Regulatory management toolkit

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Authorship

Abstract

Regulatory management refers to the systematic appraisal of the impacts of proposed legislative rules and the sustained maintenance of existing laws and regulations. Regulation, used here in the broad sense of the verb 'to regulate', means the use of legal instruments to give effect to a government policy intervention.

All countries have their own unique systems for developing, deploying, and reviewing legislation and regulations. Increasingly, they are introducing regulatory management policies and strengthening their institutions to make regulatory systems more effective. Individual regulations do not operate in isolation but interact as part of a system.

The framework underpinning this toolkit suggests that a high-performing regulatory system needs to have four key components: 1) regulatory quality tools, such as regulatory impact analysis or administrative burden reduction; 2) regulatory practices and processes, such as consultation and international regulatory cooperation; 3) regulatory institutions through a regulatory oversight body; and 4) a regulatory strategy or overarching policy, such as good practice regulatory principles.

Regardless of the differences in underlying regulatory management systems, all countries face the same range of choices about adopting regulatory quality tools, practices, strategies, and institutions.

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Every country has its own unique regulatory system to make laws, regulations, and rules and a set of procedures for reviewing them. Increasingly, countries are introducing regulatory management policies and strengthening their institutions to make their regulatory systems more effective. Intal and Gill (2016) published a comparative survey of the development of different approaches to regulatory management in selected ASEAN countries as well as Australia, Japan, the Republic of Korea, and New Zealand.

Regulatory management is a rapidly growing field as countries around the world are reviewing whether to adapt regulatory management tools and practices from other countries. By national regulatory system we focus on the national meta system rather than the regulatory regime (cluster of related regulations applying in a particular domain), an individual regulatory agency, or specific regulations. (See Gary Coglianese (2012) for a framework for regulatory excellence at the level of the individual regulatory organisation). Regulatory management is a challenging field as practice leads theory and the literature is only now beginning to develop the frameworks and evaluative knowledge that are required if practitioners' practices are to improve.

This toolkit aims to contribute to the regulatory management literature by setting out a framework for the elements of the regulatory management system and provide links to key readings for those that want to explore the practitioner and academic literatures in more detail. This paper updates an earlier paper prepared for ERIA (Gill 2016) and builds on the framework paper published by the APO[1] by including links to key resources for practitioners to use.

Regulations include rules as well as laws
'Regulation' is used here in the broad sense of the verb 'to regulate'. Regulation means the use of legal instruments to give effect to a government policy intervention. While the terms used for legal instruments vary by jurisdiction, 'legal instruments' here include all primary laws, secondary regulations, or tertiary rules.

Regulatory management ('regulating the regulation makers') is a form of meta-regulation which includes both regulatory policymaking ('regulating regulation developers') and regulatory administration and enforcement ('regulating the wielders of regulatory power'). In some countries, there is an explicit 'law on laws', while other countries rely more on decrees or conventions.

Regulatory management involves special measures
There is no rigorous definition of RMS which clearly distinguishes an RMS from the wider public management, public policy, and public law systems within which regulatory management takes place. The formal term "RMS" is used here to mean the set of special measures that apply to the development of new, or the review of existing, regulations but do not apply to other policy interventions.

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[1]

https://www.apo-tokyo.org/publications/project_reports/regulatory-management-framework-to-enhance-productivity/
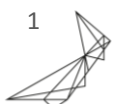
The toolkit identifies four key components

The approach adopted in this report is similar to that of the OECD (n.d.), which suggests that an RMS has four main components:

1   Regulatory quality tools, e.g. regulatory impact analysis (RIA), administrative burden reduction, and evaluation.

2   Regulatory practices and processes, e.g. consultation and accessibility.

3   Regulatory institutions, e.g. an oversight body and coordination for international/national/local coherence.

4   Regulatory strategy or overarching policy, e.g. good practice regulatory principles.

Oversight institutions play an important role

Discussions of regulatory management often focus on particular tools such as RIA and practices such as consultation. To be effective, the tools and practices in turn require the support of key institutions:

1   A coordinating body that has the capability and mandate to oversee and develop the regulatory system and report on its performance.

2   Other institutions that ensure the quality of the RMS such as legal drafting to ensure consistency with other domestic laws and international obligations.

3   Training providers who build the capabilities required.

These institutions are more effective if there is an explicit regulatory strategy that provides a whole-of-government mandate for achieving regulatory quality. Often this takes the form of government endorsement of a set of good practice regulatory principles that are sometimes linked to trade and competition policies.

1.1   Context: The shibboleth of best practices

Different countries have different systems to make and review laws, regulations, and rules. These RMS are embedded in a much broader set of national governance arrangements that have two main features:

1   An enduring set of constitutional provisions, legislative rules, norms, and decision-making processes and practices.

2   An enduring set of institutions with the responsibility for ensuring that the provisions, laws, rules, norms, and decision-making processes and practices are consistently applied.

It is important to note that these institutions and provisions occur in a variety of national contexts that include:

1   Politico-economic factors, such as the political leadership and commitment to national regulatory policies and institutions.

2   The overall public law framework, such as a freedom of information law and open government policies and practices.

3   Complementary interfaces with competition policy, sectoral regulation strategies, and international trade and investment rules.

Because each country's context is unique, there is no 'best practice' in regulatory management. However, countries are increasingly introducing 'special measures' to strengthen their systems for making and reviewing regulations. These special measures apply to the development of new, or the review of existing, regulatory interventions, but not to other policy interventions, such as taxes and spending measures. Thus, a formal RMS consists of a set of special measures which a country applies to the development or review of regulations.

To illustrate, all countries have a policy development system. In some, new regulatory interventions are subject to an RIA. The RIA is a special tool that does not apply to other policy interventions, such as spending on subsidies or transfers.

