



Submission to:

Department for Business & Trade - Smarter Regulation and the Regulatory Landscape:
Call for evidence (Closing date 7 January 2024)

Submission date:

17 January 2024

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INTRODUCTION

AIRTO, the Association of Innovation, Research & Technology Organisations, on behalf of its members, has prepared this written response to the [call for evidence by the Department for Business and Trade \(DBT\) on ‘Smarter regulation and the regulatory landscape’](#).

AIRTO represents the UK’s extensive Innovation, Research and Technology (IRT) sector, which employs 57,000 highly skilled people, has a combined annual turnover of [£6.9Bn and contributes £34Bn to UK GDP](#). Organisations in this critical sector work with industry, government and academia to promote and implement innovation, and provide technical solutions to challenges and crises. The IRT sector is a key partner for industry in delivering the support needed for innovation driven economic growth. Some of AIRTO’s member organisations are [UK Conformity Assessment Bodies \(CABs\)](#).

RESPONSE TO CONSULTATION S

1. Based on your experience, do you think that UK regulators are supportive of the individual businesses they regulate in a way that appropriately balances considerations of consumers and other businesses within the sector more broadly?

Regulators should, and generally do, consider the needs of all affected businesses in the sectors for which they are responsible. However, on top of this they are sometimes subjected to pressure from individual large companies to favour their particular business practices, sometimes to provide an advantage over competitors. Regulators should resist any such pressures which disturb the balance of regulation across companies within a sector or which lessen the safeguards afforded to consumers of their products or services.

It would be inappropriate to identify by example individual culprits guilty of exerting undue pressure. However, in our experience, such pressure is particularly likely in areas of emerging technology such as AI, autonomous systems, space technology etc.

2. Please name the UK regulator(s) you engage with most frequently:

On behalf of AIRTO’s members mostly, AIRTO staff interact directly or indirectly with DBT/OPSS, DLUHC, UKSA/Ofcom/CAA and UKAS.

3: What do you consider to be the most positive and/or negative aspect of how the UK regulators that you engage with operate?

Please provide your answer here. Examples are welcomed – you may wish to include the basis of your interaction with a regulator(s), e.g. your regular communication with regulators. You may also wish to consider both the outcomes that regulators deliver and the process through which they go about delivering these outcomes, including how they interact with those they regulate.

Unfortunately, our recent experience is dominated by changes to the regulatory environment occasioned by adjustments for Brexit and changes in departmental responsibilities.

Negative aspects include:

- Long lasting uncertainties over changes being made to regulation. E.g. concerning the transition from CE to UKCA marking.
- Slowness of policy/decision making, e.g. following Brexit and through a long-drawn-out transition to a UKCA scheme as replacement for CE product marking.

- Lack of experience and understanding of practicalities and industry's business workings and processes, as commented on by the DBT UKCA Stakeholders Consultative Group's members and elsewhere in the construction and space sectors. A particular example concerns the requirement to ascertain the financial standing of companies seeking licences to operate 'upstream' in the space sector; it has been evident that CAA staff responsible for determining financial standing do not have sufficient awareness of company financing and investment practices to fulfil these responsibilities unaided. This results in unnecessary delays and reliance on external advice concerning commercially sensitive company information.
- Time taken to process applications for licences in some areas/scarcity of resources to deal with regulation, e.g. in the space sector.
- Lack of co-ordination and consistency across departments of government e.g. concerning continued acceptance of CE marks and future policy regarding UKCA marking.
- Frequent changes of staff in relevant departments of government and continual need for their familiarisation and training.
- Failure to develop regulation in a timely manner to address developments and evolution of new products, services and markets in areas of emerging technological capability, e.g. in AI and the small satellite space sector.
- Absence of adequate co-ordination between policy makers and regulators to 'join the dots' between policy development and implementation by regulatory bodies.

The above have all caused uncertainty, frustration, delays and additional costs for affected businesses and UK Government appointed Conformity Assessment Bodies (CABs).

