



Roinn an Taoisigh  
Department of the Taoiseach

# Ireland's Better Regulation programme

Mary-Clare O'Sullivan





# Content of presentation

1. Background to Better Regulation Programme
2. Progress to date in implementation
  - White Paper *Regulating Better* (Jan 2004)
  - Better Regulation Group
  - RIA and consultation
  - Statute Law Revision, Restatement & consolidation
  - Regulatory Appeals
3. Questions/comments





# Background



- One strand of Public Service modernisation programme (SMI) being overseen by Department of the Taoiseach.
- Better Regulation Unit established in 2000
- Participation in OECD Review 'Regulatory Reform in Ireland' 2000-2001
- Liberalisation of former state monopolies
- EU central element of the Lisbon Agenda





Roinn an Taoiseach  
Department of the Taoiseach

# Better regulation

- Improving the quality and minimising the quantity, where possible, of regulation
- Better Regulation not necessarily de-regulation
- Evidence-based decision making
- Establishing core principles around what gets regulated in society and why? How best to achieve policy outcomes?





# Why focus on regulation?

- **Performance of Economy:** reduced / better quality regulation leads to increased competitiveness & growth
- **Better Governance:** quality, evidence-based policy making & improved consultation, leads to increased confidence & public satisfaction in policies
- **Modern Public Service:** Skilled and well-resourced public service leads to increased clarity, coherence, effectiveness and accessibility of regulation





# Main findings of OECD (2001)

- Good start already made, but only a start
- Historically, we favour producers over consumers
- Upgrade administrative capacity for better regulation e.g. through introduction of Regulatory Impact Analysis
- Accelerate reform and competition in key sectors.





Roinn an Taoisigh  
Department of the Taoiseach

# Response to OECD

- Consultation process leading to publication of White Paper Regulating Better (Jan 2004)
- 6 principles of better regulation & action programme





# Action Programme

## Actions include:

- Institutional arrangements for implementation
- RIA & Evidence-based policy-making
- Statute Law Revision, Restatement Consolidation
- Sectoral Regulators / Sectoral Issues





Roinn an Taoiseach  
Department of the Taoiseach

# Key areas of progress

- Establishment of Better Regulation Group
- Regulatory Impact Assessment (RIA) & consultation (*necessity, transparency, proportionality*)
- Statute Law Revision and consolidation (*necessity, transparency, consistency*)
- Regulatory Appeals (*accountability*)
- Regulatory Mapping Project (*necessity, accountability*)





# Better Regulation Group

- Established to monitor implementation of the White Paper and report to Government
- Composed of senior officials from key Regulatory Department, Independent Regulators and Chair of National Consumer Agency
- Meets regularly and has established a number of sub-groups to progress items in the White Paper





# Regulatory Impact Analysis

- Since 21 June 2005, RIA must be applied to all proposals for primary legislation, significant Statutory Instruments, draft EU Directives & significant EU Regulations
- RIA is a tool used to assess the likely effects of a proposed new regulation or regulatory change





# Regulatory Impact Analysis

- RIA requires officials to perform a step-by-step analysis including consultation and prepare a document detailing the results of this analysis
- This includes setting out the objectives of the proposals, their costs, benefits and impacts, details of consultation and how enforcement will be achieved





# Steps of a RIA

1. Description of **policy context, objectives & policy options/choices**
2. Identification of **cost, benefits & other impacts of options**
3. **Consultation** including with Government Departments, consumer & other interests
4. Description of how **enforcement and compliance** will be achieved
5. **Review** - how will performance of regulations be measured?





# RIA

- The RIA document is circulated to all Government Ministers in advance of the Cabinet agreeing to draft legislation
- RIAs should also be published along with the Bills
- Consultation Guidelines for public sector bodies published in July 2005





# Benefits of RIA

- More explicit discussion of costs, benefits and impacts
- Can detect hidden side effects
- Ensures more consultation in advance of regulations
- Ensure compliance and enforcement considered before regulations are drafted





# Alternatives to Regulation

- Should be considered as part of RIA
- Could include alternatives to regulation, alternative forms of regulation & alternative implementation models
- Guidance given as part of RIA Training & Guidelines





# Some forms of regulation

Command-and-control regulation	Most regulations
Co-regulation	Medical Council Law Society
Self-regulation	Advertising Standards Authority
Performance-based regulation	Emission standards





# Alternatives to regulation

<b>Subsidies</b>	Tax breaks for use of public transport
<b>Taxes</b>	Plastic bag tax
<b>Information campaigns</b>	Road safety advertisements
<b>Emissions trading</b>	C02 trading scheme



