

Reforming Regulation Initiative consultation response - Unchecked UK

1. 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 and of the public bodies which enforce them.

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.

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Unchecked UK is supported by the following organisations:

Allergy Action	Institute of Employment Rights
Alliance to Save our Antibiotics	Institute of Environmental Management and Assessment
Angling Trust	Mums for Lungs
Association of Personal Injury Lawyers	National Consumer Federation
Birders Against Wildlife Crime	Nature Friendly Farming Network
Chartered Institute of Environmental Health	new economics foundation
Chartered Trading Standards Institute	People Need Nature
Chem Trust	Pesticide Action Network
Client Earth	Royal Society for the Prevention of Accidents
Compassion in World Farming	SaveFace
CORE Coalition	Soil Association
Focus on Labour Exploitation	Sustain
Friends of the Earth	Sustainable Soils Alliance
Global Justice Now	Traidcraft Exchange
Green Alliance	Unison
Hazards UK	Windrush Against Sewage Pollution
High Pay Centre	Women's Environment Network

2. KEY RECOMMENDATIONS

- **The One-In-[N]-Out procedure should be scrapped and replaced with a case-by-case appraisal process which considers regulations based on their merits for wider society**
- **The scope of Regulatory Impact Assessments should be broadened to take into account wider societal benefits, and the Regulatory Policy Committee's powers extended to enable it rate policy proposals as unfit for purpose on the basis of these indicators**
- **Investment in UK national and local regulators must be sufficient to enable these bodies to fulfil their duties and reverse the decline in enforcement capacity**

3. INTRODUCTION

In this submission we set out some preliminary arguments for adopting a protective approach to regulatory policymaking in the UK. We examine the effectiveness of previous government initiatives to reduce regulation, as well as the existing cost/ benefit appraisal process for assessing the value of regulations.

Strong, well-designed regulation is good for UK businesses, society and the economy

Regulations are often portrayed as bad for business and as a barrier to economic growth. A strong body of evidence shows, however, that well-designed regulations can deliver positive economic outcomes without any loss in productivity.ⁱ Good regulation also provides important benefits for UK industries; by creating jobs and providing a level playing field for businesses to compete on the basis of quality and efficiency - making them increasingly competitive in international markets.

A report commissioned by the Aldersgate Group, which conducted first-hand interviews with a number of businesses in the construction, automotive and waste industries, found that UK businesses are generally supportive of regulation. It states: *“all those interviewed stated that the impact of environmental regulation on the competitiveness of their business was positive overall. The costs of compliance – be they taxes or increased design fees – are more than offset by gains in improved quality, performance and competitiveness or are absorbed in some other way within their business models.”*ⁱⁱ Indeed, UK business groups have repeatedly clarified that regulatory certainty and consistency are more important than the policy goal of reducing the number of regulations.ⁱⁱⁱ

UK regulators and government departments have also publicly supported the view that good regulation delivers broad economic and societal benefits. The Department for Environment, Food and Rural Affairs, for example, estimates that the benefits of its regulations are 2.4 times greater than their costs in monetary terms.^{iv}

The British public support regulations across diverse areas of everyday life

A number of polls carried in recent years have found strong support among the British public for rules and regulations - across many different areas.^v Recent polling by Ipsos MORI for Unchecked UK, which tested attitudes to regulation among Leave voters under 48, found strong support for diverse regulations among this cohort.^{vi} It found that:

- **Most younger Leave voters (66% or more) would like to keep or increase regulation in 11 out of 11 categories - such as consumer protection, food safety and the environment.** This holds true for both younger Leave voters who voted Conservative in the December 2019 General Election, and for those who voted for the Labour Party.
- When asked about a range of EU-derived regulations, **most younger Leave voters (70% or more) think the UK should keep or increase EU regulations and standards.** Across all categories, no more than 5% would like to see these rules abolished.
- **The majority of respondents (78%) agree that regulation is necessary to ensure there is fair behaviour by people and businesses.** Seven in ten younger Leave voters think that large businesses should be regulated more or that current levels are about right, with only 7% indicating that they want less regulation of large businesses.