Section 2 of this report explains the elements of a capable regulatory system. Section 3 explores supporting practices, Section 4 looks at regulatory institutions, and Section 5 examines regulatory strategy. The literature on regulatory management is extensive. This report limits itself to a handful of four suggested references so that the selection is necessarily a bit arbitrary, as whenever possible a practitioner's paper and a more academic review are included. A useful blog that covers newly released material can be found on https://regulatoryfrontlines.blog/. If We have used three icons to help guide the reader through this paper:

Refers to a more academic study

Is a practitioner-focused guide

Is a practical how-to tool

2   The whole system is greater than the sum of the parts

The toolkit starts from a system view because achieving better outcomes such as clean water or road safety requires developing a coherent regulatory regime. With a coherent regime, the whole is greater than the sum of the parts. This requires a range of linked regulatory and other interventions to be integrated so that they reinforce each other. Coherence includes horizontal alignment across different regulations and vertical alignment between regulatory interventions and regulatory practices such as compliance and enforcement as well as external alignment with international standards and norms.

Regulatory changes are something of an experiment (Mumford 2010), as it is usually uncertain how the patterns of actual behaviour by regulators and those they regulate (regulatees) will evolve over time. Figure 1 shows why regulatory regimes do not necessarily operate how their designers anticipated, drawing out the long, complex chain of decisions and interactions with indirect and unexpected impacts. The regulatory sandbox is an approach that has been applied to financial services to allow for innovations to be piloted while managing newly emerging risks (UNSGSA 2017).

Figure 1 Regulations as experiments

REGULATIONS AS EXPERIMENTS.
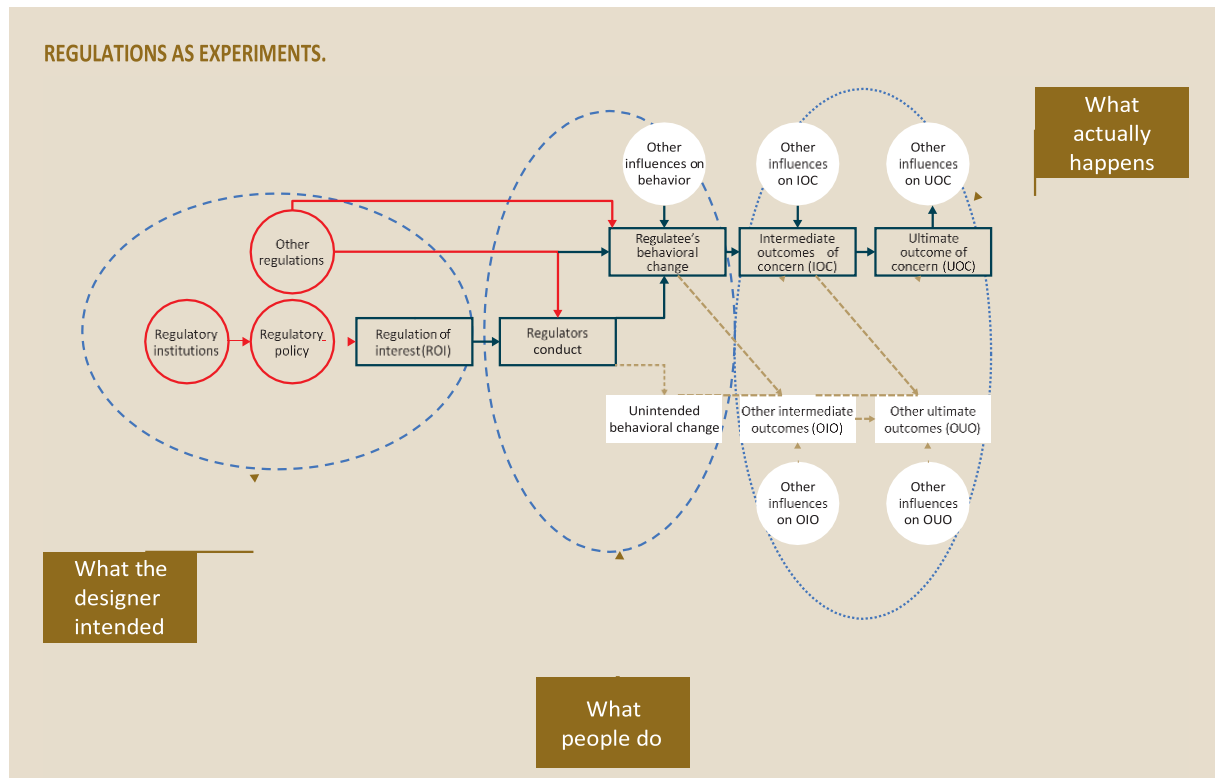
Source: Adapted from Coglianese 2012

At the heart of the diagram in Figure 1 is the overall system. While analytically convenient to show an orderly sequence of activity, because regulation is generally an experiment, the world of the regulator is more organic and sometimes chaotic. Figure 2 shows how at macro level a capable regulatory system has five components: 1) a planning phase when a program of regulatory changes is developed based on scanning and review; 2) a proposal development phase; 3) a deployment phase when implementation is planned and executed; 4) an operational phase when the regulation is enacted; and 5) a learning phase that feeds back into the planning.

Figure 2 Components of a regulatory cycle
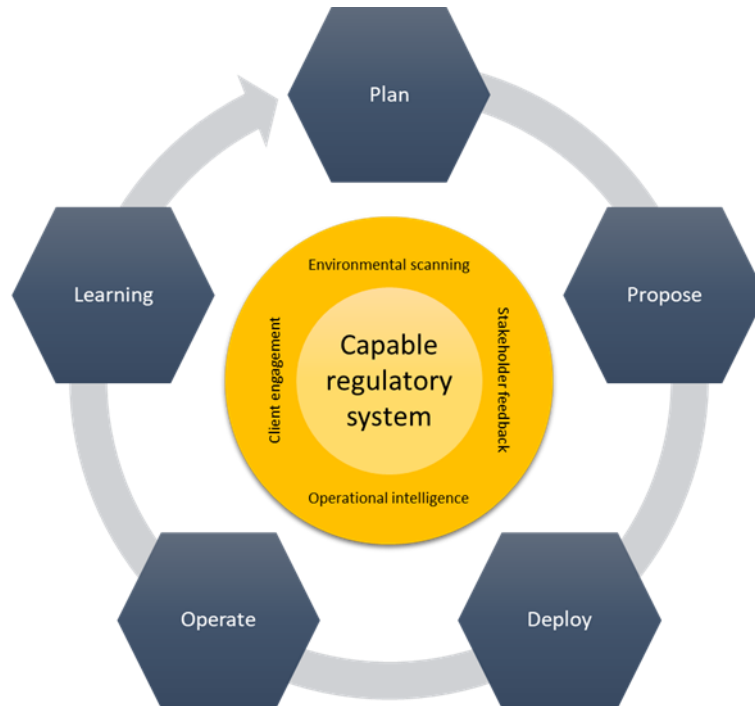
Source: The Author