AIRTO has participated in DBT's Stakeholder Group's Consultations and Roundtables concerning UKCA/CE marking and with UKAS's advisory processes. AIRTO staff members have also observed regulation and licensing processes within the space sector and frustrations in the construction sector.

Positive factors include:

- Higher priority given recently to regulation in government policy making.
- Intention to reform the UK's regulatory landscape (but note that this should avoid divergence from compliance requirements of UK export markets so as not to impose additional unwelcome complications and costs for UK suppliers serving overseas as well as UK customers).
- Intention to introduce appropriate regulations as new technologies emerge.

4: Based on your experience or understanding of UK regulators, do you find it clear what the overall purpose and objectives of individual regulators are?

Not entirely. The necessary information is published, including registers and databases of government organisations and approved conformity assessment bodies. Explanations, definitions and guidance are available on relevant websites. Nevertheless, it is hard to find a simple overall picture of the UK regulatory system, how it affects product manufacturers and consumers and how it fits with the globally agreed system of regulation.

As a result, many enquiries and requests for explanation and guidance from business are directed to UK approved Conformity Assessment Bodies. This poses a considerable burden and overhead on the operation of CABs which is difficult and frustrating for them to deal with, particularly where guidance provided by government and regulators is unclear or ambiguous. Examples are to be found in construction, UKCA/CE marking more generally and in the space sector.

In some areas (e.g. space) to fill this gap in readily available information some consultants are offering advice which is not always correct and this exposes the absence of means to accredit such sources of information.

5: Within these overall objectives (as considered in the preceding), do you find it clear what the specific statutory duties (i.e required by legislation) of individual UK regulators are?

No. When consultations have been published, they have been framed in legal language that is difficult (and expensive) for non-specialists to deal with.

6: Do you think that the statutory duties (i.e required by legislation) imposed on UK regulators: Cover the right issues? Are clearly stated in relevant statute, including where supplemented by relevant guidance?; and. Are sufficiently consistent across regulators, where this is relevant?

No. See answer to 3 and 5 above. Guidance tends not to deal with all required levels of practical detail. Also, the UK, post Brexit, lacks a system for dealing with consistency across regulators and the areas for which they are responsible. The EU used to provide such a system but the UK has, since withdrawal from the EU, not facilitated an equivalent co-ordinated system for the UK.

7: As set out above, UK regulators have a remit that is set through legislation and guidance. Which of the below do you consider best applies? Regulators always act within the scope of their remit; Regulators go beyond their remit in a way that may negatively impact the outcomes that they are required to deliver; or Regulators go beyond their remit in a way that supports the outcomes they are required to deliver?

No answer provided.

8: Do you often have to engage multiple UK regulators on the same issue or area

Yes. In relation to the CE to UKCA marking transition. DBT/OPSS, DLUHC, DoT, DEFRA, MHRA,

9: Do you consider that UK regulators collaborate effectively with each other and their international counterparts?

No. And there is little evidence of effective collaboration with EU bodies since Brexit.

10: Where you engage with multiple UK regulators, do you find it clear which regulator is responsible for a specific issue or area, and how regulator mandates interact?

No. On UKCA/CE product marking, policies across different areas of regulatory responsibility are clearly not aligned.

11: Do you consider there to be underregulated areas of the economy, or gaps in regulatory responsibility between UK regulators?

Yes. AI is an obvious example.

12: Do you consider that guidance issued by UK regulatory bodies makes the regulatory system clearer and easier to understand?

Somewhat clearer but there are still unanswered queries.

13: Do you find UK regulators to be agile and responsive to new and emerging issues?

Insufficiently. Transition to UKCA product marking is an example of regulators struggling with complexities of the transition.

14: What factors do you think work for and against UK regulators' ability to respond sufficiently rapidly?

Lack of staffing with sufficient appropriate commercial and practical experience and knowledge within both regulators and related policy making units hampers progress in this regard.

15: Do you consider the processes that UK regulators have in place allow them to make decisions in an appropriate time frame?

