Good practice guidance

Principles of effective regulation

National Audit Office

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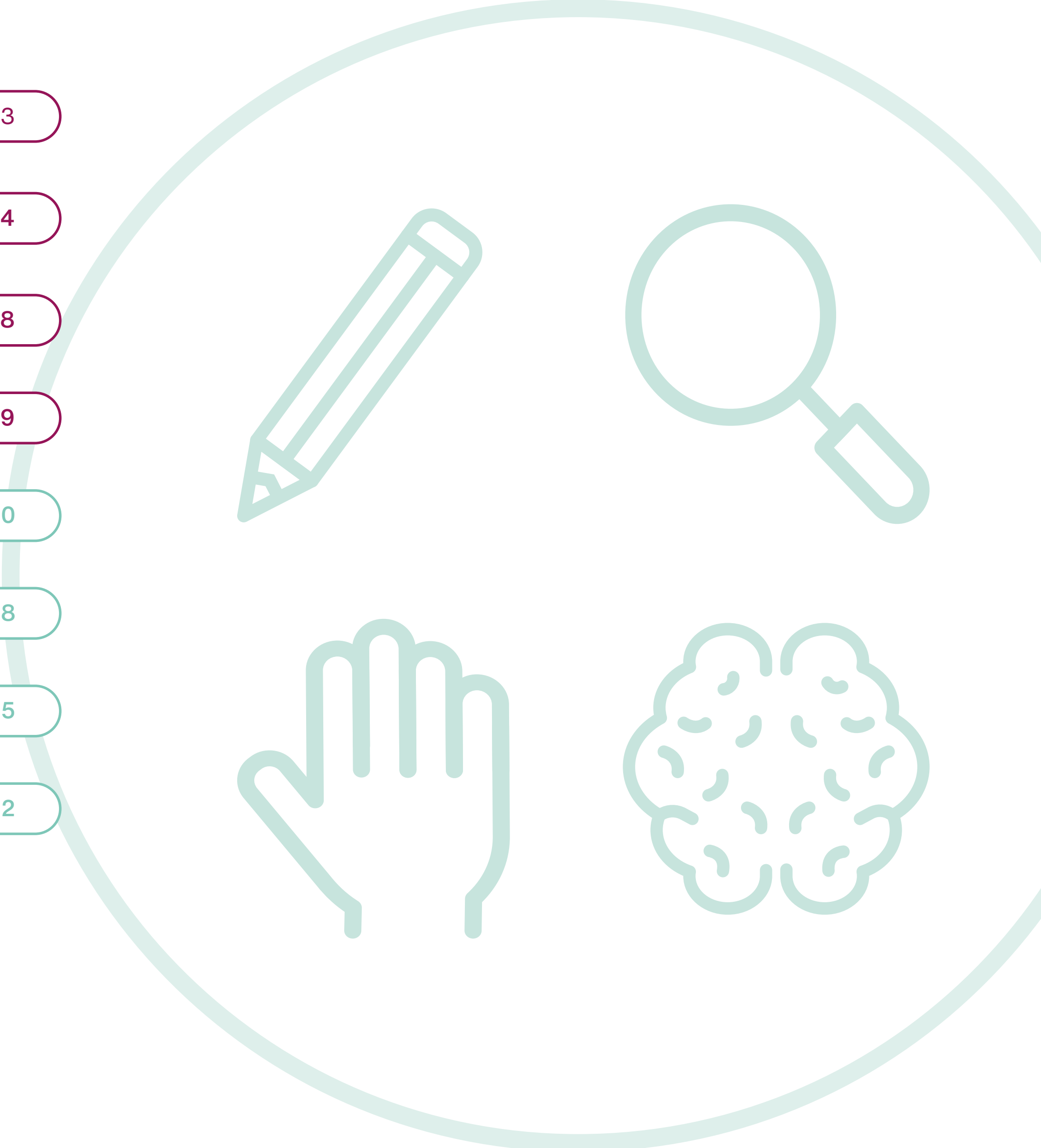
Contents



Introduction

Government and Parliament use regulation to deliver various public policy objectives across many areas, particularly where government does not provide or commission services directly. Regulation is characterised by a set of rules and expected behaviours that people and organisations should follow, and will often involve one or more regulators enforcing and influencing compliance with those rules and behaviours. Effective regulation can lead to more efficient and effective delivery, such as reduced prices, improved quality or better environmental standards. Failure can result in detriment to people, businesses, the economy or the environment, and large costs to the public purse. Our 2017 Short Guide to Regulation and 2019 Regulation Overview provide more information on the objectives of regulation, how it works, and recent thematic issues.

Our past work on regulation has identified both areas of good practice and common challenges and pitfalls to the effective use of regulation to achieve public policy aims. The coming years may also see substantial changes to regulatory frameworks, such as expanded responsibilities or new regulators, to take on functions previously done at EU level, to meet environmental commitments or to keep pace with developments in technology and digitisation. We therefore considered it an opportune time to bring together principles from previous frameworks on specific areas, along with experience from our past work, to develop a more holistic framework.

This guide sets out the broad principles of effective regulation, based on our past audits of regulatory frameworks and interactions with departments, regulators and other stakeholders. Our guide is intended to complement, not supplant, existing government guidance such as on appraisal of proposed regulatory measures. Our principles are those we would expect to see supporting the design, operation and learning cycle of effective regulation and high-performing regulators.

What is the guide about?

Who this guide is aimed at:

This guide is intended as a useful tool for policymakers and regulators overseeing any given market, sector or regulatory issue. The main audiences for this guide fall into three categories:

- **Policymakers** – those responsible for the overall policy, legislative and regulatory framework. Typically these will be in government departments, but separate regulators may also take on policy roles.
- **Regulators, and other regulatory bodies** such as inspectorates, ombudsman services and enforcement agencies – organisations (local, national or parts of departments) that deliver regulatory functions such as licensing, inspection and enforcement.
- **Parliament and other stakeholders** – members of Parliament, their staff and other stakeholders who wish to examine areas of regulation and hold departments and regulators to account.

The principles in this guide should apply to both policymakers and regulators in any area of regulation. Different audiences may have a different focus or interest – for example, policymakers may not need to consider in detail how to intervene, while regulators may have limited power to change the overall design of a regulatory framework. For each principle, we have highlighted specific considerations for regulators and policymakers.

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.

