CBI RESPONSE TO DBT SMART REGULATION AND REGULATORY LANDSCAPE- CALL FOR EVIDENCE

Background

The CBI speaks on behalf of 170,000 businesses of all sizes and sectors, across every region and nation of the UK. This includes over 1,100 corporate members, plus nearly 150 trade associations. Corporate members alone employ over 2.3 million private sector workers.

We welcome the opportunity to respond to the Smart Regulation and the Regulatory Landscape call for evidence, it is good to see the government's acknowledgement that this has a material impact on the UK's attractiveness as a place to build a business, launch new products and deliver innovative solutions to global challenges. We look forward to continuing to engage with the Department for Business and Trade to achieve a truly internationally competitive regulatory environment with the right foundations for our economy to thrive.

If you have any questions or would like any further detail, please do not hesitate to get in touch with Alex.Guest@cbi.org.uk or Mark.Goldstone@cbi.org.uk.

Summary

Following the UK's departure from the European Union, government has an opportunity to boost UK competitiveness using smart, proportionate regulation. When correctly implemented regulation, and the work and independence of regulators, is critical to the UK economy - safeguarding the interests of consumers and enabling good business practice. Through a practical framework based on co-creation, the UK's regulatory landscape can enable innovation, competitiveness *and* compliance concurrently.

However, with the advent of new regulations, sectoral barriers, and possible regulatory divergence, many firms have started to perceive the UK a less competitive investment destination than it once was.

As such, the CBI welcomes the publication of the government's *Smart Regulation to Grow the Economy* report, which sets out a vision of regulation committed to a series of reform announcements annually to benefit businesses and drive innovation and growth. Our response to this call for evidence supports the ambitions of this report, building upon previous consultations with industry, which took place from 2022/2023 relating to the Retained EU Law Bill and the potential for a post-Brexit regulatory landscape.

We have consulted members widely through the CBI's Regional council network, as well as through sector trade associations and a dedicated listening session with UK government officials, which convened firms from multiple regulated sectors. These included defence, pharmaceuticals, utilities (energy & water), aerospace, financial services, and associated trade associations.

Through the polling conducted during the CBI's Q4 2023 Regional Council round, gauging cross-sector sentiment on the UK's regulatory landscape today, from businesses across all UK regions, 40% of firms voted in favour of a net 'unattractive' classification for the UK's current regulatory landscape.

Combining both quantitative and qualitative feedback, firms have made it clear that the UK's regulatory landscape can be improved through:

1. **Providing greater clarity on how regulation supports the UK's plan for economic growth by improving regulator mechanisms through 'strategic steers'**

2. **Crowding-in private sector investment by using long-term frameworks to enable innovation**

3. Supporting the delivery of smart regulation as an enabler by deepening regulatory skills and capacity

An increased blurring of the lines between regulatory independence and political priorities has stunted the capacity for regulation to become an effective enabler, representing a missed opportunity for boosting the UK's competitiveness

Reshaping the UK's regulatory regime to one that is focused on outcomes, not process, will be important to achieve sustainable economic growth. One way to embed the potential for innovation and growth within the regulatory landscape is to give economic regulators more specific guidance in managing trade-offs. What may have begun as a system of clear primary objectives around competition and consumer protection, has evolved into an approach which often requires regulators to do more, building complexity into the system.

- **Feedback from utilities company:** *'Parliament can be contradictory in what they ask from regulators. So how do the government and Parliament intend to change their behaviours so that they can hold regulators to account without stifling innovation?'*
- **Feedback from a global technology company**: *'One of the primary concerns within the organisation is that all the good due diligence done through impact assessments is blindsided by the political will of Parliament, where drastic amendments are made to regulatory reform without consideration of the impact assessments done by regulators.'*
- **Feedback from a global logistics company:** '*The increasingly devolved approach to transport regulation is leading to a fragmentation of standards starting to emerge across the UK which is adding cost and complexity to the logistics industry which often procures its fleets and plans its networks on a national basis.'*

There are some opportunities in regulatory divergence. Though there is a need to provide greater strategic direction for how the UK will maximise this new autonomy. Key to this is the extent of the 'regulatory sphere of influence' with concerns from business that changing regulations that are global risks isolating the UK market. Whilst changing regulations which applies within the UK is seen as an opportunity for improvement.

