

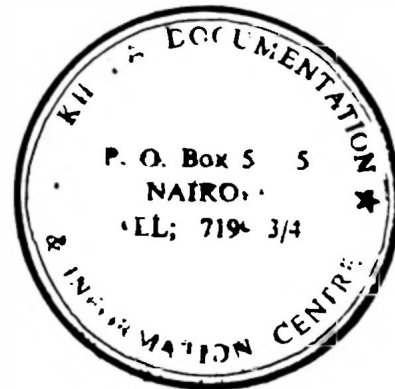
Thinking About Regulating?

The Better Regulation Guide

Private Sector Development Division

Kenya Institute for Public Policy Research and Analysis

Special Report No. 1
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Nairobi
Kenya

KIPPRA in Brief

The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is an autonomous institute whose primary mission is to conduct public policy research leading to policy advice. KIPPRA's mission is to produce consistently high quality analysis of key issues of public policy and to contribute to the achievement of national long-term development objectives by positively influencing the decision-making process. These goals are met through effective dissemination of recommendations resulting from analysis and by training policy analysts in the public sector. KIPPRA therefore produces a body of well-researched and documented information on public policy and in the process assists in formulating long-term strategic perspectives. KIPPRA serves as a centralized source from which the government and the private sector may obtain information and advice on public policy issues.

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Bishops Garden Towers, Bishops Road
PO Box 56445, Nairobi, Kenya
tel: +254 2 719933/4
fax: +254 2 719951
email: admin@kippra.or.ke

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KIPPRA acknowledges generous support by the European Union (EU), the African Capacity Building Foundation (ACBF), the United States Agency for International Development (USAID), the Department for International Development of the United Kingdom (DfID) and the Government of Kenya (GoK).

Foreword

For developing countries to win the war against poverty, it is necessary that they seek to create conducive conditions for the private sector. It is the private sector that creates jobs and generates revenue that governments require to provide essential services. In this age of globalisation, the private sector must be globally competitive in order to exploit the benefits afforded by world trade. For the private sector to be competitive, it is important that transaction costs of doing business be reduced as much as possible.

Unfortunately, the private sector in many developing countries operates under fairly unfavourable conditions. In particular, many developing countries are characterized by complicated and costly regulatory and licensing requirements for business. Such regulations increase the transaction costs and therefore act as a barrier to the entry and expansion of businesses. This regulatory environment reduces the ability of developing countries to fight poverty effectively.

Government legislation and regulations, while necessary in any modern society, impose a considerable cost burden on businesses. The regulatory framework of a country affects all businesses in that it imposes costs of compliance – costs that are passed on to the final consumer. As a result, the extent of regulation affects the competitiveness of Kenyan businesses. Kenya's statute books, as in many other developing countries, are full of unnecessary rules and requirements. The impact on businesses, especially small businesses, is high and this significantly affects their profitability and their ability to generate sustainable employment. In other words, over-regulation in Kenya can constrict employment opportunities.

On the other hand, well thought out, sensibly enforced regulations, limited in scope to what is necessary are consistent with an open, innovative and thriving business community. Poor regulations have the opposite effect of stifling innovation, investment and job creation. Every effort must be made to do away with regulatory constraints unless they are necessary for the protection of public health, public safety and the preservation of the environment. An appropriate regulatory framework can make an important contribution to building of a thriving economy and to alleviation of poverty.

The purpose of *The Better Regulation Guide* is to set out a framework within which legislation and regulations should be designed, and therefore help in simplifying the regulatory environment for business.

I strongly recommend *The Better Regulation Guide* to all those in government who are involved in designing regulations and also those in the private sector who are affected by the legislation and regulations. I believe it is an important contribution to the improvement of the enabling environment for business in Kenya.

The guide is prepared by the Private Sector Development Division of KIPPRA under the Simplifying the Regulatory Environment for Business Unit, formerly the Deregulation Unit in the Ministry of Labour and Human Resource Development. KIPPRA greatly acknowledges with gratitude financial support from the Department for International Development (DFID), which has made the preparation of this guide possible.

Mwangi S. Kimenyi
Executive Director
Kenya Institute for Public Policy Research and Analysis
May 2002

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Introduction

"If it is not absolutely necessary to make a law, it is absolutely necessary not to!" Anonymous

"The pathway to demise is paved with good intentions." The same can sometimes be said of regulation:

The purpose of this guide is to provide a framework to improve the quality of regulations in Kenya. It is intended as a reference for policy makers and regulators. It is for those who make recommendations or decisions as to whether new regulation is necessary and if so, what form it should take.