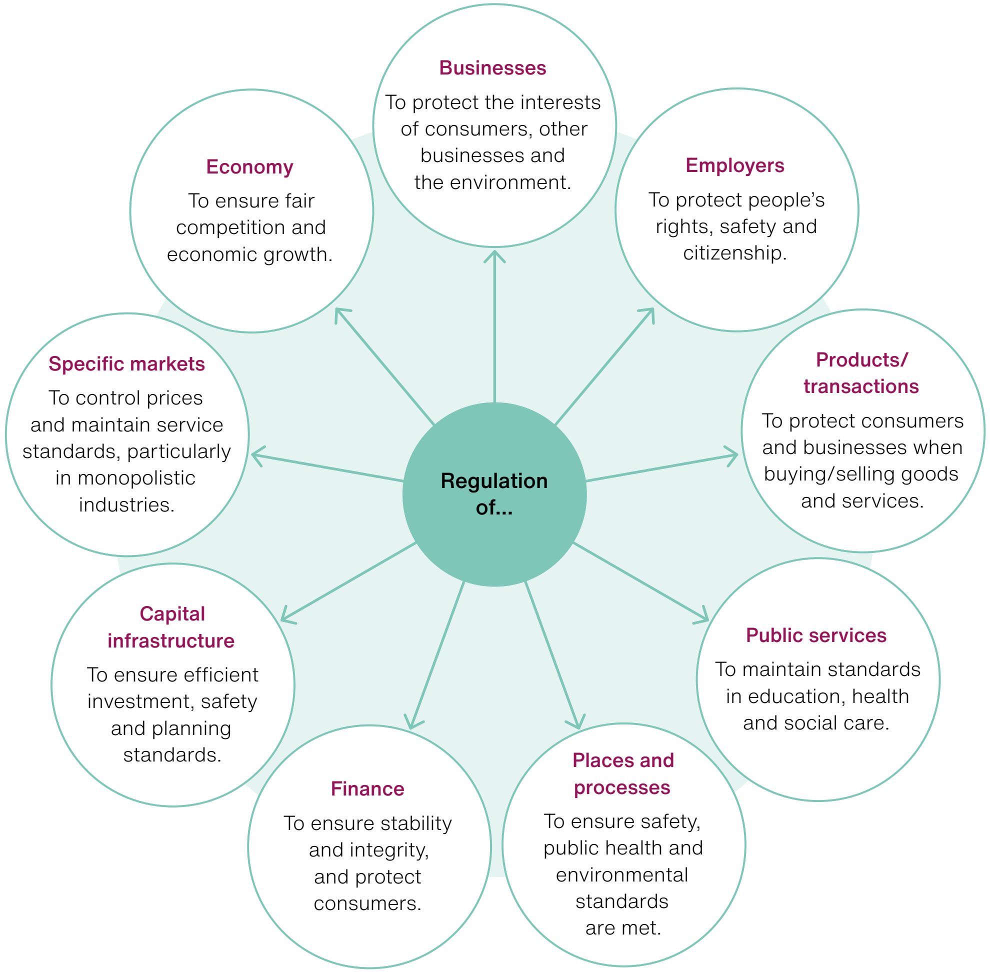
Who regulates

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, and sometimes there is not a clear boundary between regulators' remits, requiring them to work closely together. 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. As public bodies, regulators also typically have responsibilities from general legislation such as the Equality Act, Competition Act or net zero legislation.

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



Source: National Audit Office analysis

Example of a regulatory framework from our 2019 report on Ensuring food safety and standards

Figure 2: The food regulatory system

The food regulatory system involves multiple bodies

Policy

The Food Standards Agency (FSA) is responsible for policy on food and feed safety controls (including hygiene) and food safety standards.

Department for Environment, Food & Rural Affairs (Defra) is responsible for policy on food composition standards and food labelling other than safety and nutrition.

The Department of Health & Social Care (DHSC) is responsible for policy on food nutrition standards.

Oversight of the regulatory system

The FSA (a non-ministerial department) is the Central Competent Authority responsible for oversight and assurance that the regulatory system is effective. The FSA also operates centralised programmes including the National Food Crime Unit and the national surveillance model.

Delivery of food controls

Local authority delivery

Funding: By local authorities who receive their funding from the Ministry of Housing, Communities & Local Government (MHCLG). Funding is not ring-fenced. Some costs are recovered from businesses.

Food safety officers (often environmental health officers) conduct food hygiene controls. They inspect premises to check that food is stored and prepared safely (for example, free from bacterial or allergen contamination).

Food standards officers check that food meets safety, composition and nutrition labeling standards (for example, labeling of allergens, use-by dates, nutritional and compositional information).

Risk assessment on the basis of standard criteria for risk-rating individual food businesses.

FSA delivery

Funding: Directly by the FSA with some costs recovered from businesses.

Food control officers conduct document checks, physical checks and take samples. Qualified veterinarians conduct checks on animal products.

Risk assesment on the basis of statutory (EU and UK) regulations.

Port Health Authority (PHA) delivery

Funding: PHAs recover the costs of statutory controls from importers.

Food businesses: Importers from outside the EU.

Food control officers conduct risk-based document checks, physical checks and take samples. Qualified veterinarians conduct checks on animal products.

Risk assessment on the basis of statutory (EU) regulations. Criteria include what the product is and where it is from.

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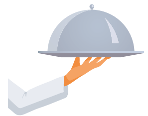
Figure 2: The food regulatory system *continued*

The food regulatory system involves multiple bodies

Food businesses



Under UK food regulations, it is the responsibility of food businesses to ensure that their food is safe, that its quality is what consumers would expect and that it is not labelled in a false or misleading way.

Food businesses covered by local authorities include food producers, food processors, catering establishments, takeaway and food delivery, retailers and approved dairy establishments.

FSA is directly responsible for controls on approved producers of meat (including abattoirs and cutting plants) wine and shellfish[1] and 'on-farm' dairy establishments.

PHAs are responsible for food controls on importers from outside the EU.

Consumers

Consumers are responsible for the safe preparation of food in their home and for checking labelling to ensure that food is suitable for them to eat.

Notes

1 The FSA and local authorities share responsibility for delivery of shellfish official controls.

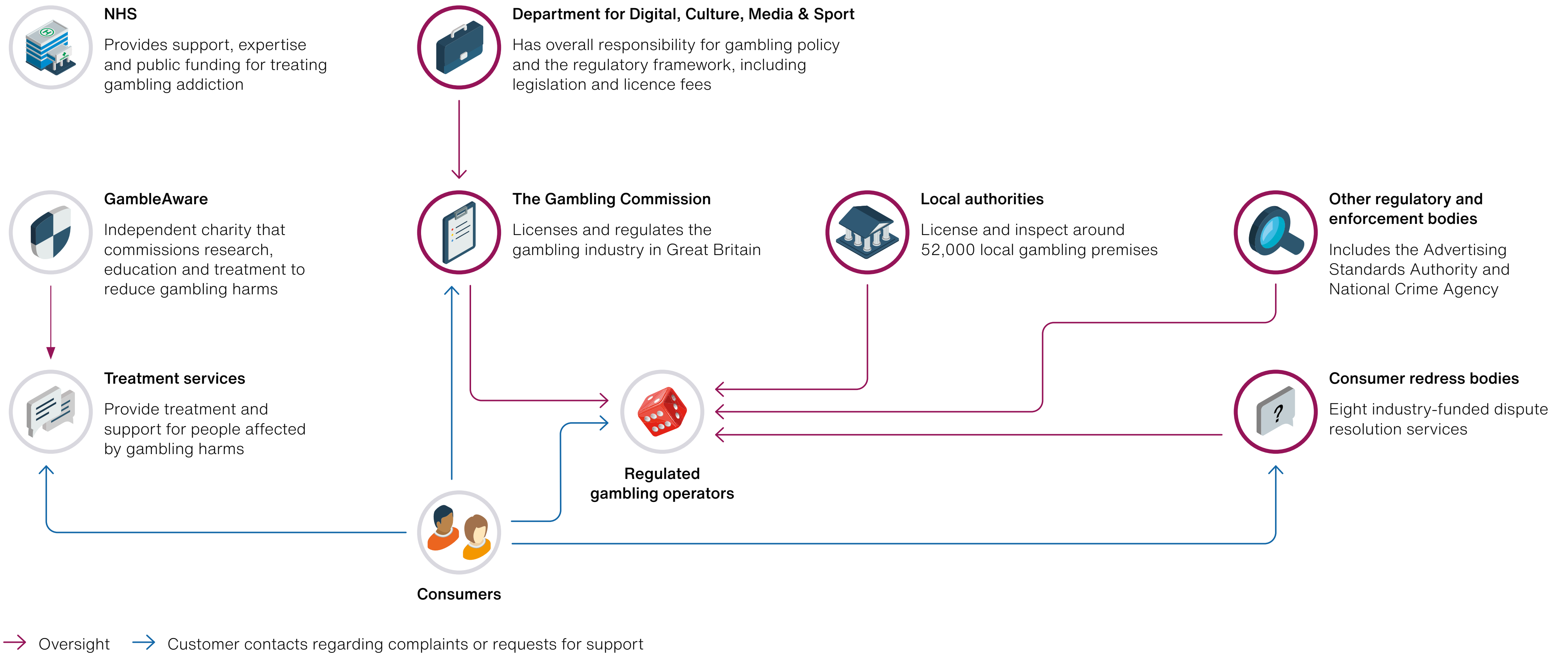
2 Egg production hygiene controls are enforced by the Animal and Plant Health Agency.

