

Regulatory Budgets: Consultation Summary

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In August 2008, Government consulted on the idea of introducing a system of Regulatory Budgets that would provide a mechanism to manage regulatory costs and lessen the impact of costs imposed on business and the public.

The Regulatory Budgets consultation paper discussed how such a system might work in practice, and sought views on possible implementation to better manage regulatory costs¹. There were 74 responses to the consultation during the 14 week consultation period which ended on the 12th November 2008.

During the Regulatory Budgets consultation period, officials from the Better Regulation Executive met with business representatives, regulators and professional bodies to discuss the Government's proposals. A consultation event also took place on the 7th October to present the ideas put forward in the consultation document and to promote discussion of the issues arising from this and to invite feedback from interested parties.

Responses to the Regulatory Budgets consultation suggested that opinion was polarised. Trade associations, business groups, and businesses were broadly in favour, whilst environmental lobbyists, consumer groups, trade unions and, on the whole, regulators were generally against the proposal.

Breakdown of the Consultation Responses

1	Do you consider that the Government should proceed with a system of Regulatory Budgets as a way of managing the costs of new regulation?	Yes	No		Neutral	Base ²
		45%	39%		16%	74
2	Do you think regulatory costs should be scored at the point of enactment or when they come into effect?	Enactment	Implementation			
		62%	35%		3%	40
3	What, in the range of three to five years, would be an appropriate budget period?	3yrs	4 yrs	5 yrs		
		81%	0%	14%	5%	37

¹ The Regulatory Budgets Consultation Paper. Available at: <http://www.berr.gov.uk/files/file47129.pdf>

² Base represents the number of respondents who answered each question.

6	Do you agree with the outline of this approach to EU and international originating regulations? Are there other issues to be addressed in the context of EU and international commitments?	Yes	No		
		84%	11%		
7	Is this approach outlined in paragraphs 3.14 – 3.22 to costs arising from specific regulatory actions appropriate?	Yes	No		
		65%	19%		
9	Do you agree with the proposed categories of costs to include in a regulatory budget as outlined in Chapter 5?	Yes	No		
		75%	22%		
10	What are your views on the proposed assessment methodology outlined in Chapter 6, including whether budgets should be set on a gross or net basis?	Gross 52%	Net 31%		42

Responses to the Consultation Questions

1. Should Government proceed with a system of Regulatory Budgets as a way of managing the costs of new regulation?

The results produced a polarised set of views on the introduction for a system of Regulatory Budgets. Respondents were almost evenly split:

- 45% said Government should go ahead with Regulatory Budgets
- 39% said the Government should abandon this idea.
- The remaining 16% made no commitment either way.

From the responses received there was a clear distinction between the views of those that regulate and those that are regulated.

Those that are regulated such as business generally welcomed the proposal. A number of businesses and trade associations shared the view expressed by the Confederation of British Industry³ (CBI) *“that such a system of Regulatory Budgets will allow the Government to provide a joined-up approach to better manage the amount of old and new regulation...”*

Regulators considered that Regulatory Budgets should not be pursued citing reasons varying from the impact on their independence, resource demands and moreover, they already work to the better regulation agenda. Despite the fact that regulators argued for their exclusion, some did see Regulatory Budgets as a positive option for the better regulation agenda. The Financial Services Authority stated that: *“a rigorous analysis of the cumulative costs and benefits of such planned new regulation through Regulatory Budgets will ensure that any new measures are appropriately prioritised and targeted”*

Trade Unions had concerns that a system of Regulatory Budgets would marginalise policies with high short-term costs and large long-term benefits. In particular, there was a concern that Regulatory Budgets would not allow the Government to balance its better regulation principles while at the same time addressing market failures and provide greater coherence and transparency. Connect stated: *“We are not convinced that the notion of regulatory budgets – by definition itself a piece of regulation – has much to offer the better regulation debate at this time.”*

Environmental bodies did not want to see the introduction of Regulatory Budgets as they feared it would be de-regulatory and prevent new climate change related regulations from being introduced, causing further harm to the environment. They also considered that not all benefits could be monetised and so would not always be taken into consideration. However, some agreed that the better regulation agenda was important to ensure that the right regulation was being brought in.

