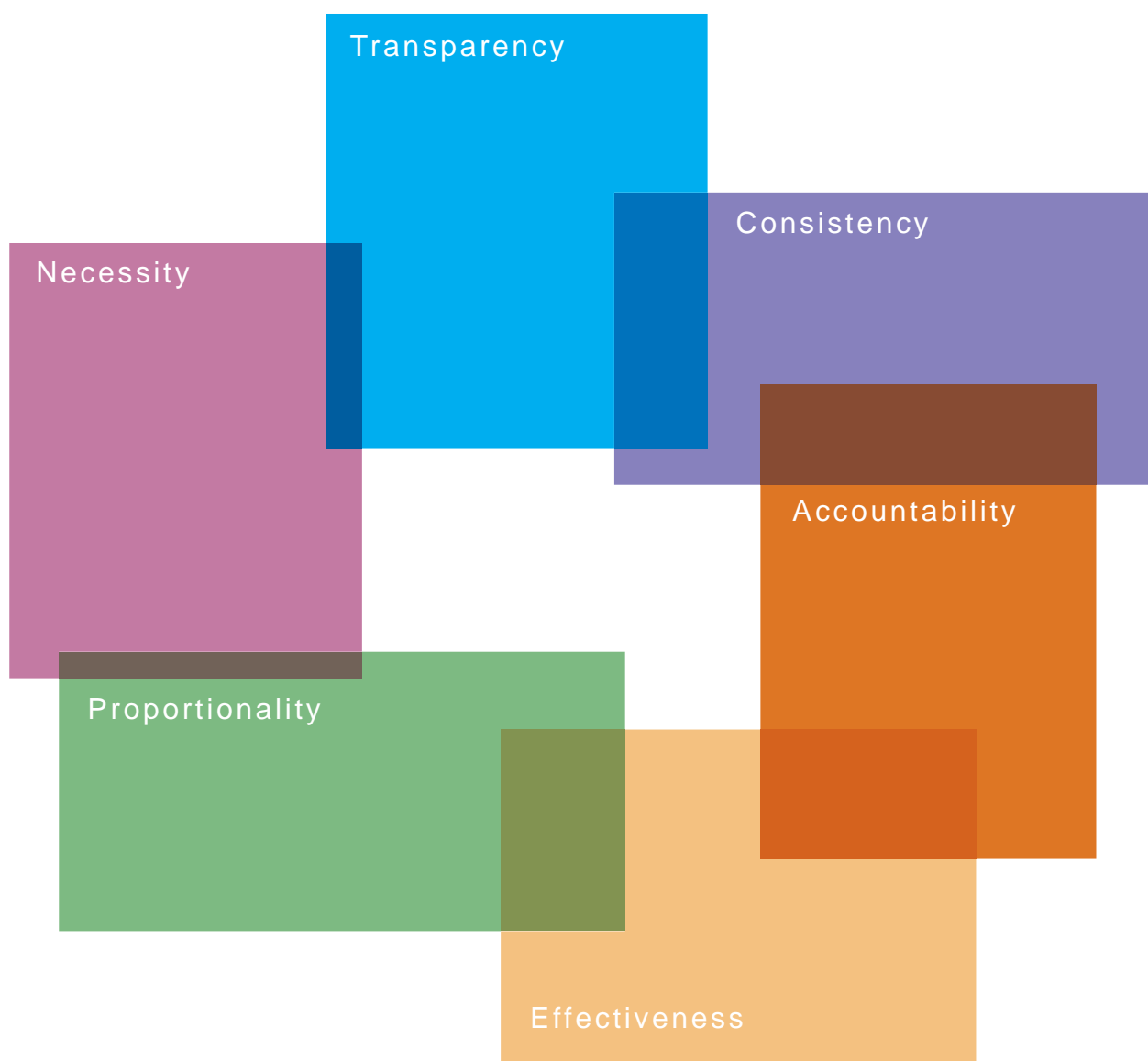




Roinn an Taoisigh  
Department of the Taoiseach

# Regulating Better

A Government White Paper setting out six principles of Better Regulation







Roinn an Taoisigh  
Department of the Taoiseach

# Regulating Better

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# Taoiseach's Foreword



Enhanced competitiveness is a key part of the Government's strategy to achieve social progress, better living standards and a steadily improving quality of life. I am absolutely committed to ensuring that Ireland continues to be a competitive and open economy and that we do not erode the social and economic progress we

have made as a country over recent years. This White Paper deals with good quality regulation, which has an essential role in achieving these objectives. It sets out core principles that the Government will adhere to in regulating and outlines a number of steps that will be taken to put the principles into practice.

Our exceptional economic growth in recent years has enabled Ireland to make significant gains on a number of fronts. Employment expanded, the unemployment rate fell rapidly, much-needed infrastructural projects were put in place or initiated, and living standards rose significantly. However, in the current, more uncertain global economic environment we need new avenues through which we can maintain and enhance our competitiveness. We also need to ensure that the benefits of greater competitiveness and of heightened domestic competition are transferred to citizens and businesses. Better Regulation is one of the instruments available to achieve this.

Historically, much Government attention has been focused on the traditional instruments of Government, such as current expenditure, taxation and investment. Little importance has been given to regulatory policy. However, increasingly in OECD countries, greater attention is being paid to choosing the most appropriate regulatory framework. The coming years are likely to be crucial, domestically and internationally, in establishing the right mix of regulatory policies, tools and institutions. This White Paper establishes core principles to guide these choices and, in doing so, provides for greater participation and transparency in policy-making and contributes to a better environment for the individual, the community and for business.

While many countries now recognise that Better Regulation is vitally important for competitiveness and economic growth, Better Regulation also has a role to play in promoting inclusiveness and good government for all citizens. Thus, the core principles set out in this White Paper also relate to the quality of governance and the efficiency and effectiveness of the public service.

It is widely accepted that, as well as providing predictability and certainty in the business world, good quality regulation contributes to establishing and maintaining individual freedom and social cohesion, not least through articulation and protection of citizens' and consumers' rights. However, the reverse is also true. Bad or cumbersome regulation not only creates barriers to efficient markets, thereby discouraging competition and innovation, but also alienates citizens from government and can contribute to unfair income and wealth distribution.

Reflecting the importance of regulation in many areas of economic and social policy, the latest social partnership agreement, "*Sustaining Progress*", contains commitments to publish a White Paper on Regulation and introduce Regulatory Impact Analysis (RIA). At EU level, the Better Regulation agenda has been gaining momentum in recent years, particularly in terms of the stated need, in the Lisbon objectives, to pursue a simpler regulatory environment. The European Commission is implementing an action plan on simplifying and improving the regulatory environment which Ireland is actively supporting.

This White Paper sets out core principles of good regulation. It also goes further: it sets out a programme of actions to give effect to these principles. I look forward to seeing these actions being implemented and to a new drive for economic competitiveness, social progress and better Government.

A handwritten signature in blue ink that reads "Bertie Aherne". The signature is fluid and cursive.

BERTIE AHERN, T.D.  
Taoiseach

# Executive Summary

## Introduction

The Government has prepared “*Regulating Better*”, a Government White Paper that will contribute to improving national competitiveness and better Government by ensuring that new regulations – Acts and Statutory Instruments (Orders) – are more rigorously assessed in terms of their impacts, more accessible to all and better understood. Existing regulations will be streamlined and revised, where possible, through a process of systematic review and by repealing, restating and consolidating them as appropriate. This White Paper will also contribute to better regulatory processes and institutions, including a more consistent approach to the establishment and design of independent sectoral regulatory authorities.

## Principles

This White Paper identifies what the Government sees as the principles of good regulation:

**NECESSITY** – is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?

**EFFECTIVENESS** – is the regulation properly targeted? Is it going to be properly complied with and enforced?

**PROPORTIONALITY** – are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?

**TRANSPARENCY** – have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?

**ACCOUNTABILITY** – is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?

**CONSISTENCY** – will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

## Approach taken

The approach of this White Paper is both practical, in that it is action-oriented, and pragmatic in that the Government is not “for or against” regulation. Rather, the Government favours Better Regulation. Regulation is an integral part of the process of governing and it will

continue to be so. Legislation and subsidiary regulations have a critical role to play in key areas of economic and social life. The recommendations and actions in this White Paper are best seen in the context of the continuing drive for competitiveness and people’s expectations of high quality public services. Many of the principles and commitments reflect good practice and developments regarding regulation internationally. For example, many of our European Union (EU) partners and the EU institutions themselves are developing similar principles and actions.

## Overview of Actions

The Government will make better use of evidence-based policy-making. This means making better use of research and analysis in both policy-making and policy implementation. Regulation is an expression of policy and **Regulatory Impact Analysis (RIA)** is an evidence-based approach that allows for the systematic consideration of the benefits and costs of a regulatory proposal to the economy and society. The Government will pilot a system of RIA in a small number of Departments and, following the pilot phase, RIA will be integrated with existing procedures. RIA will give special consideration to business impacts, especially in respect of Small and Medium Enterprises (SMEs). RIA will be integrated with developments under the e-Cabinet project and will be supported through training, guidelines and promotion.

**Systematic reviews** of the regulation of key areas and sectors will be carried out which will involve reviewing the regulatory institutions in place, as well as the body of regulation governing particular areas.

To improve the internal consistency of regulation in particular areas, the Government will implement a programme of **Statute Law Revision**, including a major project to update pre-1922 legislation. The Government will also use RIA to ensure the effectiveness of new regulations, taking account of the existing body of regulation.

Emphasis will be placed on developing proposals for improvements to the procedures for **appealing regulatory decisions**. For example, consideration will be given to establishing expert panels of judges to deal with specific competition and sectoral regulation cases.



In considering the burden of complying with regulations, the Government will review:

- i) compliance and the question of linking penalties and fines to income and ability to pay; and
- ii) the extent to which the criminal justice system is capable of efficiently dealing with the complexities of modern regulatory issues.

The Government will also monitor the cumulative burden of **compliance** on business and SMEs to ensure that compliance costs are fair and proportionate with the benefit the regulation brings.

The Government will ensure that new regulations are better understood, by publishing **explanatory guides** alongside primary legislation with significant impacts, in particular those that impact directly on consumers/citizens/SMEs. Similar steps will be taken to improve the quality of the explanatory material that accompanies secondary law/statutory instruments containing major proposals.

The Government will also encourage the establishment of norms and standards for **consultation** processes and will keep under consideration the need for legislation underpinning administrative procedures.

The Government will create new **sectoral regulators** only if the case for a new regulator can be clearly demonstrated in light of existing structures. It will assess the possibilities for rationalisation of sectoral regulators along with promoting the strengthening of existing contacts between the sectoral regulators, the Competition Authority and the Office of the Director of Consumer Affairs.

To further improve customer service delivery, the Government will require Departments to streamline service delivery and **administrative processes** where possible, using the latest technology, along with the introduction of customer charters, to reduce the burden of compliance on the citizen.

The Government intends to strengthen the capacity for evidence-based policy-making by ensuring that **Departments** promote training and awareness-raising of policy analysis skills. Departments will also be required to report, through their Strategy Statements and Annual Reports, on regulatory reforms and service improvements.

A key to Better Regulation will be clarity and accessibility of regulations. The Government will improve the coherence of legislation through **revision, restatement and repeal**, by ensuring greater consistency in the drafting of Statutory Instruments and maximising the use of IT/e-Government initiatives to improve clarity and accessibility of regulations.

## Next steps

A detailed Action Programme is set out in this White Paper, along with assignments of responsibility and indicative timescales. A **Better Regulation Group** will be established and it will be asked, inter alia, to report back regularly to the Government on implementation of these actions by Departments, Offices and Agencies.

# Glossary of Terms

## Some terms explained

**Codification:** Codification is sometimes used, in a general sense, to describe processes such as restatement and consolidation, which help bring all the relevant legislation on a particular topic into a single, updated text.

**Consolidation:** Consolidation is the process whereby the Oireachtas passes one, overall Act into which all previous Acts relating to a topic are collected. An example is the Social Welfare (Consolidation) Act, 1993.

**Consumer & citizen:** The terms *consumer* and *citizen* are used in this document and it is important to note that these are not interchangeable terms.

The term *consumer* means a private individual, participating in the market by buying goods and services for their own use.

The concept of a *citizen* denotes a fuller relationship between an individual and the State. In this White Paper, it is not used to denote nationality in any strict legal sense.

In situations where the State is a direct producer or supplier of particular goods or services to citizens and businesses, those citizens/businesses are also consumers.

**Governance:** Governance has been defined as “*rules, processes and behaviour that affect the way in which powers are exercised.... particularly as regards openness, participation, accountability, effectiveness and coherence*” (European Commission, *European Governance – A White Paper*, 2001). In this Paper the term refers to governance at all levels of Government: national, regional, local and - at times - at the level of specific economic sectors.

**The Lisbon Objectives:** These are the main targets which were adopted by the Heads of State and Government of EU Member States at their meeting in Lisbon in March 2000. The strategic goal agreed at Lisbon is to make the European economy the most competitive and dynamic knowledge-based economy in the world by 2010, i.e. to create an economy capable of sustainable development, with more and better jobs and stronger social cohesion.

These objectives are designed to focus the EU institutions and Member States on strengthening and deepening the European internal market, by preparing for the transition to a knowledge-based economy and society and promoting investment in research and innovation. Other objectives include promotion of entrepreneurship, support for Small to Medium Enterprises (SMEs), modernisation of the labour market and combating social

exclusion. The Lisbon Objectives are the central theme at European Spring Council meetings, attended by Heads of State and Government.

**Public Service Obligation (PSO):** A PSO is an obligation placed by the State on a supplier to provide a service or to engage in an activity where it is not commercially attractive to do so, but which the State considers to be in the public interest. Examples of PSOs are to be found in local public transport services and regional air services.

**Regulation:** In this document we generally use “regulation” to mean primary legislation enacted by the Oireachtas and secondary legislation enacted by Ministers empowered under primary legislation. Depending on the context, it can also mean “to regulate” in the economic and social sense of the word. For example, “regulation of telecommunications” would be taken in a general sense to include ComReg (the Commission for Communications Regulation), the Department of Communications, Marine and Natural Resources and the body of regulation that governs telecommunications.

A wider definition of “regulation” would also include, in addition to Acts of the Oireachtas and Statutory Instruments, Bunreacht na hÉireann and the Treaties, rules and regulations of the European Union. Such a definition might also extend to subsidiary rules and regulations, such as those made by Local and Regional Authorities, and self-regulatory bodies with regulatory powers.

Regulation can also be used in a more specific sense to mean an EU “Regulation”, as opposed to a Directive. This is a particular class of legal instrument made by the Council, Parliament or Commission and binding on Member States and their citizens.

It will be made clear in the document where these meanings are intended.



**Regulatory capture:** This is an economic term describing a situation where one operator (or group of operators) in the market uses its influence or resources to extract a regulatory decision, or lack of decision, for their own benefit rather than the benefit of society as a whole. It is associated with patterns of behaviour on the part of a regulatory body in one, or a combination, of the following situations:

- the regulatory body is tending to further producer interests over consumer interests.
- the regulatory body has become overly protective towards the regulated entities.
- the regulatory body is tending to adopt objectives that are very close to those of the entities it is supposed to regulate.

**Regulatory Impact Analysis (RIA):** RIA is an assessment of the likely effects of a proposed new regulation or regulatory change. It involves a detailed analysis to ascertain whether or not the new regulation would have the desired impact. It also helps to identify the side effects and any hidden costs associated with regulation. RIA clarifies the desired outcomes of the proposed regulatory change.

RIA promotes evidence-based policy-making by giving detailed consideration to the likely impacts of decisions, along with structured consultation with stakeholders and citizens.

RIA is not a substitute for decision-making. It is an approach which improves the quality of political and administrative decision-making, while providing openness, public involvement and accountability.

