

# Regulatory Budgets

Consultation response by Consumer Focus

## Summary

Consumer Focus is supportive of efforts to remove unnecessary regulation. Regulation – old and new – can have negative impact on consumers, such as reducing competition or increasing prices. We recognise the need for effective intervention to change the culture of regulation; however, we are not persuaded that a system of regulatory budgets is the best way to take forward the Government’s regulatory reform agenda.

The system as proposed has two potential flaws. Firstly, the proposals fail to account of the potential benefits of regulation. The benefits to consumers of good regulation are wide-ranging, from fewer mis-sales of extortionate interest credit products to greater parental awareness of the salt content of ready-made meals. In capping the total costs of regulation without taking account of the benefits, the system is likely to lead to some good regulatory initiatives being deferred or dropped.

Secondly, it is structured around Government Departments rather than particular market sectors. This is likely to lead to illogical and less than transparent trade-offs between unconnected regulatory proposals covering quite different businesses and consumer groups. There is a risk that consumers will lose out from horse-trading between and, indeed, within Departments. Further, as regulatory budgets will only extend to reserved matters this may produce inconsistencies in levels of consumer protection across the UK.

Consumer Focus recognises business concerns about the cumulative impact of a number of different types of regulation being introduced simultaneously. Indeed, major changes to market practice can be disruptive for consumers too, and can make it hard to predict and monitor the impact on consumer behaviour. So, if the Government ultimately decides to introduce regulatory budgets, we suggest the proposal is reconfigured to monitor and contain the cumulative impact of new regulations on specific sectors.

## Introduction

Consumer Focus campaigns for a fair deal for consumers. We do this through research and policy analysis and lobbying and by working with policy makers, providers and others who can make a difference to consumers' lives. We have a special remit to represent the interests of disadvantaged and vulnerable consumers.

We are supportive of the broad direction of the Government's Better Regulation agenda as stated in paragraph 1.1 of the consultation document to: "*maximise the benefits of regulation for society as whole whilst minimising the costs to business and others of achieving those benefits*". Overregulation can have negative consequences for consumers; it can add unnecessary costs, increase prices, reduce competition or inhibit innovation. We support the Better Regulation principles, and favour transparent evidence-based policy not knee-jerk rule-making in response to every risk that emerges.

The Better Regulation Executive has a valuable role to play as a strong advocate for better regulation within government. We welcome new ideas that seek to challenge entrenched cultures of regulation by finding the most effective mechanisms and incentives to ensure that Departments and regulators change their approach. Our sense is that there has been some shift in the regulatory mindset, but this has yet to translate into a fundamental change in behaviour.

The proposal to introduce regulatory budgets is the latest in a series of initiatives aimed at achieving a step-change in regulatory culture. It seems to us that a useful exercise would be to try to establish why these initiatives – most of which seem well-designed on paper – have not had the desired impact. This might take the form of a direct dialogue with Departments and regulators to gain an insight into their drivers and what interventions might change things.

## Answers to specific questions

*1. Do you consider that the Government should proceed with a system of regulatory budgets as a way of managing the costs of new regulation?*

We are not persuaded that a system of regulatory budgets is the best way to take forward the Government's regulatory reform agenda. We fear a system of regulatory budgets could be a time-consuming distraction from the core challenge of ensuring that any new regulatory proposal is good for business and consumers alike. It seems to create an incentive to bring forward only new regulation that is based on what is cheap in regulatory cost terms, rather than what is necessary or what will be effective (but efficient). We are also concerned it reflects a shift of focus from improving the overall *quality* of regulation to reducing the total *quantity* of new regulatory costs. This could lead to poor decisions to drop, delay or alter a regulatory proposal, even where the Impact Assessment shows a cost-benefit case for it.

The consultation document lists a series of initiatives that the Government has taken forward within the better regulation agenda. We think the work the Better Regulation Executive has been doing to improve and embed the system of Impact Assessments is particularly important. High quality and open analysis of the costs and benefits of alternative regulatory options should inform debate and shape decision-making. This is the best way to improve the quality of regulation. This is no easy task and we suggest it should remain a top priority. We consider these initiatives should be given longer to further improve and bed down before more radical options are tried.

On a specific point, we note the Government proposes to take the regulatory costs associated with tackling climate change outside of the system of regulatory budgets. Climate change is, of course, a major issue and a priority for current and future consumers. However, we think the rationale for such a position requires further discussion. It appears to tacitly recognise that the political weight placed on the assumed benefits of regulation to tackle climate change is such that it cannot be subject to the trade-offs inherent in a system of regulatory budgets. A similar case might be made that other types of regulation – safety issues for children for example – should be excluded from a process of prioritisation. This serves to highlight that the system may not work so well in practice as in theory.

