
Best Practice Regulation

What is it and how do we know

Proportional

Principle

- **The burden of rules and their enforcement should be proportionate to the benefits that are expected to result**

Indicators

- A risk-based, cost-benefit framework is in place for both rule making and enforcement
- There is an empirical foundation to regulatory judgements

Flexible

Principle

- **Regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations**

Indicators

- The underlying regulatory approach is principles or performance-based, and policies and procedures are in place to ensure that it is administered flexibly
- Non-regulatory measures, including self-regulation, are used wherever possible

Durable

Principle

- **The regulatory system has the capacity to evolve to respond to changing circumstances**

Indicators

- Feedback systems are in place to assess how the law is working in practice
- Decisions are reassessed at regular intervals and when new information comes to hand
- The regulatory regime is up-to-date with technological and market change, and evolving societal expectations

Certain and Predictable

Principle

- **Regulated entities have certainty as to their legal obligations, and the regulatory regime provides predictability over time**

Indicators

- Safe harbours are available and/or regulated entities have access to authoritative advice
- Decision-making criteria are clear and provide certainty of process
- The need for firms to take long term investment decisions is taken into account in regulatory regimes where appropriate
- There is consistency between multiple regulatory regimes that impact on a single regulated entity

Transparent and Accountable

Principle

- Rules development, implementation and enforcement should be transparent

Indicators

- Regulators must be able to justify decisions and be subject to public scrutiny

Capable regulators

Principle

- **The regulator has the people and systems necessary to operate an efficient and effective regulatory regime**

Indicators

- Capacity assessments are undertaken at regular intervals and subject to independent input and/or review

Growth-focused

Principle

- **Economic objectives (competition, exports, innovation) are given an appropriate weighting relative to other specified objectives**

Indicators

- Identifying and justifying trade-offs between economic and other objectives is an explicit part of decision-making
- The need for firms to take long term investment decisions is taken into account in regulatory regimes where appropriate
- Trade and investment liberalisation an explicit objective

Nordic Model, with reference to New Zealand Building Code requirement E2 (external moisture)

Goal

Buildings must be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside.

Functional requirements

The objective is to safeguard people from illness or injury that could result from external moisture entering the building.

Operative requirements

Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both.

Could the BPR diagnostic tool have Identified that the building control regime was vulnerable to failure?

| Growth | Proportional | Flexible | Durable | Certain | Transparent | Capable |
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|-------------------|-------|-----|-------|-----|--------|-------|-----|
| Building Act 1991 | Green | Red | Green | Red | Orange | Green | Red |
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Best practice principles as an initial diagnostic tool?

- Will generic principles and indicators applied from the centre shed essential 'daylight' on the performance of regulatory regimes? or
- Will applying generic principles and indicators mean that we miss something fundamental to the efficacy of regimes?