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Committee of Public Accounts

Principles of effective regulation

Sixteenth Report of Session 2021–22

Report, together with formal minutes relating to the report

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The Committee of Public Accounts

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Contacts

All correspondence should be addressed to the Clerk of the Committee of Public Accounts, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5776; the Committee's email address is pubaccom@parliament.uk.

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Summary

Regulation touches on every aspect of our lives. Used effectively it can keep citizens safe, support economic growth and protect the environment, but when it fails, it can have serious consequences. UK regulators face significant challenges, risks and opportunities, such as taking on new roles previously carried out by European regulators and needing to adapt to changes such as rapid technological development, changing social attitudes and an increased focus on the climate emergency.

It is not clear that government and regulators are equipped to meet these challenges. Increasingly global markets and technological advances mean that now, more than ever, regulators must work together and coordinate their actions to regulate effectively. And the world which they regulate is changing rapidly—so regulators need to be able to adapt and act quickly to these new challenges. More also needs to be done to ensure that regulatory decisions are based on a good understanding of costs and benefits, and that regulators use data more effectively to assess risks and identify areas where they need to be more innovative while continuing to maintain regulatory standards. 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.

Introduction

Regulation is used by government to set rules and expectations that people and organisations should follow to meet a wide variety of different policy aims. Often these objectives aim to keep us safe (for example, in the regulation of water quality and food safety), to ensure we are treated fairly (for example, in consumer protection regulation), or to ensure businesses can compete on a level playing field (for example, through competition regulation). Effective regulation can achieve these objectives, but when it fails, it can have serious consequences for people, the economy and the environment.

The UK's regulatory landscape is complex, with a wide range of regulators and other bodies responsible for the regulation of different sectors. The Department for Business, Energy & Industrial Strategy (the Department) has over-arching responsibility for regulatory policy across government and aims to ensure the UK has the right regulatory frameworks to help meet business and consumer needs; and to reform regulatory approaches to support innovation and productivity.

Conclusions and recommendations

1. **The response to the COVID-19 pandemic has shown what can be achieved when regulatory bodies work effectively together with a clear focus on outcomes.** Regulators have had to be agile and respond swiftly to continue to meet their objectives, while ensuring regulatory requirements have not hindered efforts to tackle the virus. Examples include: the Medicines and Healthcare products Regulatory Agency's (MHRA's) use of a rolling review process to speed up vaccine authorisation without compromising on safety; cross-government efforts to identify and enact regulatory easements to support the COVID-19 recovery; and collaboration between the Health and Safety Executive (HSE), Office for Product Safety and Standards (OPSS) and MHRA on the safety requirements for personal protective equipment. The Department considers that a focus on outcomes over process, effective coordination and a shared understanding of priorities have underpinned effective regulatory responses to the pandemic. There is now an opportunity for regulators and government to learn from this and regulate more effectively in future. In particular, they will need to continue to cooperate both domestically and internationally to address emerging challenges that blur traditional boundaries between regulatory sectors and jurisdictions, such as on digital or environmental regulation.

   Recommendation: ***The Department should identify what has facilitated effective regulatory cooperation during the COVID-19 pandemic and disseminate findings to the regulatory community to ensure good practice is embedded and learning is not lost. It should also consider the risks of the changes in process as a result of the pandemic and how these were appropriately balanced.***

2. **The Department and regulators have been slow to follow best practice in facilitating innovation.** The Government's 2019 White Paper '*Regulation for the 4th Industrial Revolution*' found that only 29% of businesses believed that government's approach to regulation facilitates innovation. The Department aims to promote innovation in various ways, primarily through the Regulatory Horizons Council and the Regulators' Pioneer Fund which has made £13m available to regulators so far. However, the Financial Conduct Authority's regulatory 'sandbox' to encourage and test innovations with a small number of customers in a controlled environment for a limited duration has existed for a number of years and is widely respected. So it is surprising that approaches similar to this regulatory sandbox are not the default model for most regulators, funded out of existing operational budgets and part of business as usual. While the Department tells us that the UK ranks highly in international rankings of regulatory policy and competitiveness, there is also room for the government to identify and learn from national and international best practice on how regulation can facilitate innovation.

