Reforming the framework for better regulation

UK Finance response to consultation from the Department for Business, Energy and Industrial Strategy

1 October 2021

Introduction

1. UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms, we act to enhance competitiveness, support customers and facilitate innovation. We welcome the opportunity to respond to the government's consultation on reforming the framework for better regulation (the BEIS consultation).[1] This is a timely initiative for not only can regulation foster growth and innovation but it can also play an important role in the recovery from covid-19 and build greater system resilience across industries, all as the UK seeks to maximise the benefits of Brexit.

2. We note that the BEIS consultation is not seeking to reopen matters on which HM Treasury (HMT) has already consulted and continues to engage with stakeholders through its future regulatory-framework (FRF) review for financial services. We nonetheless suggest that financial-services regulation should sit within the government's overall framework for better regulation, while regulation of other sectors may benefit from the approach taken to financial services. Therefore, where relevant, we have drawn on our contributions to the FRF review in answering the consultation questions in the hope that they inform both debates.

3. As the BEIS consultation recognises, regulation is not just the preserve of arm's-length or independent regulators. It is therefore important that the better-regulation framework apply equally to all public bodies that exercise regulatory functions (e.g. the Office of Financial Sanctions Implementation, part of HMT) wherever appropriate. Regulation must also focus on improving outcomes for citizens and consumers, in which competition and innovation play vital roles but are not ends in their own right.

4. We note reference to the upcoming International Regulatory Cooperation Strategy. Reducing the regulatory burden on UK firms that trade internationally and helping them access global markets are fundamental to promoting the international competitiveness of the UK, while appropriate international alignment of regulations can avoid arbitrage, improve efficiency of cross-border operations and encourage international companies to locate in the UK. A joined-up approach across relevant government departments—in

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005119/reforming-the-framework-for-better-regulation.pdf.

particular HMT, the Department for International Trade and the Foreign, Commonwealth and Development Office—can only support this.

5. If you have any questions relating to this response, please contact Matthew Conway, Director of Strategy & Policy, at matthew.conway@ukfinance.org.uk.

A "common-law approach" to regulation

Question 1: What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common-law-focused approach?

Question 2: Please provide an explanation for any answers given.

Question 3: Are there any areas of law where the government should be cautious about adopting this approach?

Question 4: Please provide an explanation for any answers given.

6. The common-law approach identified in the BEIS consultation is very much the enhanced model of financial-services regulation introduced by the Financial Services and Markets Act 2000 (FSMA) and advocated by HMT in its phase-II consultation on the FRF review (the FRF consultation).[2] We agreed in our response to the FRF consultation that this was the right model but argued that it should extend beyond the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), as proposed by HMT, to other areas of financial-services regulation, including the Bank of England's (BoE) other regulatory functions and the Payment Systems Regulator (PSR).[3] This would ensure a coherent and consistent regulatory framework for the whole sector, which is essential as structural trends continue to drive change and innovation, including the unbundling of value chains and the emergence of new business models. We suggest that similar considerations might apply to other markets subject to oversight by multiple regulators.

Question 5: Should a proportionality principle be mandated at the heart of all UK regulation?

Question 6: Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

Question 7: If no, please explain alternative suggestions.

7. Noting its identification as one of the five principles that the Better Regulation Task Force devised in 1997,[4] we argued in our response to the FRF consultation that proportionality should be at the heart of the regulatory framework for financial services and promoted in line with systemic importance. This reflected concerns that many initiatives neither reduced systemic risk nor brought benefits to customers. For example, mid-tier banks find

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927316/141020_Final_Phase_II_Condoc_For_Publication_for_print.pdf.
[3] https://www.ukfinance.org.uk/system/files/F2R2-phase-II-consultation-FINAL.pdf.
[4] https://webarchive.nationalarchives.gov.uk/20100407173247/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf.

themselves big enough to be included in such initiatives but not big enough to be able to absorb them without an impact on their ability to innovate, compete and grow.

8. We also noted that the regulatory framework for financial services had become fragmented, evolving in such a way that it is now structured around both firms and activities. Firms undertaking the same activity can face different levels of regulation, and firms can face the same cost of regulation despite posing different levels of risk. This is particularly problematic for customers, who might reasonably expect, but cannot currently be guaranteed, the same protections when consuming broadly substitutable products and services. Our response to the FRF consultation therefore recommended that the future regulatory framework achieve a better balance between an activity-based approach and a firm-based one, with greater use of principles- and outcomes-based regulation. It should subject the same activities and risks to the same regulation, with the same consumer protection, irrespective of the nature and legal status of the provider, deviating only for reasons of proportionality or where there is a need for a firm-level overlay (e.g. because of systemic importance).

