REFORM

How to run a country
the burden of regulation

Richard Harries and Katy Sawyer

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The call to action

The instruction from the Prime Minister, David Cameron, to his Ministerial team could not have been clearer:

"Today, there are over 21,000 statutory rules and regulations in force, and I want us to bring that number – and the burden it represents – down. Indeed, I want us to be the first government in modern history to leave office having reduced the overall burden of regulation, rather than increasing it."

"This marks a change from the old ways of doing things – and its success will depend on you and your department being fully behind this approach. So this is not a polite request to 'reduce regulation if you can,' it is a change in approach that means Ministerial teams should see themselves personally accountable for the number of regulations contained within and coming out of departments, and the burden they impose. Be in no doubt: all those unnecessary rules that place ridiculous burdens on our businesses and on society – they must go, once and for all."

These were not the words of a Conservative Prime Minister forcing through his agenda on an unwilling Coalition partner. Both the Conservative Party and the Liberal Democrats had made firm commitments to deregulate in their 2010 general election manifestos. In doing so, they were building on more than two decades of sustained regulatory activism – initially, a programme of "deregulation" under the Thatcher and Major administrations, followed by a programme of "better regulation" under the Blair and Brown administrations.

At first sight, this long-standing preoccupation with regulation is perplexing. After all, no government introduces a new regulation believing that, by doing so, it will make society worse. Yet successive regimes – of both the Left and the Right – have worried about the cumulative impact of regulation, particularly the impact on business. The approach taken by the Coalition Government has been twofold: with action not only to stem the "flow" of new regulation but also to reduce the "stock" of existing regulation.

The measure of success

In its latest self-assessment, published earlier this year, the Government reported that the sum total of its deregulatory programme to date has been to reduce the annual cost to business by £1.5 billion. In measuring its own performance, however, the Government has allowed itself some generous exemptions – simply ignoring the cost of any regulation relating to financial systemic risk and likewise ignoring all regulation originating in Europe. More controversially, the Government has broken its own rules in the calculation of its single largest regulatory "out". Estimated at £3.3 billion, this single change is 11 times larger than the next biggest "out" and single-handedly pays for every single regulatory "in" recorded by the Government during its entire period in office.

Correcting these mistakes reveals that, instead of saving £1.5 billion, the Coalition Government has in fact increased the regulatory burden on business by at least £3.1 billion. Against an ambition of removing at least £1 of regulation for every £1 it introduces, the Government has actually introduced at least £3.50 of regulation for every £1 it has so far removed. The Prime Minister has comprehensively failed in his ambition to leave office with less regulation than he inherited.

Yet despite this failure, the Prime Minister must be congratulated for sheer determination of his Ministerial team to tackle over-regulation. It is probably fair to say that the Coalition Government has been more thoroughgoing than any of its predecessors in seeking to reduce both the flow and stock of regulation. The next government must build on this legacy by:

- being even more transparent and consistent in its analysis of new regulations;
- reverting back from the one-in, two-out regime to the one-in, one-out regime – but without the large number of unnecessary exemptions;
- making "intelligent regulation" a core competence for the Civil Service policy profession.

1
Why regulate?

"[The] basic fact remains: every regulation represents a restriction of liberty, every regulation has a cost. That is why, like marriage (in the Prayer Book's words), regulation should not 'be enterprised, nor taken in hand, unadvisedly, lightly, or wantonly'."

Margaret Thatcher
Statecraft: Strategies for a Changing World (2013)

Regulations are the "rules of engagement" that define much of modern life, whether it is the volume of ice cream van musical jingles or the valuation of complex financial instruments. Moreover, no government introduces a new regulation believing it will make life worse for citizens. Yet the public perception of regulation is relentlessly negative, with stories of faceless bureaucrats imposing rules in an inflexible and often absurd manner. Tony Blair spoke cryptically about battling the "forces of conservatism".[1] David Cameron was more explicit:

"…every bureaucrat in government has got to understand that we cannot afford to keep loading costs onto businesses … and if I have to pull these people into my office to argue this out myself and get them off the backs of business then I will do it."[2]

Yet no regulation is implemented without political oversight. At their best, regulations help to balance risk in society and provide the framework for a stronger and more productive economy. They protect the vulnerable from harm, uphold the rights of consumers and promote a level playing field for businesses. Done well, the process of regulation can be a spur to competition and growth; done badly it can become a stifling burden.

The fundamental challenge facing policymakers is that the costs and benefits of regulation are not shared equally across all parts of society. Figure 1, taken from a recent study by the European Commission, provides a helpful taxonomy of regulation, mapping out the direct and indirect impacts. Often it is only the direct impacts that are measured by governments when they design new policies. Indirect impacts (particularly compliance and transaction costs) are often important but difficult to pin down. The "ultimate impacts" (wellbeing, GDP growth, etc) are rarely discussed at all.

This imbalance between the costs and benefits of regulation is often felt most keenly by businesses, who in turn may seek to pass on a proportion of any higher cost to consumers, creating a form of "stealth taxation". In a survey commissioned by the National Audit Office (NAO) and the Department for Business, Innovation and Skills (BIS), more than half of UK businesses reported the level of regulation in the UK was an obstacle to business success. And while this figure has been falling gradually over recent years, overall expectations about the level of future burdens have recently started to rise again.[3]

1 Speech by Rt Hon Tony Blair MP to the Labour Party Conference, 1999
2 Speech by Rt Hon David Cameron MP to the Conservative Party Spring Conference, 2011
3 Jigsaw research (2014), *Business Perceptions Survey 2014: NAO/BIS 28 May 2014,* pp. 1-3

Figure 1: A map of regulatory costs and benefits
Source: Renda, A., Schrefler, L., Luchestta, G., Zavatta, R. (2013), *Analysing the costs and benefits of regulation: Study for the European Comission, Secretarist General*