Source: National Audit Office report, *Ensuring Food Safety and Standards*, 2019

Example of a regulatory framework from our 2020 report on Gambling regulation

Figure 3: The gambling regulation framework in Great Britain

The Gambling Commission works with several other organisations to protect consumers



Notes

1 Regulatory and enforcement bodies are in red, other relevant organisations and people are in grey.

2 There are a range of other non-regulatory organisations, such as charities and academics, involved in research, education and treatment.

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

Different approaches, and alternatives, to regulation

Regulation is one way that government seeks to achieve its policy aims, but there may be alternatives to using regulation in a number of areas. Government guidance encourages policymakers to consider alternatives such as self-regulation or non-regulatory approaches, and indicates that regulation should be used only where it is the most cost-effective way to achieve desired outcomes. We reported in 2014 on using alternatives to regulation to achieve policy objectives, and HM Treasury's Green Book sets out how policymakers should appraise different policy options.

Where regulation is used, the Legislative and Regulatory Reform Act 2006 stated that good regulation should be transparent, accountable, proportionate, consistent and targeted. Government guidance encourages policymakers and regulators to consider what will be the most appropriate way to regulate, for example when proposing new regulations (the Better Regulation Framework) or interacting with regulated entities (the Regulators' Code).

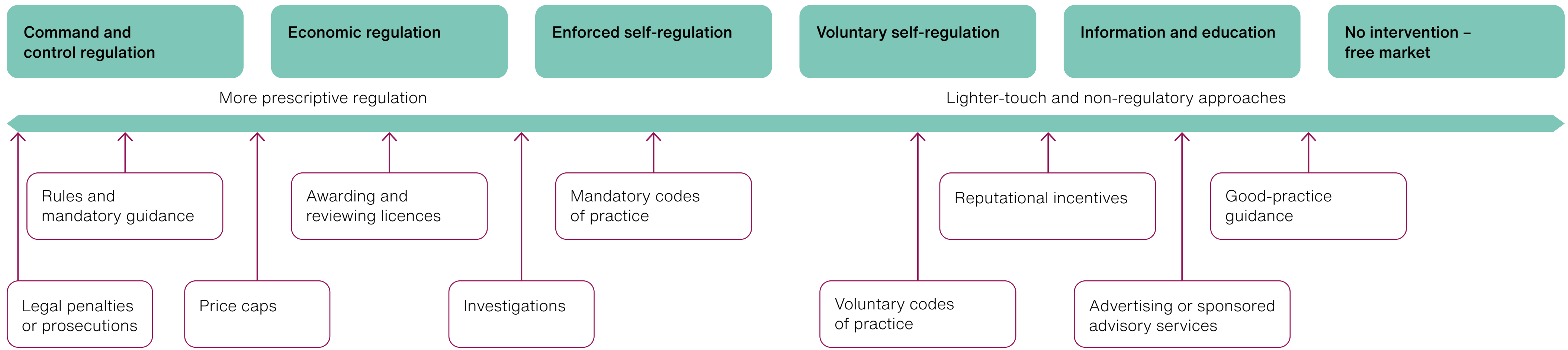
Regulation can therefore take various forms, depending on the particular issues preventing government from achieving its aims. Approaches vary and include strict and prescriptive rules and enforcement, principles-based approaches, and lighter-touch incentives through guidance and codes of practice.

Many areas of regulation will use more than one approach. **Figure 4** sets out examples of different approaches to regulation.

The costs and benefits of regulation

When deciding whether and how to regulate, policymakers and regulators consider the cost of regulation by comparison with the benefits it brings. The full costs of regulation go beyond the operating costs of regulators. Compliance with regulations brings additional costs to service providers. Good regulation maximises the benefits while minimising compliance costs and unintended consequences. The benefits of regulation can be both to wider society (such as improved environmental or safety standards) and to regulated businesses (for example, through increased consumer confidence), but not all of the benefits are necessarily easy to quantify.

Figure 4: Examples of different approaches to regulation



Source: National Audit Office analysis

The principles of effective regulation: a learning cycle

How to use this guide

This guide sets out a framework of the principles of effective regulation. The four main sections of the guide constitute a 'learning cycle' for assessing how well regulators and policymakers are applying these principles, 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 upfront, although those in the design stage are the most crucial to get right from the start.

This learning cycle can also help inform reviews of whether regulations and regulators remain relevant and fit-for-purpose, in their current form or at all, such as tailored reviews of public bodies.

1. Design

These principles are to help translate the policy intent and purpose of regulation into the design of an overall regulatory framework.

2. Analyse

These principles are to help regulators and policymakers analyse the market or issue being regulated, and identify and assess where problems are occurring that may require intervention.

3. Intervene

Where regulators identify problems, these principles are to help them understand what impact they might have, prioritise actions, and consider how best to respond.

4. Learn

These principles are to help regulators and policymakers maximise their effectiveness in future by learning from experience and working in a joined-up way with other organisations.

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
- Setting regulatory objectives
- Ensuring accountability
- Determining the degree of regulatory independence
- Deciding on powers
- Determining a funding model
- Designing organisational structure and culture

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. When the decision is taken to use regulation, public clarity over the fundamental aim for regulation (and any regulators) helps ensure a shared understanding of its purpose and intended outcomes.

In general, we expect to see the following:

- A detailed assessment of the problems or barriers that need to be addressed, such as risks to people, businesses or the environment.
- A clear articulation of the primary purpose of regulation, and how it is intended to achieve this purpose, so it can be understood by stakeholders and the wider public.
- A process with which to periodically consider whether the purpose of regulation remains relevant and up to date, and to review (where appropriate) the role of any regulators. There should be clarity over who is responsible for what in this process.

Considerations for policymakers:

- Seeking to be transparent about the chosen regulatory approach (for example, precautionary, light-touch or a combination of approaches) and the rationale for this.
- When setting up new regulators or frameworks, what good practice and lessons can be learned from other areas of regulation.
- What oversight arrangements will be appropriate to keep regulation relevant to what is going on in practice. Where multiple organisations are involved, these arrangements may need to be formalised in a framework agreement.