2.1 Development of a regulatory proposal

Regulatory proposal development generally has with two parts: 'big policy' (or intervention analysis) and support for the decision-makers as shown in Figure 3.

2.1.1 Big policy development

The focus of big policy development is to address the question of 'what works'. (Big policy can be distinguished from the 'little' or operational policy that is required to make the big policy effective.) The key functionality required for big policy development is intervention analysis. RIA is a common special measure used in a range of countries to undertake intervention analysis. The capability needed is the ability to consider regulation against other policy interventions in order to assess the most effective means of achieving the policy objective.

Common questions raised in this phase include:

1   Is the problem clearly defined and is intervention necessary?

2   What are the alternatives to regulation?

3   Is regulation the most effective form of intervention?

4   Which regulatory approach should be used, e.g. self-regulation, co-regulation, performance- and incentive-based regulation, or more prescriptive and compliance-based regulation?

5   How are cross-border issues addressed, e.g. compliance with GATT and GATS or free trade agreement provisions on goods and trade in services?

6   Do the benefits of regulation justify the costs?

Selected resources

My favourite primer on Intervention Analysis is: Weimer and Vining (2017) 'Policy Analysis: Concepts and Practice' (6th Edition) Routledge ISBN-13: 978-0205781300.

On regulatory impact analysis, a practitioner's guide can be found at: OECD (2009) 'Regulatory Impact Analysis: A Tool for Policy Coherence' https://www.oecd.org/gov/regulatory-policy/ria-tool-for-policy-coherence.htm

For a more academic perspective see Radaelli, Claudio M. and De Francesco, Fabrizio (2010) Regulatory impact assessment. In: The oxford handbook of regulation. https://strathprints.strath.ac.uk/41173/

An interesting World Bank paper on which RIA systems survive can be found at:
http://documents.worldbank.org/curated/en/691961521463875777/Giving-Sisyphus-a-helping-hand-pathways-for-sustainable-RIA-systems-in-developing-countries

The OECD's toolkit for applying behavioural insights:
http://www.oecd.org/gov/regulatory-policy/tools-and-ethics-for-applied-behavioural-insights-the-basic-toolkit-9ea76a8f-en.htm

2.1.2   Decision-making support

Support is required for decisionmakers in the executive branch and the legislature to handle the complexity of considering, developing, and amending laws. Decisionmakers will look for the key technical capabilities discussed above such as legal policy and financial and economic analyses. These technical capabilities are necessary but not sufficient conditions for high value-added decision-making support. They provide a bottom line that, if not achieved, risks undermining credibility. The bottom-line capabilities need to be augmented with top-line soft skills for engaging with decisionmakers. Some regulatory agencies recognise this and provide courses in accessible report writing and effectiveness in meeting management as part of capability development training.

Selected resource

Behm, Allan, Lynne Bennington, and James Cummane. (2000). 'A Value-Creating Model for Effective Policy Services.' *Journal of Management Development* 19 (3): 162-178.

2.1.3   Deployment of a regulatory proposal

Implementing a regulatory proposal generally has four parts: little or operational policy development; legal policy; operational strategy design; and change implementation. Many regulations fail because how the model is developed and deployed is inadequate to support the regulatory policy objectives.
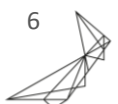
2.1.4 Operational/little policy development

Little (or operational) policy is focused on the powers, functions, and capabilities that are needed to make the big policy effective. The key functionality is a mixture of skills including design, legal analysis, and organisational analysis. The development of primary law, secondary regulations, and tertiary rules often requires consideration of little (and legal) policy issues. There is no common tool or special measure used across countries but in some cases these issues are covered by RIA systems and their accompanying documentation.

Figure 3 Measures used to improve RMS
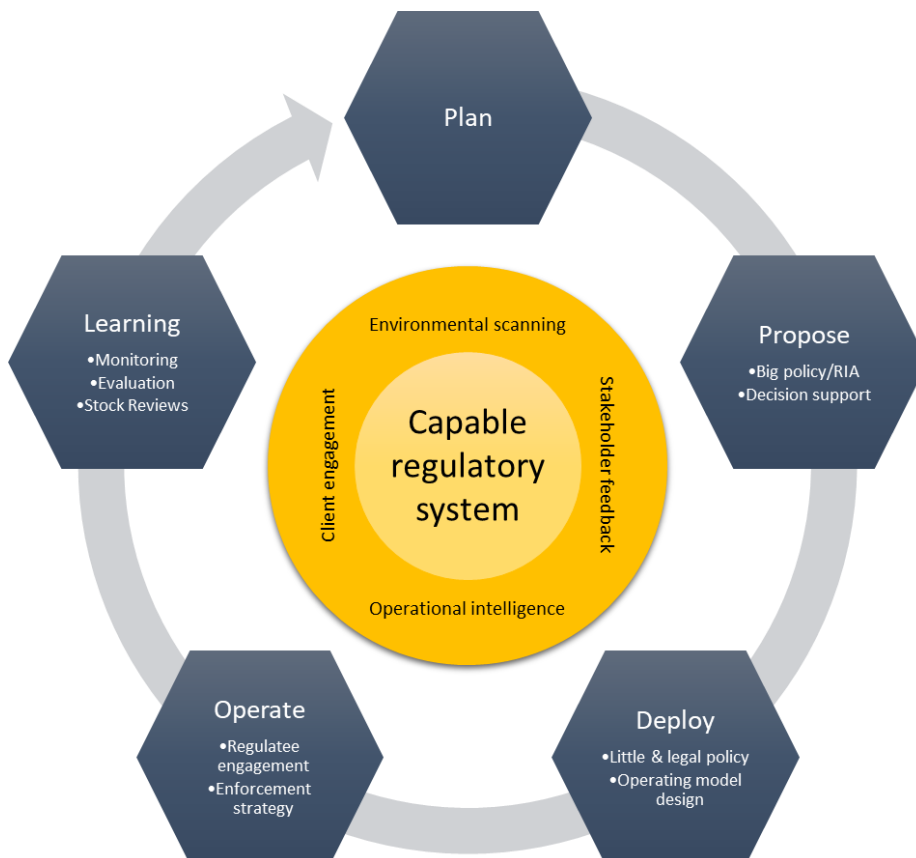
Source: The author