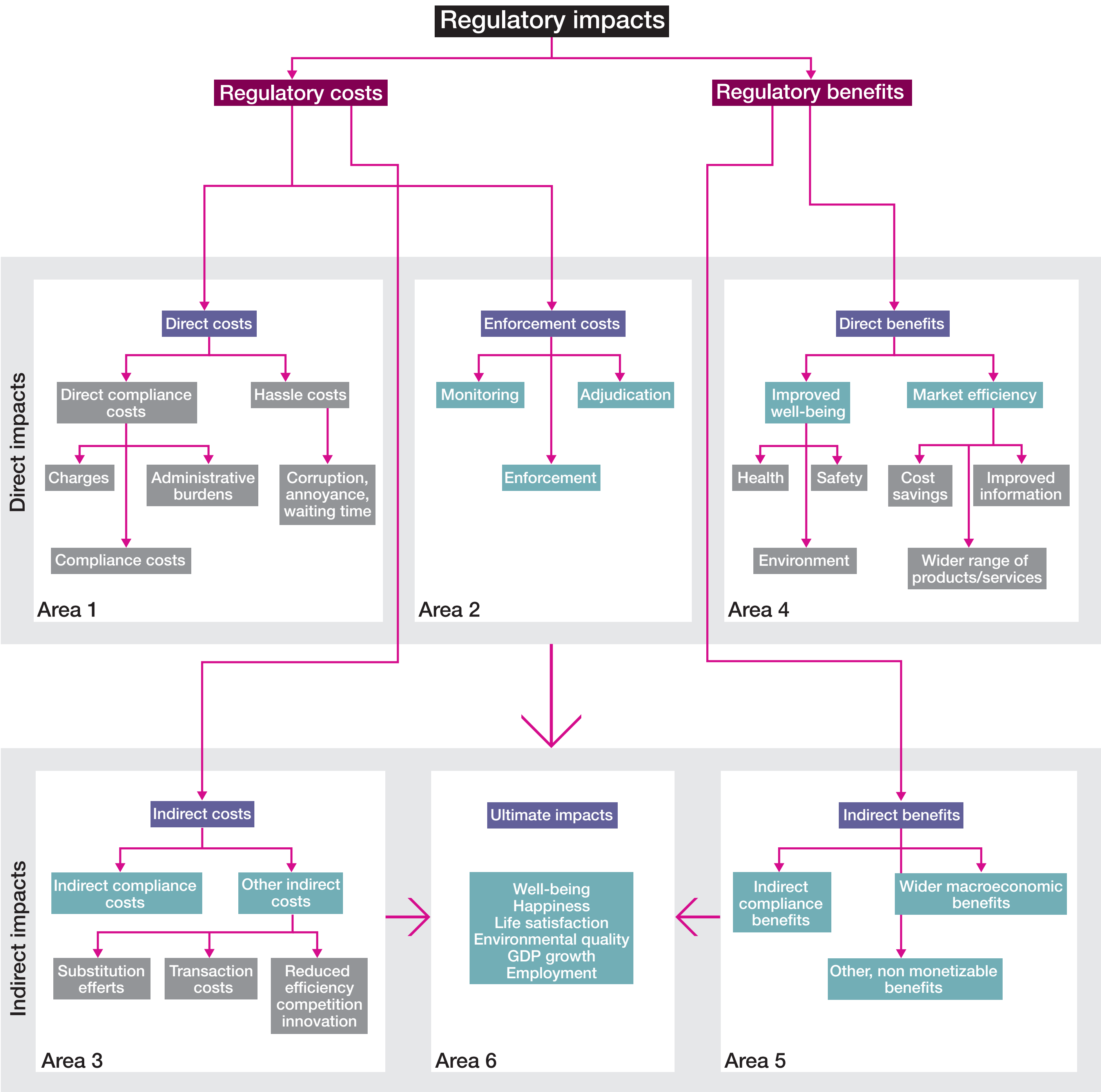
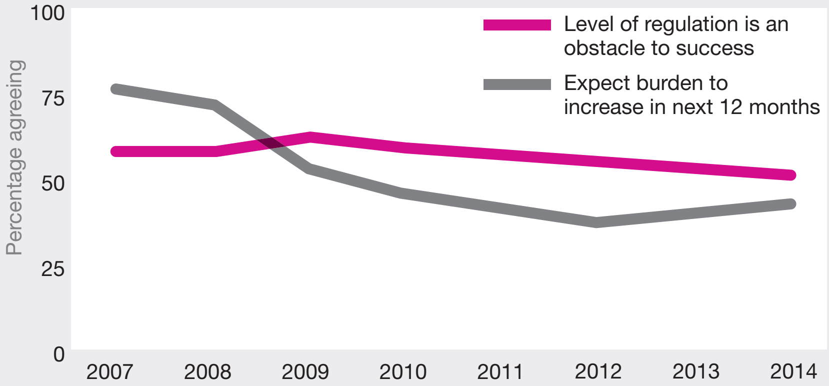
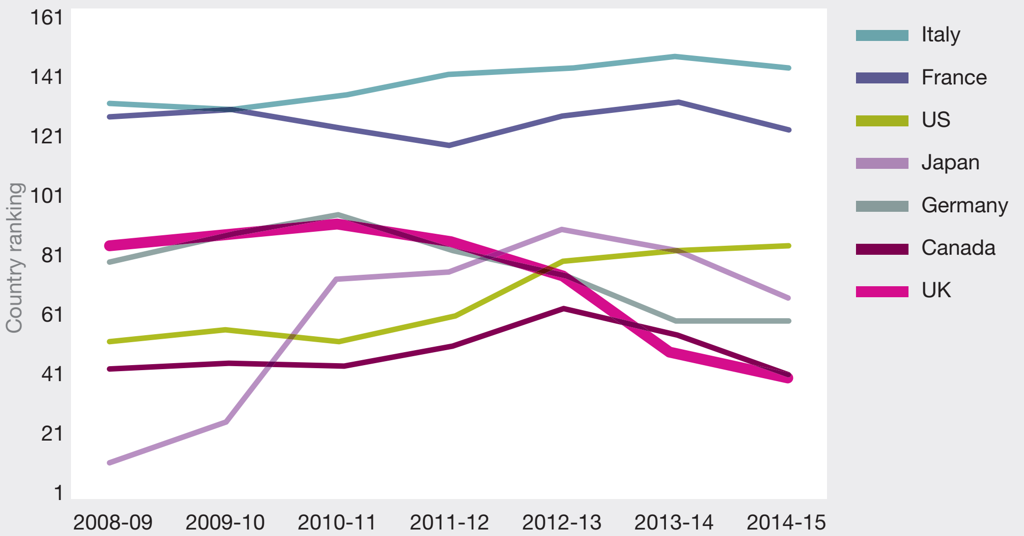


Figure 2: Business perceptions of regulation (2007-2014)
Source: NAO/BIS (2014), *Business perceptions survey*
(No survey data available for 2011 and 2013)



Alongside the direct and indirect impact of individual regulations, however, there is also the cumulative impact and general complexity of the overall regulatory landscape. In a survey published earlier this year, the Federation of Small Businesses found that over half of its members reported the most challenging aspect of regulatory compliance was the "sheer time" involved keeping up with new and amended regulations. It identified health and safety, tax administration and employment law as the most burdensome areas of compliance faced by its members.[4]

Figure 3: The comparative burden of regulation
Source: Schwab, K. (2014), *The Global Competitiveness Report 2014-2015,* World Economic Forum



Of course, the burden of regulation is one faced by all modern market economies and it is worth recognising that the relative burden of the UK regulatory stock compares well with our competitors overseas. In its latest *Global Competitiveness Report*, the World Economic Forum ranked the UK 37th overall for the burden of government regulation.[5] This is the lowest of the G7 group of nations and marks significant progress from a rank of 89th just four years earlier. Nevertheless, the pressure to deregulate remains and the next chapter reviews the attempts by successive governments to address this challenge.

4 Federation of Small Businesses (2014), *FSB Handbook March 2014,* pp.32-3
5 Schwab, K. (2014), *The Global Competitiveness Report 2014-2015*, World Economic Forum

2
From “deregulation” to “better regulation”

“There is usually a seductive logic to any new regulation. There is almost always a case that can be made for each specific instrument. The problem is cumulative. All these good intentions can add up to a large expense, with suffocating effects. Sometimes, we need to pause for a moment and think whether we will not do more damage with a hasty response than was done by the problem itself.”

Tony Blair
Speech on the compensation culture (2005)

The case for reducing the burden of regulation has a long history in British politics. As far back as 1948 the President of the Board of Trade (and later Prime Minister) Harold Wilson announced a "bonfire of controls" following recommendations from "outside investigators, whom the Government brought in [because] the Board of Trade was too busy to work out how controls could be scrapped, even when it thought they were no longer necessary."[6] This Ministerial urge to deregulate has continued ever since.

The Government under Margaret Thatcher placed particular importance on supporting free markets and open competition. Its 1985 White paper, *Lifting the Burden,*[7] represented the administration's first major step in what became a continuing programme of deregulation. It argued that the amount of regulation was acting as a brake on enterprise and the job creation process.[8] It identified around 80 regulatory measures, including planning, tax and social security, employment protection, and trade and industry, which it said were a major drain on businesses – particularly small businesses – both in terms of direct costs and management overheads.[9]

One of the most important elements in the White Paper was the establishment of a new system for Whitehall departments to assess new regulations, overseen by an Enterprise Unit in the Cabinet Office. The "Compliance Cost Assessment" would account for the predicted costs to business as well as the effect on national competitiveness.[10] In 1987 the Enterprise Unit was re-named the Deregulation Unit and moved to the Department for Trade and Industry (DTI), where it was assisted by a panel of external businesspeople. However, the adversarial approach it adopted – backed up by the publication of annual league tables – was deeply resented by departments at the time and progress faltered as the Thatcher administration came to an end.[11]

It was another President of the Board of Trade, Michael Heseltine, who re-energised the Government's deregulatory programme in the early 1990s with the re-introduction of departmental reviews and the creation of a number of task forces, including an "Anglo-German Deregulation Group".[12] This was followed by the *Deregulation and Contracting Out Act 1994*, which for the first time provided a generic legislative tool for repealing regulatory burdens.[13] It also promoted the idea of "think small first", recognising that small enterprises could suffer disproportionately from existing as well as new regulation.[14]

The DTI unit moved back to the Cabinet Office in 1995 and the scope of Compliance Cost Assessment was expanded the following year with the introduction of the "Regulatory Appraisal", which required departments to quantify the benefits of regulation as well as the costs, and to include consideration of administrative costs and issues of equity.[15]

Following its election in 1997, the New Labour Government of Tony Blair sought to shift the language from that of "deregulation" towards one of "better regulation". The Chancellor to the Duchy of Lancaster, Dr David Clark, pointed out that "deregulation implies regulation is not needed. In fact good regulation can benefit us all – it is only bad regulation that is a burden."[16] The Cabinet Office Deregulation Unit was therefore re-named the Better Regulation Unit (but only for a year or so before becoming the Regulatory Impact Unit, RIU).

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6 *Manchester Guardian* (1948), "New "Bonfire" Of Controls – Textiles to benefit?", 1 November 1948
7 HM Government (1985), *Lifting the Burden (Cmd 9571)*
8 Robinson, R. and Lloyd, M. (1986), "Lifting the burden of planning: A means or an end?" *Local Government Studies Vol. 12 Issue 3,* p. 51
9 Hansard (1985), HL Deb 16 July 1985 vol 466 cc610-8
10 Harlow, C. and Rawlings, R. (2006), *Law and Administration,* Cambridge University Press, p. 305
11 OECD (2003), *Cutting Red Tape From Red Tape to Smart Tape: Administrative Simplification in OECD Countries,* OECD Publishing, p.197
12 Ibid p.198
13 *Deregulation and Contracting Out Act 1994*, *Chapter 40,* London: The Stationery Office
14 Renda, A. (2006), *Impact assessment in the EU: The State of the Art and the Art of the State*, Centre for European Policy Studies, p.27
15 Harlow, C. and Rawlings, R. (2006), Law and Administration, Cambridge University Press p. 306
16 Cabinet Office (1997), "Better regulation – not deregulation" *News Release 46/97*, 3 July 1997

The unit began a new programme of work with departments to find the right balance between fair and effective regulation, encourage wider consideration of alternatives to regulation, and promote wider consultation with affected parties.[17] It was supported in this by a new panel of external appointees, the Better Regulation Task Force (BRTF), whose membership was drawn from large and small businesses, citizen and consumer groups, the trade union movement, the voluntary sector, and those responsible for enforcing regulations.

