Ian Bishop*

BETTER REGULATION – THE UK EXPERIENCE

The UK's better regulation system is a world leader in delivering good regulatory practices and enhancing the positive outcomes of regulation. The next challenge is to refine how it responds to the increasing pace of technological change and incentivises further innovation. Regulation can enable market conditions and incentives to innovate, encouraging and rewarding improved practices, processes or models, while supporting investment decisions. Creating these conditions is at the heart of what better regulation means – developing an approach that enables and creates the right market conditions, including ensuring appropriate protections and regulatory practices are in place.

Mejora de la regulación: la experiencia del Reino Unido

El sistema de mejora de la regulación de Reino Unido es líder mundial en la producciòn de buenas prácticas regulatorias y en la intensificación de los resultados positivos de la regulación. El desafío inmediato consiste en perfeccionar su capacidad de responder al creciente ritmo del cambio tecnológico e incentivar una mayor innovación. La regulación puede permitir que las condiciones del mercado y los incentivos para la innovación alienten y recompensen prácticas, procesos o modelos mejorados, y que al mismo tiempo apoyen las decisiones de inversión. Crear estas condiciones está en el núcleo del significado de mejora de la regulación: desarrollar un enfoque que permita y cree las condiciones de mercado idóneas, incluyendo la aplicación de medidas de protección y prácticas de regulación adecuadas.

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1. Introduction

The UK better regulation system is a national asset. The UK is ranked 9th among 190 economies for the ease of doing business (World Bank, 2019), with the quality of our regulatory practices given the highest overall country score by the Organisation for Economic Co-operation and Development (2019).

The UK's better regulation system is built on robust and systematic approaches to the use of analysis and evidence in policy making. It sets clear expectations for how transparency and engagement drive better policy making and better outcomes for society. Independent scrutiny has played a central part in the regulatory process for nearly ten years —improving the quality of analysis and influencing the behaviours of policy makers.

At the core of the better regulation system is the better regulation framework —mapped across the policy

* Head of Better Regulation Framework, Better Regulation Executive.
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development cycle[1], the framework supports a systematic approach to developing regulation. It highlights the key considerations at each point in the cycle; creates incentives and expectations for the use of analysis and evidence; and provides guidance and advice on the approach to analysis. The framework supports consistent and comparable analysis, appraisal and evaluation of policies. Placing the use of evidence at the centre of the framework ensures that policy decisions are based on high quality evidence, which drives better policy outcomes.

The approach of the Better Regulation Executive ensures the principles of better regulation are central to government and regulator policy processes. We do this through the sponsorship of the better regulation framework and the Regulatory Policy Committee[2], and through our other work to promote the use of alternatives to regulation and to encourage regulation to be designed in innovation and trade friendly way.

The UK Government's principles of better regulation provide overarching objectives that guide and steer our interventions. The principles are that regulation should be: *i)* proportionate, *ii)* targeted, *iii)* consistent, *iv)* transparent, and *v)* accountable.

Evidence and analysis, particularly through the publication of impact assessments and post-implementation reviews, provide the tools to understand the effects of interventions. They enable policy to be designed to enhance the effectiveness of proposals while ensuring that outcomes are achieved while minimising unnecessary burdens. Developing and appraising different options for their comparative benefits, costs, risks and dependencies enables an objective consideration of how policy proposals achieve the principles of good regulation.

By considering how the better regulation principles apply to the better regulation system itself we have brought forward a number of reforms. These have been, primarily, aimed at ensuring the system becomes more proportionate and resources are better targeted. We are also considering how the system will continue to evolve and improve —as the world which is regulated changes at an increasing pace, how can the system that steers regulatory design evolve? How can we maintain the UK's position as a world leader in regulatory practice?

