HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

Corrected oral evidence: Revision of the Better Regulation Framework

Tuesday 23 January 2024

3.50 pm

Watch the meeting

Members present: Lord Hunt of Wirral (The Chair); Lord De Mauley; Baroness Harris of Richmond; Lord Hutton of Furness; Baroness Lea of Lymm; Lord Powell of Bayswater; Baroness Randerson; Baroness Ritchie of Downpatrick; Lord Rowlands; Lord Russell of Liverpool, Lord Thomas of Cwmgiedd.

Evidence Session No. 1 Heard in Public Questions 1 - 14

Witness

I: Stephen Gibson, Chair, Regulatory Policy Committee

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Examination of witness

Stephen Gibson.

Q1 **The Chair:** This is a formal evidence-taking session. It is on the record and is being webcast live. A verbatim note is being taken and it will be put on the public record in printed form and on the parliamentary website. We will send you a copy of the transcript of the session so that you can amend any errors or make any additions you would like to.

In case of fire, there will be a voice-activated alarm. Any bells you hear are Division Bells, and I should mention at this stage that we anticipate that there may be some votes, in which case we will have to adjourn for 10 minutes. I am sorry about that, Mr Gibson. It is just parliamentary business. We may well not have Division Bells, but at least we are alert to the possibility. Should there be an incident, please follow the instructions that will be given to us all by our clerk.

I now ask my fellow committee members whether they have any interests they wish to declare for the record. This session is scheduled to last for about 45 minutes. We may ask you to provide supplementary information to support your answers.

Welcome, Mr Gibson. Thank you very much indeed for joining us today. This is an information-gathering exercise about how the Regulatory Policy Committee believes that the revision of the Better Regulation Framework, announced in September 2023, will affect the impact assessment process. This committee is seeking views on how the new system may affect the quality or quantity of information published to support its scrutiny task.

Perhaps I might start off by saying that I was not present, of course, when you gave evidence before. We have new members, including myself, so perhaps we can start off by asking you please briefly to summarise the function of the Regulatory Policy Committee and your key objectives.

Stephen Gibson: Yes, of course. Thank you very much for having me this afternoon. The Regulatory Policy Committee—the RPC—is the independent regulatory scrutiny body for the UK Government. We assess the quality of evidence and analysis used to inform government regulatory proposals. They can be final-stage impact assessments; post-implementation reviews, where the Government review the quality of regulation after it has been operating for a certain amount of time; or, in the new framework, options assessments, which are earlier in the policy-making process, when the Government are still assessing different policy options.

This independent advice and scrutiny of the quality of the evidence and analysis provided by the government departments in their OAs, IAs or post-implementation reviews helps to inform government decisions. It helps to inform Ministers and Parliament about how to improve the quality of government regulation.

We have five current objectives: to deliver independent opinions on impact assessments and post-implementation reviews that are timely, clear and consistent; to encourage and assist regulators and departments to improve the quality of their impact assessments and their evaluation of regulation; to contribute to the development and implementation of policies for better regulation; to engage effectively with businesses, with civil and voluntary organisations, with parliamentarians and with the public on the evidence and analysis supporting regulatory proposals; and to enhance UK regulatory scrutiny through engagement with international counterparts and to encourage evidence-based regulation in our trading partners.

Those are our current objectives. They have not been reviewed in light of the new Better Regulation Framework and they may change in that light.

The Chair: How many staff do you currently have, and how do they interact with departments?

Stephen Gibson: There are eight members of the formal committee, who are a mix of economists and people with experience of business and politics. They are supported by a secretariat of 14 staff, who are roughly split between economists and policy experts.

The secretariat regularly engages with departments. There is a mixture of one-to-one meetings between the secretariat, the better regulation units in each of the departments and wider departmental policy and analysis teams, as well as cross-Whitehall meetings. I and other members of the committee also have regular meetings with chief economists or heads of analysis in the different government departments.

The Chair: There are some members of the committee who were on the committee when you last gave evidence in 2022, one of whom is Lord De Mauley.