Table 1: Better Regulation Task Force (BRTF) Principles[18]

1. **Proportionality** – Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
2. **Accountability** – Regulators must be able to justify decisions, and be subject to public scrutiny.
3. **Consistency** – Government rules and standards must be joined up and implemented fairly.
4. **Transparency** – Regulators should be open, and keep regulations simple and user-friendly.
5. **Targeting** – Regulation should be focused on the problem, and minimise side effects.

The BRTF set out five principles of good regulation designed to provide a toolkit for measuring and improving the quality of regulation and its enforcement. It also identified a spectrum of non-regulatory options available to policymakers and urged them to consider them all, rather than assuming automatically that prescriptive regulation was required. It advised that "solutions that give stakeholders the flexibility to solve problems themselves are often preferable to imposing rules on them."[19]

Table 2: BRTF Spectrum of non-regulatory interventions[20]

Do nothing	Advertising campaigns and education	Using the market	Financial incentives	Self-regulation and voluntary codes of practice	Prescriptive regulation

Alongside the establishment of the RIU, the Prime Minister announced a new form of assessment, the "Regulatory Impact Assessment", warning that no proposal for new regulation should be considered by Ministers without one being carried out first. These new assessments would cover not just the impact on business but also on charities or voluntary bodies (and, later on, the public sector). Departments were required to set out clearly the risks of the problems being addressed, the options available – including "do nothing" and non-regulatory options – and the likely economic, social and environmental costs and benefits of each.[21]

This was a much more thorough approach to regulatory appraisal and the RIU worked closely with departments to implement the new regime. To further increase accountability, a "Panel for Regulatory Accountability" was established by the Prime Minister in 1999 to give political weight to the work of the RIU. It was chaired by the Minister for the Cabinet Office and was also attended by key business representatives. Ministers were required to report to the Panel on their departments' progress in achieving better regulation.

17 http://webarchive.nationalarchives.gov.uk/20050202182438/http://cabinetoffice.gov.uk/regulation/role/index.asp, accessed 23 November 2014
18 Better Regulation Task Force (2003), *Principles of Good Regulation*
19 Ibid.
20 Ibid.
21 http://webarchive.nationalarchives.gov.uk/20050202182438/http://cabinetoffice.gov.uk/regulation/ria/index.asp, accessed 23 November 2014

The *Regulatory Reform Act 2001* built on the foundations laid in the 1994 Act, allowing the reform of primary legislation to remove inconsistencies and to impose or reduce burdens if proportionate. The Act also gave Ministers a reserve power to set out a code of good enforcement practice.[22] The effect was that, by the end of 2003, 240 deregulatory measures had been delivered (compared to just 40 Deregulation Orders submitted under the 1994 Act between 1995 and 2000).[23] The Government also announced that the Prime Minister would now chair the Panel for Regulatory Accountability himself, providing yet more weight to the better regulation drive.

In 2005 the BRTF submitted a report to the Government entitled *Regulation – Less is More*.[24] Two of its key recommendations were: firstly, that the RIU should develop a means by which businesses and others affected by regulation might submit proposals for simplification; and secondly, that there was at least as much need to remove legislation as to make new laws – what the BRTF at the time called the "one in, one out" principle.[25]

In the wake of this report the BRTF was replaced by a new body, the Better Regulation Commission (BRC), whose task was to advise the Government on action to reduce unnecessary regulatory and administrative burdens, and ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted.[26] The RIU was in turn replaced by the Better Regulation Executive (BRE), still at the Cabinet Office but shortly to be transferred back to the DTI.[27]

A second review in 2005 by the then Chairman of J Sainsbury plc, Philip Hampton, found that small businesses were still facing disproportionate regulatory burdens.[28] In response to these two reports, the Government published an *Administrative Burdens Reduction Programme*, to minimise the net administrative cost to business of regulatory compliance.[29] This was followed a few months later by a *Better Regulation Action Plan*, with pledges to merge 29 regulatory bodies into seven, join up enforcement and inspection practices, and apply a risk-based approach to all areas of enforcement.[30]

The Labour Government introduced two further Acts of Parliament, the *2006 Legislative and Regulatory Reform Act*[31] and the *2008 Regulatory Enforcement and Sanctions Act*,[32] to remove even more obstacles to deregulation but also in recognition of the fact that the large majority of business inspections are carried out by local, not national, government. Its final structural innovation before the 2010 general election was the creation of the Regulatory Policy Committee (RPC), a new advisory body composed of economists, senior business people and civil society representatives, with a remit to provide independent expert scrutiny of regulatory impact assessments (now known just as "Impact Assessments").

Yet, despite two decades of ongoing structural and legislative change, it was still possible for those outside government to complain that not enough was being done. Following the 2008 banking crisis, for example, the Conservative Party in opposition was able to claim that:

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22 *Regulatory Reform Act 2001, Chapter 6,* London: The Stationery Office
23 Renda, A. (2006), *Impact assessment in the EU: The State of the Art and the Art of the State*, Centre for European Policy Studies, p.33
24 Better Regulation Task Force (2005), *Regulation: Less is More: Reducing Burdens, Improving Outcomes*
25 Select Committee on Merits of Statutory Instruments (2006), *Merits of Statutory Instruments – Twenty-Ninth Report,* para 26
26 Memorandum to the Select Committee on Regulators (2007) by Mr Rick Haythornthwaite, Chair, Better Regulation Commission
27 Which, as a consequence, would be re-named the Department for Business, Enterprise and Regulatory Reform (BERR) before becoming the current Department for Business, Innovation and Skills (BIS).
28 HM Treasury (2005), *Reducing administrative burdens: effective inspection and enforcement (Philip Hampton)*
29 National Audit Office (2008), *The Administrative Burdens Reduction Programme*
30 "Brown pledged to cut business red tape", *The Guardian*, 24 May 2005
31 *Legislative and Regulatory Reform Act 2006,Chapter 51,* London: The Stationery Office
32 *Regulatory Enforcement and Sanctions Act 2008,Chapter 13,* London: The Stationery Office

“…the UK has become simultaneously and dangerously under-regulated in some areas (particularly systemic risks in the banking sector) but chronically and severely over-regulated elsewhere. It’s clear that some regulation is both necessary and desirable in a modern, liberal democracy – everyone expects the food we eat to be safe, for example – but once we are properly protected from unscrupulous people and hidden dangers, that is where it should stop. Everything else should, wherever possible, be a question of individual choice rather than collective control.” [33]

The next chapter explores how the Conservatives, in coalition with the Liberal Democrats, responded to these twin challenges and assesses how successful the current government has been measured against its own aspirations.

33 Conservative Party (2009), *Regulation In The Post-Bureaucratic Age: How To Get Rid Of Red Tape And Reform Quangos*

3
A new commitment to deregulation

"Today, there are over 21,000 statutory rules and regulations in force, and I want us to bring that number – and the burden it represents – down … Be in no doubt: all those unnecessary rules that place ridiculous burdens on our businesses and on society – they must go, once and for all."

David Cameron
Letter to all Government Ministers (2011)

In their 2010 general election manifestos, both the Conservative Party and the Liberal Democrats pledged to introduce similar systems of regulatory oversight. It is therefore unsurprising that deregulation formed a significant feature of the Coalition *Programme for Government*, with no fewer than nine pledges to build a stronger regulatory framework – including the introduction of a "one-in, one-out" (OIOO) regime, a greater role for public involvement in deregulation and the introduction of so-called "sunset clauses".

Table 3: Extracts from 2010 general election manifestos and the Coalition *Programme for Government*

Conservative Party: *Invitation to Join the Government of Britain*	**Liberal Democrats:** *Manifesto 2010*
"A Conservative government will introduce regulatory budgets: forcing any government body wanting to introduce a new regulation to reduce regulation elsewhere by a greater amount. And we will give the public the opportunity to force the worst regulations to be repealed."	"Liberal Democrats will reduce the burden of unnecessary red tape by properly assessing the cost and effectiveness of regulations before and after they are introduced, using 'sunset clauses' to ensure the need for a regulation is regularly reviewed, and working towards the principle of 'one in, one out' for new rules."

