".[4] The report found that an increase in product market regulation was likely to have a negative impact on growth, while employment protection legislation can have positive and negative impacts and the impact of environmental regulation depends on the regulatory design and specific context.

[ii] Where one person's consumption of the good does not impact on or prevent other people's consumption of the same good.

[iii] Where, given one person's consumption of the good, it is costly or impossible to prevent other people from also consuming the good.

Sceptics of policies to reduce regulatory burdens might argue that governments should not worry about the cost of regulations that are introduced following an adequate governance process and have a positive net benefit. If these conditions are met, it implies that the benefits are even larger than the costs, however great those costs may be. There are a number of answers to this challenge:

- The appraisal of new regulations generally uses cost-benefit analysis (CBA), which often fails to consider the impacts of measures on competition, investment and innovation. Regulations, particularly when acting in combination, may entrench the position of incumbent firms and reduce investment, competition and innovation;
- Regulations may have had a positive net benefit when they were introduced, but circumstances may have subsequently changed making this no longer the case.
- 'Zombie' regulations may remain that no longer address products/issues of relevance but are still on the statute books, (eg. fax machine regulations);
- Governments or regulators may have mis-estimated the costs or benefits of the measure, or not predicted various unintended consequences or perverse behaviours resulting from the regulation;
- The combined burden of a set of regulations may be more than the sum of the individual estimated burdens.

It is also often the case that the political desire to reduce regulation falls away quickly when a regulatory 'failure' occurs (for example where deregulation is perceived to have led to a high profile accident or institutional failure). This makes frameworks aimed at reducing regulation difficult to maintain over the long term.

There is always a balance to be achieved between maximising regulatory protection and minimising regulatory burdens, neither extreme is positive for society. This paper compares different approaches for reducing regulatory burdens and how best to achieve that, leaving open the question of where the exact balance between regulation and deregulation should sit.

Calculating and evaluating the burden imposed by a regulation (or group of regulations) is a complex matter and needs to take account of the benefits and protections offered by regulation, as well as the costs imposed. Burden reduction should take place where the net costs of regulation are greater than the net benefits, (although in the UK impact assessments focus on the costs and benefits to businesses, often ignoring costs and benefits that accrue to other sections of society). This paper examines the different policies governments have pursued in seeking to reduce the burden of regulation and highlights lessons that can be learnt by policymakers – this is a current, ongoing and recurring debate both in the UK and across Europe and so has policy relevance as well as academic interest.

CHAPTER TWO – HOW HAVE GOVERNMENTS ATTEMPTED TO REDUCE THE BURDEN OF REGULATION OVER TIME?

Regulatory offsetting

In 2011, the UK government introduced One-In-One-Out (OIOO), whereby no new regulation (excluding EU regulations) would be introduced by departments without an existing regulation of an equivalent or greater value being cut (as measured by the equivalent annual net direct cost to business – EANDCB). This was extended in November 2012 to One-In-Two-Out (OI2O) – which required £2 of regulatory savings for each £1 of extra regulatory costs, while One-In-Three-Out was introduced in March 2016.

The UK was the first country in the OECD to introduce a regulatory offsetting rule as formal government policy. Since 2011, many other countries have introduced similar rules.[5] As of 2019, 10 EU member states had One-In-X-Out (OIXO) rules in place including France, Germany, Hungary, Italy, Latvia, Lithuania, Spain and Sweden, and the EU Commission has proposed introducing it as a shared objective and responsibility of all EU institutions, Member States, local and regional authorities.[6]

These offsetting measures focus on the flow of regulation, and assume that the current regulatory burden should be a cap on future levels. They may be difficult or impossible to reconcile with government imperatives that are likely to significantly raise regulatory burdens – the most obvious being the achievement of climate change commitments such as net zero.[iv] They are also difficult to reconcile with regulatory measures that are outside of direct government control (hence the exclusion of EU-derived regulations from the UK Better Regulation Framework).

Applying OIXO also raises the question of whether reductions in regulation ('OUTs') in one area of the economy should be restricted to only offset against increases in regulation ('INs') in the same sector (so that businesses that are hit with the extra cost of one regulation are more likely to gain the benefit from the offsetting regulatory burden reduction); the original UK OIOO approach combined an overall cross-government offsetting rule with separate departmental accounts. However the high degree of skewness in the impacts of different regulatory measures made this very difficult to operate in practice (90% of the total reductions in costs during the 2010-2015 Parliament were achieved through only 10 regulatory decisions).[7] The EC recognised this challenge and built a flexible approach into their OIOO system:

- **Flexibility within the reporting period** – if an 'OUT' cannot be identified in the same year's work programme, it will be reported in the following year.
- **'Trading' in certain exceptional circumstances across policy areas** – if the proposed legislation that imposes costs ('IN') is deemed to be necessary, but it is not possible to find an 'OUT' in the same area, the Commission can decide to take the 'OUT' from a different policy area.

[iv] Ensuring that greenhouse gas emissions across the UK are balanced by greenhouse gas reductions by 2050.

- **Exemptions in certain exceptional circumstances** – if there is political will to regulate but it is not possible to identify an offset in the same area (for instance regulation in emerging policy areas where it is necessary to fill a regulatory gap), the Commission can decide to exempt the regulation from the OIOO approach.