   Recommendation: ***Government should require regulators to engage meaningfully with businesses to explore potential new ideas and innovations and adopt regulatory sandbox type approaches, in a way that does not hinder regulatory objectives or create undue risk.***

3. **Regulators may fail to protect citizens, businesses and the environment if they do not successfully adapt to major changes in their sectors.** To remain effective,

regulators must adapt and respond to change. Rapid technological development is disrupting traditional business models, the climate emergency is driving changes in business and consumer behaviour, changing social attitudes are shifting citizens' expectations of regulators, and the UK's exit from the EU has created new risks and opportunities as UK regulators take on new roles and responsibilities previously performed at EU level (including setting laws and regulations). To respond effectively, regulators must recruit and retain the right staff, collaborate effectively with other regulators both domestically and internationally, and exploit new technology to improve their efficiency and effectiveness. The extent of the challenge is considerable, and regulators' efforts to meet this challenge must be supported by the right strategic and legislative frameworks, as well as the necessary skills and capacity.

Recommendation: ***Government and regulators should work together to ensure that regulatory frameworks are responsive, and that regulators themselves are well equipped, to be able to match the challenges and opportunities provided by the UK's departure from the EU.***

4. **Regulatory bodies do not have a good enough understanding of the costs and benefits of regulation, risking value for money.** Robust analysis of the costs and benefits of regulatory activity is essential for effective regulation, value for money and accountability. The regulators we questioned were not able to put a full monetary cost on their regulatory activity, including the wider costs to industry of complying with regulations. They face challenges in measuring costs and benefits when their focus is often on reducing risk, where it can be difficult to determine what would have happened if the regulator had not acted. The government's Business Impact Target aims to reduce the costs of regulation to business, but the Regulatory Impact Assessments (RIAs) that underpin this target currently consider the costs of regulations without an adequate assessment of the benefits. For example, the costs of gambling regulations for gambling companies are captured, but the benefits of those regulations in reducing crime or harm are not. The Competition and Markets Authority has also criticised RIAs for not giving enough consideration to the impact of regulation on competition and innovation. The government has committed to a review of the Business Impact Target and the Department is preparing to launch a consultation later this year.

Recommendation: ***In its review of the Business Impact Target, the Department should consult with regulatory bodies and wider stakeholders on how to ensure robust analysis of regulatory costs and benefits is built into regulatory policy design and evaluation. Furthermore it should include proposals to better reflect the impact of regulation in promoting competition and innovation.***

5. **Outcomes-based regulation comes with benefits, but also presents challenges for regulators in measuring their influence and compliance by industry.** In general, setting goals and facilitating business to meet them can be both a more effective and a less burdensome approach to meeting regulatory objectives than laying down lists of rules. A focus on outcomes can be important to enable innovation, as seen in the MHRA's review of vaccines during the COVID-19 pandemic. The regulators' and the Department's focus on outcomes is welcome, but where such approaches are used, it is also important for a regulator to be able to measure the outcomes themselves and the extent of its influence over them. A regulator's influence over the

industry it regulates—for example, how well businesses comply with standards—can be difficult to measure, particularly if there are not specific rules that can be easily monitored. It is therefore crucial that regulators identify what data they need, collect this robustly and systematically, use it to monitor progress and have the power to act on it effectively.

Recommendation: ***Government and regulators should work together to build in proper consideration of the right balance between outcomes-based and rules-based regulation in their sectors, to ensure regulatory objectives are not compromised and non-compliance by regulated entities does not go undetected.***

1 Responding to challenges in the external environment

1. On the basis of a report by the National Audit Office, we took evidence from the Department for Business, Energy and Industrial Strategy (the Department), and from the Environment Agency, the Health and Safety Executive (HSE) and the Office of Communications (Ofcom).[1]

2. Government and Parliament use regulation in many areas and for a range of different policy aims, particularly where Government does not provide or commission services directly. Regulation is characterised by a set of rules and expected behaviours that people and organisations should follow, and normally involves one or more regulators enforcing and influencing compliance with those rules and behaviours. Effective regulation can lead to better outcomes, such as reduced prices, improved quality or better environmental standards. Failure can result in harm to people, businesses, the economy or the environment, and large costs to the taxpayer.[2]

3. The UK's regulatory landscape is complex, with a wide range of regulators and other bodies responsible for the regulation of different sectors. The Department has over-arching responsibility for regulatory policy across government, and it aims to ensure the UK has the right regulatory frameworks to help meet business and consumer needs, and to reform regulatory approaches to support innovation and productivity.[3]