HM Government: *The Coalition – our programme for government*

1. We will reform the regulatory system to avoid a repeat of the financial crisis.
2. We will 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.
3. We will end the culture of "tick-box" regulation, and instead target inspections on high-risk organisations through co-regulation and improving professional standards.
4. We will impose "sunset clauses" on regulations and regulators to ensure that the need for each regulation is regularly reviewed.
5. We will give the public the opportunity to challenge the worst regulations.
6. We will end the so-called "gold-plating" of EU rules, so that British businesses are not disadvantaged relative to their European competitors.
7. We will reduce the regulatory burden on farmers by moving to a risk-based system of regulation, and will develop a system of extra support for hill farmers.
8. We will simplify the rules and regulations relating to pensions to help reinvigorate occupational pensions, encouraging companies to offer high-quality pensions to all employees, and we will work with business and the industry to support auto enrolment.
9. We will simplify the regulation of standards in education and target inspection on areas of failure.

Unlike its predecessor administrations, the Coalition Government avoided further machinery of government changes, choosing to keep the BRE at BIS and giving the independent RPC an even more influential role in policing the overall regulatory process. It did create a new Cabinet Sub-Committee, the Reducing Regulation Committee (RRC), chaired by the Secretary of State for Business, Innovation and Skills, to coordinate government activity[34] but all RRC-approved policies must be reviewed by the RPC to validate departmental calculations and to determine whether or not they are "fit for purpose".[35] The Coalition also introduced new legislation to support its deregulation programme. The *Enterprise and Regulatory Reform Act 2013* gives Ministers the power to include review and sunset clauses in secondary legislation.[36] And the *Small Business,*

34 Cabinet Office (2010), *Cabinet Committee System*, p. 11
35 Not all regulatory measures are subject to RRC clearance. Exemptions include specific enforcement actions and other compliance-related activity, and court or tribunal cases (where conclusion of a case has resulted in a change in the interpretation of a regulation).
36 *Enterprise and Regulatory Reform Act 2013, Chapter 24,* London: The Stationery Office

Enterprise and Employment Bill, currently before Parliament, will require future governments to publish a target for cutting regulatory burdens and to report progress against this target.[37]

The entire approval and review process is governed by the *Better Regulation Framework Manual*,[38] produced by the BRE, which sets out clearly the steps to be followed by all policymakers, with the Impact Assessment remaining the core document in this process. A key innovation was the introduction of a new, standardised measure – the "Equivalent Annual Net Cost to Business" (EANCB) – which captures the discounted net present value of the direct costs and benefits (broadly equivalent to Areas 1 and 4 in Chapter 1, Figure 1).[39] Getting this calculation right is critical, since it is the cumulative sum of individual EANCBs against which the Government's deregulatory performance will be judged.

Table 4: Formula for calculating the Equivalent Annual Net Cost to Business (EANCB)[40]

$$EANCB = \frac{PVNCB}{a_{t,r}}$$

where the annual rate, $a_{t,r} = \frac{1+r}{r}\left[1 - \frac{1}{(1+r)^t}\right]$

and PVNCB = the present value net cost to business

t = the time period over which the policy is active, typically 10 years

r = the discount rate, typically 3.5 per cent

Stemming the flow of new regulation

The Government introduced its new "one-in, one-out" (OIOO) regime in the autumn of 2010. From that point on, the impact on business of all regulatory changes had to be classified in one of three ways:

- as an "in" if the associated EANCB is positive;
- as an "out" if the EANCB is negative and if the change is deregulatory;
- as "zero net cost":
  - if the EANCB is negative and the change is regulatory, or
  - if the EANCB is zero, or
  - if the costs and benefits to business cannot be monetised.

Every Whitehall department must report its progress in a half-yearly *Statement of New Regulation* (SNR). These SNRs are collated by the BRE into a single over-arching report for the Government. Following the Coalition's mid-term review at the beginning of SNR5 (January 2013), the Government quite literally re-doubled its efforts by replacing the OIOO regime with an even tougher "one-in, two-out" (OITO) rule.

The RPC has produced a consolidated set of validated assessments covering all eight SNR periods between January 2011 and December 2014.[41] For the "armchair auditor" this is the only comprehensive database of Government performance. Taken at face

37 *Small Business, Enterprise and Employment Bill (HL Bill 57),* London: The Stationery Office

38 Department for Business, Innovation and Skills, (2013) *Better Regulation Framework Manual: Practical Guidance for UK Government Officials – July 2013,* p. 19

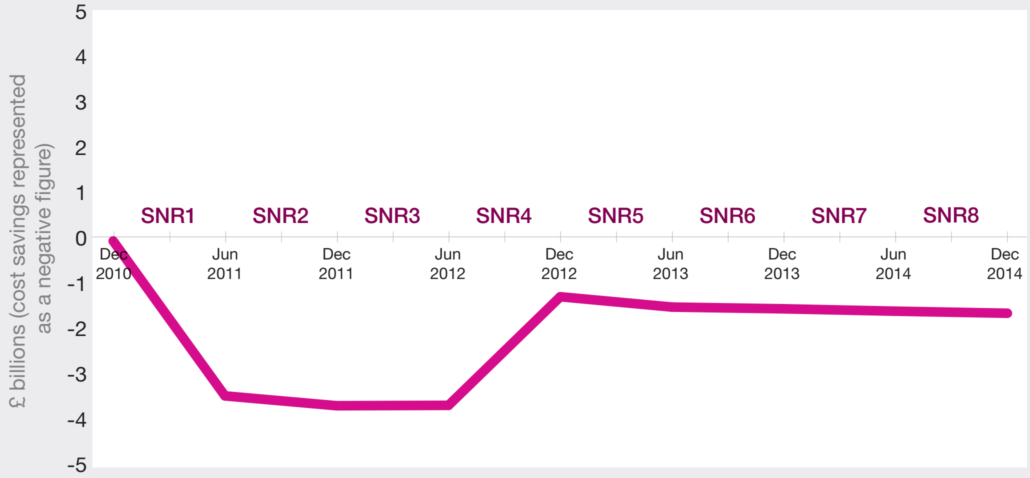
39 The *Better Regulation Framework Manual* defines as a direct impact as *"an impact that can be identified as resulting directly from the implementation or removal/simplification of the regulation"*. Somewhat unhelpfully it defines an indirect impact as *"any cost or benefit to a business which is not captured in the definition of a direct impact."*

40 Ibid.

41 Regulatory Policy Committee (2014), *Complete list of validated costs and benefits of regulatory and deregulatory proposals (Updated 9 July 2014),* (https://www.gov.uk/government/publications/validated-costs-and-benefits-to-business-of-regulations/complete-list-of-validated-costs-and-benefits-of-regulatory-and-deregulatory-proposals, accessed 23 November 2014)

value, the data would appear to show that the Prime Minister is on course to achieve his ambition of leaving office with less regulation than he inherited, with a cumulative EANCB by -£1.5 billion (see Figure 4).

Figure 4: Cumulative Equivalent Annual Cost to Business (Government's preferred measure)
Source: Authors' calculations based on Regulatory Policy Committee (2014), *Complete list of validated costs and benefits of regulatory and deregulatory proposals (Updated 9 July 2014)*



Two regulatory changes stand out over this period. The first occurred during SNR1 (January 2011-June 2011) and relates to a decision to change in the way that occupational pensions are uprated, reported as a £3.3 billion saving.[42] The second occurred during SNR4 (July 2012-December 2012) and relates to the introduction of workplace pensions auto-enrolment, reported as a £2.7 billion cost.[43] In absolute terms, these two changes account for 68 per cent of all regulatory changes since the OIOO/OITO regime was introduced.

Table 5: Measures out of scope for OIOO/OITO[44]

1. Measures that have no direct impact on business
2. Measures that have a temporary and short lifespan
3. Measures that relate to changes in wage and price inflation
4. Measures that relate to regulatory enforcement or compliance fees
5. Measures that relate to fines and penalties
6. Measures that relate to civil emergencies
7. Measures that relate to the OECD (2004) definition of financial systemic risk
8. Measures that implement EU regulations, decisions and directives
9. Measures that implement international agreements and obligations

There are however a number of exemptions to the methodology the Government has adopted for calculating EANCB. The *Better Regulation Framework Manual* divides these into nine categories (see Table 5). The first three are unremarkable, intended only to ensure that the focus is on the long-term, real impact on businesses. The next two, which broadly relate to enforcement, fines and penalties, also appear reasonable since well-founded regulation should assume compliance.

42 Department for Work and Pensions (July 2011), *Impact of the move to CPI for Occupational Pensions (DWP0014)*
43 Department for Work and Pensions (May 2012), *Workplace Pension Reforms (DWP00001b)*
44 Department for Business, Innovation and Skills (2013), *Better Regulation Framework Manual: Practical Guidance for UK Government Officials – July 2013,* pp. 40-41

It is harder to understand the rationale for the remaining exemptions on the list. Whilst the protection of citizens must be the first function of the State, it is unclear why the cost to business of any regulation associated with civil emergencies should simply be ignored. Similarly, whilst it is an unfortunate reality that the Coalition has had to re-write a great deal of regulation related to financial systemic risk as a result of the 2008 banking crisis, the Government has provided no explanation for excluding the net cost to business of these necessary changes.