**Regulatory Management and Better Regulation:**

Increasingly, these terms are being used to convey the concept of an ongoing commitment by Governments to improving regulation, e.g. the processes of policy formulation, legislative drafting and enhancing the overall effectiveness and coherence of regulation.

The idea of “Better Regulation” also helps to draw an important distinction between the wide regulatory reform agenda and the more specific issue of deregulation. In some cases, consumer, investor and the general public interest may be better served by new regulations, while in others it is better served by amending or removing regulations.

**Regulatory Reform:** Generally, this term describes, “changes that improve regulatory quality, i.e. enhance the performance, cost-effectiveness or legal quality of regulations and related government formalities” (OECD, *Regulatory Reform in Ireland*, 2001).

These can be changes in specific regulations governing markets and sectors, such as utilities - telecommunications, energy or transport. Alternatively, it can mean changes to the way regulations are formulated, enacted and enforced. Examples of these changes include: impact analysis techniques, the use of alternatives to regulation and “sunsetting” (see below).

**Repeal and re-enactment:** Repeal and re-enactment is the process whereby legislation can be repealed and re-cast in more coherent language, but with the same underlying policy. Repeal and re-enactment of secondary legislation can be undertaken by persons authorised by law to make secondary legislation.

**Restatement:** Restatement is the process used by the Attorney General to make updated versions of Acts of the Oireachtas, or earlier statutes, available. These versions, known as restatements, do not alter the substance of the law and, therefore, do not require Oireachtas approval. They are, in effect, administrative consolidations. They may, however, be cited in court and accepted in court as *prima facie* evidence of the legislation set out in them.

**Sunsetting:** Sunsetting is when, at the time a regulation is made, a specific date is set on which that regulation will expire unless it is re-made. This ensures that a regulation is formally reviewed at an agreed date in the future, to establish whether or not it is still valid, or if it could be improved, reduced or even revoked.

**Universal Service Obligation (USO):** A USO is a specific type of Public Service Obligation (PSO) – see above. It is an obligation placed by the State on a supplier to provide a service of a specified quality to all users throughout the country, irrespective of geographical location, at an affordable price. It is used particularly for network industries such as telecommunications and postal services. An example of a USO is where the price of posting a letter is the same irrespective of where in the country it is to be delivered. The cost of a USO is often met by some form of cross-subsidisation, whereby some users of the service pay more than the true cost of providing the service to them, so as to subsidise other users who pay less.

# Overview

## Why do we need this White Paper?

We need a White Paper on Regulation, mainly because of the impact which regulation has on national competitiveness. We also need it because regulation affects the quality of everyday life. This includes the quality of our food and water, the safety of our workplaces as well as the range of products and services available to us and the price we pay for them. Despite this level of influence, we have rarely paused to consider in a systematic way questions relating to the quality of regulation. Questions such as: why we regulate, how we make regulations, what kind of regulation we want or what constitutes good regulation? This White Paper attempts to address some of these questions by setting down core principles of good regulation.

## What are the principles of Better Regulation?

The principles of Better Regulation that the Government wishes to promote are:

- + **NECESSITY** – is the regulation necessary? Can we reduce red tape in this area? Are the rules and the structures that govern this area still valid?
- + **EFFECTIVENESS** - is the regulation properly targeted? Is it going to be properly complied with and enforced?
- + **PROPORTIONALITY** – are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
- + **TRANSPARENCY** – have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?
- + **ACCOUNTABILITY** – is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?
- + **CONSISTENCY** – will the regulation give rise to anomalies and inconsistencies, given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

## What do we mean by “regulation”?

We generally mean primary and secondary legislation. Primary legislation means Acts passed by the Oireachtas and earlier Parliaments. Secondary legislation means legislation for which responsibility has been delegated by the Oireachtas to some other party. In practice, it is usually Government Ministers to whom responsibility has been delegated and secondary legislation usually takes the form of Statutory Instruments. Of course, much of our national regulation is derived from our membership of the European Union, through EU Directives and regulations.

However, at some points in the White Paper we also talk about “regulation” in a wider sense. For example, we may talk about regulation of an economic sector like telecommunications. In such discussions, “regulation” is normally used to describe the entire regime which governs that particular sector or activity. Regulation in this sense includes all of the primary and secondary legislation but also extends to the various authorities which operate in those areas. For example, “regulation of telecommunications” would be taken to include ComReg (the Commission for Communications Regulation), the Department of Communications, Marine and Natural Resources and the body of regulation that governs telecommunications.

## How will these principles improve competitiveness?

Competitiveness is a relative concept and Ireland must constantly seek to improve its position vis-à-vis other economies. Inappropriate regulation can adversely affect the competitiveness of the economy. For example, our public services must not become snarled up in red tape. Our businesses must not be made to carry the dead weight of unnecessary or unduly restrictive regulation. We must not stifle competition or innovation through regulation that promotes or protects inefficiencies in the economy.



## REGULATION AND COMPETITIVENESS

**The Global Competitiveness Report 2003, published by the World Economic Forum ([www.weforum.org](http://www.weforum.org)), provides an assessment of the comparative strengths and weaknesses of 102 countries in relation to their economic competitiveness and growth. In the report, the five most competitive economies – Finland, USA, Sweden, Denmark and Taiwan – all identified tackling inefficient bureaucracy /red tape as a competitiveness issue. In general, respondents – both OECD and developing/transition countries – singled out red tape as one of the two major factors constraining their business operations.**

The actions that we will take arising from our application of the principles that we identify in this White Paper will tackle both the “stock” of existing regulation and the “flow” of new regulation. We will scrutinise regulations to ensure that they do not unintentionally damage competitiveness. As far as possible, we will try to ensure that they enhance Ireland’s competitive position.

We will pay particular attention to the interaction of competition and regulation. Vigorous competition can frequently deliver great benefits to consumers in terms of the quality and range of products and services as well as lower prices. By ensuring that regulation is supporting competition, we can bring benefits to consumers and enhance the competitiveness of the economy as a whole.

## How will these principles improve our everyday lives?

In addition to benefits as consumers, applying these principles to new and existing regulations will improve the quality of our everyday lives. Red tape is at best frustrating and, at worst, it alienates people by placing barriers between the Government on the one hand, and citizens and communities on the other. Sometimes this is because of the quality of the regulations themselves – they might be drafted more with a focus on the administrator than on those whom they are designed to assist or protect. Sometimes it can be because there is confusion as to the structures and processes that are in place for dealing with particular issues. There may be overlap or duplication between regulatory authorities. There might be a lack of clarity on appeals procedures and who is responsible for what. The new principles that we are proposing will mean that we will systematically review and take account of these issues. The goal is to achieve a more coherent regulatory framework and to improve the quality of our everyday lives.

## REGULATION IN OUR EVERYDAY LIVES

**In an average day, a person will, perhaps without even being aware of it, come into contact with a number of services that are subject to regulation. The radio stations available when one wakes up in the morning, for example, are regulated by the Broadcasting Commission of Ireland. Transportation – on buses, trains, taxis and road usage – is also regulated. If children are left in a crèche during working hours, health, safety and welfare standards in those crèches are subject to regulation under the Child Care Act, 1991. Health, safety and other standards are also enforced in restaurants, cafes, bars, and supermarkets. In other words, our everyday lives are subject to regulation in a number of ways. Providing clarity and transparency in how we make and implement regulations is important, therefore, so that services do not get tied up by excessive red tape and people are clear about how regulation affects them directly.**

## Are we against regulation?

The Government is not against regulation. Rather, it is in favour of Better Regulation. Regulation is an integral part of the process of governing and it will continue to be so. Legislation and subsidiary regulations have a critical role to play in key areas of economic and social life, including:

- + To protect and enhance the rights and liberty of citizens;
- + To promote an equitable, safe and peaceful society;
- + To safeguard health and safety or protect citizens;
- + To protect consumers, employees and vulnerable groups;
- + To promote the efficient working of markets;
- + To protect the environment and promote sustainable development; and
- + To collect revenue and ensure that it is spent in accordance with policy objectives.

This White Paper recognises that, in certain cases, less regulation may be appropriate while, in other cases, more regulation might be required to achieve particular outcomes. In all cases, however, there should be better quality regulation.

## What about EU regulation?

While precise measurement is difficult, many EU Member States have estimated that about half of their regulation derives from membership of the EU and Ireland would be no different in this respect. The actions that we are adopting in this White Paper will not stem the flow of regulation at European level. However, many of the measures that we are proposing – such as impact assessment and simplification of regulation – are being adopted at EU level by the Commission and other institutions. Other Member States are also at various stages of implementing similar reforms to their regulatory processes. There is a growing recognition within the EU that Better Regulation can help to achieve the goals that were established by the European Council at Lisbon in 2000, which were designed to make the EU the most competitive economic bloc in the world in ten years.

### COST OF REGULATION IN THE EU

**The European Commission's internal market scoreboard shows that the burden of 'red tape' on business – not including citizens or administrations – is estimated to be between 4% and 6% of Gross Domestic Product (GDP) and that 15% of this burden is avoidable. National studies within the EU have variously estimated the burden on business at levels ranging from 2.2% of GDP (Netherlands) to 4.4% of GDP (Germany).**

**Taking 3% of GDP as a guideline estimate of the overall administrative burden, and assuming the EU estimate that 15% of this burden was avoidable, then unnecessary regulation could have cost Irish business about €582 million in 2002.**

**The cost to the European Union as a whole is somewhere in the region of 0.45% of European GDP or nearly 40 billion euro.**

While the flow of EU regulations (and other international regulations, e.g. United Nations, International Labour Organisation) will continue, Ireland, as a Member State, can influence their quality and content. In addition, just because a regulation originates in the EU and must be implemented at national level does not mean that we should not try to assess its likely impact at the earliest possible stage. The European Union (Scrutiny) Act 2002 requires the engagement of the Oireachtas in early assessment of EU legislative proposals.

## Will this White Paper change who has responsibility for regulation?

The fundamentals of the legislative process and the role of the Oireachtas are established in the Constitution and there is nothing in this White Paper which proposes any change in this regard. Nevertheless, some changes have been taking place in recent times to our regulatory "architecture". Like many OECD countries, the role of the Irish Government has changed in some areas, from being service provider to service regulator. Many regulatory decision-making functions have transferred to specific sectoral regulators, in a bid to open competition and promote innovation. These new independent regulators have been established in areas such as communications – both telecommunications and postal services – as well as



energy, aviation and financial services. Further developments are expected in the transport sector. The new regulatory bodies do not necessarily have the same structure or powers.

The main regulatory “actors” - those currently designing and implementing regulation in Ireland - are: the Oireachtas (as primary regulator); Government Departments and Offices; agencies at arms-length from Government which have regulatory enforcement functions; local authorities; independent sectoral regulators; and - in certain cases - professional bodies. There is a need to avoid overly elaborate regulatory structures. The challenge is, therefore, to implement regulatory reform while managing the ongoing development and effectiveness of existing regulatory institutions. The principles and actions contained in this White Paper will help to guide future choices about our regulatory system.

### **What practical difference will this White Paper make?**

The White Paper establishes principles and also outlines steps for their implementation. These steps include changes to existing regulatory practices and introduction of some new measures. The net result will be that:

- + Regulations will be prepared in a more transparent way;
- + Public participation in their formulation will be enhanced;
- + Regulations will be clearer in their language and their focus;
- + Regulations will more effectively identify and achieve Government objectives;
- + Regulations will be designed so as to minimise the burden of compliance;
- + Regulations are likely to be better enforced;
- + Unintended effects of regulations will be minimised; and
- + Regulations will be regularly reviewed for their effectiveness and their continued relevance.

# Chart of Regulatory Principles and Actions

1. NECESSITY	2. EFFECTIVENESS	3. PROPORTIONALITY	4. TRANSPARENCY	5. ACCOUNTABILITY	6. CONSISTENCY
<p><b>We will require higher standards of evidence before regulating</b> We will strengthen policy making and the quality of regulations through impact analysis, better training and awareness-raising and better quality data on which to base decisions.</p> <p><b>We will reduce red tape</b> The burden of red tape will be reduced through customer service initiatives, IT-enabled improvements and Statute Law Revision.</p> <p><b>We will keep our regulatory institutions and framework under review</b> The requirement for sectoral regulatory institutions will be regularly reviewed in the light of sectoral dynamics, competition, convergence and market change.</p>	<p><b>We will target our new regulations more effectively</b> The objectives of regulation will be stated clearly in explanatory guides. We will more frequently use regulation that sets out the goals to be achieved but which leaves maximum flexibility as to the means of achieving them.</p> <p><b>We will make sure that regulations can be adequately enforced and complied with</b> We will frame regulations so that they achieve the greatest levels of compliance without excessive enforcement and compliance costs.</p> <p><b>We will ensure that existing regulations in key areas are still valid</b> We will systematically review existing regulations governing key areas of the economy and society.</p>	<p><b>We will regulate as lightly as possible given the circumstances, and use more alternatives</b> We will promote the use of a wider range of alternatives by Government Departments/Offices.</p> <p><b>We will ensure that both the burden of complying and the penalty for not complying are fair</b> Penalties in regulations will be more proportionate. We will also monitor the burden of compliance on business and SMEs.</p> <p><b>We will use Regulatory Impact Analysis when making regulations</b> We will pilot and then mainstream a system of RIA in Government Departments and Offices.</p>	<p><b>We will consult more widely before regulating</b> Consultation processes will be improved and made more consistent across Government Departments and Offices.</p> <p><b>There will be greater clarity about Public Service Obligations</b> We will ensure that Public Service Obligations are made more explicit when regulating, in terms of costs and service levels.</p> <p><b>Regulations will be straightforward, clear and accessible</b> Regulations will be as straightforward, clear and accessible as possible, with guidance in plain language.</p>	<p><b>We will strengthen accountability in the regulatory process</b> Regulators and enforcement agencies should be clearly accountable to citizens, through the Houses of the Oireachtas and Government.</p> <p><b>We will improve appeals procedures</b> There should be well publicised, accessible and equitable appeals procedures that balance rights of appeal with the need for speedy action, in a fair manner. Where regulatory decisions are referred to the courts, there are particular requirements of speed and expertise.</p>	<p><b>We will ensure greater consistency across regulatory bodies</b> As far as possible, there should be greater similarity in the remit, responsibilities, structure and approaches of regulatory institutions.</p> <p><b>We will ensure that regulations in particular sectors/areas are consistent</b> Legislation in linked or connected areas will be consistent, and kept up to date and accessible through processes of simplification, consolidation and restatement.</p>



# Necessity

- **We will require higher standards of evidence before regulating.**
- **We will reduce red tape.**
- **We will keep our regulatory institutions and framework under review.**

In the context of regulation, the ‘necessity’ principle is about ensuring regulatory policies and tools are deployed only when required and that the need for particular regulatory institutions is kept under regular review.

In terms of regulatory institutions - including central Government agencies, local authorities and sectoral regulatory institutions - ongoing monitoring and review of optimum structures are important. Technological advances, economic necessities or political priorities can all quickly change the rationale for particular regulatory structures. In such cases, the continued necessity and appropriateness of regulation, and the need for specific regulatory institutions and their mandates, must be reviewed and adjusted as appropriate.

In terms of assessing the need for regulation in an economic context, it is important to assess carefully whether or not the existing situation can be resolved through market mechanisms. Clear criteria should be used to determine whether circumstances justify regulation of particular markets.

Direct intervention by Government always requires careful consideration. The State should avoid the “regulatory impulse” whereby it adopts programmed, default responses to situations that arise, to the exclusion of other possible solutions.

It is also important to be clear about an objective before considering whether

intervention will ensure the intended result or be outweighed by the unintended consequences. To this end, an evidence-based approach should be adopted to policy-making in general and to the regulatory process in particular.

Is the regulation necessary?