- some regulations work well at first, but as times change, those same regulations may not work as well as they once did
- some regulations go too far - and deprive businessmen and women of the freedom to be innovative, take risks, and make their own judgements
- some regulations don't go far enough - this can result in poor health and safety standards and environmental problems
- some regulations are ill conceived, often because the costs of complying with certain regulations have not been properly weighed against the benefits they generate
- some regulations seek to protect businessmen and women from "unfair competition" with the result that those businesses ultimately become uncompetitive
- some regulations are well designed and productive, but lose their impact because they are not enforced properly
- some regulations could be helpful and facilitate business, but their productive potential is lost, because no one knows about them

The problems created by bad regulation can take the form of higher costs, wasted time and energy, restrictions on choice, inflexibility, stifling of initiative and missed opportunities. In short, they lead to lower economic growth and higher unemployment.

Achieving "Better Regulation" is about:

- **having fewer, simpler rules and regulations**
- **eliminating or simplifying regulations that hinder the ability of businesses to innovate and grow**
- **having laws which set objectives and leave businesses free to decide how best to achieve those objectives**

- **having a legal framework that replaces the concepts of control and punishment with facilitation and compliance**
- **having a legal framework that motivates innovation, growth and improvement in business performance by encouraging exposure to competition**
- **retaining necessary environmental, consumer, health and labour standards.**

Kenya is striving to promote business confidence and competitiveness, and is committed to stimulating economic growth through fewer, better, simpler, less burdensome regulations.

The purpose of this guide is to provide a framework to improve the quality of regulations in Kenya. It is intended as a reference for policy makers and regulators. It is for those who make recommendations or decisions as to whether new regulation is necessary and if so, what form it should take.

It describes best practice at various stages:

- when deciding whether to regulate
- when determining the best regulatory option
- when deciding on implementation and enforcement mechanisms
- when determining what review and monitoring arrangements to set up.

The guide highlights four fundamental themes which underpin the design of good regulations:

Consultation

Proportionality

Think Small First

Choose Goal-Based Regulations.

1

Do You Need to Regulate

Ask the Following Questions

The following is a list of questions to ask when you are considering what advice to give your Permanent Secretary on an issue or problem where regulation might be appropriate.

1. What is the issue or problem?
2. Whom does the issue or problem affect? Which Departments or Ministries have an interest in the matter?
3. What would happen if no action was taken? What would be the risk, and how great would it be?
4. To what extent is it possible to solve the issue or problem through regulation - can government realistically do anything about it?
5. What are Kenya's international commitments?
6. Are there mechanisms other than regulation, which would achieve the intended objectives more cost effectively?
7. What are the likely direct and indirect costs of compliance with each alternative?
8. What is the likely impact of each option on businesses, on the public and on the environment?
9. How would each option be managed and enforced, by whom, and at what cost?
10. Are the proposed enforcement mechanisms practical, realistic and cost effective?

Understand the Issue

You cannot decide how to tackle an issue or a problem until you understand it properly. Appropriate questions to ask include:

- why is the current situation unsatisfactory, and what are the obstacles to improvement?
- who is asking for action and why?
- is the case for change convincing and is it supported by evidence?

If there is a case for safe-guarding the public, people at work or the environment, you will need to identify how serious the danger is. You will need to assess the risk of the hazard occurring and how serious its effect could be.

Risk assessment is a technique for considering the various risks associated with a particular situation, examining whether controls are necessary, and if so, what form they should take.

A risk assessment must include an analysis of the costs and benefits of each option under consideration. (See Appendix II for a guide to conducting a risk assessment.)

Not all regulations, however, are introduced to deal with risks. For example, a regulation may be thought to be necessary to ensure fairness or to enable markets to develop. In such cases, risk assessment may not be appropriate.

Risk Assessment:

Consider people dying from electrocution (the harm) as the result of the sale of a dangerous consumer product (the hazard). If in the last ten years, there have been twenty reported deaths resulting from the use of this product, the risk may be estimated to be two deaths per year.

Remember:

- **action must be in proportion to the risks involved**
- **action must not impose any unnecessary burdens on business in relation to the likely benefit.**

Consider the Alternatives

For any issue or problem, there will be a range of possible solutions. They may have very different effects and implications. Making new laws may be one of the solutions but it may not necessarily be the best solution. Think about using a combination of approaches - some of the options and alternatives you might consider are set out below:

1. Do Nothing

Intervention may not make things any better - sometimes it can create more problems than it solves. The problem may solve itself, or it may be better solved by others, especially if the cost of government intervention outweighs the benefits. Regulation may simply shift the problem elsewhere.