By far the most contentious exemptions, however, relate to the treatment of non-domestic sources of regulation, particularly from the EU.[45] While the Government might have very little discretion over the transposition of EU directives into UK law, it does play a major role alongside other Member States in their formulation. Excluding EU and other international regulations in this way reinforces the perception that only UK government can be trusted to regulate in a way that minimises the costs to business.

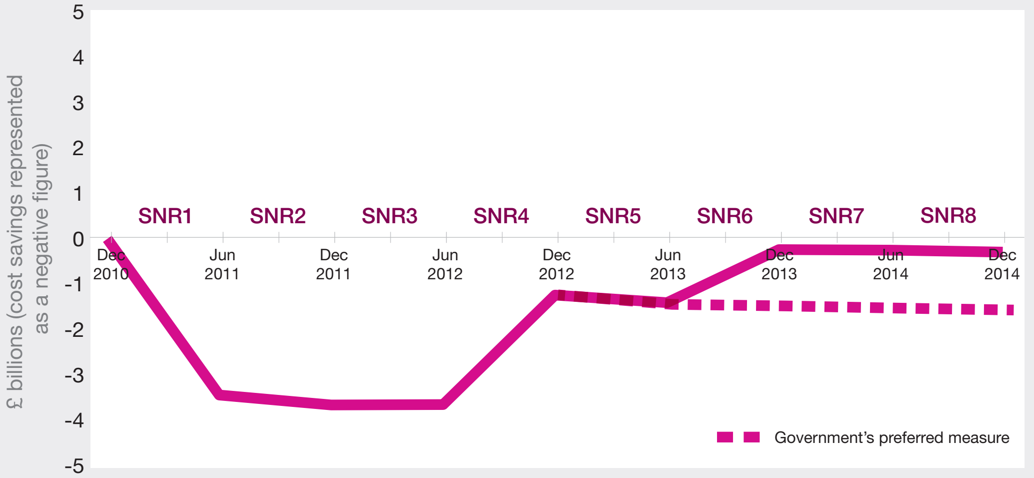
Nevertheless, the impact on British businesses of EU regulation in particular can be substantial. For example, the Food Standards Agency estimates that 90 per cent of food regulation comes from the Europe.[46] Similarly a review of its entire regulatory stock by the Department for Environment, Food and Rural Affairs found that 81 per cent of the total cost is associated with EU or international regulation.[47] The EU itself estimates that between one-third and one-half of the total administrative burden on European businesses derives from its regulations.[48] And the BRE has similarly acknowledged in recent years that a “substantial proportion of the burden of red tape and bureaucracy emanates from Europe”[49] and confirmed that “efforts to stem the flow of EU regulation will continue apace”.[50]

The decision to exclude non-domestic regulation seems arbitrary at best and the Government has offered no explanation for its exemption. It is to the credit of the RPC that, since SNR5 (January-June 2013), it has started to publish details of validated assessments of EU regulation. Figure 5 shows the consequence of including these additional regulations. It is clear that, had they been included since SNR1, the cumulative EANCB would by now have moved from negative to positive.

45 Except insofar as it might choose to “gold plate” any EU directives. This was originally prohibited in the Coalition *Programme for Government* but has continued regardless.
46 Written evidence submitted by the Federation of Small Businesses (FSB) (BRI 20) to the Regulatory Reform Committee inquiry into Better Regulation – 9 July 2014
47 Department for Environment Food and Rural Affairs (2011), *The Costs and Benefits of Defra’s Regulatory Stock,* p.15
48 European Commission, High Level Group of Independent Stakeholders on Administrative Burdens (2012), *Europe Can Do Better: Best practices for reducing administrative burdens*
49 Department for Business, Innovation and Skills (2012), *The Fifth Statement of New Regulation: Better Regulation Executive – December 2012,* p.16
50 HM Government (2012), *One-in, One-out: Fourth Statement of New Regulation – July 2012,* p.8

Figure 5: Cumulative Equivalent Annual Cost to Business (including post-SNR5 EU measures)

Source: Authors' calculations based on Regulatory Policy Committee (2014), *Complete list of validated costs and benefits of regulatory and deregulatory proposals (Updated 9 July 2014)*



Closer examination of specific exemptions reveals further anomalies. For example, the Government's explanation of its (reasonable) requirement to take proper account of inflation makes specific reference to the role of the Low Pay Commission for the National Minimum Wage. Yet when the Government chose in 2013 to go beyond the Commission's proposal to freeze the rate for apprentices (with an EANCB of £1.5 million) the Impact Assessment[51] was not recorded in the relevant BIS *Statement of New Regulation*, nor was it included in the RPC database of validated assessments.[52]

Even more striking is the status of the largest single "out" in this Parliament, the occupational pension regulatory change in SNR1 noted above. The Department for Work and Pensions (DWP) had apparently tried to claim this as a £7 billion saving before agreeing with the RPC to reduce it to less than half that amount.[53] Yet the core policy change relates to the way that pensions are uprated, moving from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI). While such a change will undoubtedly lead to significant indirect benefits to scheme providers[54] (and equivalent dis-benefits to scheme members), it clearly makes no difference to the actual, direct regulation of occupational pension schemes.[55] Indeed, this appears to be exactly the sort of regulatory change the *Better Regulation Framework Manual* inflation exemption seems intended to capture (see Table 6).

51 Department for Business, Innovation and Skills (2013), *Amendment to the National Minimum Wage regulations 2013 – increase in NMW rates*
52 In correspondence with the authors, BIS officials acknowledged this was an oversight. It will be corrected before the final *Statement of New Regulation* of this Parliament (SNR9) is published.
53 HM Government (2011), *One-in, one-out: Statement of New Regulation*, p.19
54 Miller, R. (2011), *Office for Budget Responsibility Working paper No. 2: The long-run difference between RPI and CPI inflation*
55 Except to the extent that it tips marginal schemes into or out of viability.

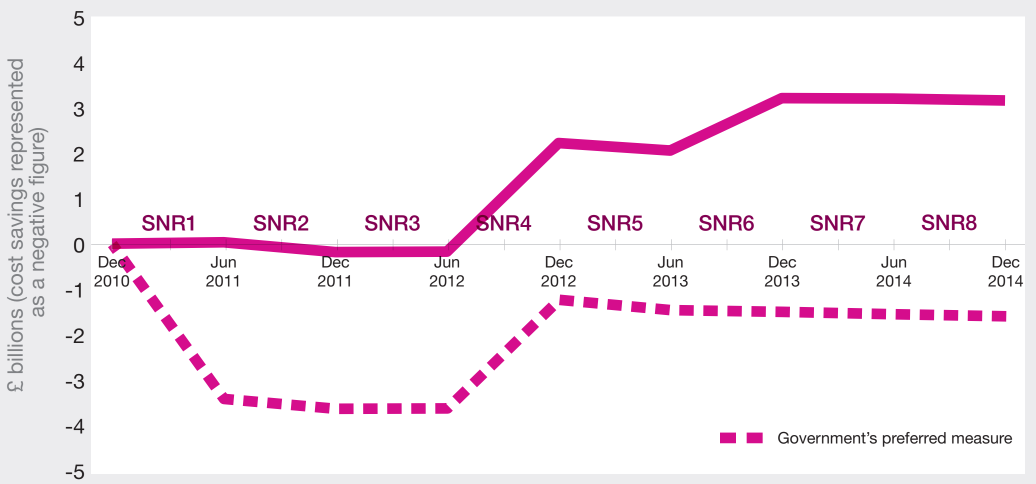
Table 6: The treatment of inflation

Exemption #3 in the *Better Regulation Framework Manual*[56]	Explanation provided by DWP in its two "final" Impact Assessments
"Operation of periodic adjustments to a pre-existing regulation or regulatory regime that are intended to maintain the current level of regulation in the face of general wage and price inflation – the adjustment must be provided for in existing legislation, either directly or through the recommendations of the relevant independent statutory body as set out in that legislation, for instance the Low Pay Commission for the National Minimum Wage."	"Legislation requires the Secretary of State to specify each year revaluation percentages based on 'the percentage which appears to [him] to be the percentage increase in the general level of prices in Great Britain' over an annual inflation reference period ending on the latest 30 September. In previous years, the Retail Prices Index (RPI) had been used. … Using CPI for this and future Revaluation Orders is intended to ensure that the underlying purpose of the legislation, to track increases in the general level of prices, will be better met."

