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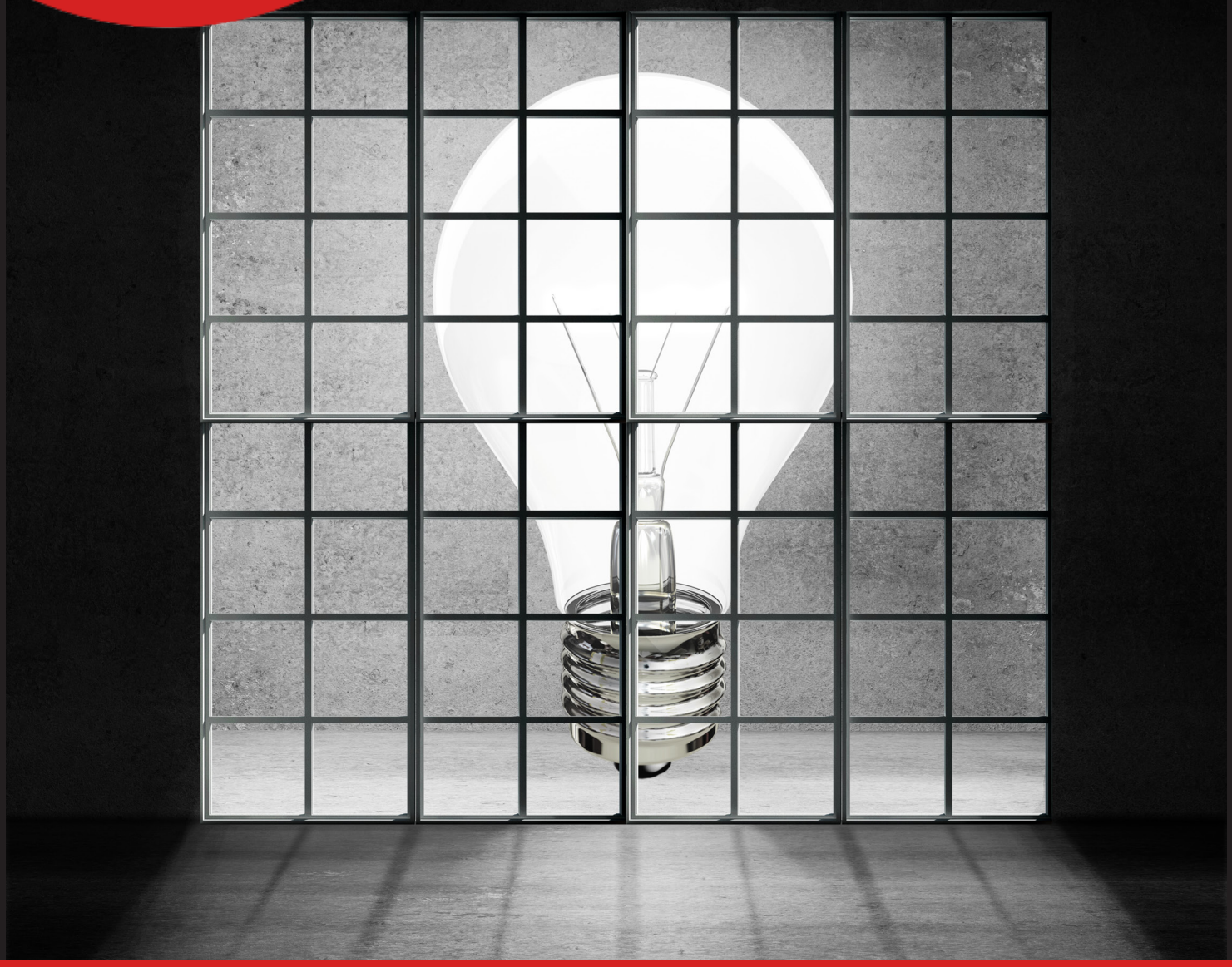

REMOVING THE BARRIERS TO ENTERPRISE

SUBMISSIONS TO THE GOVERNMENT'S TASKFORCE ON INNOVATION, GROWTH AND REGULATORY REFORM

Contents

Introduction

The prime minister established a Taskforce on Innovation, Growth and Regulatory Reform ('TIGRR') in February 2021. Led by MPs Sir Iain Duncan Smith, Theresa Villiers and George Freeman, its remit was to 'to scope out and propose options for how the UK can take advantage of our newfound regulatory freedoms to deliver these aims, as well as challenging the Government's own emerging proposals'.

The TIGGR received submissions from, or met, with more than 150 organisations and individuals. The IEA is publishing three of those contributions in this collection: the IEA's own submission, drafted by me, as Head of Regulatory Affairs, and those of Sir Mark Boleat and Jon Moynihan OBE, two distinguished commentators who gave their personal view.

The TIGGR published its report and recommendations on 16 June 2021. Its findings are wide-ranging and ambitious, and reflect some of the recommendations made by our authors. We are publishing this collection to inform the discussion about the TIGRR report and regulatory reform in general. The report and the three submissions illustrate the scale of the challenge to achieve the prime minister's objectives of driving innovation, reducing barriers to entry and improving the regulatory environment for small businesses. They also show that there are myriad opportunities to make progress towards them.

Sir Mark reflects on the structural reasons for the present regulatory burden, the need to address regulator accountability and the tendency of incumbent business, far from seeking deregulation, to favour ever greater regulation as a barrier to entry for potential competitors.

Jon Moynihan reflects on the differences between common and civil law traditions, and the UK's regulatory culture and incentives. He puts forward some key areas such as health care and financial services, where reforms could transform innovation and competitiveness.

I put forward three examples of current regulations that could be reformed, one concerning industrial goods, one concerning digital services and one concerning employment law, and considered the benefits and trade offs that might result.

The submissions have been lightly edited here for house style and consistency.

Victoria Hewson

IEA Head of Regulatory Affairs

Submission by Sir Mark Boleat

Sir Mark Boleat has held a number of significant regulatory and public policy positions. From 2012 to 2017 he was Political Leader of the City of London Corporation and Deputy Chairman of TheCityUK and the International Regulatory Strategy Group. He has been Chairman of the Jersey Competition and Regulatory Authority and a member of the Regulatory Policy Committee. He set up the system of claim management regulation and has also served on a number of commercial boards and chaired charitable bodies. He is currently Chairman of Link, which runs the UK's cash dispenser network, and a Vice Chairman of the International Business and Diplomatic Exchange. He was knighted in the 2017 Birthday Honours for services to the financial services industry and local government.

Introduction

The Task Force's terms of reference include regulatory reform. This short submission addresses the key issues of the nature of the regulatory burden and the accountability of regulators.

My qualifications for commenting on these issues include having chaired regulatory bodies, established a regulatory regime (for claims management companies), chaired regulated companies, membership of the Regulatory Policy Committee and author of an influential paper on regulation[1].

Summary

The key issues are-

- The regulatory burden largely stems from a variety of unofficial forms of regulation, not subject to any political oversight. These include guidance, which is often interpreted as being mandatory, information requests and policies and practice on inspection and enforcement activity.
- Regulators have huge scope in deciding what to do and how to do it. They are tempted to go after easy targets rather than real problems.
- There is little effective accountability of regulators.
- Regulation is subject to an impact assessment regime overseen by a Regulatory Policy Committee. But it covers only a small fraction of regulation and the regime it uses is not fit for purpose because it bears no relation to the way that regulation is developed.
- There is little enthusiasm among established businesses for deregulation partly because regulation can provide an effective barrier to entry.
- A priority for Government should be to develop a strategy to reduce the regulatory burden caused by misuse of guidance and information requests, and a concentration of inspection and enforcement activity on process rather than substance. This must

1 Boleat, M. (2009) An Agenda for Better Regulation. London: Policy Exchange

include the introduction of a robust regime for the accountability of regulators, embracing comprehensive audits of their effectiveness.