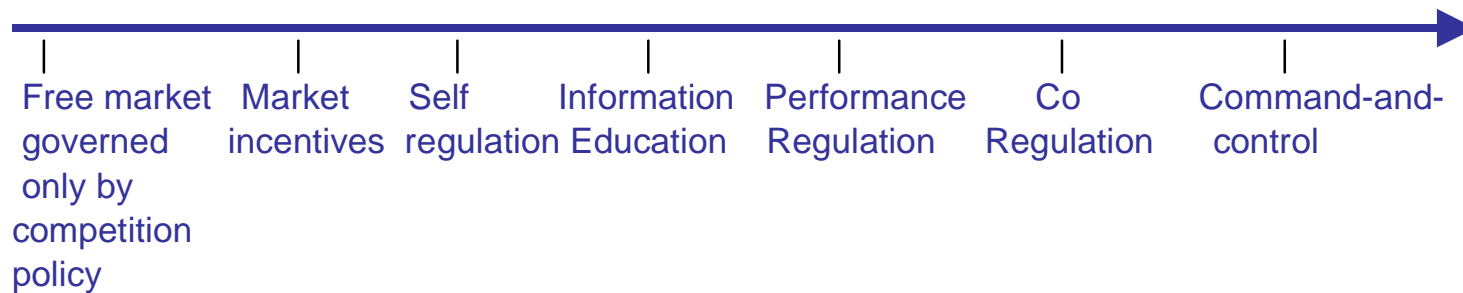


Roinn an Taoiseach  
Department of the Taoiseach

# Alternatives and options

## Market driven solutions

## Government driven solutions



*Source: adapted from OECD 2002,52*





# 'Command-and-control' regulation

- Law and state-centred process(es) of legislation action combined with administrative enforcement (Parker and Braithwaite)
- Coercive rather than incentive based





## Command-and-control :Possible pros

- Fixed standards imposed quickly & actions/goods which do not confirm instantly outlawed
- Indicates Govt taking a stand for/against particular activities
- Outlaws behaviour involving significant danger to public safety
- Some may only comply with regulations when they are strict and strongly enforced





# Command-and-control

## Possible cons



Roinn an Taoisigh  
Department of the Taoiseach

- Leads to overly complex and bureaucratic rules and procedures which can be costly
- Enforcement often expensive and evasion possible through creative compliance
- Can be difficult to determine most appropriate levels of performance
- Can increase risk of regulatory capture since relies on industry for information on standards and limits
- Overly dogmatic and intrusive





# Self-regulation: Possible pros

- Often cheaper than command-and-control with less direct costs to the State
- More adaptable to societal and technical change
- Excludes the Courts (cheaper and reduces the case load of the Courts)
- Promotes interaction in the public interest amongst competitors
- Compliance costs lower because they are designed by the industry





# Self-regulation

## Possible cons

- Can be ineffective since there may not be adequate enforcement
- Little action may be taken to curb/change behaviour which generates significant profit
- Can be anti-competitive and result in barriers to entry





# Co-regulation: Possible pros

- Reduces State costs because costs borne by profession/industry
- Encourages greater responsibility within sectors/industry for performance
- Harnesses the expertise and knowledge of industry/professional association
- Can increase compliance levels since industry/profession involved in monitoring behaviour





# Co-regulation: Possible cons

- Can encourage anti-competitive behaviour and barriers to entry
- Needs careful design based on principles of transparency and accountability to avoid barriers to competition
- Higher risk of regulatory capture given close relationship between Government and industry/profession
- Enforcement may be weaker





# Performance-based regulation: Possible pros

- Firms and individuals can identify efficient & lower cost processes to achieve desired outcome
- Encourages innovation and more widespread use of technology
- Regulations can be simpler and clearer since they involve only specification of objectives and outputs instead of prescriptive detail and processes





# Performance-based regulation

## Possible cons

- Can be difficult to develop since it requires precise and unambiguous specification of objectives and outcomes
- Requires operational guidelines to support firms and individuals with compliance. These can then become de facto prescriptive regulations





# Information/education campaigns

## Possible Advantages

- Less intrusive
- Allows informed decisions
- Useful where enforcement difficult/ costly

## Possible Disadvantages

- Can be expensive to run campaigns
- Can be costly for consumers to process information





# Information/education campaigns

## Disadvantages

- Difficult to identify causal link between campaigns, heightened awareness and behaviour
- Information/risks may not be understood
- Information may be disputed/inaccurate





