Response ID ANON-17TM-3S2D-5

Submitted to Reforming the framework for better regulation
Submitted on 2021-10-01 16:50:51

About you

What is your name?

Name:
Nicholas Shaw Nunez

What is your email address?

Email:
nshawnunez@ctpa.org.uk

What is your organisation?

Organisation:
The Cosmetic, Toiletry and Perfumery Association

Are you happy for your response to be published?

Yes

Would you like to be contacted when the consultation response is published?

Yes

Where did you hear about this consultation?

Where did you hear of this consultation?:
Email from BEIS

Other (please specify):

Are you replying on behalf of your organisation or as a private individual?

On behalf of my organisation

The common law approach to regulation

1 What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common law-focused approach?

Please provide your answer in the text box below :

The CTPA does not have any recommendations with regards to the use of a common-law approach at this point.

2 Please provide an explanation for any answers given.

Please provide your answer in the text box below:

The background provided through the consultation document, read in combination with the TIGGR report, provides the recommendation of a ‘common-law’ focused approach to regulation. However, greater clarity must be provided with regards to how this approach is intended to work in practice before it is implemented.

Additionally, highlighted in the consultation was the understanding that "the benefits of the approach are likely to vary from regulator to regulator”, and CTPA would encourage the caution that this statement provides when looking at the applicability of this approach.

While not opposing the proposed approach, in fact we believe that there might be areas in which a non-regulatory approach is appropriate within the cosmetics industry and wider environmental considerations, it should not be introduced without due consideration to the impact to consumers and the environment. Further, other aspects of this consultation should be taken into account when seeking to apply this approach with individual regulators, for example, accountability of regulators and implementation of the proportionality principle.

3 Are there any areas of law where the Government should be cautious about adopting this approach?

Please provide your answer in the text box below:

Legislation and regulations relating to consumer and product safety, including the UK Cosmetics Regulation.

4 Please provide an explanation for any answers given.

Please provide your answer in the text box below:

For the cosmetics sector, the UK chose to maintain the high safety standards of the EU Cosmetics Regulation. This is supported by the UK cosmetics industry. The process of retaining this legislation ensured that, at least for cosmetics, the legislation remained science-led, risk-based, and consumer safety-focussed. The UK Cosmetics Regulation does not currently impose unnecessary burdens, and industry is well adapted to, and familiar with, this regulatory framework.
Guidance and codes of practice enable industry and enforcement authorities to have a common understanding of the areas addressed by the Regulation. They allow businesses to adapt their practices to meet regulators' expectations and enable enforcement agencies to have clear limits to their activities. However, unclear guidance could provide a level of uncertainty which can be a challenge to businesses, unsure of how best to meet the guidance requirements. Therefore, non-regulatory approaches should be seen as an aide to solid and established regulatory frameworks and not as a substitute.

5 Should a proportionality principle be mandated at the heart of all UK regulation?

Yes

6 Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

No

7 If no, please explain alternative suggestions.

Please provide your answer in the text box below:

The UK cosmetics industry would be greatly in favour of the Proportionality Principle underpinning the way in which the UK regulates, and CTPA fully supports regulation which focusses on managing real and identified risks in a cost-effective manner. As such, the risk-level and outcomes-focussed approach are indeed ways in which the proportionality principle should be applied when considering new regulatory and non-regulatory measures, but these should not be the only considerations.

For example, the Proportionality Principle should be adopted alongside the correct application of the risk-based Precautionary Principle in the UK. The Precautionary Principle states that where there are threats of serious or irreversible environmental damage, a lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures. However, it is misapplied when viewed as a tool to remove the absolute possibility of risk or when used to propose regulation based on hazard alone, and it does not require action to be taken in all such cases. Therefore, the application of the Proportionality Principle in combination with the Precautionary Principle would require any measures to be cost-effective and consider wider societal impacts.

Also important is that the proportionality principle consider the scientific, technical and economic feasibility of businesses to be able to reach the desired outcome. For example, if the technology is simply not available, or an alternative business practice is vastly more costly, then the measure cannot be considered proportionate. In these instances, the focus on the right outcome should not be able to supersede the proportionality principle.

