Dealing with Deficits

Best value regulation to reduce our environmental and financial debts

ALDERSGATE GROUP

Leaders for a sustainable economy

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Aldersgate Group

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Executive Summary

The UK is faced with not only a record budget deficit but also a record environmental deficit. We are living beyond our means as growing demand for global resources is reducing nature's capacity to deliver goods and services in the future.

A major change is required and regulation is fundamental to achieve this. Not only does effective regulation have a vital role to play in correcting market failures but it also drives innovation and provides the foundations for long-term economic growth, jobs and competitiveness. The UK is losing momentum in the green economy race and a step change in policy is required.

The Coalition Government is committed to reducing the cost and volume of regulation on the economy and has introduced a number of measures to achieve this. While reducing outdated, excessive and burdensome measures is welcome, this must not be at the expense of the vital role that regulation plays in correcting market failures, promoting fairness and protecting the environment.

Regulatory reform should be primarily concerned with the effective achievement of outcomes, maximising growth and innovation. Costs must be minimised but this should not be the only guiding principle, and long-term benefits must not be sacrificed to avoid short-run costs.

Through streamlining legislation and adopting a smarter approach to implementation, it is possible to achieve greener outcomes and reduce administrative burdens. In these fiscally constrained times, regulation will increasingly offer the most effective way to change behaviour, provide certainty and stimulate investment.

The Aldersgate Group believes that 'best value' regulation should seek to protect essential economic, social and environmental objectives at least cost. This should:

1. **Prioritise long-term outcomes.** Seeking to increase competitiveness through early innovation rather than minimising short-run costs and locking in outdated industrial processes.
2. **Ensure prices more accurately reflect negative externalities.** Both in terms of policy appraisal and the market price.
3. **Provide clear, robust and consistent signals to business.** The cost of uncertainty is likely to be higher than the cost of an appropriate level of consistent regulation.
4. **Adopt a flexible, proportionate and risk-based approach.** Selecting the most appropriate mix of instruments to achieve objectives.
5. **Simplify the regulatory landscape across different areas of policy.** Regulation should not be developed in isolation but form a clear framework with a joined up approach.

Regulatory reform should be undertaken in a holistic way that identifies opportunities for better integration and cross-cutting simplification, both in terms of process and implementation. This should be delivered through strong enforcement, alongside greater focus on the challenges and opportunities at a local level.

Although "gold-plating" should be avoided, it will sometimes be beneficial to go beyond minimum requirements of EU legislation to secure UK environmental aspirations, provide international leadership or to create future competitive advantage for British based firms in the green economy.

The regulatory framework must encourage a rapid shift to a sustainable economy rather than being held back by vested interests or the lowest common denominator.

Introduction

Effective regulation has a vital role to play in correcting market failures, promoting fairness and increasing competition.

This government, unlike previous governments, will govern for the long term. That's why we are prepared to take the difficult decisions necessary to equip Britain for long-term success. This approach not only underpins our commitment to safeguarding our environment for future generations and to restoring transparency and accountability to our politics, it must also underpin everything we do.[1]

Prime Minister David Cameron and Deputy Prime Minister Nick Clegg

Regulation is essential to address the major challenges of our times, such as climate change and global resource constraints. The recent financial crisis and BP oil spill demonstrate the huge economic and social costs associated with not addressing fully systemic risks.

If well designed and implemented, regulation can also drive innovation and provide the foundations for long-term economic growth and wellbeing. Businesses typically respond to the early adoption of demanding environmental policies by innovating to reduce environmental impacts at lowest cost, in order to gain competitive advantage. This in turn feeds through to the economy in the form of growth and job creation in the future, and will also leave it more resilient to risks arising from environmental uncertainties[2].

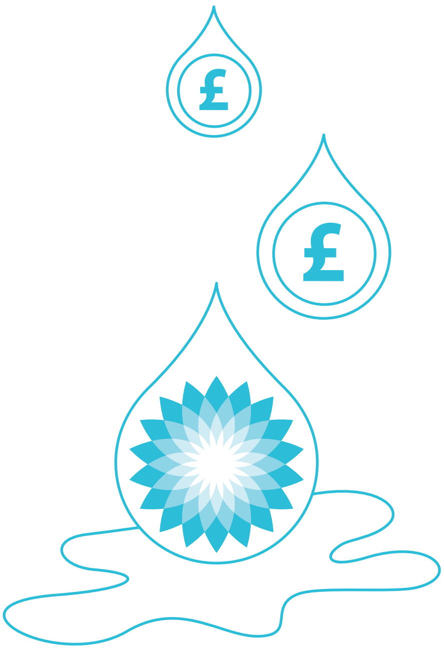
This is why governments around the world are increasingly competing at the regulatory level to attract, and even help create, the markets and industries of the future. By providing clear, robust and long-term signals, the Government must seek to maximise the economic opportunities of the transition to a sustainable economy.

Defra's approach to regulatory reform

Regulatory reform is a key plank for delivering strong, sustainable, and balanced economic growth. Regulation is a tool for:

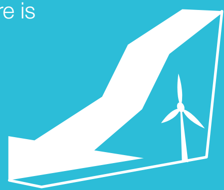
» Delivering greater economic efficiency, by ensuring that natural resources are fully and correctly valued in economic decisions and encouraging innovation by creating markets and opportunities for businesses to invest;

» Increasing economic resilience, by taking account of any critical limits or thresholds and managing risks to future growth from the depletion of natural assets.[3]



UK investment in clean technology plummets

"After achieving a fifth-place ranking for clean energy investments in 2009, the United Kingdom dropped out of the top 10 in 2010. Investment levels in 2009 were driven by large volume financings for offshore wind energy and the government's commitment to strong action on climate change. But 2010 brought a new government to Great Britain, and investors appear to believe that there is a high level of uncertainty about the direction of clean energy policy-making in the country."[4]



Pew Charitable Trusts

Aligning objectives to deliver sustainable outcomes

The benefits of regulation are often long term, complex to calculate and spread over a large number of people. In contrast, the costs of regulation tend to be short term, more easily quantifiable and directed at specific individuals or groups.

In order to reduce the more immediate and observable costs, the "fight against regulation"[5] has been a political priority for successive governments. With a renewed impetus to deregulate in response to the current economic insecurity, policy makers must not lose sight of the role of regulation to provide the best outcomes for society at least cost overall.

1 » Number 10 (3rd August 2010) *The driving purpose of the Coalition Government.*

2 » HM Government (November 2007) *Commission on Environmental Markets and Economic Performance.*

3 » Defra (May 2011) *Defra's Approach to Regulatory Reform.*

4 » The Pew Charitable Trusts (March 2011) *Who's winning the clean energy race?*

5 » HM Treasury (March 2011) *2011 Budget statement by the Chancellor of the Exchequer, the Rt Hon George Osborne MP.*

Introduction

In developing the policies required to address market failures, it will be imperative that the administrative costs of complying are kept to a minimum for any given impact. At the same time, there is a need to reduce outdated, unnecessary and disproportionate regulation.