³ The Confederation of British Industry represents 240,000 businesses

Managing a Regulatory Budget

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

A majority (62%) favoured scoring budgets at the time of enactment to encourage costs and benefits to be taken into account early in the policymaking process, while 35% favoured the scoring of regulatory costs at the point of implementation⁴, when the costs hit businesses.

For those that preferred scoring at enactment, the stated reasons were generally similar to that of the Environment Agency, *"...this fits better with the Impact Assessment framework and provides a system of budgeting when policy is set..."* The National Joint Utilities Group (NJUG) agreed with the regulatory costs being scored at enactment, and stated: *"This is because costs start from the earliest point, in reality before enactment due to the amount of preparatory work that must be undertaken"*

The preference for scoring at implementation is captured by the Chartered Institute of Environmental Health (CIEH) who stated that costs *"they should be scored when they come into effect; this would allow for a more accurate estimation of the likely costs"*. This would arguably give greater clarity on measures which were being imminently introduced.

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

There was an overwhelming majority in favour of a three-year budget cycle (81%). Only 14% favoured a five year range.

Respondents favouring three-year cycles supported this as it would mirror the Spending Review cycle. Indeed some respondents⁵ felt Regulatory Budgets should be tied to the spending review system.

Others stated that Government Departments and businesses are now comfortable with the idea of three-year cycles hence Regulatory Budgets should follow this pattern. Several respondents suggested Regulatory Budgets should be for *"the duration of Parliament"* as regulation would stem from both Primary and Secondary legislation.

There was concern that five-year budgets would be difficult to set because *"It would be nearly impossible to predict regulatory activity, and potential costs and benefits, 5 years into the future."*⁶ This was also the view of professional bodies and business groups⁷.

⁴ A base of 40 respondents answered this question

⁵ ACCA

⁶ Food Standards Agency

⁷ The British Retail Consortium also supported this view

4. What are your views on the possible system to manage Regulatory Budgets outlined in paragraphs 2.9 – 2.31? Would this deliver a credible and effective system of Regulatory Budgets?

This question focused on how Government would: set budgets; report and manage budgets; and how regulatory budgets would operate in shadow form. Details are set out below:

Setting the Budget:

Although there were few comments regarding setting the budget itself, a number of respondents did raise questions regarding some of the underlying tools to be used. Some questioned whether the current standards of IAs were robust enough to set a Regulatory Budget. Uncertainties were also expressed around the quality assurance process of IAs and suggestions were made for an independent body to oversee all IAs.

Another concern was raised by a minority of respondents which related to the issue of prioritisation of regulation. As Regulatory Budgets would be set on gross costs (i.e. not netting off benefits), some respondents expressed concern that, in treating regulatory costs and benefits separately, Departments would not give enough consideration to the scale of potential regulatory benefits, therefore opting for lower cost options rather than more expensive options which are more cost beneficial.

Reporting and Managing the Budget:

Respondents were generally supportive of the outlined process for managing the budget. There was clear support for the Government's proposal for flexibility around budgets illustrated by the British Chamber of Commerce's (BCC) view that *"some degree of flexibility for Departments is important if the system is to work effectively"*. However, some respondents⁸ did express reservations that too much flexibility around budgets, i.e. where budgets could be transferred from one Department to another, this could reduce transparency.

There was a consensus that Regulatory Budgets should be reported to Parliament, with some supporting the proposal of further scrutiny by way of a Select Committee.

Some respondents expressed the view that the Better Regulation Executive should monitor individual Departments against their Regulatory Budget and have a right to sanction those that had exceeded their budget. One respondent suggested that Departments should follow the model of the Bank of England and publish an open letter every time they exceeded their budget.

Shadow Period:

A majority of respondents agreed with the Government's proposal for a 'shadow-year' suggesting the idea that *"Departments need to be given time to become familiar with the new system...for it to be effective"*⁹.