No answer provided.

16: In the sector(s) that you operate in, do you think there are specific improvements that UK regulators and / or the Government could make to facilitate a more agile implementation of rules and regulations?

A workforce staffing and development policy and plan would probably help.

17: Do you think UK regulators have the appropriate mix of skills to deliver their objectives?

It is certainly the case that those formulating regulatory policy for regulators do not have the appropriate mix of skills. See Q3.

18: Do you think UK regulators are appropriately resourced to discharge their duties?

No. See Q3 and other answers involving staff skills.

19: Do you think existing processes enable UK regulators to test new regulatory reform proposals?

Not easily. Predicting intended and unintended consequences in practice is difficult and requires both broadly based and detailed experience. Could AI help?

20: Do you consider UK regulators to be proportionate in the measures they take, e.g. in applying regulations or responding to emerging issues?

Not entirely. See response to Q21.

21: In making decisions that involve risk, which of the below do you consider most accurate?

- UK regulators are too risk averse in their decision making
- UK regulators achieve the right balance of risk in their decision making
- UK regulators allow for too much risk in their decision making

See response to Q22 below. In our opinion, it appears that government seeks to pass all risk to the private sector and generally it resists accepting risk arising as a consequence of its framing of regulation or failure of responsible organisations to police their implementation.

22: Do you consider that individual UK regulators have the appropriate level of discretion when taking decisions that involve risk?

Not always. It has been evident that Treasury resisted any level of potential financial risk for government arising from reform to regulations to accommodate risk in evolving markets.

23: If you are a business or consumer, how does the approach that UK regulators take to risk impact your own decision-making?

We are aware of situations in the space and satellite sector of, in our opinion, an overly adverse approach to residual risk for government in the framing of regulation and the consequent negative impact on availability and cost of insurance resulting from this approach.

Reforms are addressing this now, but it has been very time-consuming and difficult. It has taken a decade to find an acceptable resolution to problems posed for a sector of UK business in which it has developed a world class technological lead.

24: UK regulators often need to balance delivery across a range of different legislative duties or regulatory requirements, some of which may involve trade-offs. Do you consider that they balance these trade-offs effectively and transparently?

No answer provided.

25: If you are a UK regulator, are there specific areas where you consider it would be beneficial to seek further steer or guidance from the Government?

No answer provided.

26: In general, do you consider the approach that UK regulators take to requests for information to be proportionate to any burden they may impose on you?

- Yes
- No
- N/A

No answer provided.

27: Do you ever receive duplicative requests for information from the same or multiple UK regulators? (i.e., requests asking for essentially the same information)?

- Yes
- No
- N/A

No answer provided.

28: Do you consider that UK regulators have in place the right governance structures to deliver the best outcomes? If not, how can they be improved?

No answer provided.

29: Do you consider that UK regulators use digital systems in their interactions with you in an efficient fashion? (e.g. data transfer or other digitised methods)?

No answer provided.

30: Do UK regulators sufficiently communicate the processes they follow to make decisions?

- Yes
- No
- N/A

Not all of them. DLUHC have been silent on problems faced by the construction sector regarding regulation of construction products post Brexit and events such as the Grenfell Tower Fire of 2017.

In space and satellites the practice of assessing licence applications for deployment of satellites on a case-by-case basis has been fairly lengthy and not necessarily well suited in the criteria applied to the rapidly developing market for lower cost propositions made possible by reducing costs in this area.

31: Are you provided sufficient opportunity to input into decision making by UK regulators processes (e.g., via consultations, workshops etc)? If not, how would you suggest improving the process?

This varies across government departments. DBT is trying hard in this area. DLUHC has been very poor by comparison in our experience.

32: Do you consider the processes that UK regulators follow deliver reasonable outcomes?

Not entirely. Some problems to be addressed are extremely complex (e.g. the transition to UKCA product marking post Brexit). The processes in this instance have been too slow and have failed to resolve a number of issues of detail associated with how the system of third party product conformity assessment and marking works.