9. While proportionality is an outcome to be desired in and of itself, it is also vital for promoting competition and the UK's international competitiveness. As such, we believe it should be included as a key test for the additional accountability that regulators with greater delegated flexibility should enjoy. (See our answer to questions 14 and 15 below.)

The role of regulators

Question 8: Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

10. We believe competition should be embedded into regulators' statutory objectives. We noted in our response to the FRF consultation that this was true of the PRA,[5] the FCA[6] and the PSR[7] but the BoE had no such duty as the UK's resolution authority. This matters given that measures the BoE can take in respect of this role can have implications for effective competition in banking markets. We therefore recommended extending the BoE's existing secondary competition objective in its role as the PRA to its resolution activities.

Question 9: Should innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

11. There is no consistent approach to innovation among financial-services regulators.

    - The PSR has a statutory innovation objective to promote the development of, and innovation in, payment systems in the interests of those who use, or are likely to use, services provided by payment systems, with a view to improving the quality, efficiency and economy of payment systems.[8]

[5] http://www.legislation.gov.uk/ukpga/2013/33/section/130.
[6] http://www.legislation.gov.uk/ukpga/2000/8/section/1E.
[7] http://www.legislation.gov.uk/ukpga/2013/33/section/50.
[8] https://www.legislation.gov.uk/ukpga/2013/33/section/51.

- As part of its statutory competition objective, the FCA may have regard to how far competition is encouraging innovation in considering the effectiveness of competition in markets for regulated financial services.[9]

- The PRA has no statutory objective in respect of innovation.

12. These formulations are all different again to, for example, the Office of Communications' (Ofcom) statutory duty to have regard to the desirability of encouraging innovation in relevant markets as appears to it to be relevant in the circumstances.[10]

13. We therefore suggest that careful consideration be given before a single approach to innovation across regulators is introduced. Moreover, as with competition, it is important that regulators intervene to promote innovation only when it is in the interests of consumers and not as an end in its own right.

Question 10: Are there any other factors that should be embedded into framework conditions for regulators?

14. Post-Brexit, competitiveness is more vital than ever to the UK's economic growth and prosperity. In this context, the FRF consultation noted the debate on whether regulators should have an objective to support the competitiveness of the UK's financial-services sector. We argued in our response that they should, reflecting the chancellor of the exchequer's commitment to ensuring the UK is "the most open, the most competitive and the most innovative place to do financial services anywhere in the world."[11] This would not be a novel approach.

    - The European supervisory authorities have competitiveness as a general regulatory principle. Specifically, the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority are each required to take due account of the impact of their activities "on the Union's global competitiveness."[12]

    - Other countries have gone further and given financial-services regulators statutory objectives to promote economic growth. For example, the Australian Securities and Investments Commission "must strive to maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy."[13] Similar objectives can be found in the frameworks of Hong Kong, Singapore and the United States.

15. Similar to the approach typically taken to proportionality, we recommended that global competitiveness be embedded as a statutory principle to which financial-services regulators should have regard. We noted that a requirement for regulators to have regard when making rules to their likely effect on the UK's relative standing as a place for

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[9] https://www.legislation.gov.uk/ukpga/2000/8/section/1E.
[10] https://www.legislation.gov.uk/ukpga/2003/21/part/1/crossheading/general-duties-in-carrying-out-functions.
[11] https://hansard.parliament.uk/commons/2020-11-09/debates/D5E911A9-1270-457F-9F6A-57AE5C272FBA/FutureOfFinancialServices.
[12] Recital 13 at each of https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1093&from=EN, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1095&from=EN and https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1094&from=EN.
[13] https://www.legislation.gov.au/Details/C2018C00438.

internationally active firms to be based or to carry on activities, modelled on provisions introduced by the Financial Services Act 2021,[14] was a reasonable basis for consideration.

16. Like proportionality, we believe competitiveness should be included as a key test for the additional accountability that regulators with greater delegated flexibility should enjoy. (See our answer to questions 14 and 15 below.)

Question 11: Should the government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules rather than legislation?

17. As set out in our answer to questions 1-4 above, this is very much the approach proposed by HMT in the FRF consultation and one with which we agree

Question 12: Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes?

