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10 November 2008

Dear Sir

Re: Consultation on the introduction of a system of regulatory budgets

We welcome the opportunity of responding to the Department of Business, Enterprise and Regulatory Reform (BERR) consultation paper on the introduction of a system of regulatory budgets.

As Lord Turner, Chairman of the Financial Services Authority, recently said '*we have to make sure [regulation] is intelligent and focused on where the risks really are*'¹. It is important that any proposed Governmental regulatory action is carefully considered with a responsibility on Government to reject any proposals that impose box ticking requirements that result in disproportionate burdens on business. This is particularly true as Government and Regulators consider what, if any, regulatory action is required in response to the current economic difficulties.

We consider that the proposals contained in this consultation paper have the potential for ensuring that regulatory action in the UK is transparent and robust, being fully financially

¹ http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article4959789.ece

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assessed with benefits for action clearly identified, that will result in UK business confidence in the need for regulatory action, when taken.

In saying, this we note that these proposals, if taken forward, will be implemented from 2010. As we consider that this approach has many benefits for UK business, we hope that the setting of regulatory budgets will survive future changes in Government policy.

Before addressing the specific questions asked within the consultation paper, we would like to make some general comments on the proposals.

It is not clear, in the consultation document, whether Government anticipates an increase in the regulatory burden. It would be disappointing if, after having set an ambitious target of reducing the administrative burden of regulation by 25%, Government then reversed this policy allowing for net increases in regulatory action.

We note that these proposals exclude the Government commitments, under the climate change agenda, from the setting of regulatory budgets.

We consider that this is a missed opportunity for the Government to demonstrate, in a transparent way, how the sustainability agenda should be part of the economic and commercial considerations of Government and Business. We also note that the administrative and policy costs, from the imposition of tax regulation, have also been omitted from these proposals. The inclusion of these areas will, we believe, give greater credibility to these proposals.

As identified in the recently published National Audit Office report on the Administrative Burdens Reduction Programme² there is still concern by the majority of businesses as to the burden of regulation with only 1% indicating that complying with regulation had become less time consuming in 2007³. The report also identifies that reported reductions in administrative burdens should be treated with caution as a result of the measurement methodology used by Government Departments⁴.

For any budgetary system, using a monetary amount as its basis, to be effective there must be confidence in the accuracy of the information obtained and we would suggest that the following steps are taken to compliment the proposals outlined in the consultation paper.

² Link: http://www.nao.org.uk/publications/nao_reports/07-08/0708944.pdf

³ Paragraph 17, page 7, of NAO report.

⁴ Paragraph 10, page 6, of NAO report.

Accurate and consistent assessment of existing UK regulation.

As identified in the NAO report⁵ the current calculation of the savings in the administrative burden on UK business has not been calculated on a consistent basis and has not been subject to independent validation.

If moving forward the setting of regulatory budgets is the correct approach, we consider that an accurate and consistent assessment of the existing regulatory burdens, including those imposed by regulatory bodies carrying out functions on behalf of Government Departments, such as the Financial Services Authority and Financial Reporting Council, should be undertaken.

Engagement with business to produce costing information prior to regulatory action.

We recognise that only those businesses affected by proposed regulatory action can properly assess the financial cost of that action, for example, only audit firms can accurately estimate the costs of changes in auditing standards.

For there to be confidence in the budgetary process there needs to be recognition of the time and cost commitment that will be needed in assessing this information. We believe the business community, through a body such as the CBI, should be incentivised to produce accurate costing information. One key way in which this might be achieved would be an agreement that regulatory action would not be proceeded with in instances where disproportionate cost had been identified. However, other options might need to be considered if this approach did not produce accurate information.

Continuous review of regulatory action.

Whilst it is very important that regulatory action is only brought after rigorous up front assessment of regulatory costs, as identified in the previous paragraph, provision must also be made for ongoing periodic assessment to reflect subsequent changes that may have occurred.

We also believe that each regulatory action should be subject to the cost and benefit test after a suitable period of time has elapsed, for example, a three year period, and that any regulatory action that is subsequently identified as disproportionate should be removed.

Dealing with the specific questions asked in the consultation document we wish to make the following comments:

⁵ Paragraph 11, page 6.