We will require higher standards of evidence before regulating

The decision to make a regulation is an important one and it will always have implications. The extent of these implications may not always be clear. In the case of regulations which affect particular markets, the implications can be far-reaching. In the future, we will require regulations to be more rigorously supported in terms of the information, analysis and assumptions that underpin them. This will be done partly through specific techniques such as impact assessment but also through strengthening capacity within Government Departments to produce evidence-based policy options. It will also require ensuring that data are available to allow proper rigorous analyses. A more favourable climate for evidence-based policy will be created within Government, through training and awareness-raising, and development of policy tools and techniques such as scenario planning and option generation.

There is already a discernible shift towards evidence-based policy. We see it, for example, in terms of evaluative programmes such as expenditure reviews, greater use of research in the social sciences and policy proofing tools to underpin key policy objectives, e.g. reducing poverty and promoting gender equality.

A recently published report by the National Statistics Board – “*Developing Irish Social and Equality Statistics to meet Policy Needs*”<sup>1</sup> – underlines this trend. On foot of this report, Departments are working with the Central Statistics Office (CSO) to identify the potential for integrating and cross-referencing data across the system. This ongoing work will add to the range and quality of available data.

The evidence-based approach seeks to answer questions such as “*What works? In what context did it work? What did it take to make it work? How would it work better?*” This approach has a lot in common with other results-oriented

<sup>1</sup> National Statistics Board – “Developing Irish Social and Equality Statistics to meet Policy Needs” (2003) (Government of Ireland)

## IMPORTANCE OF COMPETITION

**Competition is a positive force for creating jobs and promoting economic growth. Competition policy has a major role to play in generating continued improvements in living standards and overall economic welfare.**

**In a small open economy like Ireland's, greater competition in the "sheltered" (non-traded) sectors of the economy can result in lower costs to firms in the traded sector, making them more competitive internationally and resulting in higher employment. In part, this will be achieved through the continued refinement and active implementation of competition policy.**

**The role of the Competition Authority is crucial in this regard. The Authority's work, especially its studies of particular markets and sectors (e.g. the study of the professions initiated in 2001) are an important input to, and a trigger for, regulatory reform. In addition to those studies already undertaken by the Competition Authority, further studies will be commissioned across a range of topics/sheltered sectors of the economy.**

approaches to public service delivery, such as quality customer service and the value-for-money approach to financial management.

Regulations are the legal expression of policy choices. However, policy outcomes can be influenced by the decision to use a regulation as the means of implementing the policy as well as by the quality of the regulation itself. This means that, before regulating, we must assess the evidence to determine if regulation is the correct option. Strengthening the evidence base for regulation will, in turn, add to the demand for good quality data. It will raise questions as to the availability and sufficiency of such data and it will have implications for the capacity of the system to produce and use this kind of information.

Of course, regulation can also be a positive force and the decision may be quite clear-cut in certain circumstances. There are many examples of this, related to environmental, health and safety and consumer protection. Nothing in this document will affect these decisions except that we will wish to have the decision supported by clearer evidence. The key test here is that there must be demonstrable benefits in terms of achieving public policy objectives flowing from regulation that would not otherwise accrue.

**TO SUM UP:** To ensure that regulations are necessary, the Government will:

- **Strengthen capacity for evidence-based policy-making [Action 2.2.1];**
- **Improve the quality of information to support evidence-based policy [Action 2.2.2];**
- **Use Regulatory Impact Analysis [Action 2.1.1];**
- **Examine where regulation may be hampering competition, including through further reviews of sectors by the Competition Authority [Actions 3.2.2-3.2.3].**
- **Develop competencies through the Performance Management and Development System (PMDS) [Action 2.2.3];**
- **Recruit specialist staff with relevant competencies, where appropriate [Action 2.2.4];**

Can we make it easier and simpler?

**We will reduce red tape**

We are all familiar with red tape. It arises from cumbersome administrative procedures, unclear communications, excessive information demands or complicated approval processes. Red tape is irritating and frustrating but it is also costly. It is a financial drain for those who have to comply with it but also for those who have to administer it. Often, public service organisations are their own worst enemy in this area because they tie up their own operations in excessive administrative procedure.

A lot has been done already to improve things. Government Departments and agencies are much more customer focused than they were ten years ago. Customer service principles underpin many of the schemes and services that we offer to the public.



However, we need to go further. We need to design quality and efficiency into our new services and we need to review and overhaul our existing ones. Using existing structures and initiatives for improving customer service within the public service, we will begin to make further inroads in this area. Information Technology will continue to play its part. e-Government has great potential to streamline delivery of services and we will continue to work to harness its full benefits.

We are planning to make it possible to access an increasing amount of public services using modern technology, reducing the need for form-filling and making services faster and more accessible. The intention is to virtually integrate public services so that they will be accessible at a single point. Access to services will be provided through a number of channels, such as the internet, one-stop shops, mobile phones etc. Accessing public services through the “Public Services Broker” (also referred to as the e-Broker) is likely to be another option for accessing services.

Such accessibility would have many advantages, including:

- + Public services would be accessed more easily, 24 hours a day, 7 days a week;
- + There would be less form-filling – the same information need not be given again to different offices or agencies;
- + Progress of applications could be tracked more easily by the applicant; and
- + It would be possible to have faster and more efficient processing and service than provided by traditional access routes.

Departments are currently preparing customer charters which will set down service commitments following consultation with their customers. Arising from this consultation and to help mainstream Quality Customer Service (QCS), all Departments will be asked to identify opportunities to simplify and streamline how they interact with their customers, including reductions in red tape. Departments will be required to report on progress in their annual reports.

The burden of red tape from existing regulation will be reduced through programmes under the direction of the Statute Law Revision Unit in the Office of the Attorney General. Some work is already under way. For example, a review is being undertaken of all pre-1922 legislation. This review will identify outdated legislation that is in need of repeal, revision or re-enactment. It will also remove anomalies. In addition, statute law revision tools will contribute to the process of systematically reviewing regulation with a view to identifying the potential for simplification.

### RED TAPE AND SMALL ENTERPRISES

**For small businesses, red tape can be especially onerous because they do not have the staff resources to deal with it. It has been estimated that in a small firm employing just 8 people, 50% of one person's time will be spent on form filling. When we think of how important the small and medium businesses are to our economy, we can immediately see how red tape can erode competitiveness.**

**TO SUM UP:** In terms of getting rid of unnecessary red tape, the Government will:

- **Streamline service delivery and administrative processes including through further development of initiatives in e-Government and Quality Customer Service (e.g. customers charters). [Actions 1.6.1, 1.9.1];**
- **Introduce sectoral regulatory reviews – systematic reviews of regulation covering key areas within the economy and society [Actions 3.1.1-3.1.3];**
- **Use Statute Law Revision processes to tackle red tape imposed by existing regulation [Actions 1.1.1; 1.7.1-1.7.2].**

Are our rules and structures in this area still valid?

We will keep our regulatory institutions and framework under review

When all the rule-making and enforcement agencies are taken into account, the regulatory landscape in Ireland seems quite crowded. We need, therefore, to ensure that the potential for fragmentation and duplication is minimised. Such fragmentation and overlap may be horizontal in terms of the scope of coverage of regulatory functions across the sectors. There may also be vertical fragmentation or overlap in terms of the accountability chain and precise reporting arrangements in place.

Ongoing review of the regulatory framework can help ensure that the range of regulatory institutions is optimal and that the accountability mechanisms are comprehensive. In cases where the rationale for establishing an independent sectoral regulatory body is to facilitate a sector's transition to the open market, the need for regulation ought to diminish in line with the development of competition in the sector. As competition develops, it may therefore be possible to roll back the sector-specific regulatory constraints and allow market forces and the general rules of competition law to prevail.

In addition, technological developments generate considerable change that impacts on products and markets, for example, through technological convergence. This obliges us to ensure that our regulatory structures are up to date and relevant. Regular review can also help establish whether the split between the role of Government as policy-maker and regulator, which is often mirrored in the split of functions between central Government and independent sectoral regulators, is being handled effectively.

Review of this nature is part of the policy function of Government Departments. It can also be helpful to have an independent, objective assessment of such arrangements, and opportunities will be sought to benchmark Ireland's regulatory regime and progress on regulatory reform at international level, including through the OECD.

A further review mechanism will be a system of sectoral regulatory reviews whereby sectors of the economy are examined on a regular basis in order to establish the viability of current regulatory approaches, including the roles of sectoral regulators.

## REGULATORY BODIES IN IRELAND

**There are over 500 public agencies/bodies in Ireland, many of which have a regulatory function – either as a rule-maker or rule-enforcer. For example, each Government Department and Office generates regulation – either as primary or secondary legislation. In addition, there are more than 100 local authorities, including City, County and Town Councils that regulate on a local basis. Currently, there is a small number of independent sectoral regulators including ComReg (communications regulator), the Commission for Aviation Regulation, the Commission for Energy Regulation, and the Irish Financial Services Regulatory Authority (IFSRA). Further regulatory authorities have been mooted, including in the transport sector.**

**Organisations such as the Office of the Director of Consumer Affairs, and the Competition Authority also have important roles in the enforcement of a wide range of consumer protection and competition law.**

**There are also many agencies under the aegis of Government Departments that have been delegated regulatory /enforcement functions. Examples of such bodies include the Food Safety Authority and the Censorship of Publications Board.**

**The Better Regulation Group, to be established as an outcome of this White Paper, will undertake an audit of the regulatory framework in Ireland which will map the various bodies and reporting arrangements in place.**

Such reviews could be initiated by the Government, by the relevant Minister, or on the recommendation of the Better Regulation Group (BRG) based on its analysis of developments in particular sectors or in overall regulatory policy. It will be open to the BRG to organise the reviews itself in certain circumstances.

In addition to sectoral regulatory reviews, the role and resources of the Competition Authority and the Office of the Director of Consumer Affairs will be reviewed periodically to ensure their ongoing effectiveness.



## GOVERNANCE AND ACCOUNTABILITY

**Sectoral regulation has often been set in the context of a three-part model of State activity: policy-making, service provision and regulation. In certain markets (e.g. energy, public transport, communications), Ministers and their Departments have sometimes engaged in all three activities simultaneously by setting policy for the sector, owning the only service provider and regulating the market.**

Recent years, however, have seen a move away from monopoly market structures in cases where these are no longer justified by technologies or by economic or social dynamics, and a move towards an opening of such markets to competition. When a market is liberalised in this manner, it becomes undesirable for a single part of the State (typically a Minister and a Department) to continue to regulate the behaviour of all market players, while owning the dominant such player. One option that has been followed in several instances is to establish an independent economic regulator who takes on responsibility for exercising the regulatory function, within a policy context set by the Minister and Government.

This model was described in *Governance and Accountability in the Regulatory Process* (Department of Public Enterprise, 2000)<sup>2</sup>, and its applicability can be seen in key aspects of the markets for communications, energy, public transport, aviation and others.

**TO SUM UP:** In terms of keeping the necessity of regulatory structures under review, the Government will:

- **Systematically review regulation in key areas and sectors [Actions 3.1.1-3.1.3];**
- **Establish a new Better Regulation Group [Action 3.3.1];**
- **Produce an audit of the regulatory framework which will map out the various rule-making and enforcement bodies and reporting arrangements. [Action 3.4.2].**
- **Benchmark Ireland's regulatory regime at international level, including through the OECD [Action 3.4.1];**
- **Review the role and resources of the Competition Authority and the Office of the Director of Consumer Affairs [Actions 3.2.2, 3.3.2];**

<sup>2</sup> *Governance and Accountability in the Regulatory Process* (2000), Department of Public Enterprise

# Effectiveness

- We will target our new regulations more effectively.
- We will make sure that regulations can be adequately enforced and complied with.
- We will ensure that existing regulations in key areas are still valid.

Effective regulation requires clear, achievable objectives and ensuring that these policy goals remain to the fore throughout the regulatory process. An objective-led approach to regulation places greater emphasis on performance and outcomes. However, the assumptions underlying the stated objective must also be clear. These are the important events, conditions or decisions outside the regulation that must nevertheless prevail for the objective to be attained.

An associated element of regulatory effectiveness is the need to minimise unintended outcomes. That means avoiding the creation of unnecessary barriers which can frustrate and inhibit innovation and stifle economic activity by reducing entry and exit to particular sectors and markets. Effectiveness, therefore, is also about ensuring that regulations are precise, not only in identifying the right targets, but also in confining the extent of their impact.

This raises the question of downstream enforcement and compliance with regulations. This is often inadequately considered in terms of identifying acceptable and unacceptable levels of compliance, the range of enforcement options available and the likely costs involved. These aspects are important because they will ultimately determine whether or not regulations are observed.

Is the regulation correctly targeted?

We will target our new regulations more effectively

We need a results-orientated approach to regulation. This means focusing on the outcomes of regulations rather than just the process of making regulations. Such an evaluation is in keeping with the Government's approach to public policy in other areas. For example, in financial matters, we are increasingly concerned with the outcomes of expenditure: the idea of value-for-money rather than simply focussing on the expenditure process.

When we talk about targeting regulations more effectively, we mean a number of different things. Firstly, we mean being clearer about the key objectives of proposed new regulations. Often, it is difficult to determine precisely what we want to achieve from a particular Act or Statutory Instrument. At present, an Explanatory and Financial Memorandum is published at the same time as the Bill to which it refers. It is not normally updated to take account of changes made during the legislative process. In future, an Explanatory Guide, which will explain the main purpose and principal provisions of the legislation, will be published alongside Acts or secondary legislation with significant impacts, in particular those with major implications for the consumer/citizen or Small to Medium Enterprises (SMEs) e.g. consumer protection, health and safety of workers, etc. These Explanatory Guides will be in a user-friendly, accessible form. By informing citizens of their rights and entitlements, such guides will help promote greater compliance and reduce the burden of enforcement on the Exchequer. This will also complement the drive for consumer-centred customer delivery across the public service.

Secondly, having clearly stated the key objectives of a proposed regulation, it may be possible to set down the overall goal to be achieved while leaving maximum flexibility as to how it can be achieved. For example, the objective of a regulation might be to reduce emissions of a particular pollutant. It may be possible to set the goal to be achieved in terms of the amount of emissions but leave flexibility for individual firms to decide how best to achieve this goal. Some firms may do it by cleaning up their production processes. Some may achieve it by using better raw materials. Others may do it by installing filtering equipment and so on. Thus, the regulation is clearly targeting the "end" to be achieved but avoids imposing too much of a burden by being over-prescriptive in terms of the "means". We propose to promote greater use of this type of outcome-orientated regulation.



The third way that we can achieve better-targeted regulations is through Regulatory Impact Analysis (RIA) which will require a clear statement of the objective of a regulation. It is also important that we make the best attempt that we can to identify all likely impacts of a particular regulation through RIA. If RIA is used early enough in the formulation process, it can help to generate more and better ways of framing regulations so as to minimise unintended impacts and maximise effectiveness.

mechanisms, etc. In reality, we do not have such resources and we must regulate more effectively to ensure the greatest level of compliance without excessive enforcement procedures. A simple example of this might be the regulations restricting the use of bituminous coal to achieve cleaner air. The regulations that were introduced for urban areas did not make the burning of bituminous coal illegal – not least because this would require significant numbers of inspectors to enforce. The regulations simply banned the sale of bituminous coal in specified urban areas.

**TO SUM UP:** In terms of ensuring that new regulations are better targeted, the Government will:

- **Publish Explanatory Guides alongside major primary legislation with significant impacts, particularly that which has major implications for consumers/citizens and/or SMEs; [Action 1.4.1(c)];**
- **Improve the quality of the explanatory material that accompanies secondary legislation, including the production of Explanatory Guides, where appropriate [Action 1.2.3];**
- **Promote wider use of regulation that leaves maximum flexibility as to how goals can be achieved [Action 5.2.1]; Use Regulatory Impact Analysis [Action 2.1.1].**

#### NON-COMPLIANCE WITH REGULATIONS

**Failure to comply with regulatory measures can arise for a number of reasons:**

- + **Unwillingness by stakeholders to adhere to the regulation. This may happen when, for instance:**
  - **the burden of compliance costs fall heavily on SMEs**
  - **regulated parties have not been adequately consulted**
  - **there is a complex set of regulations that stakeholders do not understand;**
- + **Inadequate enforcement of regulation;**
- + **Inadequate penalties for non-compliance;**
- + **Lack of an implementation policy that gives stakeholders the necessary information and support mechanisms for compliance.**

Is it going to be properly complied with and enforced?