The nature of the regulatory burden

Over the years, if not decades, there have been a number of initiatives aimed at reducing regulation but so far the record is unblemished by any success. This is because they have failed to understand the nature of regulation, from which it automatically follows that any action is unlikely to be successful.

In the early stages of the Brexit debate there was much talk of "reducing red tape from Brussels". This has been toned down, recognising that the vast majority of regulation is home-grown, and indeed there is now obvious additional regulatory costs resulting from being outside of the European single market. However, that should not disguise the fact that membership of the European Union contributed, albeit indirectly, to a significant increase in regulation. This is largely because it gave ample opportunity for the gold plating of regulations, and generally it accelerated the process of regulatory creep. Regulators and officials sometimes argued, without justification, that EU requirements meant that there was no alternative to what they were proposing, thereby stifling proper debate and scrutiny.

It follows that Brexit should offer an opportunity to address the regulatory issue – and there is an expectation that this will happen. It would certainly be welcome to compensate for the added regulation caused by the departure from the Single Market.

So what are the real regulatory problems? Generally they are not the result of the wording of legislation and regulations, scrutinised, albeit often not effectively, by Parliament. Rather, they stem from a variety of unofficial forms of regulation, not subject to any political oversight. These include guidance, which is often interpreted as being mandatory, information requests and policies and practice on inspection and enforcement activity, particularly for those businesses subject to a specific regulatory regime and regulator.

A good example of regulation by guidance relates to the right to work in the UK. The law provides that an employer may be liable to a civil penalty if they employ someone who does not have the right to work in the UK. However, employers have an "excuse" if they conduct appropriate checks. But the Home Office guidance effectively requires such checks: "You should conduct a right to work check before you employ a person" and "You must obtain original documents" and "You must keep a record of every document you have checked". There is a general belief that such checks are a legal requirement and employers may face an inspection of such documents – much easier than inspecting whether illegal workers are being employed.

The issue of enforcement and inspection regimes raises an equally important issue of the huge scope that regulators have to decide what to do and how to do it. It is sadly the case that many regulators – and police forces – are tempted to go after easy targets rather than real problems. A good example of this is the way that HMRC enforces minimum wage legislation. There is an annual ritual of big companies being named and shamed for non-compliance. They are easy targets for HMRC because the minimum wage regulations are very complex and difficult to comply with, and big companies have immaculate records that can be inspected. By contrast, businesses that completely flout the regulations and have minimal records are generally left

alone. Another example is the refusal of competition regulators and policy-makers to address sectors where there is substantial malpractice, such as estate agency and car servicing, instead preferring to concentrate on easier issues such as bank accounts.

Within regulatory bodies the chief executive has huge power in deciding policy and practice. It is quite common for a change at the top of a regulatory body to be accompanied by significant changes which can have a material effect on individual businesses and whole sectors. There is little effective accountability and often no meaningful checks and balances within regulators. Boards of regulatory bodies often do not have the right balance of experience and expertise, partly because of political interference and bureaucratic delays in the appointments process and partly because there is a poor risk/reward balance for those willing to put their names forward.

Regulation of regulators

So what about the regulation of regulators? Ministers and officials have limited power and generally choose not to intervene if a regulator is not functioning effectively – unless there are political consequences. Other than the Treasury Committee, select committees take little interest in regulators and an appearance before a Select Committee is no grounds for concern.

Technically, regulation is subject to an impact assessment regime overseen by a Regulatory Policy Committee. But it covers only a small fraction of regulation. Financial services are largely exempt, as are most regulators. Also regulators, like regulated institutions, get round regulation by using the informal methods. Even where it does apply, the regime is not fit for purpose because it bears no relation to the way that regulation is developed. Primary legislation now generally does little more than provide for regulations to be made so an impact assessment at that stage is often meaningless. And the regulations (which may or may not be subject to an impact assessment) may simply set out a framework for making rules – for which there is no impact assessment. Options are required. This is generally inappropriate and simply leads to three options: do nothing (not on because something must be done); an over-the-top option (rejected because OTT) and the preferred option. A correct approach would be to require an impact assessment of the final decision with a commentary and analysis, where appropriate, of options that were considered and rejected. This would fit in with how policy is made – or should be made.

Why established businesses do not want deregulation

There is little enthusiasm among established businesses for deregulation. There are good and bad reasons for this. The good reason is that much of the cost of regulation is a one-off implementation cost, which is not recovered if the regulation is repealed. To take a simple example, the unnecessary legal requirement for no-smoking signs in buildings and even vehicles resulted in some initial implementation costs, none of which will be recovered if the regulation is repealed. Indeed there will be a limited cost for those businesses that decide to remove the signs. The bad reason is that for established businesses regulation can provide an effective barrier to entry. Those businesses that have borne the cost of implementing regulations have no wish to see potential competitors having an easier ride.

What should the Government do

So what should Government do? There is no need for a "big bang" approach, which would simply lead to the ritual complaints about lowering of standards. Rather, there should be a low-key, but high impact, approach, which would:

- Identify the true nature of the regulatory burden, largely by talking to trusted trade associations, companies and experts to understand fully those regulations and parts of the regulatory process that need to be reformed.
- Reform the impact assessment regime to align it with the way that policy is actually developed.
- Identify some "quick wins" in respect of laws and regulations which would not be politically controversial. One example would be to end the requirement on the Post Office to deliver to each address six days a week – a real example of deregulation enabled by Brexit. A major quick win for new businesses would be reform of anti- money-laundering requirements, which are effective in making it very difficult for new businesses to open bank accounts and arguably ineffective in preventing money laundering.
- Develop a strategy to reduce the regulatory burden caused by misuse of guidance and information requests, and a concentration of inspection and enforcement activity on process rather than substance. This must include the introduction of a robust regime for the accountability of regulators, embracing comprehensive audits of their effectiveness.

Submission by Jon Moynihan OBE

Jon Moynihan is a venture capitalist and private investor. Formerly Chair and co-Principal of Ipex Capital, the demerged high-technology venture capital arm of PA Consulting Group, of which he was Executive Chairman. He has founded and chaired a dozen or so successful new companies. Away from business, Jon is a Foundation Fellow, and previously Chairman of the Campaign Board, at Balliol College, raising £35 million. He is a Distinguished Friend of Oxford. For 7 years a Fellow of Gray's Inn, and President of the Royal Albert Hall from 2015 to 2019. Jon is Chair of the Initiative for Free Trade and of Parents and Teachers for Excellence, and a member of the Free Market Forum Advisory Board. He is also a director of IEA Forum, the non-charitable arm of the IEA.

In recent decades, business regulation in the UK has mushroomed. The more a company is required to respond to the requirements of regulators, the less it can focus on its core purpose (to provide a product or service, fairly, at the lowest possible price and the best possible quality). An increase in regulation, therefore, whatever supposed benefit it offers, necessarily also leads to a diminution in economic growth.

In the UK, the rapid growth of regulation over the past half century, and the increasing predominance of an accompanying overweening regulatory mindset, can be seen as a direct result of the UK's nearly 50-year membership of the Common Market/EU. As has often been said, the Napoleonic Code --the predominating legal approach in the EU—carries the philosophy "everything that is not explicitly allowed is forbidden", whereas the UK's (and the US's) Common Law has a perspective of "everything that is not explicitly forbidden is allowed." With the UK's increasing subservience over the years to innumerable directives from Brussels, something that increasingly came to prevail in British law and business governance, a Napoleonic-code ethos has increasingly predominated in our country. Both regulations, and regulators, have flourished and metastasised.

It is not a coincidence —indeed, it's precisely because of the mushrooming over the decades of regulation in the EU (and thus in the UK)— that of all the major economic areas in the world, the EU'seconomic growth has, over the past three decades, been the slowest: slower than any but a very few obvious outliers such as Zimbabwe and Venezuela. The UK, by occasionally opting out (where it could) from the more egregious regulations, and sticking to Common Law where possible, has managed in recent years to grow a little bit faster overall than the core EU countries; but the regulatory mindset has taken hold in our country and it will take an enormous effort to root it out, if we wish to return the country to a level of economic growth that will bring levelled-up prosperity to all our people.

