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Regulation – the regime and why we chose it?

Lisa Boulton, Head of Regulatory Unit, HMSO

Regulation

The New Pocket Oxford Dictionary defines Regulation, somewhat abruptly, as **1** *Control the rate or speed of a (machine or process)* **2** *control by means of rules*. Control seems central to the Oxford University Press vision of regulation. The public image of regulation is drawn more from experience of the statutory regulators for the privatised monopolies, OFTEL, OFGAS and so on, social inventions set up as new kinds of Government organisations in the 1980s. The original roles of these regulators fit surprisingly well with the Oxford primary definition, “control the rate or speed of a process”, the process of privatisation which was to introduce competition for what had previously been state monopolies. Their roles have evolved pragmatically so that they also fit well with the secondary definition, “control by means of rules”. The enterprise is a successful model which continues to influence approaches to new competition and monopoly management problems.

“Regulation” carries other overtones, of useful independence from detailed political direction, of challenge to entrenched bureaucratic positions, and, regrettably, of petty and disproportionate official interference in harmless activities.

There are three types of regulation, based on statute, on agreement and on ownership, and various combinations. Statutory regulators are the best-known models; they include all regulators established by legislation and are normally tasked with ensuring compliance with legislation. They may have powers to prosecute. Regulators by agreement include the authorities for certification schemes where there is extended interest in verification. An example is the Soil Association, giving independent assurance to consumers over claims about organic standards in food production. Their power is to exclude those who do not comply with the standards. Regulators by ownership include those who allow their property to be used by others and set standards as a condition of use. One among many possible examples would be a port requiring adherence to strict navigation standards.

Crown copyright

Any copyright in “a work made by Her Majesty or by an officer or servant of the Crown in the course of his duties” will be owned by the Crown. The Controller of HMSO is responsible for the duties of owning Crown copyright. The Crown can also acquire copyright just as it can acquire other property rights. The Crown includes Her Majesty Herself, the Royal Household, and Government Departments with their agencies. It does not include Parliament or its officers, Non-Departmental Public Bodies, local authorities or their agencies, or companies even those with no private sector shareholders.

Why Regulate Crown Copyright?

The [Cross-Cutting Review of the Knowledge Economy](#) recommended a major liberalisation of how Crown copyright material was licensed for re-use outside the Crown. For example, the on-line Click-Use Licence, administered by HMSO, now allows licensees re-use of the huge resource of core Government information

at nil charge. The Cross-Cutting Review treated Government Trading Funds as a special case. The Controller of HMSO could give them permission to license material that they generated, and to charge for the licences according to their business objectives within Treasury charging rules, but their licensing should be regulated by HMSO and they were to improve pricing and dissemination. HMSO was to consult publicly on the regulation task.

Trading Funds

Trading Funds were treated differently from Government Departments generally because they rely on different sources of finance. Government Departments rely on money voted by Parliament to finance their activities. If they expect to receive money from trading, that is taken into consideration in setting the Parliamentary Vote or else it is surrendered to the Consolidated Fund. To meet their financial obligations, Trading Funds rely on the money they charge their clients for delivering their services - for example fees charged for driving tests finance the operation of the Driving Standards Agency - and are required to break even taking one year with another. Excess statutory fee income may not be used to subsidise other activities. Three Trading Funds' main services are dominated by information trading and for others there is a strong public demand for information they generate. In accordance with the Cross-Cutting Review, the Controller of HMSO has offered to grant all Trading Funds permission to license Crown copyright material, but some have decided that they would prefer HMSO to license "their" material as it does for Government Departments.

Design of Regulation

The [consultation exercise](#) set out a set of proposed rules and possible sanctions for comment by the public, based on the Controller of HMSO's rights and duties over Crown copyright. It was clear from the responses that the rule-based approach from this ownership model of regulation was not the best design to deliver the improved access and pricing recommended in the Cross-Cutting Review. It was seen as bureaucratic and slow, without being powerful enough to compensate by enforcing the right behaviours in regulated bodies. Taking the responses into account, HMSO have designed a different, lighter and more co-operative regulation framework, drawing on disciplines from regulation by agreement models, but supported by the underlying responsibilities of the Controller of HMSO for Crown copyright.

The outcome, called the *HMSO Information Fair Trader Scheme*, relies on commitment by the Chief Executives of Trading Funds to open, transparent and fair trading in information. It means that the regulated bodies will be pledged to support administrative arrangements delivering these standards, which will be demonstrated to the Chief Executives and to the Controller of HMSO. As a result, any complaints about individual decisions on licensing which might fall short of the Chief Executives' standards can be investigated rapidly and solutions identified. The analysis and outcome of the consultation can be seen on HMSO's [website](#).

This scheme has been welcomed by prospective regulated bodies and by Ministers. By the time of the AGI Conference in September 2002, HMSO and the regulated bodies expect that they will have begun to roll out the scheme. This will entail Chief Executives entering the public commitment to the open fair and transparent standards of information trading, followed by a verification process led by HMSO. We believe that it will deliver the improvements in access and pricing found necessary by the Cross-Cutting Review.

Author

Mrs A M Boulton
Head of Regulation, HMSO

Contact: e-mail lisa.boulton@cabinet-office.x.gsi.gov.uk
Phone 020 7276 5215
Fax 020 7276 2661