

CPMR Discussion Paper 12

**Regulatory Reform:
Lessons from International Experience**

Richard Boyle

Foreword

This paper is the twelfth in a series commissioned by the Committee for Public Management Research. The Committee is developing a comprehensive programme of research designed to serve the needs of the future development of the Irish public service. Committee members come from the Departments of Finance, Environment and Local Government, Health and Children, Taoiseach, and Public Enterprise, and also from Trinity College Dublin, University College Dublin and the Institute of Public Administration. The research is undertaken for the Committee by the research department at the Institute of Public Administration.

This series aims to prompt discussion and debate on topical issues of particular interest or concern. Papers may outline experience, both national and international, in dealing with a particular issue. Or they may be more conceptual in nature, prompting the development of new ideas on public management issues. The papers are not intended to set out any official position on the topic under scrutiny. Rather, the intention is to identify current thinking and best practice.

We would very much welcome comments on this paper and on public management research more generally. To ensure the discussion papers and wider research programme of the Committee for Public Management Research are relevant to managers and staff, we need to hear from you. What do you think of the issues being raised? Are there other topics you would like to see researched?

Research into the problems, solutions and successes of public management processes, and the way organisations can best adapt in a changing environment, has much to contribute to good management, and is a vital element in the public service renewal process. The Committee for Public Management Research intends to provide a service to people working in public organisations by enhancing the knowledge base on public management issues.

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General information on the activities of the Committee for Public Management Research, including this paper and others in the series, can be found on its world wide web site: www.irlgov.ie/cpmr; information on Institute of Public Administration research in progress can be found at www.ipa.ie.

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Executive Summary

Regulations affect most aspects of life. Often, regulations are needed to protect and promote the public good. In areas such as health and safety, consumer protection and gender equality, regulations are needed to promote desired practices. But sometimes regulation can be an unnecessary burden. Small businesses, in particular, can suffer as a result of too much ‘red tape’. Regulatory reform aims to eliminate unnecessary regulations, and to promote better regulations in those areas where they are needed. To this end, on 1 June 1999 the government announced the adoption of a programme of regulatory reform measures.

This paper aims to support the government’s regulatory reform initiative by reviewing international practice with regard to regulatory reform. Several countries such as Australia, the Netherlands, Canada and the United Kingdom have been pursuing regulatory reform for a number of years. There is much to learn from their experience that is of relevance to Ireland.

Following the introduction, Chapter 2 examines the principles behind and impact to date of regulatory reform programmes. Whilst the broad impacts are difficult to assess, key areas where reform is seen as impacting positively are identified, particularly with regard to economic performance, regulatory quality, management capacities, and openness and accountability.

Chapter 3 assesses experience with the planning and conduct of reviews of regulation. A key component here is analysis of the benefits and costs of regulation. To this end, experience with Regulatory Impact Analysis (RIA) is reviewed.

Whilst not without challenges in its implementation, RIA offers a powerful tool to promote better regulation.

In Chapter 4, the implementation and continuous improvement of regulatory reforms are discussed. The need for effective compliance procedures is highlighted, and a range of different compliance mechanisms identified. Similarly, complaint resolution procedures and review and feedback mechanisms are assessed.

Chapter 5 explores consultation and communication practices. The central role of user involvement in regulatory reform programmes is highlighted. A user perspective is needed to ensure that regulations are workable, acceptable, and enforceable. Good practice guidelines for consultation and participation are highlighted.

Finally, in Chapter 6 the main lessons learned are drawn together and conclusions and recommendations made. These focus on the development of support structures at departmental and central levels to promote regulatory reform. Specific proposals are made to promote good practice in departments, including: the establishment of a system for tracking and registering regulations; the drawing up of an annual regulatory plan outlining changes proposed to regulations and regulation reviews to be undertaken; the development of a system of regulatory analysis; and the establishment of performance indicators to keep track of the impact of regulatory reform initiatives.

Introduction

1.1 Focus of report

This report on regulatory reform was commissioned by the Committee for Public Management Research. The report examines international practice with regard to regulatory reform. In many OECD countries the quantity and scope of government regulation has been increasing. Often this growth in regulation is for very worthwhile and necessary reasons, for instance in the fields of consumer protection and health and safety. But the cumulative impact can be to increase the burdens on industry and different economic and social groupings. In response to this situation, several countries have embarked on reform programmes to cut back and to improve their regulatory functions. Ireland is currently involved in such a process, following the government's decision on 1 June 1999 to adopt a programme of regulatory reform measures. This report draws lessons from international practice of relevance to those guiding and implementing regulatory reform in Ireland.

1.2 Study background and terms of reference

Before going further, it is useful to clarify what is meant by regulation. The OECD (1994) defines regulation as 'a particular kind of incentive mechanism, namely, a set of incentives established either by the legislature, government or public administration that mandates or prohibits actions of citizens and enterprises'. In this context, regulation covers both primary and secondary legislation through which the government establish parameters for the behaviour of citizens and enterprises. Regulation impacts on all aspects of life. Examples include drinking and driving legislation, trading standards, equal opportunities legislation, codes of conduct aimed at consumer protection and tax legislation.

The OECD (1994) also notes that regulations are products of regulatory systems 'which includes the processes and institutions through which regulations are developed, enforced and adjudicated. The regulatory system also includes processes of public consultation, communication and updating.' Regulatory reform covers changes both to regulations themselves and to the broader regulatory system.

Delivering Better Government (1996) identifies regulatory reform as one of the main themes of the programme for change in the civil service. The intention is to reduce red tape and improve the quality rather than the quantity of regulations. This theme is also highlighted in *Partnership 2000* (1996), where it is stated that a national strategy will be developed to improve the quality of regulation and reduce the administrative burden on the public, with particular regard to the needs of small business. A Strategic Management Initiative (SMI) working group on regulatory reform (Report of the SMI Working Group on Regulatory Reform, 1999) was set up to progress the issue. The working group identify three essentials for progress:

- An acceptance by the Taoiseach, ministers and civil servants that the cumulative impact of regulation is already excessive and that there must be a means of securing relief from some existing burdens.
- Agreement by all ministers and departments to undertake a programme of quantification and reform with specific measurable targets and time-scales, to be set out in their strategy statements and annual business plans.
- Reallocation of sufficient resources in this area in departments as well as some central resource to drive and monitor developments.

In *Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland* (1999), the government sets out a programme of action with regard to regulatory reform (see Table 1.1). Among the main points made with regard to the management of regulatory reform are that each department should identify a senior official to oversee and monitor developments, and a lower level officer/officers to push forward an agenda of improving the quality of regulations. Each department is also expected to use existing consultative mechanisms or establish a user group or groups of clients, to consult regularly about the quality of regulations. Centrally, it is proposed to establish a Central Regulatory Reform Resource Unit based in the Department of the Taoiseach to drive the regulatory reform agenda.

Table 1.1
Programme of Action on Regulatory Reform

The Government has decided on the following specific actions:

- each department and office will now consult with customers and other interested parties as to the priorities for regulatory reform.
- based on those consultations, each Department/Office will list, by Autumn 1999, the relevant legislation (both primary and secondary) and identify the scope which exists for its consolidation, revision and/or repeal. This will be done with particular reference to barriers/burdens to market entry and the administrative burden on small businesses.
- each Department and Office, in the light of its individual business environment, will ensure that the views of users/customers will be identified and taken into account in relation to the ongoing review of the quantity and quality of legislation/regulation in force and to the introduction of new legislation. This will be done through existing consultative mechanisms and/or the establishment of new user groups.
- Departments and Offices will assess each Memorandum for the Government containing proposals for new legislation/regulation by reference to a standard Quality Regulation Checklist.
- each Department will assign responsibility at senior management level for the implementation of the regulatory reform programme.
- because of the need to focus particularly on reducing the burden on business, an ad hoc High Level Group will be established to examine the forthcoming recommendations of the Small Business Forum relating to administrative simplification, with a view to implementing them to the greatest possible extent.
- finally, a small Central Regulatory Reform Resource Unit will be established in the Department of the Taoiseach to drive the agenda of regulatory reform and monitor progress.

Source: Reducing red Tape: An Action Programme of Regulatory Reform in Ireland, 1999, p.8.

This agenda for regulatory reform mirrors developments in many OECD countries in recent years. Thus, given that the broad framework for a regulatory reform programme has been determined by the SMI working group, this research aims to draw on international experience and highlight lessons learned to date. The terms of reference for the study are:

to help inform those charged with moving the regulatory reform agenda forward by drawing from international experience, and in particular highlighting the key issues and priorities for action in three main areas:

- departmental management and prioritisation of regulatory reform
- user involvement
- structural supports for action (e.g. role of central unit).