Question 13: Are there alternative options the government should be considering to increase the number and impact of regulatory sandboxes?

18. The BEIS consultation notes the existence of the FCA's regulatory sandbox, whose benefits include the possibility of unduly burdensome rules being waived or modified for the purpose of testing innovative propositions in the market with real consumers.[15]

19. Our response to the FRF consultation argued that the ability to forbear generally in this manner is a valuable aspect of the regulatory framework in that it allows for a pragmatic and flexible approach to firms' individual circumstances. We recommended it be extended to all regulators to which the enhanced FSMA model is applied and exercised by them in respect of retained EU law. We suggest that similar considerations might apply to other regulated sectors.

Question 14: If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to government and parliament?

Question 15: If you agree, what is the best way to achieve this accountability? If you disagree, please explain why?

20. HMT rightly noted in the FRF consultation that "accountability of the regulators will take on greater importance when their responsibilities expand as a consequence of leaving the EU and under the proposals set out in this consultation." Our response argued that this should be recognised in two ways:

    - through greater parliamentary scrutiny, intensified and reframed much more explicitly around regulators' execution of the mandates that parliament sets in the form of their statutory objectives and their navigation of the key trade-offs inherent therein. This would require new capability, capacity and resources but should enhance the UK's international competitiveness; and

[14] https://www.legislation.gov.uk/ukpga/2021/22/contents/enacted, inserting new section 143G into FSMA by virtue of paragraph 1 of Part 1 of Schedule 2 and new section 144C by virtue of paragraph 1 of Part 1 of Schedule 3.
[15] https://www.fca.org.uk/firms/innovation/regulatory-sandbox.

- under the law. As noted when the government consulted on options for reforming regulatory and competition appeals in June 2013, "The right of firms to appeal regulatory and competition decisions is central to ensuring robust decision-making and holding regulators to account in the interests of justice. Where firms are materially affected by regulatory decisions, they should have an effective right of challenge if they consider that the regulator has made a mistake or has not acted reasonably."[16] This overarching principle nonetheless needs to be implemented in context. For example, while our response to the FRF consultation identified the risk of jeopardising the supervisory relationship with a regulator by challenging its decision as a key barrier to financial-services firms' resort to judicial review, this will not be relevant to sectors where the nature of the relationship between regulator and regulated is more distant.

21. We also argued that proposals for financial-services regulators to consult HMT more systematically at an early stage in the policy-making process created a risk of politicisation and a challenge to their independence. The government's June 2011 Principles for Economic Regulation rightly reaffirmed the independence of regulation and recognised the importance of the government ensuring that it does not interfere with day-to-day regulatory decision-making.[17]

Question 16: Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

22. Our response to the FRF consultation argued that as regulators take on more powers, there should be an increased role for industry input into the policy-making process, especially in the early stages. By the time regulators seek stakeholder views at the consultation stage, the range of possible policy options has often been narrowed down to one preferred approach and valuable stakeholder input on alternative approaches has been missed. Firms are close to their customers and have detailed market data and a wealth of expertise on implementing regulation, all of which could be used by regulators to improve their decision-making.

23. As part of this, we recommended that HMT and regulators continue to adhere to consistent consultation obligations and practices, including standard comment windows. Greater use should also be made of specialised practitioner panels early in the policy-making process. These should consist of individuals closer to the impact of regulatory activities and technical subject-matter experts able to engage in detail on the more granular aspects of proposed rules.

24. Furthermore, we recall Philip Hampton's observation in his 2005 report *Reducing administrative burdens: effective inspection and enforcement* that:

    The enforcement of regulations affects businesses at least as much as the policy of the regulation itself. Efficient enforcement can support compliance across the whole range of businesses, delivering targeted, effective interventions without unreasonable administrative cost to business. Inflexible or inefficient enforcement increases administrative burdens needlessly, and thereby reduces the benefits that regulations can bring.[18]

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[16] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229758/bis-13-876-regulatory-and-competition-appeals-revised.pdf.
[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf.
[18] https://www.regulation.org.uk/library/2005_hampton_report.pdf.

25. He went on to recommend *inter alia* that:

    when new regulations are being devised, Departments should plan to ensure enforcement can be as efficient as possible, and follows the principles of this report.