The remit for the task force has emphasised finding "low-hanging fruit" that the government can quickly focus on. You are, however, asked to cover the issue more widely than just seeking the identification of a few particularly poor regulations. Thinking about how the government might create an all-round better regulatory environment, I suggest the following actions (then examine each in more detail):

I. The government should modify its current approach to regulation, changing it back in the direction of the traditional British common-law approach of laissez-faire, rather than the constricting Napoleonic Code approach that has infiltrated our country from the EU.

II. At the same time, a great number of specific regulations (as well as some regulators), both within sectors and cross-economy, could and should beneficially be removed.

III. Simultaneously, the government should commence a major, systematic process of ongoing deregulation that would cover all regulators, all quangos, and all regulations, and which would piece-by-piece neuter the past decades of regulatory creep.

I. The government should modify its current approach to regulation, changing it back in the direction of the traditional British common-law approach of laissez-faire, rather than the constricting Napoleonic Code approach that has infiltrated our country from the EU.

It is easy to get into a mindset where the answer to everything is to regulate the populace, particularly the business community, just a bit more. This mindset has become all the more prevalent since the left has begun so comprehensively to win the culture wars, where 'Capitalism' –-an idea that has brought the human race out of poverty, bringing everything from the automobile to cheap food to the iphone to affordable housing— is ubiquitously an ugly word, and business people are depicted far too frequently as villains --rather than, as they should be seen, admirable people. Capitalism somehow is bad for the human race; business people are basically crooks; of course they need to be regulated, this view goes -- the more regulation the better.

But while that anticapitalist view gets great, sometimes almost universal, play in the media and academia, somehow when it comes to elections the great British people usually manage to reject such a clearly bonkers view of the world. The electorate have at this time elected a Conservative government with a considerable majority: if this Conservative government doesn't manage to reverse the trend of greater and greater regulation, it is hard to see how it can ever happen. Doing so will, however, need a change in approach overall, not just winkling out the most egregious regulations. I argue in this section that:

A. There are too many regulators: this needs to be reversed

B. These regulators apply (in the main) dysfunctional philosophies of how they should regulate: they need to be trained into a different way of thinking

C. The regulators are, often, too heavy-handed: they need to apply a lighter, more sensible touch

A. Reverse the proliferation of regulators and regulations. In the UK, a regrettable tendency has developed in government: 'If there's a problem, let's create a regulator.' Hardly a month seems to go by without a new regulator being announced. Each has an apparently justifiable purpose, but the outcome of the regulation is rarely as planned, and the cumulative impact of so many is a disaster. The most recent, unless I

have missed an even newer one, was described proudly last month by the Economist as "The Office for Environmental Protection, Britain's new watchdog." The Economist appears concerned that "it will not be fully established until the autumn". Of course, there were no doubt super reasons for creating this "watchdog". But the mindset underlying this assumes that every new regulator is an unmixed blessing. That viewpoint misses seeing that whenever the government interferes in any situation, it does so through rules and regulations. Those rules and regulations constrain, each time, what our citizens can do. The economic harms from this constraint swamp, probably more often than they do not, any presumed or actually benefit.

A further example can be seen in the recent white paper on Audit Reform, which (of course) advocated more regulation. Jeremy Warner wrote a magisterial attack[1] on how this white paper illustrated the apparent impossibility of stopping the remorseless advance of more and more, and worse and worse, regulation.

Again: when Theresa May created, not too long before her downfall, a "Minister for Loneliness", no doubt she somehow thought this was a terrific idea. But if that minister was to do anything but utter vapid nostrums, they would have to enforce something or other, and that enforcement would bear down on some people --even if it lifted up others. No new government action or initiative is all good. Continued proliferation of government poking its nose into its citizens' lives will narrow, further and further, the ability of its citizens to enjoy their life without interference from some outside nosy busybody, and will further constrain the ability to produce and sell world-beating products and services. Quentin Letts has written a joyful jeremiad[2] which, surely, our government would want to take heed of.

So the problem starts with a proliferation of regulators and regulations.

> **Action One:** tell the Civil Service to stop suggesting new regulators.

The situation is then made way worse by the type of regulation written, and the draconian way in which the regulations are applied.

B. Train the regulators to think differently. In my various personal experiences with regulators over the years, it seems to me that there has been a gradual but general transformation of the attitude shown by regulators to the regulated. This applies to many aspects of government –-for example, in recent years HMRC seems to have changed from a more usual collaborative approach to a more frequent hostile one. Worse is the attitude of the quango regulators. From the Electoral Commission to the Charity Commission, and on, the attitude seems to be "we know best, our going-in suspicion is that you are in the wrong, you will do as we say." The individual working as a regulator adopts a somewhat selfrighteous view of the world, assuming that they know better and that there is a strong possibility of malfeasance on the part of the regulated individual. There is no room for doubt as to who is in charge, and the full resources of the state can be brought against any entity not accepting that

1 'Regulation must not be allowed to crush the spirit of risk takiung in corporate Britain', *Daily Telegraph,* 18 March 2021 (https://www.telegraph.co.uk/news/2021/03/18/regulation-must-not-allowed-crush-spirit-risk-taking-corporate/)

2 Letts, Q. (2022) *Stop Bloody Bossing Me About: How we need to stop being told what to do.* London: Little Brown Book Shop Group Limited

situation. This attitude seems to be particularly applied to any who are seen as being of a right-wing bent.

A different viewpoint needs to be instilled. First, the vast majority of citizens are law-abiding and wellintentioned. Regulators should understand that, and make assumption of innocence their going-in position. Second, a light touch, at least in the first instance, is always better. Will the proposed steps, that the regulator is wanting to suggest, improve, or worsen, outcomes? Is the malfeasance that the regulator suspects is taking place, worth going after, or is it trivial/accidental? Is the regulator being too woke/partial/leftist indoctrinated, thus making them fail to understand what is truly problematic, against what is beneficial? Addressing these issues might start with giving training to all regulators and members of quangos into understanding what they are there for. Regulators would be told that they are there to avoid only egregious problems, and not in a way that creates even more problems by requiring a plethora of compliance officers, form filling, risk avoidance activities. Instead, regulators should be taught to have a light touch, constantly thinking about how they can help what they should be taught to think of as their "clients" to achieve the clients' objectives, rather than through heavy-handed interference and a belief that "regulator knows best".

> **Action two:** Regulators should be trained to understand the benefits of a light touch approach.

It is hardly surprising, but it is dangerous, that regulators see themselves as understanding, better than do the regulated themselves, what is good for business, or people, or any given entity. Carrying as they do that mindset, regulators so frequently seek to increase their powers, not just to regulate more things, but also in the degree to which they are allowed to sanction or punish anyone they see as violating the regulations they or the government have created. There are many drawbacks to regulation, and always unforeseen and unintended consequences. Regulators mostly have only a very small understanding of the people or entities they regulate, and tend to be insouciant regarding the potential negative impact of their decisions or interference.

> **Action three:** Regulators should be regularly challenged as to whether their powers should be lessened, rather than increased.

The belief, that there's no problem that can't be solved with a bit more regulation, goes deep. A classic example of this is the so-called precautionary principle. At its worst, for example in the EU's blanket ban of genetically modified crops, it leads to appalling decisions, such as the refusal to allow cultivation of Golden Rice[3], which was widely acknowledged to be to have the potential to reduce blindness among hundreds of thousands of Vitamin A-starved citizens in underdeveloped countries. It has been alleged by some that the application of the precautionary principle in this case was a cynical manoeuvre by companies who grew products that were competitive with Golden Rice.