The operation of OIXO is dependent on the metric used to calculate the INs and OUTs. The EANDCB only includes direct costs of regulatory measures – indirect or secondary impacts such as costs pass throughs, reallocation of resources and consequential changes in innovation and productivity are not included in the measure[8] and can sometimes be very significant. In specifying the metric there is a trade-off between comprehensiveness on one hand, and analytical simplicity and practicality on the other. The choice of a net metric also obscures burden transfers – eg. from large to small businesses, or to vulnerable customers or between sectors of the economy, and does not include the wider social costs and benefits of regulation.[9]

Exclusions from the framework were also important – the National Audit Office (NAO) estimated that 46% of the 951 regulatory measures during the 2010-15 Parliament were not included in the calculated savings; including those measures would have imposed costs of £2.8 billion per annum, rather than the £2.2 billion annual savings claimed.[10]

An OIXO approach needs to apply over a fixed period of time (e.g. the expected 5-year life of a Parliament). This complicates the timing of new measures, and might constrain ministerial discretion as the remaining stock of potential offsets is exhausted. A fixed regulatory budget period may encourage forward planning, but might lead to sub-optimal sequencing of regulatory proposals. For example, measures that impose larger costs might be introduced earlier or those that remove cost delayed until there is greater clarity over the offsetting required, regardless of the ‘optimal order’. There was also concern about gaming the framework[11]:

> *“Political interest was particularly animated by a suspicion that ministerial departments were hiding scrapable regulation in order to have spare regulation available to sacrifice for future one-in, one-out occasions”.*

OI3O ended in the UK in 2017 as it was seen as having served its purpose and was replaced by the Business Impact Target regime (see below). However in September 2020, the chancellor and the business secretary asked John Penrose MP to write an independent report on ways to improve consumer protection and promote competition. In his report, Penrose recommended adopting a One-In-Two-Out automatic burden-reduction process so that “*we are moving forward rather than (at best) marking time*”.[12] In May 2021, the Taskforce on Innovation, Growth and Regulatory Reform (TIGRR, comprising Rt Hon Sir Iain Duncan Smith MP, Rt Hon Theresa Villiers MP, and George Freeman MP) reported a similar conclusion to the prime minister, that the UK should return to a One-In-Two-Out regulatory offsetting principle “*in order to focus departments on minimising the creation of additional regulation*”.[13]

However in January 2022, the government published *The Benefits of Brexit*, in which it ruled out reintroducing One-In-Two-Out because[14]:

> *"while there are many merits to such a rule, including the galvanising force it will create across government and regulators, we do not think it is consistent with delivering world class regulation to support the economy… or to achieving net zero".*

Summary Evaluation of OIXO Regulatory Offsetting Approaches

A 2019 review of approaches to regulatory offsetting in OECD countries lists five requirements for successful implementation of regulatory offsetting measures:[15]

1. Robust methodology for calculating regulatory costs;
2. Clear ownership of introduced regulation and resulting required offsetting;
3. Independent, technically competent oversight;
4. Simultaneous implementation of complementary regulatory burden management tools (e.g., systematic *ex post* reviews of existing regulation); and
5. Political commitment and support.

The first four of these requirements are consistent features of the UK's OIXO policies. However, the political commitment has been far less consistent, which has limited the success of OIXO policies and many other regulatory burden reduction measures.

Beyond any direct impact on the flow of regulation, regulatory offsetting measures may also create indirect benefits. For example, the 2019 OECD review concluded that OIXO's use "*is mostly in strengthened communication with regulatory agencies and highlighting regulatory costs.*"[16]

Red Tape Challenge

As well as addressing the flow of regulation through OIOO, the 2010 coalition government also sought to address the stock of regulation by aiming to reduce or remove regulations if there was no good reason for keeping them (eg. if they were obsolete, non-binding or served no public policy purpose).[v] The Red Tape Challenge (RTC) operated from 2011 to 2014 and in the words of Oliver Letwin, minister of state for government policy, "*the aim is not deregulation, as some sort of end in itself; it is that we are trying to make our economy and our society function better… the purpose is to make it easier for people to go about their business*".[17]

The RTC used 'crowdsourcing' to identify areas where regulation could be removed or reduced. The UK Cabinet Office developed a public website to gather views of businesses and the public and in particular those groups who are usually excluded from or who do not usually participate in more traditional consultation exercises.

[v] Some regulations were still on the statue book but had not added any value since WW2, e.g. the Trading with the Enemy Act, 1939.

The Red Tape Challenge website received over 250,000 visitors who left over 30,000 comments. These were categorised into 28 themes and over 100 sub-themes and used to identify areas for reform which were brought to a 'star chamber' of ministers and civil servants who made recommendations to the relevant department.[18] As a result of the RTC, over 3,000 regulations were scrapped or improved and there were 1,376 regulatory benefits (where "reform has an impact for business/civil society, individuals or the taxpayer and that is over and above tidying the statute book"). A review by the OECD claimed that this delivered a £1.2 billion annual saving for business,[19] although other commentators argue that[20]:

> *"while a lot of 'zombie regulation' was removed, it is difficult to come to an assessment as to whether the RTC led to a noticeable change in the regulatory burden to business (or others)".*

What is clear, however, is that the impetus and achievements were driven by the particular interest of Oliver Letwin in the Cabinet Office.

British Columbia's (BC) red tape reduction efforts are an early example of successful efforts at reducing the stock and flow of regulation. The BC government introduced the Regulatory Reform Policy in 2001. This set up a central regulatory requirement database to track progress against their target of reducing the regulatory burden by one-third over three years. Each ministry conducted a count of all the regulatory requirements contained in the statutes, regulations, and policies that the ministry oversaw (the first government-wide count revealed 382,139 regulatory requirements).[vi] The BC government publicly issued quarterly reports showing how many regulatory requirements each ministry had reduced. The reports were discussed regularly at cabinet meetings and created a strong culture of accountability across government. From 2001 to 2004, 37% of all regulatory requirements were eliminated. A report by the Mercatus Center found that "*political leadership and disciplined measurement and reporting were critical to achieving this success*".[21]

Summary Evaluation of the Red Tape Challenge

The Red Tape Challenge was reasonably successful at removing a large number of 'zombie' regulations and 'spring cleaning' the statute book. It benefited from strong political support and was more effective because it operated in parallel with regulatory offsetting measures. It was an innovative approach to gain input from a wider range of stakeholders and therefore identified areas that would not have been picked up by more traditional stakeholder consultation. However, its focus was on reducing the stock of regulation by removing regulations that were no longer effective/required, and therefore it did not have a significant impact on the burden of regulation on businesses.