Competitiveness is critical here. On the one hand, strong regulation to meet the challenges we face can boost innovation, investment and competitiveness as Aldersgate Group has emphasised consistently. On the other hand, unnecessarily high administrative costs will damage competitiveness.

Consequently, the debate on regulation should not be presented as a trade-off between burdens and growth. The "war on red tape"[6] must not become a crusade that threatens regulatory outcomes. Instead, the focus should be on how markets and regulation can work in mutual support with aligned objectives to deliver sustainable outcomes[7].

Prioritising regulatory outcomes

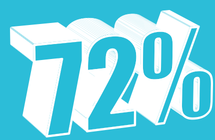
"In many instances we have become slaves to the process of regulation and lost sight of the outcomes we have been trying to achieve. We think we should be just the opposite.

If we want economic and production growth in a way that achieves or preserves high standards, Government's role should be to set the strategic overview, but then minimise its involvement."[8]

Richard Macdonald, Chairman, Farming Regulation Task Force

"What is crucially important, however, is that we are able to deliver the regulatory outcomes society demands. Achieving this is not, primarily, about structure."[9]

Hector Sants, Chief Executive, Financial Services Authority

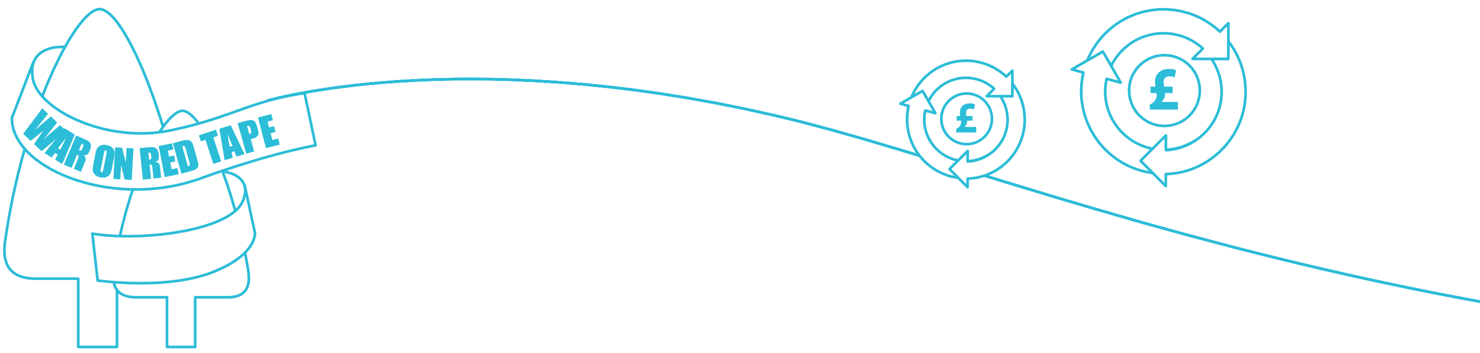


72% of global CEOs actively support new government policies that promote 'good growth' that is economically, socially and environmentally sustainable[10].

Driving growth and competitiveness

The Aldersgate Group, with its diverse membership drawn from business, politics and society, demonstrates that there is widespread support for higher environmental standards that stimulate growth and create jobs. The regulatory framework must encourage a rapid shift to a sustainable economy rather than being held back by vested interests or the lowest common denominator.

Our recent report on Greening the Economy (2011) demonstrates that the UK risks being left behind in the green economy race unless it takes urgent action. The country's future economic competitiveness is at stake.



6 » Department for Business, Innovation and Skills (7th April 2011) *Red Tape challenge kicks off.*

7 » CIWEM (September 2010) *Regulation for a Sustainable Water Industry.*

8 » Farming Regulation Task Force (May 2011) *Striking a balance: Reducing burdens; increasing responsibility; earning recognition.*

9 » Hector Sants (November 2009) *Intensive Supervision: delivering the best outcomes.*

10 » PricewaterhouseCoopers (February 2011) *14th Annual Global CEO Survey.*

Regulatory Reform in the UK

The Coalition Government believes that the current level of regulation is "excessive" and there is a renewed drive to deregulate across the economy.

> *That banks need much tighter regulation is a given… The key question is whether we shouldn't also modify our approach to economic development in general. In searching for the sources of new economic growth, should the new government stick to the traditional free market cocktail of deregulation and tax cuts? Or should it develop new forms of intervention, to stimulate investment and build on Britain's competitive advantages?*[11]
>
> **Nick Boles MP, Conservative Party**

It is committed to reducing the cost and volume of regulation on the economy – in particular the regulatory burden to business and civil society organisations. It believes that regulation should only be used as a last resort and has introduced a number of initiatives to meet this objective. These include more rigorous scrutiny processes, a 'one-in, one-out' approach to all new regulations and the Red Tape Challenge to give the public and businesses "the chance to rip up some of the 21,000 rules and regulations that are getting in your way"[12], including all of the UK's 278 environmental laws.

Deregulation is also a principal element of the Government's Plan for Growth[13]. This states that the burden of regulation is damaging the competitiveness of the UK economy and lowering this burden is a key measurable to make the UK one of the best places in Europe to start, finance and grow a business.

While reducing outdated, excessive and burdensome measures are welcome, this must not be at the expense of the vital role that regulation plays in correcting market failures, promoting fairness and protecting the environment. Regulatory reform should be primarily concerned with the effective achievement of outcomes and maximising innovation potential. Costs must be minimised but this should not be the only guiding principle.

Regulating to drive growth in low carbon construction

"There is a clear consensus on the supply side that the strongest signal that there will be a sizeable and sustainable market for products and services designed around carbon reduction and energy efficiency would be regulation. Government policy on regulation is just as clear: that it should be the last resort, and (under the 'one in, one out' rule) that new regulations can be introduced only when regulations having the same cost impact on business are retired. The supply side consensus reflects an equally strong view that, in the absence of such regulation, or an increase in energy prices that would act almost as forcefully in reducing consumption, the market for those products and services will be limited."[14]

HM Government Review on Low Carbon Construction

11» Nick Boles (2010) *Which Way is Up? The future for coalition Britain and how to get there.*

12 » www.bis.gov.uk/news/topstories/2011/Apr/red-tape-challenge.

13 » HM Treasury and BIS (March 2011) *The Plan for Growth.*

14 » HM Government (Autumn 2010) *Low Carbon Construction: Innovation & Growth Team.*

Regulatory Reform in the UK

Addressing fundamental market failures
In order to provide an acceptable level of social protection, it is clear that the Government must regulate more, not less, in some areas and the associated costs will rise. It is widely recognised, for example, that more regulation is required to address the fundamental weaknesses in the global financial system that led to the 2007 financial crisis and which had enormous economic costs in terms of lost output, higher unemployment and weakened public finances[15].