Q2 **Lord De Mauley:** When you gave evidence to us back in 2022, I recall that you said that a third of impact assessments received an initial review notice. You also mentioned that 40% of cases requested accelerated RPC consideration. Has there been any change?

Stephen Gibson: An initial review notice is where the government department submits an impact assessment for us and we do not think it is fit for purpose: we think there are weaknesses in either the assessment of the net direct cost to business or the small or micro-business assessments. We push it back to the department, identifying those weaknesses, and give it another attempt. Generally, the department takes on board our comments and submits a revised IA, and it is improved.

Last year, in 2023, of the 49 final-stage impact assessments that we scrutinised, 20—just over 40%—received an IRN, an initial review notice. Then, having taken on board our comments, only three received a final red notice. All the others received a green, fit-for-purpose opinion. That was a result of a mixture of concerns about the impact on direct cost to business and the impacts on small and micro-businesses.

What was the second part of your question about?

Lord De Mauley: It was about the accelerated RPC consideration.

Stephen Gibson: Yes, indeed. We still have about 40% of our impact assessments from departments asking for an accelerated process. We take this very much on a case-by-case basis. We recognise that some pieces of regulation need to be developed at pace and we try to assist government departments and put resources into turning those around quickly. There is a minimum realistic time that we can do that in.

One of the weaknesses of accelerated approval is that it often does not give a chance for the initial review notice process to go through. If they go through that and have a not-fit-for-purpose rating, they just get a red rating. They do not get the chance to resubmit, which takes about another 10 to 15 days to go through.

Lord De Mauley: Following the changes in September, your process is going to be brought forward. Will the initial review notice system become redundant? How will that change?

Stephen Gibson: We will be reviewing options assessments, which are like impact assessments but at an earlier stage in the process, where the department sets out the different policy options for achieving the objectives and its assessment of the costs, benefits, risks and who is going to be impacted by the different policy options. It may have a preferred option or it may not. It may simply be at the stage where that is still being considered.

If we feel that the rationale, the objectives or the initial review of the different policy options is lacking or is not fit for purpose, we have the chance to issue the department with an initial review notice, so that it can improve that and then hopefully come back to us with a better options assessment that we can then rate as fit for purpose.

Lord De Mauley: One would hope that the eventual outcome was an improvement.

Stephen Gibson: One always hopes for high quality and that is part of the purpose of the RPC, both to verify that and to encourage departments by giving them an incentive to do as well as they possibly can.

Q3 **Baroness Ritchie of Downpatrick:** I would like to ask you questions about the review. To what extent did the RPC influence the revision of the Better Regulation Framework, and are you satisfied with the outcome?

Stephen Gibson: Our comments and suggestions were certainly taken into account in the revision of the Better Regulation Framework. We did not get everything that we asked for, but some of the main changes were taken into account, such as moving to earlier review so that our opinions can actually influence policy choices, rather than commenting after the decisions have already been taken and more or less just verifying the numbers. There is also a greater emphasis on post-implementation reviews and monitoring and evaluation to support post-implementation reviews.

Baroness Ritchie of Downpatrick: Do you believe that any suggestions you made were not reflected in the final version? Maybe you can elaborate a bit on that.

Stephen Gibson: Yes, absolutely. There are three areas where we think there are potential weaknesses in the new Better Regulation Framework. The first is the continuing exemption of building safety-related regulations. They are exempt from RPC scrutiny and, therefore, there is no independent review of the quality of impact assessments or options assessments for building safety-related regulations. That is a significant hole in the framework for which I believe no justification has been put forward.

The second is on post-implementation reviews. Although the Government have said that they will endeavour to deliver PIRs when they are required, they have not committed to doing so. We would have liked them to give a stronger commitment to delivering that, because past history has suggested that they are only doing that about 40% of the time. Only 40% of regulations are getting a proper review within the five-year period, which is a statutory requirement, and we believe there should have been a stronger commitment there.