Considerations for regulators:

- Ensuring that their understanding of the primary purpose of regulation is shared across the organisation, and with government and other stakeholders.
- Where a regulator has multiple aims, how to translate these into detailed objectives and manage any trade-offs.

Case study

The need for regulation of an ineffective market

Our 2017 report on the higher education market noted that government intended for market mechanisms to improve quality and value for money for students and meet skills needs in the economy, but found that market incentives to meet these priorities were weak. Competition between providers to drive improvements on price and quality had yet to prove effective.

The Office for Students – the higher education market regulator – was created after we published our report with a focus on addressing these failures. Its statutory remit focuses on competition, student choice and outcomes.

Source: National Audit Office report, *The higher education market,* 2017

Setting regulatory objectives

Translating the overall aim of regulation into specific objectives and plans for government and regulators helps those involved ensure their work supports the primary purpose. We have found that regulators sometimes have multiple objectives that come into tension (for example, promoting investment to ensure services are sustainable while keeping prices affordable). It is therefore important for government and regulators to discuss respective priorities and how any trade-offs should be managed.

In general, we expect to see the following:

- A clear and logical explanation of how the overall purpose of regulation is translated into detailed objectives and priorities, with no substantive gaps.
- An explicit recognition of any tensions or trade-offs between objectives, and clarity where appropriate over how such potential conflicts should be managed and resolved.
- A review and refresh, where relevant, of regulatory objectives including consideration of the benefits and risks of simplifying or streamlining them.
- Clear communication with stakeholders and the public on the above points, and mechanisms to coordinate and collaborate with other bodies, including other regulators, where they have related objectives and desired regulatory outcomes.

Considerations for policymakers:

- Ensuring detailed regulatory objectives support overall desired policy outcomes, and that there is a process in place to work with regulators to analyse and manage trade-offs.
- The degree to which a regulator's overall framework should be prescriptive, to provide clarity and certainty, or more flexible and open to the regulators' discretion (for example, principles- or outcomes-based) to be more readily adaptable to meet future challenges.

Considerations for regulators:

- Articulating a clear line of sight linking high-level and, where relevant, statutory objectives to detailed operational objectives, plans and priorities.
- Whether detailed regulatory objectives remain relevant in light of policy priorities in government.

Case study

Clarifying trade-offs between objectives

Our 2019 report on regulating to protect consumers examined how well the regulators in focus discharge their duties and address the key issues for consumers. We reported that regulators need to manage a number of potential conflicts or trade-offs between objectives or groups of consumers (such as where market forces that benefit the average consumer may leave those in vulnerable circumstances behind).

Our report found that there are areas where government formally provides direction or strategic steer, for example introducing legislation requiring regulators to introduce price caps or universal service obligations. However, regulators reported that it remains challenging to determine how to manage many of the trade-offs between competing objectives in protecting consumers.

Source: National Audit Office report, *Regulating to protect consumers in utilities, communications and financial services markets*, 2019

Ensuring accountability

Robust accountability arrangements provide a common understanding of the respective roles and responsibilities of government departments, regulators and other bodies in the wider regulatory system, and set out how they will be held accountable for their efficiency and effectiveness. Clear and effective accountability arrangements help to minimise the risk of problems being missed, identify who is responsible if something goes wrong, and enable corrective action and, where necessary, redress.

In general, we expect to see the following:

- Clarity on the allocation of roles and responsibilities between the responsible department(s), regulator(s) and other stakeholders, and clear lines of accountability from regulators to Parliament and/or their sponsor departments.
- Where relevant, consideration of how national bodies' accountability to Parliament interacts with local regulators that are accountable locally.
- A mechanism for regulators and other public bodies to be challenged or held accountable for their work and, where relevant, the wider impact of their actions, such as on vulnerable groups.

Considerations for policymakers:

- How to minimise gaps or overlaps in accountability (which could, for example, leave citizens or the environment unprotected) within the design of an overall regulatory framework, particularly where multiple regulatory bodies work closely together.
- Whether arm's-length bodies, including regulators, have systems that meet the standards of governance, decision-making and financial management expected of public bodies.

Considerations for regulators:

- To help minimise gaps or overlaps in accountability, identifying and publicly setting out the perimeter between what they do and do not regulate.
- How approaches to governance and transparency support public trust and accountability.

Further guidance

Accountability to Parliament and the taxpayer

Our 2016 report examined the incentives on government accounting officers to prioritise value for money compared with the day-to-day job of satisfying ministers. It set out four essentials of accountability: a clear expression of spending commitments and objectives; clear roles and responsibilities; a mechanism or forum to hold to account; and robust performance and cost data.

Source: National Audit Office report,, *Accountability to Parliament for taxpayers' money*, 2016

Aligning accountability

Our 2021 guidance describes how organisations can only achieve joined-up working if the underlying ways of working, including regulatory regimes, support them to do so. There is a need to align objectives, funding, governance and accountability across all organisations contributing to a successful outcome. In around two-thirds of organisations we have assessed, there was a lack of clarity on how accountability aligns across end-to-end delivery.

Source: National Audit Office report, *Improving operational delivery in government: A good practice guide for senior leaders*, 2021

Determining the degree of regulatory independence

Public trust and legitimacy are integral to effective regulation in the eyes of regulated entities 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.

In general, we expect to see the following:

- A formal statement on the degree of independence a regulator has, for example in legislation or framework agreements. Depending on the role of the regulator, this may set out when and how it would be appropriate for a minister to direct the regulator, or where it has the power to bring an infraction case against government.
- A shared understanding of the rationale for a regulator's level of independence among government, regulators and other stakeholders.
- Active consideration of the impact of how regulation is funded on its actual or perceived independence.

Considerations for policymakers:

- The level and nature of a regulator's independence from ministers and/or regulated entities, and how this will be maintained (for example, by requiring the regulator to report annually if it has been sufficiently funded to undertake its activities).
- The extent to which an organisation's culture and leadership, including appointments, may affect its perceived or actual independence.

Considerations for regulators:

- Observing high standards of governance and transparency in decision-making to maintain confidence in impartiality and integrity.
- Where a regulator is part of a government department, how it can overcome any barriers arising from a lack of independence, such as powers, non-executive challenge and public reporting.

Case study

Publication of ministerial correspondence

Our 2016 report on the Competition and Markets Authority (CMA) examined the processes to maintain its independence. We found that "the CMA's role is founded in UK statute, and that... the [UK competition] regime's ability to make independent decisions is central to its credibility and impact."

Our report highlighted that "The importance of competition work means that it can come under significant external pressure" and that the CMA "has established robust processes to maintain its independence, including publication of evidence submissions and of correspondence with ministers."

Source: National Audit Office report, *The UK competition regime,* 2016

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

Determining a funding model

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

In general, we expect to see the following:

- Overall funding levels that are adequate to enable a regulator, operating efficiently, to fulfil effectively the objectives set by government.
- Funding processes that are transparent, efficient and straightforward, and all funding activities contribute directly to a regulator's objectives.
- A funding model that allows regulators to respond to new or changing risks, for example by reprioritising work or recovering costs of additional work (such as new investigations or unanticipated court actions in the public interest).