26. It is therefore important that regulators continually and meaningfully engage with those they regulate to ensure they understand different business and operational models in the market and adopt approaches to rulemaking, supervision and enforcement that encourage a plurality of providers to support competitive markets in the interests of consumers.

Question 17: Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?

27. We see the merits of such deep dives, particularly where regulated businesses have raised concerns about processes. However, consistent with our answer to questions 14 and 15, we share the concern to protect regulatory independence. We suggest that deep dives might instead be conducted by a party other than the government. They might realise additional value if they look not just at individual regulators but across sectors, helping to identify where good practice in one could be implemented in others.

28. Our response to the FRF consultation drew on a supporting paper jointly written with Baringa Partners that made recommendations for improving the measurement and reporting of regulators' performance.[19] We suggest these would be worthy of consideration beyond financial-services regulation.

Revising the process and requirements of better regulation

Question 18: Do you think that the early scrutiny of policy proposals will encourage alternatives to regulation to be considered?

Question 19: If no, what would you suggest instead?

29. Our response to the FRF consultation noted that statutory regulation is not the only approach available to regulators. In some instances where competition among providers alone is insufficient to deliver an outcome desired by society, co- or self-regulation may be a better approach. Ofcom is notably required to have regard to "the desirability of promoting and facilitating the development and use of effective forms of self-regulation"[20] and in December 2008 defined the range of appropriate regulatory approaches to deliver its duties as follows.[21]

[19] https://www.ukfinance.org.uk/system/files/Improving%20measurement%20and%20reporting%20of%20the%20performance%20of%20fina.pdf.
[20] https://www.legislation.gov.uk/ukpga/2003/21/section/3.
[21] https://www.ofcom.org.uk/__data/assets/pdf_file/0019/46144/statement.pdf.

No regulation	Markets are able to deliver required outcomes. Citizens and consumers are empowered to take full advantage of the products and services and to avoid harm.
Self-regulation	Industry collectively administers a solution to address citizen or consumer issues, or other regulatory objectives, without formal oversight from government or regulator. There are no explicit *ex ante* legal backstops in relation to rules agreed by the scheme (although general obligations may still apply to providers in this area).
Co-regulation	Schemes that involve elements of self- and statutory regulation, with public authorities and industry collectively administering a solution to an identified issue. The split of responsibilities may vary, but typically government or regulators have legal backstop powers to secure desired objectives.
Statutory regulation	Objectives and rules of engagement are defined by legislation, government or regulator, including the processes and specific requirements on companies, with enforcement carried out by public authorities.

30. We believe Ofcom's analysis to be equally valid and comprehensive in assessing the viability of co- or self-regulation in markets other than those that it regulates. We therefore recommended that HMT recognise the merits of co- and self- regulation in the regulatory framework for financial services, perhaps by assigning the same duty to financial-services regulators as that ascribed to Ofcom.

Question 20: Should the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process?

31. Ofcom's principles for analysing self- and co-regulation recognised that industry approaches (i.e. voluntary standards) work best where the incentives of industry are aligned with those of the public. Statutory regulation is most appropriate in circumstances in which firms lack an incentive, in the absence of compulsion, to deliver an outcome that society expects of them. Here, some providers may choose not to adopt a standard, either because they do not share other firms' and society's interest in the outcome being achieved or because they calculate that they could enjoy the benefits without facing the costs involved in participating. This not only means that some customers would not benefit from the measures but also jeopardises the sustainability of the standard. In other circumstances, however, a significant majority of firms may have their own interest in that outcome being achieved and therefore a strong incentive to commit to voluntary standards that would see the desired outcome delivered without the need for statutory regulation.

32. Considering standards early in the scrutiny of policy proposals can therefore not only result in a greater reliance on self-regulation where appropriate but also help to avoid self-regulatory solutions being prescribed for circumstances to which they are ill-suited.

Question 21: Do you think that a new streamlined process for assessing regulatory impacts would ensure that enough information on impacts is captured?

Question 22: If no, what would you suggest instead?

33. Our response to the FRF consultation argued that cost/benefit analyses (CBAs) are a vital part of the work of regulators, ensuring the appropriate and proportionate use of their powers. However, there are issues where CBAs are not undertaken, the scope or extent of the analysis is insufficient and/or underlying assumptions are flawed or not supported

by robust evidence. Drawing on a supporting paper jointly written with Avantage Reply,[22] we made recommendations for improving financial-services regulators' policy-making processes by enhancing the CBAs they undertake, particularly through assessing both the incremental and cumulative impact of regulatory change and bringing in international experience and independent scrutiny.