[vi] Defined as "*an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges*".

The Business Impact Target (BIT)

The Business Impact Target was introduced by the Small Business, Enterprise and Employment Act 2015 (the SBEE Act). Like OIXO, which it was to replace, it focused on the flow of regulation. It set a target (the 'BIT') for the total regulatory burden on business (as measured by the EANDCB as verified by the independent Regulatory Policy Committee (RPC)) over the life of the Parliament (which was expected to be five years, however both the 2015 and 2017 parliaments only lasted for two years). A key difference from the OIXO approach is that the BIT can be calibrated to be consistent with other government objectives (i.e. government can set the BIT target to be higher or lower (or even negative) given its approach to regulation/deregulation). The Better Regulation Framework requires the government to report each year on its progress towards achieving the BIT and then publish a report at the end of the Parliament outlining the actual cumulative regulatory burden, which is verified by the RPC.[22]

Table 1 sets out the BIT targets and outcomes since it was introduced in 2015 (the Government set a 'holding BIT' of £0 for the 2019 Parliament to reflect their intention to review the operation of the BIT approach, while confirming that they "*remain committed to achieving regulatory balance and do not intend to increase the regulatory burden on business*").[23]

Table 1: BIT targets and outcomes 2015 to 2021

	2015 Parliament	2017 Parliament	2019 Parliament
BIT Target	£10bn reduction	£9bn reduction	£0 'holding' target
BIT Outcome	£6.6bn reduction	£7.8bn increase	£14.3bn increase*

Source: RPC Independent Verification Body report December 2021 to December 2022

**Cumulative outcome for 2019-2020 to 2021-2022 excluding temporary COVID-19 measures*

It is clear that despite the objective of the BIT to set a clear commitment for the reduction in the regulatory burden on business, the government has consistently missed its target and the costs of regulation have increased considerably over this period. While it was set as a government commitment, there have been no consequences for missing the target either in an individual year or over the life of the Parliament. The BIT target does not appear to have driven regulatory or deregulatory decisions by ministers and the required publication of the BIT outcome has been downplayed and obscured in detailed administrative reports, gaining very limited public attention.[24]

A separate area of concern with the BIT approach relates to the exemptions from the Better Regulation Framework which are not included in the BIT account; in particular, the civil emergency exclusion applying to temporary COVID-19 measures. This means that "*measures that have very significant impacts on businesses and civil society organisations are… excluded from the BIT*",[25] which "*therefore very significantly underestimates the true increase in regulatory burdens on businesses during this* [December 2020 – December 2021] *reporting period*".[26]

Summary Evaluation of the Business Impact Target

The Business Impact Target is, by design, easily evaluated as a target for reducing the total burden of regulation. The BIT may promote good regulatory practices by requiring each proposed regulation to have an estimated and verified net cost assessment in the impact assessment. However, as the failure to hit the target in all three parliaments since it has been implemented illustrates, the BIT does not by itself reduce the burden of regulation. To be effective, the BIT needs stronger norms around meeting the target, which might be promoted by greater political commitment and media coverage.

Regulatory sunsetting and automatic review clauses

The 2010 coalition government sought to encourage the use of sunsetting provisions as a further tool to reduce the burden of regulation.[27] Sunset clauses provide for the automatic expiry of a measure on a specified date, usually within seven years, without further legislative action – ensuring scrutiny of the decision on whether or not to renew a regulation.[28] Sunset clauses meet government objectives of reducing the burden of regulation through removing regulations that unnecessarily impede growth, reducing the overall volume of regulation, improving the quality and design of regulation, and reducing the regulatory cost to business and civil society groups of regulation.[29] Whilst sunset clauses are not a requirement in new UK legislation, they are considered an administrative tool at the disposal of departments.[30]

In September 2022 the Government introduced the Retained EU Law (Revocation and Reform) Bill (the REUL Bill) into Parliament. The aim of the Bill is to make it easier and more urgent for departments to remove, amend or replace Retained EU Law (EU laws that had transferred over to UK domestic law at the end of the Brexit Transition Period (31 December 2020) as a result of the EU Withdrawal Act 2018). The REUL Bill aims to achieve this by automatically sunsetting all retained EU legislation unless it is specifically retained or reviewed beforehand (with an option to extend the sunsetting deadline to 23 June 2026 for individual measures), rather than dealing with them gradually through primary legislation.

Retained EU law covers a wide range of regulatory areas including: transport regulations, health and safety, environmental and product safety standards, intellectual property, private pensions, food and feed imports, gas and electricity markets, social security coordination, climate change, food hygiene, access to benefits, telecoms, employment rights, food additives, auctions, carbon capture and storage and corporate reporting. The Government originally estimated that there were over 2,400 individual retained EU laws which, without the Bill, would require primary legislation to amend or remove, which would potentially take decades (although newspaper reports suggest that an additional 1,400 pieces of legislation would be included,[31] increasing the scope even further).