Market forces such as consumer choice, customer loyalty, competition and innovation may be a faster or more reliable method of solving the problem you have identified.

Rail Safety:

Burdening the national railway with unnecessarily strict safety requirements may result in increased rail fares. This is likely to increase the number of journeys that people make by other forms of transport, such as car travel, where the risks are far greater. Regulations which increase the safety, but also the cost of rail transport, may increase the risk to the people on the roads.

You must be very sure that Government can solve the problem by regulating, and that the cost of doing so will not outweigh the benefits you are expecting.

2. Review Existing Law

Consider whether the problem arises, either directly or indirectly, out of existing regulations. Would existing regulations work better if they were simplified or targeted more directly at the problem? Perhaps the problem arises because existing regulations are not enforced properly, or because people do not know about or understand the regulations. The better solution may be to inform people about the existence of the regulation, and about how to comply with it. Alternatively, enforcement may be the solution.

Scrap Metal Act (Cap 503):

This Act provides that a licensed dealer cannot part with, disfigure or change the form or shape of a piece of scrap metal within 15 days of its purchase, except with the written approval of a senior police officer. It also requires the dealer to make sure that every purchaser or supplier of any piece of scrap metal signs a transaction note. This Act was intended to prevent the theft of metal for scrap, but it places a heavy compliance burden on dealers, and is almost impossible to enforce.

3. Improve Information

Sometimes the Government feels it is appropriate to intervene to prevent people from being exposed to unnecessary hazards.

But the Government may neither be the best judge of what an unnecessary hazard is, nor of what the best solution is. Often it is better to let the people decide for themselves, with the Government limiting its intervention to ensuring that people have access to all the information they need to make an informed decision.

Cigarettes - A Health Risk: It may be more effective for governments to require that cigarettes are properly labelled so that the public is fully informed of the health risks associated with tobacco, rather than to impose a ban on the sale of cigarettes.

4. Introduce a Voluntary Scheme, Guidelines or a Code of Practice that is not legally binding

Voluntary schemes may work in a situation where public and private interests coincide, and incentives for change result from mutual interest rather than sanction and punishment.

Examples include non-mandatory codes of practice, ratings on industry standards and agreements on disclosure.

Export of Horticulture:

It is to the advantage of the horticultural export industry as a whole that the market perceives the standard of Kenyan horticultural exports to be high. The representative industry association, therefore, has an incentive to maintain this reputation, and to introduce to its members codes of practice and accreditation standards that reflect international best practice pertaining to horticultural exports.

5. Consider a Code of Conduct that is Legally Binding

A legally binding Code of Conduct can be used if the relevant Act allows it.

Codes can set out circumstances where a regulatory authority may take action. Codes can generally be altered more easily than regulations, and are therefore easier to update. They are also more flexible than mandatory requirements.

Code of Conduct:

The Institute of Certified Public Accountants of Kenya (ICPAK) regulates the behaviour of its members with a Code of Conduct that adheres to international best practice standards. It also has an internal review procedure through which complaints concerning conduct are investigated, and provides mechanisms for sanctioning defaulting members.

The Codes themselves as well as updates need to be made easily accessible so that they do not cause uncertainty, which can be expensive for small organisations.

6. Self-Regulation

Sometimes it is more useful for a profession or industry to have an outside authority monitoring the behaviour of its members than for government to do it.

Self-regulation can be a useful approach if an outside body with a regulatory role has specific expertise not available within Government. Remember, rules made by an outside body can have legal force if the primary legislation provides for this.

The Kenya Medical Association: Collectively the profession has an incentive to regulate itself to maintain its credibility and professionalism.

With self-regulation, ministries may not be able to control the detailed content of the rules, and care needs to be taken to ensure that public, not private, interests are being protected. Self-regulation can be used by insiders to create barriers to entry. Correct and appropriate design of the primary legislation can guard against this risk.

7. Economic Incentives

Economic incentives can influence a change in behaviour and have also been shown to stimulate innovation. This form of intervention can remove the cost of enforcement from the regulators, and allows businesses (and in some cases markets) to determine their own trade-offs.

Recycling: Recycling of rubbish and waste reduction can be encouraged by economic incentives. For example, payment can be made for waste properly deposited at a waste disposal facility.