Key questions addressed in the little/operational policy development phase include:

1   What functions are needed?

2   What legal powers are required to deliver those functions?

3   Which institution should have those powers and deliver those functions?

4   How should those functions be organised, e.g. what is an appropriate allocation of functions and powers to the private sector and within the public sector and at which level(s) of government?

5   Is statutory independence required for the decisionmakers or institution making the decision?

6   What checks and balances are required?

7   How should any new organisations required be designed?

8   Do the regulators have the mandates, capabilities, and resources required?

9   How will the regime be funded?

10   If cost recovery through fees is proposed, how will they be capped to ensure that the level of fees does not exceed the cost of the regulator undertaking the function?

11   What accountability is required?

12   When and how will the regulation be reviewed?

Selected resources

Arie Freiberg has written an excellent textbook The Tools of Regulation (Federation Press, NSW, 2010, ISBN 9781862878020 https://doi.org/10.1111/1467-8500.12001)

The OECD website has resources on:

- Independence: http://www.oecd.org/gov/regulatory-policy/independence-of-regulators.htm

- Governance of regulators: http://www.oecd.org/gov/regulatory-policy/governance-of-regulators.htm

2.1.5   Legal policy development

Legal policy and little policy are generally set in parallel because one informs the other as the law or rule is developed. Legal policy is focused on ensuring the legitimacy of the powers and functions involved and their coherence with the rest of the legal framework. The key functionality here is legal analysis, and the key imperative is to achieve coherence with the wider body of law. Every country has its own institutional arrangements, and there is no common special measure used across countries. Key questions addressed in this phase include:

1   Is there a legal basis for the regulation?

2   Is this regulation consistent with superior and subsidiary law (vertical consistency) and related legislation (horizontal consistency)?

3   Is the regulation clear, consistent, comprehensible, and accessible to users?

4   Is there duplication and are there inconsistencies in administrative requirements?

5   Is the draft compliant with international obligations?

6   Is the regulatory regime proportional to the nature of the problem?

Selected resources

Cook C et al, Laying Down the Law 8th ed. LexisNexis, Sydney, 2012.

OPC Drafting Manual edition 3.2 July 2019, at
https://www.opc.gov.au/sites/default/files/s05pq37.v27_0.pdf.

2.1.6 Operating model design

Operating model design is focused on the 'what' required by regulators and regulatees if the regime approved by decisionmakers is to have the desired impact. The key activities necessary focus on the various functions the regulators will undertake such as registration, compliance, and conducting enforcement operations as well as the systems and capabilities required to support them. Typical activities include development of standard operating procedures and assessing the capabilities required and investment in training needed to support the operating model.

Key questions addressed in the operating model design phase include:

1   Which specific capabilities and resources are required to support the regulatory functions?

2   Which regulatory strategy is appropriate: risk-based or responsive regulation?

3   What type of education and engagement strategies are required for regulatees and other stakeholders?

4   What type of regulatory compliance strategy is required?

5   What sort of enforcement operations should be conducted?

6   How should independence in decision-making be protected?

7   How should regulators be made accountable?

8   What information is required to support monitoring and review?

Selected resources

See the Australian Audit Office (2014) Administering Regulation Achieving the Right Balance (Better Practice Guide) https://www.industry.gov.au/sites/default/files/montara-exhibits/INQ.0008.0001.0001.pdf

See also Chapter 3 of the New Zealand Productivity Commission 2014 report 'Regulatory institutions and practices' for a discussion of risk based and responsive regulation https://www.productivity.govt.nz/assets/Documents/d1d7d3ce31/Final-report-Regulatory-institutions-and-practices.pdf

2.1.7 Change implementation

Change implementation is focused on 'how' to implement change once final decisions have been made. The key functionality required is the ability to design and execute change.

Every country has developed its own unique ways of working, but change management planning is a common technique. Ideally, a change implementation plan is developed as a guide.

Selected resources

Department of Prime Minister and Cabinet, 'Policy Implementation', https://www.pmc.gov.au/government/policy-implementation

Australian National Audit Office, 2014. 'Successful Implementation of Policy Initiatives', https://nla.gov.au/nla.obj-494733031/view

Cerna, L, 2013. The Nature of Policy Change and Implementation: A Review of Different Theoretical Approaches. OECD.

2.2 Operating the regulatory regime

Much of the attention of academics and practitioners in the past has focused on regulatory policy rather that the practice of regulatory delivery – improving the rules rather than how they are applied. Maintaining a regulatory regime in operation requires capable, well-resourced regulators. This includes good generic corporate management systems such as human resources development, financial management, and knowledge management. The focus here is on the function and associated capabilities that are specific to administering regulations. These functions vary by regulator but include a mix of registration, licensing, certification, monitoring compliance, managing noncompliance, and compliance management as well as responding to adverse events. In some cases, intelligence gathering will be undertaken to inform the operation of the regime. The mix of functions required can vary dramatically across regulatory regimes. For example, some regulatory regimes require licensing and certification, while others allow open access without formal notification.