So it was not particularly surprising when the DWP published a "final" impact assessment on 11 February 2011, signed by the Pensions Minister, confirming that the change would have no net impact on business.[57,58] Yet less than six months later, a second "final" impact assessment was produced, again signed by the Pensions Minister, claiming that "the cash flow of these impacts [on the stock and flow and future pension liabilities] will be felt over many years and therefore the Equivalent Annual Net Cost to Business has been calculated over 39 years as £3.34bn." [59,60]

A more realistic assessment of the Government's performance to date, which strips out the SNR1 occupational pensions change and adds in post-SNR5 EU regulations, is given at Figure 6. This brings the cumulative EANCB to £3.1 billion.

Figure 6: Cumulative Equivalent Annual Cost to Business (including post-SNR5 EU measures, excluding SNR1 occupational pensions change)
Source: Authors' calculations based on Regulatory Policy Committee (2014), *Complete list of validated costs and benefits of regulatory and deregulatory proposals (Updated 9 July 2014)*



56 Department for Business, Innovation and Skills (2013), *Better Regulation Framework Manual: Practical Guidance for UK Government Officials,* p.41, Paragraph 1.9.8(viii)
57 Department for Work and Pensions (February 2011), *Impact of the move to CPI for Occupational Pensions (DWP0014)*
58 Technically this is not quite accurate. There is a specific section in the Impact Assessment which notes *"there may be an administrative cost [associated with communicating the changes to scheme members] which DWP does not have the data to quantify."*
59 Department for Work and Pensions (July 2011), *Impact of the move to CPI for Occupational Pensions (DWP0014)*
60 In correspondence with the authors, RPC and BRE officials provided a partial explanation for their decision to approve the DWP Impact Assessment (we received no reply from DWP officials). However, for a regulatory change variously estimated at £0, £3.34 billion and £7 billion, we would expect a much clearer explanation why the published rules do not apply.

Draining the swamp

The Red Tape Challenge

As well as using the OIOO/OITO regime to stem the flow of new regulation, the Prime Minister launched a two-year consultation exercise in April 2011 to reduce the stock of existing regulation. The Red Tape Challenge covered 29 themes, from agriculture and aviation to retail and road transport. The consultation followed a tightly structured 9-stage process (see Table 7) and reviewed more than 5,500 individual regulations, concluding that more than 3,000 should be scrapped or improved. Of this total, the Government believes that slightly less than half will result in "material benefits" to business/civil society, individuals or the taxpayer.[61]

Table 7: Red Tape Challenge – Process for reviewing a regulatory "theme"[62]

1. **Preparation for theme launch**

   Lead department for theme identifies regulations to be included, and appropriate sub-categories. Liaison with stakeholders to check list of regulations are accurate, and to discuss further involvement in theme. Sector champion(s) are identified. Permanent Secretary of lead department meets with the Cabinet Secretary prior to launch.

2. **Theme launch**

   Theme is launched on the Red Tape Challenge website. Communications activity and stakeholder engagement to promote the opportunity to comment.

3. **Theme spotlight**

   Theme is live on website for businesses, civil society organisations, and members of the public to post pre-moderated comments, on the regulations and rules that affect them. Private submissions to e-mail inbox also welcomed. Sector champions, and departmental theme leads actively review and respond to comments to help facilitate debate and discussion.

4. **Departmental analysis and proposals**

   Spotlight closes, and department analyses all comments, written submissions, and other evidence (e.g. earlier consultations, or stakeholder meetings). Analysis includes consideration of impact on devolved administrations, and identifying where EU regulations have become a barrier to growth, (eg, gold-plating in the UK). Departments produce proposals to scrap, reduce and improve regulation, and establish which need to stay. This process will include considering alternatives to regulation, such as data transparency, incentives or voluntary codes.

5. **Internal/external challenge**

   Department's proposals are internally challenged – for example by Red Tape Challenge Team, internal "Star Chambers", or "Tiger Teams". Departments also identify opportunities for external challenge – for example sector champions, or stakeholder groups. This will vary by theme.

6. **Star Chamber**

   Proposals are reviewed by a Ministerial "Star Chamber" with the presumption that burdensome regulations will go unless they can be strongly justified. Star Chamber is chaired by Cabinet Office and BIS Ministers and involves key Coalition advisors (with the sector champion invited to attend). Star Chamber makes recommendations on proposals.

7. **Post-Star Chamber**

   Departments respond to Star Chamber recommendations, and prepare proposals for the Reducing Regulation Committee, and other Cabinet sub-committees (the mechanism for collective Ministerial decision-making).

61 The rest (the majority) merely tidy up the Statute Book.
62 http://www.redtapechallenge.cabinetoffice.gov.uk/wp-content/uploads/2012/02/Red-Tape-Challenge-Decision-Map.pdf, accessed 23 November 2014

8. **Collective agreement and Reducing Regulation Committee**

   Cabinet sub-committee on Reducing Regulation considers proposals and makes decisions. Policy clearance is received from other Cabinet sub-committees in parallel (as needed).

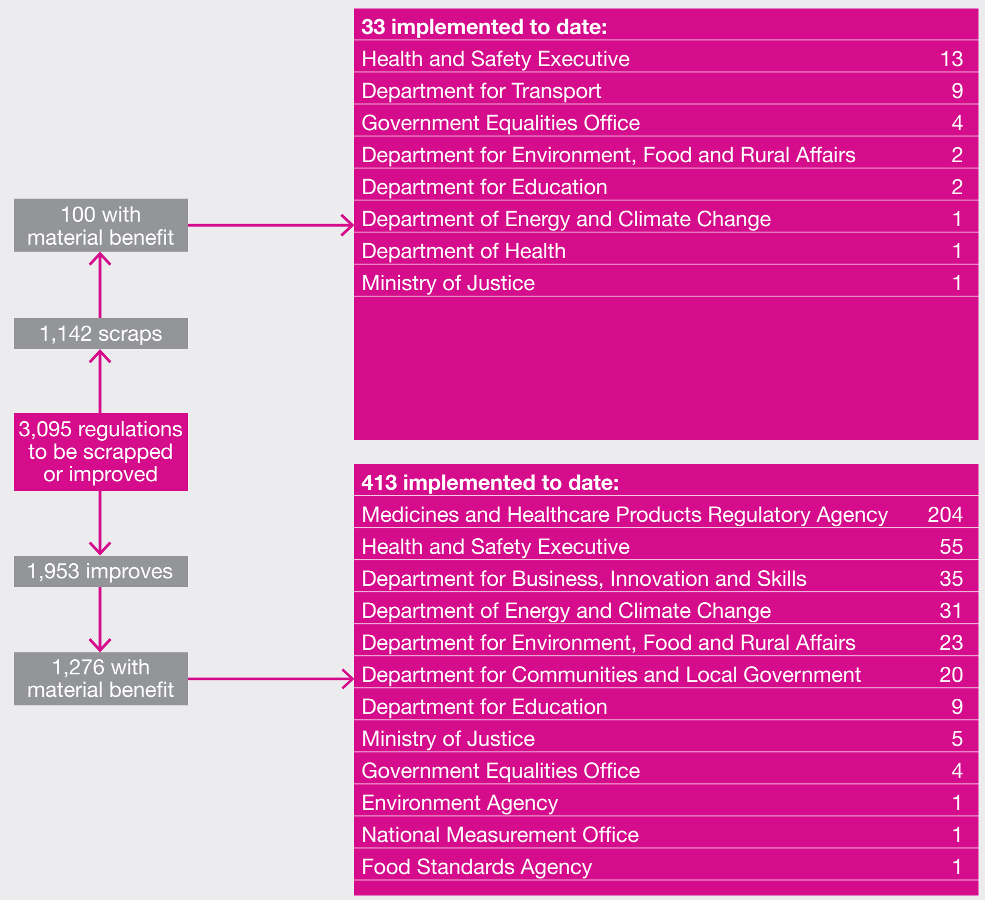
9. **Implementation**

   Proposals are announced. Implementation begins – timescales will vary depending on legal vehicles used, and whether public consultation is needed on specific proposals.

A key part of the Red Tape Challenge process was the mandatory attendance of Ministers and officials at joint Cabinet Office/BIS "Star Chamber" meetings. Although notionally co-chaired by both departments, it was the Cabinet Office Minister for Government Policy, Oliver Letwin, who often played a decisive role in the proceedings – ensuring that the relevant official, no matter how junior, was there to answer his questions. This unique approach has been credited with challenging entrenched Whitehall cultures and is reported to have been "pivotal to the success of the whole initiative".[63]

The Red Tape Challenge closed in April 2013 and in January 2014 the Cabinet Office reported that the total annual savings to business would be over £850 million, of which £384 million has so far been validated by the RPC. Of the 446 "scraps and improves" already implemented, over 60 per cent come from just two non-Whitehall agencies: the Medical and Healthcare Products Regulatory Agency and the Health and Safety Executive.