These three areas were chosen because they form a key part of the approach to managing regulatory reform being developed in Ireland, and there is information to draw on from the international literature.

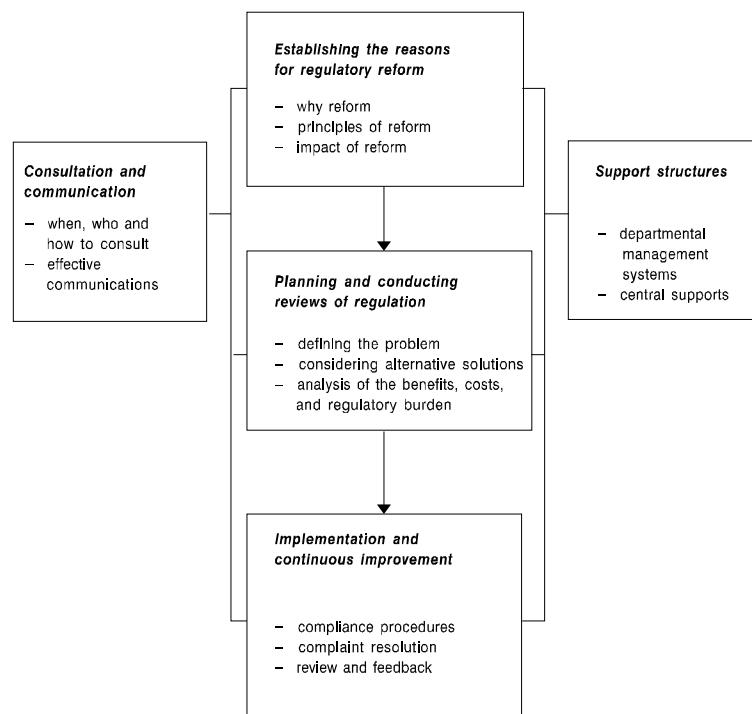
1.3 Study approach and methodology

The international literature on regulatory reform provides the main information for this study. In particular, the OECD's public management service (PUMA) has been co-ordinating a research programme on regulatory reform in member states since 1990. This PUMA research programme looks at how member states manage the regulatory reform process. As such, it provides a valuable data base. In addition, the experience of individual countries with a track record of regulatory reform is examined through literature review. In particular, Australia, Canada and the United Kingdom have extensive reform programmes which have been in place for a number of years, and which have been extensively documented.

1.4 Report structure

Figure 1.1 outlines a framework for the study. Chapter 2 establishes the reasons for regulatory reform by examining the principles and impact to date of regulatory reform programmes. In Chapter 3, experience with the planning and conduct of reviews of regulation is assessed. Chapter 4 investigates what needs to happen with regard to the implementation and continuous improvement of regulatory reform. In Chapter 5, consultation and communication practices are explored. In Chapter 6, the main lessons learned are drawn together and conclusions and recommendations made with regard to the support structures – departmental and central – needed to further regulatory reform.

Figure 1.1
Framework for the Study



Principles and Impact of Regulatory Reform

As a starting point for Ireland's regulatory reform initiatives, it is useful to take an overview of what has happened with other regulatory reform efforts. A number of questions raise themselves: why is regulatory reform considered important; what principles inform regulatory reform; and what are the effects of regulatory reform? Such questions provide a guide to investigating regulatory reform practice.

2.1 Why regulatory reform?

The Report of the SMI Working Group on Regulatory Reform (1999) notes tensions that can be caused by regulation: ‘The Group accepts that the cumulative effect of regulation is such as to place a burden on the public in general and in particular on business. The Group also accepts that much existing regulation performs a necessary function in many instances through setting down minimum standards that should be followed in particular sectors e.g. food hygiene, tax, planning and safety.’ So, while regulation can be seen as a burden, particularly on business, it is also often a necessary feature of public life. This latter point is emphasised by experience in several OECD countries in the early 1980s, where the focus was placed on deregulation. However, it became clear that deregulation, while successful in specific sectors, failed as a general policy. The OECD (1995a) states:

... a deregulation programme by itself is too limited. In precisely those areas where regulation is growing fastest – product standards, environmental quality, working conditions, safety and health, equal opportunity, consumer protection – deregulation is neither possible nor (usually) desirable ... Even in ‘deregulated’ sectors, re-regulation is proceeding as new regulatory regimes are developed and old ones revised to oversee privatised monopolies and the emergence of new technologies.

The focus then shifted from deregulation to regulatory reform: what Canada refers to as ‘regulating smarter’ and the UK as ‘better regulation’. The emphasis here is on improving regulations and the regulatory system. In particular, the OECD (1997) identifies a number of issues that justify a focus on regulatory reform:

- a) *Volume of regulation.* An overview of experience in member countries shows that regulatory growth is widespread and rapid. Increases can be found in (i) the number of regulatory instruments; (ii) the average length of regulatory instruments; and (iii) an increasing rate of revision of regulations.
- b) *Cost of regulation.* Four main components of cost are identified:
 - (i) Fiscal costs to government i.e. the cost of administering the regulatory system. Most countries do not measure this systematically, though in the United States it has been noted that staff in federal regulatory agencies rose from 71,000 in 1970 to 133,000 in 1995.
 - (ii) Administrative and paperwork costs for businesses and citizens. Here, evidence from the USA indicates that firms with 1-4 workers spend \$2,080 per employee per year in clerical cost and time associated with paperwork and administrative requirements; firms with 500-999 workers spend \$120 per employee.
 - (iii) Capital costs of compliance. This includes items such as buying new equipment, reconfiguring production processes etc. These are sometimes added to administrative costs to produce an estimate of total regulatory compliance costs. Information is limited, but estimates from the USA put regulatory compliance costs at about 10 per cent of GDP, and less complete estimates for Canada and Australia are also in the

same range of 10 per cent of GDP. However, these figures are tentative and need to be interpreted cautiously.

- (iv) Indirect costs. These are costs arising as a result of reduced competition and innovation, and hence slowed investment and growth. For example in the EU, the European Single Market Programme to remove barriers to competition is estimated to increase growth by between 0.2 and 0.9 per cent per annum.
- c) *Effects on regulatory quality and the rule of law.* The French Conseil d'État suggests that more mistakes are being made as a result of hasty and ill-considered regulation and the general growth in regulations. One particular issue is that regulatory growth may lead to disregard for some regulations, and lower compliance rates, with a general falling in respect for laws and regulations. Such regulatory growth may also be counter-productive. For example, a study of nursing home regulation in Australia and the USA found that the quality of care was higher with flexible outcome-oriented regulations in Australia (numbering thirty-one) than with detailed input-oriented regulations in the USA (numbering over 500).

There is clearly, therefore, a widespread view in OECD member countries that regulatory reform is a necessary policy choice. In many instances, such as health and safety and consumer protection, regulations are needed to promote the public good. The focus, therefore, is on improving the quality of regulations so as to enhance competition and growth and also promote important social goals such as environmental quality and equal opportunities.

2.2 What principles underlie regulatory reform?

In order to guide regulatory reform efforts, some countries have explicitly stated principles against which regulations and regulatory systems can be judged. In Australia, for example, a Competition Principles Agreement sets the tone for regulatory review. The overarching guiding principle of the reviews is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition (Productivity Commission 1998, p.xi)

In the UK, the Better Regulation Task Force (1998a) has set out what it believes to be the key principles of all good regulation:

- *Transparency.* Policy proposals which require regulations should be clearly defined and effectively communicated to all those concerned. Regulations should be simple and clear, and come with guidance in plain language.
- *Accountability.* Regulators should be clearly accountable to government, citizens and parliament. There should be a well publicised, clear and independent appeals procedure.
- *Targeting.* The approach taken should be aimed at the problem and avoid a 'scatter-gun' approach. A goals-based approach should be used where possible.
- *Consistency.* Regulatory consistency is essential between new and existing regulations, between domestic and EU obligations, and between overlapping domestic regulations.
- *Proportionality.* Government should seek to strike a balance between mitigating or eliminating risk through regulation, as against the cost and effectiveness of such action, and the rights of citizens to make their own choice.

Establishing such a set of principles provides a framework against which regulatory reform efforts can be evaluated. The extent to which the principles are put into practice determines the degree of success of regulatory reform.