Considerations for policymakers:

- Ensuring a regulator's funding matches its responsibilities and associated activities, including the need to reassess funding when emerging new skills and capabilities that are rare or in demand will cost more.
- What flexibility a regulator should have to draw on additional resources and a process by which this can be achieved (for example, increasing licence fees to fund new work).
- Any potential dependency or unintended incentives from different funding models (such as potential conflicts of interest) that could undermine a regulator.

Considerations for regulators:

- Potential threats to funding mechanisms, for example where developments in the market might cause a drop in funding (such as from licence fees) or otherwise compromise regulatory objectives.

Case study

Outdated funding model

Our 2020 report on gambling regulation noted that licence fees are intended to reflect the cost of licensing and regulating the industry. However, we found that the way that gambling regulation is funded does not allow the Gambling Commission to change licence fees and makes it more difficult to invest in new skills to quickly address changing risks.

We found that since the last fees review, the Commission had seen increased complexity in its work, particularly in online and mobile gambling, which accounted for 83% of the total number of regulatory penalties in the past five years. The Commission had identified specific skills gaps, including in crypto-currency and addictive technologies, but could not change licence fees to raise additional resource.

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

Designing organisational structure and culture

The scope and remit of regulators vary widely, but most major areas of regulation include at least one key regulatory body. We have found that for a regulator to be effective, its organisational design and culture are important. A robust internal structure (including appropriate governance arrangements) 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.

In general, we expect to see the following:

- An organisational design that allows for a shared understanding of priorities, smooth information flows between teams and with senior management, and suitable flexibility to adapt and respond to events.
- A leadership team with the vision, skills and appropriate levels of independence and diversity to build external confidence and credibility, and to deliver on the regulatory objectives.
- A focus on common critical success factors including: decisive leadership; effective programme management; information systems; human resource issues (capacity, capabilities and staffing); diversity and inclusion; culture; and open communications.

Considerations for policymakers:

- Ensuring a robust appointment process for the leadership of new or existing regulators in which the regulated community, stakeholders and the public can have confidence.
- Whether regulators have the budget and capacity proportionate to the scope and scale of their regulatory objectives and external challenges.

Considerations for regulators:

- What operating model is needed to be an effective, value-for-money organisation, and how to embed the institutional values and culture that support this model.
- How to ensure an effective system of operational management, including internal processes for managing potential, perceived or actual conflicts of interest.

Case study

Creation of Ofcom

Our 2006 report into the setting up of Ofcom highlighted that its creation was a significant achievement given the complexities involved in merging five different bodies. Our report found that achieving this had required decisive leadership, as well as rigorous management of the physical integration of the organisations and maintaining business as usual.

We found that by approaching this merger as the creation of a new entity, rather than just the fusion of the previous bodies, Ofcom responded to the government's ambition to create an entirely new style of regulator.

Source: National Audit Office report, *The creation of Ofcom: Wider lessons for public sector mergers of regulatory agencies,* 2006

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
- Embedding the citizen perspective
- Monitoring service provider compliance and incentives
- Engaging with stakeholders
- Ensuring capacity and capability
- Adopting a forward-looking approach

Using information and data

We have found that the way 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 regulated areas.

In general, we expect to see the following:

- A clear understanding in regulators and departments of how data and information support what they are trying to achieve, and what regular or ad-hoc data are needed to make this work.
- Collection and analysis of high-quality relevant data, to identify where intervention may be needed and to inform regulatory decision-making.
- Efforts to make data collection efficient to minimise unnecessary burdens on regulated entities, including exploring the feasibility of digitising data collection as far as possible.
- Data and data-driven insights that are, where appropriate, publicly available to help inform discussion and scrutiny.

Considerations for policymakers:

- What information-gathering powers regulators have, and whether they have the analytical capacity to make effective and appropriate use of them.

Considerations for regulators:

- Ensuring the relevance, timeliness and proportionality of data collected from regulated entities.
- Having a clear and documented data strategy that identifies any gaps and weaknesses in the available data and barriers to addressing them, and sets a plan to overcome these issues.
- What tools or powers are available to obtain information, and how to work with policymakers where necessary to identify ways to gather data. This could, for example, include exploring the scope to use artificial intelligence for routine data collection and monitoring.

Further guidance

Improving the use of data

Our 2019 report on data use in government concluded that without accurate, timely and proportionate data, government will not be able to make the best use of public money or take the next step towards more sophisticated approaches to using data that can reap real rewards.

The report sets out practical steps for government to improve the use of data:

1. Clear strategy, leadership and accountability, and funding to make it possible.
2. High-quality data, data standards to improve consistency, and systems and tools which talk to each other.
3. Safeguarding data and securing public trust, legislation to enable change, and skills and appetite for change.

Source: National Audit Office report, *Challenges in using data across government*, 2019

Embedding the citizen perspective

We have found from our work that developing a meaningful understanding of citizen perspectives and behaviours is important to ensuring 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.

In general, we expect to see the following:

- A defined process to regularly include the perspective of citizens in regulatory decision-making, including considering different groups or demographics, and both current and future consumers.
- An appropriate level of research and risk assessment to deepen understanding of people's experiences and perspectives, for example using surveys.
- Where detriment to people is identified, such as financial costs or harm to physical or mental health, an analysis of the scale and nature of this detriment and associated costs to public services or wider society.

Considerations for policymakers:

- How to ensure the voice of citizens can be heard and considered fairly alongside other perspectives, including those most affected by the regulated area.
- What mechanisms would be appropriate for the public to complain or seek redress in relation both to the actions of regulators and of regulated entities.

Considerations for regulators:

- Where regulators have a specific duty towards people, such as to protect consumers or workers, how to embed this focus across all teams and in all aspects of their work.
- How to influence citizen behaviour, either directly through public campaigns or indirectly through setting requirements on how service providers interact with people.

Case study

Understanding consumer vulnerability

Our 2017 report on vulnerable consumers found that the regulators we examined had all undertaken research of vulnerability in each sector, improving their insight into such issues and recognising that vulnerability is broader than the specific groups defined in their statutes.

Our report noted that regulators' research had not quantified the impact of problems on vulnerable consumers, or how the issues are changing over time. This partly reflected difficulties in identifying and recording different forms of vulnerability. The research provided a good snapshot of the current situation, but the challenges that people in vulnerable circumstances face will change as economic, technological and social factors change.

Source: National Audit Office report, *Vulnerable consumers in regulated industries,* 2017

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. We have found that monitoring compliance rates and understanding how incentives work in practice can help in the tailoring of regulatory approaches and remedial action.

In general, we expect to see the following:

- Research, analysis and engagement with regulated entities to understand the varied incentives to operate in accordance with policy aims and identify any gaps or weaknesses.
- Ongoing monitoring of compliance with regulations and other key areas of performance by service providers, to assess how incentives are impacting behaviours in practice.
- Regular monitoring of the costs of compliance to understand their impact and ensure they are not disproportionate.
- Where appropriate, regulatory incentives being used to supplement or correct for existing incentives. This can include financial incentives (for example, in licence fees or price controls) or reputational incentives (such as published ratings or league tables).

Considerations for policymakers:

- Whether regulators have suitable powers and can use a variety of approaches to measure and set incentives, ranging from enforcement to lighter-touch approaches such as guidance and codes of practice.

Considerations for regulators:

- How to build an understanding of the different types and behaviours of regulated entities based on intelligence data, and calibrating an appropriate regulatory response for each group. For example, this might be: light-touch for compliant organisations; advice for those needing guidance; or warnings and potential enforcement action against the non-compliant and potential criminals.
- How compliance can be measured or demonstrated in both principles-based and rules-based approaches.

