

CONSULTATION ON REGULATORY BUDGETS
WILDLIFE AND COUNTRYSIDE LINK RESPONSE
NOVEMBER 2008

Wildlife and Countryside Link (Link) brings together 39 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 8 million people in the UK and manage over 476,000 hectares of land.

Link welcomes the opportunity to comment on this important consultation. We question the rationale for the introduction of regulatory budgets and their role in controlling net Government expenditure. Good regulation should not mean deregulation and we suggest that effective regulation is a necessary expense - a price that needs to be paid to sustain our natural environment.

A number of Link's members will be responding individually to this consultation. Our joint response therefore focuses on key issues of collective concern and is supported by the following 12 member organisations:

- Anglers' Conservation Association
- Association of Rivers Trusts
- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign for National Parks
- Friends of the Earth England
- Froglife
- Hawk and Owl Trust
- Herpetological Conservation Trust
- Royal Society for the Prevention of Cruelty to Animals
- Royal Society for the Protection of Birds

1.0 Overview

As much of the excessive degradation and exploitation of our natural environment is due to market failure, Link believes that a well-designed and enforced regulation system is essential. A balanced regulatory environment promotes the sustainable use of our natural resources, and underpins the UK's long-term economic success and a high quality of life for its citizens. We therefore fully support the Better Regulation Executive's five principles of better regulation, which state that regulation should be proportional, accountable, consistent, transparent, and targeted.

While Link fully support the principles of "better regulation" and efforts to ensure that existing and future regulation is as efficient as possible, we do not believe that a system of regulatory budgets is the right way forward for two main reasons. First, we believe that the system risks moving the UK towards 'deregulation' rather than 'better regulation'. The dangers of light touch regulation are all too stark in today's economic climate. Second, due to the practical

challenges of implementing a system of regulatory budgets, we do not believe that a system could be introduced that is consistent with the five principles of better regulation. These practical challenges, if unresolved, will result in a costly and cumbersome system of regulatory decision-making. Our objections are explained in more detail below.

2.0 Principle of Regulatory Budgets

Link does not believe that the consultation document presents sufficient evidence that the UK economy is under threat from excessive regulatory costs and therefore whether there is a need for a system of regulatory budgets. The assumption that the regulatory burden is excessive contradicts evidence presented in the consultation document, which shows that the UK has consistently been ranked as one of the best countries in the world to do business:

- In 2008, the World Bank Doing Business Survey placed the UK second in the EU and sixth in the world for the best business conditions;
- The Organisation for Economic Co-operation and Development (OECD) annual Going for Growth Survey 2005, ranked the UK top among the G8 countries and second among all OECD countries for liberal product market regulation;
- The OECD Economic Survey of the United Kingdom 2005 ranked the UK as first of the G7 countries and of the 30 OECD countries in terms of its macroeconomic performance.

We are concerned that the proposed system does not give adequate weight to the benefits of regulation. There is no mention in the consultation document of the risks of setting the budget level too low or the resultant loss of regulatory benefits. It is acknowledged in the consultation document that it is “impractical” to measure the total costs of regulation or to ascertain the level at which regulatory costs threaten the UK economy. This means that budgets risk being set too low or too high. If budgets are set too low, critical existing regulations may be removed and future regulations will not be brought into force. The consequences of ‘light touch’ regulation are all too clear in the current economic turmoil. If critical environmental regulation is lost, the UK economy will shift to a more unsustainable path and our quality of life will diminish.

3.0 Practical Considerations

The concept of regulatory budgets has been considered in the USA amongst other countries for many decades. However, the practical challenges of implementing such a system have resulted in the concept never having been adopted. The consultation document leaves many practical issues unresolved.

Key to the system of regulatory budgets is the setting of the budget level for each Department. There is little detail in the consultation document on how this will be done although it is understood that Ministers will set budgets via an undefined political process led by BERR. This needs to be explained in more detail. At the point when a budget runs out we question whether the regulatory process would stop or whether decisions would be delayed until a new regulatory budget is available. Link is concerned that setting regulatory budgets would be a move towards cost cutting and side stepping regulatory mechanisms and this is unacceptable.