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Question 1 – Do you consider that the Government should proceed with a system of regulatory budgets as a way of managing the cost of new regulation?

We fully support the Government's approach of setting regulatory budgets. For this approach to have credibility, however, all regulatory action needs to be captured within the budget setting process. This should include all Governmental areas; including tax and climate change policy, as well as action taken by independent regulators acting on behalf of Government Departments.

We believe, however, that this approach to regulation should not reduce the importance of preparing detailed regulatory impact assessments – disproportionate regulation should never be brought forward even when included within a regulatory budget.

It is unclear, from the consultation paper, whether Government expects that these proposals will result in a net increase in regulatory costs. We consider that reducing regulatory burden should be the focus of Government and that this should be incorporated with the regulatory budgets set for each Department, in effect setting 'minus budget levels'.

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

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

We support the Government's view that regulatory budgets should be scored on the basis of enactment and that, therefore, a three year budget period is the most appropriate.

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

As identified above, we consider that only the accurate assessment, that passes the test of 'benefit over cost', will allow for credibility in whether regulatory action is required and, if so, the action is included within the setting of a regulatory budget. We consider that timing of regulatory action will be dependent on a number of factors, for example legislative timeframes that exist for European legislation.

In recognising that Government Departments may need flexibility to bring forward regulatory action that has not been budgeted for, we do not believe that the flexibility suggested, of allowing Departments scope to transfer or borrow a budget from another Department, is appropriate. To ensure confidence in the setting of budgets, each

Department should only be allowed to operate within their own budget limits. This approach will ensure that Departments accurately assess and set budgets.

To assist this process, we suggest that there is independent oversight of the budgetary process, either by the Better Regulation Executive or the Cabinet Office. In circumstances where a Department wishes to exceed its budgetary limit, this body should have the power to either approve or decline the regulatory action within the budgetary year in question. This approach will, we believe, provide transparency and accountability in the setting and maintaining of budgets. It also has the potential for ensuring that different Departments bring forward coherent regulatory action where overlaps exist as well as prioritising regulatory action across Government as a whole.

It is not clear how any proposals for reducing administrative burdens could be considered separately to the setting of regulatory budgets. We believe that the purpose of regulatory budgets must be to ensure that new regulatory action is part of the consideration of reducing administrative burden on UK business, operating at least a 'one in – one out' approach to regulatory action.

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

For business, there is little difference in the source of regulatory burdens when the cost of that action is considered. We strongly urge Government to include all bodies that do, in some way, impose regulatory burdens on behalf of Government, for example, independent regulators such as the Financial Services Authority.

A number of bodies also impose 'soft regulation' requirements, for example, codes of practice, which add to the administrative costs faced by business. Whilst we understand the many benefits of this approach, if the aim of these proposals is to identify the cost of regulation on business then all elements should be included to ensure confidence in this process.

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

We agree with the Government's aim of including European and other international obligations within regulatory budgets.

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

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We agree with the proposals that those areas outlined in paragraphs 3.14 to 3.22 should be included within regulatory budgets.

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

We support the Government's view that the work of independent regulators is not incompatible with their inclusion in the setting of regulatory budgets and support the inclusion of these bodies within the regulatory budget framework, provided that the assessment of cost was performed in a robust way as identified in our general comments above.

We consider that the cost of regulatory action taken by independent regulators should be included, but clearly identified, within the budgets of their sponsoring Department.

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

We agree with the Government's proposals as outlined in Chapter 5 of the consultation paper.

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

We accept that there are advantages in setting individual budgets to identify implementation costs of regulation over longer term costs, but accept that this would result in a system that was difficult to understand and would not cater for differing implementation timescales. We therefore support the proposal of a single budget.

We also support the proposal of using gross costs in the assessment of regulatory budgets. Whilst we agree that this approach may result in Departments underestimating costs, we return to our comments of the need for accurate costing information – only a robust assessment of the cost of proposed regulatory action will ensure that impact assessments and regulatory budgets are accurate.

If you require any further information would you please contact Peter Wyman of this office. We are happy for this response to be published.



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Yours faithfully

A handwritten signature in black ink, which appears to read "PricewaterhouseCoopers LLP".

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