2.3 What are the effects of regulatory reform?

The effects of regulatory reform can be assessed by investigating the degree of follow-through on reform efforts and the actual impacts of reform.

2.3.1 Administrative follow-through of reform

In general terms, OECD studies show the importance of continued political commitment if regulatory reform is to succeed, and the difficulties involved in sustaining this commitment. The OECD (1993) note two points often made by those involved in regulatory reform. First, political support has often been more general than specific, tending to waver when proposals are opposed by well-organised interest groups. Second, political attention tends to be cyclical: high at the moment of programme initiation, but falling before change can be attained.

This general and cyclical commitment to regulatory reform also affects the progress of reforms through parliament. As the UK Better Regulation Task Force (1998b) notes: ‘Procedures for repealing redundant regulations are unsatisfactory, in that departments are more interested in using their allocated parliamentary time and their resources to introduce new legislation rather than to repeal old regulation.’

More generally, little is documented about the extent to which regulatory reform initiatives are progressed. One notable exception is Australia, where the Office of Regulation Review (ORR), within the Productivity Commission, has responsibility *inter alia* for reporting on implementation of the commonwealth government’s legislation review programme, under which existing legislation which restricts competition or has a major impact on business is being reviewed. In order to report, they have developed a set of performance indicators for the legislative review programme (see Table 2.1).

Table 2.1: Performance Indicators for the Commonwealth’s Legislative Review Programme

Stage I – Planning the reviews

- a) Did the review proceed as scheduled? If not, was approval sought from the Prime Minister, the Treasurer and the responsible minister and have reasons for the variation been publicly stated? Did reviews commence late in the financial year?
- b) Was the ORR consulted at least three months before the scheduled commencement?
- c) Did the ORR agree that the terms of reference met the requirements of the Competition Principles Agreement and the Commonwealth’s review requirements?
- d) Was the review body as specified by the government?

Stage II – Conducting the reviews

- e) Has the review been completed? Was a reporting date included in the terms of reference? If so, was the review completed accordingly? Where appropriate, was approval sought for an extension?
- f) Has the report been made publicly available? If so, how long after completion of the review?
- g) Is there evidence of appropriate consultation opportunities?
- h) Did the report contain a conclusion with respect to the guiding principle of the Competition Principles Agreement?

Stage III – Implementing reforms

- i) Has the government responded? If so, how long after release of the report? Were the review recommendations accepted?
- j) Where the government has announced regulatory reforms, have the reforms been fully implemented? If so, how long after the announcement?
- k) Where appropriate, was there full compliance with Regulation Impact Statement requirements?

Drawing on the experience of sixty reviews (Productivity Commission 1998) the first annual report of the Productivity Commission note areas where performance was good:

- Performance was good where reviews of legislation were planned, for instance by consulting the ORR on terms of reference and adopting the type of review body suggested by the government.
- Performance was also good where there was a high standard of consultation – where all reviews were advertised, where review reports listed consultation details and drafts were widely circulated during the conduct of reviews.

The Productivity Commission also note areas where performance could be better, mostly at the review and implementation stages, and recommends:

- ensuring that the report of any review clearly addresses the guiding principle of the Competition Principles Agreement;
- making the review report publicly available as soon as practicable after the conclusion of each review;
- timely implementation of proposals, or seeking approval for variations to the schedule at an early stage (a third of reviews did not adequately meet this criterion);
- fully complying with the Regulatory Impact Statement requirements where regulatory changes result from the review (50 per cent of reviews did not adequately meet this criterion).

It seems clear that added difficulties arise in ensuring follow-through on reform efforts as the process progresses through planning, review and implementation.

2.3.2. The impacts of regulatory reform

OECD studies have found that a rigorous assessment of the impact of regulatory reform initiatives is not possible. Causal factors for outcomes are often unclear, and few governments have developed measurement systems for tracking quality improvements. However, the OECD (1995a) does identify four key areas where suggestions are that reform is impacting positively:

- (i) *Economic performance.* Empirical evidence of links between regulatory reform and economic growth is not conclusive, but suggestive of beneficial results. Econometric modelling studies in Germany and the Netherlands suggest substantial benefits from deregulation efforts, with GDP and employment rising and inflation falling. The EU Single Market programme is estimated to have produced gains of 1.5 per cent of European GDP from 1987 to 1993. Australia assesses its gains from reform to be around 5.5 per cent of GDP.

Also, for particular sectors such as transport and energy, there is evidence that regulatory reform aimed at improving market competition has resulted in lower costs and prices for consumers and for user industries. For example, several industry wide studies of airlines and surface freight indicate substantial positive effects from deregulation (OECD 1997).

- (ii) *Regulatory quality.* Reports from countries that have introduced regulatory reform indicate that initiatives such as legislative review, regulatory impact analysis and consultation have increased the quality of many regulations. Regulations are now more likely to be cost-effective, taking more account of the costs imposed by regulations. Regulations have also become more flexible, with a move towards performance-oriented regulations. In particular, there has been a shift away from economic regulation towards health, safety and environmental regulation. However, some reformers have expressed

concern that as the volume of new regulations increases, regulatory quality comes under pressure and could decline.

- (iii) *Management capacities.* New regulatory systems are seen to be more manageable and responsive to changing needs. The systematic process of regulatory monitoring, tracking and oversight allows governments to detect regulatory problems earlier, and respond more speedily.
- (iv) *Openness and accountability.* Consultation has increased significantly, as has the information on which consultation is based. In particular, regulatory impact statements are seen as having placed information gathering and presentation in systematic frameworks that have facilitated public debate on regulation. Accountability has improved through more informed reporting to cabinets and parliament, and through clearer ministerial responsibilities for meeting explicit quality standards.

Planning and Conducting Reviews and Regulation

Reports such as *Delivering Better Government* (1996) and *Partnership 2000* (1996) indicate that regulatory reform is needed in Ireland. *Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland* (1999) sets out a broad framework for introducing and implementing regulatory reform in government. Chapter 2 indicates that, despite limited information, reports show that regulatory reform has had positive effects in those OECD countries which have introduced reform programmes in recent years. In this context, what is now needed is the detailed application of regulatory reform practice in government departments and agencies.

Planning and conducting reviews of regulation – either reviewing existing regulation or assessing the impact of proposed regulations – is a key task in this implementation process. The focus in this chapter is on how to ensure a rigorous review of a new or an existing regulation. Broader planning issues, such as how to decide what regulations to review and when, are dealt with in Chapter 6, where departmental management of regulatory reform is discussed. International experience indicates that three issues in particular need to be covered in the review process – defining the problem, considering alternative solutions, and analysing the benefits, costs and regulatory burden. Consultation, which is a central element running throughout each of the stages in the planning and review process, is explored in detail in Chapter 5, which covers the issue of user involvement more generally.

3.1 Defining the problem

When deciding to retain an existing regulation or before putting in place a regulatory solution, departments need to be able to demonstrate that a problem exists for which regulation is the answer. As the UK Better Regulation Unit (1998) states:

Whenever you are considering introducing regulations, your first step should always be to identify as clearly as possible the issue that you are seeking to address. What is the nature and scope of the problem? Who is affected or involved? What is your timescale for action? What exactly is your objective in addressing the problem?

In particular, the nature of the problem needs to be such that regulatory intervention by government is needed. The Australian Office of Regulation Review (1998) identify two main justifications for regulation:

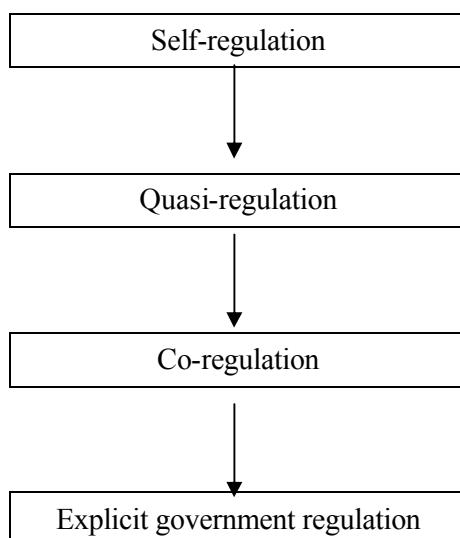
- Dealing with market failure, which may occur:
 - when there is a monopoly and abuse of market power;
 - if there is insufficient or inadequate information available;
 - when goods or services are public goods;
 - when there are external costs or benefits resulting from a transaction in a market.
- Attaining social goals, involving issues such as worker safety, environmental degradation, consumer protection and equity goals.

