



## HM Government's Plans for Regulation Debate on 7 December 2017

### Summary

This Lords Library Briefing has been prepared in advance of Baroness Neville-Rolfe's (Conservative) debate scheduled to take place in the House of Lords on 7 December 2017, on the following motion: "to move that this House takes note of Her Majesty's Government's plans to ensure that regulation is balanced, cost-effective, easy to understand, and properly enforced".

Regulation is a broad term for a range of tools that governments can use to intervene in markets. The primary purpose of regulation is to address market failures which result in outcomes that are not in accordance with public good or intended policies. Regulation can take various forms, ranging from prescriptive government-led intervention to market-led incentives and codes of practice.

The Coalition Government introduced policies intended to reduce the costs to businesses and civil society of complying with regulation. This included the Red Tape Challenge and a 'one in, one out' policy, under which any new UK regulation which imposed a direct annual net cost on businesses or civil society organisations would have to be offset by the removal of existing regulations with an equivalent value.

The subsequent Conservative Government continued the Coalition Government's policies of examining areas where the costs of regulation could be reduced. The Government was also required by law to publish a target for reducing the cost burden of regulation, known as the Business Impact Target. The Government, then led by David Cameron, published a target of reducing the cost to business of regulation by £10 billion by 2020. The Government has been criticised for excluding certain high-impact measures, in particular the National Living Wage, from the calculation and presentation of the target.

The European Union (Withdrawal) Bill, currently progressing through Parliament, provides that all European Union (EU) law will become part of UK law when the UK leaves the EU. As a result of the UK's withdrawal from the EU, UK regulatory bodies may have to take on new functions and new bodies may have to be established.

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## **I. Regulation in the UK: Overview**

Regulation is a broad term for a range of tools that governments can use to intervene in markets. In the UK regulation covers a range of sectors, from private markets, such as energy and banking, to taxpayer-funded public and mixed markets such as social care and higher education.<sup>1</sup> According to the National Audit Office, “the characteristics of some markets mean that, left to their own devices, they risk failing to produce behaviour or results in accordance with public interest (for example, clean air) or policy objectives”.<sup>2</sup> The primary purpose of regulation is to address these market failures. Regulation can take various forms, ranging from prescriptive government-led intervention to market-led incentives and codes of practice.

### ***Regulatory Bodies and Costs***

There are more than 90 regulatory bodies in the UK.<sup>3</sup> These bodies cover a range of areas including financial services, education, healthcare, charities, transport, communications, the media, utilities and the environment. Regulators can have a variety of administrative statuses; some are statutorily independent bodies, while others are executive agencies of government departments.

In 2015/16, UK regulatory bodies had a total expenditure of £4.1 billion.<sup>4</sup> The largest, the Financial Conduct Authority, had expenditure of £543 million in 2015/16, while the smallest regulators spent approximately £100,000 each. This expenditure covered all regulatory activities as well as general running costs.

In addition to the costs of the regulatory bodies, regulation imposes costs on businesses. The National Audit Office found that the most recent estimate of the total cost to businesses imposed by all regulation was undertaken by the now-defunct Better Regulation Task Force and took place in 2005. It estimated the cost to the UK economy of regulation to be approximately £100 billion each year.<sup>5</sup> However, in a recent report, the National Audit Office emphasised that the costs of regulation should be considered in conjunction with its benefits to businesses and society; for example, there is an estimated £10 direct financial benefit to consumers from the work of the Competition and Markets Authority for every £1 of its running costs.<sup>6</sup>

Government departments have been criticised for not having a recent or precise estimate of the cost implications of the regulations they are responsible for. A House of Commons Public Accounts Committee report,

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<sup>1</sup> National Audit Office, [A Short Guide to Regulation](#), September 2017, p 8.

<sup>2</sup> *ibid*, p 6.

<sup>3</sup> *ibid*, p 5.

<sup>4</sup> *ibid*, p 12.

<sup>5</sup> *ibid*.

<sup>6</sup> *ibid*, p 4.

published in 2016, stated that “many departments have only a partial understanding of the total costs and benefits to business of the regulations for which they and regulators are responsible”, and five of the 14 departments with regulatory responsibilities have no plans to quantify existing regulations.<sup>7</sup> In its response to the report, the Government said that “by February 2017, the Better Regulation Executive will set out in greater detail its work to improve its understanding of existing regulations”.<sup>8</sup> This information is not listed among publications by the Department for Business, Energy and Industrial Strategy.<sup>9</sup>

### **Government and Non-government Bodies Involved in Making and Reforming Regulation**

Proposals to create, amend or abolish regulations come from government departments or regulatory bodies. Each department has a Better Regulation Unit, which is responsible for promoting principles of better regulation and advising policymakers in government departments.<sup>10</sup>

The Reducing Regulation Cabinet Sub-Committee has strategic oversight of the Government's regulatory framework. The Better Regulation Executive, a unit of the Department for Business, Energy and Industrial Strategy, is responsible for coordinating cross-departmental efforts to reduce regulation, including developing and implementing a framework for achieving the Business Impact Target, a target for reducing the costs of regulation (this is discussed further in section 2.3 of this briefing).

