DECC Red Tape Challenge: AG Response

Background

The Red Tape Challenge has been designed to allow the public to scrutinise government regulations and discuss ways in which the aims of these regulations can be fulfilled in the least burdensome way possible. It will ensure that outdated or ineffective regulations are identified and removed or replaced with a more effective way of achieving their goals.

Aldersgate Group

The Aldersgate Group is an alliance of leaders from business, politics and society that drives action for a sustainable economy. Please note that the views expressed in this briefing can only be attributed to the Aldersgate Group and not to individual members.

Introduction

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 While reducing outdated, excessive and burdensome measures is welcome, this must not be at the expense of the vital role that regulation plays in correcting market failures, promoting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.

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

Although 'gold-plating' should be avoided, it will sometimes be beneficial to go beyond minimum requirements of EU legislation to secure UK environmental aspirations, 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 and the lowest common denominator.

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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” 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.

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 the 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” 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.

Best Value Regulation

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.

Simplifying the Regulatory Landscape

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 taking one regulation at a time is being undertaken in the absence of an overall vision. Regulatory reform must be undertaken holistically and identify opportunities for better integration and cross-cutting simplification. This will require a number of policy teams and government departments to work together on specific issues alongside specialists that have experience across different sectors.

CRC Energy Efficiency Scheme (CRC)

The Aldersgate Group supports the objectives of the CRC, a mandatory scheme aimed at improving energy efficiency and cutting carbon emissions in large public and private sector organisations which are collectively responsible for around 10% of the UK's carbon footprint.

However, the removal of the revenue recycling mechanism has severely weakened the financial incentives for organisations to invest in energy efficiency and has damaged the reputation of the scheme. It has effectively transformed the CRC into a tax, with revenues directed towards HM Treasury.

The original recycling mechanism gave high levels of reward for the highest performers. The revised scheme now only gives the same marginal return as the Climate Change Levy (CCL) and as a result, the CRC has become a much weaker financial driver for investment in energy efficiency. Energy mitigation strategies have been replaced with compliance strategies. Furthermore, the validity of the performance league table has been damaged and as a result, combined with a large number of discrepancies, is increasingly regarded as an ineffective reputational driver.

The CRC is overly complex and burdensome. DECC is committed to simplifying the scheme and published proposals in June 2011. While the removal of the emissions cap will negate the need for participants to develop auctioning strategies, thereby reducing administrative burdens and simplifying business cases, it also removes a fundamental aspect of the "cap-and-trade" scheme. This will lead to more uncertainty in the effectiveness of the CRC to limit carbon emissions to a pre-determined threshold. The original cap and trade scheme would have also brought with it a secondary market in CRC allowances.

The other simplification measures include providing greater flexibility for businesses to define "natural business units", reducing the number of fuels reported and reducing overlap with other schemes. While these will make the CRC less complex, they maintain the fundamental discrepancies between the CRC carbon footprint and that produced under other government guidance. The scheme remains too burdensome for an energy tax, especially considering the relatively weak reputational drivers. In the context of the wider energy policy landscape, the CRC simplification measures are tinkering at the edges and do not fundamentally address the root of the problem.

The climate change and energy policy landscape includes what is effectively two taxes charged on the energy used in business, the CRC and CCL, and the Government recently consulted on the introduction of mandatory carbon reporting.

There is significant scope to streamline these regulations whilst maintaining revenues for HM Treasury and increasing carbon reductions. The Government should seek to harmonise carbon and energy reporting obligations in a single, mandatory reporting framework (that could be used to compile an annual public league table), which is transparent and consistent with international reporting requirements.

These simplifications should be made in a way that boosts investment in renewable electricity generation and which rewards best performers and penalises the worst performers. They should also ensure visibility at Board level of the key recognitions made by Government and of a business's own fossil fuel dependency and costs. At the same time, there needs to be full visibility as to the impacts on competitiveness for manufacturing and energy intensive sectors (such as through a system analogous to Climate Change Agreements).

This view is supported by a range of business and academic organisations, such as the OECD, CBI, Corporate Leaders Group on Climate Change, LSE and Policy Exchange.

Electricity Labelling

All renewable electricity supplied to users is exempt from the Climate Change Levy (CCL). Instead of paying this levy, companies that buy green electricity pay a premium to their suppliers for the provision of that green electricity. The cost of the premium paid to suppliers is greater than the financial benefit gained by averting the CCL – so companies are paying extra for using green energy.

The Defra guidance for reporting GHG emissions states that all electricity purchased should be reported as the grid average emissions factor, regardless of the source of this electricity. In addition, renewable energy generation (even if this is owned or controlled by a company) is not exempt from the CRC Energy Efficiency Scheme if Renewable Obligation Certificates (ROCs) are issued.