8. Risk-Based Insurance or Risk-Pricing

Insurance markets can be used as an alternative to direct regulation by requiring business to insure itself against injury or damage. This allows the market to price risk.

Workman s Compensation: Businesses are required to insure the safety of their staff whilst at work. The safer the working environment, the lower the insurance premium. Business owners are left to determine the most cost-effective mechanism for ensuring the safety of their workers.

9. Licensing

Licensing can be an effective way of controlling or restricting unsuitable operators, but it can also lead to abuses of power and to unnecessary and time-consuming bureaucracy. Licensing inherently restricts entry to markets, and therefore competition. Where licensing is used to control resources such as radio wavelengths, or to preserve scarce resources such as limited wildlife or fish, it is important that competition is not restricted. In these cases, the granting of a licence is dependent on the ability of applicants to demonstrate the capacity to operate within defined health, safety and environmental parameters.

Licensing rules, that are not related to the regulation, are not desirable.

10. Direct regulation

Finally, consider regulation whereby requirements are laid down directly in statute and enforced. One of the advantages of regulation is that by laying down standards directly, you can avoid complexity and be seen to be fair. Law-making, however, is a lengthy and costly procedure. Regulations can also be inflexible, discourage innovation and be expensive to monitor and enforce. They can quickly become outdated and require frequent and expensive revisions. Even if direct regulation is the best option, you should avoid being overly prescriptive.

Wherever possible, regulation should specify the goal and provide for businesses to decide how best to achieve this goal. It is important to back up goal-based regulations with carefully drafted guidelines or codes of practice. It is also important to focus on achieving compliance rather than just punishing breaches. Above all, it is important to **KEEP IT SIMPLE.**

2

Designing Effective Regulation

The Decision to Regulate

Before making any firm recommendations to your Permanent Secretary or Minister, you must study the most likely options. This will help you to make sure that your assumptions about the need to regulate are justified, and that your proposed way of dealing with the problem is appropriate. Consultation, with stakeholders within and outside of government, is necessary. There can be a few exceptions to this procedure in very urgent or sensitive cases.

Consider carefully which sectors will be affected by the proposed regulations when you decide who to approach both within and outside of Government.

Designing the Regulation

Careful consideration of four fundamental themes underpins the design of good regulations. These are:

1. Consultation:

- **Within Government:**

Included in the design phase, a key step is consultation with Departments, Executive Agencies and Non-Departmental Public Bodies that have an interest in the matter.

Consider what enforcement issues are raised by your proposals. Enforcement bodies must be identified and consulted.

- **Outside Government:**

You should consult all involved groups, including business associations, businesses, citizens groups, voluntary organisations and the general public. Make it clear that you are looking for views and information on an informal basis, and that any proposals must be approved by Ministers and followed by a full and formal consultation. This will help you to generate the widest range of options.

2. Proportionality

You should be very clear about the nature of the problems you are trying to solve, and match the regulations as closely as you can to the problem. Remember, keep the regulation in proportion to the problem.

3. Think Small First

Over-regulation harms small businesses most. Always consider the effect of regulations on small businesses before you consider the effect on large firms. Small firms are vital for generating jobs, wealth and competition, so it is especially important to get

their views and to take these into account. **If a regulation is made with small firms in mind, you will probably also have solved the problems of large firms. The reverse is not always true.**

Unnecessary Financial Burden:

Legislation may require firms to invest in new equipment in advance of their normal development plans. This may increase short-term capital requirements and create a disproportionate burden on balance sheets and cash flows.

4. Choose Goal-based Regulations

Use goal-based regulations wherever possible. Concentrate on setting the objective to be achieved by those being regulated instead of detailing the way the regulation should be adhered to.

Regulatory Impact Assessment

A regulatory impact assessment is an analysis of the estimated cost and the perceived benefits of a proposed regulation. The purpose of preparing the regulatory impact assessment is to help you determine the risks, costs and benefits of your regulatory proposal, and identify who will be affected by the proposed regulation.

A regulatory impact assessment is intended to ensure that any proposed regulation is:

- necessary
- aimed at the right target
- in proportion to the problem or issue being addressed.

The regulatory impact assessment is particularly important whenever you are proposing regulations that impose costs on businesses.

