

FSA RESPONSE TO GOVERNMENT CONSULTATION ON REGULATORY BUDGETS

EXECUTIVE SUMMARY

1. In August the Government launched a consultation, as it announced it would do in the March 08 Budget, on the introduction of a system of regulatory budgets for departments (and independent regulators who choose to opt in) that will set out the cost of new regulation that can be introduced in a given period.
2. The consultation document, a copy of which is attached at Annex 1, explains the background to regulatory budgets and how they might work in practice. This paper discusses some of the policy issues around regulatory budgets and sets out a recommended FSA response to the consultation document. It does not discuss whether the FSA should opt in to the regulatory budgets initiative. That decision can wait until the Government has published the final details of the scheme (likely to be early 2009).

The Board is asked to:

- **agree** the FSA's proposed responses to the questions posed in the consultation document; and
- **agree** that, when the response is sent to the Government, that it should be placed on the FSA website.

REGULATION, GOVERNMENT AND SECRETARIAT DIVISION

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Issue

1. The Government has published a consultation document on the introduction of a system of regulatory budgets for Departments which will set out the cost of new regulation that can be introduced over a set period.
2. This paper sets out the FSA's proposed response to the consultation which considers the design of the regulatory budgets scheme. It does not discuss whether the FSA should participate in the scheme. A recommendation on participation will be put to the Board when the Government publishes details of the final scheme (likely to be early 2009).

Strategic Aims

3. The key strategic aim for the FSA is to protect the interests of consumers in relation to food, which includes drink. The Government is proposing regulatory budgets as part of its overall better regulation agenda. The FSA believes that better regulation can help deliver increased consumer protection balanced against the burdens regulations can impose on businesses.

Background

4. In his March 08 Budget the Chancellor of the Exchequer announced that the Government would consult on a system of regulatory budgets that will set out the cost of regulation that can be introduced over a set period. Regulatory budgets will be an additional part of the Government's overall better regulation agenda that aims to keep regulation to a minimum by reducing unnecessary burdens on business, the public and third sectors whilst maintaining the protection and benefit regulation can provide.
5. The Government believes that there is a finite amount of regulation that the economy can absorb and that it currently has no mechanism to manage such costs directly. Regulatory budgets would, in the Government's eyes, plug that gap.
6. The Government plans to introduce the regulatory budgets scheme from April 2009 (although the first year would be a shadow year to test the system), and would be the first government in the world to introduce such a scheme. Regulatory budgets would apply to both domestic and European-inspired regulatory measures and activities. The size of budgets for each Department

would be negotiated over the autumn/winter before being announced publicly in time for April 2009.

7. For devolved matters, such as food and animal feed regulation, they would apply only in England¹. No cap would be set on regulation which could be introduced in Scotland, Wales or Northern Ireland.
8. The Government believes that the benefits of regulatory budgets are:
 - better control of regulatory costs; and
 - better prioritisation of new regulatory proposals.
9. The Government acknowledges that, in designing the regulatory budgets system, it will be essential that the benefits of regulation are taken into account in setting budgets and that regulatory budgets do not inhibit the Government's, including independent regulators', ability to respond to emergencies.
10. The Government proposes that regulatory budgets should be set at Departmental or independent regulator level (if the regulator opts in), and would cover the cost of all new regulation with an impact on business including both policy and administrative costs. The current administrative burden reduction exercise only covers the latter. If new legislation amends existing legislation, it is the cost of the new element which would count against the regulatory budget. Regulation that only impacts on the public sector would be excluded.

Impact

11. The consultation document seeks responses to 10 questions:
 - 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?
 - Q2. Do you think regulatory costs should be scored at the point of enactment or when they come into effect?
 - Q3. What, in the range of three to five years, would be an appropriate budget period?
 - 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?
 - Q5. Which forms of government action should be within scope of regulatory budgets?

¹ Regulatory budgets would apply at a national UK Government level only, covering reserved and non-transferred matters for the UK and Great Britain as appropriate, and England, or England and Wales as appropriate, only for devolved or transferred matters.

