

Good practice guidance

Principles of effective regulation



National Audit Office



May 2021

We are the UK's independent
public spending watchdog

The objectives of regulation and who is involved

What is regulated and why

Regulation is used for a variety of different purposes, such as to protect and benefit people, businesses and the environment and to support economic growth. Regulation is one of the primary ways in which government can achieve its aims. It is distinct from direct government provision or commissioning of services because it relies heavily on using incentives to drive behaviour change in individuals and organisations outside of government's direct oversight.

The objectives of regulation determine who or what should be regulated and how this will provide the means for achieving the desired public policy outcomes. The scope and remit of regulation may need to be updated or adapted to new market, economic or societal conditions as they develop.

Figure 1 sets out examples of what is regulated and why.

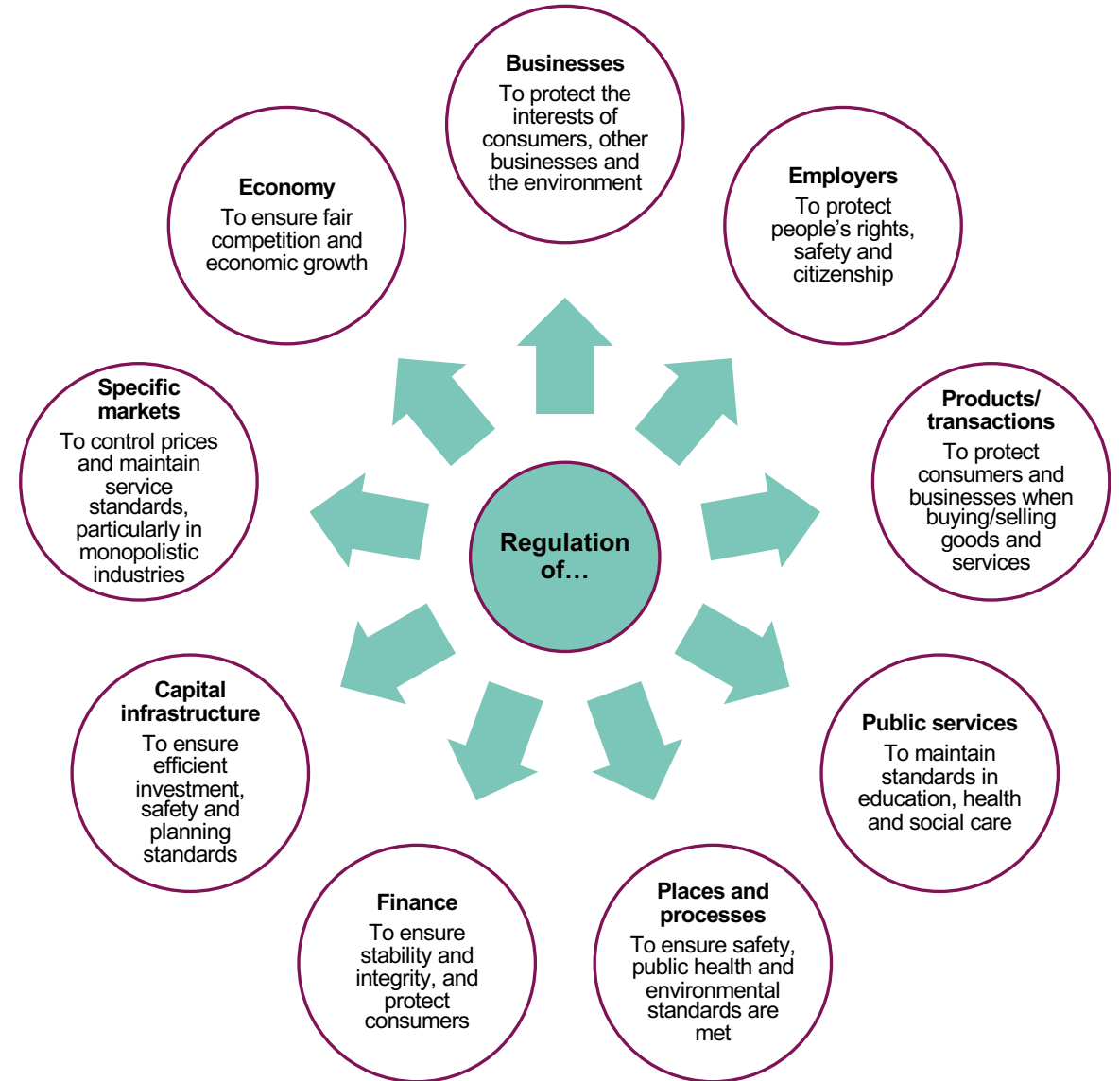
Who regulates

Many areas of regulation involve one or more main regulators with specific powers and duties to enforce or otherwise influence compliance with rules and standards. These regulators can be at national and local level. Some public bodies that are not generally considered regulators also deliver regulatory functions, such as local authorities and some enforcement bodies.

