



National Audit Office

Paper

by the National Audit Office

Better Regulation Executive

Using alternatives to regulation
to achieve policy objectives

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Summary

1 Government can achieve its policy objectives by using taxpayer's money, or through a range of non-spending interventions, including regulation. Regulation aims to set rules to protect and benefit people, businesses and the environment, stabilising markets and addressing market failures to support economic growth. Regulation can also create costs for businesses, the third and the public sectors. It can, if overused, poorly designed or implemented, stifle competitiveness and growth. The government's Principles of Regulation see (Figure 1 on page 10) encourage departments to consider alternatives to regulation, and say that rule-based approaches should be a last resort.

2 The government wants to continue to reduce regulation. Departments must reduce the cost to business of regulation and focus regulation on where it adds the most value. Our previous work in this area¹ found that doing so needs arrangements for managing the flow of regulation. This is similar to the arrangements needed for managing taxpayer's money.

3 Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, existing policies can be improved, without further regulation, using techniques such as behavioural insight or changing enforcement practices to improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure

4 This paper builds on our work to understand the government's actions to reduce rule-based regulation when it needs to intervene in markets to meet policy goals. We sought to understand what affects departments' use of alternatives to regulation and to learn lessons that can enhance their use across government. It forms the basis for further NAO work on using regulation to meet policy objectives.

¹ Comptroller and Auditor General, *Submission of evidence: controls on regulation*, National Audit Office, September 2012.

Findings

5 Departments have used alternative approaches to regulation. There are examples where information and education have helped to improve existing regulation and reduced the need for regulatory intervention. Industry sometimes sets out its own standards rather than having the government impose regulation.

6 There are incentives and barriers to departments considering alternatives to regulation. Incentives include alternatives to regulation being out of scope of both the 'One-in, Two-out' rule and scrutiny by the Regulatory Policy Committee. Barriers include a perception that regulation shows decisive action; an aversion to risk; poor knowledge of alternatives; and limited resource.

7 Few government departments use the full range of evidence available to develop alternatives. There are many policy areas in which government intervenes where regulation was never considered. These interventions are not labelled 'alternatives to regulation', but could provide generalisable lessons. Few of the policy officials we met knew what an 'alternative' was. This makes it harder to know what evidence they should be drawing on. When government has used alternatives it has done little to assess their success and to learn lessons for future policy development.

8 The effectiveness of alternative approaches varies by case and circumstance, and alternatives don't always work. For example, a rules-based approach may be appropriate for addressing conflict between government and industry objectives. Self-regulation may work better when the objectives of industry are closely aligned with governments. Policymakers need a good understanding of the factors that help the successful use of alternatives.

9 Policymakers need to consider alternatives early in policymaking. The minister is the overall decision-maker in policymaking and his or her buy-in is a critical factor in the success of alternatives. Getting ministers engaged requires discussion of alternatives at the earliest stages of policymaking. This means early engagement with stakeholder groups and using the department's analytical skills early on. Starting early in the process reduces the chances a preferred option is identified before alternatives are explored. A good quality consultation stage can also improve the appraisal of alternatives. Departments should ensure that the impact assessment properly assesses the costs and benefits of a range of policy options when entering consultation.

10 The lack of formal appraisal requirements for alternatives creates risks. A light touch approach to appraising alternatives can lead to risks, such as: missing the impact on competition; creating more burden than the rules-based approach to regulation; or not maximising benefits over costs. The lack of formal appraisals also reduces the information for departments to learn from.

Conclusion

11 There are some good examples across government of alternatives to regulation to achieve policy objectives. Centrally, there should be greater sharing of reviews of alternatives. This should help departments to overcome the perceived barriers to considering alternatives and to start development early on. Also to ensure that potential alternatives are not ruled out for lack of early consideration in decision-making processes. Departments should provide a stronger push for alternatives as they understand best which of its policy areas are most suitable for alternative approaches.

Matters for consideration

To ensure early consideration of alternatives

12 Key internal stakeholders should be involved at the early stages of policymaking. Internal stakeholders such as policymakers, better regulation teams, behavioural economists, economists, lawyers and social researchers should work together from the outset of policy development. Early engagement should encourage discussion of a wider range of options for achieving policy objectives.

13 There is a need for early and ongoing engagement with external stakeholders. Many of the examples of alternative approaches point to the need for early engagement with business, industry, the third sector and citizens. This should be done with a wide range of stakeholders early on, and continue through policy development, to review the success of interventions. This can be done outside of, or alongside, the formal consultation process.

To overcome perceived barriers to using alternatives

14 A stronger understanding of the factors that increase the success of alternatives is needed. Government needs to articulate more clearly what alternatives to regulation are, how they should be developed and implemented, and when they work best. This evidence may give policymakers and ministers more confidence to take alternative approaches to achieving policy objectives.

15 More evaluation of alternatives to regulation would help to better understand the impact and effectiveness of different policy approaches. Our prior reports on impact assessments found that relatively few post-implementation reviews were conducted. Providing a documented evidence base would make evaluation easier to perform and help hold departments to account. Stakeholders would understand more clearly the costs and benefits of the approach being proposed even if it is non-regulatory.

16 More evaluation of interventions not explicitly labelled ‘alternatives to regulation’ could provide greater insight. Government has intervened where the use of regulation was never considered. These interventions provide insights into the development of alternatives. Departments and the Better Regulation Executive could do more to draw out lessons for future policy development.

To improve the policymaking process

17 The Better Regulation Executive should continue working with department to inform policymakers about how alternatives to regulation should be considered during policy development. Sharing examples, and understanding where alternatives worked, may address some of the concerns and barriers. The Better Regulation Executive is working on information that will support policymakers early on in option development which should raise awareness. Departments will need to work with the Better Regulation Executive to disseminate this to policymakers.