As soon as a proposal to regulate is formulated, you should be in a position, having considered as many as possible of the regulatory and non-regulatory alternatives, to compile the regulatory impact assessment. It should be a short document. It should describe briefly the issue that has given rise to a need for regulation and compare various possible options for dealing with the problem. It should identify the risks, costs and benefits of each option, provide an explanation as to who will be affected and how. It should also provide an explanation as to why non-regulatory action will be inadequate. Costs to small business should be highlighted because regulations can often impose disproportionate burdens on smaller firms.

Remember the document is intended at this stage to assist your Permanent Secretary to understand the problem and possible solutions, and to facilitate an informed public debate about regulation.

Once you have decided to make a formal proposal to the Permanent Secretary, for submission, at his or her discretion, to the Minister or the Cabinet, as appropriate, you should have prepared a thorough and robust assessment of the options and of their costs and benefits. Remember, the more thorough your regulatory impact assessment, the more likely it is that you will persuade Cabinet and ultimately Parliament, of the necessity to act in accordance with your recommendation.

The Eight Stages of a Regulatory Impact Assessment

Some regulatory proposals are clearly more significant than others. The level of resources devoted to carrying out a regulatory impact assessment is a matter of judgement, but in general, it should be in proportion to the significance of the proposal in question.

The regulatory impact assessment should normally include entries under the following eight headings:

1. TITLE

2. PURPOSE AND INTENDED EFFECT OF THE REGULATION

- Identify the issue and objective
- Identify the stakeholders likely to be affected including types of businesses
- Identify the harm to be corrected
- Estimate the probability of that harm or detriment occurring without the regulation, or without changing the existing regulation.

3. OPTIONS

- Identify the options for dealing with the issue
- Identify issues of equity or fairness
 - Consider whether the options proposed carry with them disproportionate benefits or costs for different groups in the community
 - Unfair benefits or costs have implications for the various options to be considered.

4. BENEFITS

- Identify the benefits of each option and state who will benefit. Be sure to note common benefits including, a cleaner environment, improved hygiene and improved safety. Those benefiting may be workers, private sector operators, consumers or society generally
- Bear in mind the unintended consequences. People may alter their behaviour in response to change, and this can produce more problems, e.g. banning a product may lead businesses or consumers to switch to substitutes which carry other or possibly even greater risks.

5. COMPLIANCE COSTS ON BUSINESS

- Identify and estimate the compliance costs of the options for a typical business or for the types of business most likely to be affected
- Identify any additional or disproportionate costs that will burden small businesses.

6. ADMINISTRATION COSTS ON GOVERNMENT

- Identify who will administer the regulation
- Identify the cost of administration
- Assess whether the cost of both compliance and administration is justifiable

7. RESULTS OF CONSULTATIONS

- Identify those that have been included in consultations during the regulatory impact assessment process
- Describe the views of each
- Describe any other dialogue or studies undertaken.

8. SUMMARY AND RECOMMENDATIONS

- For each option, list and compare the costs and benefits, and summarise the advantages and disadvantages for different stakeholders. Where costs are expected to fall primarily on a business, bear in mind that these costs are likely to be passed on to consumers in the form of higher prices or fewer choices
- Summarise any issues of equity or fairness
- Make a recommendation.

3

Implementing and Enforcing Regulation

Formal Consultation

When it has been decided that regulation is the best option, specific and formal agreement to proceed is obtained, it is advisable to hold formal consultations with interested and affected parties on the specific proposals.

Formal consultation will:

- help to identify and solve any unforeseen problems with the proposed regulation
- help the enforcement agency to understand the concerns of those who are being regulated
- help outside bodies to understand why the regulation is being proposed
- clarify the costs and benefits involved and help identify the most cost-effective way of achieving the aim
- bring out objections at a sufficiently early stage to influence decisions
- improve the potential for compliance.

When consulting, remember:

- to give sufficient time for bodies to consult their members
- consultation can place a burden on business people. Be clear and concise as to how the issue actually affects businesses
- it is particularly important to consult small businesses if they are likely to be affected by your proposals
- include those who may be affected indirectly by your proposals, as well as the appropriate professionals.

Achieving Compliance

Regulations will only be effective and provide the necessary protection if businesses and others comply with them. Helping businesses and others to comply in the most effective way should, therefore, be one of your key aims. Enforcement officials cannot achieve this solely through detection and punishment of breaches. It is not desirable for enforcement and sanctions to be so punitive that you are effectively discouraging those who are being regulated from performing legitimate activities. It is also wrong to force compliance through fear or uncertainty so that individuals go to unnecessary lengths to comply.

The most cost-effective way of achieving compliance with regulations is to make sure that people are aware of them.