Case study

Limited use of regulatory incentives to benefit vulnerable consumers

Our 2017 report on vulnerable consumers found that all four regulators we examined were proactively seeking to incentivise good customer service, but that regulatory incentives to promote service quality for vulnerable consumers were limited.

We found that all the regulators had provided some reputational incentives for companies to support consumers, although these did not normally relate to vulnerability. The regulators also published customer service scores or complaints data for companies in their sectors. They also announced when they had found large-scale customer service failings as part of enforcement action.

Source: National Audit Office report, *Vulnerable consumers in regulated industries*, 2017

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 we have found that 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.

In general, we expect to see the following:

- Early, regular and meaningful engagement with regulated entities, other key stakeholders and the public, focused on improving the operation and outcomes of the regulatory framework for stakeholders.
- Transparent public consultations on major initiatives or proposed regulatory changes that are clear and open as to their rationale, allow a reasonable period for comment, and result in a published substantive response.

Considerations for policymakers:

- Following existing government guidance on government-led consultations (for example, its consultation principles).
- What steer to provide to regulators, where appropriate, as to how they are expected to communicate with the regulated community and the public.

Considerations for regulators:

- How to engage fairly and proportionately with relevant service providers of all types and sizes, with organisations representing other key stakeholders (such as campaign groups or consumer advocates) and, where relevant, with the wider public.
- How different approaches to stakeholder engagement and consultation will impact regulators' ability to influence and regulate effectively.

Case study

Engaging with local authorities

Our 2021 report looking at the protection and support of the clinically extremely vulnerable during COVID-19 lockdown found that the Ministry of Housing, Communities & Local Government's (MHCLG's) engagement with local authorities was initially poor, but improved.

MHCLG recognised that it needed to improve engagement with local authorities and moved to a more collaborative approach, setting up a fortnightly stakeholder engagement forum, on which nine local authority chief executives were represented.

Source: National Audit Office report, *Protecting and supporting the clinically extremely vulnerable during lockdown*, 2021

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

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. We have found from our work that regulatory approaches can benefit from being informed by proactive engagement with business innovators and other stakeholders.

In general, we expect to see the following:

- Appropriate levels of horizon-scanning and stakeholder engagement, to identify and understand potential or known changes coming up and consider the need for discrete responses or changes to the regulatory regime.
- Anticipatory regulatory strategies that are adaptable or flexible by design so that plans can cope with the inherent uncertainty of dynamic technologies or markets (as much as is practicable when balanced with predictability).
- Engagement with regulated entities to explore potential new ideas and innovations in a way that does not hinder regulatory objectives or create undue risk.

Considerations for policymakers:

- Whether there is a need to seek independent, external views of future risks, threats and opportunities to regulators and the regulatory landscape.

Considerations for regulators:

- Using systematic horizon-scanning to understand potential problems, risks and developments before they crystallise that could impact on the ability to meet regulatory objectives in future. Once identified and assessed, appropriate action and mitigation can be prioritised into plans and programmes.
- What formal mechanisms would help to work with innovators to test new products or approaches that support its regulatory objectives.

Case study

Testing innovative propositions in financial services regulation

The Financial Conduct Authority's (FCA's) regulatory sandbox is a mechanism for firms to test innovations for limited duration with a limited number of customers. To date, the FCA has worked with defined cohorts of firms, but in summer 2021 it will launch an 'Always Open' regulatory sandbox available on a rolling basis. It is open to authorised firms and some other businesses that are looking to deliver innovation in the UK financial services market. The FCA's sandbox seeks to provide firms with:

- the ability to test products and services in a controlled environment;
- reduced time to bring innovations to market, at potentially lower cost;
- support in identifying appropriate consumer protection safeguards to build into new products and services; and
- better access to finance.

Source: *Financial Conduct Authority* website

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
- Prioritising interventions
- Drawing on a range of regulatory tools
- Embedding consistency and predictability
- Ensuring interventions are proportionate
- Being responsive

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. From our work, we have found that consideration should be given to 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.

In general, we expect to see the following:

- A shared overall understanding between government, regulators and stakeholders of how regulation is intended to achieve its aims.
- Well-developed causal models or logic maps that inform future plans and interventions, based on an understanding of: how different regulatory approaches influence change; what works effectively to influence the behaviour of regulated entities and citizens; and what short-term effects are needed to achieve longer-term outcomes.

Considerations for policymakers:

- Whether regulators are able to meet their regulatory objectives based on the powers and tools they have, and the challenges they face in trying to do so.

Considerations for regulators:

- Using monitoring and evaluations of the impact of different interventions to inform causal models and keep the range and effectiveness of different approaches under review and up to date.
- Where limitations are identified and new tools or powers are required, making the case to policymakers for changes.

Further guidance

Understanding the link between regulatory activities and outcomes

Our 2016 good practice guidance on performance measurement by regulators recognises that developing an understanding of the links between regulatory activities and intended outcomes is complex, but is important to assessing and understanding a regulator's performance and influence.

A causal model or strategy map is a good way of understanding the relationships between the regulator's activities and intended outcomes, including the relative level of influence it has over different measures of performance.

Source: National Audit Office report, *Performance measurement by regulators*, 2016

Prioritising interventions

The Analyse section of this guide sets out the principles for gathering intelligence and stakeholder perspectives to identify where intervention may be needed. It is rarely possible, however, to investigate or intervene on every potential issue that arises, and regulators therefore need to prioritise. From our work, we have found that 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.

In general, we expect to see the following:

- Analysis of relevant data and information and engagement with stakeholders that feeds directly into the processes used to inform prioritisation decisions.
- Assessments of the potential or actual risk to regulatory objectives, including distributional impacts (such as on different groups of stakeholders), to target areas most at risk.
- A robust mechanism to ensure that intelligence can be fed in from all relevant internal and external sources, so that decisions can be taken based on complete information as far as possible.

Considerations for policymakers:

- Whether and how to reflect government's priorities in a policy steer or guidance to regulators to enable these to be factored into their approach.

Considerations for regulators:

- Ensuring access to reliable and up-to-date data and information to inform prioritisation, risk assessment and targeting decisions, in line with the general expectations set out on this page.
- How to reflect any policy steer or priorities from government when making decisions.
- How to focus on issues or areas where the regulator, as opposed to other organisations, is best-placed to contribute and have impact.

Case study

Identifying priorities

Regulators need a good understanding of the problems that provide the rationale for regulation, to focus on what matters to consumers and develop clear objectives. Our 2019 report found that to prioritise resources on issues that will bring the biggest benefit, regulators need to assess the level and nature of harm to consumers (and future consumers), the current performance of service providers, and any distributional impacts on different groups.

We found that all four regulators we examined gathered information on the issues that consumers face in each market, and the potential harm they may experience in future, and that this work fed into regulators' processes for setting priorities and developing annual plans.

Source: National Audit Office report, *Regulating to protect consumers in utilities, communications and financial services markets*, 2019

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. We have found that impact can be maximised by determining, on a case-by-case basis, which tools or interventions are likely to be the most appropriate to prompt improvement, deter non-compliance by other regulated entities, or both.