One structured way of defining the problem to be addressed is through the use of front-end assessment guidelines, as used by Agriculture and Agri-Food Canada (Regulatory Best Practices Committee 1994b). These guidelines detail the steps programme officials should take in completing a front-end assessment of regulatory options: describe the circumstances creating the need for new initiatives; outline the anticipated reaction of industry, consumers and other relevant stakeholders; compare the regulatory initiatives taken by major trading partners for the subject area; specify all potential non-regulatory options; and complete a preliminary impact assessment for each potential regulatory or non-regulatory option identified.

3.2 Considering alternative solutions

The last two points of the front-end assessment guidelines specified above refer to the issue of considering alternative solutions to the specified problem. As the Australian Office of Regulatory Review (1998) notes, this involves determining the form of regulation and the most appropriate instruments to achieve the policy objectives. Four main forms of regulation (see Figure 3.1) are identified:

*Figure 3.1
A Simplified Spectrum of Regulation*



Source: Office of Regulation Review, 1998

- *Self-regulation* is generally characterised by industry formulating rules and codes of conduct, with industry solely responsible for enforcement. Typically, an organisational group regulates the behaviour of its own members
- *Quasi-regulation* refers to the range of rules, instruments and standards used by government to influence business to comply, but which do not form part of explicit government regulation. Examples include government endorsed industry codes of practice or standards and national accreditation schemes.
- *Co-regulation* usually refers to the situation where industry develops and administers its own arrangements, but government provides legislative backing to enable the codes or standards to be enforced.
- *Explicit government regulation* has three main characteristics: it aims to change behaviour by detailing how regulated entities should act; it generally relies on government inspectors and/or monitoring to detect non-compliance; and it imposes punitive sanctions if the regulations are not complied with.

Within this framework, a range of instruments are available to achieve policy objectives (Office of Regulation Review 1998; Better Regulation Unit 1998):

- *Do nothing.* As a starting point, the option of not taking any specific action should be considered. The problem may not be capable of solution by government intervention; or, changes anticipated in the environment may negate the need for action at this stage.

- *Review existing law.* If a previous government law has directly or indirectly caused the problem, the solution may be to improve guidance as to how to comply or to better target or simplify existing regulations.
- *Improve information and education.* Such strategies seek to address the problem by changing the quality or distribution of information available, usually to enhance consumer information. This approach does not set legally binding rules on behaviour, but focuses on persuasion and education.
- *Introduce a voluntary scheme.* This may be appropriate where public and private interests co-incide. Examples include non-mandatory codes of practice, agreements on standards and information disclosure such as labelling.
- *Consider a legally enforced code of conduct.* Codes are generally adopted and administered by the industry to which they relate. They may be used as evidence to show whether a legal duty has been complied with.
- *Use economic incentives or tradable property rights.* Economic incentives can be used to change behaviour: a tax or user charge will raise the cost of engaging in an activity, for example charges for waste disposal, while a subsidy will lower it. Tradable property rights are government issued permits granting property rights that may be bought and sold in the market, such as tradable pollution permits or takeoff and landing rights at crowded airports.
- *Direct regulation.* Here, requirements are laid down directly in statute and enforced. Regulatory standards are often set. There are three main types of standard:
 - principles-based, which describe the objective in general terms and require interpretation according to the circumstances;
 - performance-based, which specify the desired outcome in precise terms, but allow flexibility in the achievement of that outcome; and
 - prescriptive standards, which specify the technical means for attaining the specified outcome.

3.3 Analysing the benefits, costs and regulatory burden

Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland (1999) proposes that all relevant memoranda for government should have a statement of impact assessment and compliance costs. The intention is that departments must be able to demonstrate that the benefits of regulatory requirements are greater than their costs and the burden they place on regulated entities. Assessment of the impact of regulations, commonly termed regulatory impact analysis (RIA), has been described by the OECD (1997) as ‘probably the single most effective process reform for reducing the cost of new regulations’.

By 1996, more than half of OECD countries had adopted RIA programmes of one sort or another. Some evidence has been gathered that where it is done well, RIA improves the cost-effectiveness of regulatory decisions. For example, in 1987 the US Environmental Protection Agency evaluated fifteen RIAs and found that they cost \$10 million to conduct, but resulted in net benefits of \$10 billion arising from revisions to regulations. Also, most countries note that RIA contributes to a ‘cultural shift’ whereby regulators become more aware of the costs and benefits of their actions and more conscious of the need to take costs into account when developing or changing regulations. Through encouraging a systematic approach to the issue, RIA is also seen to contribute to enhancing the openness and transparency of decision making, particularly through the structured consultation and participation of affected groups (OECD 1996).

The degree of rigour and analysis needed to conduct an RIA varies depending on the importance of the regulation. In most countries, formal and rigorous impact assessments, such as full fledged cost benefit analysis, are limited to the most significant regulations. For less important regulations, rough cost assessments and qualitative assessments are more common. What is common is that RIAs are structured so as to give as comprehensive a picture as practicable of the costs, benefits and regulatory burden of a particular regulation and of the alternatives to it. A typical set of elements contained in an RIA are set out in Table 3.1, derived from work by the UK Better Regulation Unit (1998).

Table 3.1: Typical Contents of a Regulatory Impact Analysis

1. Purpose and intended effect of the measure

- a) Identify the issue and objectives
- b) Conduct a risk assessment if appropriate

2. Options

- a) Identify options for dealing with the issue
- b) Consider issue of equity or fairness – the distribution of benefits and costs

3. Benefits

- a) Identify the benefits
- b) Quantify and value the benefits

4. Compliance costs

- a) Identify sectors involved e.g. business, charities, voluntary organisations
- b) assess compliance costs for a 'typical' business
- c) estimate total recurring and once-off compliance costs

5. Identify any other costs

6. Consultation

- a) particularly with small business, including small charities and voluntary organisations
- b) results of consultations

7. Summary and recommendations

- a) for each option, compare the benefits and costs and, where appropriate, give a net value or range of values, and distributional effects

8. Enforcement, sanctions, monitoring and review

- a) set out arrangements for ensuring compliance and details of sanctions for non-compliance
- b) say how the regulation is to be monitored and give a date for review

Source: Better Regulation Unit (1998)

Some impact assessments are targeted at specific sectors. For example, in Canada, a Business Impact Test (BIT) has been developed to enable regulators to evaluate the impacts on business of proposed regulatory measures. The BIT is a consultation tool that enables assessment of how regulations and regulators affect business, whether alternative approaches to regulation exist, and the direct cost to firms of regulation (Industry Canada, BIT web site 1999)

Despite this rigorous approach to RIA, and the benefits that arise, there is evidence of significant non-compliance and quality problems with RIAs. The OECD (1998) note that in Finland, a parliamentary committee found that assessments of the impact of costs of new laws on the private sector were often non-existent, four years after RIA was legally mandated. The Australian Productivity Commission (1998) found a failure to conduct Regulatory Impact Statements in some cases, particularly regarding quasi-regulations, and that some statements were of poor quality. The OECD (1996) quote an Australian official who details several problems with the federal RIA programme:

Quality varies enormously. Assertions are often not well supported. Little assessment of benefits is the most common failing. The statement of purpose is often inadequate. We have real problems getting departments to apply welfare economics analysis to benefit-cost type judgements. The RIS (Regulatory Impact Statement) often becomes a justification for what they want to do anyway.

Some of these problems are technical – a lack of the necessary skills and analytical approaches needed to conduct rigorous assessments or a lack of appropriate quality control procedures. Some problems, however, are more institutional in nature, resulting from value and power conflicts. Regulators and interest groups can be opposed to RIA, seeing it as a threat to their way of doing business. Sanctions for non-compliance may be seen to be ineffective, and incentives limited in their impact. The OECD (1996), taking such factors into account, note seven conditions which seem to support the successful adoption of RIA – see Table 3.2. They also note that two programme designs seem to be particularly ineffective:

Table 3.2: Seven Conditions Supporting Regulatory Impact Analysis

1. *political support* at ministerial or parliamentary level;
2. establishment of *clear quality standards* (such as cost-effectiveness or benefit-cost tests) for regulations that can be measured by RIA;
3. selection of *a methodology that is flexible and administratively feasible* given capacities and resources. In most cases, simplicity is more important than precision, even if only the order of magnitude of impacts can be reliably determined. In all cases, use of a few consistent analytical rules can greatly improve the quality of the analysis;
4. *development of an institutional structure* for a RIA programme that charges regulators with primary responsibility for RIA, and places quality control with an independent oversight body empowered to establish quality standards for analysis;
5. testing of assumptions through *public consultation*;
6. integration of analysis into administrative and political decision processes, including *communication of information* in a coherent and systematic manner; and
7. development of a programme to *build expertise and skills among regulators*, including development of written government-wide guidance. Canada has, for example, shifted its focus from examining individual RIAs to providing training, communication and best-practice seminars for personnel involved in the analytical process.