Robust enforcement is key to achieving regulatory goals

Strong enforcement is central to the achievement of regulatory outcomes. Several studies show that regulatory enforcement generates a significant return on investment. For example, every £1 spent on waste crime enforcement yields a return of as much as £5.60,^{vii} and Trading Standards services generate £6 of consumer savings for every £1 of investment.^{viii}

However, over the last decade, the UK has experienced a substantial loss of enforcement capacity. From 2009 to 2018, real terms funding for the environmental and social protection work of nine national regulators¹ fell on average 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 services² which protect the health and wellbeing of citizens and the environment fell on average by 35%.^{ix}

If UK regulatory bodies are to properly fulfil their statutory duties and deliver beneficial environmental and social outcomes, they must be given the appropriate powers, independence and resources to perform their duties.

4. THE EFFECTIVENESS OF PREVIOUS GOVERNMENT INITIATIVES TO REDUCE REGULATION

Previous government initiatives to reduce regulation have not always delivered their intended outcomes of cost reduction, policy efficiency and social/ business benefits.

Despite the efforts of the 2010-15 Coalition Government, for example, the NAO observes that: *"The previous government estimated that it reduced regulatory costs for businesses by £10 billion during the 2010–2015 Parliament. This is equivalent to an average annual saving of around £400 for each UK business."*^x

According to the think-tank Reform: *"Instead of saving £1.5 billion, the Coalition Government has in fact increased the regulatory burden on business by at least £3.1 billion. Against an ambition of removing at least £1 of regulation for every £1 it introduces, the Government has actually introduced at least £3.50 of regulation for every £1 it has so far removed."*^{xi}

Below, we examine the effectiveness and outcomes of two recent flagship initiatives in more detail.

➤ The 2011 Red Tape Challenge

The Red Tape Challenge was conceived of to give voice to the perceived high levels of popular frustration with 'red tape'. However, the main studies which have analysed public responses to the Challenge find that the majority of participants (75-80% in some analyses) wanted to maintain or strengthen existing regulations, and that the majority of the remaining participants were unclear in their view. In reality, participants did not support policy efforts to reduce the UK's regulatory stock – meaning the core assumption of the Red Tape Challenge project was manifestly undermined.^{xii}

The initiative also threw up a number of procedural issues. The process created a huge number of non-standardised points-of-view from often unidentifiable sources, some referring to whole swathes of regulation, some referring to specific policies, and some referring to personal grievances which lay outside of the scope of the project. This obstructed attempts to code responses or to gather any empirical or meaningful insights. Government estimates stated that just 12% of comment submitted via the online channels were considered useful.^{xiii}

¹ The Food Standards Agency, the Environment Agency, Natural England, the Forestry Commission, the Health and Safety Executive, the Gangmaster and Labour Abuse Authority, the Employment Agency Standards Inspectorate, the Equality and Human Rights Commission, the Crown Prosecutions Service.

² Average net reductions in local authority spending on trading standards, food safety, environmental protection, health and safety, fire safety

The Red Tape Challenge also failed to deliver on bureaucracy- and cost-reduction. In fact, the initiative created additional bureaucracy within government, and consumed huge amounts of civil service time. Some former civil servants claim that the Challenge became something of a tick-box exercise itself; noting departments' tendency to pick zombie provisions to throw onto the scrapheap.^{xiv} The reported annual cost-savings for businesses achieved by the Red Tape Challenge (GBP 1.2 billion) is difficult to unpick, as no methodology for this calculation has been published.