Regulators often operate within a wider regulatory framework that includes other organisations, such as appeals bodies, advocacy bodies or complaints services.

Figures 2 and 3 on the following pages set out examples of regulatory frameworks from our recent reports.

Figure 1: Examples of what is regulated and why

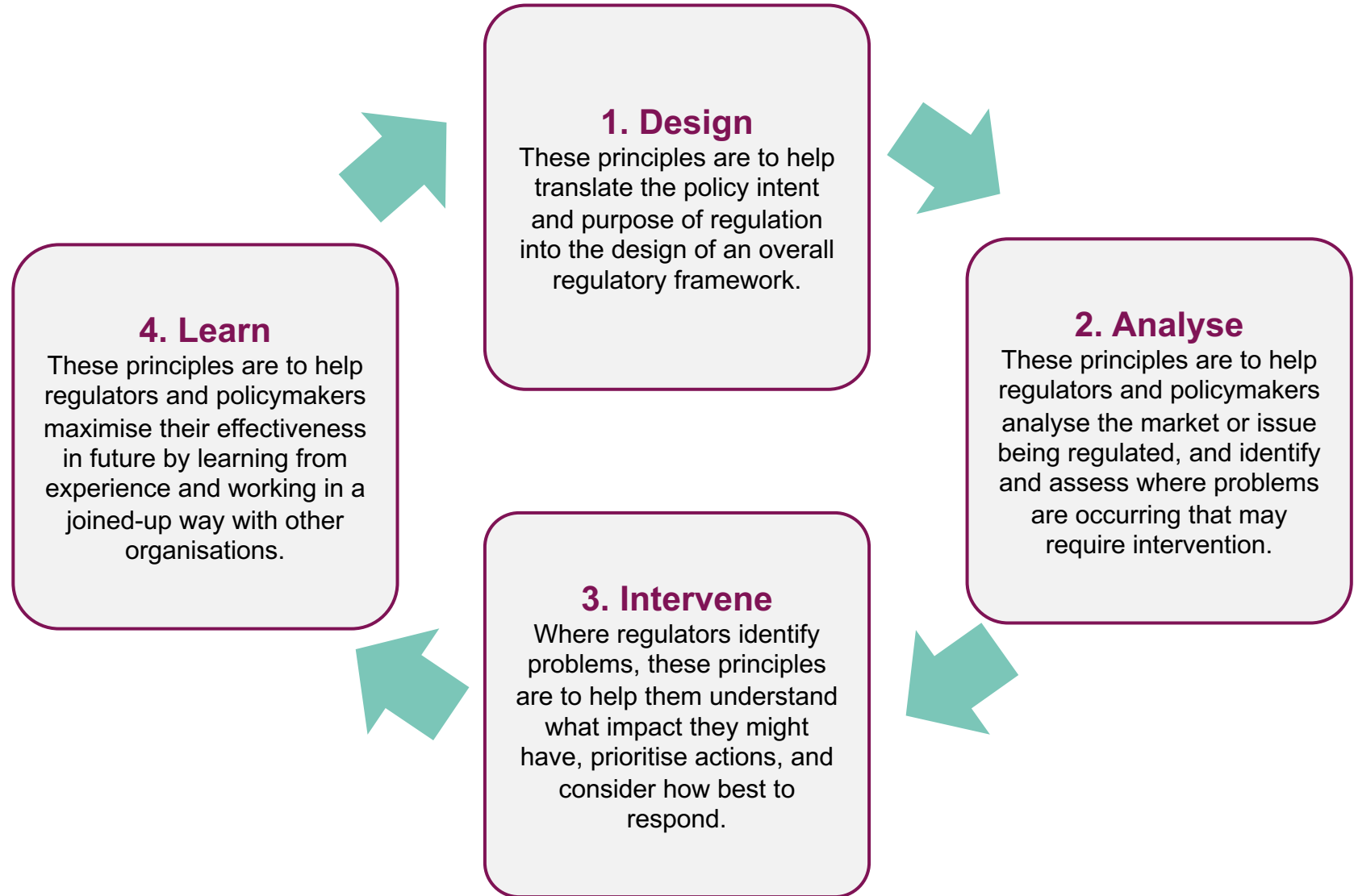


The principles of effective regulation: a learning cycle

The four main sections of our framework constitute a 'learning cycle' for assessing how well regulators and policymakers are applying the principles of effective regulation, as they assess progress and respond to external challenges and pressures.