We will make sure that regulations can be adequately enforced and complied with

A key consideration in evaluating the effectiveness of a regulation is the extent to which it is complied with. A related issue is the cost of enforcement. If we had unlimited resources, we could probably achieve close to 100% compliance with all regulations, by putting in place large teams of inspectors, enforcement agents, monitoring

It is important, therefore, that when considering the regulations, we are aware of factors such as the levels of compliance that are likely to be achieved under the proposed enforcement regime and the costs involved. The introduction of a regulation must be seen as the first step only in achieving a policy goal. If it is not adequately formulated, implemented, enforced and complied with, the desired policy outcomes will not be achieved.

We have not tended to use compliance and enforcement indicators to formally assess the success of regulatory decisions. Regulatory Impact Analysis will help to redress this for new regulations. With regard to existing regulations, assessments of compliance levels and enforcement will form an important part of the reviews of regulation affecting particular areas of economic and social life. The type of questions that we will ask include:

- + Has the issue of compliance with the regulation been fully considered?
- + What are the compliance costs and who is most affected by them?
- + How can these costs be minimised?
- + Has consideration been given to how enforcement can be improved?
- + What criteria for success will be put in place?
- + What methods of enforcement will be or are being applied?
- + Is it obvious where full compliance has been achieved?
- + Are there enforcement costs involved and who will bear them?
- + Has attention been given to enforcement issues with respect to technological advances?

In addition, wider and deeper consultation in advance of making regulations can assist with compliance. Active participation by stakeholders/citizens in the design and implementation of regulations is an effective way, not only of promoting openness and transparency in policy making, but also of ensuring greater understanding of, and compliance with, the regulation.

**TO SUM UP:** In terms of ensuring better compliance and enforcement, the Government will:

- **Use RIA when framing new regulations so as to ensure maximum compliance without excessive enforcement procedures and costs [Actions 2.1.1-2.1.6];**
- **Use sectoral regulatory reviews to assess compliance levels and enforcement costs [Actions 3.1.1-3.1.3];**
- **Implement better consultation processes to inform and involve stakeholders [Actions 5.1.1-5.1.4].**

Is it still effective?

We will ensure that existing regulations in key areas are still valid

The idea that regulations would be regularly reviewed, to ensure that their original objectives are still valid and/or being achieved, is an integral part of measuring effectiveness. With technological change and greater convergence of economic sectors, we need to ensure that there are regular systematic reviews of the effectiveness of regulation in particular areas and sectors. Under the principle of “necessity”, a commitment is made to ongoing reviews of our regulatory “architecture” – the institutions that are in place within our regulatory framework. Here, this is reinforced by committing to ongoing review of the actual body of regulations governing key areas of society and the economy.

These reviews will be undertaken in particular sectors or other areas of economic activity on a project basis. The reviews will examine the effectiveness of the regulations and regulators in particular sectors and may result in proposals for greater competition or re-regulation. It would be appropriate to conduct reviews of a sector where there are rapid changes in the global market, costs to consumers, enforcement and compliance burdens or negative economic impacts.

While such reviews may be initiated by the Government or relevant Ministers, areas for review may also be suggested by the Better Regulation Group (BRG) based on its analysis of the regulatory burden. Areas for review may also be identified following consultation with, or suggestions by, representatives of consumers or SMEs.



## REVIEW MECHANISMS IN OTHER COUNTRIES

The Danish Government have established a Division for Better Regulation, based in the Ministry of Finance. The Division works on a number of projects including a comprehensive review of the regulatory system in Denmark, aimed at reducing the administrative burdens for both citizens and businesses. Together with the Prime Minister's Office, the Division also advises a high-level Regulation Committee regarding the legislative programme of the Government.

In the Swedish Ministry of Industry, Employment and Communications, the SimpLex Unit aims to promote small business development by reducing the number of regulations, and making them more fair and intelligible. Its work consists of investigation and information, giving advice and support to government agencies and other regulatory bodies, reviewing present regulations and putting forward suggestions for modifications in order to promote simpler and more intelligible regulations.

The UK's Better Regulation Task Force was set up in 1997 as an independent body to advise Government on actions to ensure good regulation. The Task Force does this through a series of reviews of particular regulatory issues by sub-groups of the Task Force. The sub-groups set their own working methods and produce detailed reports on the area. They do not carry out formal consultations but discuss their proposals with key stakeholders and with Ministers and Government Departments. When completed, the report is sent to the relevant Government Minister who is required to respond within 60 days of publication. The Task Force also monitors and assesses the Government's progress in response to its recommendations.

**TO SUM UP:** In terms of ensuring that existing regulations in key economic areas are still valid, the Government will:

- **Undertake sectoral regulatory reviews - systematic reviews of the regulations governing key areas within the economy and society [Actions 3.1.1-3.1.3];**
- **Establish a new Better Regulation Group, inter alia, to advise on areas for review. [Action 3.3.1].**

# Proportionality

- We will regulate as lightly as possible given the circumstances, and use more alternatives.
- We will ensure that both the burden of complying and the penalty for not complying are fair.
- We will use Regulatory Impact Analysis appropriately when making regulations.

In this context, proportionality means striking a balance between the advantages a regulation provides and the constraints that it imposes. The first consideration is the fundamental question: is Government action required in the first place and, if so, should that action be regulatory? Just as there may be alternatives to regulation, there may also be alternative types of regulation, for use in cases where the full rigour of primary legislation is not required.

A second aspect of proportionality is ensuring that, when framing regulations, the burdens imposed and penalties for non-compliance are proportionate to the risks. A fundamental consideration might be, for example, whether penalties within the civil or criminal code are most appropriate. Similarly, it is useful to consider whether the costs for a particular group (e.g. small businesses) of complying with an administrative procedure are proportionate to the benefits to society resulting from the new procedure.

Regulatory Impact Analysis (RIA) provides policy makers with a deeper understanding of the likely effects of regulatory actions. This is a practical way in which the proportionality of proposed regulations can be assessed. Impact analysis then supports other principles of good

regulation, such as transparency - through making clear the underlying assumptions - and accountability. Arguably, its main contribution is in helping policy makers to ensure regulation is warranted in the first place and that benefits and costs are clearly defined.

Is there a more effective way of achieving the objective?

We will regulate as lightly as possible given the circumstances, and use more alternatives

There will always be a need for regulation. The questions that we need to consider are about how much regulation is appropriate and to what extent it is of good quality. When we talk about the quantity of regulation, this can mean both the volume of regulations governing particular aspects of economic and social life, as well as their complexity. When we talk about the quality of regulation, we mean how effective and how clear it is.

An efficient and well-founded regulatory system is one of the features of good governance and gives great strength and certainty to society and the economy. But we do need to recognise the potential disadvantages of State-imposed regulation in certain circumstances. For example, such regulation can be restrictive to market entry, enforcement can be costly, and it can be unresponsive to change over time.

In this regard, some countries have set targets for reduction of regulation. For example, Denmark published an Action Plan in 2002 containing a target to reduce the regulatory burden on businesses by 25% in four years. In addition, it is estimated that the Community acquis – secondary legislation binding on EU Member States – has been reduced by 20,000 official journal pages following completion of a consolidation programme.

It is important to assess the costs and benefits of a traditional “command and control” type regulation, but also to evaluate whether it would be more sensible to use an instrument other than regulation, such as a tax, subsidy, tradable permit, information campaign or other means. A combination of a number of these options might be the best mix to achieve a particular policy goal.



## ALTERNATIVES TO REGULATION

**A range of regulatory and non-regulatory alternatives exist including:**

- + **Co-regulation:** usually involves sharing the regulatory role between the regulating authority and regulated parties, such as particular industries or groups. Objectives may be set by the regulator, with implementation largely devolved to the regulated parties through enforceable codes of practice.
- + **Economic instruments:** By raising or lowering the cost of engaging in a particular activity, regulatory authorities can provide incentives to undertake desired actions. Options include taxes, charges, subsidies, user-pays pricing and refund schemes.
- + **Performance-based regulation:** specifies the ends rather than the means. Firms and individuals are allowed to choose the process by which they will comply with the law. This promotes compliance at a lower cost and encourages use of technology and innovation. A further refinement is the “equivalent principle” which allows parties to propose more efficient ways of achieving compliance. This has been used in other countries in areas such as health and safety, environment and fisheries.

For example, to alleviate the litter problem arising from plastic bags, a tax was used to modify behaviour. This still meant that a regulation had to be introduced but it was a relatively “light” regulation. It did not ban the importation or production of plastic bags. It did not seek to appoint more litter wardens or establish an inspectorate to visit shops.

Regulation should be seen as one of a range of instruments available to policy makers. It can be used instead of, or alongside, other instruments. However, one of the problems with regulation – particularly traditional “command and control” regulation – is that it is often seen as a quick fix. However, problems may not always have a regulatory solution or regulation may only be part of the solution, if used alongside information campaigns, or some other measures.

We need to build our confidence in using alternative types of regulation and alternatives to regulation. We need to build our capacity and understanding of these alternatives because they can, of themselves, improve public understanding of policy objectives. Regulatory alternatives tend to encourage desired behaviours rather than discourage undesired ones.

**TO SUM UP:** In terms of ensuring that we will regulate as lightly as possible, and use more alternatives, the Government will:

- **Promote different ways of regulating and alternatives to traditional regulation as ways of more effectively achieving policy goals [Action 5.2.1].**

Is the regulation framed in a proportionate way?

We will ensure that both the burden of complying and the penalty for not complying are fair

It is important to recognise that there are costs associated with regulation. Direct costs include fiscal costs (e.g. the cost to the Exchequer of administrators’ and legislators’ time, the cost of enforcement, etc.). Direct costs also include the cost to industry, business or citizens of complying with the regulations - e.g. installing new equipment, meeting new standards, etc. It is critically important for competitiveness, and for social equity, that we know what the direct costs arising from a regulation will be and who will bear them. For example, compliance can place a disproportionately higher burden on smaller firms. It was estimated by another EU Member State in 1995 that the cost of ‘red tape’ absorbed by small business works out at €3,600 per annum for each person employed. For larger firms, the comparable figure was put at €153. In Small and Medium Enterprises (SMEs), owners and managers tend to combine a number of functions, and administrative compliance is not easily delegated or contracted out. Excessive compliance

requirements, and administrative procedures that are insensitive to the special difficulties of SMEs, will deter new entrepreneurs and distract existing enterprises from innovation and expansion.

Just as compliance costs should be fair and proportionate to the benefits that the regulation brings, the penalties for non-compliance should also be realistic and related to the potential harm and have the desired deterrent effect. Over time, the impact of monetary penalties is inevitably eroded by inflation with the result that they have less and less deterrent effect. Mechanisms are needed to ensure that such penalties, the monetary value of which may have been fixed in old statutes, should be kept in line with inflation. Such difficulties could be overcome by the introduction of a standard fine system based on a number of categories related to the gravity of offence, and containing an indexation mechanism. The Government will explore the possibility of addressing these issues through the introduction of appropriate legislation.

#### **APPROPRIATENESS OF CRIMINAL JUSTICE SYSTEM TO DEAL WITH REGULATORY MATTERS**

**There is a need to consider the extent to which the criminal justice system is capable of dealing with the complexities of modern regulatory issues in an efficient manner.**

**Consideration should be given to alternative processes for addressing particular difficulties which arise, such as the risk of competitors, including less established operators, being squeezed out of the market during the time it takes to build cases to meet the standards of criminal proof required.**

**Related to this, an examination of the issues around the introduction of meaningful and proportionate fines for corporate entities who breach regulations will also be considered. This would enable fines to be set at such a level so as to act as a firm deterrent against non-compliance by corporate bodies.**

The complexity of regulatory systems in a modern economy can give rise to particular difficulties, including the timeliness and suitability of penalties that can be imposed on regulated parties. When setting penalties, it may be appropriate to bear in mind the financial circumstances of the offending person or body. In particular, the offender's ability to pay may be considered, the provision of easier methods of payment (by instalments, for example), as well as more efficient systems for the collection of fines. This is an issue that requires careful consideration.

**TO SUM UP:** In terms of ensuring that both the burden of complying with regulations - and the penalty for not complying - are fair and proportionate, the Government will:

- **Examine the extent to which the criminal justice system can deal effectively with complex regulatory issues, including the question of applying meaningful penalties for non-compliance [Action 5.4.1] ;**
- **Introduce an indexation mechanism for fines and improved methods for payment, and enhance procedures to link penalties and fines with ability to pay [Action 5.4.2];**
- **Monitor the cumulative burden of compliance on business and SMEs [Action 2.1.3].**



Do the advantages of the regulation outweigh the disadvantages?

We will use Regulatory Impact Analysis appropriately when making regulations

Evidence based policy making is about making better use of research and analysis in both policy-making and policy implementation. Regulatory Impact Analysis (RIA) is an evidence-based decision tool, which has four main facets:

- + Quantification of impacts;
- + Structured consultation with stakeholders;
- + Evaluation of alternatives to regulation and alternative types of regulation; and
- + Full consideration of downstream compliance and enforcement issues.

RIA is an aid to, and not a substitute for, decision-making. RIA should not be a mechanistic decision process. It should not give a single “right or wrong” answer - either in monetary or in other terms - on the question of whether or not to regulate in particular circumstances. Neither should RIA be something that simply adds to the bureaucratic process of producing regulations. Rather, RIA should be relatively light and proportionate.

It is envisaged that there will be a two-phase approach, the first stage involving relatively light preliminary assessments. In many cases, these will provide sufficient insight into likely impacts and costs. The second stage - the actual RIA - will be a more thorough analysis. A carefully designed system of thresholds and triggers will ensure that a RIA is only required for proposals with major implications - for example, if the cost of the regulation exceeds a certain threshold, or if it has major implications for certain, very specific policy areas that have been identified by the Government to be of particular importance. The level of analysis will be commensurate with the likely impact of the proposal.

RIA enhances the quality of political and administrative decision-making. It also supports other principles of good regulation, including greater openness and transparency and accountability of regulators. This is because public consultation is an essential component of the process. With openness and transparency in regulatory policy, stakeholders/citizens will be able to see the benefits of participation and get actively involved.

Special consideration will be given to the impact on business, particularly SMEs. Better quality regulation can

## EU AND IMPACT ASSESSMENT

**In the context of the European Union, impact assessment techniques are increasingly becoming a feature of the regulatory process. This is part of a shift toward evidence-based policy-making. The Commission’s Action Plan on Simplifying the Regulatory Environment (June 2002) emphasises the importance of impact assessment, not only for the Commission in initiating legislation, but also for Member States when proposing substantial changes to Draft Directives/Regulations or other major policy initiatives. Ireland will continue to promote best practice at EU level in relation to regulatory management, including impact assessment and the principles of good regulation.**

**As well as being an opportunity to maintain and improve our influence on EU regulation as it is being made, impact assessment offers us a vehicle for scrutinising, understanding and transposing European legislation when it has been made. EU regulation is often made with uniformity in mind, which is understandable in light of the internal market. Ireland’s economic, social and geographic features often present particular challenges in terms of adapting regulatory requirements to our circumstances. RIA can help to ensure that the full ramifications of regulation are understood and taken into account when being transposed into national law.**

significantly improve competitiveness. Some business groups have found that for over half of small Irish businesses, legislation – specifically rules and regulations emanating from the EU and employment legislation – is a major problem due to the costs of compliance and loss of flexibility. It has been estimated that 44% of small Irish firms have cited red tape – form filling and compliance with regulatory requirements – as problematic, both as a barrier to market entry and as a significant impediment to business expansion. This is consistent with the results of a Government-commissioned survey<sup>3</sup> published in 2003 which found that 54% of businesses felt that regulations were a significant and increasing burden on their business.

