

CENTRALIZED REGULATORY REVIEW IN THE UK: THEY SAID IT COULDN'T BE DONE

1.1. The UK is pioneering a further development of control of regulation through a technique which has often been talk of in many other countries but never successfully applied. It is effectively a Net Cost Zero Regulatory Budget. The idea of "Regulatory Budgets" has been around for a while and the UK attempted something like that in 2007 but it failed to get off the ground. A simpler version has now been promoted under the title of "One In, One Out" (OIOO) (a clear advantage is that there is no need to negotiate any budgets). The idea behind it can be stated simply, namely that all new regulation/ legislation will have cost and therefore the cost of any new legislation must be met by removing a similar cost of existing legislation. So, for every new measure there has to be a loss of an old measure or measures of equivalent cost¹:

- The first point to note is that it is concerned with net direct costs to business. A legislative proposal will still require an overall economic impact assessment which ensures that the benefits will outweigh the costs and that assessment will take full account of all costs and benefits. For the purpose of One In One Out, however, the further calculation is needed to look only at the direct costs and benefits to business. It is only the net benefits to business that drive the calculations in this approach (specifically the Equivalent Annual Net Cost to Business - EANCB). (In strict terms, it is not only business but also civil society organisations.) In addition to whatever impact this approach actually has on the economics of businesses, a large part of the motivation behind the scheme is to ensure that policy-makers are much more aware of the costs of the measures to business and will start devising policy-making in a way that is sensitive to business benefits.
- The second point is that the "Out" does not have to have any connection with the proposed "In" but it is supposed to be within the legislative portfolio of that Department. Any number of "Outs" can be counted in the calculation, in order to balance the figures. It is also possible for Departments to trade "Outs" but only in limited circumstances. (The earlier attempt at Regulatory Budgets was a more complex system which had already started to lead to an internal trading system across Departments before a combination of Climate Change and the crisis in the banking sector drove a coach and horses through the valuations of some major policies.)
- The third point to note is that the costs to business are not limited to simply information obligations or administrative costs; rather they include all direct costs, including "policy" costs as well as transitional and annual recurring costs. The previous initiative on reducing administrative burdens spawned a considerable industry related to measuring burdens on business, primarily based on the Standard Costs Model devised by the Dutch. That exercise became very extensive in various countries and was taken up at EU level but it was always limited to a particular set of burdens on

¹ See, <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/11-671-one-in-one-out-methodology.pdf> for the Better Regulation Executive's OIOO methodology.

business, in particular, "information obligations". For many businesses, the real cost came from the substance of the regulation and not just from peripheral administration. These costs were the "policy costs", such as having to install expensive equipment to meet standards set in the regulation or having to change complex internal systems. The cost to business being measured in One In One Out are now intended to be a realistic assessment of actual costs to business. The method of calculation is not as prescriptive as under previous initiatives, so long as the economist working on the impact assessment is sufficiently persuaded of its validity and the analysis is confirmed by the an independent body, the Regulatory Policy Committee. The Standard Costs Model is no longer the yardstick (although it can still be used).

1.2. The impact of One In One Out is very significant. In addition to further reinforcing the need for policy-makers to consider the impact of proposals on business (of which they were already pretty well aware), it has made policy-makers focus on the stock of regulation. This has always been one of the biggest challenges of any of the previous regulatory reform agendas in the UK because it is in the nature of politics always to be seen to be doing new things and not simply to be quietly running the country. Consequently, Ministers have never been keen to explore the stock of old regulations and resource has never been available to tackle anything which was not a Ministerial priority. Now, however, the stock is the supply of "Outs" (enhanced by the Red Tape Challenge programme², designed to systematically review the stock of legislation, with the assistance of "crowd-sourcing" techniques) and therefore now worthy of considerable attention. The impact on the "Outs" may turn out to be the greatest achievement of this initiative. It also means that impact assessment has to be applied (to some extent) to these pre-existing regulations, as well as to new proposals. This is in order to establish the value of the "Out".