3 'GM crops don't kill kids. Opposing them does', *The Times*, 1 August 2013 (https://www.the-times.co.uk/article/gm-crops-dont-kill-kids-opposing-them-does-tfmpmvq5kdl

Application of the precautionary principle is not confined to the European Union: drug regulators around the world apply it, apparently in the most zero-risk-based way. Two decades ago, the FDA banned the antihistamine Seldane because heart irregularities had been detected among a few elderly gentleman who had taken it. Now the obvious sensible decision to take, on finding that out, would have been to provide warnings to elderly gentleman not to take this drug, or at least to be cautious as regards the potential impact on their hearts. Instead, the FDA took the drug off the market instantly. It is not so much the several billions of dollars of revenue that Seldane's manufacturer lost, but what lay behind that loss; the disappearance of the huge amount of benefit and convenience that all the annual over 100 million worldwide users of that antihistamine had enjoyed.

Again, take the enormously popular heartburn drug ranitidine (Zantac), discovered in 2020 to be connected to NDMA, a carcinogen (although so far, no solid evidence has been published that I know of that definitively connects ranitidine to cases of cancer). When the NDMA connection was established, ranitidine was immediately banned. Was banning ranitidine the correct response? After all, it is fairly clear that eating a lot of bacon increases the risk of cancer. Are we going to ban bacon? If not, then why do we ban ranitidine (which, even if and as a direct cancer connection is proven, will almost certainly show cases of bladder cancer of a far lower order of magnitude than the cases of cancer caused by bacon)? When Zantac was banned, the reaction of heartburn sufferers around the world was to buy up as much ranitidine as possible in the 24 hours they had before it was removed from the shelves, and stockpile it. Those stockpiles are now running down fast. Doctors and Pharmacist users of Zantac, of course, had the best access to it at the time of the ban, so are still happily working through their (larger) stockpiles; civilian heartburn sufferers are less fortunate. Ask most former users of Zantac: Now you know about the (very small) possibility of getting cancer from your use of Zantac, if I nevertheless gave you a pot of Zantac, would you throw it away, or carry on using it until you ran out? I guarantee you that 99 out of 100 Zantac users would take the pot and use it. Why cannot solid citizens be trusted to make their own decisions on matters such as this? How sure are we that nanny knows best? Now that the science is fully understood and explained, why is not user advisory the way to go, rather than a complete precautionary principle-style ban?

> **Action four:** Ban any zero-risk-based application of the precautionary principles: insist that regulators make public judgements on the balance of upside and downside.

C. Constrain regulatory Overreach. They say that if you give someone a hammer, they see every problem as a nail. Thus, regulators given powers over organisations see further rules and regulations, year after year, as a natural thing to aspire to. We routinely see regulators saying that their problem is that they need more powers, more money, more reach into the organisations they regulate. To argue for that is as natural to them as breathing. But, as argued above, the opposite is the way to go; if we are to give our economy a chance to compete in the world, it's crucial for us to find ways to loosen the constraining grip of regulators, not increase their powers.

A particularly valid exercise would be to consider whether any particular area, or business sector, could be divided into two: one part requiring regulation and the second part not requiring it, or requiring less; ensuring that for the second less regulated part, there is an explicit 'caveatemptor' warning that ensures those engaging with that company accept the higher risk involved. This is theoretically already done to a degree in the financial world, where the rules regarding how a financial institution should deal with its customers vary according to whether the customer is "sophisticated" or not. But the recent case of London Capital Finance shows that the regulator, the FCA, was itself unable to understand LCF's business, and this gave a false impression of security to customers buying LCF's unregulated minibonds. Judge Dame Elizabeth Foster gave a "blistering review into the FCA's failures in the scandal"[4]. Here is yet another example of a regulator whose achievements fell short of what had been envisaged when it was set up. Would not a 'caveat' emptor' approach have been better, with LCF being banned from selling to retail?

As a further example, take the Charity Commission, which operates often with a heavy hand and in matters that it seemingly has very little understanding of. One purposal would be to divide all charities into two segments: one segment would be overseen by the Charity Commission, and those who donated to such a charity could have the (in my but perhaps not their view rather dubious, as shown by the case of Oxfam and others) comfort of knowing that the Commission was overseeing that charity's affairs. The second segment would opt out of supervision by the Charity Commission, and 'caveat emptor' to anyone who donated to it. (Perhaps that segment could attract less, but still some, tax relief on donations.) If organisations in that second segment broke the law in any way, they would still be subject to the same, perhaps we could say worse, criminal prosecution in all the usual ways that any organisation faces, but they would not offer their donors the comfort of Charity Commission supervision. That would reduce heavy-handed regulation by quite a bit in that one area, the charity sector; it's an approach that could be applied in many areas.

Overall, to reverse the disastrous anti-progress, emotion-based trend, of ever-greater regulation, the government needs to announce that it wishes to change its approach to dealing with societal and business problems, an approach that moves us away from the precautionary principle, the civil law-style codification and the proliferation of regulators and regulations. Such an announcement might startle some people and would of course be furiously opposed by nanny statists; but over time it would come to be seen as having been a breakthrough, if the government were to say that most people are decent and trustworthy, that they don't deserve overweening interference by the state in their lives, and that it would be best in most cases if they were left to get on themselves with deciding what the appropriate action might be. The need for citizens to have full information in order to make sound decisions can be met by labelling requirements, and the provision for civil suits with aggravated damages if the company withholds information on product dangers. If the government were then to advise civil servants that the best kind of policy on any topic is not one that creates a new regulator, or quango, or enquiry, or review, but one that gives citizens freedom and allows them to work things out for themselves, then the reaction would

4 'UK regulator 'didn't understand' effect of loophole on investors being exploited in LCF scandal', *Financial Times*, 25 March 2021 (https://www.ft.com/content/5e1f8ba5-fc6b-4c4d-a6ab-a0c0227b2095)

be even better.

Action five: ask all regulators what opportunities there are for narrowing the scope of which entities they regulate

Action six: Announce a new government philosophy on regulation. As a government, espouse and articulate a mildly sceptical view of the benefits, and need for, draconian regulation, recognising that not all regulators, nor all regulations, are a net good; none are an unmixed good. Acknowledge and incorporate the traditional British common-law approach of "if it's not explicitly forbidden, then it's allowed"; apply the precautionary principle only gently, and only in the most extreme cases; trust the people and rely upon the criminal code to catch those few who betray that trust, rather than acting as though all people are going to behave badly unless constrained.

Action seven: Create a code of conduct for regulators that ensures they have a more customer-oriented focus, worrying about the overall impact of their activities and impositions, rather than seeing it as an unalloyed good to stamp out every possible infraction of the norms, or the slightest potential for harm.

Action eight: Audit current behaviours by regulators. Require all regulators and quangos to conduct an exercise on themselves that examines whether or not their regulation is in accordance with the new philosophy and code of conduct, and that changes things to the degree that they come up short against that audit.

II. At the same time, a number of specific regulations (as well as some regulators), both within sectors and cross-economy, can and should beneficially be removed.

The following suggests, on both a sector-by-sector, and an across-sectors, basis, a number of potential regulations that could beneficially be amended or removed. I suspect a good number will already have been suggested to you in other submissions. As can be seen, the list is considerable --which means that a systematic, thoroughly supervised process would be needed to capture all the potential benefits

A. Health Care

Clinical Trials. At the turn of the century, the UK had some 12% of the global market in clinical trials. The EU came along with a new directive on clinical trials in 2002, and within a couple of years, the UK's market share was 1-2%. The MHRA traditionally oversaw clinical trials very well and can now do it again — we just have to get rid of the parts of the EU regulation that caused the crash in the UK's market share. It would un-needed be necessary to task somebody of the stature and reputation of Sir John Bell of Oxford University to talk with the CEOs of the big pharma companies, and contract research companies such as Quintiles and Covance, to find out what they need to make the UK a centre for their clinical trials again, and to commit to investing in their UK locations if the needed changes were made to make it easier to conduct these trials in the UK. The MHRA are key to this –and we have seen how good they were at, to take an example, giving approvals for vaccines in record time.