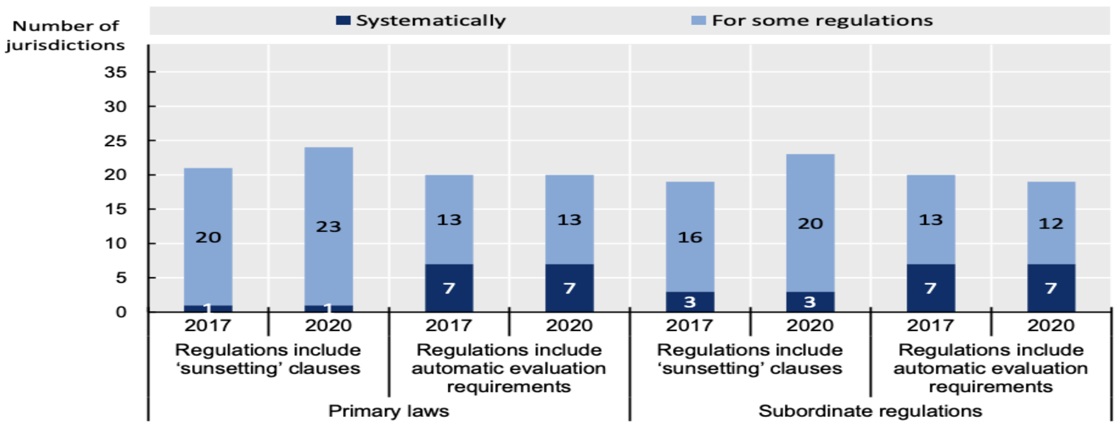
This Bill also aims to deliver on the Government's commitment to cut £1 billion of business costs from retained EU red tape.[32] A separate clause in the Bill would also repeal the BIT target provisions in the SBEE Act 2015, allowing the Government more flexibility in reforming the Better Regulation Framework.

The tight timetable in the REUL Bill runs the risk of sunsetting some legislation by default, without any consideration of their costs or benefits. Even for those measures which are identified and considered, the large volume of different measures will challenge the resources and capacity of departments to undertake proper consideration of the impacts. The Bill does not specify the policy goals against which the measures will be assessed making effective review more challenging. The RPC rated the REUL Bill impact assessment as 'not fit for purpose', and the cost-benefit analysis in the IA as 'very weak'".[33]

Regulatory sunsetting (where the rule expires after a set period unless it is reviewed) and automatic review clauses have become more common across the OECD for both primary and subordinate regulations (Figure 3), although both are usually implemented on an ad hoc basis, rather than systematically. The OECD recommended that its members:

> *"would benefit from a greater uptake of automatic review and sunset clauses, especially for regulations that at the time of adoption were subject to significant uncertainty".*[34]

Figure 3: Use of sunsetting and automatic evaluation requirements across the OECD



Source: OECD, OECD Regulatory Policy Outlook 2021

The current review of the Better Regulation Framework is looking at ways to make Post Implementation Reviews occur earlier (within two years, with the findings published in the third year) and more effective, for example by encouraging departments to review regulations as a group.[35]

Summary Evaluation of regulatory sunsetting and automatic review clauses

At its best, regulatory sunsetting and automatic review clauses enable regulation to adapt to changing environments whilst reducing the burden of regulation, if appropriate. When employed well, sunsetting does not mean solely discarding existing regulations but revisiting them and improving them[36] and can provide an avenue for reducing the burden of regulation following the appropriate review.

Whilst the sunsetting proposal in the REUL Bill could be effective in reducing the burden of regulation, it has proven politically controversial given the lack of guidance around what internal review process will be employed to assess each piece of retained EU law and the constraints on resources to undertake a proper assessment. Further, the REUL Bill fails to consider the benefits that retained EU law may provide and leaves many businesses and consumers with significant uncertainty over the future status of the regulations.

Impact Assessments

In the UK, the Better Regulation Framework requires government departments to produce impact assessments (IAs) of all regulations that have a direct impact on business above a +/-£5 million *de minimis* threshold. While not normally thought of as a measure for reducing the cost of regulation; if done properly, producing and publishing an IA is a mechanism for measuring and capturing regulatory burdens individually and collectively and considering alternative policy options. Independent scrutiny and validation provide greater confidence to stakeholders in the robustness of the cost estimates. This can make ministers think carefully about measures that significantly increase regulatory burdens, particularly where the ultimate costs are expected to fall on vulnerable groups. The options analysis in impact assessments can facilitate ministers choosing non-regulatory policy options or options with lower costs when considering a range of ways to achieve their policy objectives.

Post Implementation Reviews (PIRs)

In the UK there is a statutory requirement to undertake a post implementation review (PIR) and evaluate the effectiveness of the regulation five years after it is introduced (or explain why it is not appropriate to do so[37]); however since 2018, less than 40% of new PIRs were completed on time.[38] The NAO also noted this in their 2016 report:

> *"although HM Treasury guidance says that departments should monitor the ongoing impact of their regulatory decisions, they rarely do so. This means that departments could miss opportunities to adapt policies in ways that would help businesses. Lack of evaluation means that the government cannot know the real impact of its efforts on business."*[39]

