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NJUG response to Government Consultation on a System of Regulatory Budgets

I am writing on behalf of the National Joint Utilities Group (NJUG) in response to the Department for Business, Enterprise and Regulatory Reform's consultation into a system of regulatory budgets.

Introduction

NJUG was formed in 1977 and is recognised as the only UK industry association representing utilities on street works issues. Our focus is on promoting: safety; the prevention of damage to underground assets; quality and sustainability of street works; sharing of best practice; self regulation; and a two-way working relationship with Government, local authorities, and other key stakeholders to minimise disruption. To further these aims we launched a *Vision for Street Works* in April 2007, which was recently updated to include concrete examples of how our members are delivering on its commitments. The latest version of the *Vision* can be viewed online at http://www.njug.org.uk/uploads/Vision_for_Street_Works.pdf.

NJUG's current members are Energy Networks Association (representing electricity and gas), Water UK (representing all water and wastewater companies), National Grid, BT, Virgin Media and THUS, a Cable and Wireless Business. Our associate members are Clancy Docwra, Skanska McNicholas, Balfour Beatty, Morrison, Morgan Est, NACAP, PJ Keary, First Intervention, Carillion and Enterprise. Including members through trade associations, NJUG represents thirty-eight utility companies.

Many of our members are actively supporting a number of Government sponsored projects including the 2012 Olympics and Paralympics, and Crossrail. Our members also represent utilities in discussions with Government and other key stakeholders to seek to ensure that any legislative or regulatory proposals are fair, workable and do not affect the safe provision of our essential services or place unnecessary burdens on utilities or their customers. For this reason, we have recently been working very constructively with Kent County Council on their proposed street works permit scheme, following the introduction of the Traffic Management Act 2004 Permits regulations earlier this year.

Our members are involved in numerous voluntary regulatory schemes to ensure that best practice within the street works sector is maintained to the highest level. For example, our members are involved in Advanced Planning schemes in both the West Midlands and London, to promote the co-ordination of street works and negate the need for legislative pressure in this area. Similarly, NJUG is the utility arm of the Highway Authorities and Utilities Committee, known as HAUC(UK), working collaboratively with local authorities to better standards of road and street works in England, Northern Ireland, Scotland and Wales. One of the primary roles of HAUC(UK) is to ensure a high quality of standards within the sector through the production of workable, efficient and effective Codes of Practices and regulations, which are drafted by the Committee's numerous technical Working Groups in co-operation with the Department for Transport.

NJUG has a record of working in partnership with Government and welcomes this opportunity to respond to such an important consultation. NJUG firmly believes that regulation should only be used as a last resort once existing legislation has been exhausted and voluntary measures have been proven to be ineffective and / or inoperable. Furthermore, regulations must always be drafted in full consultation with all effected stakeholders to ensure Government is fully informed of the technical details surrounding the subject they are considering.

NJUG's submission

Q1: Do you consider that the Government should proceed with a system of regulatory budgets as a way of managing the costs of new regulation?

NJUG fully supports a system of departmental regulatory budgets as a way of managing costs and ensuring that all new regulations are necessary and any resulting burdens on business are both unavoidable and minimal.

Regulatory budgets will not only allow for a system of prioritisation amongst regulatory proposals, but also a clearer picture when it comes to analysing the costs of regulations. NJUG hopes that such an enhanced form of scrutiny would seek to ensure that any regulatory proposals put forward are as a last resort, following exhaustive consideration of improvements to existing legislation and possible voluntary measures industry could pursue (as per Government's own better Regulation principles).

NJUG welcomes the Government's "intention to keep regulation to a minimum by reducing unnecessary burdens on business" and supports the claim that there is a "finite capacity for the economy to absorb the total costs of regulation and at present no mechanism for the Government to directly manage these costs."¹

Q2: Do you think regulatory costs should be scored at the point of enactment or when they come into effect?

NJUG believe that regulatory costs should be scored at the point of enactment rather than when they come into effect. This is because costs start from the earliest point, in reality before enactment due to the amount of preparatory work that must be undertaken. If regulatory costs are only taken from when regulations come into effect, they will fail to recognise and capture all the time and work (and therefore financial outlay) which has gone into preparing for the new regulatory system.