The principles are grouped according to where they primarily apply, but many principles are cross-cutting and apply, to varying degrees, at different stages of the learning cycle.

When a new regulator or regulatory framework is being set up, all aspects of the guide should be considered up front, although those in the Design stage are the most crucial to get right from the start.





1. Design



These principles are intended to translate the policy intent and purpose of regulation into the design of an overall regulatory framework. When setting up, or considering changes to, a regulator or regulatory system, these principles need particular consideration and resolution to avoid costly, untimely or disruptive remedial action later (for example because they may require new legislation).

Defining the overall purpose of regulation

To design an effective regulatory framework, it is important to define a clear overall purpose based on a good understanding of the issues that regulation is intended to address and ensure a shared understanding of its purpose and intended outcomes.

Setting regulatory objectives

Translating an overall aim into specific objectives helps those involved ensure their work supports the primary purpose. Where multiple objectives come into tension (such as promoting investment in making services sustainable while keeping prices affordable), it is important for government and regulators to discuss respective priorities and agree how trade-offs should be managed.

Ensuring accountability

Robust accountability arrangements provide a common understanding of roles and responsibilities across a regulatory system, minimise the risk of problems being missed, help identify who is responsible if something goes wrong, and enable corrective action and, where necessary, redress.

Determining the degree of regulatory independence

Public trust and legitimacy are integral to many regulators in the eyes of the regulated and the public. While not every area requires a regulator that is independent (of government and/or of regulated organisations), it is important to consider the merits of regulatory independence and be transparent on the degree of independence a regulator has.

Deciding on powers

Regulatory powers need to be proportionate but allow regulators to do what is needed to regulate effectively, such as data gathering, investigation or enforcement. Powers can become out of date if they do not adapt to changes in the regulated market, such as social and technological developments.

Determining a funding model

The way that regulation is funded can have a substantial impact on its effectiveness. Government and Parliament typically intend regulators' funding to be sufficient to regulate effectively, adaptable to changing risks, and fair to citizens and businesses. Where the funding comes from – for example, industry fees or general taxation – may affect a regulator's actual or perceived independence.

Designing organisational structure and culture

Most major areas of regulation include at least one key regulatory body. A robust internal structure allows a regulator to operate efficiently and coherently, and the way in which senior management lead it can affect both its internal culture and morale and its external credibility.



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Deciding on powers

Regulatory powers derive from primary and secondary legislation. It is important that regulators' powers are proportionate but allow them to do what is needed to regulate effectively to meet objectives, such as data gathering, investigation or enforcement. We have found that regulatory powers can also become out of date if they do not adapt to changes in the regulated market, such as technological developments and new ways of accessing goods and services.

In general, we expect to see the following:

- A clear rationale that matches the regulator's range of powers to its objectives, responsibilities, functions, capacity and resources.
- Regulators and policymakers working together and with other stakeholders to identify any limitations or gaps in powers, and working to influence and overcome them.
- Regular consideration of regulators' powers and their effectiveness in a fast-changing technological and digital world.
- A process for regulated entities, stakeholders and the general public to appeal against decisions made by a regulator under its powers that adversely affect them, for example through a judicial process or public ombudsman route.



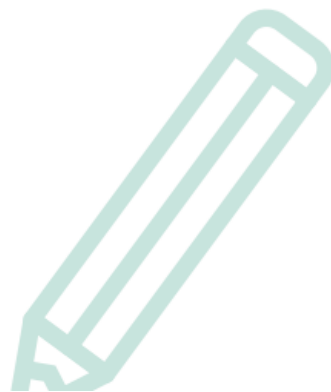
Considerations for policymakers:

- How to engage with regulators, stakeholders and the public in assessing the effectiveness, limitations or mismatches of a regulator's powers, for example when conducting an overall review of a regulator.



Considerations for regulators:

- The range and effectiveness of existing powers in achieving regulatory objectives – including 'softer' influencing powers as well as 'hard' enforcement powers – and how to deal with different types of problem as well as new challenges.



Case study

Lacking a full range of powers

Our 2019 report on food safety and standards found that the regulatory system lacked the full range of powers to ensure businesses supply safe food. The Food Standard Agency's Food Crime Unit was given resources in 2018 to tackle food fraud, but worked with police forces to do so as it lacked the full range of investigative powers to operate independently. Legislation is required to provide access to additional powers.