Learning from the COVID-19 pandemic

4. The COVID-19 pandemic has been one of the biggest challenges we have faced in recent years, affecting all aspects of our lives. Regulators have had to respond swiftly and agilely to continue to meet their objectives, while ensuring regulatory requirements have not hindered or slowed down efforts to tackle the virus and its impacts. The Department told us that a focus on outcomes over process, effective coordination and a shared understanding of priorities have underpinned effective regulatory responses to the pandemic. It highlighted the Medicines and Healthcare products Regulatory Agency's (MHRA's) use of a rolling review process to speed up vaccine authorisation without compromising on safety as an example of what can be achieved when there is a focus on outcomes over process. It also told us that cross-government efforts to identify and put in place regulatory easements to support the COVID-19 recovery, and collaboration between the HSE, Office for Product Safety and Standards (OPSS) and MHRA on the safety of personal protective equipment, were examples of what could be achieved with effective cooperation and a shared understanding of priorities.[4]

5. Beyond the pandemic, regulators increasingly need to cooperate domestically and internationally as they face challenges that blur traditional boundaries between regulatory sectors and jurisdictions, such as on digital or environmental regulation. Ofcom told us it has established a digital regulatory cooperation forum with the Competition and Markets Authority (CMA), the Information Commissioner's Office (ICO) and the Financial

1 National Audit Office (NAO), *Good practice guidance: Principles of effective regulation*, May 2021
2 NAO Report, page 3
3 Department for Business, Energy & Industrial Strategy, *Single departmental plan*, June 2019
4 Q 63

Conduct Authority (FCA) with the aim of sharing skills and expertise and coordinating regulatory activity where appropriate.[5] The Environment Agency also highlighted the work it has done with Ofwat to shape its five-year price review framework, informing how much money the water companies will spend over that period on protecting the environment, and what the money (around £5 billion) will be spent on.[6]

6. We asked the Department how lessons from the regulatory response to the pandemic, including effective cooperation between regulators, could be embedded in the regulatory system. It told us that encouraging dialogue between regulators and with ministers was important, and highlighted its role in convening regulatory forums such as a regulators' innovation network.[7] Ofcom also told us that practical steps, including ensuring regulators are able to share data and have a more explicit duty to consider each other's objectives where appropriate, can help facilitate greater cooperation.[8]

Facilitating innovation

7. The Government's 2019 White Paper '*Regulation for the 4th Industrial Revolution*' found that only 29% of businesses believed that "government's approach to regulation facilitates innovative products and services being efficiently brought to market".[9] The Department explained that enabling innovation and innovative sectors to grow has been a central plank of the work that it has been doing on regulation over the past few years. The Government's Regulatory Horizons Council focuses on looking at cross-cutting issues and specific sectors, and the Department has established the Regulators' Pioneer Fund which has made £13m available to regulators so far in individual ring-fenced pockets of funding. The Department cited the Financial Conduct Authority's (FCA's) regulatory 'sandbox' to encourage and test innovations in financial services that has existed for a number of years and is widely respected.[10] The FCA's regulatory sandbox is a mechanism for firms to test innovations for limited duration with a limited number of customers. To date, the FCA has worked with a defined cohort of firms but is also launching an 'Always Open' regulatory sandbox available on a rolling basis. It is open to authorised firms and some other businesses that are looking to deliver innovation in the UK financial services market. The FCA's sandbox seeks to provide firms with: the ability to test products and services in a controlled environment; reduced time to bring innovations to market, at potentially lower cost; support in identifying appropriate consumer protection safeguards to build into new products and services; and better access to finance. We heard that Ofgem and the Civil Aviation Authority have also more recently launched their own regulatory sandboxes (for example, for the use of drones for freight delivery).[11] We were surprised, however, given the importance of innovation to the economy, that the sandbox approach is a not a default model for all or even most regulators.[12]

8. The Department told us that the UK is ranked highly in terms of regulatory policy and competitiveness by international bodies such as the OECD, the World Bank and the World Economic Forum (WEF). We heard that the Department seeks to learn from

5 Q 39
6 Q 40
7 Q 65
8 Q 39
9 *Regulation for the Fourth Industrial Revolution*, CP 111, June 2019.
10 Q 59
11 Written response from Ms Jaee Samant CBE to PAC Chair Meg Hillier, 22 June 2021.
12 Q 60

international best practice, and it considers that the Danish Business Authority is very good and provides an interesting model, which provides a one stop-shop (bringing together a number of regulatory functions) for all types of business, particularly emerging technology businesses. The Department also co-chairs a WEF council on regulation that aims to work with other countries to try and ensure that regulation is sensible, proportionate, agile and is focused on emerging technologies.[13] There is scope for the UK to continue to learn from other countries on how regulators could cooperate and collaborate more, particularly in the digital space where companies want to know what they should be aware of and who is responsible for regulation.[14]