34. We are mindful that robust CBAs are a means to achieve good regulation. They should no more frustrate that outcome through ill-considered or disproportionate application than through their neglect. Therefore, while streamlining regulatory impact assessments to eliminate unnecessary bureaucracy is desirable, this should not come at the expense of their quality or specificity and their demonstration of the appropriateness of the regulatory intervention chosen.

Question 23: Are there any other changes you would suggest to improve impact assessments?

35. Our recommendations in response to the FRF consultation were for:

    a. regulators to conduct CBAs for all interventions, whether or not in the nature of formal rulemaking. Exceptions to this requirement should be limited to instances of significant extenuating circumstances, which should be properly and publicly evidenced;

    b. regulators to assess both the incremental and the cumulative impact of regulatory change. CBAs should consider not only first-order impacts but also potential second- and third-order impacts, as well as feedback loops, so they are robust and effective;

    c. CBAs to analyse a full spectrum of options, from "do nothing" through to formal rulemaking. Options to adopt non-regulatory solutions or better enforce current rules should be clearly considered;

    d. CBAs to incorporate an appropriate sensitivity analysis of options to assess the range of benefits and costs under varying assumptions. Such analysis should include consideration of how each option would affect different business models;

    e. proposed interventions that would mandate or promote the provision of new products or services to be accompanied by market assessments that demonstrate there is enough interest in supplying and consuming them;

    f. regulators to consider whether rules with the same policy objectives exist in other jurisdictions and include an explanation for any proposed divergence from established international standards;

    g. independent scrutiny of CBAs; and

    h. additional considerations where a regulator proposes rules with retrospective effect.[23]

36. These recommendations do not operate in a vacuum. They interact with and reinforce each other. For example, cumulative-impact analysis by itself can be informed through

[22] https://www.ukfinance.org.uk/system/files/Improving%20cost-benefit%20analyses%20by%20financial-services%20regulators%20-%20FINAL.pdf.
[23] See the solicitor-general's March 2002 statement at https://hansard.parliament.uk/commons/2002-03-06/debates/48085a3a-8954-46cf-b7c3-0b2c0f8eddf8/RetrospectiveLegislation.

sensitivity and options analysis. Moreover, as an overarching principle, CBAs should adopt a risk-based approach. This would improve their effectiveness by ensuring regulatory interventions are high quality, deliver desired outcomes and minimise the likelihood of regulatory failure.

Question 24: What impacts should be captured in the better-regulation framework?

Question 25: How can these objectives be embedded into the better-regulation framework?

37. Our supporting paper on improving CBAs by financial-services regulators notes that the Australian Office of Best Practice Regulation,[24] the European Commission,[25] Ofgem[26] and the Treasury Board of Canada Secretariat[27] point out a wide range of potential impacts, including economic, environmental and social effects, that should be considered when CBAs are performed. Impacts that are indirect or outside the market should be considered, in addition to more obvious direct impacts of the proposed regulation on affected sectors.

38. The requirement to account for the cumulative costs of regulation is explicitly articulated in some instances. The US Office of Information and Regulatory Affairs notes that, "Where appropriate and feasible, agencies should consider cumulative effects and opportunities for regulatory harmonization as part of their analysis of particular rules, and should carefully assess the appropriate content and timing of rules in light of those effects and opportunities. Consideration of cumulative effects and of opportunities to reduce burdens and to increase net benefits should be part of the assessment of costs and benefits . . . Agencies should avoid unintentional burdens that could result from an exclusive focus on the most recent regulatory activities."[28]

39. The Centre for European Policy Studies (CEPS)–Economisti Associati[29] and HMT[30] provide examples of categories that should be considered within indirect costs (e.g. indirect compliance costs, substitution effects and transaction costs) and indirect benefits (e.g. positive spillover effects related to third-party compliance and wider macroeconomic benefits) during the impact-assessment process. CEPS–Economisti Associati also describes the concept of second-order effects of legislation, or "ultimate impacts," defining these as a result of a combination of direct and indirect costs and benefits associated with a regulatory intervention.