2. Recent history of the UK better regulation system

The UK's better regulation system is mature and stable. The main building blocks and tenets of effective regulatory practices having been established for a relatively long time. The current system has developed from the Better Regulation Taskforce (established in 1997) which led the development of the five better regulation principles (2003). The work of the taskforce led to the Better Regulation Executive (in 2006) and the Legislative and Regulatory Reform Act 2006 which embedded the better regulation principles in law. In 2009 the Regulatory Policy Committee (RPC) was created to provide independent scrutiny of the evidence underpinning regulatory and deregulatory proposals. The role of the RPC was to comment on whether robust analysis and evidence had been used to support decision making —with responsibility for decision making continuing to sit with Government ministers. The RPC remains comprised of independent experts supported by a civil service secretariat and undertakes its scrutiny function before final policy proposals are agreed by the Cabinet, ensuring that the decisions put to Parliament on regulatory proposals are based on robust evidence. All formal opinions provided by the RPC are published ensuring there is a transparent record of their scrutiny. Together with the publication of impact assessments and post-implementation reviews

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[1] In the UK the policy development cycle is usually characterised as the ROAMEF cycle (Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback). Issues relating to the choice and design of implementation tools and approaches are usually considered during the objectives and appraisal phases of the cycle.

[2] The Regulatory Policy Committee is the independent non-departmental public body that is responsible for providing independent scrutiny of the evidence supporting regulatory proposals. More information is available at www.gov.uk/rpc

transparency and public engagement act as an important lever to drive the quality of analysis.

The work to 2010 ensured that there was a robust and credible system in place. The structures and processes for embedding better regulation approaches were able to enhance and give credibility to the Government's subsequent burden reduction programmes. David Cameron, the then prime minister, set an ambition "to be the first Government in modern history to leave office having reduced the overall burden of regulation, rather than increasing it" (2011). The maturity of the better regulation system, and the central role that evidence and tools, such as cost-benefit analysis, played in the policy process provided the routes and levers for Government to bear down on the burden of regulation through controlling the flow of new regulatory requirements and embedding the expertise to evaluate the impact of existing requirements.

The 2010-2015 Parliament saw a significant focus on the role of regulatory off-setting as a tool for burden reduction. The Government's One-in, One-out and subsequent One-in, Two-out policies required the identification and removal of regulatory burdens to off-set any new requirements placed on business. To ensure the system better reflected the experience of businesses, the costs and benefits of policy proposals, and not just changes in administrative burdens, needed to be independently validated by the RPC. Independent checking and challenge ensured robust analysis and provided an important check and balance on factors such as optimism bias or poorly justified assumptions. One outcome of the role of independent scrutiny can be seen in the quality of impact assessments. During the first year of the RPC 56 % of impact assessments were rated as fit for purpose as initially submitted by the relevant Government department (Regulatory Policy Committee, 2010a). In 2017-2018 just over 80 % were rated fit for purpose as initially submitted (Regulatory Policy Committee, 2010b).

Setting an offsetting target that incorporated independent validation required metrics in order to measure progress and enable comparisons between different policies. The boundaries of the metric have significant implications for the types of measure and the types of impact that would count towards the target. This, in turn, has implications for how robust estimates are likely to be and the resource requirements for Government departments developing analysis. The metric used to measure the progress of One-in, One-out and One-in, Two-out and which is still used under the current Business Impact Target is the "Equivalent Annual Net Direct Cost to Business (EANDCB)". The metric focusses on the direct, first-order costs and benefits of regulatory changes —these are often the most easily measurable and provide a relatively straightforward boundary for the types of impact a measure is likely to have. As a result, the EANDCB provides for an easily understandable metric that enables simple comparisons between different policy options and over time. As discussed later it does, however, create challenges in developing rules for what is included (and in resolving those disputes) and incentivises the analysis of some impacts over others.

During the 2010-2015 Parliament the net burden on business and voluntary bodies was reduced by over £2 billion in annual terms or by over £10 billion across the life of the Parliament (Department for Business, Innovation & Skills, 2014). The individual measures and the contribution were validated by the RPC. Without independent scrutiny of the analysis, the claimed annual savings would have been around £2.7 billion[3]. Further deregulation was delivered through burden reduction programmes, but which related to changes that were not in scope of One-in, One-out or One-in, Two-out. The burden reduction programmes such as the Red Tape Challenge and Focus on Enforcement identified an estimated £850 million - £1 billion annual savings to business only some of which was included in the £2.2 billion figure (Department for Business, Innovation &

[3] This only includes changes that were identified through the scrutiny process, and does not include the behavioural effects of Departments taking a more robust approach in the knowledge that the analysis will be subject to independent scrutiny (RPC, 2015).