Adapting to change

9. Rapid technological development is altering traditional business and commerce, the climate emergency is driving changes in business and consumer behaviour, and changing social attitudes are shifting citizens' expectations of regulators. The UK's exit from the EU has also created both risks and opportunities, as the UK takes on new regulatory roles and responsibilities previously performed at EU level including setting laws and regulations.[15]

10. Ofcom, the Environment Agency and the HSE all stated that mitigating the risks and maximising the opportunities of change in their sectors as a key challenge for them as regulators. For Ofcom, new technology has disrupted traditional business models and it is seeing a growth in the reach and power of some global technology and digital companies across its sectors, raising potential issues with monopolies and risks to competition.[16] It is also taking on new responsibilities to regulate online harms and ensure that public telecoms providers are complying with their telecom security duties.[17] In the case of the HSE, it has become the UK's chemicals regulator now that the UK has left the EU and is also taking on new responsibilities in building safety regulation.[18] The Environment Agency highlighted the climate emergency as the biggest challenge it faces, alongside ensuring its regulatory objectives keep pace with changing public attitudes.[19]

11. To meet these challenges and opportunities, regulators need to recruit and retain the right staff, collaborate effectively both domestically and internationally, and exploit new technology to improve their efficiency and effectiveness. Ofcom has recruited a new chief technology officer from industry and told us that recruiting the right skills was difficult but that it was confident it could attract and deploy the right skills by working with other regulators and thinking creatively about its approach.[20] HSE described plans to establish a data-sharing hub for regulators, which will be a single source of information on business risk and compliance. The HSE hopes this hub will also reduce the need for businesses to provide the same information to multiple regulators.[21] The Environment Agency also set out how it is using new technology to improve its data collection, including the use of remote monitoring, satellites and drones.[22]

13 Q 61
14 Q 62
15 NAO report, page 31
16 Q 28
17 Qq 29–30
18 Qq 31, 36
19 Q 27
20 Qq 29–30, 48
21 Q 41
22 Q 24

12. The Department views its role as supporting coordination and dissemination of best practice across the regulatory system. However, it told us it is the responsibility of individual sponsoring departments to provide appropriate governance of regulatory bodies, including oversight of value for money.[23] It also confirmed that government has a role to play in setting the strategic and legislative frameworks that enable regulators to do their jobs effectively.[24]

23 Q 71
24 Q 87

2 Understanding the costs and benefits of regulation

Measuring regulatory costs and benefits

13. Robust performance measurement and evaluation, including analysis of the costs and benefits of regulatory activity, are essential for effective regulation. They can help evidence value for money, provide insight into unintended outcomes, and help to refine interventions to improve outcomes. Good monitoring and reporting can also support accountability to Parliament and the taxpayer.[25] In its 2019 report on the actions of Ofwat, Ofgem, Ofcom and the Financial Conduct Authority (FCA) to protect consumers in their sectors, this committee concluded that the regulators did not yet have a good enough understanding of their own impact and effectiveness in protecting consumers.[26]

14. We questioned Ofcom, the Environment Agency and the HSE on the extent to which they are able to capture the cost of their regulations on their sectors. Ofcom told us it is stepping up its efforts to measure its impact since this committee's 2019 report. But it also set out the challenges that regulators face in measuring costs and benefits when their focus is often on reducing risk, where it can be difficult to determine what would have happened if the regulator had not acted.[27] The Environment Agency does not have a figure for the overall cost to industry of its regulation, but it has a goal to reduce costs year on year and when it makes significant changes to regulations it assesses the cost implications.[28] The HSE is able to track the costs of some of its regulatory activity, in cases where costs are charged directly to business. However, more generally, employers have a duty under the Health and Safety at Work Act to ensure, as far as reasonably practicable, the health, safety and welfare at work of their employees. The HSE does not track the costs to businesses of meeting this duty. However, it contended that businesses benefit from ensuring a safe workplace (in terms of increased competitiveness and trust), and that this may outweigh the costs.[29]

15. The government's Business Impact Target is set each Parliament and aims to reduce the costs of regulation to business. Regulators must carry out Regulatory Impact Assessments (RIAs) on qualifying regulations to determine their impacts on business. Where these assessments identify an impact of more than £5 million, the analysis underpinning them is then independently verified by the independent Regulatory Policy Committee.[30]