Once regulations are adopted, consider publicising the regulations, together with explanatory notes, and ensure that people have a contact point for their queries and comments.

First Time Tax Payers:

Taxation regulations, that sanction investigations and heavy penalties for past non-compliance by first time tax payers, will discourage informal enterprises from formalising their activities. This effectively places a ceiling on the ability of informal operations to grow, develop and generate new employment opportunities.

Remember that regulations that are difficult to understand or interpret only encourage non-compliance.

Enforcement

When you are exploring your options, you will need to think ahead about enforcement of the proposed regulation:

- who will enforce it?
- what level of compliance will be satisfactory?
- how can this be achieved and at what cost?

It is better **not** to have a regulation than to have one which cannot be properly and consistently enforced. **Poorly enforced regulations create disrespect for the Rule of Law, undermine the legitimacy of the enforcing authority, create uncertainties and encourage corruption.**

Depending on the regulation, you may not need active enforcement. Compliance may be best achieved through self-assessment. This means that instead of requiring enforcement officers to check whether businesses are complying with a regulation, you simply give affected individuals an enforceable right to challenge the businesses compliance. An example where this might be appropriate is in relation to limits on factory pollution emissions.

Enforcement costs time and money. Always consider the cost implications for the proposed enforcement body as early as possible. Also, consider whether the body has sufficient staff and skills. Consider whether the cost of enforcement should be paid from public revenue, or from the regulated businesses themselves. Make sure the cost is kept to a minimum and the burden of payment is placed where it is most appropriate.

Businesses should be able to obtain guidance from enforcement authorities about regulations, and should be able to complain without fear, if they are unhappy, with the way a regulation has been enforced. Make sure there is a satisfactory procedure for solving disputes and for considering complaints about unreasonable enforcement. This will be a quicker and cheaper alternative to court action, particularly for small businesses.

In deciding on the sanctions to be applied for non-compliance with the regulation, aim for a regime that is fair, proportionate and effective. The full range of options should always be considered. These can be administrative methods, statutory fines, civil and/or criminal liability. Criminal sanctions should only be used for very serious breaches, for example where there is criminal intent, wilful negligence, when you are dealing with persistent offenders and those who may cause serious harm.

Remember, the emphasis should always be on encouraging compliance rather than on punishing non-compliance.

4

Monitoring and Reviewing Regulation

Before the regulation comes into force, decide how you are going to review it when it has been in force long enough to have gained experience from its practice. Once a regulation is in force, you need to test whether it is effective and at what cost.

Review Questions To Ask

- what are the objectives behind the regulation?
- has the issue changed?
- does the regulation achieve its objectives?
- to what degree are any changes to the regulation needed?
- does any change have side-effects?
- is the regulation fair?
- does the scope of the regulation need to be so wide?
- is the regulation being enforced consistently?
- what does it cost:
 - to administer and enforce?
 - to comply with, directly or indirectly?
- do the benefits of the regulation still outweigh the costs - is there now a better or more efficient way of achieving the regulation's objective?
- when will the regulation be reviewed again?

Sun-Setting

A powerful way of keeping the regulatory burden to a minimum is to include an expiry date in the regulation. Such a clause is known as a sun-setting clause. This can be particularly appropriate in cases where you are producing a regulation to deal with an unexpected and short-lived emergency. On the other hand, reinstating the regulation may take up valuable parliamentary time so you need to consider this option carefully.

5

Good Regulations

Kenya is striving to promote business confidence and competitiveness and is committed to stimulating economic growth through fewer, better, simpler, less burdensome regulations.

The Principles of Good Regulation

1. **Do Not Regulate unless Absolutely Necessary**
2. **Identify the Issue**

Know the exact nature of the problem you are trying to control and match the regulation to it as closely as you can. Keep the regulation in proportion to the problem.
3. **Keep it Short and Simple**

Regulations need to be clear and unambiguous, but also concise. Complex regulations can be difficult to understand and comply with, and thus difficult to enforce.
4. **Provide Flexibility for the Future**

Use goal-based regulation. Set the objective rather than detailing the way the regulation should be adhered to.
5. **Consider the Impact on Competition and Trade**

Try to find ways of regulating that interfere as little as possible with trade and market forces.
6. **Minimise Costs of Compliance**

Think small first. Do not place unnecessary burdens on business. Prepare a regulatory impact assessment at an early enough stage to influence the consultation process and subsequent decisions.
7. **Integrate with Previous Regulations**

If the regulation overlaps with another measure, try to replace it with a combined and streamlined regulation.
8. **Make Sure the Regulation can be Effectively Managed and Enforced at Reasonable Cost**

Do not make regulations without knowing for sure who will enforce them and how. If they cannot be enforced at a reasonable cost, think again. Reflect the principles of business sensitive enforcement and compliance over punishment.
9. **Make Sure the Regulation will Work and that You will Know if it Does Not**

Look at the regulation from all sides and consider the different ways it might be interpreted. Is it clear and unambiguous? Are there any loopholes?