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[24] https://obpr.pmc.gov.au/sites/default/files/2021-06/cost-benefit-analysis_0.pdf.
[25] https://ec.europa.eu/info/sites/default/files/better-regulation-guidelines-impact-assessment.pdf.
[26] https://www.ofgem.gov.uk/sites/default/files/docs/2019/11/riio-2_eso_cba_guidance.pdf.
[27] https://www.tbs-sct.gc.ca/rtrap-parfa/analys/analys-eng.pdf and https://www.canada.ca/en/government/system/laws/developing-improving-federal-regulations/requirements-developing-managing-reviewing-regulations/guidelines-tools/policy-cost-benefit-analysis.html.
[28] https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/cumulative-effects-guidance.pdf.
[29] https://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf.
[30] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf.

Scrutiny of regulatory proposals

Question 26: The current system requires a mandatory PIR to be completed after five years. Do you think an earlier mandated review point, after two years, would encourage more effective review practices?

Question 27: If no, what would you suggest instead?

40. A post-implementation review (PIR) should ideally take place as soon as sufficient evidence is available to assess whether the objectives of a regulatory intervention were met. This will vary according to circumstance, but there may be merit in mandating an earlier assessment (e.g. after two years) of whether a PIR would be timely.

41. Our response to the FRF consultation noted that practices relating to PIRs vary between and within financial-services regulators. Requiring any intervention to be followed up with a PIR would ensure there is consistent reporting of the aggregate effectiveness of regulatory changes. Such reviews should revisit pre-implementation consultation papers, feedback received and CBAs, highlighting how regulatory change has delivered against intended objectives and predefined success indicators. This may highlight the need for additional or remedial action and offer the opportunity to ensure lessons are learned for future policymaking. PIRs might be conducted for a specific change (e.g. a new policy) or a suite of changes (e.g. an annual review of minor regulatory initiatives).

Question 28: Which of these options would ensure a robust and effective framework for scrutinising regulatory proposals?

42. Consistent with our answer to question 23 above, we favour option 2: an independent body. However, we see merit in this being supported by experts from industry and academia, as mooted for option 3.

Measuring the impact of regulation: reviewing the BIT

Question 29: Which of the four options presented would be better to achieve the objective of striking a balance between economic growth and public protections?

43. Consistent with our answer to questions 24 and 25 above, we favour option 2: change. This seems to strike the right balance of delivering meaningful improvements to the assessment of regulatory impacts without undue upheaval.

Regulatory offsetting: one in, X out

Question 30: Should the one-in, X-out approach be reintroduced in the UK?

Question 31: What do you think are the advantages of this approach?

Question 32: What do you think are the disadvantages of this approach?

44. We do not support the reintroduction of one in, X out. Where regulatory intervention is appropriate, it should not be dependent on identifying offsetting savings elsewhere. Where existing regulation is inappropriate, it should be amended or removed as a matter

of course, not overlooked or deliberately retained until an offset for another intervention is needed.

45. We observed in our response to the FRF consultation that Ofcom must keep the carrying-out of its functions under review to ensure that it does not impose or maintain unnecessary burdens. In reviewing its functions, Ofcom must consider the extent to which it would be appropriate to remove or reduce regulatory burdens it has imposed.31 We saw no reason why financial-services regulators should not be subject to this stricter proportionality duty rather than the duty that they currently enjoy.

Question 33: How important do you think it is to baseline regulatory burdens in the UK?

46. We believe that it is very important to baseline regulatory burdens. Not only would this enable meaningful measures of progress in reducing burdens but it would also facilitate comparisons between sectors.

Question 34: How best can One-in, X-out be delivered?

47. See our answer to questions 30-32 above.

Further comments

Question 35: Are there any other matters not mentioned above you would suggest the government does to improve the UK regulatory framework?

48. First, consistent with preserving their independence, it is crucial that the better-regulation framework apply as fully to regulators as to government departments, particularly as they gain new powers post-Brexit. It is unclear to what extent this is currently true in principle; it certainly seems not to be the case in practice.

49. Second, even when regulation is coherent and incrementally justified, its cumulative impact on firms individually and the UK's competitiveness as a whole is rarely assessed. The government has already recognised the need to improve coordination in financial-services regulation through the establishment of the Financial Services Regulatory Initiatives Forum.[32] It could extend this approach more generally given that the source of a regulatory intervention—be it central or local government, a non-departmental public body or an independent regulator—is ultimately of little significance to a firm compared to the nature of the requirement facing it.

[31] https://www.legislation.gov.uk/ukpga/2003/21/section/6.
[32] https://www.fca.org.uk/publication/corporate/financial-services-regulatory-initiatives-forum-tor.pdf.