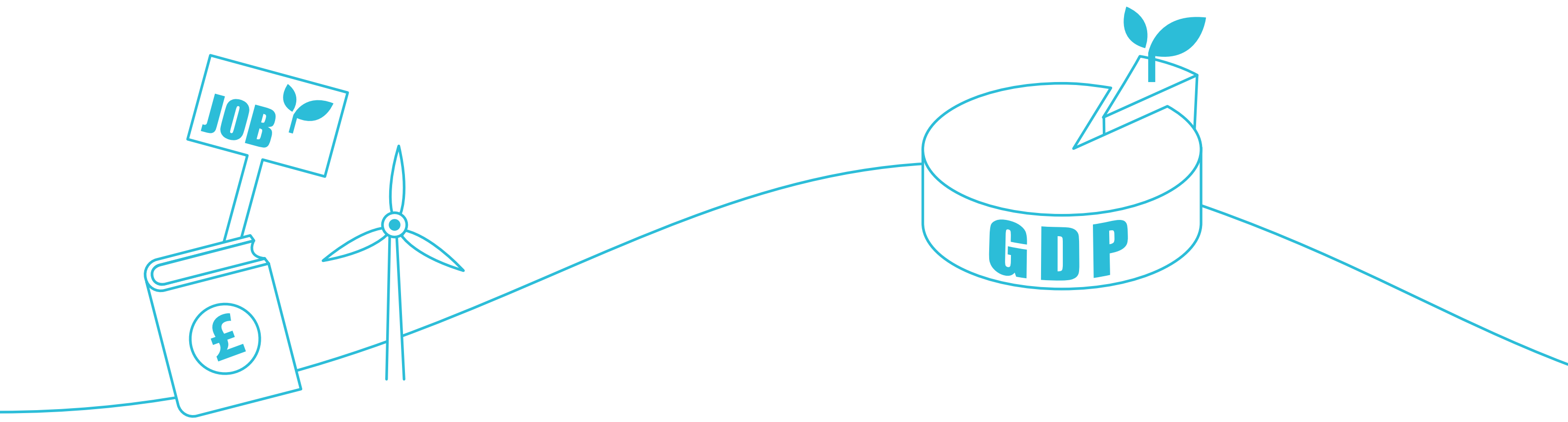
> "(Our recommendations) entail costs to banks, some of which fall on the wider economy, but these appear to the Commission to be outweighed by the benefits of materially reducing the probability and impact of financial crises."[16]
>
> ***Independent Commission on Banking***

The test will be finding ways to continue to deliver results that are cost effective and targeted yet sufficiently ambitious for the challenges we face.

The Coalition Government recognises that protecting the environment is one of the "gravest" of these challenges and "urgent action" is required. It is committed to using a wide range of levers to cut carbon emissions, decarbonise the economy and support the creation of new green jobs and technologies[17].

In these fiscally constrained times, regulation will increasingly offer the most effective way to change behaviour, provide certainty and encourage investment. For this reason, the vast majority of the environmental commitments in the Coalition Agreement will be delivered through policy interventions and not public spending.

To illustrate the rising costs (and benefits) of environmental protection, a comprehensive study by the United Nations makes a compelling economic and social case for investing two percent of global GDP in greening ten central sectors of the economy in order to increase GDP significantly over the next forty years and unleash public and private capital flows onto a low carbon, resource efficient path. This will be achieved primarily through the regulatory framework, strengthening market-based mechanisms, redirecting public investment and greening public procurement[18].



15 » Independent Commission on Banking (April 2011) *Interim Report: Consultation on Reform Options.*

16 » Ibid

17 » HM Government (May 2010) *The Coalition: Our programme for government.*

18 » United Nations (February 2011) *Towards a Green Economy: Pathways to sustainable development and poverty eradication.*

Regulatory Reform in the UK

The case for action on climate change

“At the heart of economic policy must be the recognition that the emission of greenhouse gases is a market failure. When we emit greenhouse gases we damage the prospects for others and, unless appropriate policy is in place, we do not bear the costs of the damage. Markets then fail in the sense that their main coordinating mechanism – prices – give the wrong signals. That is, prices – of petrol or of aluminium produced with dirty energy, for example – do not reflect the true cost to society of producing and using those goods.

By producing and consuming less of these products and more of others, we create economic gains that can make everyone better off. Markets with uncorrected failures lead to inefficiency and waste.

The appropriate response to a substantial market failure is not to abandon markets but to act directly to fix it, through taxes, other forms of price correction, or regulation. Acting in this way on climate change, with complementary policies on technology and deforestation, will allow continued and substantial growth and poverty reduction. Allowing the market failure to continue will damage the environment, curtail growth and lead to dislocation and conflict.”[19]

Lord Nicholas Stern

There is a growing awareness that good environmental performance is good for the bottom line at the company level, by using resources more efficiently to cut costs, comply with legislation, address risk, increase market share for greener products and services and meet shifting customer and stakeholder expectations. There is a clear link between companies that demonstrate strong financial performance and those that measure, manage and reduce their environmental impacts[20].

Given that regulation is one of the few means of stimulating the economic recovery to take a more sustainable path, an overly rigid regulatory reform framework risks damaging competitiveness. A mindset of ‘best-in, bad-out’, rather than ‘one-in, one-out’ that takes a whole system approach, would, for example, tailor needs more effectively to specific challenges.

It is critical that interventions are not developed in isolation but form a clear framework with joined-up legislation. If designed correctly, this will lead to a reduction in red tape rather than an increased regulatory burden.

Delivering savings for business and the environment

The Environment & Resource Efficiency Plans programme (EREP) introduced in the Victorian state of Australia in 2008 achieves savings of over $70 million each year for the 250 sites participating. Large energy and water users are required to show they have assessed their operations, identified opportunities to improve resource efficiency and prioritised these actions. Importantly, actions which pay for themselves within three years must be implemented and the average payback period is about 10 months. Businesses are finding they can create a strong competitive advantage by cutting costs and reducing their greenhouse emissions[21].

In the UK, it is estimated that business could save around £23bn per year from resource efficiency measures that are either no or low cost. This figure rises by another £33bn per year when considering efficiencies that require more investment[22].

19 » Lord Nicholas Stern (January 2010) *A Blueprint for a Safer Planet: How We Can Save the World and Create Prosperity.*

20 » Environment Agency (November 2010) *Greener Business.*

21 » EREP (November 2009) *Helping deliver savings for business and the environment.*

22 » Defra (March 2011) *The Further Benefits of Business Resource Efficiency.*

Best Value Regulation

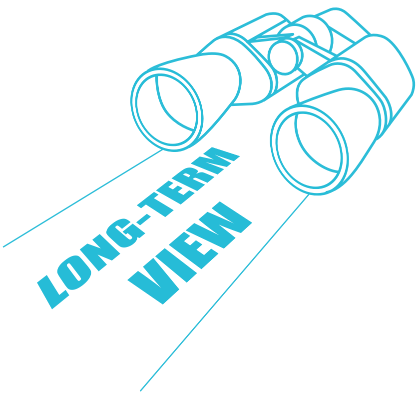
Regulatory reform should not be determined by an excessively prescriptive system that adopts a piecemeal approach, but should aim to provide 'best value' for society and the economy. Fundamentally, this should seek to protect essential economic, social and environmental outcomes at least cost.