Q3: What, in the range of three to five years, would be an appropriate budget period?

NJUG feels the budget period should be set at five years to obtain the broadest picture possible of the cost and effect of any new regulations.

Q4: 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?

NJUG supports the three main stages outlined in paragraphs 2.9 to 2.31. However, NJUG would urge the Government to ensure that any Impact Assessment process undertaken be as robust as possible. This has not been the case with previous Regulatory Impact Assessments such as that conducted to justify the Traffic Management Act 2004. This was backed up by research conducted by the National Audit Office², which argued that there had been a lack of clarity and consistent weakness in the assessment process, highlighting 'two areas of particular concern: costs and benefits; and monitoring and evaluation'. Additionally, NJUG commissioned the independent Regulatory Policy Institute to produce a Report on the Regulatory Impact Assessment accompanying the permit regulations, which highlighted a range of concerns³.

NJUG accepts and supports the use of effective Impact Assessments, but stresses the need for these to be relevant and robust throughout the policy making cycle.

Furthermore, NJUG would encourage extensive consultation with all stakeholders throughout the budgeting process, particularly when setting the budget. Within "Regulatory Budgets: A Consultation Document" Government express a desire to "increase transparency and facilitate external input"⁴, and NJUG would encourage exhaustive consultation as the most effective way to do this. Indeed, when necessary and proper

¹ Page 9, "Regulatory Budgets: A Consultation Document"

² NAO (28/06/2006) 'Evaluation of Regulatory Impact Assessments 2005-2006'

³ Review of the Regulatory Impact Assessments accompanying the introduction of the Traffic Management Permit Scheme (England) Regulations", Regulatory Policy Institute, June 2008, http://www.njug.org.uk/uploads/0809_Permit_schemes_-_RPI_final_report.pdf

⁴ Page 20, "Regulatory Budgets: A Consultation Document"

consultation is not undertaken, regulatory measures often become ineffective and impractical, which reflects poorly on all parties involved and potentially increases costs with little resulting benefit.

NJUG supports the Government's proposed 'shadow rollout' of the regulatory budget system, and feels this would provide an opportunity for thorough consultation with stakeholders and testing of the system to ensure the best possible outcome.

Q5: Which forms of Government action should be within the scope of regulatory budgets?

NJUG agrees that the regulatory budget system will need to be simple and clear in order to "enable stakeholders to effectively scrutinise how well the budget holders are operating"⁵. To this end, NJUG would agree with including those areas defined as regulation in the Standard Cost Model (as laid out within "Regulatory Budgets: A Consultation Document").

NJUG would stress that all statutory regulation must be included, but feels that by not including voluntary agreements with business, an incentive may be produced for Government departments to promote such self-regulation above legislative action. This is something NJUG firmly believes in, due largely to its own involvement in many such initiatives, such as street works advanced planning agreements instigated voluntarily between utilities to improve the coordination of works.

Q6: Do you agree with the outline of this approach to EU and internal originating regulations? Are there other issues to be addressed in the context of EU and internal commitments?

NJUG agrees that where possible, European regulations must be included in regulatory budgets. However, we do acknowledge that on occasion time pressures will not allow for this to be the case. In such instances, NJUG would urge Government to prove to stakeholders that this is the case and provide justification for why certain EU regulations could not be covered within departmental regulatory budgets. Only through such a transparent system will belief in the system exist.

Q7: Is the approach outlined in paragraphs 3.14-3.22 to costs arising from specific regulatory actions appropriate?

NJUG would disagree with the point made in paragraph 3.15 that enforcement activities to ensure compliance with regulations should be excluded from the regulatory budget system. NJUG feels this would undermine the initiative's effectiveness and limit its ability to forecast the total regulatory impact upon business.

Q8: What are your views on the approach set out in paragraphs 4.6-4.14 for treating independent regulators in a regulatory budget?