At present, a number of policy proofing mechanisms and procedures already exist within Government Departments. These include various checklists that must be completed when submitting proposals to the Government under Cabinet Procedures. They also include specific filters for policy

<sup>3</sup> Business Attitudes Towards Government Regulations, (2003): Lansdowne Market Research

designed to identify particular impacts on issues such as gender, poverty and health. There is potentially an overlap in some of these areas with Regulatory Impact Analysis. preparing and submitting documents to Government will be done on an electronic basis. RIA, along with other proofing mechanisms, would form part of the e-Cabinet system whereby the detailed assessment of impacts would be available to Ministers at the touch of a button, where they have been undertaken.

### RIA INTERNATIONALLY

Many countries have adopted the approach that a full RIA is only required based on defined thresholds/criteria, for example:

In KOREA, a full RIA is applied to significant regulations only. Significant is defined as follows:

- + an annual impact exceeding KRW 10 billion (equivalent to €7.25 million); or
- + an impact on more than 1 million people; or
- + a clear restriction on market competition; or
- + a clear departure from international standards.

In the NETHERLANDS, criteria similar to that of Korea are applied to regulatory proposals with the result that only 8-10% of draft regulations are subject to a full RIA.

In the USA, a full benefit/cost analysis of a rule is required in the following instances:

- + if annual costs exceed \$100 million; or
- + where rules are likely to impose a major increase in costs for a specific sector/region; or
- + if the rules have significant effects on competition, employment, investment, productivity or innovation.

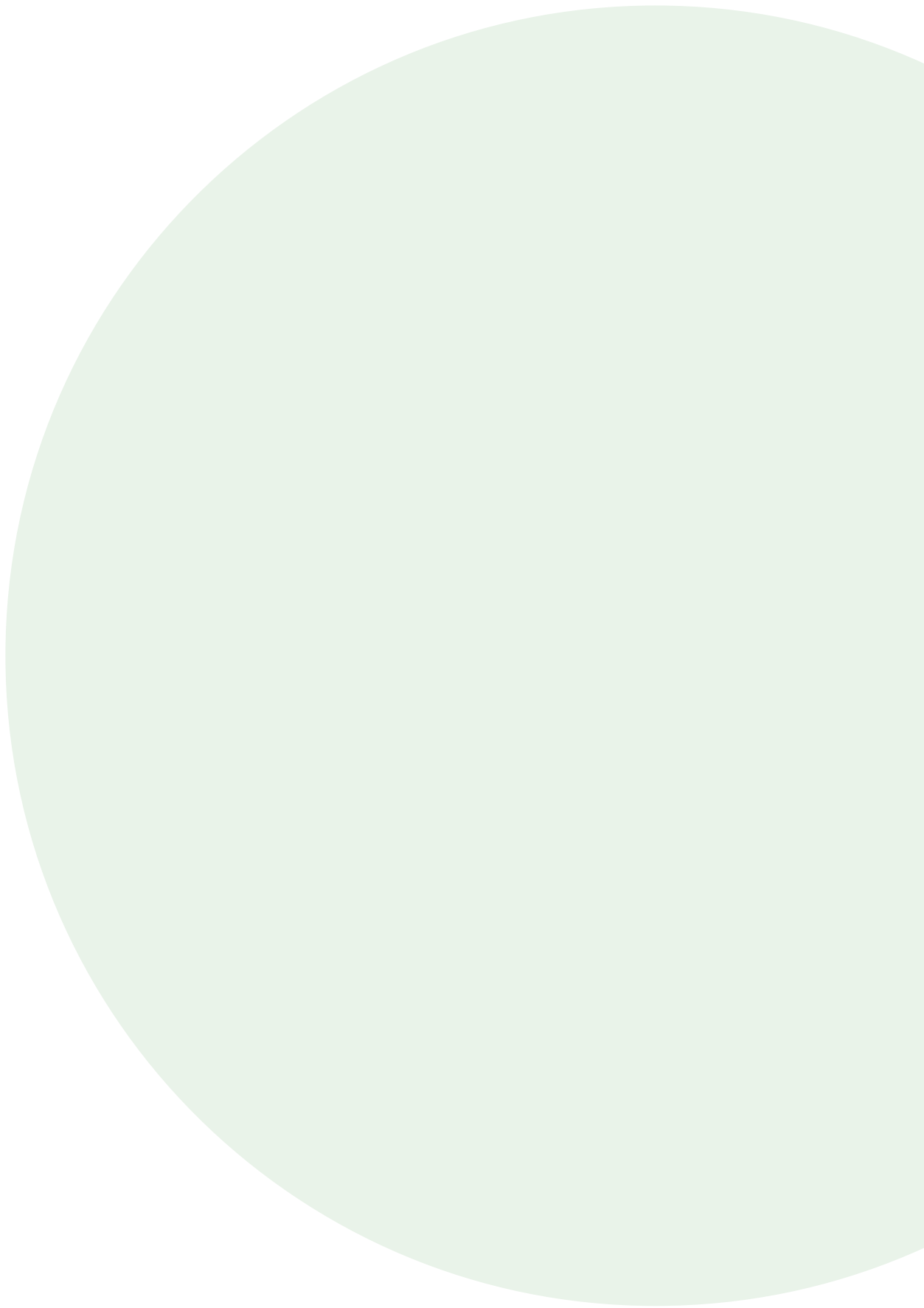
RIAs are conducted in a number of OECD countries, although the approach can vary considerably from one country to another. The European Union also conducts impact assessments on certain draft regulations and directives. Among the countries that currently use a model of RIA are:

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, and the United States.

**TO SUM UP:** In terms of ensuring that Regulatory Impact Analysis is used when making regulations, the Government will:

- **Pilot a system of RIA in a number of Government Departments [Action 2.1.1];**
- **Support RIA through training, guidelines and promotion [Action 2.2.1];**
- **Give special consideration to business impacts, especially SMEs [Action 2.1.3];**
- **Integrate RIA with developments under the e-Cabinet Project [Action 2.1.4];**
- **Use RIA for scrutiny of EU regulation [Action 1.8.1];**
- **Publish RIAs, where conducted, alongside a Bill, where appropriate [Action 1.4.1(b)].**





# Transparency

- **We will consult more widely before regulating.**
- **There will be greater clarity about Public Service Obligations.**
- **Regulations will be straightforward, clear and accessible.**

Enhancing regulatory transparency contributes to the quality of regulations, increases the likelihood of compliance and reduces the risk of “capture” or bias towards special interests. It also empowers citizens by giving access to information which enhances their decision-making abilities as consumers and as participants in the community. Freedom of Information legislation has already made an important contribution to transparency of regulation in Ireland.

Transparency is an important principle of good governance - it is widely accepted that there should be the maximum possibility clarity and openness in the operations of government and public administration. Transparency of regulations is also critically important to the performance of the economy, not least because it guards against special interests gaining undue influence in markets. It generates greater trust on the part of consumers. It assures and satisfies investors that there is a level playing field, and encourages new entrants to sectors. In terms of the quality of public services, the principle of transparency underpins the need for regulations to be as clear, straightforward and accessible as possible in their drafting, promulgation, codification and dissemination.

Have we consulted with stakeholders prior to regulating?

We will consult more widely before regulating

Many existing regulatory authorities, including the independent regulatory bodies, have quite sophisticated consultation processes. However, there is a need for greater consistency in our approach to consultation. Better consultation provides opportunities for stakeholders to have a meaningful input into the regulatory process. We need a regulatory framework that has mechanisms for informing and involving affected parties but is sufficiently open to ensure special interest groups do not gain disproportionate influence or control.

The State does not have a monopoly on wisdom or expertise in all areas of economic and social life. Problems can best be solved with the active involvement of the relevant stakeholders. The Government is committed to a social partnership approach across the policy spectrum. A similar broadly based inclusive approach will underpin regulatory policies and processes.

While excessive rigidity is undesirable, consultation norms should be established for sectors and groups of regulatory agencies - such as utility regulators, central Government Departments and local authorities. These would give customers a sense of what they can expect from regulatory bodies, such as the timeframes allowed for observations on regulations. These norms might vary from sector to sector or across different levels of government. There will, of course, always be the need for emergency regulation that would override normal consultation practices.

It is important to recognise the danger of over-representation of one particular viewpoint during consultations. Consideration will be given to encouraging not-for-profit groups to engage with the consultation process. Greater engagement will help consumer organisations, for instance, to become self-sustaining through demonstrated success in achieving policy influence.

In other jurisdictions, administrative procedures legislation has been introduced to give a statutory basis to service standards. In Ireland, the principles of accessibility and transparency in administration are supported by legislation such as the Freedom of Information Acts, the Ombudsman Act, the Data



Protection Acts, the Ethics in Public Office Act and prompt payment legislation. Against the background of existing legislative provisions, the need for legislation to underpin administrative procedures will be kept under review.

However, guidelines for consultation will be prepared, setting out the range of consultation mechanisms and options available to regulators, be they central Government Departments or otherwise, and the circumstances in which they should be applied. Guidelines will include an assessment of the strengths and weaknesses of different approaches and set out the circumstances where particular approaches are best used. For example, “calls for comment”, which are short advertisements in newspapers seeking comments on the basis of a few headings, have been found to be useful. “Notice and comment” procedures, on the other hand, give citizens a period for comments before the final rule is introduced. A sensible approach to consultation will be adopted in order to avoid blocking up the regulatory and decision-making processes. This may be achieved through a graduated approach to consultation, where some measures would be the subject of national advertisement and/or public meetings, while others would merit e-mail contact with identified/registered interested parties, and the use of Departmental websites.

#### THE NEED FOR OPEN REGULATORY PROCESSES

**“Regulatory capture” is a term used in economics to describe a situation where a market player uses influence or superior resources to extract a regulatory decision - or lack of decision - that brings it greater benefits than it does society as a whole.**

**There are many facets to regulatory capture such as the idea that concentrated interest groups, like market players, have a greater incentive to influence regulators than more diffuse groups, like consumers. More open and better-structured consultation processes can only be one element of an overall strategy to deal with the complex issues involved. They are important, however, to guard against the incidence, and the perception of, regulatory capture.**

**TO SUM UP:** In terms of improving consultation processes, the Government will:

- **Make public consultation more rigorous and consistent [Actions 5.1.1-5.1.4];**
- **Use RIA to support greater consultation prior to regulating [Action 5.1.1];**
- **Establish norms and standards for consultation processes [Action 5.1.2];**
- **Support an inclusive consultation process [Actions 5.1.3-5.1.4];**
- **Keep under review the need for legislation to underpin administrative procedures [Action 5.3.1].**

Is regulation transparent with regard to Public Service Obligations?

There will be greater clarity about Public Service Obligations

In general, competition in a market brings lower prices, higher standards of service and greater choice. In the long run, most customers benefit from market liberalisation. If suppliers focus only on profitable areas, some potential customers - such as geographically isolated, low income or low demand consumers - may not benefit. For reasons of economic, social and regional cohesion, governments often decide that such customers should be provided with access to certain service levels at reasonable prices, even though it might not be commercially viable. Ensuring the provision of uneconomic – but socially desirable – service is commonly achieved through Public Service Obligations (PSOs).

It is important also that there is clarity around the scope, rationale and cost of PSOs and, as a subset, Universal Service Obligations (USOs). This is necessary so that citizens and consumers can be kept fully aware of their service entitlements. In addition, the Government needs to be clear about the cost of providing PSOs, given that it is usually either the taxpayer (via the Exchequer) or consumer that bears the costs of PSOs.

## SERVICES OF GENERAL INTEREST

In May 2003, the European Commission published a 'Green Paper on Services of General Interest'. The intention was to stimulate a debate on the role of the EU in promoting the provision of high-quality public services.

The Green Paper focuses on issues related to 'services of general economic interest'. In Community practice, there is broad agreement that the term refers to services of an economic nature which the Member States or the Community subject to specific Public Service Obligations by virtue of a general interest criterion. The concept thus covers certain large network industries such as transport, postal services, energy and communications. The term also extends to any other economic activity subject to Public Service Obligations.

The view of the Government is that the principle of subsidiarity underpinning Member States' competencies should continue to be respected in the area of services of general interest. (The principle of subsidiarity is intended to ensure that decisions are taken at a level as close as possible to the citizen, whilst checking that any action to be undertaken at European level is justified compared with the options available at national level.)

The costs related to the delivery of USOs to 'uneconomic' customers are usually balanced against the provider's overall profits and presence in the market. If the extra costs are deemed to be relatively insignificant, then the USO provider must absorb them into its cost base. However, if the USO can be shown as a significant and undue burden on the provider, then recompense may be available. This is usually funded through a levy on other service providers in the market. Thus, the cost of USOs generally falls ultimately on the other customers in the market.

In cases where the Government contracts out such services, it is important that alternative service providers are kept fully aware of the issues around PSOs, to ensure that barriers to sectoral entry are not created that would deter future competitors.

**TO SUM UP:** In terms of improving the transparency of regulations relating to Public Service Obligations, the Government will:

- Ensure that regulatory authorities clearly set out the scope and rationale of Public Service Obligations [Action 5.5.1];
- Ensure that RIA clarifies the cost and other impacts of Public Service Obligations [Action 2.1.6];
- Enhance dialogue and information sharing on a cross-border basis [Action 5.5.2].

Is the regulation in this area clear and accessible to all?

Regulations will be straightforward, clear and accessible

High quality regulation is essential for the appropriate functioning of society. How the regulation is explained to affected parties is critically important if it is to be effectively implemented, accepted and supported. The objectives and implications of the regulation and the responsibilities of those involved should be plainly set out and easily understood.

Regulation should be drafted in language that achieves its intended purpose, resolving the tensions between clarity, simplicity and accuracy. It should not create ambiguities and uncertainties. In addition, it is important to ensure Statutory Instruments (S.I.s) are drafted more consistently and, where possible, in plainer terms. Many significant proposals are legislated for through S.I.s and, in time, RIA should be applied to the more substantive proposals contained in S.I.s. In order to improve drafting of S.I.s across the Civil Service, the Office of the Parliamentary Counsel to the Government has produced a manual for Government Departments - "*Statutory Instruments – Drafting Checklist and Guidelines*" in 2003. To complement this, consideration will be given to options for enhanced scrutiny of S.I.s by the Oireachtas. Departments sponsoring legislation should consider



publishing the draft heads of Bills where feasible and appropriate. This would enhance openness and transparency in the drafting process and allow for consultation on the measures proposed in the Bill. A completed RIA, where carried out, should also be published alongside the Bill to ensure openness and transparency in the legislative process.

The existing Explanatory and Financial Memoranda for primary legislation are confined to Bills as initiated. In future, an Explanatory Guide, which will explain the main purpose and principal provisions of the legislation, will be published alongside Acts or secondary legislation with significant impacts, particularly those with major implications for the consumer/citizen or SMEs, e.g. consumer protection, health and safety of workers, etc. These Explanatory Guides will be in a user-friendly, accessible form. By informing citizens of their rights and entitlements, such guides will help promote greater compliance and reduce the burden of enforcement on the Exchequer. This will also complement the drive for customer-centred delivery of public services.

The clarity of legislation will also be improved by avoiding the use of non-textual amendments. A non-textual amendment is one which does not insert text but instead requires the reader to interpret a word or phrase in a particular way. A non-textual amendment is made where an amending Act instructs the reader to read a particular provision or phrase in the Principal Act in a particular way. For example, in The Central Bank and Financial Services Authority of Ireland Act, 2003, the reader is asked to read “Bank” for “Board” in each place it occurs in a series of sections.