> *The role of the Treasury in this area is to design frameworks that provide the certainty and incentives to attract private sector investment in green technologies… and this long-term framework of certainty will help British companies raise finance and export their technologies around the world.*[23]
> **Chancellor of the Exchequer, George Osborne**

The Aldersgate Group believes that best value regulation should adopt the following five principles:

1. Prioritise long-term outcomes
Regulation should seek to increase competitiveness through early innovation rather than minimising short-run costs and locking in outdated industrial processes.

It is imperative that the Government takes a longer-term view, resisting the appeal of reducing short-term costs to business in all instances, and focusing effort on how to maximise long-term economic benefits. At the same time, policy must address the very limited number of resource intensive industries where there is clear evidence of major impacts on competitiveness.



Regulation for a sustainable water industry

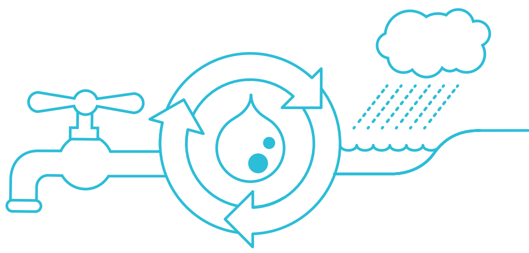
A review by the Chartered Institution of Water and Environmental Management (CIWEM) finds that incentives in the water industry actively reward behaviour and outcomes that are inconsistent with a sustainable water sector. For example, existing regulatory mechanisms encourage a repeating "boom and bust" business and asset management cycle and capital expenditure rather than operational-based solutions. This tends to promote end-of-pipe techniques rather than fundamental design solutions that would support efficiency in the longer term. This incentive framework results in the industry building more infrastructure to sell more water – the very opposite of what we need.

One potential solution would be to have water companies delivering broader water "services" through a regulatory regime based on longer term investment and planning cycles. With water companies being increasingly recognised as "water and environmental service providers" we would see the supply of sustainable water services at the centre of companies' delivery and incentive structures. Regulatory mechanisms to counter revenue loss would allow water companies to work with customers to help save and reuse water, so as to reduce their bills, use resources more efficiently, and reduce the impact on the environment[24].

Driving innovation and transformational change

Recent research published in the journal Sustainability in the United States demonstrates that the contribution of technical innovation to sustainable development requires integrated, long-term policy to unlock industry from previous business models and practices. It finds that a weaker regulatory response that focuses on cost reduction or increased production is more likely to provide short-term benefits with little investment in human capital. A stronger, more disruptive response, if successful, is likely to be longer lasting and to reward and encourage the acquisition of new skills by labour to work with the new technology.

In order to encourage this strong form of innovation the researchers suggest a multi-purpose design policy that integrates environmental, economic and labour market regulation. Examples of this can already be seen at a national level, such as in the Netherlands where there is one combined agency for environment and spatial planning[25].



23 » George Osborne (24th November 2009) *Speech at Imperial College*

24 » CIWEM (September 2010) *Regulation for a Sustainable Water Industry.*

25 » Ashford, N.A. & Hall, R.P. (2011) *The Importance of Regulation-Induced Innovation for Sustainable Development. Sustainability. 3: 270–292.*

Best Value Regulation

2. Ensure prices more accurately reflect negative externalities

Keystone policy objectives such as increasing resource efficiency and decarbonising the economy will only be achieved if they are adequately reflected in price signals, both in the valuation of policy options (e.g. through accurate impact assessments) and in the market price.

Government policy appraisals on the basis of current or anticipated market prices are not adequate tools for addressing wider, longer-term challenges facing our economy and society. To avoid the potentially severe long-term economic impacts of climate change or a resource crunch, high values should be accorded to the natural resources whose use is contributing to these market failures (as the Government has undertaken for carbon pricing).

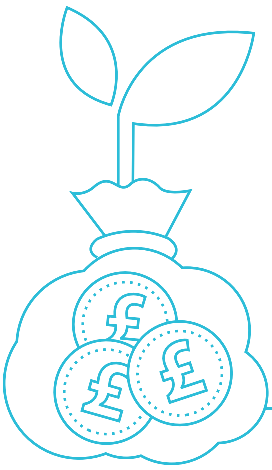
A report by the Regulatory Policy Committee, the government advisory body that assesses the costs and benefits of regulation, finds that policy appraisals lack robustness when addressing non-monetarised factors. It finds that very few demonstrate "any level of detailed analysis of qualitative impacts, and even fewer do this in any formal framework", despite this being essential to address a number of significant market failures[26].

More widely, the Aldersgate Group has consistently demonstrated that current market prices are a long way off providing a sufficient incentive for investments at the pace and scale required to meet environmental challenges.

Ensuring cost-benefit analysis is fit for purpose

"The enhanced powers of the cross-Whitehall Regulatory Policy Committee – a key mechanism for policing the one-in one-out rule – is choking off new regulations. Its recent report judged that over 40% of regulatory impact assessments were not fit-for-purpose. Its simplistic approach to cost benefit analysis – whereby only direct costs and benefits are counted, means that any indirect benefits that are likely to accrue are not taken into account. For mandatory greenhouse gas reporting for example, the direct costs of reporting are not considered in the context of the indirect benefits of enabling emissions reduction and cutting costs".

Martin Baxter, Executive Director Policy, Institute of Environmental Management and Assessment (IEMA)



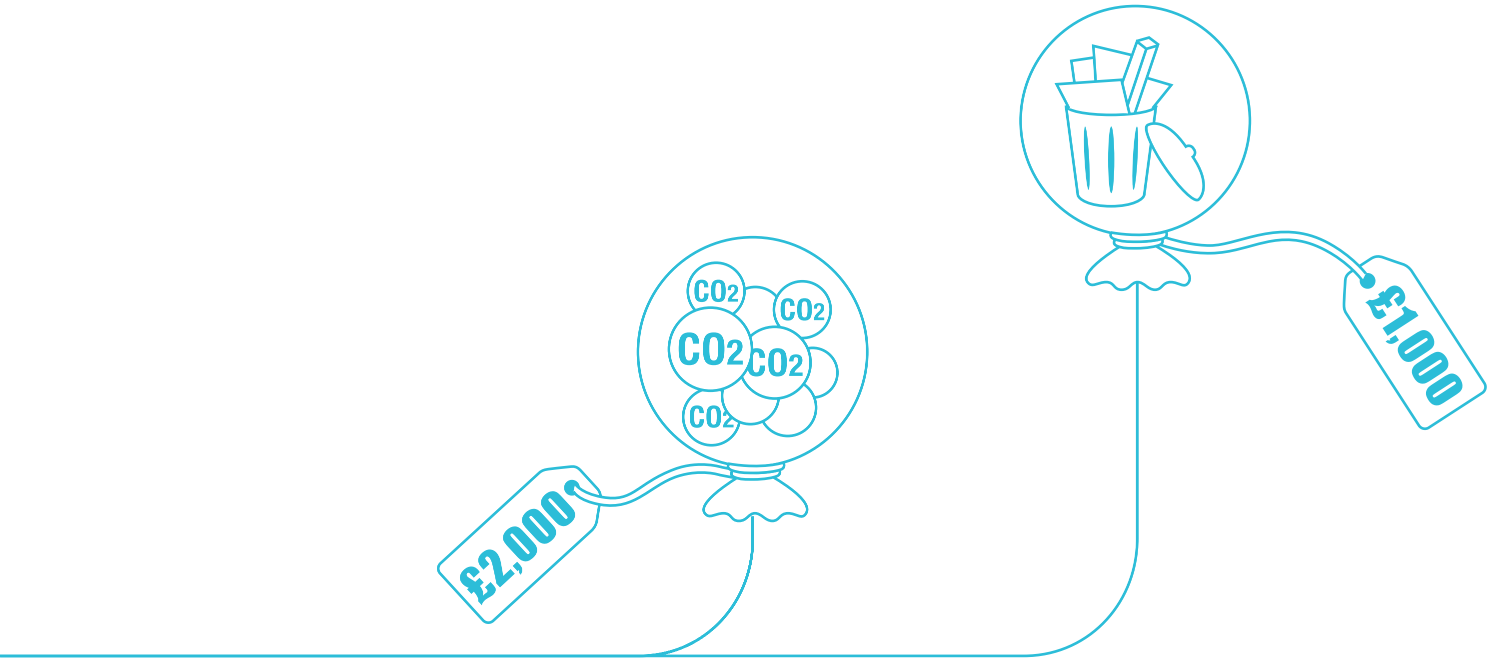
26 » Regulatory Policy Committee (August 2010) *Reviewing Regulation.*