In general, we expect to see the following:

- Availability of a range of tools and powers, with sufficient flexibility to provide a calibrated response to regulatory issues, including the scope to tackle the most harmful practices as well as take a lighter-touch or reputational approach in other areas.
- A transparent and nuanced approach to deciding how to intervene on a case-by-case basis, taking into account factors such as the impact on regulatory objectives, the evidence needed, the likelihood of a successful outcome, speed, cost, the need to provide redress for the public, a meaningful deterrent effect, and the potential future impact of precedent-setting.

Considerations for policymakers:

- Engaging with regulators on the relative effectiveness of different types and levels of intervention, and monitoring the impact on overall policy objectives.

Considerations for regulators:

- Using the full range of tools available, in line with the general expectations set out on this page.
- Drawing on experience and evidence of using different tools, including from other regulators and sectors, to keep the range and effectiveness of interventions under review and, where necessary, make the case to policymakers for changes in its powers.

Case study

The Gambling Commission's approach to licensing and enforcement

Our 2020 report on gambling regulation found that the Gambling Commission had a range of powers and tools to help it achieve its licensing objectives, including protecting people from gambling-related harm. We found that in recent years it had increased its enforcement actions against operators that had broken rules by revoking licences and enforcing financial penalties. However, we identified some common approaches other regulators use that the Commission had not introduced and could benefit from. For example, it had not explored opportunities to create a competitive market that rewarded operators for going beyond minimum standards by providing consumers with information and tools to identify operators that treat consumers fairly or where the risk of harm is lower.

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

Embedding consistency and 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. Consistency is also important more widely in regulatory decision-making, particularly when regulators have to make complex judgements. We have found that the choice of regulatory approach can affect the extent to which this consistency is achieved.

In general, we expect to see the following:

- A clear and consistent overall approach to rule-making and intervention that is understood by regulated entities and stakeholders.
- Where consistency and predictability is particularly important, a 'no surprises' approach to provide a stable environment for investment and stakeholders that is reflected in regulatory plans and interventions.
- Where changes or rapid responses are required, the rationale for these changes is communicated with regulated entities and stakeholders as early as possible.

Considerations for policymakers:

- What degree of importance to attach to consistency and predictability in decision-making for the regulatory framework, in meeting government's policy objectives and managing unintended consequences.

Considerations for regulators:

- How to use regular, formal engagement to provide opportunities to share thinking and forward plans with the regulated community.
- Ensuring consistency and predictability when making decisions, particularly those that require the use of complex judgements.

Case study

Ofwat regulatory approach for water and wastewater services for its 2019 price review

In 2016, Ofwat published *Water 2020: our regulatory approach for water and wastewater services in England and Wales*. This document set out the future regulatory framework for the water and wastewater industry in England and Wales. The update was intended to help promote a shared understanding of its approach to regulatory design and the implications, costs and benefits associated with it. The evolution in Ofwat's thinking was intended to ensure its regulatory approach was proportionate and targeted, provided clarity and predictability, and did not impose undue costs.

Source: Ofwat, *Water 2020: Our regulatory approach for water and wastewater services in England and Wales,* 2016

Ensuring interventions are proportionate

Government guidance sets out how policymakers and regulators should ensure their work is proportionate, for example in rule-making and minimising burdens on small businesses (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.

In general, we expect to see the following:

- Remedies, enforcement actions or rule changes that are proportionate, timely and meaningful to the scale and type of loss experienced by citizens, businesses or the environment, and serve to act as an effective deterrent to others.
- A range of tools and regulatory decisions being used, rather than all interventions having the same result (although in some cases this may be appropriate).
- Meaningful engagement with stakeholders and the regulated community to understand their perspectives on what a proportionate response would be to different issues.
- Where relevant, fees levied on regulated entities (to fund the regulatory regime) that cover the costs incurred.

Considerations for policymakers:

- Providing guidance to regulators on how to consider the interests of the regulated entities, consumers, citizens or the environment in a proportionate way in making intervention decisions, including providing an impartial route for appeal.

Considerations for regulators:

- Ensuring that interventions and penalties on individual undertakings are proportionate and meaningful, in line with the general expectations set out on this page.

Case study

A proportionate approach as part of good regulation

In 2008, the Better Regulation Executive and the National Audit Office report reviewed the progress that various regulators, including the Health and Safety Executive (HSE), had made in implementing the principles of effective inspection and enforcement set out in Philip Hampton's 2005 report: *Reducing administrative burdens: effective inspection and enforcement*. The report highlighted good practice in the HSE's use of a tool to assist inspectors to make enforcement decisions (the Enforcement Management Model). Independent research commissioned by the HSE found that this model improved the consistency, proportionality and transparency of decision-making, particularly among local authorities.

Source: National Audit Office report, *Regulatory quality: How regulators are implementing the Hampton vision,* 2008

Being responsive

Identifying new issues or changes in the external environment (such as technological, environmental and political) promptly 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, we have also found that 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.

In general, we expect to see the following:

- An assessment of emerging risks, and the likelihood of them crystallising and impacting on regulatory objectives, based on an overall forward-looking approach.
- Organisational structures and culture that allow information to reach decision-makers quickly, so that actions and responses can be taken in a timely way.
- Consideration of whether the design of an overall regulatory framework and a regulator's objectives are sufficiently flexible and outcomes-based to support timely responses to new issues.

Considerations for policymakers:

- Whether regulators have the powers, organisational structure and resources to respond quickly to new problems or changes in the external regulatory environment.

Considerations for regulators:

- What capacity and skills are needed to reprioritise and respond to significant changes in demand-led activities such as casework, investigations and appeals, and to changes in the external environment that potentially prevent the overall regulatory approach from working.

Further guidance

Responsive regulation

Our 2014 report on using alternatives to regulation to achieve policy objectives explored different approaches to regulation and their strengths and weaknesses. It concluded that 'goal-based regulation' (that focuses on setting overall regulatory objectives rather than specifying rules) can be more responsive to change because the regulatory objective remains the same, even where the process or activity being regulated has changed. In contrast, while 'rule-based' regulation can in some cases help make interventions simpler or more predictable, it can also be less responsive because the rules may be very specific to the context, and may require legislative change to be adapted.

Source: National Audit Office report, *Using alternatives to regulation to achieve policy objectives*, 2014

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
- Measuring performance
- Evaluating impact and outcomes
- Engendering cooperation and coordination
- Ensuring transparency

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). We have found from our work that good governance is also integral to ensuring propriety, regularity and value for money in spending by public bodies.

In general, we expect to see the following:

- Clarity over the role of the board, including its ability to challenge strategic management issues such as budget and performance reviews.
- Accountability to Parliament and/or to sponsor departments for how funding is spent and for ensuring that this represents value for money.
- A governance framework of checks and balances that helps ensure that decision-making is lawful, informed by objective advice, transparent and consultative.
- Periodic review of performance and governance frameworks to ensure they stay fit-for-purpose.

Considerations for policymakers:

- Whether regulators are operating within agreed governance frameworks, and in what circumstances it may be necessary to intervene.

Considerations for regulators:

- Ensuring that internal structures support a robust, transparent and accountable decision-making framework.
- Where regulators are part of a government department rather than independent bodies with their own board, ensuring appropriate governance processes and non-executive scrutiny.
- Whether the diversity of the board is appropriate to reflect different perspectives within the governance arrangements.

