

Better Regulation Task Force

Alternatives to Regulation

This leaflet aims to...

- Inspire you to consider creative ways of addressing policy problems
- Advise you about some pros and cons of each approach
- Suggest some questions worth asking when deciding how to approach policy problems
- Encourage you to read the full report!

The Better Regulation Task Force is an independent body that advises Government on actions to ensure that regulation and its enforcement are:

Proportionate,

Accountable,

Consistent,

Transparent, and

Targeted.

Introduction

Classic regulation, in the form of prescriptive rules, is the most common response to a policy problem. Sometimes, this is the best and most direct way to protect people from harm, or it may be a necessary element in implementing an EU Directive. In many cases, however, an alternative form of implementing policy – either on its own, or in conjunction with other methods – may be the better approach. It is often best not to intervene at all.

Regulatory failure can be worse than market failure.

On the next page, we set out the five main ways of delivering regulatory outcomes. The rest of this leaflet then summarises the pros and cons of each approach, and suggests some questions worth asking when deciding how to solve a policy problem.

For a more comprehensive account, please refer to the main Report: **Imaginative Thinking for Better Regulation**. You can order a copy free of charge from the address on the back of this leaflet, or find it on the Task Force website (www.brta.gov.uk).

The report contains many detailed examples of the possible techniques. It also contains regulatory tips and best practice. And it makes nine recommendations to Government – all of which have now been accepted in full.

Both the report and this leaflet use examples to illustrate the techniques. Each example has its supporters and detractors. But whatever their individual merits, they all show where the technique has been used, so that the interested reader can find out more.

The 5 main types of regulatory tool



No intervention



Information and Education

- Government-provided information
- Reporting requirements
- Technical and Quality Standards
- Naming and shaming



Self-regulation

- Codes of practice (for example of trade associations)
- Co-regulation (codes with statutory backing or other significant Government involvement)



Incentive-based structures

- Creating markets (privatisation)
- Tradable permits / quotas
- Price caps
- Targets
- Taxes
- Rewarding desirable behaviour (tax credits / subsidies / awards)



Classic regulation and its variants

- Exemptions (but better still, design away any unfairness)
- “Comply or explain”
- Voluntary opt-outs
- Sunset clauses (regulation expires automatically unless specifically renewed)

The five alternatives

1 No Intervention

Examples

- Chip pan fires are relatively common, but a ban on chip pans would be unpopular and unenforceable.
- The European Commission had proposed to lower the limit values for certain car emissions tests. Following a critical analysis from the UK, in which it was shown that the benefits did not justify the costs, the Commission proposal was dropped. A more proportionate Directive was subsequently adopted.

Remember – it is often better not to intervene

2 Information and Education

Examples

- Hard-hitting advertising campaigns relating to drink-driving were introduced to influence attitudes.
- The Energy Label, produced by the British Standards Institution to provide information about the energy consumption of domestic refrigerators, is used by consumers and has led to a change in perspective on the part of manufacturers.
- To help consumers compare similar products, information about credit cards is required to be presented in a particular way.

Useful because tends to...	But in danger of being...
<ul style="list-style-type: none">■ Allow individuals and business to make informed decisions.■ Leave decisions to individuals and managers.■ Improve the working of the market.■ Be a less intrusive form of regulation.	<ul style="list-style-type: none">■ No better than classic regulation – requiring the provision of information can be costly and bureaucratic.■ A barrier to entry.■ Too much of a good thing – information overload.

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Self-regulation

Examples

- The Code of the Portman Group is agreed by companies responsible for producing alcoholic drinks in the UK market. Developed in response to fierce criticism of the marketing of alcopops, an offending product can be subject to a “Retailer Alert” and removed from the shelves. The Code relates to the promotion, naming and packaging of drinks and has been approved by the Office of Fair Trading.
- The Advisory, Conciliation and Arbitration Service (ACAS) code of practice on disciplinary and grievance procedures is a code with statutory backing, and is therefore an example of *co-regulation*. The law requires Employment Tribunals to consider how far employers have complied with the code when assessing claims of unfair dismissal.

Useful because tends to...	But in danger of being...
<ul style="list-style-type: none">■ Offer a cheaper alternative to classic regulation, with few direct costs to Government.■ Be more adaptable to change in society.■ Exclude the courts (thus, cheaper for society).	<ul style="list-style-type: none">■ Toothless, especially if the relevant trade association is weak, or if large companies dominate.■ Anti-competitive, providing a barrier to entry for smaller firms.

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Incentive-based structures

Examples

- Price caps have been imposed on the electricity Distribution Network Operators to simulate the operation of a market.
- In order to reduce carbon dioxide emissions, a carbon emissions trading scheme has been introduced. Companies are allocated the right to emit carbon dioxide up to a certain limit. If they want to emit more they can buy the right (permit) to do so from another company in the scheme.
- Targets are used in the field of education to give schools an incentive to achieve better standards.
- Tax on cigarettes provides a financial incentive to quit smoking.
- Tax incentives are used to boost research and development spending by companies. Some spending on R&D can be deducted from the tax the company has to pay.
- The Working Well Together Campaign was introduced to encourage a change of health and safety attitudes and practice in the construction industry. The Campaign introduced several awards, including a cash prize for the best small construction firm.