Best Value Regulation

3. Provide clear, robust and consistent signals to business
Greater policy certainty through effective long-term signals will lead to an increase in investment in green technologies and infrastructure. The Aldersgate Group's recent report on *Greening the Economy*[27] suggests that effective policy should aspire to be:

- **Credible.** Legal, enforceable, fully deliverable and supported by an overarching vision with fixed numerical targets.
- **Consistent.** Providing confidence that a policy direction will be maintained, implementing progressive, and avoiding retrospective, changes.
- **Bankable.** Risk and reward levels are attractive over clear investment timeframes, with no shocks to damage early investors.

Uncertain regulation polarises the private sector, with some 'over managing' (for example, by paying high prices for carbon or waste) and others sitting back in the hope that there will be government procrastination. Either way the cost of uncertainty is likely to be higher than the cost of an appropriate level of consistent regulation. This is most clearly demonstrated with the uncertainty around the CRC Energy Efficiency Scheme, with a number of early movers disadvantaged when the rules of the game were changed unexpectedly.



27 » Aldersgate Group (March 2011) *Greening the Economy: A Strategy for Growth, Jobs and Success.*

4. Adopt a flexible, proportionate and risk-based approach

New kinds of environmental, economic and social challenges require a more sophisticated approach to environmental regulation – one that selects the most appropriate mix of instruments to achieve essential environmental objectives at minimum cost to businesses and public authorities.

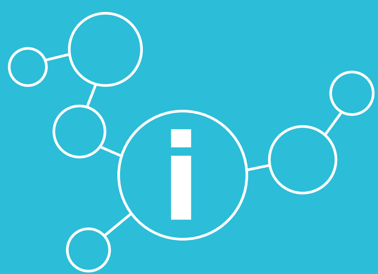
The aim should be to provide a proportionate, risk-based approach that will drive environmental improvements and reward good performance, while still providing reassurance that tough action will be taken against those who fail to meet acceptable standards[28].

For example, the Environment Agency is increasingly taking a proportionate approach to regulation with businesses that consistently comply with their permit conditions. This relieves the administrative burden on these businesses, saving them money and time by reducing inspections of high-performing sites and issuing better guidance that helps businesses do the right thing[29].

Improving co-ordination between delivery bodies

Scotland's Environmental and Rural Delivery Service (SEARS) is a partnership of nine public bodies that offers an improved service to those who manage rural land in Scotland. It seeks to provide better information and advice by adopting a streamlined and co-ordinated approach. This closer working arrangement leads to a reduction in the number of inspections that need to be carried out which focus on needs and improving environmental outcomes.

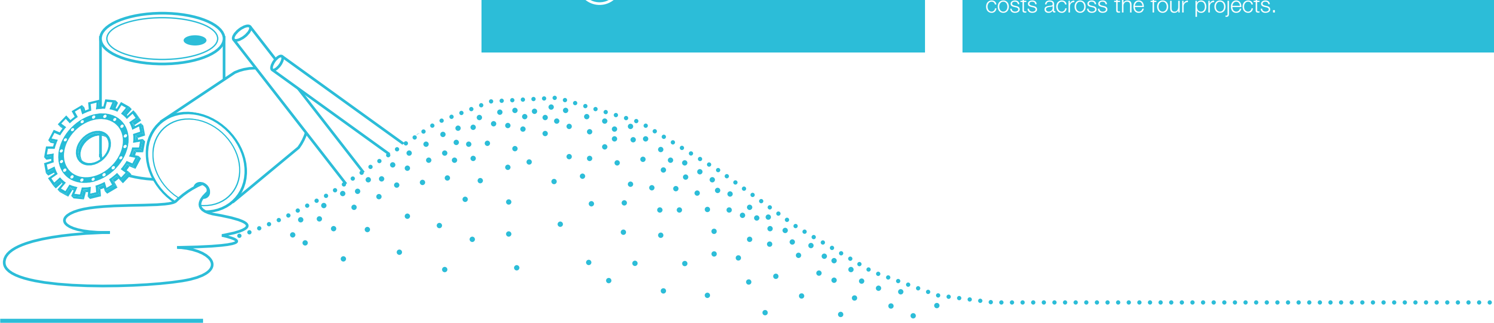
Among the key service improvements since SEARS got underway in June 2008 are annual savings of approximately £133,000 to the sheep farming industry in annual groundwater licence charge waivers and around 5,000 less inspections for land managers[30].



Modernising regulations to reduce business costs

Over the last 20 to 30 years, large volumes of soil from old industrial sites have been excavated and deposited in landfills because legislation defined them as waste by virtue of their unsuitable nature for that particular location. As understanding of the risks from these soils has become more advanced in recent years, it has become clearer that what may be unsuitable at one location may be suitable at another location with different environmental circumstances. However, the definition and regulation of waste placed prohibitive regulatory burdens on re-using these soils.

In September 2008, a mechanism was agreed for materials to be transferred from one site to another through a regulated intermediate site and this was further updated in 2010. This paved the way for projects such as National Grid's CLUSTER project in the North West of England. The project is combining the clean up of four former gasworks sites with a soil treatment and quality control facility. It has enabled substantial quantities of soil to be re-used that might otherwise be disposed of to landfill and has lead to efficiency savings of approximately 26% (over £1.4 million) on the clean up costs across the four projects.



28 » SEPA (December 2010) *Better Environmental Regulation: SEPA's Change Proposals.*

29 » Environment Agency (November 2010) *Greener Business.*

30 » SEARS (June 2010) *Annual Review 2009–10.*

Best Value Regulation

5. Simplify the regulatory landscape across different areas of policy
Driving the agenda to green the economy will require legislative change in a number of areas and it is critical that these are not developed in isolation but form a clear framework with a joined-up approach. Environmental legislation has developed over many years in response to specific problems, leading to a wide range of different regulations, methodologies, enforcement mechanisms and legal requirements. The cumulative result is significant complexity and this must be overcome.