The Regulatory Policy Committee is an independent body which provides advice on the quality of analysis and evidence used by departments and regulators in their assessments of the economic impact on business from regulatory interventions.<sup>11</sup> It scrutinises all regulatory provisions with an impact on business or civil society, at the point at which they are submitted to the Cabinet for clearance.<sup>12</sup> It is also the independent verifying body for the Government's Business Impact Target.

### **International Comparison**

The National Audit Office noted a study by the Organisation for Economic

<sup>7</sup> House of Commons Public Accounts Committee, [Better Regulation](#), 12 October 2016, HC 487 of session 2016–17, p 5.

<sup>8</sup> HM Treasury, [Government Responses to the Committee of Public Accounts on the Thirty Ninth Report from Session 2015–16: the Fourteenth to the Twenty First Reports from Session 2016–17: and Progress on Government Cash Management](#), December 2016, Cm 9389, p 20.

<sup>9</sup> HM Government, [Publications by Department for Business, Innovation and Skills](#), accessed 29 November 2017.

<sup>10</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#), June 2016, HC 236 of session 2016–17, p 16.

<sup>11</sup> Department for Business, Innovation and Skills, [Regulatory Policy Committee Framework Document](#), January 2017, p 3.

<sup>12</sup> Regulatory Policy Committee, [Corporate Report 2016–17](#), July 2017, p 7.

Co-operation and Development (OECD) which found that, in most regards, the UK has relatively low levels of regulation compared with other member states.<sup>13</sup> In particular, in 2013 the UK had the least regulated “network” industries (including electricity, gas, telecoms and rail) of all 47 member nations which were assessed. This assessment included criteria such as barriers to entry, the level of public ownership, vertical integration and market structure. In product markets, the OECD’s assessment suggested that the UK has relatively low barriers to competition compared with most other member states, and less use of prescriptive “command and control” regulation. However, the study found that UK regulations are often more complex than those in other nations.

## 2. Reducing Costs to Businesses

### 2.1 Coalition Government Policies

#### *Red Tape Challenge and ‘One In, One Out’ Policy*

The Coalition Agreement published by the Conservative-Liberal Democrat Coalition Government included a commitment to reducing regulation, stating that it would “cut red tape by introducing a ‘one in, one out’ rule whereby no new regulation is brought in without other regulation being cut by a greater amount”.<sup>14</sup>

The objective of the ‘one in, one out’ policy was to bring down the cost and volume of regulation.<sup>15</sup> Under this policy, any new UK regulation which imposed a direct annual net cost on businesses or civil society organisations would have to be offset by the removal of existing regulations with an equivalent value. The methodological guidance for the policy included a list of 15 types of measure that were out of scope of the policy, including EU regulations, decisions and directives.<sup>16</sup>

In January 2013, the then Government replaced this policy with a ‘one in, two out’ rule, doubling the financial savings that departments were required to identify in order to offset the cost of new regulations.<sup>17</sup>

In order to help departments to identify possible savings from regulation, the Coalition Government launched the Red Tape Challenge, an initiative which solicited views from the public on the effectiveness of current regulation.<sup>18</sup> The consultation received more than 30,000 comments before it closed in

<sup>13</sup> National Audit Office, [A Short Guide to Regulation](#), September 2017, p 14.

<sup>14</sup> HM Government, [The Coalition: Our Programme for Government](#), May 2010, p 9.

<sup>15</sup> HM Government, [One-In, One-Out \(OIOO\) Methodology](#), July 2011, p 3.

<sup>16</sup> *ibid*, p 5.

<sup>17</sup> Department for Business, Innovation and Skills, [“One-in, Two-out”: Government to Go Further and Faster to Reduce Burdens on Business and Help Britain Compete in the Global Race](#), 9 July 2014.

<sup>18</sup> Cabinet Office, [Red Tape Challenge](#), 7 April 2011.

December 2014,<sup>19</sup> and over 3,000 regulations were removed or changed as a result of the programme.<sup>20</sup>

The Coalition Government calculated that these initiatives resulted in a net saving to businesses of £10 billion in the 2010–15 parliament.<sup>21</sup> Examining this calculation, the National Audit Office stated that nearly half of the 951 regulatory decisions made in this time were not included in the Government's claim that it had achieved savings of £10 billion. According to the National Audit Office, these out-of-scope regulations were expected to impose around £2.8 billion of annual costs on businesses, more than the estimated annual savings to business from in-scope regulatory decisions of £2.2 billion.<sup>22</sup>

A series of surveys undertaken by the National Audit Office and the Department for Business, Innovation and Skills between 2007 and 2014 examined businesses' perceptions of regulation. In 2009, this survey found that 19 percent of businesses said that complying with regulation presented the greatest challenge to their business. This decreased to 14 percent in 2014.<sup>23</sup> In 2009, 62 percent of respondents said that the overall level of regulation was an obstacle to success; in 2014 this was 51 percent.<sup>24</sup>

### ***Small Business, Enterprise and Employment Act 2015***

In June 2014, the Coalition Government introduced the Small Business, Enterprise and Employment Bill, which received royal assent in March 2015. In the Queen's Speech at the beginning of the 2014–15 parliamentary session, the Government said that the Bill would "help make the United Kingdom the most attractive place to start, finance and grow a business. The Bill will support small businesses by cutting bureaucracy and enabling them to access finance".<sup>25</sup> The Act includes a requirement for the Government to set and publish a target for itself for the economic impact on business of new qualifying regulatory provisions, called the Business Impact Target.<sup>26</sup> In a fact sheet published alongside the Bill, the Government stated that the intention of the Business Impact Target was to "entrench in law the setting of a deregulation target—similar to the 'one-in, two-out' approach—and transparent reporting of new regulatory burdens on business".<sup>27</sup>

<sup>19</sup> Department for Business, Innovation and Skills, '[Hancock: Red Tape Drive Saves Business a Record £10 Billion](#)', 30 December 2014.