2.2.1 Administration and enforcement

Administration and enforcement are focused on ensuring compliance with the regime by citizens and businesses. (Note that this function includes the review of individual cases for fairness in administrative procedures.) Effective regulator use a wide range of tools to achieve the objectives of the regulatory regime. Part of the craft of effective regulation is know which tool to use at what time on particular cases. Being an effective regulator is a real craft that requires a combination of capability, leadership, judgement and credibility. Every country has its own institutional arrangements, and there are no common special measures used across countries.

Key questions addressed in the administration and enforcement phase (in addition to those in the previous section) include:

1   How can we adopt an evidence-informed, risk-based approach to regulatory administration?

2   Do we have the capabilities and systems we need on the ground to operate the regime?

3   Do regulatees receive the information required to meet their responsibilities?
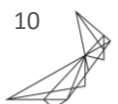
4   What procedures exist to review the procedural fairness and legality of regulatory decision-making?

5   Do we have effective relationships with stakeholders?

6   How effective are our compliance activities?

7   Do we have the right mix of education, compliance checks, operations and investigations and do we have the intelligence we need to make the right decisions?

8   What capability development and investment are required?

Selected resources

The classic references here are:

- Malcom Sparrow (2000) 'The regulatory craft: controlling risks, solving problems, and managing compliance' Brookings Institution Press.

- Ayres, Ian and John Braithwaite (1992) 'Responsive Regulation: Transcending the deregulation debate.' Oxford University Press.

and a more recent contribution

- Graham Russell, Graham and Christopher Hodges eds (2019) 'Regulatory Delivery: Introducing the Regulatory Delivery Model.' Hart Publishing, Oxford.

On enforcement see:

- OECD Regulatory Enforcement and Inspections Toolkit: http://www.oecd.org/gov/oecd-regulatory-enforcement-and-inspections-toolkit-9789264303959-en.htm

- UK's Benefits of FoE reviews https://webarchive.nationalarchives.gov.uk/20160106104255/http://discuss.bis.gov.uk/focusonenforcement/benefits-of-foe-reviews-3/

- Florentin Blanc http://independent.academia.edu/FlorentinBlanc

2.3   Learning about regulatory regime effectiveness

'Learning' is used in this report in the everyday sense of 'the act or process of gaining knowledge'. All regulatory changes have the nature of an experiment, as it is usually uncertain how the patterns of actual behaviour will evolve over time. Thus, it is important to have the ability to learn both about whether the regulatory regime is necessary, efficient, and effective and to learn about how to implement and enforce the regime more effectively to improve compliance. Learning arises from a range of sources of formal processes such as monitoring, reviews, audit, and evaluation, as well as more informal feedback and learning by doing.

2.3.1   Monitoring

Monitoring is focused on assessing whether a regulation is working as intended. Ideally, it is based on a monitoring plan required as part of the RIA. Information generated can be used to fine-tune the implementation of the regulations and provide early warning of any big or

little policy issues that need to be addressed. The key functionality required is the ability to gather information so that the operation of the regulation can be examined.

Key questions in the monitoring phase include:

1   What structured information do we have about the effectiveness of compliance activities?

2   What does the more informal information suggest?

3   What are the vulnerabilities and opportunities for improvement?

4   How is regulatees' behaviour changing?

5   Are the outcomes of concern improving or deteriorating?

6   Is there any evidence of impact on other outcomes?

2.3.2   Evaluation

In contrast with an everyday term such as 'review', 'evaluation' is a more formal term with a more precise meaning and a well-defined body of practitioners, supported by professional associations and journals. In the literature, it is conventional to distinguish between ex ante impact evaluations and ex post evaluations. The latter take two main forms: a formative evaluation that provides information on improving a process; and a summative evaluation that provides information on short-term impact or long-term effectiveness. The distinction in types of ex post evaluations is an important one. In formative evaluations, the focus is on 'are we doing things right', while in summative evaluations, the focus is on 'are we doing the right things'.

Ex post evaluation of regulation is a near-universal weakness across OECD countries. According to the OECD (2016, p.234), *"Few countries assess whether underlying policy goals have been achieved, whether any unintended consequences have occurred, and whether there is a more efficient solution".* Key big policy questions addressed in this phase include:

1   Is the regulation still necessary, i.e. is there a recognised problem that the regulation seeks to address?

2   Is the regulation effective in achieving the objectives for which it was introduced?

3   Is the regulation efficient by achieving the objective at lower cost than other feasible alternative options?

If the regime is necessary, efficient, and effective, there is a range of little policy and legal questions to be addressed concerning whether the operation of the regime could be enhanced by clarifying certain legal provisions, strengthening checks and balances, reallocating functions, improving the design, strengthening the capability of the regulator, etc.

Selected resources

HM Treasury. (2011). Magenta Book Guidance for Evaluation
http://www.hm-treasury.gov.uk/data_magentabook_index.htm

Government of Canada. (2009). 'Handbook for Regulatory Proposals: Performance Measurement and Evaluation Plan'. http://www.tbs-sct.gc.ca/rtrap-parfa/pmep-pmre/pmep-pmretb-eng.asp

OECD Framework for Regulatory Policy Evaluation: https://www.oecd.org/regreform/framework-for-regulatory-policy-evaluation.htm

For a great recent example of an evaluation of regulation in the European Commission: https://ec.europa.eu/info/publications/better-regulation-taking-stock-and-sustaining-our-commitment_en

2.3.3   Stock management reviews

'Review' refers to a deliberative examination with a view to taking action. Reviews can occur at two levels. They can be focused on the overall regime and its effectiveness, drawing upon evaluations when available. Reviews can also occur at the level of an individual case or transaction as a means of providing an assessment of procedure and fairness of process, but this latter type is not the concern of this report.