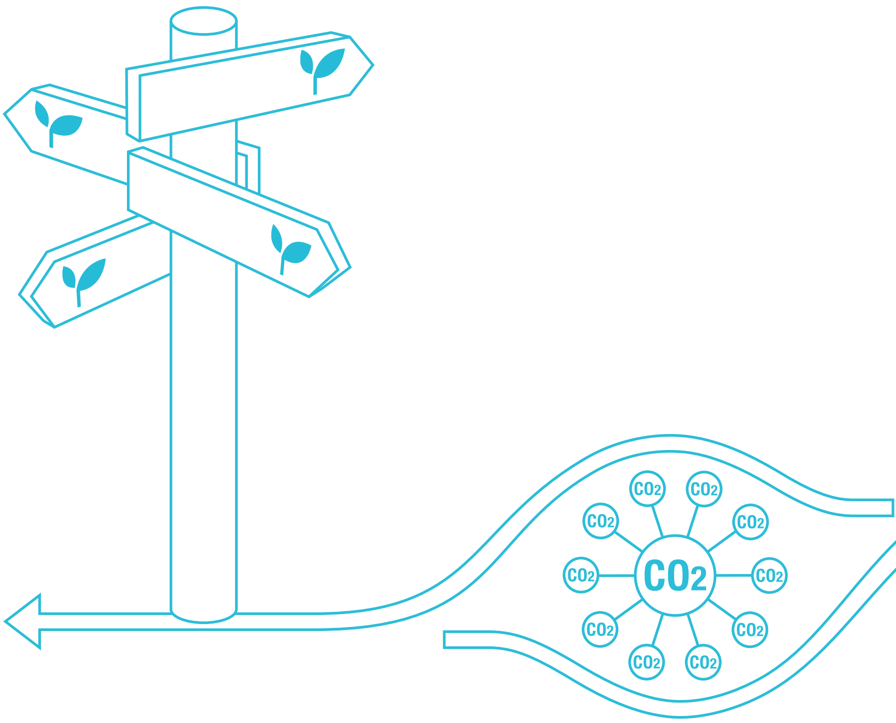
The current piecemeal approach of tackling one regulation at a time is being undertaken in the absence of an overall vision. Regulatory reform should be carried out holistically and identify opportunities for better integration and cross-cutting simplification. This will require a number of policy teams and government departments working together on specific issues alongside specialists that have experience across different sectors.

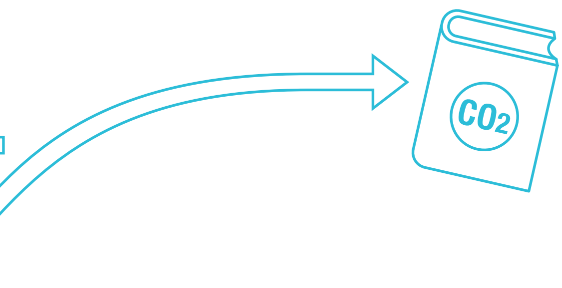
Streamlining carbon legislation

There are a large number of carbon regulations with significant overlap which include what are effectively two taxes charged on the energy used in business (the CRC Energy Efficiency Scheme and Climate Change Levy). The Aldersgate Group believes that there is significant scope to streamline some of these requirements whilst maintaining revenues for Treasury and increasing carbon reductions. Similarly, the CBI has urged the Government to step back and take a holistic approach to achieve policy simplicity. It suggests looking at alternatives to the CRC such as making use of a reformed Climate Change Levy alongside greater use of Climate Change Agreements and abandoning the performance league table in place of mandatory carbon reporting as an alternative reputational driver[31].

"Domestic carbon pricing policies need to be harmonised and streamlined in terms of programmes and prices."[32]

OECD, Economic Survey of the UK 2011





31 » CBI (March 2011) *Back to the answer: Making the CRC work.*

32 » OECD (March 2011) *Economic Survey of the United Kingdom 2011.*

Delivering Better Outcomes at Minimum Cost

The pressure on public finances has led to an urgent review of delivery processes with significant implications for the role of public sector bodies.

A holistic approach

Most regulatory agencies, faced with budget cuts of at least a quarter, will struggle to achieve the same level of regulatory outcome. This will demand an even greater shift to a risk-based approach, focusing on the biggest challenges and worst performers.

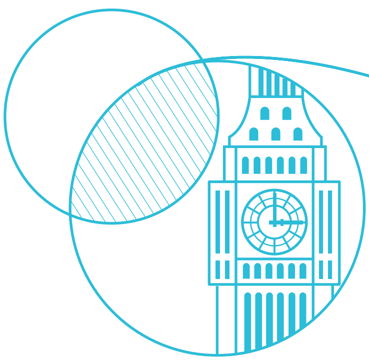
It is also clear that good regulation requires intelligent regulators. The public sector cuts have reignited the debate about the role of the regulators and arm's length bodies: should they be an enforcer or critical friend? Will the weakening of the policy making function of the regulators threaten the better regulation agenda? Should the regulators have a duty to hold the Government to account?

A report by the Institute for Government[33] demonstrates the complexities of reforming public sector bodies. It shows that at least some public functions are best performed with a degree of freedom from ministerial control; much of the money spent by public bodies could not realistically be reduced simply by abolishing a body; most advisory bodies do not have their own budgets and simply offer a way of bringing expert advice to policy makers at lower cost than they would through consultancy contracts; and a lack of clarity over public bodies' roles and responsibilities can lead to significant duplication of activity with sponsor departments.

The Public Bodies (Reform) Bill grants powers to Ministers to abolish, merge or modify a very significant number and range of public bodies. However, the Government has revealed very little in terms of a clear rationale or criteria (above its "three tests"[34]) for its decisions and there is a lack of consistency in the separation of bodies into "births, deaths and marriages". There needs to be a much more transparent, holistic and accountable process which identifies efficiency savings through reducing duplication, combined with measures to prevent the ad hoc creation of new bodies in the future[35].

"A major reason for the complex and fragmented nature of the planning and non-planning consent landscape is that there is not – and has never been – strategic oversight of the landscape as a whole. No-one in Government is responsible for looking at these regimes in their entirety, from the perspective of the developer; nor is there a mechanism to ensure that existing non-planning consents operate as effectively and efficiently as possible and that any new consents are implemented in a way that takes account of the landscape as a whole"[36].