A significant practical obstacle to a system of regulatory budgets is its reliance on Impact Assessments (IAs) to accurately and robustly estimate the costs of regulation. As the benefits of regulation are proposed to be considered at the budget setting stage, IAs must also accurately estimate the benefits of regulation.

Evidence suggests that the range of impacts that are included in Regulatory Impact Assessments (RIAs) is limited and, in particular, they downplay the environment in general and environmental benefits in particular. A review by the UK's National Audit Office of a cross-section of RIAs found that half included 'poor quality analysis of environmental and social impacts', and 80 percent exhibited 'some weak elements' in this regard" (National Audit Office, 2006)¹.

In part, this is due to the difficulties in valuing environmental impacts, which do not have a market price. For example, there is no 'price' for clean air, productive soil, or an inspirational countryside view. It is difficult to put a financial benefit on the value of pet keeping. The techniques of revealed and stated preference can be used to place values on these non-market goods. However, in some cases these techniques have been subject to criticism. Some criticisms of the techniques can be overcome by ensuring well-designed and well-implemented assessments. However, as shown by the IAs of the Marine Bill, Water Framework Directive, and Nitrates Directive, even when best practice guidelines are followed and substantial resources invested in the IA, it is not possible to value all the benefits and costs.

The IA for the Water Framework Directive (2000/60/EC) provides an example of this. The background research commissioned for the IA involved some of the World's leading environmental economists (including Prof. Carson and Prof. Bateman) and cost in excess of £0.8 million. In spite of this, significant uncertainties remain surrounding the costs and benefits. Other key benefits, including the benefits of adapting to climate change provided by having a higher proportion of water bodies in good ecological status, remained un-monetised. The three estimation methods used in the IA produced vastly different estimates of the benefits, with the result that the correct range to use in the impact assessment was unclear. Depending on the point within the range, the benefits are estimated to be a third greater or less than the costs.

The recent Nitrates Directive partial RIA is an example of an IA that did not attempt to monetise the environmental benefits of the proposal. Instead, the costs of the measures were compared with the resulting proportionate changes in water quality. In this instance, it is difficult to see how a budget setting process would have been able to take into account the potential benefits of the Nitrates Directive in the UK.

The Animal Welfare Act was the first animal welfare law that had a RIA. The RIA could not place financial values on many of the benefits that would arise from the Act such as improving levels of pet care or reducing animal cruelty as little data existed on intangible societal values such as pet ownership or the feeling that improving animal welfare was an important part of a civilised society which consistent public polling showed.

Clearly for the budget to work effectively, costs will also need to be monetised. However, in many RIAs it is not possible to accurately monetise all costs. It is not clear in the consultation how the system will deal with costs that either cannot be monetised or are uncertain. For example, costs estimated in the IA of the Water Framework Directive resulted in a range of cost estimates differing by a factor of ten on some measures.

Another key challenge in implementing a system of regulatory budgets that is inadequately addressed in the consultation document is how IAs will be reviewed for quality assurance. The system presents incentives for IAs to under or over-estimate the true costs and benefits

¹ National Audit Office (2006). Regulatory Impact Assessments and Sustainable Development – Briefing for the House of Commons Environmental Audit Select Committee.

thereby undermining the whole system. While it is not discussed in the consultation document, it would appear likely that independent auditors will be required to oversee the quality of IAs. This is likely to be extremely costly and is not included in the IA of this proposal.

We believe the suggested timetable for introducing a system budget is too short and urge the Government to extend its consultation period. The risks of introducing a system of regulatory budgets without ironing out the practical challenges cannot be overstated. This will also enable more time to assess recent moves by the Government to improve the regulatory decision-making process, notably the new Impact Assessment template, which was introduced in May 2007. The template was introduced with the aim of improving the quality and transparency of the cost-benefit analysis underlying regulatory decision-making and may negate the need (perceived or otherwise) for a system of regulatory budgets.

Link questions the rationale for the introduction of regulatory budgets and their role in controlling net Government expenditure. Good regulation should not mean deregulation and we suggest that a focus on proportionate cost recovery may be a more profitable line of enquiry. Effective regulation is a necessary expense and a price that needs to be paid to sustain our natural environment.

**Wildlife and Countryside Link
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