Source: OECD (1996)

delegating full responsibility to regulators without adequate oversight sacrifices RIA to the narrower incentives and mission of the regulators, while at the other extreme, placing responsibility for RIA in an independent body isolates the analysis from the decision-making process, and renders it an academic and impotent analysis.

Implementation and Continuous Improvement

Once the existing or new regulation has been reviewed, implementation of the best solution identified from the alternatives assessed is the next main step. Here, the focus is on programme design: in particular, compliance procedures, complaint resolution, and review and feedback. The aim is to ensure effective follow-through on the regulatory reform initiative, and to build in a process of review and reflection so that future adjustments can be made to regulations as necessary.

4.1 Compliance procedures

Ensuring that compliance with regulations is achieved effectively can be a difficult task. It must begin at the assessment phase: when designing or revising the regulation, alternative compliance strategies such as education, persuasion, incentives, enforcement and sanctions must be reviewed. As the OECD (1995a) notes: ‘Realistic assessment of expected compliance rates, based on available compliance and enforcement strategies, may suggest that one policy instrument is more attractive than another that appears more effective on paper, but is likely to be more difficult to implement.’ A range of possible enforcement responses are available to regulators (OECD 1994):

- verbal or written warnings;
- tickets with a monetary penalty attached;
- administrative directives or orders;
- increased regulatory burden (e.g. more stringent reporting requirements, more intensive inspections, cost recovery of additional inspections);
- administratively imposed monetary penalties;
- negotiated solutions to non-compliance, enforceable by various methods (e.g. performance bonds, consent orders, suspended penalties);
- adverse publicity;
- licensing sanctions (e.g. increased restrictions, short-term renewals, suspension);
- contract listing (loss of right to government contracts);
- other civil remedies (injunctions, more punitive fines, restitution); and
- criminal prosecution (which may also result in a wide array of possible remedial orders).

It is important that whatever compliance strategies are adopted are founded on sound principles of enforcement. To this end, the UK Better Regulation Unit (1998) has set out principles of good enforcement agreed with government departments and local authority association (see Annex A). Apart from sound principles, another means of securing compliance is to use an implementation assessment checklist (OECD 1994) – see Table 4.1. Such a checklist can help ensure that all the relevant questions are addressed regarding compliance.

Overall, the broad aims of compliance strategies should be to explain and outline the policy objectives of the proposed reform, detail the compliance mechanisms used, and ensure enforcement. In an increasingly complex world, traditional ‘sticks’ (such as sanctions) and ‘carrots’ (such as grants or licenses), need to be supplemented by new procedures. In particular, strategies should aim to strengthen those factors working in favour of compliance in the environment and minimise those working against compliance.

Table 4.1
Model Regulatory Implementation Assessment Checklist

- | |
|---|
| <ol style="list-style-type: none">1. Is the law drafted in a way that will facilitate implementation and enforcement?2. What is the strategy for securing compliance with the regulation?3. What functions will be required to make this strategy work properly?4. How will compliance promotion and other communications activities be carried out?5. How will compliance monitoring be carried out?6. How will regulator requirements be kept up to date?7. How will enforcement be carried out?8. How will adjudication be carried out?9. What types of information will be required for operation of the programme? How will it be generated, compiled, protected and disseminated?10. What kind and level of human and financial resources will be required? How will they be acquired and managed?11. What organisational structure will be optimal to provide a suitable balance of control, accountability, and freedom to provide services?12. What arrangements will be required for security? |
|---|

Source: OECD, 1994

4.2 Complaint resolution

Those affected by regulation should have the right to appeal if they are not satisfied with the way the regulation is enforced. In Canada, the Treasury Board of Canada Secretariat (1996) have set out principles which should inform complaint resolution mechanisms established by federal regulatory authorities. They state that it is important that complaint resolution mechanisms:

- are easily accessible and well-publicised;
- are available in both official languages;
- are simple to understand and use;
- allow speedy handling, with established time limits for action, and that keep people informed of the progress of their complaints;
- ensure a full and fair investigation of complaints;
- respect people's desire for confidentiality;
- provide an effective response and appropriate redress to complainants; and
- provide information to managers so that they can improve services.

Some complaint resolution mechanisms may be relatively informal e.g. ensuring a contact person/point is identified to whom complaints can be made. Ultimately, more formal mechanisms may be needed, such as independent adjudication through administrative tribunals, courts etc.

4.3 Review and feedback

Early on in the process, it is useful to decide how the regulation is to be monitored, with a specific timescale set for review. Some regulations are specifically subject to set expiry dates: so-called ‘sunsetting’ of regulations. This is aimed at ensuring that regulations do not carry on indefinitely, and, as the UK Better Regulation Unit (1998) state: ‘... can be particularly appropriate in cases where you are producing a regulation to deal with an unexpected and possible short-lived emergency’.

Formal review and evaluation of regulatory programmes can provide feedback on their effectiveness in meeting the specified objectives and regarding their continuing rationale. For example, in Canada, from 1987 to 1992 thirty-eight ex-post evaluations of regulatory programmes were completed by Canadian government departments. The majority of these evaluations led to some modification in the form of operational changes to the programme (Lemaire 1998).

5

User Involvement: Consultation, Participation and Communication

The active involvement of citizens and businesses in the development and review of regulations is needed to ensure that regulations are workable, acceptable and enforceable. The OECD (1994) identify a number of general lessons with regard to public consultation:

- Introducing public participation can require significant changes in existing regulatory processes, and significant changes in the attitudes of administrators. In particular, consultation processes imposed from above without training and oversight often lead to government officials going through the motions.
- If it is to be genuine, public consultation processes must ensure that the public is well informed on the issues. Governments must be pro-active about generating usable information.
- Consultation must occur at an early enough stage to affect decisions. Waiting until the minister has already approved a proposal may be too late.
- Accessibility to the consultation process should be fair, and not biased towards narrow interest groups.
- Processes of consultation and participation must be carefully structured, particularly so as not to introduce intolerable delays and costs.
- Effective communication of regulatory processes and proposals to affected citizens is a particular concern. Clarity, simplicity and legal transparency of regulatory proposals and decisions are needed.
- An energetic and involved network of organised interest groups – a healthy ‘civil society’ – is critical to the success of public consultation.

There are three main categories of public involvement in regulation identified by the OECD (1994): (a) *notification*, basically the provision of information; (b) *consultation*, asking citizens and businesses to provide comments and advice; and (c) *participation*, providing citizens and businesses with an opportunity to assist in establishing regulatory objectives, determining the general strategy, and drawing up initial regulatory proposals.

5.1 Notification

Some OECD countries publish agendas of laws and regulations that are planned. This procedure is aimed at giving affected parties as much notice as possible of likely implications arising from regulatory developments. For example, in the USA, the Regulation Information Service Center publishes the *Unified Agenda* twice yearly, in the spring and autumn, in the government’s Federal Register. The *Unified Agenda* is a comprehensive listing of regulatory and deregulatory activities proposed by the federal government. A *Regulatory Plan* is published as part of the autumn edition of the Agenda. The *Regulatory Plan* identifies regulatory priorities and contains additional detail about the most significant regulatory actions that agencies expect to take in the coming year (Regulatory Information Center web site, 1999).

In Australia, as part of a government policy announced in 1998, all government departments and agencies are required to publish an annual regulatory plan. These plans are seen as an important part of the drive to improve the regulatory environment for small business. A pilot plan has been published by the Department of Employment, Workplace Relations and Small Business, which includes summary information about changes to regulation which occurred during 1998 and activities planned for 1999 which may lead to regulatory change (Department of Employment, Workplace Relations and Small Business 1999). The information is provided using a standardised set of headings, as illustrated in Table 5.1. An example output, for the Affirmative Action Agency, is given in Annex B.

Table 5.1
Information contained in Regulatory Plans (Australia)

Information about each regulatory change or planned activity is presented under a standardised set of headings, as follows:

1998 changes

Title

Description – A brief explanation of the regulatory issue containing information on such matters as the nature of the regulatory change; the purpose and benefits of the change; who will be affected and how.