# Economic instruments – Possible pros

- Less costly in achieving policy objectives
- More flexible than command & control
- Encourages innovation and technical change
- Involves low levels of discretion so reduces risk of capture
- Incentives to meet objectives efficiently
- No heavy burdens of information gathering and provision
- Leaves discretion to individuals/firms





## Economic instruments: possible cons



Roinn an Taoiseach  
Department of the Taoiseach

- Ineffective if value of activity more than the tax or cost of reducing it more than the subsidy
- May need complex systems of rules
- May need enforcement mechanisms to reduce tax avoidance/prevent information being withheld
- Difficult to predict the effects of incentives. May involve costly research and calculations
- Signals certain levels of undesirable behaviour acceptable





# Statute Law Revision



- Review of all legislation enacted before foundation of state
  - over 26,000 Acts examined
  - 9,328 already repealed (pre and post 1922 legislation)
  - 12,621 weren't applicable to Ireland
- Statute Law Revision (pre-1922) Act 2005 enacted on 18 December 2005 repealed 206 obsolete/ redundant Statutes
- Statute Law Revision Bill 2006 (published shortly)
  - Will repeal over 3,100 obsolete Statutes and positively retain some 1300 Statutes
  - Repeal as many as enacted since 1922





# Statute Law Restatement



- Statute Law (Restatement) Act 2002
- Administrative consolidations, certified by the Attorney General, which do not change substance of law. Do not require the approval of Oireachtas. Can be cited in court as accepted prima facie evidence
- Government agreed Law Reform Commission would undertake programme of restatement and public consultation launched
- Proposals for restatement currently being considered





# Consolidation

- White Paper stated that a stronger programme of consolidation needed
- A number of programmes of review and consolidation underway e.g.
- Land and Conveyancing Law Reform Bill 2006
- Social Welfare Consolidation Act 2005





# Regulatory Appeals

- White Paper committed to the introduction of an improved approach to appeals of decisions of sectoral regulatory authorities
- Consultation paper prepared and published in July
- Advertisements in the national media seeking views





Roinn an Taoisigh  
Department of the Taoiseach

# Content of consultation paper

- Focussed on 6 key regulatory authorities
- Outlined existing appeals mechanisms
- Identified issues to be considered in designing/improving appeals mechanisms





# Preliminary findings

- Judicial review is always a right.
- A very wide range of additional mechanisms exist across the Irish Public Service, with some more developed than others.
- Some not enshrined in statute but operated on an administrative basis.
- Different approaches exist in statute in relation to appeals between the various regulatory authorities.





# Preliminary findings

- Appeals Panels/Tribunals in place in most of the sectors under consideration.
- Very wide range of mechanisms and experiences exist.
- The number of appeals taken varies across the sectors.





# Some key issues

## Form of appeals body

- Who should hear appeals? - the Courts or an appeals body?
- If a Court is used, should this be a general or specialist Court? (or a Court supported by experts?)
- If an appeals panel is used, should the panel be appointed for a fixed term or be formed on a case by case basis?





# Some key issues

- If an appeals body is considered appropriate, should it be cross-sectoral or cover just one sector?
- How can the availability of sufficient independent, non-conflicted experts be ensured?
- Should there be a time limit for hearing appeals?





# Some key issues

## Scope and grounds of appeal:

- Should the introduction of new evidence be allowed at appeals stage?
- If there is an appeals body, should recourse to the Courts be limited to points of law?
- Should the appeals body have the power to replace the regulator's decision with a new decision?





# Some key issues

- Should the regulatory decision stand during the appeals process?
- How can vexatious appeals be avoided while at the same time ensuring that appeals mechanisms are accessible?





Roinn an Taoisigh  
Department of the Taoiseach

# Next steps on appeals

- 30 submissions (7 more expected) being considered
- Synthesis document being prepared and considered by the Better Regulation Group





Roinn an Taoisigh  
Department of the Taoiseach

# Other areas

- Electronic Statutory Instruments
- Mapping of Regulatory Framework
- Survey of Business Attitudes to Regulation
- Monitoring and participating in groups covering better regulation at EU level. Ireland part of the 6 presidency initiative on better regulation





# Next steps

- Publication & Enactment of second Statute Law Revision Bill
- Publication of results of Business Survey
- Development of proposals on appeals
- Piloting & roll-out of new procedures to allow Statutory Instruments be made available in electronic format faster than at present
- Regulatory Mapping database
- Review of RIA





# Any questions?



Further information:

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

[http://ec.europa.eu/enterprise/  
regulation/better\\_regulation](http://ec.europa.eu/enterprise/regulation/better_regulation)

E-mail: [betterregulation@taoiseach.gov.ie](mailto:betterregulation@taoiseach.gov.ie)