So on the one hand, companies are given an exemption from the CCL when they purchase zero carbon renewable electricity; but on the other hand, the Government's voluntary emissions reporting scheme and CRC Energy Efficiency Scheme treats this electricity as grid average.

DECC committed in 2009 to review how the purchase of electricity by businesses can stimulate increased low carbon generation and help reduce GHG emissions. This review was due to be completed by no later than December 2010 but this has not been forthcoming. The review should be completed without delay and include a detailed analysis into the feasibility of a fully regulated system, which reflects the carbon content of electricity purchased.

Dark Smoke and Clean Air Regulations

Aldersgate Group member, Green Alliance, has suggested that the one-in, one-out rule may not capture the difference between high quality, effective regulation and redundant regulation. As an example, it highlighted four 'regulations' as listed on the Government's Red Tape Challenge website which may no longer be needed:

- Dark Smoke (Permitted Periods) Regulations 1958 Allows derogation from the Clean Air Act 1993 (CAA) s1 prohibition on dark smoke emissions from industrial plant, allowing specified short-term emissions
- Dark Smoke (Permitted Periods) (Vessels) Regulations 1958 Allows derogation from the CAA s44 prohibition on dark smoke emissions from vessels, allowing specified short-term emissions

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- Clean Air (Emission of Dark Smoke) (Exemption) Regulations 1969 Disapply the CAA s2 prohibition on smoke emissions from industrial or trade premises in relation to burning
- Clean Air (height of chimneys) (exemption) regulations 1969 Sets out exemptions (eg for temporary plant) from the requirements of CAA s14 to have a chimney height approved.

Green Alliance argues that "as exemptions from regulation in the Clean Air and Dark Smoke Acts, these four 'regulations' are a barrier to stopping air pollution. The regulations are pretty old, with modern biomass boilers not suffering from dark smoke, so we see no reason not to scrap these then. In fact, scrapping the exemptions might lead to economic stimulus if businesses replace older, polluting equipment and processes with more efficient new equipment and processes."

Under the one-in, one-out approach, the removal of these would allow for the introduction of much more substantive and wide reaching regulations, such as mandatory carbon reporting, progressive appliance efficiency standards, or an emissions performance standard. These could have significant benefits for business and the environment, despite being more substantive. Green Alliance argues that regulatory reform needs to be focused on effective and sustainable outcome, rather than simple reduction in regulation or perceived burden.

Roundtable with DECC

In December 2011, members of the Aldersgate Group attended a roundtable with the DECC Red Tape Challenge team, held under Chatham House rules. This was jointly chaired by Dr Jeanie Cruickshank (Head of Better Regulation, DECC) and Terry A'Hearn (Aldersgate Group Lead, Best Value Regulation workstream). The following points were made:

- As well as reviewing regulations on an individual basis, DECC should be ensuring greater consistency between regulations – particularly across government departments.
- Ensuring that regulation is targeted at the right level in a company is important – such as energy efficiency regulation being signed off by a Director.
- The CRC Energy Efficiency Scheme should be simplified (beyond the measures already outlined by DECC) – reducing bureaucracy while maintaining revenues for Treasury. The most effective way to do this would be to streamline the CRC with the CCL and mandatory carbon reporting.
- It can sometimes be beneficial to go beyond the requirements of EU regulations (so called "gold plating") – ensuring competitive advantage for UK based firms. It was also noted that translating EU regulations "line by line" into UK legislation could lead to rigidity, ambiguity and inefficiencies (particularly in technical areas), making it harder for businesses to implement.
- Regulation should be outcome-focused rather than too prescriptive. For example, old manufacturing regulations which stipulated that factories required metal gates for health and safety delayed the implementation of modern laser equipment. Prescriptive regulations are based on past technologies and processes, while outcome-based regulations allow for flexibility and modernisation. Industry bodies are best placed to assist small businesses to interpret outcome-based regulations that might otherwise be at a disadvantage.
- Self-regulatory codes of conduct that are common in the energy supply industry are complex for small to medium-sized enterprises (SMEs) to understand and they often

do not have the resources to negotiate alterations. The challenge is to ensure a self-regulatory framework that does not exclude new entrants and small suppliers.

- The Red Tape Challenge is an opportunity to shift away from technical language that SMEs find hard to understand and comply with.
- The drafting of legislation can be particularly complex and the CRC Energy Efficiency Scheme was raised as an example of this. It was suggested that the private sector (such as consultants and lawyers that help clients comply with regulations) should be involved at an earlier stage of the development process.
- Regulatory trials could be an innovative and effective way to road test emerging ideas.

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