33: Do you think UK regulators treat those that they regulate consistently?

No answer provided.

34: As a business, do you think the process to challenge a UK regulator you interact with is sufficiently clear, robust and fair?

No answer provided.

35: What steps, if any, do you think could be taken to further improve the effectiveness and clarity of the reviews and appeals processes?

No answer provided.

36: In your experience, have UK regulators that you interact with delivered on their stated objectives in that interaction?

No answer provided.

37: Do you think UK regulator performance reporting is proportionate, objective and transparent?

No answer provided.

38: Do you think UK regulators report on the right set of criteria and metrics to monitor their performance and ensure accountability?

No answer provided.

39: If you could suggest a single reform to improve how UK regulators operate, what would it be? Please provide further detail here. Examples are welcomed.

To increase the level of relevant and direct industry experience brought to bear by staff engaged in detailed policy making for government.

40: Are there any examples of international approaches to regulation that you think set best practice that UK regulators could learn from?

No answer provided.

41: What is the best designed regulation you face, and why?

No answer provided.

42: Are there any further points you would raise about regulation, including the functioning of the regulatory system or any recommendations you have on the stock of regulations from the Government which should be removed or reformed and modernised?

There are urgent needs from time to time to update regulation as new markets develop driven by disruptive emergence of innovation and novel or more capable technologies. Dealing with such situations needs a rapid reaction from the regulatory system and an approach which is balanced and not overcautious in its formulation. Space is a rapidly evolving sector which has been impacted by the need to develop a significant new regulatory framework. AI is emerging as another such evolving sector.

Great care is needed in the removal of existing stock of regulations. Such actions should be carefully and thoroughly thought through to avoid unintended negative consequences.

43: In what capacity do you interact with UK regulators or regulated businesses? (Please select the most appropriate option that represents you, and respond according to your primary responsibilities)

- Regulated entity (i.e. business)
- Consumer
- Regulator
- Academic or think tank
- Other

If you selected other, please specify here:

Trade Association for RTOs, PSREs, Catapults and various membership-based organisations representing sectoral interests in innovation, research and technology.

Interactions which are the subject of this Call for Evidence are mainly concerned with policy making in relation to UK regulation and regulators, on behalf of Association members. Such interactions are informed by views and experience of Association members and other relevant contacts of association staff.

44: If you are a business, how many employees do you have?

- Not Applicable – not a business
- 1 – 9 employees
- 10 – 49 employees
- 50 – 99 employees
- 100 – 499 employees
- 500+ employees

45: Please name the Sector(s) that you operate in - you may wish to reference Standard Industrial Classifications

Association's members operate in Life Sciences, Physical Sciences and Engineering, Construction, Transport, Energy Systems, Food and Agri-tech, Manufacturing, Aerospace and Satellites, and broad areas of product safety and third-party conformity assessment for such purposes.

46: If you are a regulated business, how much as a percentage of turnover does demonstrating compliance with regulation cost your business?

- Not Applicable
- Less than 1% of turnover
- 1 to 5% of turnover
- More than 5% and up to 10% of turnover
- Over 10% of turnover

If possible, please provide more specific figures on the cost of compliance with regulation here. Compliance costs may for example include costs of staff responsible for engaging with regulators, responding to requests for information and demonstrating compliance.

Compliance costs may for example include costs of staff responsible for engaging with regulators, responding to requests for information and demonstrating compliance to the regulator. It is these costs we are concerned with, rather than the costs of delivering the policy intent of the regulation.

AIRTO staff numbers are small, but it is informed by a number of organisations whose costs as a proportion of turnover vary widely.

47: What is your name, or the name of your organisation?

AIRTO, Association of Innovation, Research and Technology Organisations.

48: What is your e-mail address (optional response)?

enquiries@airto.co.uk

49: We usually publish a summary of all responses, but sometimes we are asked to publish the individual responses too. Would you be happy for your response to be published in full?

- Yes
- Yes, but without identifying information
- No, I want my response to be treated as confidential