This approach and considerations would effectively enable the UK to strike the right balance of strong and essential protection of the environment and health and safety, alongside achieving broader benefits to society and the environment brought by innovation and growth.

The role of regulators

8 Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

c. Creating reporting requirements for regulators

Please provide additional information in the text box below:

The CTPA does not have a view on whether competition should be embedded into guidance or statutory objectives, nor views on the applicability of these objectives to individual regulators. However, we strongly believe that any objectives established should ensure that there is a system which allows the reporting and review of the regulators' success in achieving the desired objectives to ensure responsibility and accountability.

9 Should innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

d. Other (please explain)

Please provide additional information in the text box below:

An alternative to the inclusion of a general commitment to the support of innovation into statutory requirements or guidance, a clear framework intended to help regulators achieve the objective of promoting innovation should be provided. For example, funding to help new technologies progress from the concept stage to a commercially feasible scale-up stage, regulatory acceptance of new, non-animal testing methodologies to enable the approval of new chemicals for certain applications including cosmetics.

10 Are there any other factors that should be embedded into framework conditions for regulators?

Please provide your answer in the text box below:

If we take consideration of how the proportionality principle being mandated at the heart of the UK regulation, this should also be embedded into the statutory objectives and subject to reporting requirements. This would mean that it is no longer a principle, but a requirement.
Clear information on how to implement the proportionality principle should be provided. For example, how to calculate the impact on both businesses and downstream users, such as the consumer, of regulatory measures. Regulators should be provided with information on how to objectively determine whether the costs and benefits are in proportion.

11 Should the Government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules, rather than legislation?

Yes

12 Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes?

13 Are there alternative options the Government should be considering to increase the number and impact of regulatory sandboxes?

Please provide your answer in the text box below:

The regulatory sandbox models have not been tested in areas like the cosmetic sector, and CTPA is unsure about their applicability with regards to consumer and product safety. However, the cosmetics industry remains willing to engage with our regulator in the development of voluntary initiatives to explore the evolution of the UK Cosmetics Regulation.

14 If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to Government and Parliament?

Yes

15 If you agree, what is the best way to achieve this accountability? If you disagree, please explain why?

Please provide your answer in the text box below:

Regulators with greater flexibility and power to introduce regulatory and non-regulatory measures should also have equal duty to do so responsibly and with consideration to the principles of good regulation. As mentioned previously in the consultation, to remain unchecked could equal the regulator achieving the objectives established by the Government and Parliament without full consideration to the impact and proportionality of those measures for businesses or consumers. Therefore, regulators should be accountable to the Government and Parliament not only for whether the objectives of the measure have been achieved, but for the impact on society and businesses too.
Accountability of the regulator could be achieved through mandatory, and independent, reporting on the impact and effectiveness of the measures taken, the evaluation of post-implementation reviews in light of the measures taken and objectives established, and their ability to consider the regulated sectors into account. However, the measurement of the effectiveness of a regulator is not in itself accountability, which should be given through additional supervision or greater flexibility on their approach to regulatory and non-regulatory measures implemented. Regulators who have demonstrated that they are effective through the ability to obtain the policy or legislative objective with measures that are suitable for the sector and aim, should be given greater flexibility.

16 Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

Yes

17 Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?

No

Revising the process and requirements of better regulation

18 Do you think that the early scrutiny of policy proposals will encourage alternatives to regulation to be considered?

Yes

19 If no, what would you suggest instead?

Please give your answer in the text box below:

Early scrutiny of the policy proposals by an independent verification body can help establish where different routes could achieve the same objective more efficiently or with less impactful or burdensome measures. However, this will be most effective when businesses are also involved in the process by being consulted before the proposal is formally introduced. This would allow stakeholders to be able to suggest suitable alternatives which might prove better, at a time where changing the proposal would be easier for the regulator, before resources are spent on the development of an unsuitable policy or regulatory strategy.
Additionally, the scrutiny should also take into consideration if the proposed regulatory measure is intended to provide further regulatory or non-regulatory measures where simple increased enforcement would be enough to provide resolution to the matter intended to be addressed.