⁸ PWC, National Farmers Union are some of the organisations who expressed this view

⁹ Chittendon & Ambler's view

5. Which forms of Government action should be within scope of Regulatory Budgets?

This open question gave respondents the opportunity to express their views on what regulation should be included in the scope of Regulatory Budgets.

Although there was a general consensus on the proposed scope of regulation to be included in a system of Regulatory Budgets, some concern was expressed regarding the proposed climate change exemption. All business groups argued for climate change measures to be included. The Institute of Directors' (IoD) view was echoed by others. They said it (climate change) *"should be subject to the same transparency and rigour as any other form of regulation and as such it rejects the exemption suggested within the consultation"*.

Another area of concern was the proposed exclusion of tax measures as some respondents¹⁰ argued for their inclusion in the Regulatory Budgets system, as there was a worry that their exclusion could damage the credibility of and confidence in the overall Regulatory Budget system. The Institute of Chartered Accountants in England & Wales (ICAEW) sought further clarification: *"we think that the reasons for HMRC's omission...should be explained in much more detail"*.

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

There was overwhelming support that EU originating legislation should be included within the scope of a system of Regulatory Budgets¹¹. 84% of respondents mirrored the view expressed by Consumer Focus that *"EU and international regulations need to be included within the scope of any new system of Regulatory Budgets"*.

There was some concern from a minority of respondents that the inclusion of EU and international regulations would *"place domestic legislation under significant pressure"*¹², as they felt that EU legislation would be prioritised over domestic legislation. Some respondents felt that it would be inconsistent with the UK's obligations and too difficult to attempt to include EU and international originating regulations into the Regulatory Budgets system¹³.

7. Is this approach outlined in paragraphs 3.14 – 3.22 to costs arising from specific regulatory actions appropriate?

This question asked respondents for their views on four specific cost elements arising from: enforcement activities; self-funding regulations; contractual obligations; and legal proceedings, and whether the approach to each of these was appropriate.

¹⁰ The CBI expressed this view

¹¹ A base of 44 respondents answered this question

¹² Stated by the RSPB

¹³ Stated by the Chartered Institute of Environmental Health and The Chartered Institution of Water and Environmental Management

Enforcement Activities:

Respondents generally favoured the Government's approach to keep "*individual enforcement activities or action to ensure compliance with regulations*" excluded from Regulatory Budgets. As EEF stated "*the cost of enforcement action for non-compliance should be outside the scope of Regulatory Budgets*".

Self-funding Regulations:

Most respondents felt the Government's proposal on including the new changes to self-funding regulations was a sensible option and agreed that these should be included.

Contractual Obligations:

There was little opposition to the Government's proposal of excluding contractual monitoring and management obligations falling on small business service providers and the third sector when working with Government.

Legal Proceedings:

There were no responses to the Government's proposal of not including any costs coming from court cases and EU infringement proceedings.

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

Regarding the scope of including regulators in a system of Regulatory Budgets the Government proposed not to include competition functions, to invite those Hampton regulators which have explicit statutory independence from Ministers to opt in positively, and, for practical reasons, not to include the non-economic regulatory functions of the Civil Aviation Authority (CAA), Ofcom, Ofgem and Office of Rail Regulation (ORR). Over two-thirds of respondents to the Government's proposal were content.

Of those that disagreed, a number of respondents argued similar views to that of the Professional Contractors Group which stated that "*to exclude the functions of economic regulators...would be to exclude a large volume of regulation unnecessarily from consideration*". There were several respondents that supported the view that regulators should be included within Regulatory Budgets. This is best summed up by the IoD who stated "*...it is of the utmost importance that these bodies take part in the process and as such the IoD believes that if not captured in the process by voluntary arrangements the legislative underpinning that enables their separation should be reviewed to bring them within the Regulatory Budgets system*".

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

The consultation paper stated that the system of Regulatory Budgets would cover all policy areas, including all regulation with an impact on a business or third sector organisations; and regulations impacting on the private, third and public sector; but that public service regulation would be excluded.