In relation to improved access for citizens to the existing stock of legislation, our programme for delivering e-Government will make provision for the accessibility of Acts, Statutory Instruments, the Chronological Tables (the Tables that provide information about amendments to Acts) and related materials such as Dáil and Seanad Debates. These initiatives will be structured to complement similar developments at EU level.

In addition, the programme of Statute Law Revision will outline specific targets and priorities for using repeal, consolidation and restatement to streamline existing legislation.

**TO SUM UP:** In terms of improving the clarity and accessibility of regulations, the Government will:

- **Improve coherence of legislation through revision, restatement and repeal (Statute Law Revision) [Action 1.7.1];**
- **Maximise the use of IT and e-Government initiatives to improve clarity and accessibility of regulations [Action 1.6.1];**
- **Minimise the use of non-textual amendments in legislation [Action 1.5.1];**
- **Publish draft Heads of Bills, where feasible and appropriate [Action 1.4.1(a)];**
- **Publish RIAs, where conducted, alongside a Bill, where appropriate [Action 1.4.1(b)];**
- **Ensure that an increasing number of Acts are accompanied by an explanatory guide, particularly those with major implications for consumer/citizens and/or SMEs [Action 1.4.1(c)];**
- **Apply RIA to Statutory Instruments that contain proposals with significant impacts [Action 1.2.1];**
- **Ensure greater consistency in the drafting of Statutory Instruments [Action 1.2.2];**
- **Give consideration to more effective scrutiny of Statutory Instruments by the Houses of the Oireachtas [Action 1.2.4].**

# Accountability

- We will strengthen accountability in the regulatory process.
- We will improve appeals procedures.

Accountability is fundamental because of the complexity of the regulatory process and the range of participants involved. The concept of a regulatory chain is often used to describe the regulatory process and it is critically important that the links in that chain – from originator to regulated party - are clearly defined.

Regulatory accountability means having clarity and certainty about the roles of: those originating regulation; those who must enforce or otherwise achieve compliance; the regulated parties; those charged with adjudicating on appeals; and those reviewing and evaluating. Integrating the tiers of accountability while regulations are being designed is critically important. However, given the complexity and evolving nature of regulatory institutions and roles, changes in one regulatory area or to the responsibilities of one agency may have knock-on effects in other areas or for other agencies.

Of particular importance is the question of fair, open, efficient and effective appeals procedures. Increasingly, this aspect of accountability has informed developments within the public service, for example, through initiatives to improve customer service and through the work of the Ombudsman. There is a need to ensure that this concept is replicated and expanded within the regulatory framework, including sectoral regulatory areas.

Is it clear under the regulation precisely who is responsible to whom and for what?

We will strengthen accountability in the regulatory process

The regulatory framework is constantly evolving and it is necessary to ensure that proper lines of accountability are maintained. At the heart of accountability are the questions, “*accountable to whom and accountable for what?*”

Due in part to the complexities of the industries in question, the accountability of independent regulators will be subject to development and institutional change in years to come. In the meantime, accountability is served through good information flows, with full disclosure of the details of the decision-making process and of all submissions and representations made to the regulator. This is, in fact, the practice largely followed by sectoral regulators in Ireland. It has contributed significantly to a better understanding of the problems faced and the reasons behind the decisions taken. Such information disclosure also makes it more likely that the regulatory decisions will be accepted by those most affected by them.

As part of ongoing accountability arrangements for Government Departments and Offices, their annual reports will include material on aspects of regulatory management, including consultation processes used, simplification or consolidation of legislation, and conduct of RIAs throughout the year. Such reports will also contain commentary on oversight of regulatory bodies under their aegis and on any sectoral regulatory reviews undertaken.

Regulators and regulated bodies alike have indicated that they are conscious that the question of ‘*who regulates the regulator?*’ is not always adequately addressed by the existing systems in place. In devising legislative frameworks for sectoral regulators, the Government will ensure that a systematic approach is being taken to the overview of sectoral regulators by Government Departments and Oireachtas Committees.

The resources of the Oireachtas and its Committees for reviewing sectoral regulatory structures must be commensurate with their monitoring and accountability functions. In addition, there is a need for greater clarity and consistency when regulatory bodies are being established, as to how they relate to the Oireachtas, balancing autonomy in making regulatory decisions and their political accountability.



## ACCOUNTABILITY OF REGULATORS

**Independent sectoral regulators are accountable to citizens for the pursuance of their remit, overall performance and plans for future work. This accountability is provided through a number of mechanisms and, for sectoral regulators established in recent years, such mechanisms are often set out in law.**

Firstly, regulators are accountable to Government through being:

- + appointed by Ministers (after an independent selection process);
- + obliged to have their finances audited by the Comptroller and Auditor General; and
- + required to work within a policy framework set by the Minister and to report to the Minister on their strategy and work.

Secondly, they are accountable to the Oireachtas through:

- + presenting annual reports; and
- + being obliged to appear before relevant Oireachtas Committees.

Thirdly, regulators are also accountable through the courts by being subject to judicial review of their decision processes, and they are sometimes subject to other appeals or review mechanisms in relation to their decisions.

Fourthly, regulators give account directly to regulated industries and to citizens generally through the publication of information about their decisions and their work.

**In practice, the accountability of regulators needs to be balanced against their independence. Regulators have been established as independent entities in order to ensure that regulatory decisions are taken in an objective manner. Accountability mechanisms must be designed so that regulators give full account for the discharge of their duties, and that their regulatory independence is not compromised in the process.**

Accountability can also be strengthened through greater involvement of the consumer. The consultative processes in which the regulators engage would be strengthened by informed and well-researched submission and comment from sectoral consumer councils, user groups, and business interests, as well as households, communities and disadvantaged groups. Where existing industry levies are collected, consideration will be given to using resources generated by these levies to support consumer councils and user groups.

**TO SUM UP:** In terms of improving accountability in the regulatory process, the Government will:

- **Develop a systematic approach to the overview of sectoral regulators by Government Departments and Oireachtas Committees [Actions 4.1.1, 3.2.1];**
- **Develop new measures to strengthen the role of the consumer [Actions 3.3.2];**
- **Ensure more comprehensive accountability by Government Departments in respect of regulatory management [Action 5.3.2];**
- **Supplement existing accountability arrangements with a series of sectoral regulatory reviews [Actions 3.1.1-3.1.3].**

Is there an effective appeals process?

**We will improve appeals procedures**

In many areas, the State has moved from the role of service provider, transferring regulatory decision-making functions to specific sectoral regulators. As a result of placing greater autonomy with the sectoral regulators, and growing competition among a greater number of players, decisions made by sectoral regulators have been challenged – in some cases lasting a very long time. Although there are a variety of sector-specific appeals mechanisms, in some instances the only route for the

## REGULATORY APPEALS

**In the case of utilities regulators, one possibility might be to establish a single regulatory appeals body. Such an appeals body could call on a number of expert panellists with relevant knowledge and experience of sector specific issues and/or competition law and policy, and/or economics, to adjudicate appeals. The regulatory appeals panel might facilitate a more expedient and cost effective alternative to judicial review. Access to further court appeals would remain an option, but only on points of law.**

**Powers of the single regulatory appeals body might include:**

- + Confirming or setting aside all or part of the regulator's decision;**
- + Imposing, revoking or varying the amount of any penalty;**
- + Granting or cancelling an individual exemption or varying any condition or obligation which relates to that exemption;**
- + Giving such directions, or taking such other steps as the sectoral regulator could have given or taken; and**
- + Making any other decision which the sectoral regulator could have made.**

**There are, of course, challenges associated with establishing a regulatory appeals body. Firstly, the right of appeal to the courts will still remain - as the courts can always review any administrative decision. Thus, the only effect of having a formalised appeals procedure may be to delay the final decision further. Secondly, the appeals procedures themselves may be used intentionally to delay a final decision, to protect the benefits accruing to the incumbent or dominant producer in the sector.**

questioning of regulatory decisions has been to undertake a judicial review - even though recourse to judicial review often proves to be a time-consuming and resource-intensive process.

Regulatory appeals have also placed a considerable burden on the courts system. In a number of cases, judges have been asked by complainants to substitute their opinion for the decision of the regulator, even though this is beyond the scope of a judicial review.

If accountability is to be fully established, an innovative approach to regulatory appeals should be adopted to facilitate expedient, efficient and informed review of regulatory decisions. Ideally the parties undertaking the review would have expertise in relevant areas, e.g. competition law, economics and sector-specific issues, or direct access to such expertise. However, we must seek to get the correct balance between the right to appeal a regulatory decision and undue delay in decision-making and implementation. There are, therefore, a number of complex issues involved in establishing an efficient appeals procedure. The Government is committed to reviewing the options available, in consultation with interested parties, and developing proposals for an improved approach.

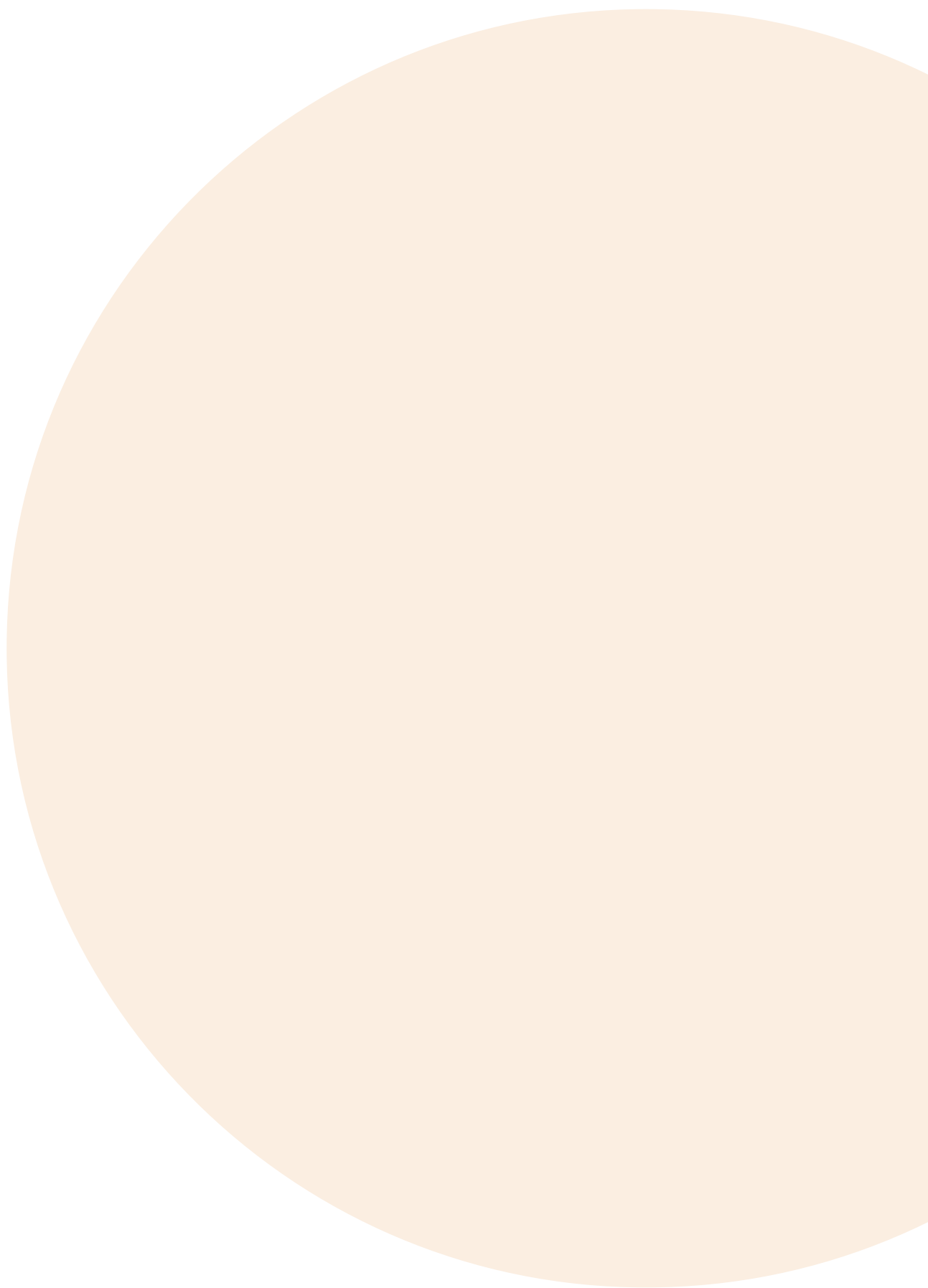
A small number of judges have been appointed to deal with competition cases in accordance with the Competition Act 2002. Judges have either presided over previous competition cases or have a specific interest in the area. However, there is a need to consider whether further specialisation should be supported, for example relating to regulatory matters, due to the growing complexity of the issues involved.

It may also be possible to improve processes through better case management, including allocation of cases, limitation of opportunities for submissions and presentations on points of law. In other words, more efficient administration of cases may have the desired effect.

**TO SUM UP:** In terms of improving regulatory appeals procedures, the Government will:

- **Develop proposals for an improved approach to appeals of sectoral regulators' decisions [Action 4.3.1];**
- **Develop further the approach whereby there are expert judges in particular commercial areas, to deal with specific competition and/or sectoral regulation cases [Action 5.6.1];**
- **The Courts Service will continue to improve and streamline case management practices in cases relating to sectoral regulation in order to expedite the process [Action 5.6.1].**





# Consistency

- **We will ensure greater consistency across regulatory bodies.**
- **We will ensure that regulations in particular sectors/areas are mutually consistent.**

Consistency in the regulatory process is important as it gives a degree of predictability and legal certainty to individuals and groups within society and the economy. Ad hoc approaches, whereby similar situations are treated differently, tend to add to transaction costs associated with particular activities. They can also create unnecessary bureaucratic layers to social and economic processes, and ultimately diminish respect for the regulatory process.

Two types of consistency are deemed particularly important in this context: first, the idea of structural consistency whereby regulatory actors in similar situations would have broadly similar roles, responsibilities, powers and perhaps even structures. This might apply to independent regulatory authorities and to Government Departments and agencies. For example, responsibility for consumer complaints and/or competition has tended to be treated differently in the mandates and operations of the various sectoral regulators.

The second aspect of the regulatory process for which greater consistency is important is in achieving greater internal consistency between regulations and legislation within particular sectors. Regulations should be compatible with international trade rules, EU law and competition policy. Regulations should also be consistent with each other to the extent that conflicting requirements are not being imposed on sections of the community or in particular

economic sectors. They should also recognise the economic linkages between different sectors.

In terms of consistency within the regulatory system, it is important that, where markets are reformed or deregulated, other regulatory systems should not be used as an alternative form of regulation.

Are we dealing with similar situations across the board in similar ways?

We will ensure greater consistency across regulatory bodies

The evolution of regulatory policy in Ireland has not, to date, proceeded in a uniform fashion. The result has been the establishment of regulatory institutions with different mandates, as well as different levels of responsibility, different legal bases and different structures. Most other OECD countries have seen a similar pattern of development.

One of the main issues is the variety in structures and responsibilities across different sectors. While these may not be significant problems in themselves, the adoption of a national regulatory policy should ensure that consistency is introduced across the regulatory system, where possible. The issue is not about following 'precedent' but rather one of dealing with situations consistently. It is also about public bodies seeking information or designing application processes, as much as possible, in the same format. This would ensure greater confidence in the system, greater transparency in decision-making and promote greater efficiency across the various sectors.

Given the limited size of the Irish economy and public service, integration of regulatory activity may be strengthened by a sharing of resources, especially in generic areas such as financial management, administration, human resource management (HRM), data systems and legal services. To this end, Government policy will be to minimise the creation of new regulatory authorities. In addition, dialogue between the various regulatory authorities should be maximised to encourage the sharing of best practice, and resources where possible, across the sectors.



On a separate point relating to consistency, it is important to recognise the advantages, in certain circumstances, that a complementary approach to Public Service Obligations (PSOs) would bring to the island of Ireland. In the case of utilities' regulation, such a shared approach to regulation could promote greater competition, security of supply and consumer welfare.