Date of effect – Information about when changes took effect or will take effect.

For further information contact: – Details of an individual who can be contacted for further information about the matter.

Will it affect any small businesses? – The information under this heading is either ‘yes’ or ‘no’ and is provided to make it possible at a glance to distinguish which items are directly relevant to small business. A ‘yes’ indicates that at least some small businesses will be affected, but does not mean that all small businesses will be affected or that the effect will be large.

1999 planned activities

Title

Description – As for 1998 regulatory changes.

Planned consultation – A short summary of consultation which is likely to take place in connection with the issue, where such information is available.

Expected timetable – A summary of available information about the likely timing of work on the matter.

For further information contact: – As for 1998 regulatory changes.

Priority – Each planned activity has been categorised as ‘high’, ‘medium’ or ‘low’ priority by the responsible agency.

Will it affect any small businesses? – As for 1998 regulatory changes.

Source: Department of Employment, Workplace Relations and Small Business, 1999

5.2 Consultation

Consultation can occur throughout the regulatory reform process, from development to implementation to review. It is important that the main affected groups or stakeholders are identified and consulted. Particular efforts may be needed to involve disadvantaged interests, as the OECD (1994) note: ‘Consultation which focuses on only selected and well-organised interests may produce biased information which can skew regulatory decision-making. Governments can improve opportunities for balanced participation by assisting disadvantaged groups, either directly, or by making it easier for them to obtain information and provide input’. With regard to business, it is important to remember that regulations may have a disproportionate effect on small business, and that their views need to be taken into account.

The UK Better Regulation Unit (1998) has issued good practice guidelines for the production of consultation papers. They suggest that all consultation papers should:

- be in simple language, be concise and clearly laid out. Aim for a couple of pages wherever possible;
- provide a summary of the proposals;
- state what you think those who are being regulated will have to do in order to meet the proposals;
- state who else is likely to be affected and how;
- do more than just make a general request for comments. Ask specific questions. Highlight the options on which views are sought;
- include a draft Regulatory Impact Assessment and request comments on the estimates of costs and benefits;
- include a timetable: for responses and further consultation, for making the regulations, for proposals to be considered by parliament and for the regulation to take effect;
- provide a contact name, telephone number and address;
- provide a list of consultees;
- include a statement that responses will normally be made public; and
- allow enough time for considered responses, with eight weeks generally being the minimum period.

As mentioned in Section 3.3, the regulatory impact analysis (RIA) acts as a spur to structured consultation, alongside its role as an analytical tool. It is normal policy that a consultation statement is included in the RIA, detailing the consultation undertaken, or reasons why consultation was inappropriate. The UK Better Regulation Unit (1998) note in particular how an RIA can be used to structure consultation with small business:

As part of every RIA, departments should normally identify two or three typical small businesses and discuss with them the impact the regulations will have on them. This should include the practicality and cost impact of implementing the regulations and any other impacts, for example on their competitiveness and export business.

Where the regulations will affect more than one sector then sufficient small businesses will need to be consulted to ensure there is a representative analysis of the impact on small businesses in those sectors likely to be affected by the regulation. Where the regulation will also impact on charities and voluntary organisations then the test should also include some typical small organisations from this sector.

Whatever consultation methods are used, consultation will need to be brought to a close at some stage. In the Netherlands, what is seen as a major cultural change in the current regulatory reform programme is that consultation is now being viewed as an input to quality decisions rather than a search for consensus. This is seen as reducing delays and focusing more on outcomes (OECD 1999). Health and Welfare Canada have found the production of a formal notification document, distributed to industry, to be a useful means of bringing consultation to a definitive conclusion. This document highlights the concerns raised by industry following consultations and outlines final amendments that will be made to the proposed regulations. Those sent the notification document are requested to contact the department by a specific date if they require additional clarification (Regulatory Best Practices Committee 1994a). The department have found this process to be a useful way of bringing the consultation process to a conclusion.

Apart from consultation on specific proposals, there is also a need for general information and advice on regulation. To this end, the Cabinet Office in the UK have recently announced a pilot project 'Infoshop', to offer advice to the public and business community on a range of regulatory issues. The pilot will be led by a consortium of local authorities, central government departments and other public bodies, and operate in a selected number of local authorities. The pilot will focus on business and citizen requirements for help on regulatory issues regarding planning, building control, health and safety, and food safety, with the possibility of being expanded to cover other issues later if successful. The pilot builds on an electronic information system developed by the London Borough of Bexley, and will enable staff to answer complex queries about a range of regulation issues such as whether planning permission is needed or how best to ensure worker safety (Cabinet Office web site 1999).

5.3 Participation

In a structured attempt to bring citizens and, in particular, businesses into the regulatory decision-making process, several OECD countries have developed on-going participation initiatives. In particular, permanent or temporary advisory groups have been set up to assist in the development of new regulations and in the review and elimination of new regulations. Such a process is proposed in *Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland* (1999).

Canada has documented some of its experience with advisory groups (Regulatory Best Practice Committee 1994b). Agriculture and Agri-Food Canada set up an External Regulatory Panel to assist the department in conducting a review of its regulations, and to assess progress against regulatory plans. The panel consists of seven individuals, including a private consultant and people for the agri-food sector, a consumer group, and academics. The panel meets three times a year, and is supported by a secretariat provided by the department. The panel is seen as allowing external stakeholders to oversee and comment on the regulatory review process. It is also seen as a useful means of providing the department with a way to obtain an initial reaction from affected stakeholders before engaging in a comprehensive consultation process.

Similarly, the Federal Environmental Assessment Review Office has set up a Regulatory Advisory Committee (RAC) which meets every two to three months. The RAC has twenty members: six from industry associations; four from environmental non-governmental associations; two from aboriginal groups; four from provincial government; and four from federal departments. The office has found the RAC mechanism preferable to ad hoc public consultation meetings as a means of providing soundings on differing views. However, the office also makes an important general point about the role of such groups:

While stakeholders should be encouraged to feel ownership in the draft regulation and policies around which a consensus is built, it must always be clear that the government has ultimate responsibility for producing regulations. Bodies such as the RAC are advisory only (Regulatory Best Practices Committee 1994b).

The USA have tried another means of participation in a limited number of cases: negotiated rule making. Here, since 1993, each government department has been directed to use negotiated rule making for developing regulations in at least one case each year. The aim is to provide an opportunity for persons and organisations affected by a regulatory proposal to reach agreement on the principles and detail of the regulation before these are drawn up or proposed by the department. It is aimed at avoiding costly litigation involving challenges to regulations, and is seen as having some success in doing this. However, it is also seen as very staff intensive and costly, and only works well where the competing interests want to reach a result through a co-operative effort (Regulation Review Committee 1998).

Conclusions and Recommendations: Developing Support Structures to Promote Regulatory Reform

As noted in the Introduction, regulation is in many instances an important and necessary feature of public life. Regulations are the product of regulatory systems, comprising institutions and processes through which regulations are developed, implemented and enforced. Management of this regulatory system, in terms of ensuring that supports are in place at departmental and central level to provide incentives for regulatory reform, is central to the success of reform initiatives.

Before going on to look at support structures at departmental and central levels, one overarching support, previously mentioned, needs to be emphasised: that of political support. As the OECD (1994) note: ‘Without active self-criticism by ministers, cabinets and parliaments of their regulatory decisions, the scope of reform will be limited.’ Continuing political involvement in the regulatory reform process is needed if it is to succeed.

Another key contextual issue is the role of the European Union (EU). Many regulatory developments in Ireland derive from EU Community law. Regulatory burdens may arise from the transposing of EU law into domestic law. It is therefore important that steps are taken not only to promote best practice nationally, but also to promote best practice at the stage of formulation of EU law. Support structures to promote regulatory reform will have a role in influencing EU developments as well as promoting domestic initiatives.