20 Should the consideration of standards as an alternative or complement to regulation be embedded into this early scrutiny process?

No

21 Do you think that the new streamlined process for assessing regulatory impacts will ensure that enough information on impacts is captured?

No

22 If no, what would you suggest instead?

Please enter your answer in the text box below:

While the process of creating an impact assessment might not allow for increased speed in the proposal and implementation of regulatory and non-regulatory measures, it is worth remembering that the in-depth analysis of the impacts will allow to make better decisions according to the proportionality principle. Often, impacts and unintended consequences, including clashes with existing regulations and policies, cannot be fully accounted unless enough time is provided to conduct the analysis, and enough information is provided for informed policy decision.
The cosmetics industry would have serious concerns about the introduction of a streamlined approach to impact assessments that would not be able to fully capture the information required for good regulatory and policy decisions. A streamlined IA may also not fully capture the impact on society and businesses, and could lead to regrettable substitutions; for example, in encouraging cosmetics businesses to move to a replacement ingredient which has different but equivalent environmental challenges. The usefulness of the IA tool should not be compromised for the sake of speed.
The CTPA would not recommend making any changes to the current system.

23 Are there any other changes you would suggest to improve impact assessments?

Please give your answer in the text box below:

The experience of the cosmetics industry would suggest that in-depth impact assessments are a useful tool to predict the challenges and outcomes of the measures to be implemented. Early consultation with industry might enable the information to be of more relevance and enable early identification of alternatives to be proposed. We also agree that a need to be able to provide information related to the qualitative impacts should be an option, more so with early contributions where a full exploration of the costs might not be available.
However, there should be a guarantee of transparency in the decision process to modify or not the proposed measures following the impact assessment. Further, both the impact assessment and the extent to which the report has informed decisions should be made publicly available through publication on the relevant Government websites. Where a regulator has received an impact assessment highlighting grave inefficiencies in the proposed measures, the regulator should be held accountable by providing adequate justification for the choice to pursue or not the proposed measures. Impact assessments showing unfavourable results to proposed measures should not be able to be disregarded without sufficient justification, and there should be a mechanism for businesses and organisations to challenge regulators or Government departments who have inadequately disregarded impact assessments.

24 What impacts should be captured in the Better Regulation framework? Select all which apply:

a. Innovation, b. Trade and Investment, c. Competition, d. Environment

25 How can these objectives be embedded into the Better Regulation Framework? Can this be achieved via:

a. A requirement to consider these impacts,

Please give additional information in the text box below:

Scrutiny of regulatory proposals

26 The current system requires a mandatory PIR to be completed after 5 years. Do you think an earlier mandated review point, after 2 years, would encourage more effective review practices?

No

27 If no, what would you suggest instead?

Please enter your answer in the text box below:

While the principle of implementing an earlier review point might seem an effective way to expedite the learnings from the implementation of legislation, it might fall short of achieving these goals by not giving enough time to evaluate correctly.
An alternative solution would be the introduction of a PIR which encourages the implementation of the review learnings after 5 years. In practice, this would mean mandating an earlier review point established at 3 years, which would include a consultation process with businesses, probably after 4 years post-implementation.
In addition, there should be flexibility to have a later PIR point if required. For example, if a monitoring study is necessary to evaluate the difference to the environment that a measure has made, it may require longer than 5 years to properly quantify the difference. Consideration to the timelines for application of the legislation should also be given, and it should be clear when the PIR is intended to be from the date of entry into force or from the date where the requirements become mandatory if they are different.
There should also be a recommendation to include international assessment of the effectiveness of similar measures as introduced by regulators and

Government in the UK. The international landscape is moving into areas of greater compatibility and similar regulatory models being refined by other countries worldwide. The ability to learn from the lessons of other regulators will enable the UK to make decisions that would ensure that steps taken by international regulators which failed to meet the objectives of the proposed measures are not repeated in the UK such as UK REACH.