Figure 7: Red Tape Challenge – reducing the number and burden of regulations
Source: Authors' calculations based on http://www.redtapechallenge.cabinetoffice.gov.uk/wp-content/uploads/2014/01/RTC-results-as-at-January-2014.xlsx



63 Smith, N. (2014), "Cutting the tape" *Civil Service Quarterly Blog (30 January 2014)*

Review and sunset clauses

By comparison with the OIOO/OITO regime and the Red Tape Challenge, the third element of the Government's approach to deregulation has passed almost completely unseen. This is the undertaking that all new domestic and non-domestic regulatory measures should be accompanied by a review or sunset clause (see Table 8). The aim of review and sunset clauses is threefold: to strengthen the way the Government monitors the impact of regulation, to ensure that redundant legislation is removed, and to identify regulation that is costly or ineffective.[64]

Table 8: Review and sunset clauses[65, 66]

Review clauses impose a statutory duty to carry out a review of the measure in a specified timescale, usually within five years of it coming into force.	**Sunset clauses** provide for automatic expiry of the measure on a specified date.
A review clause is mandatory for all measures that regulate business (including both domestic and EU-derived measures), except for fast track measures, and time-limited measures that are subject to an existing sunset clause causing them to expire within one year of coming into force.	A sunset clause is mandatory for all measures that regulate business that are domestic in origin and are being implemented through secondary legislation.

The Government has published very little detail about the use of such clauses in any of its *Statements of New Regulation* and there appears to be no central register of clauses to demonstrate compliance or even just to clarify the balance of use between the two. This is surprising given the potentially significant administrative burden such clauses could place on departments in coming years. The last BRE *Statement of New Regulation* to refer to these clauses claimed that "over 200 pieces of legislation introduced since 2011 include a sunset or review provision".[67] However, it did not provide a "denominator" against which to compare this number so it is impossible to judge the degree to which the Coalition is fulfilling its *Programme for Government* commitment.

64 HM Government (2012), *One-in, One-out: Third Statement of New Regulation*
65 Department for Business, Innovation and Skills (2013), *Better Regulation Framework Manual: Practical Guidance for UK Government Officials,* p30
66 The Government is also introducing sunset clauses into the founding legislation of new statutory regulators.
67 Department for Business, Innovation and Skills (2013), *The Seventh Statement of New Regulation: Better Regulation Executive – December 2013*

4
Mission accomplished?

The central challenge facing any government is that, while it is relatively easy to introduce new regulation, it is much harder to remove it once it is in place. It is probably fair to say that the Coalition Government has been more thoroughgoing than any of its predecessors in reducing both the flow of new regulation and the stock of existing regulation. Its commitment to deregulation started almost immediately after the 2010 general election and has remained firm ever since. Two questions arise. Has it been successful? And what lessons are there for the next government?

How well has the Coalition Government done?

Table 9 shows the cumulative performance of the twelve major spending departments (and two key regulatory agencies) over the first four years of this Parliament, based on the RPC's consolidated set of validated Impact Assessments,[68] corrected for the mistakes identified in Chapter 3.[69] Whilst, to date, the majority have comfortably exceeded the Government's one-in, two-out ambition, the Government's performance overall is considerably lower, at just one-in, 0.29-out (equivalent to introducing at least £3.50 of regulation for every £1 it has so far removed).

To a large extent, this poor performance reflects the uneven distribution of the regulatory stock across Whitehall. Indeed, one criticism of the OIOO/OITO approach is that it assumes all departments face a broadly similar challenge. Yet a department that has been a more effective prior steward of its regulatory stock could find it harder to source sufficient "outs" to pay for any "ins". On the other hand, a department that has previously been less cautious about the costs it has placed on business could continue to operate a lax regime as long as its ratio of "ins" to "outs" is good enough.

The estimates in Table 9 remain approximate since they exclude the cost of all regulations related to civil emergencies and financial systemic risk, as well as all European regulations assessed during the first two years of the Parliament (SNR1-SNR4). It would be wrong however to assume that the impact of these omissions is always to flatter departmental performance. For example, the Department for Transport falls from 1-in, 20-out to a much lower (but still respectable) 1-in, 8-out using the Government's preferred metric. Nevertheless, what these figures do reveal is the significant distortion caused by the Government's partial measurement.

68 Regulatory Policy Committee (2014), *Complete list of validated costs and benefits of regulatory and deregulatory proposals (Updated 9 July 2014)*, (https://www.gov.uk/government/publications/validated-costs-and-benefits-to-business-of-regulations/complete-list-of-validated-costs-and-benefits-of-regulatory-and-deregulatory-proposals, accessed 23 November 2014)

69 That is, including post-SNR5, RPC-validated Impact Assessments for all EU regulations and excluding the DWP occupational pensions change in SNR1.

Table 9: Departmental in/out ratios over all eight Statement of New Regulation periods (January 2011-December 2014)
Source: Authors' calculations based on Regulatory Policy Committee (2014), *Complete list of validated costs and benefits of regulatory and deregulatory proposals (Updated 9 July 2014)*

Department/Agency	Government's preferred measure	Actual performance to date
Foods Standards Agency	0 in, 800,000 out	0 in, 800,000 out
Department for Culture, Media and Sport	1 in, 73 out	1 in, 73 out
Department for Communities and Local Government	1 in, 116 out	1 in, 19 out
Department for Transport	1 in, 8 out	1 in, 20 out
Department for Environment, Food and Rural Affairs	1 in, 29 out	1 in, 13 out
Health and Safety Executive	0 in, 1,040,000 out	1 in, 7 out
Department for Education	1 in, 5 out	1 in, 5 out
Department for Business, Innovation and Skills	1 in, 10 out	1 in, 4 out
Department of Energy and Climate Change	1 in, 650 out	1 in, 1.68 out
Home Office	1 in, 0.11 out	1 in, 0.11 out
Department for Work and Pensions	1 in, 1.30 out	1 in, 0.07 out
Department of Health	1 in, 0.07 out	1 in, 0.06 out
HM Treasury	1 in, 1.87 out	1 in, 0.03 out
Ministry of Justice	1 in, 0.00 out	1 in, 0.00 out
Overall	**1 in, 1.53 out**	**1 in, 0.29 out**

Turning to the Red Tape Challenge, the Government must be applauded for the sheer scale of the consultation exercise it undertook and for the salutary effect this has had on Whitehall's perception of its role as curator of a vast regulatory stock. At the same time, the Prime Minister's original challenge could not have been clearer. In his 2011 letter to all Government ministers, he wrote: "there are over 21,000 statutory rules and regulations in force, and I want us to bring that number – and the burden it represents – down."[70] Against this tougher baseline it is clear that the Red Tape Challenge has barely scratched the surface, reviewing perhaps a quarter of the total stock of all regulation, scrapping just 5 per cent, with only 0.5 per cent resulting in a material benefit to businesses, civil society, individuals and/or the taxpayer.

Possibly the most disappointing aspect of the Government's approach to deregulation has been its lackadaisical approach to the use of review and sunset clauses. As specific blocks of text in legislation, it should have been a very straightforward matter to record their accumulation as the Government takes each regulation through Parliament. There are isolated examples of good practice by individual departments,[71,72] however there appears to be no way for the independent observer to judge the performance of the Government overall.

70 HM Government (2011), Letter from the Prime on cutting red tape (https://www.gov.uk/government/news/letter-from-the-prime-minister-on-cutting-red-tape, accessed 23 November 2014)
71 Department for Transport (2014), *Reviewing Regulation: Setting out DfT's commitments*
72 Department for Work and Pensions (2014), *Reviewing Regulation: Detailing DWP (including HSE) Commitments*

What should the next Government do?

Be more transparent and more consistent

Shortly after the general election in May 2010, the Prime Minister said he wanted to see the creation of "a whole army of armchair auditors looking over the books" so that his ministers would not be able "to get away with all the waste, the expensive vanity projects and pointless schemes that we've had in the past."[73] The Coalition Government must be congratulated for the lengths that it has gone to in making clear its processes for regulation and deregulation. Its *Better Regulation Framework Manual* is a model of clarity. Similarly its *Statements of New Regulation* go much further than previous administrations in clarifying the scale and impact on business of proposed new regulation.

Yet, with 399 domestic Impact Assessments validated by the RPC so far in this Parliament, and a further 59 EU-origin Impact Assessments, it is challenging for the armchair auditor to test the veracity of individual assessments. We have seen in the last chapter at least one Impact Assessment (on changes to the National Minimum Wage in 2013) that did not appear to have been included in the BIS *Statement of New Regulation*, the BRE summary *Statement of New Regulation* or the RPC list of validated Impact Assessments.

The task facing the armchair auditor is made more complicated by the fact that the results of departmental calculations, particularly EANCB calculations, are often stated without detailed workings being shown, leaving outside observers to simply take the figures on trust. This is asking for quite a leap of faith in the light of the 2013 *Macpherson Review* of quality assurance of government models, which followed the disastrous collapse of the InterCity West Coast franchise competition.[74] For example:

- in preparing this report, we have not encountered a single Impact Assessment that identifies a "model Senior Responsible Owner" (SRO) even though the *Macpherson Review* recommends that all business-critical models should have a named SRO;
- similarly, whilst official Treasury guidance encourages departments to make specific provision for optimism bias,[75] we came across fewer than ten Impact Assessments that spelt out the detail of their bias assumptions.