6.1 Departmental support structures

Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland (1999) notes that regulatory reform will require the re-allocation of resources in departments to give more emphasis to reform. In particular, the report states that each department should identify a senior official to oversee and monitor developments, and a lower level officer or officers to push forward an agenda of improving the quality of regulations. These officers will have a number of tasks to undertake to ensure that departmental regulatory systems support reform efforts. Many of these tasks have been noted throughout this study, but are worth summarising here, drawing from the OECD (1994) checklist of quality techniques for regulatory management:

- A system for tracking and registering regulations is a necessary first step with regard to regulatory management. The SMI Regulatory Reform Working Group emphasises the need for an audit of existing legislation and establishment of a computerised database of all legislation, both primary and secondary.
- An annual regulatory plan should be drawn up by departments, outlining planned changes proposed to regulations, and regulation reviews to be undertaken over the coming year. Regulatory priorities can be identified and highlighted in the plans.
- A standardised checklist should be used by each department to guide regulatory development. Again, the SMI Regulatory Reform Working Group note the need for this, and set out a quality regulation checklist (see Annex C). Checklists are a useful means of ensuring that regulators ask the right questions in a structured manner.
- A system of regulatory analysis should be established. Regulatory impact analysis, as noted in section 3.3, focuses the attention of regulators on the impacts, costs and burden of proposed regulations. For less important regulations, qualitative assessment may suffice. But for priority and costly regulations, full cost-benefit analysis is likely to be needed.
- Mechanisms for consultation and participation should be developed. As noted in Chapter 5, public consultation and participation are powerful means of improving regulatory

quality. Consultation and participation ground regulatory review in the reality of those most affected. User involvement comprises three main elements: (a) general notification on regulatory activities e.g. through regulatory plans or information centres; (b) consultation on specific actions, often as part of the regulatory impact analysis; and (c) structured participation through advisory groups.

- Compliance and complaint resolution strategies should be developed. Compliance strategies should outline the objectives of regulation, detail the compliance mechanisms to be used, and outline the enforcement mechanisms to be applied. Alongside such compliance strategies, complaint resolution procedures should be established as a right of appeal and redress for those affected by regulations.
- Systems for the review of existing regulations should be established. Regulations tend to continue on regardless of whether or not they remain relevant, unless specific efforts are made to review and evaluate them. Departments need to adopt systematic processes for evaluating existing regulations to see if they are still needed or need to be amended. The government's Programme Review initiative, established in 1997, provides a context within which such reviews could take place.
- Departments should promote cultural change. The OECD (1994) states that 'In the longer term, improving the quality of laws and rules requires 'counter-cultural' change within regulatory institutions themselves. External controls and oversight are necessary but are not in themselves sufficient to overcome bureaucratic resistance and the embedded 'command and control' philosophy.' Initiatives such as training and development and inclusion of reform actions in business and personal performance plans can be used to promote a supportive culture.
- Departments need to keep track of whether or not their regulatory reform systems are working well or not. The establishment of relevant performance indicators can help with this task. This point is addressed in section 6.2 below, as it is also relevant to central supports, and is often driven from the centre, to ensure consistency across departments and allow for comparisons.

It should also be noted that there is a current trend towards the establishment of independent regulatory bodies in certain sectors, and the removal of some regulatory functions from departments, thus separating policy from regulation. Examples here are the recently established Office of the Director of Telecommunications Regulation and the Commission for Electricity Regulation. The setting up of such bodies provides an ideal opportunity for putting in place the good practice quality techniques for regulatory management outlined in this study.

6.2 Central supports

The OECD (1997) in its review of regulatory management, notes that 'regulatory reform cannot be left entirely to regulators ... Instead, reform must be a shared responsibility between central regulatory managers, who protect global values of regulatory quality, and regulators pursuing specific policy goals.' Two particular issues arise with regard to the development of central supports: the role of central specialised regulatory reform units; and the monitoring and tracking of regulatory reform initiatives.

6.2.1 Central regulatory reform units

Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland (1999) notes that while the main work regarding reform must be done by individual departments, it is critical that a central resource unit be created to drive forward the agenda of reform. The government have decided that a Central Regulatory Reform Resource Unit be established and located in the Department of the Taoiseach. Such a central unit has been identified by several OECD countries as an essential element of a regulatory reform programme. The OECD (1994) notes that these units ‘... carry out a multitude of tasks ranging from intensive day-to-day review of individual rules to co-ordination among ministries to general monitoring of regulatory activity and advising the politicians. In general, they act as ‘watch-dogs’ over the regulatory and legislative process’.

Examples of central regulatory units include the Better Regulation Unit (re-named the Regulatory Impact Unit in mid-1999), based in the Cabinet Office in the UK, and the Office of Regulation Review, based in the Productivity Commission, which oversees the Australian Commonwealth’s reform programme. The Charter for the Office of Regulation Review (ORR), setting out its functions, is outlined in Table 6.1. It can be seen that the ORR has a significant advisory function, providing advice to departments and agencies on quality control for regulation-making and review and on regulatory impact analysis. The ORR also provides training and guidance to officials, and reports on compliance and on regulatory reform developments. In the Netherlands, the Ministry of Justice has a central support role in its regulatory reform programme. The ministry reviews and negotiates with other ministries on draft laws prior to their submission to cabinet, using regulatory quality standards. This is seen as an important quality control mechanism (OECD, 1999).

The central unit in the Department of the Taoiseach is thus likely to have two main roles: the provision of advice and guidance and the monitoring and quality control of activities. There can be tension between these activities. The first is developmental in nature, the second more focused on control. Maintaining the balance between the two can be a delicate task for those employed in central units. In terms of providing advice and guidance, the production of guides, checklists and good practice guidelines is a particularly important and useful task. In terms of control, overseeing regulatory impact analysis is a key task.

6.2.2 Monitoring and tracking regulatory reform programmes

Whilst the primary responsibility for monitoring progress with regard to regulatory reform lies with departments and agencies, some central oversight of the process is needed to ensure consistency. Central tracking of reform is also needed both as a quality control mechanism and as a means of highlighting general issues or problems to government.

Performance indicators can and should be used to track regulatory activities. The most systematic approach to the development of such indicators has been undertaken in Australia, under the auspices of the Office of Small Business (1999). In 1997, the prime minister announced that all Commonwealth departments and agencies would develop performance indicators relating to their regulatory activities. The Office of Small Business, working with departments and agencies, has produced a set of nine Regulatory Performance Indicators (RPIs) which can be applied by all commonwealth bodies with responsibility for regulation. These indicators, and the objectives which underly them, are set out in Annex D.

The intention is that the Office of Small Business will report annually on performance against RPIs. These reports will be based on information provided by the departments and agencies and the Office of Regulation Review. The indicators cover both (a) the impact of regulatory reform on the community and business, and (b) the process of regulatory management, covering issues such as consultation and analysis procedures. Over time, it should be possible to develop similar sets of indicators in Ireland.

Table 6.1 Chapter of the Office of Regulation Review (Australia)

The role of the ORR is to promote the Commonwealth Government's objective of effective and efficient legislation and regulations, and to do so from an economy-wide perspective. Its functions are to:

- advise the Government, Commonwealth departments and regulatory agencies on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations;
- examine Regulatory Impact Statements (RISSs) prepared by departments and agencies and advise on whether they meet the Government's requirements and whether they provide an adequate level of analysis;
- provide training and guidance to officials to assist them in meeting the requirements to justify regulatory proposals;
- report annually on compliance with the Government's guidelines, and on regulatory reform developments more generally;
- provide advice to Ministerial Councils and national standard setting bodies on COAG guidelines which apply when such bodies make regulations;
- lodge submissions and publish reports on regulatory issues having significant economic implications; and
- monitor regulatory reform developments in the States and Territories, and in other countries, in order to assess their relevance to the Commonwealth.

These functions are ranked in order of the Government's priorities, and the ORR must concentrate its limited resources where they will have most effect. While maintaining an economy-wide perspective, the ORR is to focus its efforts on regulations which restrict competition or which affect (directly or indirectly) businesses. The ORR is to ensure that particular effects on small businesses of proposed new and amended legislation and regulations are made explicit, and that full consideration is given to the Government's objective of minimising the paperwork and regulatory burden on small business. The ORR (together with the Treasury) is to advise the Assistant Treasurer in his role as the Minister responsible for regulatory best practice.

Source: Productivity Commission (1998)

6.3 Concluding comments

Regulation impacts on most aspects of life today. Many regulations are needed, for example to promote health and safety and desired social policies on issues such as equality. Other regulations may be outdated, or impose unnecessary costs on particular sectors of the economy such as small businesses. Regulatory reform is concerned with assessing the costs and benefits of regulations, and their impact on different sectors and interest groups. Reform is also about ensuring that arising from this review, unnecessary regulations are removed and needed regulations improved.