Medical Devices. Again, the UK used to be global leaders in the development of medical devices but now the majority of such development is done in the US, and in Germany and its low-cost neighbour the Czech Republic (and to some degree also in China). Much of this is down to the requirements of the CE marking process – we should get our own UK process that avoids some of the more egregious CE roadblocks. (Of course, we often make it worse for ourselves by gold plating these regulations —see point I above as to how the regulators must be told to adopt a different approach). The UK has really good scientists in this area but the actual business of getting approval for EU devices has always been done mostly in Germany.

Mutual recognition. Allow mutual recognition of devices and pharmaceutical products that have been approved for use in any other compliant country. This is a more general free trade point, which will then power up global sales of products as soon as they are approved by MHRA etc.

GMO regulation. Get away from the EU's ridiculous banning of things that might save the world from hunger, disease etc.

B. Financial Services:

There is right now a major opportunity for the City of London to become the World's leading Financial Services hub. (This opportunity could be made even larger if the Biden administration follows through on its threat to put in further constraints on FinServ in the US.) You have received other good submissions for this sector, so here I offer just one overarching principle, and one specific badly needed reform:

Return to a Principles-based, not the current Rules-based, regulatory/compliance regime. This was how it used to be. The panic of 2008/9 led to massive self-defeating stringency that just entrenched the incumbents and significantly reduced both innovation and customer benefits.

Dump/replace MiFID. Although it was intended to create a more transparent and competitive financial market, it has failed to achieve its objectives and discourages the creation of new firms due to excessive EU regulation. An IEA paper that explores this issue can be found here[5]. Philip Booth also explores financial services regulation at greater length[6].

For both of these points, there are plenty of people in the City, practitioners of high capability such as Lord (Michael) Spencer, hugely qualified to help shape this regulatory reform. Note however that those wanting reform will in the main tend to be challengers/mid size players: the incumbents love regulation --the more the better-- because they can afford it and have built systems to deal with it; it may lower their productivity, but they can live with that because the regulation keeps competitors out as a result of the huge costs of building compliance from scratch.

5 McBride, C. (2019) Not everyone's cup of tea. IEA Financial Services Unit Paper. London: Institute of Economic Affairs

6 Booth, P. (2019) Regulation without the state: The example of financial services. IEA Discussion Paper No.97. London:Institute of Economic Affairs

C. Employment

The reason why the EU has in general such high unemployment levels is that they have a view, urged on them by unions and big corporates, that the more regulation there is of employment, the better. The UK has to some degree avoided this trap, in great part because of the reforms Lord (Peter) Lilley put in in the 1990s; but that advantage has gradually been eroded as we adopted more and more EU directives, and added a few silly regulatory laws ourselves. The four policies discussed below are discussed at length in Professor Len Shackleton's 'How to Create New Jobs'[7].

Occupational regulation/licensing. Almost one in five UK employees (19%) require a license to work – a proportion that has doubled in the last 15 years. Interesting examples include taxi drivers, private security guards, heavy goods vehicle drivers, care workers, and most obscurely, farriers (someone who puts shoes on horses, and you must undertake a four year apprenticeship to get this licence). Recent examples include childcare staff, security staff, private investigators, estate agents, social workers, plus the requirement for graduate-only police and nurses. Addressing this policy is important in times of covid when many people are trying change job; and it is aligned with the government's 'reskill' campaign.

Apprenticeship levy. An expensive farce, the scheme limits employers' ability to use funds for appropriate retraining by tying it to phoney apprenticeship rules. Abolish the apprenticeship levy or, at the very least, liberate how it is spent. (This is not arguing against the very good idea of apprentices. It's the levy which is dysfunctional —merely a way of taking more money from companies thus making them less likely to succeed and less likely to grow organically/as they best see fit.)

Pension auto-enrolment. Reform should attempt to maximise the number of people who have a preference to save but choose not to because of inertia, whilst minimising the number of people who remain contributing due to inertia but for whom it is not rational to save. The following three reforms should move the scheme in that direction whilst reducing burdens on employers:

a. Increase the minimum earnings threshold that requires auto-enrolment to £15,000 a year and index it to inflation. This would roughly triple the minimum contribution and make it meaningful. i.e. avoid costly bureaucracy of low contributions yielding annual pensions of only £10-£15 from the age of 65.

b. Increase the age at which individuals are auto-enrolled to 25.

c. Reduce the employer's contribution to zero so that the scheme is a genuine "nudge" scheme, even though this would politically be difficult.

Agency Worker rules. Workers employed via agencies currently have a right to full employee status after 12 weeks working for a company. Agency working will be important for employers trying to test the water post-lockdown, without committing to permanent contracts. Current law gives agency workers full employment rights too early and this raises costs. Flexibility is hugely important in order to give a turbo boost

7 Shackleton, J.R. (2020) How to create new jobs. IEA Covid-19 Briefing Paper. London: Institute of Economic Affairs

to the Covid recovery. The most recent laws, requiring some gig economy workers to be treated as employees, will of course lower economic growth across the board.

D. Intrusive Nanny State

GDPR and e-privacy regulations (not the e-commerce directive). The GDPR regime is suspicious of innovation and inherently protectionist[8]: its prescriptive and complex requirements mean smaller entrants find it harder to ensure compliance. Smaller companies lack the resources to monitor and record compliance with the GDPR, which also obliges some businesses to have a dedicated data protection officer. Smaller firms might choose to risk sanction to avoid the substantial compliance costs, making GDPR self-defeating. Such matters should be determined by freedom of contract. The whole thing is a nonsense and a huge drag on productivity, both for providers and users – if you add up the number of times millions of people are clicking 'I accept' etc over and again, every day. Indeed, it is an enabler of fraud because no one ever bothers to read any of it – the whole nation would grind to a halt if people did. So it is totally useless.

E. Personal/Lifestyle

E-cigarettes. Repeal Article 20 of the Tobacco Products Directive, which created petty and pointless regulations for the sale and promotion of e-cigarettes and e-cigarette fluid. More use of e-cigarettes and vaping leads to less, relatively more harmful, tobacco smoking.

Tobacco. Repeal the ban on menthol cigarettes (introduced earlier in the year) which is a legacy of EU membership and will fuel the UK's already large black market for tobacco. Similarly, remove the ban on retailers being able to recommend reduced harm tobacco products to customers.

Drugs. Legalise cannabis. This could be an easy win, popular for young people, and a new source of tax revenue. (Note: the best way to achieve this is legalisation, not de-criminalisation.) Christopher Snowdon estimates VAT plus a 10% tax would raise about £500 million per year in tax revenues[9]. This is the sort of thing that 4 years later everyone will wonder what the fuss was. Half of the US has done it already and the other half is swiftly following. Some of the undoubtedly concerning personal harms caused by cannabis consumption will persist –-but no worse than they are now, and possibly less, as removal of criminal sanctions lead to more benign versions of the drug (prohibition being a direct cause of more potent packaging of the drug into skunk, just as banning laudanum led to heroin, banning cocaine led to crack, banning alcohol led to whiskey rather than beer or madeira). Many other harms from cannabis, such as criminality, recruitment of young children and street violence, will be cut out – at least as far as this one drug is concerned. Further details of the policies above can be found in 'Vaping Solutions: An easy Brexit win' by Christopher Snowdon[10].

8 Hewson, V. and Tumbridge, J (2020) Who regulates the regulators? No.1: The Information Commissioner's Office. London: Institute of Economic Affairs

9 Snowdon, C. (2018) Joint Venture: Estimiating the Size and Potential of the UK Cannabis Market. IEA Discussion Paper No.90. London: Institute of Economic Affairs

10 Snowdon, C. (2017) Vaping Solutions: An easy Brexit win. IEA Current Controversies No.54. London: Institute of Economic Affairs

F. Hospitality

Restaurants – consult on creating a more relaxed regime. Keep an eye on whether the employment restrictions shouldn't be relaxed even more. Consider allowing even more hiring from abroad if the employer provides private health care for the immigrant for the first 5 years, so they are not a strain on the NHS.