Stock management reviews focus on whether regulations are working as intended. The key functionality required is the ability to review groups of regulations systematically to ensure that they are effectively meeting their objectives. (This differs from monitoring in that the focus is generally on regimes, i.e. groups of regulations rather than individual regulations.) Regulatory effectiveness includes two aspects. First, have regulations been implemented and administered properly? Second, how well do regulations contribute to achieving impacts, such as altering the behaviour of citizens and businesses which in turn influences the goals, both intended and unintended, of the regulation (Government of Canada).

In a survey of Australian state and federal regulatory practices, the Australian Productivity Commission (2011) suggested that there are three types of reviews of regulatory regimes:

1   Stock management, involving RIAs, red-tape reduction, regulatory budgets, and in/outs.

2   Ad hoc, e.g. stock-taking regimes, principle-based regimes, benchmarking, and in-depth reviews.

3   Programmed reviews, e.g. sunsetting, embedded in statutes, and postimplementation reviews.

Thus, there is a wide range of regulatory stock management tools which different countries have adopted, including the standard cost model, regulatory guillotine, red-tape reduction targets, 'one-in, two-out' or 'one-in, one-out' ('one in, X out' or OIXO), regulatory budgeting, and the use of review clauses or sunset provisions. These review tools vary in their breadth (i.e. how wide the coverage is), depth (i.e. the focus on administrative costs or wider distortions), and frequency (regularly programmed or ad hoc).

Key questions in the review phase include:

1   What are the objectives of the regulatory regime?

2   Has the regulatory proposal achieved the objectives for solving or mitigating the issue?

3   Who were the targets (i.e., regulated individuals and organisations) of the proposed regulation?

4   Who were the intended beneficiaries of the proposed regulation (e.g. the general public or specific groups within the public)?

5   What behavioural changes in the target audience were intended to be achieved (e.g. awareness, understanding, capacity, compliance)?

Selected resources

Australian Productivity Commission. (2011) 'Identifying and Evaluating Regulation Reforms' http://www.pc.gov.au/projects/study/regulation-reforms/report 2011

OECD (2019) Best Practice Principles: Reviewing the Stock of Regulation http://www.oecd.org/regreform/regulatory-policy/public-consultation-oecd-best-practice-principles-reviewing-the-stock-of-regulation.htm

Specifically on one in X out (Oixo) see https://www.oecd-ilibrary.org/governance/one-in-x-out-regulatory-offsetting-in-selected-oecd-countries_67d71764-en

2.3.4   Planning changes to a regulatory regime

Changing government priorities or information arising from monitoring and review can reveal whether a regulation or an overall regime is working as the government intended or not. The role of overseeing the operation of a stock of regulations also implies a responsibility for planning how the regulations should be maintained and updated. Exercising regulatory stewardship means taking a proactive, collaborative approach to the care of a regulatory system throughout its life cycle. Exactly what 'stewardship' responsibility involves is still under development, but New Zealand guidance and the stewardship plans developed by the larger regulatory agencies are useful.

Key questions in the change planning phase include:

1   How has the domestic operational context changed (new technologies, business models, etc.)?

2   How have international regulatory standards and practices evolved over time?

3   What does the government's overall regulatory strategy suggest?

4   What changes have occurred in related regulatory policies and practices?

Selected resource

See New Zealand Government 2019 Regulatory Stewardship https://g-reg.govt.nz/stewardship/

3 Practices required to support a capable system

The report so far has focused on the components of the classic plan–act–review cycle with the regulator at the centre. However, there is an increasing emphasis in the public policy literature on the role of citizens and businesses in achieving regulatory outcomes. Regulatory policy development is becoming less government centred as it draws on actors and institutions outside the formal policy system. This is particularly important for regulatory policy, as regulatory outcomes are co-produced in the interactions between the regulators and regulatees. Contemporary policy development includes good supporting practices (see Figure 4), such as:

1   Consultation.

2   Communication and engagement.

3   International coordination.

4   Regulatory collaboration.

5   Transparency and accountability.

Figure 4 Regulatory practices required for regulations to be effective
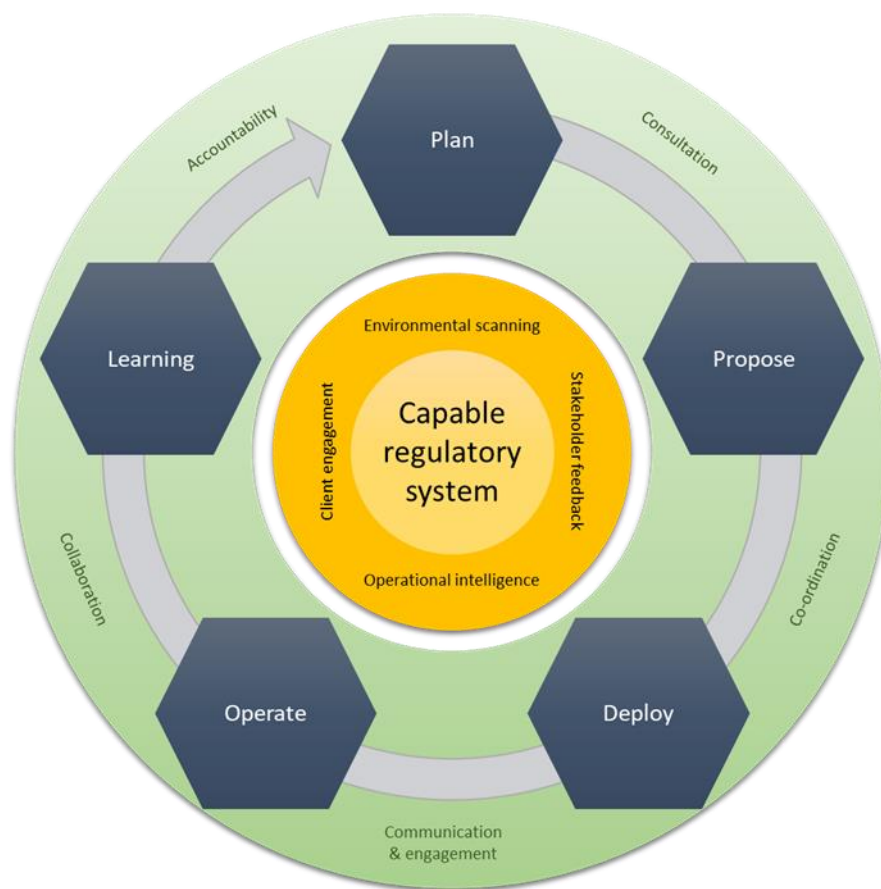
Source: The author