The final area, which I am sure some of your members may well want to discuss further, is the loss of scrutiny at the final stage. That is a potential weakness. There is a trade-off here between mandatory scrutiny of options assessments, which we welcome, and a desire not to make the whole process too resource-intensive and too cumbersome for departments to manage. We will need to see how it develops. We certainly hope that having high-quality options assessments will improve the quality of the final-stage impact assessments, but we have yet to see. That is an area where there are potential concerns.

Baroness Ritchie of Downpatrick: Thank you. Lord Chair, there are areas there that we need to explore further as a committee.

The Chair: Yes, I agree.

Q4 **Baroness Lea of Lymm:** The new framework has a wide range of exemptions, including the building issues you have just mentioned. We have almost gone into that already. There were seven exemptions from the requirement to produce an IA. Are there too many? Does it seriously undermine the system? Should they be more comprehensive?

Stephen Gibson: We have already mentioned the building regulations, and that is the biggest hole in the framework. We prefer as few exemptions as possible, for obvious reasons. One of the exemptions is a de minimis, and that has increased from £5 million to £10 million a year. Regulations that have an impact on businesses of less than £10 million will now not go through the full RPC scrutiny process.

I am less concerned about that as an exemption. I am much more concerned that we focus on the bigger measures, the measures that have tens of millions, hundreds of millions or even billions of pounds’ worth of impacts, and that we spend the proper resources and focus on that, rather than the tiddlers. Previously, we have spent an awful lot of time on assessing regulations that actually have a relatively small impact.

The other change is the removal of the exemption for temporary measures. That is a positive measure. That builds on learning about the exemption used for Covid, where measures that had massive implications for businesses and for society as a whole—regulating whether shops, gyms or restaurants could be open, et cetera—were outside the process, because they were designed as temporary measures. I am very glad that has been changed. I believe there is no other widening of the exemption apart from those.

Baroness Lea of Lymm: Interestingly, you jumped to my next question. If I may say so, you are very good at anticipating the questions. I am a new member, by the way, so I was not here when you were last discussing these matters, but the revision says the Minister can defer the impact assessment in the case of emergency legislation. Do you think that is a good idea?

Stephen Gibson: That is absolutely necessary where you have measures that need to go through quickly. Russian sanctions after Russia invaded Ukraine are a good example of that. We wanted to have those regulations in place quickly; we did not want to wait around. There is still a requirement to have retrospective evaluation after the measures are put in place. That is really important. Again, Russian sanctions are a good example. We had a series of sanctions that got increasingly tight, and understanding the costs and benefits of earlier sanctions can inform decisions about future sanctions, about what works, what does not work and how best to structure them, et cetera. It is important still to have scrutiny of emergency regulations, but it should not hold up things that are necessarily urgent.

Q5 **Lord Powell of Bayswater:** You said you regretted the continuing exemptions for building regulations and so on. Presumably, you oppose continuing these exemptions. Who insisted that the exemptions should continue?

Stephen Gibson: This exemption is primarily focused on the Department for Levelling Up, Housing and Communities.

Lord Powell of Bayswater: Did it produce any convincing reasons, as far as you were concerned?

Stephen Gibson: I saw no justification for the exemption.

Lord Powell of Bayswater: It was just a handed-down decision.

Stephen Gibson: It is a very political decision. There are reasons why you would want to be very careful about that, particularly given the history of Grenfell, et cetera, which is where they arose from, but the exemption was originally structured because there were concerns about the Government being seen to worry about the cost of Grenfell-related regulations. Now, with the removal of the business impact target from the Better Regulation Framework, there is no pressure to reduce the costs of regulation per se. Therefore, any reason that might have justified that as an exemption previously does not hold any water at the moment.

Lord Powell of Bayswater: But it goes on all the same.

Stephen Gibson: It goes on all the same.

Q6 **Lord Thomas of Cwmgiedd:** Can I ask you a short question in relation to the exemption for provisions imposing fines and penalties? What is the rationale for that?