**TO SUM UP:** In terms of improving consistency in regulatory bodies, the Government will:

- **Create new sectoral regulators only if the case for a new regulator can be clearly demonstrated in light of existing structures [Action 4.2.1];**
- **Assess the possibilities for rationalisation of sectoral regulators including through the merger of existing regulators and/or through the sharing of common services [Action 4.2.2];**
- **Promote the strengthening of existing contacts between the sectoral regulators, the Competition Authority and the Office of the Director of Consumer Affairs [Action 4.2.3];**
- **Pursue development of a complementary approach to regulation, and PSOs in particular, on an island of Ireland basis [Action 5.5.2].**

Will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area?

We will ensure that regulations in particular sectors/areas are consistent

The principle of consistency applies to both new and existing regulations in a number of ways.

In the context of new regulations, it is important to attain a degree of consistency with existing or proposed national, European or international regulations, especially in key economic or social policy areas. To ensure even greater consistency in the regulatory system, it is important that, where markets are liberalised, other regulatory measures for example, new physical planning, safety or other requirements, are not used as an alternative form of regulation to restrict market entry.

In terms of existing regulation, systematic reviews would be useful to allow regulatory objectives to be maintained, improved or removed in the light of changes in economic or social situations. Review could also occur after the collection of new data provides new information on the regulated market or activity. This will ensure that regulations remain targeted on their objectives while allowing for adjustments to maintain consistency across the thematic area. In addition, mechanisms such as "sunsetting", whereby regulations expire after a certain period of time, can also be used to ensure that regulations remain relevant and consistent over time.

Consolidation is the traditional tool for making legislation more accessible and coherent. Departments have used this tool to ensure up-to-date legislation but, generally, the process has been piecemeal which is consistent with the experience of codification/Statute Law Revision in other countries. A comprehensive policy is necessary, using tools of codification, restatement, simplification and consolidation, to reduce the volume of legislation and make it more coherent and accessible. This is in line with the public service modernisation commitments under 'Sustaining Progress', the current social partnership agreement.

Successive amendments to Statutory Instruments can create difficulties in their interpretation. As outlined above, a stronger programme of consolidation is needed. As best practice, therefore, Departments should consider consolidating Statutory Instruments that have been amended more than three times.

Taken together, these streamlining measures will create modern, more user-friendly legislation that will substantially reduce transaction costs and give citizens and investors a more accessible legal system. These policies will mirror work being undertaken with the same objective at European Community level. It is estimated that the Community acquis – the secondary legislation binding on EU Member States – has been reduced by 20,000 Official Journal pages following completion of a consolidation programme.

**TO SUM UP:** In terms of improving internal consistency of regulation in particular sectors, the Government will:

- **Implement a Programme of Statute Law Revision [Actions 1.7.1-1.7.2];**
- **Use RIA to ensure the consistency of new regulations with the existing body of regulation [Action 1.3.1(c)];**
- **Examine the advantages and disadvantages of using review mechanisms such as “sunsetting” [Action 1.3.1(b)];**
- **Ensure an integrated approach is taken such that removing regulatory barriers in a particular sector is not offset by imposing different kinds of regulatory barriers to entry in that sector [Action 1.3.1(a)];**
- **Improve the quality of Statutory Instruments through greater consolidation [Action 1.2.2]**



# ACTION PROGRAMME FOR BETTER REGULATION

## 1. Actions relating to legislative process and Statute Law Revision

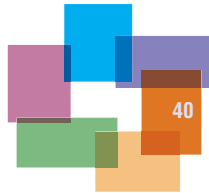
	ACTION	PRINCIPLE	BY WHOM	BY DATE
<b>1.1</b> <b>Pre-1922</b> <b>legislation</b>	<p>1.1.1 A programme (under the remit of the Statute Law Revision Unit) will be put in place to analyse pre-1922 legislation with a view to:</p> <ul style="list-style-type: none"> <li>■ Identifying moribund legislation and repealing it through the introduction of a Bill;</li> <li>■ Re-enacting legislation that is still useful, removing anomalies in the process; and</li> <li>■ Streamlining/simplifying the Statute Book as necessary.</li> </ul>	<b>Necessity</b>	Office of the Attorney General	Spring 2004
<b>1.2</b> <b>Statutory</b> <b>Instruments</b>	<p>1.2.1 RIA will be used for Statutory Instruments that contain proposals with a significant impact.</p> <p>1.2.2 The Office of the Attorney General will work with Departments to promote the Guidelines on drafting Statutory Instruments.</p> <p>As best practice, Departments/Offices will encouraged to simplify/codify, e.g. to consolidate Statutory Instruments that have been amended more than three times.</p>	<b>Transparency</b>	All Departments/ Offices	2005
		<b>Transparency</b>	Office of the Attorney General	Ongoing
		<b>Consistency</b>	All Departments /Offices	Ongoing
	1.2.3 Statutory Instruments containing significant proposals will be accompanied by an improved explanatory statement /guide. (see also 1.4.1)	<b>Effectiveness</b> <b>Transparency</b>	All Departments /Offices	Immediate
	1.2.4 Consideration will be given to opportunities for more effective scrutiny of Statutory Instruments by the Houses of the Oireachtas.	<b>Transparency</b>	Office of the Government Chief Whip	Ongoing
<b>1.3</b> <b>Drafting</b> <b>new legislation</b>	1.3.1 There will be greater training and awareness-raising in Government Departments and Offices on the process of legislative drafting, including issues such as: <ul style="list-style-type: none"> <li>a) The need to ensure that the gains made by reducing regulations in a particular sector/industry are not offset by re-regulating in another guise.</li> <li>b) The advantages and disadvantages of mechanisms such as "sunsetting" clauses as a means of ensuring review at a future date.</li> <li>c) The need for closer scrutiny of new regulations to ensure their consistency with the existing body of regulation in that area (RIA will be of use in this regard).</li> </ul>	<b>Consistency</b>	CMOD, Department of Finance All Departments/Offices	Ongoing

		<b>ACTION</b>	<b>PRINCIPLE</b>	<b>BY WHOM</b>	<b>BY DATE</b>
<b>1.4 Better information on new legislation</b>	1.4.1	<p>Departments and Offices will adopt best practices regarding providing better quality information on legislation, including:</p> <ul style="list-style-type: none"> <li>a) Draft Heads of a Bill to be published where feasible and appropriate.</li> <li>b) RIAs, where conducted, to be published alongside a Bill, where appropriate, taking into account Cabinet confidentiality, security and commercial sensitivity issues.</li> <li>c) An explanatory guide to be published alongside all new Acts with significant impacts, particularly those with major implications for consumers/citizens and/or SMEs. This guide will be akin to the Explanatory Memorandum that currently accompanies most Bills and will be written with the general public in mind. A similar guide will be produced in respect of Statutory Instruments that contain major proposals.</li> </ul>	<p><b>Transparency</b></p> <p><b>Proportionality</b></p> <p><b>Effectiveness</b></p>	All Departments/ Offices	<ul style="list-style-type: none"> <li>a) Immediate</li> <li>b) On introduction of RIA</li> <li>c) Immediate</li> </ul>
<b>1.5 Amendment of existing legislation</b>	1.5.1	As a matter of good practice, Departments/Offices will be encouraged to amend legislation by textual amendments and avoid the use of non-textual amendments as far as possible.	<b>Transparency</b>	All Departments/ Offices	Immediate
<b>1.6 Improved access to legislation</b>	1.6.1	<p>Current e-Government (including e-Cabinet) and Quality Customer Service initiatives will be utilised more fully to improve the quality and accessibility of legislation, including:</p> <ul style="list-style-type: none"> <li>a) Greater accessibility of Acts, Statutory Instruments, the Chronological Tables (the Tables that provide information about amendments to Acts) and related materials such as Dáil and Seanad Debates.</li> <li>b) Further development of a web-based service to allow citizens full electronic access to legislation, debates of the Houses of the Oireachtas and other related materials.</li> <li>c) Using customer charters to reduce the burden of compliance on the citizen.</li> </ul>	<p><b>Necessity</b></p> <p><b>Transparency</b></p>	<ul style="list-style-type: none"> <li>a) and b) Office of the Attorney General in co-operation with Departments/Offices</li> <li>c) All Departments/ Offices</li> </ul>	2004
<b>1.7 Use of Statute Law Revision tools</b>	1.7.1	The Government's Legislative Committee will include a rolling programme of Statute Law Revision as a part of the legislative programme. This will outline specific targets and priorities for the use of the principal Statute Law Revision tools of repeal, consolidation and restatement.	<p><b>Necessity</b></p> <p><b>Transparency</b></p> <p><b>Consistency</b></p>	Office of the Attorney General, Office of the Government Chief Whip,	Ongoing
	1.7.2	The Statute Law Revision Unit will maintain a prioritised list of legislation to be: (a) consolidated; (b) repealed; (c) restated; (d) otherwise revised. This list will be compiled in conjunction with Departments/Offices and will be submitted to the Better Regulation Group for consideration.	<p><b>Necessity</b></p> <p><b>Consistency</b></p>	Office of the Attorney General, Departments/Offices	Ongoing

		<b>ACTION</b>	<b>PRINCIPLE</b>	<b>BY WHOM</b>	<b>BY DATE</b>
<b>1.8 Scrutiny of EU legislation</b>	1.8.1	RIA will be used as a tool for greater scrutiny of EU legislation, including use by Departments and Offices in the reports that they make to the Oireachtas Committee on EU Affairs and for analysing impact assessments produced by the European Commission.	<b>Proportionality</b>	All Departments/ Offices	On introduction of RIA
<b>1.9 Improving service delivery</b>	1.9.1	<p>In the context of further improvements to customer service, Departments and Offices will be asked to review their current regulatory and administrative systems and identify opportunities to simplify and streamline how they interact with their customers, including:</p> <ul style="list-style-type: none"> <li>■ Simplifying forms and using more accessible language</li> <li>■ Reviewing requirements for the provision of information</li> <li>■ Redesigning services around customer needs</li> <li>■ Using alternative delivery channels (e.g. phone and internet)</li> <li>■ Ensuring information is only collected from customers once</li> <li>■ Integrating services across organisations</li> </ul> <p>This work will be taken forward as part of the wider Civil Service modernisation programme including the Quality Customer Service initiative and e-Government (including Public Services Broker)</p>	<b>Effectiveness</b>	All Departments /Offices	Immediate

# Actions on RIA and evidence-based policy-making

	ACTION	PRINCIPLE	BY WHOM	BY DATE
<b>2.1 Regulatory Impact Analysis</b>	2.1.1	<b>Necessity</b> <b>Effectiveness</b> <b>Proportionality</b>	Department of the Taoiseach in co-operation with piloting Departments	a) 2004  b) 2005
	2.1.2	<b>Proportionality</b> <b>Effectiveness</b>	Department of the Taoiseach and Better Regulation Group	End-2004
	2.1.3	<b>Effectiveness</b> <b>Proportionality</b>	Department of Enterprise, Trade and Employment and Departments/Offices	On introduction of RIA
	2.1.4	<b>Effectiveness</b> <b>Proportionality</b>	Department of the Taoiseach	2005
	2.1.5	<b>Proportionality</b>	Departments of Finance and the Taoiseach,  Relevant Departments	On introduction of RIA
	2.1.6	<b>Effectiveness</b> <b>Transparency</b>	Department of Transport, Department of Communications, Marine and Natural Resources and other Departments as appropriate.  Sectoral Regulators	On introduction of RIA



		<b>ACTION</b>	<b>PRINCIPLE</b>	<b>BY WHOM</b>	<b>BY DATE</b>
<b>2.2 Capacity building to support evidence-based policy-making</b>	2.2.1	The capacity for evidence-based policy-making in the public service will be strengthened through greater awareness-raising and training, including specific courses on RIA techniques, as well as modular inputs to wider policy analysis and legislative process training courses.	<b>Necessity</b> <b>Proportionality</b>	CMOD, Department of Finance	Ongoing
	2.2.2	Data management, including the quality and range of statistical enquiries, will be improved.	<b>Necessity</b>	All Departments & Offices, National Statistics Board and the Central Statistics Office	Ongoing
	2.2.3	The requisite competencies to support evidence-based policy analysis will be actively promoted in the Civil Service through the Performance Management and Development System (PMDS).	<b>Necessity</b>	Department of Finance All Departments/ Offices	Ongoing
	2.2.4	These policy competencies will be given special attention for the purposes of promotion and recruitment, including through mechanisms established in 'Sustaining Progress' which allow for the direct recruitment of staff with specialist skills in certain circumstances.	<b>Necessity</b>	Department of Finance	2004

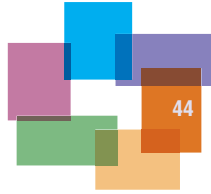
## 3. Actions on institutional change and review

		ACTION	PRINCIPLE	BY WHOM	BY DATE
<b>3.1 Sectoral regulatory reviews</b>	3.1.1	Regulatory reviews of sectors of the economy will be undertaken in order to establish the viability of existing regulatory approaches. This will involve reviewing the regulatory institutions in place, as well as the body of regulation governing particular areas.	<b>Necessity Effectiveness Accountability</b>	Departments & Offices, Better Regulation Group.	From 2004
	3.1.2	Such reviews could be initiated by the Government, by the relevant Minister, or on the recommendation of the Better Regulation Group. It may be open to the Better Regulation Group to organise reviews itself.	<b>Necessity Effectiveness Accountability</b>	Departments & Offices, Better Regulation Group.	From 2004
	3.1.3	The reviews will include assessing the roles of sectoral regulators and the range of functions that have been transferred from central Government Departments to independent regulatory bodies. This will include considering whether there is scope for partial integration of regulatory bodies.	<b>Necessity Effectiveness Accountability</b>	Departments & Offices, Better Regulation Group	From 2004
<b>3.2 Building on existing capacity</b>	3.2.1	The question of the capacity of the Houses of the Oireachtas and its committees to review new regulatory structures will be examined in the context of resources.	<b>Accountability</b>	Office of the Government Chief Whip	Immediate
	3.2.2	The role and resources of the Competition Authority will be reviewed periodically to ensure its ongoing effectiveness in reviewing mergers and acquisitions, in advocating and policing competition policy and studying anti-competitive aspects of particular markets including regulations.	<b>Necessity</b>	Department of Enterprise, Trade and Employment	Ongoing
	3.2.3	The Competition Authority will conduct further reviews of sectors and markets across a range of areas including sheltered sectors. These reviews could be conducted on a stand-alone basis, for example at the request of the Government, or could form a part of a sectoral regulatory review.	<b>Necessity</b>	Competition Authority	Ongoing

	<b>ACTION</b>	<b>PRINCIPLE</b>	<b>BY WHOM</b>	<b>BY DATE</b>
<b>3.3 New structures</b>	3.3.1	A new Better Regulation Group will be established to monitor implementation of the actions arising from this White Paper and will report to the Government on an annual basis. In addition, it will make recommendations to Government on relevant areas for external review. It will also be open to the Group to arrange such reviews.	Department of the Taoiseach	2004
	3.3.2	New measures will be examined to strengthen the role of the consumer in the process of sectoral regulation. In this context, consideration will be given to the establishment of sectoral consumer councils to bring together the concerns of individual citizens. The Government will also consider the case for using resources generated by existing industry levies to support consumer councils. The role and resources of the Office of Director of Consumer Affairs will be reviewed periodically to ensure its ongoing effectiveness.	Relevant Departments	2004
<b>3.4 Review at national level.</b>	3.4.1	Opportunities will be sought to benchmark Ireland's regulatory regime and progress on regulatory reform at international level, including through the OECD, which undertook a major national review of Ireland's regulatory structures and processes in 2001.	Departments of the Taoiseach and Finance	2005
	3.4.2	An audit of the regulatory framework in Ireland will be undertaken which will map the various bodies and reporting arrangements. It will also provide information on the range and type of bodies in Ireland with regulatory powers – whether “rule-makers” or “rule-enforcers”.	Better Regulation Group	2004