Pubs. Help pubs get back on their feet by allowing ventilated, designated smoking rooms if the owner desires. Christopher Snowdon explores the issue and also suggests we halve alcohol duty to bring it closer to the European average (and get rid of a bunch of smuggling. Cigarettes the same)[11]. After Covid, this could help pubs bounce back thus preventing many from going bust.

G. Energy

Safe Nuclear. Despite having the science base to do well in this area, we are being outcompeted by the US and Canada who are racing ahead on this. We need to figure out what is stopping people from developing, for example safe Molten Salt reactors in the UK when they are already handing out contracts for them in Canada and the US.

Hydrogen. Some say it has a big future; others that it will always be too expensive. It shouldn't be for us to judge. We should just clear away regulation that makes it difficult for people to develop new hydrogen technology in this country.

Fracking. Yes, seriously. It will have a far more beneficial impact on lowering our carbon emissions than any 'green' policy proposal. It will be a major geopolitical defence against Russia's encroaching gas hegemony. And it will stop the steady drain of jobs, out of UK companies that are high consumers of energy, to China, Germany and the US. When these jobs go to China or Germany, global pollution increases not decreases: these two countries rely so much on coal that global emissions rise - far more than is/was happening while the jobs were in the UK with our environmental and climate policies.

H. Fisheries

Fishing, Processing, Exporting. Many individuals, such as Sir John Redwood, have written compellingly on the various ways on which our fisheries policies could be re-formulated both to improve fishing stocks and to support our fishing industry. I therefore don't elaborate any further on this area here, but merely refer to those many documents, with the overall suggestion that considerable benefit could be captured: for the environment, for our fishermen, and for our fish processing industry, if those policies were adopted.

I. Housing/Building/Planning

Categorisation. De-regulate to allow easier switching from retail to housing, work/living spaces, accommodation above businesses etc - especially to save our high streets.

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11 Snowdon, C. (2014) Closing Time: Who's killing the British pub? IEA Briefing 14:08

Stamp Duty. Should be reduced to 2010 levels (or scrapped), then devolved so that local governments have the capacity to reduce it further (though not to increase it back above 2010 levels). Stamp Duty is also too complex, with lower rates for self-built homes, and for properties left empty or allowed to become derelict, creating an incentive for people to leave properties vacant. It is not enough to say that increases in stamp duty lead to an overall increase in revenues (this is surely inevitable when such swingeing increases have been imposed); account needs to be taken of the very significant reductions in mobility, thus in personal freedoms to take but one example, that these increases have led to.

Green Belt. Reform the Green Belt. It has grown significantly in recent years. We should allow construction on it, especially on brownfield sites and on parts close to train and tube stations and city centres.

Jacob Rees-Mogg and Radomir Tylecote explored all three of the above polices in 'Raising the Roof'[12] and some of those proposed changes are as a result now in train.

J. Transport

Deregulate public transport fares and end taxi licensing[13].

E-scooters - Allow their ownership and widespread use. Possible speed limits and restricting their use on pavements at above certain speeds, but in general being as liberal as possible. They are of course far better for the environment than cars.

III. Simultaneously, the government should commence a major, systematic process of ongoing deregulation that would cover all quangos, all regulators, and all regulations; and which would piece-by-piece neuter the past decades of regulatory creep.

The regulatory state has taken many decades to put together; its reach now extends into a myriad of nooks and crannies across the nation. Dismantling it, or at the very least ameliorating its most pernicious effects, will, commensurately, take many years, and will require long-term dedicated and persistent efforts, managed on a systematic basis, for the effort to have any chance even of smallish, let alone complete, success.

Your TIGRR initiative should not, of course, wait for some giant process to be put into train in order to try and get wins on the board, but at the same time it should not, I argue, merely propose a few changes, however desirable those might be, while ignoring the longer term, larger needs. I would suggest to you that a three-phase approach for this longer-term process might be the most valuable:

A. Short term, implement the best and top ideas that your initiative has uncovered.

B. Medium-term, first have all departments, regulators, and quangos run a historical review of regulations that were imposed on our country by directive from the EU, and that at the time were argued against in any way by our representatives in Brussels, or were resisted in any way by the Minister in the UK when they were sent by Brussels

12 Rees-Mogg, J. and Tylecote, R. (2019) Raising the Roof: How to solve the United Kingdom's housing crisis. IEA Current Controversies No.70. London: Institute of Economic Affairs

13 Zuluaga, D. (2017) Taxi and private hire vehicle regulation. IEA Briefing. London: Institute of Economic Affairs

to our country, only for the Minister to be told that the Directive must nevertheless be followed. Second, take up Mark Littlewood's excellent suggestion that the various regulations that were dropped during the Covid Crisis not be re-imposed at its end[14]. If they could be dropped for a while without harm, why not keep them dropped?

C. Long-term, and finally, commence on a major deregulation programme that encompasses the whole of government, reviewing the entire regulatory panorama and finding ways in each case to make it more responsive, less intrusive, more pragmatic.

Each of these is reviewed in turn below.

A. Short term: implement the best and top ideas that your initiative has uncovered

From my own knowledge, you have already received many excellent proposals from such as Barney Reynolds and James Webber, Daniel Hodson, and Simon Boyd. Doubtless there are more that I am not aware of. It would in any case be redundant of me to suggest which of these will most appeal to your initiative; which to first go after. I assume you will come up with some kind of prioritisation process and highlight those that come top of the list.

B. Medium term: run a historical review of regulations imposed by EU directive

For decades, we became accustomed to hearing ministers excuse some of the more egregious laws and regulations that have been imposed upon our country with the phrase *'there's nothing I can do, it's an EU directive and we are required to follow it and put it into law.'* Ministers were often at pains to say that if it had been up to them, they would never have implemented that regulation.

Well, now is the chance for us all to be able to make up for that. The civil service has excellent historical paperwork; it should be very feasible for each department to allocate a couple of its fast-track officials to go back to all the documentation regarding each of the very many Brussels directives, and review where Ministers protested, or sought to block the directive. At the same time, all papers written by our Brussels officials regarding the original creation of the directive should be reviewed, and any input made by the UK, that sought but failed to change any parts of the directive, should be brought out and turned into a review of how we could change the law made by that directive into something that reflects our original concerns on the directive. Finally, while that is done, review each for unnecessary goldplating.

It should be possible to take no more than a year to run that process; to the degree that some of the changes that result would require primary legislation, there would of course have to be prioritisation and review of what was easy and what was difficult to do. But at least the review would have taken place and the country would have the satisfaction of knowing that our lawmaking had returned to our control.

C. Long-term: commence on a major, multiyear deregulation programme.

Regulation created by Brussels directive is, of course, important, but it's not the

14 'Maybe rules that are waived to beat the virus shouldn't have been there at all', *The Times*, 23 March 2020 (https://www.thetimes.co.uk/article/maybe-rules-that-are-waived-to-beat-the-virus-shouldnt-have-been-there-at-all-drnnn06rv)

chief cause of the regulatory state; that has been something we have been ourselves equally complicit in creating. If the current situation is to be changed significantly, then a systematic, multiyear, piece-by-piece approach to deregulation has to be created and implemented. The process should comprise, at minimum:

Create a deregulation minister. This individual should have cabinet-level rank, with powers to make enquiries in all departments, delivering reports on progress.

Create legislation that makes it more difficult for regulation to be so ubiquitous and to metastasise. For example, a philosophy that follows the thinking of part I of this submission should be created, and enshrined in legislation; a "1 in 2 out" law should be created that applies to each department; sunset laws for regulations should become the norm, with blocks against circumvention of the sunset; a regulatory ombudsman should be appointed with the power to question the behaviour and conduct of regulators and quangos, and the power to make recommendations to the deregulation minister.