- **Feedback from a global investment company**: '*When global firms are looking to place investment in Europe, they ask their national subsidiaries to compete for the opportunity. In 9 times out of 10, the UK subsidiary loses out, leading to investment going to other parts of Europe. Additional UK regulatory burden is nearly always cited as the cause, especially within advanced manufacturing.'*
- **Feedback from a global technology company:** '*Referring to the post-Brexit UK environment, there was a belief that leaving Brussels would result in a comprehensive re-make of the UK's regulatory landscape. Divergence in areas of new technology, where the UK is leading the way and, in effect, setting global regulatory frameworks, would be acceptable. However, divergence in existing regulatory processes, where the only tangible result is more paperwork and administration for the same outcome, makes the UK much less attractive.'*

1. Recommendation: Providing greater clarity on how regulation supports the UK's plan for economic growth by improving regulator mechanisms through 'strategic steers'

This could be achieved **through**:

- Government providing clarity to regulators, departments, and businesses over the **long- term strategic priorities for regulation** by providing an 'overarching' Strategic Policy Statement over a 10-year horizon.
- Clear scrutiny from DBT Select Committee on **the level of compatibility of regulators** with the objectives of the government's economic strategy.
- A **national framework for strategic sectors**, such as logistics, would help deliver consistent standards across the UK. Industry requirements should be made clear and a framework approach for local schemes such as emission zones, road charging, pedestrianisation and low traffic neighbourhoods could be included in this guidance.
- The government systematically and strategically **reviewing the statutory duties, objectives, and processes of existing regulators**, with the objective of providing recommendations aimed at achieving less burdensome approaches to regulation and ensuring markets are not unnecessarily

regulated. This should focus on the application an of outcomes based collaborative approach' to regulation.
- The government using its role to provide **guidance to regulators on how to deliver on their statutory duties more effectively**, using specific targets and regular scrutiny. This should, include guidance on how to develop Strategic Policy Statement (SPS) with a greater emphasis on effective prioritisation.
- Where regulators feel that their statutory duties are in *conflict*, they should have the capacity to request **updated 'strategic guidance' from their sponsoring department**.

Regulatory short-termism combined with a lack of agility in the UK's approach has had a limiting effect on industry capacity for investment and innovation.

In any effective regulatory system that seeks to enable economic growth and innovation, there must be a degree of certainty and stability embedded within its policy framework that delivers confidence.

This is particularly prevalent within firms which require significant capital investment into fixed assets and projects, on which the UK relies for years to come. With the longevity of these projects and their associated yield curves, firms need to know that regulation is enduring and deployed consistently. As such, one of the critical priorities from members was to emphasise the need for a long-term framework to support investment.

- **Feedback from an energy supplier**: *'There is a recognition that there is short-termism embedded in the current system. Still, from the perspective of a retailer, there should be a focus on fixing the short-term in such a way that also fixes the long-term issues with regulation to reach net zero and make renewable energy more cost-effective for consumers.'*
- **Feedback from a power distribution company:** *'We have seen a positive example of investor confidence when we look at Net Zero as an economic game-changer. As such, we want to see a similar environment across regulation to foster a feeling of safety for investors. In the energy and infrastructure sector, we are now seeing an erosion of the historical stability and the independence of regulators, which has resulted in a feeling of politicisation and short-termism- when they talk about putting assets in the ground or investment in projects- these can both be up to 50 years.'*

At the same time, for emerging technologies operating in high-growth markets, the pace of development can be so fast that it quickly moves out of step with the broader frameworks. So, whilst long-term frameworks are necessary to provide investor certainty, it is key that these aren't at the expense of the development of the market.

- **Feedback from a technology Trade Association:** *'The UK has an emerging space cluster, leading innovation in new technologies. However, regulation has consistently failed to keep pace with market needs and demand. A specific example was provided around satellite technology, where the regulator assesses each satellite individually and requires each to be insured as a single entity. This immediately becomes an issue when you wish to put lots of satellites up simultaneously- it makes getting insurance almost impossible. This encourages firms to look elsewhere around the world for a more friendly regulatory environment.'*
- **Feedback from a leading Trade body:** *'The central problem across the board remains the speed of decision-making and the approval of projects. This is particularly the case in the high-intensity innovation sectors. So, how do we get a revised scheme and system that works with the government of the time to ensure that we do not allow short-termism to prevent economic progress.'*
- **Feedback from a global logistics company:** '*The Defra Clean Air Zone Framework provided a good model as there was a single standard which could be deployed nationally as appropriate. Operators procuring national fleets could plan their fleet upgrades accordingly without interoperability between cities being impacted. However, outside of this structure we are seeing increasing divergence. All of these schemes have repercussions beyond their direct localities given that the freight and logistics industry deliver using a national network model.'*

2. Recommendation: Crowding-in private sector investment by using long-term frameworks to enable innovation

This could be achieved **through**:

