SMARTER REGULATION AND THE REGULATORY LANDSCAPE: CALL FOR EVIDENCE

5 January 2024

Summary

- Logistics UK recognises the need for, and importance of, effective regulation to ensure the safe, efficient and competitive operation of transport and logistics businesses.
- There is a need for far greater transparency as to how regulators make and enforce their decisions to prevent the erosion of trust among those they regulate.
- Innovation and decarbonisation present significant, imminent challenges to the current regulatory landscape, which is not agile enough to respond effectively in its current form.
- External challenge and oversight of regulators is essential to them fulfilling their function as market enablers.

About Logistics UK

Logistics UK is one of the country's largest business groups, supporting, shaping and standing up for safe and efficient logistics. We are the only organisation representing the entire logistics sector.

We represent a sector delivering an increasingly innovative, productive and sustainable system of essential national infrastructure. This system ensures the availability of the products that households, businesses and public services rely on every day, and is supporting the UK's transformation for the future. Our membership of over 21,000 includes global, national and regional businesses and SMEs spanning the road, rail, sea and air industries as well as the buyers of freight services, such as retailers and manufacturers.

Response to call for evidence

Please note this response addresses questions 1-18, 21, 22, 24, 29-31, 33, 35, and 37-39 only.

Question 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?

Logistics UK has strong relationships with a number of regulators who interact with businesses and individuals operating in the logistics sector. In our experience, the most effective engagement and industry involvement takes place when the desired outcome of regulators already aligns with that of businesses. However, where regulators' policies or decisions are detrimental to logistics operators, more could be done to ensure that the impacts on those businesses are balanced against the objectives of those policies.

In our industry, one example of this would be the requirement for laden brake testing of HGVs, where there is currently limited evidence of a problem and the cost implications for businesses have not been given sufficient weighting. Similarly, while the logistics sector wholeheartedly supports efforts to minimise deaths and serious injury on our roads, the practicality of implementing new safety systems is not always considered in full partnership with the industry.

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

Logistics UK engages most frequently with regulators who have a direct role in overseeing transport and logistics operations. Our primary relationships are with:

- Office of Rail and Road (ORR)
- Driver and Vehicle Standards Agency (DVSA)
- Driver and Vehicle Licensing Agency (DVLA)
- Office of the Traffic Commissioner (OTC)
- Civil Aviation Authority
- Driver & Vehicle Agency (DVA) in Northern Ireland

As a trade association, we will also engage on occasion with regulators who have a broader focus, but whose remit extends to areas of interest for the sector, such as the Office of Gas and Electricity Markets (Ofgem) and the Health and Safety Executive (HSE).

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

As a general rule, Logistics UK finds regulators in our sector to be positive when it comes to engaging with industry, listening to businesses' views and responding quickly to queries and requests for information. This applies across all of the main regulators Logistics UK engages with, particularly DVSA, DVLA, OTC and DVA NI.

However, across all regulators there is a perception that their industry engagement on new approaches and policies often takes place once outcomes have been predetermined. This leads to limited opportunities for influence and undermines businesses' confidence that their expertise and concerns will influence the regulatory approach. While Logistics UK appreciates that regulators are ultimately accountable to ministers and will therefore follow the policy direction and principles set out by government, they should also act as a conduit for communicating the often detrimental impact of regulation on the logistics industry and ensure both regulation and enforcement are proportionate to the level of risk.

Regulatory consistency across the UK is another important consideration to minimise confusion, maximise compliance and ensure a level playing field. In Northern Ireland for example, unlike GB, there is no legislative provision for Authorised Testing Facilities. All testing in NI is carried out by the regulator DVA.

Question 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?
Please provide further detail here if this question applies to you. Examples are welcomed.

Yes, on the whole the regulators Logistics UK engages with are clear in setting out their strategies and objectives and communicate this regularly with the industry. However, to reinforce the points made above, these objectives tend to focus on reducing risk, no matter how small, as opposed to ensuring the effective functioning of the industry within safe parameters.

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

Yes

Question 6: Do you think that the statutory duties (i.e. required by legislation) imposed on UK regulators:

1. **Cover the right issues?**
2. **Are clearly stated in relevant statute, including where supplemented by relevant guidance?; and**
3. **Are sufficiently consistent across regulators, where this is relevant?**

The rapid pace of technological change in the logistics sector is creating a situation whereby the statutory duties of regulators will not keep up with the way the industry operates. Regulatory functions therefore need to be far more agile in order to support this innovation while ensuring safe transport operations.