<sup>20</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#),

29 June 2016, HC 236 of session 2016–17, p 12.

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*, p 17.

<sup>23</sup> National Audit Office and Department for Business, Innovation and Skills, [Business Perceptions Survey 2014](#), 28 May 2014, p 13.

<sup>24</sup> *ibid.*, p 15.

<sup>25</sup> [HL Hansard, 4 June 2014, col 1](#).

<sup>26</sup> Small Business, Enterprise and Employment Act 2015, s 21.

<sup>27</sup> Department for Business, Innovation and Skills, [Small Business, Enterprise and Employment Act: Regulatory Reform Fact Sheets](#), 2015, p 5.

## 2.2 Conservative Government Policies from 2015

In order to achieve the Business Impact Target required by legislation, the Government, then led by David Cameron, extended the deregulatory policies introduced by the previous Government.

In March 2016, the then Business Secretary, Sajid Javid, announced that the 'one in, two out' policy would become a 'one in, three out' policy.<sup>28</sup>

The Cameron Government also introduced the Cutting Red Tape programme as a successor to the Red Tape Challenge and Focus on Enforcement reviews (discussed below).<sup>29</sup> The Cutting Red Tape programme continued the approach of opening up successive sectors for consultation with businesses, soliciting recommendations for improvements to regulation. This programme ended in June 2017.

The 2017 Conservative Party general election manifesto stated that the Party would reduce and improve regulation:

Regulation is necessary for the proper ordering of any economy and to ensure that people—and their investments—are protected. However, poor and excessive government regulation limits growth for no good reason. So we will continue to regulate more efficiently, saving £9 billion through the Red Tape Challenge and the 'one in, two out' rule.

Reducing the cost of regulation is not just about reducing its volume. The wrong regulatory frameworks can over-reward investors for the risk they are taking in backing a particular project, meaning households and businesses can become systematically overcharged. We will therefore examine ways in which the regulation of utilities and transport infrastructure can be improved to deliver a better deal for customers and sharper incentives for investment efficiency.<sup>30</sup>

## 2.3 Business Impact Target

### *Setting the Target*

The Small Business, Enterprise and Employment Act 2015 requires the Government to set a target for the economic impact on business activities of regulatory decisions made during the course of each parliament.<sup>31</sup> A report by the House of Commons Public Accounts Committee explains the process

<sup>28</sup> Department for Business, Innovation and Skills, '[Government Going Further to Cut Red Tape by £10 billion](#)', 3 March 2016.

<sup>29</sup> HM Government, '[Cutting Red Tape](#)', accessed 27 November 2017.

<sup>30</sup> Conservative Party, '[The Conservative Party Manifesto 2017](#)', 18 May 2017, pp 15–16.

<sup>31</sup> Small Business, Enterprise and Employment Act 2015, s 21(1).

for setting and implementing this target:

The Better Regulation Executive [...] is responsible for developing and implementing a framework for achieving the Government's target. Departments and regulators are responsible for delivering the cost savings to achieve the target through the regulatory decisions they make. At the policy planning stage, HM Treasury guidance requires departments to complete impact assessments that contain estimates of the annual costs and benefits of the preferred policy option [...] The Regulatory Policy Committee, an advisory non-departmental public body, scrutinises and validates the estimates departments make of the costs and benefits to business.<sup>32</sup>

In its 2015 general election manifesto, the Conservative Party committed to reducing regulatory costs to businesses and voluntary and community bodies by £10 billion "over the next parliament".<sup>33</sup> This commitment was formalised in the Business Impact Target, published in a written statement to Parliament in March 2016.<sup>34</sup>

When the Business Impact Target was set it was expected that the parliament would continue until 2020, following the enactment of the Fixed-term Parliaments Act 2011. However, as a result of the general election called for 8 June 2017, Parliament was dissolved on 3 May 2017. Under the Small Business, Enterprise and Employment Act 2015, the Secretary of State is required to publish a target within twelve months of the commencement of a new parliament; the current parliament began on 21 June 2017.<sup>35</sup>

### **Exclusions**

In June 2016, the National Audit Office published a report which examined the Business Impact Target. It found that significant costs imposed on businesses by new regulation have been excluded from the target, in particular the National Living Wage, which is expected to add costs of £4.1 billion by 2020 and the National Minimum Wage, which is expected to add £3.1 billion.<sup>36</sup> The National Living Wage was excluded from the Business Impact Target because the "offsetting measures" of changes to national insurance and tax were excluded under the terms of the Small Business, Enterprise and Employment Act 2015.<sup>37</sup> However, the National Audit Office

<sup>32</sup> House of Commons Public Accounts Committee, [Better Regulation](#), 12 October 2016, HC 487 of session 2016–17, p 8.