1.3. There are some limitations to the scope of this initiative. It applies only to regulations that have a direct impact on business or civil society organisations. It does not apply to EU Regulations, Decisions and Directives. This is because these are out of control of the UK government, except insofar as reducing "Gold-plating" in the previous transposition of a Directive can count as an "Out". It does not apply to tax administration (because that is being dealt with separately by the Office for Tax Simplification) and it does not cover "financial systemic risk". Better Regulation initiatives in many countries often exclude the tax system and often exclude financial services as well. This is a serious drawback in regulatory reform from the point of view of a business because tax and financial services tend to assume the lion's share of the problems for business. However, the UK's record in this initiative has greater respectability. "Financial Services" are not outside scope in entirety but only the relatively narrow sphere of "financial systemic risk" and the tax system is, as mentioned, being dealt with in another way. Against that, the system applies to more than just formal legislation. It applies to both primary and secondary legislation and also applies to codes of practice and self-regulation which are backed by statutory force, to guidance issued under statutory powers and to by-laws made by central government.

² <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>.

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1.4. This is a remarkable achievement for the UK. Twice a year, coinciding with the Common Commencement Date for the publication of new regulations, Departments have to publish their forward programme of regulation in a Statement of New Regulation. This also tracks the progress of One In One Out.³ The latest report claims four achievements:

- Since January 2011, the increase in burdens on business remains at zero;
- The volume of new regulations with net costs to business has fallen from 9 to 5 between the second half of 2011 and the first half of 2012;
- The percentage of impact assessments rated fit for purpose has increased; and
- The UK has deregulated more than it has regulated.

1.5. A large part of the success of this scheme has been down to the central oversight of two bodies - the Regulatory Policy Committee⁴ 4 and the Reducing Regulation Committee⁵ 5 - plus the coordination of a central unit, the Better Regulation Executive, as well as the fact that the UK's legislative system allows the Executive Branch almost total control over the submission of legislative proposals, therefore the entire legislative machine can be largely subject to impact assessment and to this form of regulatory budget.

1.6. The Regulatory Policy Committee (RPC) is notable for being a team of independent experts rather than government officials or Ministers, yet working inside the Executive process. In both the EU and US system, oversight of impact assessment is by officials. The Reducing Regulation Committee (RRC) is made up of Ministers, chaired by the Secretary of State for Business. The RRC has asked the RPC to review all impact assessments and award then a Red, Amber or Green opinion, based on the analysis and calculations contained in the impact assessment. Taking the RPC's opinions into account, the RRC decides whether to proceed with "Ins" and whether "Outs" are available to compensate.

1.7. A "Green" allows the dossier to go to the RRC. An "Amber" requires some adjustment but the RPC does not need to check it again before going to the RRC. A "Red" will be sent back by the RRC so the Department must re-submit to the RPC until it earns an "Amber" or "Green". In 2010, 44% of dossiers were

³ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/12-p96a-one-in-one-out-third-statement-new-regulation.pdf>.

⁴ <http://regulatorypolicycommittee.independent.gov.uk/>. See also its 2011 Report at <http://regulatorypolicycommittee.independent.gov.uk/wp-content/uploads/2012/04/RPC-REPORT-IMPROVING-REGULATION-March-2012-FINAL.pdf>.

⁵ <http://webarchive.nationalarchives.gov.uk/+/http://www.dius.gov.uk/policies/bre/better-regulation-framework/regulatory-decision-making/reducing-regulation-committee>.

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given “Red” as being not fit for purpose. Many of these were also sent back again after re-submission. In 2011, the percentage of dossiers failing decreased to 28%, indicating that the discipline is working.

1.8. Part of the success is clearly due to the single-mindedness and skills of the RPC but credit has also to be given to the discipline shown by the Ministers in the RRC and the BRE for developing and implementing the methodology and processes to make this scheme work. On the very rare occasion that a Minister insists on a dossier being considered by the RRC despite its having a “Red”, the RRC has either rejected it or insisted that the full RPC report on it is published alongside the legislation.