Stephen Gibson: It is about the scope of the Better Regulation Framework. It really focuses on regulations that have impacts on business. Just as we do not see any taxes, government subsidies or regulations around that area, fines that are matters for the courts and for a judicial process, rather than a regulatory process, are outside the framework.

Lord Thomas of Cwmgiedd: Would there be a case for examining the efficacy of the level of fines and penalties, particularly those imposed by regulators?

Stephen Gibson: There certainly might be, but we currently do not deal with those and I am not looking to expand our powers specifically in that area.

Q7 **Baroness Randerson:** We have seen a number of impact assessments that appear to have been produced to support decisions that have already been taken, rather than to inform policy development. Will the introduction of RPC scrutiny at options assessment stage prevent that happening in future?

Stephen Gibson: I certainly hope so and I certainly recognise your concern. We very much share that concern. The benefit you get from doing impact assessments, options assessments or any sort of analysis is to support and inform regulatory policy-making. If you have already decided on the policy, most of the benefits from the impact assessment process are not there. Moving it earlier into the process, where there is a set of options that we hope are all reasonable and realistic—we have to see how this plays out—where you can see different ways of achieving objectives, will be a better place to have regulatory scrutiny inform better regulation.

Baroness Randerson: There is another way in which you could say there is a loophole. Sometimes, proposals start as a modest set of proposals, at options assessment stage, and then later expand to become very much bigger than originally anticipated. Do you think that would be caught, or would it still be a loophole?

Stephen Gibson: That is a risk, and it is difficult to know beforehand. We have not seen any options assessment go through the new process yet. It is difficult to know beforehand whether it will be a significant problem, but the framework sets out that, "If a preferred option changes in such a way that the rationale for intervention and original options assessment can no longer by reasonably applied to it, then some form of resubmission to the RPC is likely to be required".

There is a recognition in the way the framework is set up that, if the modest options assessment expands, as you suggested, it would have to be resubmitted for us. Our initial assumption is that this is unlikely to be significant, but we will keep an eye on this, particularly if we suspect that departments are trying to game-play or behave strategically to avoid scrutiny. We do not believe they should. We believe that we add value to this process. They should welcome this, and we very much hope that is the case.

One of the advantages of the new framework, compared with the old one, is that it is no longer set in a statutory framework in legislation. If it does need to be changed, it is much easier to change it, by changing the guidelines it works around rather than requiring a full change to an Act of Parliament or statutory instrument to do so.

Q8 **Lord Rowlands:** You have already told the committee that you are relaxed on the issue of raising the threshold to £10 million a year, but how many fewer impact assessments will be published as a result of this lifting of the threshold?

Stephen Gibson: It is likely that it will reduce the number by definition, although the de minimis threshold no longer affects Bills. All Bills will go through the Better Regulation Framework, which will mitigate the reduction. We are not expecting a significant reduction. Certainly, we do not expect it to be more than 10%. It will probably be between 5% and 10%, but that varies on a year-by-year basis.

Looking backwards is not necessarily a good guide to either the number of assessments that we will see or the distribution of assessments in terms of impacts. We do not expect it to be significant and, as I say, I am much more concerned with focusing on the big measures, giving them proper resources, rather than looking at the smaller ones.

Lord Rowlands: If there is no RPC check on the majority of final impact assessments, how will we be able to judge the quality of the information? Is there a possibility that the amount of information published will decline?

Stephen Gibson: We hope not. That is obviously a risk. If you remove RPC scrutiny of final-stage impact assessments, you have no independent verification of that. It is a balance. We will be commenting on options assessments and, as in the past, having high-quality options assessments should feed through into better final-stage IAs.

Part of that depends on how departments respond to the lack of final-stage scrutiny, and whether they place less emphasis on, provide fewer resources for and provide poorer-quality IAs. The other side is about how far they take on board our comments at the options assessment stage as to areas to improve, to generate high-quality, fit-for-purpose final-stage IAs. We do not yet know how it will all work; we certainly intend to keep an eye on it as the Better Regulation Framework comes into operation.