<sup>33</sup> Conservative Party, [The Conservative Party Manifesto 2015](#), April 2015, p 19.

<sup>34</sup> House of Commons, [Written Statement: Business Impact Target](#), 3 March 2016, HCWS574.

<sup>35</sup> Small Business, Enterprise and Employment Act 2015, s 21(1).

<sup>36</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#), 29 June 2016, HC 236 of session 2016–17, p 17.

<sup>37</sup> House of Commons, [Written Statement: Business Impact Target](#), 3 March 2016, HCWS574.

argued that “this approach leaves the Government open to claims that it has chosen to omit regulations which introduce significant costs to business”, and may undermine the credibility of the target.<sup>38</sup>

Tax administration is also excluded from the target. The Government has a separate programme to reduce the burden from tax administration, with a goal of reducing the annual cost of tax administration by £400 million by 2020.<sup>39</sup> However, the National Audit Office has argued that tax administration not being included in the Business Impact Target “makes it difficult to coordinate deregulatory efforts around the experience of businesses, or to prioritise the areas that have the greatest effects”.<sup>40</sup> The Federation of Small Businesses and the British Chambers of Commerce have asked the Government to bring tax administration with the remit of the target.<sup>41</sup>

In October 2016, the House of Commons Public Accounts Committee reported on the Government's progress towards meeting its target. It argued that as a result of exclusions, the Business Impact Target “does not closely reflect the compliance costs that businesses face”.<sup>42</sup> In its response to the Committee's report, the Government stated that all regulatory provisions covered by the Small Business, Enterprise and Employment Act 2015 are included in the Business Impact Target annual report, and that although tax is not regulation, in the next Business Impact Target annual report information about the impact of changes in tax administration would be included.<sup>43</sup> However, the general election that was called for June 2017 had the effect of requiring the annual report to be published early, and because of time pressure the Government was not able to include all the required information. The report stated that “the Government will produce a more comprehensive report that meets the entirety of its reporting obligations as soon as it is practicable to do so after the general election on 8 June”.<sup>44</sup>

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<sup>38</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#), 29 June 2016, HC 236 of session 2016-17, p 18.

<sup>39</sup> HM Revenue and Customs, [Single Departmental Plan 2015 to 2020](#), 13 July 2017.

<sup>40</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#), 29 June 2016, HC 236 of session 2016-17, p 19.

<sup>41</sup> *ibid.*

<sup>42</sup> House of Commons Public Accounts Committee, [Better Regulation](#), 12 October 2016, HC 487 of session 2016-17, p 5.

<sup>43</sup> HM Treasury, [Government Responses to the Committee of Public Accounts on the Thirty Ninth Report from Session 2015-16; the Fourteenth to the Twenty First Reports from Session 2016-17; and Progress on Government Cash Management](#), December 2016, Cm 9389, p 20.

<sup>44</sup> Department for Business, Energy and Industrial Strategy, [Business Impact Target: Interim Report 2016-17](#), April 2017, HC 1004 of session 2016-17, p 4.

### 3. Impact Assessments and Monitoring

#### *Impact Assessments*

HM Treasury guidance requires departments to complete regulatory impact assessments for intended changes to regulation if the policy will affect businesses, charities or the voluntary sector.<sup>45</sup> These are then submitted to the Regulatory Policy Committee.

In its 2016 investigation, the National Audit Office found that the process of assessing expected costs and benefits to businesses functions well, stating:

The Government and Regulatory Policy Committee have established robust processes to ensure that the method for calculating expected business costs and benefits is applied correctly. We examined ten recent impact assessments accompanying regulatory decisions, and found that all of them included clear breakdowns of expected costs and benefits to business. The RPC's approach to validating the expected impacts of regulatory changes is thorough and comprehensive, and has increased the transparency of impact assessments.<sup>46</sup>

Treasury guidance states that although the trigger for producing an impact assessment is that the proposal could affect businesses, charities or the voluntary sector, the assessment itself should cover the full range of economic, social and environmental effects. However, the National Audit Office reported that in spite of this requirement, only a third of the impact assessments scrutinised by the Regulatory Policy Committee in 2014 contained robust calculations of wider societal costs and benefits.<sup>47</sup> In evidence given to the House of Commons Public Accounts Committee, Matthew Upton, Head of Policy (Consumer and Public Services) at the Citizen's Advice Bureau, said that "one of the worries, when you look at the impact analyses that have been done, is that there is such a strong business focus, consumers' voices are not heard".<sup>48</sup>

In the introduction to the most recent report of the Regulatory Policy Committee, its Chair, Michael Gibbons, wrote that the Committee would press for "full assessment and scrutiny of wider societal impacts and risks as well as costs and benefits to business and civil society".<sup>49</sup>

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<sup>45</sup> HM Treasury, [Green Book: Appraisal and Evaluation in Central Government](#), July 2011, p 8.

<sup>46</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#), 29 June 2016, HC 236 of session 2016–17, p 8.

<sup>47</sup> *ibid*, p 30.

<sup>48</sup> House of Commons Public Accounts Committee, [Oral Evidence: Better Regulation, HC 487](#), 13 July 2016, Q10.

<sup>49</sup> Regulatory Policy Committee, [Corporate Report 2016–17](#), July 2017, p 6.

