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This consultation response has been drafted by the named academic member of the Centre, who retains responsibility for its content.

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Response to 'Public Accounts Committee: Principles of Effective Regulation Call for Evidence'Introduction

The following consultation response to the request of the Public Accounts Committee has as its focus three broad themes that are relevant to the Committee's inquiry as to the use of regulation to secure policy objectives. These centre upon compliance strategies; engendering trust and the harnessing of 'best practice' to secure effective results. It is perhaps important to stress that many entities perform regulatory tasks and that these can range from those bodies concerned with the regulation of economic actors or professions to institutionalized redress schemes (including ombudsmen). Some entities charged with regulation perform multiple activities that give rise to competing demands upon their time. This is particularly true of local government.

Compliance

1. Effective regulation requires that all actors understand the rules, the role of regulation and its possible effects. It is noticeable that the National Audit Office (NAO) have twice highlighted that business confidence in regulators' knowledge about how regulation affects them remains low and that regulation is still viewed as an obstacle to business success.¹ This problem has a direct impact on both how regulation is perceived and its compliance effects. Further problems can arise where confusion exists as to the ambit of regulation at stakeholder level and when seeking wider public engagement. With the move from regulation focused on economic activity to broader policy goals that include all stakeholders, including the consumer to secure welfare and protection, there can be a direct impact on regulatory effects. Examples of the expanding role of regulators can be found by studying the increasing number of statutory duties of economic regulators, such as Ofgem, over time.² The propensity for non-compliance arguably becomes greater when the regulatory task widens. Compliance is the key to regulatory effectiveness. Deploying an economics approach would indicate that the concern is the credibility of the threat of enforcement and the cost to the firm of non-compliance. In other words, the enforcement body needs to be properly resourced and organised so there is a high probability of detecting non-compliance and the punishment for non-compliance needs to be sufficiently severe compared to the gains from non-compliance. However, when the regulation is adopted in more "social" or public protection contexts, as with food and health and safety regulation, the matter does not rest on simple enforcement. Here enforcement, if regulation is to be effective, should necessarily be the last resort (Hutter and Amodu, 2008; Ayres and Braithwaite).³ My research for the HSE into compliance and its effectiveness illustrates this point (Amodu, 2008).⁴ There are multiple motivations that businesses have for complying with regulations which are not limited to their enforcement, these extend to gaining a competitive advantage and reputational concerns.
2. Actors within this space may fail to appreciate the reach of regulation (this is especially true of those who are the object of regulation and consumers) or may perceive that their interests are

¹ National Audit Office, 'A Short Guide to Regulation', 3 August 2015 and September 2017, <https://www.nao.org.uk/wp-content/uploads/2017/09/A-Short-Guide-to-Regulation.pdf>

² See Harker, M. (2019), 'Statutory duties and energy regulation: a case study on Ofgem', Centre for Competition Policy Research Bulletin, Issue 38, Winter 2019, pp. 2-4,

<http://competitionpolicy.ac.uk/documents/8158338>, and Chapter 3: 'Institutions and Policymaking: A Tale of Increasing Complexity' pp. 32-45 in Deller, D. and Waddams Price, C. (eds.) (2018), 'Fairness in Retail Energy Markets? Evidence from the UK', Centre for Competition Policy and part of the UK Energy Research Centre's programme, <http://competitionpolicy.ac.uk/documents/8158338/8193544/CCP+Research+Bulletin+Spring+2017.pdf/486f1478-0629-45a4-8a64-66bf9e8dba4d> for the Ofgem case. Updated and additional diagrams for the increasing statutory duties of Ofwat and Ofcom are provided by Mosunova, N. and Reader, D. (with Harker, M.) for the National Infrastructure Commission, 'Technical annex: Duties diagrams for water, energy and telecoms – Centre for Competition Policy', Regulation Study, available at: <https://nic.org.uk/studies-reports/regulation/duties-diagrams-for-utilities/>

³ Hutter, B.M. and Amodu, T., (2008), 'Risk Regulation and Compliance: Food Safety in the UK', London School of Economics: London, <https://www.lse.ac.uk/accounting/assets/CARR/documents/S-R/Food-Safety-in-the-UK.pdf>; Ayres, I. and Braithwaite, J. (1992), 'Responsive Regulation: Transcending the Deregulation Debate', Oxford University Press: Oxford

⁴ Amodu, T. (2008), 'The determinants of compliance with laws and regulations with special reference to health and safety: A literature review', Health and Safety Executive Research Report RR638, <https://www.hse.gov.uk/research/rrpdf/rr638.pdf>

being diminished by regulation with detrimental effects (this may be particularly true of businesses). This is illustrated in the Health and Safety context, which the Media often berates, when the regulatory objective in terms of protection is significant. The mission of regulation can become obscured by the surrounding ‘noise,’ giving rise to increased regulatory burdens for those being regulated and Government generally. This can be particularly so in times of economic uncertainty. It is known that the compliance costs associated with regulatory effectiveness and, indeed enforcement, can be minimized when regulations are clear, targeted appropriately and certain, such that all who are involved are clear as to the regulatory expectations. For this reason it is perhaps appropriate for all regulators to be mindful of compliance effects at all times. However well regulations are designed, it does not follow that these can be easily translated into effective regulation unless the constellation of actors concerned, and their needs, are: (a) considered, (b) included within the process formulating the regulations, and (c), perhaps most importantly, the context within which the regulations are to take effect is understood. Transparency in the formulation of regulatory standards and their application, in addition to education, remain the key to regulatory compliance.