Source: National Audit Office report, *Ensuring food safety and standards*, 2019

Powers updated to close gaps

Before 2014, the Gambling Commission had limited powers over gambling websites based outside Great Britain. In 2014, new legislation gave the Commission powers to regulate all commercial gambling in Great Britain. Our 2020 report on gambling regulation highlighted how the 2014 changes meant that, in effect, any commercial gambling provided in Great Britain is illegal except where explicitly licensed by the Commission.

Source: National Audit Office report, *Gambling regulation: problem gambling and protecting vulnerable people*, 2020



2. Analyse



Within a regulatory framework as designed, these principles are intended to help regulators and policymakers analyse the market or issue being regulated on an ongoing basis, identify and assess in a timely manner where problems may be occurring that require intervention, engage with stakeholders to understand needs and priorities, and understand what capacity is needed to respond appropriately.

Using information and data

How data and intelligence are analysed is essential in assessing risks that may require investigation, identifying problems that need intervention (such as harm to people or the environment), and prioritising and targeting activities and resources. To do this well, it is important to have access to relevant, reliable and up-to-date data and information on what is happening in the regulated areas.

Embedding the citizen perspective

Developing a meaningful understanding of citizen perspectives and behaviours is important to help ensure that regulation works in practice. In many cases, regulators have been given an explicit objective to protect the interests of citizens (for example, consumers or workers). In other cases, notably environmental regulation, how people behave and use goods and services also often affects outcomes.

Monitoring service provider compliance and incentives

To maximise the extent to which service providers comply with regulations or otherwise support public policy aims, it is important to understand their interests and incentives. Clear and accessible advice and guidance help with compliance, and can encourage a culture of openness and going beyond minimum requirements. Monitoring compliance rates and understanding how incentives work in practice can help in the tailoring of regulatory approaches and remedial action.

Engaging with stakeholders

Stakeholder and wider public engagement is an important way of ensuring a full range of perspectives and interests are considered, and are integral to building public trust and legitimacy. For example, policymakers and regulators often consult publicly on proposed major initiatives or planned changes, and the way this is done can affect the extent to which they receive useful feedback and are perceived to have reflected it in their approach.

Ensuring capacity and capability

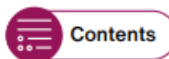
To be effective, it is important for regulators to have sufficient capacity and skills to identify and respond to problems and challenges in the areas they regulate. Where regulators need to secure resources to build suitable expertise, it helps to work with policymakers to assess and address needs, and keep it under regular review in light of external developments.

Adopting a forward-looking approach

A proactive, forward-looking approach to identifying potential issues or new developments helps in responding proportionately to issues that may scale rapidly. Regulatory approaches can benefit from being informed by proactive engagement with business innovators and other stakeholders.



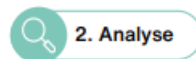
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Ensuring capacity and capability

To be effective, it is important for regulators to have sufficient capacity and skills to identify and respond to problems and challenges in the areas they regulate. We have found from our work that where regulators identify a need to secure the resources to build suitable expertise, it is important that they work with policymakers to assess and address needs, and keep it under regular review in light of external developments.

In general, we expect to see the following:

- A meaningful and up-to-date analysis of the work needed by regulators to achieve their aims, and the skills and resources needed to do this work effectively.
- An identification of gaps in capacity and capability, or mismatches between regulatory capacity and that of regulated entities (for example, we have found that this can be a challenge for some professional skills or in complex regulated sectors).
- A clear plan to address any deficiencies identified in organisational skills and capabilities which are likely to impact on the ability to achieve regulatory objectives.



Considerations for policymakers:

- Engaging proactively with regulators on skills and [funding](#) needs and any gaps or deficiencies, and working with them to resolve any issues. Where appropriate, this may benefit from external advice on different approaches to bridging the capacity gaps and helping regulators meet their objectives.



Considerations for regulators:

- What regulatory and other activities are needed to discharge their duties effectively now and in the near future, and keeping capacity and capability under review in light of this to identify any issues.
- Where shortfalls are identified that regulators cannot resolve on their own, working with government to agree what is needed and secure the necessary resources.