Please see over for pros and cons ►

Type of incentive	Useful because tends to...	But in danger of being...
<i>Creating a competitive market</i>	<ul style="list-style-type: none"> ■ Increase efficiency and lower costs. ■ Reduce prices for consumers. 	<ul style="list-style-type: none"> ■ A big upheaval to the businesses and their workforce.
<i>Creating a market in quotas and permits</i>	<ul style="list-style-type: none"> ■ Be more flexible than classic regulation, which is generally the only alternative. ■ Provide incentives for companies to meet Government objectives in the most efficient manner. 	<ul style="list-style-type: none"> ■ Tricky to set up – disputes about initial allocations are inevitable. ■ Complex – expert advice would be needed.
<i>Price caps</i>	<ul style="list-style-type: none"> ■ Simulate the virtues of the market where a natural monopoly exists. ■ Lead to efficiency gains. 	<ul style="list-style-type: none"> ■ Set at an inappropriate level: they require a lot of information from industry.
<i>Targets</i>	<ul style="list-style-type: none"> ■ Act as a powerful motivator. ■ Allow monitoring of achievement. 	<ul style="list-style-type: none"> ■ A source of bias, distorting activity. ■ Misleading, because difficult to set at the right level and because quality is difficult to measure. ■ ‘Fiddled’: has led to dishonest behaviour.
<i>Taxes as regulatory devices</i>	<ul style="list-style-type: none"> ■ Leave discretion to the individual. 	<ul style="list-style-type: none"> ■ Ineffective in preventing harm if the value of the activity is worth more than the tax.
<i>Rewards (tax credits, awards etc...)</i>	<ul style="list-style-type: none"> ■ Act as powerful incentive. ■ Make people feel good. 	<ul style="list-style-type: none"> ■ Resource-intensive to set up and monitor. ■ A waste of resources if badly targeted.

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Classic regulation and variants

Examples

- Making the wearing of motorcycle helmets compulsory has led to fewer injuries.
- In the area of employment law, classic regulation is used to guarantee minimum rights for employees.
- The VAT registration regulations include a small firm exemption. A small firm has to register for VAT only if its total taxable supplies exceed a specified threshold.

Useful because tends to...	But in danger of being...
<ul style="list-style-type: none"> ■ Provide a level playing field. ■ Be clear. ■ Be the principal way of implementing an EU Directive. ■ Act as a visible sign that Government is “doing something” about a problem. 	<ul style="list-style-type: none"> ■ Costly and bureaucratic. ■ Unenforceable. ■ A burden, especially on small businesses (can consider exemptions). ■ Inflexible – difficult or slow to change (can consider sunset clause). ■ Worse than doing nothing, with unintended consequences.

Many forms of unintended consequences are associated with classic regulation.

Examples:

- Power is shifted
- Incentives are altered
- The market is changed

in ways that need to be properly worked through, to prevent unexpected outcomes. Brainstorming all the possible impacts, thinking “out of the box” and consulting widely may all help to prevent some unintended consequences.

Alternatives to Regulation

When choosing which regulatory tool to use, there are no hard and fast rules. To help make sure the most effective and proportionate choice is made, here are five questions you might want to ask.

Deciding on a regulatory tool: five key questions

1 *What kind of harm is being dealt with?*

- Where the likelihood of harm is small, it is worth considering whether it would be better to do nothing.
- Sometimes there is pressure for action when something has gone wrong. But better enforcement or information may be more appropriate than new law.

2 *What are the unintended consequences of any proposed action?*

- Most intervention has unintended consequences.
- It might be necessary to think laterally in order to consider fully all the possible consequences of intervention. Careful consultation will help.

3 *Is there a role for a creative approach?*

- Self-regulation or incentives may not work in all circumstances.
- Self-regulation may work where there is a strong trade association, but be a weak option if their sanctions do not bite.
- A system of trading permits and quotas may work well if there are sufficient participants in the market, but may be inappropriate if the market is dominated by one large firm.

4 *Is classic regulation necessary?*

- Other options should be considered first.
- On some occasions, the issue may already be covered by existing legislation, and the solution might be better enforcement or more publicity.
- Sometimes, classic regulation may work best in conjunction with other measures.
- Even when it is decided that classic regulation is the best way forward, it may still be desirable to consider flexible measures such as exemptions and “comply or explain” approaches. Similarly, sunset clauses can help to overcome the inflexibility of classic regulation in fast-developing areas.

5 *How difficult or expensive would enforcement be?*

- It is rare for compliance with the law to reach 100% even when there is active enforcement. Another method may be more effective in changing behaviour.
- Before any regulation is introduced, the resources that will be needed to ensure the desired level of compliance must be considered.
- Enforcement measures may be necessary for tools other than classic regulation. For instance, a system of targets may require monitoring.

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