Skills, 2014)[4]. These programmes were intended to act as a catalyst for the review of existing regulation to identify where regulation may no longer be required. In this way the better regulation system used a burden offsetting approach to drive proportionate and targeted approaches to the design of new regulation, while incentivising Government to identify existing regulatory requirements that could be improved or removed.

Linking the better regulation framework to the delivery of the Government's overarching policy objective to reduce regulatory burdens helped ensure that better regulation was a central consideration in the policy process —from the Cabinet down there was a clear emphasis and importance placed on robust analysis and appraisal of different options (including non-regulatory approaches). There was clear political support for challenging policies where anticipated impacts seemed unnecessary or disproportionate, and for challenging policy makers if measures were not accompanied by robust evidence. As policy decisions are made by Ministers by collective agreement, strong political support for evidence-based policy and a willingness for Ministers to challenge each other are important factors in enabling the use of better regulation approaches to deliver better policy outcomes. This approach has, however, required the Better Regulation Executive to develop carefully considered communications plans for working with officials in Government departments. This has been used to mitigate the risk that better regulation and burden reduction become conflated or are viewed as synonymous —better regulation techniques provide tools to achieve better policy outcomes and maximising the benefit of any interventions.

The successes of the better regulation system resulted in proposals to put elements of the framework onto a statutory footing. This was done through the Small Business, Enterprise and Employment Act 2015. This placed a legal duty on the Government to:

— *Set a Business Impact Target (BIT) at the start of each Parliament*. This requires the Government to set a target for overall net changes in regulatory burden for the whole five-year Parliament; to set out the methodology that will be used for calculating those impacts; and any measures that would be excluded from the target[5] (administrative exclusions). If any changes are made to the BIT methodology during a Parliament all the previous decisions on measures would need to be revisiting to ensure the previous assessments remained accurate.

— *Report on progress against the target each year and at the end of the Parliament*. This includes listing all the measures that have come into force and confirming either their validated impacts or that one or more administrative exclusions apply[6]. The annual report is also required to highlight how the Government has mitigated or limited any disproportionate regulatory burdens on small and micro businesses.

— *Appoint an "Independent Verification Body" (IVB)*. Only impacts that have been verified by the IVB can be included in the Government's annual BIT report. For the current Parliament, the RPC has been named as the IVB. Once appointed the same body must undertake the IVB role for the entire Parliament.

— *Include statutory review clauses in secondary legislation*. When making secondary legislation (under enabling powers contained in primary legislation) the Government is required to either include a statutory review clause or provide a statement on why it is not appropriate. The requirements also set out some of

[4] Department for Business, Innovation & Skills (2014). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397237/bis-14-p96b-ninth-statement-of-new-regulations-better-regulation-executive.pdf

[5] The Small Business, Enterprise and Employment Act 2015 includes a number of 'statutory exclusions' that legally cannot be included in the BIT (sections 22 and 27). These include taxes, changes to government procurement rules, and changes to fees or charges that are paid to government or regulatory bodies. The administrative exclusions for this Parliament were announced in a written ministerial statement (Griffiths, 2018). Further detail on the operation of both the statutory and administrative exclusions can be found in Annex 1 of the Better Regulation Framework Guidance (Department for Business, Energy & Industrial Strategy, 2018c).

[6] The most recent report covers from 2017 to 2018 (Department for Business, Energy & Industrial Strategy, 2018b).

the core issues and questions that must be covered in those statutory reviews.

The Enterprise Act 2016 amended the requirements of the 2015 Act so that national regulators were brought into scope. This meant that the actions of Government departments and the main regulatory bodies would be captured within the target[7].

The evolution of the better regulation system over the 2010-2015 Parliament helped drive significant behavioural changes by policy makers. There was a visible improvement in the quality of analysis presented to the RPC (and therefore in the quality of published appraisal used to inform consultation and Parliament) and a significant reduction in regulatory burdens. There were also a number of less visible or more indirect effects, for example through encouraging consideration of a wider range of policy approaches diverting some measures from regulatory approaches to non-regulatory alternatives.

The Better Regulation Executive has a cross-government role. This has been crucial in enabling an effective better regulation system that delivers improved outcomes. Leadership and direction setting across Government while facilitating constructive challenge and encouraging appropriate and proportionate approaches to evidence have been underpinned by the development of tools, guidance and training. Clear processes and expectations (such as the framework rules) are an important element in delivering better regulation —but without signposting to further support and guidance there is a risk that processes are viewed as tick-box exercises or hoops to jump through rather than tools to support high quality policy development. Supporting Departments and regulators in the development, use and publication of robust evidence and analysis is a central element of this.