NJUG would wish to see as many regulators and competition authorities included in a system of regulatory budgets as possible, to fully appreciate the additional burdens their regulations place on industry. At the same time, NJUG is aware of the constraints and difficulties this presents, as set out in paragraphs 4.6-4.14. After all, regulators are "governed by statute and they clearly cannot go beyond that statute"⁶. However, for any new regulatory system such as this to be as effective as possible, there is a need for as much to be included / covered as possible.

NJUG would support a system of separate budgets for each institution and department, to allow for direct accountability of costs. Such a clearly defined system would allow for stakeholders to understand and see from which institution or department costs stem. In the field of street works, the Department for Transport is the Government department that holds responsibility over the sector and out of whose budget street works regulation would stem. At the same time, wider environmental, sustainability and safety legislation initiated by other Government departments and regulatory measures imposed by regulators such as Ofgem, Ofwat and Ofcom also affect our stakeholders.

While an umbrella 'family' system of budgets may appear simpler, there is a possibility such a system could impose more complexities than first considered. For example, if a 'family' system is introduced, the 'families' will

⁵ Page 25, "Regulatory Budgets: A Consultation Document"

⁶ Page 32, "Regulatory Budgets: A Consultation Document"

need to be defined, for example by sector. Street works could represent one sector. However stakeholders would be at rights to call for more and more 'families' to fully acknowledge the complexities of our economy and its various industries. Therefore NJUG believes that a clearly defined system along the lines of institution, regulator and department is in fact the simplest approach to take to a system of regulatory budgets.

Q9: Do you agree with the proposed categories of costs to include in a regulatory budget as outlined in Chapter 5?

NJUG agrees that the “department of the Minister who signs the Impact Assessment for a given piece or part of regulation” should “score the costs of the regulation against their budget”⁷.

While NJUG agrees that a system of regulatory budgets should not “prevent cost-effective action on key policy areas”⁸, we believe that this will not be the case if a fair, efficient and workable system is implemented. All policy areas are after all equally essential to their specific remits and therefore regulatory budgets, to be fair, must cover all policy briefs equally without exception in order for the system to be viewed as credible by stakeholders.

NJUG supports the inclusion within the regulatory budgets of “all the costs associated with regulation that have an impact on...business”⁹. NJUG acknowledges the Government’s leniency towards public sector organisations, but stresses the importance of business not only towards the establishment and promotion of a healthy economy, but as in NJUG’s case, towards the provision of essential services without which society would not be able to operate in its current format.

Q10: What are your views on the proposed assessment methodology outlined in Chapter 6, including whether budgets should be set on a gross or net basis?

NJUG welcomes the proposal for regulatory budgets to “take account of direct and indirect costs as well as benefits, including possible unintended effects” so as to take account of the “full economic impact of new regulations”¹⁰. NJUG fully supports this approach based on its experience of the cost impact of new regulations. For example, as a result of the Traffic Management Act 2004 Permit regulations, NJUG has continually stressed that there will be an inevitable increase in costs for the consumer, as a result of the increased costs to utilities. While an unintended effect of the regulatory burden placed on the utility industry, it was not a factor acknowledged by Government.

NJUG supports the monetary valuation of costs and benefits of regulations as part of the budgetary system, and agrees that these valuations must be included in any Impact Assessments. However, NJUG is wary that Regulatory Impact Assessments (RIAs) are not always conducted as robustly and rigorously as they could or should be. This was certainly the case with the RIAs surrounding the Traffic Management Act 2004 regulations, which were highlighted by the National Audit Office as not meeting the necessary standard¹¹. More recently, the RIAs surrounding the Traffic Management Act 2004 Permit regulations were heavily criticised in an independent report¹² by the think-tank The Regulatory Policy Institute who listed a large number of failings which NJUG believes will lead to an unfair, imbalanced and unworkable regulatory framework for street works. It is imperative that any RIAs conducted as part of the proposed regulatory budgets system be as thorough and transparent as possible to maintain stakeholder confidence and to prove that the system will not only be workable, but also effective and worthwhile.

