

The background of the slide features a large, ornate, light-colored building with many windows and a prominent tower, situated behind a line of trees. In the foreground, there is a wide river with gentle ripples on its surface. The entire scene is overlaid with a semi-transparent blue filter.

# Better Regulation Task Force

## Principles of Good Regulation

# Introduction

Regulation may widely be defined as any government measure or intervention that seeks to change the behaviour of individuals or groups. It can both give people rights (e.g. equal opportunities), and restrict their behaviour (e.g. compulsory use of seat belts).

Government interventions have an impact on us all, both at home and in the workplace. In prosperous societies there are constant demands for more regulation to protect the environment, workers or consumers. But where regulation is poorly designed or overly complicated it can impose excessive costs and inhibit productivity. The job of government is to get the balance right, providing proper protection and making sure that the impact on those being regulated is proportionate.

Politicians differ about the appropriate level of intervention, but all governments should ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence. To achieve this, any policy intervention, and its enforcement, should meet the following five principles which the Better Regulation Task Force devised in 1997:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting

The Principles are a useful toolkit for measuring and improving the quality of regulation and its enforcement, setting the context for dialogue between stakeholders and government. They should be applied to the full range of alternatives for achieving policy objectives, when dealing with both domestic and European legislation. Government Departments and independent regulators alike should use them when considering new proposals and evaluating existing regulations. The Principles should also be used to avoid unnecessary bureaucratic burdens being imposed on the public sector.

The Government has endorsed the five Principles, and integrated them into its Guide to Regulatory Impact Assessment. The European Commission has also taken steps to give the Principles life through its recent Action Plan on Better Regulation.

This leaflet references other documents that will be of use when developing or enforcing regulation.

# Achieving policy objectives

Policy makers have a wide range of options available for implementing policy objectives. The Task Force urges them to consider them all, rather than automatically assume prescriptive regulation is required. The options chosen will have implications for the incentives facing stakeholders; the burdens imposed on them; levels of compliance; and ultimately the success of a policy. The unintended consequences need to be taken into account, as well as the desired outcomes. Solutions that give stakeholders the flexibility to solve problems themselves are often preferable to imposing rules on them.

Below are some of the alternatives available:

## **Do nothing**

Government consistently faces demands from interest groups and the media to take action, often in response to one-off incidents or tragedies. In many cases the most appropriate response is to do nothing, as government action may be unnecessary, or worse, have costly unintended consequences.

## **Advertising campaigns and education**

Government can influence the behaviour of individuals and firms through information, advice and persuasion – perhaps reinforced by other incentives or penalties. This approach was used to good effect in the campaign against drink driving.

## **Using the market**

Government can remove problems preventing markets from working effectively or can introduce a market where none exists.

Often markets do not function effectively if participants do not have all the information necessary to make an informed decision. Industries can adopt codes of practice, regulating the provision of information themselves or Government can require producers of goods or services to provide relevant information or provide the information itself.

Many industries causing pollution do not meet the financial cost of its impact on the environment and people's lives. Many countries are now using or developing tradable permit schemes to address this problem, effectively creating a market in pollution and incentives to reduce it.

### **Financial incentives**

Financial incentives may take the form of taxes, charges and levies; tax breaks and subsidies; and price caps in non-competitive industries. These create incentives to achieve the outcomes government wishes to secure (e.g. increased innovation or reduced pollution), and have the advantage of leaving managers to manage.

### **Self-regulation and voluntary codes of practice**

Self-regulation and voluntary codes of practice have the advantage of involving stakeholders themselves in the process of regulation, and may be cheaper and more flexible to use than government enforced rules. There are many forms of self-regulation and the level of government intervention will vary, according to the risk posed by the activity being regulated.

### **Prescriptive regulation**

Government can prescribe the behaviour it expects from business and individuals by setting rules or standards (e.g. proposals that part-time workers must be treated no less favourably than full-time workers). There are areas where this is the best means of achieving a policy objective. However, prescriptive regulation, like many other means of government intervention, may have unintended consequences (e.g. employers might avoid employing part-time workers), and without enforcement compliance may be limited. It will often be less flexible and less sympathetic to the way markets work than other tools.

# Policy-maker's checklist

This table sets out, against each of the five Principles of Good Regulation, what regulators should bear in mind when devising, implementing, enforcing and reviewing regulations.