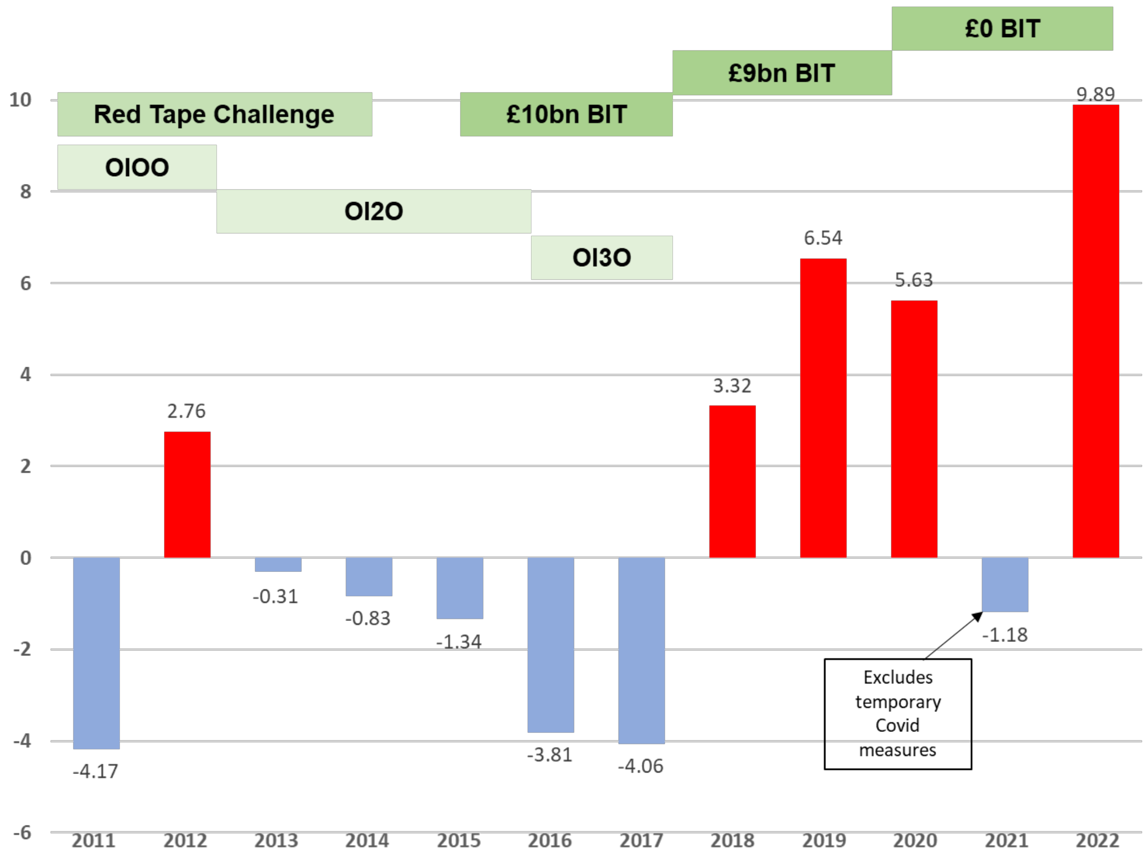
One option for improving departments' performance in undertaking PIRs would be to require automatic sunsetting of the measure within (say) seven years if a PIR had not been undertaken by that point.

Analysis of the experience of the operation of a regulation in practice shows where regulations are effective and working as expected (and where they are not), and can support moves to review and reduce the burden of regulation. It can highlight importance factors that are difficult to pick up *ex ante,* such as the exact details of how the regulation has been introduced, the regulatory structures adopted and the level of regulatory compliance. It can also inform future policy decisions about how to achieve regulatory objectives with the minimum regulatory cost.

The overall impact of UK regulatory reduction measures

Figure 4 shows the different regulatory burden reduction measures in the UK and the increases/reductions in regulatory burden in the years that they operated. Given that the measures overlapped in their operation and changing political and economic circumstances would have in any case have led to a variety of different regulatory burden outcomes in different years, the data do not provide a clear picture of the relative performance of the different approaches. However, the BIT approach has been the least successful in driving down regulatory burdens (particularly taking into account that the 2021 figure significantly underrepresents the regulatory burdens in that year due to the temporary COVID-19 measure exemption).

Figure 4: Change in UK net regulatory burden (£Bn, 2019 prices) and regulatory reduction measures



Source: RPC documents and authors' analysis

Note: figures adjusted to cover calendar years

CHAPTER THREE – LESSONS LEARNT FROM THE DIFFERENT APPROACHES

The importance of political support

Governments have a range of policy objectives that may require regulation to achieve, and these can often be in conflict with the desire to reduce the overall regulatory burden. Governments have strong political incentives to increase regulation to satisfy different lobby groups, particularly where the benefits of regulation are focused on a small number of stakeholders, while the costs are dispersed across the population. In addition, political manifestos tend to focus on things that voters care about (consumer protection, employment protection, health and safety, etc.) with little consideration of the regulatory costs of policies to deliver them. Therefore, if the burden reduction approaches are to be effective, it is imperative that they have strong political backing.

The involvement of Oliver Letwin, former chancellor of the Duchy of Lancaster, and his personal political support from the prime minister, was a crucial factor in the successful delivery of the Red Tape Challenge.[40] Similarly the OECD reports that the Dutch system only works[41]:

> *"because senior ministers have made the burden reduction target one of the government's top three priorities and because the minister of Finance is responsible for delivery and prepared to intervene when departments fail to produce adequate burden reduction proposals."*

The OECD goes on to say[42]:

> *"strong political commitment and backing is needed for a successful implementation of OIXO. How this commitment is expressed might differ depending on the country and its administrative culture, OIXO might be set by law (Canada, Spain), a presidential order (USA, Mexico), ministerial order (Korea, France) or a government policy (Germany, UK). Without such commitment, achieving the goals of OIXO is hardly possible".*

The lack of strong political support for the UK BIT targets is a key reason why the targets were not achieved.

Independent validation of the regulatory burden calculations

In the UK, the Better Regulation Executive (BRE) is responsible for managing the Better Regulation Framework with the Regulatory Policy Committee responsible for independent validation of the regulatory burden calculations. Other independent regulatory oversight bodies in Europe include: the Netherlands Advisory Board on Regulatory Burden, Danish Business Regulation Forum, Finnish Council of Regulatory Impact Analysis, National Regulatory Control Council (Germany), Norwegian Better Regulation Council, Regulatory Impact Assessment Board (Czech Republic) and the Swedish Better Regulation Council.