Consider how you will monitor the results, costs and any side effects or changes in behaviour. It is important to ensure that regulations only last for as long as they are achieving their aim and at a reasonable cost.
10. **Allow Enough Time**

Allow enough time for:

 - consulting people inside and outside government through workshops, questionnaires, interviews, submissions and other available methods
 - considering comments; making policy decisions
 - drafting
 - pausing between finalising the regulations and bringing them into force
 - a possible phasing-in period.

The Principles of Good Enforcement

1. Standards

Clear standards should be drawn up setting the level of service and performance that the public and business people can expect to receive. The standards and the way performance will be assessed should be published.

2. Assistance with Compliance

The authority should provide information and advice on the rules that apply, and assist people and businesses to comply with the regulations.

3. Courteous and Efficient Service

The authority should provide courteous and efficient service. Applications for approval should be dealt with efficiently and promptly.

4. Complaints

The authority should provide a well publicised, swift and efficient complaint procedure that is easily accessible to business.

5. Proportionality

The authority should minimise the costs of compliance for business by ensuring that any action it requires is proportionate to the risks. "Business sensitive" enforcement is especially important.

6. Appeals

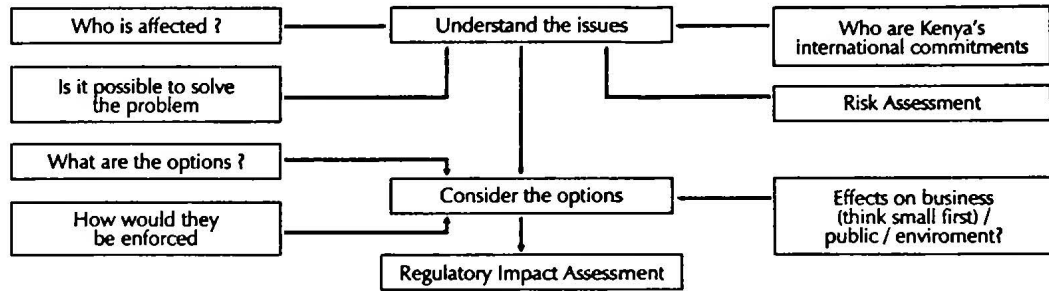
Advice on appeal mechanisms should be clearly set out in writing at the time the action or enforcement is taken.

7. Fairness and Consistency

The authority should carry out its duties in a fair, equitable and consistent manner. There is a presumption that actions are permitted unless they are expressly ruled out.