Trust

3. Whilst there remains an ongoing discourse surrounding the meaning of regulation, the efficient and effective delivery of regulatory goals is a critical element of ensuring economic prosperity and societal wellbeing. One aspect that is often overlooked is the role of regulatory ethics in ensuring that regulation is both credible and effective.⁵ The Regulators Code of 2014 and the subsequent work of the Committee on Standards in Public Life’s 2016 report on “Ethics for Regulators”⁶ set some broad parameters for securing effective regulation. What remains at issue is the extent to which frameworks for engendering a climate of trust can be created by regulatory bodies (of all types) themselves or by Government to maximise the ‘regulatory complex of efficacy’ and buy-in by both those being regulated and the wider public (including consumers).
4. Regulations that enhance credible trusting relations between actors should be the goal for effective regulation. The more that regulation is seen as trustworthy, in terms of (a) its perceived sense and logic, (b) perception of parity in treatment, and/or (c) credible enforcement, the greater the prospect of compliance and, indeed, confidence in the regulator itself. It is known that once trust in those performing regulatory tasks or the regulations themselves fails, there are relative losses for all concerned.
5. Being mindful of this fact, the Committee is encouraged to consider how best agencies can promote and explain their regulatory objectives in as clear a way as possible. While the NAO Report of 2021⁷ is to be welcomed, it is striking that much of the discussion focuses upon what may be termed the internal coherence of regulatory frameworks rather than making explicit the

⁵ See Amodu, T. (2017), ‘From Principles-based Regulation to ‘Principled’ Regulation?’, Centre for Competition Policy Research Bulletin, Issue 33, Spring 2017, pp. 5-7, <http://competitionpolicy.ac.uk/documents/8158338/8193544/CCP+Research+Bulletin+Spring+2017.pdf/486f1478-0629-45a4-8a64-66bf9e8dba4d>

⁶ See Jackman, D. (2016), ‘Ethics for Regulators’, report for the Committee on Standards in Public Life, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553826/David_Jackman_-_Ethics_for_regulators.pdf

⁷ National Audit Office, ‘Principles of effective regulation: good practice guidance’, May 2021, <https://www.nao.org.uk/wp-content/uploads/2021/05/Principles-of-effective-regulation-SOff-interactive-accessible.pdf>

aims and objectives of the regulatory task overall, especially to business and stakeholders. Illustrating this, there is currently considerable debate concerning the effectiveness of some of the strategies of Ombudsman Services (which performs regulatory tasks in the broadest sense in the energy context). Anecdotal evidence suggests that a misalignment exists with regard to the activities of the entity and consumer expectations.

Harnessing Best Practice

6. There is undoubtedly considerable learning within Government and beyond as to best practice. The UK Regulators' Network⁸, for example, functions reasonably well on this point. However in the absence of a formally institutionalized framework, it remains less clear how Intelligence/best practice is shared across all sectors to foster greater efficiencies through co-operation, collaboration and co-ordination and potentially ease the regulatory burden for those whose enterprise covers more than one sector. It is acknowledged that approaches to tackle this are not without risk however. The proliferation of statutory duties for regulators could complicate the regulatory mission and the argument remains finely balanced. Given that the UK has left the EU and so the focus of regulation will be important to ensure compliance with supranational as well as domestic needs, now may be an appropriate time to institutionalize the exchange of intelligence and expertise within the regulatory arena. This could be done by establishing a statutory duty of co-operation between regulators or establishing a multi-sector Meta- or Super-regulator to secure an alignment in general regulatory approach, that will apply to all those exercising regulatory functions including Ombudsman Schemes. It is to be stressed that although the literature is equivocal on the point, such an entity would not have specific regulatory duties itself but would exercise oversight over the activities of those exercising regulatory functions in the broad sense, to ensure a general level of consistency.⁹

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⁸ See <https://www.ukrn.org.uk/>

⁹ Deller, D. and Vantaggiato, F., (2014): Revisiting the Regulatory State: A Multidisciplinary Review Establishing a New Research Agenda CCP Working Paper 14-9
<http://competitionpolicy.ac.uk/documents/8158338/8235397/CCP+Working+Paper+14-9.pdf/49db203a-9326-4b94-b46e-dedcf12bd751>