Lord Rowlands: How can you be sure that all final impact assessments required will actually be produced?

Stephen Gibson: That is ultimately a commitment for the Government, to ensure their compliance with the process that they have set and they agreed on. The RPC will maintain records of cases that have gone through us. Where we get options assessments, we publish them either at the point that the final-stage assessment is published or when the Bill or statutory instrument is laid before Parliament. At that stage, if there is not a final-stage IA, we will draw attention to that, both on our website and in our external comms.

Lord Rowlands: The worry that I have is that, because of these increasing thresholds, there will be no public scrutiny. There will be much less opportunity for committees to scrutinise impact assessments. That seems quite a serious problem and a serious consequence.

Stephen Gibson: We do publish the distribution and the size of different impact assessments in our annual reports. If you look at the distribution of sizes, historically there has been only a very small number of impact assessments in that £5 million to £10 million bracket. There is not going to be a huge range of new regulations that come through that way without any regulatory scrutiny, but I recognise your concern about the lack of scrutiny at final stage.

I very much hope, and the intention is, that departments still have to produce final stage IAs. If they take account of our comments at the earlier stage, it will help them to produce high-quality final-stage impact assessments. It has been very clear from government, right the way through the review of the Better Regulation Framework, that there was no appetite for having scrutiny at both points. We believe that having it earlier in the process is more important for improving the quality of regulations.

Lord Rowlands: The earlier process, this optional process, is within departments. It is not publicly revealed, is it?

Stephen Gibson: We will publish our decision on the options assessment at the final stage. When the legislation or the statutory instrument is in the public domain, when it is laid before Parliament, we will then publish our options assessment opinion. You will still see our opinion and where we have flagged up areas that we believe should be improved in the final stage.

Lord Rowlands: There is another threshold. I will quote: "In addition, RPC scrutiny of the final IA will only be required for any measure with an anticipated cost-benefit in excess of £100 million per annum and that was judged as deficient at the options stage". Tell us about this £100 million threshold.

Stephen Gibson: The idea of that is to capture very large measures. We think it is very sensible to have final-stage scrutiny for very large measures, in order to make sure that you and Parliament, et cetera, have proper assurance about the quality of the assessment underpinning those. That is why there is final-stage scrutiny.

Lord Rowlands: How do you go from £10 million to £100 million? How was the figure of £100 million chosen, as opposed to £50 million or anything between £10 million and £100 million?

Stephen Gibson: The number is fairly arbitrary, I agree, but as Baroness Randerson mentioned earlier, some things can start off very small and grow larger. This is really a safety net to capture things that manage to sneak under the £10 million boundary and then suddenly, for whatever reason, expand. We do not expect this to be operated very often, if indeed at all.

Q9 **Lord Hutton of Furness:** The whole objective of the better regulation process is to make the rationale for legislation more transparent and accountable, is it not? For this to happen, the Regulatory Policy Committee's views will need to be well advertised. What more should you be doing to make sure that Parliament and the public are alerted promptly, for example when you have red-rated an impact assessment?

Stephen Gibson: I absolutely recognise your concern about how important it is for our views to be well understood and widely disseminated. Currently, whenever we have a red rating, a not-fit-for-purpose rating, we publish that on our website and tweet it out. In addition, we have a specific page on our website that captures all the red-rated opinions, so people can see whether there has been a change in the number or which regulations have been red-rated in the past.

We try also, in our RPC blog, to draw attention to concerns we have about poor-quality impact assessments, late submission of impact assessments or post-implementation reviews that are not being done on time or done properly. We do what we can. Indeed, we are having a meeting in the House of Lords tomorrow to launch the new Better Regulation Framework, the aim of which is to increase the profile and increase understanding of the RPC and the Better Regulation Framework. If you have other suggestions about how we can improve the profile and make it more well understood, we would welcome those.

Lord Hutton of Furness: Maybe that is something that the committee can reflect on, because it is a really fundamental part of the whole process. Coming back to one of the new aspects of the Better Regulation Framework, which is this options assessment stage, it looks a really useful development. The problem is, of course, that the options assessments do not have to be published. The RPC might be critical or might have some observations to make about the options assessment but, unless the department publishes it, we will never know that you have those concerns. Do you think that is good enough?