Commence a major process, under the aegis of the deregulation minister, should be commenced, to review every regulator and quango. Each should be asked to respond to these questions:

> a. What are the intended beneficial purposes of this entity? —if such cannot be articulated, should the entity be closed down or significantly defunded?
>
> b. Are the beneficial purposes being properly advanced at this time? What proof is there that that is the case? Again, if there is no proof of considerable major benefit being achieved, why should it not be closed down or defunded?
>
> c. Is there a disruptive change that could be bought to this entity that would allow it to achieve the beneficial purpose with less intrusiveness than currently is seen?
>
> d. What failures or errors has this entity caused in the past 5 to 10 years? What lessons were learnt from those failures? Did those failures indicate in any way that the entity was not fit for purpose and should possibly be closed down or defunded? What changes should be made to the entity, in the light of the replies to the above questions?

All the above would constitute a massive process, but it would arguably reap enormous rewards for our country, and for the government that implemented it successfully.

Submission by Victoria Hewson

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Introduction and General Principles

We were asked by Theresa Villiers MP to put forward our top 3 opportunities for regulatory reform, which are now possible outside the EU and which the government could move quickly to implement to drive innovation and growth.

We have set out below three suggested regulations that could be prioritised for reform. Thousands of items of EU derived regulation now form part of UK law. They took the form of directly effective regulations, UK regulations implementing EU directives, and also primary legislation implementing directives and treaty obligations, and were carried into domestic law, sometimes with amendments, under the European Union (Withdrawal) Act 2018 and the powers under it. To focus on reform to regulations that are now available for reform as a result of the UK's regulatory autonomy, the Task Force should identify the pool of laws and regulations that are in scope for this activity. For example, it is thought that there are around 500 items of EU regulation in effect on the environment alone.

This is not a top three in the sense of a ranking but rather three indicative examples from different sectors where EU derived regulations have brought significant costs out of proportion to any benefits, and where reforms could have positive effects on growth, innovation and competition. Reforms here will not be straightforward and benefits will need to be considered in the context of international commitments, including the Trade and Cooperation Agreement with the EU (TCA), possible trade barriers in the UK internal market due to the operation of the Northern Ireland Protocol, and additional friction to trade with the EU from divergence with inherited EU rules. However, any changes to inherited EU rules that will have material effects will raise these trade offs.

The three are:

- The UK GDPR
- UK REACH
- The Agency Workers Regulations

In each case, a full review from first principles should be carried out. Principles of good regulation should be applied, including an assessment of the costs and benefits of each regulation being considered, based on evidence from its operation in practice. Post implementation reviews should always be carried out on regulations, and this

task force is well placed to begin that process for EU rules carried into domestic law. Such reviews should also take in the institutional architecture of regulatory bodies that will be taking over activities from EU agencies, including in devolved governments.

The costs and benefits should include consideration of effects on international trade, including with the EU, and on the UK single market. Divergence from EU rules on goods could introduce barriers to the supply of goods to Northern Ireland from Great Britain if suppliers do not wish to maintain dual EU and UK compliant supply chains. This would be mitigated by the UK continuing to recognise EU regulations for goods, so suppliers, and ultimately consumers would decide which is the most efficient regulation.

The overarching direction should be away from EU style of regulation and standard setting in goods and services and towards less prescriptive and more market-oriented measures. There should also be a principle of open-ness under which, whether by way of unilateral or mutual recognition if a product can be sold lawfully in one recognised jurisdiction, it can be sold freely in the UK, without having to comply with additional rules. This would be a long term strategy that would involve cooperating with governments in partner jurisdictions to establish where their laws and regulations provide for an acceptable baseline of safety and quality, and to share data. It would enhance consumer welfare by removing trade barriers on imports, leading to greater competition, and could form a vital part of trade policy, enabling genuine free trade unilaterally and by facilitating free trade and mutual recognition agreements.

More generally, while this focus on opportunities for reform is welcome as it brings laws into scope that have been out of scope for previous reform initiatives, the burdens of domestic-origin regulation should not be neglected.

Three Regulations For Reform

1. UK GPDR

Proposed Reforms

At the time the GDPR was proposed by the European Commission the UK government was sceptical of the costs and benefits outlined by the Commission in its impact assessment. The Ministry of Justice carried out its own impact assessment which found that the costs had been understated and the benefits overstated by the Commission. This has been vindicated as the costs have been many times greater than the Commission projection, and many experts believe that the GDPR is impossible to comply with. The MoJ impact assessment recommended that the UK should pursue ‘a data protection framework that will stimulate economic growth and innovation, whist providing data subjects with a proportionate level of protection’. With regulatory autonomy, the UK is now able to do this and the government should undertake a full review of the UK GDPR and Data Protection Act, and the Privacy in Electronic Communications Regulations, starting from first principles including the definition of personal data, purpose limitation and legal grounds for processing.

A number of immediate reforms could be made to mitigate some of the most onerous aspects while a full review and cost benefit analysis is under way:

- Adjusting the system of fines, to make sanctions proportionate to harm, and reduce the cost of over-compliance, and removing compensation rights for non-material loss or damage, returning to a common law approach to assessing compensation where loss or damage has been suffered as a result of a breach.
- Reducing the scope of the tasks of the Information Commissioner by removing broader policy advisory matters to focus on the implementation and enforcement of the relevant laws and regulations, increasing rigour in the scrutiny and accountability of the Information Commissioner.
- Revising the appeal process for enforcement action by the Information Commissioner and introducing procedural safeguards and cost capping, so that meritorious appeals against decisions are not discouraged by the burden of potential costs.
- Reviewing all existing guidance issued by the Information Commissioner's Office and clearly delineating recommendations for compliance with the law from the Commissioner's view of best practice and requiring the Commissioner to carry out impact assessments for future guidance that could have material economic effects.
- Liberalising data transfers with other countries, in the first instance by way of frameworks available under the UK GDPR and in the longer term by establishing a proportionate and risk-based approach that focuses on real world priorities for the security and confidentiality of data that may be transferred.

Increasing legal certainty and clarity will benefit businesses and consumers. The GDPR has adversely affected investment and competition in digital markets so reforms could improve consumer welfare by reducing the barriers to entry and particular burdens on newer and smaller businesses.

Liberalising international data flows will be good for trade in goods and, especially, services. It would enable UK firms and consumers to access the best and most innovative services from providers anywhere in the world without the onerous legal and compliance risks caused by the EU framework for international transfers.

Trade Offs

Data protection reforms would not be in scope for non-regression or 'rebalancing' measures under the TCA, but the EU has a much more effective mechanism available to it to seek to maintain UK alignment to its data protection laws – the withdrawal of its determination that the UK's laws are 'adequate', which would mean that EU personal data could not be transferred here without further safeguards. But this should not be understood as meaning any reforms to the GDPR (as now incorporated into national legislation as the UK GDPR) should be off the table.

Firstly, adequacy does not require identical laws. The EU may be more likely to be concerned with surveillance and use of personal data by the state than commercial use, so some reforms to mitigate the burden on users of personal data and improve consumer experience and welfare would not necessarily threaten adequacy as long as what the Commission and the CJEU consider to be essential protections remain in place.

But more importantly, the risk of losing adequacy should not be a sword of Damocles, deterring any change from the EU framework, and cleaved to by vested interests that benefit from the notable anti-competitive effects of the GDPR.

The UK should not hold on to existing rules only for the sake of adequacy if the benefits from liberalising the rules domestically and for freer data flows with other countries would outweigh the benefits of free flow of data from the EU (bearing in mind that there are ways personal data can be lawfully transferred from the EU without an adequacy decision).