Our approach delivered improved outcomes for business. The Business Perceptions Survey (Department for Business, Energy & Industrial Strategy, 2018a) shows that the proportion of businesses viewing the overall level of regulation as an obstacle to success has decreased to 40 % in 2018 (from 62 % in 2009 and 49 % in 2016). With the proportion of businesses considering regulation as an obstacle falling since 2016 across all profile measures —size, sector, age of firm and growth of firm.

As the cross-government better regulation lead, the Better Regulation Executive continuously looks for ways to improve the outcomes of the system. This work has, in particular, focused on whether the incentives are driving the right considerations and whether the system could be more proportionate. Our approach has also taken account of external stakeholders' views and the evolving evidence, including how best to respond to the comments raised by the National Audit Office (2016) and the Parliamentary Public Accounts Committee (2016).

3. Better Regulation in the UK since 2017

During the current Parliament we have delivered two key changes to the better regulation framework —a *de minimis* threshold and greater reporting of societal impacts of regulation. The most significant is the introduction of an impact threshold for both mandatory independent scrutiny and inclusion within the BIT (the *de minimis*). This means that measures with low direct impacts on business (an EANDCB of less than +/- £5 million) no longer automatically need to be scrutinised by the RPC. The approach was informed by considering the profile of regulatory changes in the previous Parliaments. In previous Parliaments a large proportion of the volume of measures had relatively small costs and benefits yet had to follow the same scrutiny processes, with similar expectations for the production of analysis as for significant measures. This meant the ~90 % of measures that contributed less than 10 % of the change in regulatory burdens went through the same processes as the ~10 % of measures contributing over

[7] The list of national regulators brought into scope of the BIT can be found here: http://www.legislation.gov.uk/uksi/2017/344/pdfs/uksi_20170344_en.pdf

90 % of the net changes in burdens. Applying the better regulation principles to the better regulation system itself highlighted that the approach could be more targeted and more proportionate.

Introducing a threshold for mandatory independent scrutiny has enabled departments and the RPC to focus resources on measures that have the most significant impacts, or the greatest analytical challenges. However, rules also remain in place for smaller measures. Policy makers in the UK follow published guidance on policy appraisal (whether to inform regulatory or spending decisions) set out in the Treasury's *Green Book* (2018). This means that all policy proposals must be supported by a proportionate amount of analysis. In this way the *de minimis* has allowed policy makers to have greater freedom in deciding how to meet these expectations but has not removed the need to do analysis. Some measures that qualify for the *de minimis* on the basis of the net direct impacts on business have other complicating factors, such as significant societal impacts[8]. In such cases, the Better Regulation Executive works with the RPC and others to operate a "call-in" process. This process means that measures are not subject to independent scrutiny only where it is appropriate. In addition, policy makers are able to seek an RPC opinion voluntarily. This is an approach that provides useful reassurance for stakeholders that policy proposals have been based on high quality analysis, and the estimated impacts are robust.

The *de minimis* also introduces a number of new considerations for how the better regulation system interacts with policy makers and how to provide effective oversight in a proportionate manner. The approach to these implementation challenges builds on the lessons and evidence from the previous Parliaments, while ensuring that the system itself does not become overly complicated or burdensome.

As explained above, the EANDCB metric chosen for measuring the costs and benefits for business and civil society organisations enables comparisons between different policy proposals. This helps ensure that the analytical expectations are proportionate by drawing a boundary around the elements that must be robust for legal reporting purposes. However, there are some drawbacks in the focus on EANDCB including emphasising the focus of the analysis of elements in scope of the target. As highlighted in several reports by the RPC it has potentially resulted in analysis supporting policy proposals not sufficiently explaining the potential benefits to society —the businesses facing impacts have therefore not always been explained within the context of the benefits that policies and regulation can bring to society. A key challenge in the future will be how to place appropriate emphasis on the analysis of these elements when they are often more difficult to appraise and subject to greater uncertainty. The interactions with behavioural responses also mean these indirect impacts are potentially less suited to standard cost-benefit appraisal approaches. It is also clear that detailed dynamic and agent-based modelling may not be proportionate for all regulatory changes.