Stephen Gibson: We will publish our opinion, and our opinion should be comprehensive enough to indicate to people who are reading it, in the absence of the options assessment being published, our views, where we see the benefits and costs of the measure and how we expect the assessment to be improved to get to final stage. There will be some information in the public domain.

Sitting suspended for a Division in the House.

Q10 **Lord Rowlands:** When the previous witnesses gave evidence, I was left with what was perhaps the wrong impression that this new arrangement sounded all a bit too cosy. It was all very collaborative and it was all going to be done within departments and between departments and you. Are you not being sucked into the system?

Stephen Gibson: I hope not. We are independent and we stress our independence. We have been very clear about the fact that we will, if we see weaknesses in impact assessments, post-implementation reviews or, in the future, options assessments, we will make that point very clearly.

For example, we have red-rated a number of impact assessments of our sponsoring department, which is now the Department for Business and Trade; it was BEIS beforehand. We have challenged government free trade agreements. We have, in the past, exercised that independence by pointing out where we see weaknesses in evidence and analysis, without fear or favour, speaking truth to power. That is the aim of my committee.

Q11 **Lord Powell of Bayswater:** I was on the committee last time you came, Mr Gibson, and very helpful you were. It is very nice to see you back. My question is about the post-implementation reviews, a pretty disappointing area. With your experience of business, you will know that a post-implementation review or a post-investment review is a crucial part of management's ability to run a company.

They appear to have virtually no relevance in Whitehall at all, judging by the fact that only 40% of those that are required by law are actually conducted, which means that 60% are not. Presumably, government is therefore complicit in breaking the law. It sounds not a very satisfactory position to be in. How do you account for the fact that people in Whitehall get away with not observing the law in this area, and have you protested against it?

Stephen Gibson: We certainly have protested against it. I have written a number of times. We have blogged. In our annual reports, we have drawn attention to the weaknesses of the departmental processes in doing, as you say, a post-implementation review on only four out of every 10 regulations when it is due.

There are a number of reasons for that. It is never as sexy or as exciting for either Ministers or civil servants to review past policies, as opposed to preparing new policy proposals that grab the headlines, but it is very important. It is an important way by which we review whether regulations are working, whether they have unintended consequences or whether they are imposing unnecessary costs on businesses or society.

We hope that the new focus in the new Better Regulation Framework will raise the responsibility and the delivery of post-implementation reviews. The other big change that we hope will improve this is the fact that the preliminary work, the final impact assessment and the options assessment should be more focused on monitoring and evaluation plans. They should set out, early on in the pre-implementation analysis, what they expect the regulation to deliver, how they are going to monitor that, what information they will capture, so that they can check whether it is actually working, and what the success factors will be to assess, when you come to do the evaluation and the review, whether it has been a success.

Obviously, things change between setting out a regulation and reviewing it, but that should be very helpful in assessing whether you should keep a regulation, whether you should revise it in some way or whether you should remove it because it is either not necessary or not working as expected.

Lord Powell of Bayswater: Presumably, by suppressing reviews and not having them, government is avoiding disinterring some bodies it might not wish to see, failings and other things. It is a way of suppressing errors in government.

Stephen Gibson: We do not know the benefits that have not been had by not doing the post-implementation reviews, but if post-implementation reviews are done well they should highlight whether the regulation is working or how it might be revised to make it more effective, because things change: technology changes; markets change.

We learn more by doing, by actually implementing the regulation, and that should be taken account of and changed. Lots of Government Ministers and politicians talk about a desire to reduce the burden of regulation. That is where you can get the biggest bang for your buck, looking at the huge stock of regulation and seeing where it is necessary and where it is, frankly, not necessary.

Lord Powell of Bayswater: Where will the results of the reviews that are conducted be published? Will they include your comments?