<p><b>Proportionality</b></p>	<p><i>Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.</i></p> <ul style="list-style-type: none"> <li>• Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut.</li> <li>• All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.</li> <li>• “Think small first”. Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses.</li> <li>• EC Directives should be transposed without gold plating.</li> <li>• Enforcement regimes should be proportionate to the risk posed.</li> <li>• Enforcers should consider an educational, rather than a punitive approach where possible.</li> </ul>
<p><b>Accountability</b></p>	<p><i>Regulators must be able to justify decisions, and be subject to public scrutiny.</i></p> <ul style="list-style-type: none"> <li>• Proposals should be published and all those affected consulted before decisions are taken.</li> <li>• Regulators should clearly explain how and why final decisions have been reached.</li> <li>• Regulators and enforcers should establish clear standards and criteria against which they can be judged.</li> <li>• There should be well-publicised, accessible, fair and effective complaints and appeals procedures.</li> <li>• Regulators and enforcers should have clear lines of accountability to Ministers; Parliaments and assemblies; and the public.</li> </ul>

<p><b>Consistency</b></p>	<p><i>Government rules and standards must be joined up and implemented fairly.</i></p> <ul style="list-style-type: none"> <li>• Regulators should be consistent with each other, and work together in a joined-up way.</li> <li>• New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.</li> <li>• Regulation should be predictable in order to give stability and certainty to those being regulated.</li> <li>• Enforcement agencies should apply regulations consistently across the country.</li> </ul>
<p><b>Transparency</b></p>	<p><i>Regulators should be open, and keep regulations simple and user-friendly.</i></p> <ul style="list-style-type: none"> <li>• Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.</li> <li>• Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account.</li> <li>• Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.</li> <li>• Regulations should be clear and simple, and guidance, in plain language, should be issued 12 weeks before the regulations take effect.</li> <li>• Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.</li> <li>• Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance.</li> <li>• The consequences of non-compliance should be made clear.</li> </ul>

<b>Targeting</b>	<p><i>Regulation should be focused on the problem, and minimise side effects.</i></p> <ul style="list-style-type: none"> <li>• Regulations should focus on the problem, and avoid a scattergun approach.</li> <li>• Where appropriate, regulators should adopt a “goals-based” approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.</li> <li>• Guidance and support should be adapted to the needs of different groups.</li> <li>• Enforcers should focus primarily on those whose activities give rise to the most serious risks.</li> <li>• Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.</li> </ul>
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Policy makers and enforcers may also find the following publications useful:

- Better policy making: a guide to regulatory impact assessment (<http://www.cabinet-office.gov.uk/regulation/scrutiny/betterpolicy.htm>)
- Code of Practice on Written Consultation (<http://www.cabinet-office.gov.uk/servicefirst/2000/consult/code/ConsultationCode.htm>)
- Guidance on implementation periods (<http://www.sbs.gov.uk/content/pdf/implementationguidelines.pdf>)
- Enforcement concordat (<http://www.cabinet-office.gov.uk/regulation/PublicSector/enforcement/Enforcement.htm>)
- Cabinet Office guidance on policy-making ([www.policyhub.gov.uk](http://www.policyhub.gov.uk))

# Tests of good regulation, and pitfalls to be avoided

These tests build on our five Principles of Good Regulation. They should be applied to the full range of policy tools, not just prescriptive regulation.

## **Regulations must:**

### **Be balanced and avoid knee-jerk reactions**

*Ministers can come under pressure to react immediately in response to high profile public concerns. This can lead to ineffective or disproportionate regulation being introduced.*

- Gun control measures introduced following the tragedy at Dunblane School appear to have largely been ineffective in tackling gun crime.
- The UK Government resisted pressures for a knee-jerk reaction in the wake of the financial scandals surrounding Enron and Worldcom.

### **Seek to reconcile contradictory policy objectives**

Clear assessments of the likely impact of regulations are essential for identifying and reconciling contradictory objectives.

- Environmental protection must be balanced against economic need when taking planning decisions.
- Chemicals legislation needs to protect workers, the public and the environment without reducing the competitiveness of chemical industries.
- Regulatory Impact Assessments help policy makers to think through the full impact of proposals and to identify alternative options for the desired outcome.

### **Balance risks, costs and benefits**

It is neither practical nor desirable for regulators to seek to remove all risk. Trade-offs between the costs and benefits of regulation need to be assessed, and citizens allowed, within reason, to make their own judgements about the risks in question.