- Each regulator having clear **responsibility to acknowledge *how* regulatory policy aligns with the government's objectives on growth and investment**. This would also require each regulated sector to assist decisions and reduce fragmentation between departments and bodies.
- Launching a **call for evidence on the broader tools available**, other than price control, to achieve long-term investment ambitions.
- Ensuring that regulatory **frameworks for emerging technologies prioritise principles-based and outcomes-based regulation** and adopt collaborative approaches to overcome fragmentation of regulatory remits.
- **UK Regulators Network (UKRN) reporting on the tools available to regulators** to drive innovation, drawing on international experience and business consultation.
- Regulators **diversifying the toolkit used to test new business models**: The government must be clear on the relationship between the 'Regulators Innovation Network' and the resources available to regulators to enable innovation.
- **Using regulatory sandboxes to create a space for businesses**, regulators, academics, and consumers to develop and test how new business models, technologies, and policies can be deployed and used in a way that is safe and responsible. This would build on the successful models operated by UK regulators and forums like the FAC, ICO, and DRCF.
- Developing less resource intensive frameworks to enable and **support business to evaluate innovative business models such as toolkits or an FAQ helpline**.
- Using these arenas to **develop the necessary skills and common capabilities** within the regulatory professional body required to support innovation and growth.

Difficulty in navigating regulation is proving as time consuming and costly for industry as the volume of regulatory compliance itself.

Regulator powers and accountability have not always moved in tandem. Partly due to increased decision-making powers some regulators now possess following our departure from the EU. In some instances, this has put additional pressure on regulators to deliver more outputs against a backdrop of workforce challenges, salary inflation and skills shortages. This has consequences, and firms from a range of sectors have cited concerns in the quality of regulatory output in their sectors.

- **Feedback from an energy supplier**: *'The importance of having skilled staff in Ofgem and other regulators is vital to ensure processing will happen in a timely manner. The firm made specific reference to the importance of digital skills within regulators- it was felt these were lacking.'*

The UK is home to globally significant and innovative sectors including Life Sciences, AI, and Advanced Material Manufacturing. A contributing factor to this success is a result of the UK's recognition around the world for strengths in research & development and the creation of intellectual property (IP).

Commercialising this IP faces challenges, not least raising finance, though, the pace at which products can be brought to market is also a critical factor. Members told us specifically that a lack of resources within regulators that approve new products has resulted in current processes taking far too long in the UK compared to other jurisdictions, in turn impacting on the attractiveness of the UK to launch.

- **Feedback from a medical technologies company:** *'As a company that operates in the healthcare sector, one of its key competitive features is first mover advantage on new products. However, his experience working with regulators in the UK is that this process is too slow and means they lose their competitive advantage. The sluggish speed of regulators in this space makes the UK look like an unattractive place to launch new products.'*
- **Feedback from an innovation-focused Trade body:** *'There is a strong need to invest in skills and resources to improve the system's speed and competitiveness when products go to market. The*

current experience is a negative one, with the approval process of products taking far longer than they should and costing businesses that vital competitive advantage needed to justify launching products in the UK.'

3. Recommendation: Supporting the delivery of smart regulation as an enabler by deepening regulatory skills and capacity

This could be achieved **through**:

- Conducting a financial assessment ahead of the 2025 Spending Review to **identify potential funding gaps that may be inhibiting the effective discharge of regulators' duties** and objectives.
- Using the 2025 Spending Review to then **implement the recommendations from the financial assessment.**
- Ensuring that funding settlements, such as those for the MHRA which issue 'approvals or licences', are regularly reviewed to **ensure appropriate levels of funding are in place in order to deliver timely decisions** around market approvals.
- **Strengthening the role of the UKRN** on regulatory best practise by making it an official body that is adequately funded and resources.
- Promoting the **development and professionalism of regulatory staff** building on the expertise of the *Institute of Regulation*.
- Promote the **understanding of the role of standards in the regulatory framework**, building on the expertise of the *British Standards Institution*.
- Establishing a **formal industry secondment process** for ensuring that regulators are staffed with employees with industry experience. This process could be facilitated by the Whitehall & Industry Group, ensuring no conflicts of interest.

Taken together, these recommendations would go a long way to instilling greater confidence in the UK's regulatory landscape – unlocking innovation and easing the regulatory burden on many sectors. Concurrently, these will allow government to continue to protect consumers and wider policy aims i.e. the transition to Net Zero and growing the economy.

The CBI will continue to advocate for these reforms, working closely with businesses across the UK to provide analysis and both qualitative and quantitative feedback to government. If there are any specific areas government departments would like further information on, CBI colleagues would be happy to expand on the contents of this submission.

CBI

January 2024