An independent regulatory watchdog offers external expert scrutiny that provides reassurance to Parliament and external stakeholders that departments are properly considering impacts on those being regulated (or allows them to challenge where they have concerns).[43] It can improve the quality of the impact assessments going to ministers and parliament. 23% of final stage impact assessments were rated as not fit for purpose when initially submitted to the Regulatory Policy Committee and 56% had a 'Weak' or 'Very Weak' quality rating; but after RPC scrutiny, almost all were fit for purpose.[44] It can also make the assessment more accurate: in 2021, the impact of EANDCB adjustments following RPC advice was to increase the total BIT score by £1.44 billion.[45]

Setting the scope of the framework properly

Though the Better Regulation Framework has a number of exemptions, some have little impact on the overall regulatory burden reported (such as the *de minimis* exemption for measures with an impact of less than +/- £5 million per year) and are useful in reducing the number of measures and resources required to review them. However, two in particular have had a very significant impact on the estimated total regulatory burden (meaning that as a result, it left out measures with very significant regulatory costs).

The first measure was the Civil Emergency Exclusion applying to COVID-19 measures that are in force for less than 12 months (the 12 month limit was later relaxed[46] so that temporary COVID-19 measures that lasted for longer than year were also excluded from the BIT). This meant, according to the RPC, that[47]:

> *"the BIT figure excludes some of the most severe and restrictive regulatory measures introduced by a peacetime government. It therefore very significantly underestimates the true increase in regulatory burdens on businesses during this reporting period* [December 2020 – December 2021]*."*

The second exclusion related to the measures which derive from EU regulations, decisions and directives. This exclusion was justified on the basis that the UK government had limited power to reduce the cost of those measures, but nonetheless meant that businesses faced significant costs that were not captured by the regulatory accounting approach.

Properly calculating the costs and benefits of regulation

A challenge in regulatory burden reduction is measuring the costs and benefits of different regulations. The three main methods to estimating this are: standard cost approach, opportunity cost and text-based metrics. The standard costing approach is used in the UK and widely across Europe. It can be costly to do well and is particularly suited to evaluating new regulatory proposals and comparing alternatives, considering the direct costs and benefits that are likely to impact on business as a result of the introduction of the regulatory measure.[48]

The UK standard cost calculation is based on the equivalent annual net direct cost to business (EANDCB) metric, which has some particular oddities. For example if a regulation which costs business £20 million per year is abolished in the first year of an (assumed) five-year Parliament, the total saving is £100 million, which seems fair; however if the same regulation is abolished in the last year of the Parliament, it is still reported as £100 million over the life of the Parliament – even though businesses have only benefited by £20 million in that time period.[49] In addition, the EANDCB (as its name implies) only measures the direct costs to businesses – it therefore ignores the costs and benefits to the public or to consumers and also the indirect costs to business. While this is more practical and feasible to calculate on a consistent basis across a range of different regulatory measures, it nonetheless does not capture some of the most important impacts of those measures.

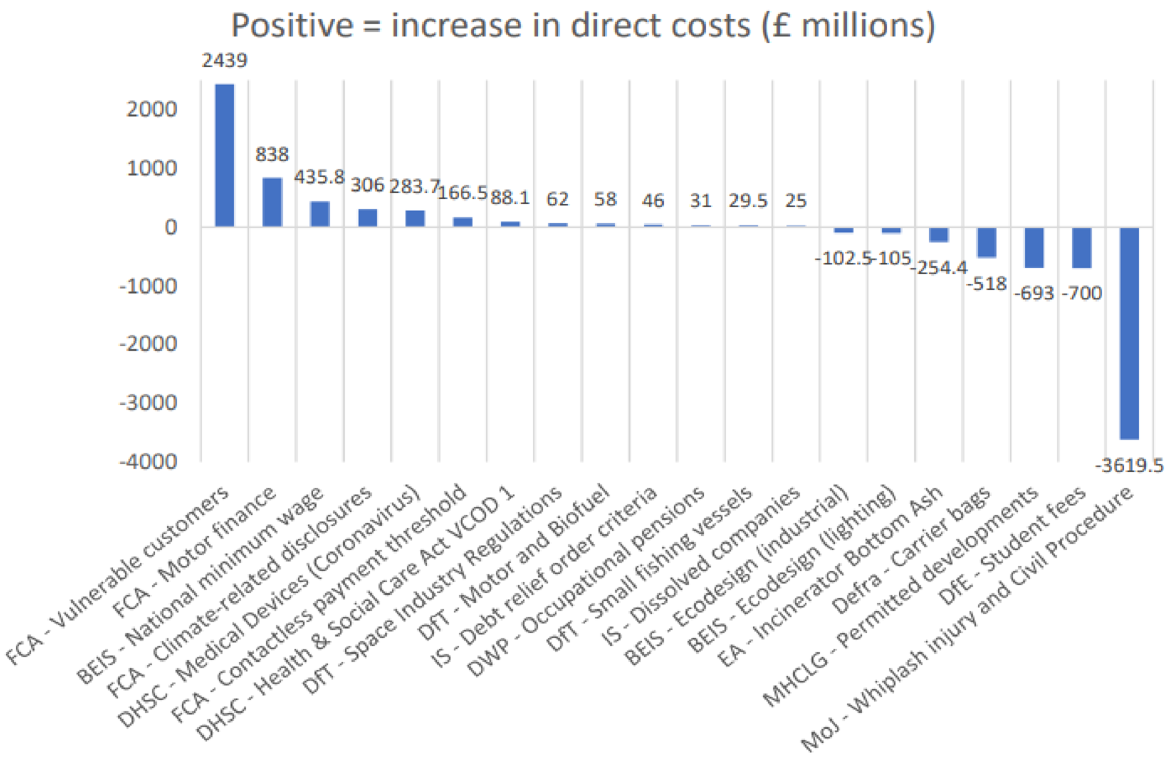
An opportunity cost approach was adopted in the USA from 2017-2021. It is very resource intensive and complex to deliver which reduces its effectiveness and seeks to understand the true economic cost the regulation, in terms of the foregone opportunities as a result of adopting the chosen approach. For example, if regulation of an industrial plant affects the use of additional land or buildings within the existing plant boundary, opportunity cost analysis would include the impact on the additional land or facilities (while a standard cost approach would not include this impact).

