



## **New Directions for Israel's Regulation Policy: Establishing Parliamentary Oversight and Sunset Clauses**

By: Dr. Yitzhak Klein

*This paper studies the idea of involving the Knesset in the oversight of regulation, conducting comparative research and detailing a proposal for its mechanism that includes a bipartisan committee and the automatic expiration of regulation.*

The **first chapter** introduces the idea of involving the Knesset in the optimization of Israel's regulatory regime, reviewing both the current state of regulation in Israel and the subjects of legislative oversight of regulation and sunset clauses.

The **second chapter** reviews elected officials' involvement in the oversight of regulation in other states, first discussing the constitutional and public benefits aspects and the general features of parliamentary review, then surveying parliamentary oversight of secondary legislation in the UK, Australia, New Zealand, Canada and the US.

The **third chapter** looks at sunset clauses in regulation legislation.

The **fourth chapter** details the proposal for Knesset oversight of regulation and secondary legislation with a general sunset clause.

### **Summary:**

According to nearly every economist, institution or researcher who has taken up the issue, the main drag on Israel's economy is heavy regulation. Since 2013, the state's official policy has been to decrease the regulatory burden on the economy. The Department of Governance and Social Affairs in the Prime Minister's Office was granted the authority to manage a multi-year policy aimed at easing the direct burden of regulation promulgated by ministerial regulators. The department counseled the ministries in how to evaluate their regulation in order to reach the goals that the department had set in their regulation evaluation manuals published in 2014. Towards the end of 2018, the department was further granted the authority it previously lacked to

not only guide but also review the regulation evaluations conducted by the various regulators.

However, the OECD, the Department of Governance and Social Affairs and other observers, including the author, all found a deeply embedded cultural difficulty with integrating a policy of "better" regulation - or deregulation - within the Israeli governing system. Most ministries and regulators saw the new demand to evaluate the regulation they issued from a market-wide, legalistic perspective, as an extrinsic task and additional bureaucratic burden impeding the ministry's primary work. All observers agreed that without significant cultural change, all disciplinary tools handed to government officials would fail. There is an acute need for the regulators to be motivated to assess and optimize their regulation.

In the fall of 2018, Kohelet Policy Forum held a discussion with representatives of The Movement for Quality Government in Israel and former Commissioner for the Israel Antitrust Authority Mr. Dror Strum. The latter broached the idea of authorizing Members of the Knesset to review regulation. The obligation to answer to MKs, and either improve the regulation they set or see it canceled by parliament might provide regulators with the necessary incentive to adopting a less reluctant approach to optimizing their regulation. Various regulators' interest would lie in satisfying the elected officials and persuading them that the regulation they issued was the best possible under the circumstances.

This paper is an attempt to implement Mr. Strum's proposal, outlining a mechanism for parliamentary oversight combined with sunset clauses.

Worldwide, a significant number of Anglo-Saxon states have adopted laws that authorize their parliaments to review regulation or to pass secondary legislation, and some are authorized to cancel regulation as well. In Westminster style systems, parliament's authority to review regulation is considered a constitutional principle; in fact, parliamentary power to delegate legislation to executive bodies is perceived as a constitutional challenge, since legislation is supposed to be the public representatives' exclusive prerogative.

Parliamentary oversight over regulation and other secondary legislation is more effective when there is a consensus about the review; when it can be viewed in the context of agreed principles such as protection of rights and limiting regulators' authority to the explicit authority granted them in legislation. This proposal is designed with the idea that the principle of optimizing regulation in a way that lessens the regulatory burden and promotes free competition should be viewed as an apolitical principle.

Many states have also legislated "sunset" laws, determining that new and extant regulation shall expire at some specific date or number of years after issuance.

International data illustrates that sunset clauses alone are not effective at easing the regulatory burden. Regulation is vital in many areas, and when parliament or the executive have not the tools to review and amend regulation near the expiration date, the default is to simply re-legislate the existing regulation. However, two conditions make sunset clauses effective as an opportunity to re-assess regulation: first, the executive or legislative representatives are interested and willing to dedicate their time and political capital to doing so, and second, there is a body that can provide the expertise and professional manpower to thoroughly evaluate existing regulation.

### **Recommendations:**

Israel should adopt some features of successful Anglo-Saxon systems for review, and abolish harmful regulation. In designing the system for parliamentary oversight over secondary legislation, this paper was guided by the standards set by scholar Alan Tucker: the Israeli government should be charged with defending its regulation when challenged in the Knesset, and there should be a realistic likelihood that parliament be authorized to cancel secondary legislation, given the relevant political conditions.

The proposal's main points:

- (a) Every Member of the Knesset (MK) may lay a proposal on the Knesset table to cancel specific regulation in whole or in part. If the Knesset does not reject the MK's proposal by the end of its session - it will be automatically adopted and the regulation canceled, thus forcing the government to address proposals to abolish regulation.
- (b) Establish a Knesset regulation committee. All state regulation new and existing shall be handled by the committee. It would have the authority to discuss all and any regulation, to request an independent evaluation of its quality, and change or cancel it.

In order to ensure that such a committee enjoys a consensus and remains apolitical, it should be shaped as follows:

- 1) Its members shall represent a balance between opposition and coalition, with the chairman coming from the opposition.
- 2) Any discussion of specific regulation shall require the support of one opposition and one coalition member.
- 3) The committee's decision to ratify, change or cancel regulation shall require a majority, including at least two opposition and two coalition members.

- 4) The Knesset Rules of Procedure should be amended to authorize the committee to discuss only regulation quality and neither the specific policy it was meant to implement nor any regulation that constitutes part of a political dispute between the government and the opposition. Although such an amendment will not eliminate political influence, it could go a long way towards minimizing it. The regulation committee's authority shall apply to statutory authorities as well as ministries. Thus, for the first time, public representatives will be able to retroactively review statutory authorities' regulatory decisions. For the most part, the elected government has no special interest in defending those decisions it is not answerable for.
- (c) Sunset clauses should be added to the laws establishing the regulation policy authority and authorizing the Knesset to review and cancel regulation. The regulation policy authority will survey all state regulation, and direct the government and the Knesset's attention to regulation that stands to expire in two years' time. The authority will thoroughly research select issues from among these regulations, also evaluating the regulation's overall effectiveness and comparing it to similar regulation around the world. It will submit its findings to the government, the Knesset and the relevant regulatory bodies. The government may add or remove items from the authority's agenda, and the Knesset regulation committee will have limited authority to add research subjects to the authority's agenda.
- The working assumption is that any regulation not specially reviewed in the manner detailed above will be renewed without change until the next expiration date.

[For the full Hebrew paper](#)