16. The Department told us that RIAs currently consider the cost impact of regulations without an adequate assessment of the benefits. For example, the costs of complying with gambling regulations for gambling companies are captured, but the benefits of those regulations in reducing crime are not. Similarly, the costs to landlords of tenant fee regulations are counted, but the benefits to tenants from these regulations are not.[31] The Competition and Markets Authority (CMA) has also criticised RIAs for not giving

25 NAO report, pages 34–35
26 HC Committee of Public Accounts, *Consumer Protection*, 107th report of Session 2017–19, HC 1752, July 2019
27 Qq 43–44
28 Q 45
29 Q 46
30 Department for Business, Energy & Industrial Strategy, *Business Impact Target Statutory Guidance*, January 2019
31 Q 70

enough consideration to the impact of regulation on competition and innovation, increasing the risk that regulatory measures may have major unintended impacts on competition and innovation.[32] The Department accepted that the process for integrating competition assessments into RIAs could be improved, but told us this must be balanced with ensuring the process itself is not so burdensome on regulators and departments that it delays the delivery of policy objectives. The government has committed to reviewing the Business Impact Target framework, with the aim of ensuring the approach in future better recognises both the costs and benefits of regulation. The Department expects to launch this as a consultation exercise later this year.[33]

Outcomes-focused regulation

17. An outcomes-focused regulatory approach is one characterised by setting overall outcomes or principles expected of the regulated industry, rather than specifying rules. This has the benefit of often being more responsive to change because the regulatory objective or outcome remains the same even where the process or activity being regulated has changed. This was observed during the COVID-19 pandemic, for example with a rolling review process for vaccine approval (as set out in paragraph 13). An outcomes-focused approach can also be less burdensome for business in general.[34] The HSE told us that it works with businesses to set outcomes, and provided that a business shows that it can meet those outcomes, the HSE does not try to second-guess how the business should work and specifically what it should do.[35] We also received academic evidence as part of our inquiry which argued that good regulation comprises a broad outcomes-focused approach combined with detailed guidance.[36] We were surprised that not all regulators have an outcomes-over-process model embedded in how they operate.[37]

18. An outcomes-focused approach, however, can present a challenge for regulators and policymakers in measuring the influence or impact of regulation and the level of compliance by industry. A regulator's influence over the industry it regulates—for example, how well businesses comply with standards—can be difficult to measure, particularly if there are not specific rules that can be easily monitored.[38] For this reason, it is imperative that regulators identify what data they need, collect this robustly and systematically, use it to monitor progress and have the power to act on it effectively. Failing to collect reliable data, or being unable to act on data effectively, can undermine a regulator's objectives.[39] One London borough submitted evidence to us highlighting how the level of fines on water companies is not sufficient in deterring them from discharging raw sewage into the environment above the levels permitted by the Environment Agency.[40]

32 Competition and Markets Authority, *Regulation and Competition: A Review of the Evidence*, January 2020
33 Qq 67–70
34 NAO Report, page 31
35 Q 36
36 Centre for the Study of Existential Risk, University of Cambridge
37 Qq 65, 84
38 Q 46; NAO Report, pages 21 & 26
39 NAO Report, pages 15 & 19
40 London Borough of Hackney

Formal minutes

Thursday 9 September 2021

Members present:

Dame Meg Hillier, in the Chair

Mr Gareth Bacon
Peter Grant
Anthony Higginbotham
Mr Richard Holden
Craig Mackinlay
James Wild

Draft Report (*Principles of effective regulation*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 18 read and agreed to.

Summary agreed to.

Introduction agreed to.

Conclusions and recommendations agreed to.

Resolved, That the Report be the Sixteenth of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Monday 13 September at 1:45pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Monday 14 June 2021

Sir James Bevan, Chief Executive, Environment Agency; **Sarah Albon**, Chief Executive, Health and Safety Executive; **Dame Melanie Dawes**, Chief Executive, Ofcom Q1–50

Sarah Munby, Permanent Secretary, Department for Business, Energy & Industrial Strategy; **Chris Carr**, Director of Better Regulation, Department for Business, Energy & Industrial Strategy; **Jaee Samant**, Director General for Market Frameworks, Department for Business, Energy & Industrial Strategy Q51–88

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

PER numbers are generated by the evidence processing system and so may not be complete.

1 Heathrow Airport (PER0006)

2 Hilton, Samuel (Research Affiliate, Centre for the Study of Existential Risk) (PER0004)

3 Jackman, Mr David (Director, The Ethical Space Ltd) (PER0001)

4 London Borough of Hackney (PER0002)

5 University of East Anglia (PER0005)

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