NJUG agrees with the Government’s proposal for the regulatory budgets to be set on gross cost estimates of regulation, and that budgets should be announced alongside the anticipated benefits. NJUG also agrees with a “single budget based on equivalent annual costs” in order to “take account of the full economic cost of new regulations over time, and...incorporate one-off transitional costs and annual recurring costs”¹³.

⁷ Page 35, “Regulatory Budgets: A Consultation Document”

⁸ Page 35, “Regulatory Budgets: A Consultation Document”

⁹ Page 35, “Regulatory Budgets: A Consultation Document”

¹⁰ Page 37, “Regulatory Budgets: A Consultation Document”

¹¹ NAO (28/06/2006) ‘Evaluation of Regulatory Impact Assessments 2005-2006’

¹² “Review of the Regulatory Impact Assessments accompanying the introduction of the Traffic Management Permit Scheme (England) Regulations”, Regulatory Policy Institute, June 2008, http://www.njug.org.uk/uploads/0809_Permit_schemes_-_RPI_final_report.pdf

¹³ Page 39, “Regulatory Budgets: A Consultation Document”

Additional comments

The National Joint Utilities Group (NJUG) and its member companies support the efforts of the Government to revise the regulatory system in the UK and NJUG is continually engaging with key stakeholders to ensure that this important issue is addressed.

NJUG feels that full consideration must be given to alternative forms of classic regulation. We welcome the commitment of all major political parties to the principles of 'Better Regulation', but feel that the Government must honour this commitment. It is NJUG's view that Governmental departments have sometimes failed to embrace the spirit, principles and practices presented by the principles of better regulation, for example during the passage of the Traffic Management Act 2004 (TMA).

We believe that, in line with its better regulation principles, Government should always fully consider voluntary measures or existing legislation before introducing new regulatory measures. For instance, we were extremely disappointed by the failure of the Government to respond to the concerns that we expressed during the passage of the TMA, warning of replication between this Act and the New Roads and Street Works Act 1991 (NRSWA), which resulted in already heavily burdened utilities being targeted with yet more legislation.

NJUG feels that there are already excessive and unnecessary regulatory burdens on the utilities sector. In the area of street works alone, utilities are faced with the TMA, Communications Act, NRSWA, and London Local Authority Bills to name but a few. Whilst each regulation may on its own appear eminently sensible and not too burdensome, the cumulative effect is increasing costs and bureaucracy for utilities, which ultimately is having an effect on the competitiveness of UK plc, and further increasing the cost for consumers.

It is our belief that effective attempts to deliver 'Better Regulation' will be beneficial to the utilities sector and the UK economy as a whole. We recognise Government efforts to streamline and simplify regulations and support measures designed to ensure that effective regulation is developed through greater transparency and Regulatory Impact Assessments produce comprehensive cost / benefit analysis.

Sufficient and justifiable cost / benefit analysis should be the foundation of any regulation. It is NJUG's belief that to date, such evidence has not been produced to substantiate a number of the regulations found within the TMA, resulting in an increase in costs that will inevitably be felt by the consumer. Nonetheless, NJUG supports the Government's commitment to reducing congestion and establishing a sustainable society and has therefore committed to working in partnership with the Department for Transport and Local Authorities to try and initiate a smooth transition into the system introduced by the TMA.

However, NJUG is still particularly concerned about the Government introducing further legislation, and believes the refinement of, and adherence to, existing legislation and use of non-regulatory measures is preferable to additional regulation. It is our belief that the current system encourages Government Ministers and officials to introduce new legislation and regulation rather than consider self-regulation and/or non-regulatory measures. This would appear to go against the Government's publicised commitment to 'Better Regulation', which is currently supported by all major political parties.

For this reason, NJUG fully supports the introduction of a system of regulatory budgets to ensure new regulations are only ever brought in as a last resort, when all other possible avenues have been considered and tested.

NJUG would welcome the opportunity to elaborate on arguments included within this consultation response, and to answer any queries that the Department for Business, Enterprise and Regulatory Reform may have. If the Department desires this, please do not hesitate to contact me on 0207 340 1423 or at info@njug.org.uk.

Yours sincerely,



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