The proposal is that regulatory budgets should only apply to reserved matters. Some issues affecting consumers, such as food, are devolved meaning that regulatory budgets would only impact on regulation introduced in England and Wales. In the absence of a cap on the cost of regulation which could be introduced in Scotland, Wales and Northern Ireland a situation could result where there are inconsistencies in levels of consumer protection across the UK. Such inconsistencies would also cause problems for business.

*2. Do you think regulatory costs should be scored at the point of enactment or when they come into effect?*

We see this question as a distraction from the more substantive issue of how and when choices will be made between alternative regulatory options in order to stay within the regulatory budget cap.

Enactment of legislation takes place many months and often years after the regulation was first considered, and actual implementation takes place even later. Indeed, not all new legislation is within the control of Departments, for example a successful private members bill. It is hard to imagine a Department would wish to be in the position of withdrawing a piece of primary legislation which had completed most of its legislative stages, because it was about to reach the limit of its regulatory budget. It certainly would not be helpful for an incentive to be created within Departments for different teams to push forward secondary legislation in order to avoid been 'caught by the cap'. This suggests any decisions about priorities are likely to be made in effect at a pre-legislative stage.

For businesses and consumers, the timing of when regulations come into effect is more important than the date of enactment. Departments and regulators need to exercise judgement about timing but it will usually be too late to alter the regulation itself. Sometimes business prefer to coordinate a number of changes at the same time, or to coincide them with a new financial or calendar year. On other occasions, businesses complain about the pressures and costs (e.g. changing IT systems) of implementing lots of different regulations simultaneously, and the potential loss of focus on providing products and services to consumers.

Provided that sight is not lost of the potential benefits of regulation, we suggest that Government Departments and regulators should take account of these concerns. But it is not clear that the proposed design of the system of regulatory budgets will address this issue.

*3. What, in the range of three to five years, would be an appropriate budget period?*

If the Government does introduce a system of regulatory budgets, we suggest the budget period should be no longer than three years. A period of five years is too long to forecast the future need for new regulations with any precision, and it is also out-of-step with the policy planning cycle; for example three years is the time period used for Comprehensive Spending Reviews.

*4. What are your views on the possible system to manage regulatory budgets outlined in paragraphs 2.9-2.31? Would this deliver a credible and effective system of regulatory budgets?*

It will be essential to allow some flexibility within the process of regulatory budgets to allow for unforeseen events requiring a regulatory response. The recent global financial crisis vividly highlights why this is necessary.

We also support the plan to allow Departments to offset any reductions in their existing regulatory stock from their budget for new regulation.

We have reservations, however, about the notion of ‘trading’ budgets across Departments, as this could increase the degree of ‘horse-trading’ and reduce the transparency of decisions. The reporting process will be very important in ensuring Departments are not only accountable if they exceed their budgets but also for the choices they have made in staying within budget.

If regulatory budgets were introduced, we would support a ‘shadow rollout’ in 2009/10 to test the processes and methodology. Further, given our reservations about the proposed system, it may be best to pilot the proposal with one or two Departments rather than across the whole of Whitehall. A full evaluation of the shadow rollout should happen before deciding whether to proceed to full rollout.

*5. Which forms of government action should be within scope of regulatory budgets?*

Consumer Focus believes the scope of regulatory budgets should be limited to statutory legislation and regulation initiated by Government or regulators. There is a danger that including Government approved self-regulatory arrangements within scope, while excluding self-regulatory codes etc that do not have such backing, could create an undesirable incentive for policy-makers to favour the latter over the former. For some fragmented market sectors (e.g. car servicing and repairs) the back-up of the Office of Fair Trading’s approved codes regime has proven necessary to get a self-regulatory scheme to work satisfactorily. So we suggest all self-regulatory arrangements should be excluded from the scope of regulatory budgets.

*6. Do you agree with the outline of this approach to EU and international originating regulations? Are there other issues to be addressed in the context of EU and international commitments?*

Consumer Focus agrees that EU and international regulations need to be included within the scope of any new system of regulatory budgets. A substantial share of new regulation for some key retail consumer sectors, such as food and financial services, originates from the EU. On the positive side, this may create an additional incentive for the UK Government to promote a Better Regulation agenda in the EU. However, the UK

Government inevitably has less room for manoeuvre in setting priorities and determining timelines for EU regulation than it has over purely domestic regulation. This could mean that some Departments are forced to deprioritise UK legislation when nearing the cap on their regulatory budget. Therefore, some flexibility needs to be built into the system of regulatory budgets to recognise these constraints.