The UK framework's first steps in approaching these challenges have been to ensure that in reporting the direct effects of regulation (in the annual BIT report) is increasingly set within a context of the wider benefits. The RPC provides independent comment and opinion on the quality of the analysis of wider impacts —but with a less hard-edged approach compared to the discharge of its statutory function under the BIT. With no requirement to verify a figure as robust, the RPC has greater potential to engage with analysts in departments as a centre of excellence in policy appraisal.

We have also ensured that the implementation of the *de minimis* has included appropriate safeguards. In particular for measures that may qualify for the *de minimis* on the basis of net direct impacts on business, but which involve significant wider impacts of large gross impacts that are balanced out in a net figure (such as transfers between businesses). Where these factors are apparent, the analysis underpinning the measure may

[8] The Better Regulation Framework Guidance provides more detail on the other circumstances and factors in paragraph 2.5.7.

be “called-in” for RPC scrutiny. The approach and system are still evolving —the balance between the use of a consistent metric for simplicity needs to be balanced against the risk that it could be perceived as disincentivising analysis of measures that predominantly have indirect impacts or are intended to deliver “non-business” benefits (such as improving environmental protections).

This highlights another key challenge in the smooth running of the better regulation framework —the definition of the impacts that can be considered within the scope of the metric. In some instances, identifying which effects are direct or indirect is straightforward, in others it may be less clear cut. One of the challenges in implementing the framework has been in encouraging a focus on improving the quality of analysis and shifting the focus away from the “policing” of the boundary between direct/indirect. Shifting the focus has, to some extent, also helped respond to the challenge — systematic and consistent approaches, e.g. through developing clear logic models, helps demonstrate the reasoning behind why measures have been described as direct or not. To this extent, recent evidence highlights that the reasons that impact assessments are considered not fit for purpose increasingly relate to poorly justified assumptions or a lack of clarity, rather than analytical errors (RPC, 2017). In turn this highlights a challenge for the next step in the continuous improvement of impact assessments —how to ensure that good quality analysis is not unduly undermined through ineffective presentation and explanation.

One area that has been identified as having the potential for an improvement in the quality of analysis and evidence is in the approach to the appraisal of impacts on small businesses (<50 employees) and micro businesses (<10 employees). During 2013, the UK Government built on the micro-business moratorium by introducing the *Small and Micro Business Assessment* for measures coming into force after March 2014. The purpose of the assessment was to ensure departments considered how policy proposals affect smaller businesses, and to ensure that those businesses were either exempt from disproportionate burdens or mitigating strategies were put in place. The Better Regulation Executive has worked with the RPC to explore the analytical approach taken by departments and has identified a number of areas where they have not been consistently meeting good practice. The current project will help support departments in better understanding and explaining how to balance effectively burdens on smaller businesses with achieving their overall policy objectives. Achieving this without the better regulation framework requirements being seen as either a tick box exercise or unnecessarily restricting policy options and choice, will be a key delivery goal.

4. Better Regulation in the UK in 2019 and beyond

As highlighted above, the UK’s better regulation system is a world leader in delivering good regulatory practices and enhancing the positive outcomes of regulation. As with any system that reaches maturity, the next challenge is to review, refine and improve how it operates. In particular the opportunities of the Fourth Industrial Revolution raise new challenges for how better regulation systems not only respond to the increasing pace of technological change but also provide the right incentives to encourage further innovation. At its best, regulation can ensure the right market conditions and incentives to innovate, encouraging and rewarding those seeking to improve practices, processes or models, while providing the assurance and consistency that underpins long-term investment decisions. Creating these conditions is at the heart of what better regulation means —avoiding unnecessary burdens remains important, but as part of a nuanced and targeted approach that enables and creates the right market conditions which will often include ensuring appropriate protections and regulatory practices are in place.

Delivering the right outcomes requires the better regulation system to change behaviours and approaches in Government departments and regulators. This will mean further developing the evidence base on the interactions between regulation and innovation and identifying how to influence rule makers so they are comfortable taking new or novel approaches in order to enable those who are regulated to innovate. Some of the questions at the core of the challenge include: how do we encourage or enable anticipatory and adaptable regulation? is there a right amount of autonomy (and if so what is it), and how is that balanced against protections? how do we manage providing the freedom to businesses to innovate, but the certainty and clarity of regulatory expectations that best support investment?