3.1   Consultation

Consultation can help:

1   Identify priority areas for review and reform.

2   Come up with concrete simplification proposals.

3   Increase the ownership of reforms among stakeholders.

4   Create a dialogue between the regulators and their stakeholders.

As a result, consultation can occur at multiple stages in the RMS, for example:

1   When addressing the big policy question of what works.

2   When considering the little policy questions of how the regulatory regime should operate.

3   In the legal phase, focusing on how exactly the policy should be enacted in law.

4   In the design of the change implementation stage.

5   In monitoring and review to check whether the regime is working.

Selected resources

- Draft Best Practice Principles OECD on stakeholder engagement (to be updated once the final version comes out): http://www.oecd.org/governance/regulatory-policy/public-consultation-best-practice-principles-on-stakeholder-engagement.htm

- Case studies on stakeholder engagement practices from various OECD and non-OECD countries: http://www.oecd.org/governance/regulatory-policy/public-consultation-best-practice-principles-on-stakeholder-engagement.htm

- OECD work on open government: https://www.oecd.org/gov/open-government-9789264268104-en.htm

3.2   Coordination with international regulations

Regulators are increasingly engaged in a complex web of international regulatory coordination (IRC) involving bilateral, regional, plurilateral, and multilateral partners. Some of these arrangements are relatively informal networks and communities of practice, some are formally recognised in trade agreements, and some take the form of mutual recognition agreements or full harmonisation. As a result, IRC needs to be considered at multiple stages in the RMS, for example:

1   When addressing the big policy question of what works.

2   When considering the little policy questions of how the regulatory regime should operate.

3   In the legal phase, when determining exactly how the policy should be enacted in law.

4   In the design of the change implementation stage.

5   In monitoring and review to check whether the regime is working.

Selected resources

Gill D (2018) International regulatory cooperation: Case studies and lessons learnt
https://nzier.org.nz/publication/international-regulatory-cooperation-case-studies-and-lessons-learnt

OECD (2013), International Regulatory Co-operation: Addressing Global Challenges.

See also the general OECD IRC website for a policy brief, and case studies of IRC through international organisations http://www.oecd.org/gov/regulatory-policy/irc.htm

3.3   Communication and engagement

As regulatory effectiveness depends upon the behaviour of those regulated, open communication and active engagement with citizens and businesses are crucial. This suggests the need to emphasise 'interactive, participatory, and process styles' rather than the harder 'rational and argumentative styles' (Mayer et al 2004) during regulation development and enforcement.

Selected resource

Johns, M., and V. Saltane. 2016. 'Citizen Engagement in Rulemaking: Evidence on Regulatory Practices in 185 Countries.' Policy Research Working Paper 7840, World Bank, Washington, DC.

3.4   Accountability and transparency

Regulatory agencies use public resources and apply the coercive power of the state to their citizens and businesses. It is important, therefore, that regulatory agencies are publicly accountable for the use of those resources and the exercise of those powers. Transparency is important to promote accountability as well as engagement. As a result, most developed countries have moved toward an online, readily searchable database of all laws and rules open to the public.

Selected resources

World Bank, 2019. 'Accountability and Transparency', Chapter 10 in 'Governing Infrastructure Regulators in Fragile Environments - Principles and Implementation Manual':
https://openknowledge.worldbank.org/bitstream/handle/10986/32052/9781464814341.pdf?sequence=4&isAllowed=y

OECD working paper on fairness and regulatory policy: https://www.oecd-ilibrary.org/governance/perceived-fairness-and-regulatory-policy_1629d397-en

4 Institutions required to underpin the RMS

Policies and practices do not exist in isolation but need to be sustained by institutions. The left and right 'support wings' at the bottom of Figure 5 refer to institutions including: lead institutions; coordinating institutions; and training providers. The lead institution is a coordinating body that has the capability and mandate to oversee and develop the regulatory system and report on its performance. The OECD (2012) lists the roles of the 'standing oversight body' as including:

1   Oversight and development of improvements in the RMS.

2   Quality control of regulatory tools and assessments.

3   Coordinating *ex post* assessment.

4   Providing training and guidance on regulatory assessment and improving regulatory quality.

5   Improving regulatory practices.

Figure 5 Regulatory strategy and institutions required for regulations to be effective
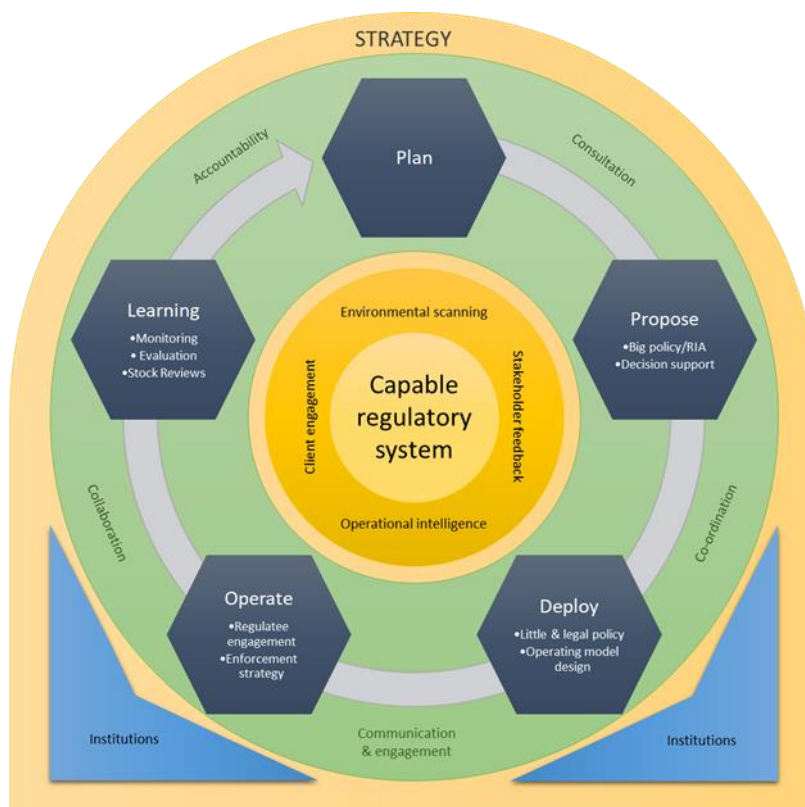
Source: The author