Finally, while much was made of the 3,095 provisions which were scrapped, official reports state that just 1,376 changes were of material benefit, where "the reform has an impact for business/civil society, individuals or the taxpayer, over and above tidying the statute book".^{xv}

➤ **One-In-[N]-Out (OINO)**

The OINO approach decrees that the value of the UK's regulatory stock must be considered primarily in relation to the associated net impacts on business. This raises some immediate issues. Business interests are not necessarily aligned with the interests of society, and are often in direct opposition. Policies which place the greatest costs on companies are often those which deliver the greatest public benefits, not least because they contain harmful business activities. The minimum wage, for example, was estimated to cost the business community £4.1 billion. As such, most socially worthwhile regulations will *necessarily* carry business costs.

As OINO does not consider non-economic impacts of regulations, it risks generating outcomes which are directly antithetical to other public policy goals. For example, in 2014 Brandon Lewis MP (then Housing Minister) cited the One-in-One-Out rule as justification for his decision not to mandate the fitting of sprinklers in domestic and commercial properties.^{xvi} Experts now attest that the presence of sprinklers in Grenfell Tower would undoubtedly have saved lives.^{xvii} Clearly, regulation exists to fulfil objectives that are not solely economic. To appraise their value on the basis of this indicator alone is illogical.

Various studies have also called the efficacy of the OINO approach into question. Oxford University's Smith School 2017 undertook a comparative analysis of the OINO model in eight countries, and found that: "*none of the countries we review has demonstrated that this policy innovation has actually led to improvements in economic efficiency*".^{xviii} Indeed, the approach which underpins the OINO rule, cost-benefit analysis, has been found to systematically undervalue social and environmental benefits. Writing for the Legatum Institute, former Cabinet Secretary Lord O'Donnell said: "*Conventional cost-benefit analysis...is familiar and long-used, but its familiarity should not disguise its problems or the enormously important issues that it does not take into account.*"^{xix}

5. THE EFFECTIVENESS OF EXISTING MEASURES USED TO DETERMINE REGULATORY 'COSTS'

➤ **The Business Impact Target (BIT)**

The introduction of the BIT in 2015 outlined the (then) government's formal commitment to reduce regulatory costs for business by £10bn between 2015 and 2020, and obliged government departments to appraise regulations with regard to their cost to business.

Similarly to OINO, the BIT appraises regulatory value solely in the light of costs to businesses. It does not account for, or attempt to mitigate, the presence of economic externalities such as public health impacts. The shortcomings of this approach to public policy is illustrated by the fact that, in 2016, the regulations noted to have the greatest cost implication for businesses were the standardisation of tobacco packaging and the prohibition of psychoactive substances.

The target risks creating a system of perverse incentives within policy-making, where departments are ranked by their progress in minimising regulatory costs to business. By focusing on regulatory cost reduction to the exclusion of wider considerations, the achievement of social and environmental policy objectives is put at risk. Conversely, regulations which are validated on the basis of cost-savings to business may generate significant social externalities down the line.

Furthermore, cost-savings achieved via the BIT are regularly overstated. Policymakers have been criticised for ‘cherry-picking’ measures to include in the target, with certain policies with major regulatory impacts on business simply left outside its scope. Under the 2010-15 Parliament, 46% of the 951 regulations validated by the Regulatory Policy Committee were not included in the (then) government’s claim that it had achieved savings of £10 billion.^{xx}

➤ Regulatory Impact Assessments (RIAs)

As part of the BIT, regulators are obliged to publish a RIA alongside proposed policies or policy amendments, which sets out the estimated cost implications for businesses. Social and environmental impacts are often mentioned, but not monetised, and therefore given no weight in the appraisal process - and the Regulatory Policy Committee (RPC) cannot ‘red rate’ a policy on these grounds. This framework means that policies predicted to save businesses money - but which also forecast public harms - may legitimately be waved through.

