

Principles of good regulation

Introduction

As a business membership organisation advocating less regulation, you may think that knowing the principles of good regulation is unnecessary. However, Governments believe that they are elected in order to legislate, so the challenge for the private sector then becomes one of helping Government achieve its policy objectives whilst minimising the burden on business. This can be tackled when policy proposals for new legislation or new regulation are being debated but can also be tackled when rules are drawn up to apply the new policy. It can therefore be helpful to be able to encourage policy makers and policy implementers to adhere, as far as possible, to the principles outlined in this short note.

Key principles

OECD principles

The OECD has reviewed approaches to regulation in many of its members. It suggests that the key tools include regulatory impact analysis (RIA), the systematic consideration of alternatives to regulation, public consultation and transparent accountability arrangements. In particular, regulators should be aware of the likelihood of unforeseen consequences if they fail to consult widely – since the regulators are not the people already undertaking the activity that is to be regulated. They have developed a series of questions¹, on which this checklist is based, to assist those involved in regulatory decision-making.

Is the issue correctly defined?

Is there a problem? The issue to be addressed should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen.

Is government action justified?

Government intervention should be based on explicit evidence that government action is justified, given the nature of the issue, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the issue.

Is regulation the best form of government action?

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering, inter alia, costs, benefits, distributional effects and administrative requirements.

Is there a legal basis for regulation?

Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

¹ “Regulatory policies in OECD countries”, OECD, Nov 2002

What is the appropriate level of government for this action?

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

Do the benefits of regulation justify the costs?

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken. Be aware that too often the costs accrue to the businesses that are being regulated and the benefits accrue to the state, so justification will be needed.

Is the distribution of effects across society transparent?

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

Is the regulation clear, consistent, comprehensible and accessible?

Regulators should assess whether rules will be understood by likely users should take steps to ensure that the text and structure of rules are as clear as possible.

Have all interested parties had the opportunity to present their views?

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

How will compliance be achieved?

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

The UK approach

The UK's Better Regulation Task Force (now known as the Better Regulation Commission) was established in September 1997. It is an independent body that advises Government on action to ensure that regulation and its enforcement accord with the five principles of good regulation:

- **Proportionality:** regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
 - 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.
 - All the alternative options for achieving policy objectives must be considered - not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.
 - "Think small first". Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses.
 - EC Directives should be transposed without gold plating.
 - Enforcement regimes should be proportionate to the risk posed.
 - Enforcers should consider an educational, rather than a punitive approach where possible.
- **Accountability:** regulators must be able to justify decisions and be subject to public scrutiny.
 - Proposals should be published and all those affected consulted before decisions are taken.

- Regulators should clearly explain how and why final decisions have been reached.
- Regulators and enforcers should establish clear standards and criteria against which they can be judged.
- There should be well-publicised, accessible, fair and effective complaints and appeals procedures.
- Regulators and enforcers should have clear lines of accountability to Ministers, Parliaments and assemblies and the public.
- **Consistency:** government rules and standards must be joined up and implemented fairly.
 - Regulators should be consistent with each other, and work together in a “joined-up” way.
 - New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.
 - Regulation should be predictable in order to give stability and certainty to those being regulated.
 - Enforcement agencies should apply regulations consistently across the country.
- **Transparency:** regulators should be open and keep regulations simple and user-friendly.
 - Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.
 - Effective consultation must take place before proposals are developed, to ensure that stakeholders’ views and expertise are taken into account.
 - Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.
 - Regulations should be clear and simple. Guidance, in plain language, should be issued 12 weeks before the regulations take effect.
 - Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.
 - Those being regulated should be given time and support to comply. It may be helpful to supply examples of methods of compliance.
 - The consequences of non-compliance should be made clear.
- **Targeting:** regulation should be focused on the problem and minimise side effects.
 - Regulations should focus on the problem and avoid a scattergun approach.
 - 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.
 - Guidance and support should be adapted to the needs of different groups.
 - Enforcers should focus primarily on those whose activities give rise to the most serious risks.
 - Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.