Adrian Penfold,
Review of Non-Planning Constraints



33 » Institute for Government (July 2010) *Read Before Burning: How to increase the effectiveness and accountability of quangos.*

34 » Retained bodies have to meet one of the three tests: performing a technical function, requiring political impartiality, or needing to act independently to establish facts. See Cabinet Office (October 2010): *New legislation introduced to enable quango reforms.*

35 » Matthew Flinders (October 2010) *Written evidence from Professor Matthew Flinders, Department of Politics, University of Sheffield: Smaller Government: Shrinking the Quango State.*

36 » Adrian Penfold (July 2010) *Review of Non-Planning Consents. Non-planning consents include environmental permits, highways orders, and heritage consents that are needed alongside or after planning permission.*

Delivering Better Outcomes at Minimum Cost

Improving compliance and enforcement

Environmental regulation depends on effective enforcement. This requires adequate resources for the enforcement agency and the freedom to apply those resources effectively. Regulations should specify desired outcomes and not be overly prescriptive in regards to the enforcement process. Weak enforcement tempers the competitive advantage of those in the industry who choose to be proactive and go beyond the regulatory baseline.

For example, a previous Aldersgate Group study demonstrates that weak enforcement at both the national and local level of building regulations risks undermining the credibility of the zero-carbon targets[37]. The Government recognises that this needs to be addressed, as the quote from CLG Minister Grant Shapps demonstrates.

Enforcement of building regulations

"We are also keen to build on industry's commitment to move to an approach based on real world carbon savings, rather than modelled reductions in emissions. This is a bold step forward, and will strengthen focus on innovation delivering new and better technologies and construction methods. We will work with industry to ensure both that this commitment becomes a reality, and that effective assurance is put in place to guarantee the zero carbon standard and that real world carbon savings are achieved. The end result will be better homes and better protection for the environment."[38]

The Rt Hon Grant Shapps MP, Minister for Housing and Local Government

Civil sanctions to improve environmental outcomes

The Regulatory Enforcement and Sanctions Act 2008 is designed to provide more consistent enforcement of regulations and ensure that the regulatory system is risk-based, proportionate and effective. Civil sanctions can be used against a business committing certain environmental offences as an alternative to prosecution and criminal penalties. They help achieve better outcomes by providing environmental improvements and benefits for local people affected by offending activities and remove financial gain from offending without necessarily having to resort to the criminal justice system. They also allow the regulator to take action that is proportionate to the offence, and will make environmental law enforcement more flexible and effective for both regulators and businesses.

A shift of civil sanction powers from the regulator to the courts would increase the risk of weak enforcement and must be justified on strong evidence of the lack of transparency and accountability of the current framework.[39]

37 » Aldersgate Group (July 2008) *Better Regulation for a Sustainable Built Environment.*

38 » The Rt Hon Grant Shapps MP (17th May 2011) *Written Statement on Buildings and the Environment.*

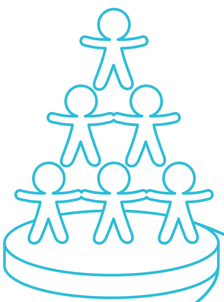
39 » ENDS Report (7th April 2011) *Civil sanctions regime is 'intolerable' says minister.*

Delivering Better Outcomes at Minimum Cost

Regulating at the local level

The Prime Minister's Big Society vision comprises the devolution of power from central government to the local level and empowering citizens, businesses and other groups to contribute to public decision making and take over the delivery of certain government functions.

It presents a number of opportunities for best value regulation. As Terry A'Hearn demonstrates in his article *'Conjuring Sustainability from Austerity'*[40], the best innovation comes through partnerships. As the Big Society is designed to bring the different parts of society together to generate better outcomes, it could provide a platform in which regulated businesses, interested community members and government agencies combine to explore transformational innovation.



Big Society regulatory innovation trials

"This concept of Big Society regulatory innovation trials is a completely new one so no prior examples exist. How might it work in practice? There are endless possibilities depending on the interests of the relevant members of business, government and the broader community.

Let's look at just one hypothetical trial. Everyone in Britain has an interest in avoiding a double-dip recession so accelerating high quality development proposals could be the basis of a trial. This could involve a developer and a local community agreeing to a halving of the planning approval timeline on the basis that the developer commits to meeting all minimum environmental, amenity and other standards and to involving the local community much earlier than normal in its own development planning.The details would need to be carefully negotiated and novel methods for building and maintaining trust created.This is why it should be a trial – it is about creating new forms of innovation in which regulatory requirements are met or exceeded at lower cost."

Terry A'Hearn, Director of Regulatory Innovation, WSP

Aggregates Industries: working at a local level to improve biodiversity

What characterises the ongoing rehabilitation and restoration efforts at Little Paxton Quarry in Cambridgeshire is the close local work provided by different partners bringing in their own expertise. This includes Aggregate Industries working with Friends of Paxton Pits Nature Reserve (formed in 1995 by the local community to improve the conservation value of the surrounding gravel pits), RSPB and The Wildlife Trusts. Volunteers were involved at an early stage and consulted on planning changes that might affect biodiversity. Timely communications between staff and volunteers helped to prevent mistakes in routine operations, ensure the expectations of the local community were met and maximise biodiversity outcomes[41].

40 » Terry A'Hearn (February 2011) *WSP Environment and Energy: Conjuring Sustainability from Austerity.*

41 » World Business Council for Sustainable Development (2011) *Quarry rehabilitation case study: Aggregate Industries UK.*

Delivering Better Outcomes at Minimum Cost

Application of EU law

A significant proportion of business regulation originates from Europe. At EU level, an agreed vision that is consistent with the AG's five principles for best value regulation would be an essential building block in achieving an integrated, coordinated and consistent legal framework which will help to better deliver environmental outcomes. European legislation that is outdated or too prescriptive constrains innovation and can be a barrier to delivering the most cost-effective solutions.

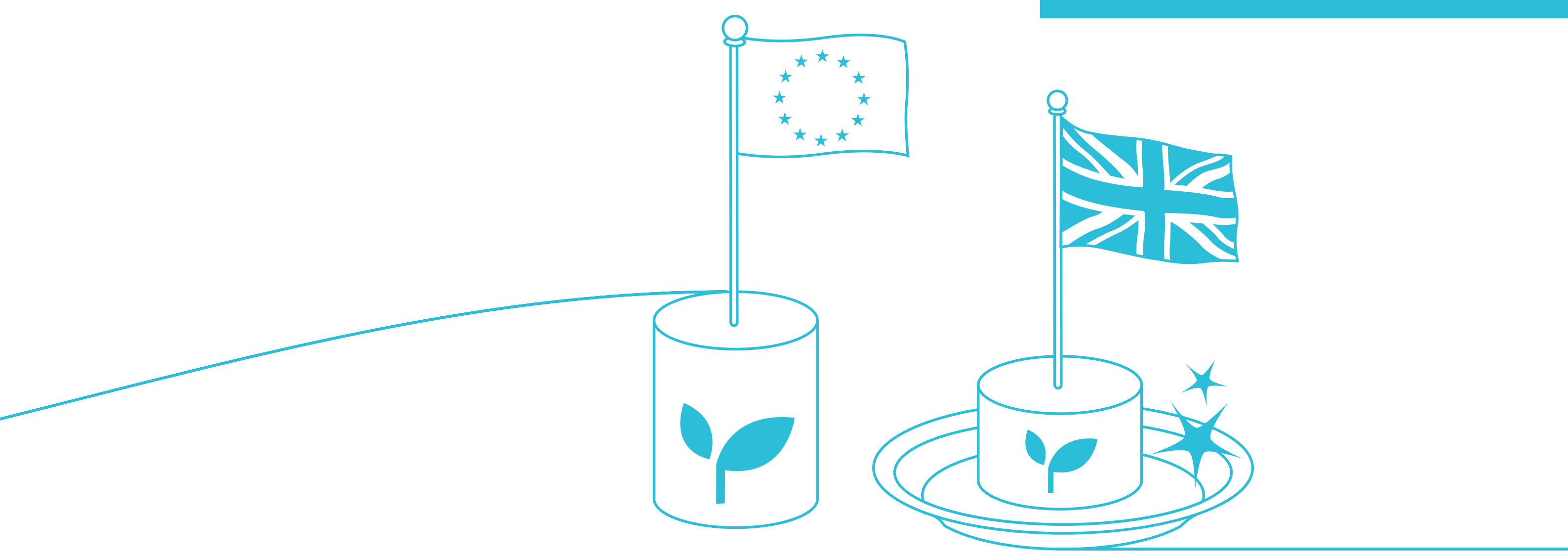
A common misguided criticism of the UK framework is that there is excessive use for "gold-plating" (extending the scope of European legislation), more often than not founded on questionable, rudimentary measures – such as comparing the number of words used in European and domestic legislation. The Davidson Review put to rest such claims by finding that inappropriate over-implementation is not widespread and it is sometimes beneficial to set regulatory standards that went beyond the minimum requirements of European legislation[42].