The overall structure of regulation in the transport and logistics sector will also be challenged by innovation and the drive towards decarbonisation. Road transport in particular will be greatly influenced and changed by autonomous vehicles, alternative propulsion systems and artificial intelligence. Each of these issues, and many more besides, cut across the remits of current regulators such as DfT, DVSA, DVLA, DVA, Ofgem and HSE. The UK's regulatory system must therefore be reviewed to ensure it takes the right approach and that individual regulators are capable of effectively handling these cross-cutting issues without adding complexity for businesses.

Question 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?

1. **Regulators always act within the scope of their remit;**
2. **Regulators go beyond their remit in a way that may negatively impact the outcomes that they are required to deliver; or**
3. **Regulators go beyond their remit in a way that supports the outcomes they are required to deliver**

Statement 2 is most applicable here. It can be argued that regulators in the logistics sector can make decisions that do not effectively balance perceived risks to public safety and benefits to businesses. The Longer Semi-Trailer (LST) trial is a strong example of this, whereby years of robust data demonstrating the safety and benefits of LSTs has not been adequately reflected in the overly restrictive guidance and requirements for use that have been published by DfT.

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

1. **Yes**
2. **No**

In most matters relating to the transport of goods it is currently clear which regulator is responsible for any given issue. However, as mentioned in our response to Question 6, this is likely to change in the future due to the uptake of new digital technologies and alternative powertrains.

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

Within the UK there is evidence of good collaboration between the regulators that interact with the logistics industry, although this could be strengthened to ensure commonality between different transport modes and between the devolved nations of the UK. Internationally, we are aware that regulators maintain working relationships with counterparts at an EU level, particularly in respect of DVA NI which maintains a close working relationship with their counterpart in the Republic of Ireland, the Road Safety Authority. However Brexit has inevitably led to a divergence of UK and EU priorities. Logistics UK maintains its own contacts in the EU to counteract this and to provide the most comprehensive advice to businesses in the industry.

Question 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?

Within the road transport sector in particular there are both overlaps and gaps in terms of areas of responsibility, which can make it difficult to engage on a new or emerging issue. One relevant scenario is the development of autonomous vehicles, which has significant implications across a number of areas of regulation, including those covered by DVLA, DVSA, and OTC among others.

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

In comparison to the operation of Light Goods Vehicles (LGVs), the use of Heavy Goods Vehicles (HGVs) is very heavily regulated. While this in part reflects greater risks to public safety from the unsafe use of HGVs, there is a need to ensure the logistics sector as a whole is fairly and justifiably regulated. As the industry explores the use of autonomous and semi-autonomous mobility, as well as other new technologies, there is an opportunity to review regulatory requirements that support the effective and safe operation of a critical part of the UK economy.

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

Logistics UK operates an effective and well-regarded Member Advice Centre which deals with hundreds of queries from logistics operators each year. One of the greatest frustrations of the industry is the lack of clarity when it comes to guidance issued by relevant regulators, which can make it difficult for businesses to understand if their operations are compliant. While there are many good examples of regulators working closely with trade associations and industry representatives to craft effective guidance and communications, this is not universal. There is an urgent need to review how regulators issue their guidance and ensure it is done in an unambiguous, business-friendly way.

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

There are instances in which UK regulators in the transport sector have moved quickly to address new and emerging issues, however these tend to be restricted to matters where the regulator or sponsoring department has a pre-existing strategy or objective that fits with their subsequent decision. Similar to our points raised in response to previous questions, we do have concerns that the structure of the current regulatory environment is too rigid and bureaucratic to enable agile decision-making on fast-emerging issues.

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

One of the biggest barriers to agile and rapid responses is the multi-layered and complex decision-making processes that often exist in regulators. While we appreciate that the most serious and far-reaching decisions require high-level approval, this can lead to a tendency towards risk aversion and therefore slows down regulatory responses. Similarly, protocols around the publication of information on Gov.UK can also reduce the impact of messages being communicated.

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

No, see response to Question 14.

Question 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?

Logistics and transportation is a sector which inherently carries risks both to those who work in it and to the wider public. We therefore appreciate and welcome the fact that regulation is required to enable safe and efficient operations, which is supported by the overwhelming majority of responsible businesses. However, Logistics UK also believes that regulation, and subsequent enforcement, should always be the last resort to ensure desired outcomes. Too often, it can feel as though the desire to regulate comes before these outcomes are clearly defined and before alternative approaches have been considered and tested. Regulators need to work far more closely with businesses to establish frameworks and best practices, which can then be supported by regulation further down the line, if needed.

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

Given the wide range of often highly technical issues regulators are required to engage with, it is difficult for regulators to possess the full range of knowledge and skills to address every issue within their remit. The use of external expertise is therefore essential to enable good regulation, whether this is in the form of consultants or industry engagement. However, Logistics UK believes that decisions often rely too heavily on the former, with little weight given to the industry's challenges against the advice received by regulators. Effective industry consultation should be one of the primary tools to address knowledge and skills gaps in regulations and must be strengthened.