Revert to one-in, one-out but reduce the number of exemptions

After the Government moved from one-in, one-out to one-in, two-out in January 2013, the then Minister for Business and Enterprise, Michael Fallon, announced with some flourish: "I tightened the screw with the 'One-In, Two-Out' rule. Now departments must find £2 of saving for every £1 of extra cost imposed. It is now much harder for ministers to regulate!" [emphasis in original]. Yet the various exemptions to the Government's regime undermine this bold claim. Whether it is the misinterpretation of its own rules (as in the case of DWP's occupational pensions change), the failure to include core financial or "tax-like" regulation, or the almost complete exemption of EU regulation, the result is that the burden of regulation has unquestionably increased in this Parliament.

73 Transcript of the Prime Minister's podcast on transparency from 29 May 2010, https://www.gov.uk/government/news/pms-podcast-on-transparency, accessed 23 November 2014
74 HM Treasury (2013), *Review of quality assurance of Government analytical models: final report*
75 HM Treasury (2013), *Green Book supplementary guidance: optimism bias*

Table 10: The "other exemption": taxation

This report adopts a reasonably generous position on regulatory fees and charges, which are treated by the Government as outside the OIOO/OITO regime. Others, notably the RPC, have taken a more sceptical position, commenting on "the surprising number of [recent Impact Assessments] proposing an increase to fees and charges given that cost recovery is a long established Treasury requirement."[76]

However the other exemption that some think should also be counted is taxation and, in particular, the treatment of "tax-like" regulatory changes. For example, the two largest outstanding measures in 2014 are the Energy Company Obligation, estimated to cost business around £1.3 billion a year, and the Carbon Emissions Reduction Target, believed to be an "out" of a similar value. The Government is awaiting a decision from the Office of National Statistics on whether the Energy Company Obligation should be classified as a tax.[77] If it is then two measures, which would naturally offset each other, could instead be recorded under the OIOO/OITO regime as a significant regulatory saving.

A more honest approach would be to acknowledge the genuine difficulty in controlling the growth of regulation, alongside a more thoughtful analysis of the overall impact of regulation on national wellbeing (the "ultimate impacts" of Area 6 in Chapter 1, Figure 1). Whilst the analytical foundations for such an approach already exist in Whitehall,[78] implementation would be both politically and technically complex. A better solution is to revert to the one-in, one-out regime – but to keep the number of exemptions to the bare minimum. As part of this, individual departments should have more tailored "one-in, *x*-out" targets, based on the size of their overall regulatory stock and their deregulatory performance over recent years.

The opportunity to make this change exists in the form of the *Small Business, Enterprise and Employment Bill*. As noted in Chapter 3, this Bill will require future governments to publish targets for cutting regulatory burdens and to report progress against these targets.[79] However, whilst clause 22(4) of the Bill adopts a broad definition of regulation (exempting only short-term provisions lasting less than 12 months and those relating to procurement, grant giving and taxation) it still allows the Secretary of State to determine the methodology to be used for assessing the economic impact of regulations. As with the current situation, this will allow future governments if they choose to adopt methodologies that simply ignore any inconveniently expensive regulations.

Make "intelligent regulation" a core competence for the policy profession

Alongside fiscal and monetary policy, the OECD defines regulation as "one of the three key levers of state power".[80] At a time of unprecedented fiscal austerity, this makes the current Government's commitment to deregulation all the more remarkable. By voluntarily limiting its capacity to regulate, many would conclude it is making the task of governing considerably harder. Yet the creation of the Behavioural Insights Team (BIT) – initially mocked, now lauded – and more recently a "Policy Lab" at the Cabinet Office demonstrates a willingness to take seriously the search for non-regulatory solutions.[81]

This is reinforced by the publication two years ago of the *Civil Service Reform Plan*[82] and last year of the *Twelve Actions to Professionalise Policy Making*.[83] The latter document, signed by the Cabinet Secretary, Head of the Home Civil Service and Permanent Secretaries of 17 Whitehall departments, is addressed to the 17,000 people who identify

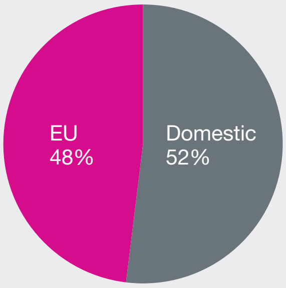
76 Regulatory Policy Committee (2012), *Improving Regulation: An independent report on the analysis supporting regulatory proposals, January-December 2011*
77 Regulatory Policy Committee (2014), *Regulatory Policy Committee scrutiny in 2013: Improving the evidence base for regulation*
78 Department for Environment, Food and Rural Affairs (2011), *A framework for understanding the social impacts of policy and their effects on wellbeing: A paper for the Social Impacts Taskforce*
79 *Small Business, Enterprise and Employment Bill (HL Bill 57),* London: The Stationery Office
80 OCED (2010), *Regulatory Policy and the Road to Sustainable Growth (Draft Report)*, p, 5
81 Lunn, P. (2014), *Regulatory Policy and Behavioural Economics*
82 HM Government (2012), *The Civil Service Reform Plan*
83 HM Government (2013), *Twelve Actions to Professionalise Policy Making: A report by the Policy Profession Board*

themselves as working in policy roles across the Civil Service and encourages new thinking about how to make policy in a more open and evidence-based way. Combined with the "shock and awe" of the Red Tape Challenge, these developments have gone some way to resetting departmental thinking on the management of their regulatory stocks. For some, like the Defra Better Regulation Unit, this has given forward thinking civil servants the political clout to make significant inroads in their regulatory oversight, making the most of modern technology (see Table 11).

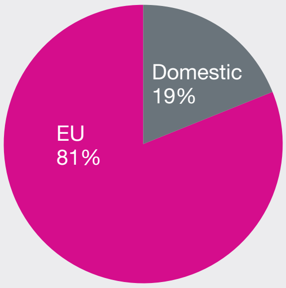
Table 11: A new approach to managing Defra's regulatory stock

As noted in Chapter 1, the "sheer time" involved keeping up with the overall regulatory landscape can often be a greater problem for businesses than dealing with individual regulations.[84] Recognising that it was a department whose regulation significantly affects small and micro businesses, Defra officials undertook a comprehensive audit of its entire regulatory stock in 2011. This was the first time any Whitehall department has attempted an exercise like this and Defra took great care, for example, to assess the reliability of its underlying evidence base. The audit represents best practice in open policy making, with the provision of genuinely useful information in a practical and convenient format.[85]

Number of Defra regulations
(435 sets in total)



Cost of Defra regulations
(£5.4bn in total)



To complement its audit, the department also launched *DefraLex*, "a "one-stop-shop" for all key publicly produced documentation on Defra-owned legislation, including guidance, consultation documents and impact assessments."[86] Hosted on the legislation.co.uk website, *DefraLex* is intended to increase transparency, saving time for businesses and the public so that they can search quickly for the most up-to-date regulation that affects them.

Whilst the idea of turning the Red Tape Challenge process into a permanent feature of good government has a superficial appeal, the sheer amount of Ministerial and Civil Service time consumed, compared with the marginal impact it has had on the size of the regulatory stock, must raise questions about overall value for money. A better approach would be to build on the existing drive to Civil Service professionalism and promote a more systematic approach to regulation and non-regulatory alternatives. As the Government itself acknowledges, "it is not a question of the use of regulation being ruled out altogether, rather that regulation is only used when satisfactory outcomes cannot be achieved by alternative approaches, or where alternative approaches would involve higher costs."[87]

This approach reflects the views of others like the NAO, which has recently produced its own spectrum of non-regulatory interventions, very similar to the list produced by the Better Regulation Task Force in 2005 (see Chapter 2, Table 2).[88] Having moved from an era of "better regulation" under New Labour to one of "deregulation" under the Coalition Government, there is merit in the next administration being one of "intelligent regulation", where new techniques like behavioural economics are used alongside new technologies to create a more subtle and effective framework that provides the essential protections required by society whilst minimising the burdens placed on business.

84 Federation of Small Businesses (2014), *FSB Handbook March 2014*, pp.32-3
85 Department for Environment, Food and Rural Affairs (2011), *The Costs and Benefits of Defra's Regulatory Stock*, p.3
86 Department for Environment, Food and Rural Affairs (2014), *Defra better for business: A Strategic Reform Plan for Defra's Regulations*
87 Cabinet Office (2011), *Government Response to the Science and Technology Select Committee Report on Behaviour Change*
88 National Audit Office (2014), *Using alternatives to regulation to achieve policy objectives*.

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