A key requirement for regulatory coherence is that an institution takes responsibility for ensuring consistency between national and subnational regulations, and between national law and international obligations. In decentralised systems, it is important that the lead

institution also assumes a role in developing the regulatory management capability of subnational government.

Other institutions undertake specialised roles to ensure the quality of regulation, such as an institution that specialises in legal drafting to ensure consistency between statutes and between primary laws, secondary regulations, and any tertiary rules.

Training providers play important roles in building up the capabilities required. One innovative practice is the development of a formal programme of regulatory training and qualifications in New Zealand. The Government Regulatory Practice Initiative (G-REG) is a network of central and local government regulatory agencies that coordinate a programme of regulatory practice initiatives. Over 4,500 people have completed or are in the process of obtaining qualifications.

Selected resources

On regulatory oversight see:

Chapter 3 in the OECD's Regulatory Policy Outlook (2018): https://www.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2018/the-institutional-landscape-of-regulatory-policy-and-oversight_9789264303072-7-en

For eight case studies of European arm's length regulatory oversight bodies: https://www.oecd.org/gov/regulatory-policy/regulatory-oversight-bodies-2018.htm

Details on New Zealand's G-REG regulatory practice initiative can be found at https://www.solgm.org.nz/government-regulatory-practice-initiative

and https://g-reg.govt.nz/qualifications/

5   Strategy to shape system evolution

Institutions need a mandate as well as capability. Figure 5 (see above) therefore includes a regulatory strategy as the fourth and final component of a high-performing RMS. Jurisdictions typically adapt a set of good practice principles of regulation. While useful, principles are not sufficient on their own.

Regulatory reviews of a wide range of countries have highlighted the need for political commitment to regulatory reform and for this to be reflected in an explicit whole-of-government strategy or policy for regulatory quality. A regulatory quality strategy must receive political commitment from the highest levels of government as well as have a singularity of purpose to focus on improving regulatory quality.

Selected resources

APEC-OECD integrated checklist (2005)
https://www.oecd.org/regreform/34989455.pdf

ASEAN Good Regulatory Practice Core Principles (2018)
https://asean.org/storage/2017/11/ASEAN-GRP-Core-Principles-FINAL-ENDORSED.pdf

Radaelli, C. and Fritsch, O. (2012) Measuring regulatory performance: Evaluating regulatory management tools and programmes. OECD
https://researchrepository.murdoch.edu.au/id/eprint/44993/

6   Conclusion: different regulatory approaches and implications for regulatory quality

Just as every country has its own unique systems for developing, deploying, and reviewing legislation, each has undertaken its own evolutionary journey for improving the quality of regulation. Different countries have different starting points as they set out on the path of regulatory reform, for example:

1   Some countries initially focus on SMEs or on particular sectors, and some take an economy-wide approach.

2   Some focus on minimising administrative costs, some on compliance cost reduction, and some on minimising total distortions from poor regulation.

3   Some focus on screening the flow of new regulations, some on managing existing stocks, and some on ex post reviews of current rules.

RMS in different jurisdictions also have different exclusions: In the USA, primary legislation is excluded as the focus is on secondary administrative rules, while in the Australia Federal Government, priorities covered by a prime minister's letter are exempt.

Regardless of the differences in their journeys and the underlying RMS, all countries face the same range of options for the regulatory quality tools, practices, strategies, and institutions they choose. Smart system designers select from a wide range of tools and practices to improve regulatory coherence and performance. The craft of good RMS design is knowing how to select the right tool and apply it in the right way at the right time.

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Coglianese G., Measuring Regulatory Performance: Evaluating the Performance of Regulation and Regulatory Policy, OECD Expert Paper No.1, Paris 2012.

Coglianese G., Listening, Learning, Leading A Framework for Regulatory Excellence, Penn Program on Regulation, 2015. https://www.aer.ca/documents/about-us/UPenn_Final_Report_Regulatory_Excellence.pdf

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Mayer I.S., van Daleen C.E., Bots P. Perspectives on policy analysis: A framework for understanding and design. International Journal of Technology Policy and Management 2004; 4: 169.

Mumford P. Enhancing Performance Based Regulation: Lessons from New Zealand's Building Control System. Wellington: IPS Victoria University of New Zealand; 2010.

OECD. Recommendation of the Council of the OECD on improving the quality of government regulation. Available at: www.oecd.org/officialdocuments /publicdisplaydocumentpdf/ , 1995.

OECD. Recommendation of the Council on Regulatory Policy and Governance. Paris 2012 https://www.oecd.org/governance/regulatory-policy/49990817.pdf

OECD. Regulatory Policy in Perceptive: A Reader's Companion to the OECD Regulatory Policy Outlook. Paris: OECD; 2015, p. 234.

United Nations. UNSGSAs Briefing on Regulatory Sandboxes. 2017. https://www.unsgsa.org/files/1915/3141/8033/Sandbox.pdf