## Monitoring

HM Treasury's guidance states that, while a regulation is being implemented, policymakers should monitor the impact of the regulation on stakeholders.<sup>50</sup> However, in its 2016 review of the Business Impact Target, the National Audit Office found that the Better Regulation Executive placed little emphasis on monitoring in its guidance and that, in practice, departments rarely include adequate monitoring and evaluation plans in the impact assessments that accompany their regulatory decisions.<sup>51</sup>

The House of Commons Public Accounts Committee concluded that "once departments have implemented a regulatory decision, they do not do enough to monitor and evaluate its impact".<sup>52</sup> Giving evidence to the Committee, the Chair of the Regulatory Policy Committee said that he was concerned that his Committee had so far received very few of the post-implementation reviews they were expecting, and that of those they had received, "none of these covered anything of major significance".<sup>53</sup> The National Audit Office argued that not evaluating regulatory decisions during and after implementation means that "departments could miss opportunities to adapt policies in ways that would help businesses".<sup>54</sup>

Responding to the House of Commons Public Accounts Committee's assessment that once departments have implemented a regulatory decision they do not do enough to monitor and evaluate its impact, the Government said that it agreed with the Committee. The Government highlighted that post-implementation reviews are now a statutory requirement under the Small Business, Enterprise and Employment Act 2015, and stated that, in addition, "the Better Regulation Executive will encourage departments to include monitoring and evaluation plans in all impact assessments on significant regulatory proposals that have a statutory review clause".<sup>55</sup>

## 4. Enforcement

### 4.1 Regulators' Code

The current Regulators' Code sets out how regulators are expected to engage with those that they regulate. It was introduced by the Coalition Government and came into effect in April 2014. Under the Legislative and

<sup>50</sup> HM Treasury, [Green Book](#), 11 November 2016, p 42.

<sup>51</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#),

29 June 2016, HC 236 of session 2016–17, p 8.

<sup>52</sup> House of Commons Public Accounts Committee, [Better Regulation](#), 12 October 2016, HC 487 of session 2016–17, p 6.

<sup>53</sup> *ibid*, p 13.

<sup>54</sup> National Audit Office, [The Business Impact Target: Cutting the Cost of Regulation](#),

29 June 2016, HC 236 of session 2016–17, p 8.

<sup>55</sup> HM Treasury, [Government Responses to the Committee of Public Accounts on the Thirty Ninth Report from Session 2015–16; the Fourteenth to the Twenty First Reports from Session 2016–17; and Progress on Government Cash Management](#), December 2016, Cm 9389, p 21.

Regulatory Reform Act 2006, regulators whose functions are specified by the Act must have regard to the Regulators' Code when developing policies and operational procedures that guide their regulatory activities.<sup>56</sup> The Code enshrines six principles for regulators to follow. These are that regulators should:

- carry out their activities in a way that supports those they regulate to comply and grow;
- provide simple and straightforward ways to engage with those they regulate and hear their views;
- base their regulatory activities on risk;
- share information about compliance and risk;
- ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
- ensure that their approach to their regulatory activities is transparent.<sup>57</sup>

Introducing the Code, the then Minister of State for Business and Enterprise, Sir Michael Fallon, wrote that it “provides a flexible, principles-based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities”.<sup>58</sup>

## 4.2 Focus on Enforcement Programme

In March 2012, the Coalition Government launched the Focus on Enforcement campaign, which solicited recommendations from businesses on areas where the enforcement of regulation could be improved or reduced.<sup>59</sup> Introducing the programme, the then Business Secretary, Vince Cable, said that “sometimes regulations are fine, it is inconsistent, inappropriate or overlapping enforcement that is the problem”.<sup>60</sup> As a result of sectoral reviews conducted under the programme, the then Government made changes to enforcement regimes, including reducing time spent on inspections, prioritising guidance and addressing situations where the same information had to be submitted multiple times to different agencies.<sup>61</sup> This programme was succeeded by the Business Focus on Enforcement reviews, which allowed trade associations and representative business groups to bid to review how enforcement operated in their business area.<sup>62</sup>

<sup>56</sup> Legislative and Regulatory Reform Act 2006, s 22(2).

<sup>57</sup> Department for Business, Innovation and Skills, [Regulators' Code](#), April 2014, pp 2–8.

<sup>58</sup> *ibid*, p 2.

<sup>59</sup> Department for Business, Innovation and Skills, ['Focus on Enforcement'](#), 23 March 2012.

<sup>60</sup> *ibid*.

<sup>61</sup> Department for Business, Innovation and Skills, ['Business-friendly Enforcement Saves Firms over £40 Million'](#), 10 February 2015.

<sup>62</sup> Department for Business, Innovation and Skills, ['Focus on Enforcement'](#), accessed 24 November 2017.

### 4.3 Regulatory Futures Review

In January 2017, the Cabinet Office published a review of certain regulators in the UK, with a view to identifying ways to improve the efficiency of regulation and to reduce burdens on regulators, as well as to develop a system of regulatory delivery models which could be applied to all regulators.<sup>63</sup>

The review recommended that regulators focus on outcomes rather than processes such as compliance with detailed rules.<sup>64</sup> The report argued that outcome-based regulation can be more flexible in response to changing technology and markets, encouraging new entrants and innovation. It can also reduce the resources required by the regulator for inspections and investigations.