For example, the RIA for the repeal of 23 local building acts across England in 2012 points to a potential *“increase of approximately 3% (per thousand fires) in fires getting ‘big’...”*, but was validated on the basis of estimated cumulative cost-savings of nearly £1m from removing the requirement to install smoke extractors or sprinklers in buildings. Fire safety experts have claimed that if section 20 of the London Building Act had not been repealed, Grenfell Tower would have been more scrupulously assessed due to its height.^{xxi}

This narrow approach to assessing regulatory value has drawn criticism. The NAO has said: *“too often RIAs are used to justify decisions already made rather than an ex ante appraisal of policy impacts”*.^{xxii} The RPC itself has called for the scope of RIAs to include societal costs and benefits.^{xxiii}

Additionally, RIAs have undoubtedly increased the administrative burden on departmental teams.^{xxiv} Despite this, they have become more embedded within policy procedure, (from 2016 all statutory regulators have been required to issue RIAs.)

CONCLUSION

Strong, properly-enforced regulations benefit UK businesses, society and the wider economy. Good regulation is the means by which governments ensure a positive balance between the benefits and costs of given activities - from preventing financial fraud and scams; to limiting environmentally damaging activities; to ensuring minimum standards for construction work; to guaranteeing safety and nutritional standards for children’s food.

The costs of deregulation and the erosion of enforcement capacity under successive UK governments are likely to have been borne disproportionately by those already most vulnerable or marginalised - economically and socially.

Our research finds that there is no appetite for this approach among key voter groups. In fact, younger Leave voters strongly support keeping or increasingly regulations across many areas of everyday life.

We note that the requirement for departments to indicate whether regulatory measures fall within the scope of 'One-in-Three-Out' has now been removed from Regulatory Impact Assessments, and would welcome clarification as to whether this means the approach has been dropped.

We urge the government to abandon any commitment to this policy, or to similar deregulatory approaches which measure and prioritise business costs over societal benefits, and commit instead to improving the quality of UK regulation, as measured by a broader assessment of social costs and benefits.

We believe that scope of Regulatory Impact Assessments should be broadened to take into account wider societal benefits, and that the powers of the RPC should be amended accordingly. Finally, we ask the government to urgently prioritise the proper resourcing of the UK bodies which enforce existing regulations.

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ⁱⁱ Aldersgate Group (2017), *Help or Hindrance? Environmental regulations and competitiveness* <https://www.aldersgategroup.org.uk/asset/896>

ⁱⁱⁱ For example, the Chemical Industries Association (2018), *Making Brexit Work for the Chemical Industry: "In light of the UK decision to leave the EU, the chemical industry does not argue for lower regulatory standards in the area of chemicals regulations but regulatory consistency and continuity."*

https://www.cia.org.uk/LinkClick.aspx?fileticket=2JL_YBGG80Y%3D&portalid=0. The UK aerospace, automotive, chemicals, food and drink and pharmaceutical sectors have also warned of "the damage which would be done by the current approach on regulatory divergence". <https://www.bbc.co.uk/news/business-50019069>

^{iv} The Department of Environment, Food and Rural Affairs (2011), *The Costs and Benefits of Defra's Regulatory Stock; Emerging Findings From Defra's Regulation Assessment* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69226/pb13623-costs-benefits-defra-regulatory-stock110816.pdf

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^{xii} See, for example:

https://www.regulation.org.uk/library/2012_carr_crowdsourcing_and_the%20red_tape_challenge.pdf

^{xiii} [https://www.instituteforgovernment.org.uk/sites/default/files/120123%20Crowdsourcing%20Presentation%20-%20IfG%20\(2\).pdf](https://www.instituteforgovernment.org.uk/sites/default/files/120123%20Crowdsourcing%20Presentation%20-%20IfG%20(2).pdf)

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^{xvi} Hansard, <https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140206/halltext/140206h0002.htm>

^{xvii} See, for example: <http://www.bbc.co.uk/news/uk-england-london-41230521>

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^{xxi} See, for example <https://www.constructionnews.co.uk/best-practice/health-and-safety/london-building-act-would-have-averted-grenfell-disaster/10020920.article>

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