Stephen Gibson: The reviews should be published on the departmental websites and the legislation.gov.uk website that is associated with all the regulations. Our opinions will be published on our website and linked to the legislation website.

Lord Powell of Bayswater: It is a sad story.

Stephen Gibson: We hope it will improve.

Q12 **Lord Russell of Liverpool:** Did we hear you correctly earlier when you said there was going to be a launch tomorrow?

Stephen Gibson: Indeed, you did.

Lord Russell of Liverpool: Will you just tell us a bit more about that?

Stephen Gibson: More than 100 stakeholders have been invited to come. Lord Johnson, who is the Minister for Regulatory Reform in the Department for Business and Trade, will give the opening address. I will speak. Lord Lindsay, a former member of this committee, will speak. We also have the director general of the Institute of Directors as a representative of one of our stakeholders. We will have stakeholders from all business representative groups, civil society organisations, consumer organisations, think tanks, et cetera. If you would like to attend, I am sure it is not too late to get in contact with the secretariat and get an invitation.

The Chair: Baroness Lea of Lymm has volunteered to be present from the committee.

Stephen Gibson: That is excellent. I look forward to seeing you, Baroness Lea.

Lord Russell of Liverpool: For future reference, if another such event comes along, I suspect the committee would be very interested in having advance warning.

Stephen Gibson: I believe the Lord Chairman was invited.

Lord Russell of Liverpool: Thank you very much. Can you just explain the reporting lines? To whom or to what body do you report in, and how does that interaction work?

Stephen Gibson: We are an arm's-length body. I am appointed by the Secretary of State, which is approved by No. 10. I do not report in to anyone. We are sponsored by the Department for Business and Trade. I have an annual review with a senior civil servant in the Department for Business and Trade, but there is no opportunity for promotion, bonuses or anything like that. We are an independent body and we sit as an independent body. We are appointed for fixed terms of office, generally three-year terms of office, and you can have two terms. That is the way it works.

Lord Russell of Liverpool: At the very beginning of your very helpful evidence you went through your five objectives, but at the end you said it is possible that some of those might change. Can you explain a bit more about that?

Stephen Gibson: For example, the reference to final-stage impact assessments might well change to options assessments. We will have to review these objectives in the light of the new Better Regulation Framework.

Lord Russell of Liverpool: Is there anything we have not covered that you would like to add?

Stephen Gibson: The UK Better Regulation Framework is very highly regarded internationally. I am often asked by colleagues in similar scrutiny bodies across Europe, in India and around the world for advice on how they can repeat the successes of the UK model, but any framework, whether it is the old one or the new one, will not work unless it has the full support of Government Ministers.

Ministers need to be committed to ensuring that their departments gather high-quality evidence, undertake proper analysis and do that in time to allow proper independent scrutiny. Ministers and departments need to see the Better Regulation Framework as a helpful part of policy-making. That is really important to improve the quality of regulation, avoid unnecessary burdens and ensure that regulations are achieving their objectives.

We are committed to play our part in doing that, but it is necessary for other people to play their part for the whole structure to work as effectively as possible.

Lord Russell of Liverpool: Thank you very much for that warning shot across the bows of, I suspect, several Ministers.

Q13 **Lord Thomas of Cwmgiedd:** You mentioned the figure of only 40% of instruments that are required by law being reviewed post implementation. Do you keep a record, department by department, in respect of that and other matters where you are not happy?

Stephen Gibson: We currently do not, because the relationship between post-implementation reviews and impact assessments is fuzzy at best. What we are proposing to do with the new Better Regulation Framework is to have a much clearer record, so that we will be able to call out departments on poor performance. I hope that will be one of the mechanisms through which we encourage departments to be better at doing the post-implementation reviews.

Lord Thomas of Cwmgiedd: There is something about naming and shaming that seems, in the modern world, to be effective. One wonders, therefore, if you were able, in the various areas you deal with, to help with the task of shaming the bad departments.

Stephen Gibson: Currently we name all the red-rated opinions and the late opinions. We name and shame those.