The report also recommended a greater use of systems of “regulated self-assurance”, in which regulated entities, purchasers or professions use processes and schemes to maintain standards, rather than this compliance being assured through action by regulators.<sup>65</sup> The report cited the example of the Red Tractor scheme, owned jointly by the National Farmers Union and the British Retail Consortium, which inspects food production. Farms which are assured under the scheme are less likely to be inspected by the Food Standards Agency and do not have to be inspected by each individual retailer. The report argued that a compliance regime designed by the businesses being regulated could lead to a better targeted and more efficient regime, among other benefits.<sup>66</sup> However, it also noted that there are potential drawbacks to these schemes, including a possible increased focus on processes rather than outcomes, and power being concentrated in large entities.<sup>67</sup>

## 5. Impact of the Grenfell Tower Disaster on Regulation

On 14 June 2017, a fire started at Grenfell Tower, a 24-storey tower block in North Kensington, London. The fire destroyed 151 homes and approximately 80 people are estimated to have died.<sup>68</sup> It has been suggested that the cladding used on the building caused the fire to spread rapidly, contributing to the severity of the fire.<sup>69</sup>

On 15 August 2017, the Prime Minister, Theresa May, announced the establishment of a public inquiry into the fire.<sup>70</sup> The terms of reference of

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<sup>63</sup> Cabinet Office, [Regulatory Futures Review](#), January 2017, p 1.

<sup>64</sup> *ibid*, p 29.

<sup>65</sup> *ibid*, p 25.

<sup>66</sup> *ibid*, p 37.

<sup>67</sup> *ibid*, pp 37–8.

<sup>68</sup> BBC News, [‘London Fire: What Happened at Grenfell Tower?’](#), 19 July 2017.

<sup>69</sup> *ibid*.

<sup>70</sup> Grenfell Tower Enquiry, [Inquiry Chairman Receives Terms of Reference](#), 15 August 2017.

the inquiry include several points relating to regulation: the scope and adequacy of building regulations, fire regulations and other legislation, guidance and industry practice relating to the design, construction, equipping and management of high-rise residential buildings; and whether such regulations, legislation, guidance and industry practice were complied with in the case of Grenfell Tower and the fire safety measures adopted in relation to it.<sup>71</sup>

The Grenfell Tower fire led to debate about the appropriateness of deregulatory policies. In a parliamentary question asked on 3 July 2017, Lord Rennard (Liberal Democrat), asked the Government “in the light of the Grenfell Tower disaster, what plans they have to review their ‘one in, two out policy’ for new regulations”.<sup>72</sup> Lord Prior of Brampton, then Parliamentary Under Secretary of State at the Department of Business, Energy and Industrial Strategy, responded that “the Government has not yet decided how its better regulation system, including any ‘one in, two out’ policy, will operate in this parliament”.<sup>73</sup>

Speaking in a debate on the inquiry into the fire at Grenfell Tower, the Shadow Secretary of State for Housing, John Healey, argued against a presumption in favour of reducing regulation:

Surely Members in all parts of the House would agree that all markets, organisations and consumers require regulation to guarantee quality and safety, to ensure fair practice and to stop abuse, yet that is not the current Government’s mindset. Never again can we have a Government Minister who, when challenged on fire safety measures after the fire in Camberwell [at Lakanal House in 2009, in which six people died], said that they were not the Government’s responsibility, justifying that with the ‘one in, two out’ approach to regulation.<sup>74</sup>

Responding to concerns that deregulation had contributed to the events at Grenfell Tower, Alok Sharma, Minister for Communities and Local Government, said:

We had a discussion about building regulations, and I respectfully point out that they were put together in 2006, not when the current Government were in place, so this idea that somehow deregulation has played a part is unfair. Let me also make reference to the Lakanal House fire and what the coroner wanted to happen. The coroner recommended simplifying the fire safety guidance under the building regulations, not a change in the standards. I accept that that has not happened as yet, but clearly in the light of this tragedy we need to

<sup>71</sup> House of Commons, ‘[Written Statement: Grenfell Tower Enquiry Terms of Reference](#)’, 14 September 2017, HCWS135.

<sup>72</sup> House of Lords, ‘[Written Question HL406](#)’, 3 July 2017.

<sup>73</sup> *ibid.*

<sup>74</sup> [HC Hansard, 12 July 2017, col 323.](#)

reflect on the previous plans for consulting. Clearly, if anything emerges from the investigation where we need to take immediate action, we will do that.<sup>75</sup>

A debate took place in the House of Lords in July 2017 on a motion moved by Baroness Andrews (Labour) on the impact of deregulation on, and the role of regulatory enforcement in delivering, public services and health and safety. Baroness Andrews argued that former and current governments had too zealously pursued a deregulatory approach:

[...] the state is being wilfully dismantled and disabled by an ideology that explicitly pursues a leaner and meaner state. This has been marked not just by an increasing frenzy ramped up over seven years by successive Ministers to get rid of as many regulations as fast as possible, but by a climate of hostility that invites compromises over safeguards and standards, and opts for guidance rather than enforcement. Crucially, this fatal obsession with deregulation in all forms across Whitehall has been pursued with no regard for consequences, other than the benefits to business. Even then, the outcomes are far from transparent or consistent.<sup>76</sup>

Responding for the Government, Lord Prior of Brampton said that “deregulation and public safety are not necessarily contradictory”, arguing that public safety improved over a period when many regulations were removed.<sup>77</sup> He also emphasised that the delivery of regulation was as important as the regulation itself, and that “good regulatory delivery [...] is about having competent regulators, being outcome-focused and having regulatory activities that rely on a robust assessment of risk”. Reflecting on the balance between necessary regulation and over-regulation, Lord Prior said “I feel that the balance we have achieved over the past 20 years has been about right” but that “it is now time to think afresh about how we approach regulation”.