Case study

Identifying skills and resources gaps

Our report examined government's progress in achieving its environmental ambitions. We found that there were indications that skills and resources gaps could inhibit its progress:

- Local authorities play a critical role on a range of environmental issues ... the COVID-19 pandemic put pressure on local authorities' resources and they needed access to the right expertise, including ecological expertise.
- The Department for Environment, Food & Rural Affairs would need to ensure it had people with the right skills and experience to oversee such a complex programme, and that it handled turnover well.
- Three arm's-length bodies raised concerns around funding or skills shortages within their organisations or the wider supply chain that they would need to rely on to deliver environmental improvements.

Source: National Audit Office report, *Achieving government's long-term environmental goals*, 2020



3. Intervene



Where regulators identify problems that may require intervention, these principles are intended to help them understand what impact they might have, prioritise actions, and consider how best to respond to achieve their intended outcomes with proportionate and timely responses. Regulatory tools range from “soft” approaches (such as guidance and support) to “harder” tools including enforcement action and prosecution.

Developing a theory of change

To maximise the beneficial impact of regulatory interventions, it is important to understand how different approaches and interventions work to influence change and achieve regulatory objectives. This benefits from considering the potential impact on the behaviour both of citizens (for example, as consumers) and of regulated entities, as well as identifying any risks of unintended consequences.

Prioritising interventions

It is rarely possible to investigate or intervene on every potential issue that arises, and regulators therefore need to prioritise. It is important that prioritisation is based on an assessment of the potential risk to regulatory objectives, and that this guides when and how to intervene.

Drawing on a range of regulatory tools

Most regulators have a range of regulatory tools they can use to intervene, ranging from 'softer' approaches (for example guidance, codes, warning notices) to 'harder' actions such as fines, prosecutions or revocation of licences. Impact can be maximised by determining, on a case-by-case basis, what tool or intervention is likely to be the most appropriate to prompt improvement, deter non-compliance by other regulated entities, or both.

Embedding predictability

In many areas of regulation (in particular, economic regulators or others that use licensing or authorisation), standard good practice is to ensure an appropriate level of predictability and consistency for regulated entities, in order to sustain stability and confidence for investors and stakeholders. The choice of regulatory approach can affect the extent to which this predictability is achieved.

Ensuring interventions are proportionate

Government guidance sets out how policymakers and regulators should ensure their work is proportionate, for example in rule-making (the Better Regulation Framework) and how regulators intervene (the Regulators' Code). Interventions should not be disproportionate to the issue or scale of harm that they are seeking to address, and should take into account the interests of regulated entities and of citizens or service users.

Being responsive

Promptly identifying new issues, or changes in the external environment, helps ensure that responses can be swift and effective to minimise risk. As well as using information and data to identify problems and emerging issues, business processes and capacity need to be in place, along with a suitably flexible overall regulatory approach, to enable timely operational decisions and interventions where necessary.



4. Learn



It is important for regulators and policymakers to work collaboratively, measure progress and learn from experience to maximise effectiveness in future. These principles are intended to help measure and report performance and outcomes against regulatory objectives, evaluate the real-world impact of interventions, and work in a joined-up way with other organisations in the regulatory landscape.

Establishing governance processes

To maximise the effectiveness of regulation, it is important for regulators and policymakers to have the right governance in place. The benefit of good governance is both direct (to provide meaningful challenge to improve performance) and indirect (to engender public confidence in the legitimacy and robustness of the regulatory regime). Good governance is also integral to ensuring propriety, regularity and value for money in spending by public bodies.

Measuring performance

Performance measurement is important in helping regulatory organisations achieve their objectives and make the best use of resources. Good monitoring and reporting also supports accountability which, in the case of regulators, includes accountability to Parliament and to the taxpayers and other stakeholders who fund their activities and have a keen interest in their effectiveness.

Evaluating impact and outcomes

As well as measuring performance on an ongoing basis, it is also important to evaluate the impact of major interventions, new rules or changes to the regulatory regime. While it can at times be challenging and costly, robust evaluation can help evidence value for money, provide insight into unintended outcomes and refine regulatory interventions to improve outcomes.

Engendering cooperation and coordination

Regulators increasingly work with or alongside other regulatory bodies, whether this is local and national regulators, international partners, or regulators covering different aspects of the same regulated market. UK regulators operating in a wider regulatory landscape can benefit from working collaboratively with other bodies at all levels, including internationally, to ensure coherent and effective delivery of objectives.

Ensuring transparency

Transparency is important for trust in regulation and regulators to be maintained with regulated entities, stakeholders and the wider public. Operating in as open a way as possible, while recognising sensitivities or constraints, can help build this trust. Good transparency involves clearly articulating the principles and reasoning behind the regulatory approach and major decisions, and reporting transparently on performance and outcomes.

Principles of effective regulation, feel free to contact us:

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