Lord Thomas of Cwmgiedd: What about tables of numbers, so that a department can be seen as being at the top or bottom of the table?

Stephen Gibson: That is certainly something we are considering with the new Better Regulation Framework.

Lord Thomas of Cwmgiedd: It would be quite helpful for us to have that information as well.

Stephen Gibson: I agree. That would be a very powerful tool.

Lord Thomas of Cwmgiedd: No one ever wants to be at the bottom of such a table.

Stephen Gibson: Indeed. As an example, the Office for Environmental Protection and the National Audit Office produced a report showing that more than 60 post-implementation reviews had not been done by Defra. They called those out and there were questions in Parliament about that. The Minister at the time, Thérèse Coffey, committed to catch up on the backlog by the end of this year. This was last autumn. We hope that is an example of how shedding some light on departmental failures can push Ministers to deliver.

Q14 **The Chair:** Mr Gibson, it would be hugely helpful for this committee to be kept informed about any such actions that you take as a committee vis-à-vis certain departments.

Stephen Gibson: I am very happy to keep you involved. I know the secretariat already has good working relationships with the clerks, et cetera, so we are very happy to do that.

The Chair: When the Department for Business and Trade came to give evidence to us about the reformed Better Regulation Framework, it said that one great advantage would be more flexibility to adjust.

Stephen Gibson: When you say flexibility to adjust, in what areas was it suggesting that there would be more flexibility?

The Chair: That was just its bald statement. I was hoping you might help me in identifying those areas where you could challenge the department and say, "You said you were going to give us more flexibility to adjust under this new framework". What are the areas where you could?

Stephen Gibson: This relates to the point that I made a bit earlier in the questioning about the framework not being set on a statutory basis. Previously, it was set under the Small Business, Enterprise and Employment Act, the SBEE Act, which set out the rules for the implementation target[1] and how the Better Regulation Framework would work. That is no longer the case.

There is more flexibility in the sense that, if we see elements of the Better Regulation Framework not working, it does not require legislation or secondary instruments to change that. It can be done through collective agreement. I believe that is what you mean by "more flexibility".

Although it is five months since the framework was launched, we have yet to see options assessments come through the new framework. Everyone is still using the old framework. There is a 12-month transition period. As soon as we see things coming through, we will be better informed as to what works well and what needs revising.

The Chair: The department also said that we would benefit, as the Secondary Legislation Scrutiny Committee, from better statistics from the RPC. Would you like to clarify that a little more?

Stephen Gibson: Yes. We are developing a much better database of regulations, from the starting point right the way through to post-implementation review. We hope to publish those, put them on our website and shed some more light. That will allow you to make comparisons between departments or comparisons between different types of regulation, so that you can focus your attentions as appropriate.

The Chair: How is your relationship with the Department for Business and Trade? Do you have regular meetings in order to go through the areas, for

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[1] This is a reference to the business impact target.

instance, that we have been discussing today?

Stephen Gibson: We certainly have very regular meetings with what is now the Smarter Regulation Directorate and was the Better Regulation Executive. I have a meeting every two weeks with the director there and we have very good relationships. I also have regular meetings with the sponsoring Minister, although I am now on my seventh sponsoring Minister over the last year or so. That does not help.

The Chair: Have you been able to have one yet with the new Minister?

Stephen Gibson: I have met Lord Johnson twice. He attended our committee meeting last week, which was excellent. He is very engaged in this and I am very hopeful that we will move forward and be very successful with Lord Johnson now.

The Chair: This has been such an interesting and helpful session, Mr Gibson, and we are particularly grateful to you for your interesting reflections. We will carefully consider a number of the points you have made. Baroness Ritchie of Downpatrick indicated from your answer to her questions that there are areas that we will want to explore further as a committee.

Of course, all will become clearer as this new style of assessment becomes more common, but you and your team will be instrumental in ensuring that good-quality information is provided. You have certainly set the gold standard today. You have been very open and explicit with us, for which we are very grateful indeed. Thank you very much.