Case study

Local authority governance

Local government has faced considerable funding and demand challenges, which have raised questions as to whether government governance systems remain effective. Our 2019 report found that poor governance can make the difference between coping and not coping with financial and service pressures.

For local government governance arrangements to be effective, the Ministry of Housing, Communities & Local Government (MHCLG) needs to know that the governance arrangements that support local decision-making function as intended. Our report found that in order to mitigate the growing risks to value for money in the sector, MHCLG needed to improve its system-wide oversight, be more transparent in its engagement with the sector, and adopt a stronger leadership role across the governance network.

Source: National Audit Office report, *Local authority governance*, 2019

Measuring performance

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

In general, we expect to see the following:

- A performance measurement framework that includes appropriate measures and indicators of inputs, regulatory activities, outputs and outcomes to enable a meaningful assessment of regulatory performance across different objectives and responsibilities.
- Periodic review of the performance measurement framework to ensure it is comprehensive and meaningful, and reflects priorities and regulatory objectives.
- Monitoring of distributional impacts of regulatory measures to provide insight into what works for different groups (for example, vulnerable consumers or small businesses).

Considerations for policymakers:

- Whether the performance monitoring framework provides policymakers with sufficient and clear information to enable a meaningful assessment of a regulator's overall performance on which it can be held to account.

Considerations for regulators:

- How much influence they can have on different outcomes, and which indicators can be directly linked to their actions to demonstrate the overall strategic results of their regulatory approach.
- How performance measurement can be built into a cycle of continuous improvement, maximising operational efficiency and effectiveness.
- While meaningful comparisons can be difficult at an organisational level, benchmarking against comparator organisations may be possible for specific regulatory functions, and can be a useful tool to support performance assessment.

Further guidance

Performance measurement by regulators

Our 2016 good practice guidance on performance measurement by regulators sets out criteria for developing performance measurement frameworks and measures, and provides examples of existing good practice. It also outlines important considerations for how to report and use performance information.

The guidance explores the particular challenges of measuring regulators' influence over their intended outcomes, and outlines steps that regulators can take to improve their knowledge of how – and how well – their activities influence those outcomes. It also considers how regulators can assess the risks to achieving their regulatory objectives and measure their performance in mitigating those risks.

Source: National Audit Office report, *Performance measurement by regulators,* 2016

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, we have found that robust evaluation can help evidence value for money, provide insight into unintended outcomes and refine regulatory interventions to improve outcomes.

In general, we expect to see the following:

- An evaluation framework that sets out how regulatory interventions will be evaluated, including how the direct causal impact on outcomes will be estimated. This may also consider proportionality, independence and how evaluation evidence will be used to inform future policy development.
- In designing new interventions or regulatory changes, consideration of how and when they will be evaluated and what data will be needed to do this.
- Evidence of timely and appropriate use of evaluations and post-implementation reviews of regulatory changes to determine whether intended outcomes have been achieved and to examine the impact of interventions.

Considerations for policymakers:

- Whether a regulator's approach to evaluating its interventions is suitably scoped, rigorous and independent, reflects best practice and takes into account the views of different stakeholders such as consumers or citizens.

Considerations for regulators:

- How evaluation activity will be considered as part of the business planning process.
- What good practice and lessons can be learned from and shared by other regulators, and how best practice can be applied.
- How to prioritise which interventions or changes should be evaluated (and how the evaluations will be done), recognising that it is not normally feasible to evaluate everything in depth.

Case study

Evaluating interventions

Our 2019 report on regulating to protect consumers assessed how well the four regulators in scope measured and reported their performance in protecting the interests of consumers.

We found that the Financial Conduct Authority had made the most progress in starting work to better understand its impact and influence. In 2018, it published an impact evaluation framework and has since put in place a rolling programme of evaluations to measure the impacts of its actions.

Source: National Audit Office report, *Regulating to protect consumers in utilities, communications and financial services markets*, 2019

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. We have found that 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.

In general, we expect to see the following:

- A good understanding of the wider regulatory landscape and the roles and responsibilities of other bodies with which the regulator needs to work and align to achieve regulatory and public policy objectives.
- Mechanisms to coordinate and collaborate with other bodies where they share common objectives and desired regulatory outcomes.
- A sensible approach to learning from and, where appropriate, influencing developments in other bodies both domestically and overseas, such as participating in international regulatory working groups.

Considerations for policymakers:

- A major cause of past regulatory failures is when several bodies making up a regulatory system have failed to coordinate and work together. Policymakers have regulatory oversight responsibilities and need to be alert to any evidence of problems in this regard.
- Whether a regulator has a constructive relationship and coordinates well with other bodies in the regulatory landscape, at local, national and international levels.

Considerations for regulators:

- How to identify and pursue opportunities for coordination and engagement with other bodies in the wider regulatory landscape (domestically and internationally where appropriate).
- Whether there are opportunities to work with regulators in other sectors with the aim of sharing good practice and, where appropriate, exploring ways to streamline and coordinate interactions with regulated bodies.

Case study

Consumer protection partnership

Our 2011 report on the UK's system for enforcing consumer law found that the consumer protection regime was very fragmented, with poor overall system coordination. In returning to the issues in 2016, our report on protecting consumers from scams, unfair trading and unsafe goods found that the Department for Business, Energy & Industrial Strategy had improved communication and coordination of the key consumer protection bodies by establishing the Consumer Protection Partnership in 2012. The partnership aims to identify consumer threats and risks, prioritise these and agree action to address them. It meets regularly at executive and operational level and coordinates communications campaigns.

Sources: National Audit Office report, *Protecting consumers – the system for enforcing consumer law*, 2011

National Audit Office report, *Protecting consumers from scams, unfair trading and unsafe goods*, 2016

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 any particular sensitivities or constraints, can help build this trust and foster an open dialogue between regulators and wider stakeholders. We have found that good transparency involves clearly articulating the principles and reasoning behind the regulatory approach and major decisions, and reporting transparently on performance and outcomes.

In general, we expect to see the following:

- Public clarity over the respective roles and duties of regulators and regulated entities, including the perimeter of their responsibilities. If regulatory overlap becomes apparent, clarification of responsibilities is sought and agreed.
- Publicly available and readily accessible policies, guidance and risk-based systems covering matters such as compliance, enforcement, decision-making and review.
- Regulatory performance against key criteria, measures and indicators that is reported fully and published in an accessible way.

Considerations for policymakers:

- How to be transparent and open with any policy priority steers that regulators should take into account, for example on potential trade-offs between its regulatory objectives.

Considerations for regulators:

- How to embed transparency into regulatory operations, for example, through the development of a communications strategy.
- Publishing the reasoning behind regulatory decisions for transparency reasons, to improve the understanding of regulated entities and what constitutes compliance in the eyes of the regulator.
- How to ensure that the processes used to engage with stakeholders guard against any risk of potential (actual or perceived) preferential treatment or conflicts of interests.

Case study

Food Standards Agency Board meetings

The Food Standards Agency (FSA) Board holds all of its meetings in public (unless there is a particular reason why specific issues cannot be discussed in public). Agendas, papers and decisions are published and meetings are live-streamed online.

The FSA Board invites questions from members of the public on the discussions held at each of its meetings. Members of the Board and the Executive Team then have an opportunity to address these questions during the meeting. Members of the public submitting a question also receive a written response within 14 working days, which is also published on the FSA's website.

Source: *Food Standards Agency website*