28 Which of the options described in paragraph 3.4.10 (see the related information link above) would ensure a robust and effective framework for scrutinising regulatory proposals?

c. Option 3

Please provide additional information in the text box below:

Measuring the impact of regulation

29 Which of the four options presented under paragraph 3.5.4 (see the related information link above) would be better to achieve the objective of striking a balance between economic growth and public protections?

c. Replace

Please provide additional information in the text box below:

Regulatory offsetting: One-in, x-out

30 Should the One-in, X-out approach be reintroduced in the UK?

No

31 What do you think are the advantages of this approach?

Please give your answer in the text box below:

The CTPA has not identified any immediate advantages as related to the cosmetics sector.

32 What do you think are the disadvantages of this approach?

Please give your answer in the text box below:

The OIXO approach would require the regulators to identify measures or areas of deregulation to compensate for the proposed measures. While this could be beneficial in certain circumstances, there are sectors where this would be a highly difficult task and one that might lead to the regulator itself becoming less effective. There is a risk this approach could not result in the regulator becoming overall less efficient by spending too much time trying to identify areas for deregulation.
It is important to bear in mind that deregulation can be very costly if not carried out appropriately. These costs might be later incurred in; for example, environmental clean-up or compensating victims of inappropriate safety measures.
Following this approach, an effective regulator who has already considered all the areas that would benefit from deregulation would be forced to withdraw regulated areas should it require to introduce a burdensome measure intended to regulate an area which requires intervention.

33 How important do you think it is to baseline regulatory burdens in the UK?

a. Very important

34 How best can One-in, X-out be delivered?

Please give your answer in the text box below:

We are not in favour of the arbitrary application of the OIXO approach. Such an approach could only be delivered when considering the intended outcomes of the measures being introduced as well as offsetting the impacts to businesses.
Regulators should be able to follow innovation and development, and replace and update regulatory measures introduced which have become obsolete or that are able to be improved.

Further comments

35 Are there any other matters not mentioned above you would suggest the Government does to improve the UK regulatory framework?

Please give your answer in the text box below:

Through this consultation there have been a number of areas which CTPA believes the UK Government should engage further before completing a recommendation to reform the Better Regulation Framework, such as the application of the proportionality principle in combination with other good regulatory practices; the need for transparency during and after consultation with businesses; avoiding the use of standards as an alternative to regulation; and the consequences of shifting the burden and responsibility of compliance from regulators to industry.
The need for transparency and accountability should already be a requirement to the introduction of regulatory approaches, and this will be increasingly important if the UK Government intends to provide greater flexibility to regulators and promote the use of non-regulatory approaches. The UK cosmetics

industry remains willing and able to continue our collaboration with our regulator and the UK Government on this matter.

The UK Government should also ensure policy decisions are not aimed at shifting the burden of compliance with regulatory measures towards the private sector and businesses, and instead enable regulators and enforcement authorities to fulfil their roles. The increased costs of compliance faced by businesses may impede or limit the ability for businesses to invest in research and innovation, funding needed for progress to help the UK meet its objectives such as environmental targets and world-leading scientific initiatives.

The cosmetics industry is fully supportive of a regulatory system which is focussed on improving health and environmental outcomes, rather than driven by compliance with regulation as a 'tick-box' exercise. However, we are not supportive of achieving this through the imposition of mandatory standards. While they could be seen as an important tool to demonstrate product compliance with legislation and can sometimes promote the acceptability of products and processes in international market, they should not be used as a replacement for a regulatory system. Such an approach would most likely require companies to demonstrate their adherence to the standards through third-party certifications, increasing the burden and cost to companies while impeding the possibility of achieving the same results through initiatives developed by individual organisations. Additionally, in the cosmetics sector, the establishment of a framework based on standards is commonly regarded by international governments as a devolution of responsibilities and far removed from good regulatory practices for the protection of consumers and human health.

As such, international considerations will also be important. The need to be demonstrably effective and efficient regulators will ensure that the reputation of the UK is maintained and that other regions continue to regard the country as a source of products, innovation and regulation worthy of respect. In turn, this will open the doors to a greater trading relationship with the world.