## 6. Opposition Policies

In its manifesto published ahead of the 2017 general election, the Labour Party stated that it would uphold existing workers’ rights, consumer rights and environmental protections.<sup>78</sup> It stated that, if elected, it would increase regulation of commercial fostering agencies and certain bus routes, end self-regulation of the Department for International Development’s private contractors, and reform regulation of banks and energy efficiency requirements for landlords.<sup>79</sup>

<sup>75</sup> [HC Hansard, 12 July 2017, col 323.](#)

<sup>76</sup> [HL Hansard, 13 July 2017, col 1303.](#)

<sup>77</sup> *ibid*, cols 1335–6.

<sup>78</sup> Labour Party, [The Labour Party Manifesto 2017](#), 16 May 2017, p 26.

<sup>79</sup> *ibid*, pp 16, 21, 87, 90 and 122.

In the Liberal Democrat 2017 manifesto, the Party stated that it would “reform the Regulatory Policy Committee to remove unnecessary regulation, reduce regulatory uncertainty, and support new markets and investment, particularly in low-carbon and resource-efficient innovation”.<sup>80</sup>

## 7. Leaving the European Union

### 7.1 Transposition of EU law into UK law

Many regulations are written in EU rather than UK law. According to the National Audit Office, there are 34 EU regulatory organisations whose frameworks affect the UK, but “there is no authoritative assessment of what proportion of UK laws and regulations are directly affected by the EU”.<sup>81</sup> Addressing the impact of leaving the EU on UK regulation, Lord Prior of Brampton, then Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, wrote that “in the immediate future there will be major challenge for departments to understand the stock of regulations that directly and indirectly implements 45 years’ worth of EU law”.<sup>82</sup>

The European Union (Withdrawal) Bill, which is currently progressing through Parliament, would repeal the European Communities Act 1972. The 1972 Act provides for the incorporation of European Union law (then European Economic Community law) into domestic law. Under the terms of the European Union (Withdrawal) Bill, all existing EU legislation will be transposed into UK law so that “as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before”.<sup>83</sup>

### *Impact on Regulators*

UK regulatory bodies may be required to take on new responsibilities as a result of the UK’s departure from the EU, and new regulatory bodies may need to be established. Clause 7 of the European Union (Withdrawal) Bill gives ministers a power to make secondary legislation to resolve problems in retained EU law arising upon the UK’s exit. Subsection 2 of the Bill gives examples of the types of problem that ministers would have the power to remedy, including that functions are currently being carried out in the EU on the UK’s behalf, for example by an EU agency, or that there are EU references which are no longer appropriate.<sup>84</sup>

<sup>80</sup> Liberal Democrats, [The Liberal Democrat Manifesto 2017](#), 17 May 2017, p 40.

<sup>81</sup> National Audit Office, [A Short Guide to Regulation](#), September 2017, p 16.

<sup>82</sup> Department of Business, Energy and Industrial Strategy, [Letter from Lord Prior of Brampton: the Government’s Response to the Committee’s Report on Better Regulation](#), 1 March 2017, para 26.

<sup>83</sup> [European Union \(Withdrawal Bill\) Explanatory Notes](#), p 8.

<sup>84</sup> *ibid*, p 29.

In the Explanatory Notes to the Bill, the Government gives examples of what secondary legislation made under clause 7 could do:

For example, it can transfer the functions of EU authorities to UK public authorities or create new UK public authorities to take on those functions. These functions might include the ability to set rules or create standards, which are currently made by the EU as non-legislative acts (delegated and implementing acts).<sup>85</sup>

The Government's Delegated Powers Memorandum accompanying the European Union (Withdrawal) Bill gives examples of functions which would have to be transferred from EU to UK bodies, including the Competition and Markets Authority taking functions from the European Commission, the Civil Aviation Authority replacing the European Air Safety Authority, and a UK government body taking on the functions of assessing chemical substances under the REACH regulation.<sup>86</sup>

The law firm Ashurst has analysed the prospect that after the UK leaves the EU the Competition and Markets Authority (CMA) may oversee large mergers currently under the purview of the European Commission. Ashurst has argued that this should not require significant legal changes because "the UK already has in place the legislation and institutions required to undertake detailed, sophisticated reviews of large-scale, complex mergers and there is no reason to think that any reforms will be required simply to equip the CMA to deal with larger international mergers".<sup>87</sup> However, it predicted that the CMA will need additional resources to deal with the larger and more complex cases. The House of Commons Exiting the European Union Committee's report of the European Union (Withdrawal) Bill also cited capacity concerns for regulators taking on new functions, stating that "a key challenge of replicating EU functions in the UK will be establishing the requisite domestic expertise and regulatory capacity to administer any local regime".<sup>88</sup>

There may also be an additional burden on businesses from no longer reporting to EU bodies. For example, if both the EU and UK have to be notified of a merger, each regulator will undertake their own proceedings and "this will result in more notifications and investigations, with the associated increase in financial cost and management time for the businesses concerned".<sup>89</sup>

In response to a parliamentary question asked in July 2017, Parliamentary Under Secretary of State for Exiting the European Union Robin Walker said

<sup>85</sup> [European Union \(Withdrawal\) Bill Explanatory Notes](#), p 30.