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

No, response times and efficiency among regulators covering transport and logistics are far too slow, which has direct business implications and limits their responsiveness to new issues. Government needs to recognise that regulators are not just there to make and enforce rules but should enable the effective operation of an industry or sector and should therefore be resourced sufficiently to achieve this goal.

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

1. **UK regulators are too risk averse in their decision making**
2. **UK regulators achieve the right balance of risk in their decision making**
3. **UK regulators allow for too much risk in their decision making**

Statement 1 is the most applicable here, as supported by responses to other questions in this call for evidence.

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

As raised in our response to Question 14, Logistics UK believes that there is a tendency for regulators to escalate decision making, often to ministerial level, rather than appropriately grade the level of risk and impact for each decision. This limits the agility and responsiveness of regulators and also inhibits their ability to change direction in light of any evidence relating to the impact of decisions.

Question 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?

It is difficult to fully respond to this question as regulators' actions and decisions are often delivered with limited explanation of the trade-offs that have been made in reaching that outcome. This lack of transparency can undermine business confidence in the actions of regulators, particularly when those actions place restrictions on business activity. Regulators must be open and communicate transparently when decisions are made in order to comply with legislative duties or political direction and acknowledge when they are not fully supported by evidence provided by industry and other consultees.

Question 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)?

Logistics UK believes there has been significant progress in the digitisation of regulators' activities, however there is still a long way to go in order to achieve the efficiencies businesses desire and the rate of change is slow, with Northern Ireland often lagging behind GB

In particular, urgent work is required to improve digital interoperability between different regulators operating across similar business sectors. A prime example of this in relation to logistics is vehicle approvals and registration. Currently, there is no digital link between VCA (Vehicle Certification Agency), DVLA and DVSA,

leading to unnecessary paperwork and errors. Additionally, to resolve issues, Logistics UK members have to interact with all three separately. We would also cite a lack of digitisation between the OTC's Vehicle Operating Licensing system and DVSA as another example.

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

1. **Yes**
2. **No**
3. **N/A**

No – see response to Question 24

Question 31: Are you provided with 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?

Consultation and engagement with industry and representative bodies is wildly inconsistent between regulators and across different issues. There is an understandable perception among businesses that consultation exercises conducted by regulators either have little impact as decisions have already been made, or that they simply seek confirmation of a pre-existing position rather than being open to change as a result of feedback received. This is not helped by the various consultation windows and methods we see, with some exercises as short as four weeks, which make it extremely difficult for trade associations to engage with members and for businesses to respond directly.

Regulators must therefore provide the greatest possible opportunity for external organisations to engage with consultations and must demonstrate how the evidence they have gathered have influenced decision making, including where decisions ultimately go against the feedback provided by consultees and why this is the case.

Logistics UK would also like to see trade associations and other business representative groups sufficiently recognised during consultation exercises. Through extensive and continuous engagement with our members, we represent a significant proportion of the logistics industry and speak with confidence and authority on their behalf. When using and reporting the results of consultations, regulators should give appropriate weighting to the scale of membership that organisations such as Logistics UK represent, rather than counting our responses in the same ways those made by individuals.

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

In the main, there is consistency in the way that regulators treat those that the regulate. However, where a different approach is taken, regulators must be transparent and honest in their rationale.

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

As identified throughout this response, there is a need for transparency when in comes to regulators' decision making. This extends to the reviews and appeals process, where as much information as possible needs to be openly published and accessible.

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

Logistics UK feels there is significant room for improvement in this area. Currently there is limited upfront engagement between regulators and those they regulate in relation to setting strategy and objectives. Performance reporting is therefore self-determined and frequently does not reflect the experiences of businesses and organisations who interact with those regulators.

External review and appraisal of regulator is essential to build confidence in regulators and drive service improvements. Logistics UK is pleased to have been invited to take part in the current DVLA review process and

would like to see further external, broad-based scrutiny of regulators and involvement in determining their role and objectives.

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

As set out in response to Question 37, it should not be left solely to regulators to determine their own performance metrics with little regard to their role in enabling business and markets to function optimally. In particular, regulators' objectives must be closely aligned to providing a level of service that the sector needs in order to be more efficient, effective and globally competitive whilst also operating safely and legally.

Question 39: If you could suggest a single reform to improve how UK regulators operate, what would it be?

Throughout our response to this call for evidence, Logistics UK has reiterated the need for greater transparency from regulators as to how they operate and make decisions. This must be a guiding principle throughout any reforms, with decisions and policies developed in conjunction with those who are regulated and a more open culture of engagement, providing easier access and flow of information between industry and regulators.

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