Text-based approaches have been used in British Colombia and other Canadian provinces and focus on the number of pages of regulations (or the number of regulations) that have been added/removed as a result of the measure. They are relatively easy to undertake (particularly with AI support) and can be used to complement impact assessments and cost-benefit analysis. They are useful for reducing the physical size of the statute book, even if this may be a limited reflection of the burdens they impose.[50]

A minority of regulatory measures generate the vast majority of the regulatory burdens

Between 2010 and 2015, "*just 15 significant measures generated over 90% of the costs and savings to business, while three-quarters of the measures cost or saved business less than £1 million per year each and accounted for less than 1% of the total value of the Government's regulatory account*."[51] This highly skewed distribution is also a feature of all the RPC BIT verification reports from 2016 to 2021 – the distribution from the 2020-21 report shown in Figure 5 is typical.

Figure 5: Contribution of regulatory measures to the BIT score 2020-2021



Source: RPC, Independent Verification Body Report: December 2020 to December 2021

This means that as an alternative to approaches that cover the totality of regulatory measures, much of the benefit in terms of burden reduction may be gained from focusing on the few measures which have the greatest impact on businesses and considering how they might be revised to reduce the burden they impose (of course this still requires some analysis of all regulatory measures to assess whether they are likely to be one of the measures with the largest impacts).

The importance of stakeholder involvement

Involving stakeholders is important in both identifying regulations or regulatory processes that should be revised or removed and also providing evidence to help measure and quantify the burden reduction. The OECD reports that[52]:

> *"fostering trust among stakeholders helps to achieve regulatory goals – compliance is improved where stakeholders feel heard and have had opportunities to suggest solutions. Providing feedback to stakeholders about how their input has or has not helped shape rules is critical."*

For example, the Dutch administrative burden reduction commissions are composed of senior civil servants, business representatives and trade associations, as well as citizens, final customers, civil society organisations and NGOs.[53]

There are costs of operating and complying with regulatory frameworks

There are always constraints on the resources available for government policy activity and "*some departments told the NAO that the complexity of complying with BRE rules diverts resources away from genuine deregulatory activity*".[54] However it can also be argued that without a clear framework that drives regulatory cost reduction, deregulatory activity would have not happened otherwise, as it would have been superseded by other policy activity. Moreover, in the absence of a better regulation framework the options analysis that compares different policy options to find the lowest cost method of achieving a particular regulatory objective would not have been carried out.

CHAPTER FOUR – CONCLUSION

After more than a decade of stagnant economic growth, the UK needs to exploit all sources for potential growth. Regulatory burden reduction can boost growth by freeing businesses and consumers from the costs of complying with regulation. The UK and other governments have put in place a range of policy measures to try and reduce the regulatory burden on businesses. This paper has examined the measures used by the UK government (Regulatory Offsetting, Red Tape Challenge, the Business Impact Target (BIT), regulatory sunsetting and automatic review clauses, Impact Assessments, and Post-Implementation Reviews) and considered their effectiveness. By synthesising the impacts of these measures on the net cost to UK businesses, several lessons have been drawn – in particular:

- The critical importance of political support to the success of regulatory burden reduction approaches;
- The value of setting the scope of the framework properly so as to include all of the most important regulatory measures;
- The importance of properly calculating the costs and benefits of the regulations and the benefit of independent validation of the regulatory burdens assessments;
- The fact that a small minority of regulations typically generate the vast majority of the regulatory costs;
- The importance of stakeholder involvement in the process; and
- That there are costs of operating and complying with regulatory frameworks.

The UK tops the OECD tables for many measures of regulatory policy and governance competency (eg. in the depth and extent of stakeholder engagement and the use of regulatory impact assessments). All things being equal, the measures examined in this paper, such as the Business Impact Target, OIXO, impact assessments, post implementation reviews and the components of the broader UK regulatory policy and governance landscape, such as the Regulatory Policy Committee, promote better regulatory policy outcomes. However, regulatory policy is (rightly) beholden to political constraints.

The Retained EU Law Bill is illustrative of many of the lessons drawn in this paper. While the enthusiasm for a reduction in the UK regulatory burden is welcome, the REUL Bill does not provide sufficient time or resources to properly assess the costs and benefits of the potentially 4,000 pieces of Retained EU Law that may be sunsetted by the Bill. Political motivation to 'get Brexit done' is driving particularly zealous attempts to cut regulation and it is likely that instead of a golden opportunity to properly review the effectiveness of a large batch of existing legislation, regulations are cut without properly thinking through their value. Ironically, this is the opposite to the normal situation, in which ministers propose regulations without sufficiently considering the costs involved. The solution is the same in both cases: good regulatory policy requires careful and reasoned judgement supported by evidence and analysis, respect for institutions, and engagement with the trade-offs between regulatory policy and other policy objectives. Extending the REUL sunsetting deadline, providing clear guidance around the internal processes to be used to assess the retained EU regulations, together with a properly managed and resourced assessment and review programme would be the best way to achieve this.

ENDNOTES

[1] Prime Minister's Office, 10 Downing Street et al. (2022), Red Tape Cut for Thousands of Growing Businesses.

