



# Regulators' Code

Consistent Regulation

For a Better Future

**This Regulators' Code should be read in conjunction with specific section policies detailing how each team seeks to comply with this Code.**

## **Regulators' Code**

Government Regulators whose functions are specified by legislation must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If a regulator concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.

### **1. Regulators should carry out their activities in a way that protects the environment and supports those they regulate to comply and grow**

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

1.2 When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best;

- a. understand and minimise negative environmental and economic impacts of their regulatory activities,
- b. minimising the costs of compliance for those they regulate,
- c. improve confidence in compliance for those they regulate, by providing greater certainty, and
- d. encourage and promote compliance.

1.3 Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.

1.4 Regulators should ensure that their officers understand the principles of good regulation<sup>1</sup> and of this Code, and how the regulator delivers its activities in accordance with them.

### **2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views**

2.1 Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on the environment and business and engage with business and interested organisation representatives.

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<sup>1</sup> regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent

2.2 In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required, or decisions taken, and the reasons for these.

Regulators should provide an opportunity for dialogue in relation to the advice, requirements, or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

2.3 Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision. (this may vary dependant of legislation being appealed).

2.4 Regulators should provide an impartial and clearly explained route to appeal against a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.

2.5 Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.

2.6 Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.

2.7 Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate.

### **3. Regulators should base their regulatory activities on risk**

3.1 Regulators should take an evidence-based approach to determining the priority risks in their area of responsibility and should allocate resources where they would be most effective in addressing those priority risks.

3.2 Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

3.3 Regulators designing a risk assessment framework<sup>2</sup>, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.

3.4 Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.

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<sup>2</sup> The term 'risk assessment framework' encompasses any model, scheme, methodology or risk rating approach that is used to inform risk-based targeting of regulatory activities in relation to individual businesses or other regulated entities.

3.5 Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly. The term 'risk assessment framework' encompasses any model, scheme, methodology or risk rating approach that is used to inform risk-based targeting of regulatory activities in relation to individual businesses or other regulated entities. <sup>4</sup> The Government will discuss with other regulators a common approach to surveys to support benchmarking of their performance.

#### **4. Regulators should share information about compliance and risk**

4.1 Regulators should collectively follow the principle of "collect once, use many times" when requesting information from those they regulate.

4.2 When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.

#### **5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply**

5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens.

5.2 Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.

5.3 Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.

5.4 Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.

5.5 In responding to requests for advice, a regulator's primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on. (NOTE: In more serious cases this does not preclude enforcement action be instigated).

5.6 Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.

#### **6. Regulators should ensure that their approach to their regulatory activities is transparent**

6.1 Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.

6.2 Regulators' published service standards should include clear information on;

- a. their approach to checks on compliance, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect,

- b. how they communicate with those they regulate and how they can be contacted,
- c. their approach to providing information, guidance and advice,
- d. their enforcement policy, explaining how they respond to non-compliance,
- e. their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges, and
- f. how to comment or complain about the service provided and routes to appeal.

6.3 Information published to meet the provisions of this Code should be easily accessible, including being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date.

6.4 Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

6.5 Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals their decisions.

## **Monitoring the effectiveness of the Regulators' Code**

The Government is committed to making sure the Regulators' Code is effective.

To make sure that the Code is being used effectively, we want businesses, regulated bodies and citizens to challenge regulators who they believe are not acting in accordance with their published policies and standards. It is in the wider public interest that regulators are transparent and proportionate in their approaches to regulation. The Government will monitor published policies and standards of regulators subject to the Regulators' Code and will challenge regulators where there is evidence that policies and standards are not in line with the Code or are not followed.

### **Sections adopting this code**

Infrastructure and Environment Department

Regulation Directorate

Development and Land  
Environmental and Consumer Protection  
Regulatory Improvement and Licensing