- Q6. Do you agree with the outline of this approach to EU and international originating regulations? Are there other issues to be addressed in the context of EU and international commitments?
- Q7. Is the approach outlined in paragraphs 3.14 – 3.22 to costs arising from specific regulatory actions appropriate?
- Q8. What are your views on the approach set out in paragraphs 4.6 – 4.14 for treating independent regulators in the regulatory budget?
- Q9. Do you agree with the proposed categories of costs to include in a regulatory budget as outlined in Chapter 5?
- 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?

The FSA's proposed response to each of the questions is set out at Annex 2.

12. The Board received a briefing on regulatory budgets from the Better Regulation Executive at its business meeting on 18 September. In considering the proposed responses to the questions the Board will wish to consider how regulatory budgets might further contribute to delivering better consumer protection, over and above the current initiatives. Regulatory budgets are likely to subsume the current administrative burden reduction exercise, but overall work on simplification will continue.
13. Better regulation initiatives can deliver increased consumer protection by making it making it easier for more businesses to comply with the law. Similarly if a system of regulatory budgets requires Government to prioritise it will wish to focus on those regulations which offer greatest consumer protection and deliver greatest public health benefits without imposing excessive costs on business.

Conclusion

14. Regulatory budgets are the Government's latest better regulation initiative which it hopes will control the cost of regulation imposed on business and the third sector. The initiative has the potential to do this, but it will be important that in designing the system the Government recognises that:
- the benefit regulation can deliver for consumer protection and wider public health;
 - the reality that the vast majority of food legislation originates in Brussels;
 - food and animal feed regulation is a devolved issue. Regulatory budgets will add further complication to an already complex regulatory structure and detract from the consistent approach businesses desire; and
 - regulators must not be prevented from taking prompt action where there is an imminent, serious risk to public health.

Board Action Required

15. The Board is asked to:

- **agree** the FSA's proposed responses to the questions posed in the consultation document; and
- **agree** that, when the response is sent to the Government, that it should be placed on the FSA website.

Previous discussion

Presentation to FSA Board at Business Meeting

18 September 2008

ANNEX 1

Copy of HM Government consultation: Regulatory Budgets: A Consultation
Document

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

The FSA supports the Government's current better regulation agenda because of the benefits it can deliver for both businesses and consumers. It is therefore essential, before the FSA is able to say whether should proceed in this area, that the Government designs a system for regulatory budgets which will deliver benefits for both consumers and businesses, over and above the initiatives currently in place. That system must also take full account of the benefits some regulation can bring to the wider economy. Healthy eating interventions, for example, will bring considerable benefits to the UK population.

In designing the regulatory budgets system the Government must recognise the FSA's independence in deciding for itself whether to participate in the initiative. The FSA will be guided by its main statutory objective of protecting public health from risks arising in connection with the consumption of food, including drink, and otherwise protecting the interests of consumers in relation to food, including drink.

In trying to manage the cost of regulation it will be essential that where emergency action is required it is not prevented, and also recognise the major role Europe plays in shaping the UK's regulatory landscape.

Finally, food and animal feed regulation is a devolved issue. This means that regulatory budgets would only impact on regulation introduced in England. There would be no cap on the cost of regulation which could be introduced in Scotland, Wales and Northern Ireland. This would create an inconsistent regulatory landscape for business which would not be in their best interests.

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

The FSA believes that regulatory costs should be scored when they come into effect. The cost of regulation can be significantly reduced if a transitional period is built in between enactment and implementation dates. Businesses are then able to choose the timing of their compliance to coincide with normal business practices, such as labelling changes. If the Government chooses enactment as the point at which regulation scores against the budget then the FSA would expect recognition be given for the mitigated costs gained in the transitional period.

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

The FSA recognises that business need certainty in regulatory changes and this suggests a three year would be preferable to five years. It would be nearly impossible to predict regulatory activity, and potential costs and benefits, 5 years into the future. The FSA also believes that regulatory budgets should be aligned with Government spending reviews which occur every three years. The FSA believe that a three year budget would not be as incompatible with scoring against budgets on implementation as the Government suggests.

4. 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?

The FSA Board is content for FSA officials to work with the Government on designing a system to manage regulatory budgets, without presuming the FSA will choose to opt in to the initiative. In designing the system the FSA would urge the Government to ensure it is simple to administer, manageable and integrated with existing systems, such as using annual Simplification Plans as the vehicle to report on performance against budget.