[2] Coffey, B., McLaughlin, P. and Peretto, P. (2016), The Cumulative Cost of Regulations, Mercatus Research.

[3] https://www.johnlocke.org/the-opportunity-costs-of-overregulation-are-massive/.

[4] Frontier Economics (2012), The Impact of Regulation on Growth: A Report Prepared for the Department of Business, Innovation and Skills.

[5] OECD Regulatory Policy Working Papers (2019), One-In, X-Out: Regulatory offsetting in selected OECD countries.

[6] https://ec.europa.eu/commission/presscorner/detail/nl/qanda_21_1902.

[7] Comptroller and Auditor General (2016), The Business Impact Target: Cutting the Cost of Regulation.

[8] Regulatory Policy Committee (2019), Business Impact Target specific issues: direct versus indirect impacts.

[9] Comptroller and Auditor General, The Business Impact Target: Cutting the Cost of Regulation.

[10] Comptroller and Auditor General, The Business Impact Target: Cutting the Cost of Regulation.

[11] Lodge, M. and Wegrich, K. (2015), Crowdsourcing and Regulatory Reviews: A New Way of Challenging Red Tape in British Government?, Regulation & Governance 9:1.

[12] Penrose, J. (2021), The Penrose Report: Power to the People.

[13] Duncan Smith, I., Villiers, T. and Freeman, G. (2021), Taskforce on Innovation, Growth and Regulatory Reform Independent Report.

[14] HM Government (2022), The Benefits of Brexit: How the UK Is Taking Advantage of Leaving the EU.

[15] OECD Regulatory Policy Working Papers (2019), One-In, X-Out: Regulatory offsetting in selected OECD countries.

[16] Ibid.

[17] https://quarterly.blog.gov.uk/2014/01/30/cutting-the-tape/.

[18] Lodge, M. and Wegrich, K., Crowdsourcing and Regulatory Reviews.

[19] OECD, Red Tape Challenge (UK) 2016.

[20] Lodge, M. and Wegrich, K., Crowdsourcing and Regulatory Reviews.

[21] Jones, L. (2015), Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?, *Mercatus Research*.

[22] https://www.gov.uk/government/collections/rpc-regulatory-overview.

[23] Callanan, M. (2020), Written Statements - Written Questions, Answers and Statements - UK Parliament.

[24] https://rpc.blog.gov.uk/2021/09/24/one-in-some-out-should-government-set-itself-a-target-or-control-framework-to-reduce-regulatory-impacts/.

[25] https://rpc.blog.gov.uk/2021/07/20/scope-of-the-better-regulation-framework/.

[26] Regulatory Policy Committee (2022), Independent Verification Body Report: December 2020 to December 2021.

[27] Department for Business, Innovation and Skills (2011), Sunsetting Regulations: Guidance.

[28] Department for Business, Innovation and Skills (2020), Better Regulation Framework: Interim Guidance.

[29] Department for Business, Innovation and Skills, Sunsetting Regulations: Guidance.

[30] Department for Business, Innovation and Skills, Better Regulation Framework: Interim Guidance.https://www.zotero.org/google-docs/?tHEuqt

[31] https://www.ft.com/content/0c0593a3-19f1-45fe-aad1-2ed25e30b5f8

[32] HM Government, The Benefits of Brexit: How the UK Is Taking Advantage of Leaving the EU.

[33] Regulatory Policy Committee (2022), Retained EU Law (Revocation & Reform) Bill: RPC Opinion (Red-Rated).

[34] OECD, OECD Regulatory Policy Outlook 2021.

[35] HM Government, The Benefits of Brexit: How the UK Is Taking Advantage of Leaving the EU.

[36] Romano, R. and Levin, S. (2021), Sunsetting as an Adaptive Strategy, Proceedings of the National Academy of Sciences 118:26.

[37] Section 28, SBEE Act 2015.

[38] https://rpc.blog.gov.uk/2021/09/03/is-regulation-working-as-intended/.

[39] Comptroller and Auditor General, The Business Impact Target: Cutting the Cost of Regulation.

[40] Lodge and Wegrich, 'Crowdsourcing and Regulatory Reviews'.

[41] Better Regulation Task Force (2005), Regulation - Less Is More: Reducing Burdens, Improving Outcomes.

[42] Trnka, D. and Thuerer, Y. (2019), One-In, X-Out: Regulatory Offsetting in Selected OECD Countries, OECD Regulatory Policy Working Papers 11.

[43] https://rpc.blog.gov.uk/2021/08/25/independent-scrutiny-and-the-better-regulation-framework/.

[44] https://rpc.blog.gov.uk/2022/10/17/house-of-lords-committee-report-on-government-impact-assessments/

[45] RPC, Independent Verification Body Report: December 2020 to December 2021.

[46] Scully, P. (2021), Written Statements - Written Questions, Answers and Statements - UK Parliament.

[47] RPC, Independent Verification Body Report: December 2020 to December 2021.

[48] A summary diagram of the RPC appraisal and framework guidance with links to supporting documents is available at: https://www.gov.uk/government/publications/rpc-summary-diagram-of-existing-appraisal-and-framework-guidance

[49] https://www.regulation.org.uk/deregulation-regulatory_budgets.html.

[50] Jones, L. and McLaughlin, P., Measurement Options for Regulatory Budgeting, Harvard Journal of Law & Policy Per Curiam 25:18.

[51] Comptroller and Auditor General, The Business Impact Target: Cutting the Cost of Regulation.

[52] OECD, Better Regulation Practices across the European Union 2022

[53] Better Regulation Task Force, Regulation - Less Is More: Reducing Burdens, Improving Outcomes.

[54] Comptroller and Auditor General, The Business Impact Target: Cutting the Cost of Regulation.