Despite the findings of the Davidson Review, the Government has set out a series of new principles to end gold-plating so that "British businesses are not put at a disadvantage relative to their European competitors."[43] The key to the new measures will be the principle of copying out the text of European directives straight into UK law. This intention would reduce opportunities to streamline and merge the requirements into existing UK laws, potentially leading to unnecessary duplication.

In addition, DECC and Defra have a key role to play in robustly defending regulations that have clear environmental benefits. The UK is often competing with its European neighbours to accelerate progress towards a green economy that would result in significant economic benefits, and raising regulatory standards is a key driver to secure future competitiveness.

Going beyond minimum requirements for sustainable buildings

A major source of competitive advantage in the built environment sector for UK businesses relates to their experience of developing and implementing world leading sustainability standards, such as the Code for Sustainable Homes and BREEAM. The government report on Low Carbon Construction states that "the success that the UK has had in the past in exporting innovative processes, such as PFI, is notable. If the carbon reduction programme does build to scale at a pace and in a way that makes it a world leader, then there must be an opportunity to build on the UK's reputation for sustainable design, to develop a proposition for the implementation of a programme to decarbonise the built environment at mass scale – a prospect that every developed country in the world faces. If this proposition leads, then products and services will follow."[44]



42 » Lord Davidson (November 2006) *Davidson Review: Implementation of EU legislation.*

43 » Department of Business Innovation and Skills (15th December 2010) *Government ends 'gold-plating' of European Regulations.*

44 » HM Government (Autumn 2010) *Low Carbon Construction: Innovation & Growth Team.*

Conclusion

Climate change, resource depletion and energy security all require transformative change which impacts the whole economy.

This cannot be achieved at the scale and pace required if the market is left to its own devices. The majority of current policies and processes will only lead to incremental change and not the step change that is needed.

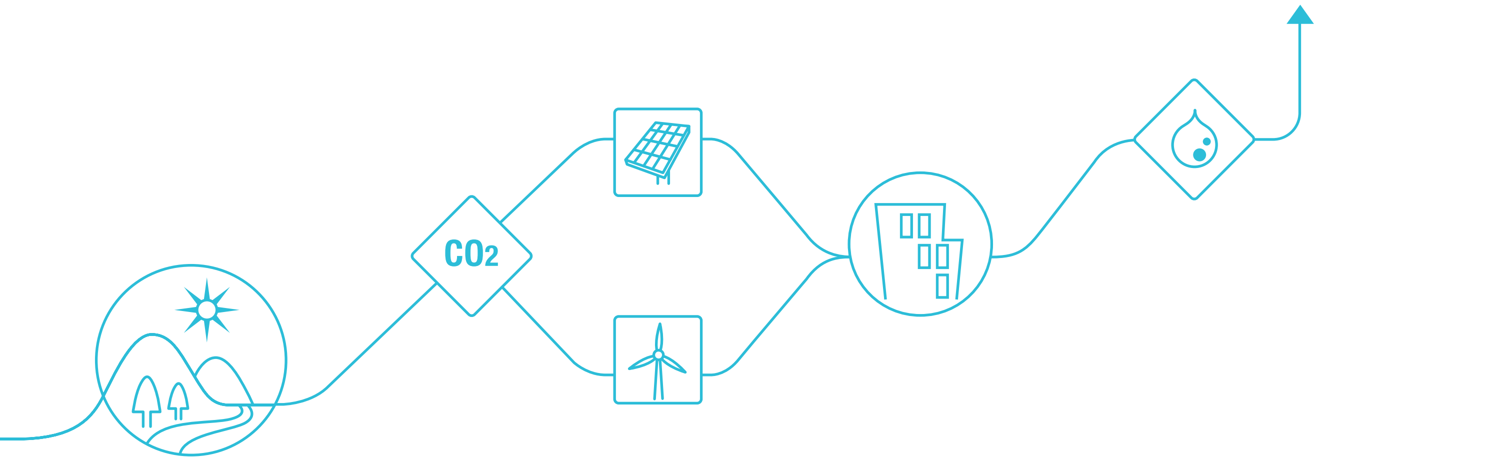
This gap can only be closed by a more integrated approach and cross-government commitment, delivering a consistently strong and predictable message that all policies are aligned to the sustainable transformation of the UK's economy.

Through streamlining legislation and adopting a smarter approach to implementation, it is possible to achieve greener outcomes, reduce regulatory burdens and make business in the UK more competitive and attractive. But this goal means focusing on the desired outcomes and holistic analysis of the benefits of the regulatory and non-regulatory interventions required. Choices based solely on merit and value must not be constrained by arbitrary targets on cutting red tape or achieving short-term cost benefits. Where special impacts arise, transitional help can be applied, but opportunities to drive the mainstream at pace must not be impeded by a disadvantaged few calling a halt to progress.

In some areas and sectors, the initial costs to the economy to deal effectively with the scale of our environmental challenges will inevitably rise in the short term to provide significant long-term gains. Regulation must seek to achieve the 'best value' outcome, increasing prosperity, stimulating innovation and leading the way to a more competitive economy. Innovation must be factored in to avoid a continued bias to protect the status quo leading to long term risks for the economy and the environment.

The Aldersgate Group sums up this raised ambition by deliberately coining the phrase 'best value regulation', because just better will not do and there should be no place for inferior and ineffective measures. But merit must be the only criteria to gauge whether a regulatory approach is needed and when, it must meet the best value test to be adopted or retained. Such regulation will deliver value, advantage and innovation to the benefit of both business and wider society and provide a key stimulant for sustainable economic growth for years to come.

Peter Young
Chairman, Aldersgate Group



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