Many businesses will have prepared for not having adequacy anyway, and should be encouraged to maintain such preparations, as the EU adequacy decision is always conditional. In any event, the UK should continue to recognise the adequacy of EU law for transfers of personal data from the UK to the EU.

There would be no direct impact on Northern Ireland as data protection law is not included in the Protocol, though not having adequacy could affect cross border services trade with Ireland.

Under the Withdrawal Agreement, personal data of EU citizens that was obtained before the end of the Transition Period must continue to be protected in line with the protections in place at the end of the TP. Unfortunately, this introduces a level of complexity for businesses who hold EU citizens' data as they will need to either continue to follow the mor prescriptive requirements of the GDPR for all personal data that they hold or implement a two tier system, which does not seem feasible or desirable. However, this should not be used to rule out substantive reforms, as businesses that trade with the EU will need to maintain GDPR level compliance in any event to meet the extra-territorial requirements of the GDPR, and smaller, newer businesses, and those who focus on the domestic market or non-EU markets will be able to benefit from the pro-competitive, less burdensome reforms.

2. REACH

Proposed Reforms

One of the EU's most complex and ambitious regulations, the REACH Regulation requires the registration of all chemical substances on the market and the authorisation of some that are of high concern. Some registered substances may be subject to restrictions, and no substance or article containing chemicals can be placed on the single market if it has not been registered by a manufacturer or importer based in the EEA or an official representative in the EEA. This has far-reaching effects across entire supply chains.

So far, the UK has proceeded to adopt the REACH Regulation in domestic law and replicate its registration and authorisation system, to be operated by the Health and Safety Executive (HSE). This means that UK manufacturers and importers have incurred, and will continue to incur, significant costs in transferring and duplicating registrations from the European Chemicals Agency system.

The government should undertake a full review of the REACH regulation, as implemented in UK law, with a view to establishing if its objectives can be met in more proportionate ways, at a minimum improving evaluation methodologies based

on sound science and transparent decision making. In the meantime, an immediate reform that would alleviate the burden on British manufacturers and importers from parallel, but functionally identical, systems for Great Britain and the EEA + Northern Ireland would be unilateral recognition of EU registrations and authorisations that are notified to the HSE. This would guarantee that EU registered substances would continue to be available to the UK market and reduce the compliance burden on UK businesses who would only need to have one set of registrations for both markets. Data exchange and cooperation commitments in the Chemicals Annex of the TCA should support this.

If the UK then diverged in substance, the UK could continue to accept any chemicals that are accepted to the EU market (subject always to a right to restrict individual substances where there is a specific concern) and manufacturers and importers could continue to operate with their EU registrations only or could elect to operate to the UK system for their domestic trade and trade with other countries, as applicable.

Trade Offs

UK divergence from REACH could apply only in Great Britain; Northern Ireland will (at least until the vote by the Northern Ireland Assembly in 2024) have to maintain the EU rules, as amended from time to time. REACH is not generally enforced at borders but is monitored and enforced by national regulators and trading standards. This means divergence need not increase border frictions (indeed there are already additional formalities for the supply of chemicals between GB and NI as things stand and a carve out for REACH under the Internal Market Act), but it could affect supply chains between GB and NI and further fragment the UK single market. This could be mitigated by the proposed reform whereby the UK would continue recognise and accept EU registrations and authorisations for chemicals and articles imported to GB, from NI and anywhere in the EEA, but the impact on supply of goods from GB to NI could be serious and illustrates the need to address the effects of the Northern Ireland Protocol on the UK internal market.

REACH is included as an environmental measure for the purposes of the non-regression commitments in the TCA: 'A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period'. However, reforms to REACH should not weaken environmental protection and in fact if they lead to greater clarity and efficiency, should improve protection from risks involving chemical substances.

Even divergence that does not weaken current levels of protection could trigger rebalancing measures by the EU if it impacts trade or investment between the UK and EU in a manner that changes the circumstances that formed the basis for the conclusion of the agreement. Unilaterally recognising EU registrations and authorisations would be a divergence (as the EU does not recognise third countries) but as this would enhance openness to EU trade it should not invite retaliation. Substantive reforms to the regime for the domestic market would be in scope but the rebalancing mechanism is untested and the scope of actions that the EU could take is unclear. In the first instance it should be noted that reforms to regulations like REACH should not mean lower levels of protection for the environment. The

aim should be to achieve the same or better outcomes in more proportionate, pro-competitive ways. The UK should not be deterred from reforms that could have transformative effect on domestic productivity and non-EU trade because of the risk of rebalancing measures that should, at worst, simply cancel out the disadvantage the EU feels its producers are subjected to as a result. If anything, an EU claim for rebalancing measures would show that the proposed reforms are advantageous to the UK, and retaliatory measures by the EU to protect its producer interests will be bad for competition and consumer welfare in the EU.

The chemicals industry in the UK (which is largely based in the North and North East of England and includes many SMEs), having absorbed the immediate costs of leaving the single market, is now calling for reforms. The EU is already moving forward with further changes to chemicals regulation, which some in the industry have predicted the UK will not follow, so divergence seems inevitable. It may be better to embrace it as opportunity and maximise benefits and focus on the gains that separation makes possible.

3. Agency Workers Regulations

Proposed Reforms

Following the Covid-19 lockdown, the UK labour market faces much higher unemployment and reductions in labour force participation as some groups withdraw from the labour market. In general, employment regulation is in effect a tax on jobs, the burden falling largely on workers in reduced pay and employment opportunities rather than on company profits. It often serves sectional interests at the expense of the wider workforce and may be a poorly-targeted way of assisting disadvantaged groups. Regulation not only prevents voluntary economic activity taking place, which has a very real but necessarily hidden cost, but also involves the overt use of resources to ensure compliance - for example the 200,000 or so people involved in human resource management jobs in the UK. Together the overt and hidden costs of regulation may often exceed the benefits from regulation, and act as a drag on productivity.

The government could usefully undertake a full review of employment and workers' rights legislation including domestic origin laws like minimum wages (where even eliminating the complexity of multiple levels would help businesses and reduce the distortions in the employment market), pay gap reporting, the apprenticeship levy, pension auto-enrolment and occupational licensing. A review from first principles would take in working time regulation, unfair dismissal, and discrimination laws, all of which are costly to employers, such costs often being passed on to the workers themselves, through lower wages and fewer opportunities.

An immediate reform that could be considered in the interim would be the repeal, or at least suspension, of the obligation on employers under the Agency Workers Regulations to extend all benefits available to their own workers to temporary agency workers who have been with them for 12 weeks. These benefits include access to training, holiday pay, periods of notice, pensions and so forth. This obligation reduces the attraction of using agency workers and may have led to a greater use of other cost-minimising employment practices such as zero hours contracts. There was a way

round this, known as the 'Swedish derogation contract', whereby agency workers were employed directly by the agency rather than the hiring employer, but this has been banned since April 2020.

When the outlook is as uncertain as it is at the moment, firms are reluctant to take on new employees, particularly in jobs for which the demand is seasonal or erratic. They may also need temporary replacements for workers who are ill or on parental leave, and agency workers can fill gaps quickly without the employer undertaking a lengthy recruitment process. Workers are screened by agencies and thus save employers time in the short run, and in the slightly longer term avoid employers having to take workers on permanently when they might be unsatisfactory or when the demand for services is so variable that permanent posts cannot be justified. The agency worker gets the benefit of employment more quickly than he or she could find it otherwise, and the temporary nature of the work avoids long-term commitment which they would otherwise perhaps find difficult to offer because of personal circumstances.

Trade offs

Changes to laws in this area, and non-alignment with future EU developments, could trigger non-regression and rebalancing measures under the TCA. Even if such mechanisms were applied, they should only have the effect of cancelling out perceived unfair advantage from the deregulatory measure vis a vis the EU so at worst should be neutral in respect of EU trade and could have great benefits for domestic and rest or world trade, especially in services and the knowledge economy.

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