There are a range of factors that will be crucial in meeting these challenges including, but not limited to, understanding the different types of innovation that businesses undertake and how to respond to and support those; considering how regulators can be encouraged to anticipate or enable those changes; exploring how innovation will affect how Government and regulators operate, and understanding how analytical approaches to appraisal and evaluation will need to evolve and change to respond.

To support regulators and the UK Government in responding to these challenges, in October 2018 we invested £10 million in 15 UK regulator-led projects through the Regulators' Pioneer Fund. These projects were awarded funding to help drive forward innovation and help businesses seize long-term opportunities arising from the Fourth Industrial Revolution, including the growth of Artificial Intelligence (AI) and data-driven technologies. The funding will support regulators to create a regulatory environment that gives innovative businesses the confidence to invest, innovate and deploy emerging technologies for the benefit of consumers and the wider economy. Exploring how we can learn from these projects and build on their successes will be a key tool in delivering ongoing innovation in how regulators approach the issue of how to balance maintaining vital protections with enabling innovation. Encouraging wider take-up of successful approaches will be the subsequent challenge.

The Better Regulation Executive is also using support from the GovTech Catalyst Fund to run a competition aimed at engaging small businesses, such as tech start-ups, to provide a solution to three key questions:

— How can we analyse the stock of existing regulation and identify which requirements apply to different businesses and sectors?

— How can we assess how challenging individual regulatory requirements are for different businesses and sectors to comply with?

— How can we assess how challenging the cumulative stock of regulation is for different businesses and sectors to comply with?

The aim is to develop a regulatory system that is simpler for businesses to navigate, while maintaining protections for citizens and the environment. The intention is to understand better how the historical and incremental build-up of regulations can lead to disproportionate burdens on business or worse public outcomes, particularly if obligations on business are poorly co-ordinated. The approach recognises that digital innovations give policy makers the opportunity to tackle this problem by looking at the UK's regulatory environment as a whole.

The competition is currently ongoing. The outcome will see suppliers deliver a digital tool that enables policy makers to review the existing stock of regulation and remove unnecessary burdens on business as well as design less burdensome regulation moving forward.

We also recognise the need to learn from what has worked well in the past, and to ensure we design and implement new regulation in a way that takes account of that learning alongside appropriate analytical techniques. A challenge we are currently exploring is how to build on the successes of our system of post-implementation reviews and statutory review clauses, to ensure that effective monitoring and evaluation plans are genuinely developed throughout the policy cycle. Responding to this challenge will require balancing the need to develop clear and robust plans with ensuring that those plans are able to respond to changing circumstances. As with the approach to enabling innovation friendly regulation, for example by avoiding the lock-in of specific approaches or technologies, our approach to the monitoring and evaluation of policies must avoid being locked in to certain approaches if circumstances change.

5. Conclusion

This is an exciting time for better regulation in the UK. The effort and drive of recent years has been widely recognised and puts us in a place of strength. It is also a time when the world within which Government and regulators operate is changing at increasing pace. Understanding how the world might change and how regulation might need to respond to or anticipate those changes has implications for better regulation and how it influences policy makers and regulators. Well-designed regulation is crucial in setting the context within which innovation happens —it sets the market rules and what products, processes and interactions are allowed. Regulation can play a central role in enabling innovations with the most potential to benefit society and protect consumers and citizens from those that may be harmful.

Enabling a paradigm shift from prescriptive or detailed regulation to appropriate use of adaptable, flexible and outcomes focused approaches will require policy makers to think differently, to consider different options, to plan for new or experimental approaches to implementation, and take more holistic approaches to the evaluation of regulation. The better regulation system will be at the heart of driving and enabling these changes —balancing the opportunities with appropriate protections needs to be based on effective use of evidence and analysis.

The use of evidence in policy making also needs to be communicated to stakeholders and the public. Explaining the benefits and purpose behind regulatory changes is crucial to ensuring public confidence in changes and the system —as the world which we seek to influence continues to evolve we need to ensure that the public retains confidence that the regulatory systems protecting them have evolved with it, not just to ensure we anticipate new threats or issues but to also ensure that innovations with the potential to deliver benefits are not held back by outdated or slow reacting regulatory systems.

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