- Rehabilitating criminals into society carries some risk that they will re-offend, but this must be assessed against the potential benefits.
- When government delivers its policies through intermediate agencies, it has a duty to ensure that taxpayers' money is spent appropriately. But excessive audit and reporting requirements hinder front-line staff.
- The accountability burden in the higher education sector is out of proportion to the risk of financial or academic mismanagement.



- The risks to children of using mobile phones have been managed through making information available to parents and letting them decide for themselves, not by imposing restrictions.

### **Avoid unintended consequences**

By regulating in one area, regulators may unintentionally create problems elsewhere.

- Rules requiring single occupancy rooms in care homes prejudiced the therapeutic needs of those being treated for drug and alcohol addiction.
- Requirements to recycle fridges created a “fridge mountain” in the UK, which was ill-prepared to process them.
- Enhanced employment rights could lead to indirect discrimination against those the regulations are trying to help.
- Complex regulation often places small firms and voluntary sector groups at a disadvantage against large organisations.

### **Be easy to understand**

People know that they must pay a TV licence fee or are entitled to a minimum wage because the legislation is straightforward. But the complexity of some regulations can undermine their effectiveness.

- The Working Time regulations are complex and difficult to administer, reducing their effectiveness.
- The complexity of the Housing Benefit system has made it difficult for claimants to make the transition into work.
- The Fire Safety regulations – which were the subject of 120 Acts and a similar number of subordinate regulations – are being consolidated into a single risk-based regime.

### **Have broad public support**

Broad public support for a policy or regulation is a good indicator that the public sees it as necessary. Where such support is absent, compliance is likely to be low.

- The ban on ‘beef on the bone’ was widely considered to be excessive, with people preferring to judge the risks themselves.
- Compulsory use of seatbelts in the rear of vehicles is widely supported, as people understand why it is necessary.

However, the public's view can change over time, resulting in better compliance or in a gradual disregard for previously accepted regulations.

- Drink-driving laws, which were ineffective for many years are now working well.
- Sunday trading restrictions, on the other hand, which had been well respected for over a century, suddenly lost credibility and were substantially reduced.

### **Be enforceable**

To be effective regulation must also be practical to enforce.

- The Criminal Records Bureau was unable to cope with the demands of conducting checks on all new teachers.

Self-regulation, on the other hand, can provide very effective enforcement mechanisms.

- The Advertising Standards Authority, through its influence in the printed media, can ensure that an advertiser cannot find a medium to publish adverts it has not approved.

### **Identify accountability**

When things go wrong there must be clear accountability without resorting to unfair retribution.

- There is a risk of blurred accountability for the regulation of the rail industry between Ministers and a number of independent regulators.
- Self-regulation can ensure that industries themselves are held accountable for their actions and how they are regulated (e.g. the Banking Code).

### **Be relevant to current conditions**

Regulations should be reviewed on a regular basis to ensure that they remain necessary and relevant.

- Prescriptive regulation quickly becomes outdated in areas where market conditions or technologies change rapidly, and may inhibit innovation.
- Licensing legislation limiting opening hours was widely seen as an outdated response to public order concerns, and is being reformed.
- Writing “sunset” clauses into legislation can be a useful tool for keeping regulation up to date.

# The Better Regulation Task Force

The Better Regulation Task Force was established in 1997. It is an independent body that advises the Government on action to ensure that regulation, and its enforcement, accords with the five Principles of Good Regulation. The Task Force is sponsored by the Cabinet Office, and its members and Chair are appointed by the Minister for the Cabinet Office.

The Task Force influences government by publishing reports on specific policy issues, and has published reports on issues as diverse as Employment Regulations, Housing Benefit, Licensing Legislation and Higher Education. The Task Force also influences government policy by contributing to consultation documents and other policy proposals (see <http://www.brtf.gov.uk/taskforce/ourwork.htm>). Its Chair, David Arculus, sits on the Panel for Regulatory Accountability, a Cabinet Committee that holds Ministers to account on their regulatory performance.

Task Force members come from a wide variety of backgrounds, but all have experience of regulatory issues. Members are drawn from large and small businesses; citizen and consumer groups; the trade union movement; the voluntary sector and those responsible for enforcing regulations. A full list of the members, along with biographies and a Register of Members' Interests, is published on our website (<http://www.brtf.gov.uk>) and is available on request.

If you have any queries about the work of the Task Force or would like to request a publication, e-mail us at [taskforce@cabinet-office.x.gsi.gov.uk](mailto:taskforce@cabinet-office.x.gsi.gov.uk) or call us on 020 7276 2142.

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