*7. Is the approach outlined in paragraphs 3.14-3.22 to costs arising from specific regulatory actions appropriate?*

Yes. In particular, we agree that specific enforcement action by a Department or a regulator should be outside the scope of a regulatory budget. Regulators should not be restricted from addressing non-compliance by firms with regulations that have already been costed and implemented.

*8. What are your views on the approach set out in paragraph 4.6-4.14 for treating independent regulators in a regulatory budget?*

We are not clear on the rationale for the proposal to exclude economic regulators (e.g. Ofgem) from regulatory budgets, while potentially including other regulators with 'consumer protection' functions (e.g. Food Standards Agency). The consultation paper appears to imply that relative to consumer protection regulation, economic regulation is assumed to require greater independence from political oversight, and should not be subject to prioritisation. We take issue with this implication. In addition, some of the organisations listed as 'economic regulators' have a broad range of 'non-economic' regulatory responsibilities (for example, Ofcom has important responsibilities in relation to public service broadcasting).

Protecting the statutory independence of sector regulators, such as the Food Standards Agency and the Financial Services Authority, is of critical importance to consumers. Although Consumer Focus will sometimes have differences with these bodies on specific regulatory issues, we believe the separation of regulation from day-to-day political considerations has improved the transparency and quality of regulation in these key sectors. Sector regulators usually have clear statutory objectives and are increasingly subject to Better Regulatory disciplines (for instance, the Legal Services Act requires the new Legal Services Board to have regard to the five Better Regulation principles).

We would not want the independence of regulation to be compromised, by a requirement on regulators to negotiate with sponsoring Departments, in order that the Department stays within its regulatory budget. So participation in the system should be a decision for the Boards of each of the regulators. In addition, if individual regulators do decide to 'opt-in' to the system of regulatory budgets, we suggest they should have their own budget rather than being part of a 'family' budget held by their sponsoring Department.

Apart from the issue of independence, it would be very difficult to manage a process of prioritisation between regulators and Departments, given their different governance structures. Furthermore, a sector-specific regulator is more likely to be considering regulations that relate to the same firms/markets, than is a Department with a wider scope, so the issue of prioritisation has more salience at that level.

*9. Do you agree with the proposed categories of costs to include in a regulatory budget as outlined in Chapter 5?*

We have concerns about the implications of budgets being set at a Departmental level. Government Departments such as BERR and Defra have a broad range of responsibilities, and therefore will consider very different types of regulation, which impact on different industry sectors and types of consumer. The requirement on a Department to keep within its regulatory budget is likely to require trade-offs to be made between these different types of regulatory costs. So to take a theoretical example, Defra might need to make a choice between regulations that impact on vets and regulations impacting upon supermarkets. The consumer groups and businesses are likely to be quite different, so the policy rationale for requiring such a trade-off is not obvious.

In addition, we are not clear how the process of prioritisation will take place. There is a danger that political considerations will lead to 'horse-trading' behind closed doors, and legislation/regulation may be deferred or dropped without consultation. This may unintentionally be inconsistent with the Better Regulation principles of accountability and transparency.

It may be better to take a more systematic approach to monitoring the cumulative impact and flow of regulations that impact upon particular markets or sectors, rather than approaching the issue of regulatory budgets from the perspective of Government Departments.

We note the discussion about whether to include the public sector within the system of regulatory budgets focuses on the perspective of public sector workers. Before making a decision about this issue, we suggest the Government needs to consider the interests of users of public services.

*10. What are your views on the proposed assessment methodology outlined in Chapter 6, including whether budgets should be set on a gross or net basis?*

Consumer Focus agrees that any system of regulatory budgets should include indirect costs (in addition to direct costs), as this captures the broader impact on business and consumers, rather than focusing on administrative costs.

If a system of regulatory budgets is introduced, we favour budgets being set on a net basis rather than a gross basis. The system as proposed, focuses only on the quantity of the costs of regulation, and excludes the benefits. This runs contrary to the overall stated objective of the Government's Better Regulation agenda. It also means that individual regulatory proposals which have been assessed as offering a net benefit could be deferred by a Department which is trying to keep its gross costs within budget.