

FDF RESPONSE TO BERR REGULATORY BUDGETS CONSULTATION

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?

FDF supports the Government's proposal for a system of regulatory budgets but urges that its coverage is extended to avoid significant loopholes which will allow too many burdensome policies and practices to slip through unaccounted. For example, the Food Standards Agency is a key regulator for the food industry, initiating or negotiating much of the regulatory framework under which we operate. It also initiates 'voluntary' action which carries costs for business and, in better regulation terms, can amount to 'regulatory creep'.

As such to give the Agency an 'opt out' as proposed (and certainly in relation to its functions which concern health rather than food safety) would undermine regulatory budgets. So would the exemption of so called voluntary measures. For example voluntary product reformulation was initiated with the threat of legislation and carries costs for business. To exclude its costs from regulatory budgets would be disingenuous. FDF therefore urges the Government to take a more comprehensive approach to the concept of regulatory budgets by including all regulatory authorities that can impose burdens on business within its scope and all of their actions, regulatory or voluntary where they give rise to costs for business.

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

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

The rigour of budget setting - and, as stated before, its coverage - will determine the credibility of the system to a large extent. FDF would therefore prefer a 3 year budget as estimating costs for as far ahead as 5 years would be fraught with difficulty.

With this in mind, FDF would be content for regulatory costs to be scored at the point of enactment given that this would allow alignment with Government three year spending cycles. Also because the consultation document points out that it would reduce the burdens associated with regulatory budget setting, some of which will no doubt fall on businesses helping Government preparation of budgetary estimates.

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?

FDF agrees that regulatory budgets should be net of simplification savings in order to incentivise the Departments continued search for such savings. However, the costs of such savings would need to be estimated with the same degree of rigour as the budgets themselves to avoid any incentive to inflate savings identified through simplifications.

FDF recognises the need for end of period flexibility within departments and the need for exceptional provision to cover an emergency.

However, we do not support the proposal for trading between departments as that could lead to unexpected and perverse impacts on certain sectors or parts of the economy if Departments choose to 'purchase' the ability to regulate more than their budget would allow and could lead to regulatory budgets being traded and unexpectedly imposed of sectors not less able to bear the additional costs.

FDF welcomes the proposal for annual reporting and the introduction of mechanisms to hold Departments to account if they exceed their budgets. The option for Parliament and parliamentary committees to make such challenges is welcomed. However, it should be possible for industry and trade bodies to make formal representations to Departments that exceed their budget and to challenge cost estimates and for such representations to be summarised in the annual reports that are proposed.

5. Which forms of government action should be within scope of regulatory budgets?

FDF supports the costs arising from all forms of Government regulation or policy actions which coordinate or spearhead changes in business behaviour being included in regulatory budgets. This includes costs arising from voluntary codes and guidance and local government action all of which can add significantly to burdens on business.

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?

FDF agrees that the system of regulatory budgets will need to take full account of the cost of regulation that arises from EU legislation and other international obligations. Not least because the CBI estimates that the European Union generates more than 50 per cent of regulation affecting British firms.

However, it is difficult to see how the UK, as one of 27 Member States, will be able to exercise control over the costs of regulatory proposals coming from Brussels. The UK's recent experience with the EU Plant Protection Products Directive 91/414 is a case in point – where the costs of the European Commission's proposals were unknown due to a lack of an impact assessment and the European Parliament has been making proposals which could go even further and, according to the Pesticides Directorate, result in an end to agriculture as we know it in the UK.

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

FDF supports the proposed approach relating to specific cost elements arising from regulatory actions.

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

FDF notes the special position of economic regulators which have an explicit role to play overseeing monopoly structures and market powers. However, their activities can indirectly impact on other parts of the economy when for example their powers are being used to pursue social goals. For example, Ofcom can take action to restrict advertising of certain foods at given times taking account of the impact on broadcasting revenues. However, it has no duty to take account of the impact on product sales and the resultant losses incurred by manufacturers which should therefore be included in regulatory budgets.

As stated above, independent regulators such as the Food Standards Agency should also be included in the system and not given an 'opt out'.

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

FDF supports the proposed categories of costs to be included in a regulatory budget.

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

FDF agrees that setting a regulatory budget according to the gross costs (with benefits alongside) would be preferable to net costs. We particularly agree that there would be an incentive to inflate the benefits which by their nature are particularly difficult to estimate and, as such, very difficult for industry to challenge.