## 4. Actions on sectoral regulators/sectoral issues

		ACTION	PRINCIPLE	BY WHOM	BY DATE
<b>4.1 Accountability</b>	4.1.1	The Government will promote a systematic approach to the overview of sectoral regulators by Government Departments and Oireachtas Committees.	<b>Accountability</b>	Office of the Government Chief Whip and relevant Departments	Ongoing
<b>4.2 Structures</b>	4.2.1	Where new sectoral regulators are proposed, they will be established only if the requirement for a regulator can be clearly demonstrated and if responsibility for the sector in question cannot be assigned to an existing regulator.	<b>Consistency</b>	All Departments/Offices	Ongoing
	4.2.2	The Government will assess, on an ongoing basis, the possibilities for rationalisation of sectoral regulators including through the merger of existing regulators and/or through the sharing of common services.	<b>Consistency</b>	Departments of Finance, Transport, and Communications, Marine and Natural Resources	Ongoing
	4.2.3	Strengthened contacts between the sectoral regulators, the Office of the Director of Consumer Affairs and the Competition Authority will be promoted.	<b>Consistency</b>	Relevant Departments, Competition Authority, Office of the Director of Consumer Affairs and regulatory agencies	Ongoing
<b>4.3 Appeals</b>	4.3.1	Proposals for an improved approach to appeals of decisions by sectoral regulators, which will be put forward for consultation with interested parties, will be developed. This could involve, for example: <ul style="list-style-type: none"> <li>■ an appeals body composed of members drawn from a panel of experts with a judicial/legal chair. The same panel and approach could be used for each sector;</li> <li>■ appeals would be on the merit of the regulator's decision. A number of different options would be available to the appeals body (change decision, refer back to regulator);</li> <li>■ legislation would clarify that, given the availability of an appeals process, recourse to the courts would be limited to points of law;</li> <li>■ to prevent use of the appeals structure in a vexatious or delaying manner, there could be disincentives, perhaps in the form of a requirement to lodge a sum of money as well as liability for costs, which might include any wider economic costs arising; and</li> <li>■ the decision of the regulator could stand for the duration of the appeals process.</li> </ul>	<b>Accountability</b>	Better Regulation Group and relevant Departments/Offices.	End-2004



## 5. Actions on Regulatory Procedures and Processes

		ACTION	PRINCIPLE	BY WHOM	BY DATE
<b>5.1 Consultation</b>	5.1.1	Wider and more consistent consultation is a key element of the new Regulatory Impact Analysis approach. Procedures and guidelines will be developed to promote better quality public consultation and to outline a full range of consultation options including "notice and comment" procedures, "calls for comment", and "silence is consent" rules, where appropriate.	<b>Effectiveness</b> <b>Transparency</b>	Department of the Taoiseach, Department of Finance (CMOD/CPMR)	2004
	5.1.2	While the duration of consultation processes may vary from sector to sector or across different branches of Government, norms and standards of consultation will be established within particular areas. Bypassing consultation will be possible, but the exceptions will be set out so that it will be clearer to the end users of regulation what can be normally expected in terms of consultation on routine regulation. Commitments in this regard could be included in customer charters, where appropriate.	<b>Effectiveness</b> <b>Transparency</b>	All Departments/ Offices, regulatory agencies	2004
	5.1.3	Better use will be made of web-based technologies as a pro-active measure to increase coverage of consultation processes.	<b>Effectiveness</b> <b>Transparency</b>	All Departments/ Information Society Commission	Ongoing
	5.1.4	Consideration will be given to the mechanisms for ensuring balanced consultation procedures, taking care to consider the particular requirements of "not-for-profit" groups.	<b>Effectiveness</b> <b>Transparency</b>	All Departments/ Offices	2004
<b>5.2 Alternatives</b>	5.2.1	a) Alternatives to traditional "command and control" type regulation/legislation will be promoted and developed for wider use by Government Departments and Offices. This could include new approaches to regulation, including co-regulation and performance-based regulation (where the overall goal is stated but maximum flexibility is permitted as to how the goal can be achieved). b) Detailed guidance on this approach will be prepared and issued.	<b>Effectiveness</b> <b>Proportionality</b>	a) All Departments/Offices b) Better Regulation Group	End-2004



		<b>ACTION</b>	<b>PRINCIPLE</b>	<b>BY WHOM</b>	<b>BY DATE</b>
<b>5.3 Administrative Procedures</b>	5.3.1	The need for an Administrative Procedures Act, to set out, in one Act, the procedures underpinning the rights and standards of treatment that people can expect in their various dealings with Government Departments and Offices, will be kept under review.	<b>Accountability</b>	Department of Finance	Ongoing
	5.3.2	There will be greater accountability by Government Departments in respect of regulatory management, including reporting on regulations enacted, repealed, revised and restated etc. through the strategy statement/annual report process.	<b>Accountability</b>	All Departments/ Offices	Annual Reports 2004
<b>5.4 Penalties</b>	5.4.1	The Government will examine the issue of empowering Courts and regulators to apply effective and economically meaningful penalties for non-compliance with laws or regulations. The Government will examine the extent to which the criminal justice system can appropriately deal with complex regulatory issues in an efficient manner.	<b>Proportionality</b>	Better Regulation Group in conjunction with Departments with sectoral regulatory responsibilities, Department of Justice Equality and Law Reform and the Office of the Attorney General.	End-2004
	5.4.2	The Government will provide for the indexation of fines and give greater consideration to the linking of monetary penalties/fines to the income/ability to pay of the non-compliant party/body.	<b>Proportionality</b>	Department of Justice, Equality and Law Reform	End-2004
<b>5.5 Public Service Obligations</b>	5.5.1	The rationale and criteria for Public Service Obligations (PSOs) should be clearly set out by the appropriate regulatory authorities/Government Departments and should be kept under ongoing review.	<b>Transparency</b>	Department of Communications, Marine and Natural Resources Department of Transport	Ongoing
	5.5.2	The Government will keep under review the opportunities for developing a complementary approach to regulation, and PSOs in particular, on an island of Ireland basis, including enhancing information sharing on a cross-border basis.	<b>Transparency Consistency</b>	Department of Communications, Marine and Natural Resources Department of Transport	Ongoing
<b>5.6 Case Management</b>	5.6.1	The Courts Service will continue to improve and streamline case management practices in cases relating to sectoral regulation in order to expedite the process. Expert panels of judges will be established within the system to deal with specified cases of competition and sectoral regulation.	<b>Accountability</b>	The Courts Service; Department of Justice, Equality and Law Reform	Ongoing

# Appendix 1 - Regulatory Impact Analysis

## What is Regulatory Impact Analysis?

Regulatory Impact Analysis (RIA) is a policy tool designed to identify and quantify, where possible, the impact of new regulations. It can also be used in the review of existing regulations. In essence, RIA attempts to clarify the relevant factors for decision-making through the comprehensive and systematic compilation of information. It encourages policy-makers to make balanced decisions when considering legislative action that trade off possible solutions to a problem, against the wider economic and distributional goals.

Best practice models of RIA often include the following key elements:

- + **Identification and quantification (where possible) of impacts**  
Any model of RIA must be designed to ensure that all relevant potential impacts are examined, without creating an overly burdensome assessment process. The OECD has noted a trend for overly extensive and unclear tests incorporated within the RIA model.
- + **Structured consideration of alternatives to regulation and of different regulatory approaches**  
State regulation is not always the best option and alternatives to regulation, or different regulatory approaches, need to be examined. Efficient and effective policy action is only possible if all options are considered. This includes the use of available instruments, whether singly or in combination, or the possibility of the State taking no action where the problem can be solved by other means.
- + **Built-in comprehensive, consultation processes**  
Ireland has a long tradition of consultation with affected parties. Until now, however, there haven't been formal measures in place to formalise public consultation processes or to ensure consistency of the process - such as who should be consulted or how to actively engage consumer groups' interest. As well as providing information on the acceptability of a proposal, consultation can be a vital support for evidence-based decision-making, by acting firstly as a source of data and then as a means of ensuring that the assumptions upon which recommendations are made are correct.
- + **Formal consideration of compliance issues (including enforcement aspects, plain language drafting, red tape issues etc.)**  
Consideration should be given, as early in the process as possible, to the issue of compliance. Will there be compliance costs, and if so, who will pay? How can these costs be minimised? Will effective compliance mechanisms be in place when the regulation comes into effect? What criteria for success will be put in place? And will it be obvious that compliance will be taking place?

RIA is designed to encourage evidence-based policy-making by requiring that each element is reported upon and by imposing accountability through the requirement to make the report public. It is intended to establish a standard for rigorous policy work, building on our current procedures. This will ensure that all elements are undertaken and a structured reporting format to provide users with consistent, complete and accessible information is implemented. RIA formalises and provides evidence of the steps that should be taken in policy formulation. It also provides consistency in the presentation of this information in summary form.

## Why introduce RIA?

One important way to achieve the goals of Better Regulation is the use of Regulatory Impact Analysis. This promotes evidence-based policy-making, based on a detailed consideration of the impacts of decisions along with structured participation of stakeholders and citizens. Evidence-based policy is about making better use of research and analysis, in both policy making and practice. RIA by itself is not a substitute for decision-making. Instead, RIA is best used as a guide to improve the quality of political and administrative decision-making, while also serving the important values of openness, public involvement and accountability.

The introduction of Regulatory Impact Analysis is not just a matter of improving the quality of legislation. It must be seen in the wider context of enhancing the capacity of the public service to provide high quality timely analysis to inform policy-making. A structured, rigorous process of impact analysis will ensure the strengthening of analytical competencies in

the public service, and facilitate the wider acquisition of such competencies across management grades.

The enhanced capacity required to operate RIA will support all forms of impact analysis, proofing and evidence-based policy-making - whether or not legislation is involved. RIA will, therefore, help to address the recommendation of PA Consulting in their *Evaluation of the Progress of the Strategic Management Initiative* for 'measures to improve policy development on a service-wide and Departmental basis.'

RIA could also be usefully used when reviewing existing legislation. Extending RIA to local authorities, sectoral regulators and so on, could be considered at a later point. It must be acknowledged, however, that the sectoral regulators already undertake structured public consultation in relation to proposals being developed.

In developing the model, it is crucially important to ensure that RIA does not become an overly bureaucratic exercise, with costs outweighing the advantages. Practical use must take precedence over superficial compliance. The level of analysis required in any instance must be proportionate to the likely impact of the proposal.

## Further context for the application of RIA in Ireland

It is recognised that, in practice, many of the steps in the RIA process are already undertaken when a regulation is being prepared in Ireland. Introduction of a formalised system of RIA will increase the consistency with which these steps are taken and assist in the application of best practice.

Most OECD countries already use some form of RIA when taking regulatory decisions. By 1996, more than half had adopted RIA programmes, up from one or two in 1980. In April 2001, the Government acted on the findings of the OECD Report which strongly recommended introduction of a diagnostic tool, namely Regulatory Impact Analysis (RIA).

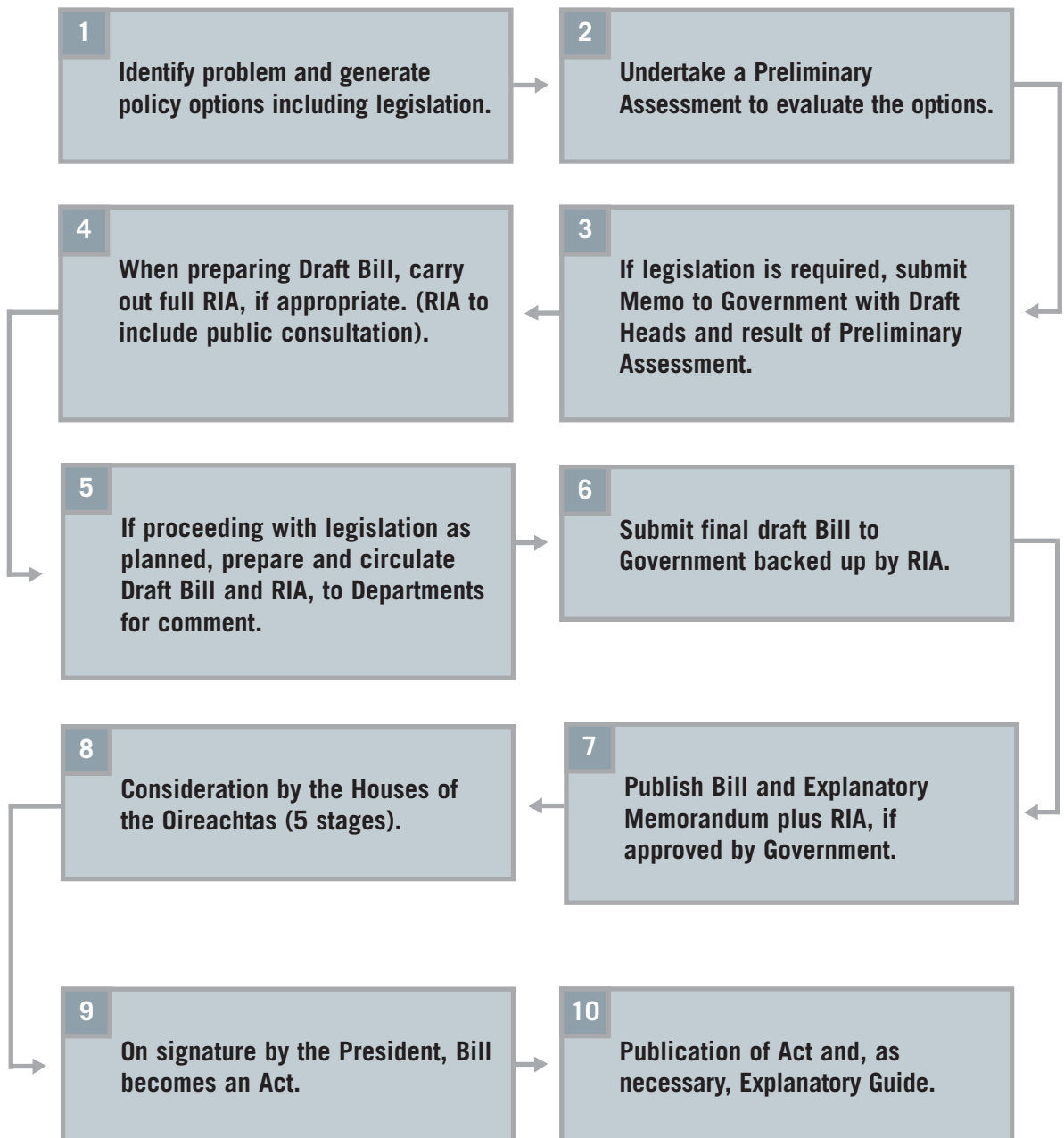
The introduction of RIA at national and EU levels was also recommended by the Report of the EU High Level Consultative Group on Regulatory Quality (Mandelkern Group). On 5 June 2002, the European Commission published a package of measures on Better Regulation. This package includes the Commission's plans for the introduction of Impact Assessment, on a phased basis, for all major Commission initiatives from 2003. The system would be fully operational by 2004/2005. It also requires Member States to carry out an Impact Assessment in certain circumstances.

From 1 July 2002, new proposals for Oireachtas scrutiny of EU business require that a paper on the nature and purpose of EU legislative proposals and an initial indication of possible implications for Ireland be sent to the Joint Committee on European Affairs. RIA might serve as an initial assessment of the implications of a proposal for Ireland for this purpose.

RIA is an aid to decision-making, and does not substitute for, but rather seeks to contribute to, the making of political judgements.



# Appendix 2 - RIA and the Legislative Process



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# Notes



[www.betterregulation.ie](http://www.betterregulation.ie)  
[www.bettergov.ie](http://www.bettergov.ie)