The FSA welcomes the proposal for a shadow year of running regulatory budgets to test the systems put in place, although would suggest that the shadow year might cover those regulatory areas which impose the most burden on businesses, such as employment law, before deciding whether to roll out the initiative more fully. This shadow year must be properly evaluated before any decision is taken on the future of the initiative.

The FSA agrees that administrative burden reduction work should be subsumed into regulatory budgets to prevent confusion, although the work to reduce the cost of the stock of regulation should continue to help businesses without jeopardising consumer protection.

5. Which forms of government action should be within scope of regulatory budgets?

The FSA strongly believe that only those forms of action which are statutory and where action can be taken to compel a business to comply should be within scope of regulatory budgets. Voluntary initiatives and initiatives which Government has supported businesses to develop should be excluded from scope.

The FSA recognises that regulatory budgets will only apply to reserved and non-transferred matters. If the FSA chooses to opt in to the regulatory budgets initiative there will be the additional complicating factor in managing the budget of food being a devolved issue. Businesses who trade across the United Kingdom will want a

consistent approach to regulation. Regulatory budgets will not deliver that if the form currently proposed by the Government.

The FSA believes that there also will need to be a contingency budget that Departments/regulators are able to call upon to deal with the unforeseen, which may be more than dealing with emergency situations.

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

The FSA agrees that if the Government wishes to introduce a system of regulatory budgets then EU- and international-originating legislation will have to be included. However this will bring with it considerable complications for some regulators and Departments.

Over 90% of food legislation originates from the European Union. Whilst the FSA actively negotiates in Brussels on behalf of the UK Government to minimise the impact of new regulation on business whilst delivering consumer protection, voting procedures may mean the FSA is not always able to achieve all its negotiating objectives. This may mean that regulatory costs would be incurred that the FSA would not have incurred for domestically inspired regulation. Regulatory budgets will need to be sufficiently flexible to allow for such circumstances.

The FSA would also wish the regulatory budgets system to acknowledge where negotiations successfully reduce the cost of the original proposal.

The comitology process is a further complicating factor. The timing of comitology proposals is unpredictable and the European Commission is not obliged, at present, to prepare impact assessments on such proposals. These factors will have to be taken into account when designing the regulatory budgets system.

7. Is the approach outlined in paragraphs 3.14 – 3.22 to costs arising from specific regulatory actions appropriate?

The FSA agrees with the Government that individual regulatory action should not be constrained through regulatory budgets. The Government's Hampton agenda is already improving how regulations are enforced and compliance achieved.

On self-funding regulation, the FSA would expect the Government to consider the impact of regulatory budgets on its policy that Departments should operate on a full cost recovery basis for their regulatory activity. Departments should not be penalised for moving towards this policy, providing they can demonstrate they have managed the cost/fees they charge effectively.

The FSA agrees that the system must be sufficiently flexible to take account of calls against a regulatory budget incurred through court cases and infraction proceedings.

8. What are your views on the approach set out in paragraphs 4.6 – 4.14 for treating independent regulators in the regulatory budget?

The FSA warmly welcomes the Government's position that the decision as to whether or how the FSA becomes part of the regulatory budgets initiative is for the FSA. The FSA Board will decide formally when the Government has published its final proposals following this consultation. The FSA will be guided by its main statutory objective of protecting public health from risks arising in connection with the consumption of food, including drink, and otherwise protecting the interests of consumers in relation to food, including drink.

Whilst the FSA does not have a sponsoring department, being a department in its own right, the FSA would expect the regulatory budgets system to be designed in such a way so that where a regulator has been obliged by another Department to introduce regulation that bears a cost that cost should be posted against the originating Department's budget.

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

The FSA agrees with the Government's proposal in chapter 5, but as stated above, where a regulator is required by another Department to introduce regulation, those costs should be scored against the originating Department's budget.

10. 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?

If the Government is serious about its statement that much regulation brings with it benefits, then it is essential that benefits are part of the regulatory budgets process.

It has long been Government policy, through the Impact Assessment process, that the benefits should justify the costs. This should continue to be the Government's policy. Impact assessments are subject to public scrutiny. If a Department were to inflate the benefits to justify the costs this would be subject to challenge.

If a Department was forced, because of the constraints imposed by regulatory budgets, not to introduce a regulatory intervention, it will also be important to make public that neither will the benefits accrue.