A Road Map to Better Regulation

Stage 1: Understanding the Issues and Considering the Options



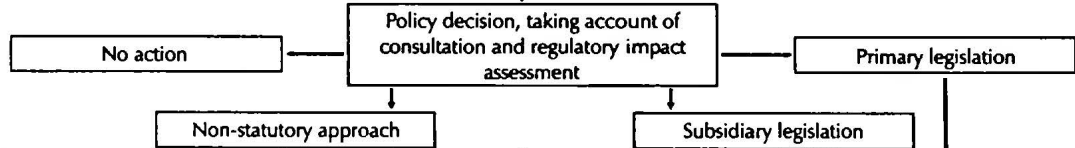
Stage 2: Consulting on the Options

Informal consultation on the options, inside and outside Government

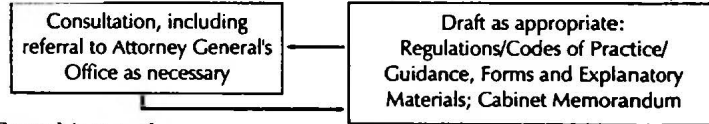
Stage 3: Deciding on the Best Solution

Agreement from Permanent Secretary that the proposed action is appropriate

Formal consultation with interested and affected parties



Stage 4: Drafting

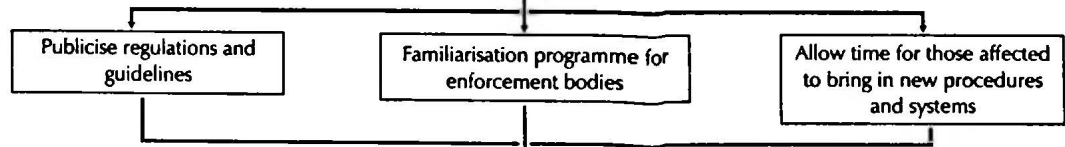


Stage 5: Formal Approval

Ministerial or Cabinet approval, as necessary

Stage 6: Implementation

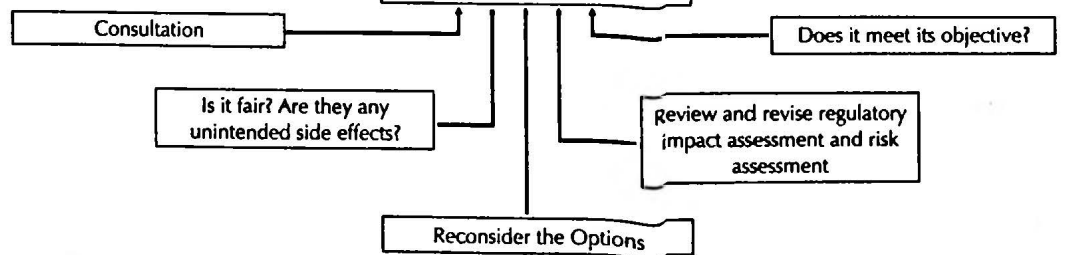
Parliamentary Consideration where required



Stage 7: Monitoring and Reviewing

Bring into force

Monitor regulation



Conducting a Risk Assessment

Risk assessment is a technique for considering the various risks associated with a particular situation, examining whether controls are necessary, and if so, what form they should take. A risk assessment will help you to devise a regulation in proportion to the problem - using the lightest measure possible to achieve the main objective while avoiding or reducing the potential for undesirable side effects. The objective is not usually to reduce the risk at all costs; there must be a balance between the costs and the benefits.

Although the results of a risk assessment and a regulatory impact assessment need to be appraised alongside other related factors when considering policy options, they can help to prevent the adoption of policies that impose an unnecessary burden on business.

The Six Stages of a Risk Assessment

If there is a case for protecting the public, people at work or the environment, you will need to identify how serious the hazard is, the risk of it happening, and how wide its effect could be. A **hazard** is a situation where there is the potential of an undesirable outcome; **risk** is the probability or chance of that undesirable outcome happening.

1. Identify the exact nature of the hazard you are attempting to deal with, and the pathway leading to it
2. Estimate the probability of the hazard occurring and the likely consequences if it does
3. Identify how significant the risk is, and whether control is necessary to reduce the risk
4. Identify precisely how the various proposed controls will minimise the risk of the hazard occurring or reduce the seriousness of the consequences if it does occur
5. Identify the downside of imposing the various controls, and the downside of leaving the situation as it is and doing nothing
6. Finally, assess the cost of imposing the various controls, as against the benefits that will result.

Remember, when conducting a risk analysis, you should bear in mind the wider effects of introducing a regulation. A regulation, which reduces one risk, may well increase another. A regulation, which increases the cost of one product, is likely to encourage people to buy another ..

Glossary of Terms

Code of Conduct/Practice: a set of principles or rules that govern conduct or behaviour

Compliance: behaviour which accords with a requirement being imposed

Compliance rather than Punishment: a principle that requires enforcers of regulations to put emphasis on encouraging people affected by regulations to comply with them, rather than on punishing them for non-compliance

Goal-based Regulations: regulations which set an objective to be achieved, but do not detail how that objective is to be achieved. This approach gives businesses the flexibility to decide for themselves what they need to do to comply with the regulation

Hazard: a situation where there is the potential of an undesirable outcome

Proportionality: one of the main themes of good regulations
Proportionality emphasises the importance of keeping the proposed regulation in proportion to the problem

Regulatory Impact Assessment (RIA): an analysis of the estimated cost of compliance with a proposed regulation weighed against the perceived benefits of the regulation

Risk: the probability or chance of an undesirable outcome happening

Risk Assessment: a technique for considering the various risks associated with a particular situation, for examining whether controls are necessary, and if so, what form they should take

Self-regulation: a situation in which rules governing conduct and behaviour are designed and enforced by those whose behaviour or conduct is being governed

Think small First: a principle that requires us to consider the effects of regulation on small businesses before considering the effect on larger businesses, because over-regulation harms small businesses the most

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