<sup>86</sup> [European Union \(Withdrawal\) Bill Delegated Powers Memorandum](#), paras 16–20.

<sup>87</sup> Ashurst, 'UK Merger Control at a Crossroads', 25 November 2016.

<sup>88</sup> House of Commons Exiting the European Union Committee, [European Union \(Withdrawal\) Bill](#), 17 November 2017, HC 373 of 2017–19, p 21.

<sup>89</sup> Ashurst, 'UK Merger Control at a Crossroads', 25 November 2016.

that “no decisions have yet been made on our future relationship with the EU’s decentralised bodies after leaving the EU”.<sup>90</sup>

### ***New Regulations***

The National Audit Office has highlighted two areas in which the transposition of EU law into UK law may require new regulation. If the UK leaves the single market and customs union, as the Government has stated it will,<sup>91</sup> this “may [...] require new regulatory regimes to trade with the rest of the world where the UK is no longer covered by EU agreements”.<sup>92</sup> In addition, new regulations may be necessary where current frameworks name European courts as the arbiter:

Where existing regulatory frameworks specify that European courts have unlimited jurisdiction over certain matters—for instance, the Euratom treaty covering civil nuclear activities—the Government’s current stated position that UK courts should have ultimate authority will necessitate the formation of new regulatory frameworks.<sup>93</sup>

However, responding to concerns about the enforcement of air quality regulations after the UK leaves the EU, the then Secretary of State for the Department of Environment, Food and Rural Affairs, Andrea Leadsom, said:

The UK courts will be perfectly well able to deal with any issues of enforcement, as indeed they do now on issues with water or wildlife crime and so on. The UK courts are perfectly well able to deal with matters of enforcement. We won’t be needing to replace European courts.<sup>94</sup>

## **7.2 Regulation Created after the UK Leaves the EU**

It is not yet clear to what extent UK regulation will diverge from EU regulation after the UK leaves the EU. In Theresa May’s speech on the UK’s future relationship with the EU, she argued that the fact that the UK currently has the same rules and regulations as the EU puts the UK in “an unprecedented position” regarding negotiating a new economic relationship with the EU.<sup>95</sup>

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<sup>90</sup> House of Commons, ‘[Written Question: EU Institutions](#)’, 17 July 2017, 5546.

<sup>91</sup> Foreign and Commonwealth Office, [PM’s Florence Speech: A New Era of Cooperation and Partnership Between the UK and the EU](#), 22 September 2017.

<sup>92</sup> National Audit Office, [A Short Guide to Regulation](#), September 2017, p 16.

<sup>93</sup> *ibid.*

<sup>94</sup> House of Commons Environmental Audit Committee, [Oral Evidence: The Future of the Natural Environment after the EU Referendum](#), 25 October 2016, Q329.

<sup>95</sup> Foreign and Commonwealth Office, ‘[PM’s Florence Speech: A New Era of Cooperation and Partnership Between the UK and the EU](#)’, 22 September 2017.

However, it is possible that in the future UK regulation will diverge from that of the EU. Lord Prior of Brampton has argued that leaving the EU presents an opportunity for the UK to “ensure that the future regulatory landscape is as efficient and effective as it can be to support growth, innovation and productivity”.<sup>96</sup> According to the National Audit Office, regulations enshrined in EU law rather than UK law are often “more rules-based than the principles-based approach that many UK regulators are increasingly adopting”.<sup>97</sup> Responding to a question from the journalist Andrew Marr about the extent to which regulatory divergence would impact trade, the Secretary of State for Exiting the European Union, David Davis, said that an arbitration panel would enable settlement of disputes.<sup>98</sup>

The Labour Party's 2017 general election manifesto argued that the Government would use the UK's exit from the EU as an opportunity to pursue a deregulatory agenda, contending that “a Conservative Brexit will weaken workers' rights [and] deregulate the economy”. The Labour Party stated that it would “ensure there is no detrimental change to workers' rights, equality law, consumer rights or environmental protections as a result of Brexit”.<sup>99</sup>

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<sup>96</sup> Department of Business, Energy and Industrial Strategy, [Letter from Lord Prior of Brampton: The Government's Response to the Committee's Report on Better Regulation](#), 1 March 2017, para 26.

<sup>97</sup> National Audit Office, [A Short Guide to Regulation](#), September 2017, p 16.

<sup>98</sup> BBC News, [The Andrew Marr Show: Interview with David Davis MP, Secretary of State for Exiting the European Union](#), 24 September 2017.

<sup>99</sup> Labour Party, [The Labour Party Manifesto 2017](#), 16 May 2017, p 25.