There was strong support for the Government's categories of costs with 75% agreeing this was the right approach.

Conversely, those that rejected the categories stressed that public sector costs should be included. Views were similar to that of the British Cement Association which stated that *"In addition...it is appropriate to include the impact on the public sector within the budget."*

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

Most respondents focussed on the question of whether the budget should be set on a gross cost basis (i.e. where costs are treated separately from benefits) or net of benefits (i.e. where benefits are netted off from costs) with 52% favouring gross costs. One response highlighted the advantage of setting a budget on gross cost as this would allow the Government to assess the cumulative cost of new regulation, while another expressed support for setting Regulatory Budgets net of savings from simplification measures.

Some respondents misunderstood that benefits would not feature at all in the Regulatory Budgets system. Of those that recognised benefits would be used to inform the budget setting and prioritisation of regulations, concerns were raised that a gross cost approach would send the wrong signals and result in a one-sided partial approach.

A majority of responses preferred to set budgets on the equivalent annual cost (EAC) basis, instead of setting one budget for transitional costs and one for annual recurring costs. Several respondents who preferred using the EAC also wanted the transitional costs and annually recurring costs to be identified separately as well. One response questioned whether the EAC was the best approach and whether using the present value over a standard number of years of operation would be better.

A majority of responses noted the difficulties in measuring benefits, as well as costs, and suggested that for Regulatory Budgets to work the estimates needed to be sufficiently accurate and robust. A number of responses identified the potentially adverse incentives that a Regulatory Budget system could introduce, for example, to underestimate costs. One response called for clear and robust checks on estimates within the system and a process to audit Impact Assessment estimates.

Annex I Stakeholder Response List

Local Authorities Coordinators of
 Regulatory Services (LACORS)
 Private Individual
 Lucite International
 The Society of Pensions Consultants
 Chemical Industries Association
 Health and Safety Executive
 The Aldersgate Group
 Civil Court Users Association
 Institute of Chartered Accountants for
 Scotland
 Association of Chartered Certified
 Accountants (ACCA)
 Information Commissioner
 Private Individual
 West Midlands Fire Service
 National Joint Utilities Group
 Chartered Institute of Environmental
 Health (CIEH)
 Natural England
 British Retail Consortium (BRC)
 International Air Transport Association
 (IATA)
 Professional Contractors Group
 Food Standards Agency
 Royal Society for the Protection of Birds
 (RSPB)
 Standard Life
 British Cement Association
 PriceWaterhouseCoopers (PWC)
 British Lime Association
 Trades Union Congress (TUC)
 Consumer Focus
 Private individual
 Green Alliance
 Wildlife and Countryside Link
 Chemical Business Association
 Western Power Distribution
 Civil Aviation Authority
 Trading Standards Institute (TSI)
 Chartered Institute of Water and
 Environmental Management
 Society of Chief Trading Standards
 Officers
 Chartered Institute of Taxation

The Chartered Institute of Wastes
 Management
 General Medical Council
 Institute of European Environmental
 Policy
 British Chambers of Commerce
 Manchester and London Business Schools
 Chartered Institute of Management
 Accountants
 Engineers and Employment Federation
 Association of British Insurers
 Royal Institute of Chartered Surveyors
 Environment Agency
 Medicines and Healthcare products
 Regulatory Agency (MHRA)
 Office of Rail Regulation (ORR)
 Institute for Chartered Accountants for
 England & Wales
 Public and Commercial Services Union
 National Farmers Union
 National Lottery Commission
 Which?
 Ofgem
 National Consumer Federation
 Federation of Small Businesses
 Connect
 Confederation of British Industry (CBI)
 Institute of Directors
 Environmental Services Association
 Forum of Private Business
 Ofwat
 Ernst & Young
 The Chartered Institute of Public Finance &
 Accountancy (CIPFA)
 Food and Drink Federation
 Ofcom
 British Contract Furnishing and Design
 Association
 The Travel Association (ABTA)
 British Bankers Association
 Scottish Power
 Tiga's Game Association
 Advertising Association
 The Teacher's Union (NASUWT)