The tasks associated with regulatory reform impose a significant workload and challenge for government departments and agencies. This review of international experience indicates a broad agenda of issues to be addressed if regulatory reform is to succeed. In particular, it is crucial that sound and effective regulatory systems are in place in departments to produce and review the regulations themselves. Good regulations are an important element in the effective running of government in today's complex and rapidly changing environment.

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- Report of the SMI Working Group on Regulatory Reform (1999), in *Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland*, Dublin: Department of the Taoiseach, pp. 11-19.
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ANNEX A:
PRINCIPLES OF GOOD ENFORCEMENT – POLICY AND PROCEDURES (UK)

Principles of Good Enforcement: Policy

Standards. In consultation with business and other relevant interested parties, including technical experts where appropriate, clear standards should be drawn up setting out the level of service and performance that the public and business people can expect to receive. The standards, and annual performance against them, should be published. The standards should be made available to business and others being regulated.

Openness. The authority should provide information and advice in plain language on the standards that it applies and should disseminate this as widely as possible. It should be open about how it sets about its work including any charges that it sets, consulting business, consumers, employee representatives, voluntary organisations, and charities about it, and should discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness. Because prevention is better than cure, the authority's role involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. The authority should provide a courteous and efficient service and its staff should identify themselves by name. It should provide a contact point and telephone number for further dealings, and encourage business to seek advice/information. Applications for approval of establishments, licences, registration etc., should be dealt with efficiently and promptly. Wherever practicable the authority should ensure that its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays.

Complaints. The authority should provide well publicised, effective and timely complaint procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal and details of the process and the likely time-scale involved should be explained.

Proportionality. The authority should minimise the costs of compliance for business by ensuring that any action it requires is proportionate to the risks. As far as the law allows, the authority should take account of the circumstances of the case and the attitude of the operators when considering action. It should take particular care to work with small businesses so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency. The authority should carry out its duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, arrangements should be in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

Principles of Good Enforcement: Procedures

Advice from an officer should be put clearly and simply, and be confirmed in writing on request, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers should provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required should be given at the time and confirmed in writing in most cases within five working days, and in all cases, within ten working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism should be clearly set out in writing at the time the action is taken (whenever possible this advice should be issued with the enforcement notice).

Adherence to these principles should benefit business by cutting the overall costs of complying with regulations, by reducing the uncertainty of businesses about whether they are getting it right, and by assuring businesses that they are competing with one another on level terms. Helping business to comply will ensure that regulations provide necessary protection to consumers, employees and the environment. The emphasis should be on ensuring compliance.

Source: Better Regulation Unit (1998), Annex 3.

Annex B:
Extract from an Annual Regulatory Plan:
Regulatory Developments 1998 and 1999 (Australia)

Affirmative Action Agency

1998: Regulatory changes

There were no relevant regulatory changes within the responsibility of the Affirmative Action Agency during 1998.

1999: Planned regulatory activity

Implementation of the Government response to the review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.

Description

The Government has foreshadowed a number of legislative amendments to the Act including:

- Changing of name of the Act, Agency and title of Director;
- Inserting objects in the Act;
- Revising the current 'eight-step' contents of a program;
- Introducing an outcomes-focused reporting arrangement;
- Revising the current reporting requirements to biennial reporting; and
- Revising the current waiving requirements.

Other policy changes (not requiring legislative amendment) include:

- Establishing a Board consisting of people with expertise and experience in the field of Affirmative Action/Equal Employment Opportunity;
- Developing guidelines for employers;
- Removing the five level assessment system; and
- Investigating ways of better identifying employers covered by the Act.

Planned consultation

Employers, employer organisations and the new Board will be consulted during the development of guidelines and the new reporting format. It is envisaged that consultation with employers will begin in the latter half of 1999.

Expected timetable

It is expected that legislative amendments for the Act will be introduced into Parliament during 1999. Other policy changes to the operation of the Act will be introduced during 1999.

For further information contact:

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Priority

High

Will it affect any small businesses?

No

Source: Department of Employment, Workplace Relations
and Small Business, 1999

ANNEX C: **QUALITY REGULATION CHECKLIST**

1. Is the proposed legislation and/or regulation absolutely necessary i.e. is the problem correctly defined and can the objective be achieved by other means (i.e. improved information, voluntary schemes, codes of practice, self-regulation, procedural instructions)?
2. Will the legislation affect market entry, result in any restrictions on competition or increase the administrative burden?
3. Is the legislation compatible with developments in the Information Society, particularly as regards electronic Government and electronic commerce?
4. Outline the consideration which has been given to exemptions or simplified procedures for particular economic or social sectors which may be disproportionately burdened by the proposal, including the small business sector.?
5. Outline the consideration which has been given to application of the following principles
 - (a) Sunsetting i.e. establishing a date by which the measure will expire unless renewed
 - (b) Review date i.e. a predetermined date on which the efficacy and impact of the proposed new measure will be reviewed
 - (c) The “Replacement” principle i.e. where the body of regulations/legislation in a particular area will not be added to without a corresponding reduction through repeal of an existing measure.
1. Outline the extent to which interested or affected parties have been consulted, including interest groups or representative bodies where such exist. A summary of the views of such parties should be provided.

Source: Report of the SMI Working Group on Regulatory Reform, 1999, p.16

ANNEX D:
REGULATORY PERFORMANCE
OBJECTIVES AND INDICATORS (AUSTRALIA)

To ensure that all new or revised regulation confers a net benefit on the community

1. Proportion of regulations for which the Regulation Impact Statement adequately addressed net benefit to the community. (This indicator will be monitored by the Office of Regulation Review).

To achieve essential regulatory objectives without unduly restricting business in the way in which these objectives are achieved.

2. Proportion of regulations for which the Regulation Impact Statement adequately justified the compliance burden on business. (This indicator will be monitored by the Office of Regulation Review).
3. Proportion of regulations which provide businesses and stakeholders with some appropriate flexibility (as defined) to determine the most cost effective means of achieving regulatory objectives.

A regulation would be regarded as providing flexibility if it had one or more of the following attributes:

- it set a performance or outcome based standard without prescribing in detail steps which businesses must take in order to comply; or
- it included provision for businesses to seek acceptance of an alternative compliance mechanism to that prescribed in regulation; or
- it used a market based mechanism such as tradeable permits to allow businesses flexibility in determining a compliance strategy; or
- it incorporated any other means to ensure that businesses have flexibility in deciding what steps to take to comply with regulation.

To ensure that regulatory decision making processes are transparent and lead to fair outcomes.

4. Proportion of cases in which external review of decisions (as defined) led to a decision being reversed or overturned.

External review for these purposes is limited to processes with the following characteristics:

- review is carried out by a judicial body or any other review body which is either separate from the department or agency which made the decision or is set up by legislation and has a function of reviewing decisions made by the department or agency;
- the review body is empowered to reverse or overturn the decision; and the department or agency is a party to the review.

5. Proportion of regulatory agencies whose mechanisms for internal review of decisions meet standards for complaints handling outlined in Principles for Developing a Service Charter published by the Department of Finance and Administration.

To ensure that information and details on regulation and how to comply with it are accessible and understood by business.

6. Proportion of regulatory agencies having communications strategies for regulation, or formal consultative channels for communicating information about regulation. (Guidelines for this purpose should be documented).

To create a predictable regulatory environment so business can make decisions with some surety of future environment.

7. Proportion of regulatory agencies publishing an adequate forward plan for introduction and review of regulation.

An adequate forward plan for regulation should include the following elements:

- it should be published in a way which makes it readily accessible to the business community, for example in an annual report, on the Internet or by distribution to relevant business organisations;
- it should outline planned or likely regulatory activity (as detailed below) expected to occur within a specified period, and should be published before that period starts;
- it should include information about reviews of legislation to be undertaken in the relevant period, including reviews underway at the beginning of the period;
- it should include information about policy development processes which will be taking place during the relevant period which could affect business regulation, where information about those processes is publicly available;
- it should include information about Government decisions to develop or implement legislation during the relevant period to the extent where those decisions have been publicly announced.

To ensure that consultation processes are accessible and responsive to business and the community.

8. Proportion of regulations for which the Regulation Impact Statement included an adequate statement of consultation. (This indicator will be monitored by the Office of Regulation Review).
9. Proportion of regulatory agencies with organisational guidelines outlining consultation processes, procedures and standards. (Guidelines for this purpose should be documented).

Source: Office of Small Business (1999)

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Discussion Paper 1, *Evaluating Public Expenditure Programmes: Determining A Role For Programme Review*, Richard Boyle, 1997

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